

545 U.S. 1, 125 S.Ct. 2195, 162 L.Ed.2d 1, 73 USLW 4407, 05 Cal. Daily Op. Serv. 4725, 2005 Daily Journal D.A.R. 6530, 18 Fla. L. Weekly Fed. S 327  
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(repealed 1970).<sup>FN14</sup> Like the Harrison Act, the Marihuana Tax Act did not outlaw the possession or sale of marijuana outright. Rather, it imposed registration and reporting requirements for all individuals importing, producing, selling, or dealing in marijuana, and required the payment of annual taxes in addition to transfer taxes whenever the drug changed hands.<sup>FN15</sup> Moreover, doctors wishing to prescribe marijuana for medical purposes were required to comply with rather burdensome administrative requirements.<sup>FN16</sup> Noncompliance exposed traffickers to severe federal penalties, whereas compliance would often subject them to prosecution under state law.<sup>FN17</sup> Thus, while the Marihuana Tax Act did not declare the drug illegal *per se*, the onerous administrative requirements, the prohibitively expensive taxes, and the risks attendant on compliance practically curtailed the marijuana trade.

FN14. R. Bonnie & C. Whitebread, *The Marijuana Conviction* 154-174 (1999); L. Grinspoon & J. Bakalar, *Marihuana, the Forbidden Medicine* 7-8 (rev. ed.1997) (hereinafter Grinspoon & Bakalar). Although this was the Federal Government's first attempt to regulate the marijuana trade, by this time all States had in place some form of legislation regulating the sale, use, or possession of marijuana. R. Isralowitz, *Drug Use, Policy, and Management* 134 (2d ed.2002).

FN15. *Leary*, 395 U.S., at 14-16, 89 S.Ct. 1532.

FN16. Grinspoon & Bakalar 8.

FN17. *Leary*, 395 U.S., at 16-18, 89 S.Ct. 1532.

Then in 1970, after declaration of the national "war on drugs," federal drug policy underwent a significant transformation. A number of noteworthy events precipitated \*12 this policy shift. First, in *Leary v. United States*, 395 U.S. 6, 89 S.Ct. 1532, 23 L.Ed.2d 57 (1969), this Court held

certain provisions of the Marihuana Tax Act and other narcotics legislation unconstitutional. Second, at the end of his term, President Johnson fundamentally reorganized the federal drug control agencies. The Bureau\*\*2203 of Narcotics, then housed in the Department of Treasury, merged with the Bureau of Drug Abuse Control, then housed in the Department of Health, Education, and Welfare (HEW), to create the Bureau of Narcotics and Dangerous Drugs, currently housed in the Department of Justice.<sup>FN18</sup> Finally, prompted by a perceived need to consolidate the growing number of piecemeal drug laws and to enhance federal drug enforcement powers, Congress enacted the Comprehensive Drug Abuse Prevention and Control Act.<sup>FN19</sup>

FN18. Musto & Korsmeyer 32-35; 26 Almanac 533. In 1973, the Bureau of Narcotics and Dangerous Drugs became the DEA. See Reorg. Plan No. 2 of 1973, § 1, 28 CFR § 0.100 (1973).

FN19. The Comprehensive Drug Abuse Prevention and Control Act of 1970 consists of three titles. Title I relates to the prevention and treatment of narcotic addicts through HEW (now the Department of Health and Human Services). 84 Stat. 1238. Title II, as discussed in more detail above, addresses drug control and enforcement as administered by the Attorney General and the DEA. *Id.*, at 1242. Title III concerns the import and export of controlled substances. *Id.*, at 1285.

Title II of that Act, the CSA, repealed most of the earlier antidrug laws in favor of a comprehensive regime to combat the international and interstate traffic in illicit drugs. The main objectives of the CSA were to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances.<sup>FN20</sup> Congress was particularly concerned with the \*13 need to prevent the diversion of drugs from legitimate to illicit channels.<sup>FN21</sup>

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FN20. In particular, Congress made the following findings:

“(1) Many of the drugs included within this subchapter have a useful and legitimate medical purpose and are necessary to maintain the health and general welfare of the American people.

“(2) The illegal importation, manufacture, distribution, and possession and improper use of controlled substances have a substantial and detrimental effect on the health and general welfare of the American people.

“(3) A major portion of the traffic in controlled substances flows through interstate and foreign commerce. Incidents of the traffic which are not an integral part of the interstate or foreign flow, such as manufacture, local distribution, and possession, nonetheless have a substantial and direct effect upon interstate commerce because-

“(A) after manufacture, many controlled substances are transported in interstate commerce,

“(B) controlled substances distributed locally usually have been transported in interstate commerce immediately before their distribution, and

“(C) controlled substances possessed commonly flow through interstate commerce immediately prior to such possession.

“(4) Local distribution and possession of controlled substances contribute to swelling the interstate traffic in such substances.

“(5) Controlled substances manufactured and distributed intrastate cannot be differentiated from controlled substances manufactured and distributed interstate. Thus, it is not feasible to distinguish, in terms of controls, between controlled substances manufactured and distributed interstate and controlled substances manufactured and distributed intrastate.

“(6) Federal control of the intrastate incidents of the traffic in controlled

substances is essential to the effective control of the interstate incidents of such traffic.” 21 U.S.C. §§ 801(1)-(6).

FN21. See *United States v. Moore*, 423 U.S. 122, 135, 96 S.Ct. 335, 46 L.Ed.2d 333 (1975); see also H.R. Rep., at 22, U.S.Code Cong. & Admin.News 1970, pp. 4566, 4596.

To effectuate these goals, Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA. 21 U.S.C. §§ 841(a)(1), 844(a). The CSA categorizes all controlled substances into five schedules. § 812. The drugs are grouped together based on their accepted medical uses, the potential for abuse, and \*\*2204 their psychological and physical effects on the body. \*14 §§ 811, 812. Each schedule is associated with a distinct set of controls regarding the manufacture, distribution, and use of the substances listed therein. §§ 821-830. The CSA and its implementing regulations set forth strict requirements regarding registration, labeling and packaging, production quotas, drug security, and recordkeeping. *Ibid* 21 CFR § 1301 *et seq.* (2004).

In enacting the CSA, Congress classified marijuana as a Schedule I drug. 21 U.S.C. § 812(c). This preliminary classification was based, in part, on the recommendation of the Assistant Secretary of HEW “that marihuana be retained within schedule I at least until the completion of certain studies now underway.” FN22 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. § 812(b)(1). These three factors, in varying gradations, are also used to categorize drugs in the other four schedules. For example, Schedule II substances also have a high potential for abuse which may lead to severe psychological or physical dependence, but unlike Schedule I drugs, they have a currently accepted medical use. § 812(b)(2). By classifying marijuana as a Schedule I drug, as opposed to listing it on a lesser schedule,

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the manufacture, distribution, or possession of marijuana became a criminal offense, with the sole exception being use of the drug as part of a Food and Drug Administration pre-approved research study. §§ 823(f), 841(a)(1), 844(a); see also *United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483, 490, 121 S.Ct. 1711, 149 L.Ed.2d 722 (2001).

FN22. *Id.* at 61, U.S.Code Cong. & Admin.News 1970, pp. 4566, 4629 (quoting letter from Roger Egeberg, M.D.O. to Hon. Harley O. Staggers (Aug. 14, 1970)).

The CSA provides for the periodic updating of schedules and delegates authority to the Attorney General, after consultation with the Secretary of Health and Human Services, to add, remove, or transfer substances to, from, or between \*15 schedules. § 811. Despite considerable efforts to reschedule marijuana, it remains a Schedule I drug.  
FN23

FN23. Starting in 1972, the National Organization for the Reform of Marijuana Laws (NORML) began its campaign to reclassify marijuana. Grinspoon & Bakalar 13-17. After some fleeting success in 1988 when an Administrative Law Judge (ALJ) declared that the DEA would be acting in an "unreasonable, arbitrary, and capricious" manner if it continued to deny marijuana access to seriously ill patients, and concluded that it should be reclassified as a Schedule III substance, *Grinspoon v. DEA*, 828 F.2d 881, 883-884 (C.A.1 1987), the campaign has proved unsuccessful. The DEA Administrator did not endorse the ALJ's findings, 54 Fed.Reg. 53767 (1989), and since that time has routinely denied petitions to reschedule the drug, most recently in 2001. 66 Fed.Reg. 20038 (2001). The Court of Appeals for the District of Columbia Circuit has reviewed

the petition to reschedule marijuana on five separate occasions over the course of 30 years, ultimately upholding the Administrator's final order. See *Alliance for Cannabis Therapeutics v. DEA*, 15 F.3d 1131, 1133 (1994).

### III

[1] Respondents in this case do not dispute that passage of the CSA, as part of the Comprehensive Drug Abuse Prevention and Control Act, was well within Congress' commerce power. Brief for Respondents 22, 38. Nor do they contend that any provision or section of the CSA amounts to an unconstitutional exercise of congressional authority. Rather, respondents' challenge is actually quite limited; they argue that the CSA's categorical prohibition of the manufacture and possession \*\*2205 of marijuana as applied to the intrastate manufacture and possession of marijuana for medical purposes pursuant to California law exceeds Congress' authority under the Commerce Clause.

In assessing the validity of congressional regulation, none of our Commerce Clause cases can be viewed in isolation. As charted in considerable detail in *United States v. Lopez*, our understanding of the reach of the Commerce Clause, as well as Congress' assertion of authority thereunder, has \*16 evolved over time.<sup>FN24</sup> The Commerce Clause emerged as the Framers' response to the central problem giving rise to the Constitution itself: the absence of any federal commerce power under the Articles of Confederation.<sup>FN25</sup> For the first century of our history, the primary use of the Clause was to preclude the kind of discriminatory state legislation that had once been permissible.<sup>FN26</sup> Then, in response to rapid industrial development and an increasingly interdependent national economy, Congress "ushered in a new era of federal regulation under the commerce power," beginning with the enactment of the Interstate Commerce Act in 1887, 24 Stat. 379, and the Sherman Antitrust Act in 1890, 26 Stat. 209, as amended, 15 U.S.C. § 2 *et seq.*<sup>FN27</sup>

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FN24. *United States v. Lopez*, 514 U.S. 549, 552-558, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995); *id.*, at 568-574, 115 S.Ct. 1624 (KENNEDY, J., concurring); *id.*, at 604-607, 115 S.Ct. 1624 (SOUTER, J., dissenting).

FN25. See *Gibbons v. Ogden*, 9 Wheat. 1, 224, 6 L.Ed. 23 (1824) (opinion of Johnson, J.); Stern, That Commerce Which Concerns More States Than One, 47 Harv. L.Rev. 1335, 1337, 1340-1341 (1934); G. Gunther, *Constitutional Law* 127 (9th ed.1975).

FN26. See *Lopez*, 514 U.S., at 553-554, 115 S.Ct. 1624; *id.*, at 568-569, 115 S.Ct. 1624 (KENNEDY, J., concurring); see also *Granhelm v. Heald*, 544 U.S. 460, 472 - 473, 125 S.Ct. 1885, 1895-1896, 161L.Ed.2d 796 (2005).

FN27. *Lopez*, 514 U.S., at 554, 115 S.Ct. 1624; see also *Wickard v. Filburn*, 317 U.S. 111, 121, 63 S.Ct. 82, 87 L.Ed. 122 (1942) ("It was not until 1887, with the enactment of the Interstate Commerce Act, that the interstate commerce power began to exert positive influence in American law and life. This first important federal resort to the commerce power was followed in 1890 by the Sherman Anti-Trust Act and, thereafter, mainly after 1903, by many others. These statutes ushered in new phases of adjudication, which required the Court to approach the interpretation of the Commerce Clause in the light of an actual exercise by Congress of its power thereunder" (footnotes omitted)).

Cases decided during that "new era," which now spans more than a century, have identified three general categories of regulation in which Congress is authorized to engage under its commerce power. First, Congress can regulate the channels of interstate commerce. *Perez v. United States*, 402 U.S. 146, 150, 91 S.Ct. 1357, 28 L.Ed.2d 686

(1971). Second, Congress has authority to regulate and protect the instrumentalities of interstate commerce, and persons or things in interstate \*17 commerce. *Ibid.* Third, Congress has the power to regulate activities that substantially affect interstate commerce. *Ibid.*; *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 37, 57 S.Ct. 615, 81 L.Ed. 893 (1937). Only the third category is implicated in the case at hand.

[2] Our case law firmly establishes Congress' power to regulate purely local activities that are part of an economic "class of activities" that have a substantial effect on interstate commerce. See, e.g., *Perez*, 402 U.S., at 151, 91 S.Ct. 1357; *Wickard v. Filburn*, 317 U.S. 111, 128-129, 63 S.Ct. 82, 87 L.Ed. 122 (1942). As we stated in *Wickard*, "even if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if \*\*2206 it exerts a substantial economic effect on interstate commerce." *Id.*, at 125, 63 S.Ct. 82. We have never required Congress to legislate with scientific exactitude. When Congress decides that the "total incidence" of a practice poses a threat to a national market, it may regulate the entire class. See *Perez*, 402 U.S., at 154-155, 91 S.Ct. 1357 (quoting *Westfall v. United States*, 274 U.S. 256, 259, 47 S.Ct. 629, 71 L.Ed. 1036 (1927) ("[W]hen it is necessary in order to prevent an evil to make the law embrace more than the precise thing to be prevented it may do so")). In this vein, we have reiterated that when "a general regulatory statute bears a substantial relation to commerce, the *de minimis* character of individual instances arising under that statute is of no consequence." E.g., *Lopez*, 514 U.S., at 558, 115 S.Ct. 1624 (emphasis deleted) (quoting *Maryland v. Wirtz*, 392 U.S. 183, 196, n. 27, 88 S.Ct. 2017, 20 L.Ed.2d 1020 (1968)).

Our decision in *Wickard*, 317 U.S. 111, 63 S.Ct. 82, 87 L.Ed. 122, is of particular relevance. In *Wickard*, we upheld the application of regulations promulgated under the Agricultural Adjustment Act of 1938, 52 Stat. 31, which were designed to control the volume of wheat moving in interstate and foreign commerce in order to avoid surpluses and consequent abnormally low prices. The

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regulations established an allotment of 11.1 acres for Filburn's 1941 wheat crop, but he sowed 23 acres, intending to use the excess by consuming it on his own farm. Filburn \*18 argued that even though we had sustained Congress' power to regulate the production of goods for commerce, that power did not authorize "federal regulation [of] production not intended in any part for commerce but wholly for consumption on the farm." *Wickard*, 317 U.S., at 118, 63 S.Ct. 82. Justice Jackson's opinion for a unanimous Court rejected this submission. He wrote:

"The effect of the statute before us is to restrict the amount which may be produced for market and the extent as well to which one may forestall resort to the market by producing to meet his own needs. That appellee's own contribution to the demand for wheat may be trivial by itself is not enough to remove him from the scope of federal regulation where, as here, his contribution, taken together with that of many others similarly situated, is far from trivial." *Id.*, at 127-128, 63 S.Ct. 82.

*Wickard* thus establishes that Congress can regulate purely intrastate activity that is not itself "commercial," in that it is not produced for sale, if it concludes that failure to regulate that class of activity would undercut the regulation of the interstate market in that commodity.

The similarities between this case and *Wickard* are striking. Like the farmer in *Wickard*, respondents are cultivating, for home consumption, a fungible commodity for which there is an established, albeit illegal, interstate market.<sup>FN28</sup> Just as the Agricultural Adjustment Act was designed "to \*19 control the volume [of wheat] moving in interstate and foreign commerce in order\*\*2207 to avoid surpluses ..." and consequently control the market price, *id.*, at 115, 63 S.Ct. 82, a primary purpose of the CSA is to control the supply and demand of controlled substances in both lawful and unlawful drug markets. See nn. 20-21, *supra*. In *Wickard*, we had no difficulty concluding that Congress had a rational basis for believing that, when viewed in the aggregate, leaving home-consumed wheat outside the regulatory scheme would have a substantial influence on price and market conditions. Here

too, Congress had a rational basis for concluding that leaving home-consumed marijuana outside federal control would similarly affect price and market conditions.

FN28. Even respondents acknowledge the existence of an illicit market in marijuana; indeed, Raich has personally participated in that market, and Monson expresses a willingness to do so in the future. App. 59, 74, 87. See also *Department of Revenue of Mont. v. Kurth Ranch*, 511 U.S. 767, 770, 774, n. 12, and 780, n. 17, 114 S.Ct. 1937, 128 L.Ed.2d 767 (1994) (discussing the "market value" of marijuana); *id.*, at 790, 114 S.Ct. 1937 (REHNQUIST, C. J., dissenting); *id.*, at 792, 114 S.Ct. 1937 (O'CONNOR, J., dissenting); *Whalen v. Roe*, 429 U.S. 589, 591, 97 S.Ct. 869, 51 L.Ed.2d 64 (1977) (addressing prescription drugs "for which there is both a lawful and an unlawful market"); *Turner v. United States*, 396 U.S. 398, 417, n. 33, 90 S.Ct. 642, 24 L.Ed.2d 610 (1970) (referring to the purchase of drugs on the "retail market").

More concretely, one concern prompting inclusion of wheat grown for home consumption in the 1938 Act was that rising market prices could draw such wheat into the interstate market, resulting in lower market prices. *Wickard*, 317 U.S., at 128, 63 S.Ct. 82. The parallel concern making it appropriate to include marijuana grown for home consumption in the CSA is the likelihood that the high demand in the interstate market will draw such marijuana into that market. While the diversion of homegrown wheat tended to frustrate the federal interest in stabilizing prices by regulating the volume of commercial transactions in the interstate market, the diversion of homegrown marijuana tends to frustrate the federal interest in eliminating commercial transactions in the interstate market in their entirety. In both cases, the regulation is squarely within Congress' commerce power because production of the commodity meant for home consumption, be it wheat or marijuana, has a

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substantial effect on supply and demand in the national market for that commodity.<sup>FN29</sup>

FN29. To be sure, the wheat market is a lawful market that Congress sought to protect and stabilize, whereas the marijuana market is an unlawful market that Congress sought to eradicate. This difference, however, is of no constitutional import. It has long been settled that Congress' power to regulate commerce includes the power to prohibit commerce in a particular commodity. *Lopez*, 514 U.S., at 571, 115 S.Ct. 1624 (KENNEDY, J., concurring) ("In the *Lottery Case*, 188 U.S. 321, 23 S.Ct. 321, 47 L.Ed. 492 (1903), the Court rejected the argument that Congress lacked [the] power to prohibit the interstate movement of lottery tickets because it had power only to regulate, not to prohibit"); see also *Wickard*, 317 U.S., at 128, 63 S.Ct. 82 ("The stimulation of commerce is a use of the regulatory function quite as definitely as prohibitions or restrictions thereon").

\*20 Nonetheless, respondents suggest that *Wickard* differs from this case in three respects: (1) the Agricultural Adjustment Act, unlike the CSA, exempted small farming operations; (2) *Wickard* involved a "quintessential economic activity"-a commercial farm-whereas respondents do not sell marijuana; and (3) the *Wickard* record made it clear that the aggregate production of wheat for use on farms had a significant impact on market prices. Those differences, though factually accurate, do not diminish the precedential force of this Court's reasoning.

The fact that Filburn's own impact on the market was "trivial by itself" was not a sufficient reason for removing him from the scope of federal regulation. 317 U.S., at 127, 63 S.Ct. 82. That the Secretary of Agriculture elected to exempt even smaller farms from regulation does not speak to his power to regulate all those whose aggregated production was significant, nor did that fact play any role in the

Court's analysis. Moreover, even though Filburn was indeed a commercial farmer, the activity he was engaged in-the cultivation of wheat for home consumption-was not treated by the Court as part of his commercial farming operation.<sup>FN30</sup> And while it \*\*2208 is true that the record in the *Wickard* case itself established the causal connection between the production for local use and the national market, we have before us findings by Congress to the same effect.

FN30. See *Id.*, 317 U.S., at 125, 63 S.Ct. 82 (recognizing that Filburn's activity "may not be regarded as commerce").

Findings in the introductory sections of the CSA explain why Congress deemed it appropriate to encompass local activities within the scope of the CSA. See n. 20, *supra*. The \*21 submissions of the parties and the numerous *amici* all seem to agree that the national, and international, market for marijuana has dimensions that are fully comparable to those defining the class of activities regulated by the Secretary pursuant to the 1938 statute.<sup>FN31</sup> RESPONDENTS NONETHEless insist that the csa cannot be constitutionally applied to their activities because Congress did not make a specific finding that the intrastate cultivation and possession of marijuana for medical purposes based on the recommendation of a physician would substantially affect the larger interstate marijuana market. Be that as it may, we have never required Congress to make particularized findings in order to legislate, see *Lopez*, 514 U.S., at 562, 115 S.Ct. 1624; *Perez*, 402 U.S., at 156, 91 S.Ct. 1357, absent a special concern such as the protection of free speech, see, e.g., *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 664-668, 114 S.Ct. 2445, 129 L.Ed.2d 497 (1994) (plurality opinion). While congressional findings are certainly helpful in reviewing the substance of a congressional statutory scheme, particularly when the connection to commerce is not self-evident, and while we will consider congressional findings in our analysis when they are available, the absence of particularized findings does not call into question Congress' authority to legislate.<sup>FN32</sup>

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FN31. The Executive Office of the President has estimated that in 2000 American users spent \$10.5 billion on the purchase of marijuana. Office of Nat. Drug Control Policy, Marijuana Fact Sheet 5 (Feb.2004), available at <http://www.whitehousedrugpolicy.gov/publications/factsht/marijuana/index.html>.

FN32. Moreover, as discussed in more detail above, Congress did make findings regarding the effects of intrastate drug activity on interstate commerce. See n. 20, *supra*. Indeed, even the Court of Appeals found that those findings “weigh[ed] in favor” of upholding the constitutionality of the CSA. 352 F.3d 1222, 1232 (C.A.9 2003) (case below).

The dissenters, however, would impose a new and heightened burden on Congress (unless the litigants can garner evidence sufficient to cure Congress’ perceived “inadequa[cies]”)—that legislation must contain detailed findings proving that each activity regulated within a comprehensive statute is essential to the statutory scheme.

*Post*, at 2227-2228 (O’CONNOR, J., opinion of dissenting); *post*, at 2233 (THOMAS, J., opinion of dissenting).

Such an exacting requirement is not only unprecedented, it is also impractical. Indeed, the principal dissent’s critique of Congress for “not even” including “declarations” specific to marijuana is particularly unpersuasive given that the CSA initially identified 80 other substances subject to regulation as Schedule I drugs, not to mention those categorized in Schedules II-V. *Post*, at 2228 (O’CONNOR, J., opinion of dissenting). Surely, Congress cannot be expected (and certainly should not be required) to include specific findings on each and every substance contained therein in order to satisfy the dissenters’ unfounded skepticism.

\*22 In assessing the scope of Congress’ authority

under the Commerce Clause, we stress that the task before us is a modest one. We need not determine whether respondents’ activities, taken in the aggregate, substantially affect interstate commerce in fact, but only whether a “rational basis” exists for so concluding. *Lopez*, 514 U.S., at 557, 115 S.Ct. 1624; see also *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 276-280, 101 S.Ct. 2352, 69 L.Ed.2d 1 (1981); *Perez*, 402 U.S., at 155-156, 91 S.Ct. 1357; \*\*2209 *Katzenbach v. McClung*, 379 U.S. 294, 299-301, 85 S.Ct. 377, 13 L.Ed.2d 290 (1964); *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 252-253, 85 S.Ct. 348, 13 L.Ed.2d 258 (1964). Given the enforcement difficulties that attend distinguishing between marijuana cultivated locally and marijuana grown elsewhere, 21 U.S.C. § 801(5), and concerns about diversion into illicit channels, FN33 we have no difficulty concluding that Congress had a rational basis for believing that failure to regulate the intrastate manufacture and possession of marijuana would leave a gaping hole in the CSA. Thus, as in *Wickard*, when it enacted comprehensive legislation to regulate the interstate market in a fungible commodity, Congress was acting well within its authority to “make all Laws which shall be necessary and proper” to “regulate Commerce ... among the several States.” U.S. Const., Art. I, § 8. That the regulation ensnares some purely intrastate activity is of no moment. As we have done many times before, we refuse to excise individual components of that larger scheme.

FN33. See n. 21, *supra* (citing sources that evince Congress’ particular concern with the diversion of drugs from legitimate to illicit channels).

\*23 IV

[3] To support their contrary submission, respondents rely heavily on two of our more recent Commerce Clause cases. In their myopic focus, they overlook the larger context of modern-era Commerce Clause jurisprudence preserved by those cases. Moreover, even in the narrow prism of respondents’ creation, they read those cases far too

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ATTACHMENT NO. 1.37

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broadly. Those two cases, of course, are *Lopez*, 514 U.S. 549, 115 S.Ct. 1624, and *Morrison*, 529 U.S. 598, 120 S.Ct. 1740. As an initial matter, the statutory challenges at issue in those cases were markedly different from the challenge respondents pursue in the case at hand. Here, respondents ask us to excise individual applications of a concededly valid statutory scheme. In contrast, in both *Lopez* and *Morrison*, the parties asserted that a particular statute or provision fell outside Congress' commerce power in its entirety. This distinction is pivotal for we have often reiterated that "[w]here the class of activities is regulated and that class is within the reach of federal power, the courts have no power 'to excise, as trivial, individual instances' of the class." *Perez*, 402 U.S., at 154, 91 S.Ct. 1357 (emphasis deleted) (quoting *Wirtz*, 392 U.S., at 193, 88 S.Ct. 2017); see also *Hodel*, 452 U.S., at 308, 101 S.Ct. 2352.

At issue in *Lopez*, 514 U.S. 549, 115 S.Ct. 1624, was the validity of the Gun-Free School Zones Act of 1990, which was a brief, single-subject statute making it a crime for an individual to possess a gun in a school zone. 104 Stat. 4844-4845, 18 U.S.C. § 922(q)(1)(A). The Act did not regulate any economic activity and did not contain any requirement that the possession of a gun have any connection to past interstate activity or a predictable impact on future commercial activity. Distinguishing our earlier cases holding that comprehensive regulatory statutes may be validly applied to local conduct that does not, when viewed in isolation, have a significant impact on interstate commerce, we held the statute invalid. We explained:

\*24 "Section 922(q) is a criminal statute that by its terms has nothing to do with 'commerce' or any sort of economic enterprise, however broadly one might define those terms. Section 922(q) is not an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated. It cannot, therefore, be sustained under our cases upholding regulations of activities\*\*2210 that arise out of or are connected with a commercial transaction, which viewed in the aggregate, substantially affects interstate commerce." 514

U.S., at 561, 115 S.Ct. 1624.

The statutory scheme that the Government is defending in this litigation is at the opposite end of the regulatory spectrum. As explained above, the CSA, enacted in 1970 as part of the Comprehensive Drug Abuse Prevention and Control Act, 84 Stat. 1242-1284, was a lengthy and detailed statute creating a comprehensive framework for regulating the production, distribution, and possession of five classes of "controlled substances." Most of those substances—those listed in Schedules II through V—"have a useful and legitimate medical purpose and are necessary to maintain the health and general welfare of the American people." 21 U.S.C. § 801(1). The regulatory scheme is designed to foster the beneficial use of those medications, to prevent their misuse, and to prohibit entirely the possession or use of substances listed in Schedule I, except as a part of a strictly controlled research project.

While the statute provided for the periodic updating of the five schedules, Congress itself made the initial classifications. It identified 42 opiates, 22 opium derivatives, and 17 hallucinogenic substances as Schedule I drugs. 84 Stat. 1248. Marijuana was listed as the 10th item in the 3d subcategory. That classification, unlike the discrete prohibition established by the Gun-Free School Zones Act of 1990, was merely one of many "essential part[s] of a larger regulation of economic activity, in which the regulatory scheme could be undercut \*25 unless the intrastate activity were regulated." *Lopez*, 514 U.S., at 561, 115 S.Ct. 1624. FN34 Our opinion in *Lopez* casts no doubt on the validity of such a program.

FN34. The principal dissent asserts that by "[s]eizing upon our language in *Lopez*," *post*, at 2223 (opinion of O'CONNOR, J.), *i.e.*, giving effect to our well-established case law, Congress will now have an incentive to legislate broadly. Even putting aside the political checks that would generally curb Congress' power to

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enact a broad and comprehensive scheme for the purpose of targeting purely local activity, there is no suggestion that the CSA constitutes the type of "evasive" legislation the dissent fears, nor could such an argument plausibly be made. *Post*, at 2223 (O'CONNOR, J., dissenting).

Nor does this Court's holding in *Morrison*, 529 U.S. 598, 120 S.Ct. 1740. The Violence Against Women Act of 1994, 108 Stat.1902, created a federal civil remedy for the victims of gender-motivated crimes of violence. 42 U.S.C. § 13981. The remedy was enforceable in both state and federal courts, and generally depended on proof of the violation of a state law. Despite congressional findings that such crimes had an adverse impact on interstate commerce, we held the statute unconstitutional because, like the statute in *Lopez*, it did not regulate economic activity. We concluded that "the noneconomic, criminal nature of the conduct at issue was central to our decision" in *Lopez*, and that our prior cases had identified a clear pattern of analysis: " 'Where economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained.' " FN35 *Morrison*, 529 U.S., at 610, 120 S.Ct. 1740.

FN35. *Lopez*, 514 U.S., at 560, 115 S.Ct. 1624; see also *id.*, at 573-574, 115 S.Ct. 1624 (KENNEDY, J., concurring) (stating that *Lopez* did not alter our "practical conception of commercial regulation" and that Congress may "regulate in the commercial sphere on the assumption that we have a single market and a unified purpose to build a stable national economy").

\*\*2211 Unlike those at issue in *Lopez* and *Morrison*, the activities regulated by the CSA are quintessentially economic. "Economics" refers to "the production, distribution, and consumption of commodities." Webster's Third New International \*26 Dictionary 720 (1966). The CSA is a statute that regulates the production, distribution, and

consumption of commodities for which there is an established, and lucrative, interstate market. Prohibiting the intrastate possession or manufacture of an article of commerce is a rational (and commonly utilized) means of regulating commerce in that product. FN36 Such prohibitions include specific decisions requiring that a drug be withdrawn from the market as a result of the failure to comply with regulatory requirements as well as decisions excluding Schedule I drugs entirely from the market. Because the CSA is a statute that directly regulates economic, commercial activity, our opinion in *Morrison* casts no doubt on its constitutionality.

FN36. See 16 U.S.C. § 668(a) (bald and golden eagles); 18 U.S.C. § 175(a) (biological weapons); § 831(a) (nuclear material); § 842(n)(1) (certain plastic explosives); § 2342(a) (contraband cigarettes).

The Court of Appeals was able to conclude otherwise only by isolating a "separate and distinct" class of activities that it held to be beyond the reach of federal power, defined as "the intrastate, noncommercial cultivation, possession and use of marijuana for personal medical purposes on the advice of a physician and in accordance with state law." 352 F.3d, at 1229. The court characterized this class as "different in kind from drug trafficking." *Id.*, at 1228. The differences between the members of a class so defined and the principal traffickers in Schedule I substances might be sufficient to justify a policy decision exempting the narrower class from the coverage of the CSA. The question, however, is whether Congress' contrary policy judgment, *i.e.*, its decision to include this narrower "class of activities" within the larger regulatory scheme, was constitutionally deficient. We have no difficulty concluding that Congress acted rationally in determining that none of the characteristics making up the purported class, whether viewed individually or in the aggregate, compelled an exemption from the CSA; rather, the subdivided class of activities defined by the Court \*27 of Appeals was an essential part of the larger

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regulatory scheme.

First, the fact that marijuana is used “for personal medical purposes on the advice of a physician” cannot itself serve as a distinguishing factor. *Id.*, at 1229. The CSA designates marijuana as contraband for *any* purpose; in fact, by characterizing marijuana as a Schedule I drug, Congress expressly found that the drug has no acceptable medical uses. Moreover, the CSA is a comprehensive regulatory regime specifically designed to regulate which controlled substances can be utilized for medicinal purposes, and in what manner. Indeed, most of the substances classified in the CSA “have a useful and legitimate medical purpose.” 21 U.S.C. § 801(1). Thus, even if respondents are correct that marijuana does have accepted medical uses and thus should be redesignated as a lesser schedule drug,<sup>FN37</sup> \*\*2212 the CSA would still impose controls beyond what is required by California law. The CSA requires manufacturers, physicians, pharmacies, and other handlers of controlled substances to comply with statutory and regulatory provisions mandating registration with the DEA, compliance with specific production quotas, security controls to guard against diversion, recordkeeping and reporting obligations, and prescription requirements. See \*28 21 U.S.C. §§ 821-830; 21 CFR § 1301 *et seq.* (2004). Furthermore, the dispensing of new drugs, even when doctors approve their use, must await federal approval. *United States v. Rutherford*, 442 U.S. 544, 99 S.Ct. 2470, 61 L.Ed.2d 68 (1979). Accordingly, the mere fact that marijuana-like virtually every other controlled substance regulated by the CSA-is used for medicinal purposes cannot possibly serve to distinguish it from the core activities regulated by the CSA.

FN37. We acknowledge that evidence proffered by respondents in this case regarding the effective medical uses for marijuana, if found credible after trial, would cast serious doubt on the accuracy of the findings that require marijuana to be listed in Schedule I. See, *e.g.*, Institute of Medicine, *Marijuana and Medicine:*

*Assessing the Science Base* 179 (J. Joy, S. Watson, & J. Benson eds.1999) (recognizing that “[s]cientific data indicate the potential therapeutic value of cannabinoid drugs, primarily THC [Tetrahydrocannabinol] for pain relief, control of nausea and vomiting, and appetite stimulation”); see also *Conant v. Walters*, 309 F.3d 629, 640-643 (C.A.9 2002) (Kozinski, J., concurring) (chronicling medical studies recognizing valid medical uses for marijuana and its derivatives). But the possibility that the drug may be reclassified in the future has no relevance to the question whether Congress now has the power to regulate its production and distribution. Respondents’ submission, if accepted, would place all homegrown medical substances beyond the reach of Congress’ regulatory jurisdiction.

Nor can it serve as an “objective marke[r]” or “objective facto[r]” to arbitrarily narrow the relevant class as the dissenters suggest, *post*, at 2223 (O’CONNOR, J., opinion of dissenting); *post*, at 2235 (THOMAS, J., opinion of dissenting). More fundamentally, if, as the principal dissent contends, the personal cultivation, possession, and use of marijuana for medicinal purposes is beyond the “ ‘outer limits’ of Congress’ Commerce Clause authority,” *post*, at 2220 (O’CONNOR, J., opinion of dissenting), it must also be true that such personal use of marijuana (or any other homegrown drug) for recreational purposes is also beyond those “ ‘outer limits,’ ” whether or not a State elects to authorize or even regulate such use. Justice THOMAS’ separate dissent suffers from the same sweeping implications. That is, the dissenters’ rationale logically extends to place *any* federal regulation (including quality, prescription, or quantity controls) of *any* locally cultivated and possessed controlled substance for *any* purpose beyond the “ ‘outer limits’ ” of Congress’ Commerce Clause authority. One need not have a degree in economics to understand why a nationwide exemption for the vast quantity of marijuana (or other drugs) locally cultivated for personal use (which presumably would include use

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by friends, neighbors, and family members) may have a substantial impact on the interstate market for this extraordinarily popular substance. The congressional judgment that an exemption for such a significant segment of the total market would undermine the orderly enforcement of the entire regulatory scheme is entitled to a strong presumption of validity. Indeed, that judgment is not only rational, but “visible to the \*29 naked eye,” *Lopez*, 514 U.S., at 563, 115 S.Ct. 1624, under any commonsense appraisal of the probable consequences of such an open-ended exemption.

