



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: David Sykes

SUBJECT: ACTIONS RELATED TO THE
MEDICAL MARIJUANA
PROGRAM

DATE: March 25, 2016

SUPPLEMENTAL

REASON FOR SUPPLEMENTAL

To respond to the City Council's direction of December 8, 2015 that the Administration provide an analysis of the cost of creating a Division of Medical Marijuana Control and sources of funding.

RECOMMENDATION

Accept the Administration's report on the cost of creating a Division of Medical Marijuana Control and sources of funding.

OUTCOME

Acceptance of the Administration's report will allow the Administration to respond to the Council's Direction of December 8, 2015.

EXECUTIVE SUMMARY

On June 17, 2014, the City Council approved a Medical Marijuana Program (Program) that regulates where medical marijuana establishments can operate in the City, who can operate those establishments and how they can operate. As of December 18, 2015, sixteen (16) medical marijuana establishments (hereafter, "collectives") successfully registered with the City's Program. This memorandum will summarize the current staffing dedicated to the Program's operation and the cost of creating a Division of Medical Marijuana Control and sources of funding to support that Division.

BACKGROUND

On June 17, 2014, the City Council approved a Program that regulates collectives and their operators. That Program required all collectives to register with the City. Registration with the City required each collective to complete and submit both: (1) a Zoning Code Verification Certificate Application, establishing that the Collective will operate in an area that complies with the Program's land use regulations, and (2) an Application for Registration as a Medical Marijuana Collective, evidencing that the Collective will operate in strict compliance with the Program's operational regulations. Collectives then had until December 18, 2015 to obtain both a Zoning Code Verification Certificate and a Notice of Completed Registration.

On December 8, 2015 the Council directed staff to return in March 2016 with the cost of creating a Division of Medical Marijuana Control and sources of funding. This memorandum responds to that direction.

As of December 18, 2015, sixteen (16) collectives had obtained both a Zoning Code Verification Certificate and a Notice of Completed Registration evidencing their registration with the City. By that date, those collectives had also made their first quarterly payment towards the Annual Operating Fee charged to each collective to cover the cost of the City operating the Program.

ANALYSIS

This section discusses the multi-department staff support needed for the Program and the associated Medical Marijuana Collective Annual Operating Fee (Annual Operating Fee) and responds to the Council request for the estimated cost for a Division of Medical Marijuana Control. To provide context, this section first includes information on the 2015-2016 Annual Operating Fee that was approved with the adoption of the 2015-2016 budget.

Medical Marijuana Collective Annual Operating Fee: As outlined below, a multi-department staffing plan is needed to carry out the professional responsibilities and expertise to sustain the City's Program. This fee is intended to recover 100% of the costs incurred by the City to pay for the staff and other costs needed to sustain the full scope of the City Council's policy direction for the Program, as set forth below.

- **City-Wide Policy Coordination, Implementation, and Sustainment:** The City Manager's Office has assumed oversight responsibility for operating the Program, which requires coordination of multiple departments, including: each division of the Department of Planning, Building and Code Enforcement, the Fire Department, the Finance Department, the Police Department and the City Attorney's Office. Specifically, the Program requires that an Assistant to the City Manager be allocated to manage this work in the City Manager's Office. An Assistant to the City Manager position in the City Manager's Office is a high-level position that is typically assigned with overseeing complex City functions and programs that need the City Manager's Office direct support

and oversight. The Assistant to the City Manager position serves a key managerial function in convening the internal working group and tracking the policy issues associated with implementation of the Program and support of the Program regulations as well as developing policy reports to the City Council. This position also serves as a City point of contact to the registered Collectives. In addition, this position coordinates all public outreach processes, including maintaining community engagement, receiving community complaints, and addressing non-criminal law enforcement components of the Program to ensure that non-sworn staff is appropriately supporting law enforcement duties. Since the fee requires that the funding be disbursed among multiple departments, the Assistant to the City Manager is also responsible for the fiscal management of this Program, ensuring that revenue and costs are assigned appropriately. This position also has executive oversight of the implementation of the Program to ensure alignment with the overall city-wide policy strategy. In 2015-2016, 0.40 FTE Assistant to the City Manager position was allocated to the Annual Operating Fee.

Included in this multi-departmental coordination effort is support from a Senior Executive Analyst position for the day-to-day functions associated with coordinating these complex, multi-department ordinances. These functions include maintaining and updating content on the City's Medical Marijuana Website, information sharing and inter-departmental coordination, facilitating response to stakeholder inquiries through multiple communication outlets, compiling and preparing data for reports, drafting reports, and overseeing community coordination. This position also requires attendance at all meetings with staff and/or stakeholders, as well as the development of agendas and follow-up notes/direction for staff. Generally, the Senior Executive Analyst position also follows-up and informs the Assistant to the City Manager of any special concerns requiring his/her attention. In 2015-2016, 0.10 FTE Senior Executive Analyst position was allocated to the Annual Operating Fee.

- **Non-criminal Law Enforcement & Investigation:** A Police Sergeant is responsible for the coordination of the regulatory law enforcement and compliance work performed by the Police Department, along with supervising an Analyst. Additionally, the Police Sergeant provides back-up support when the Analyst is not available due to training or other authorized absences. The Police Sergeant is also charged with administering internal enforcement procedures and training on such procedures and is responsible for coordinating notifications/communications of the Program through the appropriate internal structure. The Police Sergeant may also serve as a liaison between the City and other law enforcement agencies. Most importantly, the Police Sergeant is responsible for performing the day-to-day regulation of the collectives, including conducting inspections, issuing administrative citations, and regulating and taking civil action against collectives if they are not in compliance with the Program regulations. An Analyst in the Police Department assists in the review of all documents submitted to the Police Department by the collectives to comply with the Program regulations and the issuance of administrative citations. In 2015-2016, 1.0 FTE Police Sergeant position and 0.49 FTE Analyst position were allocated to the Annual Operating Fee.

- **Code Enforcement and Investigation:** Two Code Enforcement Inspector positions provide resources for the necessary ongoing inspections for compliance with the Program regulations as they relate to both land use and collective operations. Specifically, these positions conduct repeated inspections of collective sites, meet with collective representatives to ensure compliance with Program regulations, issue administrative citations and/or compliance orders to non-compliant collectives and appear before administrative bodies and in court to support the City in its enforcement actions. Given the number of establishments that may be operating in the City, these inspectors are needed to effectively investigate all complaints received regarding collectives and work with the Police Department and the City Attorney's Office to close establishments that engage in public nuisance activity. These positions also coordinate with the Planning Division, the Building Division, the Fire Department and the Finance Department to conduct joint inspections of the collectives to check compliance with the Building Codes, Fire Codes and the Program's reporting and auditing requirements. In 2015-2016, 1.99 FTE Code Enforcement Inspector positions were allocated to the Annual Operating Fee.
- **Financial and Compliance Review:** The Accountant and Investigator/Collector positions review the financial records of all collectives and coordinate with the City Manager's Office, the Police Department and the Code Enforcement Division on financial investigations and financial audits of the collectives to ensure fiscal compliance with the Program regulations. In 2015-2016, 1.0 FTE Accountant position and 0.75 FTE Investigator/Collector position were allocated to the Annual Operating Fee.
- **Legal:** The Assistant City Attorney oversees a number of Deputy City Attorneys who work together to provide legal advice and support in interpreting the regulatory ordinances and train staff on sustainment of the Program. In addition, the attorneys are charged with bringing legal civil action against collectives operating in violation of the Program regulations. Those actions could include preparing cases for and representing the City at administrative officer hearings, hearings before the Appeals Hearing Board, and civil court. The Legal Analyst and Legal Administrative Assistant are necessary to provide analytical and administrative support to these positions. In 2015-2016, 3.5 FTE positions, including attorneys and support staff, were allocated to the Annual Operating Fee.

Current Annual Operating Fee: Table 1 below represents the current annual Program costs that were calculated as part of the 2015-2016 Adopted Budget. This reflects only a portion of the staff that has worked on medical marijuana policy development and enforcement over the past seven years. The complex nature of policy and enforcement has required significant resources. Proper implementation of the Program requires, at a minimum, the staffing plan shown below. In addition, there are several unknown factors that continue to impact the staffing plan such as: (1) Non-compliance with the Program; (2) Changes in collective operations / business models; (3) Changes in the patient population, and (4) Activities taken by surrounding jurisdictions that

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result in impacts to San José operations. These issues are closely monitored by the City Manager's Office and reported to the City Council.

Table 1: 2015-2016 Medical Marijuana Cost-Recovery Staffing Plan and Annual Operating Fee

Staff Classification	Level (FTEs)	Cost
<u>City-Wide Policy Coordination, Implementation, and Sustainment</u>		\$153,129
Assistant to the City Manager	0.40	
Senior Executive Analyst	0.10	
<u>Law Enforcement and Investigation</u>		\$501,030
Police Sergeant	1.00	
Analyst I/II	0.49	
Overtime for Police Officers (\$100,000)		
<u>Code Enforcement and Investigation</u>		\$296,797
Code Enforcement Inspector I/II	1.99	
<u>Financial and Compliance Review</u>		\$232,647
Accountant II	1.00	
Investigator/Collector I	0.75	
<u>Legal</u>		\$704,634
Assistant City Attorney	0.05	
Senior Deputy City Attorney	0.80	
Deputy City Attorney	1.15	
Legal Analyst	1.00	
Legal Administrative Assistant	0.50	
Non-Personal/Equipment		\$25,000
Total FTEs/Cost	9.23	\$1,913,237
Total Annual Operating Fee Per Collective (20 assumed)		\$95,661

The Annual Operating Fee of \$95,661 per collective was based on a total of 20 collectives successfully achieving registration with the City. However, only 16 collectives actually achieved registration with the City by the December 18, 2015 deadline. If the fee had been based on 16 collectives, it would have been calculated at a total of \$119,577 per collective.

