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City Manager's Office

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Angelique Gaeta

SUBJECT: MEDICAL MARIJUANA -
STATUS REPORT

DATE: January 13, 2014

Approved

Date

1/13/14

INFORMATION

The purpose of this memorandum is to summarize the actions taken by the City Council on December 10, 2013, regarding medical marijuana establishments operating in San José and to provide a brief update on the Administration's recent activities and schedule to return to Council.

Background

On September 13, 2011, the Council approved two ordinances regarding medical marijuana establishments; one, amending Title 20 of the San José Municipal Code to establish land use regulations (Land Use Ordinance), and one amending Title 6 of the Code to establish operational requirements (Regulatory Ordinance).

On October 28, 2011, medical marijuana advocates filed a Petition for Referendum challenging the Regulatory Ordinance and forcing the Council to either repeal the Regulatory Ordinance or put it to a vote of San José residents.

On November 8, 2011, the Council suspended the Land Use Ordinance making it effective only if and when the Regulatory Ordinance took effect.

On February 14, 2012, the Council repealed the Regulatory Ordinance.

Because the Land Use Ordinance was effective only if the Regulatory Ordinance took effect, the repeal of the Regulatory Ordinance resulted in the continued suspension of the Land Use Ordinance and, simply put, the lack of legal authorization for medical marijuana establishments to operate in the City. As such, *medical marijuana collectives, cooperatives, dispensaries and delivery service businesses (collectively, "Collective(s)) operating in San José are illegal.*

However, due to the City's limited resources, since February 14, 2012, the Administration was directed to first take enforcement action against those Collectives creating a public nuisance,

failing to pay the Marijuana Business Tax (MBT)¹ and failing to comply with State law distance requirements.

December 10, 2013 Council Meeting

On December 10, 2013, following the City's receipt of numerous concerns from the community regarding the impact of Collectives operating here, the Council directed the Administration to:

- (a) Expand its enforcement efforts to include those Collectives located within:
 - (1) 1,000 feet of public and private schools, child daycare centers, churches with child daycare centers, community/recreation centers, parks, libraries and other Collectives;
 - (2) 500 feet of substance abuse rehabilitation centers; and
 - (3) 150 feet of residential uses (*with immediate attention focused on those Collectives that share a "zero lot line" with residential uses*); and to

- (b) Return to the Council within ninety (90) days with a robust regulatory program that takes into consideration and addresses a number of issues including, but not limited to:
 - (1) Guidance from the U.S. Attorney General regarding medical marijuana;
 - (2) Buffers between Collectives and sensitive land uses;
 - (3) Appropriate zones for Collectives to locate;
 - (4) Hours of operation for Collectives;
 - (5) Off-site cultivation of medical marijuana;
 - (6) Regulations for the tobacco industry, wineries and breweries;
 - (7) Marketing of medical marijuana to minors;
 - (8) Diversion of medical marijuana to minors;
 - (9) Tracking the source of medical marijuana and the revenues coming from its distribution; and
 - (10) Prohibition of on-site consumption of medical marijuana

Recent Enforcement Activity

Since the December 10 meeting, the Code Enforcement Division of the Department of Planning, Building and Code Enforcement identified 28 Collectives which share a zero lot line with residential uses. Half of those establishments have been sent a Compliance Order ordering them to shut down their operations by January 31, 2014. All but two of those establishments have challenged the Compliance Order and requested an administrative hearing with the City. After the administrative hearing, it is likely that these cases will be heard by the Appeals Hearing Board in March.

¹ Regardless of their legal status, all Collectives operating in San José are required to pay the City's MBT, currently 10% 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.

Code Enforcement is also coordinating with the City Attorney's Office on the timing to issue Compliance Orders to the remaining 14 establishments that are adjacent to residential uses and to those establishments that meet the other enforcement criteria approved by Council on December 10.

Neighborhoods Commission

On January 8, 2014, the Administration gave a presentation on medical marijuana to the Neighborhoods Commission. Following the presentation, the Commission voted to request the Administration also explore the following areas when drafting a medical marijuana regulatory program:

- (1) Expansion of the 150 foot buffer between Collectives and residential uses;
- (2) Strict prohibitions on the resale of medical marijuana by members of Collectives to members of the public;
- (3) The use of air scrubbers in facilities where medical marijuana is cultivated;
- (4) The requirement for the Administration to connect with the Office of the Inspector General as part of the backgrounding process for Collective owners and operators; and
- (5) Providing the public with a hearing prior to the City "registering" a Collective so that the public has the opportunity to weigh in on each Collective and whether that Collective should be allowed to register and operate within the City.

Ordinance Preparation and Schedule

Consistent with the Council's direction in December 2013, the Administration is drafting land use, regulatory, and other associated ordinances for Collectives. The Administration will begin outreach in late January to the industry and the community. The Administration will also return to the Neighborhoods Commission in February with an update on the issues they requested staff explore. Then, under the Code, the Planning Commission is required to review the land use ordinances and make a recommendation to the City Council on the same. Based on the Administration's experience with this particular topic, the Planning Commission will likely also request a review of the operational regulations to better understand the entire medical marijuana program the Administration is bringing forward. Assuming legal and technical resources are available, the earliest the Planning Commission is expected to make recommendations to the Council on the ordinances would be at their February 26 meeting. Assuming this schedule is viable, the earliest the Council would consider the ordinances would be their evening Council meeting on March 18, 2014.

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