

MAY 15 2013

City Manager's Office
Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Angelique Gaeta

SUBJECT: MEDICAL MARIJUANA
ENFORCEMENT UPDATE

DATE: May 13, 2013

Approved



Date

5/14/13

INFORMATION

The purpose of this memorandum is to provide the City Council with an update on the City's enforcement efforts as they pertain to medical marijuana establishments operating in San José.

Background

On September 13, 2011, the Council approved an ordinance amending Title 20 of the San José Municipal Code (Code) to establish land use regulations pertaining to medical marijuana establishments (hereafter, Land Use Ordinance); and, approved an ordinance amending Title 6 of the Code to establish regulations pertaining to medical marijuana establishments (hereafter, Regulatory Ordinance).

On October 28, 2011, medical marijuana advocates filed a Petition for Referendum asking the Council to repeal the Regulatory Ordinance or put the ordinance to a vote of San José residents.

On November 8, 2011, the Council adopted an Urgency Ordinance amending the Land Use Ordinance so that it would become effective only if and when the Regulatory Ordinance took effect. On February 14, 2012, the Council repealed the Regulatory Ordinance. As a consequence of the Council actions, medical marijuana collectives, cooperatives, dispensaries and delivery service businesses (hereafter, "Collective(s)") are not legal uses in the City of San José.

Accordingly, since February 14, 2012, the Administration has taken and continues to take enforcement action against any Collective operating in the City based on the priorities set by the Council. Those priorities include focusing first on those Collectives that create a public nuisance, fail to pay the Marijuana Business Tax (MBT)¹ and fail to comply with State law distance requirements.

¹ Regardless of their legal status, all Collectives operating in San José are required to pay the City's MBT, currently 7% of gross receipts, pursuant to Chapter 4.66 of the San José Municipal Code. Payment of these taxes in no way legalizes business activities that are otherwise unlawful in the City.

Since the Administration last provided an update to Council in an Information Memorandum dated January 17, 2013, the City has received 21 complaints regarding Collectives operating in San José. Following inspection of those facilities by Code Enforcement, those cases break down as more fully set forth below. For a complete list of Collectives currently operating, and/or possessing an MBT certificate, in the City, please refer to Attachment A.

Public Nuisance Activities

New Cases:

Of the 21 complaints received by the City, three cases met the criteria for investigation of a public nuisance. In one case, Code Enforcement performed an inspection of the premises and found Code violations which included smoking at the facility and unpermitted building modifications². After being contacted by Code Enforcement, the owner corrected the building Code violations and began the process to evict the tenant. Code Enforcement will continue to monitor the location parallel to the eviction proceedings and take appropriate action, as necessary.

At a second location³, Code Enforcement performed an inspection and identified several Code violations. Code Enforcement has since met with the property owner to discuss those violations.

Finally, at a third location⁴, Code Enforcement received a complaint of a large outdoor marijuana growing facility and is in the process of inspecting the premises.

Ongoing Cases:

On January 17, the Administration reported that no new public nuisance cases had been opened and discussed the conclusion of each remaining case.

State Law – 600 Foot Distance From Schools

Since January 17, there have been three complaints of Collectives operating in violation of State law distance requirements by having their principal place of business too close to a public school⁵. At each of the three locations, Code has notified the property owner that the tenant facility is within 600 feet of a school and must close. Each facility was scheduled to close by April 30, 2013. Staff will follow up with these Collectives to ensure closure was achieved.

² 623 N. 1st Street

³ 2142 The Alameda

⁴ 351 Lincoln Avenue

⁵ 940 Story Road, 970 Story Road and 2050 Tully Road

Marijuana Business Tax

Pursuant to Council direction, the Finance Department (Finance) provides a comprehensive update regarding MBT collections in its quarterly financial reports. The next report is due to the Public Safety, Finance and Strategic Support (PSFSS) Committee later this month. The last comprehensive analysis was included in Finance's Second Quarter Financial Report presented to the PSFSS Committee on February 7, 2013. A copy of that report can be found at: <http://sanjoseca.gov/DocumentCenter/View/12227>.