[4] Second, limiting the activity to marijuana possession and cultivation “in accordance with state law” cannot serve to place respondents’ activities beyond congressional reach. The Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail. It is beyond peradventure that federal power over commerce is “superior to that of the States to provide for the welfare or necessities of their inhabitants,” however legitimate or dire those necessities may be. \*\*2213 *Wirtz*, 392 U.S., at 196, 88 S.Ct. 2017 (quoting *Sanitary Dist. of Chicago v. United States*, 266 U.S. 405, 426, 45 S.Ct. 176, 69 L.Ed. 352 (1925)). See also 392 U.S., at 195-196, 88 S.Ct. 2017; *Wickard*, 317 U.S., at 124, 63 S.Ct. 82 (“[N]o form of state activity can constitutionally thwart the regulatory power granted by the commerce clause to Congress”). Just as state acquiescence to federal regulation cannot expand the bounds of the Commerce Clause, see, e.g., *Morrison*, 529 U.S., at 661-662, 120 S.Ct. 1740 (BREYER, J., dissenting) (noting that 38 States requested federal intervention), so too state action cannot circumscribe Congress’ plenary commerce power. See *United States v. Darby*, 312 U.S. 100, 114, 61 S.Ct. 451, 85 L.Ed. 609 (1941) (“That power can neither be enlarged nor diminished by the exercise or non-exercise of state power”). FN38

FN38. That is so even if California’s current controls (enacted eight years after the Compassionate Use Act was passed) are “[e]ffective,” as the dissenters would

have us blindly presume, *post*, at 2228 (O’CONNOR, J., opinion of dissenting); *Post*, at 2232, 2235 (THOMAS, J., opinion of dissenting). California’s decision (made 34 years after the CSA was enacted) to impose “stric[t] controls” on the “cultivation and possession of marijuana for medical purposes,” *post*, at 2232 (THOMAS, J., dissenting), cannot retroactively divest Congress of its authority under the Commerce Clause. Indeed, Justice THOMAS’ urgings to the contrary would turn the Supremacy Clause on its head, and would resurrect limits on congressional power that have long since been rejected. See *post*, at 2219 (SCALIA, J., concurring in judgment) (quoting *McCulloch v. Maryland*, 4 Wheat. 316, 424, 4 L.Ed. 579 (1819)) (“To impose on [Congress] the necessity of resorting to means which it cannot control, which another government may furnish or withhold, would render its course precarious, the result of its measures uncertain, and create a dependence on other governments, which might disappoint its most important designs, and is incompatible with the language of the constitution”).

Moreover, in addition to casting aside more than a century of this Court’s Commerce Clause jurisprudence, it is noteworthy that Justice THOMAS’ suggestion that States possess the power to dictate the extent of Congress’ commerce power would have far-reaching implications beyond the facts of this case. For example, under his reasoning, Congress would be equally powerless to regulate, let alone prohibit, the intrastate possession, cultivation, and use of marijuana for recreational purposes, an activity which all States “strictly contro[ll].”

Indeed, his rationale seemingly would require Congress to cede its constitutional power to regulate commerce whenever a State opts to exercise its “traditional police powers to define the criminal law and to

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protect the health, safety, and welfare of their citizens." *Post*, at 2234 (dissenting opinion).

\*30 Respondents acknowledge this proposition, but nonetheless contend that their activities were not "an essential part of a larger regulatory scheme" because they had been "isolated by the State of California, and [are] policed by the State of California," and thus remain "entirely separated from the market." Tr. of Oral Arg. 27. The dissenters fall prey to similar reasoning. See n. 38, *supra* this page. The notion that California law has surgically excised a discrete activity that is hermetically sealed off from the larger interstate marijuana market is a dubious proposition, and, more importantly, one that Congress could have rationally rejected.

Indeed, that the California exemptions will have a significant impact on both the supply and demand sides of the market for marijuana is not just "plausible" as the principal dissent concedes, *post*, at 2229 (O'CONNOR, J., opinion of dissenting), it is readily apparent. The exemption for physicians provides them with an economic incentive to grant their patients permission to use the drug. In contrast to most prescriptions for legal drugs, which limit the dosage and duration of the usage, under California law the doctor's permission to \*31 recommend marijuana use is open-ended.\*\*2214 The authority to grant permission whenever the doctor determines that a patient is afflicted with "any other illness for which marijuana provides relief," Cal. Health & Safety Code Ann. § 11362.5(b)(1)(A) (West Supp.2005), is broad enough to allow even the most scrupulous doctor to conclude that some recreational uses would be therapeutic.<sup>FN39</sup> And our cases have taught us that there are some unscrupulous physicians who overprescribe when it is sufficiently profitable to do so.<sup>FN40</sup>

FN39. California's Compassionate Use Act has since been amended, limiting the catchall category to "[a]ny other chronic or persistent medical symptom that either: ...

[s]ubstantially limits the ability of the person to conduct one or more major life activities as defined" in the Americans with Disabilities Act of 1990, or "[i]f not alleviated, may cause serious harm to the patient's safety or physical or mental health." Cal. Health & Safety Code Ann. §§ 11362.7(h)(12)(A) (B) (West Supp.2005).

FN40. See, e.g., *United States v. Moore*, 423 U.S. 122, 96 S.Ct. 335, 46 L.Ed.2d 333 (1975); *United States v. Doremus*, 249 U.S. 86, 39 S.Ct. 214, 63 L.Ed. 493 (1919).

The exemption for cultivation by patients and caregivers can only increase the supply of marijuana in the California market.<sup>FN41</sup> The likelihood that all such production will \*32 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.<sup>FN42</sup> Moreover, that the national and international narcotics trade has thrived in the face of vigorous criminal enforcement efforts suggests that no small number of unscrupulous people will make use of the California exemptions to serve their commercial ends whenever it is feasible to do so.<sup>FN43</sup> Taking into account the fact that California is only one of at least nine States to have authorized the medical use of marijuana, a fact Justice O'CONNOR's dissent conveniently disregards in arguing that the demonstrated\*\*2215 effect on commerce while admittedly "plausible" is ultimately "unsubstantiated," *post*, at 2228, 2229, Congress could have rationally concluded that the aggregate impact on the national market of all the transactions exempted from federal supervision is unquestionably substantial.

FN41. The state policy allows patients to possess up to eight ounces of dried marijuana, and to cultivate up to 6 mature or 12 immature plants. Cal. Health & Safety Code Ann. § 11362.77(a) (West

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Supp.2005). However, the quantity limitations serve only as a floor. Based on a doctor's recommendation, a patient can possess whatever quantity is necessary to satisfy his medical needs, and cities and counties are given *carte blanche* to establish more generous limits. Indeed, several cities and counties have done just that. For example, patients residing in the cities of Oakland and Santa Cruz and in the counties of Sonoma and Tehama are permitted to possess up to 3 pounds of processed marijuana. Reply Brief for Petitioners 18-19 (citing Proposition 215 Enforcement Guidelines). Putting that quantity in perspective, 3 pounds of marijuana yields roughly 3,000 joints or cigarettes. Executive Office of the President, Office of National Drug Control Policy, What America's Users Spend on Illegal Drugs 24 (Dec.2001), [http://www.whitehousedrugpolicy.gov/publications/pdf/american\\_users\\_spend\\_2002.pdf](http://www.whitehousedrugpolicy.gov/publications/pdf/american_users_spend_2002.pdf). And the street price for that amount can range anywhere from \$900 to \$24,000. DEA, Illegal Drug Price and Purity Report (Apr.2003) (DEA-02058).

FN42. For example, respondent Raich attests that she uses 2.5 ounces of cannabis a week. App. 82. Yet as a resident of Oakland, she is entitled to possess up to 3 pounds of processed marijuana at any given time, nearly 20 times more than she uses on a weekly basis.

FN43. See, e.g., *People ex rel. Lungren v. Peron*, 59 Cal.App.4th 1383, 1386-1387, 70 Cal.Rptr.2d 20-23 (1997) (recounting how a Cannabis Buyers' Club engaged in an "indiscriminate and uncontrolled pattern of sale to thousands of persons among the general public, including persons who had not demonstrated any recommendation or approval of a physician and, in fact, some of whom were not under the care of a physician, such as undercover officers," and noting that "

some persons who had purchased marijuana on respondents' premises were reselling it unlawfully on the street").

So, from the "separate and distinct" class of activities identified by the Court of Appeals (and adopted by the dissenters), we are left with "the intrastate, noncommercial cultivation, possession and use of marijuana." 352 F.3d, at 1229. Thus the case for the exemption comes down to the claim that a locally cultivated product that is used domestically \*33 rather than sold on the open market is not subject to federal regulation. Given the findings in the CSA and the undisputed magnitude of the commercial market for marijuana, our decisions in *Wickard v. Filburn* and the later cases endorsing its reasoning foreclose that claim.

## V

Respondents also raise a substantive due process claim and seek to avail themselves of the medical necessity defense. These theories of relief were set forth in their complaint but were not reached by the Court of Appeals. We therefore do not address the question whether judicial relief is available to respondents on these alternative bases. We do note, however, the presence of another avenue of relief. As the Solicitor General confirmed during oral argument, the statute authorizes procedures for the reclassification of Schedule I drugs. But perhaps even more important than these legal avenues is the democratic process, in which the voices of voters allied with these respondents may one day be heard in the halls of Congress. Under the present state of the law, however, the judgment of the Court of Appeals must be vacated. The case is remanded for further proceedings consistent with this opinion.

*It is so ordered.*

Justice SCALIA, concurring in the judgment.

I agree with the Court's holding that the Controlled Substances Act (CSA) may validly be applied to respondents' cultivation, distribution, and possession of marijuana for personal, medicinal use. I write separately because my understanding of the

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doctrinal foundation on which that holding rests is, if not inconsistent with that of the Court, at least more nuanced.

Since *Perez v. United States*, 402 U.S. 146, 91 S.Ct. 1357, 28 L.Ed.2d 686 (1971), our cases have mechanically recited that the Commerce Clause permits congressional regulation of three categories: (1) the \*34 channels of interstate commerce; (2) the instrumentalities of interstate commerce, and persons or things in interstate commerce; and (3) activities that “substantially affect” interstate commerce. *Id.*, at 150, 91 S.Ct. 1357; see *United States v. Morrison*, 529 U.S. 598, 608-609, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000); *United States v. Lopez*, 514 U.S. 549, 558-559, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995); *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 276-277, 101 S.Ct. 2352, 69 L.Ed.2d 1 (1981). The first two categories are self-evident, since they are the ingredients of interstate commerce itself. See *Gibbons v. Ogden*, 9 Wheat. 1, 189-190, 6 L.Ed. 23 (1824). The third category, however, is different in kind; and its recitation without explanation is misleading and incomplete.

It is *misleading* because, unlike the channels, instrumentalities, and agents of interstate commerce, activities that substantially affect interstate commerce are not themselves part of interstate commerce, and thus the power to regulate \*\*2216 them cannot come from the Commerce Clause alone. Rather, as this Court has acknowledged since at least *United States v. Coombs*, 12 Pet. 72, 9 L.Ed. 1004 (1838), Congress's regulatory authority over intrastate activities that are not themselves part of interstate commerce (including activities that have a substantial effect on interstate commerce) derives from the Necessary and Proper Clause. *Id.*, at 78; *Katzenbach v. McClung*, 379 U.S. 294, 301-302, 85 S.Ct. 377, 13 L.Ed.2d 290 (1964); *United States v. Wrightwood Dairy Co.*, 315 U.S. 110, 119, 62 S.Ct. 523, 86 L.Ed. 726 (1942); *Shreveport Rate Cases*, 234 U.S. 342, 353, 34 S.Ct. 833, 58 L.Ed. 1341 (1914); *United States v. E.C. Knight Co.*, 156 U.S. 1, 39-40, 15 S.Ct. 249, 39 L.Ed. 325 (1895) (Harlan, J., dissenting).<sup>FN1</sup> And the category of “

activities that substantially affect interstate commerce,” *Lopez, supra*, at 559, 115 S.Ct. 1624, is *incomplete* because the authority to enact laws necessary and proper for the regulation of interstate commerce is not limited to laws \*35 governing intrastate activities that substantially affect interstate commerce. Where necessary to make a regulation of interstate commerce effective, Congress may regulate even those intrastate activities that do not themselves substantially affect interstate commerce.

FN1. See also *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 584-585, 105 S.Ct. 1005, 83 L.Ed.2d 1016 (1985) (O'CONNOR, J., dissenting) (explaining that it is through the Necessary and Proper Clause that “an intrastate activity ‘affecting’ interstate commerce can be reached through the commerce power”).

I

Our cases show that the regulation of intrastate activities may be necessary to and proper for the regulation of interstate commerce in two general circumstances. Most directly, the commerce power permits Congress not only to devise rules for the governance of commerce between States but also to facilitate interstate commerce by eliminating potential obstructions, and to restrict it by eliminating potential stimulants. See *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 36-37, 57 S.Ct. 615, 81 L.Ed. 893 (1937). That is why the Court has repeatedly sustained congressional legislation on the ground that the regulated activities had a substantial effect on interstate commerce. See, e.g., *Hodel, supra*, at 281, 101 S.Ct. 2352 (surface coal mining); *Katzenbach, supra*, at 300, 85 S.Ct. 377 (discrimination by restaurants); *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 258, 85 S.Ct. 348, 13 L.Ed.2d 258 (1964) (discrimination by hotels); *Mandeville Island Farms Inc. v. American Crystal Sugar Co.*, 334 U.S. 219, 237, 68 S.Ct. 996, 92 L.Ed. 1328 (1948) (intrastate price-fixing); *Board of Trade of Chicago v. Olsen*, 262 U.S. 1, 40, 43 S.Ct. 470, 67

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ATTACHMENT NO. 1.44

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L.Ed. 839 (1923) (activities of a local grain exchange); *Stafford v. Wallace*, 258 U.S. 495, 517, 524-525, 42 S.Ct. 397, 66 L.Ed. 735 (1922) (intrastate transactions at stockyard). *Lopez* and *Morrison* recognized the expansive scope of Congress's authority in this regard: "[T]he pattern is clear. Where economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained." 514 U.S., at 560, 115 S.Ct. 1624; *Morrison*, *supra*, at 610, 120 S.Ct. 1740 (same).

This principle is not without limitation. In *Lopez* and *Morrison*, the Court-conscious of the potential of the "substantially affects" test to "obliterate the distinction between what is national and what is local," *Lopez*, *supra*, at 566-567, 115 S.Ct. 1624 \*36 (quoting *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 554, 55 S.Ct. 837, 79 L.Ed. 1570 (1935)); see also \*\*2217 *Morrison*, *supra*, at 615-616, 120 S.Ct. 1740-rejected the argument that Congress may regulate noneconomic activity based solely on the effect that it may have on interstate commerce through a remote chain of inferences. *Lopez*, *supra*, at 564-566, 115 S.Ct. 1624; *Morrison*, *supra*, at 617-618, 120 S.Ct. 1740. "[I]f we were to accept [such] arguments," the Court reasoned in *Lopez*, "we are hard pressed to posit any activity by an individual that Congress is without power to regulate." *Lopez*, *supra*, at 564, 115 S.Ct. 1624; see also *Morrison*, *supra*, at 615-616, 120 S.Ct. 1740. Thus, although Congress's authority to regulate intrastate activity that substantially affects interstate commerce is broad, it does not permit the Court to "pile inference upon inference," *Lopez*, *supra*, at 567, 115 S.Ct. 1624, in order to establish that noneconomic activity has a substantial effect on interstate commerce.

As we implicitly acknowledged in *Lopez*, however, Congress's authority to enact laws necessary and proper for the regulation of interstate commerce is not limited to laws directed against economic activities that have a substantial effect on interstate commerce. Though the conduct in *Lopez* was not economic, the Court nevertheless recognized that it could be regulated as "an essential part of a larger

regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated." 514 U.S., at 561, 115 S.Ct. 1624. This statement referred to those cases permitting the regulation of intrastate activities "which in a substantial way interfere with or obstruct the exercise of the granted power." *Wrightwood Dairy Co.*, *supra*, at 119, 62 S.Ct. 523; see also *United States v. Darby*, 312 U.S. 100, 118-119, 61 S.Ct. 451, 85 L.Ed. 609 (1941); *Shreveport Rate Cases*, *supra*, at 353, 34 S.Ct. 833. As the Court put it in *Wrightwood Dairy*, where Congress has the authority to enact a regulation of interstate commerce, "it possesses every power needed to make that regulation effective." 315 U.S., at 118-119, 62 S.Ct. 523.

\*37 Although this power "to make ... regulation effective" commonly overlaps with the authority to regulate economic activities that substantially affect interstate commerce,<sup>FN2</sup> and may in some cases have been confused with that authority, the two are distinct. The regulation of an intrastate activity may be essential to a comprehensive regulation of interstate commerce even though the intrastate activity does not itself "substantially affect" interstate commerce. Moreover, as the passage from *Lopez* quoted above suggests, Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce. See *Lopez*, *supra*, at 561, 115 S.Ct. 1624. The relevant question is simply whether the means chosen are "reasonably adapted" to the attainment of a legitimate end under the commerce power. See *Darby*, *supra*, at 121, 61 S.Ct. 451.

FN2. *Wickard v. Filburn*, 317 U.S. 111, 63 S.Ct. 82, 87 L.Ed. 122 (1942), presented such a case. Because the unregulated production of wheat for personal consumption diminished demand in the regulated wheat market, the Court said, it carried with it the potential to disrupt Congress's price regulation by driving down prices in the market. *Id.*, at 127-129, 63 S.Ct. 82. This potential disruption of

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Congress's interstate regulation, and not only the effect that personal consumption of wheat had on interstate commerce, justified Congress's regulation of that conduct. *Id.*, at 128-129, 63 S.Ct. 82.

In *Darby*, for instance, the Court explained that "Congress, having ... adopted the policy of excluding from interstate commerce all goods produced for the commerce which do not conform to the specified labor standards," \*\*2218312 U.S., at 121, 61 S.Ct. 451, could not only require employers engaged in the production of goods for interstate commerce to conform to wage and hour standards, *id.*, at 119-121, 61 S.Ct. 451, but could also require those employers to keep employment records in order to demonstrate compliance with the regulatory scheme, *id.*, at 125, 61 S.Ct. 451. While the Court sustained the former regulation on the alternative ground that the activity it regulated could have a "great effect" on interstate commerce, *id.*, at 122-123, 61 S.Ct. 451, it affirmed the latter on the sole ground that "[t]he requirement\*38 for records even of the intrastate transaction is an appropriate means to a legitimate end," *id.*, at 125, 61 S.Ct. 451.

As the Court said in the *Shreveport R. Co.*, the Necessary and Proper Clause does not give "Congress ... the authority to regulate the internal commerce of a State, as such," but it does allow Congress "to take all measures necessary or appropriate to" the effective regulation of the interstate market, "although intrastate transactions ... may thereby be controlled." 234 U.S., at 353, 34 S.Ct. 833; see also *Jones & Laughlin Steel Corp.*, *supra*, at 38, 57 S.Ct. 615 (the logic of the *Shreveport Rate Cases* is not limited to instrumentalities of commerce).

## II

Today's principal dissent objects that, by permitting Congress to regulate activities necessary to effective interstate regulation, the Court reduces *Lopez* and *Morrison* to "little more than a drafting guide." *Post*, at 2222 (opinion of O'CONNOR, J.). I think that criticism unjustified. Unlike the power to

regulate activities that have a substantial effect on interstate commerce, the power to enact laws enabling effective regulation of interstate commerce can only be exercised in conjunction with congressional regulation of an interstate market, and it extends only to those measures necessary to make the interstate regulation effective. As *Lopez* itself states, and the Court affirms today, Congress may regulate noneconomic intrastate activities only where the failure to do so "could ... undercut" its regulation of interstate commerce. See *Lopez, supra*, at 561, 115 S.Ct. 1624; *ante*, at 2206, 2209, 2210. This is not a power that threatens to obliterate the line between "what is truly national and what is truly local." *Lopez, supra*, at 567-568, 115 S.Ct. 1624.

*Lopez* and *Morrison* affirm that Congress may not regulate certain "purely local" activity within the States based solely on the attenuated effect that such activity may have in the interstate market. But those decisions do not declare noneconomic intrastate activities to be categorically beyond \*39 the reach of the Federal Government. Neither case involved the power of Congress to exert control over intrastate activities in connection with a more comprehensive scheme of regulation; *Lopez* expressly disclaimed that it was such a case, 514 U.S., at 561, 115 S.Ct. 1624, and *Morrison* did not even discuss the possibility that it was. (The Court of Appeals in *Morrison* made clear that it was not. See *Brzonkala v. Virginia Polytechnic Inst.*, 169 F.3d 820, 834-835 (C.A.4 1999) (en banc).) To dismiss this distinction as "superficial and formalistic," see *post*, at 2223 (O'CONNOR, J., dissenting), is to misunderstand the nature of the Necessary and Proper Clause, which empowers Congress to enact laws in effectuation of its enumerated powers that are not within its authority to enact in isolation. See *McCulloch v. Maryland*, 4 Wheat. 316, 421-422, 4 L.Ed. 579 (1819).

And there are other restraints upon the Necessary and Proper Clause authority. As Chief Justice Marshall wrote in \*\*2219 *McCulloch v. Maryland*, even when the end is constitutional and legitimate, the means must be "appropriate" and "plainly adapted" to that end. *Id.*, at 421. Moreover, they

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may not be otherwise "prohibited" and must be "consistent with the letter and spirit of the constitution." *Ibid.* These phrases are not merely hortatory. For example, cases such as *Printz v. United States*, 521 U.S. 898, 117 S.Ct. 2365, 138 L.Ed.2d 914 (1997), and *New York v. United States*, 505 U.S. 144, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992), affirm that a law is not "'proper for carrying into Execution the Commerce Clause'" "[w]hen [it] violates [a constitutional] principle of state sovereignty." *Printz, supra*, at 923-924, 117 S.Ct. 2365; see also *New York, supra*, at 166, 112 S.Ct. 2408.

### III

The application of these principles to the case before us is straightforward. In the CSA, Congress has undertaken to extinguish the interstate market in Schedule I controlled substances, including marijuana. The Commerce Clause unquestionably permits this. The power to regulate interstate commerce "extends not only to those regulations which aid, \*40 foster and protect the commerce, but embraces those which prohibit it." *Darby, supra*, at 113, 61 S.Ct. 451. See also *Hipolite Egg Co. v. United States*, 220 U.S. 45, 58, 31 S.Ct. 364, 55 L.Ed. 364 (1911); *Lottery Case*, 188 U.S. 321, 354, 23 S.Ct. 321, 47 L.Ed. 492 (1903). To effectuate its objective, Congress has prohibited almost all intrastate activities related to Schedule I substances—both economic activities (manufacture, distribution, possession with the intent to distribute) and noneconomic activities (simple possession). See 21 U.S.C. §§ 841(a), 844(a). That simple possession is a noneconomic activity is immaterial to whether it can be prohibited as a necessary part of a larger regulation. Rather, Congress's authority to enact all of these prohibitions of intrastate controlled-substance activities depends only upon whether they are appropriate means of achieving the legitimate end of eradicating Schedule I substances from interstate commerce.

By this measure, I think the regulation must be sustained. Not only is it impossible to distinguish "controlled substances manufactured and distributed

intrastate" from "controlled substances manufactured and distributed interstate," but it hardly makes sense to speak in such terms. Drugs like marijuana are fungible commodities. As the Court explains, marijuana that is grown at home and possessed for personal use is never more than an instant from the interstate market—and this is so whether or not the possession is for medicinal use or lawful use under the laws of a particular State.<sup>FN3</sup> \*41 See *ante*, at \*\*2220 2211-2215. Congress need not accept on faith that state law will be effective in maintaining a strict division between a lawful market for "medical" marijuana and the more general marijuana market. See *id.*, at 2212-2213, and n. 38. "To impose on [Congress] the necessity of resorting to means which it cannot control, which another government may furnish or withhold, would render its course precarious, the result of its measures uncertain, and create a dependence on other governments, which might disappoint its most important designs, and is incompatible with the language of the constitution." *McCulloch, supra*, at 424.

FN3. The principal dissent claims that, if this is sufficient to sustain the regulation at issue in this case, then it should also have been sufficient to sustain the regulation at issue in *United States v. Lopez*, 514 U.S. 549, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995). See *post*, at 2226 (arguing that "we could have surmised in *Lopez* that guns in school zones are 'never more than an instant from the interstate market' in guns already subject to extensive federal regulation, recast *Lopez* as a Necessary and Proper Clause case, and thereby upheld the Gun-Free School Zones Act"). This claim founders upon the shoals of *Lopez* itself, which made clear that the statute there at issue was "not an essential part of a larger regulation of economic activity." *Lopez, supra*, at 561, 115 S.Ct. 1624 (emphasis added). On the dissent's view of things, that statement is inexplicable. Of course it is in addition difficult to imagine what intelligible

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scheme of regulation of the interstate market in guns could have as an appropriate means of effectuation the prohibition of guns within 1000 feet of schools (and nowhere else). The dissent points to a federal law, 18 U.S.C. § 922(b)(1), barring licensed dealers from selling guns to minors, see *post*, at 2226, but the relationship between the regulatory scheme of which § 922(b)(1) is a part (requiring all dealers in firearms that have traveled in interstate commerce to be licensed, see § 922(a)) and the statute at issue in *Lopez* approaches the nonexistent-which is doubtless why the Government did not attempt to justify the statute on the basis of that relationship.

Finally, neither respondents nor the dissenters suggest any violation of state sovereignty of the sort that would render this regulation "inappropriate," *id.*, at 421-except to argue that the CSA regulates an area typically left to state regulation. See *post*, at 2223-2224, 2226 (opinion of O'CONNOR, J.); *post*, at 2233-2234 (opinion of THOMAS, J.); Brief for Respondents 39-42. That is not enough to render federal regulation an inappropriate means. The Court has repeatedly recognized that, if authorized by the commerce power, Congress may regulate private endeavors "even when [that regulation] may pre-empt express state-law determinations contrary to the result which has commended itself to the collective wisdom of Congress." *National League of Cities v. Usery*, 426 U.S. 833, 840, 96 S.Ct. 2465, 49 L.Ed.2d 245 (1976); see *Cleveland v. United States*, 329 U.S. 14, 19, 67 S.Ct. 13, 91 L.Ed. 12 (1946); *McCulloch, 4 Wheat.* at 424. At bottom, respondents'\*42 state-sovereignty argument reduces to the contention that federal regulation of the activities permitted by California's Compassionate Use Act is not sufficiently necessary to be "necessary and proper" to Congress's regulation of the interstate market. For the reasons given above and in the Court's opinion, I cannot agree.

\*\*\*

I thus agree with the Court that, however the class of regulated activities is subdivided, Congress could reasonably conclude that its objective of prohibiting marijuana from the interstate market "could be undercut" if those activities were excepted from its general scheme of regulation. See *Lopez*, 514 U.S., at 561, 115 S.Ct. 1624. That is sufficient to authorize the application of the CSA to respondents.

Justice O'CONNOR, with whom THE CHIEF JUSTICE and Justice THOMAS join as to all but Part III, dissenting.

We enforce the "outer limits" of Congress' Commerce Clause authority not for their own sake, but to protect historic spheres of state sovereignty from excessive federal encroachment and thereby to maintain the distribution of power fundamental to our federalist system of government. *United States v. Lopez*, 514 U.S. 549, 557, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995); *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 37, 57 S.Ct. 615, 81 L.Ed. 893 (1937). One of federalism's chief virtues, of course, is that it promotes innovation by allowing for the possibility that "a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311, 52 S.Ct. 371, 76 L.Ed. 747 (1932) (Brandeis, J., dissenting).

\*\*2221 This case exemplifies the role of States as laboratories. The States' core police powers have always included authority to define criminal law and to protect the health, safety, and welfare of their citizens. *Brecht v. Abrahamson*, 507 U.S. 619, 635, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993); \*43 *Whalen v. Roe*, 429 U.S. 589, 603, n. 30, 97 S.Ct. 869, 51 L.Ed.2d 64 (1977). Exercising those powers, California (by ballot initiative and then by legislative codification) has come to its own conclusion about the difficult and sensitive question of whether marijuana should be available to relieve severe pain and suffering. Today the Court sanctions an application of the federal Controlled Substances Act that extinguishes that experiment, without any proof that the personal cultivation,

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possession, and use of marijuana for medicinal purposes, if economic activity in the first place, has a substantial effect on interstate commerce and is therefore an appropriate subject of federal regulation. In so doing, the Court announces a rule that gives Congress a perverse incentive to legislate broadly pursuant to the Commerce Clause—nestling questionable assertions of its authority into comprehensive regulatory schemes—rather than with precision. That rule and the result it produces in this case are irreconcilable with our decisions in *Lopez, supra*, and *United States v. Morrison*, 529 U.S. 598, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000). Accordingly I dissent.

## I

In *Lopez*, we considered the constitutionality of the Gun-Free School Zones Act of 1990, which made it a federal offense “for any individual knowingly to possess a firearm ... at a place that the individual knows, or has reasonable cause to believe, is a school zone,” 18 U.S.C. § 922(q)(2)(A). We explained that “Congress’ commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce . . . , i.e., those activities that substantially affect interstate commerce.” 514 U.S., at 558-559, 115 S.Ct. 1624 (citation omitted). This power derives from the conjunction of the Commerce Clause and the Necessary and Proper Clause. *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 585-586, 105 S.Ct. 1005, 83 L.Ed.2d 1016 (1985) (O’CONNOR, J., dissenting) (explaining that *United States v. Darby*, 312 U.S. 100, 61 S.Ct. 451, 85 L.Ed. 609 (1941), *United States v. Wrightwood Dairy Co.*, 315 U.S. 110, 62 S.Ct. 523, 86 L.Ed. 726 (1942), and *Wickard v. Filburn*, 317 U.S. 111, 63 S.Ct. 82, 87 L.Ed. 122 (1942), \*44 based their expansion of the commerce power on the Necessary and Proper Clause, and that “the reasoning of these cases underlies every recent decision concerning the reach of Congress to activities affecting interstate commerce”); *ante*, at 2216 (SCALIA, J., concurring in judgment). We held in *Lopez* that the Gun-Free School Zones Act could not be sustained as an exercise of that power.

Our decision about whether gun possession in school zones substantially affected interstate commerce turned on four considerations. *Lopez, supra*, at 559-567, 115 S.Ct. 1624; see also *Morrison, supra*, at 609-613, 120 S.Ct. 1740. First, we observed that our “substantial effects” cases generally have upheld federal regulation of economic activity that affected interstate commerce, but that § 922(q) was a criminal statute having “nothing to do with ‘commerce’ or any sort of economic enterprise.” *Lopez*, 514 U.S., at 561, 115 S.Ct. 1624. In this regard, we also noted that “[s]ection 922(q) is not an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated. It cannot, therefore, be sustained under our cases upholding regulations\*\*2222 of activities that arise out of or are connected with a commercial transaction, which viewed in the aggregate, substantially affects interstate commerce.” *Ibid*. Second, we noted that the statute contained no express jurisdictional requirement establishing its connection to interstate commerce. *Ibid*.

Third, we found telling the absence of legislative findings about the regulated conduct’s impact on interstate commerce. We explained that while express legislative findings are neither required nor, when provided, dispositive, findings “enable us to evaluate the legislative judgment that the activity in question substantially affect[s] interstate commerce, even though no such substantial effect [is] visible to the naked eye.” *Id.*, at 563, 115 S.Ct. 1624. Finally, we rejected as too attenuated the Government’s argument that firearm possession in school zones could result in violent crime which in turn could \*45 adversely affect the national economy. *Id.*, at 563-567, 115 S.Ct. 1624. The Constitution, we said, does not tolerate reasoning that would “convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States.” *Id.*, at 567, 115 S.Ct. 1624. Later in *Morrison, supra*, we relied on the same four considerations to hold that § 40302 of the Violence Against Women Act of 1994, 108 Stat. 1941, 42 U.S.C. § 13981, exceeded Congress’ authority under the Commerce Clause.

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In my view, the case before us is materially indistinguishable from *Lopez* and *Morrison* when the same considerations are taken into account.

II

A

What is the relevant conduct subject to Commerce Clause analysis in this case? The Court takes its cues from Congress, applying the above considerations to the activity regulated by the Controlled Substances Act (CSA) in general. The Court's decision rests on two facts about the CSA: (1) Congress chose to enact a single statute providing a comprehensive prohibition on the production, distribution, and possession of all controlled substances, and (2) Congress did not distinguish between various forms of intrastate noncommercial cultivation, possession, and use of marijuana. See 21 U.S.C. §§ 841(a)(1), 844(a). Today's decision suggests that the federal regulation of local activity is immune to Commerce Clause challenge because Congress chose to act with an ambitious, all-encompassing statute, rather than piecemeal. In my view, allowing Congress to set the terms of the constitutional debate in this way, *i.e.*, by packaging regulation of local activity in broader schemes, is tantamount to removing meaningful limits on the Commerce Clause.

The Court's principal means of distinguishing *Lopez* from this case is to observe that the Gun-Free School Zones Act of 1990 was a "brief, single-subject statute," *ante*, at 2209, see also *ante*, at 2208, \*46 whereas the CSA is "a lengthy and detailed statute creating a comprehensive framework for regulating the production, distribution, and possession of five classes of 'controlled substances,'" *ante*, at 21. Thus, according to the Court, it was possible in *Lopez* to evaluate in isolation the constitutionality of criminalizing local activity (there gun possession in school zones), whereas the local activity that the CSA targets (in this case cultivation and possession of marijuana for personal medicinal use) cannot be

separated from the general drug control scheme of which it is a part.

Today's decision allows Congress to regulate intrastate activity without check, so long as there is some implication by legislative design that regulating intrastate activity\*\*2223 is essential (and the Court appears to equate "essential" with "necessary") to the interstate regulatory scheme. Seizing upon our language in *Lopez* that the statute prohibiting gun possession in school zones was "not an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated," 514 U.S., at 561, 115 S.Ct. 1624, the Court appears to reason that the placement of local activity in a comprehensive scheme confirms that it is essential to that scheme. *Ante*, at 2210-2211. If the Court is right, then *Lopez* stands for nothing more than a drafting guide: Congress should have described the relevant crime as "transfer or possession of a firearm anywhere in the nation" -thus including commercial and noncommercial activity, and clearly encompassing some activity with assuredly substantial effect on interstate commerce. Had it done so, the majority hints, we would have sustained its authority to regulate possession of firearms in school zones. Furthermore, today's decision suggests we would readily sustain a congressional decision to attach the regulation of intrastate activity to a pre-existing comprehensive (or even not-so-comprehensive) scheme. If so, the Court invites increased federal regulation of local activity even if, as it suggests, Congress would not enact a *new* interstate\*47 scheme exclusively for the sake of reaching intrastate activity, see *ante*, at 2209, n. 31; *ante*, at 2218 (SCALIA, J., concurring in judgment).

