

DRAFT – URGENCY ORDINANCE

ORDINANCE NO.

AN URGENCY ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO AMEND SECTION 20.10.040 OF CHAPTER 20.10 TO CLARIFY THAT UNLAWFUL USES ARE NOT ALLOWED UNDER THE TITLE AND TO AMEND CHAPTER 20.80 TO ADD A NEW PART 9.5 TO EXPRESSLY BAN BUSINESS USES THAT INVOLVE THE CULTIVATION, DISPENSATION OR DISTRIBUTION OF MARIJUANA FOR ANY PURPOSE AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY

WHEREAS, on _____, the Director of Planning, Building and Code Enforcement determined, pursuant to the provisions of Title 21 of the San José Municipal Code and the provisions of the California Environmental Quality Act of 1970, together with regulatory guidelines promulgated thereunder (collectively, “CEQA”), that the approval and adoption of this Ordinance [is not subject to / is exempt from] CEQA pursuant to the provisions of CEQA Guideline Section _____, File No. PP_____; and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has considered and hereby approves of this determination under the provisions of CEQA for the approval and adoption of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 20.10.040 of Chapter 20.10 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.10.040 Interpretation

A. In interpreting and applying the provisions of this Title, they shall be held to be for the purpose of promoting the public safety, health, convenience, comfort, prosperity, or general welfare of the community. It is not intended by this Title to interfere with or abrogate or annul any easements, covenants, or other agreements between parties; provided, however, that where this Title imposes a greater restriction upon the use of buildings or premises or upon height or buildings, or requires larger open spaces than are imposed or required by other ordinances, rules, regulations or by easements, covenants, or agreements, the provisions of this Title shall govern.

B. No provision of this Title is intended to nor shall be interpreted or applied to allow a use or structure that violates federal, state or local law. This statement is declarative of existing law.

SECTION 2. Chapter 20.80 of Title 20 of the San José Municipal Code is hereby amended by adding a new Part 9.5 to be numbered and entitled and to read as follows:

Part 9.5

BAN ON BUSINESS USES INVOLVING MARIJUANA

20.80.750 Prohibited Business Uses

A. No business owner or operator shall cultivate, dispense, distribute, transport or sell, nor allow or suffer the cultivation, dispensation, distribution, transportation or sale of, any variety of marijuana for any reason or purpose whatsoever on any

real property located in the City, either as a stand-alone activity or in combination with any other business use of property.

B. For the purposes of this Part, a "business" includes a cooperative or collective organization, whether organized as a for-profit or non-profit entity.

C. For purposes of this Part, "marijuana" shall have the same meaning as set forth in California Health and Safety Code Section 11018, as the same may be amended from time to time.

D. The provisions of this Section are declarative of existing law.

SECTION 3. This Ordinance is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety. The fact constituting such urgency is that there is an urgent need to clarify that businesses involving the cultivation, dispensation, distribution, transportation or sale of any variety of marijuana for any purpose whatsoever, either as a stand-alone activity or in combination with any other business, are not allowed and may not operate in the City for each and all of the following reasons:

- A. In order to facilitate the ability of the City to address currently, illegally-operating facilities that are dispensing varieties of marijuana for purportedly medical purposes without any authority or approval from the City; and
- B. The number of these illegally operating facilities has dramatically escalated in the past few months, to over eighty such facilities at present, in the absence of a clarifying ban on these facilities in the City; and
- C. Serious crimes, such as violent armed robberies involving the use of semi-automatic handguns, recently have occurred at these facilities, as have federal drug raid activities; and
- D. Many of the illegally operating facilities are openly operating as commercial store fronts and advertising their businesses in local publications; and
- E. The number of complaints from neighbors related to illegal drug activity at these facilities has increased.

RD:RNG
11/3/2010

SECTION 4. This Ordinance shall become effective immediately upon its adoption pursuant to Section 605 of the Charter of the City of San Jose and shall remain in effect until the effective date of a superseding ordinance.

ADOPTED this day of , 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk