

Medical Marijuana Ordinances

June 22, 2010

Item 3.10

March 30, 2010 Council Referral

1. A draft ordinance establishing **regulations for the control and taxation of Collectives** and reflecting principles 1, 2, and 4 outlined in the Joint Memorandum dated March 25, 2010 from Mayor Reed and Vice Mayor Chirco:
 - *Principle 1:* San Jose recognizes that California law allows a patient's primary care giver to cultivate and possess marijuana for the personal medical purposes of the patient upon the recommendation of a physician;
 - *Principle 2:* San Jose will follow the guidance of the California Attorney General and the United States Attorney General in criminal enforcement of the laws regarding medicinal use of marijuana.
 - *Principle 4:* Individuals or entities that cultivate or distribute marijuana for profit are operating illegally under state law and are illegal under San Jose Municipal Code.
2. **A community outreach plan;** and,
3. An analysis for Council consideration about the process for placing the issue on the **November 2, 2010 ballot** asking for Citywide support for the restricted zoning of medical marijuana collectives/cooperatives in San José according to State law by taxing them at 3% per \$1,000 gross receipts including the allowance for indexing for inflation.

Today's presentation will cover:

- Legal Analysis
- Current State
- Draft Land Use Policy
- Draft Regulatory Program
- Taxation & Potential Ballot Measure Analysis

Legal Analysis & Framework

- Medical Marijuana is a challenging area of the law
 - Generally remains illegal under both State and Federal law
 - Compassionate Use Act and MMP Provide an Affirmative Defense
 - Differing Interpretations Regarding Retail/Dispensary Model
- Regulations Provide For Operation of Dispensaries Within Parameters of State law
 - Members are patients and their caregivers
 - All activities performed by members
 - Dispensary cannot make a profit
 - Dispensary cannot be a primary caregiver

What's Happening in San Jose?

- Increase of Medical Marijuana ads in some newspapers suggest activity may exceed the law
- In Fall 2009, the City had 3 active Code Enforcement cases
- In January 2010, 24 additional cases opened
- Since then, 6 additional cases opened and 3 cases closed
- Enforcement tools include letters, Compliance Orders, Appeals Hearing Board, etc.



San Jose Municipal Code
Title 20: Zoning & Policy Alternatives

Zoning/Land Use Ordinance

- Maximum Number of Collectives at 10
- Commercial General Zoning District (On-Site Cultivation)
- Zoning Compliance Certificate (No Land Use Permit)
- 500 feet distance requirement from sensitive uses
 - Residential use
 - School
 - Child day care center
 - Church that includes a school or child day care use
 - Community or recreation center
 - Park
 - Trail
 - Library
 - Substance abuse rehabilitation center or
 - Another Medical Marijuana Collective

Policy Alternatives

- Allow Collectives in another Zoning District, such as Industrial Park or Combined Industrial/Commercial Zoning District
- Other Land Use Permit Process
 - Public Noticing Process
- 1000 feet from sensitive uses
- Remove entirely distance requirement from sensitive uses or the concept of a sensitive use
- Offsite Cultivation in Industrial Zoning Districts

San Jose Municipal Code
Chapter 6.88: Medical Marijuana & Policy
Alternatives

Medical Marijuana Ordinance

- Part 1: Purpose and Intention
- Part 2: Definitions
- Part 3: General Provisions - Registration
- Part 4: Operating Regulations and Conditions
- Part 5: Maintenance of Records
- Part 6: Audits
- Part 7: Inspection and Enforcement
- Part 8: Other Legal Duties
- Part 9: Personal Use Requirements and Regulations

Medical Marijuana Ordinance

- Collective Structure
- Registration Process
- Hours of Operation
- Safety and Security
- Closed Loop System
- Packaging for Medical Marijuana
- Sale of Ancillary and Manufactured Products or Paraphernalia Prohibited
- Consumption of medical marijuana onsite prohibited
- Records Maintenance and Independent Audits
- Personal Use Considerations and Regulations
- Sunset in Two Years

Policy Alternatives

- Number of Medical Marijuana Collectives
- Hours and/or Days of Operation
- Operating Regulations and Conditions
 - Safety & Security
 - Cultivation
 - Collective Operations
 - Owner/Manager Requirements
 - Packaging
 - Records
 - Audits
- Personal Use Considerations of Medical Marijuana

*Medical Marijuana Taxation
and
Potential City Tax Measure Analysis*

Taxation Analysis

- Current business tax model is based on employee count
- Based on Council referral, the proposal is to modify the current business tax structure to allow the taxation of marijuana collectives at a rate of \$30 per \$1,000 of gross receipts
- State Law prohibits collectives from generating a profit
- Potential tax revenues generated under a collective model vs. a retail model is limited

State Initiative - *Regulate, Control and Tax Cannabis Act of 2010*

- If voters approve the State Initiative; local governments would be allowed to adopt regulations to permit the retail sale of marijuana
- Federal government could decide to intervene if California voters pass the State initiative
- If State initiative and City's gross receipt business tax are approved by voters:
 - Subject to City Council's decision to permit the retail sale of marijuana in San Jose
 - City could begin imposing and collecting the new gross receipts business tax on all cannabis businesses in San Jose
- Ability to forecast potential tax revenue at this time is difficult

Policy Alternative For City Tax Measure

- Council can decide to delay any potential City Tax Measure taxing cannabis businesses until after the November Election
 - Next election opportunity would be in 2012, unless the City Council unanimously votes to declare a fiscal emergency
 - A special tax can be voted on at any election but
 - Requires 2/3 voter approval
 - Tax revenues must be dedicated to specific purposes

Timeline and Cost for Ballot Placing

Timeline:

June 23-July 2	Survey Development
July 2-12	Consultant Conducts Survey
July 15	Consultant Provides Results
July 23	Staff Report Out with Proposed Ballot Measure Question
August 3	City Council Consideration
August 6	Filing deadline with County

Estimated Cost: \$450,000

Options for the City Council

- 1) Comprehensive Regulatory Program
- 2) Ban Establishments Dispensing Medical Marijuana
- 3) Postpone Action on Regulatory Program



Staffing Plan

Staffing Plan

Proposed staffing plan:

- Reflects minimal level of resources required based on the draft ordinances and 10 collectives
- Uses some existing organizational infrastructure for implementation and to keep costs down for a Collective
- Addresses the significant resources and diverse sets of professional expertise/disciplines needed to support the Regulatory Program (e.g., legal, policy, financial reviews, law enforcement, etc.)

Staffing Plan

Staff Classification	Level (FTEs)	Cost
Citywide Policy Coordination and Policy/Evaluation Review		
- Executive Analyst (City Manager's Office)	0.5	\$55,488
Law Enforcement and Investigation		
- Police Officers.....	2.0	\$366,666
- Police Sergeant.....	1.0	\$209,592
- Indirect Cost.....	\$153,310
- Non-Personal/Equipment.....	\$2,930
Financial Audit		
- Analyst II (Finance Department).....	1.0	\$121,014
- Indirect Cost.....	\$41,160
TOTAL	4.5	\$950,160
Registration Fee per Collective (10 Total)	\$ 95,016*

***Cost Recovery: Subject to annual review as part of the City's schedule of fees and charges**

Registration Fee Applied to Patient Population and Collective Model

Registration Fee: \$95,016

Patient Population	Annual Fee (Registration Fee/Patient Population=Annual Fee)	Monthly Fee (Annual Fee/12= Monthly Fee)
5,000	\$19.00	\$1.58
15,000	\$6.33	\$0.53
35,000	\$2.71	\$0.23
100,000	\$0.95	\$0.08