



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Dennis Hawkins, CMC
City Clerk

SUBJECT: SEE BELOW

DATE: 2-1-12

SUBJECT: ACTIONS RELATED TO MEDICAL MARIJUANA

RECOMMENDATION

As recommended by the Rules and Open Government Committee on February 1, 2012 and outlined in the attached memo previously submitted to the Rules and Open Government Committee:

- (a) Consistent with California Elections Code Section 9241, approve an ordinance entirely repealing Ordinance No. 28960 (Chapter 6.88 of the San Jose Municipal Code), which establishes regulations pertaining to medical marijuana collectives and to individual cultivation and use of medical marijuana.
- (b) Establish enforcement priorities for city actions against medical marijuana collectives to guide staff until the Council adopts a regulatory ordinance or the State of California establishes a regulatory system;
- (c) Direct staff to produce quarterly report on tax compliance and complaint data by locations; and
- (d) Continue consideration of a marijuana business tax increase at a meeting and at a public hearing to be set at a later date.
(Mayor)

OR

- (e) If (a) is not approved, adopt a resolution calling a special municipal election to be held on June 5, 2012, for the purpose of submitting to the electors of the City of San José, a measure seeking approval of Ordinance No. 28960. (City Clerk)



Memorandum

TO: RULES AND OPEN
GOVERNMENT COMMITTEE

FROM: Mayor Chuck Reed

SUBJECT: MEDICAL MARIJUANA
ORDINANCE

DATE: January 27, 2012

Approved

Chuck Reed

Date

1/27/12

RECOMMENDATION

Agendize for Council action on February 14, 2012:

1. Rescind the municipal code provisions in Title 6 dealing with medicinal marijuana;
2. Establish enforcement priorities for city actions against medical marijuana collectives to guide staff until the Council adopts a regulatory ordinance or the State of California establishes a regulatory system;
3. Direct staff to produce quarterly reports on tax compliance and complaint data by locations; and
4. Defer consideration of a tax increase to cover the cost of an election.

BACKGROUND

As a result of the successful referendum signature-gathering efforts, the Council must either rescind the medical marijuana ordinance for at least a year, or place it on the June ballot for voter approval. The Council could also rescind the ordinance and adopt a new ordinance that is significantly different than the current ordinance. However, efforts to devise a significantly different ordinance have been unsuccessful due to the limitations of California law.

The California Attorney General has reached a similar conclusion, and she has recently ceased work on a revision of medical marijuana guidelines until the Legislature makes some statutory changes:

“We cannot protect the will of the voters, or the ability of seriously ill patients to access their medicine, until statutory changes are made that define the scope of the group cultivation right, whether dispensaries and edible marijuana products are permissible, and how marijuana grown for medical use may lawfully be transported.”

RULES AND OPEN GOVERNMENT COMMITTEE

January 27, 2012

Subject: Medical Marijuana Ordinance

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In addition, the California Supreme Court has agreed to review four cases from the Courts of Appeal that have interpreted the Compassionate Use Act. The Court's decision is likely to clarify some areas of the law.

These actions underline the difficulty for local governments in crafting regulations in this complex area. If state law is modified by the legislature, the courts, or by ballot initiative (several are being processed), the City should reconsider an ordinance at that time.

Many parties have made a significant good-faith effort to find a solution to revise our ordinance, and I appreciate the time and resources they have invested. Unfortunately, the law is simply unclear and unsettled. I agree with the Attorney General that this needs legislative action.

Until then, the City's enforcement efforts should be based on tax compliance, proximity to schools, residential areas or other sensitive areas, and nuisance activities.