



Memorandum

TO: City Council

FROM: Councilmember Herrera

SUBJECT: Protecting Our Children by
Eliminating the For-Profit
Marijuana Market

DATE: 5/12/14

APPROVE

Rosa Herrera MG

DATE:

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Recommendation

Direct staff to:

1. Draft an ordinance that would Ban current retail dispensaries and replace them with 501(c)3 medical dispensaries or distribution that is run by the County Health Department, and
2. Draft a change of the city zoning code that would prohibit dispensary operation within Industrial Parks (IP), instead allowing the dispensaries to more easily locate in Light Industrial/Heavy Industrial (LIHI) zones, and
3. Work with county staff to strengthen the medical card identification system to enable verification by law enforcement and dispensaries.

Background

I would like to thank the Mayor and my other colleagues for the memo they put out regarding 8.1 on the May 13th council agenda. They have helped bring focus to the issue of marijuana within our city by outlining what we can and cannot do when it comes to city policy regulating the substance. While we both agree that we have to act within federal and state regulations and we all see the need to protect our kids, medical use patients and public safety, we disagree on the specifics of how this is best accomplished. I agree with my colleagues' recommendations that there be: a ban of chemical processing, 24-hour security, an age restriction to 21 years of age and above for both access and workers, a requirement of a patients to have a Marijuana State Identification Card issued by the County, no resemblance between marijuana and its packaging to that of candy, a provision allowing the city to shut down collective immediately, and no self-illuminated signs or sign wavers.

Where I differ from my colleagues lies in how to keep supply small enough to only cover legitimate medical demand, and the specifics of where they would be allowed. While I appreciate the memo my colleagues wrote, I believe it does not go far enough in these respective areas to deal with the substantial problems the expansion of for-profit medical marijuana dispensaries have created for our kids and the safety of our residents. The first change I would suggest is that zoning should be such that dispensaries are prohibited in all IP, not just the ones specified by my colleagues.

Keeping Marijuana Away from Kids

Apart from zoning concerns, I am wary of the market that regulations proposed by staff and my colleagues would still allow. As my colleague's memo pointed out, suspensions due to students possessing illegal substances have been going up in our city. In my district alone, East Side Union High School District has seen a 143% increase in suspensions due to possession of such substances; marijuana possession occurring the most frequently. I do not believe the staff's recommendation, or my colleagues amendments will reduce this number or the access our kids have to marijuana. Our kids have access to marijuana not because it is located near where they attend school but because the high number of dispensaries and their retail-like operations makes the substance abundant and cheap. Since medical cards are not attached to a specific primary care doctor or dispensary, and since these cards are often faked and hard to authenticate, those seeking to buy marijuana may shop around at different dispensaries allowing for competitive pricing. This keeps the substance cheap enough and abundant enough to easily flip on the street.

All land use restrictions being proposed would just address where dispensaries could be located without reducing the total number of dispensaries operating. Access in the form of high supply and low prices, would be the same. While retaining restrictions on location of dispensaries so that our businesses can feel safe in our city, we must go further than this and address the retail environment. The best way to do this is to require that all dispensaries operating in our city are 501(c)3 non-profits. When this was required in Pheonix, AZ, it took away the profit motive of dispensaries. So long as we strictly require legitimate medical use cards, this will inevitably shrink the supply as those looking to simply make a profit would exit the market and eliminate their supply as they leave.

My recommendation that requires dispensaries to operate as non-profits cannot keep this substance out of the hands of kids on its own. To be effective it must be done in conjunction with strictly applied rules on who can access the dispensary. The only patients allowed in dispensaries must be those that have gone through the proper channels and received a legitimate medical use card from the county. This would prevent dealers from getting their card and simply moving the epicenter of the supply-for-profit model from the dispensaries to the streets.

As of now, medical cards are easy to fake, easily purchased on the internet, and hard to verify. I have asked to see a "patient's" card before and he was only able to produce a blue piece of paper signed by a "doctor," one that he only saw once for the card and never again. He claimed this was all he needed to purchase marijuana from a dispensary. We must be able to require a specific type of medical use card that is easily verifiable and we must make sure the few dispensaries that will choose to operate in the non-profit environment have records to prove their patients' legitimacy.

Preserving Voter Intended Compassionate Use

With any policy we propose in this area we must make sure that we do not violate state law and prevent access for compassionate use. However with less than 200 legitimate cards issued in our county and over 100 dispensaries in operation, we are far from this situation. The current ratio of

dispensaries to legitimate card holders means that each location has less than two patients. Should over half our dispensaries close we would still not be in danger of infringing on patients' rights.

My solutions would allow the market to decide exactly how many dispensaries we would need to ensure safe access for patients without creating a street market. If we are able to verify the legitimacy of those purchasing marijuana, and we eliminate the profit motive then dozens of dispensaries will choose to leave our city as their operations here are no longer viable. The ones that would stick around in hopes of operating illegally could easily be audited, checked, and shut down on the spot if they are found to be selling to non-patients. The market would continue to shrink until only enough dispensaries to cover the demand of patients exist; no more than this and no less than this.