

SUPPLEMENTAL

COUNCIL AGENDA: 6/22/10
AGENDA ITEM: 3.10



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Deanna J. Santana
Robert L. Davis

SUBJECT: MEDICAL MARIJUANA

DATE: June 18, 2010

Approved

Date

6/18/10

SUPPLEMENTAL

REASON FOR SUPPLEMENTAL REPORT

In the original staff report, released on June 15, 2010, staff noted that a supplemental report on the following items would be distributed before the June 22, 2010 City Council Meeting:

- (1) Administrative Citation Schedule of Fines,
- (2) Draft ordinance on a Medical Marijuana Ban,
- (3) Summary of the community input, and
- (4) State Board of Equalization's tax opinion expert clarification (not included in this memo).

The purpose of this supplemental memorandum is to transmit the following information to the City Council regarding the draft Medical Marijuana Ordinances: Administrative Citation Schedule of Fines and Summary of the June 7th Public Meeting. As stated in the original staff report, the State Board of Equalization's tax opinion expert is expected to respond to the City in early July regarding clarification on when a medical marijuana sale is subject to sales tax collection. The draft ordinance on a Medical Marijuana Ban was released by the City Attorney's Office separately.

DISCUSSION

1. Administrative Citation Schedule of Fines

The Administration's June 15, 2010 Memorandum, titled, *Medical Marijuana*, includes the following standard amendment language for the Administrative Citation Schedule of Fines for violations related to the draft medical marijuana ordinance (Chapter 6.88, Medical Marijuana). Attachment F, which was released separately by the City Attorney's Office and can be found on the City Clerk's website, is the proposed resolution to amend the Administrative Citation Schedule of Fines so that violations to the Medical Marijuana Ordinance can be imposed. The proposed fine amounts are aimed to ensure compliance and serve as a deterrent for potential offenses pertaining to:

- Failure to Register;
- Operation and Regulatory Conditions;
- Collective Operations;

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- Collectives Operating For Profit, Engaging in Sales and Attempting to Illegally Transfer Registration; and,
- Personal Use Requirements and Regulations.

The Police Department recommends the fine for the first violation for the failure to register be set at \$100,000, slightly above the \$95,016 Registration Fee, to deter operators from engaging in illegal and/or unauthorized operations of cannabis distribution activities in the City of San Jose. The proposed fines also have escalators built in that progressively increase the fines for subsequent violations of the Medical Marijuana Ordinance. For example, the fine for a second violation, within a 12 month period from the date of the previous violation, is 1 ½ times higher than the fine for first violation (\$150,000); and, third and subsequent violations are double the amount of the first violation (\$200,000). It is staff's opinion that setting the fine amount above the nature and cost of registering as a Medical Marijuana Collectives reduces the likelihood of cannabis operations opting to pay the fines for the sake of operating and as a "cost of business," instead of complying with the City's Ordinance.

The Administrative Citation Schedule of Fines for violations of operations or regulatory conditions are generally consistent with Title 6, Business Licenses and Regulations, fines for non-compliance. Lastly, fines for violations of personal use requirements and regulations have been developed sufficiently low to ensure relative consistency with the spirit of the Compassionate Use Act, but to deter the operation of "grow houses" in the City.

Table 1: Proposed Schedule of Fines for Medical Marijuana Ordinance

Section	Offense	Administrative Citation Fine
6.88.300 (A,B)	Medical Marijuana Registration Process	First Violation.....\$100,000
		Second Violation.....\$150,000 <i>(within 12 month period from date of previous violation)</i>
		Third and Subsequent Violations.....\$200,000 <i>(within 12 month period from date of previous violation)</i>
6.88.360 (A-D)	Medical Marijuana Updated Registration Form Required	First Violation.....\$5,000
6.88.400C	Medical Marijuana Operating Regulations and Conditions	Second Violation.....\$7,500 <i>(within 12 month period from date of previous violation)</i>
6.88.410	Medical Marijuana - Compliance with the Code	Third and Subsequent Violations.....\$10,000 <i>(within 12 month period from date of previous violation)</i>
6.88.420	Medical Marijuana - Security	
6.88.430	Cultivation of Medical Marijuana	
6.88.440 (A, D-M)	Medical Marijuana Collective Operations	

