

TOWN OF FAIRFAX STAFF REPORT

TO: Mayor, Members of the Town Council

FROM: Judy Anderson, Town Clerk

DATE: November 2, 2011

SUBJECT: Adoption of Resolution No. 11-58, a Resolution of the Town Council of the Town of Fairfax in Opposition to Department of Justice Crackdown on Medical Marijuana Clinics

This Resolution has been withdrawn and the agenda will be amended at the meeting to make it a discussion item only based on the attached letters.

AGENDA ITEM # 12



TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
(415) 453-1584 / FAX (415) 453-1618

October 26, 2011

Mayor
Larry Bragman

Melinda Haag
United States Attorney
450 Golden Gate Avenue, 11th Floor
San Francisco, CA 94102

Vice Mayor
Pam Hartwell-Herrero

BY FACSIMILE AND U.S. MAIL: (415) 436-7234

Town Council
John Reed
Lew Tremaine
David Weinsoff

Re: Marin Alliance for Medical Marijuana
6 School Street Plaza, Suite 215
Fairfax, California 94930

Town Manager
Michael Rock

Dear Ms. Haag:

I am writing as a follow up to our telephone conversation of October 25, 2011.

As we discussed, the Marin Alliance for Medical Marijuana has been operating pursuant to a conditional use permit issued by the Town of Fairfax fourteen years ago. You indicated that your office selected the Marin Alliance, and others for closure because their proximity to a public park, ballfield or school is in violation of California law.

The location of medical marijuana dispensaries is regulated under California Health and Safety Code section 11362.768 which excludes them from a 600 foot radius around schools. However, under California Health and Safety Code section 11362.768 (g):

"Nothing in this section shall preempt local ordinances, adopted prior to January 1, 2011, that regulate the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider."

The Marin Alliance has been operating under a conditional use permit granted in 1997 which regulated its location along with 83 other special conditions. The permit was granted pursuant to the Town of Fairfax's land use and planning ordinances which were adopted prior to the effective date of the legislation. Hence, I believe that the location of the Marin Alliance is a legal pre-existing, non-conforming use under California law. Given these circumstances, I would again implore you to reconsider your office's decision to proceed against the Marin Alliance.

Thanks again for your time and consideration. Please feel free to call me if you'd like to discuss the matter further.

Respectfully yours,


LARRY BRAGMAN
Mayor

This letter represents the personal viewpoint of the Council member who signs it and does not necessarily represent an official position of the Town of Fairfax.



TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
(415) 453-1584 / FAX (415) 453-1618

October 13, 2011

Mayor
Larry Bragman

Vice Mayor
Pam Hartwell-Herrero

Town Council
John Reed
Lew Tremaine
David Weinsoff

Town Manager
Michael Rock

Melinda Haag
United States Attorney
450 Golden Gate Avenue, 11th Floor
San Francisco, CA 94102

Re: Marin Alliance for Medical Marijuana
6 School Street Plaza, Suite 215
Fairfax, California 94930

Dear Ms. Haag:

I am writing in regard to the status of the ongoing operation of the Marin Alliance for Medical Marijuana in Fairfax.

The Marin Alliance for Medical Marijuana (MAMM or Marin Alliance) has been operating as a publicly licensed medical marijuana dispensary pursuant to a Use Permit issued by the Town of Fairfax since 1997. Since its inception, the Marin Alliance has provided safe and reliable access to a growing cross-section of the Marin community that benefits from medical marijuana.

The original Use Permit issued by the Town of Fairfax had 84 conditions which covered all material terms of MAMM's operation including but not limited to its location, signage, hours of operation, patient records, sales records and inspection by the Fairfax Police Department. During its fifteen continuous years of operation, MAMM has had a cooperative and collaborative relationship with the Town of Fairfax. In addition to its service to the community, the Marin Alliance has generated significant sales tax revenue for the Town of Fairfax which is especially important during these difficult times. Over the years, the Marin Alliance has evolved from an outlier into an established member of the Fairfax community.

The Marin Alliance has been located at its current location at School Street Plaza since its inception. While the dispensary is adjacent to a Municipal Baseball Field, the proximity of its location has never been the cause of any issues or controversies for our community. The Marin Alliance has faithfully adhered to the Fairfax Use Permit conditions which prohibit the consumption or display of medical marijuana on or near the premises and its inconspicuous operations have never caused any disruption or interference with the Little League or other youth activities at the field or the surrounding neighborhood.

