



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Deanna J. Santana
Robert L. Davis
Joseph Horwedel
Scott P. Johnson
Jennifer A. Maguire

SUBJECT: MEDICAL MARIJUANA

DATE: June 15, 2010

Approved

Date

6/15/10

RECOMMENDATION:

- (a) City Council consideration of a regular and/or urgency ordinance of the City of San Jose amending Title 6, Business Licenses and Regulations, of the San Jose Municipal Code to add a new Chapter 6.88 to establish regulations pertaining to Medical Marijuana Collectives and to the individual cultivation and use of medical marijuana and setting forth the facts constituting such urgency;
- (b) City Council consideration an urgency ordinance of the City of San Jose amending Title 20, Zoning, of the San Jose Municipal Code (the Zoning Code) by amending Section 20.10.040 of Chapter 20.10, Section 20.40.100 of Chapter 20.40; adding a new part 9.5 to Chapter 20.80; and adding a new part 13 to, and amending Section 20.100.200 of, Chapter 20.100, all to establish land use regulations pertaining to Medical Marijuana Collectives and amending Section 1.13.050 of Title 1 of the San José Municipal Code to be consistent with the amendments to Title 20;
- (c) City Council consideration of adoption of a resolution to initiate these amendments to Title 20 on a permanent basis, forward these proposed Title 20 amendments to the Planning Commission for its report and recommendation, and set a public hearing date on these proposed amendments to Title 20 before the City Council;
- (d) Adopt the following Appropriation Ordinance and Funding Resource Resolution Amendments in the General Fund for Fiscal Year 2010-2011:
 - (1) Increase the Police Department's 2010-2011 General Fund Personal Services appropriation by \$576,258;
 - (2) Increase the Police Department's Non Personal Services/Equipment appropriation by \$2,930;
 - (3) Increase the Finance Department's 2010-2011 General Fund Personal Services appropriation by \$121,014;
 - (4) Increase the Office of the City Manager's 2010-2011 General Fund Personal Services appropriation by \$55,488; and,
 - (5) Increase the Revenue Estimate for Licenses and Permits by \$755,690.
- (e) Account for the increase collection of Indirect Cost (Overhead) by \$197,470, according to the City-wide Cost Allocation Plan for FY 2010-2011 as part of the City's Annual Report;
- (f) Authorize the addition of 1.0 Police Sergeant position and 2.0 Police Officer positions in the Police Department Narcotics/Covert Investigations Units as of July 1, 2010;

HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: Medical Marijuana

June 15, 2010

Page 2 of 27

- (g) Authorize the addition of 1.0 Analyst II position in the Finance Department Revenue Compliance and Monitoring Division as of July 1, 2010;
- (h) Authorize the addition of 0.5 Executive Analyst position in the City Manager's Office Administration Division as of July 1, 2010;
- (i) Adopt a resolution to amend the Adopted 2010-2011 Schedule of Fees and Charges Resolution (Resolution 72737, as amended) to add a Medical Marijuana Collective Registration Fee and establish the fee at \$95,016 per each Collective that registers;
- (j) Amend the Adopted 2010-2011 Administrative Citation Schedule of Fines to establish fines for various violations related to Title 6, Business Licenses and Regulations, Chapter 6.88 (Medical Marijuana Collectives) and repeal Resolution No 75065, titled Administrative Citation Schedule of Fines for Certain Violations of the San Jose Municipal Code⁴;
- (k) Review of analysis and direction to staff regarding placing a Medical Marijuana Tax on the November 2, 2010 ballot;
- (l) Review of the community outreach strategy to provide information to the public regarding a draft Medical Marijuana Ordinance; and,
- (m) As an alternative policy option, consideration of an urgency ordinance to amend Title 20 of the San José Municipal Code to amend Section 20.10.040 of Chapter 20.10 and to amend Chapter 20.80 to add a new Part 5 to ban establishments dispensing medical marijuana in the City of José and consideration of adoption of a resolution to initiate these amendments to Title 20 on a permanent basis, forward these proposed Title 20 amendments to the Planning Commission for its report and recommendation, and set a public hearing date on these proposed amendments to Title 20 before the City Council.

OUTCOME

This memorandum is in response to a multi-part City Council referral issued on March 30, 2010 regarding medical marijuana regulation in the City of San Jose (City). This report highlights key features of a medical marijuana land use ordinance and a medical marijuana regulatory ordinance. This report also provides policy alternatives within the respective ordinances for City Council consideration. Finally, this report provides an analysis regarding instituting the regulatory program at a 100% cost recovery, a November 2010 ballot tax measure, and a community outreach plan.

BACKGROUND

In November 2009, the Rules and Open Government Committee Meeting (Rules Committee) directed staff to conduct a workload assessment and provide legal analysis on land use issues relative to medical marijuana. Staff provided a status report on this referral at the November 18, 2009 Rules Committee meeting. Then, on January 27, 2010, staff provided a more complete workload assessment pertaining to land use issues. Following staff's presentation of the workload assessment, the Rules Committee directed staff to conduct additional follow-up analysis on the land use issues and forwarded the analysis to the full City Council. On March 30, 2010, staff presented its workload assessment on the land use

HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: Medical Marijuana

June 15, 2010

Page 3 of 27

issues related to medical marijuana to the full City Council. Following a lengthy discussion, Council directed staff to return to Council on June 8, 2010 with the following items:

1. A draft ordinance establishing regulations for the control and taxation of Collectives and reflecting principles 1, 2, and 4 outlined in the Joint Memorandum dated March 25, 2010 from Mayor Reed and Vice Mayor Chirco:

Principle 1: San Jose recognizes that California law allows a patient's primary care giver to cultivate and possess marijuana for the personal medical purposes of the patient upon the recommendation of a physician;

Principle 2: San Jose will follow the guidance of the California Attorney General and the United States Attorney General in criminal enforcement of the laws regarding medicinal use of marijuana.

Principle 4: Individuals or entities that cultivate or distribute marijuana for profit are operating illegally under state law and are illegal under San Jose Municipal Code.

2. A community outreach plan; and,
3. An analysis for Council consideration about the process for placing the issue on the November 2, 2010 ballot asking for Citywide support for the restricted zoning of medical marijuana collectives/cooperatives in San José according to State law by taxing them at 3% per \$1,000 gross receipts including the allowance for indexing for inflation.

(Source: March 30, 2010 City Council Synopsis and Minutes, Approved by the City Council on May 18, 2010)

As noted, the Council's March 30th referral was much broader than the previous direction from the Rules Committee regarding medical marijuana, which was solely focused on land-use policy and did not include a request for analysis on the regulation of medical marijuana establishments. The City Council's referral directed staff to develop regulations for the control of Collectives, land use regulations, taxation analysis, ballot measure analysis, and a community outreach plan. Given the broad range of issues that required resolution by staff, and the short timeframe to complete this work, at the June 2, 2010 Rules Committee meeting, the Committee approved a deferral of the item to the June 15th City Council meeting and waived the "sunshine requirements" allowing staff to distribute the staff report and draft ordinances outside of the open government requirements. On June 7, 2010, staff engaged members of the public in a community meeting where key features of two draft ordinances – a land use ordinance and a regulatory ordinance – were reviewed. Given the number of issues raised at the June 7th outreach meeting, at the June 9 Rules Committee meeting, the Offices of the City Manager and City Attorney requested that this item be heard at the June 22 City Council meeting and requested a waiver of the "sunshine requirements." Through a separate supplemental memorandum, the City Attorney's Office will be providing its legal analysis on the application of the law pertaining to medical marijuana, an application which serves as the basis for the policy development presented in this report.

It should be noted that the development of an ordinance setting forth a regulatory program within a 60 day timeframe has been far more complex than anticipated, especially in light of other competing priorities and a lack of City Council discussion with respect to the workload impact to other departments and project priorities. While staff has completed the majority of the work associated with this Council referral, in the future, staff will take projects of such nature to the Rules Committee for the purpose of reviewing staff workload and setting a more realistic project schedule. That said, a

HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: Medical Marijuana

June 15, 2010

Page 4 of 27

supplemental report is still pending which will transmit the Schedule of Fines, draft ordinance on a Medical Marijuana Ban, summary of the community input, and if received in time, the State Board of Equalization's tax opinion expert clarification on when a medical marijuana sale is subject to sales tax collection.

ANALYSIS

Research and discussion around medical marijuana is complex; one that can be filled with values and conflicting legal analyses. Compounding this review is the broad range of current legislation to address medical marijuana (Attachment A) and the outcome uncertainty of the November 2010 ballot measure, "*Regulate, Control and Tax Cannabis Act of 2010*¹," that would: (1) Allow people 21 years old or older to possess, cultivate, or transport marijuana for personal consumption and not for sale (although sales could be permitted to individuals in public establishments licensed for marijuana consumption); (2) Permit local government agencies to regulate and tax the commercial production and sale of marijuana; (3) Prohibit people from possessing marijuana on school grounds, using it in public, smoking it while minors are present, or providing it to anyone under 21 years old; and (4) Maintain current prohibitions against driving while impaired. As part of this discussion, it should be noted that 33 other cities in California currently regulate medical marijuana collectives and cooperatives, while 91 cities have enacted moratoriums and 131 have banned collectives and cooperatives.²

In an ever changing legislative environment where there is a level of uncertainty with respect to the current state of medical marijuana regulation issued by the State of California, staff is bringing forward a local public policy that reflects the legal review provided by the City Attorney's Office and that strives to bring improved certainty to this issue for the City. It should be noted early on in this report that the draft ordinances are shaped by the application of the law, which is based on the City's legal review. To the extent possible, and where legally permissible, staff has provided policy alternatives for the City Council to consider should it desire to amend staff's professional recommendation; however, the City's policy can't exceed the law.

This memorandum covers the following categories:

1. Zoning/Land Use Policy;
2. Regulatory Program;
3. Cost for Regulatory Program;
4. Ballot Measure (Taxation Analysis); and,
5. Community Outreach Plan.

Should the City Council adopt the draft ordinances, and to the extent that policy alternatives are approved as part of the City Council's policy development, staff will require four weeks minimum to compose the documents necessary for the medical marijuana establishments to: obtain land use

¹ See Secretary of State's website at http://ag.ca.gov/cms_attachments/initiatives/pdfs/i821_initiative_09-0024_amdt_1-s.pdf

² City of Mountain View Memorandum, *June 1, 2010 Study Session—Regulation of Medical Marijuana Cooperatives and Collectives*, May 27, 2010, page 3.

HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: Medical Marijuana

June 15, 2010

Page 5 of 27

clearance from the Department of Planning, Building and Code Enforcement and regulatory clearance from the Police Department (e.g., a zoning certification, regulatory registration forms, and other supporting documentation); fill the staffing positions; and, provide staff training for the staff that will be issuing the required documentation to the medical marijuana establishments. Staff believes that it can accomplish the above within the four week minimum timeframe given the pool of staff impacted by layoff or bumping that would be considered for these vacant positions. Information on the activation of the registration process will be advertised and an Information Memo would be provided to the City Council. However, upon the passage of the ordinance, other regulatory provisions would be effective immediately. The adoption of the urgency ordinances requires 8 votes of the City Council.

The proposed ordinance amending Title 6 has also been agendized as a regular ordinance. The City Council may approve the proposed ordinances at the June 22nd City Council meeting. The second reading would occur on August 3, 2010. The ordinance would then be effective on September 3, 2010.

Under Title 20, the proposed amendments to Title 20 require the Planning Commission's consideration and report before the City Council may approve the permanent ordinance. Accordingly, at the June 22nd meeting, the City Council only has the option of adopting the amendments to Title 20 on an urgency basis. Accordingly, the initiation of the regular ordinance amending Title 20 and forwarding the proposed ordinance to the Planning Commission for its consideration and report has been agendized.

1. Zoning/Land Use Policy

At the March 30th City Council Meeting, the City Council discussed Councilmember Oliverio's recommendation for the City ordinance to consider: "...industrial zoning as the primary area to be considered for medical marijuana cultivation and sale and specify that no on-site consumption of medical cannabis shall be allowed."

After extensive City Council discussion and public testimony, the City Council decided to allow staff to bring forward other possible areas for consideration pertaining to which land uses should be used for medical marijuana purposes. Under the leadership of the City Manager's Office, an inter-Departmental team was convened with the City Attorney's Office, Police Department, and Finance Department, and Department of Planning, Building and Code Enforcement. Upon the Administration's review and analysis, the draft ordinance (Attachment B, to be released separately by the City Attorney's Office) contains proposed amendments to Title 20 to include specific land use provisions for Medical Marijuana Collectives. These provisions include:

1. **Commercial General (CG) Zoning District & Sensitive Uses:** Collectives are the locations where qualified patients or their primary caregivers come together to collectively cultivate marijuana for medical purposes. The Commercial General Zoning District is best suited to Collectives because this District is typically located on major streets with public transit and is not always located adjacent to neighborhoods. For this reason, the Administration is recommending that Collectives be allowed only in the Commercial General (CG) Zoning District, as long as the

HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: Medical Marijuana

June 15, 2010

Page 6 of 27

location at the time of issuance of a zoning code compliance certificate is not within 500 feet of the enumerated sensitive uses such as a residential use, school, child day care center, church that includes a school or child day care use, community or recreation center, park, trail, library, substance abuse rehabilitation center or another Medical Marijuana Collective.

