



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Angelique Gaeta

**SUBJECT:** MEDICAL MARIJUANA  
STATE LEGISLATION

**DATE:** October 30, 2015

Approved

Date

10/30/15

## INFORMATION

On October 9, 2015, Governor Brown signed three bills into law that regulate medical marijuana cultivation, sales, and distribution in the State of California. The following is an analysis of the legislation and its impacts on San José's Medical Marijuana Program.

## BACKGROUND

In 1996, the voters of California approved Proposition 215 (the "Compassionate Use Act"), establishing an affirmative defense to prosecution under State law for seriously ill patients using medical marijuana and for primary caregivers assisting seriously ill patients in their use of medical marijuana. In 2004, the State Legislature enacted Senate Bill 420 (the "Medical Marijuana Program Act"), which established the medical marijuana ID card system for patients, to be implemented by all counties within the State. The Medical Marijuana Program Act (MMPA) also created guidelines for personal use and allowed for seriously ill patients and their primary caregivers to assist and care for each other through the collective and cooperative cultivation of medical marijuana. However, in the past nineteen years, a comprehensive regulatory program was never developed.

In 2009, San José began to see a proliferation of illegal medical marijuana establishments operating in the City. In response, the City Council and staff worked to develop regulations for the use and cultivation of medical marijuana that would meet the needs of seriously ill patients while protecting San José youth and neighborhoods from its illegal diversion. On June 17, 2014, the City Council approved a Medical Marijuana Program (Program) comprised of a Medical Marijuana Land Use Ordinance and a Medical Marijuana Regulatory Ordinance. Staff has since been implementing the Program which requires cooperatives, collectives and dispensaries (hereafter, "collectives") to register with the City as a Medical Marijuana Collective and to do so by December 18, 2015. To ensure compliance with the MMPA, one of the main components of the City's Program is its closed-loop, vertically integrated framework. This framework requires collectives to cultivate and manufacture any medical marijuana and medical marijuana products that they dispense to their membership (patients and caregivers).

## **NEW STATE LEGISLATION**

On October 9, 2015, the Governor signed three bills into law—AB 243, AB 266, and SB 643. Together, these bills are known as the Medical Marijuana Regulation and Safety Act and are intended to work in concert to create a comprehensive scheme for regulating all aspects of commercial medical marijuana activity.

For example, AB 243 (Wood) establishes a regulatory and licensing structure for cultivation sites under the Department of Food and Agriculture and provides direction around the regulation of pesticides, edibles, and environmental impacts.

AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, Wood) establishes a dual licensing structure requiring a state license and a local license (or permission) to engage in commercial medical marijuana activity; creates the Bureau of Medical Marijuana Regulation within the California Department of Consumer Affairs; and outlines the Bureau's areas of responsibility. This bill also requires the creation and promulgation of health and safety and testing regulations. In addition, under this bill, cities and counties retain the ability to tax, zone, regulate, and ban medical marijuana uses, including delivery services.

SB 643 (McGuire) establishes criteria for licensing of medical marijuana businesses, regulates physicians and recognizes local authority to levy taxes and fees.

For more details, please see the following summaries:

- League of California Cities: <http://www.cacities.org/Top/News/News-Articles/2015/September/Summary-of-Medical-Marijuana-Package>
- California Association of Police Chiefs: [http://www.californiapolicechiefs.org/assets/Marijuana/Medical%20Marijuana%20Package\\_Summary%20for%20Chiefs.pdf](http://www.californiapolicechiefs.org/assets/Marijuana/Medical%20Marijuana%20Package_Summary%20for%20Chiefs.pdf)

## **IMPACT OF LEGISLATION ON SAN JOSÉ'S MEDICAL MARIJUANA PROGRAM**

With regard to the impact of the Medical Marijuana Regulation and Safety Act (MMRSA) on the City's Program, it is important to note that it will take time for the State regulations to be fully implemented. While the effective date of the MMRSA is January 1, 2016, the State anticipates the earliest it will be ready to review applications for licensure and have in place the regulations required to be promulgated under the MMRSA is 2018. Accordingly, until the regulations are in place and the State is issuing licenses, the MMRSA relies on medical marijuana establishments to comply with the local regulations of the jurisdictions in which they operate.

Further, as discussed, the MMRSA provides a licensing structure that will overlay local regulations. Therefore, once the State's licensing system is in place, a medical marijuana

establishment will not be eligible to apply for a State license *unless it is already authorized to operate under the local jurisdiction's regulations.*

One difference between the State's program and the City's is that the MMRSA creates the following categories of licenses: Cultivator, Dispensary, Distributor, Manufacturing, Testing, and Transport (for commercial transport between licensees, not delivery to consumers). In addition, within each category are various classifications of licenses and no licensee may hold licenses in more than two categories, with the combinations of licenses held restricted. Moreover, testing facilities may not hold any other license or any financial interest in any other licensee. Ultimately, the MMRSA does not allow for a vertically integrated operation, *unless:*

- The local jurisdiction in which a medical marijuana business is operating has an ordinance in place prior to July 1, 2015 that requires vertical integration;
- The business was cultivating, manufacturing, and dispensing medical marijuana or medical marijuana products on July 1, 2015, and has continuously done so since that date;
- The business has been in compliance with all applicable local ordinances at all times prior to licensure by the state; and
- The business is registered with the State Board of Equalization.

As discussed, San José's Program ordinances were adopted by the City Council on June 17, 2014 and give collectives until December 18, 2015 to complete registration with the City. Although not all of the collectives currently in the City's registration process were cultivating, manufacturing and dispensing medical marijuana on July 1, 2015, the Governor's Office has indicated that it will work with the City to amend the date by which collectives will need to have been engaging in said activities to allow these collectives to continue in the City's registration process and remain compliant with the City's Program.

If at some point prior to the State's implementation of its licensing process the Administration determines that the City's Program is not fully recognized under the MMRSA, the Administration will review the City's Program ordinances to determine what changes would be required for the State to accept San José collectives for licensing. Going forward, those collectives that currently remain in the City's process towards registration are encouraged to stay the course as the MMRSA prioritizes for licensure those medical marijuana businesses that can demonstrate that by January 1, 2016 they were in operation and in good standing with the local jurisdiction.

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