

**BENICIA CITY COUNCIL
REGULAR MEETING AGENDA**

**City Council Chambers
February 01, 2011
7:00 PM**

*Times set forth for the agenda items are estimates.
Items may be heard before or after the times designated.*

I. CALL TO ORDER (7:00 PM):

II. CLOSED SESSION:

III. CONVENE OPEN SESSION:

A. ROLL CALL.

B. PLEDGE OF ALLEGIANCE.

1. REFERENCE TO THE FUNDAMENTAL RIGHTS OF THE PUBLIC:

A plaque stating the fundamental rights of each member of the public is posted at the entrance to this meeting room per section 4.04.030 of the City of Benicia's Open Government Ordinance.

C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF THE PUBLIC:.

A plaque stating the fundamental rights of each member of the public is posted at the entrance to this meeting room per section 4.04.030 of the City of Benicia's Open Government Ordinance.

IV. ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

A. ANNOUNCEMENTS.

1. Announcement of action taken at Closed Session, if any.

2. Openings on Boards and Commissions:

Sky Valley Open Space Committee: One full term to January 31, 2015

Civil Service Commission: One full term to January 31, 2015

Building Board of Appeals: Three full terms to January 31, 2015

Solano Transportation Authority Pedestrian Advisory Committee: One full term to January 31, 2014

3. Mayor's Office Hours:

Mayor Patterson will maintain an open office every Monday (except holidays) in the Mayor's Office of City Hall from 6:00 p.m. to 7:00 p.m. No appointment is necessary. Other meeting times may be scheduled through the City Hall office at 746-4200.

B. APPOINTMENTS.

- 1. Appointment of Council Member Tom Campbell to the City Council Appointment Sub Committee for a one-year term ending January 31, 2012.**

C. PRESENTATIONS.

D. PROCLAMATIONS.

V. ADOPTION OF AGENDA:

VI. OPPORTUNITY FOR PUBLIC COMMENT:

This portion of the meeting is reserved for persons wishing to address the Council on any matter not on the agenda that is within the subject matter jurisdiction of the City Council. State law prohibits the City Council from responding to or acting upon matters not listed on the agenda. Each speaker has a maximum of five minutes for public comment. If others have already expressed your position, you may simply indicate that you agree with a previous speaker. If appropriate, a spokesperson may present the views of your entire group. Speakers may not make personal attacks on council members, staff or members of the public, or make comments which are slanderous or which may invade an individual's personal privacy.

A. WRITTEN COMMENT.

B. PUBLIC COMMENT.

VII. CONSENT CALENDAR (7:15 PM):

Items listed on the Consent Calendar are considered routine and will be enacted, approved or adopted by one motion unless a request for removal or explanation is received from a Council Member, staff or member of the public. Items removed from the Consent Calendar shall be considered immediately following the adoption of the Consent Calendar.

A. Approval of Minutes of the Special and Regular meetings of January 18, 2011. (City Clerk).

B. ACCEPTANCE AND NOTICE OF COMPLETION FOR THE 2010 STREET RESURFACING PROJECT. (Public Works and Community Development Director)

The 2010 Street Resurfacing Project resurfaced Rose Drive between East 2nd Street and McAllister Drive and patched the northbound lane of East 2nd Street between Industrial Way and Wanger Street. The final construction cost of \$210,596 is within the approved project budget and is fully funded with Proposition 1B bond monies. Formal acceptance of the work by the City Council is now required to file the notice of completion and allow final payment to be made to the contractor.

Recommendation: Adopt a resolution accepting the 2010 Street Resurfacing Project as complete including Change Order Nos.1-3, authorizing the City Manager to sign the Notice of Completion, and authorizing the City Clerk to file same with the Solano County Recorder.

C. Approval to waive the reading of all ordinances introduced and adopted pursuant to this agenda.

VIII. PUBLIC HEARINGS (7:30 PM):

A public hearing should not exceed one hour in length. To maximize public participation, the council requests that speakers be concise and avoid repetition of the remarks of prior speakers. Instead, please simply state whether you agree with prior speakers.

A. APPROVAL OF THE AGREEMENT WITH ALLIED WASTE FOR THE SOLID WASTE, RECYCLING AND GREEN WASTE FRANCHISE AGREEMENT AND DIRECTION TO AMEND THE MUNICIPAL CODE RELATED TO MANDATORY COMMERCIAL/INDUSTRIAL RECYCLING. (City Attorney)

At the December 16, 2010 City Council meeting, it was reported that the negotiations with Allied Waste for an extension of the Franchise Agreement for garbage services had broken down. Council directed that the Council Subcommittee return on January 18 with a new agreement or to select a consultant to assist with a request for proposals process. The subcommittee

met again with Allied. The parties have successfully arrived at a new proposed franchise agreement. If approved by the City Council, the new franchise agreement will be effective July 1, 2011.

Recommendation: Adopt the resolution approving the Collection Service Agreement between the City and Allied Waste Systems for the collection of solid waste, recycling and green waste throughout the City. Also, by motion direct the preparation of an ordinance to mandate commercial and industrial users use Allied Waste for recycling.

B. MEDICAL MARIJUANA DISPENSARIES BAN. (City Attorney)

In 2009, the City Council adopted a moratorium on the establishment of medical marijuana dispensaries and hookah lounges. This was in response to an inquiry regarding opening a medical marijuana dispensary. Like many cities, Benicia has a “permissive” zoning system, under which any use—including medical marijuana dispensaries—that is not expressly enumerated as a permitted use is deemed to be prohibited. Thus, although the Benicia Municipal Code does not specifically regulate such dispensaries, the City’s practice has always been to deem dispensaries prohibited. Nevertheless, the City adopted the previous moratorium to make this policy explicit. Since the moratorium is due to expire, permanent rules should be enacted. The Planning Commission considered this ordinance at their January 26, 2011 meeting. Their recommendation will be presented at the Council meeting.

Recommendation: Introduce the ordinance to prohibit medical marijuana dispensaries except in limited, specified licensed facilities.

1. Supplemental Report - MEDICAL MARIJUANA DISPENSARY BAN

IX. ACTION ITEMS:

X. INFORMATIONAL ITEMS:

A. City Manager Reports.

XI. COUNCIL MEMBERS REPORTS:

XII. ADJOURNMENT (9:30 PM):

Public Participation

The Benicia City Council welcomes public participation.

Pursuant to the Brown Act, each public agency must provide the public with an opportunity to speak on any matter within the subject matter jurisdiction of the agency and which is not on the agency's agenda for that meeting. The City Council allows speakers to speak on non-agendized matters under public comment, and on agendized items at the time the agenda item is addressed at the meeting. Comments are limited to no more than five minutes per speaker. By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the City Council.

Should you have material you wish to enter into the record, please submit it to the City Manager.

Disabled Access

In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact Anne Cardwell, the ADA Coordinator, at (707) 746-4211. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Meeting Procedures

All items listed on this agenda are for Council discussion and/or action. In accordance with the Brown Act, each item is listed and includes, where appropriate, further description of the item and/or a recommended action. The posting of a recommended action does not limit, or necessarily indicate, what action may be taken by the City Council.

Pursuant to Government Code Section 65009, if you challenge a decision of the City Council in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to, the public hearing. You may also be limited by the ninety (90) day statute of limitations in which to challenge in court certain administrative decisions and orders (Code of Civil Procedure 1094.6) to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

The decision of the City Council is final as of the date of its decision unless judicial review is initiated pursuant to California Code of Civil Procedures Section 1094.5. Any such petition for judicial review is subject to the provisions of California Code of Civil Procedure Section 1094.6.

Public Records

The agenda packet for this meeting is available at the City Manager's Office and the Benicia Public Library during regular working hours. To the extent feasible, the packet is also available on the City's web page at www.ci.benicia.ca.us under the heading "Agendas and Minutes." Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting at the City Manager's Office located at 250 East L Street, Benicia, or at the meeting held in the Council Chambers. If you wish to submit written information on an agenda item, please submit to the City Clerk as soon as possible so that it may be distributed to the City Council. A complete proceeding of each meeting is also recorded and available through the City Clerks Office.

RESOLUTION NO. 11-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING THE MAYOR'S APPOINTMENT OF COUNCIL MEMBER TOM CAMPBELL TO A CITY COUNCIL APPOINTMENT SUBCOMMITTEE FOR A ONE-YEAR TERM ENDING JANUARY 31, 2012

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Benicia that the appointment of Council Member Tom Campbell to a City Council Appointment Subcommittee by Mayor Patterson is hereby confirmed contingent on the adoption of the subcommittee resolution.

The above Resolution was approved by roll call by the City Council of the City of Benicia at a regular meeting of said Council held on the 1st day of February 2011 and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
January 18, 2011

City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

I. CALL TO ORDER:

Mayor Patterson called the meeting to order at 6:30 p.m.

II. CONVENE OPEN SESSION:

A. ROLL CALL

All Council Members were present.

B. PLEDGE OF ALLEGIANCE

Council Member loakimedes led the Pledge of Allegiance.

C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF THE PUBLIC:

III. OPPORTUNITY FOR PUBLIC COMMENT:

A. WRITTEN COMMENT

B. PUBLIC COMMENT

None

IV. CLOSED SESSION:

Heather McLaughlin, City Attorney, read the announcement of Closed Session.

**A. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Subdivision (a) of Government Code Section 54956.9)**

Name of case: Mary Wika v. City of Benicia

V. ADJOURNMENT (7:00 PM):

Mayor Patterson adjourned the meeting to Closed Session at 6:31 p.m.

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
January 18, 2011

City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

I. CALL TO ORDER:

Mayor Patterson called the meeting to order at 7:00 p.m.

II. CLOSED SESSION:

III. CONVENE OPEN SESSION:

A. ROLL CALL

All Council Members were present.

B. PLEDGE OF ALLEGIANCE

Vice Mayor Schwartzman led the Pledge of Allegiance.

C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF PUBLIC

IV. ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

A. ANNOUNCEMENTS

1. Announcement of action taken at Closed Session, if any.

Ms. McLaughlin reported that Council received information from Staff, and then gave direction to Staff.

Council Members Hughes, Schwartzman, and Ioakimedes disclosed exparte communications regarding the closed session item.

2. Openings on Boards and Commissions:

Mayor Patterson clarified that the interview process was still open for the openings on the boards and commissions. Staff discussed setting deadlines for applications/interviews in the future.

Mayor Patterson expressed Council's support and sorrow for the victims of the shooting in Tucson, Arizona.

Mayor Patterson stated the meeting would be adjourned in memory of Howard and Beverly Sherman.

Sky Valley Open Space Committee:
Two full terms to January 31, 2015

Civil Service Commission:
One full term to January 31, 2015

Building Board of Appeals:
Three full terms to January 31, 2015

Solano Transportation Authority Pedestrian Advisory Committee:
One full term to January 31, 2014

Human Services Board:
One unexpired term to July 31, 2014

Finance, Audit and Budget Committee:
One full term to January 21, 2015

3. Mayor's Office Hours:

4. Benicia Arsenal Update

No update was necessary, as the Arsenal would be discussed under the Consent Calendar.

B. APPOINTMENTS

- 1. Confirmation of the Mayor's appointment of Council Member Hughes as the alternate to the Soltrans Joint Powers Authority via an addition to the resolution of the Mayor's Appointments of Members to Standing, Ad Hoc and outside agency committees.**

On motion of Mayor Patterson Council adopted the Resolution, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

RESOLUTION 11-1 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF MEMBERS OF THE CITY COUNCIL TO STANDING AD HOC AND OUTSIDE AGENCY COMMITTEES

C. PRESENTATIONS

D. PROCLAMATIONS

V. ADOPTION OF AGENDA:

Mr. Kilger stated there were no changes. He noted minor amendments to items VII.B and VII.C. Mr. Knox clarified that pages VII.B.20 and VII.C.20, both staff reports incorrectly list references to the right-turn pocket, which should have

been precluded from the contract: paragraph 2, subsections b, c, and d, should be stricken.

Council Member loakimedes requested item VII.F be heard prior to items VII.B and VII.C (and any other items that might be pulled).

On motion of Vice Mayor Schwartzman, seconded by Council Member loakimedes, Council adopted the agenda, as amended, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

VI. OPPORTUNITY FOR PUBLIC COMMENT:

A. WRITTEN COMMENT

One item received from Karen Burns (copy on file).

B. PUBLIC COMMENT

David Lockwood - Mr. Lockwood discussed concerns regarding City salaries. He discussed concern regarding maintenance in the Rose Drive/East Second Street assessment district, and volunteers being unhappy about the excess money being spent on City salaries.

Mr. Kilger discussed the issue of maintenance on Rose Drive, the City not being near bankruptcy, the upcoming Council meeting on 2-1-11 (where the City's finances and services would be discussed), and the issue of employee compensation/balancing the budget.

Council Member Campbell suggested resuming the past practice of having the last Tuesday of each month dedicated to a meeting to discuss the budget.

Vice Mayor Schwartzman announced BERT was having two upcoming classroom sessions. He encouraged the public to participate. He then announced an upcoming Families in Transition/Community Action Coalition fundraiser.

VII. CONSENT CALENDAR:

Council pulled items VII.B, VII.C, VII.D, VII.E, VII.F, and VII.J for discussion.

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, Council adopted the Consent Calendar, as amended, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

A. Approval of Minutes of the Special and Regular meeting of January 4, 2011

B. CONTRACT FOR DESIGN AND CONSTRUCTION ADMINISTRATION OF THE DOWNTOWN INTERMODAL PROJECT

RESOLUTION 11-5 - A RESOLUTION APPROVING A CONTRACT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR A NOT-TO-EXCEED COST OF \$570,179 TO COMPLETE THE DESIGN AND CONSTRUCTION ADMINISTRATION FOR THE DOWNTOWN INTERMODAL PROJECT

Mayor Patterson stated that if any specifics were going to be discussed, she would have to recuse herself, due to a conflict of interest.

Staff discussed justification for hiring a consultant for this project.

Council Member Ioakimedes and Staff discussed whether there should be language specifying the relationship between the first and second part of the contract.

Mayor Patterson recused herself.

Council Member Campbell and Staff discussed concern regarding the placement of the trees and bulbouts. Staff recommended waiting until the design changes are submitted - as Council and the public would have a chance to review.

Council Member Hughes clarified that the current plans were preliminary, and Council, Staff, and the public, would have a chance to review future changes.

Council Member Ioakimedes discussed the need to follow the process.

Vice Mayor Schwartzman and Staff discussed the issue of the maintenance of the trees being planted. He asked Staff to verify that the left turn lane turning into the Solano Square/Starbucks area would still be there (it would).

Council Member Ioakimedes clarified the need for the City/Council to be stewards of the funds for this project.

Council Member Campbell and Staff discussed the lack of bicycle lanes in the current design.

Public Comment:

Toni Haughey - Ms. Haughey discussed concern regarding HPRC/Planning Commission not being given the chance to provide input on this project from the very beginning. She discussed using some of the funds to replace some of the light fixtures on First Street.

Council Member Hughes discussed the need for better communication in the future, so there would not be as many surprises to Council or the public.

End of Public Comment

Council Member Hughes made a motion to adopt the resolution, with the suggested changes (to page VII.B.20).

On motion of Council Member Hughes, seconded by Council Member Campbell, Council adopted the Resolution, as amended, on roll call by the following vote:

Ayes: Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

C. CONTRACT FOR DESIGN AND CONSTRUCTION ADMINISTRATION OF THE WESTERN GATEWAY INTERMODAL PROJECT

RESOLUTION 11-6 - A RESOLUTION APPROVING A CONTRACT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR A NOT-TO-EXCEED COST OF \$570,179 TO COMPLETE THE DESIGN AND CONSTRUCTION ADMINISTRATION FOR THE WESTERN GATEWAY INTERMODAL PROJECT

Council Member loakimedes and Staff discussed page VII-C-20, and the issue of permanent impacts to the side streets in the area. Staff clarified that could be addressed in the scope of work, and it would be part of the design process.

Council Member Campbell and Staff discussed what could be done with the leftover funds (use it for traffic mitigation/calming on West K Street).

Public Comment:

None

On motion of Vice Mayor Schwartzman, seconded by Council Member loakimedes, Council adopted the Resolution, as amended, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

D. FORMATION OF AN AD-HOC TASK FORCE TO RECOMMEND BIKE RACKS AND LOCATIONS

RESOLUTION 11-7 - A RESOLUTION APPROVING THE FORMATION OF A BICYCLE RACK TASK FORCE

Council Member Campbell inquired about what the committee would be doing. He discussed concern regarding returning the racks and losing out on the money used to purchase them. Staff discussed possible recommendations the committee could make, and placing the racks in better locations.

Council Member Campbell inquired whether Staff could install the racks in an attempt to save money. Staff indicated it would most likely cost more for Staff to install the racks, rather than the contractor.

Council Member Campbell clarified the funds for the bicycle racks came from the Good Neighbor Steering Committee, and was stipulated for bicycle racks.

Public Comment:

Larry Fullington - Mr. Fullington stated he was speaking on behalf of a neighbor. Perhaps the dulling the surface on the racks and making them look more like a wagon wheel would make them look more appropriate.

Marilyn Bardet - Ms. Bardet hoped the City would find an equitable way to move the racks without having to lose them and the funds already spent on them. She discussed concern regarding the need to follow a process.

Karen Burns - Ms. Burns read a letter she submitted stating her concerns regarding the bike racks (copy on file).

Toni Haughey- Ms. Haughey discussed the installation costs, an experience she had watching staff stand around and watch the bike rack installations, the need to follow the processes, and the disconnect between Staff and the commissions.

End of Public Comment

Mayor Patterson asked if there was a motion to approve the formation of the task force, with the addition that there be a report on the alternative staff installation option, and an accurate cost of all the bike rack installations.

On motion of Council Member Hughes, seconded by Council Member Campbell, Council adopted the Resolution, as amended, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, Ioakimedes

Noes: (None)

E. APPROVAL OF A CONTRACT AMENDMENT FOR RENNE SLOAN HOLTZMAN SAKAI, LLP FOR HUMAN RESOURCES PROFESSIONAL SERVICES

RESOLUTION 11-8 - A RESOLUTION APPROVING THE CONTRACT AMENDMENT IN THE AMOUNT OF 87,500 WITH RENNE SLOAN HOLTZMAN SAKAI, LLP, MODIFYING THE SCOPE TO INCLUDE ADDITIONAL PERSONNEL SERVICES AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY

Mayor Patterson asked Staff for justification for hiring the consultant. Staff confirmed the City did not have qualified staff available for this position. In part, the City would need to hire someone for this position, even if it had a human resources manager on staff, particularly for the task of labor negotiations.

Public Comment:

None

On motion of Vice Mayor Schwartzman, seconded by Council Member

loakimedes, Council adopted the Resolution, on roll call by the following vote:
Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes
Noes: (None)

F. DENIAL OF THE CLAIM AGAINST THE CITY BY PRISM ENGINEERING, INC. AND REFERRAL TO INSURANCE CARRIER

Council Member loakimedes discussed the issue of a possible conflict of interest regarding the services being bundled with the contractor.

Staff clarified there was no conflict of interest with the way the agreement was structured.

Council Member Campbell inquired if Staff knew of a history of a similar situation. Staff indicated there was no such history in the City. Council Member Campbell would like to know (for future items) when the contractor has a history regarding similar situations/scenarios.

Public Comment

None

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, Council approved the denial of the claim against the City by Prism Engineering, Inc., and referral to insurance carrier, on roll call by the following vote:
Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes
Noes: (None)

G. APPROVAL OF THE BENICIA HIGH SCHOOL TRAFFIC SIGNAL AND ENTRANCE CIRCULATION IMPROVEMENT PROJECT

RESOLUTION 11-2 - A RESOLUTION APPROVING CHANGE ORDER NO. 27 IN THE AMOUNT OF \$2,500, ACCEPTING THE BENICIA HIGH SCHOOL TRAFFIC SIGNAL AND ENTRANCE CIRCULATION IMPROVEMENT PROJECT AS COMPLETE INCLUDING CHANGE ORDER NOS. 1-27, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY CLERK TO FILE SAME WITH THE SOLANO COUNTY RECORDER

H. REVIEW AND ACCEPTANCE OF THE INVESTMENT REPORT FOR THE QUARTER ENDED SEPTEMBER 2010

I. PURCHASE OF REPLACEMENT PUMPS AT THE LAKE HERMAN PUMP STATION

J. REPORT FROM THE ARSENAL SUBCOMMITTEE AND RECOMMENDATION FOR AWARD OF AN AGREEMENT FOR CONSULTING SERVICES FOR THE BENICIA ARSENAL PROJECT TO ENVIRONMENTAL RISK SERVICES ("ERS")

RESOLUTION 11-4 - A RESOLUTION AWARDDING THE CONSULTANT

AGREEMENT TO ERS CORPORATION FOR THE BENICIA ARSENAL CLEANUP PROJECT AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY

Vice Mayor Schwartzman pulled this item so Council could provide the public with an update.

Mayor Patterson discussed the meeting that took place last week. The DOJ was doing a good job of slowing the process down, thus putting the current property owners at a higher risk of having to absorb the remediation costs that might be necessary. She was offended by the representative of the DOJ and his comments toward a private attorney that was at the meeting. She hoped they would be able to make progress at a future meeting. The next step would to begin the process of public outreach, start a notification process, and come up with a strategy.

Vice Mayor Schwartzman reiterated that it behooved the DOJ to drag this issue along. He was disappointed that the DOJ presented the way they did. The longer this is strung out, he fears the DTSC will issue an imminent endangerment order. He doesn't want that to happen.

Council Member Campbell disclosed exparte communications. He discussed the issue of limiting the geographical scope of the cleanup, and the need to better define what the mitigation is that the DTSC wants. Staff suggested including language regarding those issues in 'Develop Strategy #5.' Staff suggesting adding 'consideration would be given early on to limiting the scope of the Arsenal Project in terms of the property owners or operators in the geographical area.' Mayor Patterson would like to see a parenthetical inserted regarding cost, time, and efficient/effective manner.

Vice Mayor Schwartzman and Staff discussed the issue of the geographical scope of work, and the possibility of determining (up front) which properties don't need to be included.

Council Member Ioakimedes and Staff discussed the issue of developing a cleanup strategy and the City's core values. He did not think the current language went far enough.

Council Member Hughes disclosed exparte communications. He discussed concern regarding developing strategies at this time.

Council Member Ioakimedes disclosed exparte communications.

Public Comment:

Dana Dean - Ms. Dean discussed concern regarding the proposed agreement regarding excess funds, remediation funds, termination clause, and the issue of the City tendering insurance against property owners. She was concerned that

the document incentivizes making claims against the property owners.

Council and Staff discussed the concerns raised by Ms. Dean.

Council Member Hughes suggested adding language to paragraph 3a to prevent ambiguity regarding what the City would pay the consultant.

Ms. Dean inquired whether the property owners had been notified (as concerns had been raised about lack of notice in the past), and whether it was the Council's intention to have the City Attorney approve 'any other' remediation funds (paragraph 5).

Marilyn Bardet - Ms. Bardet discussed concern regarding the process for determining which properties are clean.

David Lockwood - Mr. Lockwood discussed the need to get the State of California involved in this issue. It could be risky and costly for the City to take this on alone.

End of Public Comment

Ms. McLaughlin listed the proposed changes to the agreement:

- Address the concern in paragraph 3(a) on page VII.J.7 regarding the City Attorney approval of 'any other remediation funds' a clause will be added that the city attorney will report any approval immediately to the Council
- Also in paragraph 3, insert language stating that the consultant would be paid for work actually performed
- On page VII.J.9 paragraph 6 (b), there was discussion about work actually performed, but that was actually included in paragraph 6 (b) and (c), so that didn't need to be amended
- The City Attorney explained the difference between 'any time' and 'at that time' so she did not think that needed to be amended
- On page VII.J.17 - she suggested in paragraph one, that early meetings with DTSC and other agencies, she put in there under 'purpose' - 'to consider strategy per paragraph 5 below, and public participation opportunities'
- On page VII.J.18, item 5, insert the sentence 'in determining the cost, time efficient and effective strategy, consideration would be given early on to limiting the scope of the Arsenal Project. In terms of an appropriate property owners or operators, and/or geographic area'. By including the reference in paragraph 1 to paragraph 5, that should make it easier.

Council Member Campbell made a motion to incorporate the changes listed by Ms. McLaughlin.

Vice Mayor Schwartzman discussed the need for language regarding the clean property owners being able to opt out.

Council Member loakimedes discussed concern regarding the need for a document that clearly states Council's intentions (so future council's know the current council's intentions).

Ms. McLaughlin read the additional changes to the language:

- In determining a cost, time efficient, and effective strategy, consideration will be given early on to limiting the scope of the Arsenal Project in terms of appropriate property owners, operators, and/or geographic area - add a parenthetical the definition of appropriate - if a property is determined to be free of contamination, property owners will have the option of participating in the City's global program for the Arsenal Project.

Council Member Campbell agreed to the amendment to his motion.

On motion of Council Member Campbell, seconded by Council Member Hughes, Council adopted the Resolution, as amended, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

K. Approval to waive the reading of all ordinances introduced and adopted pursuant to this agenda

VIII. PUBLIC HEARINGS:

IX. ACTION ITEMS:

X. INFORMATIONAL ITEMS:

A. City Manager Reports

1. OVERVIEW OF THE SUSTAINABLE COMMUNITIES STRATEGY, IMPLEMENTATION OF SENATE BILL 375 RELATIVE TO LAND USE, TRANSPORTATION, AND ENVIRONMENTAL PLANNING

Charlie Knox, Public Works & Community Development Coordinator, reviewed the staff report.

Council Member loakimedes and Staff discussed the issue of housing to jobs instead of jobs to housing, and working that school of thought into the workings of a transit agency.

Council Member Hughes and Staff discussed the risks associated with entering into a partnership (SolTrans).

Mayor Patterson suggested having regular updates on this item.

Public Comment:

None

2. STATUS REPORT ON THE AGREEMENT WITH ALLIED WASTE FOR THE SOLID WASTE, RECYCLING AND GREEN WASTE FRANCHISE AGREEMENT

Heather McLaughlin, City Attorney, reviewed the staff report.

Vice Mayor Schwartzman discussed the improvements made to the proposed agreement, and the state mandated recycling program.

Council Member Ioakimedes clarified that a lot of the changes that were made to the contract are things that the City is already doing. He felt the agreement would be a good thing for the City.

Council Member Campbell discussed the waste management contract the City of San Carlos signed. He discussed the public participation aspect that San Carlos did, but seemed to be missing in Benicia. He inquired how much the City was saving the Benicia Unified School District by not charging them for the waste pickup. He discussed the issue of customer complaints, and how that should be handled. He would like to have some kind of public committee or input on how much Allied could increase the fees, and have it tied to the CPI. He would like to look at the rate the City is getting for the franchise fee (it seemed to be lower than other comparable cities).

Mayor Patterson asked Council to put the remainder of their comments into an email to the City Manager that could then be distributed to all council members.

Mayor Patterson gave direction to Staff to look at opportunities to schedule a workshop or study session to discuss the concerns submitted by Council, and get back to Council to let them know when that would be. Staff should find other ways to solicit feedback from the commercial community.

Council Member Hughes discussed the good service and relationship the City has had with Allied Waste. They have been a good community partner. He would like the issues of the rate increase, and the franchise extension fee addressed in a workshop.

Council Member Ioakimedes clarified there was a meeting on 1/25/11 at the Chamber of Commerce for the commercial community, to get feedback on the agreement.

Mayor Patterson would like an answer about the relationship with the transfer stations and the landfills.

Vice Mayor Schwartzman and Staff cautioned Council on the time constraints with either moving forward or proceeding with seeking RFP's.

Council Member Hughes did not feel another workshop was necessary. He felt

Council had the information it needed to make an informed decision.

Council Member Campbell discussed the need to get the message out to the public that there would be a fee increase, but the services they would be receiving would be positive.

Public Comment:

Dana Dean - Ms. Dean spoke in support of having a workshop to discuss the contract.

Tim Argente - Mr. Argente stated that Allied Waste looked forward to working with the City.

End of Public Comment

Council Member Ioakimedes cautioned people about assuming there would be fee increases.

3. FOREIGN TRADE ZONES

Mario Giuliani, Management Analyst, reviewed the staff report.

Public Comment:

None

B. Council Member Committee Reports

- 1. Mayor's Committee Meeting. (Mayor Patterson)
Next Meeting Date: January 19, 2011**
- 2. Association of Bay Area Governments (ABAG). (Mayor Patterson and Council Member Ioakimedes)
Next Meeting Date: 2011 Spring General Assembly will be held on Thursday, April 14, 2011**
- 3. Finance, Audit and Budget Committee. (Vice Mayor Schwartzman and Council Member Campbell)
Next Meeting Date: February 3, 2011**

Council Member Campbell discussed the City's recent successful audit, and concerns regarding the audit firm. The committee might recommend changing audit firms.

- 4. League of California Cities. (Mayor Patterson and Vice Mayor Schwartzman)
Next Meeting Date: City Manager's Department Meeting, February 2-4, 2011**

5. **School Liaison Committee. (Council Members Ioakimedes and Hughes)**
Next Meeting Date: March 10, 2011
6. **Sky Valley Open Space Committee. (Council Members Campbell and Hughes)**
Next Meeting Date: February 2, 2011
7. **Solano EDC Board of Directors. (Mayor Patterson and Council Member Campbell)**
Next Meeting Date: January 20, 2011
8. **Solano Transportation Authority (STA). (Mayor Patterson and Council Member Ioakimedes)**
Next Meeting Date: January 19, 2011
9. **Solano Water Authority-Solano County Water Agency and Delta Committee. (Mayor Patterson and Vice Mayor Schwartzman)**
Next Meeting Date: January 13, 2011
10. **Traffic, Pedestrian and Bicycle Safety Committee. (Council Members Hughes and Ioakimedes)**
Next Meeting Date: January 20, 2011
11. **Tri-City and County Regional Parks and Open Space. (Council Members Campbell and Hughes)**
Next Meeting Date: TBD
12. **Valero Community Advisory Panel (CAP). (Council Member Hughes)**
Next Meeting Date: TBD
13. **Youth Action Coalition. (Vice Mayor Schwartzman and Council Member Campbell)**
Next Meeting Date: January 26, 2011
14. **ABAG-CAL FED Task Force-Bay Area Water Forum. (Mayor Patterson)**
Next Meeting Date: TBD

XI. ADJOURNMENT:

Mayor Patterson adjourned the meeting at 10:32 p.m. in memory of Howard and Beverly Sherman.

**AGENDA ITEM
CITY COUNCIL MEETING DATE - FEBRUARY 1, 2011
CONSENT CALENDAR**

DATE : January 11, 2011
TO : City Manager
FROM : Public Works and Community Development Director
SUBJECT : **ACCEPTANCE AND NOTICE OF COMPLETION FOR THE 2010 STREET RESURFACING PROJECT**

RECOMMENDATION:

Adopt a resolution accepting the 2010 Street Resurfacing Project as complete including Change Order Nos.1-3, authorizing the City Manager to sign the Notice of Completion, and authorizing the City Clerk to file same with the Solano County Recorder.

EXECUTIVE SUMMARY:

The 2010 Street Resurfacing Project resurfaced Rose Drive between East 2nd Street and McAllister Drive and patched the northbound lane of East 2nd Street between Industrial Way and Wanger Street. The final construction cost of \$210,596 is within the approved project budget and is fully funded with Proposition 1B bond monies. Formal acceptance of the work by the City Council is now required to file the notice of completion and allow final payment to be made to the contractor.

BUDGET INFORMATION:

The final project budget is as follows:

Project Budget

Construction Contract – Proposition 1B Bond Monies	\$194,929
Construction Contingency (10%) – Proposition 1B Bond Monies	\$20,071
<u>Total Budget</u>	<u>\$215,000</u>

Final Project Expenditures

Construction Contract.....	\$194,929
Change Order No. 1: Adjust Manholes on E. 2 nd (<i>Staff Approved</i>)	\$3,000
Change Order No. 2: Add Yellow Striping Reflectors on Rose (<i>Staff Approved</i>)	\$1,340
Change Order No. 3: Adjustment for Quantities (<i>Staff Approved</i>)	\$11,327
<u>Total Expenditure</u>	<u>\$210,596</u>

Change Order No. 1 is to adjust 4 utility access points to finished grade in the repair areas on East 2nd Street. Change Order No. 2 is to add yellow reflector buttons adjacent to the 4-inch yellow traffic stripe along the Rose Drive median to enhance safety at night. Change Order No. 3 is an adjustment for the actual quantities of work performed by the contractor (versus the bid quantities). More asphalt overlay quantities were needed on Rose Drive, and greater deep lift repair quantities were needed on East 2nd Street than originally bid to complete the project.

The total combined change order amount of \$15,667 constitutes an 8% increase from the original contract amount and is under the 10% contingency budgeted for the project.

The final project cost of \$210,596 is fully funded with Proposition 1B Bond monies. The remaining \$4,404 of the project budget will be returned to the Special Streets Project Fund.

GENERAL PLAN:

Relevant Goals include:

- Goal 2.28: Improve and maintain public facilities and services

STRATEGIC PLAN:

Relevant Strategic Plan Goals and Strategies:

- Strategic Issue #4: Preserving and Enhancing Infrastructure
 - Strategy #1: Provide safe, functional and complete streets
 - Strategy #4: Provide adequate funding for ongoing infrastructure needs

ENVIRONMENTAL REVIEW:

This project is categorically exempt from CEQA review in accordance with Section 15031(c), which applies to maintenance and repair of existing streets.

BACKGROUND:

On September 7, 2010, the City Council awarded a construction contract to Team Ghilotti Inc, of Petaluma, CA, for the 2010 Street Resurfacing Project. The project resurfaced Rose Drive between East 2nd Street and McAllister Drive with 1 ½ inches of asphalt concrete overlay. The new asphalt was placed over the existing street, providing a new driving surface and strengthening the street. In addition, the lane widths on Rose Drive were decreased during the striping application in accordance with the City's Traffic Calming Program to help reduce traffic speeds.

The project also patched deteriorated asphalt sections along the northbound lane of East 2nd Street between Industrial Way and Wanger Street, improving durability and enhancing safety for the heavy truck traffic accessing the Benicia Industrial Park.

The 2010 Street Resurfacing Project was completed with a final construction cost of \$210,596, which is within the allocated budget and is fully funded using Proposition 1B monies. The project was completed to the satisfaction of the City Engineer and it is therefore recommended that City Council accept this project as complete.

Attachments:

- Proposed Resolution
- Notice of Completion
- Location Map/Project Photographs

RESOLUTION NO. 11-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ACCEPTING THE 2010 STREET RESURFACING PROJECT AS COMPLETE INCLUDING CHANGE ORDER NOS. 1-3, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY CLERK TO FILE SAME WITH THE SOLANO COUNTY RECORDER

WHEREAS, by Resolution No. 10-118, City Council awarded the contract for the 2010 Street Resurfacing Project to Team Ghilotti, Inc. of Petaluma, CA; and

WHEREAS, Team Ghilotti Inc. has completed the work in accordance with the plans and specifications and to the satisfaction of the City Engineer for a final construction cost of \$210,596, including Change Order Nos.1-3; and

WHEREAS, formal acceptance of the work by the City Council is now required to allow final payment to be made to the contractor.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby accepts the 2010 Street Resurfacing Project as complete, including Change Order Nos.1-3, for a final construction cost of \$210,596.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to sign the Notice of Completion and the City Clerk is authorized to file said Notice with the Solano County Recorder.

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 1st day of February, 2011, and adopted by the following vote:

Ayes:
Noes:
Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

CORRECTED

CITY OF BENICIA

After recording return to:

CITY OF BENICIA
ATTN: CITY ENGINEER
250 EAST L STREET
BENICIA, CA 94510

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN THAT:

- 1. The City of Benicia, 250 East L Street, Benicia, CA, 94510, is the owner of the property described as:

Rose Drive and East 2nd Street located in the City of Benicia, County of Solano, State of California.

Nature of title as stated owner: In Fee.

- 2. A work of improvement known as the **2010 Street Resurfacing Project** at the property described was completed and accepted by the City Council of the City of Benicia on February 1, 2011.
- 3. The name of the contractor for the improvement is **Team Ghilotti Inc. of Petaluma, California.**

CITY OF BENICIA

Dated: _____

By: _____
Brad Kilger, City Manager

Attest: _____
Lisa Wolfe, City Clerk

The undersigned, being duly sworn, says: that she is the person signing the above document; that she has read the same and knows the contents thereof, and that the facts stated therein are true, under penalty of perjury.

Lisa Wolfe, City Clerk

2010 STREET RESURFACING PROJECT



Rose Drive looking Easterly towards East 2nd Street



Rose Drive looking Westerly from East 2nd Street

AGENDA ITEM
CITY COUNCIL MEETING DATE - FEBRUARY 1, 2011
PUBLIC HEARINGS

DATE : January 24, 2011

TO : City Council

FROM : City Attorney

SUBJECT : **APPROVAL OF THE AGREEMENT WITH ALLIED WASTE FOR THE SOLID WASTE, RECYCLING AND GREEN WASTE FRANCHISE AGREEMENT AND DIRECTION TO AMEND THE MUNICIPAL CODE RELATED TO MANDATORY COMMERCIAL/INDUSTRIAL RECYCLING**

RECOMMENDATION:

Adopt the resolution approving the Collection Service Agreement between the City and Allied Waste Systems for the collection of solid waste, recycling and green waste throughout the City. Also, by motion direct the preparation of an ordinance to mandate commercial and industrial users use Allied Waste for recycling.

EXECUTIVE SUMMARY:

At the December 16, 2010 City Council meeting, it was reported that the negotiations with Allied Waste for an extension of the Franchise Agreement for garbage services had broken down. Council directed that the Council Subcommittee return on January 18 with a new agreement or to select a consultant to assist with a request for proposals process. The subcommittee met again with Allied. The parties have successfully arrived at a new proposed franchise agreement. If approved by the City Council, the new franchise agreement will be effective July 1, 2011.

BUDGET INFORMATION:

The proposed franchise agreement will bring additional revenue to the city in the form of increased franchise fees and other fees, more in line with neighboring jurisdictions. The franchise fee is increased from \$150,000 this year to a percentage of the gross receipts. It is estimated that this will bring in an additional \$260,000 in FY 2011-12, along with a vehicle impact fee of \$145,000. A franchise extension fee of \$150,000, due in FY 2010-11, is also included. The fees are discussed in more detail below.

The proposed franchise agreement will also help both the City's budget and the School District's budget by providing for services to City and School facilities.

GENERAL PLAN:

Relevant General Plan Goals and Policies include:

- ❑ Goal 2.4.2: Enhance the recycling of solid waste
 - Policy 2.42.1: Strive to accomplish the mandated objectives of the California Integrated Waste Management Act
- ❑ Goal 4.16: Require hazardous materials and hazardous waste management handling and disposal procedures that are protective of human health and the environment
 - Policy 4.16.1: Support Solano County Hazardous Waste Management Plan and its goals, policies and implementation guidelines for hazardous waste reduction, hazardous waste facility siting, hazardous waste handling and disposal, public education and involvement, and program coordination with regulatory requirements
 - Policy 4.16.2: Continue, promote and expand the City's Household Hazardous Waste Program
- ❑ Goal 4.16: Reduce health and safety hazards associated with hazardous materials users, hazardous waste generators, and hazardous waste disposal sites and toxic air contaminants

STRATEGIC PLAN:

Relevant Strategic Plan Goals and Strategies:

- ❑ Goal 1.00: Protect Community Health and Safety
- ❑ Goal 4.00: Preserves and Enhance City Assets and Infrastructure

CLIMATE ACTION PLAN:

Relevant Benicia Climate Action Plan Strategies:

- ❑ Objective SW-1: Commit to a Waste Diversion Goal of 90% for City Government Operations
- ❑ Objective SW-2: Commit to Waste Diversion Goal of 75% for the Community
- ❑ Strategy T-8.1.1. Encourage local businesses to Use Alternative Fuel Vehicles

BACKGROUND:

The proposed agreement achieves the General Plan, Strategic Plan and Climate Action Plan goals and objectives. In addition, the agreement limits rate increases so that both residential and commercial customers can have some certainty about future rate increases. The agreement also rewards customers who recycle by having price differentials between the large trashcans and the small cans.

Diversion Goals: AB 939 is a 1989 law that established diversion goals to encourage the reduction of waste ending up in landfills. Under AB 939, the City was required meet diversion goals of 25% by 1995 and 50% by the year 2000. Cities like Benicia who have been making a reasonable good faith effort to meet the 50% have not been fined by the state although that is a possibility. Fortunately, Benicia's current diversion rate is around 50%. Through the Climate Action Plan, the City has decided to divert more of its garbage. The Climate Action Plan establishes a 75% diversion goal City-wide and a 90% diversion goal for the City itself. The proposed agreement will greatly assist the City in achieving these goals. First, residential recycling service is increase from every other week to weekly. Second, commercial recycling services will now be included as part of commercial trash service. Third, both residential and commercial customers who are able to recycle more can downsize to a smaller can or bin and achieve cost savings. Fourth, a wide range of bulky and hazardous waste services are provided to prevent these items from ending up in the landfill. Fifth, the agreement is a performance-based agreement. If the diversion goal of 75% is meet by December 31, 2016, the agreement will be extended. If the goal is not met, Allied is liable for liquidated damages and in default of the agreement.

Service Improvements: Service under the agreement is divided into two basic categories: single family residential and commercial. Commercial includes multi-family and excludes refinery waste.

Single-family residential service improvements include the much requested weekly recycling. The agreement also provides for weekly curbside pickup of a wider variety of household hazardous waste (HHW). The items eligible for weekly curbside service include: dry cell household batteries, PDAs, cell phones, used motor oil, used oil filters, and compact fluorescent light bulbs. An on-call HHW service includes items that residents used to have to bring to Napa for disposal. These items include: cleaning products, pesticides, e-waste, herbicides, insecticides, painting supplies, automotive products, fuel, lubricants, paint, solvents, stripes and adhesives, auto batteries, non-controlled medicines, sharps, and universal waste. Subject to size limitations, an on-call bulky waste service will be provide up to three times for residents. This service allows items like mattresses, furniture and refrigerators to be picked up curbside. Finally, single-family residential customers will now be able to put plant based food waste into the green waste container. This allows a wide variety of items including vegetables, food soiled paper and coffee grounds to be removed from the garbage. Full food waste service is not currently provided since that would require weekly service and would require a rate increase. This service could always be added in the future.

Commercial service improvements include recycling as part of the trash service. Currently, recycling is a separate service. Many, if not all, commercial customers should be able to realize a cost savings by recycling more and moving to a smaller trashcan. CalRecycle reported on their website:

“According to 2008 [Statewide Waste Characterization data](#), the commercial sector generates more than half of the solid waste in California (approximately 68 percent of waste disposed). While significant commercial recycling already occurs, much of the commercial sector waste disposed in landfills is clean enough to be recycled. The commercial sector, however, is not directly subject to the requirements of the Integrated Waste Management Act of 1989, (AB 939, Sher, Chapter 1095, Statutes of 1989), to divert waste from landfills.”

CalRecycle also reports that the regulations making commercial recycling mandatory will be adopted with an effective date of 1/2012. An ordinance will be drafted using some of the CalRecycle samples to make commercial recycling mandatory. One question that has been raised is the application of mandatory recycling to customers who currently sell their recyclable by – products. They will be able to continue to do so.

Other commercial service benefits include continuing the monthly street sweeping on 12 of the streets in the industrial park and twice weekly sweeping of First Street.

Service to the City and School District. Allied has also recognized the benefit it receives from the City and has agreed to donate free service to the City as well as the School District. To assist the City in meeting its diversion goals Allied is providing free service including recycling at various City-sponsored events.

In keeping with the Climate Action Plan objective of encouraging local businesses to use **alternative fuel vehicles**, the Agreement provides for replacement of Allied's existing vehicles. The schedule is:

- CNG powered front loader vehicle in use as of January 15, 2011
- CNG powered front loader vehicle no later than December 31, 2012
- 4 CNG automated side loaders no later than December 31, 2012
- CNG roll-off vehicle no later than December 2015.

Support vehicles are also required to be low emission fuel vehicles. The change to CNG will reduce Greenhouse Gas Emissions by 26.42 metric tons per vehicle.

Public outreach and education is an important part of meeting the diversion goals and helping customers select the service best for them. One thing we found during the public forums was that many people asked for services that were already available to them. The public outreach will help keep the customers informed about what their options are. Exhibit 13 of the Agreement

lays out the outreach program for single family residential, multi family and commercial service. For all three, there is an initial “roll out” program and then an on-going outreach program. Other educational programs are included as part of the School service component.

Rates: Every reasonable effort has been made to keep the ratepayers costs increases low while providing more services that people want. To that end and to encourage residential customers to recycle, residential rates for the new 20-gallon container and for the 32-gallon container will remain stable until 2013. Other customers residential and commercial will see an annual rate increase on July 2012, and subsequent years until 2016, of between 2.25% and 4%. Subsequent increases will be limited to not more than 4% of CPI. Please see the attached charts of residential and commercial rates as well as the comparisons to neighboring jurisdictions.

Of course, if a change in circumstances occurs like new services requested by the City or extraordinary cost increases, Allied may see a rate increase which must be approved by the City Council.

IMPROVED SERVICES:

The proposed agreement provides increased services while minimizing rate increases. One of the biggest service increases is the move to weekly recycling for residential users. Another major improvement is the offering of free services to the Benicia Unified School District. Other improvements include:

**Comparison of the “Model” Agreement
to
the Current Franchise Agreement
and
the Proposed Franchise Agreement**

Comments in the Proposed Franchise Agreement Column compare to the Model Agreement

	Current Agreement	Proposed Franchise Agreement	“Model” Agreement
Term	October 1, 2001 – February 28, 2012	Yes 2 , 3-year extensions	July 1, 2011 – June 30, 2020 2, 5-year extensions if diversion and service requirements are met
Hours and Days of Collection	Collection in residential areas between hours of 6 am-7 pm	Yes	Collection in residential areas between hours of 6 am-7 pm Monday through

	Current Agreement	Proposed Franchise Agreement	“Model” Agreement
			Friday with no service on Saturday, except for holiday service Collection in commercial areas between hours of 4 am-7 pm Monday through Friday and Saturday from 4 am-4 pm
Carts and Bins Replacement	Not specified	yes	Within 3 working days Replace: 1 free garbage cart or bin, 1 free recycling cart or bin, 1 free organic waste cart or bin during the life of the agreement
Carts and Bins Exchange	Not specified	yes	Within 3 working days Replace: 1 free garbage cart or bin, 1 free recycling cart or bin, 1 free organic waste cart or bin per agreement year
Rate Increase	CPI or 5 % whichever is less	CPI No increase until 7/13 for 20 and 32 gal. After that as noted below. Other sizes 2.25%-4% per year until 7/14. 2%-4% per year 7/15 & 7/16 not more than 4% after that	RRI (collection element, disposal element, organic processing element, and franchise fee element)
Fees	Franchise Fee (\$150,000 due 1/1/2010 with annual increase of \$5,000), approximately 2.75% of	8% increasing to 10%, no pass thru to customers	Franchise Fee 7% of Gross Receipt collected each month increase 2% annually for five years (15%

VIII.A.6

	Current Agreement	Proposed Franchise Agreement	“Model” Agreement
	\$5.236 million		by 2014), minimum fee \$150,000 increased by 5,000 annually starting 7/1/2011
		no, but ½ time recycling coordinator	Solid Waste Fund Administrative Fee \$XXX,XXX / year adjusted by Collection Element
		\$145,000	Vehicle Impact Fee \$XXX,XXX / year adjusted by Collection Element
		\$150,000 on execution, \$30,000/yr for 10 years	Franchise Extension Fee \$XXX,XXX / year for 3 years upon execution of extension of the Agreement (if current provider retained)
		no	Development Fee one time fee of \$XXX,XXX
Residential Services	Weekly garbage collection	yes	Weekly garbage collection
	Bi-weekly green waste collection	improved	Bi-weekly organic waste collection, green waste collection including new limited food waste collection (including food contaminated paper products, fruits and vegetables)
	Bi-weekly recycled waste collection	yes	Weekly recycled waste collection
	Curbside collection of used motor oil and filters (Maximum 3 gallons per pickup)	yes	Curbside HHW collection, Contractor to provide containers (batteries, used motor oil, filters, compact florescent light bulbs)
		yes	On-Call HHW collection (cleaning products, pesticides, herbicides, painting supplies, Sharps,

	Current Agreement	Proposed Franchise Agreement	“Model” Agreement
			U-Waste, etc.)
	Every Sat. 9-12 residential drop-off of hazardous materials at the Corporation Yard (batteries, fluorescent bulbs, latex paint, antifreeze, mercury thermometers, car batteries, oil, filters)	no	Two annual residential drop-offs of hazardous materials at the Corporation Yard
	Two free on-call collections for unlimited quantity of extra containerized yard waste/cardboard	Yes plus on call 4x/year for green waste and cardboard	Extra recycling and/or organic waste carts as need for no additional cost
	One free on-call collection for up to 2-CY of extra garbage (not including bulky items such as furniture, appliances, etc.) On-call bulky waste and electronic waste collection (for a fee)	yes but 2 CY and 3 bulky items	Three free on-call large item collections per year (up to 4 CY / collection (containerized waste including electronic waste) and up to 3 individual bulky items such as couch, water heater, etc. per year)
		annual reuse days and curbside reuse days (7.02.4 and 5)	
Other Residential Services	Holiday tree chipping fundraiser with Boy Scouts	yes	Holiday tree chipping fundraiser with Boy Scouts
	Sharps collection program provided by Allied	3 CY/once year plus workshops	Compost give aways 2/year
		yes	Sharps collection included as part of on-call HHW collection for a fee.

VIII.A.8

	Current Agreement	Proposed Franchise Agreement	“Model” Agreement
	Pedrotti collects batteries and fluorescent tubes. Allied picks up material at Pedrotti's, takes it to the disposal facility and pays for disposal.	yes and on call	Batteries and fluorescent tubes are collected as part of the Curbside HHW Collection at no additional cost.
	Partnered with Pedrotti's for 2010 Earth Day compost give away	one	Two compost give aways per year
Multi-Family Services	Weekly garbage collection	yes	Same as Commercial with the following exceptions:
	Bi-weekly recycled waste collection	yes unless exempt	Bi-weekly organic waste collection, green waste collection including new limited food waste collection (including food contaminated paper products, fruits and vegetables)
		yes	Recycling Tote Bags
	On-call bulky waste collection (for a fee)	yes	Large Item Collection (for a fee)
Commercial Services	Weekly garbage collection	yes or more	Weekly garbage collection
	Subscription recyclables collection (for an additional fee)	yes	Free weekly recycling collection
		yes	Additional carts or bins for no additional cost
		yes	Weekly organic waste collection (for a reduced fee) including new food waste collection (including meat, fish and dairy, food contaminated paper products, fruits and vegetables)

	Current Agreement	Proposed Franchise Agreement	“Model” Agreement
City Collection Services	Collection at City facilities without reimbursement from City	yes	Collection at City facilities without reimbursement from City
	3 debris boxes at Corporation Yard	yes	3 debris boxes at Corporation Yard
	Roll-off/Debris box service at special clean-up events free of charge	yes at listed events	Roll-off/Debris box service at special clean-up events free of charge
	Free recycling to schools (if school district contracts with Contractor to provide solid waste collection)	yes and garbage	Free recycling to schools School diversion discount School recycling program
		yes	Compost delivery up to 360 CY
Diversion Requirements	Best efforts to help City attain its AB 939 goals	55% 12/11 60% 12/12 65% 12/13 75% 12/14 also tied to extension	65% by December 31, 2012
Contractor's Office	Local office open to residents for bill pay	yes	Local office open to residents for bill pay
	Toll-free phone number to customer service department	yes	Toll-free phone number to customer service department
		yes	Multilingual/TDD service
		yes	Develop and maintain a state-of-the-art website
Other Services	Not specified	yes	Public Outreach and Education Services
		½ time	Recycling Coordinator
		yes	Annual Collection Service Notice
Collection Vehicles	Clean trucks weekly	yes	Clean trucks weekly
	Contractor's name on side of each truck	yes	Repaint vehicles as necessary

	Current Agreement	Proposed Franchise Agreement	“Model” Agreement
	Contractor's name on side of each truck	yes	Contractor's name, customer service telephone number, and number of vehicle on each side and rear of each truck
	Leak proof and completely enclose all solid waste collected	yes	Leak proof and completely enclose all solid waste collected
		yes	All vehicles equipped with GPS Safety equipment (highway lighting, flashing and warning lights, clearance lights, warning flags and back-up warning devices)
		yes	Clean air vehicles
		phased in	CNG or LNG fuel
		yes	Vehicle noise level must comply with U.S. EPA noise emission regulations
		yes	Size limitations – SFD Residential Collection vehicles not exceed 18,000 lbs/axel, must not exceed 52,000 GVWR
Record Keeping & Reporting Requirements	Maintain full and complete accounting records of all service performed	yes	Maintain all records for a period of 5 years following the close of each the Contractor's fiscal years
	Annual profit and loss statement no later than 4 months after close of its fiscal year	yes	Maintain full and complete accounting records of all service performed
		yes	Maintain records of all payments made to the City

	Current Agreement	Proposed Franchise Agreement	“Model” Agreement
		yes	Maintain tonnage records
		yes	Monthly, Quarterly and Annual Reports
Liquidated Damages	Not specified	Yes	Procedure for assessment and review of liquidated damages
		per chart	Reasonable estimates of the amount of such damages
Billing Audit and Performance Reviews	Not specified	yes with costs covered to \$50,000	One billing audit and performance review for each 5 years during the term of Agreement
		yes	Purpose to verify calculation of billing rates, franchise fees, and other fees, compliance with reporting requirements and performance standards, and reported diversion percentages
Performance Bond	\$50,000 (increased by CPI or 5% annually, whichever is lower)	yes	\$500,000
Transition to Next Contractor	Not specified	yes	Cooperate fully with City and any subsequent contractors to assure a smooth transition of services
Insurance: Worker's Compensation Employer's Liability	Bodily Injury \$500,000 Property Damage \$500,000	statutory and yes for ER liability	\$3,000,000 per accident
Comprehensive General Liability & Property	Bodily Injury \$1,000,000 each person \$1,000,000 each occurrence \$5,000,000 combined single limit	yes	\$10,000,000 combined single limit per accident for bodily injury, personal injury and property damage

VIII.A.12

	Current Agreement	Proposed Franchise Agreement	“Model” Agreement
	Property Damage \$2,000,000 Aggregate		
Comprehensive Auto Liability	Bodily Injury \$1,000,000 each person \$1,000,000 each occurrence \$5,000,000 combined single limit Property Damage \$1,000,000 each accident	yes	Auto: Bodily Injury \$10,000,000 combined single limit Property Damage \$10,000,000 each accident
Business Auto Policy	Bodily Injury \$1,000,000 each person \$1,000,000 each occurrence \$5,000,000 combined single limit Property Damage \$1,000,000 each accident	see above	Not specified
Employee Blanket Fidelity Bond (covering dishonesty, forgery, alteration, theft, disappearance, destruction)	Not specified	yes	\$500,000 per employee
Hazardous Waste and Environmental Impairment Liability	Not specified	yes	\$3,000,000 each occurrence \$10,000,000 aggregate

FEES: Franchise Fee: The City currently receives \$150,000 as a franchise fee. It is more typical to have a franchise fee based on a percentage of revenue to the hauler. The proposed agreement provides for fee based on 8% of gross receipts. It is estimated that this will bring in approximately \$410,000 for the 2011-12 fiscal year. It is proposed that the fee will increase 1% a year until 10% is reached. The agreement provides that this fee cannot be passed through to the customers. However, if the City desires a higher than 10% franchise fee, Allied would be allowed to pass that increase on to the customers. This payment starts July 1, 2011. (See page 25 of 118)

Vehicle Impact Fee: To account for the increased wear and tear on City streets due to the heavy loads the collection trucks haul, Allied has agreed to a \$145,000 per year fee. The fee will be paid in monthly installments. This fee is adjusted annually. The first payment is July 15, 2011. (See page 26 of 118)

Franchise Extension Fee: Allied has agreed to pay a franchise extension fee. The fee will be \$150,000 for the 2010-11 fiscal year and then \$30,000 per year for 10 years. The first payment is due 30 days after execution of the agreement. (See page 26 of 118)

The increased franchise fee will help offset the nearly \$102,000 the City pays for street sweeping each year. The improved franchise agreement will also allow the City to cancel the agreement with the Napa-Vallejo Waste Management authority for an approximately \$80,000 savings per year. So, in addition to providing for rate stabilization for the ratepayers, free service for the School District, and improved services overall, the agreement will improve the City's financial position by about \$413,000 per year (\$260,000 increased franchise fee, \$145,000 vehicle impact fee, \$30,000 annual franchise extension fee, plus \$80,000 savings for the Napa-Vallejo HHW contract and less the \$102,000 street sweeping cost). It is estimated that the cost savings for the School District are about \$140,000.

Questions from the January 18, 2011 Council Meeting:

1. What about weekly residential green waste pick up? This item was considered but ultimately rejected for the time being. First, the customer survey was clear (by more than 2 to 1) that they did not want weekly green waste. Second, Allied periodically surveys the bins and has found that the bins are not consistently full. For those who have large yards, an extra bin may be requested at no cost.
2. What is the savings to the School District from this agreement? It is estimated that the School District will save about \$140,000 by the City entering into this agreement in which Allied donates the services to the School District.
3. What is the procedure for dispute resolution? The agreement provides for liquidated damages according to the table in Article 19. If the dispute is not resolved, it could be that Allied could be held in default of the

agreement and the agreement terminated.

4. How are the fees established? The fees are set up so that there is a ceiling on the maximum amount of any annual increase. Since it is based on CPI, there is not any further Council approval needed. If there is a need to raise fees dues to extraordinary circumstances, the increase would go to the City Council for a determination. See Section 4.04.
5. How does the franchise fee stack up against other cities? The 10% franchises fee is in the low to middle range of other cities franchise fees.
6. What transfer stations and landfills will be used? Exhibit 3 lists the approved facilities and includes Keller Canyon and Pacific Rim. Locking in Keller Canyon is a benefit to the City since it guarantees a place for the City's refuse to go. Keller Canyon also has the trash to gas facility. An attachment describes Keller Canyon in more detail. And having Pacific Rim is great because it is an active local company and being close by helps reduce driving.

Summary:

Council Member Ioakimedes and staff presented details the agreement to the Board of the Chamber of Commerce. The Board has voted unanimously to support the agreement.

Development of this Agreement has been a real team effort. In addition to the Council Subcommittee of Vice Mayor Schwartzman and Council Member Ioakimedes, the team was supported by staff from all departments in the City. Public Works and Parks and Recreation staff were especially important in documenting the services the City was currently receiving. We also had the gift of time and knowledge from several very generous community members including Rob Braulik who sat in on numerous meetings and reviewed documents, Janice Adams and her staff who gave us information about School District needs, and Tracy Swanborn and Bob Hilton who reviewed and provided important industry standards input. We also were lucky to have a number of citizens who completed the surveys, participated in the forums or otherwise to provide the needed information on what the community desires.

In sum, this agreement provides numerous benefits for the customers as well as the City and School District. It limits annual rate increases for the term of the agreement. It provides mechanisms for achieving the City's diversion goals and provides Allied an incentive, in the form of a contract extension, to meet those goals. It improves service while keeping rate increases to a minimum. It is recommended that the Agreement be approved.

Attachments:

- Resolution Approving the Agreement
- Agreement Overview

- Proposed Agreement
- Single Family Residential Rate Summary
- Single Family Residential Rate Comparison Chart
- Commercial/Industrial Summary
- Commercial Rate Chart
- Commercial Rate Comparison Chart
- Keller Canyon Information
- CNG Info

cc: Richard Tagore-Erwin
Rob Braulik
Tim Argenti
Susan Hurl
Mike Caprio
Tracy Swanborn
Bob Hilton

CORRECTED

RESOLUTION NO. 11 -

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AWARDING THE SOLID WASTE, RECYCLING AND GREEN WASTE FRANCHISE AGREEMENT TO ALLIED WASTE AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY

WHEREAS, the City recently completed negotiations with Allied Waste Systems dba, Allied Waste Services of Contra Costa County; and

WHEREAS, the City has been satisfied with the services from Allied Waste and would like to continue to use their services; and

WHEREAS, the proposed agreement with Allied Waste offers improved services to residential customers, commercial customers, the Benicia Unified School District, and the City while maintaining rates at a stable and reasonable level.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby awards the Franchise Agreement to Allied Waste and authorizes the City Manager to execute the agreement subject to minor changes approved by the City Attorney.

On motion of Council Member _____ and seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 1st day of February, 2011 and adopted by the following vote.

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

Allied Waste Agreement Overview

1. Limits rate increases for the term of the agreement
 2. Sets diversion standards and ties to extensions to meeting City established standards
 3. Establishes operational standards to maintain or exceed current service
 4. Codifies customer service procedures and standards
1. Annual Rate increases limited to CPI but no more than 4%
 2. Diversion performance measures and standards
 - a. To help achieve the state mandated and city diversion goals
 - b. All customers have unlimited recycling
 - c. No cost green/organic waste for single family residential customers
 - d. Reduced cost green/food waste for Multi family/commercial customers
 - e. No cost recycling at City-sponsored events and public recycling cans
 - f. 75% diversion by December 31, 2016 or no extension of the agreement and liquidated damages and default
 3. Operational standards
 - a. Unlimited recycling with trash service
 - i. Weekly recycling service for single family residential
 - b. Green waste for all if desired
 - i. Single family residential includes vegetable food waste
 - ii. Multi-family and commercial full food waste available
 - c. Hazardous waste
 - i. Single Family Residential:
 1. Weekly curbside HHW collection (Includes dry cell household batteries, PDAs, cell phones, used motor oil, used oil filters, and compact fluorescent light bulbs)
 2. On-call HHW collection (Includes cleaning products, pesticides, e-waste, herbicides, insecticides, painting supplies, automotive products, fuel, lubricants, paint, solvents, stripes and adhesives, auto batteries, non-controlled medicines, sharps, and universal waste)
 - d. Bulky Waste
 - e. Street Sweeping
 - f. Greener vehicles- Replace existing vehicles
 - i. CNG powered front loader vehicle in use as of January 15, 2011
 - ii. CNG powered front loader vehicle no later than December 31, 2012
 - iii. 4 CNG automated side loaders no later than December 31, 2012
 - iv. CNG roll-off vehicle no later than December 2015
 - v. Low emission fuel support vehicles
 - g. Donated services to City facilities and City- sponsored events
 - i. For example, Coastal Clean-Up Day, Annual Spring Cleaning
 - ii. City Buildings
 - iii. School Facilities
 - h. Public outreach and analysis

January 25, 2011

VIII.A.20

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COLLECTION SERVICE AGREEMENT

**Executed Between the
City of Benicia
and Allied Waste Systems, Inc.**

**A Delaware Corporation
dba, Allied Waste Services of Contra Costa County,
Inc.**

This ___ day of ___ 2011

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CITY OF BENICIA

This Agreement made and entered into this ___ day of ____, 2011 by and between the City of Benicia, State of California, hereinafter referred to as "CITY" and Allied Waste Systems, Inc. a Delaware Corporation, dba Allied Waste Services of Contra Costa County hereinafter referred to as "CONTRACTOR".

RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("Act") and subsequent additions and amendments (codified at California Public Resources Code Section 40000 et seq.), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Garbage Collection within their jurisdiction; and

WHEREAS, the State of California has found and declared that the amount of Garbage generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from landfilling and the need to conserve natural resources, have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. The State has, through enactment of the Act, directed the responsible State agency, and all local agencies, to promote disposal site diversion and to maximize the use of feasible Garbage reduction, re-use, recycling, and Composting options in order to reduce the amount of Garbage that must be disposed of in disposal sites; and

WHEREAS, pursuant to California Public Resources Code Section 40059(a) as may be amended from time to time, the CITY has determined that the public health, safety, and well-being require that an exclusive right be granted to a qualified contractor to provide for the Collection of Garbage, Recyclable Materials, and Green Waste/Organic Waste Materials, except for Collection of materials excluded in the CITY'S Municipal Code, and other services related to meeting the Act's 50% Diversion goal and other requirements of the Act; and

WHEREAS, the CITY further declares that the CONTRACTOR, and not the CITY, has established maximum rates that CONTRACTOR may charge all Service Recipients for the Collection, transportation, processing, recycling, Composting, and/or disposal of Garbage, Recyclable Materials, and Green Waste/Organic Waste Materials; and

WHEREAS, the City Council has determined through a negotiation process for Collection Services that CONTRACTOR, by demonstrated experience, reputation and capacity, is qualified to provide for the Collection of Garbage, Recyclable Materials, and Green Waste/Organic Waste Materials within the corporate limits of the CITY, the transportation of such material to appropriate places for processing, recycling, Composting and/or disposal; and City Council desires that CONTRACTOR be engaged to perform such services on the basis set forth in this Agreement; and

WHEREAS, the CONTRACTOR, through its proposal to the CITY, has proposed and represented that it has the ability and capacity to provide for the Collection of Garbage, Recyclable Materials, and Green Waste/Organic Waste Materials within the corporate limits of the CITY; the transportation of such material to appropriate places for processing, recycling, Composting and/or disposal; and the processing of materials; and

WHEREAS, this Agreement has been developed by and is satisfactory to the CITY and the CONTRACTOR.

1 Now, therefore, in consideration of the mutual covenants, conditions and consideration
2 contained herein, the CITY and CONTRACTOR hereby agree as hereinafter set forth:

3 ARTICLE 1. Definitions

4 For the purpose of this Collection Service Agreement, the definitions of words or phrases
5 contained in CITY Municipal Code section 8.24.010 shall control (including the definitions of
6 Green Waste/Green Waste/Organic Waste, Recyclables, Refinery Industrial/Special Waste,
7 Sludge and Garbage over any inconsistent definitions in this Agreement. When not inconsistent
8 with the context, words used in the present tense include the future, words in the plural include
9 the singular, and words in the singular include the plural. Use of the masculine gender shall
10 include the feminine gender.

11 1.01 AB 939. The California Integrated Waste Management Act (California Public
12 Resources Code Sections 40000 et al.), as amended from time to time.

13 1.02 Agreement. The written document and all amendments thereto, between the
14 CITY and the CONTRACTOR, governing the provision of Collection Services as provided
15 herein.

16 1.03 Agreement Year. Each twelve (12) month period from July 1st to June 30th.

