



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jennifer A. Maguire

**SUBJECT:** ACTIONS RELATED TO THE  
MEDICAL MARIJUANA  
REGULATORY PROGRAM

**DATE:** December 5, 2014

Approved

Date

12/5/14

## RECOMMENDATION

- (a) Adopt a resolution amending the 2014-2015 Schedule of Fees and Charges (Resolution No. 72737, as amended) to:
- (1) Increase the fee for the Processing of a Zoning Code Verification Certificate Application from \$900 per application, plus \$154 per hour for additional Planning review services beyond 4 hours and \$125 per hour for additional Code Enforcement inspection services beyond the first hour, to \$1,212 per application, plus \$154 per hour for additional Planning review services beyond 6 hours and \$125 per hour for additional Code Enforcement inspection services beyond the first hour;
  - (2) Establish a Medical Marijuana Collective Annual Operating Fee for the cost to the City of operating a Medical Marijuana Regulatory Program in the amount of \$71,960 per year for each Medical Marijuana establishment that is registered with the City;
  - (3) Establish a Medical Marijuana Collective Amendment Fee for the cost to the City of receiving amendments to the registration form filed by the Collective in the amount of \$152 per amended application submitted; and
  - (4) Establish a Medical Marijuana Collective Renewal Registration Fee for the cost to the City of processing an application to renew a Collective's registration in the amount of \$2,256 per application for renewal plus \$125 per hour for additional Code Enforcement inspection services beyond the first hour and a Police Department sworn hourly investigation fee in the amount of \$93 per hour beyond 15 hours and \$181 per employee above four.
- (b) Adopt a resolution to amend the Administrative Citation Schedule of Fines to establish fine amounts for the violation of Sections 6.88.300(A) & (B) of Chapter 6.88 (Medical

Marijuana) of the San José Municipal Code in the amount of \$10,000 for the first violation, \$25,000 for a second violation within a twelve month period from the date of previous violation, and \$50,000 for a third and each subsequent violation within a twelve month period from the date of previous violation.

(c) Approve the addition of 1.0 Analyst I/II to the Police Department.

### **OUTCOME**

Approval of the recommendations outlined above would result in a full cost-recovery Medical Marijuana Regulatory Program (Program) and establish fines to impose against those medical marijuana establishments which fail to register with the City as required by the Program or, if registered, fail to pay the fees to the City to cover the cost of the Program.

### **EXECUTIVE SUMMARY**

On June 17, 2014, the City Council approved a Program that regulates where medical marijuana establishments can operate in the City and how they can operate. To remain consistent with the City Council's direction that the Program be full cost recovery, the Administration is recommending the adoption of certain fees and charges necessary to effectively sustain the Program. In addition, the Administration is recommending certain fines to further ensure compliance with the Program.

### **BACKGROUND**

On June 17, 2014, the City Council approved a Program that regulates where Collectives can operate in the City and how they can operate. That Program requires all medical marijuana establishments operating in San José including, but not limited to: collectives, cooperatives and dispensaries (hereafter, "Collective(s)") to register with the City. Registration with the City requires each Collective to complete and submit both: (1) a Zoning Code Verification Certificate Application, establishing that the Collective will operate in an area that complies with the Program's land use regulations, and (2) an Application for Registration as a Medical Marijuana Collective, evidencing that the Collective will operate in strict compliance with the Program's operational regulations. Beginning July 18, 2014, Collectives had ninety (90) days (or until October 17, 2014) to apply for registration and one (1) year (or until July 17, 2015) to become registered. Initial fees to cover the costs associated with processing Medical Marijuana Collective registration applications were brought forward and approved by the City Council on August 5<sup>th</sup>, 2014.

By close of business on October 17, 2014, of the estimated 78 Collectives operating in the City, 50 Collectives submitted the applications required for registration, as described above, and were eligible to be considered for registration with the City. As of the date of this memorandum, 19

Collectives have received a Zoning Code Verification Certificate and are proceeding through the second phase of the registration process by having their Applications for Registration as a Medical Marijuana Collective reviewed.

Based on the above number of applicants and the number of Zoning Code Verification Certificates approved thus far, the Administration estimates that by July 17, 2015, up to 30 Collectives could ultimately achieve full registration with the City. Based on that estimation, the Administration is recommending the fees included in this memorandum in order to cover the number and costs of positions for the staffing plan required to sustain the Program as set forth below.

### **ANALYSIS**

This section discusses amendments to the fee for the Processing of a Zoning Code Verification Certificate Application and the establishments of the three fees required to sustain the Program approved by the City Council: the Medical Marijuana Collective Annual Operating Fee, the Medical Marijuana Collective Amendment Fee, and the Medical Marijuana Collective Renewal Registration Fee. This section also discusses additional administrative fines necessary to ensure Collectives comply with the requirements of the Program.

