



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Mayor Reed
Vice Mayor Nguyen
Councilmember Liccardo
Councilmember Oliverio

SUBJECT: MEDICAL MARIJUANA
COLLECTIVES – TITLE 6

DATE: May 9, 2014

Approved

Clare Reed

Date

5/14

SAFETY FOR CHILDREN, NEIGHBORHOODS, AND PATIENTS ACT – TITLE 6

RECOMMENDATION

A) Approve the staff the recommendations outlined in the staff report dated April 29, 2014 to amend Title 6 with the additions and changes outlined below.

- Amend Title 6.88.010, Purpose and Intent [page 2 of the draft ordinance] by replacing with content of Exhibit A.
- Add to Part 2, Definitions [page 3], definitions for Manufacturing and Processing. The definition for Processing should include reference to the ban on chemical processing in the California code.
- Add to Title 6.88.380, Fees and Charges [page 28], fees for inspection.
- Amend Title 6.88.420, Security, Item J [page 33] to: require 24-hour security at offsite cultivation facilities and to include the sidewalks adjacent to the collective.
- Amend Title 6.88.440, Collective Operations, Item F [page 37] to read: “No persons under the age of twenty-one (21) shall be allowed at the location.”
- Increase the distance in Title 6.88.440, Collective Operations, Item J [page 37] to read: “within 300 feet of the Premises and/or Location on the public-right-of-way.”¹
- Add to Title 6.88.450, Owner, Manager, Membership Requirements [page 39]: “Each member of a collective operating in San Jose must provide a valid Medical Marijuana State Identification Card issued by the Santa Clara County Department of Public Health.”

¹ Three hundred feet is the distance requirement outlined in Title 6.86.240 Performance Standards for Off-Sale Alcohol facilities.

- Amend Title 6.88.450, Owner, Manager, Membership Requirements, Item A, Number 3 [page 39] to read “Be under the age of twenty-one (21)” and more clearly reflect that dispensing marijuana to minors is prohibited.
- Amend Title 6.88.460, Dispensing and Packaging of Medical Marijuana, Item C [page 42] to clarify that not only shall packaging not imitate candy, but the medical marijuana product itself shall not imitate candy.
- Amend Title 6.88.700, Inspection and Enforcement, Item C [page 48] to include provisions that samples obtained by the police will be logged and recorded in accordance with departmental standards.
- Add to Title 6.88.820, Violation and Enforcement, Item A [page 50], a provision that “any and all remedies” may include the immediate closure of the collective by the City Manager or Chief of Police for violations threatening the health and safety of patients, caregivers, employees and/or the public.
- Add sections for Property Maintenance and Performance Standards, as outlined in Exhibit B.
- Add a provision that, in compliance with California law, the chemical processing of concentrated cannabis is prohibited. Should state law change in the future, chemical processing will continue to be prohibited in collectives and will only be considered in offsite cultivation locations with a Hazardous Materials permit and appropriate chemical safety plan.
- Add a provision that collective employees shall be at least twenty-one (21) years of age.
- Add a provision that live or recorded performances, or any other entertainment uses, incidental or otherwise require an Entertainment Permit.
- Add a provision that transfers may only occur inside the premises of the collective.
- Add a provision that no self-illuminated advertising of medical marijuana shall be located on buildings or windows.
- Add a provision that the use of human or mechanical sign wavers to advertise medical marijuana or collectives is prohibited.

BACKGROUND

Proposition 215, the Safe and Compassionate Use Act, was approved by the voters of California on Nov. 5, 1996. At that time, effective treatment for HIV/AIDS was in its infancy, and nearly 8,000² Californians had died from the disease in the prior year alone. The supporters of Proposition 215 highlighted medical marijuana’s use for “seriously ill Californians.” They specifically called out diseases that the public viewed as a death sentence, such as AIDS and cancer, or debilitating, such as glaucoma and migraine (which also had few available treatments).

² According to the California Department of Public Health, “Annual AIDS deaths increased rapidly throughout the 1980s and peaked in 1994, fell dramatically with widespread HIV testing and effective antiretroviral treatment through 1998, and have slightly trended down in the past ten years. AIDS deaths dropped from 7,966 in 1994 to less than 1,710 each year since 2002.”

(<http://www.cdph.ca.gov/programs/aids/Documents/EvolutionofAIDS.pdf>)

Following the passage of Proposition 215, the San Jose City Council established zoning regulations for medical marijuana facilities. The San Jose Police Department Narcotics Division had initial oversight; including requiring that collectives use a closed loop system for acquiring the marijuana they dispensed or cultivate marijuana onsite. However, federal enforcement of national drug regulations effectively ended medical marijuana distribution in San Jose. When the zoning code was updated in 2001, the Title 20 provisions for medical marijuana were deleted.