17 1.04 Alternative Daily Cover (ADC). Disposal Facility cover material, other than SFD,
18 MFD, and Commercial Food Waste and at least six (6) inches of earthen material, placed on the
19 surface of the active face of the refuse fill area at the end of each operating day to control
20 vectors, fires, odor, blowing litter and scavenging, as defined in Section 20164 of the California
21 Code of Regulations.

22 1.05 Biohazardous or Biomedical Waste. Any waste which may cause disease or
23 reasonably be suspected of harboring pathogenic organisms; included are waste resulting from
24 the operation of medical clinics, hospitals, and other facilities processing wastes which may
25 consist of, but are not limited to, human and animal parts, contaminated bandages, pathological
26 specimens, Sharps, contaminated clothing and surgical gloves.

27 1.06 Bulky Waste. Those materials including furniture, carpets, mattresses, White
28 Goods, and Large Green Waste which are attributed to the normal activities of a SFD Service
29 Unit, MFD Service Unit, or City Service Unit. Bulky Waste must be generated by and at the
30 Service Unit wherein the Bulky Waste are collected. Bulky Waste does not include items herein
31 defined as Exempt Waste.

32 1.07 Change in Law. Means any of the following events or conditions which has a
33 material and adverse effect on the performance by the parties of their respective obligations
34 under this Agreement (except for payment obligations): (a) The enactment, adoption,
35 promulgation, issuance, modification, or written change in administrative or judicial interpretation
36 on or after the effective date of any applicable law; or (b) The order or judgment of any
37 governmental body, on or after the effective date, to the extent such order or judgment is not the
38 result of willful or negligent action, error or omission or lack of reasonable diligence of the CITY
39 or of the CONTRACTOR, whichever is asserting the occurrence of a change in law; provided,
40 however, that the contesting in good faith or the failure in good faith to contest any such order or
41 judgment shall not constitute or be construed as such a willful or negligent action, error or
42 omission or lack of reasonable diligence.

43 1.08 CITY. The City of Benicia, California.

1 1.09 City Code Enforcement Clean-up Service. The Collection of Garbage, Green
2 Waste/Organic Waste, Recyclable Materials, Bulky Waste and E-Waste by the CONTRACTOR
3 resulting from written or verbal requests from the CITY for temporary clean-up of Garbage,
4 Green Waste/Organic Waste, Recyclable Materials, Bulky Waste, or E-Waste. Such service
5 shall include the provision of Debris Box containers by the CONTRACTOR.

6 1.10 City Collection Service. City Code Enforcement Clean-up Service, City Garbage
7 Collection Service, City Recycling Service, City Green Waste/Organic Waste Collection Service,
8 City Debris Box Service, and Special Event Collection Service.

9 1.11 City Debris Box Service. The provision of Debris Box containers at the City
10 Service Units for the accumulation of Garbage, Green Waste/Organic Waste and Recyclable
11 Materials and the Collection, Processing and Disposal of those materials and such other Bulky
12 Waste from the City Service Units as may be directed by the CITY.

13 1.12 City Garbage Collection Service. The Collection of Garbage by the
14 CONTRACTOR, from City Service Units in the Service Area, and the delivery of that Garbage to
15 a Disposal Facility.

16 1.13 City Green Waste/Organic Waste Collection Service. The Collection of Green
17 Waste/Organic Waste, by the CONTRACTOR, from City Service Units in the Service Area and
18 the delivery of that Green Waste/Organic Waste to the Green Waste/Organic Waste Processing
19 Facility.

20 1.14 City Recycling Service. The Collection of Recyclable Materials, by the
21 CONTRACTOR, from City Service Units in the Service Area and the delivery of those
22 Recyclable Materials to a Materials Recovery Facility.

23 1.15 City Representative. That person, or their designee, designated by the CITY to
24 administer and monitor the provisions of this Agreement.

25 1.16 City Service Unit. Those CITY properties or locations as set forth in **Exhibit 2**,
26 "City Service Units", which is attached to and included in this Agreement.

27 1.17 City Street. Public streets within the CITY, as designated by the City
28 Representative. City Streets include large arterials, major collectors, and all public streets
29 throughout the CITY.

30 1.18 Collection. The process whereby Garbage, Green Waste/Organic Waste and
31 Recyclable Materials are removed and transported to a Disposal Facility, Green Waste/Organic
32 Waste Processing Facility or Materials Recovery Facility, as appropriate.

33 1.19 Collection Services. Single Family Dwelling (SFD) Collection Service, Multi-
34 Family Dwelling (MFD) Collection Service, City Collection Service, Commercial Collection
35 Service, and Street Sweeping Service.

36 1.20 Commercial Collection Service. Commercial Garbage Collection Service,
37 Commercial Recycling Service, Commercial Green Waste/Organic Waste Collection Service,
38 and Commercial Debris Box Service.

39 1.21 Commercial Debris Box Service. The Collection of Garbage, Recyclable
40 Materials, Green Waste/Organic Waste, or Construction and Demolition Debris by the
41 CONTRACTOR from Commercial Service Units in the Service Area, and the delivery of
42 collected Debris Box containers to an appropriate processing facility or Disposal Facility.

1 1.22 Commercial Food Waste. Food scraps and trimmings from food preparation,
2 including but not limited to: meat, fish and dairy waste, fruit and vegetable waste, grain waste,
3 and acceptable food packaging items such as pizza boxes, paper towels, waxed cardboard and
4 food contaminated paper products.

5 1.23 Commercial Garbage Collection Service. The Collection of Garbage by the
6 CONTRACTOR, from Commercial Service Units in the Service Area, and the delivery of that
7 Garbage to the Disposal Facility.

8 1.24 Commercial Green Waste/Organic Waste Collection Service. The Collection of
9 Green Waste/Organic Waste by the CONTRACTOR from Commercial Service Units in the
10 Service Area, and the delivery of that Green Waste/Organic Waste to a Green Waste/Organic
11 Waste Processing Facility.

12 1.25 Commercial Recycling Service. The Collection of Recyclable Materials, by the
13 CONTRACTOR, from Commercial Service Units in the Service Area, the delivery of those
14 Recyclable Materials to a Materials Recovery Facility and the processing and marketing of
15 those Recyclable Materials.

16 1.26 Commercial Service Unit. All retail, professional, office, wholesale, refineries,
17 and industrial facilities and enterprises offering goods or services to the public and Mixed Use
18 Service Units that utilize a Garbage Cart, Bin, or Debris Box for the accumulation and set-out of
19 Garbage.

20 1.27 Compactor. Any Debris Box container or bin, which has a compaction
21 mechanism, whether stationary or mobile.

22 1.28 Composting. The controlled biological decomposition of Green Waste/Organic
23 Waste into a specific mixture of decayed Green Waste/Organic matter used for fertilizing or soil
24 conditioning.

25 1.29 Construction and Demolition Debris. Commonly used or discarded materials
26 removed from construction, remodeling, repair, demolition, or renovation operations on any
27 pavement, house, commercial building, or other structure, or from landscaping. Such materials
28 include, but are not limited to, dirt, sand, rock, gravel, bricks, plaster, gypsum wallboard,
29 aluminum, glass, asphalt material, plastics, roofing material, cardboard, carpeting, cinder
30 blocks, concrete, copper, electrical wire, fiberglass, Formica, granite, iron, lad, linoleum, marble,
31 plaster plant debris, pressboard, porcelain, steel, stucco, tile, vinyl, wood, masonry, rocks, trees,
32 remnants of new materials, including paper, plastic, carpet scraps, wood scraps, scrap metal,
33 building materials, packaging and rubble resulting from construction, remodeling, renovation,
34 repair and demolition operations on pavements, houses, commercial buildings and other
35 structures. Construction and Demolition Debris does not include Exempt Waste.

36 1.30 Consumer Price Index (CPI). The index published by the U.S. Department of
37 Labor, Bureau of Labor Statistics, Series Id: CCUA422SAO, Not Seasonally Adjusted, All
38 Items, All Urban Consumers (CPI-U) for San Francisco-Oakland-San Jose, California.

39 1.31 CONTRACTOR. Allied Waste Services, Inc. a Delaware Corporation, dba Allied
40 Waste Services of Contra Costa County, Inc.

41 1.32 County. Solano County, California.

42 1.33 Debris Box Collection Service. Collection utilizing 8 - 40 cubic yard containers
43 provided to Service Units for the Collection of Garbage, including Construction and Demolition
44 Debris materials, for the delivery of that material to an appropriate facility.

1 1.34 Debris Box. A metal container that is normally loaded onto a motor vehicle and
2 transported to an appropriate facility.

3 1.35 Disposal Facility. The Keller Canyon Landfill and Contra Costa Transfer and
4 Recovery Station located in Contra Costa, County California, or such place or places specifically
5 designated by the CONTRACTOR for the disposal, or processing as appropriate, of Garbage
6 and other materials as appropriate.

7 1.36 Dwelling Unit. Any individual living unit in a single family dwelling (SFD) or multi-
8 family dwelling (MFD) structure or building intended for, or capable of being utilized for,
9 residential living other than a hotel or motel.

10 1.37 E-Waste. Discarded electronics equipment such as PDAs, cell phones,
11 computers, monitors, televisions, and other items containing cathode ray tubes (CRTs), LCD or
12 plasma screens and computer monitors.

13 1.38 Exempt Waste. Biohazardous or Biomedical Waste, Hazardous Waste,
14 automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines,
15 lead-acid batteries, and those wastes under the control of the Nuclear Regulatory Commission.

16 1.39 Garbage. All non-recyclable packaging, and putrescible waste attributed to
17 normal activities of a Service Unit. Garbage must be generated by and at the Service Unit
18 wherein the Garbage is collected. Garbage does not include those items defined herein as
19 Recyclable Materials, Green Waste/Organic Waste, Bulky Waste, E-Waste, U-Waste, or
20 Exempt Waste.

21 1.40 Garbage Bin. A metal or plastic container, with a capacity of one (1) cubic yard
22 up to, and including, eight (8) cubic yards, designed or intended to be mechanically dumped into
23 a loader packer type garbage truck that is approved for such purpose by the CITY. Garbage
24 Bins may also include Compactors that are owned by the MFD or Commercial Service Unit
25 wherein the MFD or Commercial Collection Service occurs.

26 1.41 Garbage Cart. A heavy-duty plastic receptacle with wheels and a rated capacity
27 of at least twenty (20) gallons and not more than ninety-six (96) gallons, having a hinged tight-
28 fitting lid and wheels, that is approved by the City Representative for use by Service Recipients
29 for Collection Services under this Agreement.

30 1.42 Green Waste. Any vegetative matter resulting from normal yard and landscaping
31 maintenance that is not more than three (3) feet in its longest dimension or six (6) inches in
32 diameter and fits in the Green Waste/Organic Waste Cart or Overage Bag utilized by the
33 Service Recipient. Green Waste includes plant debris, such as, ivy, grass clippings, leaves,
34 pruning, weeds, branches, brush, holiday trees, and other forms of vegetative waste and must
35 be generated by and at the Service Unit wherein the Green Waste is collected. Green Waste
36 does not include items herein defined as Exempt Waste.

37 1.43 Green Waste/Organic Waste. Includes Green Waste, and SFD, MFD, and
38 Commercial Food Waste.

39 1.44 Green Waste/Organic Waste Bin. A metal or plastic container, with a capacity of
40 one (1) cubic yard up to and including eight (8) cubic yards, designed or intended to be
41 mechanically dumped into a loader packer type truck that is approved for such purpose by the
42 CITY.

1 1.45 Green Waste/Organic Waste Cart. A heavy plastic receptacle with wheels and a
2 rated capacity not exceeding ninety-six (96) gallons, having a hinged tight-fitting lid, and wheels,
3 that is approved for such purpose by the CITY.

4 1.46 Green Waste/Organic Waste Processing Facility. Any facility selected by the
5 CONTRACTOR that is designed, operated and legally permitted for the purpose of receiving
6 and processing Green Waste/Organic Waste and Large Green Waste.

7 1.47 Gross Receipts. All monetary amounts collected by the CONTRACTOR for the
8 provision of Collection Services pursuant to this Agreement calculated in accordance with
9 Generally Accepted Accounting Procedures (GAAP). The term Gross Receipts, for purposes of
10 this Agreement, does not include any revenues generated from the sale of Recyclable Material,
11 or other receipts from state and local government accounts (e.g. grants, cash awards and
12 rebates) resulting from the performance of this Agreement.

13 1.48 Hazardous Waste. Any material, which is defined as a hazardous waste under
14 California or United States law, or any regulations promulgated pursuant to such law, as such
15 law or regulations may be amended from time to time.

16 1.49 Household Hazardous Waste (HHW). HHW includes dry cell household batteries,
17 cell phones and PDAs; used motor oil; used oil filters when contained in a sealed plastic bag;
18 cooking oil; compact fluorescent light bulbs contained in a sealed plastic bag; E-Waste; cleaning
19 products, pesticides, herbicides, insecticides, painting supplies, automotive products, solvents,
20 stripes, and adhesives, auto batteries; and Universal Waste generated at a SFD or MFD
21 Service Unit.

22 1.50 Industrial Waste. Non-hazardous Garbage, Green Waste/Organic Waste, and
23 Recyclable Materials generating from mechanized manufacturing facilities, factories, and
24 publicly operated treatment works located within the Service Area.

25 1.51 Lineal Mile. The distance of one mile of a street as measured by CITY along the
26 center line of the street. Distances along median islands are not considered Lineal Miles.

27 1.52 Large Green Waste. Oversized Green Waste such as tree trunks and branches
28 with a diameter of not less than six (6) inches and not more than two (2) feet and a length of not
29 more than three (3) feet in its longest dimension, which are attributed to the normal activities of
30 a SFD, MFD, or City Service Unit. Large Green Waste must be generated by and at the Service
31 Unit wherein the Large Green Waste is collected.

32 1.53 Materials Recovery Facility (MRF). Any facility, selected by the CONTRACTOR
33 as listed in **Exhibit 3**, designed, operated, and legally permitted for the purpose of receiving,
34 sorting, processing, storing, or preparing Recyclable Materials for sale.

35 1.54 MFD Collection Service. MFD Garbage Collection Service, MFD Recycling
36 Service, MFD Green Waste/Organic Collection Service, MFD Debris Box Service, and MFD
37 Large Item Collection Service.

38 1.55 MFD Debris Box Service. The Collection of Garbage, Recyclable Materials,
39 Green Waste/Organic Waste, or Construction and Demolition Debris by the CONTRACTOR
40 from MFD Service Units in the Service Area, and the delivery of collected Debris Box containers
41 to an appropriate processing facility or Disposal Facility.

42 1.56 MFD Food Waste. Food scraps and trimmings from food preparation, including
43 but not limited to: fruit and vegetable waste, grain waste, Stable Matter, and acceptable food

1 packaging items such as pizza boxes, paper towels, waxed cardboard and food contaminated
2 paper products.

3 1.57 MFD Garbage Collection Service. The Collection of Garbage, by the
4 CONTRACTOR, from MFD Service Units in the Service Area and the delivery of that Garbage
5 to the Disposal Facility.

6 1.58 MFD Large Item Collection Service. The periodic on-call Collection of Bulky
7 Waste, by the CONTRACTOR, from MFD Service Units in the Service Area and the delivery of
8 those Bulky Waste to a Disposal Facility, Materials Recovery Facility, Green Waste/Organic
9 Waste Processing Facility or such other facility as may be appropriate under the terms of this
10 Agreement.

11 1.59 MFD Green Waste/Organic Waste Collection Service. The Collection of Green
12 Waste/Organic Waste by the CONTRACTOR from MFD Service Units in the Service Area, and
13 the delivery of that Green Waste/Organic Waste to a Green Waste/Organic Waste Processing
14 Facility.

15 1.60 MFD Recycling Service. The Collection of Recyclable Materials, by the
16 CONTRACTOR, from MFD Service Units in the Service Area, the delivery of those Recyclable
17 Materials to a Materials Recovery Facility and the processing and marketing of those
18 Recyclable Materials.

19 1.61 MFD Service Unit. Any combination of Dwelling Units in the Service Area utilizing
20 a common Garbage Cart or Bin for the accumulation and set-out of Garbage.

21 1.62 Mixed Use Service Units. A building or structure, which contains both a retail,
22 professional, office, wholesale or industrial facilities or enterprises offering goods or services to
23 the public and Dwelling Unit(s).

24 1.63 Mixed Waste. Recyclable Materials, Garbage, Green Waste/Organic Waste,
25 Industrial Waste, Refinery Waste and other Construction and Demolition Debris commingled in
26 any combination thereof in a cart, bin, debris box or other container set out for collection at any
27 type of Service Unit defined in this agreement.

28 1.64 Non-Collection Notice. A form developed and used by the CONTRACTOR, as
29 approved by the CITY, to notify Service Recipients of the reason for non-collection of materials
30 set out by the Service Recipient for Collection by CONTRACTOR pursuant to this Agreement.

31 1.65 Recyclable Materials. Those materials, which are capable of being recycled and
32 that would otherwise be processed or disposed of as Garbage. Recyclable Materials include
33 those materials defined by the CITY, including newsprint (including inserts); mixed paper
34 (including magazines, catalogs, envelopes, junk mail, corrugated cardboard, brown bags and
35 paper, paperboard, paper egg cartons, office ledger paper, and telephone books); glass
36 containers; aluminum beverage containers; small scrap and cast aluminum (not exceeding forty
37 (40) pounds in weight nor two (2) feet in any dimension for any single item); steel including "tin"
38 cans, aerosol cans (empty, non-toxic products) and small scrap (not exceeding forty (40)
39 pounds in weight nor two (2) feet in any dimension for any single item); bimetal containers; #1-7
40 plastics regardless of form or mold, including but not limited to plastic containers, bottles, wide
41 mouth tubs, aluminum foil and pans; dry cell household batteries and cell phones when
42 contained in a sealed plastic bag; and those materials added by the CONTRACTOR from time
43 to time. Plastic bags, film plastic, rigid polystyrene, loose polystyrene used in packaging if they
44 are contained in a closed bag, and aseptic containers will be included as markets and
45 processing is developed to support diversion of these materials.

- 1 1.66 Recyclables Tote-Bag. A collapsible bag distributed to all MFD Service
2 Recipients for their use in transporting Recyclable Materials to the Collection point that is
3 approved for such purpose by the CITY and is appropriately labeled as a Recyclables Tote-Bag.
- 4 1.67 Recycling Bin. A plastic or metal container, with a capacity of one (1) cubic yard
5 up to and including eight (8) cubic yards, designed or intended to be mechanically dumped into
6 a loader packer type recycling truck that is approved for such purpose by the CITY and is
7 appropriately labeled as a Recycling Bin.
- 8 1.68 Recycling Cart. A heavy plastic receptacle with wheels and a rated capacity of at
9 least thirty-two (32) gallons and not more than ninety-six (96) gallons, having a hinged tight-
10 fitting lid, and wheels, that is approved for such purpose by the CITY and is appropriately
11 labeled as a Recycling Cart.
- 12 1.69 Refinery Waste. Non-hazardous Garbage, Green Waste/Organic Waste, and
13 Recyclables Materials, generated from a petroleum refinery located within the Service Area.
- 14 1.70 Service Area. That area within the corporate limits of the City of Benicia,
15 California.
- 16 1.71 Service Recipient. An individual or company receiving Collection Service.
- 17 1.72 Service Unit. SFD Service Units, MFD Service Units, City Service Units, and
18 Commercial Service Units.
- 19 1.73 SFD Collection Service. SFD Garbage Collection Service, SFD Recycling
20 Service, SFD Green Waste/Organic Waste Collection Service, SFD Debris Box Service, and
21 SFD Large Item Collection Service.
- 22 1.74 SFD Debris Box Service. The Collection of Garbage, Recyclable Materials,
23 Green Waste/Organic Waste, or Construction and Demolition Debris by the CONTRACTOR
24 from SFD Service Units in the Service Area, and the delivery of collected Debris Box containers
25 to an appropriate processing facility or Disposal Facility.
- 26 1.75 SFD Food Waste. Food scraps and trimmings from food preparation, including
27 but not limited to: fruit and vegetable waste, grain waste, Stable Matter, and acceptable food
28 packaging items such as pizza boxes, paper towels, waxed cardboard and food contaminated
29 paper products depending upon the processing plant used by CONTRACTOR.
- 30 1.76 SFD Garbage Collection Service. The Collection of Garbage, by the
31 CONTRACTOR, from SFD Service Units in the Service Area and the delivery of that Garbage to
32 a Disposal Facility.
- 33 1.77 SFD Large Item Collection Service. The periodic on-call Collection of Bulky
34 Waste, by the CONTRACTOR, from SFD Service Units in the Service Area and the delivery of
35 those Bulky Waste to a Disposal Facility, Materials Recovery Facility, Green Waste/Organic
36 Waste Processing Facility or such other facility as may be appropriate under the terms of this
37 Agreement. SFD Large Item Collection Service does not include the Collection of Bulky Waste
38 through the use of Debris Box containers.
- 39 1.78 SFD Green Waste/Organic Waste Collection Service. The Collection of Green
40 Waste/Organic Waste by the CONTRACTOR from SFD Service Units in the Service Area, the
41 delivery of that Green Waste/Organic Waste to a Green Waste/Organic Waste Processing
42 Facility.

1 requirements in this Agreement, the CITY shall be obligated to offer the CONTRACTOR in
2 writing a three (3) year extension of this Agreement. CONTRACTOR shall provide written notice
3 to the CITY as to whether CONTRACTOR accepts or rejects the CITY's offer within twenty (20)
4 Work Days of the date of the offer. If CONTRACTOR fails to provide such notice to the CITY
5 within twenty (20) Work Days, the CITY's offer shall be deemed withdrawn and the CITY shall
6 have no obligation to extend the term of this Agreement beyond June 30, 2021. If the term of
7 this Agreement is extended, the compensation provisions of Article 4 shall not be subject to
8 negotiation. However, the compensation payable to CONTRACTOR shall be adjusted annually
9 throughout the extended term as provided in Article 4.

10 2.01.2 Second Extension. On or about July 1, 2022, provided the CITY
11 determines that the CONTRACTOR has not failed to meet and maintain the minimum diversion
12 requirements set forth in Article 5 for two (2) consecutive years and has met the service
13 requirements in this Agreement, the CITY shall be obligated to offer the CONTRACTOR in
14 writing a three (3) year extension of this Agreement. CONTRACTOR shall provide written notice
15 to the CITY as to whether CONTRACTOR accepts or rejects the CITY's offer within twenty (20)
16 Work Days of the date of the offer. If CONTRACTOR fails to provide such notice to the CITY
17 within twenty (20) Work Days, the CITY's offer shall be deemed withdrawn and the CITY shall
18 have no obligation to extend the term of this Agreement beyond June 30, 2024. If the term of
19 this Agreement is extended, the compensation provisions of Article 4 shall not be subject to
20 negotiation. However, the compensation payable to CONTRACTOR shall be adjusted annually
21 throughout the extended term as provided in Article 4.

22 ARTICLE 3. Services Provided by the CONTRACTOR

23 3.01 Grant of Exclusive Agreement. Subject only to the express exceptions in Section
24 3.02 of this Agreement, and for the Term of this Agreement as it currently exists and may be
25 extended, the CONTRACTOR is hereby granted an exclusive franchise and contract pursuant
26 to section 8.24.040 of the City of Benicia Municipal Code for the collection, transportation,
27 processing, recycling and disposal of all Garbage generated in the City of Benicia, subject only
28 to the exceptions contained in Benicia Municipal Code section 8.24.050. Without limitation of
29 the foregoing, CONTRACTOR'S exclusive franchise and contract covers and includes all
30 Garbage as defined in section 8.24.010 (9) of the Municipal Code, and includes without
31 limitation all Recyclables, Green Waste/Organic Waste, Industrial Waste, Refinery Waste,
32 Mixed Waste and Construction and Demolition Debris as defined in Municipal Code section
33 8.24.010 (3) and (7).

34 3.02 Limitations to Scope of Exclusive Agreement.

35 3.02.1 Any resident may dispose of Garbage produced on his/her own premises
36 only if he/she complies with the following:

37 3.02.1.1 Files an affidavit with the City Manager or his/her
38 representative setting forth an alternate means of disposal.

39 3.02.1.2 The City Manager approves the alternative method of
40 disposal.

41 3.02.1.3 The City Manager may impose any terms and conditions to
42 the alternate method of disposal, which are necessary to protect public health, prevent public
43 and private nuisances, and prevent litter and to keep public and private property clean and
44 sanitary and may revoke it at any time.

1 3.02.2 Notwithstanding the provisions of Section 3.01, a petroleum refinery or
2 industrial facility may transport for disposal or contract for the transport and disposal its own
3 Hazardous Waste using its own equipment.

4 3.02.3 Notwithstanding the provisions of Section 3.01, the CONTRACTOR shall
5 not have the exclusive right to collect, haul, transport or dispose of the following types of Solid
6 Waste or Green Waste:

7 3.02.3.1 Green Waste when removed and transported by the
8 gardening service performing the gardening;

9 3.02.3.2 Garbage generated by construction and demolition which
10 is accumulated as the result of new construction, structure demolition or modification, when:

11 3.02.3.2.1. The building or demolition/modification contractor
12 owns and operates the hauling equipment necessary to remove and haul the demolished
13 construction and modification rubbish generated; or

14 3.02.3.2.2. The construction and demolition debris generated is
15 hauled by a vehicle or trailer commonly known as an "end dump," which vehicle or trailer must
16 have a nondetachable debris container with an open top and cannot be capable of loading itself
17 and the driver remains with the vehicle while it is being loaded; provided further, that the
18 equivalent services or equipment are not available from the CONTRACTOR; or

19 3.02.3.2.3. Green Waste which must be removed only as
20 incidental to the infrequent clearing of a premises and when a vehicle or container of no greater
21 than two cubic yards capacity is used to remove the Garbage or Green Waste.

22 3.02.3.3 A building or demolition/modification contractor may not
23 subcontract for construction and demolition debris hauling services except as is set forth in
24 subsection 3.02.3.2.

25 3.03 If CONTRACTOR can produce evidence that other persons are servicing Collection
26 containers or are Collecting Garbage, Recyclable Materials, Bulky Waste, Mixed Waste,
27 Construction and Demolition Debris and/or Green Waste/Organic Waste in a manner that is not
28 consistent with the CITY'S Municipal Code or this Agreement, it shall report the location, the
29 name and phone number of the person or company to the CITY along with CONTRACTOR'S
30 evidence of the violation of the exclusiveness of this Agreement, and the CONTRACTOR shall
31 assist the CITY to enforce the City Municipal Code and this Agreement. In addition,
32 CONTRACTOR shall have the right to independently initiate legal proceedings, including
33 requesting injunctive relief and damages from the Superior Court, to enforce CONTRACTOR'S
34 exclusive rights and privileges under this Agreement.

35 3.03.1 The scope of this Agreement shall be interpreted to be consistent with
36 applicable law, now and during the term of the Agreement. If future judicial interpretations of
37 current law or new laws, regulations, or judicial interpretations limit the ability of the CITY to
38 lawfully provide for the scope of services as specifically set forth herein, CONTRACTOR agrees
39 that the scope of the Agreement will be limited to those services and materials which may be
40 lawfully provided and that the CITY shall not be responsible for any lost profits or losses claimed
41 by CONTRACTOR to arise out of limitations of the scope of the Agreement set forth herein. In
42 such an event, it shall be the responsibility of CONTRACTOR to minimize the financial impact of
43 such future judicial interpretations or new laws.

1 3.04 Service Standards. CONTRACTOR shall perform all Collection Services under this
2 Agreement in a thorough and professional manner. Collection Services described in this
3 Agreement shall be performed regardless of weather conditions or difficulty of Collection.

4 3.05 Hours and Days of Collection.

5 3.05.1 SFD and MFD Collection Services shall be provided, commencing no
6 earlier than 6:00 a.m. and terminating no later than 7:00 p.m., in accordance with the Municipal
7 Code, Monday through Friday with no service on Saturday (except for holiday service as set
8 forth in Section 3.09 of this Agreement in which case normal Collection hours may be utilized) or
9 Sunday. The hours, days, or both of Collection may be extended due to extraordinary
10 circumstances or conditions with the prior written consent of the City Representative.

11 3.05.2 Commercial and City Collection Service shall be provided, commencing
12 no earlier than 4:00 a.m., and terminating no later than 7:00 p.m., Monday through Friday, and
13 on Saturdays commencing no earlier than 4:00 a.m., and terminating no later than 4:00 p.m.
14 The hours, days, or both of Collection may be extended due to extraordinary circumstances or
15 conditions with the prior written consent of the City Representative.

16 3.05.3 The CITY may direct CONTRACTOR to reduce the Collection hours in
17 areas around schools and in high traffic areas during peak commute hours. When the CITY is
18 conducting road overlay or slurry projects, the CITY reserves the right to temporarily redirect or
19 restrict CONTRACTOR from Collection in the affected areas or temporarily change the
20 Collection hours if needed. The hours of Collection may be extended due to extraordinary
21 circumstances or conditions with the prior written consent of the City Representative.

22 3.06 Manner of Collection. The CONTRACTOR shall provide Collection Service with as
23 little disturbance as possible and shall leave any cart or bin in an upright position at the same
24 point it was collected without obstructing alleys, roadways, driveways, sidewalks or mail boxes.

25 3.07 Containers.

26 3.07.1 Carts and bins are to be hot-stamped, embossed, laminated, or painted
27 with a unique identification number, and in-molded with the type of materials to be collected
28 (i.e., Garbage, Green Waste/Organic Waste, Recyclable Materials) and instructions for proper
29 usage. The in-molding shall be on the lids with graphics approved by the CITY. CONTRACTOR
30 replacement and repair requirements as specified in Sections 3.07.3 and 3.07.4 shall also apply
31 to carts that have in-molded graphics on the lids. CONTRACTOR shall also provide new
32 Recyclables Tote-Bags to be made available to individual MFD Service Recipients at no charge
33 to the MFD Service Recipient. The type, size, and graphics of the Recyclables Tote-Bags shall
34 be approved by the City. Debris Box containers may be used, provided they are newly painted,
35 properly marketed and in good working order. The CITY retains the right to inspect any such
36 used Debris Box container and direct the CONTRACTOR to replace such a used Debris Box
37 container if it is deemed to be not acceptable.

38 3.07.2 Purchase and Distribution of Carts, Bins, and Recyclables Tote-Bags.
39 The CONTRACTOR shall be responsible for the purchase and distribution of fully assembled
40 and functional carts, bins, and Recyclables Tote-Bags to Service Units in the Service Area.
41 CONTRACTOR shall also distribute carts, bins, and Recyclables Tote-Bags to new Service
42 Units that are added to CONTRACTOR'S Service Area during the term of this Agreement. The
43 distribution shall be completed within three (3) Work Days of receipt of notification from the
44 CITY or the Service Unit.

1 3.07.3 Replacement of Carts and Bins. CONTRACTOR'S employees shall take
2 care to prevent damage to carts or bins by unnecessary rough treatment. However, any cart or
3 bin damaged by the CONTRACTOR shall be replaced by the CONTRACTOR, at the
4 CONTRACTOR'S expense, within three (3) Work Days at no cost or inconvenience to the
5 Service Recipient.

6 3.07.3.1 Upon notification to the CONTRACTOR by the CITY or a
7 Service Recipient that the Service Recipient's cart(s), bin(s), or Recyclables Tote-Bag(s) have
8 been stolen or damaged beyond repair through no fault of the CONTRACTOR, the
9 CONTRACTOR shall deliver a replacement cart(s), bin(s), or Recyclables Tote-Bag(s) to such
10 Service Recipient within three (3) Work Days. The CONTRACTOR shall maintain records
11 documenting all cart and bin replacements occurring on a monthly basis.

12 3.07.3.2 Where such cart is lost, stolen or damaged beyond repair
13 through no fault of the CONTRACTOR, each SFD Service Unit shall be entitled to the
14 replacement of one (1) lost, destroyed, or stolen Garbage Cart, one (1) lost, destroyed, or stolen
15 Recycling Cart, one (1) lost, destroyed, or stolen Green Waste/Organic Waste Cart during the
16 life of this Agreement at no cost to the Service Recipient.

17 3.07.3.3 Where such cart, bin, or Recyclables Tote-Bag is lost,
18 stolen or damaged beyond repair through no fault of the CONTRACTOR, each MFD Service
19 Unit shall be entitled to the replacement of one (1) lost, destroyed, or stolen Garbage Cart or
20 Bin, one (1) lost, destroyed, or stolen Recycling Cart or Bin, one (1) lost, destroyed, or stolen
21 Green Waste/Organic Waste Cart or Bin, and three (3) lost, destroyed, or stolen Recyclables
22 Tote-Bags during the life of this Agreement at no cost to the Service Recipient.

23 3.07.3.4 Where such cart or bin is lost, stolen or damaged beyond
24 repair through no fault of the CONTRACTOR, each Commercial and City Service Unit shall be
25 entitled to the replacement of one (1) lost, destroyed, or stolen Garbage Cart or Bin, one (1)
26 lost, destroyed, or stolen Recycling Cart or Bin, and one (1) lost, destroyed, or stolen Green
27 Waste/Organic Waste Cart or Bin during the life of this Agreement at no cost to the Service
28 Recipient.

29 3.07.3.5 Where such bin or cart replacement occurs through no
30 fault of the CONTRACTOR, CONTRACTOR shall be compensated by the customer for the cost
31 of those replacements in excess of the requirements set forth above in accordance with the
32 "Cart or Bin Exchange" Service Rate, as appropriate, as initially set by the CITY or as may be
33 adjusted by the CITY as provided under the terms of this Agreement.

34 3.07.4 Repair of Carts and Bins. CONTRACTOR shall be responsible for repair
35 of carts in the areas to include but not be limited to, hinged lids, wheels and axles. Within three
36 (3) Work Days of notification by the CITY or a Service Recipient of the need for such repairs,
37 the CONTRACTOR shall repair the cart or bin or if necessary, remove the cart or bin for repairs
38 and deliver a replacement cart or bin to the Service Recipient.

39 3.07.5 Cart or Bin Exchange. Upon notification to the CONTRACTOR by the
40 CITY or a Service Recipient that a change in the size or number of carts or bins is required, the
41 CONTRACTOR shall deliver such carts or bins to such Service Recipient within three (3) Work
42 Days. Each SFD Service Unit shall be entitled to receive one (1) free Garbage Cart exchange,
43 one (1) free Recycling Cart exchange and one (1) free Green Waste/Organic Waste Cart
44 exchange per Agreement Year during the term of this Agreement. Each MFD, Commercial and
45 City Service Unit shall be entitled to receive one (1) free Garbage Cart or Bin exchange, and
46 one (1) free Recycling Cart or Bin exchange, and one (1) free Green Waste/Organic Waste Cart

1 or Bin exchange per Agreement Year during the term of this Agreement. Accordingly
2 CONTRACTOR shall be compensated for the cost of those exchanges in excess of one (1) per
3 Agreement Year, in accordance with the "Cart or Bin Exchange" service rate as Set forth in
4 **Exhibit 1** which is attached to and included in this Agreement or as may be adjusted under the
5 terms of this Agreement.

6 3.07.5.1 Ownership of Carts and Bins. Ownership of carts shall rest
7 with the CONTRACTOR. Ownership of bins distributed by the CONTRACTOR shall rest with
8 the CONTRACTOR. However, in the case of the termination of the Agreement prior to the
9 expiration of the initial term or optional extension term due to the default of the CONTRACTOR
10 as set forth in Article 24 of this Agreement, the CITY shall have the right to take possession of
11 the carts and bins for a reasonable period of time, not to exceed three months, to allow the City
12 to enter into satisfactory arrangements with a third party or using its own forces to provide
13 Collection Services using other equipment, and there shall be no monies owing to the
14 CONTRACTOR from the CITY for the use of the equipment.

15 3.07.5.2 Upon the receipt of written notice from the CITY,
16 CONTRACTOR shall submit to the City Representative an inventory of carts and bins, including
17 their locations.

18 3.07.5.3 At the expiration of this Agreement, CONTRACTOR shall
19 be responsible for removing all carts and bins in service from the Service Area and reusing or
20 recycling such carts.

21 3.07.6 Ownership of Debris Box Containers. Ownership of Debris Box containers
22 distributed by the CONTRACTOR shall rest with the CONTRACTOR. However, in the case of
23 the termination of the Agreement prior to the expiration of the initial term or optional extension
24 term due to the default of the CONTRACTOR the CITY shall have the right to take possession
25 of the containers for a reasonable period of time, not to exceed three months, to allow the City
26 to enter into satisfactory arrangements with a third party or using its own forces to provide
27 Collection Services using other equipment and there shall be no monies owing to the
28 CONTRACTOR from the CITY for the use of the equipment. Upon the receipt of written notice
29 from the CITY, CONTRACTOR shall submit to the City Representative an inventory of
30 containers, including their locations.

31 3.07.7 Annual Inspection and Cleaning. Once each Agreement Year, at no
32 charge to the CITY or the MFD or Commercial Service Unit, CONTRACTOR shall inspect all
33 Garbage, Recycling, and Green Waste/Organic Waste Bins and Debris Box containers at the
34 Service Unit's premises and shall replace those bins needing cleaning with clean bins and
35 remove the dirty bins for cleaning.

36 3.08 Labor and Equipment. CONTRACTOR shall provide and maintain all labor,
37 equipment, tools, facilities, and personnel supervision required for the performance of
38 CONTRACTOR'S obligations under this Agreement. CONTRACTOR shall at all times have
39 sufficient backup equipment and labor to fulfill CONTRACTOR'S obligations under this
40 Agreement. No compensation for CONTRACTOR'S services or for CONTRACTOR'S supply of
41 labor, equipment, tools, facilities or supervision shall be provided or paid to CONTRACTOR by
42 CITY or by any Service Recipient except as expressly provided by this Agreement.

43 3.09 Holiday Service. CONTRACTOR will provide Collection Services on every holiday
44 except Christmas and New Year's. CONTRACTOR's office will be closed New Year's Day,
45 Martin Luther King's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and
46 Christmas Day. In any week in which one of these holidays falls on a Work Day, all Collection

1 Services for the holiday and each Work Day thereafter will be delayed one Work Day for the
2 remainder of the week with normally scheduled Friday Collection Services being performed on
3 Saturday.

4 3.10 Processing and Disposal.

5 3.10.1 Compliance with Regulations. All materials collected under this
6 Agreement shall be delivered to facilities that comply with the Department of Resources
7 Recycling and Recovery regulations under Title 14, Chapter 3, Minimum Standards for Solid
8 Waste Handling and Disposal (Article 5.9 – Sections 17380-17386). CONTRACTOR, and not
9 the CITY, must assure that all Disposal, transfer, and processing facilities are properly permitted
10 to receive material collected under this Agreement. Failure to comply with this provision shall
11 result in the levy of liquidated damages as specified in Article 19 of this Agreement and may
12 result in the CONTRACTOR being in default under this Agreement.

13 3.10.2 CONTRACTOR must assure that all facilities selected by CONTRACTOR
14 shall possess all existing permits and approvals by local enforcement agencies to be in full
15 compliance with all regulatory agencies to conduct all operations at the approved location.
16 CONTRACTOR shall, upon written request from the CITY, arrange for the facilities selected by
17 the CONTRACTOR to provide copies of facility permits, notices of violations, inspection areas
18 or concerns, or administrative action to correct deficiencies related to the operation. Failure to
19 provide facility information shall result in the levy of liquidated damages as specified in Article 19
20 of this Agreement and may result in the CONTRACTOR being in default under this Agreement.

21 3.10.3 Disposal Facility. Except as set forth below, all Garbage collected as a
22 result of performing Collection Services shall be transported to, and delivered on the same day
23 as Collection, at the Disposal Facility. In the event the Disposal Facility is closed on a Work
24 Day, the CONTRACTOR shall transport and dispose of the Garbage at such other legally
25 permitted disposal facility as is approved by CITY. Failure to comply with this provision shall
26 result in the levy of liquidated damages as specified in Article 19 of this Agreement and may
27 result in the CONTRACTOR being in default under this Agreement.

28 3.10.4 Materials Recovery Facility. All Recyclable Materials collected as a result
29 of performing SFD, MFD, Commercial and City Recycling Services shall be delivered to the
30 Materials Recovery Facility (MRF). In the event the MRF is closed on a Work Day, the
31 CONTRACTOR shall transport and deliver the Recyclable Material to such other legally
32 permitted MRF as is approved by CITY. Failure to comply with this provision shall result in the
33 levy of liquidated damages as specified in Article 19 of this Agreement and may result in the
34 CONTRACTOR being in default under this Agreement.

35 3.10.5 Green Waste/Organic Waste Processing Facility. CONTRACTOR shall
36 deliver on the same day as collected all Green Waste/Organic Waste to a fully permitted Green
37 Waste/Organic Waste Processing Facility. In the event the facility is closed on a Work Day, the
38 CONTRACTOR shall transport and deliver the Green Waste/Organic Waste Material to such
39 other legally permitted facility as is approved by CITY. CONTRACTOR shall ensure that all
40 Green Waste/Organic Waste collected pursuant to this Agreement, except residue resulting
41 from processing, is diverted from the Disposal Facility in accordance with AB 939 and
42 subsequent legislation and regulations. Green Waste may be used as ADC.

43 3.11 Inspections. The CITY shall have the right to inspect the CONTRACTOR'S facilities
44 or Collection vehicles and their contents at any time while operating inside or outside the CITY.

1 3.12 Commingling of Materials.

2 3.12.1 Garbage and Recyclable Material. CONTRACTOR shall not at any time
3 commingle Garbage or Green Waste/Organic Waste, collected pursuant to this Agreement, with
4 any Recyclable Material separated for Collection pursuant to this Agreement without the
5 express prior written authorization of the City Representative.

6 3.12.2 Recyclable Materials. CONTRACTOR shall not at any time commingle
7 Recyclable Materials collected pursuant to this Agreement, with any other material collected by
8 CONTRACTOR inside or outside the CITY without the express prior written authorization of the
9 City Representative.

10 3.13 Spillage and Litter. The CONTRACTOR shall not litter premises in the process of
11 providing Collection Services or while its vehicles are on the road. The CONTRACTOR shall
12 transport all materials collected under the terms of this Agreement in such a manner as to
13 prevent the spilling or blowing of such materials from the CONTRACTOR'S vehicle. The
14 CONTRACTOR shall exercise all reasonable care and diligence in providing Collection Services
15 so as to prevent spilling or dropping of Garbage, Green Waste/Organic Waste, or Recyclable
16 Materials and shall immediately, at the time of occurrence, clean up such spilled or dropped
17 materials.

18 3.13.1 The CONTRACTOR shall not be responsible for cleaning up un-sanitary
19 conditions caused by the carelessness of the Service Recipient; however, the CONTRACTOR
20 shall clean up any material or residue that are spilled or scattered by the CONTRACTOR or its
21 employees.

22 3.13.2 Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris
23 resulting from the CONTRACTOR'S operations or equipment repair shall be covered
24 immediately with an absorptive material and removed from the street surface. When necessary,
25 CONTRACTOR shall apply a suitable cleaning agent to the street surface to provide adequate
26 cleaning. To facilitate such cleanup, CONTRACTOR'S vehicles shall at all times carry sufficient
27 quantities of petroleum absorbent materials along with a broom and shovel.

28 3.13.3 The above paragraphs notwithstanding, CONTRACTOR shall clean up
29 any spillage or litter caused by CONTRACTOR within two (2) hours upon notice from the CITY.

30 3.13.4 In the event where damage to City Streets is caused by a hydraulic oil
31 spill, CONTRACTOR shall be responsible for all repairs to return the street to the same
32 condition prior to the spill. CONTRACTOR shall also be responsible for all clean-up activities
33 related to the spill. Repairs and clean-up shall be performed in a manner satisfactory to the City
34 Representative and at no cost to the CITY.

35 3.14 Ownership of Materials.

36 3.14.1 Title to Garbage, Green Waste/Organic Waste, and Recyclable Materials
37 shall pass to CONTRACTOR at such time as said materials are placed in the CONTRACTOR'S
38 Collection vehicle.

39 3.14.2 Title to material Collected as part of the City Collection Service shall pass
40 to CONTRACTOR at the time the material is placed in the Debris Box container or other
41 Collection vehicle or container approved for use at the event.

42 3.14.3 Notwithstanding the foregoing, under no circumstances shall the
43 CONTRACTOR take ownership or ever be deemed to have taken ownership of Hazardous
44 Waste or other waste that CONTRACTOR may not lawfully Recycle or dispose of at the Keller

1 Canyon Landfill. Title to Hazardous Waste shall at all times remain with the generator of such
2 Hazardous Waste.

3 3.15 Hazardous Waste.

4 3.15.1 Under no circumstances shall CONTRACTOR'S employees knowingly
5 collect Hazardous Waste, or remove unsafe or poorly containerized Hazardous Waste, from a
6 collection container. If CONTRACTOR determines that material placed in any container for
7 Collection is Hazardous Waste, or other material that may not legally be accepted at the
8 Disposal Facility or one of the processing facilities, or presents a hazard to CONTRACTOR'S
9 employees, the CONTRACTOR shall have the right to refuse to accept such material. The
10 generator shall be contacted by the CONTRACTOR and requested to arrange for proper
11 disposal service. If the generator cannot be reached immediately, the CONTRACTOR shall,
12 before leaving the premises, leave a Non-Collection Notice, which indicates the reason for
13 refusing to collect the material, and how the Hazardous Waste can be properly disposed or
14 recycled.

15 3.15.2 If Hazardous Waste is found in a Collection container that poses an
16 imminent danger to people or property, the CONTRACTOR shall immediately notify the Benicia
17 Fire Department. The CONTRACTOR shall immediately notify the CITY of any Hazardous
18 Waste that has been identified.

19 3.15.3 If Hazardous Waste is identified at the time of delivery to the Disposal
20 Facility, or one of the processing facilities and the generator cannot be identified,
21 CONTRACTOR shall be solely responsible for handling and arranging transport and disposition
22 of the Hazardous Waste.

23 3.16 Regulations and Record Keeping. CONTRACTOR shall comply with emergency
24 notification procedures required by applicable laws and regulatory requirements. All records
25 required by regulations shall be maintained at the CONTRACTOR'S facility. These records shall
26 include waste manifests, waste inventories, waste characterization records, inspection records,
27 incident reports, and training records.

28 3.17 Transition. CONTRACTOR understands and agrees that the time between the
29 formal Agreement signing and July 1, 2011 is intended to provide the CONTRACTOR with
30 ample and sufficient time to, among other things, order equipment, prepare necessary routing
31 schedules and route maps, obtain any permits and licenses, establish/build facilities, and begin
32 the public awareness campaign. CONTRACTOR shall be responsible for the provision of all
33 Collection Services beginning July 1, 2011.

34 **ARTICLE 4. Charges and Rates**

35 4.01 CONTRACTOR Billing. The CONTRACTOR shall be responsible for the billing and
36 collection of payments for all Collection Services. Notwithstanding the preceding provision, the
37 CONTRACTOR shall not bill for CITY Collection Services. The CONTRACTOR shall charge
38 Service Recipients a maximum amount not to exceed the service rates set by CITY resolution
39 and attached in **Exhibit 1** to this Agreement and as may be adjusted under the terms of this
40 Agreement. The City shall approve the format for all Service Recipient bills.

41 4.01.1 Partial Month Service. If, during a month, a Service Unit is added to or
42 deleted from CONTRACTOR'S Service Area, the CONTRACTOR'S billing shall be pro-rated
43 based on the weekly service rate (the weekly service rate shall be the service rate established

1 in **Exhibit 1** divided by four (4) times the number of actual weeks in the month that service was
2 provided to the Service Unit.

3 4.01.2 Production of Invoices for Service Units Utilizing Cart Service. The
4 CONTRACTOR shall produce an invoice, in a form and format that is approved by the City
5 Representative, for Service Recipients utilizing carts received under this Agreement in advance
6 but no less than four (4) times per year. The CONTRACTOR'S invoice shall be remitted to the
7 Service Recipient no earlier than the twentieth (20th) day of the 1st month of the period for which
8 service is being billed. Notification of future rate increases shall be included in at least one
9 invoice prior to the affected rate increase date.

10 4.01.3 Production of Invoices for Service Units Utilizing Bin Service. The
11 CONTRACTOR shall produce an invoice, in a form and format that is approved by the City
12 Representative, for Service Recipients utilizing bins received under this Agreement in advance
13 but no less than twelve (12) times per year. The CONTRACTOR may invoice the Service
14 Recipient no less than ten (10) days preceding the month for services for which service is being
15 billed.

16 4.01.4 Production of Invoices for Debris Box Collection Service. The
17 CONTRACTOR shall produce an invoice, in a form and format that is approved by the City
18 Representative, for Debris Box Collection Services received under this Agreement in arrears for
19 services during the prior month. Service Recipients utilizing Debris Box Collection Services may
20 be invoiced upon completion of the service.

21 4.01.5 City Provided Billing Inserts. CITY may provide educational and other
22 material to CONTRACTOR for inclusion in the invoices provided by CONTRACTOR to SFD,
23 MFD and Commercial Service Recipients for Collection Services. CONTRACTOR shall not
24 charge the CITY for the inclusion of additional educational or other materials in the invoices
25 provided the inclusion of such CITY requested materials does not exceed the cost for standard
26 postage.

27 4.01.6 Methods of Payment. CONTRACTOR shall provide the means for Service
28 Recipients to pay bills through the following methods: cash, checks, credit cards, internet
29 payment service or automatic withdrawal from bank account. On-line (E-Pay) bill methods shall
30 be password protected and comply with federal regulations protecting the privacy of customer
31 credit information. CONTRACTOR shall provide evidence of such security certifications and
32 advise the CITY of CONTRACTOR'S security measures implemented for on-line payment.

33 4.01.7 Delinquent Service Accounts. CONTRACTOR agrees not to discontinue
34 service to a customer until customer's account has been delinquent in payment for a period of at
35 least 60 days. If the CONTRACTOR terminates service to any non-paying person, corporation
36 or entity, such person, corporation, or entity as a condition precedent to establishment of such
37 service, shall comply fully with all of the then billing policies and practices of the
38 CONTRACTOR, including, but not limited to, requirement of payment by cash or cash
39 equivalent, prepayment of one full billing cycle, payment of all costs of collection of monies
40 owed to CONTRACTOR, and payment of a reinstatement fee. If the CONTRACTOR
41 discontinues service for non-payment of the customer's account, CONTRACTOR shall
42 immediately give written notice to the City Manager of any discontinuance of service for
43 nonpayment of account, giving the name and address of the customers. CITY shall have no
44 responsibility for collecting monies owed to CONTRACTOR from delinquent service accounts.

45 4.01.8 Senior Discount. To receive the senior discount, the CITY shall provide
46 CONTRACTOR with the names and addresses of qualified seniors. CONTRACTOR may

1 require SFD Service Recipient to re-qualify each twelve (12) months. CONTRACTOR shall
2 invoice SFD Service Recipients qualifying for the senior discount at the rates set forth in Exhibit
3 1.

4 4.01.9 Annual Rate Increase by CPI. On July 1, 2012, CONTRACTOR may
5 increase Maximum Service Rates for all rates except SFD 20- and 32-gallon cart rates by two
6 and one-quarter percent (2.25%) but not more than four percent (4%) using the twelve (12)
7 month average percentage change in the CPI between December 2010 to December 2011,
8 CONTRACTOR shall apply the percentage change to the Maximum Services Rates as listed in
9 **Exhibit 1** as attached to this Agreement and submit the CONTRACTOR'S request for an
10 adjustment to the Maximum Service Rates to the CITY in the same form as **Exhibit 1**. On July
11 1, 2013 and July 1, 2014, CONTRACTOR may increase Maximum Service Rates by two and
12 one-quarter percent (2.25%) but not more than four percent (4%) using the twelve (12) month
13 average percentage change in the CPI between December of the current year to December of
14 the prior year. On July 1, 2015 and July 1, 2016, CONTRACTOR may increase Maximum
15 Service Rates by two percent (2%) but not more than four percent (4%) using the twelve (12)
16 month average percentage change in the CPI between December of the current year to
17 December of the prior year. On July 1, 2017 and each subsequent July 1st, CONTRACTOR may
18 increase Maximum Service Rates by not more than four percent (4%) using the twelve (12)
19 month average percentage change in the CPI between December of the current year to
20 December of the prior year. CONTRACTOR shall apply the percentage change to approved
21 current Maximum Service Rates and submit the CONTRACTOR'S request for an adjustment in
22 the Maximum Service Rates to the CITY in the same form as **Exhibit 1**.

23 4.01.9.1 Rounding. Annual adjustments shall be made only in units
24 of one cent (\$0.01) and shall not result in a decrease to the rates currently in effect. Fractions
25 of less than one cent (\$0.01) shall not be considered in making adjustments. The indices shall
26 be truncated at four (4) decimal places for the adjustment calculations.

27 4.02 CONTRACTOR'S Payments to CITY. CONTRACTOR shall make payment to the
28 CITY of a franchise fee, and such other fees as may be specified in this Article 4. Payment to
29 the CITY shall be due, on the fifteenth (15th) day of the month following the prior three month
30 period the revenues are collected. Each such payment shall be accompanied by an accounting,
31 which sets forth CONTRACTOR'S Gross Receipts collected during the preceding three months.
32 Franchise Fee payments to the CITY shall be due beginning October 15, 2011 and quarterly
33 thereafter by the 15th of January, April, July, and October.

34 4.02.1 Franchise Fee. The franchise fee shall be a percentage of
35 CONTRACTOR'S Gross Receipt collected each month under the terms of this Agreement.
36 Gross Receipt shall specifically include revenue received by the CONTRACTOR from any
37 entity, including federal, state, county or other local facilities within the Service Area for the
38 provision of Collection Services by the CONTRACTOR. However, revenue received by the
39 CONTRACTOR from the sale of Recyclable Materials and from related California Redemption
40 Value (CRV) payments shall not be considered as Gross Receipts for purpose of the calculation
41 of franchise fees. For the Agreement Year beginning July 1, 2011, the franchise fee percentage
42 shall be eight percent (8%) of Gross Receipts. For the Agreement Year beginning July 1, 2012
43 the franchise fee percentage shall be nine percent (9%) of Gross Receipts. For the Agreement
44 Year beginning July 1, 2013 and each Agreement Year thereafter, the franchise fee percentage
45 shall be ten percent (10%) of Gross Receipts. CONTRACTOR shall not pass on any franchise
46 fee of ten percent (10%) or less in its Maximum Service Rates. In the event that the City adjusts
47 the franchise fee percentage above ten percent (10%), the Maximum Service Rates will also be
48 adjusted to incorporate any such changes in the franchise fee percentage.

1 4.02.2 Vehicle Impact Fee. The CONTRACTOR shall pay the CITY \$145,000
2 divided into twelve (12) equal monthly payments of \$12,083.33. The 1st payment to the CITY
3 shall be due July 15, 2011 and on the fifteenth (15th) day of each month thereafter. These fees
4 will be adjusted by the same percentage as adjustments to the Collection Element, unless
5 otherwise changed by City Council action.

6 4.02.3 Franchise Extension Fee. CONTRACTOR shall pay the CITY \$150,000
7 within thirty (30) days upon execution of this Agreement. Beginning July 15, 2011, and on each
8 subsequent July 15th for ten (10) Agreement Years, CONTRACTOR shall also pay the CITY
9 \$30,000.

10 4.02.4 Recyclables Revenue Share. Starting on July 15, 2012, and each
11 subsequent July 15th, CONTRACTOR shall pay the CITY fifty percent (50%) of revenue
12 received on amounts over \$100 per ton from the sale of Recyclable Materials where the actual
13 amount received by the CONTRACTOR exceeds \$100 per ton for all Recyclables Materials sold
14 during the prior Agreement Year. Recyclables Revenue Share shall be determined on an
15 Agreement Year based on the total Recyclables Materials collected, net of residual, and the
16 total revenue received by the CONTRACTOR for the purchase of Recyclable Materials by third
17 parties, net of any processing, residual disposal costs, or transportation costs incurred by the
18 CONTRACTOR.

19 4.02.5 Negotiation Assistance Fee. CONTRACTOR shall pay the CITY \$25,000
20 within thirty (30) days upon execution of this Agreement to reimburse the CITY for the CITY's
21 cost to prepare this Agreement.

22 4.02.6 No acceptance by CITY of any payment shall be construed as an accord
23 that the amount is not in-fact the correct amount, nor shall such acceptance of payment be
24 construed as a release of any claim CITY may have against CONTRACTOR for any additional
25 sums payable under the provisions of this Agreement. All amounts paid shall be subject to
26 independent audit and recompilation by CITY. If, after the audit, such recompilation indicates an
27 underpayment CONTRACTOR shall pay to CITY the amount of the underpayment and shall
28 reimburse CITY for all reasonable costs and expenses incurred in connection with the audit and
29 recompilation within ten (10) Work Days of receipt of written notice from CITY that such is the
30 case. If, after audit, such recompilation indicates an overpayment, CITY shall notify the
31 CONTRACTOR in writing of the amount of the overpayment, less costs and expenses incurred
32 in connection with the audit and recompilation. CONTRACTOR may offset the amounts next
33 due following receipt of such notice by the amount specified therein.

34 4.03 Tonnage Data. Within thirty (30) days upon execution of the Agreement and on the
35 twentieth (20th) day of each month thereafter during the term of this Agreement,
36 CONTRACTOR shall deliver to CITY a listing of the actual tonnage collected, disposed,
37 recycled, Composted, and residue for the preceding month sorted between SFD, MFD
38 Commercial and CITY Service Units and between Debris Box containers and all other
39 containers to the extent practical.

40 4.04 Special Rate Adjustment. A special rate change may be approved at any time it
41 can be established that there is good cause based on a significant change in circumstances.
42 Significantly changed circumstances may include City directed changes in service pursuant to
43 Section 25.03, or other dramatic changes in costs not within the control of CONTRACTOR. If
44 CONTRACTOR does desire to seek a special rate change, CONTRACTOR shall submit to the
45 City Manager a thorough written explanation of the significantly changed circumstances, as well
46 as an explanation of why these extraordinary circumstances constitute good cause for making
47 such an application and the amount of the rate adjustment requested by CONTRACTOR,

1 together with such other data and supporting documentation as may be required by City
2 Manager.

3 4.04.1 The City Manager shall determine within 90 days whether good cause
4 exists for an adjustment in rates. If it has been determined that good cause does exist, a
5 hearing on the proposed maximum rate adjustments will be scheduled before the City Council
6 within 60 days after the City Manager's determination. The City Council shall consider the
7 CONTRACTOR's application and such other materials and information reasonably requested by
8 the City Council from CONTRACTOR to assess the merits of CONTRACTOR's application. The
9 City Council will consider an adjustment to CONTRACTOR's maximum rates to compensate
10 CONTRACTOR for its reasonable, net costs of providing such additional or modified services.
11 No action from the City Manager within the 90-day period shall be considered an appealable
12 denial, as described below. CITY and CONTRACTOR shall agree to the effective date of any
13 such Special Rate Adjustment as approved by the City Council.

14 4.04.2 If the City Manager determines that good cause does not exist,
15 CONTRACTOR shall have ten days in which to file an appeal of the determination with the City
16 Council. That appeal shall be placed on the City Council's agenda as soon as practicable.

17 4.04.3 The Council's decision shall be conclusive. However, nothing in this
18 Agreement shall be construed to prevent either party from seeking judicial relief for any breach
19 of any provision of this Agreement by either party.

20 ARTICLE 5. Diversion Requirements

21 5.01 Minimum Requirements. CITY and CONTRACTOR acknowledge that the period
22 from July 1, 2011 through December 31, 2011 will be used by the CONTRACTOR to implement
23 the new diversion programs as specified in this Agreement, and that measurement of state
24 diversion requirements is done on a calendar year basis. Therefore, the CITY requires the
25 CONTRACTOR to use its best efforts to achieve a minimum annual diversion rate of **fifty-five**
26 **percent (55%)** by December 31, 2012, increase to **sixty percent (60%)** by December 31, 2013,
27 increase to **sixty-five percent (65%)** by December 31, 2014, increase to seventy percent (70%)
28 by December 31, 2015 and be no lower than **seventy-five percent (75%)** by December 31,
29 2016 and each year thereafter for SFD Collection Services, MFD Collection Services,
30 Commercial Collection Services, CITY Collection Services, and Debris Box Collection Services,
31 or such other amount as may be set in accordance with the provisions of Article 25 of this
32 Agreement during each calendar year beginning January 1, 2012. The annual diversion rate will
33 be calculated as "the tons of materials collected by CONTRACTOR from the provision of
34 Collection Services that are sold, processed, or shipped to a recycler or re-user and net of any
35 residue amounts, as required by this Agreement, divided by the total tons of materials collected
36 by CONTRACTOR in each calendar year."

37 5.02 Failure to Meet Minimum Requirements. CONTRACTOR'S failure to meet the
38 minimum diversion guarantees set forth above in Article 5 may result in the imposition of
39 liquidated damages as specified in Article 19, or denial of an extension to this Agreement as
40 specified in Article 2. In determining whether or not to assess liquidated damages, or denial of a
41 term extension, the CITY will consider the good faith efforts put forth by the CONTRACTOR in
42 implementing the required programs as specified in this Agreement to meet the minimum
43 diversion requirements and the methods and level of effort of the CONTRACTOR.

ARTICLE 6. Service Units

6.01 Service Units. Service Units shall include all the following categories of premises which are in the Service Area as of July 1, 2011, and all such premises which may be added to the Service Area by means of annexation, new construction, or as otherwise set forth in this Agreement during term of this Agreement:

6.01.1 SFD Service Units

6.01.2 MFD Service Units

6.01.3 Commercial Service Units

6.01.4 CITY Service Units

6.01.4.1 Any question as to whether a premises falls within one of these categories shall be determined by the City Representative and the determination of the City Representative shall be final.

6.02 Service Unit Changes. The CITY and CONTRACTOR acknowledge that during the term of this Agreement it may be necessary or desirable to add or delete Service Units for which CONTRACTOR will provide Collection Services.

6.02.1 Additions and Deletions. CONTRACTOR shall provide services described in this Agreement to new Service Units within five (5) Work Days of receipt of notice from the CITY or new Service Unit to begin such service.

6.03 Route Map Update. CONTRACTOR shall revise the Service Unit route maps to show the addition of Service Units added due to annexation and/or addition of new Service Areas and shall provide such revised maps to the City Representative as requested.

ARTICLE 7. SFD Collection Services

7.01 SFD Collection Services. These services shall be governed by the following terms and conditions:

7.01.1 Conditions of Service. The CONTRACTOR shall provide SFD Collection Service to all SFD Service Units in the Service Area whose Garbage is properly containerized in Garbage Carts, Recyclable Materials are properly containerized in Recycling Carts, except as set forth in Section 7.01.5.3; and Green Waste/Organic Waste is properly containerized in Green Waste/Organic Waste Carts except as set forth in Section 7.01.9. SFD Collection Service shall be curbside unless the Service Recipient elects to receive On-Premise Collection Service. CONTRACTOR may not charge for the Collection of Recyclable Materials or Green Waste/Organic Waste.

7.01.1.1 Curbside Collection Service. SFD curbside Collection shall be done where Garbage, Recyclable Materials and Green Waste/Organic Waste Carts are placed within five (5) feet of the curb, swale, or at edge of street pavement for streets without curbs. Carts shall be three (3) feet apart and away from other objects that may impair automated Collection. This shall apply to both public and private streets. CONTRACTOR may charge for curbside Collection at the rates as set forth in **Exhibit 1**.

7.01.1.2 On-Premise Collection Service - Subscription. A SFD Service Recipient may subscribe for on-premise SFD Collection Service where Garbage, Recyclable Materials, and Green Waste/Organic Waste Carts are collected from a side-yard, backyard, or other off-street location agreed on between the CONTRACTOR and the Service

1 Recipient. CONTRACTOR may charge for on-premise Collection at the rates as set forth in
2 **Exhibit 1.**

3 7.01.1.3 On-Premise Collection Service – Physical Disability. A
4 SFD Service Recipient, and all other adults living at the Service Unit residing therein, that has
5 disabilities that prevent him/her from being physically unable to place Garbage, Recyclable
6 Materials, or Green Waste/Organic Waste Carts at the curb for Collection shall receive on-
7 premise Collection Service where all Garbage, Recyclable Materials, and Green Waste/Organic
8 Waste Carts are Collected from a side-yard, backyard, or other off-street location agreed on
9 between the CONTRACTOR and the Service Recipient. SFD Service Recipient shall provide
10 CONTRACTOR with written documentation from a health care provider regarding their inability
11 to physically place all carts at the curb for Collection. CONTRACTOR shall provide this service
12 at the curbside SFD Collection Service rates as set forth in **Exhibit 1.**

13 7.01.2 Frequency and Scheduling of Service. Except as set forth in Articles
14 7.01.7, 7.01.8, 7.01.9 and 7.01.11, SFD Garbage Collection Services and SFD Recycling
15 Collection Services shall be provided one (1) time per week, and SFD Green Waste/Organic
16 Waste Collection Services shall be provided every other week on a scheduled route basis. SFD
17 Collection Services shall be scheduled so that a SFD Service Unit receives SFD Garbage
18 Collection Service and SFD Recycling Service on the same Work Day, and when SFD Green
19 Waste/Organic Waste Collection Service is provided it shall be provided on the same Work Day
20 as SFD Garbage Collection Services.

21 7.01.3 Non-Collection. Except as set forth in Articles 7.01.5.3, 7.01.9,
22 7.01.10, and 7.01.11 CONTRACTOR shall not be required to Collect any Garbage, Recyclable
23 Material, or Green Waste/Organic Waste that is not placed in a cart. In the event of non-
24 collection, CONTRACTOR shall affix to the cart a Non-Collection Notice explaining why
25 Collection was not made. CONTRACTOR shall maintain a copy of such notices during the term
26 of this Agreement.

27 7.01.4 SFD Garbage Collection Service. This service will be governed by the
28 following additional terms and conditions:

29 7.01.4.1 Disposal Facility. All Garbage collected as a result of
30 performing SFD Garbage Collection Services shall be transported to, and disposed of, at the
31 Disposal Facility. Failure to comply with this provision shall result in the levy of liquidated
32 damages as specified in this Agreement and may result in the CONTRACTOR being in default
33 under this Agreement.

34 7.01.4.2 Additional Garbage Carts. Upon notification to the
35 CONTRACTOR by the CITY or a Service Recipient that additional Garbage Carts are
36 requested, the CONTRACTOR shall deliver such Garbage Carts to such Service Recipient
37 within five (5) Work Days. CONTRACTOR shall be compensated for the cost of additional
38 Garbage Carts in accordance with the “Additional Garbage Cart” Service Rate as set forth in
39 **Exhibit 1a** or as may be adjusted under the terms of this Agreement.