***Processing of a Zoning Code Verification Certificate Application Fee*** – The Administration recommends increasing the fee charged to Collectives to process an application for a Zoning Code Verification Certificate. Specifically, the Administration recommends that the fee be increased from \$900 per application, plus \$154 per hour for additional Planning review services beyond 4 hours and \$125 per hour for additional Code Enforcement inspection services beyond the first hour, to \$1,212 per application, plus \$154 per hour for additional Planning review services beyond 6 hours and \$125 per hour for additional Code Enforcement inspection services beyond the first hour.

As discussed above, a total of fifty (50) Collectives have submitted applications required to register with the City. Nineteen (19) of those Collectives have received Zoning Code Verification Certificates. It was during the processing of those applications that Planning staff realized it had spent more time during the review of the applications than it had initially projected it would as Planning staff was expending six hours, rather than the four allotted under the \$900 base fee, doing field verification, measuring distances of the subject site from various sensitive land uses, and conducting an inspection to ensure Code compliance through in-person site visits. As a result, Planning has had to invoice Collectives for an hourly fee to cover costs beyond what the initial fee covered. Increasing the base fee will help to avoid this additional step and to ensure the City fully recovers the cost for staff time to review applications. The recommended increase to this fee represents the increase from a minimum of four hours of planning staff time included in the fee when it was established to the six hours of planning staff time that has been spent on each application so far as well as the corresponding increase to the General Plan Update surcharge as defined in the City's Schedule of Fees and Charges.

**Medical Marijuana Collective Annual Operating Fee** – As outlined below, a multi-department staffing plan is needed to carry out the professional responsibilities and expertise to implement and sustain the annual Medical Marijuana Regulatory Program. The Annual Operating Fee reflects 100% cost-recovery for the staffing plan and other costs needed to implement the full scope of the City Council’s policy direction for the Program. In order to ensure that the staffing plan is appropriately funded for 2014-2015 and beyond, staff will require that all Collectives seeking to register with the City submit the total Annual Operating Fee as a condition to finalizing their registration with the City.

Table 1 represents the required Program resources that total \$2.16 million for 12 months. It should be noted that all positions, with the exception of one, currently exist and have been temporarily funded by the General Fund with the expectation that their costs would eventually be recovered once the Program was approved by the City Council. The initial fee amount is recommended at \$71,960 per Collective, assuming that a total of 30 medical marijuana establishments successfully register with the City.

**Table 1: Medical Marijuana Cost-Recovery Staffing Plan- Annual Operating Fee**

<b>Staff Classification</b>	<b>Level (FTEs)</b>	<b>Cost</b>
<b><u>City-Wide Policy Coordination, Implementation, and Sustainment</u></b>		
Assistant to the City Manager	0.40	\$136,287
Staff Technician	0.30	\$37,007
<b><u>Law Enforcement and Investigation</u></b>		
Police Sergeant	0.88	\$266,760
Analyst I/II	0.49	\$139,687
Overtime for Police Officers		\$100,000
<b><u>Code Enforcement and Investigation</u></b>		
Code Enforcement Inspector II	1.99	\$314,297
<b><u>Financial and Compliance Review</u></b>		
Accountant II	1.00	\$151,242
Investigator/Collector I	1.00	\$151,663
<b><u>Legal</u></b>		
Sr. Deputy City Attorney	1.00	\$313,261
Deputy City Attorney	1.00	\$247,764
Legal Analyst	1.00	\$196,217
Legal Administrative Assistant	0.50	\$79,644
<b>Non-Personal/Equipment</b>		\$25,000
<b>Total FTEs/Cost</b>		<b>9.56 \$2,158,829</b>
<b>Total Annual Operating Fee Per Collective (30 total)</b>		<b>\$71,960</b>

**City-Wide Policy Coordination, Implementation, and Sustainment:** The City Manager’s Office has assumed oversight responsibility for operating the Program, which requires

coordination of multiple departments. Specifically, the program requires that 0.40 Assistant to the City Manager be allocated in the City Manager's Office. An Assistant to the City Manager position in the City Manager's Office is a high-level position that is typically assigned with overseeing complex City functions and programs that need the City Manager's Office direct support and oversight. The Assistant to the City Manager position serves a key managerial function in convening the internal working group and tracking the policy issues associated with implementation of the Program and support of the Program regulations as well as developing policy reports to the City Council. This position also serves as a City point of contact to the registered Collectives. In addition, this position coordinates the public outreach processes, including maintaining community engagement, receiving community complaints, and addressing non-law enforcement components of the Program to ensure that non-sworn staff is appropriately supporting law enforcement duties. Since the Annual Operating Fee requires that the funding be disbursed to multiple departments, the Assistant to the City Manager will also be responsible for the fiscal management of this Program, ensuring that revenue and costs are assigned appropriately. This position also has executive oversight of the implementation of the Program to ensure alignment with the overall city-wide policy strategy. As such, this position serves as a direct liaison to answer inquiries from the Mayor and City Council.

