Medical Marijuana Dispensaries
Frequently Asked Questions

These general questions and answers are provided for your convenience and general information only and are not intended to be a complete summary of the law or legal advice.

Question: Are Medical Marijuana Dispensaries allowed in San Jose?
Answer: No. The San Jose Municipal Code in Section 1.13.040 specifies that property cannot be used in a manner that creates a public nuisance. The Municipal Code further specifies in Section 1.13.050(A)(3) that a public nuisance includes the use of property in a manner that violates any provision of City, state or federal law. The sale of medical marijuana by dispensaries and the cultivation or distribution of marijuana for profit violates the California Uniform Controlled Substances Act, Health and Safety Code Sections 11000, *et seq.*, and the Federal Controlled Substances Act.

Question: Has San Jose ever allowed Medical Marijuana Dispensaries?
Answer: Yes. The City Council adopted an ordinance in 1998 that allowed Medical Marijuana Dispensaries upon approval of a Special Use Permit. That ordinance was superseded in 2001 and Medical Marijuana Dispensaries are no longer allowed in San Jose. *View Superseded Zoning Ordinance Provisions*

Question: What is the status of medical marijuana dispensaries in San Jose?
Answer: They are illegal. Any medical marijuana dispensaries currently selling marijuana (or otherwise operating outside the confines of the limited state law immunities from criminal prosecution) in San Jose are illegal.

Question: Are Cannabis Collectives allowed in San Jose?
Answer: The California Uniform Controlled Substances Act allows qualified medical patients, or their designated primary caregivers, to cultivate marijuana for the patient's use for medicinal purposes. The Compassionate Use Act of 1996 (CUA) amended

the California Uniform Controlled Substances Act to provide a narrow affirmative defense to individual patients and their primary caregivers who are charged with criminal prosecution for the possession and cultivation of medical marijuana. The CUA contemplates that a patient will have access to marijuana either by (1) cultivating it for personal medical use, or (2) obtaining it from his or her primary caregiver, who cultivated the marijuana for the personal medical purposes of the patient.

A person asserting "primary caregiver" status must prove at a minimum that he or she (1) consistently provided care, (2) independent of any assistance in taking medical marijuana, (3) at or before the time he or she assumed responsibility for assisting with medical marijuana. One who merely supplies a patient with marijuana without being a primary caregiver has no defense from criminal prosecution under the California Uniform Controlled Substances Act.

Question: What is the difference between a dispensary and a collective or cooperative?
Answer: A dispensary generally involves the sale of marijuana. A collective or cooperative exists for the cultivation and sharing of Marijuana among a group of individual qualified medical patients in a manner that complies with the California Uniform Controlled Substances Act. These limited immunities from criminal prosecution provided under state law do not sanction the sale of marijuana or the cultivation or distribution of marijuana for profit. With respect to the exchange of money, state law provides limited immunity from criminal prosecution for an individual primary caregiver to recover from his or her qualified patient the actual or out-of-pocket expenses incurred in providing services to enable his or her eligible qualified patient to use marijuana.

Question: Is the City considering changes to the Municipal Code regarding Medical Marijuana Dispensaries?
Answer: Staff has been asked to provide a workload assessment to determine what would be involved if the City Council chose to explore changes to the Municipal Code regarding Medical Marijuana. This workload assessment is scheduled to be considered by the Rules Committee on January 27, 2010.