40 7.01.5 SFD Recycling Service. This service will be governed by the additional
41 following terms and conditions:

42 7.01.5.1 Materials Recovery Facility. All Recyclable Materials
43 collected as a result of performing SFD Garbage Collection Services shall be delivered to the
44 Materials Recovery Facility. Failure to comply with this provision shall result in the levy of
45 liquidated damages as specified in this Agreement and may result in the CONTRACTOR being
46 in default under this Agreement.

1 7.01.5.2 Additional Recycling Carts. Upon notification to the
2 CONTRACTOR by the CITY or a Service Recipient that additional Recycling Carts are
3 requested, the CONTRACTOR shall deliver such Recycling Carts to such Service Recipient
4 within five (5) Work Days at no additional cost provided that additional carts are used by Service
5 Recipients for the purposes of setting out additional Recyclable Materials for regular weekly
6 SFD Recycling Service.

7 7.01.5.3 Overages. Corrugated cardboard or other Recyclable
8 Materials that will not fit inside the Recycling Cart may be flattened, bagged and/or bundled and
9 placed beside the Recycling Cart.

10 7.01.5.4 Recycling - Changes to Work. Should changes in law arise
11 that necessitate any additions or deletions to the work described herein including the type of
12 items included as Recyclable Materials, the parties shall negotiate any necessary cost changes
13 and shall enter into an Agreement amendment covering such modifications to the work to be
14 performed and the compensation to be paid before undertaking any changes or revisions to
15 such work.

16 7.01.5.5 Recycling - Improper Procedure. CONTRACTOR shall not
17 be required to collect Recyclable Materials if the Service Recipient does not segregate the
18 Recyclable Materials from Garbage or Green Waste/Organic Waste. If Recyclable Materials are
19 contaminated through commingling with Garbage or Green Waste/Organic Waste, the
20 CONTRACTOR shall, if practical, separate the Garbage or Green Waste/Organic Waste from
21 the Recyclable Materials. The Recyclable Materials shall then be collected and the Garbage or
22 Green Waste/Organic Waste shall be left in the Recycling Cart along with a Non-Collection
23 Notice explaining why the Garbage or Green Waste/Organic Waste is not considered a
24 Recyclable Material. However, in the event the Recyclable Materials and Garbage or Green
25 Waste/Organic Waste are commingled to the extent that they cannot easily be separated by the
26 CONTRACTOR or the nature of the Garbage or Green Waste/Organic Waste renders the entire
27 Recycling Cart contaminated, the CONTRACTOR will leave the Recycling Cart un-emptied
28 along with a Non-Collection Notice that contains instructions on the proper procedures for
29 setting out Recyclable Materials.

30 7.01.6 SFD Green Waste/Organic Waste Collection Service. CONTRACTOR
31 and the CITY agree that SFD Green Waste/Organic Waste Collection Service shall be
32 mandatory service except at locations identified in **Exhibit 8**. This service will be governed by
33 the following terms and conditions:

34 7.01.6.1 Green Waste/Organic Waste Processing Services.
35 CONTRACTOR shall ensure that all Green Waste/Organic Waste collected pursuant to this
36 Agreement are diverted from the landfill in accordance with AB 939 and any subsequent or
37 other applicable legislation and regulations.

38 7.01.6.2 Green Waste/Organic Waste Processing Facility.
39 CONTRACTOR shall deliver all collected Green Waste/Organic Waste to a fully permitted
40 Green Waste/Organic Waste Processing Facility or a fully permitted Green Waste/Organic
41 Waste transfer station. All expenses related to Green Waste/Organic Waste processing and
42 marketing will be the sole responsibility of CONTRACTOR.

43 7.01.6.3 Green Waste/Organic Waste Disposal. CONTRACTOR
44 shall ensure that the Green Waste/Organic Waste collected pursuant to this Agreement is not
45 disposed of in a landfill, except as Alternative Daily Cover (ADC) or a residue resulting from
46 processing.

1 7.01.6.4 Additional Green Waste/Organic Waste Carts.
2 CONTRACTOR shall provide additional Green Waste/Organic Waste Carts to Service
3 Recipients within five (5) days of request at no additional cost provided that additional carts are
4 used by Service Recipients for the purposes of setting out additional Green Waste/Organic
5 Waste for regular biweekly Green Waste/Organic Waste Collection Service.

6 7.01.7 Compost Give-Aways. Twice each year the CONTRACTOR shall host a
7 free Compost give-away for residents to collect three (3) cubic feet of material that can be used
8 in their gardens. The time and location of the Compost give-aways shall be agreed on between
9 the CITY and CONTRACTOR. It shall be announced through billing inserts and/or newsletters
10 the CONTRACTOR produces and distributes to SFD and MFD Service Units.

11 7.01.8 Home Compost Workshops. CONTRACTOR shall offer free home
12 Compost workshops four (4) times per year. Workshops shall educate Service Recipients how
13 to Compost, benefits of Composting and uses of Compost. CONTRACTOR shall provide
14 attending Service Recipients with a 50% discount for one home Compost bin. CONTRACTOR
15 shall partner with other community groups to create educational home Composting programs.

16 7.01.9 Holiday Tree Chipping. CONTRACTOR shall provide holiday tree
17 chipping operation subject to obtaining necessary City permits. CONTRACTOR may hire a
18 subcontractor for this service. CONTRACTOR may make other arrangements, such as a
19 subcontract with chipping service to assist Boy Scout fundraising efforts, upon approval by the
20 CITY.

21 7.01.10 Household Hazardous Waste (HHW) Collection. This service will be
22 governed by the following terms and conditions:

23 7.01.10.1 Curbside Household Hazardous Waste (HHW) Collection.
24 CONTRACTOR shall provide curbside collection of HHW as part of CONTRACTOR'S regularly
25 scheduled SFD Recycling Service. Materials collected through curbside HHW Collection shall
26 include dry cell household batteries, PDAs, cell phones, used motor oil, used oil filters when
27 contained in a sealed plastic bag, and compact fluorescent light bulbs contained in a sealed
28 plastic bag.

29 7.01.10.2 On-Call Household Hazardous Waste (HHW) Collection.
30 CONTRACTOR shall provide on-call collection of HHW or subcontract for this service beginning
31 on or before January 1, 2012. CONTRACTOR shall provide collection when SFD Service
32 Recipients call at least seven (7) calendar days in advance to schedule collection, and identify a
33 secure location on their property from which the materials will be collected. Materials collected
34 through On-call HHW Collection shall include cleaning products, pesticides, E-Waste,
35 herbicides, insecticides, painting supplies, automotive products, fuel, lubricants, paint, solvents,
36 stripes, and adhesives, auto batteries, non-controlled medicines, Sharps, and Universal Waste.
37 CONTRACTOR shall coordinate annual collection of cooking oil as mutually agreed upon by
38 CITY and CONTRACTOR. All items in **Exhibit 7** shall be collected and the list may be
39 amended by agreement of the CONTRACTOR and CITY from time to time.

40 7.01.10.3 Used Oil and Used Oil Filter Containers. To the extent
41 allowed by CONTRACTOR, Service Recipients may provide their own used oil and used filter
42 containers as specified by the CONTRACTOR. However, in the event CONTRACTOR allows
43 the use of resident-provided containers, CONTRACTOR shall assume any and all liabilities
44 related to the use of such resident-provided containers. CONTRACTOR shall be reimbursed for
45 curbside oil and oil filter collection from the CITY'S oil grant funds as provided by CalRecycle.

1 Should these funds be no longer available, the CONTRACTOR shall bear the full cost of this
2 service.

3 7.01.10.4 Segregation of Used Oil. CONTRACTOR shall keep all
4 used oil and used oil filters collected pursuant to this Agreement segregated from other
5 materials.

6 7.01.10.5 Used Oil Processing. CONTRACTOR shall recycle all used
7 oil collected pursuant to this Agreement to the extent feasible and shall properly dispose of all
8 used oil and used oil filters that are contaminated or otherwise cannot be recycled.

9 7.01.10.6 CONTRACTOR shall notify the City Representative either
10 by fax or e-mail, of any contamination, which renders the used oil unacceptable for recycling or
11 which, requires disposal of the used oil or used oil filters as a Hazardous Waste.

12 7.01.11 SFD Bulky Waste Collection Service. This service will be governed by
13 the following terms and conditions:

14 7.01.11.1 Conditions of Service. The CONTRACTOR shall provide
15 SFD Bulky Waste Collection Service to all SFD Service Units in the Service Area whose Bulky
16 Waste have been placed within five (5) feet of the curb, swale, paved surface of the public or
17 private roadway, closest accessible roadway, or other such location agreed to by the
18 CONTRACTOR and Service Recipient, that will provide safe and efficient accessibility to the
19 CONTRACTOR'S collection crew and vehicle. Each SFD Service Unit in the Service Area shall
20 be entitled to receive free Bulky Waste Collection Service a maximum of three (3) collection
21 times per Agreement Year. Bulky Waste Collection Service shall be a combination of loose
22 Bulky Waste not exceeding an approximately equivalent of two (2) cubic yards and three (3)
23 individual Bulky Waste such as a TV, couch, or water heater, for items specified in **Exhibit 1a**.
24 In accordance with the "Additional Bulky Waste Collection" service rate as set in **Exhibit 1a**,
25 CONTRACTOR shall be compensated for the cost of Collecting Bulky Waste in excess of 1) a
26 single collection of over two (2) cubic yards, 2) more than three (3) Bulky Waste Collections per
27 year, or more than three (3) individual Bulky Waste during any single Bulky Waste Collection.

28 7.01.11.2 Frequency of Service. SFD Service Recipients must call at
29 least forty-eight (48) hours in advance to schedule SFD Bulky Waste Collection Service.
30 Collection will occur on the customer's regular collection day.

31 7.01.11.3 Bulky Waste Containing Freon. In the event
32 CONTRACTOR collects Bulky Waste that contain Freon, CONTRACTOR shall handle such
33 items in a manner such that the Bulky Waste are not subject to regulation as Hazardous Waste
34 under applicable state and federal laws or regulations.

35 7.01.11.4 Annual Reuse Days. CONTRACTOR shall coordinate two
36 (2) Reuse Days with the CITY. Material collected will be determined by participating nonprofits
37 or other organizations receiving the material. CONTRACTOR shall dispose of items collected in
38 accordance with the following hierarchy: reuse as is (where energy efficiency is not
39 compromised); disassembly for reuse or recycling; recycle; disposal. CONTRACTOR shall
40 provide CITY with tonnage and data of material collected and final destination.

41 7.01.11.5 On Call Curbside Reuse Collection. The CONTRACTOR
42 shall provide SFD On Call Curbside Reuse Collection Service to all SFD Service Units in the
43 Service Area two (2) times per month. Reusable items collected shall be agreed upon by
44 CONTRACTOR and CITY. Reuse items must be placed within five (5) feet of the curb, swale,
45 paved surface of the public or private roadway, closest accessible roadway, or other such
46 location agreed to by the CONTRACTOR and Service Recipient, that will provide safe and

1 efficient accessibility to the CONTRACTOR'S collection crew and vehicle. CONTRACTOR shall
2 dispose of Reuse items collected from Service Units pursuant to this Agreement in accordance
3 with the following hierarchy: Reuse as is (where energy efficiency is not compromised);
4 disassembly for reuse or recycling; recycle; disposal.

5 7.01.11.6 On Call Recycle Collection. CONTRACTOR shall provide
6 SFD On Call Recycle Collection Service to all SFD Service Units
7 in the Service Area four (4) times per year for Green Waste and/or cardboard. Recyclable
8 Materials must be placed within five (5) feet of the curb, swale, paved surface of the public or
9 private roadway, closest accessible roadway, or other such location agreed to by the
10 CONTRACTOR and Service Recipient, that will provide safe and efficient accessibility to the
11 CONTRACTOR'S collection crew and vehicle.

12 7.01.11.7 Maximum Reuse and Recycling. CONTRACTOR shall
13 dispose of Bulky Waste collected from Service Units pursuant to this Agreement in accordance
14 with the following hierarchy:

15 7.01.11.7.1. Reuse as is (where energy efficiency is not
16 compromised)

17 7.01.11.7.2. Disassemble for reuse or recycling

18 7.01.11.7.3. Recycle

19 7.01.11.7.4. Disposal

20 7.01.11.8 CITY Direction of Bulky Waste. CITY reserves the right to
21 direct CONTRACTOR to take Bulky Waste collected pursuant to this Section to a designated
22 site or sites for the purpose of permitting persons who will reuse or recycle such Bulky Waste to
23 obtain the Bulky Waste at no cost. CONTRACTOR shall have no obligation to dispose of the
24 Bulky Waste or Large Item residue remaining at the directed site or sites after reusers and
25 recyclers have removed reusable or recyclable Bulky Waste. CONTRACTOR shall be entitled to
26 an adjustment to the service rates to reflect any increased costs arising from the CITY'S
27 direction.

28 7.01.12 SFD Debris Box Service. Upon twenty four (24) hours request by
29 a SFD Service Unit for a Debris Box container, CONTRACTOR shall provide a Debris Box
30 container at the Service Unit. Such SFD Debris Box Service shall be on a temporary basis not
31 to exceed fourteen (14) days without Collection, emptying, and replacement of the Debris Box
32 container.

33 7.01.12.1 Debris Box containers shall be transported by
34 CONTRACTOR to an approved processing facility to achieve maximum diversion.

35 7.01.12.2 Charges for Debris Box containers shall be in accordance
36 with **Exhibit 1c** of this Agreement.

37 7.01.12.3 The CONTRACTOR shall provide SFD Debris Box
38 Services with as little disturbance as possible and shall leave any Debris Box containers in an
39 upright position at the same point it was collected without obstructing alleys, roadways,
40 driveways, sidewalks, or mail boxes. CONTRACTOR may not place a Debris Box container in
41 any public right-of way without the prior written approval by the CITY.

42 7.01.12.4 CONTRACTOR shall remove any and all graffiti within 24
43 hours of being identified by the CONTRACTOR or City Representative. CONTRACTOR shall

1 not deliver a Debris Box container without CONTRACTOR information or with any graffiti visible
2 on the Debris Box container.

3 ARTICLE 8. MFD Collection Services

4 8.01 MFD Collection Services. MFD Collection Services will be governed by all
5 conditions of service as specified in Article 9 of this Agreement, with the following additional
6 services:

7 8.01.1 MFD Recycling Tote Bags. CONTRACTOR shall provide Recycling Tote
8 Bags to MFD Service Units upon seventy-two (72) hours of request by the MFD Service Unit.

9 8.01.2 MFD Large Item Collection. The CONTRACTOR shall provide MFD Large
10 Item Collection Service to MFD Service Units in the Service Area in a manner agreed to
11 between the CONTRACTOR and the MFD Service Unit management. CONTRACTOR shall be
12 compensated for the cost of Collecting Bulky Waste in accordance with the "MFD Large Item
13 Collection" Maximum Service Rate as set in **Exhibit 1b** of this Agreement.

14 ARTICLE 9. Commercial Collection Services

15 9.01 Commercial Collection Services. These services will be governed by the
16 following terms and conditions:

17 9.01.1 Conditions of Service. The CONTRACTOR shall provide Commercial
18 Garbage Collection Service, Commercial Recycling Service, and Commercial Green
19 Waste/Organic Collection Service to all Commercial Service Units in the Service Area whose
20 Garbage, Recyclable Material, and Green Waste/Organic Waste are properly containerized in
21 carts or bins as appropriate where the carts and bins are accessible as set forth in Section
22 9.01.3. CONTRACTOR shall also conduct commercial recycling surveys and offer free
23 commercial waste assessments. CONTRACTOR shall offer Garbage Carts in 32, 64 and 96
24 gallon cart sizes, and Recycling and Green Waste/Organic Waste Carts in 32, 64 and 96 gallon
25 cart sizes. CONTRACTOR shall offer Garbage, Recycling, and Green Waste/Organic Waste
26 Bins in 1, 2, 3, 4, 5, 6 and 8 cubic yard sizes. CONTRACTOR shall offer Debris Box containers
27 in 8, 10, 20, 30, and 40 cubic yard sizes. The size of the container and the frequency (above the
28 minimum) of Collection shall be determined between the Service Recipient and the
29 CONTRACTOR. However, the size and frequency shall be sufficient to provide that no
30 Garbage, Recyclable Materials, or Green Waste/Organic Waste need be placed outside the
31 cart, bin or Debris Box container.

32 9.01.2 Equal Capacity. CONTRACTOR shall provide Commercial
33 Recycling Service and Commercial Green Waste/Organic Waste Collection Service to all
34 Commercial Service Units in the Service Area. For each Commercial Service Unit,
35 CONTRACTOR shall provide a minimum capacity of Commercial Recycling Service and
36 Commercial Green Waste/Organic Waste Collection Service equal to the capacity measured as
37 the total cubic yards collected weekly for Commercial Garbage Collection Service. Commercial
38 Green Waste/Organic Waste Collection Service will not have a minimum capacity should no
39 material be generated for this service.

40 9.01.3 Accessibility. CONTRACTOR shall Collect all Garbage, Recycling, or
41 Green Waste/Organic Waste Carts or Bins that are readily accessible to the CONTRACTOR'S
42 crew and vehicles and not blocked. However, CONTRACTOR shall provide "push services" as

1 necessary during the provision of Commercial Collection Services as long as they comply with
2 CONTRACTOR'S safety policies.

3 9.01.4 Manner of Collection. The CONTRACTOR shall provide Commercial
4 Collection Service with as little disturbance as possible and shall leave any cart or bin at the
5 same point it was originally located without obstructing alleys, roadways, driveways, sidewalks
6 or mail boxes.

7 9.02 Commercial Garbage Collection Service. This service shall be governed by the
8 following terms and conditions.

9 9.02.1 Size and Frequency of Service. This service shall be provided as deemed
10 necessary and as determined between the CONTRACTOR and the Service Recipient, but such
11 service shall be received no less than one (1) time per week with no exception for holiday(s) as
12 set forth herein, except that Collection Service scheduled to fall on a holiday may be
13 rescheduled as determined between the Service Recipient and the CONTRACTOR as long as
14 the minimum frequency requirement is met. Service may be provided by cart or bin at the option
15 of the Service Recipient. The size of the container and the frequency (above the minimum) of
16 Collection shall be determined between the Service Recipient and the CONTRACTOR.
17 However, size and frequency shall be sufficient to provide that no Garbage need be placed
18 outside the cart or bin. The CONTRACTOR shall provide containers as part of the Commercial
19 Collection Service rates set forth in **Exhibit 1c**.

20 9.02.2 Non-Collection. CONTRACTOR shall not be required to Collect any
21 Garbage that is not placed in a Garbage Cart or Bin unless such Garbage is outside the
22 Garbage Cart or Bin as a result of overflow. In the event of non-collection, CONTRACTOR shall
23 affix to the Garbage Cart or Bin or a Non-Collection Notice explaining why Collection was not
24 made.

25 9.02.3 Commercial Garbage Overflow. In the case of repeated overflows of
26 Garbage, CONTRACTOR shall contact the Commercial Service Unit management to arrange
27 for an appropriate change in Garbage Cart or Bin size, Collection frequency or both. In the
28 event, CONTRACTOR cannot successfully contact the Commercial Service Unit management
29 after three attempts, or cannot reach an agreement with such management regarding the
30 change in service, CONTRACTOR shall advise the City Representative, either by fax or e-mail,
31 of the details of the Garbage overages, and the attempts at communication with the Commercial
32 Service Unit management. The City Representative shall respond to CONTRACTOR'S report
33 and make a final written determination. Within five (5) Work Days of receipt of the City
34 Representative's written determination, CONTRACTOR shall change the Collection Service in
35 accordance with such written determination and charge the customer for the new service level
36 designated by the City.

37 9.02.4 Disposal Facility. All Garbage collected as a result of performing
38 Commercial Garbage Collection Services shall be transported to, and disposed of, at the
39 Disposal Facility. Failure to comply with this provision shall result in the levy of an administrative
40 charge as specified in this Agreement and may result in the CONTRACTOR being in default
41 under this Agreement.

42 9.03 Commercial Recycling Service. This service will be governed by the following terms
43 and conditions:

44 9.03.1 Conditions of Service. The CONTRACTOR shall provide Commercial
45 Recycling Service to all Commercial Service Units in the Service Area whose Recyclable
46 Materials are properly containerized in Recycling Carts or Bins, except as set forth below, where

1 the Recycling Carts or Bins are accessible. CONTRACTOR may also provide mixed waste
2 processing of Garbage for recovery of Recyclable Materials. CONTRACTOR may not charge
3 for collection of Recyclable Materials from customers using bin or cart service. CONTRACTOR
4 may charge for collection of Recyclable Materials from customers utilizing Debris Box or
5 Compactor service.

6 9.03.2 Size and Frequency of Service. This Service shall be provided as
7 deemed necessary and as determined between the CONTRACTOR and the Service Recipient,
8 but such service shall be received no less than one (1) time per week with no exception for
9 holiday(s) as set forth herein, except that Collection Service scheduled to fall on a holiday may
10 be rescheduled as determined between the Service Recipient and the CONTRACTOR as long
11 as the minimum frequency requirement is met. Service may be provided by cart or bin at the
12 option of the Service Recipient. The size of the container and the frequency (above the
13 minimum) of Collection shall be determined between the Service Recipient and the
14 CONTRACTOR. However, size and frequency shall be sufficient to provide that no Recyclable
15 Materials need be placed outside the cart or bin. The CONTRACTOR shall provide containers
16 as part of the Commercial Collection Service rates set forth in **Exhibit 1c**, however, Service
17 Recipients may own their Compactor provided that the Service Recipient is completely
18 responsible for its proper maintenance and such Compactor shall be of a type that can be
19 serviced by the CONTRACTOR'S equipment.

20 9.03.3 Recycling - Improper Procedure. The CONTRACTOR shall not be
21 required to Collect Recyclable Materials if the Service Recipient does not segregate the
22 Recyclable Materials from Garbage. In the event the Recyclable Materials and Garbage are
23 commingled to the extent that they cannot easily be separated by the CONTRACTOR or the
24 nature of the Garbage renders the entire Recycling Cart or Bin contaminated, the
25 CONTRACTOR will leave the Recycling Cart or Bin un-emptied along with a Non-Collection
26 Notice which contains instructions on the proper procedures for setting out Recyclable
27 Materials. Upon notification from the City Representative, CONTRACTOR shall Collect the
28 contaminated Recyclable Materials as part of the next regularly scheduled Commercial Garbage
29 Collection and dispose of it at the Disposal Facility.

30 9.03.4 Additional Recycling Bins or Carts. CONTRACTOR shall provide an
31 appropriate number of additional Commercial Recycling Carts and Bins to Commercial Service
32 Recipients within five (5) days of request at no additional cost provided that additional carts and
33 bins are used by Commercial Service Recipients for the purposes of setting out additional
34 Recycling Materials for regular weekly Commercial Recycling Collection Service.

35 9.03.5 Materials Recovery Facility. All Recyclable Materials collected as a
36 result of performing Commercial Recycling Services shall be delivered to the Materials
37 Recovery Facility. Failure to comply with this provision shall result in the levy of an
38 administrative charge as specified in this Agreement and may result in the CONTRACTOR
39 being in default under this Agreement.

40 9.03.6 Recycling - Changes to Work. Should changes in law arise that
41 necessitate any additions or deletions to the work described herein including the type of items
42 included as Recyclable Materials, the parties shall negotiate any necessary cost changes and
43 shall enter into an Agreement amendment covering such modifications to the work to be
44 performed and the compensation to be paid before undertaking any changes or revisions to
45 such work.

46 9.04 Commercial Green Waste/Organic Waste Collection Service. This service will be
47 governed by the following terms and conditions:

1 9.04.1 Conditions of Service. The CONTRACTOR shall provide Commercial
2 Green Waste/Organic Waste Collection Service to all Commercial Service Units in the Service
3 Area where appropriate at whose Green Waste/Organic Waste is properly containerized in
4 Green Waste/Organic Waste Carts or Bins, except as set forth below, where the Green
5 Waste/Organic Waste Carts or Bins are accessible. CONTRACTOR may charge for collection
6 of Commercial Green Waste/Organic Wastes for the rates set forth in **Exhibit 1c**.

7 9.04.2 Size and Frequency of Service. This Service shall be provided as
8 deemed necessary and as determined between the CONTRACTOR and the Service Recipient,
9 but such service shall be received no less than one (1) time per week with no exception for
10 holiday(s) as set forth herein, except that Commercial Green Waste/Organic Waste Collection
11 Service scheduled to fall on a holiday may be rescheduled as determined between the Service
12 Recipient and the CONTRACTOR as long as the minimum frequency requirement is met.
13 Service may be provided by cart or bin at the option of the Service Recipient. The size of the
14 container and the frequency (above the minimum) of Collection shall be determined between
15 the Service Recipient and the CONTRACTOR. However, size and frequency shall be sufficient
16 to provide that no Green Waste/Organic Waste need be placed outside the cart or bin. Service
17 Recipients may own their Compactor provided that the Service Recipient is completely
18 responsible for its proper maintenance and such Compactor shall be of a type that can be
19 serviced by the CONTRACTOR'S equipment.

20 9.04.3 Green Waste/Organic Waste - Improper Procedure. The
21 CONTRACTOR shall not be required to Collect Green Waste/Organic Waste if the Service
22 Recipient does not segregate the Green Waste/Organic Waste from Garbage. In the event the
23 Green Waste/Organic Waste and Garbage are commingled to the extent that they cannot easily
24 be separated by the CONTRACTOR or the nature of the Garbage renders the entire Green
25 Waste/Organic Waste Cart or Bin contaminated, the CONTRACTOR will leave the Green
26 Waste/Organic Waste Cart or Bin un-emptied along with a Non-Collection Notice which contains
27 instructions on the proper procedures for setting out Green Waste/Organic Waste. Upon
28 notification from the City Representative, CONTRACTOR shall Collect the contaminated Green
29 Waste/Organic Waste as part of the next regularly scheduled Commercial Garbage Collection
30 and dispose of it at the Disposal Facility.

31 9.04.4 Additional Organic Waste Carts or Bins. CONTRACTOR shall provide
32 an appropriate number of additional Organic Waste Carts and Bins to Service Recipients within
33 five (5) days of request at no additional cost provided that additional carts and bins are used by
34 Commercial Service Recipients for the purposes of setting out additional Organic Waste for
35 regular weekly Commercial Organic Waste Collection Service.

36 9.04.5 Green Waste/Organic Waste Facility. All Green Waste/Organic
37 Waste collected as a result of performing Commercial Collection Services shall be delivered to
38 the Green Waste/Organic Waste Facility. Failure to comply with this provision shall result in the
39 levy of an administrative charge as specified in this Agreement and may result in the
40 CONTRACTOR being in default under this Agreement.

41 9.04.6 Green Waste/Organic Waste - Changes to Work. Should changes in law
42 arise that necessitate any additions or deletions to the work described herein including the types
43 of items included as Green Waste/Organic Waste, the parties shall negotiate any necessary
44 cost changes and shall enter into an Agreement amendment covering such modifications to the
45 work to be performed and the compensation to be paid before undertaking any changes or
46 revisions to such work.

1 9.05 Commercial Debris Box Service. Upon request of Commercial Service Unit,
2 CONTRACTOR shall provide a Commercial Debris Box Service on a temporary or permanent
3 basis.

4 9.05.1 Debris Boxes shall be transported by CONTRACTOR to an approved
5 processing facility as selected by CONTRACTOR to achieve maximum diversion.

6 9.05.2 Charges for Debris Boxes shall be in accordance with **Exhibit 1c** of this
7 Agreement.

8 9.05.3 The CONTRACTOR shall provide Commercial Debris Box Collection
9 Services with as little disturbance as possible and shall leave any Debris Box containers in an
10 upright position at the same point it was collected without obstructing alleys, roadways,
11 driveways, sidewalks, or mail boxes. CONTRACTOR may not place a Debris Box container in
12 any public right-of way without the prior written approval by the CITY.

13 9.05.4 CONTRACTOR shall remove any and all graffiti within 24 hours of being
14 identified by the CONTRACTOR or City Representative. CONTRACTOR shall not deliver a
15 Debris Box container without CONTRACTOR information or with any graffiti visible on the
16 Debris Box container.

17 ARTICLE 10. CITY Collection Services

18 10.01 CITY Collection Services. These services will be governed by the following
19 terms and conditions:

20 10.01.1 Conditions of Service. The CONTRACTOR shall provide City
21 Garbage Collection Service, City Recycling Service, and City Green Waste/Organic Waste
22 Collection Service to all City Service Units as set forth in **Exhibits 3** and **6** where the carts and
23 bins are accessible as set forth in Section 10.01.3. The City reserves the right to amend the
24 listing of facilities in **Exhibits 3** and **6** and to request a specific number and type of containers at
25 each facility as the locations and needs of CITY facilities change from time to time that are
26 mutually agreed upon. CONTRACTOR considers providing City Collection Services as
27 corporate good will and shall not charge for City Collection Services.

28 10.01.1.1 Corporation Yard. In addition to the services identified in
29 **Exhibits 3** and **6**, the CONTRACTOR shall also service three (3) Debris Boxes located at the
30 CITY Corporation Yard, which CONTRACTOR shall pick up for disposal as requested by the
31 CITY as specified in **Exhibit 3**.

32 10.01.1.1.1. The CONTRACTOR agrees to provide Recycling
33 Bins for the Collection of Recyclable Materials at the CITY Corporation Yard. The
34 CONTRACTOR will provide as needed Collection Service to such bins and site clean-up as
35 necessary and as caused by CONTRACTOR.

36 10.01.1.1.2. The CONTRACTOR agrees to provide Green
37 Waste/Organic Waste Bins for the Collection of Green Waste/Organic Material at the CITY
38 Corporation Yard. The CONTRACTOR will provide as needed Collection Service to such bins
39 and site clean-up as necessary if CONTRACTOR is responsible for necessary clean-up.

40 10.01.2 Frequency of Service. Each service shall be provided at least
41 once every week on a scheduled route basis. However, in those instances where the scheduled
42 Collection day falls on a holiday as set forth in Section 3.09 herein, the Collection day may be
43 adjusted in a manner agreed to between the Service Recipient and the CONTRACTOR as long

1 as service is received a minimum of one (1) time per week. The size of the cart or bin and the
2 frequency (above the minimum) of Collection shall be determined between the CITY and the
3 CONTRACTOR. Green Waste collected at the Corporation Yard shall be collected at least one
4 time per month and adjusted seasonally to accommodate fluctuations in the amount of Green
5 Waste generated.

6 10.01.3 Accessibility. CONTRACTOR shall Collect all carts and bins that
7 are readily accessible to the CONTRACTOR'S crew and vehicles and not blocked. However,
8 CONTRACTOR shall provide "push services" as necessary during the provision of CITY
9 Collection Services as long as they comply with CONTRACTOR'S safety policies.

10 10.01.3.1 The CONTRACTOR will notify the City Representative
11 daily, by fax and e-mail, of all situations that prevent or hinder Collection from any CITY Service
12 Unit, unless otherwise directed by CITY.

13 10.02 City Code Enforcement Clean-Up Services.

14 10.02.1 CONTRACTOR, in response to the request of the City
15 Representative, shall within twenty-four (24) hours provide for temporary clean-up programs in
16 the Service Area by providing Debris Boxes as requested, but not exceeding an equivalent of
17 four hundred eighty (480) cubic yards per year. City crews will load materials into the
18 CONTRACTOR provided Debris Boxes. Additional services may be provided if mutually agreed
19 upon by CONTRACTOR and CITY. CONTRACTOR shall transport and deliver the collected
20 materials to the Disposal Facility, the Materials Recovery Facility, or such other facility as is
21 appropriate for the disposition of the materials and approved by the City Representative.

22 10.02.2 CONTRACTOR may provide for the Collection of materials at a
23 City Code Enforcement Clean-up Service event in a Collection vehicle, cart, bin or a Debris Box.
24 Each Agreement Year, CONTRACTOR shall, at no charge to the CITY, provide for a maximum
25 of four hundred (400) cubic yards of Collection from CITY Code Enforcement Clean-up
26 Services. CONTRACTOR shall be entitled to charge the CITY for amounts that exceed 400
27 cubic yards per Agreement Year in accordance with the rates specified in **Exhibit 1**.

28 10.03 Special Event Collection Service. CONTRACTOR shall provide City Garbage
29 Collection Service and City Recycling Service at CITY-sponsored events as requested by CITY.
30 Such services shall be provided in such a manner that all Garbage and recycling needs of the
31 event are adequately and properly provided for by CONTRACTOR at no cost of any kind to the
32 CITY. Special events are set forth in **Exhibits 2 and 5**, which is attached to and included in this
33 Agreement.

34 10.04 Abandoned Waste. CONTRACTOR shall direct its Collection vehicle drivers to
35 note (i) the addresses of any premises at which the driver observes that Garbage, Recyclable
36 Material, and/or Green Waste/Organic Waste is accumulating; and (ii) the address, or other
37 location description, at which Garbage, Recyclable Material, and/or Green Waste/Organic
38 Waste has been dumped in an apparently unauthorized manner. CONTRACTOR shall deliver
39 the address or description to CITY within three (3) Work Days of such observation.

40 10.05 Compost Delivery. Upon request by the City Representative, CONTRACTOR
41 shall provide premium quality compost materials delivered to locations and in amounts as
42 requested by the City Representative, provided that the total amount during any single
43 Agreement Year does not exceed three-hundred sixty (360) cubic yards. Such delivery of
44 compost shall be made within seventy-two (72) hours upon request by the City Representative.

ARTICLE 12. Street Sweeping Services

12.01 Street Sweeping Services. Beginning July 1, 2011, and continuing until the expiration or termination of this Agreement, CONTRACTOR shall provide Street Sweeping Services in accordance with the terms and conditions of this Agreement.

12.02 Manner of Service. CONTRACTOR shall provide a complete sweep of all Curb Miles on all publicly maintained City Streets. Within any Curb Mile, CONTRACTOR shall be responsible for sweeping all curbs including median islands and the corners from any cross street intersecting the subject street. CONTRACTOR shall obey all laws governing the operation of the sweepers on a public street, and shall perform its operations so that sweepers are traversing their routes in the normal direction of traffic.

12.03 Water. CONTRACTOR shall obtain water from City owned hydrants for the water necessary in the street sweeping operation, and report the total gallons used per month to the City Representative. The proper volume and pressure shall be supplied by the sweeper at all times for adequate dust control during the sweeping operation. To the extent possible, CONTRACTOR shall use reclaimed or recycled water due to increased availability of reclaimed water.

12.04 Sweeper Speed. CONTRACTOR shall operate the sweepers at a speed of not more than six (6) miles per hour when sweeping or when the sweeper brooms are down, unless CONTRACTOR can demonstrate that the sweeper can operate efficiently and safely at a higher speed. CITY will use industry standards, Environmental Protection Agency information, and the sweeper manufacturer's recommendation on the speed of sweepers when considering speeds greater than six (6) miles per hour.

12.05 Width of Sweeper Path. CONTRACTOR shall sweep a path, with all brooms down, with a width of not less than eight (8) feet unless parked vehicles, structures, or other objects prohibit the safe sweeping of this path width. The path shall begin at the face of the curb, and include the flow line of the gutter. Unless blocked by parked cars, Garbage Carts, Recycling Carts, or Green Waste/Organic Waste Carts the face of the curb and gutter shall always be included within the sweeper path. On those residential streets with no curb, the width of the sweeper path shall be not less than eight (8) feet measured from the edge of the pavement toward the center of the street.

12.06 Frequency and Day of Service.

12.06.1 Residential Streets. CONTRACTOR shall provide Street Sweeping Service for each curb mile of residential streets in the CITY once monthly on a scheduled route basis. However, in those instances where the scheduled Street Sweeping Service day falls on a holiday, CONTRACTOR shall adjust the route schedule as set forth in Article 3.09.

12.06.2 Major Arterial Streets. CONTRACTOR shall provide Street Sweeping Service for each curb mile of major arterial streets in the CITY once per week on a scheduled route basis. However, in those instances where the scheduled Street Sweeping Service day falls on a holiday, CONTRACTOR shall adjust the route schedule as set forth in Article 3.09.

12.06.3 Downtown Area Streets. CONTRACTOR shall provide Street Sweeping Service for each curb mile of the downtown area streets in the CITY twice per week on a scheduled route basis. However, in those instances where the scheduled Street Sweeping Service day falls on a Holiday, CONTRACTOR shall adjust the route schedule as set forth in Article 3.09.

1 12.06.4 Industrial Park Streets. CONTRACTOR shall provide Street Sweeping
2 Service for each curb mile of the industrial park streets in the CITY once monthly on a
3 scheduled route basis. However, in those instances where the scheduled Street Sweeping
4 Service day falls on a Holiday, CONTRACTOR shall adjust the route schedule as set forth in
5 Article 3.09.

6 12.06.5 City owned Parks Parking Lots. CONTRACTOR shall provide Street
7 Sweeping Service for each CITY owned parks parking lot in the CITY once monthly on a
8 scheduled route basis. Parks parking lots shall be swept on the same day of the month that
9 routine sweeping of the adjoining residential neighborhood takes place. However, in those
10 instances where the scheduled Street Sweeping Service day falls on a holiday, CONTRACTOR
11 shall adjust the route schedule as set forth in Article 3.09.

12 12.07 Hours of Service.

13 12.07.1 Residential Streets & Parks Parking Lots. CONTRACTOR shall provide
14 Street Sweeping Service on residential streets & parks parking lots commencing no earlier than
15 6:00 a.m. and terminating no later than 7:00 p.m., Monday through Friday with no service on
16 Saturday (except for holiday service as set forth in Article 3.09 of this Agreement in which case
17 normal Collection hours may be utilized) or Sunday. The hours, days, or both of service may be
18 extended due to extraordinary circumstances or conditions with the prior verbal consent of the
19 City Representative. Sweeping in residential areas shall be coordinated with Collection Services
20 to ensure that sweeping occurs after Collection of all Carts has been completed on a specific
21 street.

22 12.07.2 Major Arterial Streets. CONTRACTOR shall provide Street Sweeping
23 Service on major arterial streets commencing no earlier than 8:00 p.m. and terminating no later
24 than 5:00 a.m., Monday through Friday with no service on Saturday (except for holiday service
25 as set forth in Article 3.09 of this Agreement in which case normal Collection hours may be
26 utilized or as set forth in 12.08 hereof) or Sunday. The hours, days, or both of service may be
27 extended due to extraordinary circumstances or conditions with the prior verbal consent of the
28 City Representative.

29 12.07.3 Downtown Area Streets. CONTRACTOR shall provide Street Sweeping
30 Service on downtown area streets commencing no earlier than 12:00 a.m. and terminating no
31 later than 6:00 a.m., Monday through Friday with no service on Saturday (except for holiday
32 service as set forth in Article 3.09 of this Agreement in which case normal Collection hours may
33 be utilized or as set forth in 12.08 hereof) or Sunday. The hours, days, or both of service may be
34 extended due to extraordinary circumstances or conditions with the prior verbal consent of the
35 City Representative.

36 12.07.4 Industrial Park Streets. CONTRACTOR shall provide Street Sweeping
37 Service on the industrial park streets commencing no earlier than 6:00 a.m. and terminating no
38 later than 7:00 p.m., Monday through Friday with no service on Saturday (except for holiday
39 service as set forth in Article 3.09 of this Agreement in which case normal Collection hours may
40 be utilized or as set forth in 12.08 hereof) or Sunday. The hours, days, or both of service may be
41 extended due to extraordinary circumstances or conditions with the prior verbal consent of the
42 City Representative.

43 12.08 Street Changes. CITY and CONTRACTOR acknowledge that during the term of
44 this Agreement it may be necessary or desirable to add or delete City Streets for which
45 CONTRACTOR will provide Street Sweeping Service. CITY will provide notification of changes

1 to CONTRACTOR through the customer service system. Conditions which may cause the City
2 Representative to order a street or an area to be bypassed temporarily include the following:

3 12.08.1 Construction or development on or along a street.

4 12.08.2 Pavement maintenance activities, including the chip seal program or the
5 slurry seal program.

6 12.08.3 Inclement weather when running water is in the gutter or street such that
7 sweeping is ineffective.

8 12.08.4 Special sweeping on alternative schedule.

9 12.08.5 Consistent non-compliance of citizens to remove parked cars during
10 sweep days.

11 12.08.6 Other legitimate reasons that make sweeping impractical as determined
12 by the City Representative.

13 12.09 Street Additions. As new streets are constructed and accepted by CITY, CITY
14 may, at CITY'S sole option, designate such streets as part of the Service Area for the purposes
15 of Street Sweeping Service. If the City Representative designates such streets as part of the
16 Service Area CONTRACTOR shall provide Street Sweeping Service on such streets under the
17 terms and conditions of this Agreement within fifteen (15) Work Days of receipt of notice from
18 the City Representative to begin service.

19 12.10 Street Deletions. CITY may require some City Streets to be temporarily or
20 permanently removed from the list of scheduled streets for which CONTRACTOR provides
21 Street Sweeping Service under this Agreement. CONTRACTOR shall immediately cease
22 providing Street Sweeping Service to any City Street upon receipt of notice from the City
23 Representative to stop such service. When a City Street has been temporarily removed from the
24 list of scheduled streets, CONTRACTOR shall resume Street Sweeping Service on such street
25 in the next regularly scheduled cycle following notification from the City Representative to
26 resume service.

27 12.11 Revised Maps. CONTRACTOR shall revise the Street Sweeping Service route
28 maps to show the addition or deletion of City Streets as provided above and shall provide such
29 revised maps to the City Representative as requested. The maps shall be provided in a format
30 that can be posted to the CITY website.

31 12.12 Temporary Changes in Sweeping Schedule. In the event that the City
32 Representative notifies CONTRACTOR not to sweep on a temporary basis, CONTRACTOR
33 shall not be paid for the equivalent Curb Miles and no liquidated damages will be assessed for
34 failure to sweep such streets. The City Representative shall notify CONTRACTOR of the
35 temporary suspension of service at least one day prior to the scheduled sweep, except that in
36 the case where the reason for not performing service is because of inclement weather, the City
37 Representative may notify CONTRACTOR at any time.

38 12.13 Parking Restrictions. The City shall also notify CONTRACTOR of any streets
39 when permit parking may impact scheduled Street Sweeping Service. CONTRACTOR may be
40 required to adjust sweeping schedule to sweep prior to the parking permit hours restrictions.

41 12.14 Adverse Weather Conditions. Because of varying rain conditions throughout the
42 CITY, CONTRACTOR may verbally request permission from the City Representative to cancel
43 sweeping during heavy and persistent rainstorms within the Service Area. CONTRACTOR may
44 cancel sweeping only with the prior consent of the City Representative.

1 12.15 Hazardous Waste. CONTRACTOR shall not be required to remove any
2 Hazardous Waste from the street surface. If in the course of performing Street Sweeping
3 Services, any suspected Hazardous Wastes are encountered, CONTRACTOR shall
4 immediately report the location to the Benicia Fire Department or any other responsible agency
5 and to the City Representative.

6 12.16 Disposal of Sweep Waste. CONTRACTOR shall transport and deliver to the
7 CITY Maintenance Services Center all Sweep Waste collected as a result of performing Street
8 Sweeping Services. Debris will be deposited in Debris Boxes located in the CITY Maintenance
9 Services Center.

10 12.17 Spillage. During hauling, all Sweep Waste shall be contained, covered or
11 enclosed so that leaking, spilling and blowing of the Sweep Waste is prevented.
12 CONTRACTOR shall be responsible for the immediate cleanup of any spillage caused by
13 CONTRACTOR.

14 12.18 Street Sweeping Service Routes. Within thirty (30) days upon execution of
15 Agreement, CITY shall provide CONTRACTOR with a street sweeping database for use in
16 developing routes and maps. CONTRACTOR shall develop the routes and maps using this
17 data. Not less than forty-five (45) days prior to commencement of Street Sweeping Services,
18 CONTRACTOR shall submit to the City Representative, Service Area maps, precisely defining
19 the Sweeper Routes for review and approval by the City Representative. The route maps shall
20 include the days of the month sweeping shall occur, the sweeping schedules in adjacent areas,
21 the portions of the CITY to be swept, the start and finish of each route, and any special needs
22 such as early starts, and late finishes. The City Representative may provide written comments
23 on the preliminary maps to CONTRACTOR no later than ten (10) Work Days after receipt of the
24 maps from CONTRACTOR. CONTRACTOR shall revise the maps to reflect such comments
25 and return them to the City Representative within ten (10) Work Days after receipt of the City
26 Representative's comments for CITY corroboration. Upon approval by the City Representative
27 of the final Sweeper Route maps, CONTRACTOR shall develop and maintain the Sweeping
28 Routes on a computerized mapping system that is compatible with CITY'S mapping system to
29 the extent possible. Street sweeping maps provided to the CITY shall be in a format that is
30 suitable for posting to the CITY website.

31 12.19 Changes in maps due to addition and deletion of certain City Streets shall be
32 provided by CITY, and CONTRACTOR shall update the maps in CONTRACTOR'S system
33 every month. Such changes shall also be reflected in CONTRACTOR'S printed route maps.

34 12.20 Service Route Changes. CONTRACTOR shall submit to the City
35 Representative, in writing, any proposed route change (including maps thereof) not less than
36 forty-five (45) calendar days prior to the proposed date of implementation. The City
37 Representative may provide written comments to CONTRACTOR on such proposed change no
38 later than ten (10) Work Days after receipt of the proposal from CONTRACTOR, and
39 CONTRACTOR shall revise the routes to reflect such comments and return them to the City
40 Representative within ten (10) Work Days of receipt of such comments, for CITY corroboration.
41 CONTRACTOR shall not implement any route changes without the prior approval of the City
42 Representative. If the approved route change will change the day on which Street Sweeping
43 Service will occur, CONTRACTOR shall notify the affected Service Recipients of route changes
44 not less than thirty (30) Work Days before the proposed date of implementation in a manner
45 approved by the City Representative.

46 12.21 Other CITY Street Sweeping Service. If during the term of this Agreement,
47 circumstances exist which require work associated with the Street Sweeping Service program

1 LNG, bio-diesel or hybrid electric for all its support vehicles as implemented in accordance to
2 **Exhibit 10.**

3 13.04 Global Positioning Systems (GPS). CONTRACTOR shall provide all route
4 Collection vehicles equipped with fully functioning on-board GPS with direct and real-time
5 linkages to CONTRACTOR's dispatch system.

6 13.05 Vehicle Noise Level. All Collection operations shall be conducted as quietly as
7 possible and must comply with U.S. EPA noise emission regulations currently codified at 40
8 CFR Part 205, and other applicable State, County, and City noise control regulations.

9 13.06 Collection Vehicle Size Limitations. SFD Residential Collection vehicles must not
10 exceed 18,000 pounds per axel, must not exceed 52,000 GVWR.

11 13.07 Safety Equipment. All Collection equipment used by CONTRACTOR shall have
12 appropriate safety markings including, but not limited to, highway lighting, flashing and warning
13 lights, clearance lights, and warning flags. All such safety markings shall be subject to the
14 approval of the CITY and shall be in accordance with the requirements of the California Vehicle
15 Code, as may be amended from time to time. All Collection vehicles shall be equipped with
16 audible back-up warning devices and back-up warning devices.

17 13.08 Vehicle Signage and Painting. Collection vehicles shall have signage in letters of
18 contrasting color, at least six (6) inches high, on each side and the rear of each vehicle that
19 clearly provides the CONTRACTOR'S name, the CONTRACTOR'S customer service telephone
20 number, and the number of the vehicle. No advertising shall be permitted other than the name
21 of the CONTRACTOR except promotional advertisement of the Recyclable Materials, Green
22 Waste/Organic Waste programs and clean air vehicle signage. CONTRACTOR shall repaint all
23 vehicles (including vehicles striping) during the term of this Agreement on a frequency as
24 necessary to maintain a positive public image as reasonably determined by the City
25 Representative.

26 13.09 Vehicle Maintenance. CONTRACTOR shall maintain Collection vehicles in a
27 clean condition and in good repair at all times and ensure that no collected materials, oil,
28 grease, or other substances will blow, fall out, escape or leak out of the vehicle, with the
29 exceptions of vehicle emission. All parts and systems of the Collection vehicles shall operate
30 properly and be maintained in a condition satisfactory to CITY. CONTRACTOR shall wash all
31 Collection vehicles at least once a week.

32 13.10 Maintenance Log. CONTRACTOR shall maintain a maintenance log for all
33 Collection vehicles. The log shall at all times be accessible to CITY by physical inspection upon
34 request of City Representative, and shall show, at a minimum, each vehicle's CONTRACTOR
35 assigned identification number, date purchased or initial lease, dates of performance of routine
36 maintenance, dates of performance of any additional maintenance, and description of additional
37 maintenance performed.

38 13.11 Equipment Inventory. Within thirty (30) days upon execution of Agreement, and
39 on July 1st annually thereafter, CONTRACTOR shall provide to CITY an inventory of collection
40 vehicles and major equipment used by CONTRACTOR for collection or transportation and
41 performance of services under this Agreement. The inventory shall indicate each collection
42 vehicle by CONTRACTOR assigned identification number, DMV license number, the age of the
43 chassis and body, type of fuel used, the type and capacity of each vehicle, the number of
44 vehicles by type, the date of acquisition, the decibel rating and the maintenance status.
45 CONTRACTOR shall submit to the City Representative, either by Fax or e-mail, an updated
46 inventory annually to the CITY or more often at the request of the City Representative. Each

1 vehicle inventory shall be accompanied by a certification signed by CONTRACTOR that all
2 collection vehicles meet the requirements of this Agreement.

3 13.12 Reserve Equipment. The CONTRACTOR shall have available to it, at all times,
4 reserve Collection equipment which can be put into service and operation within one (1) hour of
5 any breakdown. Such reserve equipment shall correspond in size and capacity to the equipment
6 used by the CONTRACTOR to perform the contractual duties.

7 13.12.1 The CONTRACTOR may exceed the Collection vehicle size limitation for
8 a limited time period due to extraordinary circumstances or conditions with the prior written
9 consent of the City Representative. The limited time period shall not exceed 120 days.

10 ARTICLE 14. CONTRACTOR'S Office

11 14.01 CONTRACTOR'S Office. The CONTRACTOR shall maintain an office within the
12 CITY that Service Recipients can pay their bills locally. CONTRACTOR shall operate and
13 maintain its customer service function at CONTRACTOR's office located in Pacheco, CA, and
14 CONTRACTOR shall assign a local operations supervisor to oversee the services covered
15 under this Agreement that is staffed from CONTRACTOR's Pacheco, CA office. Customers
16 shall be provided a toll-free phone number to a customer service department that is staffed by
17 trained and experienced customer service representatives. Such office shall be equipped with
18 sufficient telephones that all Collection Service related calls received during normal business
19 hours are answered by an employee, and shall have responsible persons in charge during
20 Collection hours and shall be open during such normal business hours, 8:00 a.m. to 5:00 p.m.
21 on regularly scheduled Work Days (Monday through Friday) The CONTRACTOR shall provide
22 either a telephone answering service or mechanical device to receive Service Recipient
23 inquiries during those times when the office is closed. Calls received after normal business
24 hours shall be addressed the next Work Day morning.

25 14.01.1 Emergency Contact. The CONTRACTOR shall provide the City
26 Representative with an emergency phone number where the CONTRACTOR can be reached
27 outside of the required office hours.

28 14.01.2 Multilingual/TDD Service. CONTRACTOR shall at all times
29 maintain the capability of responding to telephone calls in English and such other languages as
30 CITY may direct. CONTRACTOR shall at all times maintain the capability of responding to
31 telephone calls through Telecommunications Device for the Deaf (TDD) Services.

32 14.01.3 Service Recipient Calls. During office hours, CONTRACTOR
33 shall maintain a telephone answering system capable of accepting at least ten (10) incoming
34 calls at one (1) time. CONTRACTOR shall record all calls including any inquiries, service
35 requests and complaints into a customer service log.

36 14.01.4 Response to Calls. All incoming calls will be answered within five
37 (5) rings. Any call "on-hold" in excess of one and one half (1.5) minutes shall have the option to
38 remain "on-hold" or to be switched to a message center where Service Recipient can leave a
39 message. CONTRACTOR'S customer service representative shall return Service Recipient
40 calls. For all messages left before 3:00 p.m., all "call backs" shall be attempted a minimum of
41 one time prior to 5:00 p.m. on the day of the call. For messages left after 3:00 p.m., all "call
42 backs" shall be attempted a minimum of one time prior to noon the next Work Day.

43 14.01.5 Website. CONTRACTOR shall develop and maintain a state-of-
44 the-art website dedicated to services provided in the CITY that is accessible by the public. The

1 website shall include answers to frequently asked questions, rates for Collection Services,
2 Recyclable Materials and Green Waste/Organic Waste materials specifications, Collection
3 Service schedules and street sweeping maps, and other related topics. CONTRACTOR shall
4 arrange for the CITY'S website to include an e-mail link to CONTRACTOR and a link to
5 CONTRACTOR'S website. CONTRACTOR shall provide the means for Service Recipients to
6 pay bills online through E-Pay in accordance with Section 4.01.6. The CONTRACTOR'S
7 website shall provide the public the ability to e-mail complaints to CONTRACTOR and request
8 services or service changes. CONTRACTOR's website shall also promote reuse and recycling,
9 graphics and statistic illustrating the City progress toward becoming a Zero Waste Community,
10 resources the community can use to support Zero Waste and Sustainability efforts, other CITY's
11 environmental programs, and other materials as requested by the CITY. The CITY shall review
12 and approve CONTRACTOR'S website.

13 14.02 CONTRACTOR'S Customer Service. CONTRACTOR shall maintain staff, office
14 hours and after hours phone answering capabilities in accordance with Section 14.01. All
15 service inquiries and complaints shall be directed to the CONTRACTOR. A representative of
16 the CONTRACTOR shall be available to receive the complaints during normal business hours.
17 All service complaints will be handled by the CONTRACTOR in a prompt, courteous, and
18 efficient manner. In the case of a dispute between the CONTRACTOR and a Service Recipient,
19 the matter will be reviewed and a decision made by the City Representative.

20 14.02.1 The CONTRACTOR will utilize the customer service log to
21 maintain a record of all inquiries and complaints in a manner prescribed by the CITY.

22 14.02.2 For those complaints related to missed Collections that are
23 received by noon on a Work Day, the CONTRACTOR will return to the Service Unit address
24 and Collect the missed carts or bins before leaving the Service Area for the day. For those
25 complaints related to missed Collections that are received after 12:01 p.m. on a Work Day, the
26 CONTRACTOR shall have until the end of the following Work Day to resolve the complaint. For
27 those complaints related to repair or replacement of carts or bins, the appropriate Articles of this
28 Agreement shall apply.

29 14.02.3 CONTRACTOR agrees that it is in the best interest of the CITY
30 that all Garbage and Recyclable Materials be collected on the scheduled Collection day.
31 Accordingly, missed Collections will normally be collected as set forth herein regardless of the
32 reason that the Collection was missed. However, in the event a Service Recipient reports
33 missed Collection Service more than two (2) times in any consecutive two (2) month period the
34 City Representative will work with the CONTRACTOR to determine an appropriate resolution to
35 that situation. In the event the CONTRACTOR believes any complaint to be without merit,
36 CONTRACTOR shall notify the City Representative, either by fax or e-mail. The City
37 Representative will investigate all disputed complaints and render a decision.

38 **ARTICLE 15. Other Services**

39 15.01 Public Outreach and Education Services. CONTRACTOR, at its own expense,
40 shall prepare, submit and implement an annual (Agreement Year) Public Education and
41 Outreach Program. The proposed action plan must be submitted annually for CITY approval no
42 later than May 1st for the next Agreement Year. The program must include a minimum of four
43 (4) campaigns per year, designed to increase diversion and resident participation, and two (2)
44 campaigns per year designed to increase diversion and participation at the City's Public
45 Schools. Campaigns should target certain Recyclable Materials or "problem" areas of the
46 CONTRACTOR'S Service Area where improvements can be maximized. Targets of outreach

1 should be based on local trends and recycling patterns based on information obtained by both
2 the City Representative and CONTRACTOR staff. The CONTRACTOR shall provide space in
3 CONTRACTOR'S public outreach materials, such as mailers, flyers and newsletters, for the
4 CITY to include announcements, community information, articles, and photographs. The
5 Public School campaigns shall correspond with the two (2) semesters of the school year (fall
6 and spring) and should target student, faculty and staff participation in the diversion of
7 Recyclable Materials and Green Waste/Organic Waste.

8 15.02 Recycling Coordinator. CONTRACTOR will provide for the equivalent 1/2 time
9 Recycling Coordinator dedicated to the CITY. CONTRACTOR may use an Approved
10 Subcontractors as listed in **Exhibit 5** to perform some or all the duties normally assigned to the
11 Recycling Coordinator.

12 15.03 Annual Collection Service Notice. Each Agreement Year during the term of this
13 Agreement, the CONTRACTOR shall publish and distribute separate notices to all SFD Service
14 Units regarding the SFD Collection Service programs, to all MFD Service Units regarding MFD
15 Collection Service programs and to all Commercial Service Units regarding Commercial
16 Collection Service programs. To the extent appropriate, based on the category of the Service
17 Recipient receiving the notice, it shall contain at a minimum: definitions of the materials to be
18 collected, procedures for setting out the materials, Collection and disposal options for
19 unacceptable materials, and the CONTRACTOR customer service phone number. The notice
20 shall be provided in English, and other languages as directed by the CITY, and shall be
21 distributed by the CONTRACTOR no later than November 1 of each Agreement Year.

22 15.04 Additional Programs and Services. CONTRACTOR shall provide additional
23 services and programs as requested by CITY, and as identified in **Exhibit 9**, at a price to be
24 mutually agreed upon between the CONTRACTOR and the City Representative. In the event
25 the CONTRACTOR and the City Representative cannot reach a mutually agreed upon price for
26 the requested service or program, CITY shall have the right to procure the service of other
27 vendors or contractors to provide the requested service. Services shall also include:

28 15.04.1 Operating the car batteries, oil and paint recycling drop-off center
29 every Saturday except if a holiday falls on a Saturday. Other items collected include household
30 batteries and fluorescent tubes.

31 15.05 News Media Relations. CONTRACTOR shall notify the City Representative by
32 Fax, e-mail or phone of all requests for news media interviews related to the Collection Services
33 program within twenty-four (24) hours of CONTRACTOR'S receipt of the request. Before
34 responding to any inquiries involving controversial issues or any issues likely to affect
35 participation or Service Recipient perception of services, CONTRACTOR will discuss
36 CONTRACTOR'S proposed response with the City Representative.

37 15.05.1 Copies of draft news releases or proposed trade journal articles
38 shall be submitted to CITY for prior review and approval at least five (5) Work Days in advance
39 of release, except where CONTRACTOR is required by any law or regulation to submit
40 materials to any regulatory agency in a shorter period of time, in which case CONTRACTOR
41 shall submit such materials to CITY simultaneously with CONTRACTOR'S submittal to such
42 regulatory agency.

43 15.05.2 Copies of articles resulting from media interviews or news
44 releases shall be provided to the CITY within five (5) Work Days after publication.

45 15.06 Waste Generation and Characterization Studies. CONTRACTOR acknowledges
46 that CITY must perform Garbage generation and characterization studies periodically to comply

1 with AB 939 requirements. CONTRACTOR agrees to participate and cooperate with CITY and
2 its agents and to perform studies and data collection exercises, as needed, to determine
3 weights, volumes and composition of Garbage generated, disposed, transformed, diverted or
4 otherwise processed to comply with AB 939.

5 ARTICLE 16. Emergency Service Provisions

6 16.01 Emergency Services. In the event of a tornado, major storm, earthquake, fire,
7 natural disaster, or other such event, the City Representative shall grant the CONTRACTOR a
8 variance from regular routes and schedules. As soon as practicable after such event, the
9 CONTRACTOR shall advise the City Representative when it is anticipated that normal routes
10 and schedules can be resumed. The City Representative shall make an effort through the local
11 news media to inform the public when regular services may be resumed. The clean-up from
12 some events may require that the CONTRACTOR hire additional equipment, employ additional
13 personnel, or work existing personnel on overtime hours to clean debris resulting from the
14 event. The CONTRACTOR shall receive additional compensation, above the normal
15 compensation contained in this Agreement, to cover the costs of rental equipment, additional
16 personnel, overtime hours and other documented expenses based on the rates set forth in
17 **Exhibit 1** to this Agreement provided the CONTRACTOR has first secured written authorization
18 and approval from the CITY through the City Representative.

19 ARTICLE 17. Record Keeping & Reporting Requirements

20 17.01 Record Keeping.

21 17.01.1 Accounting Records. CONTRACTOR shall maintain full,
22 complete and separate financial, statistical and accounting records, pertaining to cash, billing,
23 and provisions of all Collection Services provided under this Agreement, prepared on an accrual
24 basis in accordance with generally accepted accounting principles. Such records shall be
25 subject to audit and inspection. Gross Receipts derived from provision of the Collection Services
26 shall be recorded as revenues in the accounts of the CONTRACTOR. These records shall be
27 separate and segregated from other records maintained by CONTRACTOR for the provision of
28 other services outside the scope of this Agreement as may be provided by CONTRACTOR.
29 CONTRACTOR shall maintain and preserve all cash, billing and disposal records for a period of
30 not less than five (5) years following the close of each of the CONTRACTOR'S fiscal years.

31 17.01.2 CONTRACTOR Payments to the City. CONTRACTOR shall
32 maintain records of all payments made to the CITY for all items listed in Section 4.02.

33 17.01.3 Tonnage Records. CONTRACTOR shall maintain records of the
34 quantities of (i) Garbage, Recyclable Material, and Green Waste/Organics Waste collected,
35 processed, Composted, and disposed under the terms of this Agreement, and (ii) Recyclable
36 Materials and Green Waste/Organic Waste, by material type, purchased, sold, donated or given
37 for no compensation, and residue disposed.

38 17.01.4 Records. CONTRACTOR shall maintain all other records
39 reasonably related to provision of Collection Services, whether or not specified in this Article 17
40 or elsewhere in the Agreement for a period of not less than five (5) years following the close of
41 each of the CONTRACTOR'S fiscal years.

42 17.02 Reporting Requirements. Quarterly reports shall be submitted to the City
43 Representative no later than the 20th of the month after the end of the reporting quarter and

1 annual reports shall be submitted to the City Representative no later than thirty (30) days after
2 the end of each preceding calendar year. Quarterly and annual reports shall be submitted in
3 hard copy, and shall be provided electronically via e-mail, or a compact disc using software
4 acceptable to the CITY. Reports shall be submitted in a format mutually agreed upon between
5 the CITY and CONTRACTOR.

6 17.02.1 Quarterly Reports. Quarterly reports to the CITY shall include:

7 17.02.1.1 Garbage Data. The number of SFD, MFD, City and
8 Commercial Service Units and the number of Garbage Bins, Carts, Debris Boxes and
9 Compactors by size and Service Unit type. A listing of the tonnage from all Collection Services,
10 including Large Item Collection Service, collected, diverted and disposed by the CONTRACTOR
11 at the Disposal Facility for the preceding quarter sorted between SFD, MFD, Commercial and
12 City Service Units. All tonnage data should be compared to the corresponding tonnage data
13 from the prior year comparable period.

14 17.02.1.2 Recycling Data. The number of gross tons collected by
15 material type for SFD, MFD, City and Commercial Recycling Service, including Recyclable
16 Materials collected as part of SFD and MFD Large Item Collection Service, for the preceding
17 quarter. Indicate, by material type (and grade where appropriate), quarterly total of Recyclable
18 Materials processed and sold including facility name and location, average price received per
19 Ton and total Recycling Revenue received for the quarter. Indicate any quantities, by material
20 type, donated or otherwise disbursed without compensation. Indicate quarterly totals and
21 location for residue disposed. All tonnage data should be compared to the corresponding
22 tonnage data from the prior year comparable period.

23 17.02.1.3 Green Waste/Organic Waste Data. The number of gross
24 tons collected for SFD, MFD, City and Commercial Green Waste/Organic Collection Service,
25 including Green Waste collected as part of SFD and MFD Large Item Collection Service, for the
26 preceding quarter. Indicate the number of Green Waste/Organic Waste Bins, Carts, Debris
27 Boxes, and Compactors distributed by size and Service Unit type. Indicate quarterly totals and
28 location for residue disposed. All tonnage data should be compared to the corresponding
29 tonnage data from the prior year comparable period.

30 17.02.1.4 Public Education and Information Activities.
31 CONTRACTOR shall report on all public education and information activities undertaken during
32 the period, including distribution of bill inserts, Collection notification tags, community
33 information and events, school visits, tours and other activities related to the provision of
34 Collection Services. This report shall discuss the impact of these activities on recycling and
35 Green Waste/Organic Waste program participation and provide details of events and activities
36 planned for the next period.

37 17.02.1.5 Processing and Marketing Data. Recycling and Green
38 Waste/Organic Waste processing and marketing issues or conditions occurring during the
39 previous quarter (such as participation, setouts, contamination, etc.) and possible solutions,
40 discussed separately for SFD, MFD, Commercial and CITY programs.

41 17.02.1.6 Recyclables Revenue. A summary of total Recyclables
42 Materials collected, net of residual, and the total revenue received by the CONTRACTOR for
43 the purchase of Recyclable Materials by third parties, net of any processing, residual disposal
44 costs, or transportation costs incurred by the CONTRACTOR.

45 17.02.1.7 Customer Service Data. A summary narrative of praises,
46 compliments, and problems encountered with Collection and processing activities and actions

1 taken. Indicate type and number of Non-Collection Notices left at Service Recipient locations.
2 Indicate instances of property damage or injury, significant changes in operation, market factors,
3 publicity conducted, need for publicity. A report shall be submitted with the number and type of
4 complaints, courtesy pickups and missed pickups.

5 17.02.1.8 Operational Problems and Actions Taken. Indicate
6 instances of property damage or injury, poaching or scavenging, significant changes in
7 operation, market factors, and publicity conducted and need for publicity. Include description of
8 Green Waste/Organic Waste or Recyclable Materials loads rejected, reason for rejection and
9 disposition of load after rejection.

10 17.02.1.9 Customer Base Data. CONTRACTOR shall provide,
11 customer census data consisting of the number of SFD, MFD, and Commercial Service Units
12 billed, and City Collection Services sorted by service type, container size, number of containers,
13 and frequency of Collection.

14 17.02.1.10 Summary of Historical and Proposed Activities.
15 CONTRACTOR shall provide a narrative of activities undertaken during the month and those
16 planned or proposed for the upcoming quarter.