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Section	Offense	Administrative Citation Fine
6.88.440 (B, C)	Medical Marijuana Collective Operations	First Violation.....\$10,000 Second Violation.....\$25,000 <i>(within 12 month period from date of previous violation)</i> Third and Subsequent Violations.....\$50,000 <i>(within 12 month period from date of previous violation)</i>
6.88.450	Medical Marijuana Owner, Manager and Membership Requirements	First Violation.....\$5,000 Second Violation.....\$7,500 <i>(within 12 month period from date of previous violation)</i> Third and Subsequent Violations.....\$10,000 <i>(within 12 month period from date of previous violation)</i>
6.88.460	Medical Marijuana Packaging of Medical Marijuana	
6.88.470	Medical Marijuana - Public Safety and Safety of Location	
6.88.500	Medical Marijuana - Maintenance of Records	
6.88.600	Medical Marijuana - Audits	
6.88.700B	Medical Marijuana - Inspection and Enforcement	
6.88.810 (A-C)	Medical Marijuana - Compliance with Chapter and State Law	
6.88.840	Medical Marijuana Registration Nontransferable	First Violation.....\$10,000 Second Violation.....\$25,000 <i>(within 12 month period from date of previous violation)</i> Third and Subsequent Violations.....\$50,000 <i>(within 12 month period from date of previous violation)</i>
6.88.850	Medical Marijuana - Cease Operations after Sunset of Chapter	
6.88.900	Medical Marijuana Personal Use Requirements and Regulations	First Violation.....\$2,500 Second Violation.....\$5,000 <i>(within 12 month period from date of previous violation)</i> Third and Subsequent Violations.....\$7,500 <i>(within 12 month period from date of previous violation)</i>

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2. *Draft Ordinance on a Medical Marijuana Ban*

As noted above, the City Attorney's Office has released the draft ordinance on a Medical Marijuana Ban and is available for review on the City Clerk's website.

3. *Summary of June 7th Public Meeting Community Input*

On June 7, 2010, staff held a public community meeting at City Hall to present key features of the draft ordinances and collect public input to inform the further development of the ordinances. Information on the key features of the ordinances was presented by Deanna Santana, Deputy City Manager; Don Anders, Deputy Police Chief; and, Joe Horwedel, Director of Planning, Building and Code Enforcement. A copy of the presentation and meeting agenda was posted to the City's website before the meeting.

Almost 200 people attended the 3 ½ hour meeting facilitated by Dr. Shawn Spano, a professor at San Jose State University who specializes in designing and facilitating public engagement forums and meetings. Speakers were allowed to speak without time restrictions; over 60 people provided verbal and written comment. In addition, the meeting was transcribed to provide the City Council with a full transcript of the public input collected. A full copy of the meeting transcript was attached to the original June 15 memorandum, titled "*Medical Marijuana*" (labeled and referred to as Attachment D).

Staff used the following three questions to help initiate and facilitate public discussion:

1. *What are your thoughts on the key features of the City's draft ordinances?*
2. *Are there any missing features in the current draft ordinances you would like to see addressed?*
3. *What questions do you have about the schedule and opportunities for public input?*

Attachment G provides a high level summary of the repeated topics from the meeting, as well as transmits documents filed by members of the public. Attachment G does not contain an exhaustive list of every comment made at the meeting. Input obtained is only reflective of speakers' opinions at that meeting and should not be considered reflective of the San Jose community as a whole. Public input has been organized into eight themes, including:

1. Land Use, Zoning & Sensitive Uses
2. Onsite Cultivation
3. Conditions of Operation & Selection Process
4. Maximum Number of Medical Marijuana Collectives Allowed
5. Membership Requirements and Privacy Concerns
6. Taxation of Cannabis Businesses
7. Safety & Monitoring of Medical Marijuana
8. Medical Marijuana Policy Development Process & Sunset Requirement

It should be noted that some key features of the ordinances presented and discussed at the June 7 meeting have since been modified or deleted as a result of public input and further staff evaluation.