Policy Alternative(s): The City Council could:

- a. **Industrial Zoning:** Allow these uses in another Zoning District, such as permitting this proposed activity in the Industrial Park or Combined Industrial/Commercial Zoning District. Staff is opposed to Collectives locating in any Industrial Zoning District given the City's longstanding challenge to attract and retain jobs to secure fiscal sustainability. The employment lands zoned Industrial need to be preserved and used for industrial, economic development purposes. The introduction of Collectives could compromise the availability of land for future businesses entering the City's Industrial Areas. For these reasons, the Administration recommends that the Commercial General Zoning District is the only logical zoning district for Medical Marijuana Collectives given their commercial nature.
 - b. **Distance Requirement from Sensitive Uses:**
 - Adopt a 1,000 feet distance requirement from sensitive uses and/or remove some of the proposed sensitive uses. As sensitive use categories or distance requirements from the proposed sensitive uses are added to the proposed land use policy requirement, the number of potentially eligible sites is reduced significantly.
 - Remove entirely a distance requirement from sensitive uses and the concept of a sensitive use.
2. **Offsite Cultivation:** The Administration's recommendation to allow only onsite cultivation is based on the desire to ensure a "closed-loop system" where the distribution of medical marijuana is easy to trace back to the cultivation of it. The primary concern is to ensure that the medical marijuana is not diverted from or to non-legal uses and to enable adequate regulation of Medical Marijuana Collectives during a time of implementation of this ordinance and transition for the organization. Permitting off-site cultivation, while doable, presents additional regulatory issues for the City to resolve (such as noted above). If the City Council is interested in exploring this policy alternative, staff needs to complete its evaluation and return with recommendations, including a revised land use policy, staffing plan, and revised Registration Fee.
3. **No Land Use Permit/Zoning Code Compliance Certificate Issued:** The Administration recommends Title 20 language for the Department of Planning, Building, and Code Enforcement (PBCE) to complete a ministerial "Zoning Verification" for any proposed Collective to document that it meets the zoning, location, and distance criteria mentioned above. Since there would not be a requirement for a land use permit for a Collective, Council Policy 6-30: Public Outreach Policy for Pending and Development Proposals would not apply.

Policy Alternative(s): The City Council could direct the Administration to require a Conditional Use Permit (CUP) for Medical Marijuana Collectives. Such a permit would "run" with the property regardless of the operator or business. If a Collective were to leave the location, the property owner would be required to seek an amendment to the CUP before any other uses would be allowed on the

HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: Medical Marijuana

June 15, 2010

Page 7 of 27

property, and before he or she would be able to rent or lease the property out for use by business that were not Medical Marijuana Collectives. The Administration recommends a registration approach so that the property owner is not limited in his or her options and is not required to incur the expense of applying for an amendment to the CUP should the collective choose to cease its operations. In addition, staff recommends a registration that "runs" with the Medical Marijuana Collective rather than with the property to ensure it meets all of the proposed Title 6 provisions. If the City Council would like to pursue a CUP, the Administration would need to reassess the administrative approach for registering a collective because a requirement for a land use permit, in addition to registration with the Police Department, would be burdensome on a collective as well as staff intensive. If a CUP is directed, a more streamlined administrative process would need to be developed.

4. **Noticing:** As noted in item #3 above, a Zoning Code Compliance Certificate does not have a public outreach or noticing requirement. Given the concerns expressed about where a Medical Marijuana Collective may locate, the City Council may be interested in having staff develop a noticing process that would only be used to inform a Collective's operation plan toward mitigating impacts to surrounding businesses or other activities. Careful consideration needs to be integrated into this process such that it does not convert into a land use permit process. Staff's proposal to mitigate impacts based on applying a distance requirement and inventory of sensitive uses partially addresses the lack of a noticing requirement.
5. **Non-Transferability:** A zoning code compliance certificate may not be transferred to another Medical Marijuana Collective that plans to operate on the same site.

Policy Alternative(s): No policy alternative available. If the City Council would like to allow for the proposed use to transfer to another Collective, then other land use measures would need to be put into place.

In addition to the amendments to Title 20 described above, the proposed urgency ordinance also amends Section 1.13.050 of Title 1 to provide that Medical Marijuana Collectives that are in full compliance with the Municipal Code and applicable state law are not deemed a public nuisance solely because these facilities are in violation of a federal law or regulation.

2. Regulatory Program

Upon the March 30, 2010 City Council referral, the City Attorney's Office and staff developed an ordinance (Attachment C, to be released separately by the City Attorney's Office) entitled, "Medical Marijuana" (also referred to as "Regulatory Program") that was designed to regulate the cultivation and use of medical marijuana by both individuals and specific groups of individuals. At the onset, it is important to note that the implementation and sustainment of this Regulatory Program presents challenges associated with a new area of regulation for staff. Time will be needed to overcome any "learning curve" issues before settling into a more stable state of regulation. Additionally, the City should not discount that this Regulatory Program will be implemented during a time of significant

HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: Medical Marijuana

June 15, 2010

Page 8 of 27

change in the City's organization (as a result of the implementation of the City's budget) which will impact all of the departments contributing to the development of this report. Lastly, unidentified or unintended issues may emerge that may require City Council consideration during the term of the Regulatory Program while staff continues to formulate a regular ordinance. That said, while the City Council has the option of approving a regular or urgency ordinance, an urgency ordinance presents the opportunity to better understand regulatory implementation issues, as well as to bring forward amendments to the Regulatory Program with a regular ordinance at a later date. Upon City Council approval of the regular ordinance to replace the urgency ordinance, during the first year of implementation, staff would do the following:

- Review the success/progress of the Regulatory Program and report back to the City Council after two years or as needed during the pilot period for the purpose of identifying any necessary ordinance changes;
- Assess and determine appropriate action following the outcome of the November 2010 ballot measure, "*Regulate, Control and Tax Cannabis Act of 2010*"; and,
- Continue to work with residents and stakeholders to solicit input on how implementation and the provisions of the Regulatory Program are working.

It is the purpose of the Regulatory Program to regulate the collective and individual cultivation and use of medical marijuana to ensure that medical marijuana is cultivated and used in a manner which is responsible, lawful and in the spirit intended by state law, while at the same time ensuring the health, safety and welfare of the residents of the City of San Jose. The provisions in this Regulatory Program do not interfere with a patient's use of medical marijuana as contemplated under State law, nor do they criminalize the cultivation of medical marijuana by specifically defined classifications of persons. In fact, the provisions of the Regulatory Program contain limited requirements for individual cultivation and use of medical marijuana and generally provide that associations of individuals (specifically those individuals identified in State law) may come together in order to collectively and cooperatively cultivate marijuana for medical purposes. The Regulatory Program refers to those associations as "medical marijuana collectives" or simply, "collectives."

Strong comparisons have been made between medical marijuana collectives and pharmacies, particularly concerning how collectives are/should be considered akin to pharmacies in terms of how pharmacies operate their business. Specifically, there have been requests from stakeholders regarding greater flexibility with respect to medical marijuana product distribution, customer choice, and overall operations. However, these two entities are very different, both by the legal foundation that sets each in place (e.g., pharmaceutical product manufacturing, distribution, and research and development vs. medical marijuana cultivation and distribution) and by the significant differences in the manner in which they are regulated. Pharmaceutical companies are closely regulated by the Federal Drug Administration (FDA) and the Drug Enforcement Agency (DEA) in terms of how they function and the products supplied to the public. Medical marijuana collectives are regulated by the state in terms of how they function, but there are absolutely no regulations in place regarding the quality or safety of the marijuana product. More specifically, pharmacies distribute medicine by certified pharmacists based on prescriptions from certified medical doctors. The prescription products administered are scientifically tested by professionally recognized and regulated laboratories, approved for distribution

HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: Medical Marijuana

June 15, 2010

Page 9 of 27

upon research and validation by the FDA, and subjected to rigorous continued federal regulation and law by the DEA and the FDA. In contrast, collectives are not required to adhere to these continuous regulatory practices and product quality is not regulated by state or federal agencies, standards, and/or the law. Additionally, for prescription drugs, safety protocols are in place to alert and protect consumers of possible product contamination or defect, which results in the ability to recall products should they present health or safety concerns for consumers. Such is not the case for medical marijuana products or patients. In the case of Collectives, members of the Collective come together to grow their own marijuana and provide marijuana to other members of the Collective without having performed any testing of the product to ensure the quality or safety. Comparisons of medical marijuana products or collectives to prescriptions or pharmacy practices or operations are incomplete and inaccurate.

Within the City's legal review, staff believes that it has put forward its best professional recommendation on how the City should regulate medical marijuana establishments in San Jose. However, staff is providing full disclosure on areas where there is Regulatory Program flexibility so that the City Council can understand the policy areas that can be adjusted. Should the City Council not successfully achieve eight votes to pass a draft urgency ordinance establishing the Regulatory Program, the City Attorney's Office and staff have also prepared (1) a regular ordinance or (2) an urgency ordinance for consideration which would establish a ban on medical marijuana establishments and prohibit them from operating in San Jose. The intent and goal is to present the City Council with the full range of options available for consideration.

The following discussion is formatted after the nine sections of the draft urgency ordinance:

Part 1: Purpose and Intention

There are no proposed policy alternatives. This section outlines the purpose and intent of the draft ordinance.

Part 2: Definitions

This section outlines the definitions of the draft ordinance, which are largely driven by the California Health and Safety Code. The following definition may be adjusted:

Medical Marijuana Collective: An incorporated or unincorporated association, composed solely of four (4) or more qualified patients, persons with identification cards, and designated primary caregivers of qualified patients and persons with identification cards (collectively referred to as "members") who associate at a particulate location to collectively or cooperatively cultivate marijuana for medical purposes, in strict accordance with California Health and Safety Code Sections 11362.5, *et seq.*

Policy Alternative(s): The City Council may restrict the threshold of the number of patients (e.g., four or more) that are considered a collective. Staff's recommendation is "four or more" because it appears that the volume of cultivation and distribution amongst qualified patients should be monitored at this threshold level. This is based on the various city ordinances reviewed that indicated that the least

HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: Medical Marijuana

June 15, 2010

Page 10 of 27

number of specified individuals that make up a collective vary by city and can range from two to ten. For example, the City of Mountain View is considering developing an ordinance that defines cooperatives or collectives as an association of two or more patients, while the City of Los Angeles has its minimum at four.³

The various other elements provided in the definition are standard or directly defined and required by law.

Part 3: General Provisions

This section establishes the registration processes, outlines the various requirements to establish a collective and, among other administrative requirements, sets the grounds for disqualification from the registration process.

- 1. Registration Required:** No collective shall operate in the City until after it has filed a registration form, paid all registration fees, and its registration has been accepted as complete by the Chief of Police. The term of each registration is for one year, unless the respective urgency ordinances or subsequent regular ordinances sunset before that time.

Policy Alternative(s): The City Council could adjust the term of each registration beyond one year, but fees for a cost recovery program would need to be adjusted accordingly for budget planning purposes. Staff has modeled the registration process after other administrative processes utilized by the Police Department and the Department of Planning, Building and Code Enforcement such that this process is not a departure from other administrative processes.

- 2. Priority Order:** The Chief of Police may hold one or more lotteries for the purpose of determining the priority order in which the Chief of Police will consider the registration forms submitted by collectives. Any collective that fills out the registration form for the drawing can participate in the drawing; provided it meets the requirements set forth in the ordinance and is not disqualified for specific reasons provided therein, such as having managers who are on parole for possession of a controlled substance or have a criminal record for certain violations of the penal code. The Chief of Police will set the deadlines for submittal and publish the date, time and place for the drawing, as well as the results of the drawing.

Policy Alternative(s): City Council could consider developing a decision making framework that is based on a competitive process, rather than on a first come-served basis. This could be accomplished by requesting applicants to submit responses to a uniquely developed process that is similar to a Request for Proposals (RFP) process, applying a scoring mechanism, and selecting the highest scoring proposals to operate Medical Marijuana Collectives in the City. Staff did not propose the competitive process because it believes that the Priority Order approach is transparent and establishes clear order of how the applications will be processed/considered.

³ Ibid, page 4-5.

HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: Medical Marijuana

June 15, 2010

Page 11 of 27

There was much community input provided at the June 7th Community Meeting regarding the Priority Order, also referred to as "lottery," during the public discussion. It should be clarified that the Priority Order is proposed to establish an order and sequence for processing and reviewing applications for consideration and does not constitute a random or arbitrary approval of the application; it does, however, provide a place "in line" to have an application reviewed and considered by the City. It should be noted that this proposed selection process will impact the determination and order of who may ultimately receive approval for registration. For example, if the City Council decides to allow 10 collectives in the City, an applicant can qualify for the drawing and subsequently be drawn as applicant or pre-registrant #14. Under the priority order lottery system, this applicant (e.g., #14) would only receive consideration once three applicants who were drawn ahead of him/her are disqualified or withdraw from the process.

A patient or qualified patient caregiver whose activity does not fall under the proposed definition of Medical Marijuana Collective does not need to enter the Priority Order process, which was also the source of confusion during the June 7th Community Meeting.

Lastly, as dictated in Part 8 of the draft ordinance, any existing medical marijuana collective, dispensary, operator, establishment, or provider that does not comply with the requirements of the draft ordinance must immediately cease operation until such time, if any, when it complies fully with the requirements of the Regulatory Program. Furthermore, no Medical Marijuana Collective, dispensary, operator, establishment, or provider that existed prior to the enactment of Part 8 of the draft urgency ordinance shall be deemed to be a legally established use and such medical marijuana collective, dispensary, operator, establishment, or provider shall not be entitled to claim legal nonconforming status.

- 3. Maximum Medical Marijuana Collective Number:** Allows for a maximum of ten (10) Medical Marijuana Collectives in the City.

Policy Alternative(s): The City Council could expand or decrease the maximum number of Medical Marijuana Collectives. Staff is recommending ten (10) as the maximum number of Collectives in order to ensure that Title 6 and Title 20 provisions balance the availability of medical marijuana at approved Collectives, while sustaining a Regulatory Program within the proposed staffing plan. Any changes that require greater oversight or regulation would require an adjustment to the proposed staffing plan and Registration Fee. Upon City staff implementing the Regulatory Program and sustaining it for a designated period of time, the City Council could always reconsider the maximum Medical Marijuana Collective number and adjust it based on its evaluation of how the Medical Marijuana Collectives and/or Regulatory Program are performing. Staff is suggesting 10 Medical Marijuana Collectives as a starting point, subject to more evaluation and discussion, and to facilitate proper implementation of the proposed regulation.

Part 4: Operating Regulations and Conditions

This section outlines the terms and conditions for operating a Medical Marijuana Collective in San Jose. Generally, this section outlines requirements for: security, cultivation, collective operations, owner, manager and membership requirements and packaging of medical marijuana.

1. **Security:** In the draft ordinance, certain conditions are outlined to address security concerns, including required monitoring by a web-based closed-circuit television; centrally-monitored fire and burglar alarm system that at minimum cover the perimeter of the location and are monitored by a professional alarm company; fire-proof safe for the storing of all records required; medical marijuana storage requirements; storage of cash overnight at the location; onsite state-licensed and uniformed security guard; and, standards to prevent unauthorized entry.

Policy Alternative(s): The City Council could expand or decrease the safety requirements as detailed in the urgency ordinance; however, staff believes that it has put forward a minimum set of security requirements to ensure the safety of other commercial activity, residents, and surrounding neighborhood activities/uses.

2. **Cultivation:** Collective cultivation of marijuana at or upon the location of that Collective.
 - (a) No cultivation of medical marijuana at the location shall be visible with the naked eye from any public or other private property, nor shall cultivated marijuana or dried marijuana be visible from the building exterior.
 - (b) No cultivation shall occur at the location unless the area devoted to the cultivation is secured from public access by means of a locked gate and any other security measures necessary to prevent unauthorized entry are installed.
 - (c) No manufacture of concentrated cannabis in violation of California Health and Safety Code section 11379.6 is allowed.
 - (d) No collective shall possess more dried marijuana or plants per member other than the amounts permitted pursuant to State law.
 - (e) No collective shall possess or provide marijuana other than marijuana that was cultivated by the collective at the location and in strict accordance with State law and the Code.
 - (f) If marijuana is grown out of doors it must be grown in an area immediately adjacent to the physical structure where the collective meets and proper security measures must be in place to prevent non-members from accessing the marijuana growing outdoors.

Policy Alternative(s): The following alpha order corresponds to the above provisions:

- (a) The City Council could lift this cultivation requirement. Staff's purpose for placing this requirement is to ensure safety for the Collective's operations and medical marijuana and staff believes that open view of medical marijuana may create an easy target for crime and/or theft.
- (b) See (a) above.
- (c) No policy alternative available.
- (d) No policy alternative available.
- (e) A policy alternative for the City Council to consider is allowing the off-site cultivation of medical marijuana (See Section 1, Zoning/Land Use Policy for a discussion on this alternative).

HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: Medical Marijuana

June 15, 2010

Page 13 of 27

(f) Policy alternative detailed in Section 1, Zoning/Land Use Policy.

- 3. Collective Operations:** This section of the ordinance sets out several operation requirements for Medical Marijuana Collectives. The key areas are: hours of operation; prohibition of operating for profit; prohibition on the sale and/or manufacturing of medical marijuana products (e.g., edibles, oils, ancillary products, etc.); prohibition on the diversion of medical marijuana to non-qualified patient caregivers or patients; and, prohibition on the consumption of medical marijuana and alcoholic beverages onsite.

Policy Alternative(s): The City Council could adjust the proposed hours of operation. In developing these hours, careful consideration was given to patient need to have access to the collectives at reasonable hours while also considering the needs of other commercial activity, residents, and surrounding neighborhood activities/uses. The proposed hours, 9:00 a.m. to 8:00 p.m., are somewhat modeled after hours of operation for traditional pharmacies, which cursory researched showed the following: Monday - Friday: 9:00 a.m. to 7:00 p.m.; Saturday: 9:00 a.m. to 5:00 p.m.; and, Sunday: 11:00 a.m. to 5:00 p.m. The City Council could adjust the days of operation, as well, or model the hours of operation based on the above cursory research. Many of the remaining operational requirements are within the City Attorney's legal review and application of the law and, as such, policy alternatives are not necessarily available because they may exceed the law.

4. Owner, Manager and Membership Requirements

- (a) No member convicted of a crime of moral turpitude or convicted of those crimes listed below shall have an ownership interest in the collective or be a manager for, or engage directly or indirectly in the management of the collective. Conviction within the last 10 years of any misdemeanor or felony involving:
- The use of violence, force, fear, fraud or deception
 - The unlawful possession, sale, distribution or transportation of a controlled substance
 - The use of money to engage in criminal activity
- (b) No member under the age of 21 shall be a manager for, or engage directly or indirectly in the management of the collective.

Policy Alternative(s): While staff has put forward the regulatory requirements for owning and/or managing a Medical Marijuana Collective, the City Council could adjust the following requirements noted below. However, the requirements are established to achieve, at minimum, the legal, responsible and adequate management of a Medical Marijuana Collective.

- 21 years of age or older age limit to "18 years of age or older" to align with the legal definition of an adult;
- Conditions placed on a person with a misdemeanor or felony conviction; and/or
- Request of staff to further evaluate the proposed management structure based on any additional input that the City Council receives, which may then require an adjustment to the staffing plan and Registration Fee.

HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: Medical Marijuana

June 15, 2010

Page 14 of 27

- 5. Packaging of Medical Marijuana:** At the March 30th City Council Meeting, there was specific discussion on the safety and product quality of medical marijuana. Staff has evaluated and put forward, to the extent possible, the regulatory requirements that place some standards for product safety and quality control. The ordinance begins to address these issues, albeit the City's regulations cannot guarantee the safety or quality control of the medical marijuana provided by Medical Marijuana Collectives. That said, the ordinance establishes that no medical marijuana shall be dispensed by the collective or any of its members to a member more than once per day and establishes several packaging requirements that result in some ability to track product information and some health and safety notifications.

Policy Alternative(s): The City Council could:

- (a) Increase the number of times that a Medical Marijuana Collective can dispense medical marijuana to a member. Staff believes that the ability to obtain medical marijuana once per day allows a patient or qualified caregiver adequate opportunity to obtain medical marijuana and enables the opportunity to plan accordingly under these requirements. As such, and accordingly to legal review, no quantity limits are proposed at this time. Another reason that staff considered valid for limiting distribution to once per day was to minimize traffic impacts for neighborhoods and/or other commercial activity.
- (b) Expand or lessen the above packaging requirements proposed for medical marijuana. Staff believes that it has recommended a minimum set of disclosures consistent with any medical prescription issued with the intent to protect the public health and safety for a patient, as suggested by the City Council on March 30th.

Staff would like to acknowledge that due to staff resources and time restrictions to complete the response to this referral, operational regulations concerning: medical marijuana inventory limits; delivery systems; staff training; trash/litter collection; product recall notification process; and, live entertainment onsite (as noted in the City of Mountain View's memorandum on medical marijuana cooperatives and collectives) have not been analyzed to understand their potential impacts on the Regulatory Program and are not addressed as part of this ordinance. Depending on the City Council direction, staff could return at a later time with an analysis of how to address these topics or any other topics not included in this discussion. Lastly, at the June 7 community meeting, staff described two membership requirements that have since been removed as key features from a draft ordinance: (1) San Jose residency requirement and (2) the restriction of one membership per qualified patient or caregiver.

Part 5: Maintenance of Records

The draft ordinance outlines the minimum requirements for the maintenance of records to properly and professionally review the Medical Marijuana Collectives' activities. Adjusting the proposed requirements for the maintenance of records is not recommended and would adversely impact the City's ability to adequately support this Regulatory Program.

Part 6: Audits

The draft ordinance recommends an audit of operations which is required to be completed and certified by an independent certified public accountant in accordance with generally accepted auditing and accounting principles. This requirement ensures that the City receives an independent report on the Collectives' activities and enables the City's ability to properly support this Regulatory Program. Adjusting the proposed requirements for the auditing of records is not recommended and would adversely impact the City's ability to adequately support this Regulatory Program.

Part 7: Inspection and Enforcement

This section allows for the Chief of Police and any other City Official that is charged with enforcing the provisions of the ordinance to enter and inspect the collective and their records. This section further outlines enforcement guidelines with respect to inspections. Adjusting the proposed requirements for the inspection and enforcement is not recommended and would adversely impact the City's ability to properly support this Regulatory Program.

Part 8: Application of Chapter; Other Legal Duties

This section establishes the requirement for all existing medical marijuana collectives, dispensaries, operators, establishments, etc., not properly registered with the City to immediately cease operation. This section also outlines other legal requirements and outlines how violations will be addressed by the City. It also contains standard release of liability and a hold harmless clause. Last, it sets a sunset clause for when the draft ordinance would expire.

- 1. Sunset Clause:** The proposed term of the draft ordinance shall be for two (2) years, unless the City Council adopts an ordinance to extend these provisions.

Policy Alternative(s): The City Council could adjust the length of the sunset clause or remove it entirely. Staff proposed a sunset clause over two years to pilot this Regulatory Program, bring forward any recommended changes upon a reasonable period of time to observe the application of the regulations, and to enable further adjustments if needed.

Part 9: Personal Use Requirements and Regulations

This section outlines generally the guidelines for personal use of medical marijuana outside of the collective model.

- 1. Individual Use:** The draft ordinance allows for the cultivation and possession of medical marijuana for medical use by a single qualified patient or primary caregiver. Key features in the draft ordinance for personal use are that cultivation is limited to an area not to exceed 50 square feet per residence (a legal dwelling unit) and cultivation of medical marijuana for personal use shall be in conformance with the following standards: residence shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities; medical marijuana cultivation shall

HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: Medical Marijuana

June 15, 2010

Page 16 of 27

remain at all times secondary to the residential use of the property; qualified patient or person with a identification card shall reside in the residence where the medical marijuana cultivation occurs; medical marijuana cultivation area shall be in compliance with the current adopted edition of the California Building Code; cultivation shall not adversely affect the health or safety of the residence in which it is cultivated or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts; or, be hazardous because of the use or storage of materials, processes, products or wastes; all electrical equipment used in the cultivation of medical cannabis shall be plugged directly into a wall outlet or otherwise hardwired, the use of extension chords to supply power to electrical equipment used in the cultivation of medical marijuana is prohibited; from a public right of way, there shall be no exterior evidence of medical marijuana cultivation occurring at the property; medical marijuana cultivated or processed for personal use as provided herein shall not be distributed to any person or collective; medical marijuana cultivation lighting shall not exceed 1200 watts; and, medical marijuana sale is prohibited.

Policy Alternative(s): The City Council could choose to impose any specific requirements for the personal use of medical marijuana or adjust the above requirements, so long as they do not exceed the law. City staff's recommendation on the requirements for personal use are based on the desire to not interfere with a patient's right to use medical marijuana and to ensure that the cultivation of medical marijuana at a residence does not become the primary purpose for the dwelling. Staff has also added requirements to ensure that cultivated medical marijuana is not diverted for non-legal purposes.

