



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Deanna J. Santana
Christopher Moore
Joseph Horwedel
Scott P. Johnson

SUBJECT: MEDICAL MARIJUANA

DATE: December 8, 2010

Approved

Date

12/8/10

EXECUTIVE SUMMARY

At the December 13, 2010 Special City Council Meeting, staff will be providing the City Council with a presentation on a variety of policy options related to medical marijuana. To set the context of the discussion, the City Attorney's Office will begin by presenting the legal analysis on medical marijuana. This legal analysis serves as the basis for developing the regulatory and land use ordinances as well as policy alternatives noted in this memorandum.

From there, staff will provide a presentation of the key features of a draft medical marijuana regulatory ordinance and a draft medical marijuana land use ordinance that has been drafted to comply with the parameters of state law. Staff will also present policy alternatives within the respective ordinances to disclose the range of options available for City Council consideration. Staff will then provide analysis for instituting the regulatory program at 100% cost recovery.

Staff will then address taxation options following the voter approved ballot measure (Measure U) which will allow the City to impose a business tax on marijuana businesses at a rate of up to 10% of gross receipts. A 5% tax is recommended and can be approved separate of any action regarding regulation, ban, or moratoriums. The draft regulations pertaining to medical marijuana collectives allow for in kind contributions, monetary contributions and property contributions provided by members to support all of the collective's overhead expenses that are associated with medical marijuana cultivation (Section 6.88.440D). Accordingly, in the case of medical marijuana collectives, all of this would be part of the gross receipts that the City would tax under the new marijuana business tax.

As an alternative to regulation, the City Council may approve an ordinance at the Special City Council Meeting that bans all medical marijuana establishments in the City of San José. Finally, if the City Council wishes to continue the discussion of designing a regulatory program, staff has developed an option that bans all medical marijuana establishments but places an interim moratorium on medical marijuana collectives and cooperatives until the City Council sets regulations as discussed above. Below are the policy options for the City Council to consider in greater detail:

Policy Option 1: Regulate & Tax Medical Marijuana Establishments

Discussion and/or direction to staff regarding the following aspects of medical marijuana regulation and taxation model:

1. Zoning/Land Use Policy;
2. Regulatory Program;
3. Cost for Regulatory Program (Schedule of Fees);
4. Schedule of Fines; and,
5. Taxation Analysis (can be considered independently).

Possible Action for Policy Option 1:

- (1) Direction to staff to continue to develop medical marijuana regulation and taxation that result in the adoption of ordinances providing:
 - (a) Operating Regulations;
 - (b) Land Use Restrictions;
 - (c) Budget action that results in a 100% cost recovery program;
 - (d) Authorization of the addition of staff to support this new regulatory program; and,
 - (e) Establishment of fines for various violations related to these regulations.
- (2) Adoption of an ordinance amending Section 4.66.250 of Chapter 4.66 of Title 4 of the San Jose Municipal Code to set the rate of the Medical Marijuana Business Tax at 5% of gross receipts for all marijuana businesses.

Policy Option 2: Ban Medical Marijuana Establishments

Discussion and/or direction to staff regarding a permanent ban of all medical marijuana establishments.

Possible Action for Policy Option 2:

- (a) Adoption of an urgency ordinance amending the Section 20.10.040 of Chapter 20.10 and adding a new Part 9.5 to Chapter 20.80 of Title 20 of the San José Municipal Code to clarify that businesses involving the cultivation, dispensation, distribution, transportation or sale of marijuana in the City for any purpose are prohibited and setting forth the facts constituting such urgency.
- (b) Adoption of a resolution initiating proceedings to amend Section 20.10.040 of Chapter 20.10 and adding a new Part 9.5 to Chapter 20.80 of Title 20 of the San José Municipal Code to clarify that businesses involving the cultivation, dispensation, distribution, transportation or sale of marijuana in the City for any purpose are prohibited, setting a public hearing for the ordinance and referring said ordinance to the Planning Commission for its review and recommendation.