17 17.02.1.11 Summary of CONTRACTOR Payments to the CITY. A
18 summary of all payments made to the City as specified in Section 4.03, for the reporting period.

19 17.02.1.12 Gross Receipts. A summary of the prior quarters' Gross
20 Receipts received broken down by SFD, MFD and Commercial Service Units.

21 17.02.2 Annual Reports. The annual report submitted to the CITY shall
22 include all quarterly reports in Articles 17.02.1.1 through 17.02.1.12 summarized by quarter and
23 averaged for the calendar year. For all annual reports beginning with the report for the second
24 Agreement Year, the CONTRACTOR shall also include a historical comparison of the last
25 calendar year and the average of all calendar years.

26 17.02.2.1 CONTRACTOR Payments to the CITY. A summary of all
27 payments made to the City for the prior year as specified in Section 4.02, for the reporting
28 period.

29 17.02.2.2 Gross Receipts. A summary of the prior year's Gross
30 Receipts received and franchisee fees paid broken down by SFD, MFD and Commercial
31 Service Units.

32 17.02.2.3 Account Data. Account data for SFD, MFD, Commercial
33 Service Units and City Service Units including the total number of accounts serviced, and the
34 number of accounts, account names and addresses of Collection locations per each service
35 category.

36 17.02.2.4 Equipment Inventory. Updated complete inventory of
37 Collection and major processing equipment including stationary, rolling stock and Collection
38 containers by type and size.

39 17.02.2.5 Public Education and Information Activities. Public
40 education and information activities undertaken during the year, including distribution of
41 newsletters, billing inserts, other notices, Collection notification tags, community information and
42 events, tours and other activities related to the provisions of services.

43 17.02.2.6 Summary of Historical and Proposed Activities.
44 CONTRACTOR shall provide a narrative of activities undertaken during the year and those

1 planned or proposed for the upcoming year. CONTRACTOR shall provide information
2 describing if the activity was undertaken in the previous Agreement Year or not and if not why it
3 was added. For those activities that are not being continued, CONTRACTOR shall describe the
4 reason the activity has been discontinued and the activity that is replacing it.

5 17.03 Additional Reporting. The CONTRACTOR shall furnish the CITY with any
6 additional reports as may reasonably be required, such reports to be prepared within a
7 reasonable time following the reporting period.

8 17.04 CONTRACTOR shall maintain any and all letters, books of account, invoices,
9 vouchers, canceled checks, and other records or documents evidencing or relating to charges
10 for services or expenditures and disbursements charged to Service Recipients for a minimum
11 period of five (5) years, or for any longer period required by law, from the date of final payment
12 to CONTRACTOR pursuant to this Agreement.

13 17.05 CONTRACTOR shall maintain all documents and records which demonstrate
14 performance under this Agreement for a minimum period of five (5) years, or for any longer
15 period required by law, from the date of termination or completion of this Agreement.

16 17.06 Any records or documents required to be maintained pursuant to this Agreement
17 shall be made available for inspection or audit, at any time during regular business hours, upon
18 written request by the City Representative, the City Attorney, City Auditor, City Administrator, or
19 a designated representative of any of these officers. Copies of such documents shall be
20 provided to CITY for inspection at the CITY offices when it is practical to do so. Otherwise,
21 unless an alternative site is mutually agreed upon, the records shall be available at
22 CONTRACTOR'S address indicated for receipt of notices in this Agreement.

23 17.07 Where CITY has reason to believe that such records or documents may be lost
24 or discarded due to the dissolution, disbandment or termination of CONTRACTOR'S business,
25 CITY may, by written request or demand of any of the above named officers, require that
26 custody of the records be given to CITY and that the records and documents be maintained in
27 City Hall. Access to such records and documents shall be granted to any party authorized by
28 CONTRACTOR, CONTRACTOR'S representatives, or CONTRACTOR'S successor-in-interest.

29 ARTICLE 18. Nondiscrimination

30 18.01 Nondiscrimination. In the performance of all work and services under this
31 Agreement, CONTRACTOR shall not discriminate against any person on the basis of such
32 person's race, sex, color, national origin, religion, marital status, age, disability or sexual
33 orientation. CONTRACTOR shall comply with all applicable local, state and federal laws and
34 regulations regarding nondiscrimination, including those prohibiting discrimination in
35 employment.

36 ARTICLE 19. Quality of Performance of CONTRACTOR

37 19.01 Intent. CONTRACTOR acknowledges and agrees that one of CITY'S primary
38 goals in entering into this Agreement is to ensure that the Collection Services are of the highest
39 caliber, that Service Recipient satisfaction remains at the highest level, that maximum diversion
40 levels are achieved, and that materials collected are put to the highest and best use to the
41 extent feasible.

42 19.02 Service Supervisor. CONTRACTOR has designated a supervisor to be in charge
43 of the Collection Service within the Service Area. The supervisor shall be available to the City

1 Representative through the use of a mobile telephone at all times that CONTRACTOR is
 2 providing Collection Services. In the event the supervisor is unavailable due to illness or
 3 vacation, CONTRACTOR shall designate an acceptable substitute who shall be available and
 4 who has the authority to act in the same capacity as the supervisor. The service supervisor
 5 shall provide the CITY with an emergency phone number where the supervisor can be reached
 6 outside of normal business hours.

7 19.03 Liquidated Damages. The parties further acknowledge that consistent and
 8 reliable Collection Service is of utmost importance to CITY and that CITY has considered and
 9 relied on CONTRACTOR'S representations as to its quality of service commitment in awarding
 10 the Agreement to it. The parties further recognize that some quantified standards of
 11 performance are necessary and appropriate to ensure consistent and reliable service and
 12 performance. The parties further recognize that if CONTRACTOR fails to achieve the
 13 performance standards, or fails to submit required documents in a timely manner, CITY, and
 14 CITY'S residents and businesses will suffer damages and that it is and will be impractical and
 15 extremely difficult to ascertain and determine the exact amount of damages. Therefore, without
 16 prejudice to CITY'S right to treat such non-performance as an event of default under Article 24,
 17 the parties agree that the liquidated damages amount defined in this Article represent
 18 reasonable estimates of the amount of such damages considering all of the circumstances
 19 existing on the effective date of this Agreement, including the relationship of the sums to the
 20 range of harm to CITY, Service Recipients and the community as a whole that reasonably could
 21 be anticipated and the anticipation that proof of actual damages would be costly or impractical.
 22 In placing their initials at the places provided, each party specifically confirms the accuracy of
 23 the statements made above and the fact that each party has had ample opportunity to consult
 24 with legal counsel and obtain an explanation of the liquidated damage provisions at the time that
 25 the Agreement was made.

26 CITY Initial Here _____ CONTRACTOR Initial Here _____

27 CONTRACTOR agrees to pay (as liquidated damages and not as penalty) the following
 28 amounts:

LIQUIDATED DAMAGES		
Item		Amount
a.	Failure or neglect to respond to each complaint by the close of the next working day.	\$100 per incident per Service Recipient.
b.	Failure to maintain equipment in a clean and sanitary manner.	\$100 per incident per day.
c.	Failure to have a vehicle operator properly licensed.	\$100 per incident per day.
d.	Failure to maintain office hours as required by this Agreement.	\$100 per incident per day.
e.	Failure to maintain or timely submit to CITY all documents and reports required under the provisions of this Agreement.	\$100 per incident per day.

LIQUIDATED DAMAGES		
Item		Amount
f.	Failure to display CONTRACTOR'S name and customer service phone number on Collection vehicles.	\$100 per incident per day.
g.	Failure to collect a missed Collection by close of the next Work Day upon notice to CONTRACTOR.	\$100 per incident per day.
h.	Failure to repair or replace damaged carts or bins within the time required by this Agreement.	\$100 per incident per day.
i.	Failure to deliver or exchange carts or bins within the time required by this Agreement.	\$100 per incident per day.
j.	Failure to meet vehicle noise requirements.	\$100 per incident per day.
k.	Failure to maintain Collection hours as required by this Agreement.	\$250 per incident per day.
l.	Failure to offer and provide adequate capacity of Recyclable Materials and Green Waste/Organic Waste for MFD and Commercial Service Units.	\$250 per incident per day.
m.	Failure to have CONTRACTOR personnel in proper uniform.	\$250 per incident per day.
n.	Failure to repair damage to customer property caused by CONTRACTOR or its personnel.	\$500 per incident per location.
o.	Failure to repair damage to CITY property caused by CONTRACTOR or its personnel.	\$500 per incident.
p.	Failure to repair damage to City Streets directly caused by CONTRACTOR beyond normal operating wear and tear.	\$500 per incident and the actual cost of repair to CITY'S satisfaction—no cost to CITY.
q.	Failure to clean up spillage or litter caused by CONTRACTOR.	\$500 per incident per location.
r.	Failure to properly cover materials in Collection vehicles.	\$500 per incident.
s.	Changing residential Collection days without proper notification to the City Representative.	\$500 per incident per day.
t.	Commingling Garbage with Recyclable Materials.	\$500 per incident.
u.	Failure to provide adequate primary and alternate capacity to accept and process Recyclable Materials or Green Waste/Organic Waste.	\$500 per day.

LIQUIDATED DAMAGES		
Item		Amount
v.	Disposal of Recyclable Materials or Green Waste/Organic Waste in the Disposal Facility without first obtaining the required permission of the CITY.	\$500 per load.
w.	Failure to deliver any collected materials to the CITY approved Disposal Facility, Materials Recovery Facility, or Green Waste/Organic Waste Processing Facility, as appropriate, except as otherwise expressly provided in this Agreement without first obtaining the required permission of the CITY.	\$5,000 each failure.
x.	Delivery to the Disposal Facility of any Garbage collected outside of the City boundaries of Benicia commingled with that collected as part of this Agreement without first obtaining the required permission of the CITY, or not having a CITY approved jurisdiction-specific tracking tonnage process.	\$1,000 each unauthorized delivery.
y.	Commingling of materials collected inside and outside the City of Benicia without first obtaining the required permission of the CITY, or not having a CITY approved jurisdiction-specific tracking tonnage process.	\$1,000 per incident.
z.	Failure to implement required diversion programs as required by this Agreement.	Denial of term extension to this Agreement per Article 2.
aa.	Failure to meet minimum annual Diversion Guarantee for two consecutive years.	May result in the denial of an extension to this Agreement.
ab.	Failure to display CONTRACTOR'S name and customer service phone number on street sweeping vehicles.	\$50.00 per incident per Work Day.
ac.	Failure or neglect to complete at least 90 percent of each route on the regular scheduled Street Sweeping Service Work Day.	\$250.00 for each route not completed.
ad.	Incomplete or improper sweeping of a street.	\$50.00 per block (i.e., a cul-de-sac or, for any through street, the part of the street between two consecutive cross streets).

LIQUIDATED DAMAGES	
Item	Amount
ae. Unapproved routing changes.	\$250.00 for each unapproved route change.

1 19.04 Procedure for Assessment and Review of Liquidated Damages. Liquidated
2 damages will only be assessed after CONTRACTOR has been given the opportunity but failed
3 to rectify, in a timely manner, the breach as described in this Agreement. The City
4 Representative may assess liquidated damages pursuant to this Article 19 on a monthly basis.
5 At the end of each month during the term of this Agreement, the City Representative shall issue
6 a written notice to CONTRACTOR ("Notice of Assessment") of the liquidated damages
7 assessed and the basis for each assessment.

8 19.04.1 The assessment shall become final unless, within ten (10)
9 calendar days of the date of the notice of assessment, CONTRACTOR provides a written
10 request for a meeting with the City Representative to present evidence that the assessment
11 should not be made.

12 19.04.2 The City Representative shall schedule a meeting between
13 CONTRACTOR and the City Manager or the City Manager's designee as soon as reasonably
14 possible after timely receipt of CONTRACTOR'S request.

15 19.04.3 The City Manager or the City Manager's designee shall review
16 CONTRACTOR'S evidence and render a decision sustaining or reversing the liquidated
17 damages as soon as reasonably possible after the meeting. Written notice of the decision shall
18 be provided to CONTRACTOR.

19 19.04.4 In the event CONTRACTOR does not submit a written request for
20 a meeting within ten (10) calendar days of the date of the Notice of Assessment, the City
21 Manager's determination shall be final and CONTRACTOR shall submit payment to CITY no
22 later than that tenth (10th) day, or at the sole option of CITY, if monies are owed to
23 CONTRACTOR, CITY may deduct the liquidated damages from amounts otherwise due to
24 CONTRACTOR.

25 19.04.5 CITY'S assessment or collection of liquidated damages shall not
26 prevent CITY from exercising any other right or remedy, including the right to terminate this
27 Agreement, for CONTRACTOR'S failure to perform the work and services in the manner set
28 forth in this Agreement.

29 19.05 Lockouts. Because it is the intent of this Agreement that CONTRACTOR shall
30 consistently provide the highest level of services to the residents of Benicia, CONTRACTOR
31 shall never institute a lockout of any or all of its employees unless CONTRACTOR has
32 previously provided an alternate plan of continuing the highest level of services during the entire
33 possible period of such a lockout with ample fully trained substitutes for all such locked out
34 employees, and CITY has approved such alternate plan in writing prior to such lockout being
35 instituted by CONTRACTOR. In addition, CONTRACTOR shall fully defend, indemnify and hold
36 harmless CITY against anything whatsoever related to any such lockout as provided in Article
37 23 hereof, including but not limited to any claims, proceedings, or suits against CITY relating to
38 any such lockout. Compliance with this Section 19.05 shall in no way prevent the imposition of

1 liquidated damages pursuant to Sections 19.03 and 19.04 hereof if CONTRACTOR fails to meet
2 the standards or violates any provision as set forth in Section 19.03 a. through ae. hereof.

3 ARTICLE 20. Billing Audit and Performance Reviews

4 20.01 Billing Audit and Performance Review

5 20.01.1 Selection and Cost. The CITY may conduct one (1) billing audit
6 and performance review ("review") of the CONTRACTOR'S performance each five (5) years
7 during the term of this Agreement. The reviews will be performed by a qualified firm under
8 contract to the CITY. The CITY shall have the final responsibility for the selection of the firm but
9 shall seek and accept comments and recommendations from the CONTRACTOR. The
10 CONTRACTOR shall be responsible for the cost of the reviews up to a maximum of **Fifty**
11 **Thousand Dollars (\$50,000.00) for each review.**

12 20.01.2 Purpose. The review shall be designed to meet the following
13 objectives:

14 20.01.2.1 Verify that Service Recipient billing rates have been
15 properly calculated and they correspond to the level of service received by the Service
16 Recipient.

17 20.01.2.2 Verify that franchise fees, and other fees required under
18 this Agreement have been properly calculated and paid to the CITY.

19 20.01.2.3 Verify CONTRACTOR'S compliance with the reporting
20 requirements and performance standards of the Collection Service Agreement.

21 20.01.2.4 Verify the diversion percentages reported by the
22 CONTRACTOR.

23 20.01.3 CONTRACTOR'S Cooperation. CONTRACTOR shall cooperate
24 fully with the review and provide all requested data, including operational data, financial data
25 and other data requested by the CITY within thirty (30) Work Days. Failure of the
26 CONTRACTOR to cooperate or provide the requested documents in the required time shall be
27 considered an event of default.

28 20.02 City Requested Program Review. The CITY reserves the right to require the
29 CONTRACTOR to periodically conduct reviews of the SFD, MFD and Commercial Garbage,
30 Recyclable Materials, and Green Waste/Organic Waste Collection Service programs to assess
31 one or more of the following performance indicators: average volume of Recyclable Materials
32 per setout per Service Recipient, average volume of Green Waste/Organic Waste per setout per
33 Service Recipient, participation level, contamination levels, etc. Prior to the program evaluation
34 review, CITY and CONTRACTOR shall meet and discuss the purpose of the review and agree
35 on the method, scope, and date to be provided by the CONTRACTOR.

36 20.03 Cooperation with Other Program Reviews. If the CITY wants to collect program
37 data, perform field work, conduct route audits to investigate Service Recipient participation
38 levels and setout volumes and/or evaluate and monitor program results related to Garbage,
39 Recyclable Materials and Green Waste/Organic Waste collected in the CITY by the
40 CONTRACTOR, the CONTRACTOR shall cooperate with the CITY. CONTRACTOR shall also
41 cooperate with any waste generation studies or conducted by the CITY or its agent(s).

ARTICLE 21. Performance Bond

21.01 Performance Bond. The Agreement must be executed and bond furnished by the CONTRACTOR within fifteen (15) calendar days after award of this Agreement by the CITY. The CONTRACTOR shall furnish to the CITY, and keep current, a performance bond in a form with language that is acceptable to the CITY Attorney, for the faithful performance of this Agreement and all obligations arising hereunder in an amount of **Five Hundred Thousand Dollars (\$500,000.00)**.

21.01.1 The performance bond shall be executed by a surety company that is acceptable to the CITY; an admitted surety company licensed to do business in the State of California; has an "A:VII" or better rating by A. M. Best or Standard and Poors; and is included on the list of surety companies approved by the Treasurer of the United States.

21.02 Letter of Credit. As an alternative to the performance bond required by Section 21.01, at CITY'S option, CONTRACTOR may deposit with CITY an irrevocable letter of credit in an amount as set forth in Section 21.01. If allowed, the letter of credit must be issued by an FDIC insured banking institution chartered to business in the state of California that is acceptable to the CITY and has an "A:VII" or better rating by A. M. Best or Standard and Poors, in the CITY'S name, and be callable at the discretion of the CITY. Nothing in this Section shall, in any way, obligate the CITY to accept a letter of credit in lieu of the performance bond.

ARTICLE 22. Insurance

22.01 Insurance Policies. CONTRACTOR shall secure and maintain throughout the term of this Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with CONTRACTOR'S performance of work or services under this Agreement. CONTRACTOR'S performance of work or services shall include performance by CONTRACTOR'S employees, agents, representatives and subcontractors.

22.01.1 Minimum Scope of Insurance. Insurance coverage shall be at least this broad:

22.01.1.1 Insurance Services Office Form No. G0 0002 or, if approved by CITY, its equivalent, covering Comprehensive General Liability and Insurance Services Office Form No. GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).

22.01.1.2 Insurance Services Office Form No. CA 0001 covering Automobile Liability, code 1 "any auto", or code 2 "owned autos" and endorsement CA 0025. Coverage shall also include code 8, "hired autos" and code 9 "non-owned autos".

22.01.2 Workers' Compensation Insurance as required by the California Labor Code and Employers Liability Insurance and/or Errors and Omissions.

22.01.3 Hazardous Waste and Environmental Impairment Liability Insurance.

22.01.4 Employee Blanket Fidelity Bond.

22.02 Minimum Limits of Insurance. CONTRACTOR shall maintain insurance limits no less than:

- 1 22.02.1 Comprehensive General Liability: **Ten Million Dollars**
2 **(\$10,000,000.00)** combined single limit per occurrence for bodily injury, personal injury and
3 property damage.
- 4 22.02.2 Automobile Liability: **Ten Million Dollars (\$10,000,000.00)**
5 combined single limit per accident for bodily injury and property damage.
- 6 22.02.3 Workers' Compensation and Employers Liability: Workers'
7 Compensation limits as required by the California Labor Code and Employers Liability limits of
8 **Three Million Dollars (\$3,000,000.00)** per accident.
- 9 22.02.4 Employee Blanket Fidelity Bond in the amount of **Five Hundred**
10 **Thousand Dollars (\$500,000.00)** per employee, covering dishonesty, forgery, alteration, theft,
11 disappearance, destruction (inside or outside).
- 12 22.02.5 Hazardous Waste and Environmental Impairment Liability: **Three**
13 **Million Dollars (\$3,000,000.00) each occurrence/Ten Million Dollars (\$10,000,000.00)** policy
14 aggregate covering liability arising from the release of waste materials and/or irritants,
15 contaminants or pollutants. Such coverage shall, if commercially available without involvement
16 of CITY, automatically broaden in its form of coverage to include legislated changes in the
17 definition of waste material and/or irritants, contaminants or pollutants. This policy shall
18 stipulate this insurance is primary and no other insurance carried by CITY will be called upon to
19 contribute to the loss suffered by the CONTRACTOR hereunder and waive subrogation against
20 the CITY and other additional insureds.
- 21 22.03 Deductibles and Self-Insured Retention. Any deductibles or self-insured
22 retention must be declared to, and approved by, CITY. CITY shall not withhold approval of any
23 Deductible or Self-Insured Retention amounts where CONTRACTOR can demonstrate a
24 successful history of managing such Deductibles or Self-Insured Retention amounts.
- 25 22.04 Endorsements. The policies are to contain, or be endorsed to contain, the
26 following provisions:
- 27 22.04.1 The CITY, its officers, employees, agents and volunteers are to be
28 covered as additional insureds with respect to liability arising out of automobiles owned, leased,
29 hired or borrowed by or on behalf of CONTRACTOR; products and completed operations of
30 CONTRACTOR; and with respect to liability arising out of work or operations performed by or on
31 behalf of the CONTRACTOR including material parts or equipment furnished in connection with
32 such work or operations; Pollution and/or Asbestos Pollution.
- 33 22.04.2 CONTRACTOR'S insurance coverage shall be primary insurance
34 as respects CITY, its officers, officials, employees, agents and volunteers. Any insurance or
35 self-insurance maintained by the CITY, its officers, officials, employees, agents or volunteers
36 shall be excess of the CONTRACTOR'S insurance and shall not contribute with it.
- 37 22.04.3 Each insurance policy required by this clause shall be occurrence-
38 based, or an alternative form as approved by the CITY and shall be endorsed to state that
39 coverage shall not be cancelled by the Insurer except after thirty (30) days prior written notice
40 has been given to the CITY.
- 41 22.04.4 The CONTRACTOR'S insurance shall apply separately to each
42 insured against whom claim is made or suit is brought, except with respect to the limits of the
43 insurer's liability.

1 22.04.5 The Automobile Liability policy shall be endorsed to delete the
2 Pollution and/or the Asbestos exclusion, or documentation that the CONTRACTOR carries
3 environmental pollution liability coverage for solid waste transported by the CONTRACTOR.
4 The Automobile Liability policy shall also be endorsed to add the Motor Carrier act endorsement
5 (MCS-90) TL 1005, TL 1007 and /or other endorsements required by federal or state authorities.

6 22.04.6 Worker's Compensation and Employers Liability Coverage. The
7 insurer shall agree to waive all rights of subrogation against the CITY, its officers, officials,
8 employees and volunteers for losses arising from work performed by the CONTRACTOR for the
9 CITY.

10 22.04.7 All Coverages. Each insurance policy required by this clause shall
11 be occurrence-based or an alternate form as approved by the CITY and endorsed to state that
12 coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or
13 limits except after thirty (30) days prior written notice by certified mail, return receipt requested,
14 has been given to the CITY.

15 22.04.7.1 Any failure to comply with reporting provisions of the
16 policies shall not affect CONTRACTOR'S obligations to CITY, its officers, officials, employees,
17 agents or volunteers.

18 22.04.7.2 The CITY, its officers, officials, agents, employees and
19 volunteers shall be named as additional insureds on all policies.

20 22.05 Acceptability of Insurers. Insurance is to be placed with insurers with a current
21 A.M. Best's rating of no less than A:VII if admitted. If pollution and or Environmental Impairment
22 and/or errors and omission coverage are not available from an "Admitted" insurer, the coverage
23 may be written with the CITY's permission, by a non-admitted insurance company. A Non-
24 admitted company should have an A.M. Best's rating of A:X or higher.

25 22.06 Verification of Coverage. CONTRACTOR shall furnish CITY with original
26 certificates and with amendatory endorsements effecting coverage required by this clause. The
27 endorsements are to be signed by a person authorized by the Insurer to bind coverage on its
28 behalf. The endorsements are to be on forms provided by the City, unless the insurer will not
29 use the CITY's forms. All endorsements are to be received and approved by the CITY Attorney
30 before work commences. As an alternative to the CITY's forms, the CONTRACTOR's insurer
31 may provide complete copies of all required insurance policies, including endorsements
32 effecting coverage required by these specifications.

33 22.07 Subcontractors. CONTRACTOR shall include all subcontractors as insureds
34 under its policies or shall obtain separate certificates and endorsements for each subcontractor.

35 22.07.1 Proof of insurance shall be mailed to the following address or any
36 subsequent address as may be directed in writing by the CITY.

37 **City Attorney**
38 **Benicia City Hall**
39 **250 East L Street**
40 **Benicia, California 94510**

41 22.08 Modification of Insurance Requirements. The insurance requirements provided
42 in this Agreement may be modified or waived by the CITY Attorney, in writing, upon the request
43 of CONTRACTOR if the CITY determines such modification or waiver is in the best interest of
44 CITY considering all relevant factors, including exposure to CITY.

1 expenses (including but not limited to attorney's and expert witness fees and costs incurred in
2 connection with defending against any of the foregoing or enforcing this indemnity) of any kind
3 whatsoever paid, incurred or suffered by, or asserted against CITY or its officers, officials,
4 employees, agents, assigns, or contactors arising from or attributable to acts or omissions of
5 CONTRACTOR or its agents, including but not limited to any repair, cleanup or detoxification, or
6 preparation and implementation of any removal, remedial, response, closure or other plan
7 (regardless of whether undertaken due to governmental action) concerning any hazardous
8 substance or Hazardous Wastes at any place where CONTRACTOR transports, stores, or
9 disposes of Garbage pursuant to this Agreement. The foregoing indemnity is intended to
10 operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. section 9607(c)
11 and California Health and Safety Code Section 25364, to defend insure, protect, hold harmless
12 and indemnify the CITY from liability.

13 23.04 CalRecycle Diversion Goals. CONTRACTOR agrees to protect, indemnify, hold
14 harmless, and defend CITY with counsel selected by CONTRACTOR and approved by CITY, to
15 pay all attorneys' fees, and to indemnify and hold CITY harmless from and against all fines or
16 penalties imposed by the California Department of Resources Recycling and Recovery
17 ("CalRecycle") if the diversion goals specified in California Public Resources Code Section
18 41780 as of the date hereof and hereafter throughout are not met by the CITY with respect to
19 the materials collected by CONTRACTOR and if the lack in meeting such goals are attributable
20 to the failure of the CONTRACTOR to implement and operate the recycling or diversion
21 programs or undertake the related activities required by this Agreement.

22 23.05 Maximum Service Rates. CONTRACTOR shall defend with counsel acceptable
23 to the CITY, hold harmless, and indemnify CITY, its officers, officials, employees, volunteers,
24 agents and assignees from and against any loss, liability, penalties, forfeiture, claims, damages,
25 demands, actions, proceedings or suits, in law or equity, of every kind and description, arising
26 from the CITY's setting of maximum Service Rates for Collection Services under this Agreement
27 and/or in connection with the application of Article XIIC and Article XIID of the California
28 Constitution to the imposition, payment, or collection of Maximum Service Rates and fees for
29 services provided by CONTRACTOR under and/or in connection with this Agreement, provided,
30 however, that such obligation to defend, hold harmless and indemnify shall not apply to the
31 imposition or payment of franchise fees, or any other amounts payable to CITY under this
32 Agreement.

33 23.06 Separate Counsel. CITY may elect to have separate legal counsel from
34 CONTRACTOR at any time at its sole discretion, and in such case CONTRACTOR will pay one-
35 half (1/2) of all fees and costs and charges for such separate legal counsel.

36 23.07 Consideration. It is specifically understood and agreed that the consideration
37 inuring to the CONTRACTOR for the execution of this Agreement consists of the promises,
38 payments, covenants, rights and responsibilities contained in this Agreement.

39 23.08 Obligation. The execution of this Agreement by the CONTRACTOR shall
40 obligate the CONTRACTOR to comply with the foregoing indemnification provisions; however,
41 the collateral obligation of providing insurance must also be fully complied with as set forth in
42 Article 22 above.

43 23.09 Subcontractors. The CONTRACTOR shall require all subcontractors to enter
44 into an Agreement containing the provisions set forth Section 23.01, 23.02, 23.03, 23.04, 23.05,
45 23.06, 23.07, and Article 22 in its entirety and in the preceding subsection in which Agreement
46 the subcontractor fully indemnifies the CITY in accordance with this Agreement.

1 24.01.7 The CONTRACTOR has defaulted, by failing or refusing to
2 perform or observe the terms, conditions or covenants in this Agreement, including satisfactory
3 conformance with the requirements of Article 20, the service levels prescribed herein, provided
4 that said default is not cured within thirty (30) calendar days of receipt of written notice by the
5 CITY to do so, or if by reason of the nature of such default, the same cannot be remedied within
6 thirty (30) calendar days following receipt by the CONTRACTOR of written demand from the
7 CITY to do so, the CONTRACTOR fails to commence the remedy of such default within said
8 thirty (30) calendar days following such written notice or having so commenced shall fail
9 thereafter to continue with diligence the curing thereof. In any dispute concerning failure to
10 remedy or diligence in pursuing a cure, the CONTRACTOR shall have the burden of proof to
11 demonstrate (a) that the default cannot be cured within thirty (30) calendar days, and (b) that it
12 is proceeding with diligence to cure said default, and such default will be cured within a
13 reasonable period of time. However, notwithstanding anything contained herein to the contrary,
14 for the failure of the CONTRACTOR to provide Collection Services for a period of three (3)
15 consecutive Work Days, on the fourth (4th) Work Day the CITY may secure the
16 CONTRACTOR'S equipment, records and other property used or useful in providing Collection
17 Services under this Agreement in order to provide interim Collection Services until such time as
18 the matter is resolved and the CONTRACTOR is again able to perform pursuant to this
19 Agreement; provided, however, if the CONTRACTOR is unable for any reason or cause to
20 resume performance at the end of thirty (30) calendar days all liability of the CITY under this
21 Agreement to the CONTRACTOR shall cease and this Agreement may be deemed terminated
22 by the CITY, and the CITY shall retain equipment, records and other property used in providing
23 Collection Services on an interim basis until the CITY has made other suitable arrangements for
24 the provision of Collection Services, which may include award of the Agreement to another
25 contractor.

26 24.01.8 In the event that the Agreement is terminated, CONTRACTOR shall
27 furnish the CITY with immediate access to all of its business records related to its customer and
28 billing accounts for Collection Services.

29 24.01.9 Ninety Day Discontinuance of Service Upon Termination. In the event
30 that the Agreement is terminated, it is understood and agreed by the CITY and the
31 CONTRACTOR herein that the CITY shall have the right to require the CONTRACTOR to
32 continue its services, as set forth in this Agreement for a period not to exceed three (3) months
33 as specified in Section 3.7 and said CONTRACTOR shall be paid for services during the time at
34 the rates specified in this Agreement; it being further understood and agreed that the
35 continuance of the services by the CONTRACTOR after a termination of the Agreement by the
36 CITY for the aforesaid period of sixty (60) days does not in any way waive the termination of this
37 Agreement.

38 24.02 Effective Date. In the event of the aforesaid events specified above, and except
39 as otherwise provided in said subsections, termination shall be effective upon the date specified
40 in the CITY'S written notice to the CONTRACTOR and upon said date this Agreement shall be
41 deemed immediately terminated and upon such termination all liability of the CITY under this
42 Agreement to the CONTRACTOR shall cease, and the CITY shall have the right to call the
43 performance bond and shall be free to negotiate with other contractors for the operation of the
44 herein specified services. The CONTRACTOR for failure to perform shall reimburse the CITY
45 all direct and indirect costs of providing interim Collection Services.

46 24.03 Immediate Termination. CITY may terminate this Agreement immediately upon
47 written notice to CONTRACTOR in the event CONTRACTOR fails to provide and maintain the
48 performance bond as required by this Agreement, or if CONTRACTOR fails to obtain or

1 maintain insurance policies endorsements as required by this Agreement, or if CONTRACTOR
2 fails to provide the proof of insurance as required by this Agreement, or if CONTRACTOR offers
3 or gives any gift prohibited by CITY administrative policy.

4 24.04 Termination Cumulative. CITY'S right to terminate this Agreement is cumulative
5 to any other rights and remedies provided by law or by this Agreement.

6 24.05 Force Majeure. The parties shall be excused from performing their respective
7 obligations hereunder in the event they are prevented from so performing by reason of any acts
8 of God, such as landslides, lightning, fires, storms, floods, pestilence, freezing, and
9 earthquakes; explosions, sabotage, civil disturbances, acts of a public enemy, wars, blockades,
10 riots, or other industrial disturbances, eminent domain, condemnation or other taking, unlawful
11 conduct, vandalism and sabotage, concerted labor action not engaged in by CONTRACTOR'S
12 employees, acts of a governmental authority, or other events not caused or maintained by CITY
13 or CONTRACTOR, which event is not reasonably within the control of the party claiming the
14 excuse from its obligations due to such event, to the extent such event has a significant and
15 material adverse effect on the ability of a party to perform its obligations thereunder. Force
16 Majeure shall not include power outages, fuel shortages, strikes by CONTRACTOR'S
17 employees, work stoppage or slowdown by CONTRACTOR'S employees, sickout, lockout,
18 picketing or other concerted job action conducted by CONTRACTOR'S employees. Force
19 Majeure shall include a Change in Law if such Change in Law prohibits a party's performance
20 hereunder. Notwithstanding the foregoing, (i) no failure of performance by any subcontractor of
21 CONTRACTOR shall be a Force Majeure unless such failure was itself caused by a Force
22 Majeure; (ii) except as provided herein, no event which merely increases CONTRACTOR'S cost
23 of performance shall be a Force Majeure; and (iii) no event, the effects of which could have
24 been prevented by reasonable precautions, including compliance with agreements and
25 applicable laws, shall be a Force Majeure.

26 ARTICLE 25. Modifications to the Agreement

27 25.01 Agreement Modifications and Changes in Law. The CITY and the
28 CONTRACTOR understand and agree that the California Legislature has the authority to make
29 comprehensive changes in Garbage, Recyclables, or Green Waste/Organic Waste
30 Management legislation and that these and other changes in law in the future which mandate
31 certain actions or programs for counties or municipalities may require changes or modifications
32 in some of the terms, conditions or obligations under this Agreement. The CONTRACTOR
33 agrees that the terms and provisions of the Municipal Code, as it now exists or as it may be
34 amended in the future, shall apply to all of the provisions of this Agreement and the Service
35 Recipients of the CONTRACTOR located within the Service Area. In the event any future
36 Change in Law, modifications to the CITY Municipal Code, or directed changes by the CITY
37 materially alters the obligations of the CONTRACTOR, then the affected compensation as
38 established under this Agreement shall be adjusted. Nothing contained in this Agreement shall
39 require any party to perform any act or function contrary to law. The CITY and CONTRACTOR
40 agree to enter into good faith negotiations regarding modifications to this Agreement, which may
41 be required in order to implement changes in the interest of the public welfare or due to Change
42 in Law. When such modifications are made to this Agreement, the CITY and the
43 CONTRACTOR shall negotiate in good faith a reasonable and appropriate compensation
44 adjustment for any increase or decrease in the services or other obligations required of the
45 CONTRACTOR due to any modification in the Agreement under this Article. The CITY and the
46 CONTRACTOR shall not unreasonably withhold agreement to such compensation adjustment.

1 25.02 CITY Code Amendments. It is understood that this Agreement shall not prevent
2 the CITY from in any way amending Chapter 8.24 of Benicia City Code, or from adopting any
3 amendments concerning the collection and disposition of refuse in the CITY, and that such
4 amendments from time-to-time may include changes in the rates provided for in said Code. It is
5 understood, however, that no ordinance or amendment thereof shall impair the exclusive rights
6 provided to the CONTRACTOR hereunder.

7 25.02.1 Compensation Adjustments.

8 25.02.1.1 Change in Law That Requires Service Change. In the
9 event of a Change in Law or regulations of any governmental agency regulatory changes,
10 changes in law such as any new or amended federal, state or local law or regulation or any
11 change in the interpretation or enforcement thereof that will require additional or different
12 services to be provided by CONTRACTOR or increase the cost of providing the services
13 described in this Agreement, which are not otherwise covered by this Agreement,
14 CONTRACTOR shall provide CITY with a written rate increase request for additional
15 compensation to CONTRACTOR based on such additional or different services. CITY shall not
16 unreasonably withhold its approval of such request and shall review the request within 60 days
17 of its submittal. If the proposed rate increase exceeds five percent (5%) and CITY does not
18 agree with such rate increase, CITY, in addition to negotiating with CONTRACTOR may submit
19 the matter to non-binding mediation upon the following terms and conditions in Section 25.7.
20 CITY and CONTRACTOR shall agree to the effective date of any such compensation
21 adjustment approved by City Council.

22 25.02.1.2 Change In Governmental Fees, Surcharges and Taxes.

23 CONTRACTOR may request additional compensation for increases in governmental fees,
24 surcharges and taxes implemented by a local, state or federal entity or agency. CONTRACTOR
25 shall be able to adjust the compensation received for these increases upon submittal of
26 justification to the CITY and following CITY review of the submittal. CITY shall not
27 unreasonably withhold review or consent to these compensation adjustments and
28 CONTRACTOR shall be able to adjust rates within 60 days of submittal of their request or at a
29 time mutually agreed on between the CITY and CONTRACTOR to better align with the normally
30 scheduled July 1st adjustments to Maximum Rates.

31 25.03 City-Directed Changes. CITY may direct CONTRACTOR to perform additional
32 services (including new diversion programs, additional public education activities, etc.),
33 eliminate programs, or modify the manner in which it performs existing services. Changes in
34 the minimum diversion requirement set forth in Article 5 of this Agreement, direction of Garbage
35 to a Disposal Facility other than that originally selected by the CITY, pilot programs and
36 innovative services, which may entail new collection methods, targeted routing, different kinds of
37 services, different types of collection vehicles, and/or new requirements for Service Recipients
38 are included among the kinds of changes which CITY may direct. CONTRACTOR shall be
39 entitled to an adjustment in its compensation for providing such additional or modified services
40 but not for the preparation of its proposal to perform such services.

41 25.04 Service Proposal. Within thirty (30) calendar days of receipt of a request for a
42 service change from the CITY, CONTRACTOR shall submit a proposal to provide such service.
43 At a minimum, the proposal shall contain a complete description of the following:

44 25.04.1 Collection methodology to be employed (equipment, manpower,
45 etc.).

1 25.04.2 Equipment to be utilized (vehicle number, types, capacity, age,
2 etc.).

3 25.04.3 Labor requirements (number of employees by classification).

4 25.04.4 Type of carts or bins to be utilized.

5 25.04.5 Provision for program publicity, education, and marketing.

6 25.04.6 Five (5) year projection of the financial results of the program's
7 operations in an operating statement format including documentation of the key assumptions
8 underlying the projections and the support for those assumptions, giving full effect to the
9 savings or costs to existing services.

10 25.05 CONTRACTOR acknowledges and agrees that CITY may permit other
11 contractors or companies besides CONTRACTOR to provide additional Collection Services and
12 such other services not otherwise contemplated if CONTRACTOR and CITY cannot agree on
13 terms and conditions, including compensation adjustments, of such services in one hundred
14 twenty (120) calendar days from the date when CITY first requests a proposal from
15 CONTRACTOR to perform such services.

16 25.06 Monitoring and Evaluation. If the CITY requests, the CONTRACTOR shall
17 meet with the CITY to describe the progress of each new program and other service issues. If
18 applicable, CONTRACTOR shall document the results of the new programs on a monthly basis,
19 including at a minimum the tonnage diverted by material type, the end use or processor of the
20 diverted materials and the cost per ton for transporting and processing each type of material
21 and other such information requested by the CONTRACTOR and/or CITY necessary to
22 evaluate the performance of each program.

23 25.06.1 At each meeting, the CITY and CONTRACTOR shall have the
24 opportunity to discuss revisions to the program. The CITY shall have the right to terminate a
25 program if, in its sole discretion, the CONTRACTOR is not cost effectively achieving the
26 program's goals and objectives. Prior to such termination, the CITY shall meet and confer with
27 the CONTRACTOR for a period of up to ninety (90) calendar days to resolve the CITY'S
28 concerns. Thereafter, the CITY may utilize a third party to perform these services if the CITY
29 reasonably believes the third party can improve on CONTRACTOR'S performance and/or cost.
30 Notwithstanding these changes, CONTRACTOR shall continue the program during the ninety
31 (90) day period and, thereafter, until the third party takes over the program.

32 25.07 Dispute Resolution. All disputes relating to service or compensation changes as
33 specified in Section 25.01, 25.02, or 25.03 of this Agreement shall be resolved by the following
34 procedures:

35 25.07.1 Mediation. The parties shall first participate in non-binding
36 mediation of any dispute arising under this Agreement (whether contract, tort, or otherwise), as
37 provided hereafter:

38 25.07.1.1 The party desiring mediation shall first give written notice
39 thereof to the other party to this Agreement, specifying the dispute to be mediated.

40 25.07.1.2 The mediation shall be held at Benicia, California, or at
41 such other location as may be mutually agreed among the parties. The mediation shall be
42 conducted according to and a mediator chosen pursuant to the rules of the American Arbitration
43 Association.

1 25.07.1.3 At least ten (10) business days before the date of the
2 mediation, each side shall provide the mediator with a statement of its position and copies of all
3 supporting documents. Each party shall send to the mediation a person who has authority to
4 negotiate on behalf of the party. If a subsequent dispute will involve third parties, such as
5 insurers or subcontractors, they shall also be asked to participate in the mediation.

6 **ARTICLE 26. Legal Representation**

7 26.01 Acknowledgement. It is acknowledged that each party was, or had the
8 opportunity to be, represented by counsel in the preparation of and contributed equally to the
9 terms and conditions of this Agreement and, accordingly, the rule that a contract or Agreement
10 shall be interpreted strictly against the party preparing the same shall not apply herein due to
11 the joint contributions of both parties.

12 **ARTICLE 27. Financial Interest**

13 27.01 Representation. CONTRACTOR warrants and represents that no elected official,
14 officer, agent or employee of the CITY has a financial interest, directly or indirectly, in this
15 Agreement or the compensation to be paid under it and, further, that no CITY employee who
16 acts in the CITY as a "purchasing agent" as defined in the appropriate Section of California
17 Statutes, nor any elected or appointed officer of the CITY, nor any spouse or child of such
18 purchasing agent, employee or elected or appointed officer, is a partner, officer, director or
19 proprietor of the CONTRACTOR and, further, that no such CITY employee, purchasing agent,
20 CITY elected or appointed officer, or the spouse or child of any of them, alone or in combination,
21 has a material interest in the CONTRACTOR. Material interest means direct or indirect
22 ownership of more than five percent (5%) of the total assets or capital stock of the
23 CONTRACTOR.

24 **ARTICLE 28. CONTRACTOR'S Personnel**

25 28.01 Personnel Requirements. The CONTRACTOR shall employ and assign qualified
26 personnel to perform all services set forth herein. The CONTRACTOR shall be responsible for
27 ensuring that its employees comply with all applicable laws and regulations and meet all federal,
28 state and local requirements related to their employment and position.

29 28.01.1 The CITY may request the transfer of any employee of the
30 CONTRACTOR who materially violates any provision hereof, or who is wanton, negligent, or
31 discourteous in the performance of his/her duties.

32 28.01.2 CONTRACTOR'S field operations personnel shall be required to
33 wear a clean uniform shirt bearing the CONTRACTOR'S name. CONTRACTOR'S employees,
34 who normally come into direct contact with the public, including drivers, shall bear some means
35 of individual photographic identification such as a name tag or identification card.

36 28.01.3 Each driver of a Collection vehicle shall at all times carry a valid
37 California driver's license and all other required licenses for the type of vehicle that is being
38 operated.

39 28.01.4 Each driver of a Collection vehicle shall at all times comply with all
40 applicable state and federal laws, regulations and requirements.

1 28.01.5 CONTRACTOR'S employees, officers, and agents shall at no time
2 be allowed to identify themselves or in any way represent themselves as being employees of
3 the CITY.

4 ARTICLE 29. Exempt Waste

5 29.01 The CONTRACTOR shall not be required to collect or dispose of Exempt Waste,
6 but may offer such services. All such Collection and disposal of Exempt Waste is not regulated
7 under this Agreement, but if provided by the CONTRACTOR shall be in strict compliance with
8 all federal, state and local laws and regulations.

9 ARTICLE 30. Independent Contractor

10 30.01 In the performance of services pursuant to this Agreement, CONTRACTOR shall
11 be an independent contractor and not an officer, agent, servant or employee of CITY.
12 CONTRACTOR shall have exclusive control of the details of the services and work performed
13 and over all persons performing such services and work. CONTRACTOR shall be solely
14 responsible for the acts and omissions of its officers, agents, employees, contractors and
15 subcontractors, if any. Neither CONTRACTOR nor its officers, employees, agents, contractors
16 or subcontractors shall obtain any right to retirement benefits, Workers Compensation benefits,
17 or any other compensation or benefits, which accrue, to CITY employees and CONTRACTOR
18 expressly waives any claim it may have or acquire to such compensation or benefits.

19 ARTICLE 31. Laws to Govern

20 31.01 The law of the State of California shall govern the rights, obligations, duties and
21 liabilities of CITY and CONTRACTOR under this Agreement and shall govern the interpretation
22 of this Agreement.

23 ARTICLE 32. Consent to Jurisdiction

24 32.01 The parties agree that any litigation between CITY and CONTRACTOR
25 concerning or arising out of this Agreement shall be filed and maintained exclusively in the
26 Municipal or Superior Courts of Solano County, State of California, or in the United States
27 District Court for the Northern District of California to the fullest extent permissible by law. Each
28 party consents to service of process in any manner authorized by California law.

29 ARTICLE 33. Assignment

30 33.01 No assignment of this Agreement or any right occurring under this Agreement
31 shall be made in whole or in part by the CONTRACTOR without the express written consent of
32 the CITY. The CITY shall have full discretion to approve or deny, with or without cause, any
33 proposed or actual assignment, selling or transfer of this Agreement, or its rights, duties and
34 obligation by the CONTRACTOR. Any assignment of this Agreement made by the
35 CONTRACTOR without the express written consent of the CITY shall be null and void and shall
36 be grounds for the CITY to declare a default of this Agreement and immediately terminate this
37 Agreement by giving written notice to the CONTRACTOR, and upon the date of such notice this
38 Agreement shall be deemed immediately terminated, and upon such termination all liability of
39 the CITY under this Agreement to the CONTRACTOR shall cease, and the CITY shall have the
40 right to call the performance bond and shall be free to negotiate with other contractors, the

1 CONTRACTOR, or any other person or company for the service which is the subject of this
2 Agreement. In the event of any assignment, the assignee shall fully assume all the liabilities of
3 the CONTRACTOR.

4 33.02 The use of a subcontractor to perform services under this Agreement shall not
5 constitute delegation of CONTRACTOR'S duties provided that CONTRACTOR has received
6 prior written authorization from the City Representative to subcontract such services and the
7 City Representative has approved a subcontractor who will perform such services.
8 CONTRACTOR shall be responsible for directing the work of CONTRACTOR'S subcontractors
9 and any compensation due or payable to CONTRACTOR'S subcontractor shall be the sole
10 responsibility of CONTRACTOR. The City Representative shall have the right to require the
11 removal of any approved subcontractor for reasonable cause. The subcontractors listed in
12 **Exhibit 4** to this Agreement are hereby approved by the CITY.

13 33.03 For purposes of this Article when used in reference to CONTRACTOR,
14 "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of at least
15 fifty-one percent (51%) of CONTRACTOR'S assets dedicated to service under this Agreement
16 to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of
17 CONTRACTOR to a third party provided said sale, exchange or transfer results in a change of
18 control of CONTRACTOR (with control being defined as ownership of more than fifty percent
19 (50%) of CONTRACTOR'S voting securities); (iii) any dissolution, reorganization, consolidation,
20 merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow
21 arrangement, liquidation, subcontracting or lease-back payments, or other transaction which
22 results in a change of control of CONTRACTOR; (iv) any assignment by operation of law,
23 including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of
24 attachment for an execution being levied against this Agreement, appointment of a receiver
25 taking possession of CONTRACTOR'S property, or transfer occurring in the event of a probate
26 proceeding; and (v) any combination of the foregoing (whether or not in related or
27 contemporaneous transactions) which has the effect of any such transfer or change of control of
28 CONTRACTOR.

29 33.04 CONTRACTOR acknowledges that this Agreement involves rendering a vital
30 service to CITY'S residents and businesses, and that CITY has selected CONTRACTOR to
31 perform the services specified herein based on (i) CONTRACTOR's experience, skill and
32 reputation for conducting its Garbage, recycling and Green Waste/Organic waste management
33 operations in a safe, effective and responsible fashion, at all times in keeping with applicable
34 environmental laws, regulations and best Garbage, recycling and Green Waste/Organic Waste
35 management practices, and (ii) CONTRACTOR'S financial resources to maintain the required
36 equipment and to support its indemnity obligations to CITY under this Agreement. CITY has
37 relied on each of these factors, among others, in choosing CONTRACTOR to perform the
38 services to be rendered by CONTRACTOR under this Agreement.

39 ARTICLE 34. Compliance with Laws

40 34.01 In the performance of this Agreement, CONTRACTOR shall comply with all
41 applicable laws, regulations, ordinances and codes of the federal, state and local governments,
42 including without limitation the Municipal Code of the City of Benicia.

43 34.02 CITY shall provide written notice to CONTRACTOR of any planned amendment
44 of the CITY Municipal Code that would substantially affect the performance of CONTRACTOR'S
45 services pursuant to this Agreement. Such notice shall be provided at least thirty (30) calendar
46 days prior to the City Council's approval of such an amendment.

ARTICLE 35. Permits and Licenses

35.01 CONTRACTOR shall obtain, at its own expense, all permits and licenses required by law or ordinance and maintain same in full force and effect throughout the term of this Agreement, including a CITY business license. CONTRACTOR shall provide proof of such permits, licenses or approvals and shall demonstrate compliance with the terms and conditions of such permits, licenses and approvals upon the request of the City Representative.

ARTICLE 36. Ownership of Written Materials

36.01 All reports, documents, brochures, public education materials, and other written, printed, electronic or photographic materials developed by CITY or CONTRACTOR in connection with the services to be performed under this Agreement, whether developed directly or indirectly by CITY or CONTRACTOR shall be and shall remain the property of CITY without limitation or restrictions on the use of such materials by CITY. CONTRACTOR shall not use such materials in connection with any project not connected with this Agreement without the prior written consent of the City Representative. This Article 36 does not apply to ideas or concepts described in such materials and does not apply to the format of such materials.

ARTICLE 37. Waiver

37.01 Waiver by CITY or CONTRACTOR of any breach for violation of any term, covenant or condition of this Agreement shall not be deemed to be a waiver of any other term, covenant or condition or any subsequent breach or violation of the same or of any other term, covenant or condition. The subsequent acceptance by CITY of any fee, tax, or any other monies, which may become due from CONTRACTOR to CITY shall not be deemed to be a waiver by CITY of any breach for violation of any term, covenant or condition of this Agreement.

ARTICLE 38. Prohibition Against Gifts

38.01 CONTRACTOR represents that CONTRACTOR is familiar with CITY'S prohibition against the acceptance of any gift by a CITY officer or designated employee. CONTRACTOR shall not offer any CITY officer or designated employee any gifts prohibited by the CITY.

ARTICLE 39. Point of Contact

39.01 The day-to-day dealings between the CONTRACTOR and the CITY shall be between the CONTRACTOR and the City Representative.

ARTICLE 40. Conflict of Interest

40.01 CONTRACTOR shall comply with CITY requirements for conflict of interest and will file all required disclosure statements.

ARTICLE 41. Notices

41.01 Except as provided herein, whenever either party desires to give notice to the other, it must be given by written notice addressed to the party for whom it is intended, at the place last specified and to the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective persons and

1 places for giving of notice:

2 As to the CITY:

3 **City Manager**
4 **Benicia City Hall**
5 **250 East L Street**
6 **Benicia, California 94510**

7
8 As to the CONTRACTOR:

9 **Tim Argenti, General Manager**
10 **Allied Waste Services**
11 **441 N Buchanan Cir**
12 **Pacheco, CA 94553**
13 **Telephone: (925) 671-5833**
14 **Fax: (925) 685-4735**
15 **E-Mail: targenti@republicservices.com**

16 41.02 Notices shall be effective when received at the address as specified above.
17 Changes in the respective address to which such notice is to be directed may be made by
18 written notice. Facsimile transmission is acceptable notice, effective when received, however,
19 facsimile transmissions received (i.e. printed) after 4:30 p.m. or on weekends or holidays, will be
20 deemed received on the next business day. Receipt is deemed to have taken place within three
21 (3) working days of notice mailed by U.S. Postal Service return receipt requested. The original
22 of items that are transmitted by facsimile equipment must also be mailed as required herein.

23 41.03 Notice by CITY to CONTRACTOR of a Collection or other Service Recipient
24 problem or complaint may be given to CONTRACTOR orally by telephone at CONTRACTOR'S
25 local office with confirmation sent as required above by the end of the Work Day.

26 **ARTICLE 42. Transition to Next Contractor**

27 42.01 In the event CONTRACTOR is not awarded an Agreement to continue to provide
28 Collection Services following the expiration or early termination of this Agreement,
29 CONTRACTOR shall cooperate fully with CITY and any subsequent contractors to assure a
30 smooth transition of services described in this Agreement. Such cooperation shall include but
31 not be limited to transfer of computer data, files and tapes; providing routing information, route
32 maps, vehicle fleet information, and list of Service Recipients; providing a complete inventory of
33 all carts and bins; providing adequate labor and equipment to complete performance of all
34 Collection Services required under this Agreement; taking all actions necessary to transfer
35 ownership of carts and bins, as appropriate, to CITY; including transporting such containers to a
36 location designated by the City Representative; coordinating Collection of materials set out in
37 new containers if new containers are provided for a subsequent Agreement and providing other
38 reports and data required by this Agreement.

39 **ARTICLE 43. Entire Agreement**

40 43.01 This Agreement and the Exhibits attached hereto constitute the entire Agreement
41 and understanding between the parties hereto, and it shall not be considered modified, altered,
42 changed or amended in any respect unless in writing and signed by the parties hereto.

ARTICLE 44. Severability

44.01 If any provision of this Agreement or the application of it to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Agreement and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

ARTICLE 45. Right to Require Performance

45.01 The failure of the CITY at any time to require performance by the CONTRACTOR of any provision hereof shall in no way affect the right of the CITY thereafter to enforce same. Nor shall waiver by the CITY of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

ARTICLE 46. All Prior Agreements Superseded

46.01 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, contracts and understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements, contracts or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations, agreements or contracts, whether oral or written.

ARTICLE 47. Headings

47.01 Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Agreement.

ARTICLE 48. Exhibits

48.01 Each Exhibit referred to in this Agreement forms an essential part of this Agreement. Each such Exhibit is a part of this Agreement and each is incorporated by this reference.

ARTICLE 49. Representations and Warranties of the CONTRACTOR

The CONTRACTOR, by acceptance of this Agreement, represents and warrants the conditions presented in this Article.

49.01 Corporate Status. The CONTRACTOR is a corporation duly organized, validly existing and in good standing under the laws of the State of California ("State"). It is qualified to transact business in the State and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

49.02 Corporate Authorization. CONTRACTOR has the authority to enter this Agreement and perform its obligations under this Agreement. The Board of Directors of CONTRACTOR (or the shareholders, if necessary) has taken all actions required by law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement. The Person signing this Agreement on behalf of CONTRACTOR represents and warrants that

1 they have the authority to do so. This Agreement constitutes the legal, valid, and binding
2 obligation of the CONTRACTOR.

3 49.03 Agreement Will Not Cause Breach. To the best of CONTRACTOR'S knowledge
4 after responsible investigation, the execution or delivery of this Agreement or the performance
5 by CONTRACTOR of its obligations hereunder does not conflict with, violate, or result in a
6 breach: (i) of any law or governmental regulation applicable to CONTRACTOR; or (ii) any term
7 or condition of any judgment, order, decree, of any court, administrative agency or other
8 governmental authority, or any Agreement or instrument to which CONTRACTOR is a party or
9 by which CONTRACTOR or any of its properties or assets are bound, or constitutes a default
10 thereunder.

11 49.04 No Litigation. To the best of CONTRACTOR'S knowledge after responsible
12 investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or
13 by any court or governmental authority, commission, board, agency or instrumentality decided,
14 pending or threatened against CONTRACTOR wherein an unfavorable decision, ruling or
15 finding, in any single case or in the aggregate would:

16 49.04.1 Materially adversely affect the performance by CONTRACTOR of
17 its obligations hereunder;

18 49.04.2 Adversely affect the validity or enforceability of this Agreement; or

19 49.04.3 Have a material adverse effect on the financial conditions of
20 CONTRACTOR, or any surety or entity guaranteeing CONTRACTOR'S performance under this
21 Agreement.

22 49.05 No Adverse Judicial Decisions. To the best of CONTRACTOR'S knowledge
23 after responsible investigation, there is no judicial decision that would prohibit this Agreement or
24 subject this Agreement to legal challenge.

25 49.06 No Legal Prohibition. To the best of CONTRACTOR'S knowledge after
26 reasonable investigation, there is no Applicable Law in effect on the date CONTRACTOR
27 signed this Agreement that would prohibit the CONTRACTOR'S performance of its obligations
28 under this Agreement and the transactions contemplated hereby.

29 49.07 CONTRACTOR'S Statements. The CONTRACTOR'S proposal and other
30 supplemental information submitted to the City, which the City has relied on in awarding and
31 entering this Agreement, do not: (i) contain any untrue statement of a material fact, or (ii) omit to
32 state a material fact that is necessary in order to make the statements made, in light of the
33 circumstances in which they were made, not misleading.

34 49.08 CONTRACTOR'S Investigation. CONTRACTOR has made an independent
35 investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement
36 and the work to be performed hereunder. CONTRACTOR has taken such matters into
37 consideration in entering this Agreement to provide services in exchange for the compensation
38 provided for under the terms of this Agreement.

39 49.09 Ability to Perform. CONTRACTOR possesses the business, professional, and
40 technical expertise to collect, transport, and process the Garbage, Recyclable Materials, Green
41 Waste/Organic Waste, and Bulky Waste generated in the CITY. CONTRACTOR possesses the
42 ability to secure equipment, facility(ies), and employee resources required to perform its
43 obligations under this Agreement.

1 IN WITNESS WHEREOF, the CITY and the CONTRACTOR have executed this Agreement on
2 the day and year first written above.

3

4 **CITY OF BENICIA**

CONTRACTOR

5

6

7

8 _____
9 Elizabeth Patterson Date
10 Mayor

Signature Date

11

12

Tim Argenti

13

14

15 _____
16 Brad Kilger Date
17 City Manager

General Manager, Allied Waste Services

18

19

City of Benicia Business License Number

20

21

22 **The foregoing Agreement has been reviewed and approval is recommended:**

23

24 Resolution No. 2011
25 Approved by City Council

26

27

28 **Approved as to Form:**

29

30

31 _____
32 Heather McLaughlin Date
33 City Attorney

34

35

36 **Attest:**

37

38

Lisa Wolfe Date
City Clerk

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Exhibit 1a MAXIMUM RATES -- SFD CUSTOMERS					
A. BASE COLLECTION SERVICE RATES					
Garbage Cart Sizes (gallons)		20	32	64	96
A1	Curbside Collection Monthly Customer Rate	\$21.38	\$25.29	\$30.97	\$42.71
A2	Subscription On-Premise Collection Monthly Customer Rate	\$29.38	\$33.29	\$38.97	\$50.71
A3	Senior Monthly Customer Rate	\$18.60	\$22.15	\$26.19	N/A
A4	Curbside Collection Monthly Customer Rate with Green Waste Exemption	\$16.38	\$20.29	\$25.97	\$37.71
B. ADDITIONAL SERVICES RATES					
B2	Additional Curbside Garbage Cart (added to Line A1)	\$14.92	\$18.83	\$24.51	\$36.25
B3	Additional On-Premise Garbage Cart (added to Line A2)	\$22.92	\$26.83	\$32.51	\$44.25
B4	Additional Senior Garbage Cart (added to Line A3)	\$14.20	\$17.86	\$23.43	\$34.52
B6	Additional Cart Exchange (over 1 per year)	\$0	each additional Garbage Cart/occurrence		
B7	Additional Cart Replacement (over 1 per year)	\$0	each additional Garbage Cart/occurrence		
B8	Additional Large Item Collection (over 2 collections/year)				
Item		Cost			
Twin Mattress		\$40.00			
Twin Box Spring		\$40.00			
Double Mattress		\$40.00			
Double Box Springs		\$40.00			
Queen Mattress		\$40.00			
Queen Box Springs		\$40.00			

Exhibit 1a MAXIMUM RATES -- SFD CUSTOMERS	
King Mattress	\$40.00
King Box Springs	\$40.00
Stove	\$50.00
Dryer	\$50.00
Washer	\$40.00
Dishwasher	\$50.00
Hot Water Heater	\$50.00
Sofa/Couch	\$40.00
Hide-a-Bed	\$40.00
Refrigerator (pick up & Freon removal)	\$100.00
Freezer (pick up & Freon removal)	\$100.00
Air Conditioner (pick up & Freon removal)	\$100.00
Swamp Cooler	\$40.00
TV's	\$25.00
Computer Monitor	\$25.00
Large TV Consoles	\$40.00
E-WASTE (3 pieces)	\$5.00
Tires (smaller than 19")	\$9.00
Tires (larger than 19")	\$14.00
Extra 32 gal Bags	\$10.00

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Exhibit 1b MAXIMUM RATES – COMMERCIAL & MFD CUSTOMERS						
A. Garbage Collection (includes Recycling Collection)						
Container Size	Collection Frequency					
	1X Week	2X Week	3X Week	4X Week	5X Week	6/Week
32 Gallon	\$27.48	\$54.96	\$82.44	\$109.91	\$137.39	\$164.87
64 Gallon	\$31.71	\$63.42	\$95.13	\$126.84	\$156.56	\$190.28
96 Gallon	\$46.78	\$93.56	\$140.33	\$187.11	\$233.89	\$280.67
1 CY Bin	\$119.21	\$191.74	\$287.53	\$383.41	\$479.26	N/A
2 CY Bin	\$152.54	\$305.07	\$457.60	\$610.13	\$762.66	N/A
3 CY Bin	\$228.75	\$457.55	\$686.27	\$915.02	\$1,143.81	N/A
4 CY Bin	\$302.56	\$605.13	\$907.69	\$1,210.24	\$1,512.81	N/A
5 CY Bin	\$374.87	\$749.76	\$1,124.63	\$1,499.49	\$1,874.39	N/A
6 CY Bin	\$449.85	\$899.70	\$1,349.55	\$1,799.42	N/A	N/A
8 CY Bin	\$599.96	\$1,199.91	\$1,799.90	\$2,399.84	\$2,999.80	N/A
B. Green Waste/Organics Collection						
32 Gallon	\$10.69	\$21.38	\$32.07	N/A	N/A	N/A
64 Gallon	\$12.65	\$25.29	\$37.94	N/A	N/A	N/A
96 Gallon	\$15.48	\$30.97	\$46.45	N/A	N/A	N/A
1 CY Bin	\$59.61	\$95.87	\$143.77	\$191.71	\$239.63	N/A
2 CY Bin	\$76.27	\$152.54	\$228.80	\$305.07	\$381.33	N/A
3 CY Bin	\$114.38	\$228.78	\$343.14	\$457.51	\$571.91	N/A
4 CY Bin	\$151.28	\$302.57	\$453.85	\$605.12	\$756.41	N/A
5 CY Bin	\$187.44	\$374.88	\$562.32	\$749.75	\$937.20	N/A
6 CY Bin	\$224.93	\$449.85	\$674.78	\$899.71	N/A	N/A
C. Additional Services						
Cart or Bin Cleaning	Each Occurrence					
	Cart \$0	1 – 4 CY Bin Size \$0		5+ CY Bin Size \$0		
Additional Bin Exchange		\$0		each additional bin/occurrence		
Additional Bin Replacement		\$0		each additional bin/occurrence		

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Exhibit 1c MAXIMUM SERVICE RATES – SFD, MFD AND COMMERCIAL DEBRIS BOX SERVICES			
Debris Box - 8, 10, 15, 20, 30, 40 CY BOX		\$431.37	Per Pull (included 1 ton of material)
Compactor - 8, 10, 15, 20, 30, 40 CY Compactor		\$337.00	Per Pull (includes 1 ton of material)
Disposal Charge Per Ton	\$77.97	Disposal Facility	Keller Canyon
Green Waste/Organic Waste Processing Charge Per Ton	\$77.97	Green Waste/Organic Waste Facility	Keller Canyon/Newby Island/CCL Organics
Mixed C&D, Inerts, Green Waste, Wood Waste Processing Charge Per Ton	\$77.97	Materials Recovery Facility	Contra Costa Transfer and Recovery
Notes:			
Demurrage Per Charge (not dumped every 7 days)		\$100.00	Per week
Per hour Stand-by Charge (box not ready to be pulled)		\$0	Per hour
Saturday Service		N/A	Per Pull
Charge for Opening Locked Gate		\$0	Per month
All 8, 10, 20, 30, 40 CY Debris Boxes and Compactors are pull rates only; disposal or processing will be based on actual disposal or processing and the Franchise Fee as established in Article 4 calculated on the Gross Receipts per box (including collection, processing or disposal). The total customer rate will be the total cost for the collection, processing or disposal and the franchise fee.			

