



CITY COUNCIL

Linda R. Maio
Councilmember District 1

ACTION CALENDAR

September 21, 2004

TO: Honorable Mayor and
Members of the City Council

FROM: Councilmembers Linda Maio and Margaret Breland

SUBJECT: Quota on and location of Medical Marijuana Dispensaries

RECOMMENDATION:

Refer to the Manager the request to develop an ordinance that establishes a quota on the number of Medical Marijuana Dispensaries at no greater than three, and to ensure that they are reasonably located away from schools and not concentrated in one particular area.

BACKGROUND:

Berkeley's existing medical marijuana collectives or dispensaries have been operating responsibly. We have had no complaints from neighbors or from the police department about the operations. We also wish to ensure that patients have ready access to the medicine that they need. A quota on the number of dispensaries, which is the number currently operating in Berkeley, is being recommended for several reasons.

Oakland has experienced a proliferation of dispensaries and attendant problems such that they have established a quota of four medical marijuana dispensaries. Attached is a recent article that discusses the Oakland experience. Berkeley needs to consider the Oakland experience and be proactive in establishing a reasonable number of dispensaries that are needed to serve Berkeley patients.

Berkeley has experience with one dispensary, no longer operating, where three armed robberies occurred. By limiting the number of dispensaries our Police Department can better monitor the operations of each dispensary to ensure that our public safety goals are met.

In addition, neighbors in Southwest Berkeley have raised the issue that this area has a high level of crime and that they are concerned that dispensaries that deal in controlled substances could exacerbate this situation. They fear that a proliferation of

dispensaries will want to locate in Southwest Berkeley because the rents are low and that this could bring more crime to their area. In addition, there is concern that entities that deal in controlled substances should not be located near schools.

This item requests that the staff look into these issues and develop policies and implementation strategies that address these concerns.

FINANCIAL IMPLICATIONS:

None

CONTACT PERSON:

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Big dispute in city pot bust
Oakland pot bust heats up

By Paul T. Rosynsky, STAFF WRITER

OAKLAND -- A routine traffic stop Wednesday afternoon for an illegal turn resulted in the discovery of what could be the largest pot-growing operation ever found by police in the city.

But what the California Highway Patrol described as "a major criminal grow" is being claimed by medical marijuana advocates as a legitimate business operation for one of three city-approved medical marijuana clubs.

The dueling descriptions coupled with the past criminal history of the building's owner and the involvement of a federal drug enforcement agency turned what appeared to be a simple drug bust into a possible test of the city's medical marijuana laws. The CHP said it is turning the case over to the DEA, which doesn't recognize the state's medical marijuana law.

"That place is so medical. It is so medical," said Angel McClary Raich, a medical marijuana advocate and user who worked on the Oakland law. "The people that were involved in that were basically getting the blessing of the city. The California Highway Patrol should not have just busted through the door."

The Highway Patrol did just that shortly after

2 p.m. following a traffic stop two hours earlier -- and three blocks away -- that resulted in an officer finding 88 marijuana plants in the back of what was described as a U-Haul truck.

The officer stopped the truck after its driver made an illegal turn, police said. As he walked up to the truck, the officer smelled marijuana, conducted a search and found the plants and "documentation" that led officers to the warehouse at 2638 Market St., police said.

Once there, officers saw three people run from the building. They caught all three, went inside to search for more suspects and found almost 2,000 plants worth "several millions of dollars," police said.

"Our officers noticed the smell as soon as they arrived," said Lt. Rob Patrick. "This is a major criminal grow."

Patrick said the four arrested, the driver and three people found at the warehouse, all were born in the mid-1970s and live in San Leandro, Richmond, Santa Clara and Oakland.

Bob Berry, owner of Berry Bros. Towing, which owns a lot and a warehouse next to the growing operation, said his employees began smelling the drug

last week.

"One of my guys said it smelled like marijuana to him," Berry said. "They told us they were contractors fixing up homes in West Oakland and using the warehouse as offices."

Also being investigated is the building's owner, Thomas Grossi, a pawnbroker arrested several years ago on two counts of transporting narcotics for sale and distribution, police said.

That charge resulted in the city of Oakland revoking Grossi's pawnbroker permit.

Contacted by the Oakland Tribune, Grossi denied knowledge of the growing operation and said he leased the building to others, whom he refused to identify.

"Holy mackerel, Holy Jesus," he said. "This is such a shock, I didn't know anything about this."

In September 2003, Grossi, then owner of a medical marijuana club in Oakland, told the Tribune the clubs were helping sick people and businesses in the city's Uptown neighborhood.

"I can't emphasize that enough," he said at the time. "If you sit there on a daily basis, you will see people who are definitely ill and seeking comfort and solace and relief."

Grossi, however, refused to discuss his past Wednesday, including the prior criminal charges, which he said were misdemeanors.

The connections between the growing operation, the city's medical marijuana laws and the Highway Patrol's decision to call in federal agents troubled medical marijuana advocates.

They questioned why the city's police department was not called and said it is too much of a coincidence that a traffic stop blocks away led to the bust.

By having federal agents involved, federal drug charges could be used to prosecute the growers, setting up another challenge between federal, local and state medical marijuana laws, advocates said.

Raich, whose fight against the federal government over the legalization of medical marijuana is blazing a path through the country's legal system, said the Highway Patrol broke the law when it entered the warehouse.

In addition, she said the federal government should have never been called to investigate because the plants were being grown legally under city laws.

Raich sued the federal government in 2002 for violating California's medical marijuana law when federal agents began raiding medical marijuana clubs. That suit resulted in a court battle, which the U.S. Supreme Court on Monday agreed to hear.

A federal appeal court ruled in Raich's favor last December and she has been given permission to use marijuana for medical purposes.

Jeff Jones, director of the Oakland Cannabis Buyers Cooperative, also said the plants were being grown legally under city laws.

"There will be a medical claim," he said. "It is tied to one of the three clubs in the city."

City officials could not be reached for comment Wednesday night.

Highway Patrol Spokesman Wayne Ziese rejected the medical marijuana claims.

"Why would the suspects run if they are operating a legitimate business?" he said. "The grow is so sizable and sophisticated, this is not a minor mom and pop type grow."

Staff writers Kristin Bender, Robert Gammon, Laura Counts and correspondent Alicia Wittmeyer contributed to this report.

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