



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** MEDICAL MARIJUANA MATRIX

**DATE:** October 27, 2014

## SUPPLEMENTAL

### REASON FOR SUPPLEMENTAL

The attached matrix, prepared by the City Manager's Office, shows the differences between San Jose's existing Medical Marijuana regulations and the proposed Initiative that is being considered at the City Council's October 28, 2014 meeting. It may be useful in Council's deliberations on the matter.

RICHARD DOYLE  
City Attorney

By

Patricia A. Deignan  
Chief Deputy City Attorney

cc: Ed Shikada, City Manager

For questions please contact Angeliqe Gaeta, Assistant to the City Manager, at (408) 535-8253

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<b>Number Of Dispensaries Allowed</b>	No Maximum. Number Will Be Dictated By Proper Zones And Minimum Buffers Required Between Collectives And Sensitive Uses. (See “ <b>Requirements For Minimum Distance From Sensitive Uses</b> ” Below)	No Maximum. Number Will Be Dictated By Proper Zones And Minimum Buffers Required Between Collectives And Sensitive Uses. (See “ <b>Requirements For Minimum Distance From Sensitive Uses</b> ” Below)
<b>Type Of Establishments Allowed</b>	Location Where Qualified Patients And Designated Primary Caregivers Can Associate And Collectively Cultivate Medical Marijuana, In Strict Accordance With California Health & Safety Code Sections 11362.5, <i>Et. Seq.</i>	Must Be Consistent With Any Statewide Regulation Of Medical Cannabis Or Legalization For Cannabis For Adult Use That Is Promulgated By The Legislature Or Voter Approval In The Future. Delivery Is Be Permitted But There Are No Regulations As To How.
<b>Registration Process</b>	Collectives Wishing To Operate Need To Go Through A Registration Process Where Owners, Managers, Employees And Establishments Are Backgrounded And Site Compliance Checks Are Performed prior to the July 17, 2015 Deadline.	Existing Collectives Must, Within 180 Days After The Adoption Of This Initiative, Apply For And Receive A Notice Of Completed Registration From The City Manager Or Cease Conducting Business.

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<b>Regulating Body/Agency</b>	City Administration implements. City Council oversees and makes changes as deemed necessary. The Planning Director processes Zoning Code Verification Certificates as a ministerial duty.	City Manager Has A “Ministerial Duty” To Implement And Fulfill This Ordinance. The Planning Director processes Zoning Code Verification Certificates as a ministerial duty. City staff May Inspect With Reasonable Notice. All Violations Will Need To Be Proven To Be A Nuisance In Fact Instead Of Nuisance Per Se.
<b>Zoning</b>	Limited To The Following Zones: <ul style="list-style-type: none"> <li>• <b>HI</b>-Heavy Industrial;</li> <li>• <b>DC</b>-Downtown Primary Commercial;</li> <li>• <b>LI</b>-Light Industrial;</li> <li>• <b>CIC</b> – Combined Industrial Commercial;</li> <li>• <b>IP</b>-Industrial Park.</li> </ul>	Limited To The Following Zones <ul style="list-style-type: none"> <li>• <b>A</b>-Agricultural</li> <li>• <b>CP</b> – Commercial Pedestrian</li> <li>• <b>CN</b> – Commercial Neighborhood</li> <li>• <b>IP</b> – Industrial Park</li> <li>• <b>LI</b>-Light Industrial</li> <li>• <b>HI</b>- Heavy Industrial</li> <li>• <b>PD - Planned Development</b> – where the base district allows the use, regardless of the status of the PD district or any associated planned development permit, effectuated or not.</li> </ul>
<b>Hours Of Operation</b>	9:00 A.M. To 9:00 P.M.	9:00 A.M. To 8:00 P.M.
<b>Minimum Distance From Sensitive Uses</b>	Collectives Could Not Be Located Within <ul style="list-style-type: none"> <li>• 1,000 Feet Of Public And Private Preschools, Elementary Or</li> </ul>	Collective Could Not Be Located Within: <ul style="list-style-type: none"> <li>• 1,000 Feet Of Any Public And Private K-12 Schools; Public,</li> <li>• Private, Junior College Or University; Playgrounds, Housing</li> </ul>

