



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Angelique Gaeta
Edgardo Garcia

**SUBJECT: ACTIONS RELATED TO THE
MEDICAL MARIJUANA
PROGRAM**

DATE: March 18, 2016

Approved

Date

3/18/16

RECOMMENDATION

- (a) Approve an ordinance amending Section 6.88.600 of Chapter 6.88 of Title 6 of the San José Municipal Code to change the deadline for medical marijuana collectives to file their annual audit from April 15 of every year to September 30 of every year;
- (b) Adopt a resolution amending the Administrative Citation Schedule of Fines to create escalating fines for certain violations of Chapter 6.88 of Title 6 of the San José Municipal Code (Code) related to the City's Medical Marijuana Program, and repealing Resolution No. 77570;
- (c) Accept the Administration's report on the cost of creating a Division of Medical Marijuana Control and sources of funding; and
- (d) Discussion and follow up on Council referrals regarding the Medical Marijuana Program.

OUTCOME

Approval of the above ordinance will allow the 16 registered medical marijuana collectives operating in the City more time to submit the audit required by Chapter 6.88 of the Code (the Medical Marijuana Regulatory Ordinance). Adoption of the above resolution will establish fines for sections recently added to Chapter 6.88. Acceptance of the Administration's report on the cost of creating a Division of Medical Marijuana Control will allow the Administration to respond to the Council's Direction of December 8, 2015. Discussion of the Council's referrals related to Medical Marijuana will provide valuable input needed to refine the changes to the program.

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BACKGROUND

On June 17, 2014, the City Council approved a Medical Marijuana Regulatory Program (Program) to regulate the cultivation, manufacturing and dispensing of medical marijuana in the City of San José. The Program is comprised of two ordinances (the Medical Marijuana Land Use Ordinance, within Title 20 of the Code; and the Medical Marijuana Regulatory Ordinance, at Chapter 6.88 of Title 6 of the Code). These ordinances went into effect on July 18, 2014.

On September 30, 2014, the City Council adopted a resolution amending the Administrative Citation Schedule of Fines to create escalating fines for certain violations of Chapter 6.88 of the Code (Resolution No. 77163). On December 16, 2014, the City Council again amended the Administrative Citation Schedule of Fines to create fine amounts for violations of Sections 6.88.300(A)¹ and 6.88.300(B)² of Chapter 6.88 (Resolution No. 77254).

As originally approved, Chapter 6.88 of the Code required an annual financial audit to be completed by all medical marijuana collectives and submitted to the City by February 15th of every year. However, on May 19, 2015, at the request of the medical marijuana industry and the Administration, the Council approved changing that deadline from February 15th to April 15th of every year.

On December 8, 2015 the Administration brought forward for Council consideration an ordinance amending Chapter 6.88 of the Code to: add a definition for “transport”; require collective owners, managers and operators to wear an identification badge issued by the Police Department; expressly prohibit deliveries; allow registered collectives to share medical marijuana; allow registered collectives to manufacture medical marijuana products at their off-site cultivation location; clarify the process for disqualification from registration; revise the requirements for cultivation; decrease the time required for storing surveillance video; and limit the square footage used for cultivation and manufacturing at a residence for personal use cultivation. The Administration deferred consideration of administrative fine amounts for these added sections until Council’s adoption of the proposed changes to the ordinance were certain. On December 8th, the Council voted to approve the ordinance and it went into effect on January 15, 2016. The Administration is now bringing forward administrative fines for Council’s consideration.

On December 8, 2015, the Council also accepted the recommendation from the Administration (in its November 24, 2015 supplemental memorandum) that collectives be provided a carry-over period beginning December 18, 2015, but directed that the carry-over period extend until December 18, 2016, versus the Administration’s recommended date of May 18, 2016. The Council further directed the staff to allow collectives to make quarterly payments of the annual operating fee.

¹ Operating Without First Having Applied for Registration, Paying Required Fees and Receiving a Notice of Completed Registration.

² Failing to Operate Pursuant to a Noticed of Completed Registration.

Council also directed staff to return in March 2016 with the cost of creating a Division of Medical Marijuana Control and sources of funding and an analysis on allowing transactions/transfers with registered and licensed/permitted cultivators and manufacturers of medical marijuana products throughout the state of California.

Finally, the Council directed the staff to return in March 2016 with changes to Title 20 regarding the following:

- Allow secondary/multiple locations for cultivation, manufacturing and extraction for the registered collectives (not to include retail locations);
- Allow cultivation throughout the state of California, charging collectives the staff time and expense to conduct inspections;
- Allow collectives to inhabit a single location/site for multiple separate grows;
- Remove the 50-foot restriction for cultivation and manufacturing, but keep it in place for retail dispensary locations; and
- Allow greenhouse cultivation in appropriately zoned locations.

The Council also directed the City to take a position against any state regulation that would preempt the local taxation of medical marijuana cultivation, processing, transfers and sales, and charter powers including policing and land use.

By December 18, 2015, sixteen (16) collectives had achieved successful registration with the City of San José.

On February 5, 2016, during a meeting with collectives and accounting and CPA firms representing collectives, a number of collectives and firms requested the date to complete the audit (again) be moved. They further requested the deadline to submit the audit be moved to September 15th of every year, the standard date for the industry to file its annual corporate tax returns.

On March 12th and on March 16th, the Administration conducted outreach by holding community engagement/stakeholder meetings for feedback regarding the Council's December 8, 2015 direction to make the aforementioned changes to Title 20 of the Code.