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Exhibit 1d MAXIMUM RATES -- EMERGENCY SERVICE RATES - EMPLOYEES	
Labor Position	Hourly Rate
Driver	\$52.50

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Exhibit 1e MAXIMUM RATES -- EMERGENCY SERVICE RATES - EQUIPMENT		
Labor Position or Equipment Type	Make & Model	Hourly Rate
Route Vehicles	2010 AutoCar	\$50.00
Transfer Station Loader	2005 Caterpillar	\$125.00

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Exhibit 2 CITY SERVICE UNITS		
The following are the facilities that shall receive free Collection Services.		
Building / Facility	Estimated Service Level	
1. Benicia CITY Buildings/Facilities	Address	(Collection at least weekly)
Corporation Yard	2400 E. 2 nd Street	1 - 2yd 1x/wk 1 - 2yd 1x/wk 2 - 2yd 2x/wk 1 - 2yd 1x/wk recycle 1 - 96 gal 1x/wk recycle 6 - 96 gal 1x/wk recycle
Wastewater	614 E. 5 th Street	7 - 96 gal carts 1x/wk 4 - 2yd 1x/wk 1 - 3yd 1x/wk 1 - 96 gal cart 1x/wk recycle 1 - 2yd 1x/wk recycle
Water Treatment Plant	Lake Herman Road	1 - 6yd 1x/wk 1 - 2yd 1x/wk 1 - 2yd 1x/mo recycle or as needed 2 - 64 gal carts 2x/mo recycle or as needed
Maria Ribeiro Field	340 East I Street	5 - 64 gal carts 1x/wk
James Lemos Swimming Pool	181 East J Street	1 - 64 gal cart 2x/wk 1 - 6yd 1x/wk 1 - 1yd 3x/wk 2 - 96 gal carts 1x/wk recycle
1 st Street cans	1 st Street	96 gal carts 2x/wk
Fire Station #1	150 Military West	3 - 96 gal carts 2x/wk

Exhibit 2 CITY SERVICE UNITS		
The following are the facilities that shall receive free Collection Services.		
Building / Facility	Estimated Service Level	
		2 - 64 gal carts 1x/wk recycle 4 - 96 gal carts 1x/wk recycle 1 - 96 gal 1x/wk yard waste
Fire Station #2	601 Hastings Drive	1 - 1yd 1x/wk 4 - 64 gal 1x/wk recycle 3 - 96 gal carts 1x/wk recycle
Senior Citizens Center	1201 East 2 nd Street	3 - 96 gal carts 2x/wk 1 - 96 gal cart 1x/wk recycle
9 th Street Park	9 th Street	8 - 64 gal carts
Eunice Jensen Park	E. 2 nd and L Street	1 - 64 gal cart 1x/wk
Fitzgerald Field	E. 3 rd and East I E. H and E. 2 nd Street	2 - 4yd 2x/wk
Civic Center Park	155 East K Street	2 - 64 gal carts 2x/wk
Police Department	200 East L Street	2- 96 gal carts 1x/wk recycle
City Attorney	240 East L Street	1 - 96 gal 1x/wk recycle
City Hall	250 East L Street	1 - 6yd 2x/wk 1 - 2yd 1x/wk recycle 2 - 64 gal carts 1x/wk recycle
City Cement cans	First Street	35 - 32 gal carts 3x/wk
Francesca Terrace Park	Hillcrest Drive	3 - 64 gal carts 1x/wk
Southampton Park	Panorama Drive	2 - 64 gal carts 1x/wk
Point Benicia Pier	Point Benicia	6 - 64 gal carts 1x/wk
City Cemetery	Riverhill Drive	3 - 64 gal carts 1x/wk

Exhibit 2 CITY SERVICE UNITS		
The following are the facilities that shall receive free Collection Services.		
Building / Facility	Estimated Service Level	
Overlook Park	Seaview Drive	1 - 64 gal cart 1x/wk
Benicia Middle School Athletic Field	1100 Southampton Road	1 - 4yd 1x/wk
Y Wives End Park	West I Street and West 4 th Street	1 - 64 gal cart 1x/wk
City Park	West I Street and West 2 nd Street	8 - 64 gal carts 1x/wk
Willow Glen Park	West K Street and West 7 th Street	1 - 64 gal cart 1x/wk
12 th Street Park	West K Street	4 - 64 gal carts 1x/wk
Jack London Park	Rose and Hastings	1 - 2yd 1x/wk
Lake Herman Park	7 Lake Herman Road	1 - 2yd 1x/wk
Youth Center	150 East K Street	1 - 1yd 1x/wk 1 - 64 gal 1x/wk recycle
Semples Crossing	290 Semple Crossing	1 - 64 gal 1x/wk
Clocktower	1189 Washington St.	3 - 6yd 3x/wk
Camel Barn Museum	2090 Camel Road	1 - 4yd 1x/wk 1 - 1yd 1x/wk recycle
Library	150 East L Street	1 - 2yd 1x/wk 1 - 2yd 1x/wk recycle 2 - 96 gal carts 1x/wk recycle
Benicia Fire Museum	900 East Second Street	1 - 2yd 1x/wk

Exhibit 2 CITY SERVICE UNITS			
The following are the facilities that shall receive free Collection Services.			
Building / Facility	Estimated Service Level		
		# Roll-Off Boxes	Service Level
Corporation Yard	2400 East 2 nd Street	3 (Garbage)	3x/wk
Corporation Yard	2400 East 2 nd Street	1 (Green Waste)	On-Call
Corporation Yard	2400 East 2 nd Street	1 (dirt only)	On Call
Corporation Yard	2400 East 2 nd Street	1 (cardboard)	3x/wk
Benicia Community Center	370 East L Street	2- 5CY Bins	2x/wk
Benicia Community Park	Dempsey Drive	1	Wednesday
Seasonal Use Containers			
Coastal Clean-Up Day			
Annual Spring Clean-Up			
Tree Lighting / Merchant Open House			
Art and Jazz Festival			
Peddler's Fair			
Depot			
Commandant's Residence			
Fourth of July Parade/Picnic			
Handicraft Fair			
The City reserves the right to amend the above listing of facilities and to request specific number and type of containers at each facility as the locations and needs of City facilities change per mutual agreement with CONTRACTOR.			

Exhibit 2 CITY SERVICE UNITS		
The following are the facilities that shall receive free Collection Services.		
Building / Facility	Estimated Service Level	
Bus Shelters		
<i>Address</i>	<i># of Containers</i>	
100 Military West	1	
3. Benicia Unified Public School District		
School	Garbage	Recycling / Green Waste/Organics
Robert Semple 2015 East 3rd Street	2- 6 CY Bin collected Weekdays and Fridays	Recycling and Green Waste/Organics containers in common areas, administration and maintenance buildings, and classrooms, gyms, playground, athletic facilities. Recycling is collected on Fridays Number, size of collection containers, and frequency of collection as needed, but as of 1/15/2001, there are 2 Recycle bins at Benicia High School, and one recycling bin ant each of the other schools.
Joe Henderson 650 Hastings Drive	2- 6 CY Bin collected Weekdays and Fridays	
Mary Farmar 901 Military West	2- 6 CY Bin collected Weekdays and Fridays	
Matthew Turner 540 Rose Drive	2- 6 CY Bin collected Weekdays and Fridays	
Benicia High School 1101 Military West	4- 6 CY Bin collected Weekdays and Fridays	
Benicia Middle School 1100 Southampton Road	2- 6 CY Bin collected Weekdays and Fridays	
Liberty High 350 East K Street	1- 6 CY Bin collected Weekdays and Fridays	
5. Annual Community Cleanup Events		
Clean-up events to be designated by the CITY	§ As specified in Section 10.02	
6. CITY Directed Code Enforcement		

Exhibit 2 CITY SERVICE UNITS	
The following are the facilities that shall receive free Collection Services.	
Building / Facility	Estimated Service Level
Various locations throughout the CITY	§ As specified in Section 10.02.
7. E-Waste and U-Waste Collection	
CITY buildings designated by the CITY	§ On-call collection as needed for CITY generated E-Waste and U-Waste (not open for public drop-off)

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Exhibit 3 APPROVED FACILITIES
Keller Canyon Landfill 901 Bailey Road Pittsburg, CA 94565
Contra Costa Transfer and Recovery 951 Waterbird Way Martinez, CA 94553
Pacific Rim Recycling 3690 Sprig Drive Benicia, CA 94510
EBMUD 375 11th Street Oakland, CA 94607
Newby Island Recovery Facility 1601 Dixon Landing Road Milpitas, CA 95035
Golden Bear Transfer Station 1 Parr Blvd. Richmond, CA 94801
West County Resource Recovery 101 Pittsburg Ave. Richmond, CA 94801

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Exhibit 4 APPROVED SUBCONTRACTORS
<ol style="list-style-type: none">1. Curbside Inc.2. Pacific Rim Recycling3. Universal Building Services

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Exhibit 5 CITY-SPONSORED EVENTS	
The following are the CITY Sponsored Community events that shall receive free services.	
Event/Activity	Estimated Service Level
Coastal Clean-Up Day	As needed
Annual Spring Clean-Up	As needed
Tree Lighting / Merchant Open House	As needed
Art and Jazz Festival	As needed
Peddler's Fair	As needed
Depot	As needed
Commandant's Residence	As needed
Fourth of July Parade/Picnic	As needed
Handicraft Fair	As needed

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Exhibit 6	
CITY STREET SWEEPING SCHEDULE AND TERMS	
<p>The following streets that the CONTRACTOR shall provide Street Sweeping Service as set below. CITY Streets have been divided into four classes:</p> <ul style="list-style-type: none"> I. Residential Streets and Parks Parking Lots II. Major Arterial Streets III. Industrial Park Streets IV. Downtown Area Streets <p>The Residential Area Streets (Area 1) are further subdivided into Sections 1-5, which streets in said sections are depicted in a map in Attachment 1 of this Agreement and are incorporated herein by reference.</p>	
Sweeping Schedule	Estimated Service Level
I. Residential Areas & Parks Parking Lots	Once per month
Section 1	First Monday
Section 2	First Tuesday
Section 3	First Wednesday
Section 4	First Thursday
Section 5	First Friday
II. Major Arterial Streets	
Southampton Road	1x/wk
West 7 th Street	1x/wk
East 5 th Street (Hwy 780 –south end)	1x/wk
East 2 nd Street (Military East –Tennys)	1x/wk
Military (East and West)	1x/wk
West K Street (Highway 780 to West 6 th Street)	1x/wk
Claverie Way	1x/wk

Exhibit 6	
CITY STREET SWEEPING SCHEDULE AND TERMS	
West J Street (First Street to West 5 th Street)	1x/wk
III. Industrial Park Streets	Once per month
East 2 nd Street (Tennys to Lake Herman Road)	Third Tuesday
Park Road (Adams Street to East 2 nd Street)	Third Tuesday
Industrial Way (east 2 nd Street to Egret Court)	Third Tuesday
Egret Court	Third Tuesday
Stone Road (Park Road to East 2 nd Street)	Third Tuesday
Getty Court	Third Tuesday
Oregon Street	Third Tuesday
Goodyear Road	Third Tuesday
Bayshore Road (Park Road to ¼ mile South of Park)	Third Tuesday
East Channel Road	Third Tuesday
West Channel Road (curb areas only)	Third Tuesday
West Industrial Road	Third Tuesday
Camel Barn Road and parking area	Third Tuesday
Clocktower/Commandant's Rd. & parking area	Third Tuesday
Water Way/ Water Treatment Plant	Third Tuesday
Wastewater Treatment Plant	Third Tuesday
Corp Yard	Third Tuesday
IV. Downtown Area Streets	Two times per week
First Street (including First Street Peninsula)	Monday/Friday
City Hall	Monday/Friday
East K (1 st . – East 3 rd .)	Monday/Friday

Exhibit 6 CITY STREET SWEEPING SCHEDULE AND TERMS	
East 3 rd (East K – East L)	Monday/Friday
East L (East 3 rd . – East 2 nd .)	Monday/Friday
East 2 nd . (East L – Military East)	Monday/Friday

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Exhibit 7 HOUSEHOLD HAZARDOUS WASTE	
§	Water based latex paint
§	Auto batteries
§	Motor oil
§	Oil filters
§	Antifreeze
§	Fluorescent light bulbs
§	Household batteries and cell phones
§	Sharps (including needles, scalpels, blades, broken medical glass, broken capillary tubes, and ends of dental wires)
§	Pharmaceuticals
§	Cooking oil
§	Cleaning products, pesticides, herbicides, insecticides, painting supplies, automotive products, solvents, stripes, and adhesives
§	Universal Waste

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Exhibit 8 EXEMPT GREEN WASTE COLLECTION LOCATIONS	
§	Bay Vista
§	Bridgeview Heights I
§	Bridgeview Heights II
§	Bridgeview Heights III
§	Costa Vista
§	The Grove
§	Hampton Bay
§	Portside Village
§	Secluded Knolls
§	Villas of Benicia
§	Winward Cove

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Exhibit 9 ADDITIONAL PROGRAMS AND SERVICES PROVIDED BY CONTRACTOR
<ol style="list-style-type: none">1. Join and participate in associations promoting recycling and litter control.2. Make an annual donation of \$2,500 to the Benicia Human Services Fund.3. Sponsor Adopt-a-Highway on I-780

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Exhibit 10 CNG Powered Vehicle Replacement Schedule Specifications	
VEHICLE TYPE	NEW DATE OF CNG FUELED REPLACEMENT
Roll-off Vehicle	No later than December 31, 2015
Front Loader (1 vehicles)	In use as of January 15, 2011
Front Loader (1 vehicle)	No later than December 31, 2012
Automated Side Loaders (4 vehicles)	No Later than December 31, 2012

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Exhibit 12
SCHOOL RECYCLING PLAN

Each year, CONTRACTOR, will contact every school in the Benicia Unified School District to inform administrators, teachers and students of educational resources for schools. Information will be presented in assemblies and classrooms and printed materials will be made available.

Roll Out:

- § March 2011: CONTRACTOR will meet with Benicia Unified School District officials to determine level of solid waste and recycle service at each school and discuss process for contacting schools regarding recycling education programs. Discuss possibilities of school gardens.
- § March – April 2011: Conduct waste audits of current solid waste and recycle programs. Meet with each school's custodian staff. Conduct any necessary training.
- § April – May 2011: Meet with identified school contacts to discuss program and types of educational materials needed and best way to deliver programs and information.
- § March – June 2011: Develop educational materials (flyers, posters, stickers) needed for distribution beginning September 2011.
- § June 2011: Deliver containers to school sites.
- § September 2011: Launch educational programs. Identify teachers, students, organizations/clubs who can promote and campaign recycling programs in each school.

On Going:

- § Implement two (2) campaigns per year promoting diversion and participation.
- § Develop recognition program.
- § Identify materials to be diverted or reused and find disposal facilities.
- § Work with administrators, teachers, and students to promote and successfully implement recycling programs.
- § Encourage material exchange forum to be accessed and used by all schools.

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Exhibit 13

COMMUNITY OUTREACH PLAN

CONTRACTOR will develop, produce and distribute, with CITY input and approval, all public education materials listed in the Agreement as well as a roll out campaign for new services.

RESIDENTIAL

Roll out:

- § Cart Selection/New Services Brochure - May 2011: Will describe new services and rates. Will have a tear off postcard with postage paid for customers to select a new cart size and additional Recycle and Green Waste/Organic Waste Carts.
- § Bill insert – June 2011: Will describe new services and rates.
- § Reminder brochure – June 2011: Describes new rates and services. Reminds customer of new services start date.
- § Customer Guide – June 2011: Comprehensive brochure describing all services, cart sizes and rates with collection calendar.
- § Senior meetings – May/June 2011: Will notify seniors of two (2) scheduled community meetings to answer questions.
- § Info in newspaper and on website.
- § Form to request additional Recycle and Green Waste/Organic Waste Carts and to change Garbage Cart size on website.
- § Bill message – March 2011: Regarding new rates.
- § Meet with CITY staff to schedule Reuse Day and Home Compost Workshops. Put activities on calendar in Customer Guide mailed to residents.
- § September and December bill inserts with Reuse Day, Home Compost Workshops and other diversion information as well as other services and updates.

Ongoing:

- § Annual Customer Guide describing all services and rates.
- § Four (4) campaigns per year regarding diversion and participation. Will use bill inserts.
- § Schedule two (2) Reuse Days per year for increased diversion in coordination with local nonprofits/groups. Distribute Reuse Guide to participants for additional reuse disposal locations. Have Reuse Guide available on website.
- § Schedule four (4) Home Composting Workshops per year. Offer 50% on home Compost bins.
- § Maintain and update website with information and activities.
- § Coordinate activities with Sustainability Commission.
- § Bill insert for holiday tree collection that includes Benicia Boy Scouts tree collection schedule.
- § Informational bill messages.
- § Corrective notices used for improper set out of materials.

Exhibit 13
COMMUNITY OUTREACH PLAN

MULTIFAMILY

Roll out:

- § Contact multifamily customers March – June 2011 regarding new program: Conduct waste audit and site visit to evaluate space limitations for containers; determine recycle service level; schedule container delivery.
- § Manager/Owner Brochure – June 2011: Mail information to owner regarding new mandatory recycling program.
- § Tenant Brochure – June 2011: Information managers/owners can distribute to tenants regarding recycling program.
- § Move In Packets – July 2011: Create move in packets for managers to give to tenants describing recycling program and other services such as disposal of household hazardous materials.
- § July 2011: Continue waste audits and site visits. Contact owner/manager regarding service levels. Provide educational materials for tenants and common areas as needed.
- § Provide Recyclables Tote-Bags to tenants.
- § Corrective notices used for improper set out of materials.
- § Develop door hangers for tenant doors with recycling program details and availability of Recyclables Tote-Bags.

Ongoing:

- § Annual brochure for manager/owners regarding program.
- § Annual brochure for tenants regarding program.
- § Annual Move-In Kits for owners/managers to give to new tenants regarding program.
- § Continue waste audits. Prepare report for owners/managers and CITY on findings.
- § Distribute tenant Recyclables Tote-Bags.
- § Develop recognition program.

COMMERCIAL

Roll Out:

- § Contact commercial customers March – June 2011 regarding new program: Conduct waste audits; determine recycle service level; schedule container delivery.
- § June 2011: Mail program information to commercial customers who have a recycling program regarding new program and rate changes July 1.
- § May 2011: Mail program information to commercial customers who do not have a recycling

Exhibit 13

COMMUNITY OUTREACH PLAN

program regarding new program and rate changes July 1.

- § Brochure – June 2011: Mail information to businesses who do not have recycling regarding new mandatory recycling program.
- § Provide additional educational material as needed by commercial customers for their employees (stickers, signage, flyers).
- § Questionnaire – September 2011: Send out questionnaire to all commercial customers requesting information about their waste stream. Identify types of materials that may be reused or diverted. Create an exchange forum for these materials.
- § Food waste recycling will be promoted as soon as program is available. Separate educational materials, in-restaurant containers and technical assistance and training will be provided.

On Going:

- § Annual brochure for commercial customers regarding program.
- § Continue waste audits. Prepare report for owners/managers and CITY on findings.
- § Participate in business organizations and give presentations.
- § Provide educational material as needed (stickers, posters, flyers).
- § Will coordinate activities with Sustainability Commission.
- § Create and promote exchange forum for identifiable materials that would normally go into the waste stream.
- § Corrective notices used for improper set out of materials.
- § Develop recognition program.

Special Event Recycling

- § Will meet with CITY staff to discuss process for encouraging recycling at special events identified in this agreement.
- § Work with organizations to implement recycling at their events.

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Exhibit 14

LIST OF KEY AGREEMENT DATES

Notice of Delinquent Service (page 24) Notice of discontinued service due immediately to City Manager.

Franchise Fee (8% July 1, 2011; 9% July 1, 2012; 10% July 1, 2013) (page 25) Due on or before October 15, 2011 and quarterly thereafter every January 15, April 15, July 15 and October 15.

Vehicle Impact Fee (\$145,000.00 annually) (page 25) First payment due July 15, 2011 and on the 15th of each month thereafter.

Franchise Extension Fee (\$150,000.00 one-time fee and \$30,000 for 10 years) (page 26) One-time fee of \$150,000 due within thirty (30) days upon execution of this Agreement and \$30,000 on July 1st of each year beginning July 1, 2011 for a total of ten (10) years.

Negotiation Assistance Fee (page 26) One-time fee of \$25,000.00 due within thirty (30) days upon execution of this Agreement.

Tonnage Data (page 26) Due within thirty (30) days upon execution of this Agreement and on the 20th of each month thereafter.

Recyclables Revenue Share (50% of revenue received on amounts over \$100 per ton from sale of Recyclable Materials) (page 26) By July 15, 2012 and each subsequent July 15th

Diversion Requirements (page 27) By December 31, 2012 – minimum diversion of 55%; by December 31, 2013 – minimum diversion of 60%; by December 31, 2014 – minimum diversion of 65%; by December 31, 2015 – minimum diversion of 70%; by December 31, 2016 and each year thereafter – minimum diversion of 75%

Public Outreach and Education Services (page 48) By May 1st annually for the next Agreement Year

Annual Collection Service Notice (page 49) By November 1st annually of each Agreement Year

Big Belly Solar Compactor (page 40) Delivery by July 1, 2011

Equipment Inventory (page 46) Due within thirty (30) days upon execution of this Agreement and on July 1st annually thereafter

Quarterly Reports (page 50) Due twenty (20) calendar days after the end of the reporting quarter

Annual Reports (page 50) Due thirty (30) calendar days after the end of each proceeding calendar year

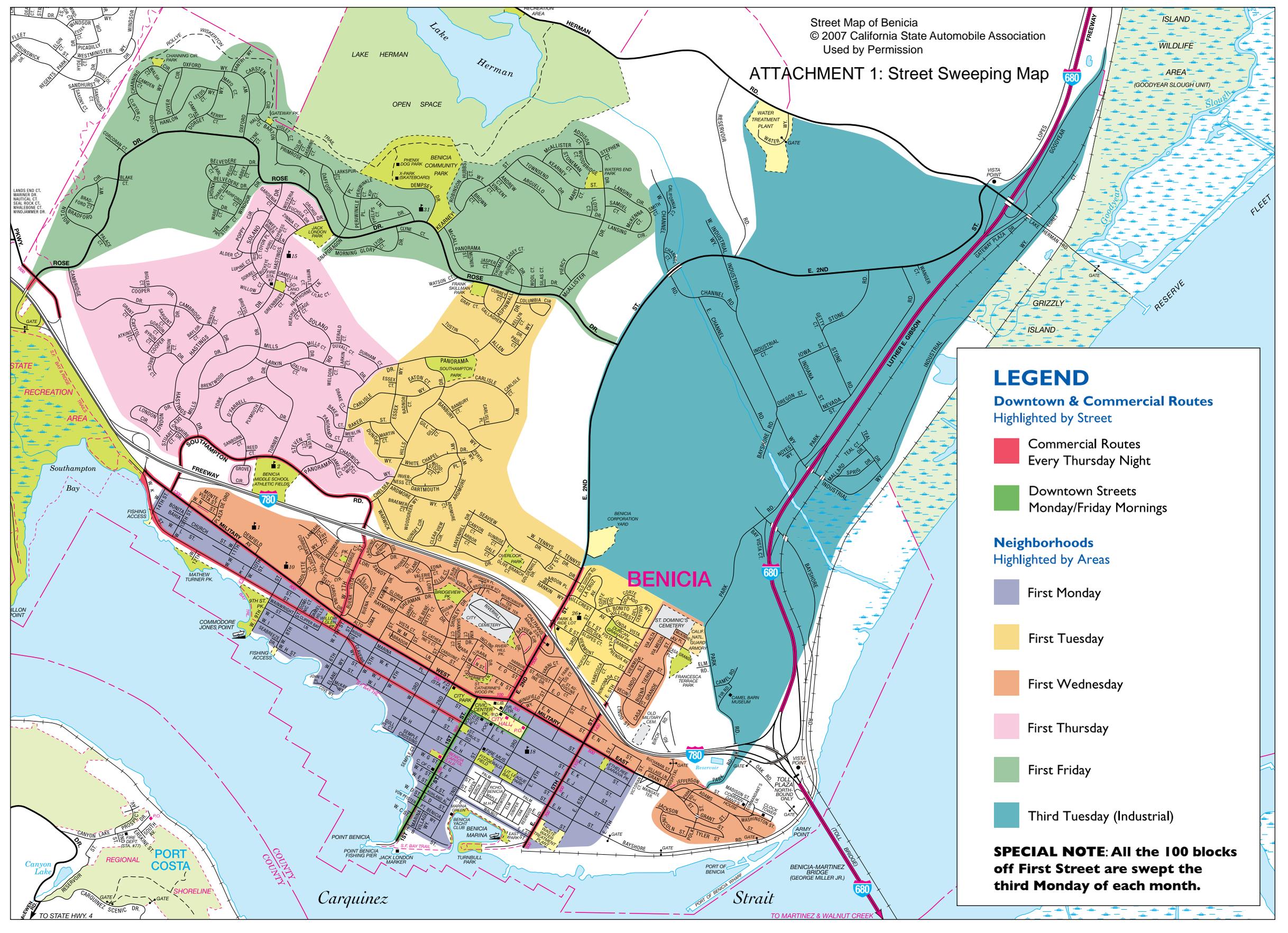
Performance Bond (\$500,000.00) (page 59) Due within fifteen (15) days upon execution of this Agreement

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ATTACHMENT 1: Street Sweeping Map



LEGEND

Downtown & Commercial Routes
Highlighted by Street

- Commercial Routes
Every Thursday Night
- Downtown Streets
Monday/Friday Mornings

Neighborhoods
Highlighted by Areas

- First Monday
- First Tuesday
- First Wednesday
- First Thursday
- First Friday
- Third Tuesday (Industrial)

SPECIAL NOTE: All the 100 blocks off First Street are swept the third Monday of each month.

SINGLE FAMILY RESIDENTIAL

	Current Agreement	Proposed Agreement	Section
Rates	20 gal N/A 32 gal \$24.09 64 gal \$28.15 96 gal \$38.83	20 gal \$21.38 32 gal \$25.29 64 gal \$30.97 96 gal \$42.71	Exhibit 1a
Increases	CPI not to exceed 5%	No increase until 7/13 for 20 and 32 gal. After that as noted below. 2.25%-4% per year until 7/14 2%-4% per year 7/15 & 7/16 not more than 4% after that	4.01.9

Single Family Residential Rate Comparison

City	Hauler	Cart Size				Frequency		Effective Date
		20	32	64	96	Recycling	Green Waste	
Albany	WM Alameda	22.13	24.77	42.82	60.87	Weekly	Weekly	1/11/2011
Benicia	Allied Waste Industries		24.10	28.16	38.84	Bi-Weekly	Bi-Weekly	8/1/2010
<i>Proposed curbside collection monthly customer</i>		21.38	25.29	30.97	42.71			
<i>Increase of:</i>			1.19	2.81	3.87			
Concord	Concord Disposal		23.00	31.00	38.00	Weekly	Weekly	1/10/2011
Dixon	Recology				24.95	Weekly	Weekly	1/11/2011
El Cerrito	East Bay Sanitary Company	27.09	38.10	74.57		Weekly	Bi-Weekly	1/11/2011
Fairfield	Solano Garbage Company		14.83	17.10	19.55	Weekly	Weekly	1/10/2011
Lafayette	Allied Waste Industries (Garbage) Valley WM (Recycling)	20.44	23.57	47.12	70.69	Weekly	Weekly	1/11/2011
		21.67	24.98	49.95	74.93	Weekly	Weekly	3/1/2011; pending CCCSWA Board approval on 1/27/11
Martinez	Allied Waste Industries	19.75	28.30	31.55	66.30	Weekly	Weekly	1/11/2011
Orinda	Allied Waste Industries (Garbage) Valley WM (Recycling)	24.28	28.01	56.02	84.03	Weekly	Weekly	1/11/2011
		26.66	30.75	60.78	91.17	Weekly	Weekly	3/1/2011; pending CCCSWA Board approval on 1/27/11
Pinole	Richmond Sanitary Services	24.35	29.09	51.44	74.52	Bi-Weekly	Bi-Weekly	1/1/2011
Pittsburg	Pittsburg Disposal Services		27.00	33.00	37.00	Weekly	Weekly	1/10/2011
Rio Vista	Rio Vista Sanitation Service		23.40	27.70	32.00	Bi-Weekly	N/A	1/10/2011
San Pablo	Richmond Sanitary Services	23.33	28.74	54.71	81.50	Bi-Weekly	Bi-Weekly	1/10/2011
Vacaville	Recology				24.52	Weekly	Weekly	1/11/2011
Vallejo	Recology Vallejo		31.74	51.52	71.28	Weekly	Weekly	1/10/2011
Walnut Creek	Allied Waste Industries (Garbage) Valley WM (Recycling)	14.19	17.00	33.99	50.99	Weekly	Weekly	1/11/2011
		14.86	17.80	35.59	53.39	Weekly	Weekly	3/1/2011; pending CCCSWA Board approval on 1/27/11

COMMERCIAL/INDUSTRIAL

	Current Agreement	Proposed Agreement	Section
Rates	Rates not regulated	See reverse side	Exhibit 1b
Increases	Increases not regulated	Rate Increases Capped by CPI 2.25%-4% per year until 7/14 2%-4% per year 7/15 & 7/16 not more than 4% after that	4.01.9
		Rates based on volume of trash to encourage recycling	
Services	Recycling is a separate fee service	Unlimited recycling included with trash service	
		Reduced rate for green/organic waste	
		Free waste assessment and survey	9.01.01
		Monthly sweeping of major industrial park roads	

Comparison of Commercial Rates Ranked Highest to Lowest

1 x/week 1 CY	
1	Pittsburg
2	Pinole
3	San Pablo
4	Orinda
5	Vallejo
6	Lafayette
7	Benicia (Proposed)*
8	Martinez
9	Clayton
10	Benicia (Current)
11	Albany
12	Walnut Creek
13	El Cerrito
14	Concord
15	Fairfield

1 x/week 2 CY	
1	Pinole
2	Orinda
3	San Pablo
4	Vallejo
5	Lafayette
6	Concord
7	Pittsburg
8	Martinez
9	Clayton
10	Albany
11	Walnut Creek
12	Fairfield
13	Benicia (Proposed)*
14	Benicia (Current)
15	El Cerrito

1 x/week 3 CY	
1	Orinda
2	Pinole
3	San Pablo
4	Lafayette
5	Vallejo
6	Martinez
7	Concord
8	Pittsburg
9	Albany
10	Walnut Creek
11	Clayton
12	Fairfield
13	Benicia (Proposed)*
14	Benicia (Current)
15	El Cerrito

1 x/week 4 CY	
1	Orinda
2	Pinole
3	Lafayette
4	San Pablo
5	Vallejo
6	Albany
7	Martinez
8	Walnut Creek
9	Benicia (Proposed)*
10	Fairfield
11	Benicia (Current)
12	Concord
13	Clayton
14	El Cerrito
15	Pittsburg

1 x/week 5 CY	
1	Pinole
2	San Pablo
3	Benicia (Proposed)*
4	Fairfield
5	Martinez
6	Benicia (Current)
7	Albany
8	Concord
9	Clayton
10	El Cerrito
11	Lafayette
12	Orinda
13	Pittsburg
14	Vallejo
15	Walnut Creek

1 x/week 6 CY	
1	Orinda
2	Pinole
3	Lafayette
4	San Pablo
5	Vallejo
6	Concord
7	Albany
8	Walnut Creek
9	Benicia (Proposed)*
10	Martinez
11	Fairfield
12	Benicia (Current)
13	Clayton
14	El Cerrito
15	Pittsburg

1 x/week 8 CY	
1	Orinda
2	Lafayette
3	Walnut Creek
4	Benicia (Proposed)*
5	Martinez
6	Benicia (Current)
7	Albany
8	Concord
9	Clayton
10	El Cerrito
11	Fairfield
12	Pinole
13	Pittsburg
14	San Pablo
15	Vallejo

2 x/week 1 CY	
1	Pittsburg
2	Pinole
3	San Pablo
4	Orinda
5	Vallejo
6	Lafayette
7	Clayton
8	Benicia (Proposed)*
9	Albany
10	Walnut Creek
11	Benicia (Current)
12	El Cerrito
13	Concord
14	Fairfield
15	Martinez

2 x/week 2 CY	
1	Orinda
2	Pinole
3	Lafayette
4	San Pablo
5	Vallejo
6	Concord
7	Pittsburg
8	Clayton
9	Albany
10	Martinez
11	Walnut Creek
12	Benicia (Proposed)*
13	Fairfield
14	Benicia (Current)
15	El Cerrito

2 x/week 3 CY	
1	Orinda
2	Pinole
3	Lafayette
4	San Pablo
5	Vallejo
6	Concord
7	Pittsburg
8	Albany
9	Walnut Creek
10	Clayton
11	Benicia (Proposed)*
12	Fairfield
13	Martinez
14	Benicia (Current)
15	El Cerrito

2 x/week 4 CY	
1	Orinda
2	Lafayette
3	Pinole
4	San Pablo
5	Vallejo
6	Albany
7	Pittsburg
8	Benicia (Proposed)*
9	Fairfield
10	Martinez
11	Benicia (Current)
12	Concord
13	Clayton
14	El Cerrito
15	Pittsburg

2 x/week 5 CY	
1	Orinda
2	Lafayette
3	Pinole
4	San Pablo
5	Walnut Creek
6	Benicia (Proposed)*
7	Fairfield
8	Benicia (Current)
9	Martinez
10	Albany
11	Concord
12	Clayton
13	El Cerrito
14	Pittsburg
15	Vallejo

2 x/week 6 CY	
1	Orinda
2	Lafayette
3	Pinole
4	San Pablo
5	Vallejo
6	Concord
7	Pittsburg
8	Walnut Creek
9	Benicia (Proposed)*
10	Martinez
11	Benicia (Current)
12	Fairfield
13	Albany
14	Clayton
15	El Cerrito

2 x/week 8 CY	
1	Orinda
2	Lafayette
3	Walnut Creek
4	Benicia (Proposed)*
5	Benicia (Current)
6	Martinez
7	Albany
8	Concord
9	Clayton
10	El Cerrito
11	Fairfield
12	Pinole
13	Pittsburg
14	San Pablo
15	Vallejo

3 x/week 1 CY	
1	Pittsburg
2	Pinole
3	Orinda
4	San Pablo
5	Vallejo
6	Lafayette
7	Clayton
8	Benicia (Proposed)*
9	Albany
10	Walnut Creek
11	Benicia (Current)
12	El Cerrito
13	Concord
14	Fairfield
15	Martinez

3 x/week 2 CY	
1	Orinda
2	Pinole
3	Lafayette
4	San Pablo
5	Vallejo
6	Concord
7	Pittsburg
8	Clayton
9	Albany
10	Walnut Creek
11	Benicia (Proposed)*
12	Fairfield
13	Martinez
14	Benicia (Current)
15	El Cerrito

3 x/week 3 CY	
1	Orinda
2	Lafayette
3	Pinole
4	San Pablo
5	Vallejo
6	Concord
7	Pittsburg
8	Albany
9	Walnut Creek
10	Clayton
11	Martinez
12	Benicia (Proposed)*
13	Fairfield
14	Benicia (Current)
15	El Cerrito

3 x/week 4 CY	
1	Orinda
2	Lafayette
3	Pinole
4	San Pablo
5	Vallejo
6	Albany
7	Walnut Creek
8	Benicia (Proposed)*
9	Benicia (Current)
10	Fairfield
11	Martinez
12	Clayton
13	Concord
14	El Cerrito
15	Pittsburg

3 x/week 5 CY	
1	Orinda
2	Lafayette
3	Pinole
4	San Pablo
5	Walnut Creek
6	Benicia (Proposed)*
7	Benicia (Current)
8	Fairfield
9	Martinez
10	Albany
11	Concord
12	Clayton
13	El Cerrito
14	Pittsburg
15	Vallejo

3 x/week 6 CY	
1	Orinda
2	Lafayette
3	Pinole
4	San Pablo
5	Vallejo
6	Concord
7	Pittsburg
8	Walnut Creek
9	Benicia (Proposed)*
10	Benicia (Current)
11	Martinez
12	Fairfield
13	Albany
14	Clayton
15	El Cerrito

3 x/week 8 CY	
1	Orinda
2	Lafayette
3	Walnut Creek
4	Benicia (Proposed)*
5	Benicia (Current)
6	Martinez
7	Albany
8	Concord
9	Clayton
10	El Cerrito
11	Fairfield
12	Pinole
13	Pittsburg
14	San Pablo
15	Vallejo

* Rates proposed by Allied on September 20, 2010 subject to change during the negotiation process.

Rates are current as of January 25, 2011, with the exception of Fairfield.

Comparison of Commercial Rates Ranked Highest to Lowest

4 x/week 1 CY	
Pittsburg	
Pinole	\$ 746.56
Orinda	\$ 728.28
San Pablo	\$ 687.40
Lafayette	\$ 662.35
Vallejo	\$ 656.28
Clayton	\$ 514.49
Benicia (Proposed)*	\$ 418.38
Walnut Creek	\$ 362.60
Benicia (Current)	\$ 358.98
El Cerrito	\$ 120.40
Albany	
Concord	
Fairfield	
Martinez	

4 x/week 2 CY	
1 Orinda	\$ 1,456.56
2 Pinole	\$ 1,333.44
3 Lafayette	\$ 1,293.31
4 San Pablo	\$ 1,232.73
5 Vallejo	\$ 1,165.21
6 Concord	\$ 980.50
7 Pittsburg	\$ 856.00
8 Clayton	\$ 791.99
9 Albany	\$ 789.92
10 Walnut Creek	\$ 725.20
11 Benicia (Proposed)*	\$ 665.80
12 Fairfield	\$ 627.55
13 Martinez	\$ 572.09
14 Benicia (Current)	\$ 571.25
15 El Cerrito	\$ 240.80

4 x/week 3 CY	
1 Orinda	\$ 2,184.84
2 Lafayette	\$ 1,910.98
3 Pinole	\$ 1,888.03
4 San Pablo	\$ 1,749.20
5 Vallejo	\$ 1,598.63
6 Concord	\$ 1,380.50
7 Pittsburg	\$ 1,204.00
8 Walnut Creek	\$ 1,087.80
9 Clayton	\$ 1,069.68
10 Benicia (Proposed)*	\$ 998.51
11 Fairfield	\$ 857.81
12 Benicia (Current)	\$ 856.72
13 Martinez	\$ 815.29
14 Albany	
15 El Cerrito	

4 x/week 4 CY	
1 Orinda	\$ 2,913.13
2 Lafayette	\$ 2,547.97
3 Pinole	\$ 2,426.48
4 San Pablo	\$ 2,251.24
5 Vallejo	\$ 2,073.37
6 Walnut Creek	\$ 1,450.41
7 Benicia (Proposed)*	\$ 1,320.65
8 Benicia (Current)	\$ 1,133.12
9 Fairfield	\$ 1,119.83
10 Martinez	\$ 1,087.11
11 Albany	
12 Concord	
13 Clayton	
14 El Cerrito	
15 Pittsburg	

4 x/week 5 CY	
1 Pinole	\$ 2,957.11
2 San Pablo	\$ 2,746.48
3 Benicia (Proposed)*	\$ 1,636.29
4 Benicia (Current)	\$ 1,403.94
5 Martinez	\$ 1,358.87
6 Fairfield	\$ 1,352.50
7 Albany	
8 Concord	
9 Clayton	
10 El Cerrito	
11 Lafayette	
12 Orinda	
13 Pittsburg	
14 Vallejo	
15 Walnut Creek	

4 x/week 6 CY	
1 Orinda	\$ 4,369.67
2 Lafayette	\$ 3,742.25
3 Pinole	\$ 3,484.82
4 San Pablo	\$ 3,422.98
5 Vallejo	\$ 2,960.04
6 Concord	\$ 2,579.50
7 Albany	\$ 2,369.76
8 Pittsburg	\$ 2,248.00
9 Walnut Creek	\$ 2,175.60
10 Benicia (Proposed)*	\$ 1,963.58
11 Benicia (Current)	\$ 1,684.75
12 Martinez	\$ 1,630.60
13 Fairfield	\$ 1,543.77
14 Clayton	
15 El Cerrito	

4 x/week 8 CY	
1 Orinda	\$ 5,826.24
2 Lafayette	\$ 4,989.67
3 Walnut Creek	\$ 2,900.82
4 Benicia (Proposed)*	\$ 2,618.78
5 Benicia (Current)	\$ 2,246.91
6 Martinez	\$ 2,174.15
7 Albany	
8 Concord	
9 Clayton	
10 El Cerrito	
11 Fairfield	
12 Pinole	
13 Pittsburg	
14 San Pablo	
15 Vallejo	

5 x/week 1 CY	
1 Pittsburg	
2 Pinole	\$ 919.78
3 Orinda	\$ 910.35
4 San Pablo	\$ 847.46
5 Lafayette	\$ 827.94
6 Vallejo	\$ 821.52
7 Clayton	\$ 643.03
8 Benicia (Proposed)*	\$ 522.98
9 Walnut Creek	\$ 453.25
10 Benicia (Current)	\$ 448.72
11 El Cerrito	\$ 150.50
12 Albany	
13 Concord	
14 Fairfield	
15 Martinez	

5 x/week 2 CY	
1 Orinda	\$ 1,820.70
2 Pinole	\$ 1,651.58
3 Lafayette	\$ 1,616.63
4 San Pablo	\$ 1,527.39
5 Vallejo	\$ 1,442.40
6 Concord	\$ 1,213.00
7 Pittsburg	\$ 1,059.00
8 Clayton	\$ 989.94
9 Walnut Creek	\$ 906.51
10 Benicia (Proposed)*	\$ 832.23
11 Fairfield	\$ 772.48
12 Benicia (Current)	\$ 714.06
13 Martinez	\$ 679.41
14 El Cerrito	\$ 301.00
15 Albany	

5 x/week 3 CY	
1 Orinda	\$ 2,731.06
2 Lafayette	\$ 2,388.72
3 Pinole	\$ 2,342.85
4 San Pablo	\$ 2,171.24
5 Vallejo	\$ 2,073.37
6 Concord	\$ 1,713.00
7 Pittsburg	\$ 1,494.00
8 Walnut Creek	\$ 1,359.76
9 Clayton	\$ 1,337.09
10 Martinez	\$ 1,308.80
11 Benicia (Proposed)*	\$ 1,248.16
12 Benicia (Current)	\$ 1,070.92
13 Fairfield	\$ 1,043.33
14 Albany	
15 El Cerrito	

5 x/week 4 CY	
1 Orinda	\$ 3,641.41
2 Lafayette	\$ 3,184.96
3 Pinole	\$ 3,014.16
4 San Pablo	\$ 2,797.15
5 Vallejo	\$ 2,564.56
6 Albany	\$ 1,974.80
7 Walnut Creek	\$ 1,813.01
8 Benicia (Proposed)*	\$ 1,650.83
9 Benicia (Current)	\$ 1,416.41
10 Fairfield	\$ 1,389.88
11 Martinez	\$ 1,358.87
12 Concord	
13 Clayton	
14 El Cerrito	
15 Pittsburg	

5 x/week 5 CY	
1 Pinole	\$ 3,676.06
2 San Pablo	\$ 3,414.96
3 Benicia (Proposed)*	\$ 2,045.39
4 Benicia (Current)	\$ 1,754.95
5 Martinez	\$ 1,698.57
6 Fairfield	\$ 1,660.86
7 Albany	
8 Concord	
9 Clayton	
10 El Cerrito	
11 Lafayette	
12 Orinda	
13 Pittsburg	
14 Vallejo	
15 Walnut Creek	

5 x/week 6 CY	
1 Orinda	\$ 5,462.09
2 Lafayette	\$ 4,677.82
3 Pinole	\$ 4,334.37
4 San Pablo	\$ 4,029.47
5 Vallejo	\$ 3,673.86
6 Concord	\$ 3,211.75
7 Pittsburg	\$ 2,799.00
8 Walnut Creek	\$ 2,719.51
9 Benicia (Proposed)*	\$ 2,454.47
10 Benicia (Current)	\$ 2,105.93
11 Martinez	\$ 2,038.26
12 Fairfield	\$ 1,902.06
13 Albany	
14 Clayton	
15 El Cerrito	

5 x/week 8 CY	
1 Orinda	\$ 7,282.80
2 Lafayette	\$ 6,237.09
3 Walnut Creek	\$ 3,626.02
4 Benicia (Proposed)*	\$ 3,273.47
5 Benicia (Current)	\$ 2,808.64
6 Martinez	\$ 2,717.72
7 Albany	
8 Concord	
9 Clayton	
10 El Cerrito	
11 Fairfield	
12 Pinole	
13 Pittsburg	
14 San Pablo	
15 Vallejo	

* Rates proposed by Allied on September 20, 2010 subject to change during the negotiation process.

Rates are current as of January 25, 2011, with the exception of Fairfield.



Keller Canyon Landfill

Keller Canyon Landfill is a Republic Services Company operating under local branding of Allied Waste Services. The landfill opened in 1992 and accepts nonhazardous solid waste.

Facility Size

Keller Canyon Landfill includes 244 acres permitted for disposal. The site currently handles approximately 3,000 tons of waste per day.

Landfill Design

The composite liner system at the landfill was designed to meet or exceed all state and federal regulations. The containment system consists of two feet of compacted clay covered by a high density plastic geomembrane. The landfill includes drainage controls and a system to collect and manage landfill liquids (leachate).

Groundwater Monitoring Systems

Groundwater is one of the most important concerns at any landfill and requires special monitoring. Groundwater monitoring wells (24) throughout the site ensure that landfill operations are not impacting groundwater. The wells and area springs are sampled and tested at various monthly, quarterly or annual intervals. Results are sent to the California Regional Water Quality Control Board. The site also has a sedimentation basin that is monitored during and after each rainfall or quarterly, whichever is greater.

Wetlands Management

Keller Canyon Landfill supports 7.21 acres of wetlands. The objective of the wetlands project is to increase the total amount of available habitat on the property by constructing new wetlands and enhancing existing wetlands and riparian habitat.

Landfill Gas

An extensive landfill gas collection system combined with a detailed monitoring plan ensures that no landfill gas migrates offsite. Landfill gas monitoring probes are located at 29 positions around the perimeter of the site to check for migrating gases.

Keller Canyon Landfill is now capturing landfill gas to generate 3.8 megawatts of electricity. The plant capturing the landfill gas was built and is operated by Ameresco, the largest independent energy service company in North America. Using engines from Western Energy Systems, the facility generates enough electricity to power nearly 2,200 homes. The electricity is used by the cities of Alameda and Palo Alto.

The impact of the renewable energy project is substantial. In addition to meeting the energy needs of local areas and businesses, the direct and avoided impacts are significant. Use of landfill gas rather than non-renewable sources has the clean air benefit equivalent to taking more than 29,700 passenger vehicles off the road. To have the same effect, you would have to plant nearly 37,000 acres of pine or fir trees. It is also equivalent to the use of 18.4 million barrels of oil.



Landfill Gas-To-Energy

Information on Landfill Gas-To-Energy Projects

Republic Services, Inc. operates more than 76 landfill gas-to-energy projects nationwide. These facilities capture a renewable resource (landfill gas) and put it to use as a green energy source. Republic’s facilities provide enough energy to meet the needs of 360,600 homes. Using this renewable energy source reduces emissions equivalent to taking more than 3.4 million cars off the road. To have the same effect, you would have to plant 4.1 million acres of pine or fir trees.

What is landfill gas (LFG)?

Landfill gas is created when organic waste in landfills decomposes. Garbage contains significant portions of organic materials that produce a variety of gaseous products inside landfills. Certain bacteria thrive in the landfill’s oxygen-free environment and aid in the decomposition process, which results in the production of gases—primarily carbon dioxide and methane (the principal component of natural gas). Carbon dioxide, which is soluble in water, is most likely to leave the landfill with liquids. Methane, on the other hand, which is less soluble in water and lighter than air, is likely to migrate out of the landfill as a gas. Instead of allowing the gas to escape into the air, it can be captured, converted, and used as an energy source.

How can landfill gas be used for energy?

Landfill gas is a readily available, local, renewable energy source that offsets the need for non-renewable resources such as coal and oil. LFG is the only renewable energy source that, when used, directly prevents atmospheric pollution. LFG can be converted and used in many ways: to generate electricity, heat, or steam; as an alternative vehicle fuel to power fleets like buses, taxis, and mail trucks; or in niche applications like microturbines, fuel cells and greenhouses.

- Of the nearly 2,400 or so currently operating, or recently closed, municipal solid waste landfills in the United States, about 445 have LFG utilization projects.
- According to the U.S. Environmental Protection Agency (EPA), in 2007, landfill gas-to-energy projects prevented the release of more than 21 million metric tons of carbon equivalent into the atmosphere. This equivalent to the annual greenhouse gas emissions of more than 14 million passenger vehicles and has the same environmental benefit as preventing the carbon dioxide emissions from the consumption of nearly 182 million barrels of oil. (www.epa.gov/lmop/accomplish.htm)



Keller Canyon Renewable Energy Project Impacts

2,200 area homes served

Equivalent to:
29,700 passenger vehicles off the road
 Or
37,000 acres of pine or fir trees planted
 Or
18.4 million barrels of oil no longer needed



What are the environmental benefits of using landfill gas as an energy resource?

Converting LFG to energy offsets the need for non-renewable resources such as coal and oil, and reduces emissions of air pollutants that contribute to local smog and acid rain. LFG projects go hand-in-hand with community commitments to cleaner air and reductions in greenhouse gases.

What are the economic benefits of using landfill gas as a resource?

Landfill gas projects are a win-win opportunity for all parties involved, whether they are the landfill owner/operators, the local utility, the local government, or the surrounding community. LFG projects also create jobs. They involve engineers, construction firms, equipment vendors, and utilities or end-users of the power produced. Much of this cost is spent locally for drilling, piping, construction, and hiring operational personnel, providing additional economic benefits to the community through increased employment and local sales. Once the LFG system is in place, the captured gas can be used as heat source or fuel or be converted to “green” power.

What are the other benefits of using landfill gas as an energy resource?

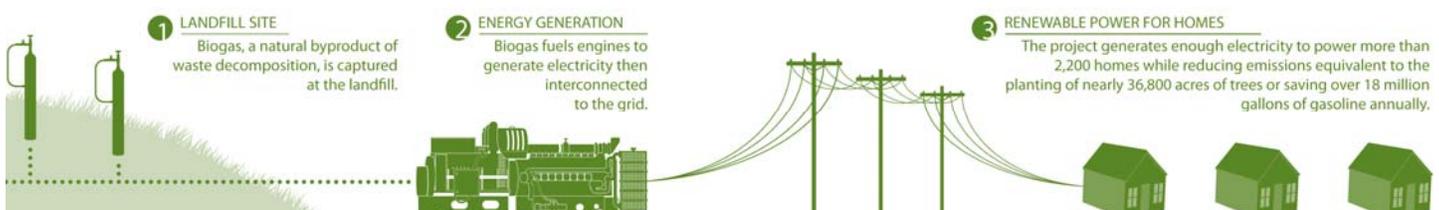
By participating in LFG project development, a community is being innovative and responsible with local resources, and can even enhance its image as an environmental leader. A community that uses its LFG is both a steward of the environment and a leader in ensuring the well being of its citizens.

Who uses recovered landfill gas?

Almost any entity can use LFG for a variety of purposes. One option is for utilities and power providers to purchase the electricity generated from the recovered LFG. Purchasing LFG enables utilities and power providers to add a renewable energy component to their energy portfolios. In addition, any entity (including municipalities, local industrial customers, and other organizations) that has a need for a direct and constant power supply is a good candidate for LFG use. Landfill gas can be piped directly to a nearby facility for use as either a boiler or an industrial process fuel. Direct use of LFG is reliable and requires minimal processing and minor modifications to existing combustion equipment.

Are landfill owners/operators required to develop LFG energy projects?

Current EPA regulations under the Clean Air Act require many landfill owners/operators to collect and combust LFG. To comply, landfill owners/operators can either burn the gas off, by flaring it, or install an LFG energy system.





About Republic Services, Inc.

Republic Services, Inc. is a leading provider of services in the domestic, non-hazardous solid waste industry. The Company provides recycling and solid waste collection, processing and disposal services for commercial, industrial, municipal, and residential customers through 427 collection companies in 40 states. It also owns operates 242 transfer stations, 213 solid waste landfills and 79 recycling facilities. Republic serves millions of residential customers under contracts with more than 3,000 municipalities for waste collection and residential services. It also serves commercial customers throughout its expansive service area. For more information, visit the Republic Services Web site at www.republicservices.com.

Environmental Sustainability

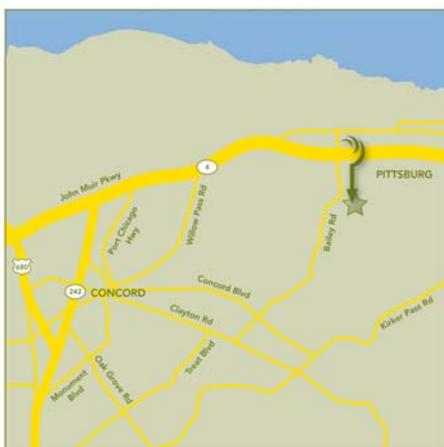
Republic Services is committed to employing the best environmental practices in all facets of our Company's operations. Environmental responsibility *is* our business. We actively pursue projects that improve the environment and help customers meet their sustainability goals.

We operate 78 recycling facilities nationwide and recycled more than 3.5 million tons of materials in 2008. We have made investments at more than one-third of our landfills to generate renewable energy. We operate the fifth largest vocational fleet of vehicles in the nation. To minimize the impact of our trucks on the road, we have: cut our oil use by one-third in many of our vehicles, invested in natural gas vehicles (more than 200 to date), and transferred to cleaner burning biodiesel fuel (on more than 450 trucks to date).

For more information on our sustainability efforts or to download our Sustainability Report, visit www.republicservices.com/sustainability.

For More Information Or To Visit Keller Canyon Landfill

Rick King, General Manager
Keller Canyon Landfill
901 Bailey Road
Pittsburg, CA 94565
Phone: (925) 458-9800
Fax: (925) 458-9891
www.alliedwasteservicesofcontracostacounty.com

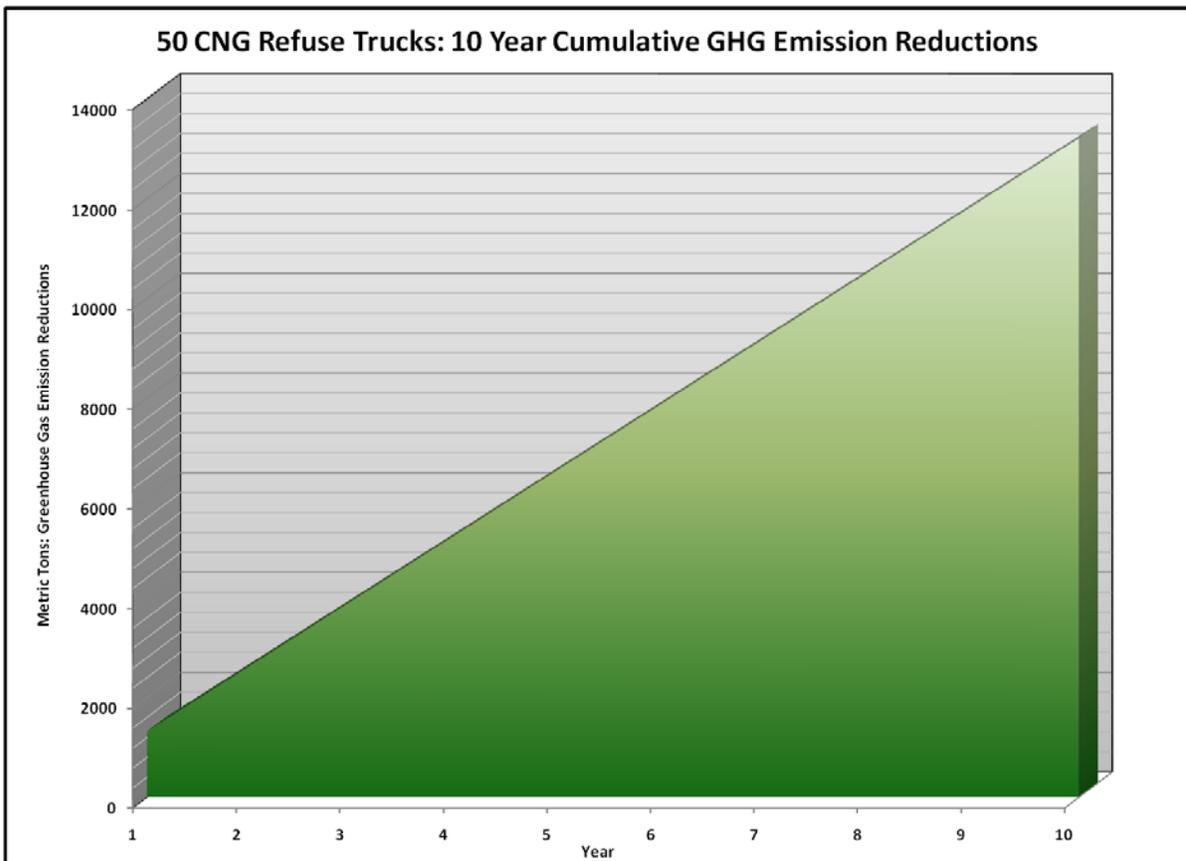


CNG Refuse Trucks Greenhouse Gas Reductions: Natural gas is the cleanest choice of fuel available today for this market. Natural gas powered vehicles produce up to 22.8% fewer greenhouse gas emissions¹ than comparable diesel models². This refuse fleet operates 50 diesel trucks and each truck consumes an average of 9,100 diesel gallons per year. Collectively, this fleet consumes an estimated 455,000 diesel gallons every year.

Based on this use, if this fleet converted to compressed natural gas (CNG), **1,321.06 metric tons of greenhouse gas emissions would be reduced annually**, a total of 13,210.6 metric tons of greenhouse gas emissions reduced over a 10-year project life!³

Annual Greenhouse Gas Emission Reductions (measured in metric tons)	
Per Vehicle	26.42
Fleet Total (50 Trucks)	1,321.06

Emissions reductions were determined utilizing California Air Resource Board GREET Pathway for CNG



¹ "Detailed California-Modified GREET Pathway for Compressed Natural Gas (CNG) from North American Natural Gas" California Air Resources Board, January 12, 2009

² "Detailed California-Modified GREET Pathway for Ultra Low Sulfur Diesel (USLD) from average Crude Refined In California" California Air Resources Board, January 12, 2009.

³ Assuming 50 Refuse trucks, each truck consumes 9,100 DEG per year using the ISL-G engine with compressed natural gas.

AGENDA ITEM
CITY COUNCIL MEETING DATE - FEBRUARY 1, 2011
PUBLIC HEARINGS

DATE : January 5, 2011
TO : City Council
FROM : City Attorney
SUBJECT : **MEDICAL MARIJUANA DISPENSARIES BAN**

RECOMMENDATION:

Introduce the ordinance to prohibit medical marijuana dispensaries except in limited, specified licensed facilities.

EXECUTIVE SUMMARY:

In 2009, the City Council adopted a moratorium on the establishment of medical marijuana dispensaries and hookah lounges. This was in response to an inquiry regarding opening a medical marijuana dispensary. Like many cities, Benicia has a “permissive” zoning system, under which any use—including medical marijuana dispensaries—that is not expressly enumerated as a permitted use is deemed to be prohibited. Thus, although the Benicia Municipal Code does not specifically regulate such dispensaries, the City’s practice has always been to deem dispensaries prohibited. Nevertheless, the City adopted the previous moratorium to make this policy explicit. Since the moratorium is due to expire, permanent rules should be enacted. The Planning Commission considered this ordinance at their January 26, 2011 meeting. Their recommendation will be presented at the Council meeting.

ENVIRONMENTAL REVIEW:

Pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3) this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

GENERAL PLAN:

Relevant General Plan Goals and Policies include:

- Goal 2.1: Preserve Benicia as a small-sized city
 - POLICY 2.1.1: Ensure that new development is compatible with adjacent existing development and does not detract from Benicia’s small town qualities and historic heritage, (and to the extent possible, contributes to the applicable quality of life factors noted

above.)

- POLICY 2.1.2: Make efficient use of land in new development areas consistent with the surrounding neighborhood.
- ❑ Goal 2.3: Ensure orderly and sensitive site planning and design for large undeveloped areas of the City, consistent with the land use designations and other policies in this General Plan
- ❑ Goal 2.5: Facilitate and encourage new uses and development which provides substantial and sustainable fiscal and economic benefits to the City and the community while maintaining health, safety, and quality of life.

STRATEGIC PLAN:

Relevant Strategic Plan Goals and Strategies: None.

BUDGET INFORMATION:

If Council introduces the ordinance to prohibit most medical marijuana dispensaries (“MMD”) in the City, the costs to the City to implement this would be minimal.

If Council were to direct staff to introduce an ordinance to permit MMDs in the City, it is estimated that staff time for the audits and inspections could cost up to \$60,000 annually (this estimate is based on a fee study used by the City of Oakland to implement charges for auditing and inspecting operating MMDs). Some cities require significant fees paid by MMD operators for the review of plans and operations, as well as to enforce specific regulations.

In either case, of course, the ordinance may be challenged by people acting contrary to the ordinance or in court. The City would then incur code enforcement and court costs.

BACKGROUND:

The City enacted a moratorium on medical marijuana facilities in 2009 in order to allow the City more time to study the issue. The moratorium prohibited all medical marijuana facilities except in specific limited circumstances. Specifically, the City was waiting for court decisions such as *Qualified Patients Assoc. v. City of Anaheim* to address whether, as asserted by some marijuana advocacy groups, local ordinances regulating or prohibiting marijuana dispensaries were preempted by the State’s laws on medical marijuana, namely the Compassionate Use Act (“CUA”) and the Medical Marijuana Program Act (“MMPA”). Unfortunately, the Court in that case did not answer that question.

As noted above, while medical marijuana dispensaries are not uses defined in the Benicia Municipal Code, like many cities Benicia has what is known as a “permissive” zoning system, under which any use—including medical marijuana

dispensaries-- that is not expressly enumerated as a permitted use is deemed to be prohibited. Thus, although the Benicia Municipal Code does not specifically define or regulate such dispensaries, the City's practice has always been to deem dispensaries to be prohibited. It is Staff's recommendation, however, that the City's residents would benefit from an ordinance that expressly addresses the issue.

The passage of Proposition 215 ("The Compassionate Use Act of 1996" or "CUA") and the adoption of SB 420 ("the Medical marijuana Program Act" or "MMPA") in 2003 has increased the interest in opening medical marijuana dispensaries. The CUA allows a person to use marijuana for medicinal purposes without criminal liability as long as a doctor so recommends. The MMPA established regulations related to medical marijuana. The regulations include a voluntary program for identification cards for qualified patients and primary caregivers, limits on the amount of marijuana per qualified patient, and confidentiality and privacy restrictions. Neither the CUA nor the MMPA, however, addresses the issue of whether cities may use their zoning/land use authority to prohibit or regulate dispensaries. The only Court that has been presented the question, *City of Claremont v. Kruse*, has held that neither the CUA nor the MMPA preempts cities from doing so. Again, the Court in the Anaheim case expressly declined to rule on that issue.

Under federal law (the Controlled Substances Act ("CSA")), the cultivation, possession and/or use of marijuana are illegal. It is still unlawful to possess, transfer, or use marijuana under California law, unless one can prove that he or she is a qualified patient or caregiver, under the CUA. Although the CUA appears to conflict with Federal law which clearly states that possession, use and sale of marijuana is illegal, California courts such as the Court in the Anaheim case, have ruled that the federal CSA does not preempt either the CUA or the MMPA.

Medical marijuana dispensaries ("MMDs") are not specifically defined under the Municipal Code. In the zoning ordinance, Section 17.16.010 allows the community development director to determine how an undefined use is classified.¹ Again, under the City's "permissive" zoning system, uses that are not expressly enumerated as permitted are deemed to be prohibited. Two

¹ 17.16.010 Purpose and applicability.

Use classifications describe one or more uses having similar characteristics, but do not list every use or activity that may appropriately be within the classification. The community development director shall determine whether a specific use shall be deemed to be within one or more use classifications or not within any classification in this title. The community development director may determine that a specific use shall not be deemed to be within a classification, whether or not named within the classification, if its characteristics are substantially incompatible with those typical of uses named within the classification.

appellate cases have upheld cities' right to prohibit medical marijuana dispensaries on this basis. (*City of Corona v. Naulls*; *City of Claremont v. Kruse*.) Nevertheless, since a medical marijuana dispensary is not specifically defined in the zoning provisions of the Benicia Municipal Code, potential applicants for a MMD may wish to claim the use is similar to a pharmacy, medical office, or miscellaneous retail use and might assert that operation of a medical marijuana dispensary should be allowed in a variety of zoning locations including near schools or day care facilities. This is clearly not the law. However, to prevent disputes about whether a medical marijuana facility is an allowed use, it is recommended that the zoning ordinance be amended to prohibit specifically the establishment of medical marijuana facilities in all zoning of the City.

In addition to amending the zoning ordinance, it is recommended that Title 9 of the Benicia Municipal Code (Public Peace, Morals and Welfare) be amended to prohibit medical marijuana establishments. Medical marijuana advocates have argued that the MMPA and CUA implicitly prohibit cities from imposing any criminal penalty (even an infraction is deemed to be quasi-criminal) for violating the medical marijuana provisions. While no appellate court has accepted that argument, staff recommends, out of an abundance of caution, the ordinance should specifically provide that violations of the ordinance are not crimes. Enforcement of the ordinance will be done via nuisance action or other methods. The proposed ordinance is included as Attachment A.

Medical marijuana dispensaries include cooperatives, collectives and dispensaries. They are not regulated by state or federal agencies. Currently in Solano County, Fairfield bans medical marijuana facilities. Dixon, Rio Vista and Vacaville currently have moratoria on medical marijuana facilities. According to an Internet search, medical marijuana is available at least eight facilities in Vallejo. There are also facilities in Berkeley, Oakland and Richmond. (Richmond does not have any legal dispensaries; they are in the process of accepting applications.) Albany also has an ordinance that will likely allow a dispensary soon. Vallejo and Concord locations offer delivery. Thus, there appears to be sufficient ways for Benicians qualifying under the Compassionate Use Act to obtain their medical marijuana.

A ban (with limited exceptions for specified State-licensed facilities) would allow the City to avoid some of the problems that have been associated with medical marijuana dispensaries. Other bay area cities that have medical marijuana dispensaries have reported increases in illegal drug activity and sales, robberies of patrons of the dispensaries, loitering, and other criminal activity. Because of these problems, it is expected that a medical marijuana dispensary will increase the calls for police services as well as public works services for clean up of the streets and sidewalks. In addition, land uses issues, such as traffic, odors and neighborhood compatibility, could arise if medical marijuana dispensaries are

VIII.B.4

allowed. Any regulations to allow this use would require significant staff time and costs to enforce. The oversight of medical marijuana dispensaries should include the following at a minimum:

- Ensuring the collectives/cooperatives are non-profit organizations;
- Tracking the marijuana to make sure it is supplied only from members of the collective/cooperative;
- Ensuring the product is laboratory-tested to ensure it is free from molds, pesticides, or harmful additives; and
- Assuring the marijuana is dispensed legally.

A permit fee could cover some of the costs but it is unlikely it would cover all of the planning, police and city attorney time required. Given the City's reduced staffing, this work does not seem essential since there are other ways, as noted above, for Compassionate Use users to obtain the marijuana. Finally, the state of the law on medical marijuana is in doubt.

