

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Angelique Gaeta

SUBJECT: MEDICAL MARIJUANA -
STATUS REPORT UPDATE

DATE: January 16, 2014

Approved /s/ Norberto Dueñas

Date 1/16/14

INFORMATION

The purpose of this memorandum is to clarify the December 10, 2013 Council direction as summarized in the Administration's memorandum of January 13, 2014.

In its memorandum dated January 13, 2014, the Administration summarized the Council's December 10, 2013, action as directing 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

What follows is a detailed list of items the Council directed the Administration to include and explore during the development of the Medical Marijuana Regulatory Program the Council had previously approved on September 13, 2011:

1. Compliance with the US Attorney General's Guidance Regarding Marijuana Enforcement Memorandum to US Attorneys dated August 29, 2013.
2. Measures to ensure a tightly regulated market in which revenues are tracked and accounted for, effective measures to prevent diversion of marijuana outside of the regulated system, and prohibition of access to marijuana to minors through the prohibition of:
 - a. Sales or transfers to minors;
 - b. Trafficking nears areas associated with minors;
 - c. Marketing in a manner that appeals to minors;
 - d. Diversion, directly or indirectly, and purposefully or otherwise, to minors.
3. Two options for zones where Collectives can locate: one that is consistent with those zones approved on September 13, 2011 (CG-Commercial General, DPC-Downtown Primary Commercial, LI-Light Industrial and CIC-Combined Industrial Commercial) and one that adds to those zones the IP-Industrial Park zone.
4. The buffers delineated by the Council in subparagraph (a) above, with the 150-foot buffer between Collectives and residential uses measured by the foot path of travel.
5. Hours of operation from 9:00 a.m. to 9:00 p.m.
6. Prohibition on the location of Collectives on ground floors of buildings within the DPC zone.
7. Prohibition on the location of Collectives on all floors of shopping centers located on a parcel or parcels totaling over 40 acres.
8. Registration of only those Collectives that:
 - a. Can show proof that they were in operation and paying the MBT as of a certain date;
 - b. Were located in compliance with the above zoning districts as of a certain date;
 - c. Secure a site in compliance with the above zoning districts;
 - d. Pass a criminal background check.
9. Preference for Collectives:
 - a. Collectives operating in compliance with zoning and operational requirements as of certain date shall have preference for registration;
 - b. If two Collectives are in compliance and in operation as of certain date, preference shall go to that Collective applying first in time.
10. The issuance of a Zoning Verification Certificate to those located in zoning districts identified above.
11. Expiration of registration and required renewal of registration.
12. Zero tolerance for serious violations of the program.
13. Authorization for City to audit Collectives' books.
14. Cost recovery fees for the program.
15. Prohibition of on-site consumption.
16. Exploration of a development of an underage decoy program similar to that used by the City to deal with sales of tobacco to minors.

17. Assurance that all restrictions placed on smoking tobacco also apply to smoking marijuana.
18. Allow off-site cultivation with controls to comply with the US Attorney General's Enforcement Memorandum and protect existing uses from negative impacts.
19. Allow cultivation in the CIC, LI and HI zones subject to same restrictions as wineries and breweries (with off-sale only as incidental uses and with sufficient controls to comply with the Enforcement Memorandum and protect existing users from negative impacts).
20. Disqualify from registration any Collective and its owners and managers that have been the subject of three or more documented or verified code violations and/or nuisance activities within one year of the time of their application for registration.
21. Prohibit the siting of any Collective on any parcel that has been the subject of three or more documented and verified code violations and/or nuisance activities within one year of the time in which the site is being considered for a Zoning Verification Certificate.
22. Explore restricting certain means of advertising (e.g., sign twirlers).
23. Replace the word "church" with "houses of worship" throughout the regulations and include all houses of worship, not just those with child daycare.
24. Explore prohibiting anyone running for office in the City of San Jose from receiving any monies connected with Collectives.
25. Explore scenarios to increase the buffer between Collectives and residential from 150 ft to one mile.
26. Referring to the prohibition in shopping centers located on parcels over 40 acres (Councilmember Rocha memorandum), explore options to make it congruent with other definitions
27. Explore scenarios for a prohibition around assembly uses and 1,000 feet from all sensitive uses (e.g., residential and school uses)

/s/

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