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The next community meeting is scheduled for July 20 at 6 p.m. at Roosevelt Community Center.

/s/

DEANNA J. SANTANA
Deputy City Manager

/s/

ROBERT L. DAVIS
Chief of Police

Attachments:

- F: Proposed resolution to amend the Administrative Citation Schedule of Fines (*Released by the City Attorney's Office and posted to the City Clerk's website.*)
- G: June 7th Public Meeting Summary, Public Documents and June 7th Public Meeting Agenda

Attachment F

(Proposed resolution to amend the Administrative Citation Schedule of Fines has been released by the City Attorney's Office and is available on the City Clerk's website)

Attachment G

JUNE 7TH PUBLIC MEETING SUMMARY

1. Land Use, Zoning & Sensitive Uses

Public testimony regarding staff's proposed commercial zoning did not result in clear audience consensus on the preferred zoning area for collectives. While some collective owners prefer industrial zoning over commercial, citing the reduced costs of maintaining a business in an industrial space and the ability to maintain a larger space; other speakers expressed that commercial zoning is the right zoning for collectives. These speakers raised some concerns with industrial zoning, including safety issues since industrial areas tend to be unpopulated and desolate, lack public transportation access, and the potential stigma resulting from patients having to travel to collectives in industrial areas. There appeared to be general consensus that collective owners, patients, and community members need to work together to come to an agreement on the appropriate distance between collectives and schools (including pre-schools) and day care centers. General comment focused on the need to be mindful of the proximity of Collectives to schools, pre-schools, and/or day care centers. Staff did here some level of disagreement regarding the proposed requirement to restrict collectives 1,000 feet from single and two-family residential. A few speakers felt that exceptions (less than 1,000 feet) should be allowed if there are impenetrable barriers already in place (e.g. train tracks, bridges, walls, freeways, etc). Lastly, speakers pointed out the need for Collectives to be accessible to individuals with disabilities and by public transportation, provide adequate parking, and mitigate traffic impacts to neighborhoods.

2. Onsite Cultivation

Many speakers raised concerns with the proposed requirement for onsite cultivation of medical marijuana, explaining that onsite cultivation is unfeasible because of the space needed for cultivation, high costs associated with commercial zoning, and safety risks for collective employees and patients. Some speakers expressed that onsite cultivation would make Collectives vulnerable to armed robberies and other types of crimes.

3. Conditions of Operation & Selection Process

Many speakers expressed strong concerns over the fairness of the proposed lottery concept, citing the lack of ability of the City to ensure the quality of the businesses selected and the inability to ensure a fair geographical distribution of collectives throughout the City to accommodate patient needs. It was suggested that the City develop a selection process based on qualifications, such as a Request for Proposals competitive process. A small handful of speakers added that the City should develop a medical marijuana advisory group or task force to help guide City staff on the appropriate refinements to the ordinances. In addition, there was disagreement over the City's statement in the presentation that the sale of medical marijuana is illegal. Many speakers expressed disagreement with the City's legal analysis, noting conflicting interpretations of the Attorney General and State Board of Equalization guidelines. Lastly, some speakers also expressed disagreement over the proposed regulation that prohibits the sale of paraphernalia, as well as ancillary products and other services. Speakers felt that collectives should be able to purchase items that help them ingest medical marijuana, as well as other ancillary and manufactured products.