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Throughout its long record of operation, the Marin Alliance has proven to be flexible and responsive to the needs and concerns of the community. Recently, after lengthy hearings in which testimony was taken from residents, the Fairfax Planning Commission allowed the Marin Alliance to conduct business while Little League games were in progress. The Planning Commission found no material instances in which the Marin Alliance's business had interfered with Little League operations or posed a risk to youth and the League did not object to the modification. Essentially, the Planning Commission found no reason to continue the prohibition and removed it from the terms of the Marin Alliance Conditional Use Permit as there simply was no factual basis to impose this restriction. The current Use Permit has 63 separate conditions.

Over the years, the community of patients that are served from the Marin Alliance has grown in both numbers and scope. Almost everyone in Fairfax and the surrounding community is familiar with someone who has benefitted by the provision of medical marijuana by the Marin Alliance. Those patients have ranged from cancer patients that have been able to avoid the nausea and other debilitating effects of their treatment to many others who suffer from a host of chronic pain and other serious medical conditions. With the highest documented rate of breast cancer in the United States, Marin's breast cancer patients have especially benefitted from having safe and legal access to medical marijuana.

There is an increasing body of peer reviewed research which establishes the medical benefits for patients. In 2010, the Center for Medicinal Cannabis Research (CMCR), an entity created by the California State Legislature, published its initial study of the medical benefits of cannabis. The study concluded that cannabis provided a wide array of medical benefits including relief of HIV-related peripheral neuropathy, effective analgesic pain relief, and reduction of muscle spasticity in Multiple Sclerosis patients. Information taken from the "Report to the Legislature and Governor of the State of California Presenting Finding Pursuant to SB 847" which Created the CMCR and Provided State Funding. In addition, The California Medical Association and The National Institute of Cancer (A Federal Agency) have stated that Medical Marijuana is helpful in the treatment of cancer.

The Marin Alliance is particularly effective in providing service to the significant percentage of physician qualified patients who cannot easily access medical marijuana without a dispensary. These patients may be elderly, infirm or reclusive and elimination of this vital community access facility would effectively prevent them from obtaining medical marijuana. For them, closure of the Marin Alliance would cause a devastating loss of dignity and privacy. Other patients would likely be forced to seek access through black market sales which would expose them to all of the inherent dangers of such activities. Thus closure of the Marin Alliance would have the paradoxical impact of increasing public safety concerns for local law enforcement departments while at the same time benefitting traffickers.

Based upon its satisfaction of the scores of conditions in the Use Permit issued by the Town of Fairfax, the record clearly establishes that the Marin Alliance has been in clear and unambiguous compliance with existing state and local laws providing for the medical use of marijuana. Its performance has been documented through open public hearings which have provided notice and opportunity for all concerned residents to offer comments and testimony. In each instance, the Marin Alliance has met or exceeded all material conditions of the Use Permit issued by the Town of Fairfax.

Equally important in determining whether the Marin Alliance should be targeted for prosecution is the complete lack of any evidence or indicia of criminal enterprise. To my knowledge there hasn't been a suggestion that the Marin Alliance isn't in compliance with all statutory and judicial interpretations of the California Attorney General's 2008 Guidelines for the Non-Diversion of Marijuana Grown for Medical Use. Nor is there any indication that it has ever allowed or encouraged any activity that would indicate trafficking activity of any federal interest. Indeed, as set forth above, the Marin Alliance's dispensary has probably decreased trafficking activity in our community.

~~The Marin Alliance has been a model of effective local oversight of medical cannabis dispensaries. Closure of this facility will eliminate significant sales tax revenue for the Town of Fairfax and needlessly increase the suffering of hundreds of patients who have come to rely on it as a safe access point for medical marijuana. I would therefore respectfully urge you to exercise your discretion to reconsider your office's evaluation of the legal viability of the Marin Alliance in light of its documented record of lawful operation and benefit to the community.~~

Please feel free to contact me if you'd like to discuss the matter directly. In the meantime, thank you very much for your time and consideration.

Respectfully yours,



LARRY BRAGMAN

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