3. Cost for Regulatory Program

Estimating the staffing needs to implement and sustain a Medical Marijuana Regulatory Program has been difficult given staff's lack of experience in the regulation of medical marijuana, lack of information about the population size subject to the draft ordinances, and the final Regulatory Program that the City Council ultimately puts in place. As already noted, based on the final decisions that the City Council makes, should the draft ordinances be approved, staff may need to adjust its staffing plan accordingly to meet the regulatory needs. In addition, staff requires sufficient time to complete materials, fill proposed staffing positions, and provide training to administratively support this ordinance.

In order to develop a "cost recovery" Regulatory Program, staff evaluated options that ranged from a full complement of sworn staff in the Police Department to multi-department staffing plan. Staff's goal was to develop a cost recovery staffing plan that could effectively address the significant resources and diverse sets of professional expertise/disciplines needed to support the Regulatory Program, such as: professional, policy, legal, and financial reviews; law enforcement operations and, any other issues that may surface during support of this ordinance. Given the complexity of implementing and supporting implementation over the next fiscal year, it appears that a staffing plan that focuses on a multi-department approach is the most prudent. This approach leverages staffing disciplines/expertise from core departments required to ensure the support of this ordinance's success and includes the resources

HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: Medical Marijuana

June 15, 2010

Page 17 of 27

required from the City Attorney’s Office which are funded by the City’s Indirect Cost Rates or by PBCE which is a fee-based department. The success of implementing this Regulatory Program, at a time of significant change for the organization, will rely heavily on the ability to work by intra-department teams and respective areas of expertise.

Table 1 represents an estimate of staffing resources based on the draft urgency ordinance, without consideration to the policy alternatives noted in this report. The various line items in the Table represent the costs to the City for the Regulatory Program and include the indirect costs rates in accordance with the City-wide Cost Allocation Plan. The indirect costs account for the costs of administrative support activities associated with this Regulatory Program and are considered revenue to the General Fund. Once the Regulatory Program is approved, staff intends to recognize the additional revenue generated through overhead as a recommendation to the City Council as part of the 2009-2010 Annual Report process. Additionally, as part of the City Council’s consideration of a regular Medical Marijuana Ordinance, or at another appropriate time, indirect costs associated with the Departments of Fire and PBCE will need to be resolved and the costs are not reflected in Table 1.

Table 1: Medical Marijuana Ordinance “Cost Recovery” Staffing Plan

Staff Classification	Level (FTEs)	Cost
<u>Citywide Policy Coordination and Policy/Evaluation Review</u> Executive Analyst (City Manager’s Office)	0.5	\$55,488
<u>Law Enforcement and Investigation</u> Police Officers	2.0	\$366,666
Sergeant	1.0	\$209,592
Indirect Cost Rate		\$153,310
Non-Personal /Equipment		\$2,930
<u>Financial Audit</u> Analyst II (Finance Department)	1.0	\$121,014
Indirect Cost Rate		\$41,160
Total	4.5	\$950,160
Registration Fee Per Collectives (10 total)		\$95,016

Below is discussion of key areas of responsibility for each of the proposed functions:

Law Enforcement & Investigation: The registration of collectives would follow a process similar to the process used for permitting and licensing public entertainment venues (nightclubs). The Police Department will utilize the components of the system that are already in place to register Collectives (e.g., photo log, computer systems, etc.). Additionally, Police Department staff, along with an internal City staff review team representing various departments, would review the registration forms and collectively make determinations. This internal staff review team would be comprised of members from

HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: Medical Marijuana

June 15, 2010

Page 18 of 27

the Police Department, PBCE, Human Resources Department - Risk Management Division, City Manager's Office, City Attorney's Office, Finance Department, and Fire Department to review applications, possibly meet with applicants as a panel, and confer with other City departments or offices to effectively support the program. The Police Department would conduct criminal background investigations of management and owners of the Collectives and perform the day-to-day regulation of the Medical Marijuana Collectives. The two Police Officers would be responsible for conducting investigations, issuing citations, and taking action against collectives if they are not in compliance with the ordinance. Because of the nature of the work and the potential problems that may arise, it is staff's professional opinion that the regulation and inspections of Collectives should be performed by two Police Officers.

The Sergeant would be responsible for the overall management and coordination of the law enforcement and investigation work performed by the Police Department, along with the immediate supervision of the two Police Officers. Additionally, given staff resources, the Sergeant would provide back up support when officers are not available due to training, court obligations, vacation, or other authorized absences, etc. The Sergeant would also be charged with developing, implementing and administering internal policies and procedures and training staff on such procedures and would be responsible for coordinating department-wide notifications/communications of this Regulatory Program through the appropriate internal structure. The Sergeant would serve as the liaison to the community (responsible for responding to citizen complaints), Collectives, District Attorney's Office, other municipalities, etc.

The proposal allows for the City to use existing organizational infrastructure to most easily implement the administrative processing for this ordinance and keeps costs down for a Collective; however, given the extent the work required to regulate the collectives, the Department is unable to absorb these additional law enforcement tasks and requires the addition of 3.0 FTEs sworn positions as detailed above.

Policy/Evaluation Review: Given that the success of implementation requires coordination of multiple departments and close tracking of policy issues over the first years of implementation, this Regulatory Program requires that a 0.5 FTE, Executive Analyst position, be allocated in the City Manager's Office. This staffing plan models other high-profile initiatives that have required the City Manager's Office direct support and oversight, much like the City Council has appropriated staffing to launch new initiatives in the past, such as: Green Vision, downtown entertainment zone coordination, domestic violence coordination, open government initiatives, etc. After two years (consistent with the Sunset Clause), staff will reevaluate the program's stability and make a determination on whether to continue City Manager's Office staffing or to accordingly distribute the duties at the department level. While in the past, one full time position was established to support these high profile City Council initiatives, the City Manager's Office has adjusted in light of the current environment and to be mindful to containing costs. Additionally, this position would play a key role in convening the internal working group, tracking the policy issues over the first year associated with implementation or support of the ordinance, and develop a one- and two- year evaluation prior to the sunset of the ordinance for the City Council. Since the Registration Fee requires that the funding be disbursed to multiple departments, the City Manager's Office would be responsible for fiscal management of this citywide appropriation and

HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: Medical Marijuana

June 15, 2010

Page 19 of 27

ensuring that revenue and costs are assigned appropriately. In addition, this position would develop and coordinate the appropriate actions following the outcome of the November 2010 ballot measure, if necessary. Lastly, this position would coordinate the public outreach processes and address non-law enforcement components of the Regulatory Program to ensure that sworn staff is appropriately supporting law enforcement duties.

Financial and Compliance Review: This 1.0 FTE, Analyst II position, would review the financial records of all collectives to ensure compliance with the ordinance and work in coordination with the Police Department on financial investigations of collectives. This position would be assigned to the Finance Department.

Registration Fee Applied to Patient Population and Collective Model

The above staffing plan provides the minimum level of resources required to implement and support a Medical Marijuana Regulatory Program. As noted, there is a lack of certainty about the patient population served and how this may impact the Registration Fee and Collective model outlined in the ordinance. However, using information obtained from an operating cannabis club in San Jose regarding the medical marijuana patient population served and June 7th public input, staff has been able to better forecast how the proposed Registration Fee might impact a medical marijuana patient that is a member of Collective. Based on discussion with an operating cannabis club, it is estimated that its client population alone is about 35,000 and growing. Additionally, at the June 7 community meeting, an attorney representing cannabis clubs noted that the estimated patient population in San Jose and Santa Clara County was 15,000 to over 100,000, respectively. Given this broad range of population figures provided, and the lack of a more scientific approach, a set of fiscal impacts for a medical marijuana patient is provided based on a range of scenarios:

Table 2: City's Registration Fee vs. Fiscal Impact on Medical Marijuana Patients/Collectives

Collective Patient Population	Annual Fee (Monthly Fee x 12 = Annual Fee)	Monthly Fee (Registration Fee/Patient Population = Monthly Fee)
5,000	\$ 235.31	\$19.60
15,000	\$78.36	\$6.53
35,000	\$33.62	\$2.80
100,000	\$11.76	\$0.98

Staff feels that the estimated costs, in each of the above scenarios, are reasonable and within the spirit of the Compassionate Use Act.

It should also be noted that the final number of collectives approved by the City Council may result in a different staffing plan, and to the degree that Collectives comply with the requirements of the ordinance, may also result in less staff regulation than if the collectives are non-compliant. Another factor that may have an impact on staffing needs is the unknown patient population. One San Jose cannabis club expressed that in Oakland, clubs have experienced a 40% patient increase when Hayward

HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: Medical Marijuana

June 15, 2010

Page 20 of 27

adopted a ban on medical marijuana dispensaries. Any changes to population served, activity taken by surrounding cities that result in impacts to San Jose operations, etc. may directly impact the staff resources needed to maintain an effective Regulatory Program: an issue to be closely monitored.

Schedule of Fines: Included in this recommendation is standard amendment language for the Administrative Citation Schedule of Fines for Violations related to the draft urgency Medical Marijuana Ordinance (Chapter 6.88, Medical Marijuana). Staff will issue a supplemental memorandum by June 22, 2010 that will provide the proposed Schedule of Fines for City Council's consideration.

4. Ballot Measure (Taxation Analysis)

The City Council directed staff to conduct an analysis for its consideration of placing a tax measure on the November 2, 2010 ballot, as such:

A cannabis business tax with a minimum tax rate of 3% which equates to \$30 applied as the tax rate per \$1,000 of gross receipts. (Source: March 29, 2010 Council Memorandum authored by Councilmember Oliverio)

Below is staff's taxation analysis along with background information.

Referral on Business Tax on Cannabis Businesses in San Jose: Staff was directed to explore the revenue generating potential of taxing cannabis businesses in San José at a rate of 3% or \$30 per \$1,000 of gross receipts. This taxing formula is similar to the Oakland business tax ordinance which was recently amended with the voter approval of Measure F in November 2009. Oakland's Measure F increased the tax rate on cannabis businesses from \$1.20 to \$18 per \$1,000 of gross receipts.

City's Current Business Tax: In general, the City currently taxes every person engaged in business in San José based on the number of employees. A minimum business tax of \$150 per year is charged, plus an additional tax in the amount of \$18 per employee over 8, not to exceed a maximum of \$25,000. The City's business tax was enacted solely to raise revenue and is imposed on businesses operating legally and illegally within the City; it is not a regulatory tax. Businesses that are nonprofits under State and Federal law are exempt from paying a business tax under State law. The payment of a business tax and its acceptance by the City, does not entitle the taxpayer to engage in business activities in the City unless the operator complies with all of the requirements of the City's Municipal Code and all other applicable laws.

Taxation Analysis/: The draft ordinance for the Regulatory Program prohibits the collectives from generating a profit, which is not the same as being a non-profit under Federal and State law. Not making a profit does not relieve the collective of their business tax liability. Absent the non-profit tax designation, the collectives will be subject to the City's Business Tax Ordinance.

HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: Medical Marijuana

June 15, 2010

Page 21 of 27

Only in-kind contributions and reasonable compensations to primary caregivers for services rendered will be allowed and only under the strict compliance with State Law. Given the limitations imposed by State Law on the ability of collectives to engage in sales for profit, the revenue generating potential of raising significant new revenues even if the voters were to pass a new tax on Medical Marijuana Collectives is small based on the proposed Regulatory Ordinance. While the City may be able to tax in-kind contributions and bartered-for-exchanges under a new business tax model, it is unclear at this time what additional revenues the City could expect to receive

Regulate, Control and Tax Cannabis Act of 2010 on the November Ballot: Under the provisions of the *Regulate, Control, and Tax Cannabis Act of 2010* currently on the November ballot, a local government may adopt regulations to permit the retail sale of marijuana, subject to certain limitations. If the voters approve the Act, and the City proactively obtains voter approval to implement a new gross receipts business tax on cannabis businesses (the "Tax") on the same ballot, then the City would be poised to begin imposing and collecting the new gross receipts business tax. The ability to collect the Tax would be subject to City Council's decision to permit the retail sale of marijuana in San José in the future and implement the necessary zoning and ordinance changes to be consistent with State Law. The ability to forecast the potential tax revenue is complicated by the unknown approach the federal government will take regarding the legalization of recreational use of marijuana. Despite the potential for voter approval, a practical concern exists that retail outlets for recreational marijuana purchases may not occur if the federal government decides to intervene.

Policy Alternative: An alternative approach is for the City to take a "wait and see approach" and delay any potential ballot measure taxing cannabis businesses until after the November 2010 election. Proposition 218 provides that an election for the purpose of imposing a general tax must be consolidated with a regularly scheduled general election for members of the City Council, except in cases of emergency declared by a unanimous vote of the City Council. Accordingly, the next opportunity to bring forward a general tax would be in 2012, unless the City Council unanimously votes to declare a fiscal emergency. A special tax can be voted on at any election but requires 2/3rds voter approval and the tax revenues must be dedicated to specific purposes.