Included in this multi-departmental coordination effort is support for a 0.30 Staff Technician position for the day-to-day functions associated with coordinating these complex, multi-department ordinances. These functions include maintaining and updating content on the City's Medical Marijuana Website, information sharing and inter-departmental coordination, facilitating response to stakeholder inquiries through multiple communication outlets, compiling and preparing data for reports, and community coordination. This position also requires attendance at all meetings with staff and/or stakeholders, and as well as the development of agendas and follow-up notes/direction for staff. Generally, the Staff Technician position also follow-ups and informs the Assistant to the City Manager of any special concerns requiring his/her attention. Each year, staff will reevaluate the Program's stability and make a determination on whether to continue City Manager's Office staffing or to distribute the duties to the department level.

**Law Enforcement & Investigation:** A Police Sergeant is responsible for the overall management and coordination of the law enforcement and investigative work performed by the Police Department, along with supervising both a Police Officer (on overtime) and a new Analyst (that has been added to the department on a temporary basis). Additionally, given staff resources, the Police Sergeant provides back-up support when the Police Officer and Analyst are not available due to training, court obligations, vacation or other authorized absences. The Police Sergeant is also charged with developing, implementing and administering internal enforcement policies and procedures and training staff on such procedures and is responsible for coordinating department-wide notifications/communications of the Program through the appropriate internal structure. The Police Sergeant also serves as a liaison between the City, the District Attorney's Office and other law enforcement agencies. In turn, the Police Officer is responsible for performing the day-to-day regulation of the Collectives, including conducting investigations, issuing administrative citations, and regulating and taking action against Collectives if they are not in compliance with the Program regulations. The Analyst assists in the

review of documents submitted to the Police Department by the Collectives to comply with the Program regulations as well as in the issuance of administrative citations.

**Code Enforcement and Investigation:** Two Code Enforcement Inspector positions provide resources for the necessary ongoing inspections and enforcement of the Program regulations as it relates to both land use and Collective operations. Specifically, these positions conduct repeated inspections of Collective sites, which could include dispensing locations located outside of San Jose, meet with Collective representatives to ensure compliance with Program regulations, issue administrative citations and/or compliance orders to non-compliance Collectives and appear before administrative bodies and in court to support the City in its enforcement actions. Given the number of Collectives that may be operating in the City, these inspectors are needed to effectively investigate all complaints received regarding Collectives and work with the Police Department and the City Attorney's Office to close establishments that engage in public nuisance activity. These positions also coordinate with the Finance Department to conduct joint inspections of the Collectives to check compliance with the Program's reporting and auditing requirements.

**Financial and Compliance Review:** The Accountant and Investigator/Collector positions review the financial records of all Collectives and coordinate with the Police Department and the Code Enforcement Division on financial investigations and financial audits of the Collectives to ensure fiscal compliance with the Program regulations.

**Legal:** For the annual operation of the estimated 30 Collectives, a Senior Deputy City Attorney and a Deputy City Attorney will work together to provide legal advice and support in interpreting the regulatory ordinances and train staff on sustainment of the Program. In addition, the attorneys are charged with bringing legal action against Collectives operating in violation of the Program regulations. Those actions could include preparing cases for and representing the City at administrative officer hearings, hearings before the Appeals Hearing Board, and civil and criminal court. The Legal Analyst and Legal Administrative Assistant are necessary to provide analytical and administrative support to these positions.

It should be noted that the above table and summary reflect only a portion of the staff that has worked on Medical Marijuana policy development and enforcement over the past three and a half years. The complex nature of policy and enforcement has required significant resources. Proper implementation of the Program will require, at a minimum, the above staffing plan. In addition, there are several unknown factors that may further impact the proposed staffing plan such as: (1) non-compliance with the Program; (2) changes in the patient population, or (3) activities taken by surrounding jurisdictions that result in impacts to San José operations. These issues will be closely monitored and reported to the City Council and the Administration will bring back any appropriate changes to this fee if needed.

