



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Rosalynn Hughey

SUBJECT: SEE BELOW

DATE: November 9, 2017

SUBJECT: FILE NO. PP17-070 –A PROPOSED ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTIONS 20.10.040, 20.50.100, 20.70.100, 20.80.760, 20.80.765, 20.80.775, 20.80.780, 20.80.790, 20.100.1530, 20.100.1535, AND 20.100.1540 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE (THE ZONING CODE) TO ADD “MEDICAL CANNABIS BUSINESS” AND “NON-MEDICAL CANNABIS BUSINESS” AS NEWLY ENUMERATED RESTRICTED USES IN SPECIFIED INDUSTRIAL ZONING DISTRICTS AND THE DOWNTOWN PRIMARY COMMERCIAL ZONING DISTRICT, CHANGE TERMINOLOGY FOR CERTAIN EXISTING MEDICAL CANNABIS USES, AND MAKING OTHER TECHNICAL, NON-SUBSTANTIVE, OR FORMATTING CHANGES IN TITLE 20.

RECOMMENDATION

On November 8, 2017, the Planning Commission voted 6-0-1 (Commissioner Ballard absent) to recommend that the City Council consider the Negative Declaration and addenda thereto and the Statutory Exemption pursuant to Section 26055(h) of the California Business and Professions Code in accordance with the California Environmental Quality Act (CEQA) and adopt an ordinance amending Title 20 of the San José Municipal Code (the Zoning Code) to revise land use provisions for marijuana/cannabis as described above.

OUTCOME

If adopted by the City Council, the proposed ordinance would amend the Zoning Code provisions pertaining to marijuana/cannabis.

BACKGROUND

On November 8, 2017, the Planning Commission conducted a public hearing on the proposed amendments to the Zoning Code. The attached Staff Report to the Planning Commission provides a full analysis, description of public outreach, and coordination conducted on the proposed item.

ANALYSIS

At the Planning Commission public hearing, staff summarized the proposed amendments to the Zoning Code and explained the context of State law and Council direction for the recommended changes.

Public Testimony

At the Planning Commission hearing, one member of the public spoke on the item. He identified himself as a lobbyist who has clients in the cannabis dispensing industry. He stated his support for staff's recommendations. He added that, at some point in the future, he thought that the Council would need to come back with changes to add cannabis dispensing to the commercial zoning districts, stating that cannabis is a retail use, and many of the industrial areas do not have the minimum parking spaces needed for cannabis businesses to thrive in the City.

In response, at the request of Chairman Pham, Planning staff explained that the Council had intentionally limited siting to Industrial Zoning Districts and the Downtown Primary Commercial Zoning District for land use compatibility, and that the Zoning Code did not have a maximum cap on parking spaces. Staff also noted that if the City adopts a citywide Vehicle Miles Traveled (VMT) Policy, that parking spaces exceeding the minimum number required in the Zoning Code for land uses could be counter to achieving the objectives of the VMT Policy.

It is important to note that, in addition, exploring such changes would require environmental review under the California Environmental Quality Act, significant public outreach, and significant staff work.

Planning Commission Discussion

Commissioner Allen asked staff to respond to public correspondence about whether or not there would be a gap in time between the effective date of the City's Ordinance and when State licensing would occur. Staff from the City Manager's Office responded that the State will accept applications for licenses in December 2017, and the State has stated it plans to issue temporary licenses starting January 1, 2018, so there should not be a gap.

Commissioner Yesney asked staff to confirm whether or not there had been many or significant complaints or land use conflicts concerning the currently Registered Collectives. Staff from the City Manager's Office confirmed that there had not been.

Commissioner Bit-Badal asked staff for clarification on what land use issues had arisen with the Registered Collectives, and how complaints were handled. Staff from the Police Department stated that there had mainly been complaints about advertising on billboards. He said that Registered Collectives were required to keep a log of complaints. The Police make Registered Collectives aware of reported complaints and staff follows-up with the Collectives so that the complaints are addressed. Commissioner Bit-Badal asked staff if there had been burdens to the Police Department from break-ins, fighting, or other issues related to the Registered Collectives.

Staff from the Police Department responded that there had been no serious problems, and that should the Police Department have needs for staff increases, the Department will present those to Council through the budget process, as appropriate, for implementing the proposed changes to the Municipal Code.

Commissioner Abelite asked why cannabis dispensaries may be located in the DC-Downtown Primary Commercial Zoning District, and commented that locating in this zoning district should be re-examined by the Council in light of key employers locating Downtown. Staff from the City Manager's Office clarified that no dispensary location on the ground-floor is allowed, and that in practice, because of the size requirement of the minimum buffer distances from sensitive receptors, no parcels currently have been found to be viable for dispensaries, and that it would be Council's decision whether to revisit this zoning district in the future.

Commissioner Bit-Badal made a motion to recommend to the City Council consideration of the Negative Declaration and addenda thereto and the Statutory Exemption, and adoption of the proposed ordinance amending the Zoning Ordinance as recommended by staff. She thanked staff, and she said that she had initially recommended the 1,000-foot buffer from some sensitive uses that Council had adopted rather than the State's lesser buffer distances. She added that she liked that Council took the initiative to keep the eligible areas in the City compact.

Commissioner Abelite noted that in Note 13 on Page 15 of the draft ordinance, the number in parentheses "(200)" should be located after the word "hundred" rather than after the word "two." Staff has corrected the clerical error.

Commissioner Allen encouraged the Council to reconsider zoning districts and buffers in order to bring dispensaries closer to customers to integrate them better into the community and to lower VMT.

The motion to support staff's recommendation passed 6-0-1(Ballard absent).

EVALUATION AND FOLLOW UP

If the proposed Zoning Ordinance amendments are approved by Council, City staff will monitor future compliance.

POLICY ALTERNATIVES

Alternative 1: Do not approve the recommended changes to the Zoning Code.

Pros: If the changes to the Zoning Code are not approved, the status quo will be maintained.

Cons: The proposed changes to the Zoning Code are intended to implement Council direction consistent with new State law pertaining to marijuana/cannabis. If the ordinance is not adopted by Council, Council's previous direction cannot be implemented.

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Reason for not recommending: Staff was directed by Council to propose changes to the Zoning Code to align the City's marijuana/cannabis provisions with new State law and create opportunities for sales of medical and non-medical cannabis.

PUBLIC OUTREACH

Staff has been available to discuss this item with interested members of the public. Public outreach included a community meeting held on October 30, 2017. Previous public outreach is discussed in the attached Staff Report to the Planning Commission.

COORDINATION

Preparation of this memorandum, and the draft Zoning Code changes were coordinated with the Police Department, the City Manager's Office and the City Attorney's Office.

CEQA

Negative Declaration (File No. PP11-039, Resolution No. 75984), as addended by File Nos. PP11-076, PP14-030, PP16-076 and PP17-070; and Statutory Exemption pursuant to Section 26055(h) of the California Business and Professions Code: Without limiting any other statutory exemption or categorical exemption, Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity.

/s/

ROSALYNN HUGHEY, SECRETARY
Planning Commission

For questions please contact Jenny Nusbaum, Principal Planner, PBCE at (408) 535-7872.

Attachments: Staff Report and Public Correspondence



Memorandum

TO: PLANNING COMMISSION

FROM: Steve McHarris

SUBJECT: See Below

DATE: November 8, 2017

SUBJECT: PP17-070 –A PROPOSED ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTIONS 20.10.040, 20.50.100, 20.70.100, 20.80.760, 20.80.765, 20.80.775, 20.80.780, 20.80.790, 20.100.1530, 20.100.1535, AND 20.100.1540 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE (THE ZONING CODE) TO ADD “MEDICAL CANNABIS BUSINESS” AND “NON-MEDICAL CANNABIS BUSINESS” AS NEWLY ENUMERATED RESTRICTED USES IN SPECIFIED INDUSTRIAL ZONING DISTRICTS AND THE DOWNTOWN PRIMARY COMMERCIAL ZONING DISTRICT, CHANGE TERMINOLOGY FOR CERTAIN EXISTING MEDICAL CANNABIS USES, AND MAKING OTHER TECHNICAL, NON-SUBSTANTIVE, OR FORMATTING CHANGES IN TITLE 20.

SUPPLEMENTAL MEMO

As mentioned in the staff report on this item dated October 30, 2017, City staff from the Department of Planning, Building and Code Enforcement, the City Manager’s Office, and the Police Department scheduled a community meeting during the evening of October 30, 2017 for the proposed Municipal Code changes including Zoning Code amendments and changes to Title 6. The meeting was held at City Hall. Approximately 50 stakeholders attended the meeting. Public comments and staff responses are summarized below. Additionally, public correspondence received since the staff report was distributed to the Planning Commission is attached.

ANALYSIS

Comments from the Public with City Staff Responses (Italicized) are as follows:

Closed Registration

1. Why are there only 16 Registered Collectives?
2. Why not open up registration to more businesses for fairness of the market?

The City’s Registration deadlines are in the Municipal Code and were put in place by the City Council in 2014. Reopening Registration requires a vote by the City Council to amend the

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Municipal Code. The Council previously indicated that it wants to wait until the State's licensing process is in place before revisiting the issue of additional Registration.

Delivery (addressed in Title 6, not in Title 20)

1. There should not be delivery allowed for non-medical use.
2. A few attendees who spoke expressed support for delivery for non-medical use.
3. Delivery for non-medical use allows a person to consume at home with less likelihood they will drive under the influence after purchasing at a store.

The City has allowed delivery of medical cannabis since November 2016. Delivery for non-medical use would be tracked by the City just as it is currently and successfully tracked for medical use.

Taxes

1. Marijuana Business Tax – Questions about whether the City's Marijuana Business Tax would be the same with the addition of non-medical marijuana.

San José voters approved the Marijuana Business Tax in 2010. The tax is a gross receipts tax of up to 10% and applies to all cannabis businesses in San José, legal or not. The tax rate is set by the City Council, and is currently set at 10% of gross receipts.

2. Consider funding cannabis awareness, drug prevention programs, and education with tax revenue collected.
3. Regulation costs outweigh the tax revenue benefits, and most cities do not allow the use.
4. It brings in revenue and is the will of the people.

Enforceability, Health and Safety

1. Cannabis is habit-forming but non-addictive.
2. It is a mind-altering substance and should be opposed.
3. The cannabis industry should be compared to tobacco and alcohol.
4. Some neighborhoods that have Collectives are not well-lit and don't have maintained sidewalks.
5. The Police do not have adequate staffing to patrol dispensaries.
6. Keep allowed hours of operation from 9 a.m. to 9 p.m.
7. Revenue to the City from the sales can educate the public and fight abuse.
8. The City should address abuse from consumption of cannabis.
9. States that sell cannabis have lower opioid use than states that do not sell cannabis.
10. Cannabis legalization has been a complete failure in Colorado.
11. It is the largest crop in California. It can be managed legally with the 16 Registered Collectives.

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Staff from the Police Department stated that they had officers and staff dedicated to enforcing the regulations for cannabis. These positions are funded by the annual registration fees that are paid by the Registered Collectives. Over the past two years since the Registration has been in place, staff has not encountered serious problems with the operations of the 16 Registered Collectives. The Police Department will be monitoring staffing needs, should the Council approve the sale of non-medical cannabis at existing Registered Collectives, and will return to Council through the budget process with recommendations.

COORDINATION

The preparation of the proposed ordinance and this staff report were coordinated with the City Attorney's Office, the Police Department, and City Manager's Office.

CEQA

CEQA: Negative Declaration (File No. PP11-039, Resolution No. 75984), as addended by File Nos. PP11-076, PP14-030, PP16-076 and PP17-070; and Statutory Exemption pursuant to Section 26055(h) of the California Business and Professions Code: Without limiting any other statutory exemption or categorical exemption, Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity.



STEVE MCHARRIS, PLANNING OFFICIAL
Planning, Building and Code Enforcement

Attachments: Public Correspondence



Memorandum

TO: PLANNING COMMISSION

FROM: Rosalynn Hughey

SUBJECT: See Below

DATE: October 30, 2017

SUBJECT: PP17-070 –A PROPOSED ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTIONS 20.10.040, 20.50.100, 20.70.100, 20.80.760, 20.80.765, 20.80.775, 20.80.780, 20.80.790, 20.100.1530, 20.100.1535, AND 20.100.1540 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE (THE ZONING CODE) TO ADD “MEDICAL CANNABIS BUSINESS” AND “NON-MEDICAL CANNABIS BUSINESS” AS NEWLY ENUMERATED RESTRICTED USES IN SPECIFIED INDUSTRIAL ZONING DISTRICTS AND THE DOWNTOWN PRIMARY COMMERCIAL ZONING DISTRICT, CHANGE TERMINOLOGY FOR CERTAIN EXISTING MEDICAL CANNABIS USES, AND MAKING OTHER TECHNICAL, NON-SUBSTANTIVE, OR FORMATTING CHANGES IN TITLE 20.