I cannot agree that our decision in *Lopez* contemplated such evasive or overbroad legislative strategies with approval. Until today, such arguments have been made only in dissent. See *Morrison*, 529 U.S., at 657, 120 S.Ct. 1740 (BREYER, J., dissenting) (given that Congress can regulate " 'an essential part of a larger regulation of economic activity,' " "can Congress save the present law by including it, or much of it, in a

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broader 'Safe Transport' or 'Worker Safety' act?")  
) *Lopez* and *Morrison* did not indicate that the constitutionality of federal regulation depends on superficial and formalistic distinctions. Likewise I did not understand our discussion of the role of courts in enforcing outer limits of the Commerce Clause for the sake of maintaining the federalist balance our Constitution requires, see *Lopez*, 514 U.S., at 557, 115 S.Ct. 1624; *id.*, at 578, 115 S.Ct. 1624 (KENNEDY, J., concurring), as a signal to Congress to enact legislation that is more extensive and more intrusive into the domain of state power. If the Court always defers to Congress as it does today, little may be left to the notion of enumerated powers.

The hard work for courts, then, is to identify objective markers for confining the analysis in Commerce Clause cases. Here, respondents challenge the constitutionality of the CSA as applied to them and those similarly situated. I agree with the Court that we must look beyond respondents' own activities. Otherwise, individual litigants could always exempt themselves from Commerce Clause regulation merely by pointing to the obvious-that their personal activities do not have a substantial effect on interstate commerce. See *Maryland v. Wirtz*, 392 U.S. 183, 193, 88 S.Ct. 2017, 20 L.Ed.2d 1020 (1968); *Wickard*, 317 U.S., at 127-128, 63 S.Ct. 82. The task is to identify a mode of analysis that allows Congress to regulate more than nothing (by declining to reduce each case to its litigants) and less than everything (by declining to let Congress set the \*48 terms of analysis). The analysis may not be the same in every case, for it depends on the regulatory scheme at issue and the federalism concerns implicated. See generally \*\*2224*Lopez*, 514 U.S., at 567, 115 S.Ct. 1624; *id.*, at 579, 115 S.Ct. 1624 (KENNEDY, J., concurring).

A number of objective markers are available to confine the scope of constitutional review here. Both federal and state legislation-including the CSA itself, the California Compassionate Use Act, and other state medical marijuana legislation-recognize that medical and nonmedical (*i.e.*, recreational) uses of drugs are realistically distinct and can be

segregated, and regulate them differently. See 21 U.S.C. § 812; Cal. Health & Safety Code Ann. § 11362.5 (West Supp.2005); *ante*, at 2198-2199 (opinion of the Court). Respondents challenge only the application of the CSA to medicinal use of marijuana. Cf. *United States v. Raines*, 362 U.S. 17, 20-22, 80 S.Ct. 519, 4 L.Ed.2d 524 (1960) (describing our preference for as-applied rather than facial challenges). Moreover, because fundamental structural concerns about dual sovereignty animate our Commerce Clause cases, it is relevant that this case involves the interplay of federal and state regulation in areas of criminal law and social policy, where "States lay claim by right of history and expertise." *Lopez*, *supra*, at 583, 115 S.Ct. 1624 (KENNEDY, J., concurring); see also *Morrison*, *supra*, at 617-619, 120 S.Ct. 1740; *Lopez*, *supra*, at 580, 115 S.Ct. 1624 (KENNEDY, J., concurring) ("The statute before us upsets the federal balance to a degree that renders it an unconstitutional assertion of the commerce power, and our intervention is required"); cf. *Garcia*, 469 U.S., at 586, 105 S.Ct. 1005 (O'CONNOR, J., dissenting) ("[S]tate autonomy is a relevant factor in assessing the means by which Congress exercises its powers" under the Commerce Clause). California, like other States, has drawn on its reserved powers to distinguish the regulation of medicinal marijuana. To ascertain whether Congress' encroachment is constitutionally justified in this case, then, I would focus here on the personal cultivation, possession, and use of marijuana for medicinal purposes.

\*49 B

Having thus defined the relevant conduct, we must determine whether, under our precedents, the conduct is economic and, in the aggregate, substantially affects interstate commerce. Even if intrastate cultivation and possession of marijuana for one's own medicinal use can properly be characterized as economic, and I question whether it can, it has not been shown that such activity substantially affects interstate commerce. Similarly, it is neither self-evident nor demonstrated that regulating such activity is necessary to the

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interstate drug control scheme.

The Court's definition of economic activity is breathtaking. It defines as economic any activity involving the production, distribution, and consumption of commodities. And it appears to reason that when an interstate market for a commodity exists, regulating the intrastate manufacture or possession of that commodity is constitutional either because that intrastate activity is itself economic, or because regulating it is a rational part of regulating its market. Putting to one side the problem endemic to the Court's opinion—the shift in focus from the activity at issue in this case to the entirety of what the CSA regulates, see *Lopez, supra*, at 565, 115 S.Ct. 1624 (“depending on the level of generality, any activity can be looked upon as commercial”)—the Court's definition of economic activity for purposes of Commerce Clause jurisprudence threatens to sweep all of productive human activity into federal regulatory reach.

The Court uses a dictionary definition of economics to skirt the real problem of drawing a meaningful line between “what is national and what is local,” \*\*2225 *Jones & Laughlin Steel*, 301 U.S., at 37, 57 S.Ct. 615. It will not do to say that Congress may regulate noncommercial activity simply because it may have an effect on the demand for commercial goods, or because the noncommercial endeavor can, in some sense, substitute for commercial activity. Most commercial goods or services have some sort of privately producible analogue. Home care \*50 substitutes for daycare. Charades games substitute for movie tickets. Backyard or windowsill gardening substitutes for going to the supermarket. To draw the line wherever private activity affects the demand for market goods is to draw no line at all, and to declare everything economic. We have already rejected the result that would follow—a federal police power. *Lopez, supra*, at 564, 115 S.Ct. 1624.

In *Lopez* and *Morrison*, we suggested that economic activity usually relates directly to commercial activity. See *Morrison*, 529 U.S., at 611, n. 4, 120 S.Ct. 1740 (intrastate activities that have been

within Congress' power to regulate have been “of an apparent commercial character”); *Lopez*, 514 U.S., at 561, 115 S.Ct. 1624 (distinguishing the Gun-Free School Zones Act of 1990 from “activities that arise out of or are connected with a commercial transaction”). The homegrown cultivation and personal possession and use of marijuana for medicinal purposes has no apparent commercial character. Everyone agrees that the marijuana at issue in this case was never in the stream of commerce, and neither were the supplies for growing it. (Marijuana is highly unusual among the substances subject to the CSA in that it can be cultivated without any materials that have traveled in interstate commerce.) *Lopez* makes clear that possession is not itself commercial activity. *Ibid*. And respondents have not come into possession by means of any commercial transaction; they have simply grown, in their own homes, marijuana for their own use, without acquiring, buying, selling, or bartering a thing of value. Cf. *id.*, at 583, 115 S.Ct. 1624 (KENNEDY, J., concurring) (“The statute now before us forecloses the States from experimenting ... and it does so by regulating an activity beyond the realm of commerce in the ordinary and usual sense of that term”).

The Court suggests that *Wickard*, which we have identified as “perhaps the most far reaching example of Commerce Clause authority over intrastate activity,” *Lopez, supra*, at 560, 115 S.Ct. 1624, established federal regulatory power over any home consumption of a commodity for which a national market exists.\*51 I disagree. *Wickard* involved a challenge to the Agricultural Adjustment Act of 1938(AAA), which directed the Secretary of Agriculture to set national quotas on wheat production, and penalties for excess production. 317 U.S., at 115-116, 63 S.Ct. 82. The AAA itself confirmed that Congress made an explicit choice not to reach—and thus the Court could not possibly have approved of federal control over—small-scale, noncommercial wheat farming. In contrast to the CSA's limitless assertion of power, Congress provided an exemption within the AAA for small producers. When Filburn planted the wheat at issue in *Wickard*, the statute exempted plantings less than 200 bushels (about six tons), and when he

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harvested his wheat it exempted plantings less than six acres. *Id.*, at 130, n. 30, 63 S.Ct. 82. *Wickard*, then, did not extend Commerce Clause authority to something as modest as the home cook's herb garden. This is not to say that Congress may never regulate small quantities of commodities possessed or produced for personal use, or to deny that it sometimes needs to enact a zero tolerance regime for such commodities. It is merely to say that *Wickard* did not hold or imply that small-scale production\*\*2226 of commodities is always economic, and automatically within Congress' reach.

Even assuming that economic activity is at issue in this case, the Government has made no showing in fact that the possession and use of homegrown marijuana for medical purposes, in California or elsewhere, has a substantial effect on interstate commerce. Similarly, the Government has not shown that regulating such activity is necessary to an interstate regulatory scheme. Whatever the specific theory of "substantial effects" at issue (*i.e.*, whether the activity substantially affects interstate commerce, whether its regulation is necessary to an interstate regulatory scheme, or both), a concern for dual sovereignty requires that Congress' excursion into the traditional domain of States be justified.

That is why characterizing this as a case about the Necessary and Proper Clause does not change the analysis significantly.\*52 Congress must exercise its authority under the Necessary and Proper Clause in a manner consistent with basic constitutional principles. *Garcia*, 469 U.S., at 585, 105 S.Ct. 1005 (O'CONNOR, J., dissenting) ("It is not enough that the 'end be legitimate'; the means to that end chosen by Congress must not contravene the spirit of the Constitution"). As Justice SCALIA recognizes, see *ante*, at 2218-2219 (opinion concurring in judgment), Congress cannot use its authority under the Clause to contravene the principle of state sovereignty embodied in the Tenth Amendment. *Ibid.* Likewise, that authority must be used in a manner consistent with the notion of enumerated powers—a structural principle that is as much part of the Constitution as the Tenth Amendment's explicit textual command. Accordingly, something more than mere assertion is

required when Congress purports to have power over local activity whose connection to an interstate market is not self-evident. Otherwise, the Necessary and Proper Clause will always be a back door for unconstitutional federal regulation. Cf. *Printz v. United States*, 521 U.S. 898, 923, 117 S.Ct. 2365, 138 L.Ed.2d 914 (1997) (the Necessary and Proper Clause is "the last, best hope of those who defend ultra vires congressional action"). Indeed, if it were enough in "substantial effects" cases for the Court to supply conceivable justifications for intrastate regulation related to an interstate market, then we could have surmised in *Lopez* that guns in school zones are "never more than an instant from the interstate market" in guns already subject to extensive federal regulation, *ante*, at 2219 (SCALIA, J., concurring in judgment), recast *Lopez* as a Necessary and Proper Clause case, and thereby upheld the Gun-Free School Zones Act of 1990. (According to the Court's and the concurrence's logic, for example, the *Lopez* court should have reasoned that the prohibition on gun possession in school zones could be an appropriate means of effectuating a related prohibition on "sell[ing]" or "deliver[ing]" firearms or ammunition to "any individual who the licensee knows or has reasonable cause to believe is less than \*53 eighteen years of age." 18 U.S.C. § 922(b)(1) (1988 ed., Supp. II).)

There is simply no evidence that homegrown medicinal marijuana users constitute, in the aggregate, a sizable enough class to have a discernable, let alone substantial, impact on the national illicit drug market—or otherwise to threaten the CSA regime. Explicit evidence is helpful when substantial effect is not "visible to the naked eye." See *Lopez*, 514 U.S., at 563, 115 S.Ct. 1624. And here, in part because common sense suggests that medical marijuana users may be limited in number and that California's Compassionate Use Act and similar state legislation may well isolate activities relating to medicinal marijuana\*\*2227 from the illicit market, the effect of those activities on interstate drug traffic is not self-evidently substantial.

In this regard, again, this case is readily

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distinguishable from *Wickard*. To decide whether the Secretary could regulate local wheat farming, the Court looked to “the actual effects of the activity in question upon interstate commerce.” 317 U.S., at 120, 63 S.Ct. 82. Critically, the Court was able to consider “actual effects” because the parties had “stipulated a summary of the economics of the wheat industry.” *Id.*, at 125, 63 S.Ct. 82. After reviewing in detail the picture of the industry provided in that summary, the Court explained that consumption of homegrown wheat was the most variable factor in the size of the national wheat crop, and that on-site consumption could have the effect of varying the amount of wheat sent to market by as much as 20 percent. *Id.*, at 127, 63 S.Ct. 82. With real numbers at hand, the *Wickard* Court could easily conclude that “a factor of such volume and variability as home-consumed wheat would have a substantial influence on price and market conditions” nationwide. *Id.*, at 128, 63 S.Ct. 82; see also *id.*, at 128-129, 63 S.Ct. 82 (“This record leaves us in no doubt” about substantial effects).

The Court recognizes that “the record in the *Wickard* case itself established the causal connection between the production\*54 for local use and the national market” and argues that “we have before us findings by Congress to the same effect.” *Ante*, at 2208 (emphasis added). The Court refers to a series of declarations in the introduction to the CSA saying that (1) local distribution and possession of controlled substances causes “swelling” in interstate traffic; (2) local production and distribution cannot be distinguished from interstate production and distribution; (3) federal control over intrastate the incidents “is essential to effective control” over interstate drug trafficking. 21 U.S.C. §§ 801(1)-(6). These bare declarations cannot be compared to the record before the Court in *Wickard*.

They amount to nothing more than a legislative insistence that the regulation of controlled substances must be absolute. They are asserted without any supporting evidence—descriptive, statistical, or otherwise. “[S]imply because that Congress may conclude a particular activity substantially affects interstate commerce does not

necessarily make it so.” *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 311, 101 S.Ct. 2352 (1981) (REHNQUIST, J., concurring in judgment). Indeed, if declarations like these suffice to justify federal regulation, and if the Court today is right about what passes rationality review before us, then our decision in *Morrison* should have come out the other way. In that case, Congress had supplied numerous findings regarding the impact gender-motivated violence had on the national economy. 529 U.S., at 614, 120 S.Ct. 1740; *id.*, at 628-636, 120 S.Ct. 1740 (SOUTER, J., dissenting) (chronicling findings). But, recognizing that “ ‘ [w]hether particular operations affect interstate commerce sufficiently to come under the constitutional power of Congress to regulate them is ultimately a judicial rather than a legislative question,’ ” we found Congress’ detailed findings inadequate. *Id.*, at 614, 120 S.Ct. 1740 (quoting *Lopez, supra*, at 557, n. 2, 115 S.Ct. 1624, in turn quoting *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 273, 85 S.Ct. 348, 13 L.Ed.2d 258 (1964) (Black, J., concurring)). If, as the Court claims, today’s decision does not \*55 break with precedent, how can it be that voluminous findings, documenting extensive hearings about the specific topic of violence against women, did not pass constitutional muster in *Morrison*, while the CSA’s abstract, unsubstantiated,\*\*2228 generalized findings about controlled substances do?

In particular, the CSA’s introductory declarations are too vague and unspecific to demonstrate that the federal statutory scheme will be undermined if Congress cannot exert power over individuals like respondents. The declarations are not even specific to marijuana. (Facts about substantial effects may be developed in litigation to compensate for the inadequacy of Congress’ findings; in part because this case comes to us from the grant of a preliminary injunction, there has been no such development.) Because here California, like other States, has carved out a limited class of activity for distinct regulation, the inadequacy of the CSA’s findings is especially glaring. The California Compassionate Use Act exempts from other state drug laws patients and their caregivers “who possess[s] or cultivat[e] marijuana for the personal

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medical purposes of the patient upon the written or oral recommendation or approval of a physician" to treat a list of serious medical conditions. Cal. Health & Safety Code Ann. §§ 11362.5(d), 11362.7(h) (West Supp.2005) (emphasis added). Compare *ibid.* with, e.g., § 11357(b) (West 1991) (criminalizing marijuana possession in excess of 28.5 grams); § 11358 (criminalizing marijuana cultivation). The Act specifies that it should not be construed to supersede legislation prohibiting persons from engaging in acts dangerous to others, or to condone the diversion of marijuana for nonmedical purposes. § 11362.5(b)(2) (West Supp.2005). To promote the Act's operation and to facilitate law enforcement, California recently enacted an identification card system for qualified patients. §§ 11362.7-11362.83. We generally assume States enforce their laws, see *Riley v. National Federation of Blind of N. C., Inc.*, 487 U.S. 781, 795, 108 S.Ct. 2667, 101 L.Ed.2d 669 (1988), and have no reason to think otherwise here.

\*56 The Government has not overcome empirical doubt that the number of Californians engaged in personal cultivation, possession, and use of medical marijuana, or the amount of marijuana they produce, is enough to threaten the federal regime. Nor has it shown that Compassionate Use Act marijuana users have been or are realistically likely to be responsible for the drug's seeping into the market in a significant way. The Government does cite one estimate that there were over 100,000 Compassionate Use Act users in California in 2004, Reply Brief for Petitioners 16, but does not explain, in terms of proportions, what their presence means for the national illicit drug market. See generally *Wirtz*, 392 U.S., at 196, n. 27, 88 S.Ct. 2017 (Congress cannot use "a relatively trivial impact on commerce as an excuse for broad general regulation of state or private activities"); cf. General Accounting Office, *Marijuana: Early Experience with Four States' Laws That Allow Use for Medical Purposes* 21-23 (Rep. No. 03-189, Nov. 2002), <http://www.gao.gov/new.items/d03189.pdf> (as visited June 3, 2005 and available in Clerk of Court's case file) (in four California counties before the identification card system was enacted, voluntarily registered medical marijuana patients

were less than 0.5 percent of the population; in Alaska, Hawaii, and Oregon, statewide medical marijuana registrants represented less than 0.05 percent of the States' populations). It also provides anecdotal evidence about the CSA's enforcement. See Reply Brief for Petitioners 17-18. The Court also offers some arguments about the effect of the Compassionate Use Act on the national market. It says that the California statute might be vulnerable to exploitation by unscrupulous physicians, that Compassionate Use Act patients may overproduce, and that the history of the narcotics trade \*\*2229 shows the difficulty of cordoning off any drug use from the rest of the market. These arguments are plausible; if borne out in fact they could justify prosecuting Compassionate Use Act patients under the federal CSA. But, without substantiation, \*57 they add little to the CSA's conclusory statements about diversion, essentiality, and market effect. Piling assertion upon assertion does not, in my view, satisfy the substantiality test of *Lopez* and *Morrison*.

### III

We would do well to recall how James Madison, the father of the Constitution, described our system of joint sovereignty to the people of New York: "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite .... The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State." *The Federalist* No. 45, pp. 292-293 (C. Rossiter ed.1961).

Relying on Congress' abstract assertions, the Court has endorsed making it a federal crime to grow small amounts of marijuana in one's own home for one's own medicinal use. This overreaching stifles an express choice by some States, concerned for the lives and liberties of their people, to regulate medical marijuana differently. If I were a California citizen, I would not have voted for the

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medical marijuana ballot initiative; if I were a California legislator I would not have supported the Compassionate Use Act. But whatever the wisdom of California's experiment with medical marijuana, the federalism principles that have driven our Commerce Clause cases require that room for experiment be protected in this case. For these reasons I dissent.

Justice THOMAS, dissenting.

Respondents Diane Monson and Angel Raich use marijuana that has never been bought or sold, that has never crossed state lines, and that has had no demonstrable effect on the national market for marijuana. If Congress can regulate\*58 this under the Commerce Clause, then it can regulate virtually anything-and the Federal Government is no longer one of limited and enumerated powers.

#### I

Respondents' local cultivation and consumption of marijuana is not "Commerce ... among the several States." U.S. Const., Art. I, § 8, cl. 3. By holding that Congress may regulate activity that is neither interstate nor commerce under the Interstate Commerce Clause, the Court abandons any attempt to enforce the Constitution's limits on federal power. The majority supports this conclusion by invoking, without explanation, the Necessary and Proper Clause. Regulating respondents' conduct, however, is not "necessary and proper for carrying into Execution" Congress' restrictions on the interstate drug trade. Art. I, § 8, cl. 18. Thus, neither the Commerce Clause nor the Necessary and Proper Clause grants Congress the power to regulate respondents' conduct.

#### A

As I explained at length in *United States v. Lopez*, 514 U.S. 549, 115 S.Ct. 1624 (1995), the Commerce Clause empowers Congress to regulate the buying and selling of goods and services trafficked across state lines. *Id.*, at 586-589, 115 S.Ct. 1624 (concurring opinion). The Clause's text,

structure, and history all \*\*2230 indicate that, at the time of the founding, the term " 'commerce' consisted of selling, buying, and bartering, as well as transporting for these purposes." *Id.*, at 585, 115 S.Ct. 1624 (THOMAS, J., concurring). Commerce, or trade, stood in contrast to productive activities like manufacturing and agriculture. *Id.*, at 586-587, 115 S.Ct. 1624 (THOMAS, J., concurring). Throughout founding-era dictionaries, Madison's notes from the Constitutional Convention, *The Federalist Papers*, and the ratification debates, the term "commerce" is consistently used to mean trade or exchange-not all economic or gainful activity that has some attenuated connection to trade or exchange. *Ibid.* (THOMAS, \*59 J., concurring); Barnett, *The Original Meaning of the Commerce Clause*, 68 U. Chi. L.Rev. 101, 112-125 (2001). The term "commerce" commonly meant trade or exchange (and shipping for these purposes) not simply to those involved in the drafting and ratification processes, but also to the general public. Barnett, *New Evidence of the Original Meaning of the Commerce Clause*, 55 Ark. L.Rev. 847, 857-862 (2003).

Even the majority does not argue that respondents' conduct is itself "Commerce among the several States." Art. I, § 8, cl. 3. *Ante*, at 2209. Monson and Raich neither buy nor sell the marijuana that they consume. They cultivate their cannabis entirely in the State of California-it never crosses state lines, much less as part of a commercial transaction. Certainly no evidence from the founding suggests that "commerce" included the mere possession of a good or some purely personal activity that did not involve trade or exchange for value. In the early days of the Republic, it would have been unthinkable that Congress could prohibit the local cultivation, possession, and consumption of marijuana.

On this traditional understanding of "commerce," the Controlled Substances Act (CSA), 21 U.S.C. § 801 *et seq.*, regulates a great deal of marijuana trafficking that is interstate and commercial in character. The CSA does not, however, criminalize only the interstate buying and selling of marijuana.

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Instead, it bans the entire market-intrastate or interstate, noncommercial or commercial-for marijuana. Respondents are correct that the CSA exceeds Congress' commerce power as applied to their conduct, which is purely intrastate and noncommercial.

## B

More difficult, however, is whether the CSA is a valid exercise of Congress' power to enact laws that are "necessary and proper for carrying into Execution" its power to regulate interstate commerce. Art. I, § 8, cl. 18. The Necessary \*60 and Proper Clause is not a warrant to Congress to enact any law that bears some conceivable connection to the exercise of an enumerated power. FN1 Nor is it, however, a command to Congress to enact only laws that are absolutely indispensable to the exercise of an enumerated power. FN2

FN1. *McCulloch v. Maryland*, 4 Wheat. 316, 419-421, 4 L.Ed. 579 (1819); Madison, The Bank Bill, House of Representatives (Feb. 2, 1791), in 3 The Founders' Constitution 244 (P. Kurland & R. Lerner eds. 1987) (requiring "direct" rather than "remote" means-end fit); Hamilton, Opinion on the Constitutionality of the Bank (Feb. 23, 1791), in *id.*, at 248, 250 (requiring "obvious" means-end fit, where the end was "clearly comprehended within any of the specified powers" of Congress).

FN2. *McCulloch*, *supra*, at 413-415; D. Currie, The Constitution in the Supreme Court: The First Hundred Years 1789-1888, p. 162 (1985).

In *McCulloch v. Maryland*, 4 Wheat. 316, 4 L.Ed. 579 (1819), this Court, speaking through Chief Justice Marshall, set forth a test for determining when an Act \*\*2231 of Congress is permissible under the Necessary and Proper Clause:

"Let the end be legitimate, let it be within the scope

of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *Id.*, at 421.

To act under the Necessary and Proper Clause, then, Congress must select a means that is "appropriate" and "plainly adapted" to executing an enumerated power; the means cannot be otherwise "prohibited" by the Constitution; and the means cannot be inconsistent with "the letter and spirit of the [C]onstitution." *Ibid.*; D. Currie, The Constitution in the Supreme Court: The First Hundred Years 1789-1888, pp. 163-164 (1985). The CSA, as applied to respondents' conduct, is not a valid exercise of Congress' power under the Necessary and Proper Clause.

## 1

Congress has exercised its power over interstate commerce to criminalize trafficking in marijuana across state \*61 lines. The Government contends that banning Monson and Raich's intrastate drug activity is "necessary and proper for carrying into Execution" its regulation of interstate drug trafficking. Art. I, § 8, cl. 18. See 21 U.S.C. § 801(6). However, in order to be "necessary," the intrastate ban must be more than "a reasonable means [of] effectuat[ing] the regulation of interstate commerce." Brief for Petitioners 14; see *ante*, at 2209 (majority opinion) (employing rational-basis review). It must be "plainly adapted" to regulating interstate marijuana trafficking—in other words, there must be an "obvious, simple, and direct relation" between the intrastate ban and the regulation of interstate commerce. *Sabri v. United States*, 541 U.S. 600, 613, 124 S.Ct. 1941, 158 L.Ed.2d 891 (2004) (THOMAS, J., concurring in judgment); see also *United States v. Dewitt*, 9 Wall. 41, 44, 19 L.Ed. 593 (1870) (finding ban on intrastate sale of lighting oils not "appropriate and plainly adapted means for carrying into execution" Congress' taxing power).

On its face, a ban on the intrastate cultivation,

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possession and distribution of marijuana may be plainly adapted to stopping the interstate flow of marijuana. Unregulated local growers and users could swell both the supply and the demand sides of the interstate marijuana market, making the market more difficult to regulate. *Ante*, at 2203, 2209 (majority opinion). But respondents do not challenge the CSA on its face. Instead, they challenge it as applied to their conduct. The question is thus whether the intrastate ban is “necessary and proper” as applied to medical marijuana users like respondents.<sup>FN3</sup>

FN3. Because respondents do not challenge on its face the CSA's ban on marijuana, 21 U.S.C. §§ 841(a)(1), 844(a), our adjudication of their as-applied challenge casts no doubt on this Court's practice in *United States v. Lopez*, 514 U.S. 549, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995), and *United States v. Morrison*, 529 U.S. 598, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000). In those cases, we held that Congress, in enacting the statutes at issue, had exceeded its Article I powers.

Respondents are not regulable simply because they belong to a large class (local growers and users of marijuana) that \*62 Congress might need to reach, if they also belong to a distinct and separable subclass (local growers and users of state-authorized, medical marijuana) that does not undermine the CSA's interstate ban. *Ante*, at 2223 (O'CONNOR, J., dissenting). The Court of Appeals found that respondents' “limited use is distinct from the broader \*\*2232 illicit drug market,” because “[t]heir medicinal marijuana ... is not intended for, nor does it enter, the stream of commerce.” *Raich v. Ashcroft*, 352 F.3d 1222, 1228 (C.A.9 2003). If that is generally true of individuals who grow and use marijuana for medical purposes under state law, then even assuming Congress has “obvious” and “plain” reasons why regulating intrastate cultivation and possession is necessary to regulating the interstate drug trade, none of those reasons applies to medical marijuana patients like Monson and Raich.

California's Compassionate Use Act sets respondents' conduct apart from other intrastate producers and users of marijuana. The Act channels marijuana use to “seriously ill Californians,” Cal. Health & Safety Code Ann. § 11362.5(b)(1)(A) (West Supp.2005), and prohibits “the diversion of marijuana for nonmedical purposes,” § 11362.5(b)(2).<sup>FN4</sup> California strictly controls the cultivation and possession of marijuana for medical purposes. To be eligible for its program, California requires that a patient have an illness that cannabis can relieve, such as cancer, AIDS, or arthritis, § 11362.5(b)(1)(A), and that he obtain a physician's recommendation or approval, § 11362.5(d). Qualified patients must provide personal and medical information to obtain medical identification cards, and there is a statewide registry of cardholders. §§ 11362.715-76. Moreover, the Medical Board of California has issued guidelines for physicians' cannabis recommendations, and it sanctions physicians who do not comply with the guidelines. \*63 See, e.g., *People v. Spark*, 121 Cal.App.4th 259, 263, 16 Cal.Rptr.3d 840, 843 (2004).

FN4. Other States likewise prohibit diversion of marijuana for nonmedical purposes. See, e.g., Colo. Const., Art. XVIII, § 14(2)(d); Nev.Rev.Stat. §§ 453A.300(1)(e)-(f) (2003); Ore.Rev.Stat. § 475.316(1)(c)-(d) (2003).

This class of intrastate users is therefore distinguishable from others. We normally presume that States enforce their own laws, *Riley v. National Federation of Blind of N. C., Inc.*, 487 U.S. 781, 795, 108 S.Ct. 2667, 101 L.Ed.2d 669 (1988), and there is no reason to depart from that presumption here: Nothing suggests that California's controls are ineffective. The scant evidence that exists suggests that few people—the vast majority of whom are aged 40 or older—register to use medical marijuana. General Accounting Office, *Marijuana: Early Experiences with Four States' Laws That Allow Use for Medical Purposes* 22-23 (Rep. No. 03-189, Nov. 2002), <http://www.gao.gov/new.items/d03189.pdf> (all Internet materials as visited June 3, 2005, and

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available in Clerk of Court's case file). In part because of the low incidence of medical marijuana use, many law enforcement officials report that the introduction of medical marijuana laws has not affected their law enforcement efforts. *Id.*, at 32.

These controls belie the Government's assertion that placing medical marijuana outside the CSA's reach "would prevent effective enforcement of the interstate ban on drug trafficking." Brief for Petitioners 33. Enforcement of the CSA can continue as it did prior to the Compassionate Use Act. Only now, a qualified patient could avoid arrest or prosecution by presenting his identification card to law enforcement officers. In the event that a qualified patient is arrested for possession or his cannabis is seized, he could seek to prove as an affirmative defense that, in conformity with state law, he possessed or cultivated small quantities of marijuana intrastate solely for personal medical use. *People v. Mower*, 28 Cal.4th 457, 469-470, 122 Cal.Rptr.2d 326, 49 P.3d 1067, 1073-1075 (2002); \*\*2233 *People v. Trippet*, 56 Cal.App.4th 1532, 1549, 66 Cal.Rptr.2d 559-560 (1997). Moreover, under the CSA, certain drugs that present a high risk of abuse and addiction but that nevertheless have an accepted medical use—drugs like \*64 morphine and amphetamines—are available by prescription. 21 U.S.C. §§ 812(b)(2)(A)-(B); 21 CFR § 1308.12 (2004). No one argues that permitting use of these drugs under medical supervision has undermined the CSA's restrictions.

But even assuming that States' controls allow some seepage of medical marijuana into the illicit drug market, there is a multibillion-dollar interstate market for marijuana. Executive Office of the President, Office of Nat. Drug Control Policy, Marijuana Fact Sheet 5 (Feb.2004), <http://www.whitehousedrugpolicy.gov/publications/factsht/marijuana/index.html>. It is difficult to see how this vast market could be affected by diverted medical cannabis, let alone in a way that makes regulating intrastate medical marijuana obviously essential to controlling the interstate drug market.

To be sure, Congress declared that state policy

would disrupt federal law enforcement. It believed the across-the-board ban essential to policing interstate drug trafficking. 21 U.S.C. § 801(6). But as Justice O'CONNOR points out, Congress presented no evidence in support of its conclusions, which are not so much findings of fact as assertions of power. *Ante*, at 2227 (dissenting opinion). Congress cannot define the scope of its own power merely by declaring the necessity of its enactments.

In sum, neither in enacting the CSA nor in defending its application to respondents has the Government offered any obvious reason why banning medical marijuana use is necessary to stem the tide of interstate drug trafficking. Congress' goal of curtailing the interstate drug trade would not plainly be thwarted if it could not apply the CSA to patients like Monson and Raich. That is, unless Congress' aim is really to exercise police power of the sort reserved to the States in order to eliminate even the intrastate possession and use of marijuana.

2

Even assuming the CSA's ban on locally cultivated and consumed marijuana is "necessary," that does not mean it is \*65 also "proper." The means selected by Congress to regulate interstate commerce cannot be "prohibited" by, or inconsistent with the "letter and spirit" of, the Constitution. *McCulloch*, 4 Wheat., at 421.

In *Lopez*, I argued that allowing Congress to regulate intrastate, noncommercial activity under the Commerce Clause would confer on Congress a general "police power" over the Nation. 514 U.S., at 584, 600, 115 S.Ct. 1624 (concurring opinion). This is no less the case if Congress ties its power to the Necessary and Proper Clause rather than the Commerce Clause. When agents from the Drug Enforcement Administration raided Monson's home, they seized six cannabis plants. If the Federal Government can regulate growing a half-dozen cannabis plants for personal consumption (not because it is interstate commerce, but because it is inextricably bound up with interstate commerce), then Congress' Article I

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powers-as expanded by the Necessary and Proper Clause-have no meaningful limits. Whether Congress aims at the possession of drugs, guns, or any number of other items, it may continue to “appropriat[e] state police powers under the guise of regulating commerce.” *United States v. Morrison*, 529 U.S. 598, 627, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000) (THOMAS, J., concurring).

Even if Congress may regulate purely intrastate activity when essential to exercising\*\*2234 some enumerated power, see *Dewitt*, 9 Wall., at 44; but see Barnett, *The Original Meaning of the Necessary and Proper Clause*, 6 U. Pa. J. Const. L. 183, 186 (2003) (detailing statements by Founders that the Necessary and Proper Clause was not intended to expand the scope of Congress' enumerated powers), Congress may not use its incidental authority to subvert basic principles of federalism and dual sovereignty. *Printz v. United States*, 521 U.S. 898, 923-924, 117 S.Ct. 2365, 138 L.Ed.2d 914 (1997); *Alden v. Maine*, 527 U.S. 706, 732-733, 119 S.Ct. 2240, 144 L.Ed.2d 636 (1999); *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 585, 105 S.Ct. 1005, 83 L.Ed.2d 1016 (1985) (O'CONNOR, J., dissenting); *The Federalist* No. 33, pp. 204-205 (J. Cooke ed. 1961) (A.Hamilton) (hereinafter *The Federalist*).