CEQA: Not a Project, File No. PP10-068(c), Municipal Code amendments involving no physical changes to the environment. (City Council, direction from 11/2/10)

Policy Option 3: Implement Moratorium on Medical Marijuana Collectives and Cooperatives Until Regulations Are Adopted

Discussion and/or direction to staff regarding implementing a moratorium on medical marijuana collectives and cooperatives until the City Council adopts regulations for those establishments, while permanently banning all other marijuana establishments.

Possible Action for Policy Option 3:

- (a) Approve an interim ordinance of the City of San Jose implementing a moratorium on medical collectives and cooperatives; and,
- (b) Direct staff to return to the Rules & Open Government Committee with a work plan and meeting schedule to complete review of the regulatory policy options and appropriately direct staff.

CEQA: Not a Project, File No. PP10-068(c), Municipal Code or Policy.

BACKGROUND

In November 2009, the Rules and Open Government Committee Meeting (Rules Committee) directed staff to conduct a workload assessment and provide legal analysis on land use issues relative to medical marijuana. Staff provided a status report on this referral at the November 18, 2009 Rules Committee meeting. Then, on January 27, 2010, staff provided a more complete workload assessment pertaining to land use issues. Following staff's presentation of the workload assessment, the Rules Committee directed staff to conduct additional follow-up analysis on the land use issues and forwarded the analysis to the full City Council. On March 30, 2010, staff presented its workload assessment on the land use issues related to medical marijuana to the full City Council. Following a lengthy discussion, Council directed staff to return to Council on June 8, 2010 with the following items:

1. A draft ordinance establishing regulations for the control and taxation of Collectives and reflecting principles 1, 2, and 4 outlined in the Joint Memorandum dated March 25, 2010 from Mayor Reed and Vice Mayor Chirco:

Principle 1: San Jose recognizes that California law allows a patient's primary care giver to cultivate and possess marijuana for the personal medical purposes of the patient upon the recommendation of a physician;

Principle 2: San Jose will follow the guidance of the California Attorney General and the United States Attorney General in criminal enforcement of the laws regarding medicinal use of marijuana.

Principle 4: Individuals or entities that cultivate or distribute marijuana for profit are operating illegally under state law and are illegal under San Jose Municipal Code.

2. A community outreach plan; and,
3. An analysis for Council consideration about the process for placing the issue on the November 2, 2010 ballot asking for Citywide support for the restricted zoning of medical

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marijuana collectives/cooperatives in San José according to State law by taxing them at 3% per \$1,000 gross receipts including the allowance for indexing for inflation.

(Source: March 30, 2010 City Council Synopsis and Minutes, Approved by the City Council on May 18, 2010)

As noted, the Council's March 30th referral was much broader than the previous direction from the Rules Committee regarding medical marijuana, which was solely focused on land-use policy and did not include a request for analysis on the regulation of medical marijuana establishments. The City Council's referral directed staff to develop regulations for the control of Collectives, land use regulations, taxation analysis, ballot measure analysis, and a community outreach plan. Given the broad range of issues that required resolution by staff, and the short timeframe to complete this work, at the June 2, 2010 Rules Committee meeting, the Committee approved a deferral of the item to the June 15th City Council meeting and waived the "sunshine requirements" allowing staff to distribute the staff report and draft ordinances outside of the open government requirements.

On June 7, 2010, staff engaged members of the public in a community meeting where key features of two draft ordinances – a land use ordinance and a regulatory ordinance – were reviewed. Given the number of issues raised at the June 7th outreach meeting, at the June 9 Rules Committee meeting, the Offices of the City Manager and City Attorney requested that this item be heard at the June 22 City Council meeting and requested a waiver of the "sunshine requirements."

Through a separate supplemental memorandum, the City Attorney's Office provided its legal analysis on the application of the law pertaining to medical marijuana, an application which serves as the basis for the policy development presented in this report (Tab 1).

At the June 22, 2010 City Council meeting, the City Council (1) deferred action on the proposed policy options (e.g., regulation or ban), (2) directed staff to enforce existing laws against those venues located within sensitive areas, and (3) directed staff to conduct public polling on marijuana taxation for Council discussion on August 3, 2010, and to present the Council with ballot language for the November 2, 2010 election "that includes taxation of medical marijuana or any other legal uses." Part of the discussion centered on the City being in a position to expand its taxation of marijuana businesses to those that might have become legal if the voters also approve the State initiative on the November ballot known as "Legalizes Marijuana Under California But Not Federal Law. Permits Local Governments to Regulate and Tax Commercial Production, Distribution, and Sale of Marijuana. Initiative Statue." (*Proposition 19*).