On October 19, 2009, the US Attorney General issued guidelines on investigations and prosecutions in states authorizing the medical use of marijuana. Those guidelines provided that as a general matter, pursuit of significant traffickers of illegal drugs should not focus resources on individuals whose actions are in “clear and unambiguous” compliance with state laws providing for the medical use of marijuana. Although the guidelines did not “legalize” marijuana or provide a legal defense to a violation of federal law, the memorandum resulted in the opening of the floodgates to the proliferation of medical marijuana collectives in San Jose and other California cities. Every other city in Santa Clara County has banned collectives, and cities across the state have enacted bans.

The staff report captures the history of City of San Jose’s efforts to reasonably regulate medical marijuana under City code over the past five years, so there is no need to repeat it here, except to reiterate the following:

- 1) None of the collectives operating in San Jose currently are legal under San Jose’s Zoning Code. All of them are operating in violation of the law.
- 2) The federal government’s policy decision regarding medical marijuana occurred as the nation was at the height of the worst recession since the Great Depression. San Jose was seeing the worst budget crises in its history. City staffing in the Police Department and Code Enforcement fell dramatically. The medical marijuana industry has seized an opportunity, exploiting the City’s staffing shortages, and proliferated across the City. The City’s inability to keep pace with the industry’s growth does not make the facilities legal.

ANALYSIS

In every discussion that the City Council has held on this issue, Councilmembers have consistently agreed that seriously ill patients – those suffering from debilitating or life-threatening illnesses, such as cancer or ALS – should have safe access to treatment for their illnesses. Ideally, medical marijuana would be regulated by the Food and Drug Administration and sold by prescription through licensed pharmacies, as all other medication is. Unfortunately, neither the State of California nor the federal government has chosen to provide such a regulatory framework, thus responsibility is left to the cities.

San Jose could ban medical marijuana, as many of our neighbors have. However, a ban is likely to be overturned through referendum. If this happens, San Jose would be left without regulations again. This doesn’t serve our residents, nor is what the people of San Jose want.

In our most recent budget poll, only 16 percent of residents favored a ban and only 21 percent favored “allowing medical marijuana dispensaries to continue to operate without any regulations on where and how they can operate, but shut down any that cause neighborhood problems or are too

close to schools, homes, or other sensitive areas.” Sixty percent of residents want the City to “adopt regulations to allow the continued operation of medical marijuana dispensaries with clear controls on location and operations to reduce neighborhood impacts.”

The most pragmatic route is to enact sensible and strict regulations that protect our youth and our neighborhoods, prevent the use of medical marijuana collectives from serving as a front for criminal activity, and site facilities in appropriate zoning districts.

Since the medical marijuana industry forced the city to repeal its earlier sensible regulations through the referendum process, collectives have proliferated throughout the city. In many locations, the collectives have created significant problems for neighboring residents and businesses and have strained already limited police and code enforcement resources.

Many of these facilities are also having a negative impact on our youth. Collectives or their members are supplying marijuana to children. According to the East Side Union High School District, suspensions for youth being under the influence increased 106 percent between 2010-2011 and 2011-2012, a timeframe in which marijuana collectives opened and proliferated in San Jose.

ESUHSD	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013
Substance Suspensions	398	348	362	297	614	563

According to the Public Defenders Office, “it was reported anecdotally that the vast majority of these incidents did in fact involve marijuana and Associate Principals of discipline reported that students were coming onto campuses with baggies, pill bottles and in some cases medical marijuana cards from the dispensaries.”

Preventing the distribution of marijuana to minors is the first priority listed in the U.S. Department of Justice Guidelines Regarding Marijuana Enforcement issued August 29, 2013. Other priorities include preventing revenue from sales of marijuana going to criminal enterprises, gangs, and cartels; preventing [medical] marijuana activity from being used as a cover for trafficking of other illegal drugs; preventing violence and the use of firearms in the cultivation and distribution of marijuana; preventing drugged driving; and other serious concerns.

To comply with federal guidelines, San Jose’s ordinances must provide “***strong and effective regulatory systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement measures. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice.***”

Staff has done a thorough job in developing their recommendations, and we commend them for their hard work. We support their recommendations with the additions outlined above.

CONCLUSION

San Jose has suffered since we were forced to repeal our medical marijuana regulations. We need to balance the medical needs of the seriously ill with the needs of our neighborhoods. We must

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protect children and teenagers and keep marijuana out of their hands. The system proposed by the Administration, together with the items outlined in our memo, will protect our children and neighborhoods, but it will also protect seriously ill people in our community. Those who have cancer or another serious ailment will not have to risk buying medical marijuana produced by drug cartels or manufactured with harmful chemicals. They will not have to risk their personal safety when buying their medication. We support a balanced approach.

