



Memorandum

TO: RULES COMMITTEE

FROM: Vice-Mayor Madison Nguyen
Councilmember Rose Herrera
Councilmember Sam Liccardo
Councilmember Pete Constant

**SUBJECT: THE ESTABLISHMENT OF A
MAXIMUM NUMBER (CAP)
AND STREAMLINED
APPLICATION PROCESS FOR
MEDICAL MARIJUANA
ESTABLISHMENTS**

DATE: March 3, 2011

Ben...
Madison Nguyen - LM for MN

APPROVE *[Signature]*

RECOMMENDATION:

Return to Council on March 29, 2011 with a recommendation that will enable the City to:

1. Establish a maximum number (cap) of 10 medical marijuana collectives and cooperatives that will be permitted to operate within the City of San José;
2. Create a streamlined application process for medical marijuana collectives and cooperatives to operate legally within the City of San José, for immediate implementation;
3. All other medical marijuana and/or cannabis collectives, cooperatives, dispensaries, operators, or businesses above and beyond the cap shall cease all operations within a specified period, such as 30 or 60 days.

BACKGROUND:

If the City of San Jose is to keep its focus on being an attractive place to live and work, we must endeavor to focus our resources on supporting efforts that achieve just that. However, the proliferation of marijuana dispensaries jeopardizes our efforts. With over 100 medical marijuana businesses, residents are angry at both the number and the underground nature of their operations. Furthermore, these businesses have caused the city to use resources we don't have, and have created an administrative distraction of creating a policy to permit businesses that are currently illegal.

In our ambition to generate tax revenues from marijuana businesses, we have lost sight of the burdens these establishments currently place on the city. For example, the *Mercury News* identified four cash-laden dispensaries and a grower victimized by criminals in a single week in December. Just two months ago, a two alarm fire broke out at the Herb Appeal medical cannabis collective. In the first eight months of 2010, staff reported that at least eight fires occurred in "grow houses." Code Enforcement and the police continue to receive and respond to complaints of secondary drug dealing,

loitering, and other related conduct. In addition to the obvious harms from these incidents, they require the expenditure of scarce staff time and precious city resources.

Since the time council first discussed this issue, the number of marijuana dispensaries has proliferated, now exceeding 100 in number. Complaints from residents and business owners about the operations of several clubs have largely gone without substantial response from City, for a host of reasons ranging from a lack of resources to confusion about legal standards for enforcement.

Accordingly, a broad consensus already appears to exist within City Hall and among Council that the City needs to reduce the number of businesses substantially to enable for more manageable enforcement of problematic operations. A reduction in clubs is consistent with the priorities of this city that we have reinforced through our budget priorities and Economic Development Strategy.

Any policy for medical marijuana establishments should reflect State Law and the direction by the City Council. At the December 13, 2010 Medical Marijuana Study Session, multiple authorities—including the District Attorney's office, the City Manager's staff, the City Attorney, and the San José Police Department—informed the Council that every medical marijuana establishment in San José operates illegally, without legalized zoning, and outside the statutory definition of state-authorized caregiver operations. It is not acceptable that we are a haven for illegal businesses.

While the City continues to engage and allocate staff time and resources to the lengthy process to establish a regulatory scheme, and endlessly debate the minutiae of possible regulations, the over 100 dispensaries will continue to divert resources from public safety and code enforcement departments.

We can establish a temporary cap in a logical and reasonable manner. For example, courts have been supportive of various cities efforts to close medical marijuana establishments that have failed to comply with or circumvented procedural requirements, such as truthfully describing the nature of their business when applying for a business tax license.

Imposing a cap now will at least reduce the flow of problems associated with these types of establishments. We can debate whatever additional regulations we might need in the future months, but we need to act now to reduce the problem to a manageable size. There is no reason to continue to burden our community, our strained Code Enforcement staff, and the Police and Fire departments, with the current magnitude of a problem when there exists a broad concurrence that the local industry should shrink anyway. Marijuana businesses also deserve some clarity and certainty in this process.

We propose to move forward immediately with this task, and accelerate it in the work plan to the March 29th council meeting. Given the concurrence of scheduling with the Public Safety, Finance & Strategic Support Committee's work on the zoning/land use issues, this should not require significantly greater staff resources than have already been devoted to this issue.

By creating a cap and establishing a clear process for the permissible collectives, we are stopping the drain on city resources and strengthening our regulatory authority.