Sales Tax: Staff is also reviewing medical marijuana as a potential source for sales tax revenue. According to the State Board of Equalization (SBOE), the sale of medical marijuana is taxable. Not making a profit does not relieve the seller of his or her sales tax liability.

The City of Oakland has received approximately \$230,000 in medicinal marijuana sales tax dollars based on their 2009 gross receipts estimated at \$23 Million. Staff's research indicates that the City of Oakland's collectives are operating as dispensaries selling medical marijuana for profit with retail sale prices ranging between \$160 to \$400 per ounce.

Under the current draft ordinance, the potential for sales tax revenue may be less based on the value placed on the bartered-for-exchanges or in-kind contributions. Staff has submitted a request to the SBOE's tax opinion expert (TOE) to assist in clarifying when a medical marijuana sale is subject to

HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: Medical Marijuana

June 15, 2010

Page 22 of 27

sales tax collection and reporting under the collective model to better assess the City's potential sales tax revenue. Staff expects the TOE to respond to the City by early July.

Timeline & Cost for Ballot Placing: The deadline to file the City Council's resolution with the County Registrar of Voters for placing a ballot measure on the November 2010 Ballot is August 6, 2010. Ballot arguments are due August 10, 2010; rebuttal arguments (if authorized by City Council resolution) are due August 17, 2010. The City Council's decision to place a ballot measure on the November 2010 ballot would incur an estimated cost of \$410,000 that would need to be funded by the General Fund. The level of support for the potential ballot measure will be affected by other measures on the ballot. This does not account for any other measures advanced by school districts, special districts, and/or the County of Santa Clara.

Ballot Measure Polling: Staff has assumed that the City Council is not interested in polling "likely voters." Confirmation of this assumption is needed in order to inform the City Council on the potential level of public support for a potential marijuana tax ballot measure, professional polling of "likely voters" in San Jose may be considered before placement of the ordinance on the November 2010 ballot. Since extensive stakeholder outreach has not yet been completed, the level of support or opposition is unknown and could significantly influence the outcome of this measure, especially when polled against a broader package of potential City ballot measures. There is also an issue of sufficient time to complete a poll if desired, staff would need to develop polling questions and secure a consultant to perform the polling in the required timeframe. Staff is concerned about the ability to present polling findings, if at all possible, by the August 3 City Council Meeting.

The cost of a telephone survey in three languages – English, Spanish, and Vietnamese – is provided. The length of each telephone survey would be determined by the number of questions asked, which would need to be developed by the end of June to put into place a survey by July, pending a consultants availability to perform this survey. A pricing scale is included below to provide the City Council with a price range for such services and would require an appropriation of funds since there is no existing budget for this purpose. The full cost of a survey varies depending on the length and sample size. Unfortunately, coordinating and developing a community survey, while concurrently implementing the ordinance, would be a staff resource challenge and the quality of the poll or implementation of the ordinance will be impacted.

Table 3: Community Polling Cost Based on Time and Sample Size

Sample Size Population	Survey Length	Estimated Costs
600*	15 minutes	\$30,500
	20 minutes	\$35,250
	25 minutes	\$40,250
800**	15 minutes	\$35,500
	20 minutes	\$42,000
	25 minutes	\$48,500

*4.0% Margin of Error **3.5% Margin of Error

HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: Medical Marijuana

June 15, 2010

Page 23 of 27

Lastly, a funding source appropriation in the approximate amount of \$450,000 would be required to move forward with a ballot measure and community polling.

5. Community Outreach Plan

The City Council directed staff to develop a community outreach plan to ensure that there is a formal process for community input and participation. The City Council's open government policy titled, "Community Engagement Process for Significant City Policy Actions," sets forth community outreach requirements and protocols for new Council policies and/or ordinances. More specifically, the "Community Engagement Process" for significant policy actions directs that at least two community meetings be "held at meaningful points in the process during which recommendations for the proposed policy action are still under development," as well as a final community meeting "after the development of final recommendations at which those recommendations will be presented to the public." Based on this requirement, and in response to the 60 day referral that the City Council directed, staff, in Table 4, has proposed a schedule to partially comply with the City Council community engagement policy.

The proposed ordinance amending Title 6 has also been agendized as a regular ordinance. The City Council may approve the proposed ordinances at the June 22nd City Council meeting. The second reading would occur on August 3, 2010. The ordinance would then be effective on September 3, 2010. If an urgency ordinance is approved, staff would develop a regular ordinance and present it to the City Council at a later time. Below is the timeline for a ballot measure, should the City Council direct staff to develop a measure:

Table 4: Community Outreach Schedule for a Ballot Measure

Date	Topic
June 7	Community outreach meeting to present key features of the draft ordinances and obtain public input
June 22	City Council review of staff report, ordinances, and public input, with determination of how to proceed with a ballot measure and regular ordinance
July 20	Community outreach meeting scheduled to present key features of a draft regular ordinance and obtain public input
August 3 (Tentative)	Review of ballot measure language, if directed by the City Council on June 22.

Similar to other policy processes, information about all meetings related to medical marijuana ordinances will be made available through various and extensive communication efforts to engage community participation, which includes:

HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: Medical Marijuana

June 15, 2010

Page 24 of 27

- Email/direct mail to individuals and groups who spoke at past Council and Committee meetings and/or have expressed an interest in participating in community input sessions. A contact list of these stakeholders has been developed that also includes businesses that advertise on local newspapers, hospices, medical societies/groups, etc.
- Distribution of information to neighborhood associations and groups through the City's Strong Neighborhoods Initiative and individual Council Offices.
- Insertion of information in the City Manager's Weekly Report.
- Posting of information on the City's web site and television channel, at community centers and libraries, and in at least one general circulation or community English language newspaper publication.

On June 7, City staff held a community outreach meeting at City Hall that was widely advertised. Approximately 200 people attended and many individuals provided public input. The meeting was structured such that staff provided the key features under consideration of the Regulatory Program and land use policy. The Meeting Agenda and Powerpoint presentation were posted to the website before the meeting began and copies of the materials were available. Speakers were allowed to speak without a time restriction. Early in the meeting, staff noted that the meeting was being transcribed to provide the City Council with a full transcription of the public input received (Attachment D). A supplemental report will be issued before the June 22 Council meeting that summarizes the repeating topics heard at the June 7 public meeting, but a transcript is provided at this time to transmit the public input.

Given the broad range of public input, it is difficult to capture the themes of the meeting; however, reoccurring topics were:

- Maximum number of permissible Medical Marijuana Collectives
- Sensitive Uses
- Zoning, Commercial vs. Industrial
- Interpretation of the Law
- Concern for the schedule
- General comment about the nature of the regulations

POLICY ALTERNATIVES

While the City Council did not direct the City Attorney to draft ordinances pertaining to a moratorium or ban of establishments dispensing medical marijuana in the City, a policy option of banning these establishments will be presented in the event the City Council does not wish to adopt the proposed amendments to Title 20 and Title 6 on an urgency basis. The City Attorney's Office and Administration wanted to ensure that the City Council did not feel restricted by its options during the June 22nd City Council Meeting. To provide this alternative, the City Attorney's Office has prepared an urgency ordinance to amend Title 20 to ban establishments dispensing medical marijuana. Although it is the City's position that medical marijuana dispensaries and collectives are not permitted uses under Title 20, the proposed ordinance would confirm the ban on these establishments. A ban rather than a

HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: Medical Marijuana

June 15, 2010

Page 25 of 27

moratorium has been proposed so that it is clear that existing dispensaries and collectives currently are not permitted uses under Title 20.

At the Council's option, staff could be directed to bring back alternative regulatory schemes for consideration by the City Council at a later date. In order for the City to adopt the permanent ordinance to establish the ban, the Planning Commission must first consider the ordinance. Accordingly, the initiation of the regular ordinance amending Title 20 and forwarding the proposed ordinance to the Planning Commission for its consideration and report has been agendized.

EVALUATION AND FOLLOW-UP

Staff will review the success of the Ordinance and report back to the City Council after two years or as needed during the pilot period for the purpose of identifying any necessary ordinance changes. Next fiscal year, however, staff will propose new costs, fees and charges, budgets, etc. as part of the budget process for FY 2011-2012.

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)**

This issue meets Criteria 2 and 3 above and falls under the Community Engagement Policy established by the City Council. As already noted in this report, given the short timeframe to complete this referral, staff has developed an outreach schedule that partially meets the Community Engagement Policy requirements and allows for Council consideration based on its direction.

As noted earlier, one public meeting has been already held. To ensure the community's awareness of the meeting, staff mailed and emailed a flyer with information about the meeting to various stakeholder groups and individuals. In addition, the flyer was posted on the City's home page, ran on the City's cable channel and on City Hall information monitors. A media advisory was sent out to all local media outlets and ads were placed in the Metro Newspaper and in the Silicon Valley Community Newspapers. Similar outreach will be conducted for the second public meeting, planned for July 20th. Additionally,

HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: Medical Marijuana

June 15, 2010

Page 26 of 27

during the development of this staff report, staff has held teleconferences with Medicinal Cannabis Collectives Coalition (MC3) and has spoken with constituents that have called the City to express concern.

COORDINATION

This memorandum has been coordinated with the Office of the City Attorney. The proposed ordinances will be posted by the City Attorney's Office to the Clerk's agenda webpage.

COST SUMMARY/IMPLICATIONS

Implementation of a medical marijuana regulatory program would not incur additional costs to the City. As proposed, the Regulatory Program would be 100% cost recovery and would not impact the General Fund as 100% of costs would be reimbursed by the Medical Marijuana Collectives.

CEQA

Exempt, File No. PP10-116.

/s/

DEANNA J. SANTANA
Deputy City Manager

/s/

ROBERT L. DAVIS
Chief of Police

/s/

JOSEPH HORWEDEL
Director, Planning, Building &
Code Enforcement

/s/

SCOTT P. JOHNSON
Director of Finance

/s/

JENNIFER A. MAGUIRE
Budget Director

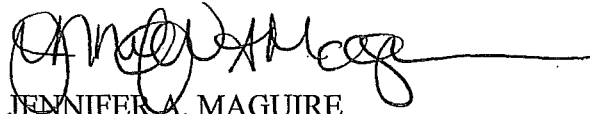
HONORABLE MAYOR AND CITY COUNCIL

SUBJECT: Medical Marijuana

June 15, 2010

Page 27 of 27

I hereby certify that there will be available for appropriation in the General Fund in the Fiscal Year 2010-2011 moneys in excess of those heretofore appropriated wherefrom, said excess being at least \$755,690.



JENNIFER A. MAGUIRE

Budget Director

Attachments:

- A: State Legislation
- B: Title 20, Land Use Ordinance *(To Be Released by the City Attorney's Office)*
- C: Title 6.88, Medical Marijuana Ordinance *(To Be Released by the City Attorney's Office)*
- D: June 7 Community Meeting Transcript
- E: Medical Marijuana Ban Urgency Ordinance *(To Be Released by the City Attorney's Office)*

City of San José
Office of Intergovernmental Relations
Sacramento Legislative Office

2009-10 State Legislative Session

Medical Marijuana Bills

As of June 14, 2010

AB 1811 (Ammiano) – Drug Paraphernalia.

Although medicinal marijuana users are allowed under California law to grow, purchase, possess, smoke, and ingest marijuana, their ability to obtain appropriate paraphernalia to assist in growing or using marijuana is prohibited by statute. This bill would allow medicinal marijuana patients to possess and use bongs, glass pipes, carburetors, roach clips, grow kits, and other paraphernalia if they are used for a lawful purpose. It would also clarify existing law to ensure that vendors providing paraphernalia intended for use with medicinal marijuana or other legal substances are allowed to sell these products. (Nonfiscal)

Status: Assembly Floor, Failed passage.

Amended: 3/9/10.

AB 2254 (Ammiano) – Marijuana Control, Regulation and Education Act.

Would have removed marijuana and its derivatives from existing statutes defining and regulating controlled substances. Would have provided for regulation by the Department of Alcoholic Beverage Control of the possession, sale, cultivation, and other conduct relating to marijuana and its derivatives, not including medical marijuana, by persons 21 years of age and older. Would have established a wholesale and retail marijuana sales regulation program to be administered and enforced by the department that imposed special fees to fund drug abuse prevention programs to commence after program regulations had been issued by the department. Would have banned local and state assistance in enforcing inconsistent federal and other laws relating to marijuana, and would have provided specified infraction penalties for violations of these new marijuana laws and regulations. Would have made existing prohibitions against the smoking of tobacco products in specified areas, including public offices and restaurants, applicable to the smoking of marijuana products. (Fiscal)

Status: Assembly Public Safety Committee, Hearing canceled at request of author. **Amended:** N/A.

AB 2650 (Buchanan) – Medical Marijuana.

Prohibits any medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates or distributes medical marijuana from being located within a 600 foot radius of any public or private K-12 school, as specified. Would also provide that local ordinances that regulate the location or establishment of these medical marijuana establishments, adopted prior to January 1, 2011, would not be preempted by its provisions; and that nothing in the bill shall prohibit municipal jurisdictions from adopting ordinances that further restrict the location or establishment of these medical marijuana establishments. (Fiscal)

Status: Passed the Assembly Floor. In Senate, amended and referred to Senate Public Safety Committee.