\*66 Here, Congress has encroached on States' traditional police powers to define the criminal law and to protect the health, safety, and welfare of their citizens.<sup>FN5</sup> *Brecht v. Abrahamson*, 507 U.S. 619, 635, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993); *Hillsborough County v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 719, 105 S.Ct. 2371, 85 L.Ed.2d 714 (1985). Further, the Government's rationale-that it may regulate the production or possession of any commodity for which there is an interstate market-threatens to remove the remaining vestiges of States' traditional police powers. See Brief for Petitioners 21-22; cf. Ehrlich, *The Increasing Federalization of Crime*, 32 Ariz. St. L.J. 825, 826, 841 (2000) (describing both the relative recency of a large percentage of federal crimes and the lack of a relationship between some of these crimes and interstate commerce). This would convert the Necessary and

Proper Clause into precisely what Chief Justice Marshall did not envision, a “pretext ... for the accomplishment of objects not intrusted to the government.” *McCulloch, supra*, at 423.

FN5. In fact, the Anti-Federalists objected that the Necessary and Proper Clause would allow Congress, *inter alia*, to “constitute new Crimes, ... and extend [its] Power as far as [it] shall think proper; so that the State Legislatures have no Security for the Powers now presumed to remain to them; or the People for their Rights.” Mason, *Objections to the Constitution Formed by the Convention (1787)*, in 2 *The Complete Anti-Federalist* 11, 12-13 (H. Storing ed.1981) (emphasis added). Hamilton responded that these objections were gross “misrepresentation[s].” *The Federalist* No. 33, at 204. He termed the Clause “perfectly harmless,” for it merely confirmed Congress' implied authority to enact laws in exercising its enumerated powers. *Id.*, at 205; see also *Lopez*, 514 U.S., at 597, n. 6, 115 S.Ct. 1624 (THOMAS, J., concurring) (discussing Congress' limited ability to establish nationwide criminal prohibitions); *Cohens v. Virginia*, 6 Wheat. 264, 426-428, 5 L.Ed. 257 (1821) (finding it “clear that [C]ongress cannot punish felonies generally,” except in areas over which it possesses plenary power). According to Hamilton, the Clause was needed only “to guard against cavilling refinements” by those seeking to cripple federal power. *The Federalist* No. 33, at 205; *id.*, No. 44, at 303-304 (J. Madison).

\*67 II

The majority advances three reasons why the CSA is a legitimate exercise of Congress' authority under the Commerce Clause: First, respondents' conduct, taken in the aggregate, may substantially affect interstate commerce, *ante*, at 2208; second, regulation of respondents' conduct is essential to

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regulating the interstate marijuana market, *ante*, at 2210; and, third, regulation of respondents' conduct is incidental to regulating the interstate marijuana market, *ante*, at 2209. Justice O'CONNOR explains why the majority's reasons cannot be reconciled with our recent Commerce Clause jurisprudence. The majority's\*\*2235 justifications, however, suffer from even more fundamental flaws.

## A

The majority holds that Congress may regulate intrastate cultivation and possession of medical marijuana under the Commerce Clause, because such conduct arguably has a substantial effect on interstate commerce. The majority's decision is further proof that the "substantial effects" test is a "rootless and malleable standard" at odds with the constitutional design. *Morrison, supra*, at 627, 120 S.Ct. 1740 (THOMAS, J., concurring).

The majority's treatment of the substantial effects test is rootless, because it is not tethered to either the Commerce Clause or the Necessary and Proper Clause. Under the Commerce Clause, Congress may regulate interstate commerce, not activities that substantially affect interstate commerce-any more than activities that do not fall within, but that affect, the subjects of its other Article I powers. *Lopez, 514 U.S.*, at 589, 115 S.Ct. 1624 (THOMAS, J., concurring). Whatever additional latitude the Necessary and Proper Clause affords, *supra*, at 2203, the question is whether Congress' legislation is essential to the regulation of interstate commerce itself-not whether the legislation extends only to economic \*68 activities that substantially affect interstate commerce. *Supra*, at 2231; *ante*, at 2217-2218 (SCALIA, J., concurring in judgment).

The majority's treatment of the substantial effects test is malleable, because the majority expands the relevant conduct. By defining the class at a high level of generality (as the intrastate manufacture and possession of marijuana), the majority overlooks that individuals authorized by state law to manufacture and possess medical marijuana exert

no demonstrable effect on the interstate drug market. *Supra*, at 2232-2233. The majority ignores that whether a particular activity substantially affects interstate commerce-and thus comes within Congress' reach on the majority's approach-can turn on a number of objective factors, like state action or features of the regulated activity itself. *Ante*, at 2223 (O'CONNOR, J., dissenting). For instance, here, if California and other States are effectively regulating medical marijuana users, then these users have little effect on the interstate drug trade.<sup>FN6</sup>

FN6. Remarkably, the majority goes so far as to declare this question irrelevant. It asserts that the CSA is constitutional even if California's current controls are effective, because state action can neither expand nor contract Congress' powers. *Ante*, at 2213, n. 38. The majority's assertion is misleading. Regardless of state action, Congress has the power to regulate intrastate economic activities that substantially affect interstate commerce (on the majority's view) or activities that are necessary and proper to effectuating its commerce power (on my view). But on either approach, whether an intrastate activity falls within the scope of Congress' powers turns on factors that the majority is unwilling to confront. The majority apparently believes that even if States prevented any medical marijuana from entering the illicit drug market, and thus even if there were no need for the CSA to govern medical marijuana users, we should uphold the CSA under the Commerce Clause and the Necessary and Proper Clause. Finally, to invoke the Supremacy Clause, as the majority does, *ibid.*, is to beg the question. The CSA displaces California's Compassionate Use Act if the CSA is constitutional as applied to respondents' conduct, but that is the very question at issue.

The substantial effects test is easily manipulated for

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another reason. This Court has never held that Congress can \*69 regulate noneconomic activity that substantially affects interstate commerce. *Morrison*, 529 U.S., at 613, 120 S.Ct. 1740 (“[T]hus far in \*\*2236 our Nation’s history our cases have upheld Commerce Clause regulation of intra state activity only where that activity is *economic* in nature” (emphasis added)); *Lopez, supra*, at 560, 115 S.Ct. 1624. To evade even that modest restriction on federal power, the majority defines economic activity in the broadest possible terms as the “ ‘the production, distribution, and consumption of commodities.’ ”<sup>FN7</sup> ANTE, AT 2211 (quoting Webster’s third new international Dictionary 720 (1966)) (hereinafter Webster’s 3d). This carves out a vast swath of activities that are subject to federal regulation. See *ante*, at 2224 (O’CONNOR, J., dissenting). If the majority is to be taken seriously, the Federal Government may now regulate quilting bees, clothes drives, and potluck suppers throughout the 50 States. This makes a mockery of Madison’s assurance to the people of New York that the “ powers delegated” to the Federal Government are “ few and defined,” while those of the States are “ numerous and indefinite.” The Federalist No. 45, at 313 (J. Madison).

FN7. Other dictionaries do not define the term “economic” as broadly as the majority does. See, e.g., The American Heritage Dictionary of the English Language 583 (3d ed.1992) (defining “economic” as “[o]f or relating to the production, development, and management of *material wealth*, as of a country, household, or business enterprise” (emphasis added)). The majority does not explain why it selects a remarkably expansive 40-year-old definition.

Moreover, even a Court interested more in the modern than the original understanding of the Constitution ought to resolve cases based on the meaning of words that are actually in the document. Congress is authorized to regulate “Commerce,” and respondents’ conduct does not qualify under any definition of that term.<sup>FN8</sup> The majority’s opinion

\*70 only illustrates the steady drift away from the text of the Commerce Clause. There is an inexorable expansion from “ ‘commerce,’ ” *ante*, at 2199, to “ commercial” and “economic” activity, *ante*, at 2209, and finally to all “ production, distribution, and consumption” of goods or services for which there is an “established ... interstate market,” *ante*, at 2211. Federal power expands, but never contracts, with each new locution. The majority is not interpreting the Commerce Clause, but rewriting it.

FN8. See, e.g., *id.*, at 380 (“[t]he buying and selling of goods, especially on a large scale, as between cities or nations”); The Random House Dictionary of the English Language 411 (2d ed.1987) (“an interchange of goods or commodities, esp. on a large scale between different countries ... or between different parts of the same country”); Webster’s 3d 456 (“the exchange or buying and selling of commodities esp. on a large scale and involving transportation from place to place”).

The majority’s rewriting of the Commerce Clause seems to be rooted in the belief that, unless the Commerce Clause covers the entire web of human activity, Congress will be left powerless to regulate the national economy effectively. *Ante*, at 2206-2207; *Lopez*, 514 U.S., at 573-574, 115 S.Ct. 1624 (KENNEDY, J., concurring). The interconnectedness of economic activity is not a modern phenomenon unfamiliar to the Framers. *Id.*, at 590-593, 115 S.Ct. 1624 (THOMAS, J., concurring); Letter from J. Madison to S. Roane (Sept. 2, 1819), in 3 The Founders’ Constitution 259-260 (P. Kurland & R. Lerner eds.1987). Moreover, the Framers understood what the majority does not appear to fully appreciate: There is a danger to concentrating too much, as well as too little, power in the Federal Government. This Court has carefully avoided stripping Congress of its ability to regulate *interstate* commerce, but it has casually allowed the Federal Government to strip States of their ability to regulate *intrastate*

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commerce-not to mention a host of local activities, \*\*2237 like mere drug possession, that are not commercial.

One searches the Court's opinion in vain for any hint of what aspect of American life is reserved to the States. Yet this Court knows that "[t]he Constitution created a Federal Government of limited powers." *New York v. United States*, 505 U.S. 144, 155, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992) (quoting \*71 *Gregory v. Ashcroft*, 501 U.S. 452, 457, 111 S.Ct. 2395, 115 L.Ed.2d 410 (1991)). That is why today's decision will add no measure of stability to our Commerce Clause jurisprudence: This Court is willing neither to enforce limits on federal power, nor to declare the Tenth Amendment a dead letter. If stability is possible, it is only by discarding the stand-alone substantial effects test and revisiting our definition of "Commerce among the several States." Congress may regulate interstate commerce-not things that affect it, even when summed together, unless truly "necessary and proper" to regulating interstate commerce.

## B

The majority also inconsistently contends that regulating respondents' conduct is both incidental and essential to a comprehensive legislative scheme. *Ante*, at 2208-2209, 2209-2210. I have already explained why the CSA's ban on local activity is not essential. *Supra*, at 2232. However, the majority further claims that, because the CSA covers a great deal of interstate commerce, it "is of no moment" if it also "ensnares some purely intrastate activity." *Ante*, at 2208. So long as Congress casts its net broadly over an interstate market, according to the majority, it is free to regulate interstate and intrastate activity alike. This cannot be justified under either the Commerce Clause or the Necessary and Proper Clause. If the activity is purely intrastate, then it may not be regulated under the Commerce Clause. And if the regulation of the intrastate activity is purely incidental, then it may not be regulated under the Necessary and Proper Clause.

Nevertheless, the majority terms this the "pivotal" distinction between the present case and *Lopez* and *Morrison*. *Ante*, at 2209. In *Lopez* and *Morrison*, the parties asserted facial challenges, claiming "that a particular statute or provision fell outside Congress' commerce power in its entirety." *Ante*, at 2209. Here, by contrast, respondents claim only that the CSA falls outside Congress' commerce power as applied \*72 to their individual conduct. According to the majority, while courts may set aside whole statutes or provisions, they may not "excise individual applications of a concededly valid statutory scheme." *Ante*, at 2209; see also *Perez v. United States*, 402 U.S. 146, 154, 91 S.Ct. 1357, 28 L.Ed.2d 686 (1971); *Maryland v. Wirtz*, 392 U.S. 183, 192-193, 88 S.Ct. 2017, 20 L.Ed.2d 1020 (1968).

It is true that if respondents' conduct is part of a "class of activities ... and that class is within the reach of federal power," *Perez, supra*, at 154, 91 S.Ct. 1357 (emphases deleted), then respondents may not point to the *de minimis* effect of their own personal conduct on the interstate drug market, *Wirtz, supra*, at 196, n. 27, 88 S.Ct. 2017. *Ante*, at 2223 (O'CONNOR, J., dissenting). But that begs the question at issue: whether respondents' "class of activities" is "within the reach of federal power," which depends in turn on whether the class is defined at a low or a high level of generality. *Supra*, at 2231. If medical marijuana patients like Monson and Raich largely stand outside the interstate drug market, then courts must excise them from the CSA's coverage. Congress expressly provided that if "a provision [of the CSA] is held invalid in one of more of its applications, \*\*2238 the provision shall remain in effect in all its valid applications that are severable." 21 U.S.C. § 901 (emphasis added); see also *United States v. Booker*, 543 U.S. 220, ---, 125 S.Ct. 738, 779, n. 9, 160 L.Ed.2d 621 (2005) (THOMAS, J., dissenting in part).

Even in the absence of an express severability provision, it is implausible that this Court could set aside entire portions of the United States Code as outside Congress' power in *Lopez* and *Morrison*, but it cannot engage in the more restrained practice of invalidating particular applications of the CSA that

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are beyond Congress' power. This Court has regularly entertained as-applied challenges under constitutional provisions, see *United States v. Raines*, 362 U.S. 17, 20-21, 80 S.Ct. 519, 4 L.Ed.2d 524 (1960), including the Commerce Clause, see *Katzenbach v. McClung*, 379 U.S. 294, 295, 85 S.Ct. 377, 13 L.Ed.2d 290 (1964); \*73*Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 249, 85 S.Ct. 348, 13 L.Ed.2d 258 (1964); *Wickard v. Filburn*, 317 U.S. 111, 113-114, 63 S.Ct. 82, 87 L.Ed. 122 (1942). There is no reason why, when Congress exceeds the scope of its commerce power, courts may not invalidate Congress' overreaching on a case-by-case basis. The CSA undoubtedly regulates a great deal of interstate commerce, but that is no license to regulate conduct that is neither interstate nor commercial, however minor or incidental.

If the majority is correct that *Lopez* and *Morrison* are distinct because they were facial challenges to "particular statute[s] or provision[s]," *ante*, at 2209, then congressional power turns on the manner in which Congress packages legislation. Under the majority's reasoning, Congress could not enact-either as a single-subject statute or as a separate provision in the CSA-a prohibition on the intrastate possession or cultivation of marijuana. Nor could it enact an intrastate ban simply to supplement existing drug regulations. However, that same prohibition is perfectly constitutional when integrated into a piece of legislation that reaches other regulable conduct. *Lopez*, 514 U.S., at 600-601, 115 S.Ct. 1624 (THOMAS, J., concurring).

Finally, the majority's view-that because *some* of the CSA's applications are constitutional, they must *all* be constitutional-undermines its reliance on the substantial effects test. The intrastate conduct swept within a general regulatory scheme may or may not have a substantial effect on the relevant interstate market. "[O]ne *always* can draw the circle broadly enough to cover an activity that, when taken in isolation, would not have substantial effects on commerce." *Id.*, at 600, 115 S.Ct. 1624 (THOMAS, J., concurring). The breadth of legislation that Congress enacts says nothing about

whether the intrastate activity substantially affects interstate commerce, let alone whether it is necessary to the scheme. Because medical marijuana users in California and elsewhere are not placing substantial amounts of cannabis \*74 into the stream of interstate commerce, Congress may not regulate them under the substantial effects test, no matter how broadly it drafts the CSA.

\* \* \*

The majority prevents States like California from devising drug policies that they have concluded provide much-needed respite to the seriously ill. It does so without any serious inquiry into the necessity for federal regulation or the propriety of "displac[ing] state regulation in areas of traditional state concern," *id.*, at 583, 115 S.Ct. 1624 (KENNEDY, J., concurring). The majority's rush to embrace federal power "is especially unfortunate given the importance of showing respect for the sovereign States that comprise our Federal \*\*2239 Union." *United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483, 502, 121 S.Ct. 1711, 149 L.Ed.2d 722 (2001) (STEVENS, J., concurring in judgment). Our federalist system, properly understood, allows California and a growing number of other States to decide for themselves how to safeguard the health and welfare of their citizens. I would affirm the judgment of the Court of Appeals. I respectfully dissent.

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# ATTACHMENT #9

## **Section 3.5 of Article III of the California Constitution**

WEST'S ANNOTATED CALIFORNIA CODES  
CONSTITUTION OF THE STATE OF CALIFORNIA 1879  
ARTICLE III. STATE OF CALIFORNIA

**→§ 3.5. Administrative agencies; prohibition against declaring statute unenforceable or unconstitutional; exceptions**

Sec. 3.5. An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

- (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;
- (b) To declare a statute unconstitutional;
- (c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.

Current through Ch. 170 of 2007 Reg.Sess. urgency legislation

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### §48.8. Threats Communicated Against Schools.

(a) A communication by any person to a school principal, or a communication by a student attending the school to the student's teacher or to a school counselor or school nurse and any report of that communication to the school principal, stating that a specific student or other specified person has made a threat to commit violence or potential violence on the school grounds involving the use of a firearm or other deadly or dangerous weapon, is a communication on a matter of public concern and is subject to liability in defamation only upon a showing by clear and convincing evidence that the communication or report was made with knowledge of its falsity or with reckless disregard for the truth or falsity of the communication. Where punitive damages are alleged, the provisions of Section 3294 shall also apply.

(b) As used in this section, "school" means a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive. Leg.H. 2001 ch. 570.

### §48.9. Organizations Sponsoring Silent Witness Program Are Immune From Civil Suit.

(a) An organization which sponsors or conducts an anonymous witness program, and its employees and agents, shall not be liable in a civil action for damages resulting from its receipt of information regarding possible criminal activity or from dissemination of that information to a law enforcement agency.

(b) The immunity provided by this section shall apply to any civil action for damages, including, but not limited to, a defamation action or an action for damages resulting from retaliation against a person who provided information.

(c) The immunity provided by this section shall not apply in any of the following instances:

(1) The information was disseminated with actual knowledge that it was false.

(2) The name of the provider of the information was disseminated without that person's authorization and the dissemination was not required by law.

(3) The name of the provider of information was obtained and the provider was not informed by the organization that the disclosure of his or her name may be required by law.

(d) As used in this section, an "anonymous witness program" means a program whereby information relating to alleged criminal activity is received from persons, whose names are not released without their authorization unless required by law, and disseminated to law enforcement agencies. Leg.H. 1983 ch. 495.

### §49. Abduction, Seduction, Injury to Servant.

The rights of personal relations forbid:

(a) The abduction or enticement of a child from a parent, or from a guardian entitled to its custody;

(b) The seduction of a person under the age of legal consent;

(c) Any injury to a servant which affects his ability to serve his master, other than seduction, abduction or

criminal conversation. Leg.H. 1872, 1905 p. 68, 1939 chs. 128, 1103.

Ref.: Cal. Fms Pl. & Pr., Ch. 394, "Parent and Child"; W. Cal. Pro., "Appeal" §§972, 973; W. Cal. Sum., "Torts" §§143, 192, 723, 729, 755, "Agency and Employment" §162.

### §50. Right to Repel Invasion of Rights by Force.

Any necessary force may be used to protect from wrongful injury the person or property of oneself, or of a wife, husband, child, parent, or other relative, or member of one's family, or of a ward, servant, master, or guest. Leg.H. 1872, 1874 p. 184.

Ref.: Cal. Fms Pl. & Pr., Ch. 58, "Assault and Battery"; W. Cal. Sum., "Torts" §§417, 419, 1099, 1141; CACI No. 1304 (Matthew Bender); CALCRIM Nos. 2514, 3470, 3475, 3476 (Matthew Bender).

### §51. Unruh Civil Rights Act.

(a) This section shall be known, and may be cited, as the Unruh Civil Rights Act.

(b) All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

(c) This section shall not be construed to confer any right or privilege on a person that is conditioned or limited by law or that is applicable alike to persons of every sex, color, race, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation.

(d) Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

(e) For purposes of this section:

(1) "Disability" means any mental or physical disability as defined in Sections 12926 and 12926.1 of the Government Code.

(2) "Medical condition" has the same meaning as defined in subdivision (h) of Section 12926 of the Government Code.

(3) "Religion" includes all aspects of religious belief, observance, and practice.

(4) "Sex" has the same meaning as defined in subdivision (p) of Section 12926 of the Government Code.

(5) "Sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation" includes a perception that the person has any particular characteristic or characteristics within the listed categories or that the person is associated with a person who has, or is perceived to have, any particular characteristic or characteristics within the listed categories.

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(6) "Sexual orientation" has the same meaning as defined in subdivision (q) of Section 12926 of the Government Code.

(f) A violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section. **Leg.H.** 1905 p. 553, 1919 p. 309, 1923 ch. 235, 1959 ch. 1866, 1961 ch. 1187, 1974 ch. 1193, 1987 ch. 159, 1992 ch. 913, 1998 ch. 195, 2000 ch. 1049, 2005 ch. 420 (AB 1400) §3.

**2005 Notes:** This act shall be known and may be cited as "The Civil Rights Act of 2005." Stats. 2005 ch. 420 (AB 1400) §1.

The Legislature affirms that the bases of discrimination prohibited by the Unruh Civil Rights Act include, but are not limited to, marital status and sexual orientation, as defined herein. By specifically enumerating these bases in the Unruh Civil Rights Act, the Legislature intends to clarify the existing law, rather than to change the law, as well as the principle that the bases enumerated in the act are illustrative rather than restrictive. Stats. 2005 ch. 420 (AB 1400) §2(c).

It is the intent of the Legislature that the amendments made to the Unruh Civil Rights Act by this act do not affect the California Supreme Court's rulings in *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721 and *O'Connor v. Village Green Owners Association* (1983) 33 Cal.3d 790. Stats. 2005 ch. 420 (AB 1400) §2(d).

**Ref.:** Cal. Fms Pl. & Pr., Ch. 116, "Civil Rights: Discrimination in Business Establishments," Ch. 117, "Civil Rights: Housing Discrimination," Ch. 117A, "Civil Rights: Interference With Civil Rights by Threats, Intimidation, Coercion or Violence," Ch. 547, "Theatres, Shows, and Amusement Places"; W. Cal. Pro., "Pleading" §137; W. Cal. Sum., "Constitutional Law" §§389, 526, 897-899, 903, 904, 908, 910, 912, 914, 915, 941, 945, 957, "Insurance" §6, "Real Property" §§116, 683, "Equity" §121, "Torts" §1131; MB Prac. Guide: Landlord-Tenant, Ch. 2; CACI Nos. 3020, VF-3010 (Matthew Bender).

#### **§51.1. Actions Requiring Copy of Petition and Brief to Be Served on State Solicitor General.**

If a violation of Section 51, 51.5, 51.7, 51.9, or 52.1 is alleged or the application or construction of any of these sections is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate division of a superior court, each party shall serve a copy of the party's brief or petition and brief, on the State Solicitor General at the Office of the Attorney General. No brief may be accepted for filing unless the proof of service shows service on the State Solicitor General. Any party failing to comply with this requirement shall be given a reasonable opportunity to cure the failure before the court imposes any sanction and, in that instance, the court shall allow the Attorney General reasonable additional time to file a brief in the matter. **Leg.H.** 2002 ch. 244 (AB 2524).

#### **§51.2. Housing Discrimination Prohibited Based Upon Age; Application of Section—Housing Specifications to Meet Needs of Senior Citizens.**

(a) Section 51 shall be construed to prohibit a business establishment from discriminating in the sale or rental of housing based upon age. Where accommodations are designed to meet the physical and social needs of senior

citizens, a business establishment may establish and preserve that housing for senior citizens, pursuant to Section 51.3, except housing as to which Section 51.3 is preempted by the prohibition in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations against discrimination on the basis of familial status. For accommodations constructed before February 8, 1982, that meet all the criteria for senior citizen housing specified in Section 51.3, a business establishment may establish and preserve that housing development for senior citizens without the housing development being designed to meet physical and social needs of senior citizens.

(b) This section is intended to clarify the holdings in *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal. 3d 72 and *O'Connor v. Village Green Owners Association* (1983) 33 Cal. 3d 790.

(c) This section shall not apply to the County of Riverside.

(d) A housing development for senior citizens constructed on or after January 1, 2001, shall be presumed to be designed to meet the physical and social needs of senior citizens if it includes all of the following elements:

(1) Entryways, walkways, and hallways in the common areas of the development, and doorways and paths of access to and within the housing units, shall be as wide as required by current laws applicable to new multifamily housing construction for provision of access to persons using a standard-width wheelchair.

(2) Walkways and hallways in the common areas of the development shall be equipped with standard height railings or grab bars to assist persons who have difficulty with walking.

(3) Walkways and hallways in the common areas shall have lighting conditions which are of sufficient brightness to assist persons who have difficulty seeing.

(4) Access to all common areas and housing units within the development shall be provided without use of stairs, either by means of an elevator or sloped walking ramps.

(5) The development shall be designed to encourage social contact by providing at least one common room and at least some common open space.

(6) Refuse collection shall be provided in a manner that requires a minimum of physical exertion by residents.

(7) The development shall comply with all other applicable requirements for access and design imposed by law, including, but not limited to, the Fair Housing Act (42 U.S.C. Sec. 3601 et seq.), the Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.), and the regulations promulgated at Title 24 of the California Code of Regulations that relate to access for persons with disabilities or handicaps. Nothing in this section shall be construed to limit or reduce any right or obligation applicable under those laws. **Leg.H.** 1984 ch. 787, 1989 ch. 501, 1993 ch. 830, effective October 6, 1993, 1996 ch. 1147, 1999 ch. 324, 2000 ch. 1004, 2002 ch. 726 (AB 2787).

#### **§51.3. Establishing and Preserving Accessible Housing for Senior Citizens.**

(a) The Legislature finds and declares that this section

is essential to establish and preserve specially designed accessible housing for senior citizens. There are senior citizens who need special living environments and services, and find that there is an inadequate supply of this type of housing in the state.

(b) For the purposes of this section, the following definitions apply:

(1) "Qualifying resident" or "senior citizen" means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

(2) "Qualified permanent resident" means a person who meets both of the following requirements:

(A) Was residing with the qualifying resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen.

(B) Was 45 years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the qualifying resident or senior citizen.

(3) "Qualified permanent resident" also means a disabled person or person with a disabling illness or injury who is a child or grandchild of the senior citizen or a qualified permanent resident as defined in paragraph (2) who needs to live with the senior citizen or qualified permanent resident because of the disabling condition, illness, or injury. For purposes of this section, "disabled" means a person who has a disability as defined in subdivision (b) of Section 54. A "disabling injury or illness" means an illness or injury which results in a condition meeting the definition of disability set forth in subdivision (b) of Section 54.

(A) For any person who is a qualified permanent resident under this paragraph whose disabling condition ends, the owner, board of directors, or other governing body may require the formerly disabled resident to cease residing in the development upon receipt of six months' written notice; provided, however, that the owner, board of directors, or other governing body may allow the person to remain a resident for up to one year after the disabling condition ends.

(B) The owner, board of directors, or other governing body of the senior citizen housing development may take action to prohibit or terminate occupancy by a person who is a qualified permanent resident under this paragraph if the owner, board of directors, or other governing body finds, based on credible and objective evidence, that the person is likely to pose a significant threat to the health or safety of others that cannot be ameliorated by means of a reasonable accommodation; provided, however, that the action to prohibit or terminate the occupancy may be taken only after doing both of the following:

(i) Providing reasonable notice to and an opportunity to be heard for the disabled person whose occupancy is being challenged, and reasonable notice to the coresident parent or grandparent of that person.

(ii) Giving due consideration to the relevant, credible, and objective information provided in the hearing. The evidence shall be taken and held in a confidential manner, pursuant to a closed session, by the owner, board of directors, or other governing body in order to preserve the privacy of the affected persons.

The affected persons shall be entitled to have present at the hearing an attorney or any other person authorized

by them to speak on their behalf or to assist them in the matter.

(4) "Senior citizen housing development" means a residential development developed, substantially rehabilitated, or substantially renovated for, senior citizens that has at least 35 dwelling units. Any senior citizen housing development which is required to obtain a public report under Section 11010 of the Business and Professions Code and which submits its application for a public report after July 1, 2001, shall be required to have been issued a public report as a senior citizen housing development under Section 11010.05 of the Business and Professions Code. No housing development constructed prior to January 1, 1985, shall fail to qualify as a senior citizen housing development because it was not originally developed or put to use for occupancy by senior citizens.

(5) "Dwelling unit" or "housing" means any residential accommodation other than a mobilehome.

(6) "Cohabitant" refers to persons who live together as husband and wife, or persons who are domestic partners within the meaning of Section 297 of the Family Code.

(7) "Permitted health care resident" means a person hired to provide live-in, long-term, or terminal health care to a qualifying resident, or a family member of the qualifying resident providing that care. For the purposes of this section, the care provided by a permitted health care resident must be substantial in nature and must provide either assistance with necessary daily activities or medical treatment, or both.

A permitted health care resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident in the absence of the senior citizen from the dwelling unit only if both of the following are applicable:

(A) The senior citizen became absent from the dwelling due to hospitalization or other necessary medical treatment and expects to return to his or her residence within 90 days from the date the absence began.

(B) The absent senior citizen or an authorized person acting for the senior citizen submits a written request to the owner, board of directors, or governing board stating that the senior citizen desires that the permitted health care resident be allowed to remain in order to be present when the senior citizen returns to reside in the development.

Upon written request by the senior citizen or an authorized person acting for the senior citizen, the owner, board of directors, or governing board shall have the discretion to allow a permitted health care resident to remain for a time period longer than 90 days from the date that the senior citizen's absence began, if it appears that the senior citizen will return within a period of time not to exceed an additional 90 days.

(c) The covenants, conditions, and restrictions and other documents or written policy shall set forth the limitations on occupancy, residency, or use on the basis of age. Any such limitation shall not be more exclusive than to require that one person in residence in each dwelling unit may be required to be a senior citizen and that each other resident in the same dwelling unit may be required to be a qualified permanent resident, a permitted health care resident, or a person under 55 years of age whose occupancy is permitted under subdivision (h) of this section or under subdivision (b) of Section 51.4.

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That limitation may be less exclusive, but shall at least require that the persons commencing any occupancy of a dwelling unit include a senior citizen who intends to reside in the unit as his or her primary residence on a permanent basis. The application of the rules set forth in this subdivision regarding limitations on occupancy may result in less than all of the dwellings being actually occupied by a senior citizen.

(d) The covenants, conditions, and restrictions or other documents or written policy shall permit temporary residency, as a guest of a senior citizen or qualified permanent resident, by a person of less than 55 years of age for periods of time, not less than 60 days in any year, that are specified in the covenants, conditions, and restrictions or other documents or written policy.

(e) Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the qualifying resident, any qualified permanent resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident. This subdivision shall not apply to a permitted health care resident.

(f) The condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential rental property shall have been developed for, and initially been put to use as, housing for senior citizens, or shall have been substantially rehabilitated or renovated for, and immediately afterward put to use as, housing for senior citizens, as provided in this section; provided, however, that no housing development constructed prior to January 1, 1985, shall fail to qualify as a senior citizen housing development because it was not originally developed for or originally put to use for occupancy by senior citizens.

(g) The covenants, conditions, and restrictions or other documents or written policies applicable to any condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential property that contained age restrictions on January 1, 1984, shall be enforceable only to the extent permitted by this section, notwithstanding lower age restrictions contained in those documents or policies.

(h) Any person who has the right to reside in, occupy, or use the housing, or an unimproved lot subject to this section on January 1, 1985, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the enactment of this section.

(i) The covenants, conditions, and restrictions or other documents or written policy of the senior citizen housing development shall permit the occupancy of a dwelling unit by a permitted health care resident during any period that the person is actually providing live-in, long-term, or hospice health care to a qualifying resident for compensation. For purposes of this subdivision, the term "for compensation" shall include provisions of lodging and food in exchange for care.

(j) Notwithstanding any other provision of this section, this section shall not apply to the County of Riverside. Leg.H., 1984 ch. 1333, 1985 ch. 1505, 1989 ch. 190, 1994 ch. 464, 1995 ch. 147, 1996 ch. 1147, 1999 ch. 324, 2000 ch. 1004 §3.

Ref.: Cal. Fms. Pl. & P., Ch. 117, "Civil Rights: Housing Discrimination," Ch. 124, "Condominiums and Other Common

Interest Developments," Ch. 134, "Deeds"; W. Cal. Sum., "Constitutional Law" §908; "Real Property" §116.

#### §51.4. Senior Housing Constructed Prior to 1982—Exemption From Design Requirements.

(a) The Legislature finds and declares that the requirements for senior housing under Sections 51.2 and 51.3 are more stringent than the requirements for that housing under the federal Fair Housing Amendments Act of 1988 ([1] P.L. 100-430) in recognition of the acute shortage of housing for families with children in California. The Legislature further finds and declares that the special design requirements for senior housing under Sections 51.2 and 51.3 may pose a hardship to some housing developments [2] that were constructed before the decision in *Marina Point, Ltd. v. Wolfson* (1982) [3], 30 Cal.3d 721. The Legislature further finds and declares that the requirement for specially designed accommodations in senior housing under Sections 51.2 and 51.3 provides important benefits to senior citizens and also ensures that housing exempt from the prohibition of age discrimination is carefully tailored to meet the compelling societal interest in providing senior housing.

(b) Any person who resided in, occupied, or used, prior to January 1, 1990, a dwelling in a senior citizen housing development [4] that relied on the exemption to the special design requirement provided by this section prior to January 1, 2001, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the changes made to this section by the enactment of [5] Chapter 1004 of the Statutes of 2000.

(c) This section shall not apply to the County of Riverside. Leg.H., 1989 ch. 501, 1991 ch. 59, effective June 14, 1991, 1996 ch. 1147, 2000 ch. 1004 §4, 2006 ch. 538 (SB 1852) §37.

§51.4. 2006 Delet. [1] Public Law [2] which [3], 30 Cal. 3d 72 [4] which [5] Senate Bill 1387 or Senate Bill 2011 at the 1999-2000 Regular Session of the Legislature

#### §51.5. Discrimination or Boycott in Business Transactions Prohibited—Parties Included.

(a) No business establishment of any kind whatsoever shall discriminate against, boycott or blacklist, or refuse to buy from, contract with, sell to, or trade with any person in this state on account of any characteristic listed or defined in subdivision (b) or (c) of Section 51, or of the person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers, because the person is perceived to have one or more of those characteristics, or because the person is associated with a person who has, or is perceived to have, any of those characteristics.

(b) As used in this section, "person" includes any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company.

(c) This section shall not be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law to any new or existing establishment, facility, building, improvement, or

any other structure, nor shall this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws. Leg.H. 1976 ch. 366, 1987 ch. 159, 1992 ch. 913, 1994 ch. 1010, 1998 ch. 195, 1999 ch. 591, 2000 ch. 1049, 2005 ch. 420 (AB 1400) §4.

**2005 Notes:** This act shall be known and may be cited as "The Civil Rights Act of 2005." Stats. 2005 ch. 420 (AB 1400) §1.

The Legislature affirms that the bases of discrimination prohibited by the Unruh Civil Rights Act include, but are not limited to, marital status and sexual orientation, as defined herein. By specifically enumerating these bases in the Unruh Civil Rights Act, the Legislature intends to clarify the existing law, rather than to change the law, as well as the principle that the bases enumerated in the act are illustrative rather than restrictive. Stats. 2005 ch. 420 (AB 1400) §2(c).

