

Dec. B, 2010
Special Meeting



Memorandum

TO: Mayor & City Council

FROM: Councilmember Pierluigi Oliverio

SUBJECT: Support for Medical
Cannabis Ordinance

DATE: December 10, 2010

Approved

Date

12-10-10

RECOMMENDATION

Accept and Direct staff to move forward with option 3a. as stated on the December 13, 2010 Special Meeting Agenda with the following additional direction listed below:

- 1). Put together a committee of no more than 12 people that include: at least 3 collective operators, law enforcement, city managers office, and city attorney office with the committee providing Council with the framework for the final ordinance. The committee will create a "work plan timeline" with proposed date for final draft of ordinance, and any other pertinent dates associated with this issue. The proposed committee member's names will be brought back to council for approval
- 2). Implement Measure U (78.3% approval) including the following: all collectives provide financial audits to the City, acknowledge the exchange of currency so that gross receipts can be taxed and taxation for medical cannabis will be set at 7%
- 3). Continue with a 600 foot restriction from residential, schools, daycare, parks and libraries (per AB 2650) with the caveat that land zoned as industrial/light industrial could be considered on a case by case basis for medical cannabis use with the approval of the Planning Director
- 4). Consider limiting the eventual number of collectives in San Jose to 30. (There are 1,300 places to purchase alcohol in San Jose)
- 5). Allow for on site cultivation but not consumption
- 6). Establish a fine for the highest amount allowed by state law for people who unlawfully provide cannabis to someone who does not have doctors permission or minors, similar to the laws that pertain to alcohol
- 7). Look to other cities for reasonable comparisons of a permit fee for a collective
- 8). Work with the San Jose Police Chief to investigate how an off duty officer could be hired and/or contracted with these facilities much like is done today for schools, shopping centers and affordable housing projects.

BACKGROUND

The exchange of currency for medical cannabis is allowed under California State Law. The Appellate Courts have upheld this; please see *People vs. Urziceanu*. Further, on November 2, 2010 the residents of San Jose overwhelmingly supported taxing medical cannabis (Measure U 78.3%). As a result, San Jose needs to move forward to create an ordinance that meets State law and allows for safe access of medical cannabis to individuals with doctors permission.

In an effort to ensure that San Jose utilizes its zoning appropriately for cannabis collectives, it is important to allow the use of industrial lands on a case by case basis at the direction of the Planning Director. For example, if we only allow the General Commercial (CG) zoning to be applied to medical cannabis, then former car dealerships could be used for collectives rather than reserving those commercial spaces for other dealerships or some other use.

There is concern about the \$95,000 permit fee. This seems rather high in comparison to other cities. For example, Oakland charges \$35,000 for a permit. I am not convinced that we need a permit fee that is so expensive when we have taxation. I look forward to staff's comparative research on this topic.

Overall, we need to move forward in creating an ordinance that follows state law and allows for collaboration with collective operators. Putting together a group to work on the final proposal for council review will be most productive.