



# Memorandum

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**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Richard Doyle  
Norberto L. Dueñas

**SUBJECT:** SEE BELOW

**DATE:** October 21, 2016

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**SUBJECT: ADOPTION OF AN URGENCY ORDINANCE REGARDING  
NONMEDICAL MARIJUANA**

## **RECOMMENDATION**

Adopt an urgency ordinance amending Chapter 20.80 of Title 20 of the San José Municipal Code to add a new Part 9.8 confirming the prohibition on cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana; confirming limitations on personal cultivation of nonmedical marijuana should Proposition 64 (the Control, Regulate, and Tax Adult Use of Marijuana Act) pass; and setting forth the facts constituting such urgency.

## **OUTCOME**

Passage of the urgency ordinance will confirm that cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana is not allowed in San José. This will provide the City Council with time to evaluate the issue of commercial activities related to nonmedical marijuana if Proposition 64 is passed by the voters of California. Additionally, passage of the urgency ordinance will confirm the limitations on personal cultivation of nonmedical marijuana in the event that Proposition 64 passes.

## **BACKGROUND**

On November 8, 2016 the voters of California will vote on whether to legalize the recreational or adult use of marijuana by those 21 and older. If passed, Proposition 64 (the Control, Regulate, and Tax Adult Use of Marijuana Act) would take effect the following day, on November 9, 2016.

Under the proposition, an individual age 21 and older would be allowed to smoke or ingest marijuana products as well as possess, process, transport, purchase, obtain, or give away without compensation of any sort. Possession limits per individual are set at not more than:

- 28.5 grams of marijuana (not concentrated cannabis);
- Four to eight grams of concentrated cannabis (including that contained in marijuana products such as edibles);
- Six living plants (including possession of the marijuana produced by those plants).

Individuals would be allowed to cultivate up to six plants at their personal residence. Cities would be able to ban or regulate outdoor cultivation, but could not prohibit cultivation inside the residence or a secure accessory structure.

Proposition 64 would create a state program licensing commercial nonmedical marijuana businesses, including dispensaries, cultivators, manufacturers, distributors, and testing labs. The licensing program would be similar to the state licensing program being implemented for medical marijuana. Facilities would have separate licenses for recreational and medical marijuana uses. Commercial nonmedical marijuana would be tracked and traced from cultivation through sale. As with medical marijuana licensing, the state would be required to begin issuing licenses by January 1, 2018.

Under Proposition 64 it would be illegal to sell recreational cannabis without a state license. It would also be illegal to cultivate, process, manufacture, deliver, sell, or distribute recreational marijuana without a state license. The state is not allowed to issue licenses to those who are breaking the law.

## **ANALYSIS**

Recreational marijuana is not an enumerated use under the City of San José's Zoning Code. The Zoning Code only has provisions for medical marijuana as a Restricted Use.

San José's Zoning Code is a "Permissive Zoning" code. Permitted uses are listed in the Zoning Code. If a use is not listed, it is not permitted. Because recreational marijuana uses are not listed, it is not legal to cultivate, process, manufacture, deliver, sell, or distribute recreational marijuana in San José.

However, given the City's past experience with medical marijuana, staff is recommending adoption of an urgency ordinance to make it explicitly clear to budding entrepreneurs that commercial recreational marijuana activities are not allowed in San José.

This would provide the time, should the voters pass Proposition 64, for analysis and policy discussion, including conducting the required environmental review under the California Environmental Quality Act (CEQA), community outreach, Planning Commission hearings, and City Council hearings prior to a vote on whether to allow and regulate the sale, cultivation, manufacture, delivery, etc. of recreational/adult use cannabis.

The urgency ordinance would confirm, if Proposition 64 passes, that nonmedical marijuana cultivated for personal use is restricted to six living plants and that nonmedical marijuana must be grown indoors or in a secure accessory structure in alignment with Proposition 64, and must comply with fire and building codes.

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

If successful, this urgency ordinance will help prevent the proliferation of illegal marijuana businesses in San José as well as the neighborhood impacts of outdoor personal cultivation.

### **PUBLIC OUTREACH**

Staff discussed the concept of an urgency ordinance at a meeting with Registered Collectives on October 4, 2016. The concept was discussed at the City Council meeting of October 18, 2016, when Council directed staff to return with further direction regarding Proposition 64. This memorandum will be posted on the City's Council Agenda website for the November 1, 2016 Council Meeting.

### **COORDINATION**

This report has been coordinated with the Police Department and the Department of Planning, Building and Code Enforcement.

### **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

HONORABLE MAYOR AND CITY COUNCIL

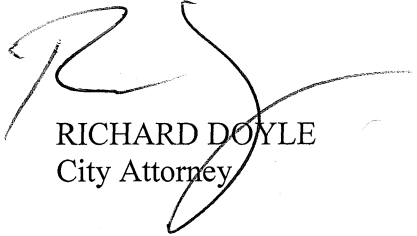
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**CEQA**

Not a Project or Exempt, File No. PP16-110, Guidelines Sections 15061(b)(3) No Significant Impact on the Environment and 15308 Actions by Regulatory Agencies for Protection of the Environment



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