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	<p>Secondary Schools, Child Daycare Centers, Houses Of Worship With Child Daycare Centers, Community/Recreation Centers,</p> <p>Parks, Libraries And Other Establishments;</p> <ul style="list-style-type: none"> <li>• 500 Feet Of Substance Abuse Rehabilitation Centers And Emergency Residential Shelters; And</li> <li>• 150 Feet Of Residential Uses, Adult Day Care Centers And Religious Assemblies</li> <li>• 50 Feet From Other Collectives</li> </ul>	<p>Facilities Owned By Public Housing Authority</p> <ul style="list-style-type: none"> <li>• 100 Feet From Private Or Public Youth Centers, Public Swimming Pools Or Video Arcade Facilities</li> <li>• Ground Floor Of Structures Or Buildings Located Within The DC-Downtown Primary Commercial Zoning District; And</li> <li>• In Any Retail Commercial Shopping Center Located On A Parcel Totaling Over Twenty Acres In Size.</li> </ul>
<b>Process if Located In The Proper Zone</b>	<p>Planning Director Would Issue A Zoning Code Verification Certificate Confirming The Location Of A Collective Is In Compliance With Title 20.</p>	<p>The Director Would Issue A Zoning Code Verification Certificate Providing The Location Is In Compliance With This Initiative. Should The City Be Unable To Finish Their Inspection Within 30 Calendar Days, The Certificate Is Deemed Granted.</p>
<b>Transferability Of Zoning Code Verification Certificate</b>	<p>Not Transferrable. Certificate Is Specific To The Collective, Its Owners And Its Operators.</p>	<p>The Zoning Code Verification Certificate Runs With The Land. Should A Collective Choose To Change Locations, They Would Only Be Required To Get A Zoning Code Verification Certificate from the City If There Is Not One Already In Existence on that parcel.</p>

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<p><b>Security Requirements</b></p>	<p>Requires:</p> <ul style="list-style-type: none"> <li>• Web Based Closed-Circuit Television And Recording System Which Will Be Maintained For 90 Days</li> <li>• Centrally Monitored Fire And Burglar Alarm Monitored By A Professional Alarm Company</li> <li>• All Records Must Be Kept In A Fire-Proof Safe,</li> <li>• Exterior Lighting Must Ensure That All Areas Are Visible, There Is Increased Lighting At The Entrances And On From Dusk To Dawn;</li> <li>• Cannabis Stored In A Locked Vault Or Safe Or Other Secured Storage Structure Which Is Bolted To The Floor,</li> <li>• Window And Roof Hatches Will Be Secured From The Inside With Bars</li> <li>• Exterior Doors To Be Locked From The Outside. Ingress Permitted By Means Of A Remote Release (continued)</li> </ul>	<p>Requires:</p> <ul style="list-style-type: none"> <li>• Web Based Closed-Circuit Television And Recording System Which Will Be Maintained For 15 Days,</li> <li>• Centrally Monitored Fire And Burglar Alarm Monitored By A Professional Alarm Company,</li> <li>• Exterior Lighting On Premises And Parking Area From Dusk To Dawn,</li> <li>• Dried Cannabis Must Be In A Locked Vault, Safe Or Other Secured Storage Structure That Is Bolted To The Floor Or Otherwise Reasonably Immovable After Hours</li> <li>• 24-Hour Telephone Number For Complaints</li> </ul>

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<b>Security Requirements (Cont'd)</b>	<ul style="list-style-type: none"> <li>• State licensed Security Personnel On Duty During The Hours Of Operation For Collectives, Or 24 Hours For Cultivation Sites</li> <li>• 24-Hour Landline Telephone Number For Complaints</li> </ul>	
<b>On-Site Representative</b>	One Person Designated To Be On-Site And Respond To Public Safety Complaints During Hours Of Operation.	A Manager Is To Be Present At All Times During The Hours Of Operation.