The City Council took action by placing a ballot measure to tax marijuana businesses on the November 2 General Election Ballot (Measure U). Measure U allows the City to tax all marijuana businesses (medical and non-medical; legal and illegal) at a rate of up to 10% of gross receipts. While Measure U passed by majority vote, Proposition 19 failed to pass statewide. Regardless of the outcome of Proposition 19, Measure U permits the City to tax the gross receipts derived from the illegal sales of recreational marijuana.

Following this action, staff advanced a recommendation to the City Council on November 2 that would have resulted in imposing a temporary moratorium on commercial marijuana activities in the event Proposition 19 passed. The Council approved the staff's recommendation, as well as a motion by Councilmember Liccardo directing the City Attorney to return to the Council with an

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ordinance providing an express prohibition on all new marijuana establishments (Policy Option #3).

Later in this report, the distinction between establishing a “ban” or “moratorium” is discussed and policy options regarding a ban are included for the City Council to review.

ANALYSIS

Research and discussion around medical marijuana is complex; one that can be filled with values and conflicting legal analyses. In an ever changing legislative environment where there is a level of uncertainty with respect to the current state of medical marijuana regulation issued by the State of California, staff is bringing forward a local public policy is consistent with state law and that strives to bring increased certainty to this issue for the City. It should be noted early on in this report that the draft ordinances are shaped by the application of the law, which is based on the City’s legal review. To the extent possible, and where legally permissible, staff has provided policy alternatives for the City Council to consider should it desire to amend staff’s professional recommendation; however, the City’s policy cannot exceed the law.

As part of this discussion, it should be noted that, as of June 2010, 33 other cities in California currently regulate medical marijuana collectives and cooperatives, while 91 cities have enacted temporary moratoriums to analyze the issue and 131 have banned collectives and cooperatives.¹

This memorandum covers the following topics:

- (1) Implementation Timeline;
- (2) Policy Option 1 , Regulation & Taxation, and related policy alternatives;
- (3) Policy Option 2, Ban of All Medical Marijuana Establishments;
- (4) Policy Option 3, Implement Moratorium on Medical Marijuana Collectives and Cooperatives Until Regulations Are Adopted;
- (5) Summary of the Community Input; and,
- (6) Impact to Existing City Resources.

1. Implementation Timeline

If the City Council chooses to implement the regulation and taxation policy option (Policy Option #1), staff will require the remainder of this fiscal year (or minimum of six months) to develop and administer the appropriate process for the medical marijuana establishments to operate per proposed regulations, such as some of the key tasks noted below:

- (1) Provide information sessions for potential Collective operators to respond to questions or clarify the City Council’s final action;

¹ City of Mountain View Memorandum, *June 1, 2010 Study Session—Regulation of Medical Marijuana Cooperatives and Collectives*, May 27, 2010, page 3.

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- (2) Initiate and support the Planning Commissions' review of amendments to Title 20 on a permanent basis and seek its report and recommendation, and set a public hearing date on these proposed amendments to Title 20 before the City Council;
- (3) Bring back final ordinances reflecting City Council direction as to the proposed regulatory program, should the City Council accept policy alternatives as noted in this report;
- (4) Complete the City's process to operate a medical marijuana collective in the City, including developing all of the materials to enable the submission and review of applications;
- (5) Administratively complete any work required to establish a Medical Marijuana Tax and the collection, tracking, etc. of this new tax revenue (Note: On August 3, Council approved a targeted implementation date of March 1, 2011. Council action on a tax can be independent of any regulatory, ban, or moratorium action);
- (6) Verify land use clearance from the Department of Planning, Building and Code Enforcement;
- (7) Verify regulatory clearance from the Police Department (e.g., a zoning certification, regulatory registration forms, and other supporting documentation);
- (8) Recruit, fill, and train the required staffing positions to sustain these functions; and,
- (9) Provide training for the broader set of staff that will participate in the regulation of medical marijuana establishments.