RECOMMENDATION

1. Consider the Negative Declaration and addenda thereto and Statutory Exemption in accordance with CEQA.
2. Recommend that the City Council adopt an ordinance amending Title 20 of the San José Municipal Code (the Zoning Code) to:
 - i) change the terminology for existing medical cannabis uses;
 - ii) add “Medical Cannabis Business” and Non-Medical Cannabis Business” as newly restricted uses; and
 - iii) make other technical, non-substantive, or formatting changes.

OUTCOME

If adopted by the City Council, the proposed ordinance (together with regulatory changes Council will consider at the same time) would allow only the 16 existing Registered Medical Marijuana Collectives to obtain a state license and provide non-medical cannabis to people who are age 21 and older. This proposal would not open Cannabis Registration to new businesses or collectives. It would not change the zoning districts or number of sites where cannabis is dispensed.

This proposal responds to City Council direction from October 18, 2016 for staff to return to Council with an analysis of Proposition 64, the Adult Use of Marijuana Act, and next steps for the City of San José.

BACKGROUND

On June 17, 2014, the City Council approved the City's Medical Marijuana Program (Program). The Program's land use regulations are contained in the Zoning Code and operating regulations are contained in Title 6 (Business Licenses and Regulations) of the Municipal Code. December 18, 2015 marked the City's deadline for San José collectives to obtain Registration. By the December 18, 2015 deadline, 16 collectives achieved successful Registration with the City of San José. The Division of Medical Marijuana Control in the San José Police Department oversees regulatory compliance. In 2016, through adoption of an urgency ordinance, the City added Sections 20.80.780 and 20.80.790 to Chapter 20.80 of the Zoning Code in response to Proposition 64 pertaining to Adult Use of Marijuana. Staff is now proposing to delete these two sections entirely and add in Title 6 provisions pertaining to the issues that these two sections currently address.

The City is not accepting new applications, and only Council action can re-open the registration period. The proposed changes to be heard by the Planning Commission for the Commission's recommendation would apply to existing Registered Collectives only.

Current Municipal Code Provisions

Title 20 of the San José Municipal Code (the Zoning Code) currently enumerates three types of Collectives as "Restricted" uses:

1. "Medical Marijuana Collective," which includes dispensing and may also include cultivation and manufacturing;
2. "Medical Marijuana Collective, Cultivation Site Only"; and
3. "Medical Marijuana Collective, Dispensary Site Only."

Title 6 of the Municipal Code defines a "Medical Marijuana Collective" (Collective) as "an incorporated or unincorporated association, composed of four or more individuals who are qualified patients and designated primary caregivers of qualified patients (individually and collectively referred to as 'member(s)') who associate at a particular location to collectively or cooperatively cultivate medical marijuana, in strict accordance with California Health and Safety Code Sections 11362.5 et seq."

Title 6 also defines the following uses:

- *Cultivation Site*: "the property, location, or premises where medical marijuana is cultivated, stored, manufactured or processed by the members of a collective on behalf of that collective."
- *Dispensary*: "the property, location, or premises where transfers of medical marijuana between qualified patients and primary caregivers are facilitated through an association"

of those qualified patients and primary caregivers who are operating as a nonprofit collective.

- *Manufacturing:* “converting, producing, deriving, concentrating, making, cooking, baking, transforming, packaging, or preparing medical marijuana, including the production of concentrated cannabis, the production of edible medical marijuana products, and/or the production of medical marijuana infused products.”

Zoning Code Verification Certificate

The Zoning Code currently provides that “Restricted” land uses may occur in designated zoning districts if specific provisions of the Zoning Code are met. Prior to obtaining Registration or amending Registration for operation, Medical Marijuana Collectives are required to obtain a Zoning Code Verification Certificate (Certificate) from the Department of Planning, Building and Code Enforcement. The Collective must remain in full compliance with the provisions of the Certificate. The Zoning Code Verification Certificate is non-transferable to a different location. Each location needs its own Certificate to determine that the site meets the Zoning Code provisions.

In addition, each Collective must obtain a Notice of Completed Registration under the requirements of the Municipal Code and City Manager regulations. Beginning January 1, 2018, each Collective will also be required to obtain a license from the State of California to operate in the City.

Zoning Districts for Medical Marijuana Collectives to Locate as a Restricted Use (No Changes Proposed)

The Zoning Code currently identifies the following zoning districts for Medical Marijuana Collectives to locate as a “Restricted” use.

- *DC-Downtown Primary Commercial (excluding ground-floor uses):* There are currently no Registered Collectives in this zoning district due the unavailability of eligible parcels.
- *CIC-Combined Industrial/Commercial, IP-Industrial Park, LI-Light Industrial, and HI-Heavy Industrial:* All 16 Registered Collectives are located in these zoning districts. The Code allows them to dispense, manufacture, and/or cultivate medical cannabis at these locations.

The City Council included sensitive use buffers and excluded some key employment and retail areas from eligibility for siting Medical Marijuana Collectives. No changes are proposed to the existing buffers or excluded areas.

State Licensing Program

With voter approval of Proposition 64 in November 2016, which legalized non-medical cannabis, and the adoption of regulatory legislation, the State of California program will license and regulate medical and non-medical cannabis. Beginning in January 2018, the State will issue licenses to medical and non-medical cannabis dispensaries, cultivators, manufacturers,

distributors, transporters, and testing laboratories. To obtain a state license, the applicant must first have a local permit, license, or other authorization. Implementation of the State’s regulatory scheme and issuance of licenses is anticipated to occur before the end of 2018. The Act makes a clear distinction between “personal use” cultivation by patients and caregivers, and “commercial use” requiring licensure.

ANALYSIS

On October 18, 2016, the Council directed staff to return to Council with an analysis of Proposition 64 (the Adult Use of Marijuana Act), and next steps for the City of San José.

Proposed Zoning Code Changes to the Program for Cannabis Businesses

The City’s consideration of non-medical cannabis sales for registered collectives requires the following changes to the Zoning Code:

- A. Zoning Code Table 20-110 “Industrial Districts Land Use Regulations” proposal to:
 1. Change “Medical Marijuana Collective” to “Medical Cannabis Collective”;
 2. Change “Medical Marijuana Collective, Cultivation Site Only” to “Medical Cannabis Collective, Cultivation Site Only”;
 3. Change “Medical Marijuana Collective, Dispensary Site Only” to “Medical Cannabis Collective, Dispensary Site Only”;
 4. Add “Medical Cannabis Business” as a new Restricted use in the current zoning districts;
 5. Add “Non-medical Cannabis Business” as a new Restricted use in the same zoning districts that Medical Cannabis Collectives are enumerated as a Restricted use; and
 6. Keep existing sensitive-use buffers.
 - B. Zoning Code Table 20-140 “Downtown Districts Land Use Regulations” proposal to:
 1. Change “Medical Marijuana Collective” to “Medical Cannabis Collective”;
 2. Change “Medical Marijuana Collective, Dispensary Site Only” to “Medical Cannabis Collective, Dispensary Site Only”;
 3. Add “Medical Cannabis Business” as a new Restricted use in current zoning district;
 4. Add “Non-medical Cannabis Business” as a new Restricted use in current zoning district; and
 5. No changes to sensitive-use buffers.
- *Recommendation* – Update “marijuana” to “cannabis” throughout the Code to align with State law, and include non-medical cannabis transactions as a Restricted use.
 - *Outcome* – Currently the City’s program does not allow non-medical cannabis businesses to operate in the City. With the proposed changes, each of the 16 currently Registered Collectives will have the option to cultivate, process, manufacture, distribute, and provide

medical and non-medical cannabis to persons age 21 or older, if these Registered Collectives obtain a State license to do so.

The Planning Commission may make recommendations about these changes to the City Council. In addition, the Council may consider changes to the Regulatory Program (outlined in Title 6 of the Municipal Code), which do not fall under the jurisdiction of the Planning Commission.

Conclusion

The Planning Commission is encouraged to provide specific input and make recommendations on staff's proposed changes to the Zoning Code as follows:

- “Industrial Districts Land Use Regulations” – Change “marijuana” to “cannabis”; add “Medical Cannabis Business” and “Non-medical Cannabis Business” as newly enumerated “Restricted” land uses in the CIC, IP, LI, and HI Zoning Districts and other minor proposed revisions to the Zoning Code for the Council’s consideration.
- “Downtown Districts Land Use Regulations” – Change “marijuana” to “cannabis”; add “Medical Cannabis Business” and “Non-medical Cannabis Business” as newly enumerated “Restricted” uses in the DC Zoning District and other minor proposed revisions to the Zoning Code for the Council’s consideration.

If the City Council approves the proposed ordinances amending the Zoning Code (see Attachment) and pending changes to Title 6, the ordinances could facilitate the legal operation of medical and non-medical cannabis business activities in San José’s existing 16 Registered Collectives.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
(Required: Website Posting)
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City.
(Required: E-mail and Website Posting)
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Numerous community and stakeholder meetings have occurred on the topic of Medical Marijuana Collectives since the City proposed the concept of a Medical Marijuana program in 2009. For the most recent proposed Municipal Code changes on the subject program, including Zoning Code amendments discussed in this staff report and Title 6, City staff from the Department of Planning, Building and Code Enforcement, the City Manager’s Office, and the

Police Department are scheduled to facilitate another community meeting during the evening of October 30, 2017 at City Hall. Public comments and staff responses will be summarized in a supplemental memorandum.

COORDINATION

The preparation of the proposed ordinance and this staff report were coordinated with the City Attorney's Office, the Police Department, and City Manager's Office.

CEQA

An Addendum to an Initial Study/Negative Declaration (IS/ND), and Addenda thereto, was prepared for the Project under the provisions of the California Environmental Quality Act of 1970, as amended (CEQA), including State and local implementing regulations. The purpose of the Addendum is to document the changes to the project and provide CEQA analysis for the project, which would amend Title 20 and Title 6 of the Municipal Code and related regulations enforced by the City Manager's Office concerning Medical Marijuana Collectives registered in San José.

The CEQA Guidelines (Section 15162 and 15164) state that when an ND has been adopted for a project, no subsequent EIR or ND shall be prepared for that project unless the Lead Agency determines, on the basis of substantial evidence in light of the whole record, that either 1) substantial changes are proposed to the project which will require major revisions to the previous ND due to new or substantially more severe significant effects, 2) substantial changes have occurred with respect to the circumstances under which the project is undertaken which will require major revisions of the previous ND due to new or substantially more severe significant effects, or 3) new information of substantial importance that was not known and could not have been known previously with the exercise of reasonable diligence shows that the project will have one or more significant effects or substantially more severe effects than disclosed in the previous ND, or a mitigation measure or alternative that is new or is now feasible, when previously found infeasible, would substantially reduce a significant effect and the project proponent declines to adopt it.

In 2011, the City Council adopted a ND for which an Initial Study was prepared that evaluated the potential environmental impacts of land use regulations for Medical Marijuana Collectives registered in San José (File No. PP11-039, Resolution No. 75984). The Initial Study and ND circulated for public and agency review between May 25, 2011 and June 15, 2011. This ND was subsequently addended in accordance with CEQA to document and disclose minor changes to the above-referenced regulations (File Nos. PP11-076, PP14-030, PP16-076, and PP17-070). The City has concluded that the Project would not result in any new impacts not previously disclosed in the circulated IS/ND; nor would it result in a substantial increase in the magnitude of any significant environmental impact previously identified (none were identified). For these reasons, an addendum to the approved IS/ND would be sufficient to meet the requirements of CEQA. According to CEQA Guidelines Section 15164, an addendum need not be circulated for public review but can be included in or attached to the final adopted negative declaration. The

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City must consider the Addendum with the adopted IS/ND and the Statutory Exemption pursuant to Section 26055(h) of the California Business and Professions Code prior to making a decision on the Project. The Addendum, along with the adopted IS/ND and addenda thereto, and exemption are available for review at <http://www.sanjoseca.gov/index.aspx?nid=5211>



STEVE MCHARRIS, PLANNING OFFICIAL
Planning, Building and Code Enforcement

Attachments:

- 1) List of Registered Medical Marijuana Collectives in San José as of October 30, 2017
<http://www.sanjoseca.gov/index.aspx?NID=4860>
- 2) Draft Ordinance amending Zoning Code