Amended: 6/10/10

SB 1449 (Leno) – Marijuana: Possession.

Specifically defines possession of not more than one ounce, or 18.5 grams, of marijuana as an infraction, an offense that under existing law is only punishable by a fine of up to \$100, and not jail time. (Nonfiscal)

Status: Passed the Senate Floor. To the Assembly, referred to Assembly Public Safety Committee.

Amended: 4/5/10.

SBx6 16 (Calderon) – Taxation: Marijuana.

Imposes a tax on the distribution of medical marijuana at a rate equivalent to that imposed upon tobacco products. Requires the tax revenues to be deposited in the Cannabis Tax Account, created by this bill. Requires the State Board of Equalization, in consultation with the Health and Human Services Agency, to report to the Legislature on the impact taxing the distribution of medical marijuana within the state. (Fiscal)

Status: Senate Committee on Revenue and Taxation, set for hearing June 23. **Amended:** N/A.

SBx6 17 (Calderon) – Cannabis Licensing Act.

Upon the enactment of SBx6 16 above, establishes a Cannabis Licensing Act, to require a seller of medical marijuana to obtain and maintain a license from the State Board of Equalization to engage in the sale of cannabis, and requires the license to be renewed annually. Requires an applicant for a license to pay a one-time license fee of and a renewal fee, and provides all moneys collected to be deposited in the Cannabis Compliance Fund, created in the State Treasury, to be appropriated by the Legislature solely for the purpose of implementing, enforcing and administering the Cannabis Licensing Act. (Fiscal)

Status: Senate Committee on Rules.

Amended: N/A.

November 2010 Statewide Ballot Measure

Initiative Statute 1377. (09-0024. Amdt. #1S) - Final Random Sample Update - 03/24/10

Changes California Law to Legalize Marijuana and Allow It to Be Regulated and Taxed.

Summary Date: 09/21/09 | Qualified: 03/24/10 | Signatures Required: 433,971

Proponents: Richard Seib Lee and Jeffrey Wayne Jones

Allows people 21 years old or older to possess, cultivate, or transport marijuana for personal use. Permits local governments to regulate and tax commercial production and sale of marijuana to people 21 years old or older. Prohibits people from possessing marijuana on school grounds, using it in public, smoking it while minors are present, or providing it to anyone under 21 years old. Maintains current prohibitions against driving while impaired.

Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: Savings of up to several tens of millions of dollars annually to state and local governments on the costs of incarcerating and supervising certain marijuana offenders. Unknown but potentially major tax, fee, and benefit assessment revenues to state and local government related to the production and sale of marijuana products.

ATTACHMENT B

Title 20, Land Use Ordinance
(See City Attorney's Office Supplemental Memorandum)

ATTACHMENT C

Title 6.88, Medical Marijuana Ordinance
(See City Attorney's Office Supplemental Memorandum)

ATTACHMENT D

The following transcript is provided for your convenience, but does not represent the official record of this meeting. The transcript is provided by the firm that provides closed captioning services to the City. Because this service is created in real-time as the meeting progresses, it may contain errors and gaps, but is nevertheless very helpful in determining the gist of what occurred during this meeting.

>> Shawn Spano: We will get started in one minute, one minute. Welcome and good evening. My name is Shawn Spano. I'm a faculty member at San José State university and a consultant who specializes in designing public meetings, public forums, public engagement events like this one. I've worked with the city on a number of meetings like this in the past. Tonight I'll be a facilitator. I'll coordinate the staff speakers as well as members of the public. Time permitting I'll summarize what we hear tonight and I'll also help facilitate the question-and-answer period again if we have time for that tonight. Just on some logistics issues, here, I hope you were able to pick up a packet at the top of the council chambers here. You have the agenda and then on the back you have a summary of the council referral and a schedule of the community input schedule, and then a copy of the PowerPoint slides that we'll be showing you tonight. Now, let's move over to the meeting purpose slide. As indicated on the slide above the purpose of tonight's meeting is to ensure public participation and input at this key point of the process in developing a medical marijuana ordinance. Should the city council choose to allow medical marijuana collectives to operate in the city -- that clause is very important -- city staff was directed by council through a referral to draft an ordinance for medical marijuana collectives in the city. The council has not yet discussed the draft ordinance, and obviously they haven't voted on it. A summary of the referral, that council gave to staff, is on the back of your agenda as I just indicated. And in addition to the draft ordinance that staff has been asked to produce, they're also asked to develop a community outreach plan as well as an analysis for placing the issue on the November ballot. So let's get back to the slide above on the meeting purpose. Tonight staff will present the key features of the draft medical marijuana ordinance, draft medical marijuana ordinance. And the main focus of tonight's meeting is to collect public comment and input. That's the focus of the meeting tonight. And as I mentioned earlier if there's time permitting we'll be able to answer some -- staff will be here and available to answer some questions. Now staff has spent considerable time over the past six months conducting research and doing analysis on medical marijuana and its application to San José. It's a complex issue. It involves multiple departments. So tonight is an opportunity for you to learn about the main elements of staff's preliminary work, and most importantly, an opportunity for you to provide public comment and input. On that issue, let's go to the community outreach schedule. This meeting is not the only opportunity you have to provide public comment on this issue. As the schedule above indicates, city council will review staff's report and a summary of tonight's meeting at their June 22nd council meeting. At that meeting there's an opportunity for public comment, as well. On July 20th, staff will hold a second community outreach meeting at the Roosevelt community center. Now

that space is going to enable us to have a little bit more exchange and a little bit more interaction and a little more time and opportunity for questions and answers. You'll also see that staff has two meetings scheduled in August to take up this issue on the ordinance. And like every council meeting there's public input opportunity at both of those council meetings in August. City council and staff encourage you to attend these meetings and express your views. At the same time they also invite you to listen openly to your fellow residents. I'm suspecting that there are a lot of views on this issue, and there's probably a lot of strong opinions, as well. And that's a good thing if we can manage it effectively. Democracy, good public policy development, depend upon having forums for council for staff and residents do listen and talk together in open, candid and respectful ways. It would be great if we could set the tone for that kind of constructive communication tonight. Next slide. So here are some guidelines for constructive communication. Let's begin with a context setting background point here. Discussion, tonight, focuses on staff will present and will inviting your input on key features included in the areas under consideration. These are areas that are under consideration. You'll notice that I've used the word draft, I've used the word preliminary. This is staff's initial attempt to put together the features of an ordinance on medical marijuana and share that with you, the public. Your input is very important in helping the city to complete its work and to shape the ordinance as it goes forward. Other guidelines, listen for understanding before evaluation. Speak honestly and respectfully, an everyone contributes in their own way. It's also note above that the discussion tonight will focus on key policy features. It's not intended to encompass a legal debate on the status of the law or potential tax ballot measure in November. That discussion will come later. So as we are getting ready to move into the next segment of the meeting, which is the key features, I want to draw your attention to the speaker cards. So if you would like to speak tonight, and I see many have already done that, please fill out a speaker card. And you can give that to one of the staff or drop that in the box here. If you would like to provide written comments tonight, we will welcome those, as well. Please, on any piece of paper, and we have paper available as well, just include your contact information that's on the speaker card and any written comments you provide will be fed forward to the staff. The meeting tonight is being video streamed, as I understand, and audio-recorded as well and staff will transcribe that and provide that information in a summary that they're going to provide the council at their June 22nd meeting. Lastly on the speaker cards. If you just want to be on the e-mail distribution, and that is, you don't have any intention of speaking tonight, fill out a speaker card on the contact information and just bring that forward to staff and let them know you want to be on the e-mail

distribution list. Once the presentation are over I'm going to turn it over to staff in just a minute to provide the presentation. We'll start moving into the public comment portion and I'll be calling speakers down in groups of three. We'll have hand held mics down here at the bottom and I'll ask you to line up in groups of three and then we'll call off your names and you'll provide public comment and we'll move on to the next group of three. Okay. That takes care of opening remarks. The community outreach schedule, and we're now ready to move into agenda item number 3, key features of the draft ordinances. We have three staff members here tonight who will handle that responsibility.

>> Deanna Santana: DGC, deputy City Manager Don endsers, deputy police chief and Joe Horwedel least the director of Planning, Building, and Code Enforcement. So let me turn it over to Deanna.

>> Deanna Santana: Let me turn my mic on. Good evening. Tonight along with the staff panel we will review the key features of the draft medical marijuana ordinance and the areas under consideration. Before we begin our presentation, I want to share that tonight's review is structured into three categories which are on the slide above and I'll just read them out loud. First is: Are the parameters of drafting the ordinance, the operational framework, and the zoning land use framework. Before we get into the details of the proposed ordinance feature let's begin with the discussion on the parameters of drafting the ordinance. First off as Shawn has already mentioned I'd like to say that research and discussion around medical marijuana is complex one that can be filled with values and conflicting legal analysis. Compounding this review is the broad range of current legislation to introduce medical marijuana and/or marijuana in general. In this ever-changing legislative environment, with respect to the current state of medical marijuana regulation issued by the state of California, staff is bringing forward a local public policy that is within the legal review provided by the city attorney's office. The draft ordinances are shaped by the application of the law, which is based on the City's legal review and the administration's receipt of it. To the extent possible, and where legally permissible, staff will be providing policy alternatives for the city council to consider. Based on the first bullet of this slide I want to review some of our key principles: Medical marijuana and the cultivation of it is legal by state law. Qualified patients of San José should have safe and affordable access to medical marijuana. Qualified patients and their primary caregivers who obtain or cultivate medical marijuana solely for the qualified patient's treatment with written or verbal recommendations of a physician are not subject to

criminal prosecution or sanction and adverse community impacts resulting from the distribution, cultivation, storage, or use of medical marijuana should be regulated and minimized for residents of San José. The next slide illustrates key features of the medical marijuana ordinance. The draft ordinance at this time contains nine parts and they are reflected above. I want to call out part 1 which is the purpose and intention for which the city attorney's legal review is based, and sets the foundation for our draft medical marijuana ordinance. Part 1 will generally read: It is the purpose of the urgency medical marijuana ordinance to regulate the collective and individual possession, cultivation, and dispensing of medical marijuana to ensure that medical marijuana is possessed, cultivated, and dispensed in a manner which is responsible lawful and the spirit intended by the voters of California while at the same time ensuring the health safety and welfare of the citizens of San José. Under state law only qualified patients, persons with identification cards and primary caregivers may possess, cultivate and dispense medical marijuana collectively. Medical marijuana collectives shall comply with all provisions of the San José municipal code, state law, and all other applicable local and state laws. Last, the purpose and intent of the ordinance will land with nothing in the proposed urgency ordinance purports to permit activities that are otherwise illegal under federal, state, or local law. These are the legal provisions that set the foundation for the proposed medical marijuana ordinance. The remaining nine sections I'll pass over to Deputy Chief Don anders of the San José police department to review.