It is the intent of the Legislature that the amendments made to the Unruh Civil Rights Act by this act do not affect the California Supreme Court's rulings in *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721 and *O'Connor v. Village Green Owners Association* (1983) 33 Cal.3d 790. Stats. 2005 ch. 420 (AB 1400) §2(d).

**1999 Note:** The amendments made by Chapter 591 to Section 51.5 of the Civil Code do not constitute a change in, but are declaratory of, existing law. Stats. 1999 ch. 591 §16.

**Ref.:** Cal. Fms Pl. & Pr., Ch. 136, "Civil Rights: Discrimination in Business Establishments," Ch. 117A, "Civil Rights: Interference With Civil Rights by Threats, Intimidation, Coercion or Violence"; W. Cal. Pro., "Pleading" §137; MB Prac. Guide: Landlord-Tenant, Ch. 2; CACI Nos. 3021, VF-3011 (Matthew Bender).

### §51.6. Gender Tax Repeal Act of 1995.

(a) This section shall be known, and may be cited, as the Gender Tax Repeal Act of 1995.

(b) No business establishment of any kind whatsoever may discriminate, with respect to the price charged for services of similar or like kind, against a person because of the person's gender.

(c) Nothing in subdivision (b) prohibits price differences based specifically upon the amount of time, difficulty, or cost of providing the services.

(d) Except as provided in subdivision (f), the remedies for a violation of this section are the remedies provided in subdivision (a) of Section 52. However, an action under this section is independent of any other remedy or procedure that may be available to an aggrieved party.

(e) This act does not alter or affect the provisions of the Health and Safety Code, the Insurance Code, or other laws that govern health care service plan or insurer underwriting or rating practices.

(f)(1) The following business establishments shall clearly and conspicuously disclose to the customer in writing the pricing for each standard service provided:

- (A) Tailors or businesses providing aftermarket clothing alterations.
- (B) Barbers or hair salons.
- (C) Dry cleaners and laundries providing services to individuals.

(2) The price list shall be posted in an area conspicuous to customers. Posted price lists shall be in no less than 14-point boldface type and clearly and completely display

pricing for every standard service offered by the business under paragraph (1).

(3) The business establishment shall provide the customer with a complete written price list upon request.

(4) The business establishment shall display in a conspicuous place at least one clearly visible sign, printed in no less than 24-point boldface type, which reads: "CALIFORNIA LAW PROHIBITS ANY BUSINESS ESTABLISHMENT FROM DISCRIMINATING, WITH RESPECT TO THE PRICE CHARGED FOR SERVICES OF SIMILAR OR LIKE KIND, AGAINST A PERSON BECAUSE OF THE PERSON'S GENDER. A COMPLETE PRICE LIST IS AVAILABLE UPON REQUEST."

(5) A business establishment that fails to correct a violation of this subdivision within 30 days of receiving written notice of the violation is liable for a civil penalty of one thousand dollars (\$1,000).

(6) For the purposes of this subdivision, "standard service" means the 15 most frequently requested services provided by the business. Leg.H. 1995 ch. 866, 2001 ch. 312.

**Ref.:** CACI Nos. 3022, VF-3012 (Matthew Bender).

### §51.7. Freedom From Violence.

(a) All persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of political affiliation, or on account of any characteristic listed or defined in subdivision (b) or (e) of Section 51, or position in a labor dispute, or because another person perceives them to have one or more of those characteristics. The identification in this subdivision of particular bases of discrimination is illustrative rather than restrictive.

(b) This section does not apply to statements concerning positions in a labor dispute which are made during otherwise lawful labor picketing. Leg.H. 1976 ch. 1293, 1984 ch. 1437, 1985 ch. 497, 1987 ch. 1277, 1994 ch. 407, 2005 ch. 420 (AB 1400) §5.

**2005 Notes:** This act shall be known and may be cited as "The Civil Rights Act of 2005." Stats. 2005 ch. 420 (AB 1400) §1.

The Legislature affirms that the bases of discrimination prohibited by the Unruh Civil Rights Act include, but are not limited to, marital status and sexual orientation, as defined herein. By specifically enumerating these bases in the Unruh Civil Rights Act, the Legislature intends to clarify the existing law, rather than to change the law, as well as the principle that the bases enumerated in the act are illustrative rather than restrictive. Stats. 2005 ch. 420 (AB 1400) §2(c).

It is the intent of the Legislature that the amendments made to the Unruh Civil Rights Act by this act do not affect the California Supreme Court's rulings in *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721 and *O'Connor v. Village Green Owners Association* (1983) 33 Cal.3d 790. Stats. 2005 ch. 420 (AB 1400) §2(d).

**Ref.:** Cal. Fms Pl. & Pr., Ch. 117A, "Civil Rights: Interference With Civil Rights by Threats, Intimidation, Coercion or Violence"; W. Cal. Pro., "Pleading" §137; W. Cal. Sum., "Constitutional Law" §§895, 914, 915, 941, 945, 949, 950, "Forms" §303; CACI Nos. 3023, 3027, VF-3013 (Matthew Bender).

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### §51.8. Discrimination in Granting of Franchises Prohibited.

(a) No franchisor shall discriminate in the granting of franchises solely on account of any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the franchisee and the composition of a neighborhood or geographic area reflecting any characteristic listed or defined in subdivision (b) or (e) of Section 51 in which the franchise is located. Nothing in this section shall be interpreted to prohibit a franchisor from granting a franchise to prospective franchisees as part of a program or programs to make franchises available to persons lacking the capital, training, business experience, or other qualifications ordinarily required of franchisees, or any other affirmative action program adopted by the franchisor.

(b) Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws. Leg.H. 1980 ch. 1303, 1987 ch. 159, 1992 ch. 913, 1998 ch. 195, 2005 ch. 420 (AB 1400) §6.

2005 Notes: This act shall be known and may be cited as "The Civil Rights Act of 2005." Stats. 2005 ch. 420 (AB 1400) §1.

The Legislature affirms that the bases of discrimination prohibited by the Unruh Civil Rights Act include, but are not limited to, marital status and sexual orientation, as defined herein. By specifically enumerating these bases in the Unruh Civil Rights Act, the Legislature intends to clarify the existing law, rather than to change the law, as well as the principle that the bases enumerated in the act are illustrative rather than restrictive. Stats. 2005 ch. 420 (AB 1400) §2(c).

It is the intent of the Legislature that the amendments made to the Unruh Civil Rights Act by this act do not affect the California Supreme Court's rulings in *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721 and *O'Connor v. Village Green Owners Association* (1983) 33 Cal.3d 790. Stats. 2005 ch. 420 (AB 1400) §2(d).

Ref.: Cal. Fms Pl. & Pr., Ch. 515, "Securities and Franchise Regulation."

### §51.9. Sexual Harassment—Elements of Cause of Action.

(a) A person is liable in a cause of action for sexual harassment under this section when the plaintiff proves all of the following elements:

(1) There is a business, service, or professional relationship between the plaintiff and defendant. Such a relationship may exist between a plaintiff and a person, including, but not limited to, any of the following persons:

(A) Physician, psychotherapist, or dentist. For purposes of this section, "psychotherapist" has the same meaning as set forth in paragraph (1) of subdivision (c) of Section 728 of the Business and Professions Code.

(B) Attorney, holder of a master's degree in social work, real estate agent, real estate appraiser, accountant, banker, trust officer, financial planner loan officer, collection service, building contractor, or escrow loan officer.

(C) Executor, trustee, or administrator.

(D) Landlord or property manager.

(E) Teacher.

(F) A relationship that is substantially similar to any of the above.

(2) The defendant has made sexual advances, solicitations, sexual requests, demands for sexual compliance by the plaintiff, or engaged in other verbal, visual, or physical conduct of a sexual nature or of a hostile nature based on gender, that were unwelcome and pervasive or severe.

(3) There is an inability by the plaintiff to easily terminate the relationship.

(4) The plaintiff has suffered or will suffer economic loss or disadvantage or personal injury, including, but not limited to, emotional distress or the violation of a statutory or constitutional right, as a result of the conduct described in paragraph (2).

(b) In an action pursuant to this section, damages shall be awarded as provided by subdivision (b) of Section 52.

(c) Nothing in this section shall be construed to limit application of any other remedies or rights provided under the law.

(d) The definition of sexual harassment and the standards for determining liability set forth in this section shall be limited to determining liability only with regard to a cause of action brought under this section. Leg.H. 1994 ch. 710, 1996 ch. 150, 1999 ch. 964.

Ref.: MB Prac. Guide: Landlord-Tenant, Ch. 2; CACI Nos. 3024, 3027; WF-3013, VE-3014 (Matthew Bender).

### §51.10. Riverside County—Housing Discrimination Prohibited Based Upon Age.

(a) Section 51 shall be construed to prohibit a business establishment from discriminating in the sale or rental of housing based upon age. A business establishment may establish and preserve housing for senior citizens, pursuant to Section 51.11, except housing as to which Section 51.11 is preempted by the prohibition in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations against discrimination on the basis of familial status.

(b) This section is intended to clarify the holdings in *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal. 3d 721, and *O'Connor v. Village Green Owners Association* (1983) 33 Cal. 3d 790.

(c) This section shall only apply to the County of Riverside. Leg.H. 1996 ch. 1147, 2004 ch. 183 (AB 3082).

### §51.11. Riverside County—Establishing and Preserving Accessible Housing for Senior Citizens.

(a) The Legislature finds and declares that this section is essential to establish and preserve housing for senior citizens. There are senior citizens who need special living environments, and find that there is an inadequate supply of this type of housing in the state.

(b) For the purposes of this section, the following definitions apply:

(1) "Qualifying resident" or "senior citizen" means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

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(2) "Qualified permanent resident" means a person who meets both of the following requirements:

(A) Was residing with the qualifying resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen.

(B) Was 45 years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the qualifying resident or senior citizen.

(3) "Qualified permanent resident" also means a disabled person or person with a disabling illness or injury who is a child or grandchild of the senior citizen or a qualified permanent resident as defined in paragraph (2) who needs to live with the senior citizen or qualified permanent resident because of the disabling condition, illness, or injury. For purposes of this section, "disabled" means a person who has a disability as defined in subdivision (b) of Section 54. A "disabling injury or illness" means an illness or injury which results in a condition meeting the definition of disability set forth in subdivision (b) of Section 54.

(A) For any person who is a qualified permanent resident under paragraph (3) whose disabling condition ends, the owner, board of directors, or other governing body may require the formerly disabled resident to cease residing in the development upon receipt of six months' written notice; provided, however, that the owner, board of directors, or other governing body may allow the person to remain a resident for up to one year, after the disabling condition ends.

(B) The owner, board of directors, or other governing body of the senior citizen housing development may take action to prohibit or terminate occupancy by a person who is a qualified permanent resident under paragraph (3) if the owner, board of directors, or other governing body finds, based on credible and objective evidence, that the person is likely to pose a significant threat to the health or safety of others that cannot be ameliorated by means of a reasonable accommodation; provided, however, that action to prohibit or terminate the occupancy may be taken only after doing both of the following:

(i) Providing reasonable notice to and an opportunity to be heard for the disabled person whose occupancy is being challenged, and reasonable notice to the coresident parent or grandparent of that person.

(ii) Giving due consideration to the relevant, credible, and objective information provided in that hearing. The evidence shall be taken and held in a confidential manner, pursuant to a closed session, by the owner, board of directors, or other governing body in order to preserve the privacy of the affected persons.

The affected persons shall be entitled to have present at the hearing an attorney or any other person authorized by them to speak on their behalf or to assist them in the matter.

(4) "Senior citizen housing development" means a residential development developed with more than 20 units as a senior community by its developer and zoned as a senior community by a local governmental entity, or characterized as a senior community in its governing documents, as these are defined in Section 1351, or qualified as a senior community under the federal Fair Housing Amendments Act of 1988, as amended. Any

senior citizen housing development which is required to obtain a public report under Section 11010 of the Business and Professions Code and which submits its application for a public report after July 1, 2001, shall be required to have been issued a public report as a senior citizen housing development under Section 11010.05 of the Business and Professions Code.

(5) "Dwelling unit" or "housing" means any residential accommodation other than a mobilehome.

(6) "Cohabitant" refers to persons who live together as husband and wife, or persons who are domestic partners within the meaning of Section 297 of the Family Code.

(7) "Permitted health care resident" means a person hired to provide live-in, long-term, or terminal health care to a qualifying resident, or a family member of the qualifying resident providing that care. For the purposes of this section, the care provided by a permitted health care resident must be substantial in nature and must provide either assistance with necessary daily activities or medical treatment, or both.

A permitted health care resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident in the absence of the senior citizen from the dwelling unit only if both of the following are applicable:

(A) The senior citizen became absent from the dwelling due to hospitalization or other necessary medical treatment and expects to return to his or her residence within 90 days from the date the absence began.

(B) The absent senior citizen or an authorized person acting for the senior citizen submits a written request to the owner, board of directors, or governing board stating that the senior citizen desires that the permitted health care resident be allowed to remain in order to be present when the senior citizen returns to reside in the development.

Upon written request by the senior citizen or an authorized person acting for the senior citizen, the owner, board of directors, or governing board shall have the discretion to allow a permitted health care resident to remain for a time period longer than 90 days from the date that the senior citizen's absence began, if it appears that the senior citizen will return within a period of time not to exceed an additional 90 days.

(c) The covenants, conditions, and restrictions and other documents or written policy shall set forth the limitations on occupancy, residency, or use on the basis of age. Any such limitation shall not be more exclusive than to require that one person in residence in each dwelling unit may be required to be a senior citizen and that each other resident in the same dwelling unit may be required to be a qualified permanent resident, a permitted health care resident, or a person under 55 years of age whose occupancy is permitted under subdivision (g) of this section or subdivision (b) of Section 51.12. That limitation may be less exclusive, but shall at least require that the persons commencing any occupancy of a dwelling unit include a senior citizen who intends to reside in the unit as his or her primary residence on a permanent basis. The application of the rules set forth in this subdivision regarding limitations on occupancy may result in less than all of the dwellings being actually occupied by a senior citizen.

(d) The covenants, conditions, and restrictions or

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other documents or written policy shall permit temporary residency, as a guest of a senior citizen or qualified permanent resident, by a person of less than 55 years of age for periods of time, not more than 60 days in any year, that are specified in the covenants, conditions, and restrictions or other documents or written policy.

(e) Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the qualifying resident, any qualified permanent resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident. This subdivision shall not apply to a permitted health care resident.

(f) The covenants, conditions, and restrictions or other documents or written policies applicable to any condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential property that contained age restrictions on January 1, 1984, shall be enforceable only to the extent permitted by this section, notwithstanding lower age restrictions contained in those documents or policies.

(g) Any person who has the right to reside in, occupy, or use the housing or an unimproved lot subject to this section on or after January 1, 1985, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the enactment of this section by Chapter 1147 of the Statutes of 1996.

(h) A housing development may qualify as a senior citizen housing development under this section even though, as of January 1, 1997, it does not meet the definition of a senior citizen housing development specified in subdivision (b), if the development complies with that definition for every unit that becomes occupied after January 1, 1997, and if the development was once within that definition, and then became noncompliant with the definition as the result of any one of the following:

(1) The development was ordered by a court or a local, state, or federal enforcement agency to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development.

(2) The development received a notice of a pending or proposed action in, or by, a court, or a local, state, or federal enforcement agency, which action could have resulted in the development being ordered by a court or a state or federal enforcement agency to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development.

(3) The development agreed to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development by entering into a stipulation, conciliation agreement, or settlement agreement with a local, state, or federal enforcement agency or with a private party who had filed, or indicated an intent to file, a complaint against the development with a local, state, or federal enforcement agency, or file an action in a court.

(4) The development allowed persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development on the advice of counsel in order to prevent the possibility of an action being filed by a private party or by a local, state, or federal enforcement agency.

(i) The covenants, conditions, and restrictions or other documents or written policy of the senior citizen housing development shall permit the occupancy of a dwelling unit by a permitted health care resident during any period that the person is actually providing live-in, long-term, or hospice health care to a qualifying resident for compensation.

(j) This section shall only apply to the County of Riverside. **Leg.H.** 1996 ch. 1147, 1999 ch. 324, 2000 ch. 1004 §5.

Ref.: Cal. Fms. Pl. & Pr., Ch. 117, "Civil Rights: Housing Discrimination."

### **§51.12. Riverside County—Continuing Occupancy of Certain Exempt Housing.**

(a) The Legislature finds and declares that the requirements for senior housing under Sections 51.10 and 51.11 are more stringent than the requirements for that housing under the federal Fair Housing Amendments Act of 1988 (Public Law 100-430).

(b) Any person who resided in, occupied, or used, prior to January 1, 1990, a dwelling in a senior citizen housing development which relied on the exemption to the special design requirement provided by Section 51.4 as that section read prior to January 1, 2001, shall not be deprived of the right to continue that residency, or occupancy, or use as the result of the changes made to this section by the enactment of Senate Bill 1382 or Senate Bill 2011 at the 1999-2000 Regular Session of the Legislature.

(c) This section shall only apply to the County of Riverside. **Leg.H.** 1996 ch. 1147, 2000 ch. 1004.

### **§52. Penalty for Discrimination.**

(a) Whoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to Section 51.5, 51.5, or 51.6, is liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than four thousand dollars (\$4,000), and any attorney's fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 51, 51.5, or 51.6.

(b) Whoever denies the right provided by Section 51.7 or 51.9, or aids, incites, or conspires in that denial, is liable for each and every offense for the actual damages suffered by any person denied that right and, in addition, the following:

(1) An amount to be determined by a jury, or a court sitting without a jury, for exemplary damages.

(2) A civil penalty of twenty-five thousand dollars (\$25,000) to be awarded to the person denied the right provided by Section 51.7 in any action brought by the person denied the right, or by the Attorney General, a district attorney, or a city attorney. An action for that penalty brought pursuant to Section 51.7 shall be commenced within three years of the alleged practice.

(3) Attorney's fees as may be determined by the court.

(c) Whenever there is reasonable cause to believe that any person or group of persons is engaged in conduct of resistance to the full enjoyment of any of the rights described in this section, and that conduct is of that nature

and is intended to deny the full exercise of those rights, the Attorney General, any district attorney or city attorney, or any person aggrieved by the conduct may bring a civil action in the appropriate court by filing with it a complaint. The complaint shall contain the following:

(1) The signature of the officer, or, in his or her absence, the individual acting on behalf of the officer, or the signature of the person aggrieved.

(2) The facts pertaining to the conduct.

(3) A request for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for the conduct, as the complainant deems necessary to ensure the full enjoyment of the rights described in this section.

(d) Whenever an action has been commenced in any court seeking relief from the denial of equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States on account of race, color, religion, sex, national origin, or disability, the Attorney General or any district attorney or city attorney for or in the name of the people of the State of California may intervene in the action upon timely application if the Attorney General or any district attorney or city attorney certifies that the case is of general public importance. In that action, the people of the State of California shall be entitled to the same relief as if it had instituted the action.

(e) Actions brought pursuant to this section are independent of any other actions, remedies, or procedures that may be available to an aggrieved party pursuant to any other law.

(f) Any person claiming to be aggrieved by an alleged unlawful practice in violation of Section 51 or 51.7 may also file a verified complaint with the Department of Fair Employment and Housing pursuant to Section 12948 of the Government Code.

(g) This section does not require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor does this section augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

(h) For the purposes of this section, "actual damages" means special and general damages. This subdivision is declaratory of existing law. Leg. H., 1905 p. 553, 1919 p. 309, 1923 ch. 235, 1959 ch. 1866, 1974 ch. 1193, 1976 chs. 366, 1293, 1978 ch. 1212, 1981 ch. 521, effective September 16, 1981, 1986 ch. 244, 1987 ch. 159, 1989 ch. 459, 1991 chs. 607, 839 §2, 1992 ch. 913, 1994 ch. 535, 1998 ch. 195, 1999 ch. 964, 2000 ch. 98, 2001 ch. 261, 2005 ch. 123 (AB 378) §1.

1991 Note: It is the intent of the Legislature to modify the prerequisite for injunctive relief under Section 52 of the Civil Code. By providing a civil remedy for the classes of persons specifically identified in Sections 51, 51.7, and 52 of the Civil Code, the Legislature does not intend to limit the availability of this remedy for any other form of discrimination which is prohibited by these sections. Stats. 1991 ch. 839 §3.

Ref.: Cal. Fms Pl. & Pr., Ch. 116, "Civil Rights: Discrimination in Business Establishments," Ch. 117A, "Civil Rights:

Interference With Civil Rights by Threats, Intimidation, Coercion or Violence"; W. Cal. Pro., "Pleading" §137; W. Cal. Sum., "Constitutional Law" §§895-898, 906, 907, 910, 914, 957, 959, "Torts" §§303, 1570; CACI Nos. 3020, 3021, 3023, 3025-3027, VF-3010 (Matthew Bender).

### §52.1. Interference With Exercise of Civil Rights—Remedies.

(a) If a person or persons, whether or not acting under color of law, interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state, the Attorney General, or any district attorney or city attorney may bring a civil action for injunctive and other appropriate equitable relief in the name of the people of the State of California, in order to protect the peaceable exercise or enjoyment of the right or rights secured. An action brought by the Attorney General, any district attorney, or any city attorney may also seek a civil penalty of twenty-five thousand dollars (\$25,000). If this civil penalty is requested, it shall be assessed individually against each person who is determined to have violated this section and the penalty shall be awarded to each individual whose rights under this section are determined to have been violated.

(b) Any individual whose exercise or enjoyment of rights secured by the Constitution or laws of the United States, or of rights secured by the Constitution or laws of this state, has been interfered with, or attempted to be interfered with, as described in subdivision (a), may institute and prosecute in his or her own name and on his or her own behalf a civil action for damages, including, but not limited to, damages under Section 52, injunctive relief, and other appropriate equitable relief to protect the peaceable exercise or enjoyment of the right or rights secured.

(c) An action brought pursuant to subdivision (a) or (b) may be filed either in the superior court for the county in which the conduct complained of occurred or in the superior court for the county in which a person whose conduct complained of resides or has his or her place of business. An action brought by the Attorney General pursuant to subdivision (a) also may be filed in the superior court for any county wherein the Attorney General has an office, and in that case, the jurisdiction of the court shall extend throughout the state.

(d) If a court issues a temporary restraining order or a preliminary or permanent injunction in an action brought pursuant to subdivision (a) or (b), ordering a defendant to refrain from conduct or activities, the order issued shall include the following statement: VIOLATION OF THIS ORDER IS A CRIME PUNISHABLE UNDER SECTION 422.77 OF THE PENAL CODE.

(e) The court shall order the plaintiff or the attorney for the plaintiff to deliver, or the clerk of the court to mail, two copies of any order, extension, modification, or termination thereof granted pursuant to this section, by the close of the business day on which the order, extension, modification, or termination was granted, to each local law enforcement agency having jurisdiction over the residence of the plaintiff and any other locations where

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the court determines that acts of violence against the plaintiff are likely to occur. Those local law enforcement agencies shall be designated by the plaintiff or the attorney for the plaintiff. Each appropriate law enforcement agency receiving any order, extension, or modification of any order issued pursuant to this section shall serve forthwith one copy thereof upon the defendant. Each appropriate law enforcement agency shall provide to any law enforcement officer responding to the scene of reported violence, information as to the existence of, terms, and current status of, any order issued pursuant to this section.

(f) A court shall not have jurisdiction to issue an order or injunction under this section, if that order or injunction would be prohibited under Section 527.3 of the Code of Civil Procedure.

(g) An action brought pursuant to this section is independent of any other action, remedy, or procedure that may be available to an aggrieved individual under any other provision of law, including, but not limited to, an action, remedy, or procedure brought pursuant to Section 51.7.

(h) In addition to any damages, injunction, or other equitable relief awarded in an action brought pursuant to subdivision (b), the court may award the petitioner or plaintiff reasonable attorney's fees.

(i) A violation of an order described in subdivision (d) may be punished either by prosecution under Section 422.77 of the Penal Code, or by a proceeding for contempt brought pursuant to Title 5 (commencing with Section 1209) of Part 3 of the Code of Civil Procedure. However, in any proceeding pursuant to the Code of Civil Procedure, if it is determined that the person proceeded against is guilty of the contempt charged, in addition to any other relief, a fine may be imposed not exceeding one thousand dollars (\$1,000), or the person may be ordered imprisoned in a county jail not exceeding six months, or the court may order both the imprisonment and fine.

(j) Speech alone is not sufficient to support an action brought pursuant to subdivision (a) or (b), except upon a showing that the speech itself threatens violence against a specific person or group of persons, and the person or group of persons against whom the threat is directed reasonably fears that, because of the speech, violence will be committed against them or their property and that the person threatening violence had the apparent ability to carry out the threat.

(k) No order issued in any proceeding brought pursuant to subdivision (a) or (b) shall restrict the content of any person's speech. An order restricting the time, place, or manner of any person's speech shall do so only to the extent reasonably necessary to protect the peaceable exercise or enjoyment of constitutional or statutory rights, consistent with the constitutional rights of the person sought to be enjoined. **Leg.H.** 1987 ch. 1277, 1990 ch. 392, 1991 ch. 607, 2000 ch. 98, 2001 ch. 261, 2002 ch. 784 (SB 1316), 2004 ch. 700 (SB 1234).

**2000 Note:** (a) The Legislature hereby finds and declares all of the following:

(1) Section 52.1 of the Civil Code guarantees the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state without regard to his or her membership in a protected class identified by its race, color, religion, or sex, among other things.

(2) The decision in *Boccatto v. City of Hermosa Beach* (1994) 29 Cal.App.4th 1797 misconstrued Section 52.1 of the Civil Code to require that an individual who brings an action, or on whose behalf an action is brought, pursuant to that section, be a member of one of those specified protected classes.

(b) It is the intent of the Legislature in enacting this act to clarify that an action brought pursuant to Section 52.1 of the Civil Code does not require the individual whose rights are secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of California to be a member of a protected class identified by its race, color, religion, or sex, among other things. **Stats.** 2000 ch. 98 §1.

**Ref.:** Cal. Fms Pl. & Pr., Ch. 117A, "Civil Rights: Interference With Civil Rights by Threats, Intimidation, Coercion or Violence"; W. Cal. Sum., "Constitutional Law" §895; CACI Nos. 3025, VF-3015 (Matthew Bender).

### §52.2. Court of Competent Jurisdiction for Certain Actions.

An action pursuant to Section 52 or 54.3 may be brought in any court of competent jurisdiction. A "court of competent jurisdiction" shall include small claims court if the amount of the damages sought in the action does not exceed [1] the jurisdictional limits stated in Sections 116.220 and 116.221 of the Code of Civil Procedure. **Leg.H.** 1998 ch. 195, 2006 ch. 167 (AB 2618) §1.

§52.2. 2006 Deletes. [1] five thousand dollars (\$5,000)

**Ref.:** Rutter Civ. P. Before Trial, 3:42.

### §52.3. Law Enforcement Officers Shall Not Deprive Individuals of Constitutionally Protected Rights, Privileges, or Immunities.

(a) No governmental authority, or agent of a governmental authority, or person acting on behalf of a governmental authority, shall engage in a pattern or practice of conduct by law enforcement officers that deprives any person of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States or by the Constitution or laws of California.

(b) The Attorney General may bring a civil action in the name of the people to obtain appropriate equitable and declaratory relief to eliminate the pattern or practice of conduct specified in subdivision (a), whenever the Attorney General has reasonable cause to believe that a violation of subdivision (a) has occurred. **Leg.H.** 2000 ch. 622.

**Ref.:** Cal. Fms Pl. & Pr., Ch. 113, "Civil Rights: The Post-Civil War Civil Rights Statutes."

### §52.4. Action for Damages Against Party Responsible for Gender Violence.

(a) Any person who has been subjected to gender violence may bring a civil action for damages against any responsible party. The plaintiff may seek actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief. A prevailing plaintiff may also be awarded attorney's fees and costs.

(b) An action brought pursuant to this section shall be commenced within three years of the act, or if the victim was a minor when the act occurred, within eight years after the date the plaintiff attains the age of majority or within three years after the date the plaintiff discovers or reasonably should have discovered the psychological

injury or illness occurring after the age of majority that was caused by the act, whichever date occurs later.

(c) For purposes of this section, "gender violence," is a form of sex discrimination and means any of the following:

(1) One or more acts that would constitute a criminal offense under state law that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, committed at least in part based on the gender of the victim, whether or not those acts have resulted in criminal complaints, charges, prosecution, or conviction.

(2) A physical intrusion or physical invasion of a sexual nature under coercive conditions, whether or not those acts have resulted in criminal complaints, charges, prosecution, or conviction.

(d) Notwithstanding any other laws that may establish the liability of an employer for the acts of an employee, this section does not establish any civil liability of a person because of his or her status as an employer, unless the employer personally committed an act of gender violence. Leg.H. 2002 ch. 842 (AB 1928).

#### §52.5. Action by Victim of Human Trafficking.

(a) A victim of human trafficking, as defined in Section 236.1 of the Penal Code, may bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief. A prevailing plaintiff may also be awarded attorney's fees and costs.

(b) In addition to the remedies specified herein, in any action under subdivision (a), the plaintiff may be awarded up to three times his or her actual damages or ten thousand dollars (\$10,000), whichever is greater. In addition, punitive damages may also be awarded upon proof of the defendant's malice, oppression, fraud, or duress in committing the act of human trafficking.

(c) An action brought pursuant to this section shall be commenced within five years of the date on which the trafficking victim was freed from the trafficking situation, or if the victim was a minor when the act of human trafficking against the victim occurred, within eight years after the date the plaintiff attains the age of majority.

(d) If a person entitled to sue is under a disability at the time the cause of action accrues, so that it is impossible or impracticable for him or her to bring an action, then the time of the disability is not part of the time limited for the commencement of the action. Disability will toll the running of the statute of limitation for this action.

(1) Disability includes being a minor, insanity, imprisonment, or other incapacity or incompetence.

(2) The statute of limitations shall not run against an incompetent or minor plaintiff simply because a guardian ad litem has been appointed. A guardian ad litem's failure to bring a plaintiff's action within the applicable limitation period will not prejudice the plaintiff's right to do so after his or her disability ceases.

(3) A defendant is estopped to assert a defense of the statute of limitations when the expiration of the statute is due to conduct by the defendant inducing the plaintiff

to delay the filing of the action, or due to threats made by the defendant causing duress upon the plaintiff.

(4) The suspension of the statute of limitations due to disability, lack of knowledge, or estoppel applies to all other related claims arising out of the trafficking situation.

(5) The running of the statute of limitations is postponed during the pendency of any criminal proceedings against the victim.

(e) The running of the statute of limitations may be suspended where a person entitled to sue could not have reasonably discovered the cause of action due to circumstances resulting from the trafficking situation, such as psychological trauma, cultural and linguistic isolation, and the inability to access services.

(f) A prevailing plaintiff may also be awarded reasonable attorney's fees and litigation costs including, but not limited to, expert witness fees and expenses as part of the costs.

(g) Any restitution paid by the defendant to the victim shall be credited against any judgment, award, or settlement obtained pursuant to this section. Any judgment, award, or settlement obtained pursuant to an action under this section shall be subject to the provisions of Section 13963 of the Government Code.

(h) Any civil action filed under this section shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim. As used in this section, a "criminal action" includes investigation and prosecution, and is pending until a final adjudication in the trial court, or dismissal. Leg.H. 2005 ch. 240 (AB 22) §2.

**2005 Note:** Nothing in this act shall be construed as prohibiting or precluding prosecution under any other provision of law or to prevent punishment pursuant to any other provision of law that imposes a greater or more severe punishment than provided for in this act. Stats. 2005 ch. 240 (AB 22) §13.

#### §53. Discriminatory Restrictions on Ownership or Use of Real Property Void.

(a) Every provision in a written instrument relating to real property that purports to forbid or restrict the conveyance, encumbrance, leasing, or mortgaging of that real property to any person because of any characteristic listed or defined in subdivision (b) or (e) of Section 51 is void, and every restriction or prohibition as to the use or occupation of real property because of any characteristic listed or defined in subdivision (b) or (e) of Section 51 is void.

(b) Every restriction or prohibition, whether by way of covenant, condition upon use or occupation, or upon transfer of title to real property, which restriction or prohibition directly or indirectly limits the acquisition, use or occupation of that property because of any characteristic listed or defined in subdivision (b) or (e) of Section 51 is void.

(c) In any action to declare that a restriction or prohibition specified in subdivision (a) or (b) is void, the court shall take judicial notice of the recorded instrument or instruments containing the prohibitions or restrictions in the same manner that it takes judicial notice of the matters listed in Section 452 of the Evidence Code. Leg.H. 1961 ch. 1877, 1965 ch. 299, operative January

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1967, 1974 ch. 1193, 1987 ch. 159, 1992 ch. 913, 2005 ch. 420 (AB 1400) §7.

**2005 Notes:** This act shall be known and may be cited as "The Civil Rights Act of 2005." Stats. 2005 ch. 420 (AB 1400) §1.

The Legislature affirms that the bases of discrimination prohibited by the Unruh Civil Rights Act include, but are not limited to, marital status and sexual orientation, as defined herein. By specifically enumerating these bases in the Unruh Civil Rights Act, the Legislature intends to clarify the existing law, rather than to change the law, as well as the principle that the bases enumerated in the act are illustrative rather than restrictive. Stats. 2005 ch. 420 (AB 1400) §2(c).

It is the intent of the Legislature that the amendments made to the Unruh Civil Rights Act by this act do not affect the California Supreme Court's rulings in *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721 and *O'Connor v. Village Green Owners Association* (1983) 33 Cal.3d 790. Stats. 2005 ch. 420 (AB 1400) §2(d).

**Ref.:** Cal. Fms. Pl. & Pr., Ch. 116, "Civil Rights: Discrimination in Business Establishments," Ch. 117, "Civil Rights: Housing Discrimination," Ch. 184, "Deeds."

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## Proposition 215: Text of Proposed Law

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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.

### PROPOSED LAW

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.*

SEC. 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 D2 . 188

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application, and to this end the provisions of this measure are severable.

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Senate Bill No. 420

CHAPTER 875

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.

[Approved by Governor October 12, 2003. Filed  
with Secretary of State October 12, 2003.]

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 nondiversion 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 decisionmaker 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 schoolbus.

(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 nondiversion 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.

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# ATTACHMENT #13

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West's Ann.Cal.Health & Safety Code § 11362.5

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Effective: [See Text Amendments]

WEST'S ANNOTATED CALIFORNIA CODES  
HEALTH AND SAFETY CODE  
DIVISION 10. UNIFORM CONTROLLED SUBSTANCES ACT  
CHAPTER 6. OFFENSES AND PENALTIES  
ARTICLE 2. MARIJUANA  
→ § 11362.5. Medical use

(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.

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ATTACHMENT NO. 6.1

West's Ann.Cal.Health & Safety Code § 11362.7

**C**

**Effective: January 01, 2004**

WEST'S ANNOTATED CALIFORNIA CODES  
HEALTH AND SAFETY CODE  
DIVISION 10. UNIFORM CONTROLLED SUBSTANCES ACT  
CHAPTER 6. OFFENSES AND PENALTIES  
ARTICLE 2.5. MEDICAL MARIJUANA PROGRAM  
→ § 11362.7. Definitions

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.