DRAFT

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTIONS 20.10.040, 20.50.100, 20.70.100, 20.80.760, 20.80.765, 20.80.775, 20.80.780, 20.80.790, 20.100.1530, 20.100.1535, AND 20.100.1540 OF TITLE 20 (ZONING) OF THE SAN JOSE MUNICIPAL CODE RELATING TO MEDICAL AND NON-MEDICAL MARIJUANA TO CHANGE “MEDICAL MARIJUANA COLLECTIVE” TO “MEDICAL CANNABIS COLLECTIVE,” “MEDICAL MARIJUANA COLLECTIVE CULTIVATION SITE ONLY,” TO “MEDICAL CANNABIS COLLECTIVE CULTIVATION SITE ONLY,” “MEDICAL MARIJUANA COLLECTIVE DISPENSARY SITE ONLY,” TO “MEDICAL CANNABIS COLLECTIVE DISPENSARY SITE ONLY,” AND TO ADD “MEDICAL CANNABIS BUSINESS,” AND “NON-MEDICAL CANNABIS BUSINESS” AS NEWLY ENUMERATED RESTRICTED USES IN SPECIFIED INDUSTRIAL ZONING DISTRICTS AND THE DOWNTOWN PRIMARY COMMERCIAL ZONING DISTRICT AND TO MAKE OTHER TECHNICAL, FORMATTING, NON-SUBSTANTIVE CHANGES

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), a Negative Declaration for this project was adopted by the City Council under Resolution No. 75984 on September 13, 2011, under File No. PP11-039, and subsequent addenda thereto under File Nos. PP11-076, PP14-030, PP16-076 and PP17-070; and

WHEREAS, pursuant to Section 15164 of the CEQA Guidelines, the City of San José has determined that no new effects would occur from and no new mitigation measures would be required for the adoption of this Ordinance; and

WHEREAS, pursuant to Section 26055(h) of the California Business and Professions Code, this Ordinance is statutorily exempt from the requirements of CEQA on the basis

that the project will adopt ordinances, rules and/or regulations, that will require subsequent discretionary review under CEQA to engage in non-medical cannabis activity in the City of San José; and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this City Council has reviewed and considered the 1) Statutory Exemption pursuant to Section 26055(h) of the California Business and Professions Code; and 2) adopted Negative Declaration and related City Council Resolution No. 75984, as addended, prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 20.10.040 of Chapter 20.10 of Title 20 of the San José Municipal Code is amended to read as follows:

20.10.040 - Interpretation.

- A. In interpreting and applying the provisions of this Title, they shall be held to be for the purpose of promoting the public safety, health, convenience, comfort, prosperity, or general welfare of the community. It is not intended by this Title to interfere with or abrogate or annul any easements, covenants, or other agreements between parties; provided, however, that where this Title imposes a greater restriction upon the use of Buildings or premises or upon Height of Buildings, or requires larger open spaces than are imposed or required by other ordinances, rules, regulations or by easements, covenants, or agreements, the provisions of this Title shall govern.

B. No provision of this Title is intended to nor shall be interpreted or applied to allow or authorize a use or Structure that violates federal, state or local law, provided, however that a ~~Medical Marijuana Collective~~ Medical Cannabis Collective, Medical Cannabis Collective Cultivation Site Only, Medical Cannabis Collective Dispensary Site Only, Medical Cannabis Business, or Non-medical Cannabis Business that is in full compliance with all applicable state and local laws and regulations may assert an affirmative defense to criminal or civil enforcement of this Code where such enforcement action is based solely upon those operations by a ~~collective~~ Medical Cannabis Collective, Medical Cannabis Collective Cultivation Site Only, Medical Cannabis Collective Dispensary Site Only, Medical Cannabis Business, or Non-medical Cannabis Business that are expressly recognized in and fully conform to the provisions of this Code.

SECTION 2. Table 20-110 of Chapter 20.50 of Title 20 of the San José Municipal Code is amended to read as follows:

**Table 20-110
Industrial Districts Land Use Regulations**

Use	Zoning District					Applicable Sections & Notes
	CIC	TEC	IP	LI	HI	
Industry						
Auction	C	C	C ^{GP}	C ^{GP}	-	
Industrial services	-	-	-	P	P	
Laboratory, processing	P	P	P	P	P	
Manufacturing and assembly						

Light	P	P	P	P	-	
Medium	P	P	P	P	P	
Heavy	-	-	-	-	P	
Research and development	P	P	P	-	-	
Catalog and mail order	P	P	P	P	-	
Construction/corporation yard	-	-	-	S	S	
Establishment for the repair, cleaning of household, commercial or industrial equipment or products	-	-	-	P	P	
Extraction of minerals from the ground, including quarrying	-	-	-	-	C	
Hazardous materials storage facility	-	-	-	C	C	
Hazardous waste facility	-	-	-	-	C	
Junkyard	-	-	-	-	C	
Miniwarehouse/Ministorage	-	-	-	P	P	
Outdoor uses or storage, industrial	-	-	-	S	P	Section 20.50.210
Private electrical power generation facility	C	C	C	C	C	
Stockyard, including slaughter	-	-	-	-	C	
Warehouse/distribution facility	P	P	P	P	P	

Wholesale sale establishment	P	S	S	P	P	
Wineries, breweries	P	P	P	P	P	
Additional Uses						
Any use not set forth in Tables 20-30, 20-50, 20-90	-	-	-	-	C	
Any use without a permanent fully enclosed building on-site	C	C	C	S	S	
Commercial support	-	P	P	-	-	Note 5; Section 20.50.110
Retail sales, goods and merchandise	P	P	-	-	-	Note 5; Section 20.50.110
Retail art studio	P	P	-	-	-	
Off-sale, alcoholic beverages - beer and/or wine only	C	C	-	-	-	Note 5; Section 20.50.110
Off-sale, alcoholic beverages, full range of alcoholic beverages	C	C	-	-	-	Note 5; Section 20.50.110
Off-sale, alcoholic beverages - beer and/or wine only and incidental to a winery/brewery	C	C	C	C	C	Note 12; Section 20.50.110
Off-sale, alcoholic beverages - distilled spirits only and incidental to a distillery	C	C	C	C	C	Note 12; Section 20.50.110
Bakery, retail	P	P	-	-	-	Note 5; Section 20.50.110
Aquaculture; Aquaponics	S	S	S	S	S	

Certified farmers' market	-	S	S	-	-	Part 3.5, Chapter 20.80
Certified farmers' market - small	-	P	P	-	-	Part 3.5, Chapter 20.80
Food, beverage, groceries	P	P	-	-	-	Note 5; Section 20.50.110
Neighborhood agriculture	P	P	P	P	P	
Nursery, plant	P	P	-	C	C	
Outdoor vending	A	A	-	A	A	Part 10, Chapter 20.80
Outdoor vending - fresh fruits and vegetables	P	P	P	P	P	Part 10, Chapter 20.80
Large format commercial establishment	-	-	C ^{GP}	C ^{GP}	-	
Large format commercial establishment, associated commercial	-	-	C ^{GP}	C ^{GP}	-	Section 20.50.115
Warehouse retail	-	-	C	C	C	Section 20.50.130
Sales, office furniture, industrial equipment, machinery	P	P	-	C	-	
Seasonal sales	P	P	P	P	P	Part 14, Chapter 20.80
Education and Training						

Day care center	C	C	C ^{GP}	C ^{GP}	-	
School, driving (class A & B license)	-	-	-	P	P	
Instructional art studios	P	P	-	-	-	
Instructional art studios, live models	C	C	-	-	-	
Private instruction, personal enrichment	P	P	-	-	-	
School - elementary and secondary (public or private)	C	C	-	-	-	Note 11
School, post secondary	C	C	C	-	-	
School, trade and vocational	C	C	-	C	C	
Entertainment and Recreation Related						
Recreation, commercial/indoor	P	C on lands with a General Plan land use designation of Transit Employment Center; C ^{GP} on lands with other General Plan land use designations	C ^{GP}	C ^{GP}	-	Note 5, Section 20.50.110
Recreation, commercial/outdoor	C	-	-	-	-	
Relocated cardroom	C ^{GP}	C ^{GP}	C ^{GP}	C ^{GP}	-	Section 20.80.1155
Performing arts production and rehearsal space, excluding performances	P	C	C	C ^{GP}	-	
Stadium, 2,000 seats or fewer	C ^{GP}	C on lands with a General Plan land use	-	-	-	Note 15

including incidental support uses		designation of Transit Employment Center; C ^{GP} on lands with other General Plan land use designations				
Stadium, more than 2,000 seats including incidental support uses	CC ^{GP}	-	-	-	-	Note 15; Note 16
Food Services						
Caterer	P	P	-	-	-	
Drinking establishments	C	C	-	-	-	
Drinking establishments interior to a full-service hotel/motel that includes 75 or more guest rooms	P	S if within 150 feet of residentially used or zoned Lot; P if not within 150 feet of residentially used or zoned Lot	P ^{GP}	-	-	Section 20.80.475; Note 13
Drinking establishment in conjunction with a winery or brewery	C	C	C	C	C	
Public eating establishments	P	P	-	C	C	Note 5, Section 20.50.110 and Section 20.50.113
Outdoor dining, incidental to a public eating establishment	P	S if within 150 feet of residentially used or zoned Lot; P if not within 150 feet of residentially used or zoned Lot	-	C	C	Note 5, Section 20.50.110 and Section 20.50.113
Health and Veterinary Services						

Animal boarding, indoor	P	P	-	-	-	Note 14
Animal grooming	P	P	-	-	-	Note 14
Emergency ambulance service	C	C ^{GP}	C ^{GP}	C ^{GP}	-	
Hospital/in-patient facility	C	C	C	-	-	Note 6
Medical marijuana <u>cannabis</u> collective	R	-	R	R	R	Part 9.75, Chapter 20.80
Medical marijuana <u>cannabis</u> collective cultivation site only	R	-	R	R	R	Part 9.75, Chapter 20.80
Medical marijuana <u>cannabis</u> collective dispensary site only	R	-	R	R	R	Part 9.75, Chapter 20.80
<u>Medical cannabis business</u>	<u>R</u>	<u>:</u>	<u>R</u>	<u>R</u>	<u>R</u>	<u>Part 9.75, Chapter 20.80</u>
<u>Non-medical cannabis business</u>	<u>R</u>	<u>:</u>	<u>R</u>	<u>R</u>	<u>R</u>	<u>Part 9.75, Chapter 20.80</u>
Office, medical	P	P	C	-	-	Note 5, Section 20.50.110
Veterinary clinic	P	P	-	-	-	Note 14
General Services						
Crematory	-	-	-	C ^{GP}	C	Note 7
Mortuary, without funeral services	-	-	-	P	P	
Dry cleaner	P	P	-	-	-	
Hotel/motel	P	P on lands with a General Plan land use	C ^{GP}	-	-	Note 13

		designation of Transit Employment Center; P ^{GP} on lands with other General Plan land use designations				
Laundromat	P	P	-	-	-	
Maintenance and repair, small household appliances	P	P	-	-	-	
Messenger services	P	P	-	-	-	
Personal services	P	P	-	-	-	Note 5, Section 20.50.110
Photo processing and developing	P	P	P	P	P	
Printing and publishing	P	P	P	P	P	
Social service agency	-	C	C	C	C	
Offices and Financial Services						
Automatic teller machine	P	P	P	P	P	Section 20.80.200
Business support use	P	P	-	-	-	
Financial institution	P	P	-	C ^{GP}	-	Note 5, Section 20.50.110
Office, general business	P	P	P	-	-	
Office, research and development	P	P	P	-	-	
Public, Quasi-Public and Assembly Uses						
Church/religious assembly	C	C on lands with a General Plan land use	C ^{GP}	C ^{GP}	-	

		designation of Transit Employment Center; C ^{GP} on lands with other designations				
Residential						
Hotel supportive housing	C	C	C	C	C	Note 17; Part 22 of Chapter 20.80
Emergency residential shelter, more than 50 beds	C	C ^{GP}	C ^{GP}	C	-	Section 20.80.500
Emergency residential shelter, 50 beds or fewer	P	C	C ^{GP}	C	-	Section 20.80.500
Living quarters, custodian, caretakers	-	-	-	-	C	Note 1
Drive-Through Use						
Drive-through in conjunction with any use	C	C ^{GP}	C ^{GP}	C ^{GP}	-	
Recycling Uses						
Processing facility	-	C	C	S	S	
Transfer facility, recycling	-	C	C	S	S	
Collection facility, large	-	-	-	-	P	
Reverse vending machine	A	A	A	A	A	
Collection facility, small	A	A	A	A	A	

Transportation and Utilities						
Common carrier	-	-	-	C	P	
Common carrier depot	S	S	S	S	S	
Community television antenna systems	C	C	C	C	C	
Data center	S	S	S	S	S	
Off-site, alternating and alternative use parking arrangements	S	S	S	S	S	Section 20.90.200
Parking establishment not permitted in Tables 20-30, 20-50 and 20-90	C	C	C	C	C	
Off-street parking establishment	C	C	C	C	C	
Television, radio studio	C	C	C	C	C	
Utility facilities, excluding corporation yards, storage or repair yards and warehouses	C	C	C	C	C	
Wireless communications antenna	C	C	C	C	C	Note 18, Sections 20.100.1300, 20.80.1915
Wireless communications antenna, slimline monopole	S	S	S	S	S	Note 18, Sections 20.80.1900, 20.80.1915
Wireless communications antenna, building mounted	P	P	P	P	P	Note 18, Sections 20.80.1910,