Staff believes that this effort requires at minimum six months to put in place this complex multi-part and multi-departmental City Council action, given the heightened need to focus on the City's fiscal condition and other competing priorities. If the City Council decides to regulate medical marijuana establishments, the City should not discount that this Regulatory Program will be implemented during a time of significant change in the City's organization (following the result of downsizing the organization to address the FY 2010-2011 \$118 million budget deficit and the need to prepare for additional downsizing with the FY 2011-2012 anticipated \$90 million budget deficit that does not include approximately \$22 million of one-time reductions) which will impact all of the departments contributing to the development of this report. Sufficient time is needed to handle the many competing priorities during a time when it is still adjusting to the FY 2010-2011 downsized organization and now preparing for the FY 2011-2012 budget reductions.

If the City Council chooses to adopt an ordinance affirmatively declaring the current prohibition of medical marijuana establishments, either permanently or temporarily while a regulatory program can be implemented, the proposed ordinance to ban medical marijuana establishments may be approved at the December 13, 2010 Special City Council Meeting. However, it should be noted that resources available to enforce the prohibition are extremely limited. We are currently enforcing according to the priorities set by Council in June 2010 as articulated in Mayor Reed and Councilmember Oliverio's memorandum which stated "...focus enforcement on the closure of any collective that is within 500 feet from sensitive uses enumerated in the staff report and/or any collective located outside the CG Commercial General Zoning District." In the staff report to Council on this issue, sensitive uses included residential use, school, child day care center, church that includes a school or day care center use, community or recreational center, park, trail, library, substance abuse rehabilitation center, or another medical marijuana collective.

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Last, it is important to note that the implementation of this Regulatory Program presents challenges associated with a new area of regulation for the City. Time will be needed to overcome any “learning curve” issues before settling into a more stable state of regulation. If the City Council takes action to regulate medical marijuana, during the first year of implementation, staff would do the following: (1) review the success/progress of the Regulatory Program and report back to the City Council after one year or as needed during the two-year pilot period for the purpose of identifying any necessary ordinance changes; and, (2) continue to work with residents and stakeholders to solicit input on how implementation and the provisions of the Regulatory Program are working.

2. Policy Option 1, Regulation & Taxation, and Related Policy Alternatives

It is the purpose of the Regulatory Program to regulate the collective and individual cultivation and use of medical marijuana to attempt to ensure that medical marijuana is cultivated and used in a manner which is responsible, lawful and in the spirit intended by state law, while at the same time attempting to ensure the health, safety and welfare of the residents of the City of San Jose, to the extent possible. The provisions in this Regulatory Program do not interfere with a patient's use of medical marijuana as contemplated under State law, nor do they criminalize the cultivation of medical marijuana by specifically defined classifications of persons. In fact, the provisions of the Regulatory Program contain limited requirements for individual cultivation and use of medical marijuana and generally provide that associations of individuals (specifically those individuals identified in State law) may come together in order to collectively and cooperatively cultivate marijuana for medical purposes. The Regulatory Program refers to those associations as “medical marijuana collectives” or simply, “collectives.”

Tab 2 contains discussion on the following regulatory topics, as well as proposed draft ordinances:

- Zoning/Land Use Policy;
- Regulatory Program;
- Cost for Regulatory Program (Schedule of Fees); and,
- Schedule of Fines.

In addition, Tab 2 contains the Taxation Analysis and Recommendation. It should be noted here that the proposed tax ordinance could be adopted at the December 13 Special City Council Meeting regardless of which policy option the City Council chooses. In other words, even if the Council decides to adopt the ordinance clarifying and continuing the existing prohibition on marijuana businesses, if such a business is illegally operating in San Jose, it would owe the Marijuana Business Tax.

The proposed framework meets the City Council direction in that it advances regulations that control Medical Marijuana Collectives (e.g., land use and operational), ensures a 100% cost recovery program, creates a tax structure (through the passage of Measure U), and establishes

finer if the Regulatory Program is violated. This multi-part Regulatory Program attempts to ensure that the City's interests related to public health and safety are adequately addressed.