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<p><b>Registration Disclosure Requirements</b></p>	<p>Registration Process Which Includes Disclosure Of:</p> <ul style="list-style-type: none"> <li>• Legal Name And Any Other Names The Collective May Be Operating Under;</li> <li>• Physical Street Address And Description;</li> <li>• Onsite Telephone Number;</li> <li>• Proof That Location Is In Compliance With The Requirements Of Title 20, Including But Not Limited To Part 9.75 Of Chapter 20.80 And Part 13 Of Chapter 20.100</li> <li>• Name, Telephone Number And Address Of Person Authorized To Accept Service Of Process For The Collective;</li> <li>• From All Persons Involved In The Cultivation, Processing, Manufacturing, Transporting Or Dispensing Medical Marijuana -Complete Legal Name And Alias(Es), Date Of Birth, Copy Of Valid Government Issued ID;</li> </ul>	<p>Registration Process Which Includes Disclosure Of:</p> <ul style="list-style-type: none"> <li>• Legal Name And Any Other Names The Collective May Be Operating Under;</li> <li>• Physical Street Address and Description;</li> <li>• Onsite Telephone Number;</li> <li>• Name, Address and Phone Number of the Collective's Contact person</li> <li>• Zoning Code Verification Certificate;</li> <li>• From Senior Managers - Complete Legal Name and Alias(es), Date Of Birth, Copy Of Valid Government Issued Id, Telephone Number And List Of Any Felony Conviction Within The Previous 7 Years For Any Crimes Involving The Use Of Violence, Fear, Force, Fraud, Deception, Possession Sale Distribution Or Transportation Of Controlled Substance And Use Of Money To Engage In Criminal Activity...</li> </ul>

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<p><b>Registration Disclosure Requirements (Cont'd)</b></p>	<ul style="list-style-type: none"> <li>• Telephone Number, Copy Of Member's Identification Card Or A Copy Of The Physician's Recommendation For The Member;</li> <li>• Name, Address And Telephone Number Of The Attending Physician;</li> <li>• If The Member Is Primary Caregiver, A Copy Of The Written Documentation Provided By Each Patient Member;</li> <li>• Telephone Number Where The Individual Owner Or Manager Can Be Reached Twenty-Four Hours A Day;</li> <li>• A List Of Criminal Convictions, Other Than Infraction Traffic Violations, The Jurisdiction And Circumstances Thereof;</li> <li>• One Set Of Fingerprints In A Form Acceptable To The Chief Of Police, And;</li> <li>• A Detailed Explanation Of The Member's Involvement With Other Collectives, Including But Not Limited To Name and Address of Collective, Capacity of Member's Involvement,</li> </ul>	<ul style="list-style-type: none"> <li>• List Of Duties And Functions</li> <li>• Copy Of The Lease Or Other Proof Of The Collective's Right To Possess</li> <li>• Operations Plan, Management Plan, Security Plan, Rules And Regulations, Site Floor Plan;</li> <li>• Statement signed by Senior Manager stating that Provided Information is Correct</li> <li>• Evidence Of Full Payment Of Applicable Taxes Including Applicable Penalties And Interest.</li> </ul>



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<p><b>Registration Disclosure Requirements (Cont'd)</b></p>	<p>Whether the Collective Is or Was the Subject of Any Criminal Investigation Or Prosecution, Civil Investigation, Administrative Action or Civil Lawsuit;</p> <ul style="list-style-type: none"> <li>• Whether Said Collective Or Member Was Denied Registration, Permit Or License In Any Other City, County Or State;</li> <li>• Complete List Of All Duties And Functions Of Managing Members;</li> <li>• Copy Of Lease Or Other Proof Of Right To Possess The Premises And/Or Location;</li> <li>• Operations Plan;</li> <li>• Management Plan, Including The Names And Responsibilities Of Each Manager;</li> <li>• List Of Managers Responsible For Receiving, Logging And Responding To Complaints;</li> <li>• Security Plan;</li> <li>• Rules And Regulations Of The Collective;</li> <li>• Hours And Days Of Operation Of Both Collective And Cultivation Sites;</li> </ul>	