The issue of medical marijuana facilities is complex and not without controversy. Arguments on both sides of the issue include:

- Do current laws allow the use and how are the laws enforced;
- What was the intent of the State Compassionate Use Act (CUA) and the Medical Marijuana Program Act (MMPA);
- What is the role of the City in implementing the CUA and MMPA;
- What are the impact of marijuana on the community, and the possible increase of those impacts if MMDs are allowed to locate in the City;
- What is the impact on public safety, including a possible increase in violent crime;
- What are the land use compatibility concerns regarding MMDs in the city;
- How should the concerns that easier access to marijuana could increase usage in undesirable ways versus the desire to provide this compassionate care alternative to Benicia residents be balanced; and
- What sort of regulations and procedures should be considered, should the decision be made to allow MMDs in the City.

Of course, the advantage of allowing MMDs in Benicia is that patients could more easily obtain marijuana in legally-operating facilities in the city. Disadvantages include the problems with regulating them. In addition to regulation issues related to land use (appropriate zones, traffic, and noise), it appears the profit or non-profit status of the facility is hard to enforce and the criminal element is hard to avoid. There is a widespread perception that MMDs sell to recreational users.

Factors to Consider

The City of Sunnyvale recently adopted a medical marijuana ban. The following factors are taken substantially from the staff report for the Sunnyvale

City Council meeting on December 16, 2010.

Federal Laws and Enforcement

In general, the Federal Drug Enforcement Agency sets the guidelines and standards for drug policy in the country and the U.S. Attorney General decides what laws to enforce. The following is a brief description of those federal parameters (more detail is shown in Attachment B):

- The Federal Controlled Substance Act (CSA) was adopted in 1970. It states that it is unlawful to manufacture, distribute, dispense, or possess any controlled substance. The Federal Government's view is that marijuana is a Schedule I substance, which is classified as having a high potential for abuse. Further, the federal view is that use of marijuana for medicinal purposes is not an accepted treatment method in the United States, and it has not been accepted that marijuana is safe to prescribe as a drug or other substance under medical supervision. Because of this position, marijuana cannot be prescribed or dispensed in the same way as legal drugs, which is why marijuana is not available from doctors or pharmacies.
- In March 2009, U.S. Attorney General Eric Holder Jr. announced it would no longer enforce the federal laws prohibiting distribution or possession of marijuana for medicinal purposes, allowing states to have the final say in the matter. It was also stated that dispensaries that use medical marijuana as a storefront for dealers of illegal drugs would be prosecuted. In a more recent announcement, Attorney General Holder's office stated they will prosecute people for growing, selling, and possessing marijuana in California if they are not in compliance with State law.

State Laws

California has passed laws and general regulations allowing the cultivation, distribution, possession, and use of marijuana for specific medical purposes, as detailed below:

- In 1996, the voters of California passed Proposition 215, known as the Compassionate Use Act (CUA). The purpose of the CUA was to give individuals the right to obtain and use medical marijuana as deemed appropriate and as recommended by a physician (Attachment C).
- The CUA ensures patients and primary caregivers will not be subject to state or local criminal prosecution for the possession or cultivation of marijuana for medical purposes.
- In 2003, the State Senate passed and the Governor signed into law SB 420, the Medical Marijuana Program Act (MMPA), which codified the regulations for the possession, distribution, and use of marijuana for medical purposes, as described in the CUA (Attachment D).
- In 2008, the California Attorney General published guidelines for the security and non-diversion of marijuana grown for medical use. These guidelines are a helpful tool for law enforcement to perform duties effectively and in

accordance with California law. It assists patients and caregivers on how they may cultivate, transport, possess, and use medical marijuana under California law. In addition, it provides the framework for “collective/cooperatives” and provides greater direction to ensure marijuana used for medical purposes is secure and does not find its way to non-patients or illicit markets (Attachment E).

- AB 2650 was signed into law in September of 2010. This law amends the California Health and Safety Code to provide that no medical marijuana dispensary authorized by law to possess, cultivate, or distribute medical cannabis that has a storefront or mobile retail outlet which ordinarily requires a local business license shall be located within a 600-foot radius of any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, except as specified (Attachment F).

Frequently Asked Questions Relating to the MMPA and AG Guidelines

Attachment G lists several frequently asked questions (FAQ's) to address this issue, including:

- What medical conditions can marijuana relieve?
- How much marijuana can an individual have?
- How does a patient get a recommendation from a doctor?
- Who is a primary caregiver?
- What is a medical marijuana ID card and how are they issued?
- Can the sale of medical marijuana be taxed?
- How can medical marijuana be distributed?
- What is a cooperative, collective or dispensary?
- Who can cultivate marijuana for medical purposes?

Effect of Recent Court Cases on City Consideration

There have been several important court cases regarding medical marijuana that have bearing for the City. A recent court case, *Qualified Patients Ass'n. v. City of Anaheim*, was closely watched by Benicia and other cities and proponents; it is summarized in Attachment H. Unfortunately, the clear answer cities hoped for on the issue of whether the CUA and the MMPA preempted local ordinances was not provided. Accordingly, the state of the law is that provided by the Court in *City of Claremont v. Kruse*, which held that the CUA and the MMPA do not preempt cities from enforcing their land use controls to prohibit medical marijuana dispensaries.

In general, the *Anaheim* case involved a legal challenge to the City of Anaheim's ordinance banning MMDs. The plaintiffs, Qualified Patients Association, sought to overturn the ordinance on the ground that it was preempted by the CUA and MMPA. The City of Anaheim filed a motion to dismiss the complaint arguing, among other things, that the plaintiffs had no standing to bring a suit to overturn the ordinance because their planned activities would be illegal under federal law.

With regard to the first question, the court ruled that the CUA and MMPA are not preempted by federal law. In the matter of interest to cities hoping to know the state of the law on MMDs, the court concluded that it was too early in the litigation to decide on the plaintiff's challenge whether state law precludes cities from banning MMDs. It is important to emphasize that the court did not decide this issue, and that question will probably not be finally resolved by the courts for at least another 2 to 3 years, if not longer. Again, however, the state of the law is that provided by the Court in *City of Claremont v. Kruse*, which held that the CUA and MMPA do not preempt cities from enforcing their land use controls to prohibit medical marijuana dispensaries.

Other Cities

Medical Marijuana cooperatives, collectives and dispensaries have recently been a hot topic for California cities. For years after Proposition 215 was passed, only a few cities in the state allowed these facilities, while others followed the federal rules that made cultivation, possession and distribution illegal. This changed in the past couple years, most likely in response to the current Presidential administration's decision regarding enforcement of marijuana offenses. As a result, most cities in the state have taken specific action to either prohibit the distribution facilities, adopt moratoriums to allow time to study the issue, or pass ordinances that allow them under specific conditions.

Attachment I also lists other cities throughout the state that have passed ordinances regulating MMDs. In reviewing all the cities listed, some cities have reversed their policies from allowing MMDs to either banning them, or to place a moratorium while they restudy the issue. In December 2010, a number of Southern California counties proposed bans on MMDs including Riverside, Orange and Los Angeles counties.

Medical Marijuana Availability

Making medical marijuana easier to obtain by city residents with serious medical conditions is a goal for some medical marijuana activists. As noted above, there are several options near Benicia for medical marijuana. It should also be noted that residents currently have to travel outside of the City for traditional hospitals and more extensive medical care. Attachment J is a map that shows locations for several MMDs nearby. At least one MMD, in Vallejo, is reported to provide delivery service.

Cultivation

While nothing in State law addresses whether there is a right to cultivate or distribute marijuana in violation of local zoning/land use controls, State law allows individuals with a physician's recommendation to cultivate marijuana for their personal use without criminal liability. The law allows each person with a

doctor's recommendation to maintain no more than six mature or 12 immature plants. A person cannot sell the marijuana they grow, but can provide it to their cooperative or collective. Currently, although the zoning ordinance is deemed to prohibit cultivation and distribution alike, no permit is expressly required for medical marijuana cultivation in Benicia.

Cultivation is a greater concern when marijuana is grown in large quantities in residential homes in what are known as "grow houses." There are many safety issues associated with grow houses, including: dangerous electrical wiring, unsafe changes to the structure, and the possible safety concerns on the surrounding residents from having a large amount of an illegal substance grown in residential locations.

MMDs are required by State law to obtain their marijuana from their members, which could mean allowing homeowners to cultivate the plant. Cultivation is also possible in larger commercial operations, such as those recently allowed in Oakland. If the City Council desires to allow MMDs, staff would suggest that cultivation requirements and restrictions be included in an ordinance. At this point, however, State law minimums allowed for plant cultivation would be the standard.

Legal Alternatives to Marijuana

The ingredient in marijuana that provides relief for those with serious medical conditions is THC ("tetrahydrocannabinol"). According to the U.S. Drug Enforcement Administration, a pharmaceutically available, FDA approved product called "Marinol" is available, which contains synthetic THC as the active ingredient. Marinol comes in the form of a pill, and is available at pharmacies.

Although proponents of medical marijuana claim that Marinol does not help all medical conditions, and may not be as effective as marijuana, it does have value in that it can be distributed through existing, legally operating pharmacies, meaning separate MMDs would not be necessary for its distribution. This is important because pharmacies are located throughout the city and are required to store, distribute and track what is dispensed.

Criminal Activity Concerns

The secondary effects and adverse impacts related to medical marijuana have been well documented in a report written by the California Police Chiefs Association, White Paper (Attachment K). The Benicia Police Department took enforcement action on 67 separate marijuana investigations in 2010. These actions included arrests, citations or requested warrants on 67 separate individuals for possessing, selling, transporting, furnishing and cultivating marijuana. Although Benicia has not seen the explosion of indoor marijuana grows like many other communities have, these statistics clearly show that

marijuana is readily available in our community. The statistics are broken down further as follows:

- Fifty-four (54) individuals were issued citations for possessing marijuana;
- Nine (9) individuals were arrested for selling marijuana;
- Two (2) individuals were arrested for cultivating marijuana;
- Two (2) individuals were arrested for furnishing marijuana.

The Benicia Police Department participates in a Solano County narcotics taskforce. In 2010 they investigated a marijuana dispensary in the unincorporated area of Fairfield. This case is currently being litigated, but three arrests were made for a variety of criminal offenses, including violating tax laws and illegally selling marijuana. Prior to investigating the dispensary the Solano County Sheriff's Office responded to several disturbances at the dispensary and reported an increase in crime in the area during the time the dispensary was being operated. In addition, Solano County has seen other violent crime associated with the marijuana industry. The crimes include home invasion robberies, assaults, murders and burglaries.

The Benicia statistics are not yet of the magnitude of those reported in the Sunnyvale Council report. They reported:

“Recent negative impacts in Santa Clara County have been directly linked to marijuana dispensaries and marijuana growers. There have been three armed takeover style robberies at San Jose marijuana dispensaries this year. These violent crimes are similarly patterned after the robberies Southern California marijuana dispensaries have experienced over the past few years; several robberies resulted in the homicide of dispensary employees.

Recently in Santa Clara County, Superior Court Judges issued warrants established by probable cause based upon illegal sales and distribution of marijuana for profit. These warrants were served by officers from the Santa Clara County Special Enforcement Team (SCCSET), the Attorney General's Bureau of Narcotic Enforcement (BNE), along with several other law enforcement agencies. These warrants were served and resulted in numerous arrests, seizures of marijuana (possession and cultivation), weapons, and money.”

The U.S. Drug Enforcement Agency and other federal, state, and local law enforcement agencies enforcement efforts have shown medical marijuana dispensaries routinely underreport revenues, resulting in the need to aggressively regulate their businesses. It is anticipated that public safety (police and fire) will be asked to provide assistance to regulatory agencies to investigate marijuana dispensaries. In order to provide minimum regulation, it will be necessary to

make regular unscheduled inspections of these facilities to ensure compliance with the city's municipal code, the state's Penal Code, fire code, and the health and safety code. Regulation should include random audits to ensure accurate record keeping and compliance.

Adverse Secondary Effects

Several secondary effects are associated with the distribution and use of marijuana. These include criminal acts, driving under the influence, white collar crimes, and negative impacts on our youth. This issue is discussed in greater detail in Attachment L and Attachment M.

Public Health

All medicines distributed by pharmacies are regulated by the United States Food and Drug Administration (FDA). FDA approval is required in order for a specific, finished medication to be marketed and distributed to patients. Scientific testing of marijuana for medical use is not performed at professionally recognized and regulated laboratories. The FDA is responsible for protecting and promoting public health. They have a safety protocol in place to alert and protect consumers of possible product contamination. This program results in the ability to recall products should they present health or safety concerns for the consumer. Marijuana growers and dispensary operators have no oversight and cannot validate the safety of their product.

Land Use Concerns

Land use comparisons for MMDs range from a facility similar to a retail outlet with frequent customer turnaround, to facilities similar to a place of assembly where people go to socialize, take classes, etc. The land use considerations vary depending on the characteristics of the use. Benicia has no experience with MMDs, but the December 16, 2010 Sunnyvale staff report recently reported their staff visited 15 MMD locations and was given a tour of a large MMD in order to understand how they fit into an area, and to better understand their operations. An excerpt of their report is included as Attachment N.

APPROACHES

There are two broad options that can be chosen with this issue: either prohibit MMDs in the city (with limited exceptions for specified State-licensed facilities) or allow them with clear criteria, regulations and conditions.

Option A: Prohibit MMDs in Benicia

This option would require the Council to introduce and adopt an ordinance that specifically prohibits MMDs in the city. The zoning code would need to be changed to specify that MMDs are a prohibited use.

Positive Effects

- Removes the possibility of illegal activity at MMDs, including profit oriented dispensaries.
- Reduces secondary negative social impacts that could arise by restricting the ability to obtain marijuana in the City.
- Avoids land use compatibility issues between MMDs and surrounding uses and businesses.
- Avoids complicated and potentially expensive enforcement efforts.

Negative Effects

- Does not respond to the “compassionate care” concerns of Proposition 215.
- Removes the ability for Benicia patients to obtain medical marijuana from collectives or cooperatives in their own city.
- Prevents cooperatives or collectives that could meet State laws from operating in the city and providing assistance to those in need.
- Is a possible loss of revenue to the City.

The proposed ordinance to prohibit MMDs defines a MMD as a facility with two or more qualified patients. This would allow a patient to receive medical marijuana from a primary caregiver in the patient's home but would prohibit the distribution to any other person. In addition, the proposed ordinance would allow patients to receive medical marijuana at a State-licensed medical clinic, hospice, or similar facility.

Option B: Allow MMDs in Benicia, subject to regulations and controls

This option would allow MMDs in the city at limited or defined locations with conditions and restrictions. There are various approaches and issues that should be evaluated and resolved if this option is chosen. Whereas Option A to prohibit MMDs requires a relatively straightforward ordinance, Option B is more complex and requires decisions on the appropriate location, necessary use restrictions, public review process, and degree of oversight by the City in the operations of a MMD.

The effects of allowing MMDs in Benicia could include:

Positive Effects

- Allows local, legal access to medical marijuana for authorized patients in the community.
- Accommodates alternative approaches to the treatment of illnesses, including the use of medical marijuana.
- Responds to an expressed desire for such facilities by some people.

Negative Effects

- Possible rise in crime activity with possibly easier access to marijuana by unauthorized users such as youths.
- Secondary negative social impacts and costs associated with more prevalent marijuana use.
- Potentially expensive enforcement required by the city and school districts to ensure the community does not experience a rise in crime from MMDs in the City.
- Difficult to apply conditions on approved MMDs because of the intrusive nature of the options necessary to ensure adherence to State laws.
- Possibility of profit-oriented MMDs in the City.

Cities have addressed the issue of permitting MMDs in different ways. Most cities have amended their zoning code to require the equivalent of a Use Permit with a public hearing. Other cities allow MMDs with a staff level approval, City Manager approval, or Public Safety permit. The option of a competitive Request for Proposals approach has also been adopted to allow one or several MMDs in a community when several applications are received (to ensure the best-run MMD is allowed to make application, not just the first to make application). There are also different approaches to the type and extent of information necessary for a MMD application, regulations to control land use aspects, and conditions of approval and operating standards to ensure a MMD meets the goals and requirements of the City.

Draft Ordinance

Staff recommends adopting the draft ordinance included with this report (Attachment A) if Council chooses to *prohibit* MMDs in the City.

If Council decides to *allow* MMDs, staff would proceed to prepare a draft ordinance for the City Council to review and possibly adopt by the end of January. The list shown in Attachment O provides a suggested outline for Council to give staff direction on how to regulate these uses.

FISCAL IMPACT

As noted above, assuming there are no challenges to the implementation or adoption of the ordinance, there will be minimal budget impact to implement this ordinance. If Council were to direct staff to introduce an ordinance to permit MMDs in the City, it is estimated that staff time for the audits and inspections could cost up to \$60,000 annually (this estimate is based on a fee study used by the City of Oakland to implement charges for auditing and inspecting operating MMDs). Some cities require significant fees paid by MMD operators for the review of plans and operations, as well as to enforce specific regulations. Attachment P shows how a few cities approach application and on-going fees for MMDs. With Council direction, staff could also investigate regulatory fees for MMDs. Although fees could possibly cover the costs for

regulating MMDs, secondary costs associated with regulating marijuana sale, cultivation, and use would be difficult to capture, such as legal and enforcement costs related to criminal activity and business violations.

RECOMMENDATION

For the reasons noted in this staff report and the attachments, staff recommends adoption of the attached ordinance to prohibit medical marijuana distribution facilities in the City (subject to exceptions for specified State-licensed facilities). The attached ordinance would prohibit distribution of medical marijuana to two or more people, thereby allowing patients to receive assistance from a primary caregiver. The ordinance would also allow patients to receive medical marijuana at a licensed medical clinic, hospice, or other state licensed medical facility. This recommendation is supported by the Benicia Youth Action Coalition.

Listed below are a few key reasons staff recommends prohibiting MMDs (see Attachment Q for additional staff concerns):

- Although the City has the right to consider whether or not to allow MMDs in the city, it would be difficult and expensive to ensure that these facilities comply with all laws, including those imposed by the City. The uncertainty between state and federal laws would further complicate and impede the effectiveness of local regulation.
- Time consuming and intrusive controls and regulations would be required to ensure that MMDs operate as non-profit “compassionate care” facilities as anticipated in Proposition 215.
- Allowing MMDs in Benicia could raise the possibility of criminal activity in the city.
- There are social and public safety concerns associated with allowing the sale of a substance that is only legal when used for medical purposes, but are otherwise illegal to possess, grow or use.

The original intent of the CUA was to allow individuals to grow marijuana individually and collectively for medical purposes, and to ensure they are safe from prosecution. In 2003, SB 420 expanded that by allowing distribution outlets of marijuana. By doing so, the State placed the entire burden on each city to ensure these facilities meet all aspects of State law.

A suggested outline of the contents of an ordinance that can be used if Council decides to allow MMDs is included in Attachment O. This approach is not recommended.

It should be noted that this ordinance does not address the hookah lounges. They are addressed in the smoking ordinance that is being reviewed by the Chamber and Main Street.

Attachments:

- A. Draft Ordinance prohibiting medical marijuana distribution facilities
- B. Federal laws and Federal enforcement summary
- C. Proposition 215, the Compassionate Use Act (CUA)
- D. SB 420, the Medical Marijuana Program Act (MMPA)
- E. Attorney General Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Purposes
- F. AB 2650
- G. Frequently Asked Questions (FAQ's)
- H. Recent court case review
- I. Review of approaches of other cities
- J. Map of nearby medical marijuana distribution facilities
- K. California Police Chief's Association research
- L. Summary of adverse secondary effects
- M. January 5, 2011 Press Release from Coalition for a Drug Free California
- N. Excerpt of December 16, 2010 Sunnyvale City Council report
- O. Potential regulatory outline and options
- P. List of fees from other cities
- Q. Assessment of Youth Substance Use

CITY OF BENICIA

ORDINANCE NO. 11 -

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA ADDING A NEW CHAPTER 9.60 (MEDICAL MARIJUANA DISTRIBUTION FACILITIES) TO TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE), A NEW CHAPTER 17.102 (MEDICAL MARIJUANA DISTRIBUTION FACILITIES) TO TITLE 17 (ZONING), AND AMENDING SECTIONS 17.24.020, 17.26.020, 17.28.020, 17.32.020, 17.36.030, 17.40.030, and 17.46.010 OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE

WHEREAS, in 1970, Congress enacted the Controlled Substances Act (CSA) which, among other things, makes it illegal to import, manufacture, distribute, possess or use marijuana in the United States; and

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, known as the Compassionate Use Act ("CUA") (codified as Health and Safety (H&S) Code Section 11362.5 et seq.); and

WHEREAS, the CUA creates a limited exception from criminal liability for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances; and

WHEREAS, on January 1, 2004, the "Medical Marijuana Program" (MMPA), codified as H&S Code Sections 11362.7 to 11362.83, was enacted by the state Legislature to clarify the scope of the Act and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with the MMPA; and

WHEREAS, the CUA expressly anticipates the enactment of additional local legislation. It provides: "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes." (H&S Code Section 11362.5); and

WHEREAS, the City Council takes legislative notice of the fact that several California cities and counties which have permitted the establishment of medical marijuana distribution facilities or "dispensaries" have experienced serious adverse impacts associated with and resulting from such uses. According to these communities, according to news stories widely reported and according to medical marijuana advocates, medical marijuana dispensaries have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, illegal sales of marijuana to, and use of marijuana by, minors and other persons without medical need in the areas immediately surrounding such medical marijuana distribution facilities. The City Council reasonably anticipates that the City of Benicia will experience similar adverse impacts and effects. A California Police Chiefs Association compilation of police reports, news

stories and statistical research regarding such secondary impacts is contained in a 2009 white paper report located at <http://www.procon.org/sourcefiles/CAPCAWhitePaperonMarijuanaDispensaries.pdf> ; and

WHEREAS, the City Council further takes legislative notice that as of December 2010, according to at least one compilation, 103 cities and 14 counties in California have adopted moratoria or interim ordinances prohibiting medical marijuana dispensaries. The city council further takes legislative notice that 139 cities and 11 counties have adopted prohibitions against medical marijuana dispensaries. The compilation is available at: <http://www.safeaccessnow.org/article.php?id=3165>; and

WHEREAS, the City Council further takes legislative notice that the California Attorney General has adopted guidelines for the interpretation and implementation of the state's medical marijuana laws, entitled "GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF MARIJUANA GROWN FOR MEDICAL USE (August 2008)" (http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf). The Attorney General has stated in the guidelines that "[a]lthough medical marijuana 'dispensaries' have been operating in California for years, dispensaries, as such, are not recognized under the law"; and

WHEREAS, the City Council further takes legislative notice that the experience of other cities has been that many medical marijuana distribution facilities or "dispensaries" do not operate as true cooperatives or collectives in compliance with the MMPA and the Attorney General Guidelines, and thus these businesses are engaged in cultivation, distribution and sale of marijuana in a manner that remains illegal under both California and federal law; as a result, the City would be obligated to commit substantial resources to regulating and overseeing the operation of medical marijuana distribution facilities to ensure that the facilities operate lawfully and are not fronts for illegal drug trafficking; and, furthermore, it is uncertain whether even with the dedication of significant resources to the problem, the City would be able to prevent illegal conduct associated with medical marijuana distribution facilities, such as illegal cultivation and transport of marijuana and the distribution of marijuana between persons who are not qualified patients or caregivers under the CUA and MMPA; and

WHEREAS, the City Council further takes legislative notice that concerns about nonmedical marijuana use arising in connection with the CUA and the MMPA also have been recognized by state and federal courts. (See, e.g., *Bearman v. California Medical Bd.* (2009) 176 Cal.App.4th 1588; *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1386 to 1387; *Gonzales v. Raich* (2005) 545 U.S. 1); and

WHEREAS, the City Council further takes legislative notice that the use, possession, distribution and sale of marijuana remain illegal under the CSA (*Bearman v. California Medical Bd.* (2009) 176 Cal.App.4th 1588); that the federal courts have recognized that despite California's CUA and MMPA, marijuana is deemed to have no accepted medical use (*Gonzales v. Raich*, 545 U.S. 1; *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483); that medical necessity has been ruled not to be a defense to prosecution under the CSA (*United States v. Oakland Cannabis Buyers'*

Cooperative, 532 U.S. 483); and that the federal government properly may enforce the CSA despite the CUA and MMP (*Gonzales v. Raich*, 545 U.S. 1); and

WHEREAS, the City Council further takes legislative notice that the United States Attorney General in 2008 announced its intention to ease enforcement of federal laws as applied to medical marijuana dispensaries which otherwise comply with state law. There is no certainty how long this uncodified policy will remain in effect, and the underlying conflict between federal and state statutes still remains; and

WHEREAS, an ordinance prohibiting medical marijuana distribution facilities, and prohibiting the issuance of any permits, licenses and entitlements for medical marijuana distribution facilities, is necessary and appropriate to maintain and protect the public health, safety and welfare of the citizens of Benicia; and

WHEREAS, the City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAIN as follows:

Section 1.

Title 9 (Public Peace, Morals and Welfare) of the Benicia Municipal Code is amended by adding a new Chapter 9.60 ((Medical Marijuana Distribution Facilities) to read as follows:

Chapter 9.60

MEDICAL MARIJUANA DISTRIBUTION FACILITIES

- 9.60.010 Definitions.
- 9.60.020 Operation of medical marijuana distribution facilities prohibited.
- 9.60.030 Violation – penalty.
- 9.60.040 Public nuisance.

9.60.010 Definitions.

“Medical marijuana distribution facility” is any facility or location, whether fixed or mobile, where a primary caregiver makes available, sells, transmits, gives or otherwise provides marijuana to two or more persons with identification cards or qualified patients, as defined in California Health and Safety Code section 11362.5 et. seq., or any facility where qualified patients, persons with identification cards and primary caregivers meet or congregate collectively and cooperatively to cultivate or distribute marijuana for medical purposes under the purported authority of California Health and Safety Code section 11362.5 et. seq.

“Medical marijuana distribution facility” shall not include the following uses, so long as such uses comply with this Code, Health and Safety Code Section 11362.5 et seq., and other applicable law:

(1) A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code.

(2) A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code.

(3) A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code.

(4) A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.

(5) A hospice or a home health agency, licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

9.60.020 Operation of medical marijuana distribution facilities prohibited.
Medical marijuana distribution facilities, as defined in this chapter, are prohibited uses in the City of Benicia.

9.60.030 Violation—penalty.
(a) Any person found to be in violation of any provision of this chapter shall not be subject to the criminal enforcement remedies set forth in Title 1.

(b) Each violation of this chapter and each day of violation of this chapter shall be considered as separate and distinct violations thereof and the imposition of a penalty shall be as set forth in subsection (a) of this section for each and every separate violation and each and every day of violation.

9.60.040 Public nuisance. Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is hereby declared a public nuisance and may be abated by the City pursuant to the procedures set forth in Chapter 8.04.

Section 2.

Title 17 (Zoning) of the Benicia Municipal Code is amended by adding a new Chapter 17.102 (Distribution of Medical Marijuana) to read as follows:

Chapter 17.102

Medical Marijuana Distribution Facilities

17.102.10. Medical marijuana distribution facilities.

17.102.010 Medical marijuana distribution facilities.
Medical marijuana distribution facilities, as defined in Chapter 9.86, are prohibited uses in all zoning districts in the City of Benicia.

Section 3.

Section 17.24.020 (RS, RM, and RH districts – Land use regulations) of Chapter 17.24 (Residential Districts) of Title 17 (Zoning) is amended by adding to the table as follows:

RS, RM, and RH Districts: Land Use Regulations

P – Permitted

U – Use Permit

L – Limited (See "Additional Use Regulations")

-- Not Permitted

	RS	RM	RH	Additional Regulations
Other Uses				
Medical Marijuana Distribution Facilities	--	--	--	

SECTION 4.

Chapter 17.26 (Mixed Use Districts) of Title 17 (Zoning) is amended by adding a new section 17.26.020 to read as follows:

17.26.020 Medical Marijuana Distribution Facilities Prohibited.

Notwithstanding anything in the Downtown Mixed Use Master Plan, medical marijuana distribution facilities are prohibited in the Mix Use District.

Section 5.

Section 17.28.020 (CC, CO, CG and CW districts – Land use regulations) of Chapter 17.28 (Commercial Districts) of Title 17 (Zoning) is amended by adding to the table as follows:

CC, CO, CG, and CW Districts: Land Use Regulations

P – Permitted

U – Use Permit

L – Limited (See "Additional Use Regulations")

-- Not Permitted

	CC	CO	CG	CW	Additional Regulations
Other Uses					

Medical Marijuana Distribution Facilities	--	--	--	--	
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Section 6.

Section 17.32.020 (CC, CO, CG and CW districts – Land use regulations) of Chapter 17.32 (Industrial Districts) of Title 17 (Zoning) is amended by adding to the table as follows:

IL, IG, IW, and IP Districts: Land Use Regulations

- P – Permitted
- U – Use Permit
- L – Limited (See “Additional Use Regulations”)
- – Not Permitted

	IL	IG	IW	IP	Additional Regulations
Other Uses					
Medical Marijuana Distribution Facilities	--	--	--	--	

Section 7.

Section 17.36.030 (Land use regulations) of Chapter 17.36 (OS Open Space Districts) of Title 17 (Zoning) is amended by adding to the table as follows:

OS District: Land Use Regulations

- P – Permitted
- U – Use Permit
- L – Limited (See "Additional Use Regulations")
- – Not Permitted

	OS	Additional Regulations
Other Uses		
Medical Marijuana Distribution Facilities	--	

Section 8.

Section 17.40.030 (Land use regulations) of Chapter 17.40 (PS Public and Semipublic Districts) of Title 17 (Zoning) is amended by adding to the table as follows:

PS District: Land Use Regulations

- P – Permitted
- U – Use Permit
- L – Limited (See "Additional Use Regulations")
- Not Permitted

	PS	Additional Regulations
Other Uses		
Medical Marijuana Distribution Facilities	--	

Section 9.

Section 17.46.010 (Schedule S-1) of Chapter 17.46 (Use Regulations Summary) District) of Title 17 (Zoning) is amended by adding to the table as follows:

Schedule S-1: Summary of Land Use Regulations													P – Permitted U – Use Permit L – Limited (See “Additional Regulations”) – – Not Permitted	
CATEGORY	RS	RM	RH	CC	CO	CG	CW	IL	IG	IW	IP	OS	PS	
Other Uses														
Medical Marijuana Distribution Facilities	--	--	--	--	--	--	--	--	--	--	--	--	--	

Section 10.

Section 17.128.070 (Prosecution of violations) of Chapter 17.128 (Enforcement) is amended to read as follows:

17.128.070 Prosecution of violations. Except for violations related to medical marijuana dispensaries, a violation of any provision of this title shall be prosecuted as an infraction. In addition, the city attorney shall, upon order of the city council, commence action or proceedings for the abatement, removal and enjoinder of any violation in the manner provided by law. Violations of the medical marijuana dispensary regulations shall only be pursued civilly.

Section 11.

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the

remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

On motion of Council Member _____, seconded by Council Member _____, the foregoing ordinance was introduced at a regular meeting of the City Council on the ___ day of February, 2011, and adopted at a regular meeting of the Council held on the ___ day of February, 2011 by the following vote:

Ayes

Noes:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

FEDERAL LAWS AND ENFORCEMENT

Federal Laws

In general, the Federal Drug Enforcement Agency sets the guidelines and standards for drug policy in the country and the U.S. Attorney General decides what laws to enforce. The following is a brief description of those federal parameters:

- The Federal Controlled Substance Act (CSA) was adopted in 1970. It states that it is unlawful to manufacture, distribute, dispense, or possess any controlled substance. The Federal Government's view is that marijuana is a Schedule I substance, which is classified as having a high potential for abuse. Further, the federal view is that use of marijuana for medicinal purposes is not an accepted treatment method in the United States, and it has not been accepted that marijuana is safe to prescribe as a drug or other substance under medical supervision.
- As a result of this standard, marijuana cannot be prescribed or dispensed in the same way as legal drugs, which is why they are not available from doctors or pharmacies.
- The Federal Drug Enforcement Agency has stated the following on its web site:
 1. Marijuana is a dangerous, addictive drug that poses significant health threats to users.
 2. Marijuana has no medical value that can't be met more effectively by legal drugs.
 3. Marijuana users are far more likely to use other drugs like cocaine and heroin than non-marijuana users.
 4. Drug proponents use "medical marijuana" as red herring in effort to advocate broader legalization of drug use.
- In March 2009, U.S. Attorney General Eric Holder Jr. announced it would no longer enforce the federal laws prohibiting distribution or possession of marijuana for medicinal purposes, allowing states to have the final say in the matter. It was also stated that dispensaries that use medical marijuana as a storefront for dealers of illegal drugs would be prosecuted. In a more recent announcement, Attorney General Holder's office stated they will prosecute people for growing, selling, and possessing marijuana in California.

Proposition 215 Text

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure adds a section to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

SECTION 1. Section 11362.5 is added to the Health and Safety Code, to read:

11362.5. (a) This section shall be known and may be cited as the Compassionate Use Act of 1996.

(b)(1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.

(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

(e) 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.

SECTION 2. If any provision of this measure or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the measure that can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.

BILL NUMBER: SB 420 CHAPTERED
BILL TEXT

CHAPTER 875

FILED WITH SECRETARY OF STATE OCTOBER 12, 2003

APPROVED BY GOVERNOR OCTOBER 12, 2003

PASSED THE SENATE SEPTEMBER 11, 2003

PASSED THE ASSEMBLY SEPTEMBER 10, 2003

INTRODUCED FEBRUARY 20, 2003 BY Senator Vasconcellos

(Principal coauthor: Assembly Member Leno.)

(Coauthors: Assembly Members Goldberg, Hancock, and Koretz)

An act to add Article 2.5 (commencing with Section 11362.7) to Chapter 6 of Division 10 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 420, Vasconcellos. Medical marijuana.

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

This bill would require the State Department of Health Services to establish and maintain a voluntary program for the issuance of identification cards to qualified patients and would establish procedures under which a qualified patient with an identification card may use marijuana for medical purposes. The bill would specify the department's duties in this regard, including developing related protocols and forms, and establishing application and renewal fees for the program.

The bill would impose various duties upon county health departments relating to the issuance of identification cards, thus creating a state-mandated local program.

The bill would create various crimes related to the identification card program, thus imposing a state-mandated local program. This bill would authorize the Attorney General to set forth and clarify details concerning possession and cultivation limits, and other regulations, as specified. The bill would also authorize the Attorney General to recommend modifications to the possession or cultivation limits set forth in the bill. The bill would require the Attorney General to develop and adopt guidelines to ensure the security and no diversion of marijuana grown for medical use, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that no reimbursement is required by this act for specified reasons.

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) On November 6, 1996, the people of the State of California enacted the Compassionate Use Act of 1996 (hereafter the act), codified in Section 11362.5 of the Health and Safety Code, in order to allow seriously ill residents of the state, who have the oral or written approval or recommendation of a physician, to use marijuana for medical purposes without fear of criminal liability under Sections 11357 and 11358 of the Health and Safety Code.

(2) However, reports from across the state have revealed problems and uncertainties in the act that have impeded the ability of law enforcement officers to enforce its provisions as the voters intended and, therefore, have prevented qualified patients and designated primary caregivers from obtaining the protections afforded by the act.

(3) Furthermore, the enactment of this law, as well as other recent legislation dealing with pain control, demonstrates that more information is needed to assess the number of individuals across the state who are suffering from serious medical conditions that are not being adequately alleviated through the use of conventional medications.

(4) In addition, the act called upon the state and the federal government to develop a plan for the safe and affordable distribution of marijuana to all patients in medical need thereof.

(b) It is the intent of the Legislature, therefore, to do all of the following:

(1) Clarify the scope of the application of the act and facilitate the prompt identification of qualified patients and their designated primary caregivers in order to avoid unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers.

(2) Promote uniform and consistent application of the act among the counties within the state.

(3) Enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects.

(c) It is also the intent of the Legislature to address additional issues that were not included within the act, and that must be resolved in order to promote the fair and orderly implementation of the act.

(d) The Legislature further finds and declares both of the following:

(1) A state identification card program will further the goals outlined in this section.

(2) With respect to individuals, the identification system established pursuant to this act must be wholly voluntary, and a patient entitled to the protections of Section 11362.5 of the Health and Safety Code need not possess an identification card in order to claim the protections afforded by that section.

(e) The Legislature further finds and declares that it enacts this act pursuant to the powers reserved to the State of California and its people under the Tenth Amendment to the United States Constitution.

SEC. 2. Article 2.5 (commencing with Section 11362.7) is added to Chapter 6 of Division 10 of the Health and Safety Code, to read:

Article 2.5. Medical Marijuana Program

11362.7. For purposes of this article, the following definitions shall apply:

(a) "Attending physician" means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.

(b) "Department" means the State Department of Health Services.

(c) "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.

(d) "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

(1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.

(f) "Qualified patient" means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.

(g) "Identification card" means a document issued by the State Department of Health Services that document identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

(h) "Serious medical condition" means all of the following medical conditions:

(1) Acquired immune deficiency syndrome (AIDS).

(2) Anorexia.

(3) Arthritis.

(4) Cachexia.

(5) Cancer.

(6) Chronic pain.

(7) Glaucoma.

(8) Migraine.

(9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.

(10) Seizures, including, but not limited to, seizures associated with epilepsy.

(11) Severe nausea.

(12) Any other chronic or persistent medical symptom that either:

(A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101- 336).

(B) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

(i) "Written documentation" means accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.

11362.71. (a) (1) The department shall establish and maintain a voluntary program for the issuance of identification cards to qualified patients who satisfy the requirements of this article and voluntarily apply to the identification card program.

(2) The department shall establish and maintain a 24-hour, toll-free telephone number that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of an identification card issued by the department, until a cost-effective Internet Web-based system can be developed for this purpose.

(b) Every county health department, or the county's designee, shall do all of the following:

(1) Provide applications upon request to individuals seeking to join the identification card program.

(2) Receive and process completed applications in accordance with Section 11362.72.

(3) Maintain records of identification card programs.

(4) Utilize protocols developed by the department pursuant to paragraph (1) of subdivision (d).

(5) Issue identification cards developed by the department to approved applicants and designated primary caregivers.

(c) The county board of supervisors may designate another health-related governmental or nongovernmental entity or organization to perform the functions described in subdivision (b), except for an entity or organization that cultivates or distributes marijuana.

(d) The department shall develop all of the following:

(1) Protocols that shall be used by a county health department or the county's designee to implement the responsibilities described in subdivision (b), including, but not limited to, protocols to confirm the accuracy of information contained in an application and to protect the confidentiality of program records.

(2) Application forms that shall be issued to requesting applicants.

(3) An identification card that identifies a person authorized to engage in the medical use of marijuana and an identification card that identifies the person's designated primary caregiver, if any. The two identification cards developed pursuant to this paragraph shall be easily distinguishable from each other.

(e) No person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in an amount established pursuant to this article, unless there is reasonable cause to believe that the information contained in the card is false or falsified, the card has been obtained by means of fraud, or the person is otherwise in violation of the provisions of this article.

(f) It shall not be necessary for a person to obtain an identification card in order to claim the protections of Section 11362.5.

11362.715. (a) A person who seeks an identification card shall pay the fee, as provided in Section 11362.755, and provide all of the following to the county health department or the county's designee on a form developed and provided by the department:

(1) The name of the person, and proof of his or her residency within the county.

(2) Written documentation by the attending physician in the person's medical records stating that the person has been diagnosed with a serious medical condition and that the medical use of marijuana is appropriate.

(3) The name, office address, office telephone number, and California medical license number of the person's attending physician.

(4) The name and the duties of the primary caregiver.

(5) A government-issued photo identification card of the person and of the designated primary caregiver, if any. If the applicant is a person under 18 years of age, a certified copy of a birth certificate shall be deemed sufficient proof of identity.

(b) If the person applying for an identification card lacks the capacity to make medical decisions, the application may be made by the person's legal representative, including, but not limited to, any of the following:

(1) A conservator with authority to make medical decisions.

(2) An attorney-in-fact under a durable power of attorney for health care or surrogate decision maker authorized under another advanced health care directive.

(3) Any other individual authorized by statutory or decisional law to make medical decisions for the person.

(c) The legal representative described in subdivision (b) may also designate in the application an individual, including himself or herself, to serve as a primary caregiver for the person, provided that the individual meets the definition of a primary caregiver.

(d) The person or legal representative submitting the written information and documentation described in subdivision (a) shall retain a copy thereof.

11362.72. (a) Within 30 days of receipt of an application for an identification card, a county health department or the county's designee shall do all of the following:

(1) For purposes of processing the application, verify that the information contained in the application is accurate. If the person is less than 18 years of age, the county health department or its designee shall also contact the parent with legal authority to make medical decisions, legal guardian, or other person or entity with legal authority to make medical decisions, to verify the information.

(2) Verify with the Medical Board of California or the Osteopathic Medical Board of California that the attending physician has a license in good standing to practice medicine or osteopathy in the state.

(3) Contact the attending physician by facsimile, telephone, or mail to confirm that the medical records submitted by the patient are a true and correct copy of those contained in the physician's office records. When contacted by a county health department or the county's designee, the attending physician shall confirm or deny that the contents of the medical records are accurate.

(4) Take a photograph or otherwise obtain an electronically transmissible image of the applicant and of the designated primary caregiver, if any.

(5) Approve or deny the application. If an applicant who meets the requirements of Section 11362.715 can establish that an identification card is needed on an emergency basis, the county or its designee shall issue a temporary identification card that shall be valid for 30 days from the date of issuance. The county, or its designee, may extend the temporary identification card for no more than 30 days at a time, so long as the applicant continues to meet the requirements of this paragraph.

(b) If the county health department or the county's designee approves the application, it shall, within 24 hours, or by the end of the next working day of approving the application, electronically transmit the following information to the department:

(1) A unique user identification number of the applicant.

(2) The date of expiration of the identification card.

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(c) The county health department or the county's designee shall issue an identification card to the applicant and to his or her designated primary caregiver, if any, within five working days of approving the application.

(d) In any case involving an incomplete application, the applicant shall assume responsibility for rectifying the deficiency. The county shall have 14 days from the receipt of information from the applicant pursuant to this subdivision to approve or deny the application.

11362.735. (a) An identification card issued by the county health department shall be serially numbered and shall contain all of the following:

(1) A unique user identification number of the cardholder.

(2) The date of expiration of the identification card.

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(4) A 24-hour, toll-free telephone number, to be maintained by the department, that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of the card.

(5) Photo identification of the cardholder.

(b) A separate identification card shall be issued to the person's designated primary caregiver, if any, and shall include a photo identification of the caregiver.

11362.74. (a) The county health department or the county's designee may deny an application only for any of the following reasons:

(1) The applicant did not provide the information required by Section 11362.715, and upon notice of the deficiency pursuant to subdivision (d) of Section 11362.72, did not provide the information within 30 days.

(2) The county health department or the county's designee determines that the information provided was false.

(3) The applicant does not meet the criteria set forth in this article.

(b) Any person whose application has been denied pursuant to subdivision (a) may not reapply for six months from the date of denial unless otherwise authorized by the county health department or the county's designee or by a court of competent jurisdiction.

(c) Any person whose application has been denied pursuant to subdivision (a) may appeal that decision to the department. The county health department or the county's designee shall make available a telephone number or address to which the denied applicant can direct an appeal.

11362.745. (a) An identification card shall be valid for a period of one year.

(b) Upon annual renewal of an identification card, the county health department or its designee shall verify all new information and may verify any other information that has not changed.

(c) The county health department or the county's designee shall transmit its determination of approval or denial of a renewal to the department.

11362.755. (a) The department shall establish application and renewal fees for persons seeking to obtain or renew identification cards that are sufficient to cover the expenses incurred by the department, including the startup cost, the cost of reduced fees for Medi-Cal beneficiaries in accordance with subdivision (b), the cost of identifying and developing a cost-effective Internet Web-based system, and the cost of maintaining the 24-hour toll-free telephone number.

Each county health department or the county's designee may charge an additional fee for all costs incurred by the county or the county's designee for administering the program pursuant to this article.

(b) Upon satisfactory proof of participation and eligibility in the Medi-Cal program, a Medi-Cal beneficiary shall receive a 50 percent reduction in the fees established pursuant to this section.

11362.76. (a) A person who possesses an identification card shall:

(1) Within seven days, notify the county health department or the county's designee of any change in the person's attending physician or designated primary caregiver, if any.

(2) Annually submit to the county health department or the county's designee the following:

(A) Updated written documentation of the person's serious medical condition.

(B) The name and duties of the person's designated primary caregiver, if any, for the forthcoming year.

(b) If a person who possesses an identification card fails to comply with this section, the card shall be deemed expired. If an identification card expires, the identification card of any designated primary caregiver of the person shall also expire.

(c) If the designated primary caregiver has been changed, the previous primary caregiver shall return his or her identification card to the department or to the county health department or the county's designee.

(d) If the owner or operator or an employee of the owner or operator of a provider has been designated as a primary caregiver pursuant to paragraph (1) of subdivision (d) of Section 11362.7, of the qualified patient or person with an identification card, the owner or operator shall notify the county health department or the county's designee, pursuant to Section 11362.715, if a change in the designated primary caregiver has occurred.

11362.765. (a) Subject to the requirements of this article, the individuals specified in subdivision (b) shall not be subject, on that sole basis, to criminal liability under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570. However, nothing in this section shall authorize the individual to smoke or otherwise consume marijuana unless otherwise authorized by this article, nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit.

(b) Subdivision (a) shall apply to all of the following:

(1) A qualified patient or a person with an identification card who transports or processes marijuana for his or her own personal medical use.

(2) A designated primary caregiver who transports, processes, administers, delivers, or gives away marijuana for medical purposes, in amounts not exceeding those established in subdivision (a) of Section 11362.77, only to the

qualified patient of the primary caregiver, or to the person with an identification card who has designated the individual as a primary caregiver.

(3) Any individual who provides 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.

(c) A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment under Section 11359 or 11360.

11362.77. (a) A qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient. In addition, a qualified patient or primary caregiver may also maintain no more than six mature or 12 immature marijuana plants per qualified patient.

(b) If a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs.

(c) Counties and cities may retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits set forth in subdivision (a).

(d) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section.

(e) The Attorney General may recommend modifications to the possession or cultivation limits set forth in this section. These recommendations, if any, shall be made to the Legislature no later than December 1, 2005, and may be made only after public comment and consultation with interested organizations, including, but not limited to, patients, health care professionals, researchers, law enforcement, and local governments. Any recommended modification shall be consistent with the intent of this article and shall be based on currently available scientific research.

(f) A qualified patient or a person holding a valid identification card, or the designated primary caregiver of that qualified patient or person, may possess amounts of marijuana consistent with this article.

11362.775. Qualified 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, 11358, 11359, 11360, 11366, 11366.5, or 11570.

11362.78. A state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.

11362.785. (a) Nothing in this article shall require any accommodation of any medical use of marijuana on the property or premises of any place of employment or during the hours of employment or on the property or premises of any jail, correctional facility, or other type of penal institution in which prisoners reside or persons under arrest are detained.

(b) Notwithstanding subdivision (a), a person shall not be prohibited or prevented from obtaining and submitting the written information and documentation necessary to apply for an identification card on the basis that the person is incarcerated in a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained.

(c) Nothing in this article shall prohibit a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained, from permitting a prisoner or a person under arrest who has an identification card, to use marijuana for medical purposes under circumstances that will not endanger the health or safety of other prisoners or the security of the facility.

(d) Nothing in this article shall require a governmental, private, or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the medical use of marijuana.

11362.79. Nothing in this article shall authorize a qualified patient or person with an identification card to engage in the smoking of medical marijuana under any of the following circumstances:

- (a) In any place where smoking is prohibited by law.
- (b) In or within 1,000 feet of the grounds of a school, recreation center, or youth center, unless the medical use occurs within a residence.
- (c) On a school bus.
- (d) While in a motor vehicle that is being operated.
- (e) While operating a boat.

11362.795. (a)(1) Any criminal defendant who is eligible to use marijuana pursuant to Section 11362.5 may request that the court confirm that he or she is allowed to use medical marijuana while he or she is on probation or released on bail.

(2) The court's decision and the reasons for the decision shall be stated on the record and an entry stating those reasons shall be made in the minutes of the court.

(3) During the period of probation or release on bail, if a physician recommends that the probationer or defendant use medical marijuana, the probationer or defendant may request a modification of the conditions of probation or bail to authorize the use of medical marijuana.

(4) The court's consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

(b) (1) Any person who is to be released on parole from a jail, state prison, school, road camp, or other state or local institution of confinement and who is eligible to use medical marijuana pursuant to Section 11362.5 may request that he or she be allowed to use medical marijuana during the period he or she is released on parole. A parolee's written conditions of parole shall reflect whether or not a request for a modification of the conditions of his or her parole to use medical marijuana was made, and whether the request was granted or denied.

(2) During the period of the parole, where a physician recommends that the parolee use medical marijuana, the parolee may request a modification of the conditions of the parole to authorize the use of medical marijuana.

(3) Any parolee whose request to use medical marijuana while on parole was denied may pursue an administrative appeal of the decision. Any decision on the appeal shall be in writing and shall reflect the reasons for the decision.

(4) The administrative consideration of the modification request authorized by this subdivision shall comply with the requirements of this section. 11362.8. No professional licensing board may impose a civil penalty or take other disciplinary action against a licensee based solely on the fact that the licensee has performed acts that are necessary or appropriate to carry out the licensee's role as a designated primary caregiver to a person who is a qualified patient or who possesses a lawful identification card issued pursuant to Section 11362.72. However, this section shall not apply to acts performed by a physician relating to the discussion or recommendation of the medical use of marijuana to a patient. These discussions or recommendations, or both, shall be governed by Section 11362.5.

11362.81. (a) A person specified in subdivision (b) shall be subject to the following penalties:

(1) For the first offense, imprisonment in the county jail for no more than six months or a fine not to exceed one thousand dollars (\$1,000), or both.

(2) For a second or subsequent offense, imprisonment in the county jail for no more than one year, or a fine not to exceed one thousand dollars (\$1,000), or both.

(b) Subdivision (a) applies to any of the following:

(1) A person who fraudulently represents a medical condition or fraudulently provides any material misinformation to a physician, county health department or the county's designee, or state or local law enforcement agency or officer, for the purpose of falsely obtaining an identification card.

(2) A person who steals or fraudulently uses any person's identification card in order to acquire, possess, cultivate, transport, use, produce, or distribute marijuana.

(3) A person who counterfeits, tampers with, or fraudulently produces an identification card.

(4) A person who breaches the confidentiality requirements of this article to information provided to, or contained in the records of, the department or of a county health department or the county's designee pertaining to an identification card program.

(c) In addition to the penalties prescribed in subdivision (a), any person described in subdivision (b) may be precluded from attempting to obtain, or obtaining or using, an identification card for a period of up to six months at the discretion of the court.

(d) In addition to the requirements of this article, the Attorney General shall develop and adopt appropriate guidelines to ensure the security and non-diversion of marijuana grown for medical use by patients qualified under the Compassionate Use Act of 1996.

11362.82. If any section, subdivision, sentence, clause, phrase, or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portion thereof.

11362.83. Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

In addition, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for other costs mandated by the state because this act includes additional revenue that is specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate, within the meaning of Section 17556 of the Government Code.



**GUIDELINES FOR THE SECURITY AND NON-DIVERSION
OF MARIJUANA GROWN FOR MEDICAL USE**

August 2008

In 1996, California voters approved an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana. In 2003, the Legislature enacted additional legislation relating to medical marijuana. One of those statutes requires the Attorney General to adopt “guidelines to ensure the security and nondiversion of marijuana grown for medical use.” (Health & Saf. Code, § 11362.81(d).¹) To fulfill this mandate, this Office is issuing the following guidelines to (1) ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets, (2) help law enforcement agencies perform their duties effectively and in accordance with California law, and (3) help patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law.

I. SUMMARY OF APPLICABLE LAW

A. California Penal Provisions Relating to Marijuana.

The possession, sale, cultivation, or transportation of marijuana is ordinarily a crime under California law. (See, e.g., § 11357 [possession of marijuana is a misdemeanor]; § 11358 [cultivation of marijuana is a felony]; Veh. Code, § 23222 [possession of less than 1 oz. of marijuana while driving is a misdemeanor]; § 11359 [possession with intent to sell any amount of marijuana is a felony]; § 11360 [transporting, selling, or giving away marijuana in California is a felony; under 28.5 grams is a misdemeanor]; § 11361 [selling or distributing marijuana to minors, or using a minor to transport, sell, or give away marijuana, is a felony].)

B. Proposition 215 - The Compassionate Use Act of 1996.

On November 5, 1996, California voters passed Proposition 215, which decriminalized the cultivation and use of marijuana by seriously ill individuals upon a physician’s recommendation. (§ 11362.5.) Proposition 215 was enacted to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person’s health would benefit from the use of marijuana,” and to “ensure that patients and their primary caregivers who obtain and use marijuana for

¹ Unless otherwise noted, all statutory references are to the Health & Safety Code.

medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.” (§ 11362.5(b)(1)(A)-(B).)

The Act further states that “Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient’s primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or verbal recommendation or approval of a physician.” (§ 11362.5(d).) Courts have found an implied defense to the transportation of medical marijuana when the “quantity transported and the method, timing and distance of the transportation are reasonably related to the patient’s current medical needs.” (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1551.)

C. Senate Bill 420 - The Medical Marijuana Program Act.

On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (MMP), became law. (§§ 11362.7-11362.83.) The MMP, among other things, requires the California Department of Public Health (DPH) to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system. Medical marijuana identification cards are intended to help law enforcement officers identify and verify that cardholders are able to cultivate, possess, and transport certain amounts of marijuana without being subject to arrest under specific conditions. (§§ 11362.71(e), 11362.78.)

It is mandatory that all counties participate in the identification card program by (a) providing applications upon request to individuals seeking to join the identification card program; (b) processing completed applications; (c) maintaining certain records; (d) following state implementation protocols; and (e) issuing DPH identification cards to approved applicants and designated primary caregivers. (§ 11362.71(b).)

Participation by patients and primary caregivers in the identification card program is voluntary. However, because identification cards offer the holder protection from arrest, are issued only after verification of the cardholder’s status as a qualified patient or primary caregiver, and are immediately verifiable online or via telephone, they represent one of the best ways to ensure the security and non-diversion of marijuana grown for medical use.

In addition to establishing the identification card program, the MMP also defines certain terms, sets possession guidelines for cardholders, and recognizes a qualified right to collective and cooperative cultivation of medical marijuana. (§§ 11362.7, 11362.77, 11362.775.)

D. Taxability of Medical Marijuana Transactions.

In February 2007, the California State Board of Equalization (BOE) issued a Special Notice confirming its policy of taxing medical marijuana transactions, as well as its requirement that businesses engaging in such transactions hold a Seller’s Permit. (<http://www.boe.ca.gov/news/pdf/medseller2007.pdf>.) According to the Notice, having a Seller’s Permit does not allow individuals to make unlawful sales, but instead merely provides a way to remit any sales and use taxes due. BOE further clarified its policy in a

June 2007 Special Notice that addressed several frequently asked questions concerning taxation of medical marijuana transactions. (<http://www.boe.ca.gov/news/pdf/173.pdf>.)

E. Medical Board of California.

The Medical Board of California licenses, investigates, and disciplines California physicians. (Bus. & Prof. Code, § 2000, et seq.) Although state law prohibits punishing a physician simply for recommending marijuana for treatment of a serious medical condition (§ 11362.5(c)), the Medical Board can and does take disciplinary action against physicians who fail to comply with accepted medical standards when recommending marijuana. In a May 13, 2004 press release, the Medical Board clarified that these accepted standards are the same ones that a reasonable and prudent physician would follow when recommending or approving any medication. They include the following:

1. Taking a history and conducting a good faith examination of the patient;
2. Developing a treatment plan with objectives;
3. Providing informed consent, including discussion of side effects;
4. Periodically reviewing the treatment's efficacy;
5. Consultations, as necessary; and
6. Keeping proper records supporting the decision to recommend the use of medical marijuana.

(http://www.mbc.ca.gov/board/media/releases_2004_05-13_marijuana.html.)

Complaints about physicians should be addressed to the Medical Board (1-800-633-2322 or www.mbc.ca.gov), which investigates and prosecutes alleged licensing violations in conjunction with the Attorney General's Office.

F. The Federal Controlled Substances Act.

Adopted in 1970, the Controlled Substances Act (CSA) established a federal regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. (21 U.S.C. § 801, et seq.; *Gonzales v. Oregon* (2006) 546 U.S. 243, 271-273.) The CSA reflects the federal government's view that marijuana is a drug with "no currently accepted medical use." (21 U.S.C. § 812(b)(1).) Accordingly, the manufacture, distribution, or possession of marijuana is a federal criminal offense. (*Id.* at §§ 841(a)(1), 844(a).)

The incongruity between federal and state law has given rise to understandable confusion, but no legal conflict exists merely because state law and federal law treat marijuana differently. Indeed, California's medical marijuana laws have been challenged unsuccessfully in court on the ground that they are preempted by the CSA. (*County of San Diego v. San Diego NORML* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2930117.) Congress has provided that states are free to regulate in the area of controlled substances, including marijuana, provided that state law does not positively conflict with the CSA. (21 U.S.C. § 903.) Neither Proposition 215, nor the MMP, conflict with the CSA because, in adopting these laws, California did not "legalize" medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition. (See *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 371-373, 381-382.)

In light of California’s decision to remove the use and cultivation of physician-recommended marijuana from the scope of the state’s drug laws, this Office recommends that state and local law enforcement officers not arrest individuals or seize marijuana under federal law when the officer determines from the facts available that the cultivation, possession, or transportation is permitted under California’s medical marijuana laws.

II. DEFINITIONS

A. **Physician’s Recommendation:** Physicians may not prescribe marijuana because the federal Food and Drug Administration regulates prescription drugs and, under the CSA, marijuana is a Schedule I drug, meaning that it has no recognized medical use. Physicians may, however, lawfully issue a verbal or written recommendation under California law indicating that marijuana would be a beneficial treatment for a serious medical condition. (§ 11362.5(d); *Conant v. Walters* (9th Cir. 2002) 309 F.3d 629, 632.)

B. **Primary Caregiver:** A primary caregiver is a person who is designated by a qualified patient and “has consistently assumed responsibility for the housing, health, or safety” of the patient. (§ 11362.5(e).) California courts have emphasized the consistency element of the patient-caregiver relationship. Although a “primary caregiver who consistently grows and supplies . . . medicinal marijuana for a section 11362.5 patient is serving a health need of the patient,” someone who merely maintains a source of marijuana does not automatically become the party “who has consistently assumed responsibility for the housing, health, or safety” of that purchaser. (*People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390, 1400.) A person may serve as primary caregiver to “more than one” patient, provided that the patients and caregiver all reside in the same city or county. (§ 11362.7(d)(2).) Primary caregivers also may receive certain compensation for their services. (§ 11362.765(c) [“A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided . . . to enable [a patient] to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, . . . shall not, on the sole basis of that fact, be subject to prosecution” for possessing or transporting marijuana].)

C. **Qualified Patient:** A qualified patient is a person whose physician has recommended the use of marijuana to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. (§ 11362.5(b)(1)(A).)

D. **Recommending Physician:** A recommending physician is a person who (1) possesses a license in good standing to practice medicine in California; (2) has taken responsibility for some aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient; and (3) has complied with accepted medical standards (as described by the Medical Board of California in its May 13, 2004 press release) that a reasonable and prudent physician would follow when recommending or approving medical marijuana for the treatment of his or her patient.

III. GUIDELINES REGARDING INDIVIDUAL QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

A. State Law Compliance Guidelines.

1. **Physician Recommendation:** Patients must have a written or verbal recommendation for medical marijuana from a licensed physician. (§ 11362.5(d).)

2. **State of California Medical Marijuana Identification Card:** Under the MMP, qualified patients and their primary caregivers may voluntarily apply for a card issued by DPH identifying them as a person who is authorized to use, possess, or transport marijuana grown for medical purposes. To help law enforcement officers verify the cardholder's identity, each card bears a unique identification number, and a verification database is available online (www.calmmp.ca.gov). In addition, the cards contain the name of the county health department that approved the application, a 24-hour verification telephone number, and an expiration date. (§§ 11362.71(a); 11362.735(a)(3)-(4); 11362.745.)

3. **Proof of Qualified Patient Status:** Although verbal recommendations are technically permitted under Proposition 215, patients should obtain and carry written proof of their physician recommendations to help them avoid arrest. A state identification card is the best form of proof, because it is easily verifiable and provides immunity from arrest if certain conditions are met (see section III.B.4, below). The next best forms of proof are a city- or county-issued patient identification card, or a written recommendation from a physician.

4. Possession Guidelines:

a) **MMP:**² Qualified patients and primary caregivers who possess a state-issued identification card may possess 8 oz. of dried marijuana, and may maintain no more than 6 mature or 12 immature plants per qualified patient. (§ 11362.77(a).) But, if “a qualified patient or primary caregiver has a doctor’s recommendation that this quantity does not meet the qualified patient’s medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient’s needs.” (§ 11362.77(b).) Only the dried mature processed flowers or buds of the female cannabis plant should be considered when determining allowable quantities of medical marijuana for purposes of the MMP. (§ 11362.77(d).)

b) **Local Possession Guidelines:** Counties and cities may adopt regulations that allow qualified patients or primary caregivers to possess

² On May 22, 2008, California’s Second District Court of Appeal severed Health & Safety Code § 11362.77 from the MMP on the ground that the statute’s possession guidelines were an unconstitutional amendment of Proposition 215, which does not quantify the marijuana a patient may possess. (See *People v. Kelly* (2008) 163 Cal.App.4th 124, 77 Cal.Rptr.3d 390.) The Third District Court of Appeal recently reached a similar conclusion in *People v. Phomphakdy* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2931369. The California Supreme Court has granted review in *Kelly* and the Attorney General intends to seek review in *Phomphakdy*.

medical marijuana in amounts that exceed the MMP's possession guidelines. (§ 11362.77(c).)

c) **Proposition 215:** Qualified patients claiming protection under Proposition 215 may possess an amount of marijuana that is “reasonably related to [their] current medical needs.” (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1549.)

B. Enforcement Guidelines.

1. **Location of Use:** Medical marijuana may not be smoked (a) where smoking is prohibited by law, (b) at or within 1000 feet of a school, recreation center, or youth center (unless the medical use occurs within a residence), (c) on a school bus, or (d) in a moving motor vehicle or boat. (§ 11362.79.)

2. **Use of Medical Marijuana in the Workplace or at Correctional Facilities:** The medical use of marijuana need not be accommodated in the workplace, during work hours, or at any jail, correctional facility, or other penal institution. (§ 11362.785(a); *Ross v. RagingWire Telecomms., Inc.* (2008) 42 Cal.4th 920, 933 [under the Fair Employment and Housing Act, an employer may terminate an employee who tests positive for marijuana use].)

3. **Criminal Defendants, Probationers, and Parolees:** Criminal defendants and probationers may request court approval to use medical marijuana while they are released on bail or probation. The court's decision and reasoning must be stated on the record and in the minutes of the court. Likewise, parolees who are eligible to use medical marijuana may request that they be allowed to continue such use during the period of parole. The written conditions of parole must reflect whether the request was granted or denied. (§ 11362.795.)

4. **State of California Medical Marijuana Identification Cardholders:** When a person invokes the protections of Proposition 215 or the MMP and he or she possesses a state medical marijuana identification card, officers should:

a) Review the identification card and verify its validity either by calling the telephone number printed on the card, or by accessing DPH's card verification website (<http://www.calmmp.ca.gov>); and

b) If the card is valid and not being used fraudulently, there are no other indicia of illegal activity (weapons, illicit drugs, or excessive amounts of cash), and the person is within the state or local possession guidelines, the individual should be released and the marijuana should not be seized. Under the MMP, “no person or designated primary caregiver in possession of a valid state medical marijuana identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana.” (§ 11362.71(e).) Further, a “state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer

has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.” (§ 11362.78.)

5. **Non-Cardholders:** When a person claims protection under Proposition 215 or the MMP and only has a locally-issued (i.e., non-state) patient identification card, or a written (or verbal) recommendation from a licensed physician, officers should use their sound professional judgment to assess the validity of the person’s medical-use claim:

a) Officers need not abandon their search or investigation. The standard search and seizure rules apply to the enforcement of marijuana-related violations. Reasonable suspicion is required for detention, while probable cause is required for search, seizure, and arrest.

b) Officers should review any written documentation for validity. It may contain the physician’s name, telephone number, address, and license number.

c) If the officer reasonably believes that the medical-use claim is valid based upon the totality of the circumstances (including the quantity of marijuana, packaging for sale, the presence of weapons, illicit drugs, or large amounts of cash), and the person is within the state or local possession guidelines or has an amount consistent with their current medical needs, the person should be released and the marijuana should not be seized.

d) Alternatively, if the officer has probable cause to doubt the validity of a person’s medical marijuana claim based upon the facts and circumstances, the person may be arrested and the marijuana may be seized. It will then be up to the person to establish his or her medical marijuana defense in court.

e) Officers are not obligated to accept a person’s claim of having a verbal physician’s recommendation that cannot be readily verified with the physician at the time of detention.

6. **Exceeding Possession Guidelines:** If a person has what appears to be valid medical marijuana documentation, but exceeds the applicable possession guidelines identified above, all marijuana may be seized.

7. **Return of Seized Medical Marijuana:** If a person whose marijuana is seized by law enforcement successfully establishes a medical marijuana defense in court, or the case is not prosecuted, he or she may file a motion for return of the marijuana. If a court grants the motion and orders the return of marijuana seized incident to an arrest, the individual or entity subject to the order must return the property. State law enforcement officers who handle controlled substances in the course of their official duties are immune from liability under the CSA. (21 U.S.C. § 885(d).) Once the marijuana is returned, federal authorities are free to exercise jurisdiction over it. (21 U.S.C. §§ 812(c)(10), 844(a); *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 369, 386, 391.)

IV. GUIDELINES REGARDING COLLECTIVES AND COOPERATIVES

Under California law, medical marijuana patients and primary caregivers may “associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes.” (§ 11362.775.) The following guidelines are meant to apply to qualified patients and primary caregivers who come together to collectively or cooperatively cultivate physician-recommended marijuana.

A. Business Forms: Any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes should be organized and operated in a manner that ensures the security of the crop and safeguards against diversion for non-medical purposes. The following are guidelines to help cooperatives and collectives operate within the law, and to help law enforcement determine whether they are doing so.