3. Policy Option 2, Ban of Medical Marijuana Establishments

As directed by the City Council on November 2, 2010, the City Attorney's Office has prepared an urgency ordinance to amend Title 20 to clarify that all businesses involving the cultivation, dispensation, distribution, transportation or sale of marijuana in the City for any purpose are prohibited (Tab 3).

In order for the City to adopt the permanent ordinance to affirmatively declare the existing prohibition, the Planning Commission must first consider the ordinance. Accordingly, the resolution initiating the regular ordinance amending Title 20 and forwarding the proposed ordinance to the Planning Commission for its consideration and report has been "agendized."

Ban v. Moratorium

It is the City's position that medical marijuana dispensaries and collectives are not permitted uses under Title 20 and, therefore, placing a moratorium on the establishment of additional medical marijuana establishments is not consistent with the City's position.

A ban on medical marijuana establishments would confirm the City's position that these existing establishments are illegal. A ban, rather than a moratorium, has been proposed so that it is clear that existing dispensaries and collectives currently are not permitted uses under Title 20.

4. Policy Option 3, Implement Moratorium on Medical Marijuana Collectives and Cooperatives Until Regulations Are Adopted

If the Council determines that it wants to continue to study the regulation and/or taxation of medical marijuana, it could adopt the permanent ban set forth above, and also adopt an interim moratorium just on medical marijuana collectives until such time that the City Council determines how to regulate them and staff completes the adopted administrative process to permit them (Tab 4).

This would have the effect of making the permanent ban temporary only for collectives. If during the course of the moratorium period, the Council decides that it is no longer interested in establishing regulations on medical marijuana collectives, it could repeal the moratorium and the permanent ban would apply to this subset of marijuana businesses as well.

5. Summary of the Community Input

The City Council directed staff to develop a community outreach plan to ensure that there is a formal process for community input and participation. The City Council's open government policy titled, "Community Engagement Process for Significant City Policy Actions," sets forth community outreach requirements and protocols for new Council policies and/or ordinances.

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More specifically, the "Community Engagement Process" for significant policy actions directs that at least two community meetings be "held at meaningful points in the process during which recommendations for the proposed policy action are still under development," as well as a final community meeting "after the development of final recommendations at which those recommendations will be presented to the public."

Similar to other policy processes, information about all meetings related to medical marijuana ordinances have been made available through various and extensive communication efforts to engage community participation, which includes:

- Email/direct mail to individuals and groups who spoke at past Council and Committee meetings and/or have expressed an interest in participating in community input sessions. A contact list of these stakeholders has been developed that also includes businesses that advertise on local newspapers, hospices, medical societies/groups, etc.
- Distribution of information to neighborhood associations and groups through the City's Strong Neighborhoods Initiative and individual Council Offices.
- Insertion of information in the City Manager's Weekly Report.
- Posting of information on the City's web site and television channel, at community centers and libraries, and in at least one general circulation or community English language newspaper publication.

The City has provided several forums for the community to provide public input. In addition to input received at the various City Council meetings where marijuana issues have been considered since November 2009, staff has also held two community meetings (on June 7 and July 20) and met with medical marijuana stakeholders since early 2010. For instance, amongst other stakeholders, staff has met via site visits, teleconference, or in person with members from:

- CannBe;
- Americans for Safe Access;
- Marijuana Cannabis Club Collectives;
- Medical Marijuana Legal Representatives;
- Medical Marijuana Land Use Consultants; and,
- Medical Marijuana Club Owners and Operators.

Additionally, staff accepted and engaged in discussion with various stakeholders to set regularly set meetings so that formal agendas could be developed on various regulatory issues and legal perspectives; these meetings were later cancelled by stakeholders because they expressed an interest on focusing on other higher-priority matters.