						20.80.1915
Power Generation						
Base load power plant	-	-	-	-	C	
Stationary peaking power plant	-	-	-	C	C	
Transportable peaking power plant	-	-	-	C	C	
Private electrical power generation facility	C	C	C	C	C	
Co-generation facility	S	S	S	S	S	
Stand-by/Back-up/Small-scale Renewable Power						
Facilities that do not exceed noise and air standards	P	P	P	P	P	
Facilities that do exceed noise and air standards	C	C	C	C	C	
Temporary stand-by or backup electrical power generation facility	P	P	P	P	P	
Solar photovoltaic power system	P	P	P	P	P	Section 20.100.610 C.7.
Vehicle Related Uses						
Auto dealer, wholesale, no on-site storage	P	P	P	-	-	
Car wash, detailing	C	C	-	-	-	
Gasoline service station or charge	P	C	C ^{GP}	C ^{GP}	-	Note 2, Note 8

station, excluding incidental service or repair						
Gasoline service station or charge station with incidental service and repair	P	C	C ^{GP}	C ^{GP}	-	Note 3
Sale, brokerage, or lease (rental) of passenger vehicles, pick-up trucks not exceeding 25 feet in length, and motorcycles	C	C	-	C	-	Note 10
Warehouse retail indoor sale of passenger vehicles, pick-up trucks not exceeding 25 feet in length, and motorcycles	C	C	C	C	C	Section 20.50.140
Repair and cleaning of vehicles	C	-	-	P	P	Note 4
Sale or lease of commercial trucks, buses, trailers, campers, boats, mobilehomes, construction equipment	C	-	-	C	-	
Sale, vehicle parts	P	P	-	P/S	-	Note 9
Vehicle tow yard	-	-	-	C	S	
Vehicle wrecking, including sales of parts	-	-	-	-	C	
Historic Reuse						
Historic landmark structure reuse	S	S	S	S	S	Part 8.5, Chapter 20.80

Notes:

1. Site must be seven (7) acres or more.
2. No incidental repair or service.
3. Incidental repair includes air conditioning service, carburetor and fuel injection service, electrical service, radiator service, and tune-up, lube, oil change, and smog check, as well as tires, batteries and accessories installation. Does not allow body repair or painting.
4. All vehicle-related repair, service, and accessory or other installation, excepting the cleaning of vehicles, shall be conducted within a fully enclosed Building.
5. Retail; recreation, commercial/indoor establishments; Public Eating Establishments; outdoor dining, incidental to a public eating establishment; financial institutions; medical clinics; medical offices; and Personal Service establishments are Permitted in the IP district subject to the limitations of Commercial Support Use, Section 20.50.110. Public Eating Establishments in the LI or HI districts are limited to a maximum of six hundred fifty (650) gross square feet in size.
6. Refer to the General Plan for criteria to determine if the use is permissible at the proposed location.
7. Crematories shall be separated by at least five hundred (500) linear feet from residential uses, schools, and day care centers, which distance(s) shall be measured from the nearest points of the Parcel boundary on which the crematory is proposed and the Parcel boundary on which the residential, school or day care center use is located.
8. Charge Stations that are incidental to a separate primary use, that do not impact on-site or off-site vehicular circulation, and that serve patrons of the primary use on-Site are Permitted in all Industrial Zoning Districts.
9. Vehicle parts sales are permitted in the LI district when the total floor area dedicated to retail display and open to the public occupies no more than fifteen (15) percent of the gross floor area of the individual tenant space. Vehicle parts sales establishments that exceed fifteen (15) percent of the gross floor area of the individual tenant space are subject to a Special Use Permit.
10. Any incidental vehicle-related repair, service, and accessory or other installation, excepting the cleaning of vehicles, shall be conducted within a fully enclosed Building.
11. Public schools are subject to the regulations of this Title, subject to the provisions of California Government Code Section 53094 for classroom facilities.
12. Off-sale of alcoholic beverages. The total square footage of alcoholic beverages on display in a retail area and the total square footage of retail floor area in which alcoholic beverages are displayed for sale shall be the lesser of the following:
 - a. Two hundred fifty (250) gross square feet; or
 - b. Five (5) percent of the winery's, brewery's, or distillery's entire gross floor area; and any and all alcoholic beverages made available for retail sale shall be limited only to those alcoholic beverages manufactured and produced on-site.
13. At least two (200) hundred rooms and four (4) or more stories in height are required for Hotels located in the TEC Transit Employment Center Zoning District.
14. In the TEC Zoning District, all uses involving any type of care for animals, including but not limited to grooming, boarding, and medical care, must be conducted wholly inside a Building.
15. Primary uses include sporting events, large assembly, concerts, and entertainment events of similar character and intensity. Incidental support uses include offices, locker rooms, retail,

Public Eating Establishments, Drinking Establishments, Outdoor Vending Facilities, and other commercial uses of similar character and intensity.

16. Use permit applications for stadiums that consist of more than two thousand seats and that are in an airport influence area shall be referred to the Santa Clara Airport Land Use Commission prior to approval by the City.
17. Hotel Supportive Housing may be Permitted only with a Conditional Use Permit pursuant to Part 22 of Chapter 20.80 and only until December 31, 2026.
18. Certain modifications of existing Wireless Facilities may be Permitted with an Administrative Permit in accordance with Section 20.80.1915 of Chapter 20.80.

SECTION 3. Table 20-140 of Chapter 20.70 of Title 20 of the San José Municipal Code is amended to read as follows:

**Table 20-140
Downtown Districts Land Use Regulations**

Use	Zoning District		Applicable Notes & Sections		
	DC	DC-NT1	Additional Use Regulations for the DG Overlay Area	Parking	Applicable to All Downtown Districts
Offices and Financial Services					
Automatic teller machine	P	P		No parking	Section 20.80.200
Business support use	P	P	S, Notes k and n	No parking	
Financial institution	P	P	S, Note n	2.5 per 1,000 sq. ft.	
Financial services	P	P	S, Notes m and n	No parking	

Offices, business and administrative	P	P	S, Notes i and n	2.5 per 1,000 sq. ft.	Section 20.70.110
Payday lending establishment	R	R			Part 12.5, Chapter 20.80; Section 20.200.875
Research and development	P	P	-	2.5 per 1,000 sq. ft.	Note 1
General Retail					
Off-sale, alcoholic beverages - beer and/or wine only	C	C		No parking	Section 20.80.900
Off-sale, alcohol beverages - full range of alcoholic beverages	C	C		No parking	Section 20.80.900
Auction	S	-	S	No parking	
Certified farmers' market	S	S		No parking	Part 3.5, Chapter 20.80
Certified farmers' market - small	P	P		No parking	Part 3.5, Chapter 20.80
Food, beverage, groceries	P	P		No parking	
Open air sales establishments and areas	S	S		No parking	
Outdoor vending	S	S		No parking	Part 10, Chapter 20.80
Outdoor vending - fresh fruits and vegetables	P	P		No parking	Part 10, Chapter 20.80

Pawn shop, pawn broker	C	C	Note b	No parking	
Retail sales, goods and merchandise	P	P	S/P, Note a	No parking	
Seasonal sales	P	P		No parking	Part 14, Chapter 20.80
Education and Training					
Day care center	P	P	S, Notes c and n	No parking	
School, post-secondary	P	P	-	1 per 360 sq. ft.	
School, trade and vocational	P	P	-	1 per 360 sq. ft.	
Personal enrichment, instructional art	P	P	-, Note d	1 per 360 sq. ft.	
School, elementary (grades K - 8)	C	C	-	1 per teacher and employee	
High school (grades 9 - 12)	C	C	-	.75 per teacher and employee and 1 per each 10 students	
Entertainment and Recreation Related					
Amusement game arcade	S	-	S, -	No parking	
Movie theater	P	P		No parking	
Recreation commercial/indoor	P	P		No parking	
Poolroom	S	-		No parking	
Private club or lodge	P	P	-	1 per 360 sq. ft.	

Art display structure	S	-	S	No parking	Section 20.70.140
Lighting display	A/S	A/S			Note e, Section 20.70.150
Food Services					
Banquet - facility	P	P		No parking required	
Caterer	P	P	C, Note f	No parking	
Drinking establishments	C	C		No parking	
Drinking establishments with an approved maximum occupancy load of over 250 persons and that operate between 12:00 midnight and 6:00 a.m.	CC	-		No parking	Note 7
Drinking establishments interior to a full-service hotel/motel with 75 or more guest rooms	P	P		No parking	Section 20.80.475
Public eating establishments	P	P		No parking	Note 9
Wineries, breweries	C	C		No parking	
Health and Veterinary Services					
Animal grooming	P	P	-	No parking	
Animal boarding, indoor	P	P	-	No parking	
Emergency ambulance service	C	-	-	No parking	
Hospital/in-patient medical facility	C	-	-	1.5 per doctor	

Medical or dental clinic/out-patient facility	P	P	-	1.5 per doctor	
Medical marijuana-cannabis collective	R	-	-	No parking	Part 9.75, Chapter 20.80
Medical marijuana-cannabis collective dispensary site only	R	-	-	No parking	Part 9.75, Chapter 20.80
<u>Medical cannabis business</u>	<u>R</u>	<u>:</u>	<u>:</u>	<u>No parking</u>	<u>Part 9.75, Chapter 20.80</u>
<u>Non-medical cannabis business</u>	<u>R</u>	<u>:</u>	<u>:</u>	<u>No parking</u>	<u>Part 9.75, Chapter 20.80</u>
Veterinarian	P	P	-	1.5 per doctor	
General Services					
Bed and breakfast inn	P	P	S, Note I	.35 per room	Part 2, Chapter 20.80
Hotel/motel	P	P	-, Note I	.35 per room	
Maintenance and repair of household appliances, small	P	P	-	No parking	
Mortuary and funeral services	C	C	-	.75 per employee and vehicle	
Personal services	P	P	Note g	No parking	
Printing and publishing	P	P	Note h	No parking	
Public, Quasi-Public and Assembly Uses					
Auditorium	C	-	C	No parking	

Cemetery	C	C	-	No parking	
Church/religious assembly	P	P		No parking	
Information center	P	P		No parking	
Museums, libraries	P	-	P	No parking	
Parks, playgrounds, or community centers	P	P	S, Note j	No parking	
Residential ^{GP}					
Residential shelter	C ^{GP}	-	-	1 per 4 beds, 2.5 per 1,000 sq. ft.	
Live/work uses	P ^{GP}	S ^{GP}		1.5 per unit	Section 20.70.120
Residential multiple dwelling	P ^{GP}	P ^{GP}	-	1 per unit	
Residential care facility for seven or more persons	C ^{GP}	C ^{GP}	-	.75 per employee	
Residential services facility, for seven or more persons	C ^{GP}	C ^{GP}	-	.75 per employee	
Hotel supportive housing	C ^{GP}	C ^{GP}	-	.35 per room	Note o; Part 22 of Chapter 20.80
Single room occupancy (SRO) living unit facility	S ^{GP}	S ^{GP}	-	.6 per room	Part 15, Chapter 20.80
Single room occupancy (SRO) residential hotel	S	S	-	.6 per room	Part 15, Chapter 20.80
Residential Accessory Uses ^{GP}					

Accessory buildings and accessory structures	P ^{GP}	P ^{GP}	-	No parking	Note 2
Recycling Uses					
Reverse vending machine	S	S	-	No parking	Part 13, Chapter 20.80
Small collection facility	S	S	-	No parking	Part 13, Chapter 20.80
Transportation and Communication					
Community television antenna systems	C	-	-	No parking	
Off-site and alternating use parking arrangements	P	P	-	N/A	Section 20.90.200
Off-street parking establishment	P	P	-	N/A	
Private electrical power generation facility	C	C	-	1 for each vehicle used in the operation of such facility	
Standby generators that do not exceed noise or air standards	A	A	-	N/A	
Temporary stand-by/backup generators	P	P	-	N/A	
Short term parking lot for uses or events other than on-site	S	S		N/A	
Radio and television studios	P	-	Note n	No parking	
Wireless communications antenna	S	-	-	No parking	Note 10, Sections 20.80.1900, 20.80.1915

