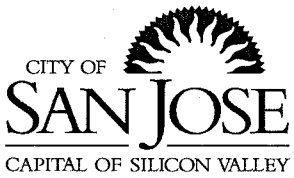
COUNCIL AGENDA: 09-12-11
ITEM: 4.1



Memorandum

TO: **MAYOR AND CITY COUNCIL**

FROM: Councilmember Sam Liccardo

SUBJECT: **ADOPTION OF THE SANTA CLARA COUNTY CITIES ASSOCIATION RESOLUTION RE: MEDICINAL MARIJUANA**

DATE: September 12, 2011

APPROVE 9-12-11

Recommendation:

In addition to whatever Ordinance the Council ultimately approves, the Council should vote to join the Santa Clara County Cities Association and other local cities in adopting the accompanying resolution, calling for consistent federal and state regulation of medicinal marijuana, including re-classifying the drug within the schedule set forth in § 812 of the Federal Controlled Substances Act.

Should the Brown Act preclude consideration of this item during Tuesday's Council hearing, refer the matter to the Rules Committee's first available agenda.

Analysis:

Since the 1930's, federal drug laws have classified cannabis as a "Schedule I" substance, a category more restrictive than that used for far more dangerous drugs such as cocaine and methamphetamine. This summer's ruling by the U.S. Drug Enforcement Agency denied a request to reclassify marijuana. By keeping the drug within a prohibited classification of the Controlled Substances Act, federal authorities cannot regulate its safety, efficacy or dosage, tasks typically within the Federal Drug Administration's domain. Equally important, marijuana's status as a Schedule I drug prevents its distribution through licensed, regulated pharmacies, a far-preferable mechanism of sale than the current morass of dispensaries.

Although the California Governor has recently signed AB1300, allowing municipalities broad discretion to regulate marijuana, no city manager professes to have the expertise or resources necessary to do so. That, of course, will not prevent cities from being sued or blamed for health problems that might arise from the negligent administration of the drug, adverse reactions, unsafe cutting agents, or other such risks.

With the hope of spurring action on the part of our federal and state officials, on May 12, 2011, the Board of the Santa County Cities Association (SCCA) approved a resolution stating the need for the State to provide uniform guidelines for regulating the drug, or better, that the Federal government takes action to regulate marijuana through rescheduling of the drug within the Controlled Substances Act. A copy of the resolution is attached as Exhibit A. Given the regional nature of this

issue, the SCCA is requesting that each city within Santa Clara County support the resolution. To date, six cities have done so, including our next largest neighbor, Sunnyvale.

At the suggestion of Councilmember Constant and myself, this Council has previously endorsed language similar to the attached resolution. However, to demonstrate solidarity with other Santa Clara County cities, this Council should pass the attached resolution. With a uniform position, we can more effectively encourage our state and federally elected officials to persuade their peers to act.

EXHIBIT "A"

Be it resolved by this Council:

WHEREAS, The State of California and the federal government of the United States of American have failed to create a consistent, sensible approach to regulation of medicinal marijuana;

WHEREAS, The U.S. Food and Drug Administration currently regulates the safety, efficacy, and dosage of virtually every drug having a medicinal use, and thereby allows many of those drugs to be distributed through licensed and regulated pharmacies;

WHEREAS, the federal government and State of California have created, both by acting and failing to act, a system in which the burden of regulating a single drug, medicinal marijuana, falls upon local governments lacking the resources to adequately do so;

WHEREAS, the failure of local governments to allow the operation of cannabis collectives and cooperatives may subject cities and counties to litigation from those clubs;

WHEREAS, the consequence of this inconsistent scheme of regulation places costs and regulatory burdens on cities like the City of San Jose, precisely at a time when the City of San Jose confronts its most severe budgetary shortfalls in decades;

IT IS THEREFORE RESOLVED THAT:

The City of San Jose joins with the Santa Clara County Cities Association and other local entities calling for:

a. consistent federal and state regulation of medicinal marijuana, including re-classifying the drug within the schedules set forth in § 812 of the federal Controlled Substances Act,

b. a regulatory approach that ensures that the FDA regulates marijuana just as it regulates other drugs purporting to have a medical purpose, and

c. distribution of medicinal marijuana through licensed, regulated pharmacies, if distribution should occur at all within the State of California.