June 7 Community Meeting Summary

Specifically, the June 7 community meeting was held to present key features of the draft ordinances and obtain public input, which resulted in some amendments to the proposed

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regulatory framework. This meeting was held at City Hall and it was widely advertised. Approximately 200 people attended and many individuals provided public input. The meeting was structured such that staff provided the key features under consideration of the Regulatory Program and land use policy. The meeting agenda and PowerPoint presentation were posted to the website before the meeting began and copies of the materials were available. Speakers were allowed to speak without a time restriction. Early in the meeting, staff noted that the meeting was being transcribed to provide the City Council with a full transcription of the public input received (Attachment D to the June 22 City Council Report, Item 3.10. A full transcript is linked to the City's website). A supplemental report was issued before the June 22 Council meeting that summarized the repeating topics heard at the June 7 public meeting (Tab 5).

July 20 Community Meeting Summary

The July 20 meeting was structured differently to allow participants to self-select ordinance features of interest and provide input in a small group setting. Approximately 100 individuals attended this two-hour meeting at the Roosevelt Community Center. At the end of the small group discussion, each group had the opportunity to report out to all participants the key themes and questions that emerged from their discussion. Similar to the June 7 meeting, copies of meeting materials, including the meeting flyer, agenda and presentation were made available on the website in advance of the meeting.

Four key discussion points were selected to frame group discussions based on demonstrated public interest. It should be noted that attendees were not limited to these topics only; and they had the opportunity to express views/opinions on other topics of interest.

- Registration Process & Requirements;
- Operating Requirements;
- Taxing Marijuana Businesses; and,
- Land Use Policy.

Staff used the following two questions to help initiate and facilitate small group discussions on the above four topics:

Question 1: What are your thoughts on the key features of the City's ordinances?

Question 2: What additional issues should the City consider?

Tab 5 provides a high level summary of public input collected at the meeting, as well as transmits documents filed by members of the public at the meeting. The summary is not an exhaustive list of every comment made at the meeting. Input obtained is only reflective of the individual opinions of meeting attendees, and should not be considered reflective of the San Jose community as a whole.

6. Impact To Existing City Resources

In the June 22, 2010 staff report, staff expressed concern about the significant organizational transition and related impacts to service resulting from implementation of the FY 2010-2011

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Adopted Operating Budget. Since that time, it has become clear that the absence of regulation does not deter activity of medical marijuana establishments. The City is in an untenable position of attempting to keep up with activity and address the City's concern for the community's general welfare and safety. It is also unclear and unknown whether the adoption of regulations will result in addressing the activity that exceeds the law.

Part of the City Council's discussion should be informed by the current impact to existing City resources and the nature of events that have taken place since the City Council had starting examining this issue, listed below are some examples for the City Council to consider:

1. There is a total lack of public health regulations regarding quality controls for use of marijuana.

Issue: Absent the state establishing public health regulations regarding quality controls, the City is not in the position to establish such regulations to ensure the safety and quality of medical marijuana. Regardless of any regulations approved by the City Council, there will be an absence of quality controls for the use of marijuana which impact public health and safety.

2. Recent residential fires at "grow homes" that involved over 3,000 marijuana plants and utilize unsafe electrical wiring/connections have occurred even in the absence of any state law or City actions.

Issue: From January 19 to August 29, 2010, there have been 8 residential fires that have occurred in San Jose due to in-door marijuana "grows" where the electrical systems have been subverted and overloaded resulting in fire. The smallest "grow" uncovered approximately 140 marijuana plants and the largest approximately 750 plants. In total, over 3,000 plants were discovered at these 8 fires at an approximate street value of \$24 million (Note: Assumes an approximate street value of \$2000 per plant per harvest, with four harvests per year).²

3. Lack of existing compliance with payment of business and state sales tax for existing medical marijuana dispensaries.

Issue: The imposition of the proposed Marijuana Business Tax would require Finance Staff to work with the City Attorney's Office to develop new marijuana business tax processes based on gross receipts rather than the current method of using the employee count as the basis for the tax. Additional staff would have to be added and trained to specifically audit and ensure compliance with the new gross receipts marijuana business tax platform.

Currently, there are two sources of revenue generation for the City from marijuana businesses. The first source is the general Business Tax which is based on employee count and due on an annual basis. As of November 30, staff has tracked a number as high as 98 medical marijuana businesses operating in San Jose and is actively pursuing compliance with the general Business Tax requirements. Of the 98 medical marijuana businesses, staff has identified 88

²It should be noted that per the "Medical Marijuana Program Act" or SB 420, patients and/or caregivers can grow up to 6 mature plants or 12 immature plants per patient (a doctor can recommend more if the quantity does not meet the patients needs).