Wireless communications antenna, building mounted	P	-	-	No parking	Note 10, Sections 20.80.1900, 20.80.1915
Electrical Power Generation					
Solar photovoltaic power system	P	P	-	No parking	Section 20.100.610 C.7.
Vehicle Related Uses					
Accessory installation for cars and passenger trucks	P	-	-	No parking	
Car wash, detailing	P	-	-	No parking	
Gasoline service station or charge station	P	-	-	No parking	Note 3, Note 8
Gasoline service station or charge station, with incidental service and repair	P	-	-	No parking	Note 3
Sale and lease, vehicles and equipment (less than one ton)	P	-	-	1.5 per employee	Note 4
Tires, batteries, accessories, lube, oil change, smog check station, air conditioning	P	-	-	2 per bay or .75 per employee	Note 5
Sale, vehicle parts, new	P	-	-	No parking required	
Historic Reuse					
Historic landmark structure reuse	S	S		Section 20.90.220 E.	Part 8.5, Chapter 20.80

Notes applicable to the DG area only:

- a. Second-hand stores not dealing primarily in antiques, artworks, or vintage clothing require a Special Use Permit in the DG overlay area.
- b. Only as a use incidental to a retail jewelry store, otherwise, not Permitted.
- c. Only as a use incidental to existing on-site office use, otherwise not Permitted.
- d. Culinary/art school with public classes and public demonstrations allowed, includes such areas as dance, music, martial arts, and fine arts.
- e. Section 20.70.150 specifies the permits required under Title 20 for a lighting display.
- f. Only as a use incidental to restaurant, grocery or bakery uses for primarily on-site sales, otherwise not Permitted.
- g. Excludes check-cashing services and bail bond services.
- h. Only if dedicated primarily to on-site retail customer copy services, otherwise not Permitted.
- i. Exception for travel agencies and real estate agencies which are the only Permitted uses.
- j. Community centers are allowed with a Special Use Permit.
- k. Exception for copy shops and mail centers which are the only Permitted uses.
- l. Use of ground floor to be primarily dedicated to customer-related public services.
- m. Includes financial retail services such as payroll advances, foreign currency exchange, debit card services and related financial services products but excludes check cashing except as an ancillary use.
- n. In order to be a Permitted use, the space to be occupied shall have been vacant on January 1, 2012, the size of the space of such use shall be limited in size to a total maximum area of no greater than twenty thousand (20,000) square feet, and the space shall not be located within a corner tenant space that is directly adjacent to the intersection of two public Streets. Any use that does not meet all of the criteria specified above in this note may be allowed with a Special Use Permit, and a Special Use Permit is and shall be required.
- o. Hotel Supportive Housing may be Permitted only with a Conditional Use Permit pursuant to Part 22 of Chapter 20.80 and only until December 31, 2026.

Notes applicable to Downtown Primary Commercial (DC) Zoning District, including DG area:

1. Excludes manufacturing uses.
2. No Lot may be used solely for an Accessory Structure or Accessory Building.
3. Incidental repair includes air conditioning service, carburetor and fuel injection service, electrical service, radiator service, and tune-up, lube, oil change, and smog check, as well as tires, batteries and accessories installation. Does not allow body repair or painting.
4. All activity must be conducted indoors.
5. Non-engine and exhaust-related service and repair allowed as incidental use.
6. Limited to instrumental and vocal music and readings. Also, notwithstanding the provisions of Section 20.200.940 B., incidental instrumental and vocal music shall be allowed between the hours of 6:00 a.m. and 12:00 a.m.

7. Maximum occupancy load shall be that maximum occupancy load determined by the City fire marshal.
8. Pedestal Charge Stations that are incidental to a separate primary use, that do not impact on-site or off-site vehicular circulation, and that serve patrons of the primary use on-Site are permitted in all Downtown Zoning Districts.
9. Includes on-site outdoor dining area(s).
10. Certain modifications of existing Wireless Facilities may be Permitted with an Administrative Permit in accordance with Section 20.80.1915 of Chapter 20.80.

SECTION 3. Section 20.80.760 of Chapter 20.80 of Title 20 of the San José Municipal Code is amended to read as follows:

Part 9.75

MEDICAL ~~MARIJUANA CANNABIS~~ COLLECTIVES, MEDICAL CANNABIS COLLECTIVES CULTIVATION SITES ONLY, MEDICAL CANNABIS COLLECTIVES DISPENSARY SITES ONLY, MEDICAL CANNABIS BUSINESSES, AND NON-MEDICAL CANNABIS BUSINESSES

20.80.760 - Compliance required

- A. No person shall operate, or suffer or allow the operation of, a Medical ~~Marijuana Cannabis~~ Collective, ~~Medical Cannabis Collective~~ ~~Medical Cannabis Collective Cultivation Site Only~~, ~~Medical Cannabis Collective Dispensary Site Only~~, ~~cultivation site~~, ~~Medical Cannabis dispensary site~~, ~~Medical Cannabis Business~~, ~~or Non-medical Cannabis Business~~; provided, however, that a person may assert an affirmative defense to a criminal or civil enforcement action brought to enforce the provisions of this Title where the person, collective, business or activity is in full compliance with all of the applicable terms, provisions and conditions of this Code, including without limitation the provisions of this Part.

B. In addition to the requirements set forth in Section 20.80.760A. above, no person shall operate, or suffer or allow the operation of, a Medical Marijuana Cannabis Collective, Medical Cannabis Collective Cultivation Site Only, Medical Cannabis Collective Dispensary Site Only, Medical Cannabis Business, or Non-medical Cannabis Business until such time as a zoning code verification certificate has been duly applied for and issued by the Director pursuant to the provisions of Chapter 20.100 of this Title, which zoning code verification certificate confirms full conformance of a proposed Medical Marijuana Cannabis Collective, Medical Cannabis Collective Cultivation Site Only, Medical Cannabis Collective Dispensary Site Only, Medical Cannabis Business, or Non-medical Cannabis Business with all of the applicable locational siting requirements of this Title; provided a licensed Medical Cannabis Collective may expand its use to include a Medical Cannabis Business or Non-medical Cannabis Business without having to obtain a new zoning code verification certificate pursuant to this Section 20.80.760B. The application for such zoning code verification certificate shall be filed pursuant to the requirements and processes set forth in said Chapter 20.100.

C. In addition to the requirements set forth in Sections 20.80.760A. and 20.80.760B. above, no person shall operate, or suffer or allow the operation of, a Medical Cannabis Collective, a Medical Cannabis Collective Cultivation Site Only, a Medical Cannabis Collective Dispensary Site Only, a Medical Cannabis Business, or a Non-medical Cannabis Business until such time as all required state licenses have been duly applied for and issued by the State of California and are effective pursuant to the provisions of state law.

CD. Notwithstanding the foregoing, all persons who choose to be involved with cannabis, Medical Marijuana Cannabis, a Medical Marijuana Cannabis

Collective, a Medical Cannabis Collective Cultivation Site Only, a Medical Cannabis Collective Dispensary Site Only, a Medical Cannabis Business, or a Non-medical Cannabis Business do so entirely at their own risk that such involvement may constitute a violation of federal or state law.

SECTION 4. Section 20.80.765 of Chapter 20.80 of Title 20 of the San José Municipal Code is amended to read as follows:

20.80.765 - Personal use cultivation

The provisions of this Part are not intended to and shall not regulate the cultivation or possession of ~~medical-marijuana cannabis~~ for ~~a medical use as~~ personal use cultivation in full compliance with all applicable state and local laws ~~by a qualified patient or primary caregiver~~ at their primary residence located within a zoning district that allows for residential uses.

SECTION 5. Section 20.80.775 of Chapter 20.80 of Title 20 of the San José Municipal Code is amended to read as follows:

20.80.775 - Restrictions and Conditions

The location and operation of Medical ~~Marijuana-Cannabis~~ Collectives, Medical Cannabis Collective Cultivation Sites Only, Medical Cannabis Dispensary Sites Only, Medical Cannabis Businesses, and Non-medical Cannabis Businesses shall be subject to and shall comply with all of the following restrictions and conditions set forth in this Section, in addition to those restrictions and conditions that may be imposed on a Medical ~~Marijuana-Cannabis~~ Collective, Medical Cannabis Collective Cultivation Site Only, Medical Cannabis Collective Dispensary Site Only, Medical Cannabis Business,

or Non-medical Cannabis Business under or pursuant to other provisions of the San José Municipal Code or other applicable State or local laws, regulations or policies. Anyone operating, or allowing or suffering the operation of, a Medical ~~Marijuana Cannabis~~ Collective, Medical Cannabis Collective Cultivation Site Only, Medical Cannabis Collective Dispensary Site Only, Medical Cannabis Business, or Non-medical Cannabis Business shall comply with, or shall cause the compliance with, all of the following restrictions and conditions set forth in this Section, in addition to those restrictions and conditions that may be imposed on a Medical ~~Marijuana Cannabis~~ Collective, Medical Cannabis Collective Cultivation Site Only, Medical Cannabis Collective Dispensary Site Only, Medical Cannabis Business, or Non-medical Cannabis Business under or pursuant to other provisions of the San José Municipal Code or other applicable State or local laws, regulations or policies, at all times at the Medical ~~Marijuana Cannabis~~ Collective, Medical Cannabis Collective Cultivation Site Only, Medical Cannabis Collective Dispensary Site Only, Medical Cannabis Business, or Non-medical Cannabis Business; provided, however, that if there is a conflict between the provisions of this Section and the provisions of any other applicable State or local law, the most restrictive law allowed to apply shall govern and control:

- A. At the time of issuance of a zoning code verification certificate, no Medical ~~Marijuana Cannabis~~ Collective, Medical ~~Marijuana Cannabis~~ Collective Dispensary Site Only, ~~or~~ Medical ~~Marijuana Cannabis~~ Collective Cultivation Site Only, Medical Cannabis Business, or Non-medical Cannabis Business shall be located closer than a minimum of one thousand (1,000) feet from any Parcel on which a public or private preschool, elementary school, or secondary school exists; and

- B. At the time of issuance of a zoning code verification certificate, no Medical ~~Marijuana Cannabis~~ Collective, Medical ~~Marijuana Cannabis~~ Collective

Dispensary Site Only, ~~or~~ Medical ~~Marijuana-Cannabis~~ Collective Cultivation Site Only, Medical Cannabis Business, or Non-medical Cannabis Business shall be located closer than a minimum of one thousand (1,000) feet from any Parcel on which any of the following uses exist: a Child Day Care Center, a community or recreation center, a park, or a library; and

C. At the time of issuance of a zoning code verification certificate, no Medical ~~Marijuana-Cannabis~~ Collective, Medical ~~Marijuana-Cannabis~~ Collective Dispensary Site Only, ~~or~~ Medical ~~Marijuana-Cannabis~~ Collective Cultivation Site Only, Medical Cannabis Business, or Non-medical Cannabis Business shall be located closer than a minimum of five hundred (500) feet from any Parcel on which any of the following uses exist: a substance abuse rehabilitation center or an Emergency Residential Shelter; and

D. At the time of issuance of a zoning code verification certificate, no Medical ~~Marijuana-Cannabis~~ Collective, Medical ~~Marijuana-Cannabis~~ Collective Dispensary Site Only, ~~or~~ Medical ~~Marijuana-Cannabis~~ Collective Cultivation Site Only, Medical Cannabis Business, or Non-medical Cannabis Business shall be located closer than a minimum of one hundred fifty (150) feet from any Parcel on which any of the following uses exist: religious assembly or adult day care center; and

E. The distances established in Subsections A. through D. above shall be measured as follows:

1. For a Medical ~~Marijuana-Cannabis~~ Collective, Medical ~~Marijuana-Cannabis~~ Collective Dispensary Site Only, ~~or~~ Medical ~~Marijuana-Cannabis~~ Collective

- Cultivation Site Only, Medical Cannabis Business, or Non-medical Cannabis Business located in a multi-tenant Building with tenant spaces occupied by uses other than the collective, the distance shall be measured in a straight line from the Parcel boundary of the sensitive use to the nearest exterior wall of the collective's occupied tenant space in the shared Building.
2. For a Medical ~~Marijuana-Cannabis~~ Collective, Medical ~~Marijuana-Cannabis~~ Collective Dispensary Site Only, ~~or~~ Medical ~~Marijuana-Cannabis~~ Collective Cultivation Site Only, Medical Cannabis Business, or Non-medical Cannabis Business that is the sole occupant of a Building, the distance shall be measured in a straight line from the Parcel boundary of the sensitive use to the nearest exterior wall of the collective's Building envelope.
- F. At the time of issuance of a zoning code verification certificate, no Medical ~~Marijuana-Cannabis~~ Collective, ~~or~~ Medical ~~Marijuana-Cannabis~~ Collective Dispensary Site Only, Medical Cannabis Business, or Non-medical Cannabis Business shall be located on a Parcel of real property that is closer than a minimum of fifty (50) feet from any Parcel on which another Medical ~~Marijuana-Cannabis~~ Collective, ~~or~~ Medical ~~Marijuana-Cannabis~~ Collective Dispensary Site Only, Medical Cannabis Business, or Non-medical Cannabis Business is located, as measured in a straight line between the boundary lines of the Parcels that are closest to one another; and
- G. At the time of issuance of a zoning code verification certificate, no Medical ~~Marijuana-Cannabis~~ Collective, Medical ~~Marijuana-Cannabis~~ Collective Dispensary Site Only, ~~or~~ Medical ~~Marijuana-Cannabis~~ Collective Cultivation Site Only, Medical Cannabis Business, or Non-medical Cannabis Business shall be located on a parcel of real property that is closer than a minimum of one hundred

fifty (150) feet from any residential use, including a residential legal nonconforming use, that is not incidental to a primary nonresidential use, as measured in a straight line between the boundary lines of the Parcels that are closest to one another; and