Additionally, for recently released information regarding MBT collections please refer to Finance's Bi-monthly Financial Report presented to the PSFSS Committee on April 18, 2013. A copy of that report can be found at: <http://sanjoseca.gov/DocumentCenter/View/14920>.

Modifications to Municipal Code:

Per direction given at the Council Priority Setting session in October 2012, the City Attorney's Office continues to work on an amendment to Title 1 of the Code to specify nonpayment of City business taxes as a ground for declaring a public nuisance. This will assist the City in seeking injunctive relief from a court to close businesses that have failed to pay City taxes following the administrative tax assessment process conducted by the Director of Finance. The City Attorney's Office will place this ordinance on the June 4, 2013 City Council agenda.

Recent California Supreme Court Decision:

On May 6, 2013, the California Supreme Court decided *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* and confirmed local governments' land use authority to regulate or ban facilities that distribute medical marijuana. In light of this ruling the Administration can be prepared to bring forward for Council consideration appropriate medical marijuana zoning and regulatory ordinances in the fall.

/s/
ANGELIQUE GAETA
ASSISTANT TO CITY MANAGER

For questions please contact Angelique Gaeta, Assistant to the City Manager, at (408) 535-8253.

Attachment

San Jose Marijuana Business Tax List as of May 6, 2013 (sorted by Council District)		
Business Name	Address On File	Council District
South Bay Healing Center, Inc.	991 Saratoga Avenue; Ste 140 San José, CA 95129	1
Theraleaf Careness Cooperative dba: San Jose Rehab Clinic	606 Saratoga Avenue; Ste D San José, CA 95129	1
Therapeutic Holistic Care dba: Herbs SVVCC	1420 S. Winchester Boulevard. San Jose, CA 95128	1
Viktorya's Medical Supply, LLC dba: Buddys	4140 Stevens Creek Boulevard San José, CA 95051	1
Yerba Buena (dba: YB Saratoga) H5 Distribution dba: Yerba Buena - Saratoga	4211 Barrymore Drive San José, CA 95117	1
	District 1 Total	5
South Bay CRC (Compassionate Relief Collective)	90 Great Oaks Boulevard; Ste 202 San José, CA 95119	2
	District 2 Total	1
All American Cannabis Club [A2-C2]	1082 Stockton Avenue San José, CA 95110	3
Emerald Crossings	560 E. Gish Road; Ste B San José, CA 95112	3
Euphorabis dba: Coleman Rx Club	915 Colman Avenue San Jose, CA 95110	3
Golden State Care Collective	623 N.1st Street San José, CA 95110	3
Larry, Daryl & Daryl (Formerly The Bud Barber)	1729 Galewood Court San José, CA 95133	3
Leaf Lab	847 Commercial Street San José, CA 95112	3
NorCal Care	25 N. 14th Street; Ste 60 San José, CA 95112	3
Palliative Health Center	1670 Zanker Road San José, CA 95112	3
Pyramid Medicinal	1590 Oakland Road, Suite B106 San José, CA 95131	3
Rehab420	444 E William Street, Ste. 206 San José, CA 95112	3
San José Medicinal Group	52 S. 1st Street; Ste 220 San José, CA 95113	3
San Jose Sanative Sanctuary dba: Urban Sunset Non-Profit Collective	581 E. Taylor Street San José, CA 95112	3
Santa Cruz Naturally	93 N. 14th Street; Ste 4 San José, CA 95112	3
SBCPA	334 Commercial Street San José, CA 95112	3
Sensi Herbal Care	21 Post Street San José, CA 95113	3
Silicon Valley Collective	246 East Gish Road San José, CA 95112	3
SJCBC, LLC (San Jose Cannabis Buyers Club)	1082 Stockton Avenue San José, CA 95110	3
Tree house Collective, Inc. dba: Tree house	190 Commercial Street San Jose, CA 95112	3
TriValley Wellness San Jose	748 S. 1st Street San Jose, CA 95112	3
Yerba Buena (dba: Phoenix) CalCan Corp	1324 N. 10th Street San José, CA 95112	3
	District 3 Total	20
Elemental Wellness	711 Charcot Avenue San José, CA 95131	4

