

RULES COMMITTEE: 01-27-10
ITEM: H.1a

Memorandum

**TO: RULES AND OPEN
GOVERNMENT COMMITTEE**

FROM: Joseph Horwedel

**SUBJECT: WORKLOAD ASSESSMENT
FOR A MEDICAL CANNABIS
ORDINANCE**

DATE: January 20, 2010

Approved

Paul Kutt

Date

1/21/10

RECOMMENDATION

Accept the workload assessment for the preparation of an ordinance allowing medical cannabis cultivation and dispensaries in San Jose.

BACKGROUND

At the November 4, 2009 Rules and Open Government Committee meeting, Planning staff was directed to develop a workload assessment to prepare an ordinance allowing medical cannabis cultivation and dispensaries in San Jose. Councilmember Pierluigi Oliverio detailed suggestions for such an ordinance and related implementation mechanisms (such as a special business tax) in his memorandum to the Rules and Open Government Committee dated October 27, 2009 (http://www.sanjoseca.gov/clerk/CommitteeAgenda/Rules/20091104/rules20091104_h1.pdf).

In 1998, the San Jose Zoning Code contained provisions for medical cannabis dispensaries. These provisions, however, were not included in the comprehensive update of the Zoning Code which was adopted by the Council in February 2001.

At the Rules and Open Government Committee meeting of November 18, 2009, the Administration gave a status of the workload assessment. The City Attorney explained that the legal landscape had changed significantly since 1998 and that it was not possible to "dust off" the prior ordinance and have it be considered by the City Council.

In response to questions from the Committee, the City Attorney clarified that medical cannabis dispensaries are not allowed in San Jose. Recognizing that other cities in California have adopted moratoria to prohibit the establishment of medical cannabis dispensaries, the City Attorney said that a moratorium is not recommended in San Jose since the use is clearly prohibited now.

Community interest in this topic is great, as demonstrated by the many people who attended and provided testimony at both Committee meetings in November on this topic. Testimony included the medical need for marijuana, encouragement that the City is considering the creation of an

ordinance, potential sales tax generation from dispensaries, and many suggestions for possible parameters of a potential ordinance.

ANALYSIS

The following workload assessment identifies the major work items and estimated hours to complete each work item associated with preparing a medical cannabis ordinance. Until staff begins the work of preparing an ordinance, it is impossible to predict the depth of study and work associated with this topic. Experience demonstrates that tailoring regulations to San Jose's circumstances and Code may raise unforeseen issues. For this reason, ranges of estimated hours are provided for each work item, totaling 137.5 to 221 hours of staff time. In addition, given staff reductions in Planning, reassignment from other priority tasks would be required.

Complete Legal Analysis (estimated 60 to 80 hours)

The City Attorney's Office would complete an analysis to answer these and other questions:

- What is the overall federal and state legal framework that enables San Jose to regulate this use?
- What are the regulations that affect a pharmacy's ability to sell this product without additional City regulation?
- How would we regulate cultivation when the City does not currently regulate the crops grown on private properties?
- What are the legal options for regulating cooperatives or collectives?
- What are the City's abilities to collect sales tax from the sale of medical cannabis?
- To what extent can San Jose impose a special business tax on medical cannabis sales?
- Which local ordinances in California provide the best guidance for regulating cultivation and sales of medical cannabis?

Conduct an Initial Community Meeting (estimated 7 to 11 hours)

While the legal research is underway, Planning staff would meet with community members to hear their ideas for a potential ordinance. Specifically, the Planning staff would:

- Create a mailing/email list of interested parties (1.5 to 2 hours)
- Prepare and send out invitations (1 to 2 hours)
- Prepare for the meeting (1 to 2 hours)
- Conduct the meeting (2 hours)
- Compile and synthesize the community comments (1.5 to 3 hours)

Complete Land Use Planning Analysis (estimated 32 to 67 hours)

Planning staff would:

- Review and discuss the legal research completed by the Attorney's Office (2 to 5 hours)
- Contact cities with medical cannabis ordinances to understand their implementation, enforcement, challenges, opportunities, etc. (4 to 6 hours)
- Work with appropriate City staff to identify ordinance parameters that meet the legal framework for cultivation, dispensaries, collectives, and cooperatives. This includes, but is not limited to, determination of appropriate zoning district(s), location criteria, distance to sensitive use(s) criteria (e.g., schools), size of operation, permit types, etc. (6 to 12 hours)

- Conduct analysis to test parameters (2 to 4 hours)
- Determine implementation strategy, business license fees, inspection fees, etc. in coordination with appropriate Departments (8 to 12 hours)
- In coordination with the City Attorney's Office, identify other Municipal Code sections that may need modification to ensure internal consistency (2 to 4 hours)
- Continue to respond to public inquiries (6 to 10 hours)
- Consider alternative ordinance parameters, as needed (2 to 4 hours)

Draft a Proposed Ordinance (estimated 4 to 10 hours)

- City Attorney's Office would take the proposed ordinance parameters and draft an ordinance (2 to 6 hours)
- Planning and other appropriate City staff would review and comment on the draft ordinance (1 to 2 hours)
- City Attorney's Office would incorporate comments, as appropriate (1 to 2 hours)

Conduct Second Community Meeting (estimated 5.5 to 9 hours)

Planning staff would:

- Prepare and send out invitations (1 to 2 hours)
- Prepare for the meeting (1 to 2 hours)
- Conduct the meeting (2 hours)
- Compile and synthesize the community comments (1.5 to 3 hours)

Revise the Ordinance Based on Community Input (estimated 2.5 to 6 hours)

- Planning and City Attorney's Office would work in coordination on appropriate revisions (1 to 2 hours)
- Other City staff would review and comment (1 to 2 hours)
- Planning and City Attorney's Office would coordinate on any additional revisions (0.5 to 2 hours)

Complete Environmental Clearance for the Ordinance (estimated 14 hours)

Planning staff would:

- Prepare an Initial Study (5 hours)
- Prepare a Negative Declaration (2 hour)
- Distribute/Post the Negative Declaration (2 hours)
- Respond to public questions (4 hours)
- Complete other processing steps (1 hour)

Prepare and Conduct Public Hearings before Planning Commission and City Council (estimated 12.5 to 24 hours)

- Planning staff would draft a staff report summarizing the legal and planning analysis, benchmarking with other cities, community outreach, and proposed provisions of the draft ordinance (4 to 6 hours)
- City Attorney and other staff would review and comment on the staff report (1 to 2 hours)
- Planning staff would incorporate the comments (0.5 to 2 hours)
- Complete necessary noticing and website updates (1 to 2 hours)
- Respond to public questions once staff report is released (2 to 6 hours)

- Conduct Planning Commission hearing, including public testimony, Commission discussion, and recommendation (2 to 3 hours)
- Conduct City Council hearing, including public testimony, Council discussion, and recommendation (2 to 3 hours)

This workload assessment does not include the other administrative hours in the City Manager's Office, City Clerk's Office, and other City departments associated with placing items on the Council agenda, broadcasting the meetings, archiving the documents, etc.

CONCLUSION AND ALTERNATIVE COURSES OF ACTION

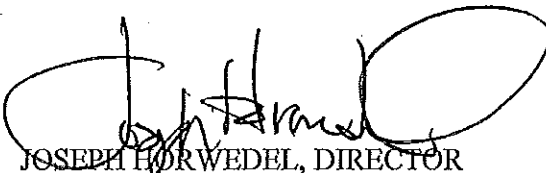
The Administration recognizes and appreciates the Committee's interest in a medical cannabis ordinance to meet the medical needs of the San Jose community. The preparation of this ordinance is a significant work item that is not currently in the work plan for the City Attorney's Office (CAO) or the Department of Planning, Building and Code Enforcement (PBCE). The current work plan for ordinance development and revision being worked on by PBCE and CAO is attached. If it is the will of the Committee and ultimately the City Council to pursue this effort in FY09-10, work on the Sign Code update will be delayed this fiscal year.

Alternatively, the Council may wish to consider this in the budget process for FY10-11, recognizing the General Fund implications.

Finally, the Committee and Council could choose not to pursue such an ordinance. In this case, the cultivation and sales of medical cannabis would remain illegal in San Jose.

COORDINATION

Preparation of this workload assessment was coordinated with the City Attorney's Office.



JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions, please call Laurel Prevetti at 408/535-7901.

Attachment: Work Plan

Ordinances and Policies Work Plan

Remaining Ordinance and Policies Work Plan Items for FY09/10 and Previous Council Priorities Now Scheduled for the Beginning of FY10/11 due to Resource Reductions

- | | |
|---|--------------------|
| 1. Sign Code Major Update | Spring 2010 |
| 2. Downtown Entertainment Ordinance | Spring 2010 |
| 3. Off-Sale of Alcohol Process Streamlining (Planning Commission recommendation to Council instead of mandatory denial) | Spring 2010 |
| 4. Tree Removal Process Streamlining | Spring 2010 |
| 5. Distinctive Neighborhoods Ordinance | Spring 2010 |
| 6. Vacant/Neglected Structure Protections | Spring 2010 |
| 7. Landscape Ordinance | Spring 2010 |
| 8. New Stormwater Municipal Regional Permit ordinance | Spring 2010 |
| 9. Post-Construction Stormwater Policy Changes | Spring 2010 |
| 10. Multi-Family District Update | Spring/Summer 2010 |
| 11. Lighting on Private Property Policy Changes | Spring/Summer 2010 |
| 12. Alum Rock Form Based Zoning Standards | Fall 2010 |

Other Ordinances On Hold Pending Resources

13. Off-Sale of Alcohol at Grocery Stores Streamlining
14. Massage Business Update ordinance
15. Phase II Downtown Entertainment (noise/outdoor) ordinance
16. Small Non-Residential Building Additions, Eliminate Percentage Increase
17. Allow a Broader Range of Uses in Historic Buildings
18. City Landmark Criteria to Align with California Register
19. Parking Requirements- delete/modify for parks/playgrounds
20. Zoning Districts to Align with Transit Corridor Residential
21. Noise Performance Standards Update
22. Condo Conversion Process Update
23. Single Family Permit Process Update
24. Height Exception for Amateur Radio Antennae
25. Streamlining of Retaining Walls, Fence Heights
26. R-1 Residential Streamlining/Clean Up
27. North San Jose Form Based Code

Note: The Community and Economic Development Committee is scheduled to discuss the prioritization of ordinance work at its February 22, 2010 meeting.