- H. At the time of issuance of a zoning code verification certificate, no Medical ~~Marijuana—Cannabis~~ Collective, Medical ~~Marijuana—Cannabis~~ Collective Dispensary Site Only, ~~or~~ Medical ~~Marijuana—Cannabis~~ Collective Cultivation Site Only, Medical Cannabis Business, or Non-medical Cannabis Business that is located in the Industrial Zoning Districts shall be located on a Parcel of real property that is within any of the following areas:
1. The area within the North San José Area Development Policy Boundary as defined in Section 14.29.020 D. of Title 14 of this Code; or
 2. The area within the Edenvale Area Development Policy boundaries, which is that area within the corporate limits of the City of San José, consisting of approximately two thousand three hundred twelve (2,312) acres, as specified and depicted in the Edenvale Area Development Policy adopted and as amended by the City Council.
 3. The area within the International Business Park Boundary, which for purposes of this Title means and consists of that area within the corporate limits of the City of San José bounded by Interstate Highway 880, Montague Expressway, Trade Zone Boulevard, the Union Pacific Railroad line, Murphy Avenue, and Brokaw Road.
- I. At the time of issuance of a zoning code verification certificate, no Medical ~~Marijuana—Cannabis~~ Collective, ~~or~~ Medical ~~Marijuana—Cannabis~~ Collective Cultivation Site Only, Medical Cannabis Collective Dispensary Site Only, Medical

Cannabis Business, or Non-medical Cannabis Business that is located in the Light Industrial Zoning District shall be located on a Parcel of real property that is within either of the following areas:

1. Those certain enterprise zones that have been or may be created and whose boundaries have been or may be established through a resolution adopted by the City Council or by the City Manager pursuant to a resolution adopted by the City Council; or
 2. Those other business incentive zones (such as a foreign trade zone) that may be created and whose boundaries are established through a formal, public action taken by the City Council.
- J. No Medical ~~Marijuana—Cannabis~~ Collective, Medical Cannabis Collective Cultivation Site Only, Medical Cannabis Collective Dispensary Site Only, Medical Cannabis Business, or Non-medical Cannabis Business shall be located on the ground floor of Structures or Buildings located on real property that, in whole or in part and at the time of issuance of a zoning code verification certificate, is within the DC-Downtown Primary Commercial Zoning District.
- K. No Medical ~~Marijuana—Cannabis~~ Collective, Medical Cannabis Collective Cultivation Site Only, Medical Cannabis Collective Dispensary Site Only, Medical Cannabis Business, or Non-medical Cannabis Business shall be located or shall operate on any floor of a retail commercial shopping center located on a Parcel or Parcels totaling over forty (40) acres in size.

- L. All activities conducted at a Medical ~~Marijuana-Cannabis~~ Collective, Medical Cannabis Collective Cultivation Site Only, Medical Cannabis Collective Dispensary Site Only, Medical Cannabis Business, or Non-medical Cannabis Business shall at all times fully comport with the provisions of ~~California Health & Safety Code Sections 11362.5 et seq. through Section 11362.83~~ the Compassionate Use Act, the Medical Marijuana Program Act, the Medical Cannabis Regulation and Safety Act, the Adult Use of Marijuana Act, and any other applicable state laws, as the same may be amended from time to time; and
- M. ~~No retail sales of any products shall occur or be allowed at a Medical Marijuana Collective; provided, however, that transfers of Medical Marijuana products in strict compliance with~~ All activities conducted at a Medical Cannabis Collective, Medical Cannabis Collective Cultivation Site Only, Medical Cannabis Collective Dispensary Site Only, Medical Cannabis Business, or Non-medical Cannabis Business shall at all times fully comport with the provisions of Chapter 6.88 of Title 6 of this Code ~~and all applicable State laws may occur~~; and
- N. The hours within which a Medical ~~Marijuana-Cannabis~~ Collective, Medical Cannabis Collective Cultivation Site Only, Medical Cannabis Collective Dispensary Site Only, Medical Cannabis Business, or Non-medical Cannabis Business may choose to operate shall be within the hours of 9:00 a.m. and 9:00 p.m.

SECTION 6. Sections 20.80.780 and 20.80.790 of Chapter 20.80 of Title 20 of the San José Municipal Code is deleted in its entirety as follows:

20.80.780 – Prohibition of Cultivation, Processing, Manufacture, Distribution, Testing, and Sale of Nonmedical Marijuana

The purpose of this Part is to confirm that:

- A. ~~The cultivation, processing, manufacture, distribution, testing, and sale of Non-medical Marijuana Cannabis, including marijuana cannabis products, is a prohibited restricted land use in all zoning districts in the City of San José. Non-medical Marijuana Cannabis is any marijuana cannabis or marijuana cannabis product, as defined in Division 10 of the California Health and Safety Code, which is not regulated by the City under Chapter 6.88 of Title 6 of this Code.~~
- B. ~~Notwithstanding, Subsection A. , if Proposition 64 (also known as the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”)) passes at the November 8, 2016 statewide general election, not more than six (6) living marijuana plants may be planted, cultivated, harvested, dried, or processed by a person over the age of twenty one (21) inside a private residence, or inside an accessory building to a private residence that is fully enclosed and secure and located upon the grounds of the private residence, as an incidental use to the primary private residential use, provided that marijuana in excess of 28.5 grams produced by plants kept for indoor personal cultivation under this Part must be stored in a locked space on the grounds of the private residence not visible from the public right-of-way. Any personal cultivation under this Part shall comply with all requirements of this Code, including without limitation, Chapter 17.12 of this Code and Title 24 of this Code.~~

20.80.790 – Sunset Clause

~~Subsection B. of Section 20.80.780 of this Chapter shall automatically sunset and have no force or effect in the event AUMA fails to pass at the November 8, 2016 statewide general election.~~

~~In the event AUMA fails to pass at the November 8, 2016 statewide general election, the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including marijuana products, whether indoors or outdoors, shall continue to be prohibited in all zoning districts of the City of San José.~~

SECTION 7. Chapters 20.100.1530, 20.100.1535, and 20.100.1540 of Title 20 of the San José Municipal Code is amended to read as follows:

20.100.1530 - Availability of Certificate - Medical ~~Marijuana-Cannabis~~ Collective, Medical Cannabis Collective Cultivation Site Only, Medical Cannabis Collective Dispensary Site Only, Medical Cannabis Business, or Non-medical Cannabis Business.

- A. A Medical ~~Marijuana-Cannabis~~ Collective, Medical Cannabis Collective Cultivation Site Only, Medical Cannabis Collective Dispensary Site Only, Medical Cannabis Business, or Non-medical Cannabis Business shall keep, or cause to be kept, a true and correct copy of the zoning code verification certificate issued by the Director for that Medical ~~Marijuana-Cannabis~~ Collective, Medical ~~Marijuana-Cannabis~~ Collective Dispensary Site Only, ~~and for any~~ Medical ~~Marijuana-Cannabis~~ Collective Cultivation Site Only, Medical Cannabis Business, or Non-medical Cannabis Business, in legible condition, on the premises of that Medical ~~Marijuana-Cannabis~~ Collective, Medical ~~Marijuana-Cannabis~~ Collective, Dispensary Site Only, ~~and on the premises of any~~ Medical ~~Marijuana-Cannabis~~

Collective Cultivation Site Only, Medical Cannabis Business, or Non-medical Cannabis Business.

- B. A Medical ~~Marijuana-Cannabis~~ Collective, Medical Cannabis Collective Cultivation Site Only, Medical Cannabis Collective Dispensary Site Only, Medical Cannabis Business, or Non-medical Cannabis Business shall present, or cause to be presented, the copy of its zoning code verification certificate to the City Manager or his/her designee, a City police officer or City code enforcement officer who is at the Site of the Medical ~~Marijuana-Cannabis~~ Collective, Medical Cannabis Collective Cultivation Site Only, Medical Cannabis Collective Dispensary Site Only, Medical Cannabis Business, or Non-medical Cannabis Business immediately upon request.

20.100.1535 - Updated certificate - Medical ~~Marijuana-Cannabis~~ Collective, Medical Cannabis Collective Cultivation Site Only, Medical Cannabis Collective Dispensary Site Only, Medical Cannabis Business, or Non-medical Cannabis Business.

A Medical ~~Marijuana-Cannabis~~ Collective, Medical Cannabis Collective Cultivation Site Only, Medical Cannabis Collective Dispensary Site Only, Medical Cannabis Business, or Non-medical Cannabis Business shall apply for a new zoning code verification certificate whenever it intends to modify its operations in a manner that may impact compliance with the provisions and conditions set forth in this Title.

20.100.1540 - Nontransferability - Medical ~~Marijuana~~ Cannabis Collective, ~~Medical Cannabis Collective Cultivation Site Only, Medical Cannabis Collective Dispensary Site Only, Medical Cannabis Business, or Non-medical Cannabis Business~~

A zoning code verification certificate may not be transferred or assigned, except that a zoning code verification certificate may be transferred or assigned to another Medical ~~Marijuana~~ Cannabis Collective, Medical Cannabis Collective Cultivation Site Only, Medical Cannabis Collective Dispensary Site Only, Medical Cannabis Business, or Non-medical Cannabis Business that plans to operate on the same Site and has obtained a new or updated registration pursuant to Chapter 6.88 of the Code authorizing such transfer or assignment.

PASSED FOR PUBLICATION of title this _____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC

City Clerk

The following
items were
received after
packets were
distributed.

On 1 Nov 2017, at 18:20, Nusbaum, Jenny <Jenny.Nusbaum@sanjoseca.gov> wrote:

That is one reason that staff has not proposed to allow any of these uses on ag land. I will forward your comments to the Planning Commission.

Jenny Nusbaum
City of San José, Dept. of PBCE
Planning Division
200 East Santa Clara Street, 3rd Floor Tower
San José, CA 95113
jenny.nusbaum@sanjoseca.gov
408-535-7872

From: Shani Kleinhaus [REDACTED] > on behalf of shani kleinhaus <shani@scvas.org>
Sent: Wednesday, November 1, 2017 6:18 PM
To: Nusbaum, Jenny
Subject: Re: City of San Jose has Scheduled Public Hearings on Changes to the City's Marijuana Program

Thanks Jenny,
We are concerned since the State's rule making seems to allow cultivation on steep slopes and waves permits for infrastructure - no requirement for clean water and endangered species regulation...

Shani

Shani Kleinhaus, Ph.D.
Environmental Advocate
Santa Clara Valley Audubon Society
22221 McClellan Rd. Cupertino 95014
Tel. (650) 868 2114
shani@scvas.org

On 1 Nov 2017, at 18:14, Nusbaum, Jenny <Jenny.Nusbaum@sanjoseca.gov> wrote:

It is not permitted now, and staff is not proposing to permit it. I don't know what Council will direct staff to revise in staff's proposal or whether Council will accept staff's recommendation.

Jenny Nusbaum

City of San José, Dept. of PBCE

Planning Division

200 East Santa Clara Street, 3rd Floor Tower

San José, CA 95113

jenny.nusbaum@sanjoseca.gov

408-535-7872

From: Shani Kleinhaus <[REDACTED]> on behalf of shani kleinhaus <shani@scvas.org>

Sent: Wednesday, November 1, 2017 6:12 PM

To: Nusbaum, Jenny

Cc: Mackenzie Mossing

Subject: Re: City of San Jose has Scheduled Public Hearings on Changes to the City's Marijuana Program

Hi Jenny,

Does this mean that cannabis cultivation will not be permitted on agriculture/rangelands in the City?

Thanks,

Shani

Shani Kleinhaus, Ph.D.

Environmental Advocate

Santa Clara Valley Audubon Society

22221 McClellan Rd. Cupertino 95014

Tel. (650) 868 2114

shani@scvas.org

On 1 Nov 2017, at 11:47, Nusbaum, Jenny <Jenny.Nusbaum@sanjoseca.gov> wrote:

It is not proposed to change Ag.

-- Jenny

On Nov 1, 2017, at 11:13 AM, Mackenzie Mossier <[REDACTED]> wrote:

Hi Jenny,

Will this ordinance amendment change anything for lands that are zoned agriculture?