Program Oversight Strategy

As mentioned, the City Manager's Office is responsible for providing Program oversight. In addition to the coordination of the work done by various departments, a significant amount of time has been spent on developing the Program policy and implementation plan. Significant policy development work is expected to continue for several months to respond to the policy changes directed by the Council in December 2015, as more fully outlined in staff's March 25, 2016 memorandum entitled "Actions Related to the Medical Marijuana Program" addressing item 3.3(d) on the March 29, 2016 Council Agenda. As the City's Program becomes more operational, the Administration plans to transition the Program oversight functions into the Police Department. Other functions such as Code Enforcement and Finance related activities will most likely continue within their respective Departments. Below is an outline of the estimated costs of creating a Division of Medical Marijuana Control. Additional work is needed to fine tune a plan for creating a division and making the transition to the Police Department. A recommendation for forming a division will be made as part of the City's budget process.

Cost of a Division of Medical Marijuana Control:

Per Council's request, below is a staffing plan to support a Division of Medical Marijuana Control. Instead of an Assistant to the City Manager position overseeing the Program, the table below anticipates that a full-time Division Manager would fill that role. The Division Manager would perform all the tasks of the Assistant to the City Manager and, working with a Senior Analyst and Senior Office Specialist, would coordinate efforts across departments and other agencies.

In the Finance Department, 0.75 FTE of an Investigator/Collector position has been replaced with 0.75 FTE of an Analyst I/II position to more accurately reflect the work being done by staff to ensure reporting compliance with the Program.

In the Police Department, 0.25 FTE of a Police Lieutenant position has been added to the Program fee to reflect the oversight provided by this position. The Lieutenant supervises the Sergeant in managing the regulatory compliance with the Program. In addition, the Police Analyst position has been increased from 0.50 FTE to a full time position of 1.0 FTE Analyst to reflect the actual work performed by this position. Overtime costs for the Police Department to conduct inspections in the evening hours also remain in the Program costs.

Table 2: 2016-2017 Medical Marijuana Cost-Recovery Staffing Plan and Annual Operating Fee with Division of Medical Marijuana Control

Staff Classification	Level (FTEs)	Cost
<u>City-Wide Policy Coordination, Implementation, and Sustainment</u>		\$480,059
Division Manager	1.00	
Senior Analyst	1.00	
Senior Office Specialist	1.00	
<u>Law Enforcement and Investigation</u>		\$774,108
Police Lieutenant	0.25	
Police Sergeant	1.00	
Analyst I/II	0.99	
Overtime for Police Officers (\$100,000)		
<u>Code Enforcement and Investigation</u>		\$424,619
Code Enforcement Inspector I/II	1.99	
<u>Financial and Compliance Review</u>		\$249,520
Accountant II	1.00	
Analyst I/II	0.75	
<u>Legal</u>		\$765,028
Assistant City Attorney	0.05	
Senior Deputy City Attorney	0.80	
Deputy City Attorney	1.15	
Legal Analyst	1.00	
Legal Administrative Assistant	0.50	
Non-Personal/Equipment		\$25,000
Total FTEs/Cost		\$2,718,334
Total Annual Operating Fee Per Collective (16 assumed)	12.48	\$169,895

The above changes to the staffing model would result in a total Program cost of \$2.7 million. Divided among the 16 registered collectives would result in an Annual Operating Fee charged to the each of the collectives of \$169,895 per year. It is important to note that even without the development of a new Division of Medical Marijuana Control, the costs of the program in 2016-2017 would increase based on the actual registered collectives operating in the City and any additional resources needing to be allocated to the Program.

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PUBLIC OUTREACH

Prior to the Council hearing this item, this memorandum will be posted on the City's Council Agenda website for the March 29, 2016 Council Meeting and posted on the City's medical marijuana website at www.sanjoseca.gov/medicalmarijuana. In addition, this memorandum will be emailed to all 16 registered collectives.

COORDINATION

This memorandum was coordinated with the Police Department, Finance Department, the Department of Planning, Building and Code Enforcement and the City Attorney's Office.

COST SUMMARY/IMPLICATIONS

If the Council were to direct the creation of a Division of Medical Marijuana Control, the costs associated with the regulatory functions of the division will be 100% recovered by the 16 registered collectives for a net-zero impact on the General Fund.

CEQA

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

A handwritten signature in black ink, appearing to read 'D. Sykes', with a long horizontal stroke extending to the right.

DAVID SYKES
Assistant City Manager

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