1. **Statutory Cooperatives:** A cooperative must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. (Corp. Code, § 12201, 12300.) No business may call itself a “cooperative” (or “co-op”) unless it is properly organized and registered as such a corporation under the Corporations or Food and Agricultural Code. (*Id.* at § 12311(b).) Cooperative corporations are “democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons.” (*Id.* at § 12201.) The earnings and savings of the business must be used for the general welfare of its members or equitably distributed to members in the form of cash, property, credits, or services. (*Ibid.*) Cooperatives must follow strict rules on organization, articles, elections, and distribution of earnings, and must report individual transactions from individual members each year. (See *id.* at § 12200, et seq.) Agricultural cooperatives are likewise nonprofit corporate entities “since they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers.” (Food & Agric. Code, § 54033.) Agricultural cooperatives share many characteristics with consumer cooperatives. (See, e.g., *id.* at § 54002, et seq.) Cooperatives should not purchase marijuana from, or sell to, non-members; instead, they should only provide a means for facilitating or coordinating transactions between members.

2. **Collectives:** California law does not define collectives, but the dictionary defines them as “a business, farm, etc., jointly owned and operated by the members of a group.” (*Random House Unabridged Dictionary*; Random House, Inc. © 2006.) Applying this definition, a collective should be an organization that merely facilitates the collaborative efforts of patient and caregiver members – including the allocation of costs and revenues. As such, a collective is not a statutory entity, but as a practical matter it might have to organize as some form of business to carry out its activities. The collective should not purchase marijuana from, or sell to, non-members; instead, it should only provide a means for facilitating or coordinating transactions between members.

B. Guidelines for the Lawful Operation of a Cooperative or Collective:

Collectives and cooperatives should be organized with sufficient structure to ensure security, non-diversion of marijuana to illicit markets, and compliance with all state and local laws. The following are some suggested guidelines and practices for operating collective growing operations to help ensure lawful operation.

1. **Non-Profit Operation:** Nothing in Proposition 215 or the MMP authorizes collectives, cooperatives, or individuals to profit from the sale or distribution of marijuana. (See, e.g., § 11362.765(a) [“nothing in this section shall authorize . . . any individual or group to cultivate or distribute marijuana for profit”]).

2. **Business Licenses, Sales Tax, and Seller’s Permits:** The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a Seller’s Permit. Some cities and counties also require dispensing collectives and cooperatives to obtain business licenses.

3. **Membership Application and Verification:** When a patient or primary caregiver wishes to join a collective or cooperative, the group can help prevent the diversion of marijuana for non-medical use by having potential members complete a written membership application. The following application guidelines should be followed to help ensure that marijuana grown for medical use is not diverted to illicit markets:

- a) Verify the individual’s status as a qualified patient or primary caregiver. Unless he or she has a valid state medical marijuana identification card, this should involve personal contact with the recommending physician (or his or her agent), verification of the physician’s identity, as well as his or her state licensing status. Verification of primary caregiver status should include contact with the qualified patient, as well as validation of the patient’s recommendation. Copies should be made of the physician’s recommendation or identification card, if any;
- b) Have the individual agree not to distribute marijuana to non-members;
- c) Have the individual agree not to use the marijuana for other than medical purposes;
- d) Maintain membership records on-site or have them reasonably available;
- e) Track when members’ medical marijuana recommendation and/or identification cards expire; and
- f) Enforce conditions of membership by excluding members whose identification card or physician recommendation are invalid or have expired, or who are caught diverting marijuana for non-medical use.

4. **Collectives Should Acquire, Possess, and Distribute Only Lawfully Cultivated Marijuana:** Collectives and cooperatives should acquire marijuana only from their constituent members, because only marijuana grown by a qualified patient or his or her primary caregiver may lawfully be transported by, or distributed to, other members of a collective or cooperative. (§§ 11362.765, 11362.775.) The collective or cooperative may then allocate it to other members of the group. Nothing allows marijuana to be purchased from outside the collective or cooperative for distribution to its members. Instead, the cycle should be a closed-circuit of marijuana cultivation and consumption with no purchases or sales to or from non-members. To help prevent diversion of medical marijuana to non-medical markets, collectives and cooperatives should document each member's contribution of labor, resources, or money to the enterprise. They also should track and record the source of their marijuana.

5. **Distribution and Sales to Non-Members are Prohibited:** State law allows primary caregivers to be reimbursed for certain services (including marijuana cultivation), but nothing allows individuals or groups to sell or distribute marijuana to non-members. Accordingly, a collective or cooperative may not distribute medical marijuana to any person who is not a member in good standing of the organization. A dispensing collective or cooperative may credit its members for marijuana they provide to the collective, which it may then allocate to other members. (§ 11362.765(c).) Members also may reimburse the collective or cooperative for marijuana that has been allocated to them. Any monetary reimbursement that members provide to the collective or cooperative should only be an amount necessary to cover overhead costs and operating expenses.

6. **Permissible Reimbursements and Allocations:** Marijuana grown at a collective or cooperative for medical purposes may be:

- a) Provided free to qualified patients and primary caregivers who are members of the collective or cooperative;
- b) Provided in exchange for services rendered to the entity;
- c) Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses; or
- d) Any combination of the above.

7. **Possession and Cultivation Guidelines:** If a person is acting as primary caregiver to more than one patient under section 11362.7(d)(2), he or she may aggregate the possession and cultivation limits for each patient. For example, applying the MMP's basic possession guidelines, if a caregiver is responsible for three patients, he or she may possess up to 24 oz. of marijuana (8 oz. per patient) and may grow 18 mature or 36 immature plants. Similarly, collectives and cooperatives may cultivate and transport marijuana in aggregate amounts tied to its membership numbers. Any patient or primary caregiver exceeding individual possession guidelines should have supporting records readily available when:

- a) Operating a location for cultivation;
- b) Transporting the group's medical marijuana; and
- c) Operating a location for distribution to members of the collective or cooperative.

8. **Security:** Collectives and cooperatives should provide adequate security to ensure that patients are safe and that the surrounding homes or businesses are not negatively impacted by nuisance activity such as loitering or crime. Further, to maintain security, prevent fraud, and deter robberies, collectives and cooperatives should keep accurate records and follow accepted cash handling practices, including regular bank runs and cash drops, and maintain a general ledger of cash transactions.

C. **Enforcement Guidelines:** Depending upon the facts and circumstances, deviations from the guidelines outlined above, or other indicia that marijuana is not for medical use, may give rise to probable cause for arrest and seizure. The following are additional guidelines to help identify medical marijuana collectives and cooperatives that are operating outside of state law.

1. **Storefront Dispensaries:** Although medical marijuana “dispensaries” have been operating in California for years, dispensaries, as such, are not recognized under the law. As noted above, the only recognized group entities are cooperatives and collectives. (§ 11362.775.) It is the opinion of this Office that a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law, but that dispensaries that do not substantially comply with the guidelines set forth in sections IV(A) and (B), above, are likely operating outside the protections of Proposition 215 and the MMP, and that the individuals operating such entities may be subject to arrest and criminal prosecution under California law. For example, dispensaries that merely require patients to complete a form summarily designating the business owner as their primary caregiver – and then offering marijuana in exchange for cash “donations” – are likely unlawful. (*Peron, supra*, 59 Cal.App.4th at p. 1400 [cannabis club owner was not the primary caregiver to thousands of patients where he did not consistently assume responsibility for their housing, health, or safety].)

2. **Indicia of Unlawful Operation:** When investigating collectives or cooperatives, law enforcement officers should be alert for signs of mass production or illegal sales, including (a) excessive amounts of marijuana, (b) excessive amounts of cash, (c) failure to follow local and state laws applicable to similar businesses, such as maintenance of any required licenses and payment of any required taxes, including sales taxes, (d) weapons, (e) illicit drugs, (f) purchases from, or sales or distribution to, non-members, or (g) distribution outside of California.

Assembly Bill No. 2650

CHAPTER 603

An act to add Section 11362.768 to the Health and Safety Code, relating to medical marijuana.

[Approved by Governor September 30, 2010. Filed with Secretary of State September 30, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2650, Buchanan. Medical marijuana.

Existing law added by initiative, the Compassionate Use Act of 1996, prohibits any physician from being punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes. The act prohibits the provisions of law making unlawful the possession or cultivation of marijuana from applying to a qualified patient, the qualified patient's primary caregiver, or an individual who provides assistance to the qualified patient or the qualified patient's primary caregiver, who possesses, cultivates, or distributes marijuana for the personal medical purposes of the qualified patient upon the written or oral recommendation or approval of a physician. Existing statutory law requires the State Department of Public Health to establish and maintain a voluntary program for the issuance of identification cards to qualified patients and establishes procedures under which a qualified patient with an identification card may use marijuana for medical purposes. Existing law regulates qualified patients, a qualified patient's primary caregiver, and individuals who provide assistance to the qualified patient or the qualified patient's primary caregiver, as specified. A violation of these provisions is generally a misdemeanor.

This bill would provide that no medical marijuana cooperative, collective, dispensary, operator, establishment, or provider authorized by law to possess, cultivate, or distribute medical marijuana that has a storefront or mobile retail outlet which ordinarily requires a local business license shall be located within a 600-foot radius of any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, except as specified. The bill also would provide that local ordinances, adopted prior to January 1, 2011, that regulate the location or establishment of these medical marijuana establishments would not be preempted by its provisions; and that nothing in the bill shall prohibit a city, county, or city and county from adopting ordinances that further restrict the location or establishment of these medical marijuana establishments. The bill would express a legislative finding and declaration that establishing a uniform standard regulating the proximity of these medical marijuana establishments to schools is a matter of statewide concern and not a municipal

affair and that, therefore, all cities and counties, including charter cities and charter counties, shall be subject to the provisions 92 of the bill. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 11362.768 is added to the Health and Safety Code, to read: **11362.768.** (a) This section shall apply to individuals specified in subdivision (b) of Section 11362.765.

(b) No medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana pursuant to this article shall be located within a 600-foot radius of a school.

(c) The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the school to the closest property line of the lot on which the medical marijuana cooperative, collective, dispensary, operator, establishment, or provider is to be located without regard to intervening structures.

(d) This section shall not apply to a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is also a licensed residential medical or elder care facility.

(e) This section shall apply only to a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is authorized by law to possess, cultivate, or distribute medical marijuana and that has a storefront or mobile retail outlet which ordinarily requires a local business license.

(f) Nothing in this section shall prohibit a city, county, or city and county from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.

(g) Nothing in this section shall preempt local ordinances, adopted prior to January 1, 2011, that regulate the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.

(h) For the purposes of this section, "school" means any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

SEC. 2. The Legislature finds and declares that establishing a uniform standard regulating the proximity of medical marijuana cooperatives, collectives, dispensaries, operators, establishments, or providers to schools is a matter of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this act shall apply to all cities and counties, including charter cities and charter counties.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

FREQUENTLY ASKED QUESTIONS- MMPA AND AG GUIDELINES

The following discussion provides an overview of the intention of the State rules and regulations as it relates to the consideration whether to allow MMDs in the city:

What medical conditions can medical marijuana relieve?

"Cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief" (State Health and Safety Code 11362.5).

How much marijuana can an individual have?

Qualified patients and primary caregivers may possess 8 oz. of dried marijuana, and may maintain no more than six mature or 12 immature plants per qualified patient.

How does a patient get recommendation from a doctor?

"Physicians may not prescribe marijuana because the federal Food and Drug Administration regulates prescription drugs and, under the CSA, marijuana is a Schedule I drug, meaning that it has no recognized medical use. Physicians may, however, lawfully issue a verbal or written recommendation under California law indicating that marijuana would be a beneficial treatment for a serious medical condition" (AG Guidelines). Also, the Medical Board of California provides standards for a physician recommending marijuana for medical conditions.

Who is a primary caregiver?

"A primary caregiver is a person who is designated by a qualified patient and 'has consistently assumed responsibility for the housing, health, or safety' of the patient" (AG Guidelines). The courts have decided that dispensary operators generally do not meet the definition of primary caregiver.

What is a medical marijuana ID card and how are they issued?

The AG Guidelines describe that it is mandatory for county health agencies to participate in the identification card program; however, participation by patients and primary caregivers in that program is voluntary. The purpose of the card is to help law enforcement officers to identify and verify that cardholders are able to cultivate, possess, and transport certain amounts of marijuana without being subject to arrest. MMDs also issue their own ID cards to members to ensure they have a recommendation from a medical doctor before dispensing marijuana.

Can the sale of medical marijuana be taxed?

"In February 2007, the California State Board of Equalization (BOE) confirmed its policy of taxing medical marijuana transactions, as well as its requirement that businesses engaging in such transactions hold a Seller's Permit" (AG Guidelines).

How can medical marijuana be distributed?

Under State law, patients may "associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes" (1 1362.775). The AG Guidelines then provide a description of the types of acceptable business forms

that can cultivate and distribute marijuana for medical purposes, mainly describing cooperatives and collectives.

"Any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes should be organized and operated in a manner that ensures the security of the crop and safeguards against diversion for non-medical purposes" (AG Guidelines).

What is a cooperative, collective or dispensary?

A cooperative must be properly organized and registered as such under the law. They must be "democratically controlled and not organized to make a profit for themselves or their members. Cooperatives should only provide a means for facilitating or coordinating transactions between members, and not purchase marijuana from, or sell to non-members" (AG Guidelines).

Although California law does not define a collective, the AG Guidelines applies the following definition: "a business, farm, etc., jointly owned and operated by the members of a group." A collective only facilitates collaborative efforts of patients and primary caregiver members- including the allocation of costs and revenues. They are not for-profit enterprises. Similar to a cooperative, collectives should only provide a means for facilitating or coordinating transactions between members, and not purchase marijuana from, or sell to non-members.

Dispensaries are not recognized under state law, but recent court cases have shown that a dispensary is allowed if it operates as a collective or cooperative. The AG Guidelines does state that, the storefront dispensaries "do not substantially comply with the guidelines of a Cooperative/Collective, unless they are organized with sufficient structure to ensure security, non-diversion of marijuana to illicit markets, and compliance with all State and local laws." The Attorney General further opines, "Dispensaries that merely require patients to complete a form summarily designating a business owner as their primary caregiver- and then offering marijuana in exchange for cash 'donations'- are unlawful."

In December 2008, the California Supreme Court issued a landmark medical marijuana decision in *People v. Mentch*. The Supreme Court focused on the "patient-primary caregiver relationship." As to who qualifies as primary caregiver, the Court held: The primary caregiver who the patient designates must be one "who has consistently assumed responsibility for housing, health, or safety of the patient." The Court held that a defendant whose caregiving consisted principally of supplying marijuana and instruction on its use, and who otherwise only sporadically took some patients to medical appointments, cannot qualify as a primary caregiver under the Compassionate Use Act and was not entitled to an affirmative defense. The Medical Marijuana Program Act (MMPA), defines the role of a "primary caregiver-patient relationship." The MMPA indicates that primary caregivers may receive "reasonable compensation" for the services provided to enable the patient to use marijuana. They may also receive reasonable compensation for out of pocket expenses incurred in providing those

services (i.e. being reimbursed for costs incurred in growing marijuana). The misconception of many collectives, cooperatives, and dispensary operators is that a medical marijuana collective/cooperative supplier and/or dispensary operators are entitled to immunity for selling marijuana to dispensaries or patients. That misconception is limited by a thorough review of the facts and records before the Supreme Court in *Mentch*. The case reflects summary rejection of MMPA compensation immunity to anyone other than primary caregivers. This immunity simply conveys the ability of the patient and primary caregivers to engage in group cultivation, such as in a community garden or community greenhouses. There is no immunity provided for any exchange of money for marijuana, and there is no immunity provided for any compensation to members of group cultivation or individuals paid to cultivate for other members of the group. The specific conduct of possession for sale of marijuana and the specific conduct of selling marijuana remain without immunity and are illegal.

The AG Guidelines list "indicia of unlawful operation", which include having law enforcement officers being alert for signs of mass production or illegal sales, including excessive amounts of marijuana, excessive amounts of cash, failure to follow state and local laws, and purchases from, or sale or distribution to, non-members.

Who can cultivate marijuana for medical purposes?

Any person with a recommendation from a doctor can cultivate their own marijuana pursuant to limitations listed above.

MMDs should acquire marijuana only from their constituent members, "because only marijuana grown by a qualified patient or their primary caregiver may lawfully be transported by, or distributed to, other members of a collective or cooperative. Nothing allows marijuana to be purchased from outside the collective or cooperative for distribution to its members. Instead, the cycle should be a closed-circuit of marijuana cultivation and consumption with no purchases or sales to or from non-members." (AG Guidelines).

The guidelines also state that MMDs should document each member's contribution of labor, resources, or money to the effort, and they should track and record the source of their marijuana.



CITY OF SUNNYVALE

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MEMORANDUM

TO: Andrew Miner, Principal Planner

FROM: Rebecca L. Moon, Assistant City Attorney

DATE: November 3, 2010

RE: *Qualified Patients Association v. City of Anaheim*

Case Update

On August 18, 2010, the California Court of Appeal, Fourth District, issued its long-anticipated decision in *Qualified Patients Association v. City of Anaheim* (2010) 187 Cal.App.4th 734. The case involved a legal challenge to the City of Anaheim's ordinance banning medical marijuana dispensaries.

The plaintiffs, Qualified Patients Association, sought to overturn the ordinance on the ground that it was preempted by the Compassionate Use Act (CUA) and the Medical Marijuana Program Act (MMPA). The City of Anaheim filed a "demurrer," i.e. motion to dismiss the complaint, arguing, among other things, that the plaintiffs had no standing to bring a suit to overturn the ordinance because their planned activities would be illegal under federal law. "Standing" is a legal concept which means the right to file a lawsuit.

The trial court sustained the demurrer and dismissed the complaint. On appeal, the appellate court was asked to decide four key legal questions: (1) whether the MMPA unconstitutionally amended the CUA; (2) whether federal drug laws preempt the State of California's legalization of medical marijuana through the CUA and MMPA, (3) whether the CUA and MMPA preempt the City of Anaheim's ordinance totally banning medical marijuana dispensaries, and (4) whether prohibition of medical marijuana dispensaries violates California's Unruh Civil Rights Act.

Office of the City Attorney

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VIII.B.63

The court ruled against the City's first two legal arguments, finding that the MMPA did not unconstitutionally amend the CUA and that California's decision to legalize marijuana for medical purposes is not preempted by federal law. The court basically found that the CUA and MMPA simply provide an immunity from prosecution under state drug laws, which is within the state's jurisdiction. The court also held that a City can permit medical marijuana dispensaries to operate without incurring criminal liability for "aiding and abetting" violations of federal law.

With regard to the third question, the court concluded that it was too early in the litigation to decide whether state law precludes cities from banning MMD's. The court specifically noted that it could not decide, on a demurrer, whether or not the Qualified Patients Association planned to open a "properly organized and operated collective or cooperative" as allowed by the MMPA or whether (as alleged by the city) its activities would be illegal. (*Id.* at 9.) On a demurrer, the court must assume that all properly pled allegations in the complaint are true. Therefore, the case must go back to the trial court for further proceedings and submission of evidence via a summary judgment motion or trial.

On the fourth question, the court found that banning medical marijuana dispensaries does not violate the plaintiffs' civil rights under the Unruh Act.

In the wake of *Qualified Patients Association*, medical marijuana advocates have continued to argue that the CUA and MMPA preempt the ability of cities and other local public entities to ban medical marijuana dispensaries. The court did note, "viewing the allegations of the complaint most favorably to the plaintiffs, as is required on demurrer, it appears incongruous at first glance to conclude a city may criminalize as a misdemeanor a particular use of property the state expressly has exempted from 'criminal liability' . . ." (*Id.* at 754.) However, the court went on to say, "in supplemental briefing at our invitation, the city and its amici curiae demonstrate the issue of state preemption under the MMPA is by no means clear-cut or easily resolved on first impressions." (*Id.*) The court expressly states, "we express no opinion on . . . whether state law preempts the city's ordinance", emphasizing "[w]hether the MMPA bars local governments from using nuisance abatement law and penal legislation to prohibit the use of property for medical marijuana purposes remains to be determined".

Unfortunately, the question may not be finally resolved by the courts for at least another 2 to 3 years, if not longer. Until a court rules otherwise, the city can exercise its traditional authority over zoning and land use to regulate or ban facilities that distribute medical marijuana in certain zones or in all zones in the city.

Review of approaches of other cities

Solano County Cities

Benicia – Moratorium

Dixon – Banned

Fairfield – Banned

Rio Vista – *none*

Vacaville – Moratorium

Vallejo – *none*

Solano County – 6 mature plants OR 12 immature plants AND 8 ounces of bud

Cities with Medical Marijuana Codes in Place

Albany

Angels Camp

Arcata - ID card system maintained by Chief of Police.

Atascadero

Berkeley

Cotati

Fort Bragg

Laguna Woods

Long Beach

Los Angeles

Malibu

Martinez

Napa

Oakland

Palm Springs – Amended in June 2010 to not allow more than 3 MMDs within City limits

Plymouth

Redding

Ripon

Sacramento

San Carlos

San Francisco

San Mateo

Santa Barbara

Santa Cruz - No quantity guidelines; city ordinance regulates cannabis clubs, allows physician's diagnosis for recommendation.

Santa Rosa

Sebastopol

Sunnyvale

Sutter Creek

Tulare

Visalia

West Hollywood - operating w/o a business license is a misdemeanor

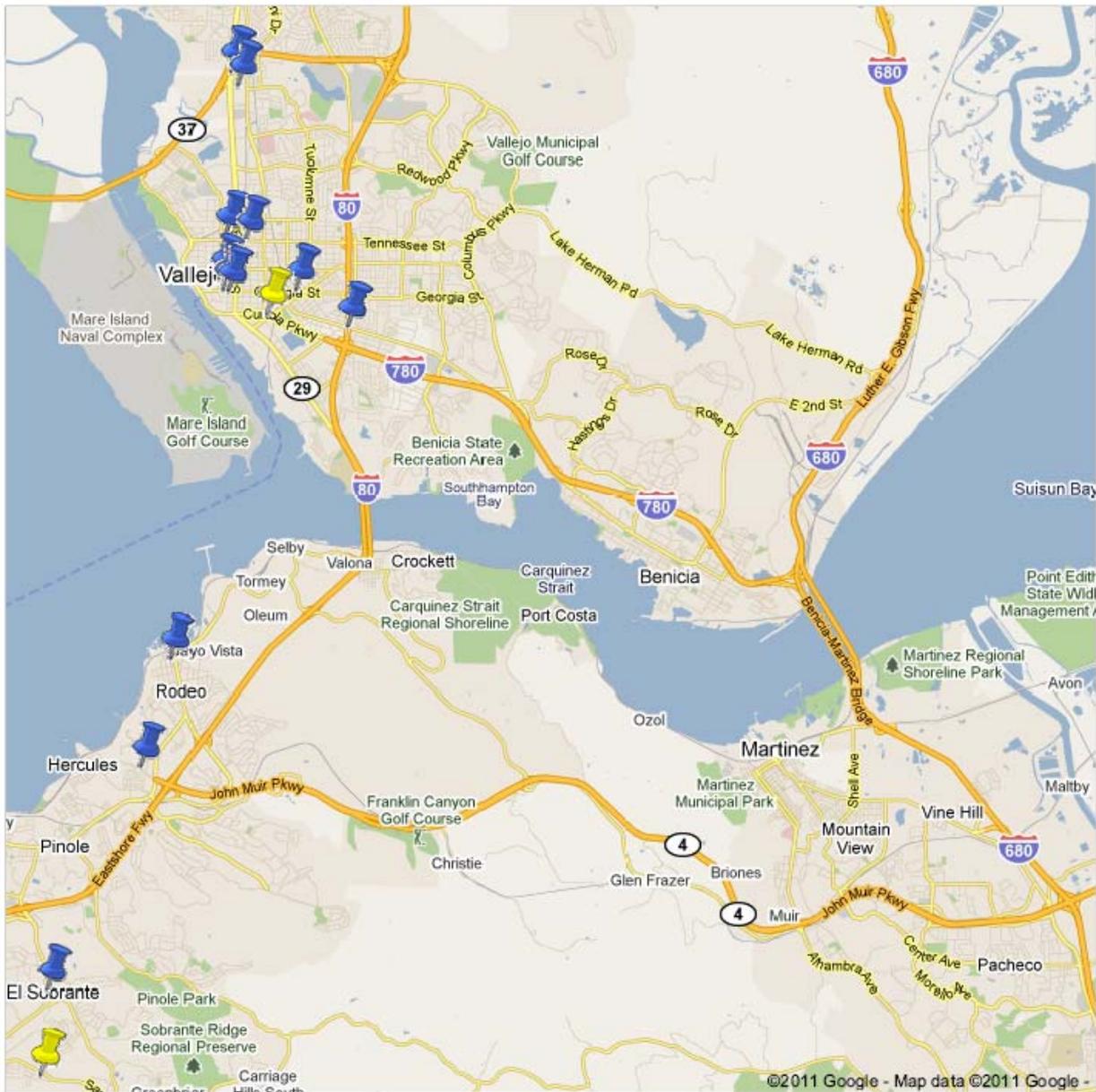
Cities with MMD Moratoria in Place

Daly City
Los Gatos
Millbrae
Mountain View
Placerville
Redwood City
San Jose
Santa Clara
Saratoga
Selma
South SF
Whittier

Cities with a Ban on MMDs

Elk Grove
Gilroy
Los Altos
Milpitas
Palo Alto

X = Ordinance in place



Medical Marijuana Dispensaries



Walk-in dispensary



Delivery service

VIII.B.68

Distance from center of City (miles)	Dispensary Name	Address	Other
DELIVERY SERVICES	Greenticket Bakery (delivers to Benicia)	Vallejo, CA	(707) 731-1129 greenticketbakery.com
	Town & Country Cooperative (delivers to Solano County)	Concord, CA	(888) 420-GUYZ tandc.org
	Hollistic Essentials (delivers to Benicia)	Concord, CA	(925) 951-7453
	Herbal Essence Holistic Healing Center (delivers to Benicia)	Concord, CA 94521	(925) 849-6750
	Delta's Finest (delivers to Solano County)	Vacaville, CA	(707) 639-7141 dfidelivery.com
	Holistic Hospice Solutions (delivers to Benicia)	El Sobrante, CA 94820	(510) 672-4683 holistichospicesolutions.org
5.9	Life Enhancement Services	650 Benicia Rd Vallejo, CA 94591	(707) 552-1540
7.4	"101 North"	1409 Georgia St Vallejo, CA 94590	(707) 648-1386
7.8	Solace Wellness Collective	1614 Sonoma Blvd Vallejo, CA 94590	(707) 652-5474
7.9	Wellness Solutions Group Collective	419 Georgia St. #9 Vallejo, CA 94590	(707) 655-6497
8.1	Greenwell Cooperative	714 Marin St Vallejo, CA 94590	(707) 980-7774
8.2	North Bay Alternative Healing	1516 Napa Street Vallejo, CA 94590	(707) 980-7221

8.5	Better Health Group Collective	432 Tennessee Street Vallejo, CA 94590-4453	(707) 643-3767 betterhealthgroup707.org
10.5	California Collective Care	1639 Lewis Brown Dr Vallejo, CA 94589	(707) 643-6313 calcareclub.org
10.6	Red Dog Green	1914 Broadway St Vallejo, CA 94589	(707) 649-1022 medicinalrevolution.com
12.9	Rodeo Natural Medicine	185 Parker Ave. Rodeo, CA 94572	(510) 396-9853 rodeonaturalmedicine.webs.com
12.9	Hercules Health Center	500 Alfred Nobel Dr Hercules, CA 94547	(510) 964-7216 herculeshealthcenter.com
22.6	7 Stars Holistic Healing Center	San Pablo Dam Road El Sobrante, CA 94820	(510) 527-7827 medicalmarijuanarichmond.com

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:

George Anderson, California Department of Justice
Jacob Appelsmith, Office of the California Attorney General
John Avila, California Narcotics Officers Association
Phebe Chu, Office of San Bernardino County Counsel
Scott Collins, Los Angeles County District Attorney's Office
Cathy Coyne, California State Sheriffs' Association
Lorrac Craig, Trinity County Sheriff's Department
Jim Denney, California State Sheriffs' Association
Thomas Dewey, California State University—Humboldt Police Department
Dana Filkowski, Contra Costa County District Attorney's Office
John Gaines, California Department of Justice/Bureau of Narcotics Enforcement
Craig Gundlach, Modesto Police Department
John Harlan, Los Angeles County District Attorney's Office—Major Narcotics Division

Nate Johnson, California State University Police
Mike Kanalakis, Monterey County Sheriff's Office
Bob Kochly, Contra Costa County Office of District Attorney
Tommy LaNier, The National Marijuana Initiative, HIDTA
Carol Leveroni, California Peace Officers Association
Kevin McCarthy, Los Angeles Police Department
Randy Mendoza, Arcata Police Department
Mike Nivens, California Highway Patrol
Rick Oules, Office of the United States Attorney
Mark Pazin, Merced County Sheriff's Department
Michael Regan, El Cerrito Police Department
Melissa Reisinger, California Police Chiefs Association
Kimberly Rios, California Department of Justice, Conference Planning Unit
Kent Shaw, California Department of Justice/Bureau of Narcotics Enforcement
Crystal Spencer, California Department of Justice, Conference Planning Unit
Sam Spiegel, Folsom Police Department
Valerie Taylor, ONDCP
Thomas Toller, California District Attorneys Association
Martin Vranicar, Jr., California District Attorneys Association

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

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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.

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.”²⁷ Marijuana businesses, of any kind, do not meet this legal definition.

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 SIMILIARLY 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 UC1'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.

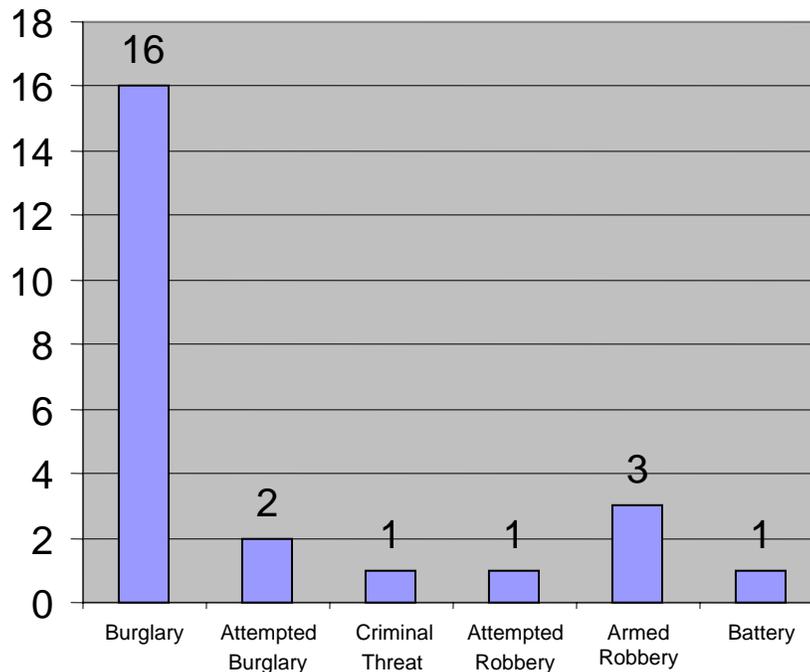
After the July 2006 search warrants a joint press conference was held with the U.S. Attorney and District Attorney, during which copies of a complaint to the medical board, photos of the food products which were marketed to children, and the charts shown below were provided to the media.

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.

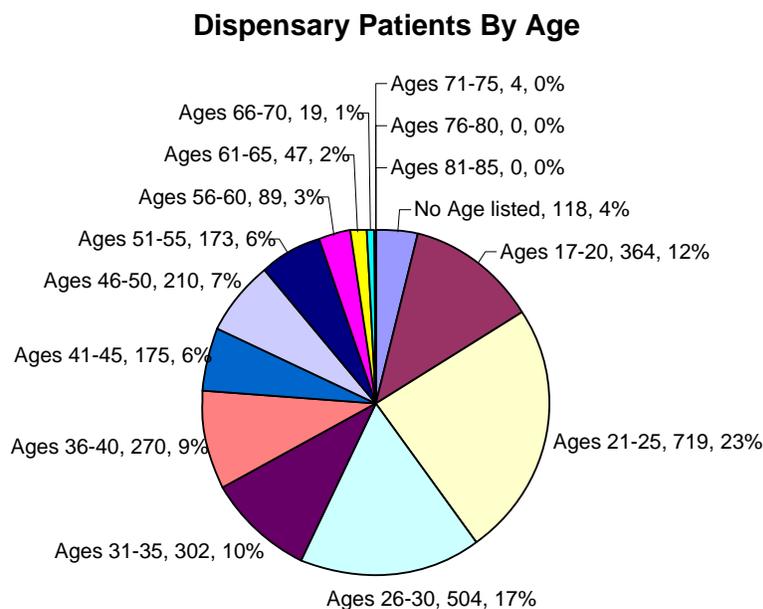
Because the complaints were received by various individuals, the exact number of complaints was not recorded. The following were typical complaints received:

- 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



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.

ENDNOTES

¹ U.S. Const., art. VI, cl. 2.

² U.S. Const., art. I, sec. 8, cl. 3.

³ *Gonzales v. Raich* (2005) 125 S.Ct. 2195 at p. 2204.

⁴ *Gonzales v. Raich*. See also *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 121 S.Ct. 1711, 1718.

⁵ *Gonzales v. Raich* (2005) 125 S.Ct. 2195; see also *United States v. Oakland Cannabis Buyers' Cooperative* 121 S.Ct. 1711.

⁶ Josh Meyer & Scott Glover, "U.S. won't prosecute medical pot sales," *Los Angeles Times*, 19 March 2009, available at <http://www.latimes.com/news/local/la-me-medpot19-2009mar19.0.4987571.story>

⁷ See *People v. Mower* (2002) 28 Cal.4th 457, 463.

⁸ Health and Safety Code section 11362.5(b) (1) (A). All references hereafter to the Health and Safety Code are by section number only.

⁹ H&S Code sec. 11362.5(a).

¹⁰ H&S Code sec. 11362.7 *et. seq.*

¹¹ H&S Code sec. 11362.7.

¹² H&S Code secs. 11362.71–11362.76.

¹³ H&S Code sec. 11362.77.

¹⁴ H&S Code secs. 11362.765 and 11362.775; *People v. Urziceanu* (2005) 132 Cal.App.4th 747 at p. 786.

¹⁵ H&S Code sec. 11362.77; whether or not this section violates the California Constitution is currently under review by the California Supreme Court. See *People v. Kelly* (2008) 82 Cal.Rptr.3d 167 and *People v. Phomphakdy* (2008) 85 Cal.Rptr. 3d 693.

¹⁶ H&S Code secs. 11357, 11358, 11359, 11360, 11366, 11366.5, and 11570.

¹⁷ H&S Code sec. 11362.7(h) gives a more comprehensive list – AIDS, anorexia, arthritis, cachexia, cancer, chronic pain, glaucoma, migraine, persistent muscle spasms, seizures, severe nausea, and any other chronic or persistent medical symptom that either substantially limits the ability of a person to conduct one or more life activities (as defined in the ADA) or may cause serious harm to the patient's safety or physical or mental health if not alleviated.

¹⁸ *People v. Mower* (2002) 28 Cal.4th 457 at p. 476.

¹⁹ *Id.* Emphasis added.

²⁰ Packel, *Organization and Operation of Cooperatives*, 5th ed. (Philadelphia: American Law Institute, 1970), 4-5.

²¹ Sam Stanton, "Pot Clubs, Seized Plants, New President—Marijuana's Future Is Hazy," *Sacramento Bee*, 7 December 2008, 19A.

²² For a statewide list, see <http://canorml.org/prop/cbclist.html>.

²³ Laura McClure, "Fuming Over the Pot Clubs," *California Lawyer Magazine*, June 2006.

²⁴ H&S Code sec. 11362.765(c); see, e.g., *People v. Urziceanu*, 132 Cal.App.4th 747 at p. 764.

²⁵ *Gonzales v. Raich*, *supra*, 125 S.Ct. at page 2195.

²⁶ *People v. Urziceanu* (2005) 132 Cal.App.4th 747; see also H&S Code sec. 11362.765.

²⁷ Israel Packel, 4-5. Italics added.

²⁸ H&S Code sec. 11362.7(d)(1).

²⁹ See, e.g., McClure, "Fuming Over Pot Clubs," *California Lawyer Magazine*, June 2006.

³⁰ H&S Code secs. 11362.5(e) and 11362.7(d)(1), (2), (3), and (e); see also *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1395.

³¹ *People v. Mower*, 28 Cal.4th at 476. Emphasis added.

³² Glenda Anderson, "Laytonville Marijuana Guru Shot to Death: 2 Others Beaten in Home; No Suspects but Officials Believe Killing Related to Pot Growing," *Santa Rosa Press Democrat*, 19 November 2005, available at <http://www1.pressdemocrat.com/apps/pbcs.dll/article?AID=/20051119/NEWS/511190303/1033/>

³³ "Medical Marijuana Shop Robbed," *Santa Barbara Independent*, 10 August 2006, available at <http://independent.com/news/2006/aug/10/medical-marijuana-shop-robbed/>

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- ⁷³ Jim Avila, "Marijuana McMansions: Cops Say Organized Crime Is Sending Families Into the Suburbs to Grow Marijuana," ABC News, 14 June 2007, available at <http://abcnews.go.com/print?id=3242760>
- ⁷⁴ Avila; Anastasia; "DEA Raids Miami Grow House," CBS5.com, 30 April 2008, available at <http://cbs5.com/national/dea.raid.miami.2.712958.html>
- ⁷⁵ Anastasia.
- ⁷⁶ Bigham, 23 September 2007; Ethan Baron, "Angel Linked to Grow-op," *The Province (CNBC)*, 22 May 2005, available at <http://www.mapinc.org/newstcl/v05/n823/a02.html>
- ⁷⁷ Bigham, 23 September 2007.
- ⁷⁸ Bigham, 23 September 2007.
- ⁷⁹ Heather Allen, "Marijuana Grow Houses Flourish as Southwest Florida Market Drops," *HeraldTribune.com*, 24 July 2007, available at <http://www.heraldtribune.com/article/20070724/NEWS/707240498>
- ⁸⁰ Eric Bailey and Tim Reiterman, "Where Mary Jane is the girl next door," *Los Angeles Times*, 31 May 2008, available at <http://articles.latimes.com/2008/may/31/local/me-pot31>
- ⁸¹ Eureka House Fire the Result of You-know-what," *Humboldt County News*, 7 September 2008, available at <http://news.humcounty.com/>; written remarks of Arcata Police Chief Randy Mendosa, 1 March 2009.
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- ⁸⁵ "DEA Raids Miami Grow House."
- ⁸⁶ Sandy Louey, "Arrests Take Toll on Local Gang," *The Sacramento Bee*, 14 August 2008, available at <http://www.sacbee.com/elkgrove/v-print/story/1152310.html>
- ⁸⁷ Avila.

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- ⁸⁸ Scott Glover, “Morro Bay Pot Dispensary Owner Found Guilty of Federal Charges,” *Los Angeles Times*, 6 August 2008, available at <http://articles.latimes.com/2008/aug/06/local/me-pot6>
- ⁸⁹ Bailey and Reiterman.
- ⁹⁰ Janis Ramsay, “Special Report: Grow-op House Can Still Be Dream Home: Realtor Says,” *The Barrie Advance*, 25 August 2008, available at <http://www.mapinc.org/drugnews/v08/n818/a06.html>
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- ⁹² Bailey and Reiterman.
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- ⁹⁵ See *People v. Urziceanu*, 132 Cal.App.4th 747.
- ⁹⁶ City of Pleasant Hill Presentation to Its Planning Commission by Planning Division Staff on April 24, 2007.
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- ⁹⁹ “Asian Gangs Move Grow-ops,” *The Asian Pacific Post*, 27 September 2007, available at http://www.asianpacificpost.com/portal2/ff8080811548063f0115482401d00003_asian_gangs_move_grow_ops.do.html
- ¹⁰⁰ See Asian Gangs Move Grow-ops.
- ¹⁰¹ See “Does Marijuana Contribute to Psychotic Illnesses?” *Current Psychiatry Online* 6(2), February 2007.
- ¹⁰² See, e.g., http://www.californiapolicechiefs.org/nav_files/research/ordinances.html
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Adverse Secondary Effects

The California Police Chiefs Association Task Force on Marijuana Dispensaries prepared a report that clearly outlined the adverse secondary effects of storefront dispensaries and similarly operated cooperatives. See Attachment K. Most notable of these effects are the criminal acts that stem from medical marijuana, ranging from murder, robbery, burglary, organized crime, to tax evasion. The California Police Chiefs Association compiled a list of medical marijuana related crimes including seven homicides from April 2008 to March 2009.

Data and supporting documentation from other cities indicates that the opening of the dispensaries have coincided with increases in calls for public safety services. Most cities have reported an increase in crime. See the September 2, 2010 Los Angeles Times article, for example.

<http://articles.latimes.com/2010/sep/02/local/la-me-0902-baca-pot-20100902>
Increased calls for service include calls related to fire alarms, medical calls, crimes ranging from loitering to homicide, driving under the influence, and traffic collisions (resulting from Driving Under the Influence).

A 2010 study by Al Crancer Jr., a retired research analyst for the National Highway Traffic Safety Administration, showed the largest increases in fatalities in fatal crashes where the driver tested positive for marijuana occurred over the 5 years following the legalization of medical marijuana in January 2004. There were 1,240 fatalities in fatal crashes where the driver tested positive for marijuana for the following five years, compared to the 631 fatalities for the five years before 2004; an increase of almost 100%. Based on the data from 2008 there were eight counties in California with 16% or more of the drivers in fatal crashes testing positive for marijuana and five of the eight counties had 20% or more.

http://www.californiapolicechiefs.org/nav_files/marijuana_files/files/Accident_M_J_Study_June_2010AAA.pdf

The California Department of Motor Vehicles website describes the effect of marijuana by saying that it lessens coordination, distorts sense of distance, and causes hallucinations, panic, depression, and fear.

http://www.dmv.ca.gov/teenweb/crazy_btn3/ability.htm

Data from other cities also indicate increases in the reported number of white-collar crimes, including embezzlement and tax evasion.

Fire Suppression Issues

Destructive fires from unsafe indoor marijuana grows have become commonplace. On December 26, 2010 a fire was reported at an apartment where marijuana was alleged to have grown.

<http://www.kron.com/News/ArticleView/tabid/298/smId/1126/ArticleID/7757/refTab/536/t/Fire%20Breaks%20Out%20in%20Apartment%20Allegedly%20Used%20to%20Grow%20Marijuana/Default.aspx>

On December 28, 2010 a house fire led to the discovery of hundreds of marijuana plants in Sacramento.

<http://www.youtube.com/watch?v=40nwCHL6Ulk>

Growers seem to commonly use numerous 1000 watt bulbs from the same circuit which can result in fires, along with faulty wiring (not up to code), the use of extension cords, and illegally bypassing PG&E meters, which can all cause fires.

Arsons have also been reported at dispensaries. On January 12, 2011 a two-alarm fire broke out at the Herb Appeal collective in San Jose. KGO reported that the blaze may have been arson.

http://abclocal.go.com/kgo/story?section=news/local/south_bay&id=7893694

It is legal to grow up to six mature or 12 immature marijuana plants for personal medical use, and it is possible that limiting grows to that amount would be less likely to create dangerous fire hazards. However, growers commonly use numerous 1000 watt bulbs from the same circuit which can result in fires, along with faulty wiring (not up to code), the use of extension cords, and illegally bypassing PG&E meters, which can all cause fires.

Mexican Drug Cartels are the leading producers of marijuana in the U.S. The "Botello" Cartel is responsible for grows in California, Oregon, Washington, and Arizona. These Drug Cartels have been directly implicated in a recent California wildfire. In August 2009, an illegal marijuana operation being operated by Mexican drug cartel burned more than 88,650 acres (Santa Barbara County Wildfire).

Negative Effects on Our Youth

There are numerous studies that report the negative effects associated with adolescent use of marijuana. The effects include lower education and graduation rates, lower college attendance, lower employment, increased treatment for addiction/dependency, teen pregnancy, increased involvement in criminal activity, and an increased use of other addictive substances.

In June 2008, the National Center on Addiction and Substance Abuse at Columbia University reported that over the prior 15 years, there had been a 188% increase in the proportion of teen treatment admissions with a medical diagnosis of marijuana dependence, compared with a 54% decline for all other

substances of abuse.

<http://www.casacolumbia.org/templates/PressReleases.aspx?articleid=527&zoneid=68>

Several recent studies discuss the correlation of marijuana and mental illness. http://www.sciencedaily.com/news/mind_brain/marijuana/ Recent brain imaging research by UCLA and Childrens' Hospital of Philadelphia helps explain why marijuana is a cause of the problem. The studies found that marijuana use, particularly during adolescence, interrupts the white matter development in the brain and is a major cause of schizophrenia in youth.



FOR IMMEDIATE RELEASE

January 5, 2011

Contact: Lori Green, 909.457.4229

CA Leads Nation in Marijuana Admissions with 117% Increase: pot as so-called "medicine" to blame says coalition

Sacramento, CA. A recent study shows California leading the nation in marijuana treatment admissions. The failure of California political leaders to address marijuana as a harmful substance, along with the proliferation of pot shops and the belief that marijuana is medicine, is leading to this sad rise among California youth. The Washington Times reported on this issue ([click here](#)) stating, "...California provided the most eye-popping statistic â€” **a 117 percent increase** in its marijuana admissions rate, growing from 52 admissions per 100,000 population in 1998 to 113 per 100,000 in 2008."

Roger Morgan, the Executive Director of [Coalition for a Drug Free California](#) (CDFC) stated, "*With regard to the Washington Times article, the 117% increase in marijuana admissions for treatment in California that occurred from 1998 to 2008 is the tip of the iceberg. The potency of marijuana has more than doubled in the same period of time, and with what we know today about the cellular damage of marijuana to brains and bodies, we can expect a surge in treatment demands as well as more mental illness, more health problems, more crime, worse academic standards, more welfare and more traffic deaths in all, much greater demands for public services and less money to pay for them.*"

Dr. Paul Chabot, founder of the [Inland Valley Drug Free Community Coalition](#) and the CDFC stated, "*This is precisely the reason we have fought so hard to keep pot shops out of our communities. Too many children truly believe pot is some kind of magical medicine with no health consequences. Our volunteers who speak to students hear about it every day. Unless California's politicians take on the problem of so-called medical pot, we will continue to see communities decline and kids enter rehab. Our state leaders should be absolutely ashamed.*"

Morgan stated, "*While the California Department of Alcohol and Drug Programs feels it is good that more people are seeking treatment, it would be highly desirable that they focus on preventing the problem to begin with. The brain is not fully developed until age 25 and marijuana can cause permanent brain damage until then, particularly during adolescence. A damaged teenage brain doesn't get better as an adult. If we keep wasting our young, we have no future as a nation, and we will never solve the root cause of the budget problem: substance abuse.*"

####

Attachment N
Excerpt of December 16, 2010 Sunnyvale City Council Report

“The land use concerns for MMDs are briefly discussed below:

- **Compatibility.** The MMDs observed by staff tended to be in multi-tenant Class C industrial buildings, near other office and R&D businesses. Two of the 15 MMDs visited were located near commercial uses, as well. In general, the facilities were low-key, with no obvious sign of activity beyond the typical use. At the large MMD that staff toured, however, there was constant turnover of cars, with people congregating at the entrance and waiting in cars. Staff visited two businesses adjacent to that MMD, and asked if they had any concern about the MMD. Those adjacent tenants complained of an increase in traffic, loitering, and crime since the MMD began operation.
- **Odors.** Marijuana has a distinctive smell: as a plant, a bud and while smoked. MMDs tend to have large ventilation systems in place to remove odors from the premises. Even with those systems, odors can still be pervasive. This has been an issue described by other cities and businesses near existing MMDs.
- **Traffic and parking.** At the MMD at which staff was given a tour, the manager of the business stated there were 30,000 members at that facility. That number is not typical, but many operators mention they have 1,000 or more members. What is not known, nor easily controlled, is whether members use the MMD daily, weekly or monthly. If the MMD has a high turnover rate where clients spend little time on site and pick up what they need and leave, then a high turnover would have less parking concerns, but may have greater traffic and circulation issues may arise depending on whether the members use the MMD during peak periods. Sometimes high turnover creates more parking concerns, not less (e.g. fast food restaurants versus sit down restaurants).

After visiting 15 MMDs, and touring one large MMD, staff concluded that, although large, well-trafficked facilities have the potential to negatively impact surrounding uses and areas, it is possible that smaller MMDs can exist with little impact to nearby businesses with proper regulations. This use is relatively new, and use patterns are not well known. It is possible that MMDs have similar impacts as any other business in an area. It is also possible that an MMD could disrupt an existing neighborhood with more traffic and a possible increase in crime due to the presence of an illegal drug (when not used for medical purposes).

Proponents claim that those cities with safety and compatibility concerns are typically those without adequate regulations in place (e.g. Los Angeles and San Jose). Proponents claim that cities like Oakland, which has concise regulations in place, have fewer safety and compatibility problems.

POTENTIAL REGULATORY OUTLINE AND OPTIONS

If Council decides to allow and regulate MMDs in Benicia, an ordinance would be required. Included in this attachment is a brief discussion of options, an outline of the ordinance, and a list of options that can be considered.

Limiting the Number and Time Period for MMDs in the City

If Council decides to allow MMDs in the city, it would be prudent to restrict the number allowed to receive permits. Options for this include limiting the number to one or two initially, which allows the City to work with a reasonable number while ensuring the uses do not increase crime or create land use incompatibilities, operate pursuant to all regulations, and do not become too difficult to regulate and enforce conditions. One option is to have a first come, first served process; however, this could be difficult to manage if applications were submitted at the same time

It may also prudent to limit the permit time frame to a short period of time (i.e. one year) in order to ensure the MMDs operate according to their permit, and to ensure the City does not commit to a long-term and expensive enforcement operation.

An option used in other cities in the State (i.e. Napa and Eureka) is to require a competitive bid process to determine which MMDs could apply for the limited number of permits allowed in the City. Factors to consider as part of that process could include details of the operation, location, size, adherence to compassionate use considerations, etc. City staff or Council could consider each proposal and make the decision as to which will be allowed to submit a planning application.

If MMDs are allowed to apply for a permit, a Use Permit with a one-year limitation should be required, after which time a new permit will be required.

Standard Submittal Requirements

Applications for MMDs would likely be more technical and complex than typical land use projects. This is because of the complex information necessary for this unique use. An ordinance should provide several key requirements as part of an application, including:

- Permit fee to cover cost of processing applications, specifically for the Public Works and Community Development, Police and Fire Departments' efforts;
- Background information for those owning, operating or working at a MMD, including criminal, employment and tax records. This information would assist in determining the credibility of the applicant, and whether the MMD would be likely to meet the intent of the City;
- Plan of operations showing:

1. Where marijuana is grown and transported,
 2. How membership will be managed to ensure work towards the MMD meets the definition of a collective or cooperative,
 3. Security Plan, site plan, floor plans, odor control plan, cultivation plan, financial plan;
- Application sign-off from adjacent tenants, if use is located in a multi-tenant building.

The required amount of information necessary will depend on the detail in which Council decides staff should go in reviewing each application. A future ordinance should include a thorough list of items necessary to review an application. It is possible to reduce the amount of information necessary to submit, but the consequence of that would be to have fewer controls in place regarding MMD's meeting the intent of the CUA.

Fees

The permit fee to cover the costs of this review is intended to be a cost-recovering amount. It is difficult at the time to determine the amount of the fee until the final decision is made regarding the level of requirements.

Currently the City of Oakland is charging \$30,000 for annual medical marijuana permit plus a \$5,000 one-time non-refundable application fee, and in November 2011, they will decide whether to raise the annual medical marijuana permit to \$60,000 per year. The application fee is used to pay for City staff to conduct background checks, review security, review of business and building checks. The City of San Jose is proposing an annual fee of \$95,016. These fees are used to hire administrative, financial, and code enforcement staff to monitor, audit, and regulate the dispensaries. This oversight is to ensure there is no diversion of marijuana sales and that the business functions of the dispensaries operate as permitted.

Distance Requirements

A key aspect to determining appropriate locations is to decide where MMDs should be allowed. Many cities, and the new State law, require a specific distance from schools, parks and other sensitive uses. The first step in determining this distance is to define "sensitive use" in this context. A future ordinance can include the following uses in the definition of "sensitive use": residential, school, park, places of assembly, and child-care uses. Different cities have used different definitions for sensitive uses; some include residential uses, while others exclude that use.

Those that include residential uses in the distance limitations use different distances for residential uses (typically 300-1,000 feet).

An option that can be used is to follow a newly passed State law (AB 2650), which requires a 600-foot radius to any public or private school providing instruction in kindergarten or grades 1 to 12. This law took effect January 1, 2011, and cities may adopt regulations more restrictive, but not less restrictive than the new law. It is suggested that a 600 foot buffer of MMDs from sensitive uses, including residential would be appropriate, but would need to be mapped out if the Council desires this option.

Another distance requirement is to control the distance between each MMD facility. Cities take different approaches, from no limit to 1,000-foot requirements.

The purpose of the distance requirements is to ensure MMDs are not near locations where the general public congregate, and are not near locations where young people are present.

Because of the lay-out of the City, a 1,000-foot buffer between these sensitive uses and other MMDs may not be realistic if the use is desired. The 1,000 foot buffer would probably eliminate MMDs. As noted above, it should be mapped out if this option is desired. Other factors to consider are whether the resulting locations are well-served by transit, which many patients would use to access the MMDs and whether the locations are more remote, and would have less police presence than areas in the heart of the City.

On-site Cultivation

The issue of where the marijuana should be cultivated is complex and contradictory. If the City encourages MMDs to obtain all its marijuana from its members, then that requires specific standards on how and where it can be grown, and will require a permit for that cultivation (residential or otherwise). A proposed ordinance could include both residential and non-residential cultivation requirements, should this option be taken.

On-site cultivation can increase the danger to those at or near the property because the large presence of marijuana can become a target for crime. Allowing the purchase of marijuana from outside sources, however, is contradictory to State law, and can result in the involvement of criminal elements.

Decision-maker

If Council chooses to allow MMDs to locate in the city, any necessary permit would be reviewed by a decision-maker. That body could be staff, the City Manager, Planning Commission, or City Council. There can be public hearing requirements, or administrative allowances for decision. A reasonable requirement is to require any MMD application to be considered at a noticed

public hearing, with appeal possible to the Council. This would give the public ample opportunity to participate in the process.

Path Forward

Included in this attachment is a general outline of an ordinance, should Council ask staff to return with options to allow MMDs. Also included is a list of possible processes and requirements that can be included in a future ordinance.

An ordinance would detail the review process and standards, findings for approval, and operating standards necessary to ensure the use is compatible in the community, does not increase crime, and ensures it meets the strict requirements of State law.

The suggested outline of the ordinance provides an approach that can be considered "aggressive." There are other less aggressive approaches possible, and other options beyond that which can be considered. Included in this attachment is a checklist of other options. The Council can direct staff to include other elements in a future ordinance, should that be their decision.

PROPOSED ORDINANCE SHOULD BENICIA ALLOW MEDICAL MARIJUANA DISTRIBUTION FACILITIES

A. Purpose, Scope and Intent

1. Basic text for purpose of ordinance

B. Applicability

1. Nothing in code is intended to make legal what is otherwise prohibited by California law

C. Definitions

1. Include in Municipal Code clear definitions of use and associated aspects of the distribution

D. Covered Projects

1. Facilities defined as Medical Marijuana Distribution facilities in the code
2. Cultivation for non-personal use, residential or nonresidential

E. Process

1. Use Permit or Special Development Permit with noticed public hearing
2. Allow appeals of any permit to Planning Commission and Council
3. Limit permit to one year in length
4. Selection process for multiple proposals
5. If changes to surrounding uses places a sensitive uses (park, school, day care center, place of assembly) within the required distance limitation, permit will not be extended
6. If zoning changes to a Residential or Public Facility zoning designation within the required distance limitation, permit shall not be extended
7. If changes occur to federal policy on enforcement of marijuana for medical purposes, permit will not be approved or extended
8. Once planning review is completed, the Police Department will be required to approve operator's background checks, security plans, etc.

F. Prohibited Activities

1. Shall not accessory to any other permitted use
2. Commercial sale of any product, good, or service is prohibited
3. No alcohol or tobacco sold or consumed on site
4. Marijuana shall not be smoked, ingested or otherwise consumed on site or in public places
5. Attending physicians shall not be on premises
6. No off-site sale of marijuana
7. Any other type of project that does not meet the covered project definition is prohibited

G. Applications and Permit Requirements

1. Standard Submittal Requirements section
2. Require a statement of qualifications, including business plan, salary, wages, etc.
3. Require applications to include sign-off from adjacent tenants of a multi-tenant building
4. All MMD operators and employees must pass background checks by the Police Department prior to operation and must be updated yearly
5. A security plan must be approved by the Police Department and in place before operation, and must be updated yearly
6. MMDs shall provide the City with the name, location and operator of each cultivator and/or processing facility
7. Allow holistic services as part of MMD in order to assure the MMD is a compassionate care facility and not a profit center

H. Fees

1. Require fees for permit processing to cover City review costs
2. Require fees for on-going operations to cover City costs

I. Noticing

1. Notification to properties owners and residents/tenants within 1,000-foot radius of subject property line

J. Permit Findings

1. Facility meets zoning requirements
2. Facility meets all requirements of State laws
3. Operator has demonstrated the ability and commitment to provide
4. Facility will not be detrimental to public health, safety or welfare
5. Facility will be compatible with surrounding land uses

K. Standards for Compliance/Specific MMD Requirements

1. Location, Size and Number
 - a. No MMDs facility shall exceed 5,000 square feet in size
 - b. Don't allow in locations identified by the Police Department as "increased or high crime areas"
 - c. Specify in Municipal Code where MMDs are allowed and where they are precluded
 - d. Require distance limitations of 1,000 feet from residential uses, schools, places of assembly, recovery centers, day care centers
 - e. Use straight-line measurement option for determining the method of determining distance requirements
 - f. Require a 1,000-foot distance from another MMD
 - g. Limit zoning district options to M-S, MP-I, MP-TOD
 - h. Interior floor plan, to ensure employees can see their surroundings and that there is visibility into the MMD
2. Operating Standards and Restrictions
 - a. No MMD can operate for profit. All costs must go towards actual expenses for growth, cultivation and processing
 - b. Dispense medical needs monthly to discourage daily/weekly visits to MMD
 - c. Each MMD shall be required to identify a community communications contact, who shall be available during normal business hours
 - d. No physicians on site can provide medical recommendations necessary to obtain medical marijuana card from MMD
 - e. All MMD facilities must include odor control mechanisms

- f. MMD must obtain a Benicia business license
 - g. MMDs must be registered by the State of California as a non-profit organization
 - h. MMD must provide a lobby to ensure there is no loitering outside facility
 - i. Limited hours of operation of 10 am to 8 pm, Monday-Saturday
 - j. Sale of edibles would require permit from County Health Department
 - k. Money collected by MMD shall cover overhead costs and operating expenses only
 - l. Reasonable compensation for directors, officers and staff is allowed, subject to approval by collective members, and shall be reported to City
 - m. Memberships limited to residents of Benicia or County of Solano ("residents" as defined by IRS as primary residence)
3. Non-residential Cultivation
- a. Cultivation could occur on site with specific approval from City
 - b. Permit for cultivation shall be limited to amount necessary for the MMD, and not for widespread distribution
 - c. No more than 50% of marijuana can be obtained from non-member or off-site nursery
 - d. On-site cultivation must not be visible from outside and must be stored in an area secured from public access
 - e. A permit shall be obtained prior to any cultivation for purposes other than personal use, including a building permit for improvements
 - f. Permit for cultivation shall be limited to specific amounts to ensure it is used by a specific MMD and not for wider distribution
4. Residential cultivation
- a. Residential cultivation shall be for personal use, or available for grower's collective or cooperative for no profit
 - b. Outdoor cultivation shall not be visible from public areas
 - c. Residential cultivators shall not sell product to cooperatives, collectives or MMDs
 - d. Total on-site cultivation shall not exceed 50 square feet in total size
 - e. Outdoor cultivation shall occur in rear or side yard, no less than 5 feet from property line

- f. Indoor cultivation shall be used only if outside cultivation is not feasible, as determined through permit process
 - g. Indoor cultivation shall include lighting not to exceed 1,200 watts, not in kitchen, bathroom or primary bedroom
 - h. Residential cultivators for non-personal purposes shall maintain records showing amount grown and MMD to which it was distributed
5. On-going Requirements- Place of Distribution Limitations and Requirements
- a. Each MMD shall be required to identify a community communications contact, who shall be available during normal business hours
 - b. Business sign shall be limited to business name, and shall not include graphics or text advertising marijuana
 - c. No alcohol sold, consumed or present on site
 - d. No smoking or consumption of marijuana on site or in parking lot of MMD
 - e. MMDs shall provide and maintain parking spaces as required by the Zoning Code
 - f. Security guard must on site whenever MMD is open or operating
 - g. Storage areas must be away from locations open to general public and must be secured at all times
 - h. Payment by check or credit card only, no cash sales
 - i. No sales or "giveaways" allowed
 - j. Limit number of members according to community need (no more than 150 members per MMD?)
 - k. Restrict retail sales on site for pipes, vaporizers and drug paraphernalia
 - l. No person under 18 years old are allowed in a MMD, unless accompanied by parent or legal guardian
 - m. No reselling of product is allowed
 - n. No deliveries allowed from MMDs
 - o. Limit retail sales of items to ensure facility is maintained as a cooperative or collective, not a retail facility
 - p. Ban use of cell phones in MMD facility
 - q. Prohibit non-member from working in MMD
 - r. Patients cannot belong to more than one MMD
 - s. No advertising in local papers- focus on maintaining a reasonable membership, not maximizing number of members
6. Enforcement and Monitoring

- a. All product shall include the MMD name, the location and operator of the product, the strain and species
- b. MMDs must have process for tracking marijuana from source to member, which shall be available for inspection by the City
- c. Source of marijuana, the cost to purchase and the amount sold
- d. Maintain record of transactions of each cardholder using the County Medical Marijuana card or other entity approved by the Police Department
- e. Issue quarterly earning statements to members of MMD and City

L. Conditions of Approval

- 1. Conditions may be imposed for any application

M. Appeals

- 1. Appeal of any decision shall follow Title 19 appeal requirements

N. Expiration

- 1. Permit shall expire one year after approval by hearing body

O. Renewal

- 1. An applicant can request a permit be renewed provided the decision on the renewal is made prior to expiration of prior permit

P. Business License

- 1. A business license is required

Q. Extension

- 1. No extension of any permit shall be made without an application for consideration of a new permit

R. Enforcement

- 1. All records associated with a MMD shall be available for inspection by the City with advanced notice
- 2. All inspection of records shall be made with confidentiality
- 3. Maintain books listing:
 - a. All members of the MMD
 - b. Amount of marijuana sold or given to each member per month
 - c. Salary and compensation for operators, employees and partners
 - d. All overhead costs

- S. **Violations**
- T. **Revocation/Suspension**
- U. **Non-transferability**
- V. **Severability**

CITY OF BENICIA
Medical Marijuana Study Issue

The following are lists of possible approaches to regulate medical marijuana distribution facilities.

PROCEDURES

1. Limit the number allowed in the City
2. Limit permit to one year in length
3. If changes to surrounding uses or zoning occurs, permit may not be extended
4. Require public hearings for MMDs
5. Restrict size allowance for MMDs facilities (square footage)
6. Create clear definitions of use and associated aspects of the distribution
7. Require significant permit fees to cover City review costs
8. Allow appeals to use to Council
9. Include provision for deviations from requirements as part of permit process
10. Require a two-step permit process- THE PUBLIC WORKS AND COMMUNITY DEVELOPMENT DEPARTMENT for use and the Police Department for operations
11. Require a fee to defray costs for enforcement
12. Application requires detailing where marijuana is grown and cultivated
13. Require a competitive RFP process with detailed list of expectations
14. Detail residential grow requirements and allowances
15. Require a permit for marijuana grown for medical purposes for non-personal use (residential and commercial)
16. Require applications to include sign-off from adjacent tenants of a multi-tenant building
17. Require a state of qualifications, including business plan, salary and wages, etc.