Thanks,

Mackenzie

Begin forwarded message:

From: "Nusbaum, Jenny" <Jenny.Nusbaum@sanjoseca.gov>

Subject: City of San Jose has Scheduled Public Hearings on Changes to the City's Marijuana Program

Date: 31 October 2017 at 14:54:53 GMT-7

NOTICE OF PUBLIC HEARINGS TO AMEND TITLE 6 (BUSINESS LICENSES AND REGULATIONS) AND TITLE 20 (THE ZONING ORDINANCE) OF THE SAN JOSE MUNICIPAL CODE TO ADD AND AMEND REGULATIONS, INCLUDING LAND USE REGULATIONS, FOR THE OPERATION AND LOCATION OF MEDICAL AND NON-MEDICAL MARIJUANA/CANNABIS COLLECTIVES/BUSINESSES, AND CULTIVATION AND DISPENSING OF MEDICAL AND NON-MEDICAL MARIJUANA

At the hearings, the Planning Commission will consider modifications to Title 20 of San José Municipal Code (the Zoning Ordinance) and City Council will consider will consider modifications to Title 6 (Business Licenses and Regulations) and Title 20 (the Zoning Ordinance) of San José Municipal Code. You are welcome to attend and speak on this issue.*

The Planning Commission of the City of San José is scheduled to consider modifications to Title 20 of the San José Municipal Code (the Zoning Code) on:

Planning Commission Hearing

Wednesday, November 8, 2017

6:30 p.m.

City Council Chambers

City Hall

200 East Santa Clara Street

The City Council of the City of San José is scheduled to consider modifications to Title 6 (Business Licenses and Regulations) and Title 20 (the Zoning Code) of the San José Municipal Code on:

City Council Hearing

Tuesday, November 14, 2017

1:30 p.m.

City Council Chambers

City Hall

200 East Santa Clara Street

The following changes are being considered:

Adoption of ordinances of the City of San José amending: (i) Chapter 6.88 of the San José Municipal Code to add and amend regulations pertaining to Medical and Non-Medical Marijuana Collectives/Businesses, and the cultivation and dispensing of medical and non-medical marijuana; and (ii) Sections 20.10.040, 20.50.100, 20.70.100, and Chapter 20.80 Parts 9.75 and 9.8 including but not limited to Sections 20.80.760, 20.80.765, 20.80.775, 20.100.1530, 20.100.1535, and 20.100.1540 of the Zoning Ordinance to add “Medical Cannabis Collective, Medical Cannabis Business, and Non-Medical Cannabis Business” and “Medical Cannabis Collective, Medical Cannabis Business, and Non-Medical Cannabis Business, Cultivation Site Only” or similarly defined land uses as newly enumerated Restricted Uses in specified Industrial Zoning Districts and the Downtown Primary Commercial Zoning District, and to add non-medical marijuana to the existing land use regulations currently pertaining to medical marijuana collectives, and making other technical, non-substantive, or formatting changes within those Sections of Title 6 and Title 20, all to add and amend land use regulations pertaining to Medical Cannabis Collectives, Medical Cannabis Businesses and Non-Medical Cannabis Businesses. Citywide

CEQA: Negative Declaration (File No. PP11-039, Resolution No. 75984), as addended by File Nos. PP11-076, PP14-030, PP16-076, and PP17-070; and Statutory Exemption pursuant to Section 26055 (h) of the California Business and Professions Code: Without limiting any other statutory exemption or categorical exemption, Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity.

Planning Commission draft recommendations will be available for review seven calendar days prior to the public hearing. City Council draft recommendations will be available for review ten calendar days prior to the public hearing. Please review at: <http://www.sanjoseca.gov/index.aspx?NID=1763>

To arrange an accommodation under the Americans with Disabilities Act to participate in this public meeting, please call (408) 535-1260 or (408) 294-9337 (TTY) at least two business days before the meeting. Để biết thêm chi tiết về tờ thông tin này bằng tiếng Việt, xin quý vị liên lạc Kieulan Pham ở số 408-793-4174 và đọc số dự án PP17-070. Para información en español acerca de esta solicitud, comuníquese con Jennifer Provedor al 408-793-4100, e indique el número de Proyecto PP17-070.

* If you choose to challenge these land use decisions in court, you may be limited to only those issues you, or someone else, raised and discussed at the public hearing or in written correspondence delivered to the City at or prior to the public hearing. If you desire to appeal the CEQA clearance prepared for this project that is described above, please consult Title 21 of the San José Municipal Code for the appropriate procedures to follow.

Comments and questions are welcome and should be referred to Wendy Sollazzi, Division Manager of Medical Marijuana Control at (408) 537-1420 or dmmc@sanjoseca.gov. Please refer to file number PP17-070 for further information on this project.

Prior to the scheduled hearings, please check the agendas at the web-links that are provided in this notice for more detailed and updated information on the public hearings.

Jenny Nusbaum

Principal Planner

City of San José, Dept. of PBCE

Planning Division

200 East Santa Clara Street, 3rd Floor Tower

San José, CA 95113

jenny.nusbaum@sanjoseca.gov

408-535-7872



September 6, 2017

Via email only

State Water Resources Control Board
Attn: Jeanine Townsend
commentletters@waterboards.ca.gov

Re: Comment Letter – Draft Cannabis Cultivation Policy and Staff Report

Dear Ms. Townsend,

The Santa Clara Valley Audubon Society and the Citizens Committee to Complete the Refuge appreciate this opportunity comment on Draft Cannabis Cultivation Policy, Principles and Guidelines for Cannabis Cultivation (Draft Policy) and its requirements and also the analysis of the associated Staff Report.

Members of our organizations care deeply about our State’s creeks, wetlands and riparian ecosystems as well as downstream protection of our wetlands, lakes and estuaries. Our members enjoy California’s rich, native, biological resources – fish, birds, plants and all wildlife - that share our varied landscapes. We submit comments here to safeguard our watersheds and waterways and the biota they support from degradation by any inappropriate cannabis cultivation actions that might erode, cause sedimentation, pollute or significantly disrupt the biological integrity of riparian and wetland habitats or push species towards extinction.

We think of a recent enforcement action in the coastal range on the San Francisco Peninsula, where law enforcement, the California Department of Fish and Wildlife (CDFW), and others made arrests and destroyed a very large, hidden and illegal cannabis operation within an open space preserve. Such unregulated operations destroy local ecosystems. We are hopeful that the State sets standards, such as through this Policy, for legal cannabis cultivation operations that convey the highest level of protection of watersheds, waterways, water supplies and treasured natural resources.

Unfortunately, we are very concerned about aspects of the Draft Policy, and the Staff Report, as we will describe in comments that follow.

General Comments of Concern

1. Clean Water Act (CWA) and California Department of Fish and Wildlife (CDFW) permits: Several times the Policy and the Guidelines state that there is a need for CWA 404/401 permits and CDFW permits for new fill. Unfortunately, the staff report discusses the 404^f exemptions while not giving context clarifying the extent for which new fill associated with stream crossings at new or rehabilitated access roads may be eligible for those exemptions. Nor do the Draft Policy terms or the Staff Report state that actions at new creek crossings or for rehabilitation of existing crossings require permits under CWA 404/401 and CDFW Lake and Stream Alteration agreement (LSA). We are very concerned that this omission may be interpreted as a sweeping, wide-net exemption and may inadvertently be used to cover stream crossings by new or enhanced access roads in farms, ranches, forests and open space areas. Such overreaching, unintended exemptions can have ripple effects in wildlife impacts, e.g. violations of the Federal and State Endangered Species Acts. We ask for clear guidelines that state unequivocally that construction of new creek crossings and enhancements to existing creek crossings with fill must require permits under CWA Sections 404 and 401, and CDFW Lake and Streambed Alteration agreements.
2. Roads and Total Disturbed Area: In the Policy, Total Disturbed Acres are used to determine the appropriate tier for a cultivation operation. However Definition 11, Attachment A states that land disturbance includes “all activities whatsoever associated with developing or modifying land for cannabis cultivation related activities or access.” Does that include land disturbed during the construction of access roads and other infrastructure? Does it include land disturbed as incursion in a riparian corridor? It should and Definition 11 should say so.
3. Certification: To avoid confusion and misinterpretation, the term “Certification” should unambiguously and crisply mean “CWA Section 401 Water Quality Certification” and should be defined as such in the Acronyms and Abbreviations section. If some actions associated with the Cannabis Cultivation Policy require other types of certifications, the other certifications should be termed uniquely and specifically described.
4. Federal CWA Permits: In *Section 1 – General Requirements and Prohibitions, General Requirement 1* the Policy states that the State Water Board or Regional Water Board may allow impacts to waters of the U.S.², even if a federal agency has not granted a permit for impacts to federal waters. We believe that Water Quality Control Board (State and/or regional) should not allow a Cannabis Cultivation project to impact any waters of the U.S unless the Army Corps of Engineers (ACE) permits it. Moreover, we believe that the Water Board does not have legal authority to allow an impact to a water of the U.S. in cases where ACE has not issued a permit for that impact. We are aware that federal law does not recognize legal cannabis cultivation. Nonetheless, we maintain that the State cannot provide

¹ The text in the Staff Report does not specifically identify the exemptions as “404(f)” exemptions, but the listed exemptions seem to be the 404(f) exempt activities.

² The statement proclaims, “If the CWA permit cannot be obtained, the cannabis cultivator shall contact the appropriate Regional Water Board or State Water Board prior to commencing any cultivation activities”

approval to cannabis cultivation projects if that approval violates the Clean Water Act nor do we find it tolerable that a State policy suggests it is possible. The statements in the Draft Policy and Staff Report must be crystal clear on this issue.

5. California Environmental Quality Act (CEQA): The statement that “This Policy meets the requirements of Water Code section 13149(b)(1) and is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to California Code of Regulations, title 14, section 15308” (Page 6, Cannabis Cultivation Policy Overview) is of great concern to us. Given the potential for wide range environmental and waterway degradation, we simply cannot agree that the voters of the state intended to categorically exempt all cultivations and associated infrastructure from the California Environmental Quality Act. It seems to us that the footnote at the end of this sentence contradicts the categorical exemption: “California Code of Regulation section 15308. Actions by Regulatory Agencies for Protection of the Environment. Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption.” We believe that the Policy and Guidelines should be re-written to clearly state that any actions or projects with potential impacts to Waters of the State and/or federal or state endangered and threatened species will require CEQA review.
6. Protection of endangered and threatened species: The policy as presented (General Requirement 4) describes the applicant’s responsibility in regards to special status species plants and wildlife under state and federal law but lacks guidelines that present steps that would initiate consultation with NMFS, USFWS and CDFW. While it does make the cultivator responsible for “meeting all requirements under the California ESA and the federal ESA” it lacks a statement of the initiating actions and timing of consultation with the wildlife agencies that would be needed to fulfill the applicant’s permit requirements.

Usually, a CWA 404 permit application requires a Biological Opinion from the federal wildlife agencies. If there is no 404 process, the Policy should specify the alternative initiation process with the federal agencies, as appropriate, perhaps utilizing findings identified under CEQA impact analysis. But if new areas of cultivation, new roads and road crossings in riparian corridors and other sensitive biotic habitats are exempt from CWA Section 404 permits and from CEQA, other triggers or indicators and criteria must be developed.

This specific guidance is necessary as, without the trigger of a 404 permit or CEQA for a Section 7 consultation or possibly other verifiable documentation that special status species may be present on a site, the only other way to receive a federal Biological Opinion would be through a Habitat Conservation Plan (Section 10 of the federal Endangered Species Act). This type of consultation usually involves many stakeholders, is often very costly, and normally can take several years, far too burdensome for purposes of a single cannabis cultivation operation.

The Policy and Guidelines should be revised to clearly state how take of listed species will be prevented, and to identify triggers and process for initiation of all appropriate wildlife consultations. Just as the State cannot afford to allow impacts to Waters of the United States under this Policy, nor can it afford to allow take of listed species. Doing so is unthinkable.

7. Definition of High Risk Sites. (Policy Implementation and Compliance, Application Process and Fees, page 17): Sites that pose a higher threat to water quality are defined as sites that disturb a larger area, located on a steeper slope, or located close to a surface water body. The Policy on page 17 suggests that such sites “require a greater level of regulatory oversight, which translates to higher costs to achieve water quality protection. High risk sites (any portion of the disturbed area is located within the riparian setback requirements), with the exception of activities authorized by CDFW with a Lake or Streambed Alteration Agreement or under a Clean Water Act section 401/section 404 permit (e.g. watercourse crossing, installation of diversion works), will be assessed the high-risk fee until the activities comply with the riparian setback Requirements.” The Policy, including Table 1, p. 14 of the Staff Report, seems to exempt stream crossings and other potential activities from the activities that require a riparian setback. Roads, bridges and creek crossings have adverse impacts to streams and their riparian ecosystems – both short term impacts during construction and long term impacts of use (non-point pollution, shading, noise, disruption of wildlife corridors, to name a few). Therefore, we ask that all activities that include permanent or temporary intrusions into the riparian setback such as would require CWA 401 and 404 permits as well as CDFW Lake and Streambed Alteration agreements be defined as “High Risk”

8. Land Disturbance definition provides.

“...land areas where natural conditions have been modified in a way that may result in an increase in turbidity in water discharged from the site. Disturbed land includes areas where natural plant growth has been removed whether by physical, animal, or chemical means, or natural grade has been modified for any purpose. Land disturbance includes all activities whatsoever associated with developing or modifying land for cannabis cultivation related activities or access. Land disturbance activities include, but are not limited to, construction of roads, buildings, water storage areas; excavation, grading, and site clearing. Disturbed land includes cultivation areas, storage areas where soil or soil amendments (e.g., potting soil, compost, or biosolids) are located.” (Attachment A: Requirements for Cannabis Cultivation. Overview, Definitions, Definition 11).