***Medical Marijuana Collective Amendment Fee*** – A Medical Marijuana Collective Amendment Fee, recommended at \$152, is also required to receive any amendment a Collective desires to make to its registration, as reflected in Section 6.88.360 (Change in Location and Updated Registration Forms) of the new Chapter 6.88, added to Title 6 of the Code. This fee is consistent

with the *Receipt of an Application for Registration Fee* as a Medical Marijuana Collective approved by City Council on August 5<sup>th</sup>, 2014. This amendment fee recovers costs associated with receiving each amendment submitted by a collective and ensuring that it is complete and is equivalent to approximately 1 hour of staff time and overhead in the City Manager's Office (45 minutes of a Senior Executive Analyst and 15 minutes of an Assistant to the City Manager).

***Medical Marijuana Collective Registration Renewal Fee*** – A Medical Marijuana Collective Registration Renewal Fee, recommended at \$2,256 per Collective, is required to sustain the annual renewal of a Collective's registration, as reflected in Section 6.88.370 (Renewal of Registration) of the new Chapter 6.88, added to Title 6 of the San José Municipal Code (Code). This fee will cover the cost of the City renewing each Collective's registration on an annual basis. Annual Renewal of a Registration will require staff time to properly review, coordinate, and/or investigate any changes related to registration, which is estimated at the very least to require twenty-four and a half (24.5) hours of staff time among various City departments as well.

The processing of an Application for Medical Marijuana Collective Registration Renewal will be the mechanism to confirm that a Collective continues to comply with the Program's regulations on an annual basis. This process will require several City departments to review multiple documents, for example, City staff will be required to review, investigate, and process the items identified below:

1. Management Plan;
2. Security Plan;
3. Collective's Cultivation Procedures;
4. Site Floor Plan;
5. Collective's Rules and Regulations;
6. Collective's Odor Management Plan; and
7. Criminal Background Checks.

The Administrations proposed fee of \$2,256 per Application for Medical Marijuana Collective Registration Renewal includes sixteen and a half (16.5) hours of City staff time to review documents as well as eight (8) hours of background checks on a total of four (4) owners, managers and specified employees. The details of this fee are outlined below:

- Staff review of 16.5 hours includes: Police Sergeant (8.5 hours), Police Officer (6 hours, overtime), Analyst (30 minutes), Code Enforcement Division (1 hour), City Manager's Office (30 minutes).
- The backgrounding costs for the initial four (4) owners, managers and specified employees of \$724 is included in the base fee (or \$181 per individual) for a total of eight (8) hours. The individual cost for backgrounding of \$181 reflects the time of the Analyst (1.5 hours) and Police Sergeant (30 minutes).

The administration further proposes an applicable fee of \$181 for each individual beyond the initial four (4) included in the base fee above that require backgrounding be added to the

Schedule of Fees and Charges, consistent with the Application for Medical Marijuana Collective Registration fee approved by City Council on August 5, 2014. This additional fee will cover each Collective owner, manager and any individual participating in the cultivation, processing, manufacturing, transporting or dispensing of medical marijuana beyond the initial four.

It should be noted that in certain instances, the positions outlined above are also responsible for administering the Regulatory Program (outlined in Table 1 above), therefore, the respective costs associated with the 24.5 hours of review for the Medical Marijuana Collective Registration Renewal Fee have been removed from the Annual Operating Fee as appropriate.

In some situations, it is expected that additional staff time will be necessary on certain Applications for Medical Marijuana Collective Registration Renewal. In order to ensure full cost recovery of the additional time and resources needed in those instances, additional hourly rates may be assessed as outlined below, for example:

- *Police Department:* The Administration recommends the use of the City Council approved Police Sworn Hourly Investigation Fee in the amount of \$93 per hour, as defined in the City's 2014-2015 Adopted Schedule of Fees and Charges, for additional review and verification of the various plans associated with the Application for Medical Marijuana Collective Registration Renewal and for additional time needed to inspect the Collective's locations and premises, which may include a separate cultivation site in Santa Clara County or in one of the contiguous counties. Because staffing is not currently available for this work, the recommended fee assumes cost recovery for the Police Sergeant currently assigned to the City's Medical Marijuana Team to conduct these reviews and investigations on an overtime basis. As a result, this fee does not include fringe/retirement costs or the overhead rate typically captured when a sworn FTE performs this function as part of his or her normal duties. As the City moves toward full implementation of the Program, the Administration will reexamine this hourly rate to determine whether moving away from the use of overtime is a viable and more efficient option.
- *Code Enforcement:* Additional time for inspections that may be necessary for some applications. This additional work would require billing at the standard Code Enforcement Division hourly rate of \$125, plus a General Plan Update surcharge as defined in the City's 2014-2015 Adopted Schedule of Fees and Charges.