>> Well, good evening, and wonderful to see everybody here. Before I present some of the operational framework considerations just a couple of things I wanted to reemphasize that both Shawn and Deanna have brought up. To emphasize, this is very, very in draft form. This is what staff has spent countless hours in researching and trying to craft a draft ordinance that facilitates further discussion and further input from all stakeholders and so what I'm about to present tonight is not proverbial done-deal, it's very much in draft form, and I think it just provides a foundation for opportunities for further input, collaboration and further crafting of the ordinance. With that let me just go ahead and start with the city registrations process and the collective management structure and kind of what we're talking about here. We have researched cooperatives, dispensaries, and collectives. And what city staff has been focused on is what we refer to as a collective model. What does a collective model look like? Basically it's a closed loop model that involves primary caregivers or qualified medical marijuana patients. It's primarily set up in somewhat of a democratic structure where there would be people responsible for supervision,

or for management, for day-to-day operations. They might assume some roles of authority with regards to being a secretary or a treasurer, or something of that nature. What we're looking at this collective model as probably being the most accommodating, responsible model to try to facilitate the provision of medical marijuana to qualified patients and/or their caregivers. So how do we go about creating a collective? Now, what we're really focused on is a registrations process. We looked at licensing processes, permitting processes, a number of ways in which government may engage themselves in the regulatory process, with their community. And we really think that the registration process is relatively seamless, is probably the least bureaucratic and really again helps facilitate this opportunity to provide medical marijuana to patients who are in need. So with that, let's just assume that we have an individual or two or five who decide that they would like to initiate a process with regards to establishing a medical marijuana collective. The registration process as proposed would look something like this. Folks would initially do a very basic application to enter some sort of a lottery system. And whether we talk about a lottery system what we've done is scanned the state, particularly what has happened of late in Los Angeles and we have tried to come up with a process that is the most fair, the most equitable, and provides the best opportunity for all parties who might be interested in developing a collective process. How sit that we provide the most fair opportunity for them to do so? Particularly in light of the fact that there will very, very likely be a limited number of collective opportunities within the City of San José. So how do people get fair opportunity to do that? That's likely through a lottery process. So we would envision an individual completing a basic application, meeting some very basic criteria, such as identifying where it is they want this collective to be located, within some further guidelines, we'll talk about later this evening. Do they, in fact, have a location identified, and has there been some obligation made with regards to that obligation? Does that individual meet some very basic qualifying criteria? Once an initial screening is done all individuals would be entered into a lottery system and ultimately there would be a lottery drawing, we envision that to be independently audited, likely very public, and a list established as people are drawn out of this lottery, out of this proverbial hat, so to speak. So let's just say hypothetically the City of San José and the ordinance decided to establish ten collectives in the City of San José. That lottery might consist of 25 names or parties or collectives that are established on a sequential list. Not just ten, because obviously we envision that in those first ten, there will likely be parties who openly cede their interest in, perhaps they don't qualify or so forth. So that's basically what we might call phase 1. Phase 2 then would be once we identify individuals who have been drawn in the lottery for the limited number of collectives,

those individuals go through what we call a preregistration process. This is a little bit more robust. Where folks would complete a preregistration form or packet, a variety of information, i.e. things like felony convictions, on parole or probation for illegal sales or distribution of narcotics, things of that nature. Things that are not particularly foreign to a licensing or permitting process in arenas similar to this. What we'd be asking for is some sort of an operating model, a business model, just to give the individuals who are engaged in the preregistration process, some idea of how the collective managers or operators envision the collective operating on a Desai Day, week to week some month to month basis. So that we can ensure there's an opportunity to provide due process we're within the parameters of the law or we're outside the parameters of the law or help us out with what A, B or C might actually look like on any given day. Once the preregistration process is completed then ultimately it will be the Chief of Police who would sign off on a particular collective, actually being registered. And that registration would be good for I believe it's one year, on a year to year base or is it two years, Deanna? Two years. The registration process, we looked at a variety of city departments. And really, we decided it's probably best that that registration process be facilitated through the police department. Let me tell you why. One is because the police department are obviously subject matter experts in the arena of state law, some federal law, medical marijuana laws in and of themselves. And so you have subject matter experts who are located at the police department. The second is, the police department already have a licensing and permitting structure. It already exists. Rather than creating a new structure, and having to develop subject matter experts in that location, there's already a structure that exists down at the police department. And the third is, we have a very strong interest in trying to minimize costs. And by having both a geographical structure and infrastructure that works, and subject matter experts on sites, we think that will likely reduce costs as compared to locating this registration process at some other site in city government. Again, this is a proposal, this is what is strongly being considered. With regards to the to a membership payment structure, it is our understanding that to sell marijuana, or to sell items that contain marijuana, exceeds the law. That the sale of marijuana in and of itself is in violation of law. And as such, we're focused on the collective structure that does not facilitate nor allow sale of marijuana. But what it does allow is that members of a collective, a member being a primary caregiver of a qualified patient, or a qualified patient, becoming a registered member of a particular collective. And between those primary caregivers or their members, having the opportunity to exchange marijuana for in-kind services or for reimbursement of actual costs, or some other similar structure. But for a collective to sell marijuana, again, exceeds the law. And for a collective to

operate to a degree that it actually generates a profit, also exceeds the law. We're looking at a collective process whereby people have an opportunity to obtain their marijuana at minimal cost, at real cost, where a profit is not generated, but yet, a system exists where people still get access to the medical marijuana that state law provides for. So with that, how does this compensation occur? And that's something that's still very much under consideration and we have a strong interest in hearing what it is you have to say tonight and we're hoping some additional ideas might be generated by some of the commentary we have tonight. But we do have an interest in ensuring that the exchange of medical marijuana products and medical marijuana products only, for in-kind services or compensation for actual costs, occurs in a very transparent way. And I think that ensures that all of us are comfortable that we're operating within the confines of law while still getting people the medical marijuana that they desire. This gets us to some additional issues, I'll skip ahead because we're going to see this I think on the next page, with regards to maintaining records and transparency. As you can envision, in order for appropriate and valid and professional regulation to occur, it's critical that records, records of transactions, records of supply, records of capital costs, records of members, and so forth, that those records are very available, and transparent, to the city government who is responsible for ultimate regulation. And so as such, in the ordinance, we are asking that many, many records remain quite transparent and very visible. What I need to emphasize to you is we are exceptionally sensitive to and empathic towards hipaa. And we are not looking to investigate or have revealed very private medical information. We are very sensitive HIPAA, very aware of HIPAA, and I just want to assure you that we are not trying to exceed any bounds or intrude into a private medical necessities or privately information of medical marijuana patients. And again, as this ordinance continues to be crafted, I think you'll be quite pleased with our sensitivity toward hipaa. We are looking for management and members of collectives to provide up-front permission, acknowledgment that there will be onsite inspection and onsite reviewing of records, offsite review of records, that records be maintained, that fireproof safes be on site so that records be appropriately retained, should there be a risk of damage to records. We just think this opportunity to engage in a professional independent audit and regulatory process really is key to ensuring that our collectives here in San José are operating in the most appropriate manner and within the parameters of law. We are focused on hours of operation, again tentative. But we've had discussions about 9:00 a.m. to 8:00 p.m. seven days a week, there are reasons for that, operating well after your typical schools get started and so forth but going into the evening so a medical marijuana patients, members of collectives, qualified members of collectives who perhaps want to access

medical marijuana after typical work hours have the opportunity to do that, as well. We thought the hours of 9:00 to 8:00 were quite reasonable and accommodating but again you might have some different thoughts about that. We'd be very interested to hear that. With regards to safety and security measures, everybody here reads the newspaper. You see the news on television, you're on the Internet and obviously, there is a degree of risk when it comes to medical marijuana collectives. Should there be cash on site? There's marijuana on site. There's the possibility of criminal activity occurring. Some of you, many of you I would imagine are familiar with an armed robbery that occurred here in the City of San José, nearly two weeks ago, of a medical marijuana enterprise. Whereby some very terrible things happened. And it's fair to say some people inside that particular structure were exceptionally traumatized as a result of armed suspects committing an armed robbery. We are quite focused on security measures and these security measures go everything from interior lighting to exterior lighting to making sure that marijuana is secure, to make sure that marijuana is not available in plain sight. To try to ensure some sort of a closed circuit TV or similar audio, or visual system, that is archived, appropriate locks, ingress and egress, windows, just things of that nature. Primary commonsensical approaches to safety and security. We are also focused on having security personnel, licensed security or certified security personnel on site. The incident that occurred about a week and a half or two weeks ago legitimizes the need for that. Security guards for want of a better term, would be secured according to business and profession requirements. Which would go to the legitimacy and the professionalism of security at the scene. We're focused on alarm systems, we're focused on ensuring, again, that records of transactions and costs and so forth of cash flow, should there be cash flow, are secure. We're also focused on ensuring that there's minimum cash retained on site. Again, for the protection of medical marijuana patients and people engaged in the management or operations of a particular collective. We're also focused on the aspect of product itself. In that how a product is cultivated, we're focused on product being cultivated, medical marijuana being cultivated primarily on site of a medical marijuana collective. And this quite frankly are for a number of reasons we think are important. First, it minimizes regulatory costs. The more geographic locations that medical marijuana is cultivated throughout the city, obviously that exponentially graduates the necessity for regulation, much more complicated, much more robust, much more sophisticated, much more staff-intense. By ensuring that marijuana is manufactured and cultivated, packaged and exchanged at the primary site of a collective, it is our hope that that minimizes regulatory cost and associated fees or compensation back to city government and ultimately the taxpayer. But to further that, how product is actually

cultivated and what is used to cultivate that product is very critical. Some of you might recall, a councilmember or two, back on March 30th, where comments referred to ensuring that whatever product was used by medical marijuana patients, that that product was safe. I think we all, any reasonable person would have a reasonable concern about how marijuana might be produced, how it might be cultivated, how it might be packaged, and what was used to perhaps supplement marijuana or what was used to fertilize or enhance the growth of that marijuana. What we're asking in the growth of that product is that that product actually contain specifics regards to how that marijuana was cultivated. What fertilizers, what pesticides and so forth may have been used to cultivate that marijuana. And certainly any reasonable person would want to ensure that any sort of a drugs, narcotic, even aspirin, ibuprofen, and medical marijuana, in this case, be in childproof containers. So that we try to, as best as reasonably as we can, ensure the safety of our children. So there are a number of packaging issues related to safety that we're focused on, as well. I talked a little bit about the closed loop system. That just gets to the circumstances or the criteria for a collective. It is closed loop. Now, what do we mean by closed loop? There are no third parties involved. For instance, for party A, party B, party C, party D and party E to engage in a collective they would need to be, one, residents of San José, two, qualified patients, 3, qualified primary caregivers. To go to a third party for that collective to say contract with a third party in lake county or Mendocino or somebody in San Francisco, where that medical marijuana is being cultivated, would not be a closed loop system. And it would exceed the bounds of the proposed ordinance. Whereby we're looking for the medical marijuana to be cultivated at the side of the collective. So this is what I'm talking about when we talk about a closed loop system. That the people who are registered and qualified to be members of that collective are ultimately responsible for the cultivation and the supplying of the medical marijuana. I've talked about packaging considerations. Now, the sale of ancillary or manufactured products or paraphernalia. This ordinance addresses that and it excludes the sale of marijuana paraphernalia or for the provision of other services. Sale of alcohol, sale of retail products, other food products that don't contain marijuana, other service i.e. massage services, what have you. One of the primary reasons for that quite frankly is because if we look at the collective model and we give consideration to the elements of a collective, as defined in the ordinance, not for profit, no sale of marijuana, so we're not actually conducting retail sales. This is not a Israeli structure. It is a collective structure where money can be exchanged for in-kind services or for actual costs for producing, cultivating, packaging and providing the marijuana. To engage in massage services, sale of alcohol, sale of marijuana paraphernalia or what have you, gets into the

arena of retail sales. And that is outside the provisions of a true medical marijuana collective as defined in this draft ordinance. I've talked about records maintenance and independent audits. This draft ordinance, what we have given consideration to are personal use and regulations associated with personal use. And just very quickly. If four qualified patients and/or their primary caregivers, if for or less choose to get together, and cultivate and supply medical marijuana within their circle of one, two, three or four parties, many of the provisions of this draft ordinance simply do not apply. It would not be deemed a medical marijuana collective per se. But that being said, there are some provisions in the draft ordinance that do address personal use of medical marijuana, personal use and cultivation of medical marijuana. Some of those include some standards with regards to growing inside of a private residence, how much space is allocated to growing insides a private residence or so forth. But it was important to let you know that those personal use considerations, some are being provide in here. But for John doe and Jane Smith to decide between the two of them that they wanted to grow marijuana for their personal medical needs many if not most of the outlined factors in the ordinance as drafted would not apply. We envision the actual ordinance, 6.88, to have a sunset clause of two years. And let me tell you why we're interested in a sunset clause of two years. Initially we thought of a sunset clause of one year. Well, we got to thinking about, really, what's the reality? Should council ultimately pass 6.88 or some version of 6.88, there's going to be a period of time, as we talked about, the likelihood of some sort of a lottery system, pre-registration or registration, then for collectives to actually begin to form, for collectives to actually ramp up and get their operating model in place, and for, really, things that function relatively seamless on a day-to-day basis, and to think that, well, within one year we're going to have enough data and information available, both the city government as well as the people involved in collectives, and be able to make an accurate, true, and legitimate determination at that point might be a little bit immature. So our thoughts were, if we set up a sunset clause for two years, that really gives us a -- what we believe to be a more than adequate period of time to really review, how has this ordinance performed? Has it met the needs of people who have set up collective models, people who belong to collectives, has it met the needs of the stakeholders, including city government? And with that data, then, an opportunity to refine, extend, or what have you. But we just thought that two-year window was really an appropriate and very accommodating window for the proposed ordinance. So with that I'm sure there maybe some questions or some opportunities to elaborate later on, but for right now I'll go ahead an stop and thank you very much.