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West's Ann.Cal.Health & Safety Code § 11362.7

(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.

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West's Ann. Cal. Health & Safety Code § 11362.71

C

Effective: January 01, 2004

WEST'S ANNOTATED CALIFORNIA CODES  
HEALTH AND SAFETY CODE  
DIVISION 10. UNIFORM CONTROLLED SUBSTANCES ACT  
CHAPTER 6. OFFENSES AND PENALTIES  
ARTICLE 2.5. MEDICAL MARIJUANA PROGRAM

→ § 11362.71. Establishment and maintenance of voluntary program for issuance of identification cards to qualified patients; access to necessary information; duties of county health departments; arrests for possession, transportation, delivery or cultivation

(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.

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ATTACHMENT NO. 6.4

West's Ann.Cal.Health & Safety Code § 11362.71

(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.

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END OF DOCUMENT

West's Ann.Cal.Health & Safety Code § 11362.715

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Effective: January 01, 2004

WEST'S ANNOTATED CALIFORNIA CODES  
HEALTH AND SAFETY CODE  
DIVISION 10. UNIFORM CONTROLLED SUBSTANCES ACT  
CHAPTER 6. OFFENSES AND PENALTIES  
ARTICLE 2.5. MEDICAL MARIJUANA PROGRAM

→§ 11362.715. Fees for identification cards; application for identification cards; legal representatives

(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 decisionmaker 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.

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ATTACHMENT NO. 6.6

West's Ann.Cal.Health & Safety Code § 11362.72

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WEST'S ANNOTATED CALIFORNIA CODES  
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→§ 11362.72. Duties of county health department or county's designee after receipt of application for identification card; approval of application; issuance of card

(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.

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ATTACHMENT NO. 6.7

West's Ann.Cal.Health & Safety Code § 11362.72

(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.

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ATTACHMENT NO. 6.8

West's Ann.Cal.Health & Safety Code § 11362.735

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WEST'S ANNOTATED CALIFORNIA CODES  
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→ § 11362.735. Serially numbered identification cards; contents; copy given to primary caregiver

(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.

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ATTACHMENT NO. 6.9

West's Ann.Cal.Health & Safety Code § 11362.74

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→ § 11362.74. Denial of applications; reasons; reapplication after denial; appeals

(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.

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ATTACHMENT NO. 6.10

West's Ann.Cal.Health & Safety Code § 11362.745

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→ § 11362.745. Annual renewal of identification cards

- (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.

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**→§ 11362.755. Application and renewal fees; reduced fees for Medi-Cal beneficiaries**

(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.

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ATTACHMENT NO. 6.12

West's Ann.Cal.Health & Safety Code § 11362.76

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→§ 11362.76. Duties and responsibilities of persons to possess identification cards; expiration of card for failure to comply

(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.

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ATTACHMENT NO. 6.13

West's Ann.Cal.Health & Safety Code § 11362.765

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WEST'S ANNOTATED CALIFORNIA CODES  
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→ § 11362.765. Criminal liability; application of section; assistance and compensation

(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.

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**→ § 11362.77. Amount qualified patients or caregivers may possess; guidelines; modifications to possession and cultivation limits by Attorney General**

- (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.

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ATTACHMENT NO. 6.15

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WEST'S ANNOTATED CALIFORNIA CODES  
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**→§ 11362.775. Criminal sanctions against qualified patients, primary caregivers, and persons with valid identification cards**

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.

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ATTACHMENT NO. 616

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**→ § 11362.78. Refusal to accept identification card issued by department; fraud**

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.

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ATTACHMENT NO. 6.17

West's Ann.Cal.Health & Safety Code § 11362.785

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**→§ 11362.785. Necessity to accommodate medical use of marijuana at places of employment or penal institutions; permission for prisoners or persons under arrest to apply for identification card; reimbursement for medical use of marijuana**

(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.

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ATTACHMENT NO. 6.18

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→§ 11362.79. **Places where medical use of marijuana is prohibited**

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 schoolbus.
- (d) While in a motor vehicle that is being operated.
- (e) While operating a boat.

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**→§ 11362.795. Confirmation by court that criminal defendant is allowed to use marijuana for medical purposes while on probation, released on bail, or on parole; statement of court's decision and reasons; administrative appeal of decision**

(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.

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**→ § 11362.8. Civil penalty or other disciplinary action against licensee based on role as designated primary caregiver; application of section**

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.

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→§ 11362.81. Penalties; application of section; development and adoption of guidelines to ensure security and nondiversion of marijuana grown for medical use

(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 nondiversion of marijuana grown for medical use by patients qualified under the Compassionate Use Act of 1996.

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→§ 11362.82. Separate and distinct provisions

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.

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→§ 11362.83. Adoption and enforcement of laws consistent with article

Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.

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→§ 11362.9. California Marijuana Research Program; legislative intent; creation; research proposals; establishment; powers and duties; Scientific Advisory Council

(a)(1) It is the intent of the Legislature that the state commission objective scientific research by the premier research institute of the world, the University of California, regarding the efficacy and safety of administering marijuana as part of medical treatment. If the Regents of the University of California, by appropriate resolution, accept this responsibility, the University of California shall create a program, to be known as the California Marijuana Research Program.

(2) The program shall develop and conduct studies intended to ascertain the general medical safety and efficacy of marijuana and, if found valuable, shall develop medical guidelines for the appropriate administration and use of marijuana.

(b) The program may immediately solicit proposals for research projects to be included in the marijuana studies. Program requirements to be used when evaluating responses to its solicitation for proposals, shall include, but not be limited to, all of the following:

(1) Proposals shall demonstrate the use of key personnel, including clinicians or scientists and support personnel, who are prepared to develop a program of research regarding marijuana's general medical efficacy and safety.

(2) Proposals shall contain procedures for outreach to patients with various medical conditions who may be suitable participants in research on marijuana.

(3) Proposals shall contain provisions for a patient registry.

(4) Proposals shall contain provisions for an information system that is designed to record information about possible study participants, investigators, and clinicians, and deposit and analyze data that accrues as part of clinical trials.

(5) Proposals shall contain protocols suitable for research on marijuana, addressing patients diagnosed with the acquired immunodeficiency syndrome (AIDS) or the human immunodeficiency virus (HIV), cancer, glaucoma, or seizures or muscle spasms associated with a chronic, debilitating condition. The proposal may also include research on other serious illnesses, provided that resources are available and medical information justifies the research.

(6) Proposals shall demonstrate the use of a specimen laboratory capable of housing plasma, urine, and other specimens necessary to study the concentration of cannabinoids in various tissues, as well as housing specimens for studies of toxic effects of marijuana.

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## West's Ann.Cal.Health &amp; Safety Code § 11362.9

(7) Proposals shall demonstrate the use of a laboratory capable of analyzing marijuana, provided to the program under this section, for purity and cannabinoid content and the capacity to detect contaminants.

(c) In order to ensure objectivity in evaluating proposals, the program shall use a peer review process that is modeled on the process used by the National Institutes of Health, and that guards against funding research that is biased in favor of or against particular outcomes. Peer reviewers shall be selected for their expertise in the scientific substance and methods of the proposed research, and their lack of bias or conflict of interest regarding the applicants or the topic of an approach taken in the proposed research. Peer reviewers shall judge research proposals on several criteria, foremost among which shall be both of the following:

(1) The scientific merit of the research plan, including whether the research design and experimental procedures are potentially biased for or against a particular outcome.

(2) Researchers' expertise in the scientific substance and methods of the proposed research, and their lack of bias or conflict of interest regarding the topic of, and the approach taken in, the proposed research.

(d) If the program is administered by the Regents of the University of California, any grant research proposals approved by the program shall also require review and approval by the research advisory panel.

(e) It is the intent of the Legislature that the program be established as follows:

(1) The program shall be located at one or more University of California campuses that have a core of faculty experienced in organizing multidisciplinary scientific endeavors and, in particular, strong experience in clinical trials involving psychopharmacologic agents. The campuses at which research under the auspices of the program is to take place shall accommodate the administrative offices, including the director of the program, as well as a data management unit, and facilities for storage of specimens.

(2) When awarding grants under this section, the program shall utilize principles and parameters of the other well-tested statewide research programs administered by the University of California, modeled after programs administered by the National Institutes of Health, including peer review evaluation of the scientific merit of applications.

(3) The scientific and clinical operations of the program shall occur, partly at University of California campuses, and partly at other postsecondary institutions, that have clinicians or scientists with expertise to conduct the required studies. Criteria for selection of research locations shall include the elements listed in subdivision (b) and, additionally, shall give particular weight to the organizational plan, leadership qualities of the program director, and plans to involve investigators and patient populations from multiple sites.

(4) The funds received by the program shall be allocated to various research studies in accordance with a scientific plan developed by the Scientific Advisory Council. As the first wave of studies is completed, it is anticipated that the program will receive requests for funding of additional studies. These requests shall be reviewed by the Scientific Advisory Council.

(5) The size, scope, and number of studies funded shall be commensurate with the amount of appropriated and available program funding.

(f) All personnel involved in implementing approved proposals shall be authorized as required by Section 11604.

(g) Studies conducted pursuant to this section shall include the greatest amount of new scientific research possible on the medical uses of, and medical hazards associated with, marijuana. The program shall consult with the Research Advisory Panel analogous agencies in other states, and appropriate federal agencies in an attempt to

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West's Ann.Cal.Health & Safety Code § 11362.9

avoid duplicative research and the wasting of research dollars.

(h) The program shall make every effort to recruit qualified patients and qualified physicians from throughout the state.

(i) The marijuana studies shall employ state-of-the-art research methodologies.

(j) The program shall ensure that all marijuana used in the studies is of the appropriate medical quality and shall be obtained from the National Institute on Drug Abuse or any other federal agency designated to supply marijuana for authorized research. If these federal agencies fail to provide a supply of adequate quality and quantity within six months of the effective date of this section, the Attorney General shall provide an adequate supply pursuant to Section 11478.

(k) The program may review, approve, or incorporate studies and research by independent groups presenting scientifically valid protocols for medical research, regardless of whether the areas of study are being researched by the committee.

(l)(1) To enhance understanding of the efficacy and adverse effects of marijuana as a pharmacological agent, the program shall conduct focused controlled clinical trials on the usefulness of marijuana in patients diagnosed with AIDS or HIV, cancer, glaucoma, or seizures or muscle spasms associated with a chronic, debilitating condition. The program may add research on other serious illnesses, provided that resources are available and medical information justifies the research. The studies shall focus on comparisons of both the efficacy and safety of methods of administering the drug to patients, including inhalational, tinctural, and oral, evaluate possible uses of marijuana as a primary or adjunctive treatment, and develop further information on optimal dosage, timing, mode of administration, and variations in the effects of different cannabinoids and varieties of marijuana.

(2) The program shall examine the safety of marijuana in patients with various medical disorders, including marijuana's interaction with other drugs, relative safety of inhalation versus oral forms, and the effects on mental function in medically ill persons.

(3) The program shall be limited to providing for objective scientific research to ascertain the efficacy and safety of marijuana as part of medical treatment, and should not be construed as encouraging or sanctioning the social or recreational use of marijuana.

(m)(1) Subject to paragraph (2), the program shall, prior to any approving proposals, seek to obtain research protocol guidelines from the National Institutes of Health and shall, if the National Institutes of Health issues research protocol guidelines, comply with those guidelines.

(2) If, after a reasonable period of time of not less than six months and not more than a year has elapsed from the date the program seeks to obtain guidelines pursuant to paragraph (1), no guidelines have been approved, the program may proceed using the research protocol guidelines it develops.

(n) In order to maximize the scope and size of the marijuana studies, the program may do any of the following:

(1) Solicit, apply for, and accept funds from foundations, private individuals, and all other funding sources that can be used to expand the scope or timeframe of the marijuana studies that are authorized under this section. The program shall not expend more than 5 percent of its General Fund allocation in efforts to obtain money from outside sources.

(2) Include within the scope of the marijuana studies other marijuana research projects that are independently funded and that meet the requirements set forth in subdivisions (a) to (c), inclusive. In no case shall the program

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accept any funds that are offered with any conditions other than that the funds be used to study the efficacy and safety of marijuana as part of medical treatment. Any donor shall be advised that funds given for purposes of this section will be used to study both the possible benefits and detriments of marijuana and that he or she will have no control over the use of these funds.

(o)(1) Within six months of the effective date of this section, the program shall report to the Legislature, the Governor, and the Attorney General on the progress of the marijuana studies.

(2) Thereafter, the program shall issue a report to the Legislature every six months detailing the progress of the studies. The interim reports required under this paragraph shall include, but not be limited to, data on all of the following:

(A) The names and number of diseases or conditions under study.

(B) The number of patients enrolled in each study by disease.

(C) Any scientifically valid preliminary findings.

(p) If the Regents of the University of California implement this section, the President of the University of California shall appoint a multidisciplinary Scientific Advisory Council, not to exceed 15 members, to provide policy guidance in the creation and implementation of the program. Members shall be chosen on the basis of scientific expertise. Members of the council shall serve on a voluntary basis, with reimbursement for expenses incurred in the course of their participation. The members shall be reimbursed for travel and other necessary expenses incurred in their performance of the duties of the council.

(q) No more than 10 percent of the total funds appropriated may be used for all aspects of the administration of this section.

(r) This section shall be implemented only to the extent that funding for its purposes is appropriated by the Legislature in the annual Budget Act.

IMPLEMENTATION

<Implementation of this section is contingent upon funding, by its own terms.>

Current through Ch. 170 of 2007 Reg.Sess. urgency legislation

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END OF DOCUMENT

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ATTACHMENT NO. 6-28

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**ATTACHMENT #14**

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Council/Agency Meeting Held: _____	City Clerk's Signature
Deferred/Continued to: _____	
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date: March 21, 2005	Department ID Number: CA 05-13

**CITY OF HUNTINGTON BEACH  
REQUEST FOR CITY COUNCIL ACTION**

**SUBMITTED TO:** HONORABLE MAYOR CITY COUNCIL MEMBERS

**SUBMITTED BY:** JENNIFER MCGRATH, City Attorney  
KENNETH SMALL, Chief of Police  
HOWARD ZELEFSKY, Director of Planning

**PREPARED BY:** JENNIFER MCGRATH, City Attorney

**SUBJECT:** Amendment to the Zoning and Subdivision Ordinance to include and regulate medical marijuana dispensaries *Ord. No. 3703*

2005 MAR 17 6:10  
HUNTINGTON BEACH, CA  
CITY CLERK  
JENNIFER MCGRATH

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)

**Statement of Issue:** Whether or not to amend the Huntington Beach Zoning and Subdivision Ordinance regulating the establishment and operation of medical marijuana dispensaries.

**Funding Source:** N/A

**Recommended Action:** Adopt Ordinance No. 3703 An Emergency Ordinance Of The City Of Huntington Beach Amending Chapter 204 (Use Classifications) And Chapter 212 (Industrial Districts) Of The Huntington Beach Zoning And Subdivision Ordinance To Include Medical Marijuana Dispensaries.

**Alternative Action(s):** Do not adopt Ordinance No. 3703.

**Analysis:** On February 22, 2005, City staff initiated an ordinance which would have imposed a temporary moratorium on medical marijuana distribution facilities for 45 days. This recommendation was based on adverse effects of the "cannabis clubs" experienced by other cities. After considering the matter and the intent of the California voters in enacting Proposition 215, the Compassionate Use Act, the City Council directed staff to prepare an ordinance regulating the establishment and operation of medical marijuana dispensaries. City Council proposed this ordinance in response to Proposition 215, and its purpose is to assure that dispensaries permitted under Proposition 215 could be legally established in Huntington Beach, while at the same time regulating them so as to ensure that they would not be incompatible with nearby uses.

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ATTACHMENT NO. 7.1

# REQUEST FOR ACTION

MEETING DATE: 3/21/2005

DEPARTMENT ID NUMBER: CA 05-13

The ordinance is designed to regulate the establishment and operation of such clubs known as "medical marijuana dispensaries" in the ordinance.

The general purpose of the ordinance remains to regulate permitting of medical marijuana dispensaries so as to minimize adverse impacts on the surrounding community. This purpose is and must be tempered with compassion and concern for the patients who use these facilities. Proposition 215 expressed the view of the state's voters that these persons should be allowed reasonable access to marijuana for their medical needs. However, Proposition 215 was not clearly drafted and left to local jurisdictions the job of working out the details of its implementation. This ordinance allows patients reasonable access to their medicine and at the same time addresses other concerns of the Huntington Beach community at large by regulating the location of the facilities. Subsequently, staff will prepare an ordinance for City Council review addressing operational criteria. Both of these ordinances will have to be repealed and any facilities in existence will have to close if the United States Supreme Court issues a decision favorable to the Department of Justice in the pending case regarding the application of federal criminal laws to medical marijuana distribution. The current proposed ordinance amends Chapter 212 and 204 of the Huntington Beach Zoning and Subdivision Ordinance by defining and adding medical marijuana dispensaries as a regulated use. Such dispensaries shall now be required to obtain a medical marijuana dispensary permit from the Planning Department and will be subject to the same locational criteria as sex oriented businesses. Accordingly, medical marijuana dispensaries cannot be located outside of industrial zones, cannot be within 500 feet of a residential use, school or park and are subject to other building and locational standards. Attached are two maps which depict the areas in which sex oriented businesses are permitted to show the areas which medical marijuana dispensaries will also be permitted. The evidence that supports the finding contained in the ordinance is set forth in the RCA that accompanied the moratorium ordinance adopted by the City Council on February 22, 2005, and considered by the City Council at that meeting.

**NOTE:** Pursuant to City Charter §501, at least five affirmative votes are required to pass an emergency ordinance to become effective immediately.

**Environmental Status:** N/A

### Attachment(s):

City Clerk's Page Number	No.	Description
3	1.	Ordinance No. <u>3703</u> An Emergency Ordinance Of The City Of Huntington Beach Amending Chapter 204 (Use Classifications) And Chapter 212 (Industrial Districts) Of The Huntington Beach Zoning And Subdivision Ordinance To Include Medical Marijuana Dispensaries
7	2.	Legislative Draft of Chapter 204
20	3.	Legislative Draft of Chapter 212
36	4.	Maps depicting Sensitive Uses South of Bolsa Avenue and East of Gothard Avenue

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ATTACHMENT NO. 7.2

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**ATTACHMENT NO. 1**

ATTACHMENT NO. 736-1B.3

ORDINANCE NO. 3703

AN EMERGENCY ORDINANCE OF THE CITY OF HUNTINGTON BEACH  
AMENDING CHAPTER 204 (USE CLASSIFICATIONS) AND CHAPTER  
212 (INDUSTRIAL DISTRICTS) OF THE HUNTINGTON BEACH ZONING  
AND SUBDIVISION ORDINANCE TO INCLUDE MEDICAL MARIJUANA DISPENSARIES

The City Council of the City of Huntington Beach does hereby ordain and find as follows:

**FINDINGS:** The issuance of permits for medical marijuana dispensaries presents a current and immediate threat to the public health, safety, or welfare, and the approval of permits for such facilities would result in that threat to public health, safety, or welfare, and potential violation of Federal law. This finding is based upon evidence received by the City Council that medical marijuana dispensaries have negative, secondary effects in California cities where they exist and upon the determination by the Federal Appellate Court that such dispensaries are not legal under the criminal statutes of the United States.

**SECTION 1.** That Section 204.10 of the Huntington Beach Zoning and Subdivision Ordinance titled Commercial Use Classifications is hereby amended to add a new subsection R to read as follows:

**R** Medical Marijuana Dispensary or Dispensary. Any facility or location where medical marijuana is made available to and/or distributed by or to three or more of the following: a primary caregiver, a qualified patient, or a person with an identification card, in strict accordance with California Health and Safety Code Section 11362.5 et seq. A "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by this Code or 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 residential hospice, or
6. A home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq.

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**SECTION 2.** Section 212.04 of the Huntington Beach Zoning and Subdivision Ordinance titled IG and IL Districts: Land Use Controls is hereby amended to include in the Use

G-1B.4

ATTACHMENT NO. 7.4

Classification-Commercial Uses, Medical Marijuana Dispensary, to be zoned P (L-13). Subsection L-13 shall read as follows:

L-13 Allowed subject to the following requirements:

- A. A proposed medical marijuana dispensary shall be at least five hundred feet (500') from any residential use, school, park and recreational facility, or any building used for religious assembly (collectively referred to as a "sensitive use") and at least seven hundred fifty feet (750') from another medical marijuana dispensary. For purposes of these requirements, all distances shall be measured from the lot line of the proposed medical marijuana dispensary to the lot line of the sensitive use or the other medical marijuana dispensary. The term "residential use" means any property zoned RL, RM, RMH, RH, RMP, and any properties with equivalent designations under any specific plan.

To determine such distances the applicant shall submit for review a straight line drawing depicting the distances from the lot line of the parcel of land on which the medical marijuana dispensary is proposed which includes all the proposed parking and:

1. the lot line of any other medical marijuana dispensary within seven hundred fifty feet (750') of the lot line of the medical marijuana dispensary; and
  2. the lot line of any building used for religious assembly, school, or park and recreational facility within five hundred (500') feet of the lot line of the medical marijuana dispensary; and
  3. the lot line of any parcel of land zoned RL, RM, RMH, RH, and RMP and any parcels of land with equivalent designations under any specific plans within five hundred feet (500') of the lot line of the proposed medical marijuana dispensary.
- B. Prior to or concurrently with applying for a building permit and/or a certificate of occupancy for the building, the applicant shall submit application for Planning Department Staff Review of a medical marijuana dispensary zoning permit with the drawing described in subsection A, a technical site plan, floor plans and building elevations, and application fee. Within ten (10) days of submittal, the Director shall determine if the application is complete. If the application is deemed incomplete, the applicant may resubmit a completed application within ten (10) days. Within thirty days of receipt of a completed application, the Director shall determine if the application complies with the applicable development and performance standards of the Huntington Beach Zoning and Subdivision Ordinance. Said standards include but are not limited to the following: Chapter 203, Definitions; Chapter 212, Industrial Districts; Chapter 230, Site Standards; Chapter 231, Off-Street Parking & Loading Provisions; Chapter 232, Landscape Improvements; and Chapter 236, Nonconforming Uses and Structures.

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- C. The Director shall grant or deny the application for a medical marijuana dispensary zoning permit for a medical marijuana dispensary. There shall be no administrative appeal from the granting or denial of a permit application thereby permitting the applicant to obtain prompt judicial review.
- D. A medical marijuana dispensary may not apply for a variance pursuant to Chapter 241 nor a special sign permit pursuant to Chapter 233.
- E. A medical marijuana dispensary zoning permit shall become null and void one year after its date of approval unless:
  - 1. Construction has commenced or a Certificate of Occupancy has been issued, whichever comes first; or
  - 2. The use is established.
- F. The validity of a medical marijuana dispensary zoning permit shall not be affected by changes in ownership or proprietorship provided that the new owner or proprietor promptly notifies the Director of the transfer.
- G. A medical marijuana dispensary zoning permit shall lapse if the exercise of rights granted by it is discontinued for 12 consecutive months.

SECTION 3. This ordinance shall become effective immediately upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk

*Jennifer McGrath*  
3/14/05 City Attorney

REVIEWED AND APPROVED:

INITIATED AND APPROVED:

*Janet C. ...*  
City Administrator

*[Signature]*  
Director of Planning

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**ATTACHMENT NO. 2**

G-1B.7  
ATTACHMENT NO. 7.7

**LEGISLATIVE DRAFT**

**Use Classifications**

(3334-6/97, 3378-2/98, 3521-2/02, 3568-9/02, 3669-12/04)

Sections:

- 204.02      Applicability
- 204.04      Uses Not Classified
- 204.06      Residential Use Classifications
- 204.08      Public and Semipublic Use Classifications
- 204.10      Commercial Use Classifications
- 204.12      Industrial Use Classifications
- 204.14      Accessory Use Classifications
- 204.16      Temporary Use Classifications

**204.02      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 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 Director may determine that a specific use shall not be deemed to be within a classification, if its characteristics are substantially different than those typical of uses named within the classification. The Director's decision may be appealed to the Planning Commission. (3334-6/97)

**204.04      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 provisions by a Zoning and Subdivision Ordinance text amendment, as provided in Chapter 247. Such an incorporation shall not be effective unless certified by the Coastal Commission as a Local Coastal Program amendment. (3334-6/97)

**204.06      Residential Use Classifications**

- A.      Day Care, Limited (or Small-Family). Non-medical care and supervision of six or fewer persons, or eight or fewer persons if two of the persons are six years of age or older, on a less than 24-hour basis. Children under the age of 10 years who reside in the home shall be counted for purposes of these limits. This classification includes nursery schools, preschools, and day-care centers for children and adults. (3334-6/97, 3669-12/04)
- B.      Group Residential. Shared living quarters without separate kitchen or bathroom facilities for each room or unit. This classification includes boarding houses, but excludes residential hotels or motels. (3334-6/97)
- C.      Multifamily Residential. Two or more dwelling units on a site. This classification includes manufactured homes. (3334-6/97)

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- D. Residential Alcohol Recovery, Limited. Twenty-four-hour care for no more than six persons suffering from alcohol problems in need of personal services, supervision, protection or assistance. This classification includes only those facilities licensed by the State of California. (3334-6/97)
- E. Residential Care, Limited. Twenty-four-hour non-medical care for 6 or fewer persons in need of personal services, supervision, protection, or assistance essential for sustaining the activities of daily living. This classification includes only those services and facilities licensed by the State of California. (3334-6/97)
- F. Single-Family Residential. Buildings containing one dwelling unit located on a single lot. This classification includes manufactured homes. (3334-6/97)

204.08 Public and Semipublic Use Classifications

- A. Cemetery. Land used or intended to be used for the burial of human remains and dedicated for cemetery purposes. Cemetery purposes include columbariums, crematoriums, mausoleums, and mortuaries operated in conjunction with the cemetery, business and administrative offices, chapels, flower shops, and necessary maintenance facilities. (3334-6/97)
- B. Clubs and Lodges. Meeting, recreational, or social facilities of a private or nonprofit organization primarily for use by members or guests. This classification includes union halls, social clubs and youth centers. (3334-6/97)
- C. Community and Human Service Facilities.
  - 1. Drug Abuse Centers. Facilities offering drop-in services for persons suffering from drug abuse, including treatment and counseling without provision for on-site residence or confinement. (3334-6/97)
  - 2. Primary Health Care. Medical services, including clinics, counseling and referral services, to persons afflicted with bodily or mental disease or injury without provision for on-site residence or confinement. (3334-6/97)
  - 3. Emergency Kitchens. Establishments offering food for the "homeless" and others in need. (3334-6/97)
  - 4. Emergency Shelters. Establishments offering food and shelter programs for "homeless" people and others in need. This classification does not include facilities licensed for residential care, as defined by the State of California, which provide supervision of daily activities. (3334-6/97)
  - 5. Residential Alcohol Recovery, General. Facilities providing 24-hour care for more than six persons suffering from alcohol problems, in need of personal services, supervision, protection or assistance. These facilities may include an inebriate reception center as well as facilities for treatment, training, research, and administrative services for program participants and employees. This classification includes only those facilities licensed by the State of California. (3334-6/97)

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6. Residential Care, General. Twenty-four-hour non-medical care for seven or more persons, including wards of the juvenile court, in need of personal services, supervision, protection, or assistance essential for sustaining the activities of daily living. This classification includes only those facilities licensed by the State of California. (3334-6/97)
- D. Convalescent Facilities. Establishments providing care on a 24-hour basis for persons requiring regular medical attention, but excluding facilities providing surgical or emergency medical services. (3334-6/97)
- E. Cultural Institutions. Nonprofit institutions displaying or preserving objects of interest in one or more of the arts or sciences. This classification includes libraries, museums, and art galleries. (3334-6/97)
- F. Day Care, Large-Family. Non-medical care and supervision for 7 to 12 persons, or up to 14 persons if two of the persons are six years of age or older on a less than 24-hour basis. Children under the age of 10 years who reside in the home shall be counted for purposes of these limits. (3334-6/97, 3669-12/04)
- G. Day Care, General. Non-medical care for 13 or more persons on a less than 24-hour basis. This classification includes nursery schools, preschools, and day-care centers for children or adults. (3334-6/97, 3669-12/04)
- H. Emergency Health Care. Facilities providing emergency medical service with no provision for continuing care on an inpatient basis. (3334-6/97)
- I. Government Offices. Administrative, clerical, or public contact offices of a government agency, including postal facilities, together with incidental storage and maintenance of vehicles. (3334-6/97)
- J. Heliports. Pads and facilities enabling takeoffs and landings by helicopter. (3334-6/97)
- K. Hospitals. Facilities providing medical, surgical, psychiatric, or emergency medical services to sick or injured persons, primarily on an inpatient basis. This classification includes incidental facilities for out-patient treatment, as well as training, research, and administrative services for patients and employees. (3334-6/97)
- L. Maintenance and Service Facilities. Facilities providing maintenance and repair services for vehicles and equipment, and materials storage areas. This classification includes corporation yards, equipment service centers, and similar facilities. (3334-6/97)
- M. Marinas. A boat basin with docks, mooring facilities, supplies and equipment for small boats. (3334-6/97)
- N. Park and Recreation Facilities. Noncommercial parks, playgrounds, recreation facilities, and open spaces. (3334-6/97)
- O. Public Safety Facilities. Facilities for public safety and emergency services, including police and fire protection. (3334-6/97)

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- P. Religious Assembly. Facilities for religious worship and incidental religious education, but not including private schools as defined in this section. (3334-6/97)
- Q. Schools, Public or Private. Educational institutions having a curriculum comparable to that required in the public schools of the State of California. (3334-6/97)
- R. Utilities, Major. Generating plants, electrical substations, above-ground electrical transmission lines, switching buildings, refuse collection, transfer, recycling or disposal facilities, flood control or drainage facilities, water or wastewater treatment plants, transportation or communications utilities, and similar facilities of public agencies or public utilities. (3334-6/97)
- S. Utilities, Minor. Utility facilities that are necessary to support legally established uses and involve only minor structures such as electrical distribution lines, underground water and sewer lines, and recycling and collection containers. (3334-6/97)

204.10 Commercial Use Classifications

- A. Ambulance Services. Provision of emergency medical care or transportation, including incidental storage and maintenance of vehicles as regulated by Chapter 5.20. (3334-6/97, 3378-2/98)
- B. Animal Sales and Services.
  - 1. Animal Boarding. Provision of shelter and care for small animals on a commercial basis. This classification includes activities such as feeding, exercising, grooming, and incidental medical care, and kennels. (3334-6/97)
  - 2. Animal Grooming. Provision of bathing and trimming services for small animals on a commercial basis. This classification includes boarding for a maximum period of 48 hours. (3334-6/97)
  - 3. Animal Hospitals. Establishments where small animals receive medical and surgical treatment. This classification includes only facilities that are entirely enclosed, soundproofed, and air-conditioned. Grooming and temporary (maximum 30 days) boarding of animals are included, if incidental to the hospital use. (3334-6/97)
  - 4. Animals: Retail Sales. Retail sales and boarding of small animals, provided such activities take place within an entirely enclosed building. This classification includes grooming, if incidental to the retail use, and boarding of animals not offered for sale for a maximum period of 48 hours. (3334-6/97)
  - 5. Equestrian Centers. Establishments offering facilities for instruction in horseback riding, including rings, stables, and exercise areas. (3334-6/97)
  - 6. Pet Cemetery. Land used or intended to be used for the burial of animals, ashes or remains of dead animals, including placement or erection of markers, headstones or monuments over such places of burial. (3334-6/97)

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- C. Artists' Studios. Work space for artists and artisans, including individuals practicing one of the fine arts or performing arts, or skilled in an applied art or craft. (3334-6/97)
- D. Banks and Savings and Loans. Financial institutions that provide retail banking services to individuals and businesses. This classification includes only those institutions engaged in the on-site circulation of cash money. It also includes businesses offering check-cashing facilities. (3334-6/97, 3378-2/98)
  - 1. With Drive-up Service. Institutions providing services accessible to persons who remain in their automobiles. (3334-6/97)
- E. Building Materials and Services. Retailing, wholesaling, or rental of building supplies or equipment. This classification includes lumber yards, tool and equipment sales or rental establishments, and building contractors' yards, but excludes establishments devoted exclusively to retail sales of paint and hardware, and activities classified under Vehicle/Equipment Sales and Services. (3334-6/97, 3378-2/98)
- F. Catering Services. Preparation and delivery of food and beverages for off-site consumption without provision for on-site pickup or consumption. (See also Eating and Drinking Establishments.) (3334-6/97, 3378-2/98)
- G. Commercial Filming. Commercial motion picture or video photography at the same location more than six days per quarter of a calendar year. (See also Chapter 5.54, Commercial Photography) (3334-6/97, 3378-2/98)
- H. Commercial Recreation and Entertainment. Provision of participant or spectator recreation or entertainment. This classification includes theaters, sports stadiums and arenas, amusement parks, bowling alleys, billiard parlors and poolrooms as regulated by Chapter 9.32; dance halls as regulated by Chapter 5.28; ice/roller skating rinks, golf courses, miniature golf courses, scale-model courses, shooting galleries, tennis/racquetball courts, health/fitness clubs, pinball arcades or electronic games centers, cyber café having more than 4 coin-operated game machines as regulated by Chapter 9.28; card rooms as regulated by Chapter 9.24; and fortune telling as regulated by Chapter 5.72. (3334-6/97, 3378-2/98, 3669-12/04)
  - 1. Limited. Indoor movie theaters, game centers and performing arts theaters and health/fitness clubs occupying less than 2,500 square feet. (3334-6/97)
- I. Communications Facilities. Broadcasting, recording, and other communication services accomplished through electronic or telephonic mechanisms, but excluding Utilities (Major). This classification includes radio, television, or recording studios; telephone switching centers; telegraph offices; and wireless communication facilities. (3334-6/97, 3378-2/98, 3568-0/02)
- J. Eating and Drinking Establishments. Businesses serving prepared food or beverages for consumption on or off the premises. (3334-6/97, 3378-2/98)
  - 1. With Fast-Food or Take-Out Service. Establishments where patrons order and pay for their food at a counter or window before it is consumed and may either pick up or be served such food at a table or take it off-site for consumption. (3334-6/97)

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- a. Drive-through. Service from a building to persons in vehicles through an outdoor service window. (3334-6/97)
  - b. Limited. Establishments that do not serve persons in vehicles or at a table. (3334-6/97)
2. With Live Entertainment/Dancing. An eating or drinking establishment where dancing and/or live entertainment is allowed. This classification includes nightclubs subject to the requirements of Chapter 5.44 of the Municipal Code. (3334-6/97)
- K. Food and Beverage Sales. Retail sales of food and beverages for off-site preparation and consumption. Typical uses include groceries, liquor stores, or delicatessens. Establishments at which 20 percent or more of the transactions are sales of prepared food for on-site or take-out consumption shall be classified as Catering Services or Eating and Drinking Establishments. (3334-6/97, 3378-2/98)
- 1. With Alcoholic Beverage Sales. Establishments where more than 10 percent of the floor area is devoted to sales, display and storage of alcoholic beverages. (3334-6/97)
- L. Food Processing. Establishments primarily engaged in the manufacturing or processing of food or beverages for human consumption and wholesale distribution. (3334-6/97, 3378-2/98)
- M. Funeral and Interment Services. Establishments primarily engaged in the provision of services involving the care, preparation or disposition of human dead other than in cemeteries. Typical uses include crematories, columbariums, mausoleums or mortuaries. (3334-6/97, 3378-2/98)
- N. Horticulture. The raising of fruits, vegetables, flowers, trees, and shrubs as a commercial enterprise. (3334-6/97, 3378-2/98)
- O. Laboratories. Establishments providing medical or dental laboratory services; or establishments with less than 2,000 square feet providing photographic, analytical, or testing services. Other laboratories are classified as Limited Industry. (3334-6/97, 3378-2/98)
- P. Maintenance and Repair Services. Establishments providing appliance repair, office machine repair, or building maintenance services. This classification excludes maintenance and repair of vehicles or boats; see (Vehicle/Equipment Repair). (3334-6/97)
- Q. Marine Sales and Services. Establishments providing supplies and equipment for shipping or related services or pleasure boating. Typical uses include chandleries, yacht brokerage and sales, boat yards, boat docks, and sail-making lofts. (3334-6/97, 3378-2/98)
- R. Medical Marijuana Dispensary or Dispensary. Any facility or location where medical marijuana is made available to and/or distributed by or to three or more of the following: a primary caregiver, a qualified patient, or a person with an identification card, in strict accordance with California Health

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and Safety Code Section 11362.5 et seq. A "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by this Code or 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 residential hospice, or
6. A home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq.