ANALYSIS

(a) Extension of Audit Deadline:

The Administration has spoken with the 16 registered collectives and various accounting and CPA firms and learned that September 15th is the standard date for the industry to file its annual corporate tax returns. In addition, moving the deadline from April 15th to September 30th of every year will not impact the Program. Accordingly, the Administration recommends changing the annual audit deadline from April 15th to September 30th of every year.

(b) Amendment to the Schedule of Fines for Administrative Citations:

Compliance with the City's Code can improve when administrative fines are reasonable and proportional to the violation being cited. In addition, escalating fines for repeat violations tends to further encourage compliance with the Code. Accordingly, the changes being proposed to the Administrative Citation Schedule of Fines establish appropriate fines for violations of various sections of Chapter 6.88, as more fully set forth below.

Staff considers a violation of the following section to be a less serious offense. Therefore, staff recommends violations of this particular section of Chapter 6.88 be fined at a lower level, as follows:

- 1) Section 6.88.425 (A, D) - Identification Badge Display Requirements
 - a. Improper display / failure to display identification badge required by Chapter 6.88 or failure to apply for a renewal of the identification badge no later than thirty (30) days prior to its expiration.
 1. \$2,500.00 for the first violation
 2. \$5,000.00 for a second violation within a twelve month period from the date of previous violation
 3. \$7,500.00 for the third and each subsequent violation within a twelve month period from the date of previous violation

Staff considers a violation of the following sections to be a moderately serious offense. Therefore, staff recommends violations of these particular sections of Chapter 6.88 be fined at a moderate level, as follows:

- 2) Section 6.88.425 (B, E) – Identification Badge Display Requirements
 - a. Failure to obtain an identification badge prior to working at a collective or failure to return an identification badge upon termination from the collective.
 1. \$5,000.00 for the first violation
 2. \$7,500.00 for a second violation within a twelve month period from the date of previous violation
 3. \$10,000.00 for the third and each subsequent violation within a twelve month period from the date of previous violation

- 3) Section 6.88.435 (F-H) – Off-Site Cultivation
 - a. Failure to comply with requirements related to off-site cultivation.
 1. \$5,000.00 for the first violation
 2. \$7,500.00 for a second violation within a twelve month period from the date of previous violation
 3. \$10,000.00 for the third and each subsequent violation within a twelve month period from the date of previous violation

Staff considers a violation of the following sections to be a serious offense. Therefore, staff recommends violations of these particular sections of Chapter 6.88 be fined at the highest level available, as follows:

- 4) Section 6.88.445 - Deliveries of Medical Marijuana Prohibited
 - a. Failure to comply with the provision that prohibits delivering medical marijuana.
 1. \$10,000.00 for the first violation
 2. \$25,000.00 for a second violation within a twelve month period from the date of previous violation
 3. \$50,000.00 for the third and each subsequent violation within a twelve month period from the date of previous violation

- 5) Section 6.88.446 - Mobile Dispensaries Prohibited
 - a. Failure to comply with the provision that prohibits mobile dispensaries from operating in San José.
 1. \$10,000.00 for the first violation
 2. \$25,000.00 for a second violation within a twelve month period from the date of previous violation
 3. \$50,000.00 for the third and each subsequent violation within a twelve month period from the date of previous violation

(c) Cost of Creating a Division of Medical Marijuana Control and Sources of Funding:

Deciding if, how and when the City would regulate medical marijuana in the City of San José has required a significant amount of work from the Council and City staff from a number of City departments, including: the Finance Department, the Fire Department, the Police Department, all three Divisions of the Department of Planning, Building and Code Enforcement, the City Attorney's Office and the Office of the City Manager.

A supplemental memo will be issued addressing the cost of creating a Division of Medical Marijuana Control and the sources of available funding.

(d) Follow up on Council referrals regarding the Medical Marijuana Program:

As discussed in this memorandum, on December 8, 2015, the Council provided staff with direction for specific changes to Title 20. Changes to Title 20 must first be considered by the City's Planning Commission and must be reviewed under the California Environmental Quality Act (CEQA). In turn, that process requires public outreach and community engagement. As a result, the Administration has hosted a number of meetings with all stakeholders and groups potentially impacted by the cultivation, manufacturing and dispensing of medical marijuana in the City, including: registered collectives and their members, cultivators, manufacturers, community based organizations, the County Department of Environmental Health, the County

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Department of Agriculture, the District Attorney's Office and the U.S. Attorney's Office. Most recently, community and stakeholder meetings were held on March 12th and March 16th.

A supplemental memo will be issued summarizing the input received and identify some clarification needed to finalize the changes to the Program.

EVALUATION AND FOLLOW-UP

The Administration has consistently provided the Council with information memoranda updating the Council on the progress of the City's Program and developments potentially impacting the medical marijuana industry. Those updates will include any feedback resulting from the proposed ordinance and resolution. In addition, the Administration will be submitting a supplemental memorandum to address recommendation items (c) and (d) above.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the March 29, 2016 Council Meeting.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

CEQA

Not a Project, File No. PP10-068(c), Municipal Code or Policy change that involves no changes in the physical environment.

/s/

ANGELIQUE GAETA
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/s/

EDGARDO GARCIA
Police Chief

For questions, please contact Assistant to the City Manager Angelique Gaeta at (408) 535-8253 or Senior Executive Analyst Michelle McGurk at (408) 535-8254.