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<p><b>Registration Disclosure Requirements (Cont'd)</b></p>	<ul style="list-style-type: none"> <li>• Cultivation Procedures, Including; Detailed Explanation Of Storage Of Chemicals And Fertilizers And Measures Taken To Minimize Or Offset Energy Uses The Location, Premises And Adjacent Areas, Including Parking Lots;</li> <li>• Odor Management Plan;</li> <li>• Designation Of Sole Dispensing Location And Cultivation Site(S)</li> <li>• Identifying Information For All Bank Accounts, Including But Not Limited To: Checking, Savings, Investments And Trusts</li> <li>• Granting City Manager Authorization To Conduct An Investigation Into The Truthfulness Of Said Registration Application;</li> <li>• Written Consent By Each Owner And Member Manager Of Collective To Provide Information In Accordance With The Code;</li> <li>• Dated Signature Under Penalty Of Perjury That The Information Is True, Complete And Correct;</li> <li>• Proof Of Payment Of Applicable Taxes;</li> </ul>	

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<b>Registration Disclosure Requirements (Cont'd)</b>	<ul style="list-style-type: none"> <li>From All Persons Involved in the Cultivation, Processing, Manufacturing, Transporting or Dispensing Medical Marijuana – Complete legal name and Alias(es), Date Of Birth, Copy Of Valid Government Issued Id, Telephone Number And List Of Any Felony Conviction Within The Previous 10 Years For Any Crimes Involving The Use Of Violence, Fear, Force, Fraud, Deception, Unlawful Possession, Sale, Manufacture, Use Distribution Or Transportation Of A Controlled Substance Or Crimes Of Moral Turpitude.</li> </ul>	
<b>Restrictions On Possession Of Firearms</b>	Must Have License From State Or Local Agency Authorizing The Person To Be In Possession Of A Firearm.	Must Have License From State Or Local Agency Authorizing The Person To Be In Possession Of A Firearm
<b>On-Site Consumption</b>	Not Allowed.	Not Addressed

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<b>Accounting Requirements</b>	Collective Must Provide An Accounting To Its Membership On the fifteenth of every month.	Not Addressed
<b>Auditing And Inspections By City</b>	<ul style="list-style-type: none"> <li>• Audit Conducted By A Certified Public Accountant and provided to the City annually.</li> <li>• City Can Inspect Records and Site(s) At Any Time And Without Notice During Collective’s Hours of Operation Or Other Times With Reasonable Notice.</li> </ul>	<ul style="list-style-type: none"> <li>• Inspection of Records Permitted Only Upon “Reasonable Notice and Request” but Fails to Describe Those Requirements.</li> <li>• No Audit required</li> </ul>
<b>Age Limitations</b>	No One Under 21 On Premises and no medical marijuana may be dispensed by the collective to a person under 21.	Minors Are Permitted on the collective’s premises Only When Accompanied By Their Physician, Parent Or Documented Legal Guardian And Must Be A Qualified Patient. The initiative does not specifically address any requirements for dispensing medical marijuana to minors.
<b>Point Of Contact For Neighborhood Complaints And Concerns</b>	24-Hour Landline For Receiving Complaints To Be Logged And Responded To By Manager.	24-Hour Number For Receiving Complaints To Be Logged And Responded To By Manager