As expressed above, we are concerned because this definition covers “all activities whatsoever” including access and construction of access roads, yet the Policy exempts roads that receive CWA Section 404/401 permits from being included in areas treated as disturbed land in riparian setbacks. We are opposed to this exclusion. Construction and enhancement of access roads should not be exempted by the Policy and Guidelines.

Comments on Sections of the Draft Policy

9. Section 1 – General Requirements and Prohibitions

- General Requirement 1 provides, “If the CWA permit cannot be obtained, the cannabis cultivator shall contact the appropriate Regional Water Board or State Water Board prior to commencing any cultivation activities”. As stated in comment 3 above, we are extremely concerned with the implication that the State Water Board or a Regional Water Board may allow an impact to a water of the U.S., even if the Corps does not grant a permit for such impacts. The State should not provide cultivation projects with approval to violate the Clean Water Act.
- General Requirement 3 direct cultivators to consult with CDFW to determine if a Lake and Streambed Alteration Agreement (LSA Agreement) only for activities that may:
 - divert or obstruct the natural flow of any river, stream, or lake;
 - change or use any material from the bed, channel, or bank of any river, stream, or lake; or
 - deposit debris, waste, or other materials that could pass into any river stream or lake.

We believe a fourth bullet is needed to cover stream crossings that include new culverts and bents within the channel. This will help reduce impacts to wildlife linkages and to aquatic and riparian species.

- General Requirement 4 proposes to protect all listed species of plants and animals (State and Federal) and requires the cannabis cultivator to meet all requirements under the California ESA and the federal ESA. As discussed above, the language of this requirement does not provide triggers to show how consultation with NMFS or USFWS will be initiated for activities that do not require CWA Section 404/401 permits or even CEQA. The text should be revised to clearly describe the procedures that will be used to initiate consultations with NMFS and/or USFWS for all activities with the possibility to cause take of a federally listed species. Further, CEQA should be required for cultivation projects that have the potential to cause take of a state listed species.
- General Requirement 29 provides, “In timberland areas, unless authorized by CAL FIRE or the Regional Water Board Executive Director, Cannabis cultivators shall not remove trees within 150 feet of fish bearing water bodies or 100 feet of aquatic habitat for non-fish aquatic species (e.g., aquatic insects). (Public Resources Code section 4526.)”. It is not clear whether this requirement applies to access roads – we believe that it should and should be stated in the Policy as such.
- General Requirement 31 asks for self-certification of compliance. This is of great concern to us because it does not provide a way to verify that cultivators are correctly following the Guidelines. Many of the issues we brought up previously in this letter address ambiguities related to needed permits and triggers to initiation of consultation with government agencies. If construction projects are exempt from CEQA and CWA Section 404(f), it will be impossible to determine whether or not the cultivator performed work in stream channels without obtaining necessary CWA 404/401 permits or CDFW Lake and

Stream Alteration Agreements. If permit oversight through existing Water Board enforcement processes are not mentioned but are considered adequate, please describe how they will work with this Policy.

10. Cannabis General Water Quality Certification.

The language of Term No. 3 would be greatly improved by a list of activities in surface waters that will require water quality certification (for example, culverts at stream crossings, bents for bridges that are located within the stream channel, diversion structures). Furthermore, this term should clarify that activities requiring water quality certification also require CEQA review, and that new stream crossings would require a CDFW Lake and Streambed Alteration Agreement.

11. Section 2 – Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation. Limitations on Earthmoving.

- Term 4 implies that CWA section 404 permit, CDFW LSA Agreement, or WDRs issued by the State Water Board or Regional Water Board are likely to authorize the operation of vehicles or equipment within a riparian setback. In fact, these permits usually prohibit “fuel, clean, maintain, repair, or store vehicles or equipment within the riparian setbacks or within waters of the state”. Term 4 should be modified to prohibit such activities, and to clarify instead that the construction of access roads (including over culverts and bridges) that will be used by a vehicles or equipment does require a CWA section 404 permit, a CDFW LSA Agreement, or WDRs issued by the State Water Board or Regional Water Board.
- Term 5 asks for road construction to be designed by a “qualified professional” and suggests that cultivators “shall conduct all road design, land development, and construction activities in compliance with the California Forest Practices Act and any state, county, city, or local requirements, as applicable”. State Water Board or Regional Water Board staff always review and comment on designs for creek crossings before they are constructed, and their review should be considered applicable. LSA is also applicable for creek crossings. This Term should be tightened to require review of designs of creek crossings by State Water Board or Regional Water Board staff. In addition, the proper design of a stable culvert that will not trigger erosion, headcuts or scour pools requires design by an experienced, professional fluvial geomorphologist. Please revise Term 15 to require that stream crossing and culvert designs must be prepared by experienced fluvial geomorphologists, and reviewed by State Water Board or Regional Water Board staff and By CDFW.

12. Section 2 – Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation. Private Road/Land Development.

- Term 16 requires cultivators to obtain all required permits and approvals prior to the construction of any road constructed for cannabis cultivation activities. Permits may include section 404/401 CWA permits, Regional Water Board WDRs (when applicable), CDFW LSA Agreement, and county or local agency permits. Please add text to this term to clarify that roads constructed for cannabis cultivation activities are not covered by the CWA Section 404(f) exemption for road and forest roads.

- Term 17 directs cultivators to the Forest Practice Rules and the Road Handbook. Use of these rules for road construction is insufficient to ensure that a road crossing avoids and minimizes impacts to waters of the State to the maximum extent practicable. This is why State Water Board or Regional Water Board staff regularly reviews and comments on designs for creek crossings before they are constructed. As commented above (comment 11, Term 5), Please revise Term 17 to require review of designs of creek crossings by State Water Board or Regional Water Board staff, require that culvert designs be prepared by experienced fluvial geomorphologists, and direct cultivators to seek LSA from CDFW.

13. Section 2 – Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation. Water Course Crossings.

Terms 54 and 57 provide design specifications for culverts and stream crossings. These specifications are incomplete. Proper design of culverts also requires that the culvert conform to the existing channel gradient and that the culvert minimize reductions in stream sinuosity. Again, the design of a stable culvert that will cause erosion or flooding, and will not trigger headcuts or scour pools requires design by an experienced fluvial geomorphologist. Please revise Terms 54 and 57 to require that culvert designs be prepared by experienced fluvial geomorphologists and that culvert designs be reviewed by State Board or Regional Water Board staff before they are constructed.

14. Section 2 – Requirements Related to Water Diversions and Waste Discharge for Cannabis Cultivation. Riparian and Wetland Protection and Management.

Term 65 states: “Cannabis cultivators shall maintain existing, naturally occurring, riparian vegetative cover (e.g., trees, shrubs, and grasses) in aquatic habitat areas *to the maximum extent possible* to maintain riparian areas for streambank stabilization, erosion control, stream shading and temperature control, sediment and chemical filtration, aquatic life support, wildlife support, and to minimize waste discharge.” (emphasis added) This language implies that it is potentially permissible to remove all trees, shrubs and grasses in riparian areas. It definitely does not provide adequate protection nor sufficiently constrain impacts to riparian vegetation and to endangered and threatened species. Please revise Term 65 to require the cultivator to detail what is “possible” and why, limit the percentage of on-site riparian vegetation that may be impacted for a cultivation project and require appropriate mitigation for impacts to riparian vegetation.

15. Draft Cannabis Cultivation Staff Report (July 7, 2017)

- Page 34 includes a discussion of Discharges of dredged or fill material to waters of the US which are regulated by the Army Corps under section 404 of the Clean Water Act and a water quality certification under section 401 of the Clean Water Act. Additionally, the text provides examples of exempt activities such as normal farming, ranching and silviculture activities; maintenance of currently serviceable structures such as dikes, dams, levees, bridge abutments or approaches, and transportation structures; construction

or maintenance of irrigation ditches, or maintenance of drainage ditches; and construction of farm roads or forest roads in compliance with applicable best management practices. Converting a wetland to a non-wetland or conversion from one wetland use to another is not exempt. Dischargers, including cannabis cultivators, proposing non-exempt discharges of dredged or fill material are required to obtain a section 404 permit from the Army Corps.

We ask for a tightening of the language to clarify that work associated with access roads for cannabis cultivation *is not covered* by the 404(f) exemptions from federal regulation, and is subject to CWA Section 404/401 permits.

- Page 34 also includes additional discussion of how Cannabis General Order provides exemptions from several Water Quality Orders (2004-0004-DWQ, 2003-0017-DWQ and any or any successor order). It states, “Cannabis cultivators that require a section 401 water quality certification may either seek coverage under the Cannabis General Water Quality Certification or apply to the State Water Board or applicable Regional Water Board for a site-specific water quality certification”. We are greatly concerned because the proposed Cannabis General Water Quality Certification appears to require less extensive review of project designs than is required for projects that obtain individual water quality certifications from the Regional Water Boards. Impacts to streams associated with new bridges or culverts for access roads can significantly destabilize creeks, resulting in erosion, headcutting, bank failures, and the creation of barriers to fish passage and wildlife movement. In order to protect the geomorphic integrity and habitat value of streams, all requests for Certification for new culverts or bridges should require review and approval by State Water Board or Regional Water Board staff, before the stream crossings are constructed.
- Page 35 appears to be an attempt to remedy the liberal exemption provided to Cannabis cultivators by stating, “The General Water Quality Certification contained in the Policy does not apply to activities that will: 1) result in significant unavoidable environmental impacts including permanent impacts to wetlands and other waters from dredge and fill activities, and/or violation of water quality standards; 2) result in the potential direct or indirect take of any listed species; or 3) expose people and/or structures to potential adverse effects from flooding, landslides or soil erosion”. In the absence of CEQA and CWA review, and with overreaching exemptions from CWA review by the State Water Board or Regional Water Board, how would a cultivator determine whether or not his project would impose significant unavoidable environmental impacts? The Guidelines should be revised to clearly prohibit coverage for activities that would be considered significant and unavoidable impacts, “result in the potential direct or indirect take of any listed species” and expose people to potential flooding, landslides or soil erosion.
- Page 37 again directs cultivators to engage “qualified Professionals and licensed earthwork and paving contractors” to design, locate, construct, and inspect roads to reduce the impacts of road construction and use. Again, please provide more specific direction to require that all new culverts and bridges over streams be designed by experienced fluvial geomorphologists. Engineers without a background in fluvial

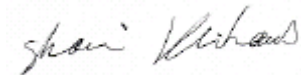
geomorphology are more likely to design crossings that result in destabilized stream channels.

In closing we ask that the Water Board use these comments to improve the Policy and to so ensure that environmental protections are sustained. We recognize that this Policy would be simpler to construct if Federal and State law were aligned as regards cannabis cultivation. But as the situation is otherwise and the Water Board must be in line with State law, a Cannabis Cultivation Policy needs to find the alternatives that will continue to protect California's watersheds, wetlands and wildlife and do not over-ride the Clean Water Act.

Sincerely,



Eileen McLaughlin
Board Member,
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From: Rand Martin <rmartin@mvmstrategy.com>

Date: November 6, 2017 at 11:06:52 AM PST

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Subject: Title 20 amendments

After reviewing the draft before the Planning Commission this Wednesday, I have a question and a suggestion.

First, new paragraph C in Section 20.80.760 indicates that a cannabis entity cannot operate unless it has a state license in effect. Unless I'm missing something, there is likely to be a gap of some period of time between the date that these Title 20 amendments go into effect and the date that a cannabis entity in San Jose receives a temporary license from the state. If my reading is accurate, does that put a cannabis business out of compliance with city ordinance until the state license is in effect and does it jeopardize our standing to get a temporary state license by calling into question whether we meet the local authorization requirement necessary to get a temporary license?

Second, you may wish to amend paragraph L in Section 20.80.775. It references both the Medical Cannabis Regulation and Safety Act and the Adult Use of Marijuana Act, which were blended together in June to become the Medical and Adult Use of Cannabis Regulation and Safety Act and no longer exist in their previous iterations.

Rand

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