LOCATION REGULATIONS

1. Require distance limitations for MMDs from sensitive uses:
 - Options: 600 or 1,000 feet for schools, places of assembly, recovery centers, day care
 - Options: 300, 600 or 1,000 feet for residential
2. Provide options for determining the method of determining distance requirements
 - Option: straight line
 - Option: As accessible from sensitive uses (amend distance if a barrier [e.g. freeway] separates uses)
3. Require a minimum distance from another MMD (600 or 1,000 feet)
4. Limit zoning district options
5. Specify locations in City to allow MMDs, not using distance requirements

6. Storefront locations must have visibility to street and parking areas
7. Require locations with easy access to transit options
8. Don't allow in locations identified by the Police Department as "increased or high crime areas"
9. Detail requirements if an identified "sensitive use" is located near permitted MMD- i.e. POA, day care, residential
10. Require in centralized locations
11. Make any code specific where MMDs are allowed and where they are precluded
12. Provide option for decision-makers to allow MMDs in areas discouraged or not meeting distance requirements

OPERATIONAL REQUIREMENTS

Compassionate care

1. No MMD can operate for profit. All costs must go towards actual expenses for growth, cultivation and processing
2. Dispense medical needs monthly to discourage daily/weekly visits to MMD

Place of distribution limitations and requirements

3. Limited hours of operation
4. Require community communications contact
5. Include odor control mechanisms
6. Business sign limited to business name, and shall not include graphics or text advertising marijuana
7. No physicians on site can provide medical recommendations necessary to obtain medical marijuana card from MMD
8. No alcohol sold, consumed or present on site
9. No smoking or consumption of marijuana on site or in parking lot of MMD
10. Must maintain required parking spaces
11. Sale of edibles would require permit from County Health Department
12. Payment by check or credit card only, no cash sales
13. Security guard must be on site whenever MMD is open or operating
14. No sales or "giveaways" allowed
15. Storage areas must be away from areas open to general public and secured at all times
16. All MMD operators and employees must pass background checks by the Police Department prior to operation and must be updated yearly
17. A security plan must be approved by the Police Department and in place before operation, and must be updated yearly
18. Limit number of members according to community need
19. Limit or restrict retail sales on site, especially for pipes, vaporizers and drug paraphernalia

20. MMD must obtain a Benicia business license
21. MMDs must be registered by a non-profit organization
22. MMD must provide a lobby to ensure there is no loitering outside facility

Cultivation business

23. Cultivation could occur at dispensary with specific approval from City
24. No more than 50% of marijuana can be obtained from non-member or nursery
25. MMDs shall provide the name, location and operator of cultivator and/or processing facility
26. All product shall include the MMD name, the location and operator of the product, the strain and species
27. MMDs must have process for tracking marijuana from source to member
28. Cultivation on-site must not be visible from outside and must be stored in an area secured from public access
29. MMD shall include cultivation in the permit for the use
30. Permit for cultivation shall be limited to specific amounts to ensure it is used by a specific MMD and not for widespread distribution

Cultivation- residential

31. A permit shall be obtained prior to any cultivation for purposes other than personal use, including a building permit for improvements
32. Residential cultivation shall be for personal use, or available for grower's collective or cooperative for no profit
33. Permit for cultivation shall be limited to specific amounts to ensure it is used by a specific MMD and not for wider distribution
34. -Outdoor cultivation shall not exceed 50 square feet in total size
-Outdoor cultivation shall occur in rear or side yard, no less than 5 feet from property line and shall not be visible from public areas
35. Indoor cultivation shall be used only if outside cultivation is not feasible
36. Indoor cultivation shall include lighting not to exceed 1,200 watts, not in kitchen, bathroom or primary bedroom
37. Indoor cultivation shall not exceed 50 square feet in total size
38. Residential cultivators shall not sell product to cooperatives, collectives or dispensaries
39. Residential cultivators for non-personal purposes shall maintain records showing amount grown and MMD to which it was distributed

Enforcement and Monitoring

40. Maintain books listing:
 - All members of the MMD
 - Amount of marijuana
 - All overhead costs
 - Source A of marijuana its cost and the amount sold

41. All records associated with a MMD shall be available for inspection with advanced notice
42. Maintain record of transactions of each cardholder using the County Medical Marijuana card or other entity approved by the Police Department
43. All inspection of records shall be made with confidentiality

BUSINESS REQUIREMENTS

1. Limit retail sales of items to ensure facility is maintained as a cooperative or collective, not a retail facility
2. Ban use of cell phones in MMD facility
3. Prohibit non-member from working in collective
4. Patients cannot belong to more than one collective or cooperative
5. No children allowed in MMD (may be allowed if accompanied by parent or guardian)
6. Money collected by MMD shall cover overhead costs and operating expenses only
7. Reasonable compensation for directors, officers and staff is allowed (subject to approval by collective members?)
8. Permissible reimbursements and allocations (from AG guidelines).
Marijuana from an MMD may be:
 - a. Provided free to qualified patients
 - b. Provided in exchange for services rendered to the MMD
 - c. Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses
 - d. Any combination of the above.
9. Avoid profiteering by:
 - a. No partners or investors of MMD
 - b. Reasonable salaries
 - c. Profits must be reinvested in MMD
10. Require quarterly earning statements to members of MMD and City of Benicia
11. No reselling of product is allowed
12. No deliveries allowed from MMDs
13. Memberships limited to residents of Benicia or County of Solano (as defined by IRS)
14. No advertising in local papers- focus on maintaining a reasonable membership, not maximizing number of members
15. Holistic services as part of MMD:
 - a. Require in order to assure the MMD is a compassionate care facility and not a profit center, OR
 - b. Disallow in order to minimize the size and scope of the facilities
16. Keep in mind AG Guidelines of "Indica of Unlawful operation":
 - a. Excessive amounts of cash

- b. Not following state and local laws
- c. Presence of weapons and illegal drugs
- d. Distribution to or from California

FEES (In dollars)				
City	Permit Fee	Dispensary Fee	Preferred Application Fee	Other
Oakland	5,000	30,000 (proposing 60,000)		211,000 Industrial cultivation fee
Stockton	3,500			
Napa	8,000	TBD	7,000	
Palm Springs	7,500			
Redding	800			
Sacramento	20,000 (approx.)	13,000 (approx.)		
San Carlos	2,311 (same as other uses)			

City of Benicia

Assessment of Youth Substance Use
And
Associated Risk Factors

April 2010

This assessment is a project of the Reducing Rates Coalition and is
funded by the Solano County Board of Supervisors

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Substance Use and Risk Factors in Benicia, CA

Introduction

The Reducing Rates Coalition (RRC) seeks to reduce problem behaviors and promote positive behaviors by addressing the risk factors that have been shown to increase the likelihood that children will become involved in substance abuse in adolescence and young adulthood.

To that end, in January 2009, the RRC embarked on a comprehensive needs and resource assessment process. Highlights of that process have included convening a needs assessment think tank with experts in the field; developing and training core advisory teams from each of the cities and the unincorporated area to assist in data identification; issuing Request for Proposals for data collection and data analysis; and producing reports which summarize and analyze the data.

Both quantitative and qualitative data have been sought to construct as comprehensive a picture as possible about the City of Benicia's youth substance-use and its root causes, including multiple archival data sets, 12 interviews, and 3 focus groups.

Risk factors that predict substance abuse have been determined from prospective, longitudinal studies. Many of the same risk factors also predict delinquency, teen pregnancy, school drop-out, violence, and depression and anxiety. The data collection and analysis effort focused on culling out the most prominent risk factors for **substance abuse** that exist throughout Solano County, although limited data on these other problems was also collected and appears in tables at the end of this section.

This report is intended to highlight Benicia's substance use patterns and risk factors. Protective factors and other community assets will be highlighted in a subsequent Resources and Gaps Analysis. References are made to tables throughout the report. Those referenced "CHKS" can be located at the California Healthy Kids Survey website. Those referenced "RRC" can be found in the *Situational Assessment of Reducing Rates Coalition's ATOD Prevention Efforts in Solano County* (every City Team Coordinator has a copy of this assessment).

One important consideration in interpreting the survey data is that of error rates, which can be anywhere from three to five percentage points or more depending on a number of factors. For this reason, when comments on comparisons are made in the report (generally Solano County compared to the state), they are prefaced by the word "slightly" or referred to as roughly equivalent/comparable if within the three to five percentage point error range.

Substance Use and Risk Factors in Benicia, CA

Key Findings

- **Alcohol is Benicia's primary problem** and the data shows the continued escalation of a problem that starts in the 5th grade. Benicia students now in the ninth grade report that by the age of 12, 18% of them had initiated alcohol use, drinking at least one full alcoholic beverage. An additional 28% began drinking between the ages of 13 and 14.

The extent of a community's youth substance use problem is also measured by asking the youth whether they have used the substance in the last 30 days, which is generally recognized as being indicative of current, active substance use rather than one-time or sporadic experimentation. Use of alcohol in the last 30 days increases dramatically among Benicia's 11th grade students to 39%, which is roughly equivalent to the State rate.

Even more troubling, 31% of 11th graders are drinking to get drunk – binge drinking, or consuming five or more drinks at a time – and half of these students will do so not just once or twice this month, but at least 3 times. This figure has climbed steadily for Benicia's 11th graders, and is now 8% higher than the State average. This is a particular area of concern, both because of its grave short-term consequences (e.g., assaults, accidents, black-outs, deaths) and long-term consequences (e.g., impact on brain functioning, priming for alcoholism, potential for other health problems).¹

Benicia's youth report that alcohol is easy to obtain – 80% of 11th graders report that it is “fairly easy” or “very easy” to obtain.

- **Marijuana is Benicia's secondary problem.**² 24% of Benicia's 9th grade students report the use of marijuana before the age of 15. Young people who initiate any drug use before the age of 15 appear to be at twice the risk of having drug problems during their lifetime, compared to those who wait until after the age of 19. (Source: CHKS) Those who start using cannabis (or marijuana) as adolescents are 2-4 times more likely to experience all of the clinical features of drug dependence than those who start using as adults. This is a vulnerable time for them socially, emotionally, and in terms of their brain development, and drug use can compound the problems that are common in adolescence.

In addition, one in five Benicia 11th graders report that they have used marijuana at least once in the past 30 days.

Benicia's youth report that marijuana is easily accessible – 76% of 11th graders say that it is “fairly easy” or “easy” to obtain – which is nearly comparable to accessing alcohol

¹ Heavy drinkers in high school are highly vulnerable to intoxication and a variety of acute alcohol related problems, especially because of their low body weight. These include losing control over their actions, exercising poor judgment, and engaging in high-risk activities such as driving while intoxicated or unprotected sex. They also have been found to be far more likely than nondrinkers to say that their schoolwork is poor and that they have cut classes or skipped school.

² In Benicia, the use of meth is lower than State levels, but the use of ecstasy is considerably higher. While the particularly destructive effects of meth make any use troublesome, the need to target use of resources would point to prioritizing alcohol and marijuana use over large-scale projects to target these lesser used substances.

Substance Use and Risk Factors in Benicia, CA

and tobacco. Easy access, combined with both a low sense of disapproval and low perceived harm, is likely adding to its resurgence. The association of marijuana-use with lower school performance, lower achievements, and increased alienation from friends and family make its widespread presence troublesome.

- What these figures tell us is that **a sizeable amount of Benicia's youth are priming themselves for serious problems with alcohol and other drugs later in life.** Approximately 85% of individuals in need of treatment began their use in their teen years, with the most severe cases initiating their drinking or other drug use prior to age 15. Benicia youth are reporting beginning signs of dependence, including using more than intended, using while alone, and worrying about reducing or stopping their use. For example, 25% of 11th grade students report loss of memory or passing out; 14% had trouble with the police; 17% have problems with emotions, nerves or mental health; 11% physically hurt or injured themselves; 21% had to use more to get the same effect, 20% thought about reducing or stopping use; 16% told themselves they weren't going to use but used anyway; and 17% used alcohol or drugs while alone. These figures are staggering and indicate the true severity of the problem.
- **Risk factors of considerable concern in Benicia:**
 - Availability of Drugs (ATOD)
 - Favorable Parental Attitudes and Involvement in the Problem Behavior
 - Friends Who Engage in the Problem Behavior
 - Favorable Attitudes Toward the Problem Behavior
 - Early Initiation of the Problem Behavior
- **Risk factors of some concern in Benicia:**
 - Family Management
- **Strengths to build on in Benicia – low risk levels for:**
 - Community Disorganization
 - Lack of Commitment to School
 - Academic Failure Beginning in Late Elementary School
 - Extreme Economic Deprivation
 - Transitions and Mobility
 - Community Laws and Norms Favorable Toward Drug Use (ATOD) and Crime
 - Family Conflict
- **Risk factors that are undetermined due to insufficient data:**
 - Low Neighborhood Attachment
 - Family History of the Problem Behavior
 - Early and Persistent Antisocial Behavior
 - Rebelliousness
 - Constitutional Factors

Substance Use and Risk Factors in Benicia, CA

Other Considerations

- Many of Benicia's elevated risk factors are shared with the rest of Solano County and California. However, this level of risk still manifests an unacceptable social and economic toll that is endured by the residents of Benicia.
- Compared to students in comprehensive public schools, students enrolled at continuation schools and County Community Schools are at greater risk in every category of data available. Their data is not analyzed in this report. No survey data was available for students enrolled at private schools.
- ATOD use trends may be underestimated by the student survey data because it does not capture high school dropouts, who typically have much greater rates of use than their peers who remain in school. The 4-year adjusted dropout rate for Solano County, which takes into consideration youth who re-enroll or are later found to be enrolled in another school, is 22.4%. For Benicia, this rate is 12.4%.

Substance Use and Risk Factors in Benicia, CA

Trends in ATOD Use from 5th to 11th Grade

5th Graders - Early Use

While none of the ATOD-use rates for Benicia's 5th grade students are higher than would be expected when compared to State rates, it is important to keep in mind that the age of onset can affect later use. Research has demonstrated that the earlier a child initiates ATOD-use (regardless of substance), the greater will be the later use and adverse consequences, as well as involvement in other risk activities. Young people who initiate any drug use before the age of 15 appear to be at twice the risk of having drug problems during their lifetime, compared to those who wait until after the age of 19. Lifetime use initiators in the 7th grade or earlier should be of particular concern. Early use of alcohol, marijuana, and other drugs also predicts early school dropout.

In Benicia, students now in the ninth grade reported that by the age of 12, 16% of students had initiated alcohol use (at least one full drink), 5% had tried marijuana and that 8% had smoked all or part of a cigarette.

7th Grade - Experimentation

The percent of students who have ever tried alcohol or another drug is inevitably of interest because prevention policy is focused on stopping initiation of use. Lifetime prevalence rates shed light on the age of onset and are useful for gauging the overall local drug environment. These items provide a guide for the timing of prevention efforts, which are most effective if administered just before the ages of peak substance use initiation.

In Benicia, students report that in their lifetime, 26% of 7th graders have had at least one full drink of alcohol, 5% have tried marijuana and 15% have tried at least a puff or two of a cigarette (6% report smoking a whole cigarette).

9th Grade - Developing Trends

In Benicia, lifetime use increases drastically between 7th and 9th grade. Among Benicia's ninth grade students, 46% have had at least one full drink of alcohol. In addition, 27% of ninth grade students have now used marijuana and 19% have smoked a whole cigarette in their lifetime.

In ninth grade, 30-day ATOD-use rates are also useful, as they are a standard indicator of current use in a community. Comparing lifetime and current use helps differentiate ATOD experimentation from regular use.

In Benicia, 23% of 9th grade students report the use of alcohol in the last 30 days. Thirteen percent report the use of marijuana and 13% report the use of cigarettes in this same time period.

Substance Use and Risk Factors in Benicia, CA

11th Grade – Problem Use

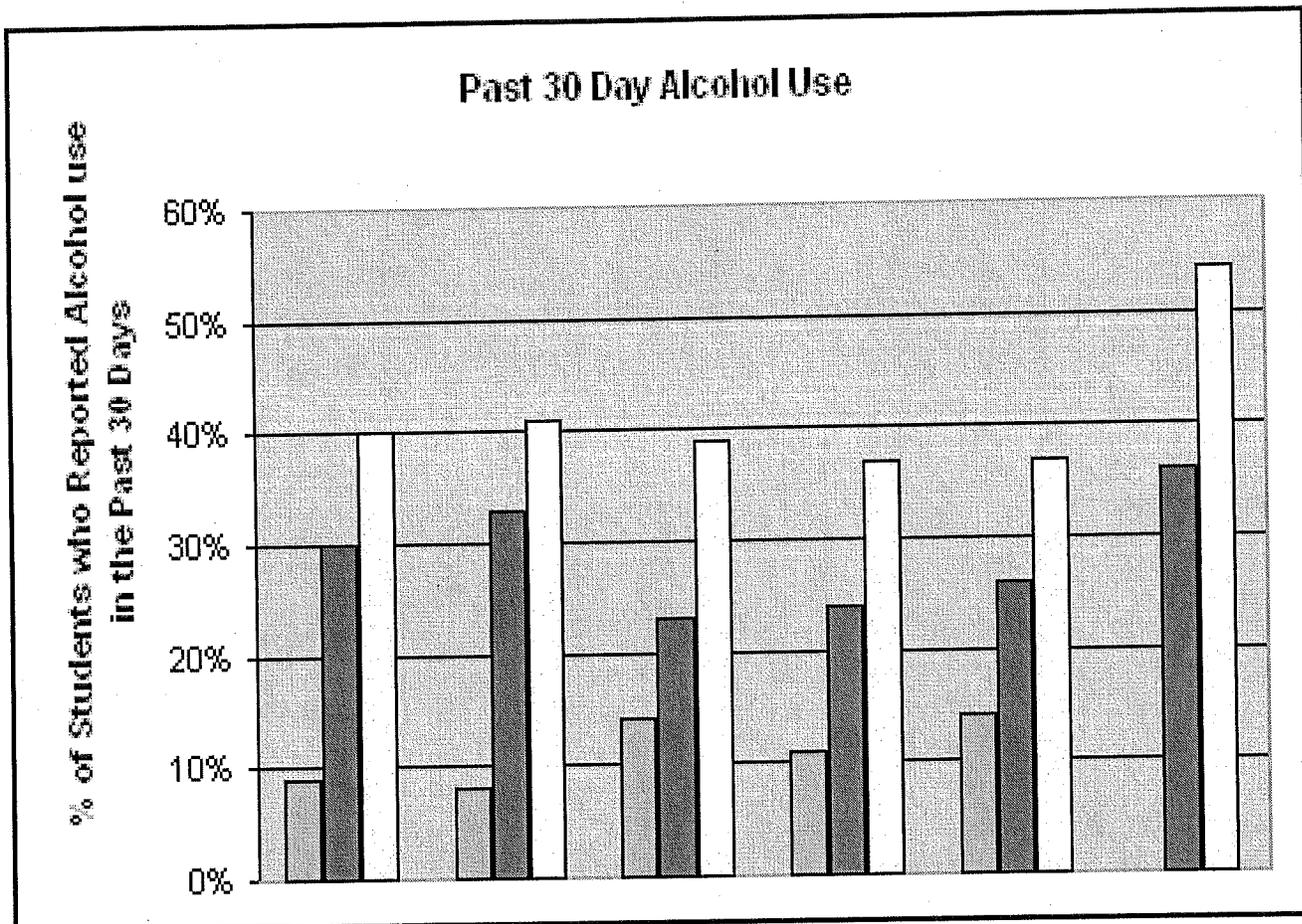
Use of alcohol in the last 30 days increases among Benicia's 11th grade students to 39%. Marijuana and tobacco use in the last 30 days also increases among Benicia's 11th graders, reporting at 20% and 23%, respectively.

Of even greater concern is the number of 11th grade student who reported "binge" drinking. Binge drinking refers to consuming at least five alcoholic beverages in a row, within a couple of hours. In Benicia, 31% of 11th grade students reported binge drinking in the last 30 days and half of that group reported binge drinking three or more days within that period.

Heavy drinkers in high school are highly vulnerable to intoxication and a variety of acute alcohol related problems, especially because of their low body weight. These include losing control over their actions, exercising poor judgment, and engaging in high-risk activities such as driving while intoxicated or unprotected sex. They also have been found to be far more likely than nondrinkers to say that their schoolwork is poor and that they have cut classes or skipped school.

Substance Use and Risk Factors in Benicia, CA

Youth Alcohol Use in the Past 30 Days



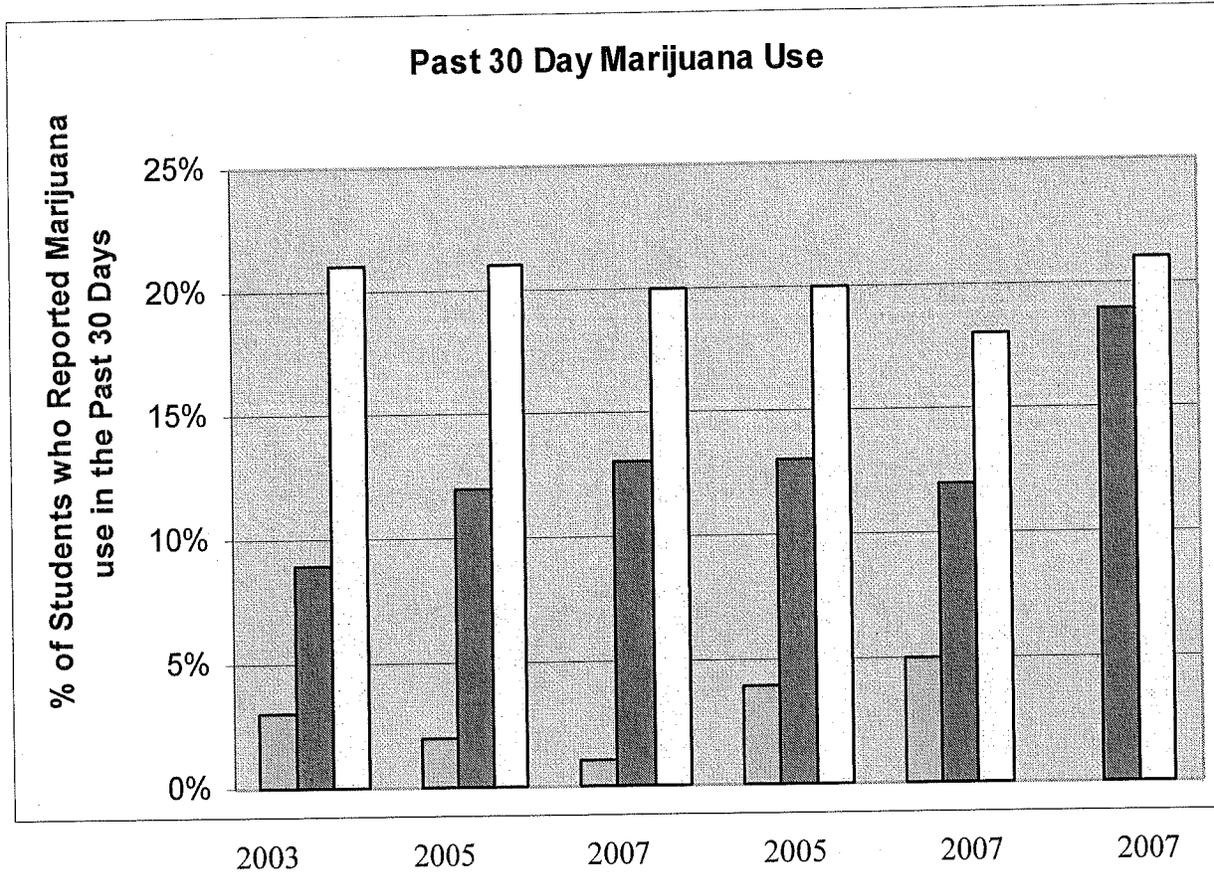
	Benicia			California		U.S.
7th	9%	8%	14%	11%	14%	
9th	30%	33%	23%	24%	26%	36%
11th	40%	41%	39%	37%	37%	54%

Source – State and local data: California Healthy Kids Survey (CHKS), national data: Youth Risk Behavior Survey (YRBS)

- While past 30-day alcohol-use rates increased for 7th grade students in 2007 by 5%, 9th grade students decreased use by 10%, bring both in line with State rates.
- Past 30-day alcohol-use rates for 11th grade students has remained steady between 2003 and 2007 and is equivalent to the State's level.

Substance Use and Risk Factors in Benicia, CA

Youth Marijuana Use in the Past 30 Days



	Benicia			California		U.S.
7th	3%	2%	1%	4%	5%	
9th	9%	12%	13%	13%	12%	19%
11th	21%	21%	20%	20%	18%	21%

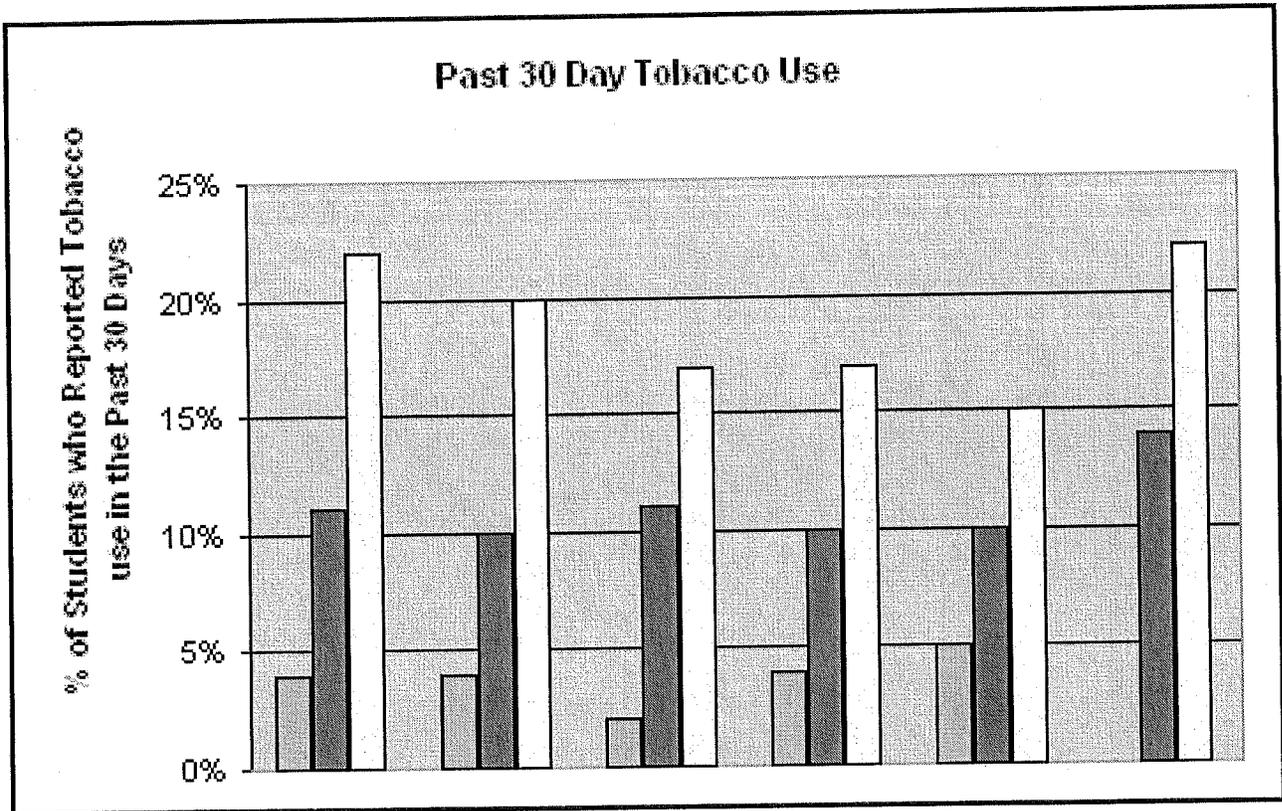
Source – State and local data: California Healthy Kids Survey (CHKS), national data: Youth Risk Behavior Survey (YRBS)

- Rates of reported past 30-day marijuana use among 7th grade students is lower than the State levels.
- Past 30-day marijuana use rates for 9th and 11th grade students are equivalent with the State level.
- Marijuana as a drug of concern for Solano County as a whole is evident in the student surveys as well as in the treatment data for young adults (18-25 years old).

Substance Use and Risk Factors in Benicia, CA

Of those young adults who were admitted for treatment in 2007-08, 30.3% indicated that marijuana/hashish was their primary drug, compared to the statewide rate of 24.6%. The primary drug for most of Solano's young adults in treatment was methamphetamines, at 41.1%. This is also higher than the statewide average, which for methamphetamines is 38.6%. (*RRC Table 3.1.6*)

Youth Tobacco Use in the Past 30 Days



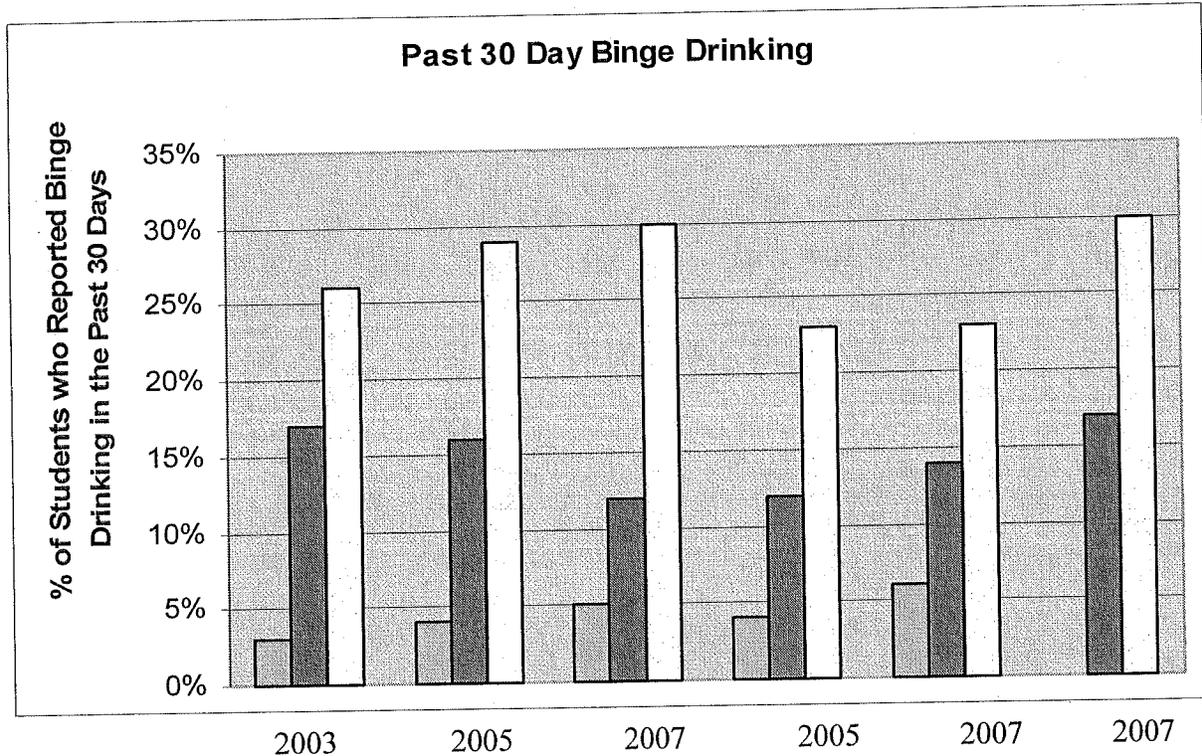
	Benicia			California		U.S.
7th	4%	4%	2%	4%	5%	
9th	11%	10%	11%	10%	10%	14%
11th	22%	20%	17%	17%	15%	22%

Source – State and local data: California Healthy Kids Survey (CHKS), national data: Youth Risk Behavior Survey (YRBS)

- Past 30-day tobacco-use rates among 7th, 9th and 11th graders in 2007 are equivalent to the State levels.

Substance Use and Risk Factors in Benicia, CA

Youth Binge Drinking in the Past 30 Days



	Benicia			California		U.S.
	7th	9th	11th	7th	9th	11th
7th	3%	4%	5%	4%	6%	
9th	17%	16%	12%	12%	14%	17%
11th	26%	29%	31%	23%	23%	30%

Source – State and local data: California Healthy Kids Survey (CHKS), national data: Youth Risk Behavior Survey (YRBS)

- Binge drinking is defined as having five or more drinks in one drinking episode and is a commonly accepted indicator of risky drinking behavior. Risky drinking behavior puts young people at risk of motor vehicle crashes, unplanned sexual activity, violence, and school problems.
- Past 30-day binge drinking rates for 7th and 9th grade students are equivalent to the State levels.
- Past 30-day binge drinking rates for 11th grade students are significantly higher than the State's level.

Substance Use and Risk Factors in Benicia, CA

Age of Onset

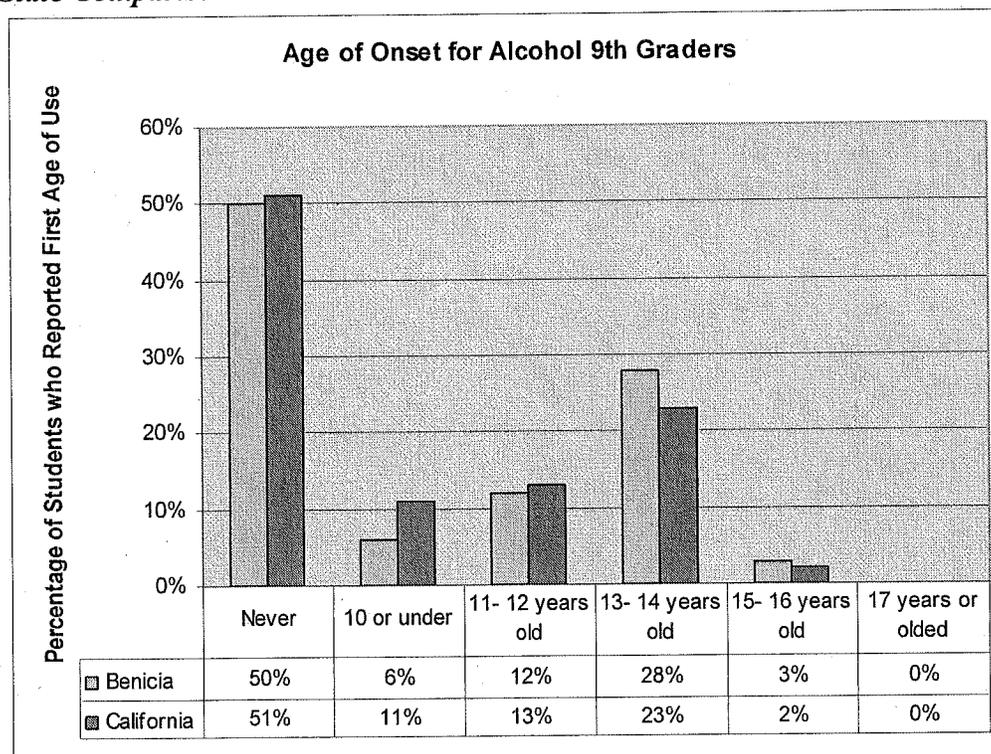
- The percent of students who have ever tried alcohol or another drug is of interest because prevention policy is focused on stopping initiation of use. These items provide a guide for the timing of prevention efforts, which are most effective if administered just before the ages of peak substance use initiation.

Benicia's 9th Grade Students Reported Age of Onset

	Alcohol (one full drink)	Marijuana	Tobacco (part or all of a cigarette)
Never	50%	76%	78%
10 or under	6%	1%	3%
11-12 years old	12%	4%	5%
13-14 years old	28%	18%	13%
15 years or older	3%	2%	1%

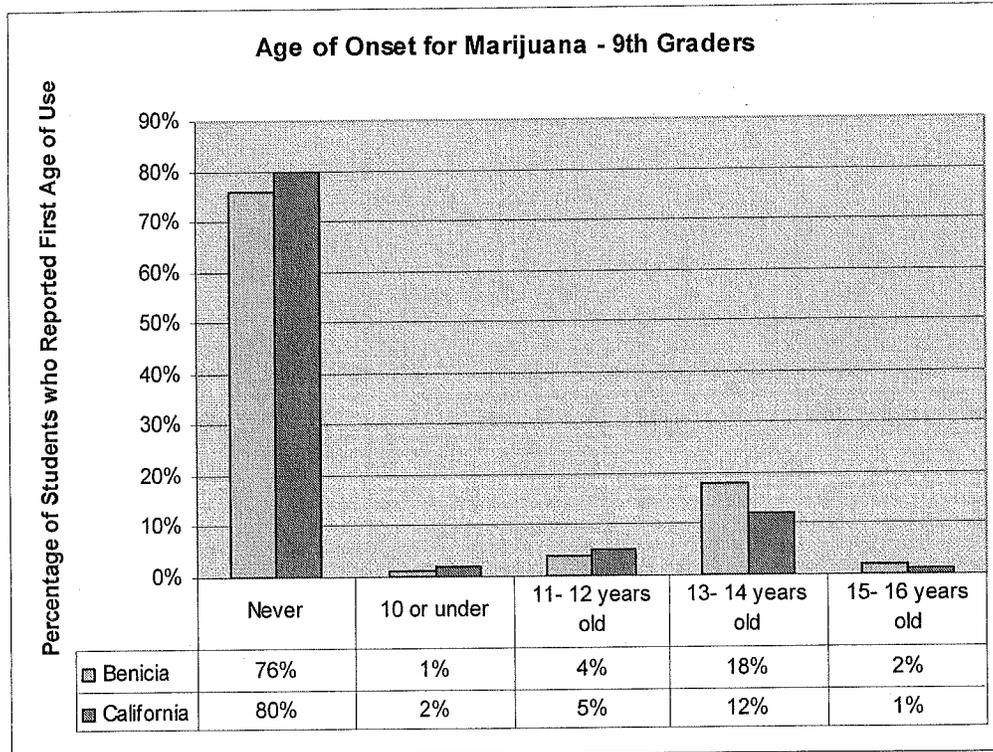
Source: California Healthy Kids Survey (CHKS) 2007

State Comparisons

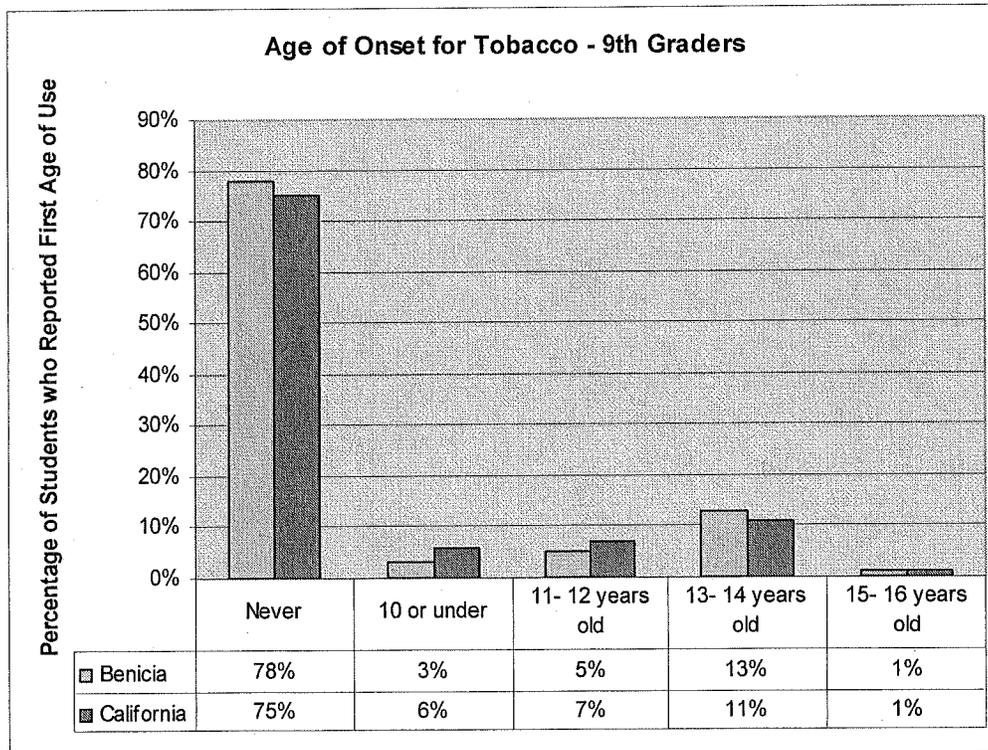


Source: California Healthy Kids Survey (CHKS) 2007

Substance Use and Risk Factors in Benicia, CA



Source: California Healthy Kids Survey (CHKS) 2007



Source: California Healthy Kids Survey (CHKS) 2007

Substance Use and Risk Factors in Benicia, CA

Problem Use (RRC Table 3.1.3)

Been Very Drunk or Sick After Drinking

	2007	2007	2007
	Benicia	County	State
7 th	10%	12%	10%
9 th	26%	30%	26%
11 th	44%	42%	42%

Been High from Using Drugs

	2007	2007	2007
	Benicia	County	State
7 th	6%	11%	8%
9 th	26%	28%	21%
11 th	45%	36%	33%

Binge or Heavy Drinking (Last 30-days)

	2007	2007	2007
	Benicia	County	State
7 th	5%	7%	6%
9 th	12%	16%	14%
11 th	31%	23%	23%

Source – State and local data: California Healthy Kids Survey (CHKS), national data: Youth Risk Behavior Survey (YRBS)

- Early warning signs that alcohol and other substance use is getting out of control and beginning to impact the lives of youth can be captured by the CHKS for 9th and 11th graders. Self-reported problems for alcohol use among Benicia youth in 9th and 11th grade students reported 5%-12% higher rates than the State.
- Benicia youth also report beginning signs of dependence, including using more than intended, using while alone, and worrying about reducing or stopping their use. For example, 25% of 9th grade students reported loss of memory or passed out, 21% had to use more to get the same effect, and 17% had used alcohol or drugs alone.

Substance Use and Risk Factors in Benicia, CA

Further Evidence and Impact of the Problem

Involvement in Drinking and Driving (CHKS Table, A4.11)

Driving under the influence is one of the main causes of traffic accidents and death among youth. Twenty-two percent of Benicia's 9th grade students and 31% of 11th grade students indicated that they had driven or been a passenger in a car driven by a friend who had been drinking. Fifty-three percent of Benicia's 7th grade students reported riding in a car with a driver who had been drinking. At the middle school level, these drivers are mainly parents and guardians.

Emergency Room Alcohol and Amphetamine Admissions (RRC Table 3.1.5)

Benicia had 15 underage emergency room admissions due to alcohol in the last year. Youth and young adults (to age 24) accounted for 16% of the admissions for alcohol and 33% of the admissions for amphetamine in Benicia.

Unwanted and/or Unprotected Sex (CHKS Table, A4.18)

Eight percent, or 23, 11th grade students in Benicia reported having unwanted and/or unprotected sex because of alcohol or drugs.

School Suspensions & Expulsions for Drugs & Violence (RRC Table 3.1.4)

The rate of suspensions due to drugs and violence was 5.4% in the State and 8.8% in Solano County. In the Benicia Unified School District, 3.48% of suspensions are due to drugs and violence.

Substance Use and Risk Factors in Benicia, CA

▲ This risk factor is of considerable concern:

- Availability of Drugs (ATOD)

Youth Perception of Difficulty Obtaining Alcohol, Tobacco, and Marijuana

Benicia's students are far more likely to report ease of access to alcohol, tobacco, and marijuana than youth statewide. In all grades – 7th, 9th, and 11th – Benicia's students report that it is “fairly easy” or “easy” to obtain each of these substances at greater rates than the State, and the differences are substantial. For example, 49% of Benicia's 7th graders report that it is “fairly easy” or “very easy” to obtain alcohol, compared to 34% of 7th graders statewide (*CHKS Tables A4.20 and A5.8*). Simply put, from one Benicia teen, “It's easy to get a hold of.”

Retail Access of Alcohol and Tobacco

Liquor Licenses

When communities are saturated with liquor outlets, research shows that those communities become more vulnerable to alcohol problems. The beer and wine licenses and off sale licenses in Solano County (n=146) are approximately evenly distributed throughout the County and are within the acceptable range established by the State. This proportionate distribution holds true in Benicia as well. (*RRC Table 2.1.9*)

Compliance Checks

The compliance rates for Benicia have fluctuated over the past few years.

- 98% of alcohol outlets checked in '08-'09 did not sell to decoys, up from 89% the year before
- 90% of tobacco outlets checked in '08-'09 did not sell to decoys, down from 93% the year before

Because alcohol and tobacco outlets are continuously monitored, there is general consensus that purchased alcohol and tobacco come from circumventing the system:

“They do the compliance checks and that is good. But honestly, if a kid wants to get liquor or cigarettes, then they know which store to go to and how to ask for it. That or they ask a person outside the store to buy it for them.”

Substance Use and Risk Factors in Benicia, CA

▲ This risk factor is of considerable concern:

- **Favorable Parental Attitudes and Involvement in the Problem Behavior**

Adult Substance Use³

Solano County's adult smoking rates are higher than those statewide – 17.6% versus 14.5%.

Adults binge drink in Solano County: In 2007, 29% of Solano County adults report they had binge drank in the past year.

Qualitative data suggests that Benicia's adults are struggling with their own ATOD issues, but in some ways a culture of denial impedes ATOD prevention efforts.

A Benicia pastor commented:

“At my church we have 5 AA meetings a week, with 80- 100 people there, adults and kids. But still people don't think we have a problem.”

53% of Benicia's 7th graders report that they have been a passenger in a car driven by someone who had been drinking (*CHKS Table A4.11*). It can be presumed that for the majority of these incidents, the drivers were closely related to the students – parents, siblings, and other family members.

Sometimes the community is temporarily shocked by a local tragedy, but it is not enough to sustain long-term change in the community's norms:

“We had a few teenagers that crashed and died a few years back and the community all came out. But the next week they were out drinking and driving.”

There are also adults who engage their children in their ATOD use. These are the youth who are at greatest risk. The following comments were made at a focus group involving mentors from Benicia's continuation school, Liberty High School.

“I had one student tell me that her dad started smoking pot with her at 5 years old.”

³ Quantitative data for this risk factor is not available by city at this time.

Substance Use and Risk Factors in Benicia, CA

“Parents are doing drugs with kids. It’s the famous quote here of “I would rather have them doing it in my house and know that they are in a safe place.” They want them in a safe environment so they supply drugs and alcohol for them. It happens enough here that you hear about it.”

“Over the years it’s gone from alcohol to hard drugs. Over 30 year ago, kids would be off doing this and try to hide it. But now the parents do it with them. The parents are users themselves.”

It was not just the mentors who reported this problem, though. It surfaced again in the focus group with the youth, who identified parents as both using marijuana with their kids and supplying them with alcohol at house parties.

Our success will be limited if we fail to see the connection between parental support and youth prevention, as one mentor noted:

“We also need to help the parents. Parents are dealing with issues themselves.”

Social Acceptability and Social Access

It is important to gauge adult alcohol, tobacco and other drug (ATOD) behavior in part because of how it may be influencing youth ATOD behavior, including role modeling, establishing family and community norms, and providing social access (versus retail access) to products that minors would otherwise have difficulty acquiring.

While not obtained from a validated survey, the message of social access was the most prominent and consistent theme of the interviews, focus groups, and World Café event conducted to collect data for this needs assessment.

The World Café was an event held in December 2009 to increase the dialogue between Solano’s youth and adults on ATOD issues. Youth from every city, including Benicia, commented that their primary source of alcohol, and sometimes other drugs, is their parents or older siblings. The following are notes captured from Benicia’s dialogue:

- Parents – Siblings – drinking and smoking pot
- Access to alcohol through parents and siblings
- Need to educate parents
- Easy to get alcohol from older friends and parents
- How do you reach parents who are encouraging drinking?
- Merchants are not as much of a problem as students/siblings/parents

Substance Use and Risk Factors in Benicia, CA

Likewise, the tenor of the focus group interview with Benicia youth seemed to indicate that ATOD use is widespread and more or less accepted. Interview participants believe that the lenient attitude toward ATOD contributes to youth's beliefs that it is acceptable to use. Whether it happens at sporting events or parties, there is a sentiment of complicity.

Adults in Benicia acknowledge that parents may be their own worst enemy:

"Some parents supply for kids in the home. They allow them to have a party."

"We overhear parents that say they want their kids to drink in a safe environment if they are going to drink. That shows they know their kids drink but they don't do anything about it and instead let them and their friends drink at their house."

"As a police officer, I have gone to many parties where parents are there and they are sponsoring it. They are letting them drink because they are not letting them drive. They think it's a great way to go with 'They're going to do it anyways, so we want them to do it under our auspices and we'll take care of them.' But what kind of message is that?"

It is a confusing message. One Benicia youth said, *"Parents let you do it at their house so they know you are safe."*

One law enforcement officer speaks to the devastating consequences being seen locally:

"Obviously the addiction aspect is a concern. I see a lot more OD's [overdoses] at parties now. We will show up and kids are passed out, throwing up; they are incoherent... They have a lot to lose at this age, they could lose their licenses, they can be held back, they have penalties, they can end up in jail, incarcerated, fined, and behavioral issues. With drug use comes behavioral issues. It alters their state of mind. You see that a lot with some of these younger kids."

Beyond the parents knowingly providing ATOD, there is also access simply because it is not locked up in the homes and because there are other adults who are willing to purchase it on the youth's behalf.

"We have done our compliance checks which showed us that it's really not coming from retail sales. It is definitely coming from friends and older friends. When I was growing up we hung around with our age groups, so 14-year-olds hung around with 14-year-olds. Now, you have 14-year-olds that hang with 19- or 20-year-olds... You have brothers and sisters that are older and they are supplying. And that's what we are finding in our town. Older friends and older siblings, either they get the alcohol from them or they are getting it from their own home. They get it from mom and dad's booze cabinet. They also get other people to buy for them. It's easy to get anything. That's the problem. It's not

Substance Use and Risk Factors in Benicia, CA

difficult to get anything that you want. Any kind of drug and I mean serious drugs as well. You just ask and you find who's got it and they get it for you."

One theme that surfaced time and again in the interviews was that Benicia is in a state of denial about its vulnerabilities, and that this denial is exacerbating those vulnerabilities because it's preventing them from being addressed head-on.

"From what I've seen and observed, and I've raised two children in Benicia, I think the biggest problem is that part of the community is in a state of denial. Benicia has a very low crime rate, and kids are looked upon as 'being without problems'. It appears that way. But in talking with other parents, and just seeing what's going on at the high school, I think Benicia has a serious alcohol abuse problem with its teenagers. Because of the combination of denial and the social acceptance of it, it's not seen as a problem."

Substance Use and Risk Factors in Benicia, CA

▲ This risk factor is of considerable concern:

- **Friends Who Engage in the Problem Behavior**

When youth perceive that “everyone’s doing it”, they tend to alter their behavior to fit their perceived social norms. When asked about their peers’ use of marijuana, Benicia’s middle and high school students greatly over-estimate the actual figures:

- Just 39% of 7th graders think that all of their peers have abstained from trying marijuana when in fact 95% have. At least 28% of 7th graders over-estimate their peers’ use.
- Just 6% of 9th graders think that all of their peers have abstained from marijuana when in fact 73% have. At least 61% of 9th graders over-estimate their peers’ use.
- Just 5% of 11th graders think that all of their peers have abstained from marijuana when in fact 56% have. At least 66% of 11th graders over-estimate their peers’ use.

Although the actual figures are lower than the perceived ones, they clearly demonstrate a problem with marijuana. Ideally, we would target prevention efforts at youth whose close friends were engaged in the problem behavior, but it is impossible to know from the data we have who those individuals are. Instead, we can use the marijuana use and perception data as proxies to determine that 1) widespread use is occurring and 2) fueling that use may be a perception that use is significantly more widespread than the reality (i.e., “everyone is doing it, so I should, too”). (*CHKS Tables A4.2 and A4.17*)

As a parent, it can be frustrating to know that your kids are surrounded by tremendous peer pressure and an environment that is very hospitable to drinking and drug use, as voiced by this Benicia parent:

“My kids complain they didn’t know one kid in high school that didn’t drink or abuse drugs. They felt they could not make friends. They didn’t want to go to other kids’ houses because they knew there would be alcohol.”

One Benicia youth said, “Kids think it’s normal to do because so many are doing it.”

Another observed that one way to keep from using ATOD is to be selective about your friends, stating, “Friends, if they don’t do it, then that can keep you away [from ATOD, too].”

Substance Use and Risk Factors in Benicia, CA

▲ This risk factor is of considerable concern:

- **Favorable Attitudes Toward the Problem Behavior**

Youth Personal Disapproval of ATOD Use

One of the indicators of favorable attitudes toward ATOD use is how strongly youth disapprove of that behavior for someone their age. Clearly, the stronger their disapproval, the less likely they are to engage in the behavior or to *want* to engage in the behavior even if the opportunity presented itself.

- 70% of Benicia's 7th graders, 57% of its 9th graders and 54% of its 11th graders strongly disapprove of someone their age having one or two alcoholic drinks nearly every day.
- 65% of Benicia's 7th graders, 40% of its 9th graders and 26% of its 11th graders strongly disapprove of someone their age using marijuana one or two times.
- 71% of Benicia's 7th graders, 49% of its 9th graders and 33% of its 11th graders strongly disapprove of someone their age using marijuana once a month or more.

Solano County youth are less likely to have a strong opinion about regular use of substances than other youth in California at all grade levels. For example, 54% of Benicia's 11th graders have neither positive nor negative opinions regarding use of marijuana or hash once or twice compared to 40% in the State. (*CHKS Table A.4.16*)

This, together with the high perceived availability, appears to pose an increased risk for youth here. It is possible, though, that this ambiguity also poses an opportunity to sway youth who are "on the fence" before they form a more solid positive perception of ATOD.

With smoking fairly prevalent among young people in Benicia, one interviewee commented:

"I see a lot of young people that smoke. This generation, smoking is not looked upon as social negative stigma anymore. I think that its social acceptance of it has increased the smoking of the younger generation."

A Benicia youth validated this sentiment about ATOD in general, saying, *"The kids that are using are not ashamed."*

Youth Perception of Harm of ATOD Use

Researchers agree that fluctuations in adolescent ATOD use are based on a number of factors. One of the most compelling is the introduction of substances to each new generation and that generation's information about and experience with the substance. If the substance is novel (e.g., crack cocaine in the mid-eighties and methamphetamine in the mid-nineties), there will be a greater appreciation of the perceived benefits and less understanding of the harms. As those harms become known to subsequent cohorts, their initiation of the substance tends to diminish. Unfortunately, this takes on a roller coaster pattern, as cohorts learn from their predecessor's substance problems and turn away from the substance, thus providing little example of the substance's harm for the subsequent cohort which in turn is more likely to return to the substance. (*2008 Monitoring the Future National Results of Adolescent Drug Use*)

Perceived Harm of Tobacco Use

In general, Benicia students perceive regular tobacco use to be harmful. However, there could be some interesting interpretations of the data. Typically we see perception of harm increasing as students become older and more knowledgeable, as is the case with the statewide data and data from other cities in Solano. That trend does not persist in Benicia. What we see here is a tremendous dip in perception of harm for regular tobacco use: 82% of 7th graders report it is greatly harmful to smoke one to two packs of cigarettes a day, while just 75% of 9th graders and 83% of 11th graders feel this way. We see the same vulnerability with the 9th graders when we ask them about the harm of smoking occasionally: 30% of Benicia's 7th graders report great harm, while just 22% of the 9th graders and 27% of the 11th graders feel this way. These figures are well below those of the State, which are 33%, 34%, and 35%, respectively. (*CHKS Table A5.7*)

It is possible that Benicia's students are taking up smoking, in part, because they do not believe that occasional cigarette use will cause them much harm. It is rare, however, to find that "occasional" use persists because of the power of nicotine addiction. It is important that students at all grade levels recognize how harmful tobacco use is, as that is one of the factors that will protect them from initiating use of and becoming addicted to this deadly substance.

The following are the sentiments of one interview participant toward the smoking trend with Benicia youth:

"Well, that's such a sleeper of a drug and also such a horrible one in terms of long-term use and consequences for the health system, as well as for the individual. It's a horrible drug once you become dependent on it to release yourself from the dependency. The larger consequences are a variety of different cancers, only becoming more and more clear and more and more apparent. Then the other issue

Substance Use and Risk Factors in Benicia, CA

is the tobacco industry itself: the intensive and conscienceless marketing basically of a drug that is proven in every way to be a detriment. I don't think a 15 or 16 year old person really fully considers all of this as they begin to use tobacco. The consequences for them, unless they've had family members die of emphysema or something like that, are largely difficult to apprehend in the young teenager."

Perceived Harm of Alcohol Use

Similar patterns exist for Benicia students' perception of harm related to alcohol use. Once again, the perception of harm for occasional use pales in comparison to the State and County figures and Benicia's 9th graders dip precipitously. Just 55% of Benicia's 7th graders report great harm in *binge drinking* (drinking 5 or more drinks at one sitting) once or twice a week. For 9th graders, it's 48% and for 11th graders, it's 49%. These figures are aligned with those from the State, and actually the 7th graders at the State show more risk. However, they are still dangerously low when considering what we know to be the harms associated with binge drinking. When asked about the risk of drinking *occasionally*, just 20% of Benicia's 7th graders report great harm, down to 14% for the 9th graders and 16% for the 11th graders. Youth statewide feel much stronger that occasional alcohol use can cause great harm: 27% of 7th graders, 27% of 9th graders, and 25% of 11th graders. (**CHKS Table A4.14**) This information provides us with important insight into why Benicia's youth may be drinking at such great rates: essentially, they feel there is little to lose.

One person interviewed in Benicia sees that there is a lot to lose:

"I think there are two [concerns with alcohol in Benicia]. The first is just the devastation that even being attached to alcohol use can bring – driving while under the influence; lapses of judgment you have under the influence of alcohol – I see that as a big public health problem to our youth. Two – in my estimation, problem drinkers in adolescence don't tend to drink socially over a long period of time and moderately. They tend to binge, and so there are problems associated with alcohol poisoning. Just really devastating physical consequences of alcohol use. Those are my two concerns."

Another feels that alcohol unfortunately does not sound the alarm that other substances do:

"Alcohol [concerns me most] because it's a legal drug, and looked upon, it's not so scary. If your kids are taking meth or cocaine, people all of the sudden become very concerned. But if they consider it as "just something teenagers do", it seems to me that parents are fairly accepting of it, but yet it's dangerous or equal to any other kind of abuse."

Substance Use and Risk Factors in Benicia, CA

Perceived Harm of Marijuana Use

In 7th grade, 47% of Benicia's students think it is greatly harmful to smoke marijuana occasionally and 66% think it is greatly harmful to smoke marijuana one or two times a week; by 11th grade, these rates decrease substantially: only 25% of Benicia's 11th graders think it poses great harm to smoke marijuana occasionally and only 40% think it poses great harm to smoke marijuana one or two times a week. The 11th grade rates are substantially lower than those of Solano County and the State, putting Benicia's youth at more risk of initiating marijuana use. (CHKS Table A4.15)

A Benicia law enforcement officer is not sure that young people understand the snowball effect marijuana use can have:

"I'm old school and I think pot leads into other stuff...It just starts with that and then they proceed into other things. Once you get into that addictive and alternate behavior and alternate your frame of mind they start wanting other highs."

Another Benicia resident recognizes how difficult it is to curb youth marijuana use:

"The reason why [marijuana] concerns me is the kids think of it as a natural herb or they give an excuse why it's good for you. They can also hide it from their parents. It's easy to hide from their parents because they can smoke it and two hours later go home, put some Visine in their eyes and some cologne on and it's very hard for their parents to detect."

An exploration of the impact that marijuana legalization efforts and dispensaries is having on the perception of benefit – versus harm – of marijuana use for the youth of Benicia is warranted.

Substance Use and Risk Factors in Benicia, CA

▲ This risk factor is of considerable concern:

- **Early Initiation of the Problem Behavior**

Research shows that delaying the initial age of substance use reduces the likelihood that young people will experience abuse or addiction problems as adults. For example, young people who begin experimenting with alcohol by the age of 15 are nearly four times more likely to have abuse or addiction problems when they become adults (NIAAA, the National Institute of Alcohol Abuse and Alcoholism). Thus, prevention programming and environmental strategies that seek to delay the age at which young people begin experimentation with alcohol are important.

- Benicia students now in the ninth grade report that by the age of 12, 18% of them had initiated alcohol use, drinking at least one full alcoholic beverage. An additional 28% began drinking between the ages of 13 and 14.
- 23% of Benicia's 9th grade students report the use of marijuana before the age of 15.
- 21% of Benicia's 9th grade students report the use of tobacco before the age of 15.

Several interview participants were concerned about the age at which they were seeing ATOD use in Benicia.

This comment comes from a law-enforcement officer:

"With alcohol, I'm finding an increase in binge drinking, with younger youth. As young as 12 years old. And based on that binge drinking, I'm seeing more ODs [overdoses], more alcohol-related injuries or hospitalizations. A lot of the binge drinking leads to them passing out, getting sick...the parents are having to call an ambulance or the police because their child is incoherent or throwing up and is not doing well."

These comments were captured at a youth focus group:

- *Kids use drugs, during school. They go off campus at lunch and come back high.*
- *Even at middle school they are doing it. You know who is doing it because the town is so small.*
- *They smoke weed, drink, and even come to school drunk, even at the private schools.*
- *They smoke cigarettes right outside of school. They are so obvious. They just walk out and light up before they are even off campus.*
- *In 8th grade there is a lot more drug use. We are hearing about it around school.*

Substance Use and Risk Factors in Benicia, CA

School personnel are frustrated with what they are seeing:

“I’m seeing an increase in tobacco use at a much younger age, especially at the middle school were I’m at...I’m finding that they are becoming much more addicted to the tobacco products right now at a much younger age. Cigarettes can be cheap, available and they are finding people to get the tobacco products for them. Once again, I’m taking cigarettes away here at the middle school just to let you know. They are trying to smoke before and after school and I’m actually taking them away.”

Some are worried that enough is not being done to prevent the problem:

“I think there are problems in the middle schools. No one’s dealing with it there and it seems to be too late in high school.”

Substance Use and Risk Factors in Benicia, CA

► This risk factor is of some concern:

- **Family Management Problems**

The family management problems identified in Benicia are specific to supervision, and will likely entail solutions in multiple domains, including family, school and community.

The average commute time for Benicia workers is 31 minutes. It is a common observation among Benicia's residents that the city's youth remain in town while their parents have to leave for work:

"One of the problems is because Benicia is a bedroom community, both mom and dad work and they leave town to go to work. A lot of these kids are on their own all day long -- especially in the summer, when they don't have school. It's one of those things where there are absentee parents, so the kids run free in the neighborhood because they don't have any adult supervision. I have seen that a lot."

There is considerable empathy for the parents, who often do not have a choice:

"To afford to live here, both parents have to work and they don't normally work in Benicia; they have to travel somewhere so they are not around. These kids are alone."

"People are so busy and that's the problem. They are just barely making it financially. Both parents are working. They are struggling just to keep food on the table."

Given the employment dynamics, a sizeable number of Benicia's teens and pre-teens are unsupervised in the afternoons and during school breaks. As a point of comparison, 39% of Benicia's 5th graders and 34% of its 7th graders report that they are never home alone, while 63% of the State's 5th graders and 40% of its 7th graders are in this situation. Likewise, Benicia has the greatest percentage of 5th graders in Solano County who have no adult present in their home after school – 14%. This jumps to 21% for 7th and 9th graders and 40% for 11th graders (*RRC Table 2.2.4*).

In addition to these figures, which tell part of the story, there is considerable anecdotal evidence that Benicia's youth are bored and somewhat compromised by a lack of appropriate parental involvement beyond the elementary school years.

The youth put it bluntly:

"It's boring here. We live in small town. We need something to do."

Substance Use and Risk Factors in Benicia, CA

"Since it's a small town the parents trust kids and they get away with things. Parents don't really know what they are doing."

The adults are in agreement:

"This is a remarkable town for small kids. There is so much for the little ones to do here. However, half-way through middle school and especially for the high school students, there is nothing to do. Unless they are involved in sports. I mean, we have no movie theaters, no bowling alleys, and no stores to go shopping."

"There really is no place to go, not here anyways. I mean, we won't let them go to Vallejo. So really they can only hang out at someone's house on Fridays and Saturdays. That normally leads to the weekend parties."

"I think the huge thing that needs to happen is we need more parents involved. We need more parents knowing where their kids are, what their kids are doing, knowing exactly if their kids are doing drugs or not. A lot of parents don't know that their kids are doing these things for years before they finally find out. Just be a little more of a proactive parent and get more involved in your kid's life. And hold these parents accountable for this. A lot of them want to live their own lives and not be a part of their children's growing up. They feel like 'out of sight, out of mind'."

"Both parents work and they are too tired and have no energy to try and fight the battle. It's hard to be good parents and I think some of them just want to give up. Parents can't just go to bed and assume their child is going to do the right thing."

The family management issue cannot be separated from the house parties and youth accessing alcohol in their or their friends' homes. While some supervision aspects may be more challenging because parents have to work out of town, others may be more straightforward because they entail negligence or blatant violation of Benicia's social host ordinance:

"House parties are the biggest events. Parents go out of town and leave older siblings to watch the younger siblings. One of them ends up throwing a party and no one is watching what they are doing. Other times parents know or are there and they don't care what the kids are doing."

Unsupervised time, coupled with the misperception that allowing kids to drink when adults are present keeps them safe, appears to be one of the major factors putting Benicia's youth at risk.

**AGENDA ITEM
CITY COUNCIL MEETING: FEBRUARY 1, 2011
PUBLIC HEARING**

DATE : January 27, 2011

TO : City Council

FROM : City Attorney

SUBJECT : **MEDICAL MARIJUANA DISPENSARY BAN (SUPPLEMENTAL REPORT)**

RECOMMENDATION:

Introduce the ordinance to prohibit medical marijuana dispensaries except in limited, specified licensed facilities.

EXECUTIVE SUMMARY:

The Planning Commission considered the medical marijuana dispensary ban on January 26, 2011. The Planning Commission declined to recommend adoption of the proposed ban. The Planning Commission would like to consider an ordinance to allow medical marijuana dispensaries.

BACKGROUND:

Section 4.08.050 of the Open Government Ordinance allows agenda-related material to be supplemented no later than 72 hours before the regular meeting. One of the reasons that an agenda may be supplemented is to provide additional information that was not known to staff. See 4.08.050 B.1.c. This report provides information from the Planning Commission meeting on January 26, 2011.

Three public speakers attended the Planning Commission meeting and spoke in favor of having a medical marijuana dispensary in Benicia. The points they made included (but were not limited to):

- Seriously ill people would benefit from not having to go to Vallejo to get their medical marijuana,
- Having to go to Vallejo or another town means that people would have to store more marijuana at their homes which makes them more vulnerable to burglaries,
- Vallejo is more dangerous than Benicia for medical marijuana users, and
- Medical marijuana from a delivery service costs more than from a storefront.

Both members of the Planning Commission and the public noted that they know medical marijuana users and wondered how many there were in Benicia. The Police Department confirmed that it is impossible to tell since Solano County does not have a medical marijuana ID system. The possibility of tax revenue was appealing to some.

The Planning Commission considered the staff recommendation and decided not to recommend adoption of the ban. The Planning Commission would like the City to adopt an ordinance to allow medical marijuana dispensaries.

Alternative Actions:

If the City Council would like to follow the Planning Commission's recommendation, staff recommends that the Council introduce the ordinance to prohibit medical marijuana dispensaries except in limited, specified licensed facilities and direct the Planning Commission to hold workshops to evaluate an ordinance to allow medical marijuana dispensaries. This will effectively prohibit the establishment of a medical marijuana dispensary until an ordinance providing regulations for such use are adopted. In the alternative, without the adoption of an ordinance, the moratorium will expire March 20th. As noted in the main staff report, Benicia has a “permissive” zoning system, under which any use—including medical marijuana dispensaries—that is not expressly enumerated as a permitted use is deemed to be prohibited. Thus, although the Benicia Municipal Code does not specifically regulate such dispensaries, the City's practice has always been to deem dispensaries prohibited. Nevertheless, the City adopted the previous moratorium to make this policy explicit. Without an adopted ordinance, it may be possible for applicants for dispensaries to argue that the community development director should determine that the proposed uses is similar to an existing allowed use.¹ This is not a determination that should be made by staff and invites litigation.

¹ 17.16.010 Purpose and applicability. Use classifications describe one or more uses having similar characteristics, but do not list every use or activity that may appropriately be within the classification. The community development director shall determine whether a specific use shall be deemed to be within one or more use classifications or not within any classification in this title. The community development director may determine that a specific use shall not be deemed to be within a classification, whether or not named within the classification, if its characteristics are substantially incompatible with those typical of uses named within the classification.

17.08.040 Rules for interpretation.

A. Zoning Regulations. Where uncertainty exists regarding the interpretation of any provision of this title or its application to a specific site, the community development director shall determine the intent of the provision.

17.16.020 Uses not classified. Any new use, or any use that cannot be clearly determined to be in an existing use classification, may be incorporated into the zoning regulations by a zoning ordinance text amendment, as provided in Chapter [17.120](#) BMC.

VIII.B.1.2