Business Name	Address On File	Council District
Gobias Collective dba: Fortune	2231 Fortune Drive; Ste A San José, CA 95131	4
Harborside of San José dba: Harborside Health Center of San José	2106 Ringwood Avenue San José, CA 95131	4
Nirvana Wellness Center	1926 O'Toole Avenue San José, CA 95131	4
Ocean View Organics (OVO)	2081 Bering Drive; Ste Y San Jose, CA 95131	4
SCVCS, Inc. INC dba: Papadon's 420 Collective - Dispensary	2051 O'Toole Avenue San José, CA 95131	4
South Bay Apothecary Collective, Inc. (SBAC)	1907 Concourse Drive San José, CA 95131	4
The Portal Herbal Health Collective	1141 Ringwood Court; Unit 100 San José, CA 95131	4
VMK, Inc. dba: Purple Lotus Patient Center	1885 Lundy Avenue #270 San José, CA 95131	4
	District 4 Total	9
Delta Health Center	3114 Story Road San José, CA 95127	5
Garden House Remedies dba: Haze	2348 Alum Rock Avenue San José, CA 95116	5
Modern Wellness Collective	156 S. Jackson Avenue San José, CA 95116	5
Natures Helpers dba: Capitol Collective (Perviously dba: Yerba Buena - Capitol)	459-461 S. Capitol Avenue; #11 San Jose, CA 95127	5
	District 5 Total	4
All Bay Cooperative	351 Lincoln Avenue San José, CA 95111	6
Amsterdam's Garden	2142 The Alameda San José, CA 95126	6
ARC Healing Center Cooperative, Inc.	885 W. Julian Street San José, CA 95112	6
Bigalow's Comopassinate Care Delivery Service	1346 The Alameda #143 San Jose, CA 95126	6
California Care Collective	551 Stockton Avenue San José, CA 95126	6
Care Givers of San José	350 S. Winchester Boulevard San Jose, CA 95128	6
Compassionate Care Clinics	265 Meridian Avenue #9 San Jose, CA 95126	6
Executive Choice, Inc. Dba: Platinum Clouds Collective	1425 W. San Carlos Street San Jose, CA 95126	6
Green Frontiers dba: SJ Patients Group	824 The Alameda San José, CA 95126	6
Greenlight Management, Inc. dba: SVCare	1711 Hamilton Avenue ; Ste B San Jose, CA 95125	6
La Vie MMX	945 S. Bascom Avenue San Jose, CA 95128	6
MedMar Healing Center	170 S.Autumn Street San José, CA 95110	6
Meridian Herbal Patients Co-op, Inc. (MHPC)	455 Meridian Avenue San José, CA 95126	6
Platinum Society	1174 Lincoln Avenue; #11 San José, CA 95125	6
San Jose Apex Group, Inc. dba: San Jose Health Center dba: Imedz	396 S. Bascom Avenue San Jose, CA 95128	6
San José Organic Relief	511 S. Bascom Avenue San José, CA 95128	6