4. Maximum Number of Medical Marijuana Collectives Allowed

Many speakers, including collective representatives, stated that the proposed 10 maximum number of Collectives is too low to meet patient need/market demand. Several speakers noted the need to broaden the placement of collectives throughout the City for the purposes of mitigating an

overabundance of Collectives in one geographic area and the direct and indirect impacts on neighborhoods. Some speakers offered alternatives to the City's proposed maximum collective number. Suggestions include:

- Set the number of collectives at 60 or 100 (minimum); 36 (based on the estimated total number of McDonald restaurants in San Jose); or, after the total number of pharmacies in San Jose.
- Use the population of the San Jose metropolitan area to set the number proportionally Citywide.
- Allow for market demand to dictate the number of collectives.
- Use dispensary, collectives, cooperatives and/or club numbers in other cities as a benchmark/guide for setting the final number of collectives allowed in San Jose. Cities suggested include: San Francisco (14 for approximately 747,000 population), Los Angeles (70 for approximately 3.8M), and State of New Mexico (5 collectives for 2.2M population).

5. Membership Requirements & Privacy Concerns

Various speakers raised strong concerns about the proposed patient record keeping requirements, proposed San Jose residency requirement, and the proposed membership limitation to one collective within the City of San Jose. More specifically, speakers raised legal issues regarding privacy rights of personal health care information under the Health Insurance Portability Accountability Act (HIPAA), as well as fears of patient incrimination.

6. Taxation of Cannabis

Some speakers felt that the proposed minimum of 3% tax rate on gross receipts is too high, and it should be lowered to no more than 2% in order to keep costs for patients, especially those on fixed income, reasonable.

7. Safety and Monitoring of Medical Marijuana

Several speakers noted disappointment with the City's proposal to not allow the consumption of medical marijuana on-site at the location of the collectives (including the parking areas). A number of speakers explained that many patients need a safe place to self-medicate, without fear of incrimination or ridicule from others. While there was general consensus that the safety of medical marijuana located at collectives is a priority, a speaker specifically in particular voiced serious concerns over the need for a medical marijuana safety monitoring program. More specifically, one individual spoke at length suggesting a program through an independent medical marijuana testing lab that provides for the quality assurance testing of medical marijuana for potency, product quality, mold, fungus, pesticide contamination, etc., and sets appropriate packaging requirements, dosage suggestions and lists the pesticides and additional additives used during the growth process and manufacturing process of the medical marijuana.

8. Medical Marijuana Policy Development Process and Sunset Requirement

Some speakers expressed concerns about this project's accelerated schedule and cautioned staff to not rush into making decisions regarding medical marijuana that could result in bad policy. Speakers felt that staff should have the more time to work with stakeholders to develop a collaborative and thoughtful public policy. Some speakers also raised concern over the amount of staff resources and time devoted to developing the two medical marijuana ordinances in midst of the City's budget deficit and uncertainty around the November 2010 ballot measure.

Some speakers felt that the City should have enacted a moratorium on medical marijuana collectives at the March 30th Council Meeting.

Lastly, speakers expressed concerns around the proposed two year sunset clause, citing that this period is too short, and it would not provide the City with the needed information and time to appropriately evaluate the program. Speakers proposed 4-6 years as a more reasonable time frame.

Google maps

Address **1195 S De Anza Blvd**

Address is approximate

Blue awning is now Monsters of Rock with 2nd blue awning Purple People Medical Marijuana



CITY OF SAN JOSE
Commendation

WHEREAS: Sue Campbell was named the 2006 Outstanding Contributor to Child Care Center-based Award for offering excellent care to children as well as extraordinary support to their parents at the Alphabet Soup Child Care Center in San Jose; and

WHEREAS: Alphabet Soup supports the developmental stages for each child and encourages the growth of social, emotional, physical, and intellectual skills that form the foundation for successful youth and adults; and

WHEREAS: Ms. Campbell has helped prepare many of our community's youngest children to enter school with the cognitive and emotional foundation they need to achieve academic and social success throughout their lives; and

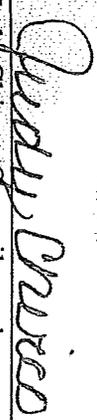
WHEREAS: Quality early care and education for children are essential for the long-term stability of our community, health, and security for the families of employers, and growth and prosperity of San José businesses;