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businesses that have paid their business license tax. Of the 88 businesses identified, the total business tax paid is \$13,412. The second source of revenue is sales tax where the City receives 1 cent of every dollar of gross receipts from sales. Since the 3rd quarter of 2009, marijuana businesses have remitted approximately \$70,659 in sales tax. The total number of sales tax permits identified is 61 out of 98. Staff is actively working with the State Board of Equalization to bring these businesses into compliance with sales tax remittance requirements. With the proliferation of marijuana businesses, staff anticipates a greater need for compliance. It should be noted that this revenue is miniscule relative to the staff resources these businesses have already consumed as a result of their operations.

To put the sales tax growth into perspective, the first two quarters of sales tax remittances from marijuana businesses totaled approximately \$2,781. The next two quarters totaled approximately \$67,878. Despite the growth in sales tax remittances, staff believes that the City is being grossly underpaid the sales tax relative to the estimated \$280,000 in sales tax monies the City of Oakland received based on \$28 million of gross receipts from sales reported last year. Compliance to ensure the City receives the correct amount of sales tax for which it is entitled.

4. Recent City experience with the rapid growth of medical marijuana establishments in the absence of regulations.

Issue: A high number of medical marijuana dispensaries have opened since December 2009. For example, in December 2009 there were about 7 to 10 dispensaries, by June 2010 the number of dispensaries grew to 25 to 30, in September, there were approximately 80 dispensaries and now the number is thought to be as high as to 98.

Concerns continue regarding City resources needed to regulate medical marijuana establishments and their activity to operate these establishments in a manner that exceeds the law. It is unclear and unknown whether the adoption of regulations will result in addressing the activity that exceeds the law. It is likely that Code Enforcement and Police resources will continue to be stretched to address complaints and activities that do exceed the law even if the Council chooses to establish regulations.

5. The Department of Planning, Building, and Code Enforcement has received numerous complaints of public nuisance related to unregulated medical marijuana facilities since 2009 and Code Enforcement actions have been commenced against illegally operating and unregulated medical marijuana establishments.

Issue:

- Due to limited resources in both Code Enforcement and in the City Attorney's Office staff has focused enforcement on medical marijuana collectives/dispensaries that have had a negative impact on nearby residences or businesses.
- Code Enforcement has expended a significant amount of resources, including a Code Enforcement Supervisor and two Code Enforcement Inspectors, to investigate complaints, and appear in Court to assist the City Attorney in prosecuting businesses that have created public nuisances. In addition, staff has responded to questions from residents and business

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owners concerned about the impact of medical marijuana collectives/dispensaries that are popping-up in neighborhoods/business districts, property owners interested in renting to these businesses, daycare operators, school officials, neighborhood leaders, and other residents or business owners concerned about the "negative impact" resulting from these businesses opening up without any regulatory or zoning guidelines.

- This work has been absorbed to date. Assuming that the focus remains on public nuisance cases, the overall level of Code Enforcement services will remain as described in an Information Memorandum to the Council dated October 1, 2010. Should the level of medical marijuana enforcement increase, General Code Enforcement services would be reduced to address non-life safety complaints from residents.

6. Recent criminal activity including armed robberies at medical marijuana dispensaries.

Issue:

- Since January there have been 15 residential marijuana "grows" discovered in San Jose. In some of these cases, large amounts of methamphetamine, ecstasy tablets, and money were recovered.
- SJPD recently responded to three marijuana dispensary robberies. In two of the robberies, the suspects tied the victims up and pistol whipped victims while they took marijuana, cash and personal items belonging to the collective and victims. In one case, the suspects told investigating officers that they travelled from Arizona to San Jose to commit the robberies because they knew that San Jose marijuana collectives have high quality marijuana.
- Criminal activity is not solely linked to marijuana dispensaries. On June 19, an armed robbery occurred at the Bank of the West on De Anza Blvd, in San Jose. The suspect indicated he had a gun and demanded money from the teller. After obtaining the money, the suspect fled the scene. On June 22, the same suspect committed another robbery, this time at the Comerica Bank in the City of Saratoga. On June 28, the same suspect committed an additional robbery in the City of Santa Cruz. On July 1, the suspect in all three robberies was identified and taken into custody in Santa Cruz. Upon searching the suspect's residence, Detectives located a large indoor marijuana grow operation. The suspect was incurring a monthly PG&E bill of over \$8,000 per month to maintain the marijuana grow operation. The suspect was delinquent on his bills and resorted to robbing banks to prevent losses to his investment (e.g., marijuana grow operation).
- On September 30, 2010, Officers from the Santa Clara County Special Enforcement Team (SCCSET), the Attorney General's Bureau of Narcotic Enforcement, along with several other Santa Clara County law enforcement agencies, conducted an investigation of illegal marijuana delivery services that advertise on-line and in traditional publications. The one day investigation resulted in the arrest of 22 adults, the seizure of over 25 pounds of marijuana, 9 firearms, 26 high capacity magazines for assault weapons, and 223 marijuana plants that were being cultivated. Two of the individuals arrested stated they had come to San Jose from outside the state (Texas and Arizona) because they realized they could make significant profit selling marijuana in California, calling it the "Green Rush" (similar to the "Gold Rush" of the 1800s).

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- On November 11, 2010, officers assisted SCCSET with the arrests of suspects at the culmination of a long term investigation. The suspects were members and associates of a known gang. Approximately 20 lbs. of manicured and bulk packaged marijuana was seized (marijuana that was ready to be ingested) in addition to several firearms. During the investigation, investigators learned that the gang was involved in several shootings and weapon brandishing incidents. SCCSET also learned that the gang ran several marijuana grow houses for intended distribution to marijuana dispensaries.

As mentioned earlier, there are now approximately 98 medial marijuana collectives operating in San Jose. This number continues to grow as staff improves its informal tracking of these establishments. As a result, the City has received numerous complaints from the neighboring communities that surround the dispensaries. These complaints range from traffic to more serious complaints of blatant drug use from individuals leaving a dispensary. Each complaint needs to be evaluated by the Police Department or Planning Department against the June 2010 guidelines to determine whether additional City resources should be assigned for further action.

EVALUATION AND FOLLOW-UP

Staff will review the success of the Ordinance and report back to the City Council after two years or as needed during the pilot period for the purpose of identifying any necessary ordinance changes. Each fiscal year, however, staff will propose new costs, fees and charges, budgets, etc. as part of the budget process.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This issue meets Criteria 2 and 3 above and falls under the Community Engagement Policy established by the City Council. Community outreach has been conducted to obtain input. The proposed ordinances are posted to the Clerk's agenda webpage and a separate website has been developed that provides an inventory on all materials published by the City during the course of developing this Regulatory Program.

HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: MEDICAL MARIJUANA

December 8, 2010

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COORDINATION

This memorandum has been coordinated with the Office of the City Attorney.

COST SUMMARY/IMPLICATIONS

As proposed, the Regulatory Program would be 100% cost recovery and would not impact the General Fund as 100% of costs would be reimbursed by the Medical Marijuana Collectives. Upon implementation of the proposed regulations, staff may discover that additional resources are needed to sustain regulations and, if so, staff will return to the City Council to consider such a request. Additionally, the taxation options are discussed earlier in this report.

CEQA

Exempt, File No. PP10-116.

/s/

DEANNA J. SANTANA
Deputy City Manager

/s/

CHRISTOPHER MOORE
Acting Police Chief

/s/

JOSEPH HORWEDEL
Director, Planning, Building &
Code Enforcement

/s/

SCOTT P. JOHNSON
Director of Finance

Attachments:

Tab	Attachment
1	City Attorney's Office provided its legal analysis on the application of the law pertaining to medical marijuana (June 18, 2010)
2	Policy Option 1, Regulation & Taxation, and Related Policy Alternatives
3	Policy Option 2, Ban of Medical Marijuana Establishments, and Related Policy Alternatives
4	Policy Option 3, Implement Moratorium on Medical Marijuana Collectives and Cooperatives Until Regulations Are Adopted
5	Summary of Community Input