**RS.** Nurseries. Establishments in which all merchandise other than plants is kept within an enclosed building or a fully screened enclosure, and fertilizer of any type is stored and sold in package form only. (3334-6/97, 3378-2/98)

**ST.** Offices, Business and Professional. Offices of firms or organizations providing professional, executive, management, or administrative services, such as architectural, engineering, graphic design, interior design, real estate, insurance, investment, legal, veterinary, and medical/dental offices. This classification includes medical/dental laboratories incidental to an office use, but excludes banks and savings and loan associations. (3334-6/97, 3378-2/98)

**TU.** Pawn Shops. Establishments engaged in the buying or selling of new or secondhand merchandise and offering loans secured by personal property and subject to Chapter 5.36 of the Municipal Code. (3334-6/97, 3378-2/98)

**UV.** Personal Enrichment Services. Provision of instructional services or facilities, including photography, fine arts, crafts, dance or music studios, driving schools, business and trade schools, and diet centers, reducing salons, fitness studios, yoga or martial arts studios, and massage in conjunction with Personal Services business. (3334-6/97, 3378-2/98, 3669-12/04)

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- VW.** Personal Services. Provision of recurrently needed services of a personal nature. This classification includes barber and beauty shops, seamstresses, tailors, shoe repair shops, dry-cleaning businesses (excluding large-scale bulk cleaning plants), photo-copying, and self-service laundries. (3334-6/97, 3378-2/98)
- WX.** Research and Development Services. Establishments primarily engaged in industrial or scientific research, including limited product testing. This classification includes electron research firms or pharmaceutical research laboratories, but excludes manufacturing, except of prototypes, or medical testing and analysis. (3334-6/97, 3378-2/98)
- XY.** Retail Sales. The retail sale of merchandise not specifically listed under another use classification. This classification includes department stores, drug stores, clothing stores, and furniture stores, and businesses retailing the following goods: toys, hobby materials, handcrafted items, jewelry, cameras, photographic supplies, medical supplies and equipment, electronic equipment, records, sporting goods, surfing boards and equipment, kitchen utensils, hardware, appliances, antiques, art supplies and services, paint and wallpaper, carpeting and floor covering, office supplies, bicycles, and new automotive parts and accessories (excluding service and installation). (3334-6/97, 3378-2/98)
- YZ.** Secondhand Appliances and Clothing Sales. The retail sale of used appliances and clothing by secondhand dealers who are subject to Chapter 5.36. This classification excludes antique shops primarily engaged in the sale of used furniture and accessories other than appliances, but includes junk shops. (3334-6/97, 3378-2/98)
- Z.AA** Sex Oriented Businesses. Establishments as regulated by Chapter 5.70; baths, sauna baths and massage establishments, as regulated by Chapter 5.24; and figure model studios as regulated by Chapter 5.60. (3378-2/98)
- AABB.** Swap Meets, Indoor/Flea Markets. An occasional, periodic or regularly scheduled market held within a building where groups of individual vendors offer goods for sale to the public. (3334-6/97)
- BBCC.** Swap Meets, Recurring. Retail sale or exchange of handcrafted or secondhand merchandise for a maximum period of 32 consecutive hours, conducted by a sponsor on a more than twice yearly basis. (3334-6/97)
- CCDD.** Tattoo Establishment. Premises used for the business of marking or coloring the skin with tattoos as regulated by Chapter 8.70. (3334-6/97)
- DD EE.** Travel Services. Establishments providing travel information and reservations to individuals and businesses. This classification excludes car rental agencies. (3334-6/97)
- EEFF.** Vehicle/Equipment Sales and Services.
1. Automobile Rentals. Rental of automobiles, including storage and incidental maintenance, but excluding maintenance requiring pneumatic lifts. (3334-6/97)

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2. Automobile Washing. Washing, waxing, or cleaning of automobiles or similar light vehicles. (3334-6/97)
3. Commercial Parking Facility. Lots offering short-term or long-term parking to the public for a fee. (3334-6/97)
4. Service Stations. Establishments engaged in the retail sale of gas, diesel fuel, lubricants, parts, and accessories. This classification includes incidental maintenance and minor repair of motor vehicles, but excluding body and fender work or major repair of automobiles, motorcycles, light and heavy trucks or other vehicles. (3334-6/97)
5. Vehicle/Equipment Repair. Repair of automobiles, trucks, motorcycles, mobile homes, recreational vehicles, or boats, including the sale, installation, and servicing of related equipment and parts. This classification includes auto repair shops, body and fender shops, transmission shops, wheel and brake shops, and tire sales and installation, but excludes vehicle dismantling or salvage and tire retreading or recapping. (3334-6/97)
  - a. Limited. Light repair and sale of goods and services for vehicles, including brakes, muffler, tire shops, oil and lube, and accessory uses, but excluding body and fender shops, upholstery, painting, and rebuilding or reconditioning of vehicles. (3334-6/97)
6. Vehicle/Equipment Sales and Rentals. Sale or rental of automobiles, motorcycles, trucks, tractors, construction or agricultural equipment, manufactured homes, boats, and similar equipment, including storage and incidental maintenance. (3334-6/97)
7. Vehicle Storage. Storage of operative or inoperative vehicles. This classification includes storage of parking tow-aways, impound yards, and storage lots for automobiles, trucks, buses and recreational vehicles, but does not include vehicle dismantling. (3334-6/97)

**FFGG. Visitor Accommodations.**

1. Bed and Breakfast Inns. Establishments offering lodging on a less than weekly basis in a converted single-family or multi-family dwelling or a building of residential design, with incidental eating and drinking service for lodgers only provided from a single kitchen. (3334-6/97)
2. Hotels and Motels. Establishments offering lodging on a weekly or less than weekly basis. Motels may have kitchens in no more than 25 percent of guest units, and "suite" hotels may have kitchens in all units. This classification includes eating, drinking, and banquet service associated with the facility. (3334-6/97)

**GGHH. Warehouse and Sales Outlets.** Businesses which store large inventories of goods in industrial-style buildings where these goods are not produced on the site but are offered to the public for sale. (3334-6/97)

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**HHII. Quasi Residential**

1. Residential Hotels. Buildings with 6 or more guest rooms without kitchen facilities in individual rooms, or kitchen facilities for the exclusive use of guests, and which are intended for occupancy on a weekly or monthly basis. (3334-6/97)
2. Single Room Occupancy. Buildings designed as a residential hotel consisting of a cluster of guest units providing sleeping and living facilities in which sanitary facilities and cooking facilities are provided within each unit; tenancies are weekly or monthly. (3334-6/97)
3. Time-Share Facilities. A facility in which the purchaser receives the right in perpetuity, for life or for a term of years, to the recurrent exclusive use or occupancy of a lot, parcel, unit or segment of real property, annually or on some other periodic basis for a period of time that has been or will be allocated from the use or occupancy periods into which the plan has been divided. A time-share plan may be coupled with an estate in the real property or it may entail a license or contract and/or membership right of occupancy not coupled with an estate in the real property. (3334-6/97)

204.12 Industrial Use Classifications

- A. Industry, Custom. Establishments primarily engaged in on-site production of goods by hand manufacturing involving the use of hand tools and small-scale equipment. (3334-6/97)
  1. Small-scale. Includes mechanical equipment not exceeding 2 horsepower or a single kiln not exceeding 8 kilowatts and the incidental direct sale to consumers of only those goods produced on-site. Typical uses include ceramic studios, candle-making shops, and custom jewelry manufacture. (3334-6/97)
- B. Industry, General. Manufacturing of products, primarily from extracted or raw materials, or bulk storage and handling of such products and materials. Uses in this classification typically involve a high incidence of truck or rail traffic, and/or outdoor storage of products, materials, equipment, or bulk fuel. This classification includes chemical manufacture or processing, food processing and packaging, laundry and dry cleaning plants, auto dismantling within an enclosed building, stonework and concrete products manufacture (excluding concrete ready-mix plants), small animal production and processing within an enclosed building, and power generation. (3334-6/97)
- C. Industry, Limited. Manufacturing of finished parts or products, primarily from previously prepared materials; and provision of industrial services, both within an enclosed building. This classification includes processing, fabrication, assembly, treatment, and packaging, but excludes basic industrial processing from raw materials and Vehicle/Equipment Services, but does allow food processing for human consumption. (3334-6/97)
- D. Industry, Research and Development. Establishments primarily engaged in the research, development, and controlled production of high-technology electronic, industrial or scientific products or commodities for sale, but prohibits uses that may be objectionable in the opinion of the Director, by reason of production of offensive odor, dust, noise, vibration, or in the

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opinion of the Fire Chief by reason of storage of hazardous materials. Uses include aerospace and biotechnology firms, and non-toxic computer component manufacturers. (3334-6/97)

This classification also includes assembly, testing and repair of components, devices, equipment, systems, parts and components such as but not limited to the following: coils, tubes, semi-conductors; communication, navigation, guidance and control equipment; data processing equipment; filing and labeling machinery; glass edging and silvering equipment; graphics and art equipment; metering equipment; optical devices and equipment; photographic equipment; radar, infrared and ultraviolet equipment; radio and television equipment. (3334-6/97)

This classification also includes the manufacture of components, devices, equipment, parts and systems which includes assembly, fabricating, plating and processing, testing and repair, such as but not limited to the following: machine and metal fabricating shops, model and spray painting shops, environmental test, including vibration analysis, cryogenics, and related functions, plating and processing shops, nuclear and radioisotope. (3334-6/97)

This classification also includes research and development laboratories including biochemical and chemical development facilities for national welfare on land, sea, or air; and facilities for film and photography, metallurgy, pharmaceutical, and medical and x-ray research. (3334-6/97)

- E. Wholesaling, Distribution and Storage. Storage and distribution facilities without sales to the public on-site or direct public access except for recycling facilities and public storage in a small individual space exclusively and directly accessible to a specific tenant. This classification includes mini-warehouses. (3334-6/97)

#### 204.14 Accessory Use Classifications

Accessory Uses and Structures. Uses and structures that are incidental to the principal permitted or conditionally permitted use or structure on a site and are customarily found on the same site. This classification includes detached or attached garages, home occupations, caretakers' units, and dormitory type housing for industrial commercial workers employed on the site, and accessory dwelling units. (3334-6/97)

#### 204.16 Temporary Use Classifications

- A. Animal Shows. Exhibitions of domestic or large animals for a maximum of seven days. (3334-6/97)
- B. Festivals, Circuses and Carnivals. Provision of games, eating and drinking facilities, live entertainment, animal exhibitions, or similar activities in a tent or other temporary structure for a maximum of seven days. This classification excludes events conducted in a permanent entertainment facility. (3334-6/97) (3521-2/02)
- C. Commercial Filming, Limited. Commercial motion picture or video photography at a specific location six or fewer days per quarter of a calendar year. (See also Chapter 5.54, Commercial Photography) (3334-6/97)

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- D. Personal Property Sales. Sales of personal property by a resident ("garage sales") for a period not to exceed 48 consecutive hours and no more than once every six months. (3334-6/97)
- E. Real Estate Sales. An office for the marketing, sales, or rental of residential, commercial, or industrial development. This classification includes "model homes." (3334-6/97)
- F. Retail Sales, Outdoor. Retail sales of new merchandise on the site of a legally established retail business for a period not to exceed 96 consecutive hours (four days) no more than once every 3 months. (3334-6/97, 3669-12/04)
- G. Seasonal Sales. Retail sales of seasonal products, including Christmas trees, Halloween pumpkins and strawberries. (3334-6/97)
- H. Street Fairs. Provision of games, eating and drinking facilities, live entertainment, or similar activities not requiring the use of roofed structures. (3334-6/97)
- I. Trade Fairs. Display and sale of goods or equipment related to a specific trade or industry for a maximum period of five days per year. (3334-6/97)
- J. Temporary Event. Those temporary activities located within the coastal zone that do not qualify for an exemption pursuant to Section 245.08. (3334-6/97)
- K. Tent Event. Allows for the overflow of religious assembly for a period not to exceed 72 consecutive hours and not more than once every 3 months. (3521-2/02)

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ATTACHMENT NO. 7.19  
G-1B.19

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**ATTACHMENT NO. 3**

ATTACHMENT NO. 7.20  
6 - 18.20

ORDINANCE NO. \_\_\_\_\_

**LEGISLATIVE DRAFT**

**CHAPTER 212 LIMITED INDUSTRIAL DISTRICTS**

(3254-10/94, 3378-2/98, 3523-2/02, 3568-9/02)

**Sections:**

- 212.02 Industrial Districts Established
- 212.04 IG and IL Districts: Land Use Controls
- 212.06 IG and IL Districts: Development Standards
- 212.08 Review of Plans

**212.02 Industrial Districts Established (3254-10/94)**

Two (2) industrial zoning districts are established by this chapter as follows: (3254-10/94)

- A. The IG General Industrial District provides sites for the full range of manufacturing, industrial processing, resource and energy production, general service, and distribution. (3254-10/94)
- B. The IL Limited Industrial District provides sites for moderate- to low-intensity industrial uses, commercial services and light manufacturing. (3254-10/94)

**212.04 IG and IL Districts: Land Use Controls (3254-10/94)**

In the following schedules, letter designations are used as follows: (3254-10/94)

"P" designates use classifications permitted in the I districts. (3254-10/94)

"L" designates use classifications subject to certain limitations prescribed by the "Additional Provisions" which follow. (3254-10/94)

"PC" designates use classifications permitted on approval of a conditional use permit by the Planning Commission. (3254-10/94)

"ZA" designates use classifications permitted on approval of a conditional use permit by the Zoning Administrator. (3254-10/94)

"TU" designates use classifications allowed upon approval of a temporary use permit by the Zoning Administrator. (3254-10/94)

"P/U" for an accessory use means that the use is permitted on the site of a permitted use, but requires a conditional use permit on the site of a conditional use. (3254-10/94)

Use classifications that are not listed are prohibited. Letters in parentheses in the "Additional Provisions" column refer to requirements following the schedule or located elsewhere in this ordinance. Where letters in parentheses are opposite a use classification heading, referenced provisions shall apply to all use classifications under the heading. (3254-10/94)

**IG AND IL  
DISTRICTS:  
LAND USE  
CONTROLS**

- P - Permitted
- L - Limited (see Additional Provisions)
- PC - Conditional use permit approved by Planning Commission
- ZA - Conditional use permit approved by Zoning Administrator
- TU - Temporary Use Permit
- P/U - Requires conditional use permit on site of conditional use
- - Not Permitted

	IG	IL	Additional Provisions
<b>Residential</b>			
Group Residential	PC	PC	(J)
<b>Public and Semipublic</b>			(A)(M)
Community and Human Service Facilities	PC	PC	(L)
Day Care, General	ZA	ZA	(3523-2/02)
Heliports Maintenance & Service Facilities	PC	PC	(O)
Public Safety Facilities	P	P	
Religious Assembly	L-10	L-10	
Schools, Public or Private	L-6	L-6	
Utilities, Major	PC	PC	
Utilities, Minor	L-7	L-7	(P)
<b>Commercial Uses</b>			(D)(M)
Ambulance Services	ZA	ZA	
Animal Sales and Services			
Animal Boarding	ZA	ZA	(3523-2/02)
Animal Hospitals	ZA	ZA	(3523-2/02)
Artists' Studios	P	P	
Banks and Savings and Loans	L-1	L-1	
Building Materials and Services	P	P	
Catering Services	-	P	
Commercial Filming	ZA	ZA	
Commercial Recreation and Entertainment	L-2	L-2	
Communication Facilities	L-12	L-12	(3568-9/02)
Eating & Drinking Establishments	L-3	L-3	
w/Live Entertainment	ZA	ZA	(S)(U)(3523-2/02)
Food & Beverage Sales	ZA	ZA	(3523-2/02)
Hospitals and Medical Clinics	-	PC	
Laboratories	P	P	
Maintenance & Repair Services	P	P	
Marine Sales and Services	P	P	
<b>Medical Marijuana Dispensary</b>	P	P	(L-13)
Nurseries	P	P	
Offices, Business & Professional	L-1	L-1	(H)

Huntington Beach Zoning and Subdivision Ordinance

**IG AND IL DISTRICTS:**  
**LAND USE CONTROLS**

P - Permitted  
 L - Limited (see Additional Provisions)  
 PC - Conditional use permit approved by Planning Commission  
 ZA - Conditional use permit approved by Zoning Administrator  
 TU - Temporary Use Permit  
 P/U - Requires conditional use permit on site of conditional use  
 - Not Permitted

	IG	IL	Additional Provisions
Personal Enrichment	L-9	L-9	(U) (3523-2/02)
Personal Services	L-1	L-1	
Research & Development Services	P	P	
Sex Oriented Businesses (regulated by HBMC Chapter 5.70)	L-11	L-11	(3378-2/98)
Sex Oriented Businesses (regulated by HBMC Chapters 5.24 & 5.60)	PC	PC	(R) (3378-2/98)
Swap Meets, Indoor/Flea Markets	PC	PC	(Q) (3378-2/98)
Vehicle/Equipment Sales & Services			
Service Stations	L-4	L-4	
Vehicle/Equipment Repair	P	P	
Vehicle/Equip. Sales/Rentals	L-5	L-5	
Vehicle Storage	P	ZA	(I)
Visitor Accommodations	PC	PC	(K)
Warehouse and Sales Outlets	L-8	L-8	
<b>Industrial (See Chapter 204)</b>			(B)(M)(N)
Industry, Custom	P	P	
Industry, General	P	P	
Industry, Limited	P	P	
Industry, R & D	P	P	
Wholesaling, Distribution & Storage	P	P	
<b>Accessory Uses</b>			
Accessory Uses and Structures	P/U	P/U	(C)
<b>Temporary Uses</b>			
Commercial Filming, Limited	P	P	(T) (3523-2/02)
Real Estate Sales	TU	TU	(3523-2/02)
Trade Fairs	TU	TU	(E)
<b>Nonconforming Uses</b>			(F)

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**IG AND IL Districts: Additional Provisions**

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- L-1 Only allowed upon approval of a conditional use permit by the Planning Commission for a mixed use project, subject to the following requirements: (3254-10/94)
- Minimum site area: 3 acres (3254-10/94)
- Maximum commercial space: 35 percent of the gross floor area and 50 percent of the ground floor area of buildings fronting on an arterial highway. (3254-10/94)
- Phased development: 25 percent of the initial phase must be designed for industrial occupancy. For projects over 500,000 square feet, the initial phase must include 5 percent of the total amount of industrial space or 50,000 square feet of industrial space, whichever is greater. (3254-10/94)
- L-2 Allowed upon approval of a conditional use permit by the Planning Commission when designed and oriented for principal use by employees of the surrounding industrial development or when designed for general public use, after considering vehicular access and parking requirements. (3254-10/94)
- L-3 Allowed upon approval of a conditional use permit by the Zoning Administrator when in a free-standing structure or as a secondary use in a building provided that no more than 20 percent of the floor area is occupied by such a use. (3254-10/94, 3523-2/02)
- L-4 Only stations offering services primarily oriented to businesses located in an I District are allowed with a conditional use permit by the Planning Commission. (3254-10/94)
- L-5 No new or used automobile, truck or motorcycle retail sales are permitted. (3254-10/94)
- L-6 Only schools offering higher education curriculums are allowed with conditional use permit approval by the Planning Commission. No day care, elementary or secondary schools are permitted. (3254-10/94)
- L-7 Recycling Operations as an accessory use are permitted; recycling operations as a primary use are allowed upon approval of a conditional use permit by the Planning Commission. (3254-10/94)
- L-8 Allowed upon conditional use permit approval by the Planning Commission when a single building with a minimum area of 100,000 square feet is proposed on a site fronting an arterial. The primary tenant shall occupy a minimum 95% of the floor area and the remaining 5% may be occupied by secondary tenants. (3254-10/94)
- L-9 Permitted if the space is 2,500 square feet or less; allowed by conditional use permit approval by the Zoning Administrator if the space is over 2,500 square feet. (3254-10/94, 3523-2/02)

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**IG AND IL Districts: Additional Provisions (continued)**


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**L-10** Allowed by conditional use permit approval by the Zoning Administrator for a period of time not to exceed five (5) years. (3254-10/94,3523-2/02)

**L-11** Allowed subject to the following requirements: (3378-2/98)

- A.** A proposed sex oriented business shall be at least five hundred feet (500') from any residential use, school, park and recreational facility, or any building used for religious assembly (collectively referred to as a "sensitive use") and at least seven hundred fifty feet (750') from another sex oriented business. For purposes of these requirements, all distances shall be measured from the lot line of the proposed sex oriented business to the lot line of the sensitive use or the other sex oriented business. The term "residential use" means any property zoned RL, RM, RMH, RH, RMP, and any properties with equivalent designations under any specific plan. (3378-2/98)

To determine such distances the applicant shall submit for review a straight line drawing depicting the distances from the lot line of the parcel of land on which the sex oriented business is proposed which includes all the proposed parking and: (3378-2/98)

1. the lot line of any other sex oriented business within seven hundred fifty feet (750') of the lot line of the proposed sex oriented business; and (3378-2/98)
  2. the lot line of any building used for religious assembly, school, or park and recreational facility within five hundred (500') feet of the lot line of the proposed sex oriented business; and (3378-2/98)
  3. the lot line of any parcel of land zoned RL, RM, RMH, RH, and RMP and any parcels of land with equivalent designations under any specific plans within five hundred feet (500') of the lot line of the proposed sex oriented business. (3378-2/98)
- B.** The front facade of the building, including the entrance and signage, shall not be visible from any major, primary or secondary arterial street as designated by the Circulation Element of the General Plan adopted May, 1996, with the exception of Argosy Drive. (3378-2/98)
- C.** Prior to or concurrently with applying for a building permit and/or a certificate of occupancy for the building, the applicant shall submit application for Planning Department Staff Review of a sex oriented business zoning permit with the drawing described in subsection A, a technical site plan, floor plans and building elevations, and application fee. Within ten (10) days of submittal, the Director shall determine if the application is complete. If the application is deemed incomplete, the applicant may resubmit a completed application within ten (10) days. Within thirty days of receipt of a completed application, the Director shall determine if the application complies with the applicable development and performance standards of the

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**IG AND IL Districts: Additional Provisions** (continued)

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Huntington Beach Zoning and Subdivision Ordinance. Said standards include but are not limited to the following: (3378-2/98)

1. Chapter 203, Definitions; Chapter 212, Industrial Districts; Chapter 230, Site Standards; Chapter 231, Off-Street Parking & Loading Provisions; Chapter 232, Landscape Improvements; and Chapter 236, Nonconforming Uses and Structures. (3378-2/98)
2. Chapter 233.08(b), Signs. Signage shall conform to the standards of the Huntington Beach Zoning and Subdivision Ordinance Code except
  - a. that such signs shall contain no suggestive or graphic language, photographs, silhouettes, drawings, statues, monuments, sign shapes or sign projections, or other graphic representations, whether clothed or unclothed, including without limitation representations that depict "specified anatomical areas" or "specified sexual activities"; and (3378-2/98)
  - b. only the smallest of the signs permitted under Chapter 233.08(b) shall be visible from any major, primary or secondary arterial street, such streets shall be those designated in the Circulation Element of the General Plan adopted May, 1996, with the exception of Argosy Drive.
3. Compliance with Huntington Beach Municipal Code Chapter 5.70. (3378-2/98)
- D. The Director shall grant or deny the application for a sex oriented business zoning permit for a sex oriented business. There shall be no administrative appeal from the granting or denial of a permit application thereby permitting the applicant to obtain prompt judicial review. (3378-2/98)
- E. Ten (10) working days prior to submittal of an application for a sex oriented business zoning permit for Staff Review, the applicant shall: (i) cause notice of the application to be printed in a newspaper of general circulation; and (ii) give mailed notice of the application to property owners within one thousand (1000) feet of the proposed location of the sex oriented business; and the City of Huntington Beach, Department of Community Development by first class mail. (3378-2/98)

The notice of application shall include the following: (3378-2/98)

1. Name of applicant; (3378-2/98)
2. Location of proposed sex oriented business, including street address (if known) and/or lot and tract number; (3378-2/98)

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**IG AND IL Districts: Additional Provisions (continued)**

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3. Nature of the sex oriented business, including maximum height and square footage of the proposed development; (3378-2/98)
  4. The City Hall telephone number for the Department of Community Development to call for viewing plans; (3378-2/98)
  5. The date by which any comments must be received in writing by the Department of Community Development. This date shall be ten (10) working days from staff review submittal; and (3378-2/98)
  6. The address of the Department of Community Development. (3378-2/98)
- F. A sex oriented business may not apply for a variance pursuant to Chapter 241 nor a special sign permit pursuant to Chapter 233. (3378-2/98)
- G. A sex oriented business zoning permit shall become null and void one year after its date of approval unless: (3378-2/98)
1. Construction has commenced or a Certificate of Occupancy has been issued, whichever comes first; or (3378-2/98)
  2. The use is established. (3378-2/98)
- H. The validity of a sex oriented business zoning permit shall not be affected by changes in ownership or proprietorship provided that the new owner or proprietor promptly notifies the Director of the transfer. (3378-2/98)
- I. A sex oriented business zoning permit shall lapse if the exercise of rights granted by it is discontinued for 12 consecutive months. (3378-2/98)
- L-12 For wireless communication facilities see section 230.96 Wireless Communication Facilities. All other communication facilities permitted. (3568-9/02)
- (A) Limited to facilities on sites of 2 acres or less. (3254-10/94)
- (B) A conditional use permit from the Zoning Administrator is required for any new use or enlargement of an existing use, or exterior alterations and additions for an existing use located within 150 feet of an R district. The Director may waive this requirement if there is no substantial change in the character of the use which would affect adjacent residential property in an R District. (3254-10/94)
- (C) Accessory office uses incidental to a primary industrial use are limited to 10 percent of the floor area of the primary industrial use. (3254-10/94)

(Rest of page not used)

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**IG AND IL Districts: Additional Provisions (continued)**

(D) Adjunct office and commercial space, not to exceed 25 percent of the floor area of the primary industrial use, is allowed with a conditional use permit from the Zoning Administrator, provided that it is intended primarily to serve employees of the industrial use, no exterior signs advertise the adjunct use, the adjunct use is physically separated from the primary industrial use, any retail sales are limited to goods manufactured on-site, and the primary industrial fronts on an arterial. (3254-10/94)

(E) See Section 241.22: Temporary Use Permits. (3254-10/94)

(F) See Chapter 236: Nonconforming Uses and Structures. (3254-10/94)

(H) Medical/dental offices, insurance brokerage offices, and real estate brokerage offices, except for on-site leasing offices, are not permitted in any I District. (3254-10/94)

Administrative, management, regional or headquarters offices for any permitted industrial use, which are not intended to serve the public, require a conditional use permit from the Zoning Administrator to occupy more than 10 percent of the total amount of space on the site of the industrial use. (3254-10/94)

(I) Automobile dismantling, storage and/or impound yards may be permitted subject to the approval of a conditional use permit by the Planning Commission and the following criteria: (3254-10/94)

(a) The site shall not be located within 660 feet of an R district. (3254-10/94)

(b) All special metal cutting and compacting equipment shall be completely screened from view. (3254-10/94)

(c) Storage yards shall be enclosed by a solid 6-inch concrete block or masonry wall not less than 6 feet in height and set back a minimum 10 feet from abutting streets with the entire setback area permanently landscaped and maintained. (3254-10/94)

(d) Items stacked in the storage yard shall not exceed the height of the screening walls or be visible from adjacent public streets. (3254-10/94)

(J) Limited to facilities serving workers employed on-site. (3254-10/94)

(K) See Section 230.46: Single Room Occupancy. (3254-10/94)

(L) Limited to Emergency Shelters. (3254-10/94)

(M) Development of vacant land and/or additions of 10,000 square feet or more in floor area; or additions equal to or greater than 50% of the existing building's floor area; or additions to buildings on sites located within 300 feet of a residential zone or use for a permitted use requires approval of a conditional use permit from the Zoning Administrator. The Planning Director may refer any proposed addition to the Zoning Administrator if the proposed

addition has the potential to impact residents or tenants in the vicinity (e.g., increased noise, traffic). (3254-10/94, 3523-2/02)

Huntington Beach Zoning and Subdivision Ordinance  
Chapter 212

212-8

02/02

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**IG AND IL Districts: Additional Provisions (continued)**

- (N) Major outdoor operations require conditional use permit approval by the Planning Commission. Major outside operations include storage yards and uses utilizing more than 1/3 of the site for outdoor operation. (3254-10/94)
- (O) See Section 230.40: Helicopter Takeoff and Landing Areas. (3254-10/94)
- (P) See Section 230.44: Recycling Operations. (3254-10/94)
- (Q) See Section 230.50: Indoor Swap Meets/Flea Markets (3254-10/94)
- (R) See L-11(A) relating to locational restrictions. (3254-10/94, 3378-2/98)
- (S) Non-amplified live entertainment greater than 300 feet from a residential zone or use shall be permitted without a conditional use permit. (3523-2/02)
- (T) Subject to approval by the Police Department, Public Works Department, and Fire Department and the Planning Director. (3523-2/02)
- (U) Limited notification requirements when no entitlement required. (3523-2/02)
  - 1. Ten (10) working days prior to submittal for a building permit or certificate of occupancy, applicant shall notice adjacent property owners and tenants by first class mail. (3523-2/02)
  - 2. Notice of application shall include the following: (3523-2/02)
    - a. Name of applicant. (3523-2/02)
    - b. Location of planned development or use, including address. (3523-2/02)
    - c. Nature of the proposed development shall be fully disclosed in the notice. (3523-2/02)
    - d. Planning Department phone number and address of City Hall shall be provided in the notice to call for viewing plans. (3523-2/02)
    - e. The date by which any comments must be received in writing by the Planning Department and City appeal procedures. (3523-2/02)
    - f. Planning Department shall receive entire list including name and address of those receiving the mailing. (3523-2/02)

**L-13 Allowed subject to the following requirements:**

- A. **A proposed medical marijuana dispensary shall be at least five hundred feet (500') from any residential use, school, park and recreational facility, or any building used for religious assembly (collectively referred to as a "sensitive use") and at least seven hundred fifty feet (750') from another medical marijuana dispensary. For purposes of these requirements, all distances shall be measured from the lot line of the proposed medical marijuana dispensary to the lot line of the sensitive use or the other medical marijuana dispensary. The term "residential use" means any property zoned RL, RM, RMH, RH, RMP, and any properties with equivalent designations under any specific plan.**

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To determine such distances the applicant shall submit for review a straight line drawing depicting the distances from the lot line of the parcel of land on which the medical marijuana dispensary is proposed which includes all the proposed parking and:

1. the lot line of any other medical marijuana dispensary within seven hundred fifty feet (750') of the lot line of the medical marijuana dispensary; and
  2. the lot line of any building used for religious assembly, school, or park and recreational facility within five hundred (500') feet of the lot line of the medical marijuana dispensary; and
  3. the lot line of any parcel of land zoned RL, RM, RMH, RH, and RMP and any parcels of land with equivalent designations under any specific plans within five hundred feet (500') of the lot line of the proposed medical marijuana dispensary.
- B. Prior to or concurrently with applying for a building permit and/or a certificate of occupancy for the building, the applicant shall submit application for Planning Department Staff Review of a medical marijuana dispensary zoning permit with the drawing described in subsection A, a technical site plan, floor plans and building elevations, and application fee. Within ten (10) days of submittal, the Director shall determine if the application is complete. If the application is deemed incomplete, the applicant may resubmit a completed application within ten (10) days. Within thirty days of receipt of a completed application, the Director shall determine if the application complies with the applicable development and performance standards of the Huntington Beach Zoning and Subdivision Ordinance. Said standards include but are not limited to the following: Chapter 203, Definitions; Chapter 212, Industrial Districts; Chapter 230, Site Standards; Chapter 231, Off-Street Parking & Loading Provisions; Chapter 232, Landscape Improvements; and Chapter 236, Nonconforming Uses and Structures.
- C. The Director shall grant or deny the application for a medical marijuana dispensary zoning permit for a medical marijuana dispensary. There shall be no administrative appeal from the granting or denial of a permit application thereby permitting the applicant to obtain prompt judicial review.
- D. A medical marijuana dispensary may not apply for a variance pursuant to Chapter 241 nor a special sign permit pursuant to Chapter 233.
- E. A medical marijuana dispensary zoning permit shall become null and void one year after its date of approval unless:
1. Construction has commenced or a Certificate of Occupancy has been issued, whichever comes first; or
  2. The use is established.