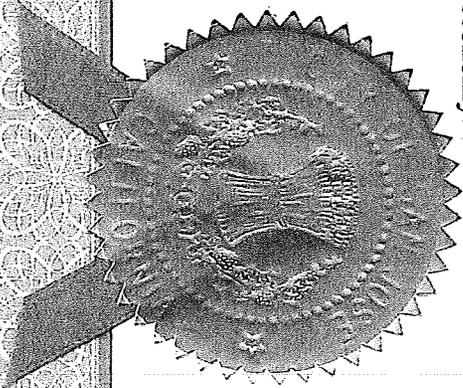
NOW, THEREFORE, I Ron Gonzales, Mayor of San José, together with Councilmember Judy Chirco and along with our colleagues on the City Council on the 18th day of April 2006 do hereby congratulate and commend

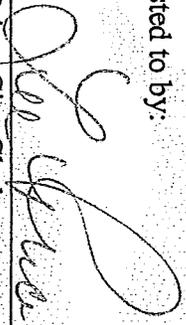
SUE CAMPBELL

for her continuing commitment to ensure the health, welfare, safety, and education of our youngest residents through effective programs and services that support families and our economy.


The Honorable Ron Gonzales
MAYOR


Judy Chirco, Councilmember



Attested to by:

Lee Price, City Clerk

To: City of San Jose

Attn: City Manager
Councilmember Judy Chirco
City Clerk

Subj: Medical Marijuana

RE: Draft Ordinance for Medical Dispensaries & Smoking Facilities

I attended the Public Hearing yesterday, June 7th at City Hall. I was one of the speakers. After I spoke I thought of other issues that should be addressed in this draft ordinance. The City has a good start for the Ordinance, but there is still a lot of work to be done and some major issues still need to be addressed.

For discussions in this letter the following is defined as:

- 'Patients' are those who have a legal Medical Recommendation from a Licensed Physician, per current California laws.
- 'Medicine' is the Medical Marijuana a patient uses, can be in different forms.
- To 'Medicate' is the ingestion of 'medicine' which can include smoking, vaporizing, eating or drinking 'medicine'.
- 'Dispensaries' are places to obtain 'medicine', may or may not include a place to 'medicate'
- 'Smoking Facilities' are places to 'medicate'.

My comments on the Medical Marijuana Ordinance:

A. Patients have the right to privacy under HIPA.

1. Requiring lists of patients from Dispensaries is a violation of these privacy rights.
2. Dispensaries in other Cities do not require this information

B. Medicine

1. Proper labeling of medicine is important.
2. At a minimum a label should be on all packaging stating 'Keep out of Reach of Children'
3. To have packaging list additional information will take a lot time to work out. What and how to label will need some major discussions.

C. Where to Medicate?

1. The ballot measure regarding the general legalization of marijuana has a chance of passing in the November 2010 Elections.
2. The issue of where to 'medicate' can become extremely volatile should this ballot measure pass.
3. When passed, my guess is that people will come out in droves, smoking everywhere. Without regulations, such as not smoking cigarettes within 25' of a building

entrance, patients will not know what to do or where to go.

4. There needs to be a difference between Smoking Facilities and Dispensaries.

D. Dispensaries

1. Require Dispensaries to obtain a building permit and to register with the City's Medical Marijuana Dispensary Section.
2. Requiring Dispensaries to grow and sell in the same location will create some logistical problems
3. Requiring patients to only have one membership to one Dispensary limit their ability to get the best price for their medicine. They can just go to another City to obtain medicine.
4. Under current California Health and Safety Code patients are allowed to grow a specified number of plants. If a Dispensary grows those plants for a patient then the growing grounds become large expansive facilities
5. Plants can be grown outside or inside. If growing outside it creates problems with theft.
6. It's better to keep growing locations confidential.
7. Keep Dispensaries in Commercial Zones and growing locations in Industrial Zones
8. Establish 1,000' setbacks from ALL places that children gather, including CDC's, daycare facilities, schools, etc.
9. Limiting a business to a 2-year contract is a lot of wasted money for a business. The capitol investment for these businesses may take 4 – 6 years to re-cap their costs.
10. Make sure all facilities are ADA compliant.