Business Name	Address On File	Council District
SLM Collective Corp. dba: Elixir	2417 Stevens Creek Boulevard San José, CA 95128	6
Statewide dba: Cal Med	973 Park Avenue San Jose, CA 95126	6
Therapeutic Holistic Care dba: Herbs SVVCC	1641 W. San Carlos Street. San Jose, CA 95128	6
Yerba Buena (dba: YB Valley Fair) Celebuddy, Inc. dba: Yerba Buena - Valley Fair	325 S. Monroe Street San Jose, CA 95128	6
	District 6 Total	20
Bay Leaf Collective (Formerly San Jose Bay Leaf)	1692 Tully Road San Jose, CA 95122	7
Better Health Group of San Jose, Inc. dba: Revolution Health Center	1621 Almaden Road San Jose, CA 95125	7
Blue Sky Care Center	3039 Monterey Road San Jose, CA 95111	7
Club 99 (Formerly Deals 4 Less)	1999 Monterey Road # 130 San Jose, CA	7
Green Care Association	940 Story Road San José, CA 95122	7
Holistic Health Care Co-op (HHCC)	88 Tully Road; Unit 107SJ San José, CA 95111	7
Holistic Remedies Cooperative	1701 S. 7th Street; Ste 7 San José, CA 95112	7
Magic Health, Inc.	1999 Monterey Highway; Ste 100 San Jose, CA 95112	7
MediMarts, Inc.	1851 Little Orchard Street San José, CA 95125	7
MINT Alternative Healing	2322 Senter Road San Jose, CA 95112	7
Natural Herbal Pain Relief	519 Parrott Street San José, CA 95112	7
NC3 Systems dba: NC3	2175 Stone Avenue; Suite 1 San José, CA 95125	7
Patient to Patient Group #2	1692 Tully Road, Ste 6 San José, CA 95122	7
San Jose Organic	88 Tully Road; Ste. 100 San Jose, CA 95111	7
Serenity Collective	2601 Senter Road San Jose, CA 95111	7
Simply Chronic Healing Coop, Inc.	970 Story Road San José, CA 95122	7
South Bay Natural Remedies	2943 Daylight Way San José, CA 95111	7
Story Wellness	1221 Story Road, Suite 40 San José, CA 95122	7
Therapeutic Holistic Care dba: Herbs SVVCC	282 San Jose Avenue San Jose, CA 95125	7
Yerba Buena (dba: YB Amber Pearl) YB Fire, Inc. dba: Yerba Buena - Amber Pearl	2129 S. 10th Street San José, CA 95112	7
Yerba Buena (dba: Yerba Buena Monterey) Lexan, Inc. dba:Yerba Buena - Monterey Road	3894 Monterey Highway San Jose, CA 95111	7
	District 7 Total	21
Alternative Natural Remedies	5752 Country Club Parkway San José, CA 95138	8
D4L (Deals 4 Less) Collective	2050 Tully Road San Jose, CA 95122	8
	District 8 Total	2

Business Name	Address On File	Council District
408 Collective	2435 S. Bascom Avenue Campbell, CA 95008	9
All American Cannabis Club [A2-C2]	3131 S. Bascom Avenue #220 Campbell, CA 95008	9
Garden House Remedies dba: Haze	1814 Hillsdale Avenue; Ste A San José, CA 95124	9
Greenlight Management, Inc. dba: SVCare	2591-1 S. Bascom Avenue San Jose, CA 95124	9
Non-Pro, Inc. dba: Medicinal Gardens	2559 S. Bascom Avenue Campbell, CA 95008	9
South Bay Wellness Center dba: Greenjeans Place (Formerly Mr. Nice Guy)	2842 S. Bascom Avenue San José, CA 95124	9
Yerba Buena (dba: YB Bascom) H5 Distribution dba: Yerba Buena - Bascom	2630 Union Avenue San Jose, CA 95124	9
Yerba Buena (dba: YB Blossom Hills) S & K Care dba: Yerba Buena - Blossom Hill	4464 Pearl Avenue San Jose, CA 95136	9
	District 9 Total	8
A Better Way (Collective)	3851 Charter Park Drive; Ste Q San José, CA 95136	10
Canna Culture Collective, Inc dba: Canna Culture Collective (Cannabis Culture Collective)	3591 Charter Park Drive San José, CA 95136	10
Holistic Herbal Healers	5406 Thornwood Drive, Ste. 175 San José, CA 95123	10
Purple Frost, Inc.	3830 Charter Park Drive San José, CA 95136	10
South Valley Pharmacy	5591 Snell Avenue San José, CA 95123	10
	District 10 Total	5
John Bartolero	(Mailing Address): PO Box 1133 Freedom, CA 95019	N/A
	Delivery Service Total	1
	Total Active Marijuana Businesses	96