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- F. **The validity of a medical marijuana dispensary zoning permit shall not be affected by changes in ownership or proprietorship provided that the new owner or proprietor promptly notifies the Director of the transfer.**
- G. **A medical marijuana dispensary zoning permit shall lapse if the exercise of rights granted by it is discontinued for 12 consecutive months.**

**212.06 IG AND IL Districts: Development Standards**

The following schedule prescribes development standards for the I Districts. The first two columns prescribe basic requirements for permitted and conditional uses in each district. Letters in parentheses in the "Additional Requirements" column reference requirements following the schedule or located elsewhere in this ordinance. In calculating the maximum gross floor area as defined in Chapter 203, the floor area ratio is calculated on the basis of net site area. Fractional numbers shall be rounded down to the nearest whole number. All required setbacks shall be measured from ultimate right-of-way and in accordance with definitions set forth in Chapter 203, Definitions. (3254-10/94)

	IG	IL	Additional Requirements
<b>Residential Development</b>			(M)
<b>Nonresidential Development</b>			
Minimum Lot Area (sq. ft.)	20,000	20,000	(A)(B)(N)
Minimum Lot Width (ft.)	100	100	(A)(B)
Minimum Setbacks			(A)(C)
Front (ft.)	10;20	10;20	(D)
Side (ft.)	-	15	(E)(F)
Street Side (ft.)	10	10	
Rear (ft.)	-	-	(E)
Maximum Height of Structures (ft.)	40	40	(G)
Maximum Floor Area Ratio (FAR)	0.75	0.75	
Minimum Site Landscaping (%)	8	8	(H)(I)
Fences and Walls	See Section 230.88		
Off-Street Parking and Loading	See Chapter 231		(J)
Outdoor Facilities	See Section 230.74		

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**IG AND IL Districts: Development Standards** (continued)

	<b>IG</b>	<b>IL</b>	<b>Additional Requirements</b>
Screening of Mechanical Equipment	See Section 230.76		(K)
Refuse Storage Area	See Section 230.78		
Underground Utilities	See Chapter 17.64		
Performance Standards	See Section 230.82		(L)
Nonconforming Uses and Structures	See Chapter 236		
Signs	See Chapter 233		

**IG AND IL Districts: Additional Development Standards**

- (A) See Section 230.62: Building Site Required and Section 230.64: Development on Substandard Lots. (3254-10/94)
- (B) Smaller lot dimensions for new parcels may be permitted by the Zoning Administrator with an approved development plan and tentative subdivision map. (3254-10/94)

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ATTACHMENT NO. 7.33

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**IG AND IL Districts: Additional Development Standards** (continued)

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- (C) See Section 230.68: Building Projections into Yards and Required Open Space. Double-frontage lots shall provide front yards on each frontage. (3254-10/94)
- (D) The minimum front setback shall 10 feet and the average setback 20 feet, except for parcels fronting on local streets where only a 10 foot setback is required. (3254-10/94)
- All I Districts: An additional setback is required for buildings exceeding 25 feet in height (1 foot for each foot of height) and for buildings exceeding 150 feet in length (1 foot for each 10 feet of building length) up to a maximum setback of 30 feet. (3254-10/94)
- (E) In all I districts, a 15-foot setback is required abutting an R district and no openings in buildings within 45 feet of an R district. (3254-10/94)
- (F) A zero-side yard setback may be permitted in the I districts, but not abutting an R district, provided that a solid wall at the property line is constructed of maintenance-free masonry material and the opposite side yard is a minimum of 30 feet. (3254-10/94)
- Exception. The Zoning Administrator or Planning Commission may approve a conditional use permit to allow a 15-foot interior side yards opposite a zero-side yard on one lot, if an abutting side yard at least 15 feet wide is provided and access easements are recorded ensuring a minimum 30-foot separation between buildings. This 30-foot accessway must be maintained free of obstructions and open to the sky, and no opening for truck loading or unloading shall be permitted in the building face fronting on the accessway unless a 45-foot long striped areas is provided solely for loading and unloading entirely within the building. (3254-10/94)
- (G) See Section 230.70: Measurement of Height. Within 45 feet of an R district, no building or structure shall exceed a height of 18 feet. (3254-10/94)
- (H) Planting Areas. Required front and street-side yards adjacent to a public right-of-way shall be planting areas except for necessary drives and walks. A 6-foot wide planting area shall be provided adjacent to an R district and contain one tree for each 25 lineal feet of planting area. (3254-10/94)
- (I) See Chapter 232: Landscape Improvements. (3254-10/94)
- (J) Truck or rail loading, dock facilities, and the doors for such facilities shall not be visible from or be located within 45 feet of an R district. (3254-10/94)
- (K) See Section 230.80: Antennae. (3254-10/94)

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**IG AND IL Districts: Additional Development Standards (continued)**

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- (L) Noise. No new use shall be permitted, or exterior alterations and/or additions to an existing use allowed, within 150 feet of an R district until a report prepared by a California state-licensed acoustical engineer is approved by the Director. This report shall include recommended noise mitigation measures for the industrial use to ensure that noise levels will conform with Chapter 8.40 of the Municipal Code. The Director may waive this requirement for change of use or addition or exterior alteration to an existing use if it can be established that there had been no previous noise offense, that no outside activities will take place, or if adequate noise mitigation measures for the development are provided. (3254-10/94)
- (M) Group residential or accessory residential uses shall be subject to standards for minimum setbacks and height of the RH District. (3254-10/94)

**212.08 Review of Plans**

All applications for new construction and exterior alterations and additions shall be submitted to the Community Development Department for review. Discretionary review shall be required as follows: (3254-10/94)

- A. Zoning Administrator Review. Projects requiring a conditional use permit from the Zoning Administrator; projects including a zero-side yard exception; projects on substandard lots. (3254-10/94)
- B. Design Review Board. Projects within redevelopment project areas and areas within 500 feet of a PS district; see Chapter 244. (3254-10/94)
- C. Planning Commission. Projects requiring a conditional use permit from the Commission. (3254-10/94)
- D. Projects in the Coastal Zone. A Coastal Development Permit is required unless the project is exempt; see Chapter 245. (3254-10/94)

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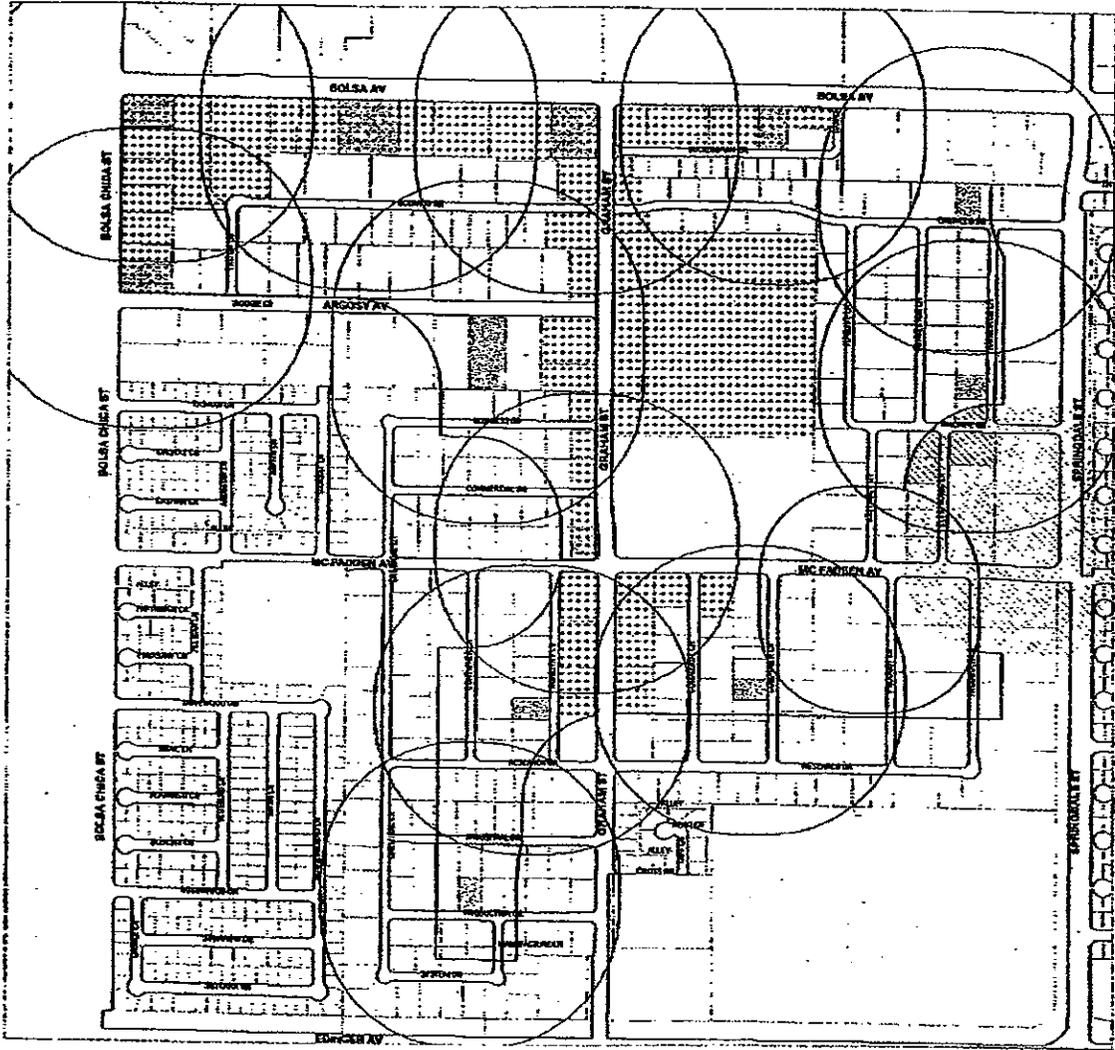
D2.270

**ATTACHMENT NO. 4**

ATTACHMENT NO. 7.36  
6-1B.36



## Available Industrial SOB Sites - 500 ft from Sensitive Uses South of Bolsa Ave



1 inch = 300 feet

October 31, 1997

- Available Whole Parcels Outside Sensitive Use Buffer Areas
- Selected Parcels for Maximum Number of SOB Sites
- Parcels Adjacent to Arterial Roadways
- 300 ft Buffer Around the Cleburne High School Site

- Parcel Lines
- Available SOB Site Inventory (at least 500 ft from Sensitive Uses)
- Buffers Around Selected Parcels (at least 750 ft from other SOB)



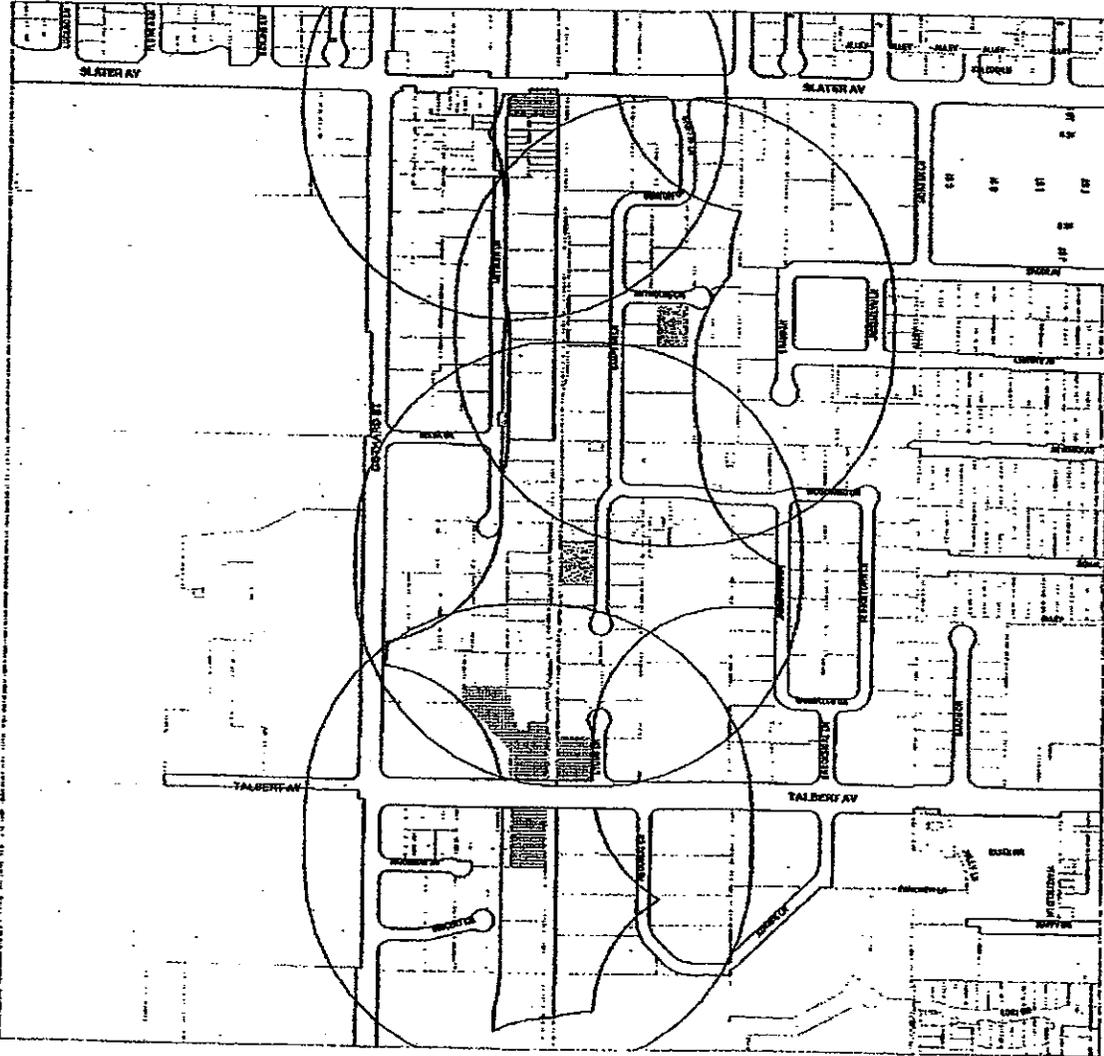
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ATTACHMENT NO. 7.37



## Available Industrial SOB Sites - 500 ft from Sensitive Uses East of Gothard Ave



1 inch = 200 feet

October 31, 1997

- Available Whole Parcels Outside Sensitive Use Buffer Areas
- Selected Parcels for Maximum Number of SOB Sites
- Parcels Adjacent to Arterial Roadways

Parcel Uses

Available SOB Site Boundary (at least 500 ft from Sensitive Use)  
Buffer Around Selected Parcels (at least 750 ft from other SOB's)



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# ATTACHMENT #15

After the City Clerk read by title, a motion was made by Hansen, second Bohr to adopt **Ordinance No. 3699** – “An Ordinance of the City of Huntington Beach Amending Chapter 10.44 of the Huntington Beach Municipal Code Relating to Oversized Vehicle Parking.” (Approved for introduction as amended on March 7, 2005.) The motion carried by the following roll call vote:

AYES: Hansen, Coerper, Hardy, Green, Bohr, Cook  
NOES: Sullivan  
ABSENT: None

**(City Council) Adopted Emergency Ordinance No. 3703 Amending Huntington Beach Zoning and Subdivision Chapter 204 (Use Classifications) and Chapter 212 (Industrial Districts) to Include Regulation of Medical Marijuana Dispensaries (570.10)**

The City Council considered communication from the City Attorney, the Police Chief and the Planning Director transmitting the following **Statement of Issue**: Whether or not to amend the Huntington Beach Zoning and Subdivision Ordinance regulating the establishment and operation of medical marijuana dispensaries.

Discussion ensued amongst Council and staff relative to possible locations for dispensaries, Supreme Court decisions and obtaining input from other sources including a League of California Cities subcommittee.

After the City Clerk read by title, a motion was made by Coerper, second Cook to adopt **Ordinance 3703** - “An Emergency Ordinance of the City of Huntington Beach Amending Chapter 204 (Use Classifications) and Chapter 212 (Industrial Districts) of the Huntington Beach Zoning and Subdivision Ordinance to Include Medical Marijuana Dispensaries.” The motion, requiring five affirmative votes carried by the following roll call vote:

AYES: Hansen, Coerper, Sullivan, Hardy, Green, Bohr, Cook  
NOES: None  
ABSENT: None

**(City Council) Mayor Pro Tem Sullivan Commented on Tentative Upcoming Agenda Memo (120.85)**

Mayor Pro Tem Sullivan commented on the Tentative Upcoming Agenda memo (which is a guideline used by staff for future meetings) suggesting that Council receive a hard copy of the memo weekly.

**(City Council) Councilmember Coerper Stated Preference that Council Comments Occur at the Beginning of the Meeting (120.85)**

Councilmember Gil Coerper announced that he prefers the Council Comments portion of the meeting to occur at the beginning.

**(City Council) Mayor Hardy Commented on Agenda Item Order, Congratulated Eagle Scouts (120.85)**

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**ATTACHMENT #16**

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## COUNCIL AGENDA REPORT

### City of Anaheim POLICE DEPARTMENT

**DATE:** JULY 31, 2007  
**FROM:** CHIEF JOHN WELTER  
**SUBJECT:** MEDICAL MARIJUANA DISPENSARY  
ORDINANCE

**ATTACHMENT: YES** **ITEM #**

#### RECOMMENDATION:

That the City Council, by ordinance, add new Chapter 4.20 to Title 4 of the Anaheim Municipal Code, prohibiting the establishment and operation of Medical Marijuana Dispensaries in the City of Anaheim.

#### DISCUSSION:

Proposition 215, the Compassionate Use Act of 1996, was approved by California voters and allows personal possession and cultivation of marijuana for medical purposes. The Act does not provide the patient with absolute immunity from arrest, but provides limited immunity allowing the patient to raise a medical use defense.

Senate Bill 420, the Medical Marijuana Program Act was signed into effect January 1, 2004 to clarify the scope of Proposition 215, and to allow cities and counties to adopt and enforce rules and regulations regarding medical marijuana, and established the amount of marijuana a qualified patient can possess.

One purpose of the Compassionate Use Act and the Medical Marijuana Program is 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. However, neither the federal nor state government has implemented a plan to provide medical marijuana under these guidelines. This leaves cities with a lack of direction about how the Act is intended to be implemented, particularly in regard to distribution of medical marijuana through dispensaries. The Medical Marijuana Program provides additional statutory guidance for medical marijuana use and cultivation, but does not explicitly address the role of dispensaries, nor does it require cities provide for or allow the establishment and/or operation of medical marijuana dispensaries.

The Federal Controlled Substances Act categorizes marijuana as a Schedule I drug. Under Federal Law it is illegal to manufacture, distribute, dispense, or possess with intent to manufacture, distribute or dispense a controlled substance. There is no medical necessity exception for marijuana under federal law. However, there are currently eleven states, including California, having laws that support or are sympathetic to the medicinal use of marijuana.

Medical marijuana dispensaries are retail businesses specializing in the sale of marijuana and marijuana products; such facilities are not licensed pharmacies and do not qualify as primary caregivers within the meaning of California Health and Safety Code Section 11362.7. Primary

MEDICAL MARIJUANA DISPENSARY ORDINANCE

caregivers are defined by the California Health and Safety Code as individuals who consistently assume responsibility for the housing, health or safety of a patient. Medical marijuana dispensaries simply sell marijuana to primary caregivers, qualified patients, and persons with a medical marijuana identification card. Presently, medical marijuana dispensaries are not defined under the Compassionate Use Act or the Medical Marijuana Program Act. Unlike licensed pharmacies that operate under stringent government controls regarding the medical products they possess and sell, medical marijuana dispensaries operate without any governmental control.

Medical marijuana dispensaries have been established in numerous locations in California, including Anaheim. As a consequence, local agencies have reported negative secondary effects on the community, which include, illegal drug activity and drug sales in the vicinity of dispensaries; robbery of persons leaving dispensaries; driving under the influence of a controlled substance by persons who have obtained marijuana from a dispensary; persons acquiring marijuana from a dispensary and then selling it to a non-qualified person; burglaries and robberies; and an increase in vacancies in the commercial areas in the vicinity of the dispensary. Many of these documented negative secondary effects and others have been experienced in Anaheim.

The California Police Chiefs Association has compiled an extensive report detailing negative secondary effects associated with medical marijuana dispensaries. A complete copy of this report is available in the City Clerk's Office. The report contains persuasive anecdotal and documented evidence that medical marijuana dispensaries pose a threat to public health, safety and welfare.

A prohibition ordinance on medical marijuana dispensaries does not conflict with any legislation in California or federally. According to the California League of Cities, more than forty cities in California have successfully enacted bans on medical marijuana dispensaries and none have been invalidated by court action. The ordinance does not prohibit nor eliminate the availability and use of medical marijuana. The ordinance guards against abuses of the law and responsibly protects the health, safety and welfare of Anaheim's citizens and businesses.

**IMPACT ON BUDGET:**

There is no known fiscal impact.

Respectfully submitted,

John Welter  
Chief of Police

**Attachments:**

1. Proposed Medical Marijuana Dispensary Ordinance

Available through the City Clerk's Office:

2. California Police Chiefs Association Compilation Report on Medical Marijuana Dispensary Negative Secondary Effects
3. Riverside County District Attorney's Office White Paper on Medical Marijuana
4. El Cerrito Police Department Memorandum Reference Medical Marijuana Compilation Reports

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF ANAHEIM  
ADDING CHAPTER 4.20 TO TITLE 4 OF THE  
ANAHEIM MUNICIPAL CODE PROHIBITING THE  
ESTABLISHMENT AND OPERATION OF MEDICAL  
MARIJUANA DISPENSARIES.

WHEREAS, the People of the State of California approved Proposition 215, which was codified as California Health and Safety Code § 11362.5 and entitled the Compassionate Use Act of 1996 ("the Act"); and

WHEREAS, the Act prohibits the provisions of law making unlawful the possession or cultivation of marijuana from applying to a qualified patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical use of the patient upon the recommendation of a physician, and also prohibits the criminal prosecution or punishment of a physician for having recommended marijuana to a patient for medical purposes; and

WHEREAS, thereafter, the Legislature of the State of California enacted Senate Bill 420 (the "Medical Marijuana Program"), codified as California Health and Safety Code § 11362.7 et seq., which requires the State Department of Health Services to establish and maintain a voluntary program for the issuance of identification cards to qualified patients and primary caregivers, and prohibits the arrest of a qualified patient or a primary caregiver with a valid identification card for the possession, transportation, delivery, or cultivation of medical marijuana; and

WHEREAS, one purpose of the Act and the Medical Marijuana Program is "[t]o 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;" and

WHEREAS, neither the federal nor the state government has implemented a specific plan "to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana," leaving cities with a lack of direction about how the Act is intended to be implemented, particularly in regard to distribution of medical marijuana through dispensaries; and

WHEREAS, the Medical Marijuana Program provides additional statutory guidance for medical marijuana use and cultivation, but it does not explicitly address the role of dispensaries, nor does it require that cities provide for or allow the establishment and/or operation of medical marijuana dispensaries; and

WHEREAS, notwithstanding the passage of the Act and the Medical Marijuana Program, the possession, sale and distribution of marijuana is prohibited by the Controlled

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ATTACHMENT NO. 4.3

Substances Act, 21 U.S.C. § 841, and Section 11359 of the California Health and Safety Code; and

WHEREAS, California state law does not provide for the sale or distribution of marijuana by Medical Marijuana Dispensaries to a primary care giver, a qualified patient or a person with an identification card, as the terms are defined in Section 11362.7 of the California Health and Safety Code; and

WHEREAS, the Anaheim Municipal Code currently does not restrict the existence or operation of Medical Marijuana Dispensaries in the City of Anaheim; and

WHEREAS, Medical Marijuana Dispensaries have been established in numerous locations in California, and as a consequence, local agencies have reported negative secondary effects on the community, which effects include, illegal drug activity and drug sales in the vicinity of dispensaries; robbery of persons leaving dispensaries; driving under the influence of a controlled substance by persons who have obtained marijuana from a dispensary; persons acquiring marijuana from a dispensary and then selling it to a non-qualified person; burglaries and robberies; and an increase in vacancies in the commercial areas in the vicinity of such businesses; and

WHEREAS, the California Police Chiefs Association has compiled an extensive report detailing the negative secondary effects associated with medical marijuana dispensaries. The City Council hereby finds that the report, a complete copy of which is on file in the City Clerk's Office, contains persuasive anecdotal and documented evidence that medical marijuana dispensaries pose a threat to public health, safety and welfare; and

WHEREAS, California Health and Safety Code Section 11362.5(c)(2) expressly provides that nothing in the Act shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for non-medical purposes; and

WHEREAS, The City Council hereby finds that, because of the inconsistency between state and federal law relating to the possession, sale and distribution, and because of the documented threat to public health, safety and welfare, it is in the best interest of the citizens of the City of Anaheim that the City prohibit the establishment and operation of medical marijuana dispensaries within the City of Anaheim; and

WHEREAS, this ordinance is enacted pursuant to California Health and Safety Code Sections 11362.5(c)(2) and 11362.83 and the City's police power as granted broadly under Article XI, Section 7 of the California Constitution in order to promote the health, safety and welfare of Anaheim residents.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ANAHEIM DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1.

That new Chapter 4.20 be, and the same is hereby, added to Title 4 of the Anaheim Municipal Code, to read as follows:

“CHAPTER 4.20

MEDICAL MARIJUANA DISPENSARIES

4.20.010 PURPOSE AND FINDINGS.

The City Council finds that federal and state laws prohibiting the possession, sale and distribution of marijuana would preclude the opening of Medical Marijuana Dispensaries sanctioned by the City of Anaheim, and in order to serve public health, safety, and welfare of the residents and businesses within the City, the declared purpose of this chapter is to prohibit Medical Marijuana Dispensaries as stated in this chapter.

4.20.020 DEFINITIONS.

The following terms and phrases, whenever used in this chapter, shall be construed as defined in this section:

.010 ‘Identification Card’ is a document issued by the State Department of Health Services which identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

.020 ‘Medical Marijuana’ is marijuana used 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 serious medical condition for which marijuana is deemed to provide relief as defined in subsection (h) of Health and Safety Code § 11362.7.

.030 ‘Medical Marijuana Dispensary or Dispensary’ is any facility or location where medical marijuana is made available to and/or distributed by or to three or more of the following: a qualified patient, a person with an identification card, or a primary caregiver. Each of these terms is defined herein and shall be interpreted in strict accordance with California Health and Safety Code Sections 11362.5 and 11362.7 et seq. as such sections may be amended from time to time.

.040 ‘Primary Care Giver’ is 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.

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ATTACHMENT NO. 9.5

.050 'Physician' is an individual who possesses a recognition 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.

.060 'Qualified Patient' is a person who is entitled to the protections of California Health and Safety Code Section 11362.5, but who does not have an identification card issued by the State Department of Health Services.

4.20.030 MEDICAL MARIJUANA DISPENSARY PROHIBITED.

It shall be unlawful for any person or entity to own, manage, conduct, or operate any Medical Marijuana Dispensary or to participate as an employee, contractor, agent or volunteer, or in any other manner or capacity, in any Medical Marijuana Dispensary in the City of Anaheim.

4.20.040 USE OR ACTIVITY PROHIBITED BY STATE OR FEDERAL LAW.

Nothing contained in this chapter shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any state or federal law."

SECTION 2. EXISTING NONCONFORMING USES.

Any Medical Marijuana Dispensary existing within the City of Anaheim on the effective date of this ordinance shall cease operations forthwith.

SECTION 3. SEVERABILITY.

The City Council of the City of Anaheim hereby declares that should any section, paragraph, sentence, phrase, term or word of this ordinance be declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other portions of this ordinance independent of the elimination herefrom of any such portion as may be declared invalid.

SECTION 4. SAVINGS CLAUSE.

Neither the adoption of this ordinance nor the repeal of any other ordinance of this City shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license or penalty or the penal provisions applicable to any violation thereof. The provisions of this ordinance, insofar as they are substantially the same as ordinance provisions previously adopted by the City relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments.

SECTION 5. PENALTY.

Except as may otherwise be expressly provided, any person who violates any provision of this ordinance is guilty of a misdemeanor and shall, upon conviction thereof, be punished in the manner provided in Section 1.01.370 of the Anaheim Municipal Code.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council of the City of Anaheim held on the \_\_\_\_ day of \_\_\_\_\_, 2007, and thereafter passed and adopted at a regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2007, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

CITY OF ANAHEIM

By: \_\_\_\_\_  
MAYOR OF THE CITY OF ANAHEIM

ATTEST:

\_\_\_\_\_  
CITY CLERK OF THE CITY OF ANAHEIM

58791.v2/MGordon

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ATTACHMENT NO. 9.7

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**ATTACHMENT #17**

# Attorney General Lockyer Issues Statement On US Supreme Court's Medical Marijuana Ruling

June 06, 2005

05-040

FOR IMMEDIATE RELEASE

(916) 324-5500

(SACRAMENTO) - Attorney General Bill Lockyer today issued the following statement on today's ruling by the U.S. Supreme Court in *Gonzales v. Raich*, which holds that federal laws prohibiting the use of medical marijuana remain in effect regardless of state laws that permit its use:

"Today's ruling does not overturn California law permitting the use of medical marijuana, but it does uphold a federal regulatory scheme that contradicts the will of California voters and limits the right of states to provide appropriate medical care for its citizens. Although I am disappointed in the outcome of today's decision, legitimate medical marijuana patients in California must know that state and federal laws are no different today than they were yesterday.

"Californians spoke overwhelmingly in favor of medical marijuana by passing Proposition 215, the Compassionate Use Initiative, and that law still stands in our state. Unfortunately, federal law continues to criminalize the use of physician-recommended marijuana medicine. This conflict between state and federal law means that seriously ill Californians will continue to run the risk of arrest and prosecution under federal law when grow and or they use marijuana as medicine.

"Today's ruling shows the vast philosophical difference between the federal government and Californians on the rights of patients to have access to the medicine they need to survive and lead healthier lives. Taking medicine on the recommendation of a doctor for a legitimate illness should not be a crime.

"There is something very wrong with a federal law that treats medical marijuana the same as heroin. The United States Congress and the President have the power to reform and modernize federal law in order to bring relief to medical patients and still punish those who illegally traffic in substances. Patients, physicians and the public that support medicinal marijuana should tell their Congressional Representatives and Senators to take a fresh look at the federal laws that ban its use."

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ATTACHMENT NO. 10

D2 . 285

# ATTACHMENT #18

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**Zoning Text Amendment  
No. 07-003 (Medical Marijuana  
Dispensaries)**

**REQUEST**

To amend Chapters 204 and 212 of the  
Huntington Beach Zoning and  
Subdivision Ordinance to delete all  
references to medical marijuana  
dispensaries in conformance with federal  
law.

## **BACKGROUND**

- In March 2005 the City adopted an Ordinance permitting medical marijuana dispensaries in the IG and IL zoning districts subject to additional requirements.
- In July 2005 the City Council directed staff to initiate this zoning text amendment.

## **ANALYSIS**

- Request is a housekeeping item and presents minimal planning issues.
- Approval will the bring the zoning code into conformance with federal law.

**PLANNING COMMISSION AND  
STAFF RECOMMENDATION**

Approve Zoning Text Amendment No.  
07-003 with findings and adopt  
ordinance.

**END**

**D2 . 288**

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# Medical Marijuana Dispensaries

City Council Meeting  
November 5, 2007

Proposition 215  
Compassionate Use Act of 1996

Senate Bill 420 (2003)  
Health and Safety Code 11362.5

# What Happened Since 1996?

✓ Adverse Community Impacts

✓ How Dispensaries Operate

✓ Photographs

# Adverse Community Impacts

# How Dispensaries Operate

# Photographs

D2 . 294

# Medical Marijuana Evaluations

LEGAL - DISCRETE - SIMPLE - PROFESSIONAL

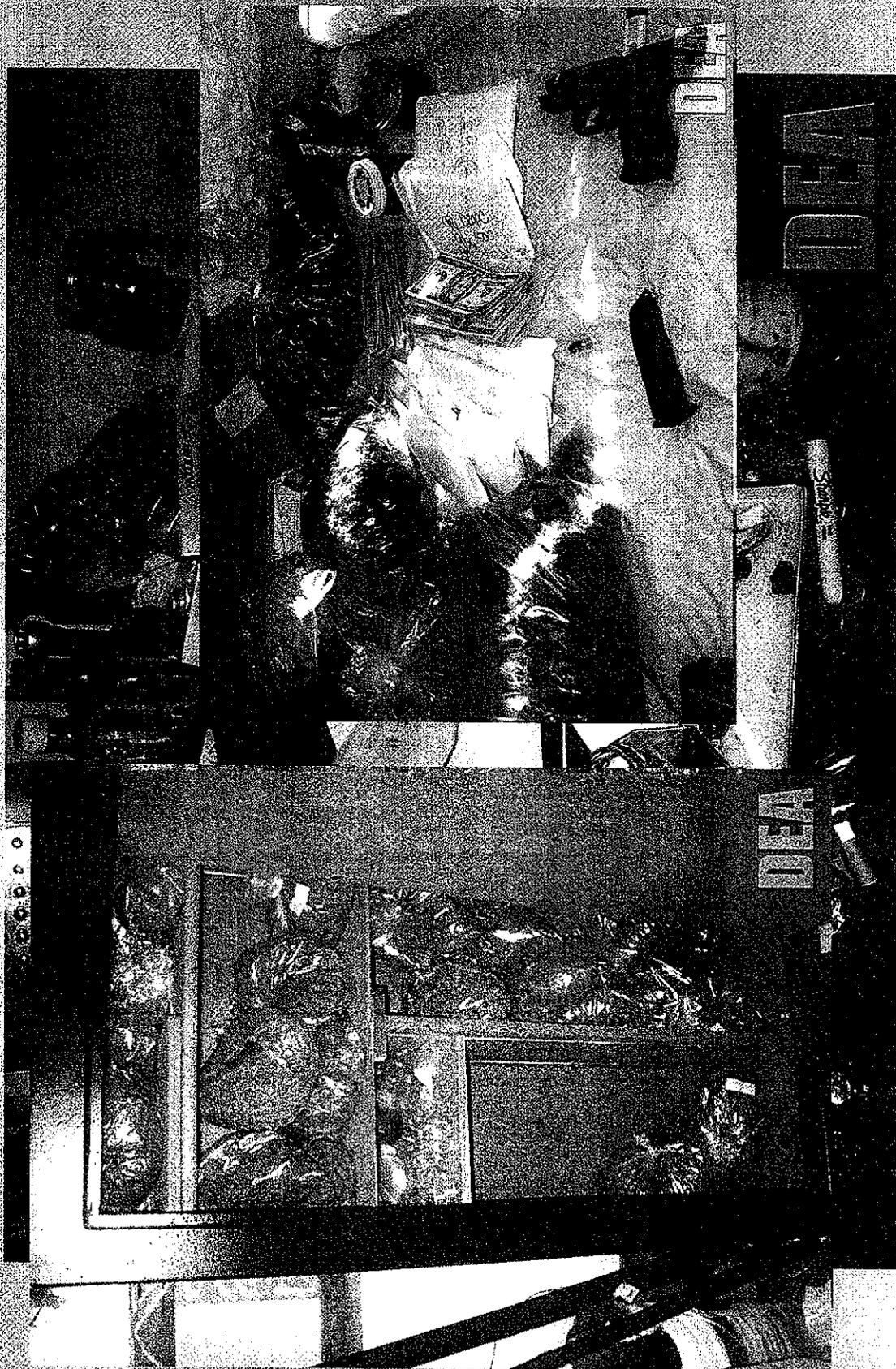
Has anyone you know experienced an illness  
for which medical marijuana could provide relief?

In the state of California, it is legal to own, smoke, and grow  
marijuana as long as you do it properly.

*GET ANSWERS NOW!*



Anxiety - Arthritis - Anorexia - Aids - Chronic Pain  
Chronic Nausea - Cancer - Glaucoma - Insomnia  
Migraines - Sports Injuries - Auto Accidents



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# Questions?