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<b>Paraphernalia Restrictions</b>	No Paraphernalia On-Site.	Not Addressed.
<b>Limitations On Owners/Managers / Growers</b>	<p>Cannot Have Any Person Involved In the Cultivation, Processing, Manufacturing, Transporting or Dispensing Medical Marijuana Who:</p> <ul style="list-style-type: none"> <li>• Is on parole or probation for the possession, sale, distribution or transportation of a controlled substance</li> <li>• Has been convicted of a crime within the last 10 years of the Use of violence, force, fear, fraud or deception; unlawful possession, sale, manufacture, use, distribution or transportation of a controlled substance or the use of money to engage in criminal activity</li> <li>• Is under the age of 21</li> </ul>	<p>Cannot have a Senior Manager Who:</p> <ul style="list-style-type: none"> <li>• Is on parole or probation for the possession, sale, distribution or transportation of a controlled substance</li> <li>• Has been convicted of a crime within the last 7 years of the use of violence, force, fear, Fraud or deception; unlawful possession, sale, distribution or transportation of a controlled substance or the use of money to engage in criminal activity</li> </ul>

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<p><b>Other Limitations On Registration</b></p>	<p>Cannot Have:</p> <ul style="list-style-type: none"> <li>• Violations of Building, Zoning, Health, Safety Codes</li> <li>• Violation of state or local law which substantially affect the public health, welfare or safety</li> <li>• Violates or had violated terms and conditions of Title 6</li> <li>• Collective, Owners or Managers cannot have owned or leased a location which has been the subject of an administrative, civil or criminal nuisance abatement action within the past 5 years</li> <li>• Registration, permit, license or other authorization has been revoked or nullified within the past 5 years</li> <li>• Conducted themselves in a manner which creates or results in a public nuisance onsite or within 150 feet;</li> </ul>	<p>Cannot Have:</p> <ul style="list-style-type: none"> <li>• Violations Of building, Health, Welfare Or Safety Codes other than those that deem medical marijuana uses to be nuisances per se or are prohibited by federal law.</li> <li>• Violations of the Initiative Ordinance</li> <li>• Been Previously Disqualified from the Registration Process within 5 years prior to current attempt to register</li> <li>• Collective conducted itself in a manner that creates or results in a public nuisance as established at a evidentiary hearing</li> <li>• If it is a corporation and they are not in good standing to do business in the State and are not addressing the issues</li> <li>• It would result in an imminent threat to the public’s health, safety or welfare as established by an evidentiary meeting;</li> </ul>

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<b>Other Limitations On Location (Cont'd)</b>	<ul style="list-style-type: none"> <li>• If it is a corporation they must be in good standing with the State</li> <li>• Does not have permission from the landlord to conduct medical marijuana business</li> <li>• The Operation cannot result in an imminent threat to the public's health safety or welfare</li> <li>• Knowingly submitting an application with false information</li> </ul>	<ul style="list-style-type: none"> <li>• Fails to specify the location's address.</li> <li>• Not paying MBT</li> <li>• Be in operation on October 31, 2014</li> <li>• Must be given notice and opportunity to correct</li> </ul>
<b>Limitations On Dispensing Of Marijuana</b>	Limited To Once Per Day Per Member.	Limited To Twice A Day In An Amount Not To Exceed State Limits

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<b>Packing Requirements</b>	Opaque childproof containers containing: <ul style="list-style-type: none"> <li>• The complete legal name of the patient</li> <li>• Complete legal name of primary caregiver if applicable</li> <li>• Name, address and landline telephone number of the collective</li> <li>• Amount of medication</li> <li>• Name of the attending physician</li> <li>• Date medication provided</li> <li>• List of chemicals/substances used during the processing</li> <li>• Direction that the medical marijuana must be stored in clean and dry place out of the reach of minors</li> <li>• Statement that the city of San Jose neither warrants nor guarantees the quality or safety of the medical marijuana</li> <li>• Edibles also require the source of the food production</li> </ul>	Not Addressed
<b>Building Requirements</b>	In compliance with Building Code and Fire Code. Proper Venting, Air Scrubbers, and an odor management plan which is reviewed by the City are required.	In Compliance With Local Zoning And Building Codes, Venting to Control Odor