### **Schedule of Fines**

The Administration is proposing amendments to the Schedule of Fines pertaining to violations of Section 6.88.300(A) & (B) of Chapter 6.88 of the Code. These sections respectively prohibit any Collective or person from operating a Collective without first registering with the City and from operating a Collective in violation of Chapter 6.88 of the Code (the Program). To ensure that the Collectives and their operators and agents comply with these sections of the Code, the Administration proposes setting fines at the following amounts:



\$10,000 for the first violation;  
\$25,000 for a second violation within a twelve-month period from the date of the previous violation; and  
\$50,000 for a third and/or each subsequent violation within a twelve-month period from the date of a previous violation.

The Administration believes that these amounts will encourage compliance versus establishments considering the cost of a fine as the cost of doing business in the City. In addition, administrative citations can be issued to the Collectives not complying with the Program regulations on a daily basis until compliance is achieved.

Currently, no revenue is forecasted from these fines because staff cannot anticipate the number of violations and associated fines at this time. This will be monitored and reported to the City Council as part of the regular reports related to implementation and sustainment. A Resolution setting forth the proposed fines for violating various sections of the Program will be posted separately by the City Attorney's Office.

### **EVALUATION AND FOLLOW-UP**

The fees and fines supported by this memorandum will support the City's ongoing expenses to regulate Collectives and ensure the City's costs are fully recovered on an annual basis. Any further fee adjustments for this Program will be brought forward for City Council consideration as part of the 2015-2016 Proposed Budget process.

### **PUBLIC OUTREACH**

Prior to the Council hearing this item, this memorandum will be posted on the City's Council Agenda website for the December 16, 2014 Council Meeting and posted on the City's medical marijuana website at [www.sanjoseca.gov/medicalmarijuana](http://www.sanjoseca.gov/medicalmarijuana). In addition, this memorandum will be emailed to all Collectives that have applied to register with the City of San José .

### **COORDINATION**

This memorandum was coordinated with the City Attorney's Office, the Police Department, the Finance Department, and the Department of Planning, Building and Code Enforcement.

### **FISCAL/POLICY ALIGNMENT**

These fees are in alignment with previous commitments by the Administration to return with proposed fees to cover the City's costs of operating the Medical Marijuana Program, which was established by the City in an effort to support safe access to Medical Marijuana in the City of San José .

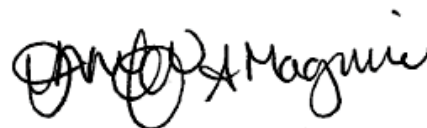
**COST SUMMARY/IMPLICATIONS**

No revenues are currently forecasted for the Processing of a Zoning Code Verification Certificate Application Fee, Medical Marijuana Collective Annual Operating Fee, Medical Marijuana Collective Amendment Fee, or Medical Marijuana Collective Registration Renewal Fee as the activity levels have not yet been established and there is no experience with actual payments. In addition, no revenue is forecasted for the fines because it is unknown how many citations will be issued, at what level of fine they will be issued, and how many of the establishments cited will actually pay the fine. Once the Administration has some baseline data, annual revenue estimates for these activities will be included in future budgets.

Through the Medical Marijuana Collective Annual Operating Fee, costs for the equivalent of 9.56 positions will be 100% recovered by the registered Medical Marijuana establishments for a net-zero impact on the General Fund. Similarly, the Medical Marijuana Collective Amendment Fee includes costs for 1 hour of City Manager's Office staff time and the Medical Marijuana Collective Registration Renewal Fee includes costs for 24.5 hours of staff time per renewal split among the following: Police Sergeant, Police Officer, Analyst, Code Enforcement Division, Senior Executive Analyst, and an Assistant to the City Manager. The only position addition recommended in this memorandum is for 1.0 Analyst in the Police Department that has been temporarily authorized this year in the General Fund to support this Program. As noted earlier, the other positions identified above are currently budgeted in the 2014-2015 Adopted Budget and funded by the General Fund; however, through the implementation of the Program, it is recommended that the costs now be recovered through the Program fees. Of these positions, 1.0 Code Enforcement Inspector and 1.0 Deputy City Attorney are currently limit-dated through June 30, 2015 and the Police overtime is only funded through the end of the fiscal year. With the approval of this memorandum, these positions and the overtime will be made permanent and factored into the development of the 2015-2016 Base Operating Budget. The recommended fees will ensure full cost recovery for the Program and will be reviewed annually and amended each year as part of the budget process.

**CEQA**

Statutorily Exempt, CEQA Guidelines Section 15273, Rates, Toll, Fares and Charges (File No. PP 10-067 (a)).



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