Exhibit A: Purpose and Intent

In 1996, the voters of the State of California approved Proposition 215, entitled “The Compassionate Use Act of 1996” (“CUA”). The intent of Proposition 215 was to enable persons who are in need of Marijuana for medical purposes to obtain and use it under limited, specific purposes. On January 1, 2004 Senate Bill 420, entitled “The Medical Marijuana Program Act” (“MMP”) became effective. The intent of the MMP was to clarify the scope of the CUA. Nothing in the MMP prevents cities and counties from adopting and enforcing rules and regulations consistent with the CUA and the MMP. The federal government has issued guidelines for states and local governments that have enacted laws authorizing marijuana-related conduct, requiring them to “implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests.”

Specifically, the Department of Justice stated that regulations must focus on:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growth of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

It is the purpose and intent of this chapter to accommodate the needs of the seriously ill and protect their health and safety, while protecting our neighborhoods, children, and businesses from negative impacts and complying with state law and federal guidelines.

The use of marijuana by minors is harmful to their health, brain development, and academic achievement. Furthermore, nothing in state law or federal guidelines permits the distribution of marijuana to minors. The federal guidelines express serious concerns about distribution to minors. This chapter expressly prohibits the distribution of medical marijuana to minors.

The federal guidelines express concerns about funding criminal enterprises. This ordinance ensures that patients, caregivers, and residents of San Jose know the origin of the medical marijuana being cultivated and distributed in San Jose collectives. It is the intent of this chapter to keep drug cartels, criminals, and gangs out of the business of cultivating or distributing medical marijuana in San Jose. It is the intent of this chapter to regulate the cultivation of

medical marijuana in a manner which is responsible and protects the health, safety, and welfare of the residents of San Jose. It is the intent of this chapter to protect seriously ill patients from medical marijuana that has been grown or processed in an unhealthy or unsafe manner or by individuals whose motivation is profit, not patient's health and safety.

It is the intent of the City of San Jose to have a strong and effective regulatory and enforcement system that addresses threats to public safety, health and other law enforcement interests through robust controls and procedures that are effective in practice.

The provisions in this Chapter do not interfere with a patient's right to use Medical Marijuana under state law, nor do they criminalize the possession or cultivation of Medical Marijuana by specifically defined classifications of persons. Under state law, only Qualified Patients and Primary Caregivers cultivate Medical Marijuana.

The cultivation of Medical Marijuana shall comply with all provisions of this Code, state laws related to Medical Marijuana and all other applicable state and local laws. Nothing in this Chapter purports to, nor shall permit activities that are otherwise illegal under state or local law.

By adoption of this Chapter and the provisions of Title 20 related to Medical Marijuana, it is the intent of the City to set forth the conditions and criteria which must be met to establish an affirmative defense to criminal and civil enforcement of the San José Municipal Code if such enforcement is based solely upon the conduct recognized herein. It is the intent of the City that the party invoking the affirmative defense must demonstrate strict compliance with this Chapter, the provisions of Title 20 relating to Medical Marijuana, and the rules and regulations promulgated thereunder.

Notwithstanding the foregoing, all persons who choose to be involved with Medical Marijuana do so entirely at their own risk that their involvement may constitute a violation of federal or state law.

Exhibit B

The following Property Maintenance and Performance Standards requirements mirror those currently in place for Off-Sale Alcohol uses under Title 6.86.230 and 6.86.240.

Property maintenance

The property owner and/or manager of a medical marijuana collective shall keep the premises in a clean and safe condition by, at a minimum, performing all of the following tasks:

- A. Properly remove and store all trash, litter, rubbish and debris on the premises at the end of each business day; and
- B. Properly dispose of all trash, litter, rubbish and debris from the premises; and
- C. Remove graffiti placed upon the premises within forty-eight hours of its occurrence; and
- D. Keep driveways, sidewalks, parkstrips, fire access roads and streets on or adjacent to the premises clear and clean; and
- E. Provide lighting on the premises to ensure the safety of the public and the employees of the medical marijuana collective; and
- F. Otherwise operate in a manner that does not create or result in any significant adverse impacts upon its premises or within three hundred feet of the premises.

Performance Standards

A. The property owner and/or operator of a medical marijuana collective shall not conduct the collective in a manner that creates or results in a public nuisance on the premises or within three hundred feet of the premises, including but not limited to:

1. Disturbance of the peace;
2. Illegal drug activity;
3. Public drunkenness;
4. Drinking in public;
5. Gambling;
6. Prostitution;
7. Sale of stolen goods;
8. Public urination;
9. Theft;
10. Assaults;
11. Batteries; or
12. Acts of vandalism.