E. Smoking Facilities

1. Locations of these facilities should be **immediately addressed**. Secondhand smoke is a major concern. Smoke creeps through walls and ceilings.
2. Refer to Zoning for Cigarette Smoking Shops as a starting point.
3. Apartments and multi-family homes should be addressed
4. Establish 1,000' setbacks from ALL places that children gather, including CDC's, daycare facilities, schools, etc.
5. Make sure all facilities are ADA compliant.

F. Establish a Citizen/Stakeholders Advisory Committee

1. Expecting Dispensaries to navigate the City's Regulating Process alone can cause delays and can create friction between the Dispensaries Owners and the City.
2. This Medical Marijuana Advisory Committee can be a forum for citizen's complaints and to help Owners navigate the City's Regulating Process.

G. Develop a Code of Conduct

1. Similar to the Homeless Shelter's Zoning develop a 'Code of Conduct' for Dispensaries and Smoking Facilities
2. Address such topic's as:
 - a. No Smoking within a minimum of 50' from entrances to all building, public or private
 - b. No loitering at Facilities
 - c. Keep Medicine in non-descript packaging to deter thefts

From the Desk of Susan M. Landry

Environmental Architect, LA Lic. No. 3161

d. Many San Francisco shops have Codes of Conduct that can be used as a model.

I hope this letter has provided the City with information that can be used to create an enforceable Medical Marijuana Ordinance. I am available to meet with City Staff should any additional information be needed and I would like to put my name on a list for potential Stakeholder/Citizens Advisory Committee members.

Thank you for your time,

Susan M. Landry

MEDICAL MARIJUANA ORDINANCE PUBLIC MEETING

June 7, 2010, 6:00 p.m. – 8:00 p.m.

City Hall – Council Chambers

AGENDA

Meeting Purpose Hold the first of two community meetings to ensure public participation, present the framework for the draft ordinances, collect public comment/input, and answer questions.

1. Opening Remarks

2. Community Outreach Schedule

3. Key features of the Draft Ordinances

- a. Parameters of Drafting the Ordinance
- b. Operational Framework
- c. Zoning/Land Use Framework

4. Public Comment

- a. **Question #1:** What are your thoughts on the key features of the City's draft ordinances?
- b. **Question #2:** Are there any missing features in the current draft ordinances you would like to see addressed?
- c. **Question #3:** What questions do you have about the schedule and opportunities for public input?

5. Adjournment

This meeting will be facilitated by Dr. Shawn Spano. Dr. Spano specializes in designing and facilitating public engagement forums and meetings.

MEDICAL MARIJUANA COUNCIL REFERRAL

- 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.

- A community outreach plan; and,
- 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.

COMMUNITY OUTREACH SCHEDULE

Date	Topic	Location
June 7 (6 p.m.-8 p.m.)	Community outreach meeting scheduled to present key features of the proposed ordinances	City Hall, Council Chambers
June 22 (1:30 p.m.)	City Council review of staff report, urgency ordinances and summary of public input. If approved by City Council, urgency ordinances immediately in effect	City Hall, Council Chambers
July 20 (6 p.m.-8 p.m.)	Community outreach meeting scheduled to present key features of the proposed regular ordinances	Roosevelt Community Center 901 East Santa Clara Street San Jose, CA
August 3 (1:30 p.m.)	First Reading of Medical Marijuana Ordinance and a possible consideration of a ballot measure for Marijuana Tax	City Hall, Council Chambers
August 17 (1:30 p.m.)	Second Reading of Medical Marijuana Ordinance	City Hall, Council Chambers
September 17, 2010	Ordinance in effect	