EXHIBIT "B'

Opinion: The feds should face up to, and regulate, medical marijuana

By Sam Liccardo

(SAM LlCCARDO represents downtown District 3 on the San Jose City Council.)

Special to the Mercury News

Posted: 01/15/2011 08:00:00 PM PST

http://www.mercurynews.com/opinion/ci_17099674?nclick_check=1

When confronting a screaming line drive, slow-footed first basemen have long benefited from an oddity in baseball's rules that enables them to avoid being charged with an error for failing to make a catch, as long as they don't touch the ball.

While dozens of states and cities grapple to find a responsible approach to regulate medical marijuana, federal regulators are behaving like America's torpid first basemen.

By keeping the drug within a prohibited classification of the Controlled Substances Act, federal authorities cannot regulate its safety, efficacy or dosage, tasks typically within the Federal Drug Administration's domain. Municipalities will be blamed for safety problems, but Washington's fingerprints won't be on any of them.

In San Jose, where the number of cannabis clubs has ballooned from a dozen to nearly 100 in recent months, the debate has sharpened.

The City Council faces a dilemma: Ban marijuana collectives and face a barrage of lawsuits for denying access to treatment for the ill, or embark on a broad scheme of drug regulation, a task for which municipal officials have no qualifications or experience.

Several cities have chosen regulation, but with wide variations in approach. They share a common outcome, however: grief.

Neighbors grumble about secondary drug deals in parking lots. Patients decry municipal taxes on their medicine.

Newspapers increasingly report violent armed robberies of cash-laden dispensaries and grow houses. Medical experts worry about the dosage, potency and purity of the drug, citing the 2,300 Californians annually admitted to emergency rooms for cannabis-associated acute psychosis.

Responsible advocates groan at studies suggesting that fewer than 10 percent of registered cannabis-receiving patients actually have a diagnosis of the type of illness routinely cited to justify compassionate use laws, such as HIV, glaucoma, multiple sclerosis, neuropathy or cancer. Police complain that the conflicting jumble of state and

federal rules leaves them without a clear means to distinguish legitimate medical collectives from Stoners-R-Us.

As we consider regulatory options, we should not overlook the obvious. First, the FDA already regulates the safety and efficacy of thousands of drugs in the U.S., but not marijuana. Second, businesses experienced in responsibly distributing therapeutic drugs already exist; they're called pharmacies.

What pushes marijuana out of pharmacies, and into dispensaries? Federal drug laws, which, since the 1930s, have classified cannabis as a "Schedule I" substance, a category more restrictive than that used for far more dangerous drugs such as cocaine and methamphetamine. Pharmacies can't touch the drug, and the FDA can't mitigate its harms.

Experts like UCLA professor Mark A.R. Kleiman have long urged distributing marijuana through pharmacies both to make the drug less accessible to recreational users and to sanction research to better understand marijuana's benefits and risks.

What risks? In recent years, marijuana growers have increasingly tinkered with the ratios of two key chemical substances in the plant, delta-9-tetrahydrocannabinol (THC) and cannabidiol (CBD), to boost the drug's euphoric potency. This has sparked medical concerns about increased adverse reactions.

Under the current regulations, federally sanctioned research labs cannot test this THC-boosted marijuana, nor can they compare its efficacy with that of other potentially safer cannabis extracts, like Sativex. We're also hampered from learning about the effects of long-term use and exploring marijuana's reported associations with everything from bronchitis to cognitive impairment to schizophrenia.

To be sure, federal reform faces political headwinds. Critics on both sides will dispense heavy doses of self-righteous rhetoric; the marijuana industry will defend unfettered access, while drug warriors will monger fears of legalization.

Risk and criticism always accompany reform. But no first baseman has ever won a Gold Glove for ducking from line drives.

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SAM LICCARDO represents downtown District 3 on the San Jose City Council. He wrote this article for this newspaper.

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