>> Deanna Santana: Thank you, Don. What I wanted to do is go over a couple of the policy alternatives I had mentioned earlier that we developed a draft medical marijuana ordinance that is based on the applied law and the legal analysis received from the attorney's office. However, we did, in the spirit of transparency here, we did want to provide where the council may consider adjustments to the proposed municipal code that we'll bring forward on June 22nd. Before I go through some of the details I do want to say that Don really focused on keeping cost down in terms of the operations and the charge that the city would need to compose in order to require its cost to provide a regulatory program. To the extent that the city council deviates from the proposed draft ordinance we would want to come back with a potential revised staffing plan. And it's still very much under development, but we would want the opportunity to bring back the revised staffing plan based on the final recommendations or proposals that the council considers. So for purposes of going into the policy alternatives, they are noted above. I'll go through a couple of them here. One is obviously the number of medical marijuana collectives. Jerald will go into that discussion later on, but that is something that can be increased or decreased by the city council and accordingly we would want to bring forward the staffing resources to support that program. Don went into a lot of background about the membership and management considerations. There are flexibilities there, and our staff report that will be issued either later this week or configuration thing next week will outline specifically where those adjustments can be made. But I did list some here in terms of age requirements, residency requirements some there is a one membership per cooperative requirement and that is obviously subject to adjustment by the council as well as any other provisions we bring forward. The hours and days of operation are also subject to adjustment. There are some reasons that were put forward already in terms of why we approached the 9 to 8, seven days a week, however we know from community input there might be some adjusting there. Operation, regulations and conditions. The legal analysis that we have received as of today suggests that the sale of ancillary products or paraphernalia or manufactured products is prohibited. However, I did want to restate here that the provision of other services such as massage, homeopathic services, that is something here that the council could add back into the ordinance. It would be more regulation for the city to support, and so we would want to be able to bring forward the appropriate resources needed. Next, the security and safety considerations. Here is an area where there might be mixed feelings in terms of too much or too little, based on where you sit on this issue. And you so certainly, there are considerations that the council can put in place to strike a balance, if it's not in agreement with what staffer brings forward, and obviously the issue of security

guards and how they provide security guard services is something that input may want to be provided. And then last, the personal use considerations of medical marijuana, the council can decide in general to not impose any requirements for the personal use and personal cultivation at an individual's residence. And we're open to hear the public input and council discussion on that. I'm not sure if it was mentioned already but our personal use consideration requirements are proposing the 50 square feet requirement, up to 50 square feet for the cultivation. That is a number also that can be adjusted. There is no science behind it in terms of it's the right balance. We are simply putting it out there as a number to gain input and certainly can hear from the public on that. So from here I'm going to pass it over to Joe Horwedel, our Planning director, who will go into the land use ordinance, which is a separate ordinance than Don and I just covered.

>> Joe Horwedel: Thank you, Deanna. So as it relates to the land use regulation in the City of San José, we've looked at medical marijuana and how it fits in the spectrum of product that is distributed, sold, transacted in the City of San José. And so there's really three big questions to deal with. One is, where is an appropriate place for medical marijuana to be made available to eligible people. And so that's really, what would the zoning districts be? And where staff's proposal is to look at our commercial areas as we really see that this is transactions that belong in our commercial areas, so that they are in a safe setting for all the parties involved. There are the questions about, can you do that in all commercial zones and in every location? And so we looked at some of the regulations we use for things like off-safely alcohol, late night uses, even drive-through, about how they relate to residential interface, how they relate to other type of sensitive uses, and I'll talk about that in a minute. So that's one of the questions we're working through. One of the other ones that Don talked about is should there be a maximum number? Looking at what's going on in Los Angeles, our sense is that there be a maximum number of venues where medical marijuana is made available at collectives, that obviously, that we've put a number of 10 out there. That's larger than some cities and smaller than others. And so it's one that is really going to be a policy decision about how many is too many, how few really deprive our citizens of the opportunity to obtain medical marijuana. So that is going to be one of the policy questions that we work through. Part of it is also, though, going to be a function of how restrictive or loose the regulation are about where medical marijuana collectives can be located. And that is a part of what we call sensitive land uses. The third piece out of it is, should there be a permit that is required to have a collective? And I mentioned, offsale of alcohol. That requires a conditional use permit in

the San José. And how staff is looking at this, we think that to the extent there are very clear criteria that are built into the zoning code that the need for a conditional use permit really goes away. And so it is a part of the balancing act, that extends that there are not a lot of criteria or requirements about where a collective can be located, that a conditional use permit probably does come back into the equation to the extent that there's great certainty about yes or no, it's a yes or no kind of question, then the ability to do that purely through the police permit process is possible, and really streamlining that process. The next slide, Deanna. So I mentioned the sensitive uses, and what we've seen in researching medical marijuana collectives in other cities is, are these kinds of issues are looked at by the city. Residential proximity is one that continues to -- you see, in just about every public agency that's done regulations allowing collectives, we're looking right now at how that relates to the City of San José. Of what is an appropriate operation, whether it's a thousand feet, is it 500 feet, is it 100 feet? So we're going through that analysis right now. And that's one, again, as Deanna said, that depending on where you sit on that issue, if you are a resident that is nearby, you look at that as, that number couldn't be big enough. If you are a collective, then that number you're looking for that to be smaller, because that opens up more sites. We're also look at issues such as daycare centers, the article in the paper ran this weekend. That is something that is of concern. That's something that initially we haven't kind of put into the list, but it's one that we're looking at. Schools is one that has come up as well as public parks and community centers is one that we've been looking at and for the most part those overlay with residential so they're not, they don't make sites harder to get into. The question of religious institutions comes up in a lot of cities. From the city staff standpoint, we're not advocating that one straight out of the gate nip but it may come into the mix. Again is how to provide enough places where a collective can operate that is not creating a challenge for the surrounding community, but not put up unnecessarily kind of prohibition for operating. We're also look at some of the multifamily housing zones, should there be a different standard for that if single family is, say, a thousand feet or 500 feet is multifamily less or is it larger? So those are part of the debate and comments that we'd like to hear tonight from you all. And then the last piece is related to, should there be a operation requirement between collectives? Is the goal to spread collectives throughout the city so there is a good access to residents to medical cannabis, or is it more of an auto row type arrangement, where they're all put together, and that way it is easier to police and keep an eye on what's going on. So very different directions about how those operate and so from as from a staff standpoint, we're looking at potentially some amount of separation, whether it's 500 feet or a thousand feet as a

location. The important part about this criteria, the bigger these numbers get, and the more things that are put into it, the fewer sites there are available in the City of San José to do a collective. To the extent that there is a lower separation, 200 feet versus a thousand feet, that means there are more places that are open for consideration. Not that they would be a guarantee. But it is something that you know, it's going to be that balancing test. We're in the process right now of mapping these, and our goal is, before this comes to council to be able to show what the different numbers would look like, what parts of the city would essentially be available or not available. And our goal is to provide enough commercial sites in the city for collectives to operate, and not push them into our industrial areas. That is a normal place where a lot of cities have pushed them, is in the industrial zones. We have a lot of concern about that, of what it does to our industrial areas of making them where you really don't have evening and nighttime populations in there for keeping an eye on things, is that we want to make sure that the collectives are really a part of the community, that they operate like any other commercial business in the city, in how they are perceived and behave with the neighborhood around them.

>> Shawn Spano: Very good, thank you very much. We are now ready to move to agenda item 4 which is public comment. We have developed three questions up here, that is council Pierluigi. Councilmember Oliverio, I apologize for that. (inaudible).

>> Councilmember Oliverio: Come back and allow (inaudible) that has already been cited. (inaudible) opportunity to vote on that as far as taxation. I must say I was a little disappointed. I didn't see my memo (inaudible) voted on (inaudible) very happy to have those amendments but I think that's really an important thing to know. I won't go into all the things we discussed here but I would say that we should allow for everyone to speak here tonight, and not end this meeting arbitrarily at 8:00 p.m. It is important that as many people here from the community, they should be heard, and that input should go in to the supplemental report that goes to the council. Because ladies and gentlemen the council will be voting on an emergency ordinance on June 22nd. That means it will become effective immediately. No second reading process is there but really, this is an urgency ordinance that will make effective for all here tonight. Let's get everyone's input in this evening. Thank you.

>> Shawn Spano: Thank you, Councilmember Oliverio. [applause]

>> Shawn Spano: That serves as a nice transition into the public comment portion of the meeting. You see we've developed three questions to help you frame your comments. We in no means mean to control what you have to say. This just helps structure the meeting. Question one, what are your thoughts on the key thoughts of the city's draft ordinances? Question two, are there any missing features in the current draft that you would like to see addressed? And question three relates to the public input portion, what questions do you have about the community outreach schedule and opportunities for public input. We have hand-held mics if I'm not mistaken, and we'll take public comment right down here. And let's see, how are we doing on the mics? Yes, excellent. Vilcia has a mic there. I'm going to read off three speakers. We have 47 cards. We have -- not going to limit time here, but I would encourage you to keep your comments brief. If we can be within the three-minute range we can work through everybody, and as the councilmember said, we go past our 8:00 p.m. stop time. But the most important issue here is to hear from the public tonight. So the first three speakers are Paul Campbell, Shannon Morgan. And Victoria Fox. So come on down, please.

>> Deanna Santana: Shawn, while the speakers come on down, I'd like to restate, or if it hasn't been stated already, that tonight's meeting will be transcribed, and that the information that you provide will be captured in a supplemental report that will be issued before the June 22nd meeting for the council to have.

>> Shawn Spano: Okay, Paul you're up.

>> My name is Paul Campbell. I'm speaking for the parents of a preschool, alphabet soup preschool, and the parents urge San José to implement restrictions diligently supervise and monitor and enforce their owners, for these dispensaries. They should not be allowed to open up businesses near any childcare or school facility. The location is our main concern. And the safety of the children. On May 10th, 2010, a dispensary, purple people meds opened up shop in a building next door to our children's preschool. The dispensary is approximately 60 feet from our schools and located near monsters of rock smoke shop that opened this spring sharing the fence with our children's outdoor play area. The combination of these two stores has made this a crime and drug centric location. We fear for the safety of our children. Assembly member Joan Buchanan is sponsoring a bill AB 2650

that as currently amended will keep marijuana dispensaries 600 feet from schools K-12. It does not mention preschools daycare centers where children are located. We request that the city pass ordinance restricting where these dispensaries can be located. They need to be placed a minimum of 1,000 feet from residents preschools daycares K-12 schools parks and other places of assembly where children are present. We fear for the safety of our children now that monsters of rock and purple people meds share our property lines. We are concerned about the risk to our children. They will be exposed to drug related crime right next to the school. We parents make the safety of our children top priority. We ask that the City of San José, to enact ordinances to protect our children. Please remove these businesses and restrict them to at least 1,000 feet from our children at our schools. Thank you.

>> Shawn Spano: Thank you.

>> Hi, I'm Victoria Fox. I'm a current law student, and I'm supportive towards medical marijuana. I want to congratulate all the stores that opened, had the guts to open. And I don't care about taxing. I think we all should do what we need to do to get out of the budget but my main concern is the zoning and the safety. I do understand being a female especially in a couple of months it's going to get dark early. And I've been to many clubs whether it be Los Angeles, San Francisco, San José, it gets scary when it's in an industrialized area. I think there's patients who are anorexic, they have cancer, they're already fragile, it's really messed up that there's stigma with medical marijuana and you're sending someone off like they're doing San José wrong or dirty in an industrialized area. I go to a current one that's a commercial area and it's much more safe and I know that I'm going to scream if there's a robbery or something, I know that there's people around me that can help me because it's in a commercial area that has a lot of lights. Also, I think there should have been a moratorium last time on March 30th. It is pretty irresponsible that you guys kept letting more and more open up. I do understand that you know preschools and stuff are concerned with being near a marijuana places and just the unlimited amount being opened is kind of ridiculous. And with the new draft regarding how many, I think ten is such a small number. San Francisco has like less people than us and I think they have 14. So if San José has more people why are you guys doing ten? That's too small. And I completely disagree with growing onsite. You're asking for a robbery and it's really unrealistic. Because what if you run out of meds? You can't go to another vendor. Because the rule is

you have to grow onsite and that's going to cause sabotage. Beam are going to try burn each other's weed on spot so that club is screwed over. It should be in a private area where it's a big secret to then when I go to buy my meds I'm not freaked out that a robber is going to try to rob onsite because there's medicine grown onsite. That's a terrible idea and that's it thanks.

>> Shawn Spano: Very good thank you. And do make sure that you hold the microphone fairly close to you so we can get there on the transcription. And before you go let me just call down three more speakers. We have a microphone over here so this is an excuse me please if I mispronounce names. Dr. Saka Nemkov, Sue Campbell and Kay Aqua. Please come down and join Alex on this side and you're up.

>> My children attend alphabet soup preschool in San José, a family run preschool for 28 years, dedicated to providing a safe, fun, and educational environment for the growth and development of future members of our community. On May 10th of this year a medical marijuana dispensary opened up within 60 feet of my children's preschool next to a recently opened monsters of rock. The combination of these two stores will increase the drug-related activities and crime in this location. An article on Sunday in the Mercury News stated that security at small dispensaries is an issue and there was an armed robbery at one last month. This is a reality of what happens when there are no restrictions in place for medical marijuana dispensaries. As a parent I do everything I can to ensure the safety of my children and monitor the influences on them yet every day I would have to bring them next door to these activities when I bring them to school and potentially desensitize them to the health concerns of smoking and drug use. There are many areas that are suitable for these establishments. 60 feet from a preschool is not one of them. Please give all children a safe place to learn and grow, a restriction on how close marijuana dispensaries, smoke shops, and other stores selling drug-related paraphernalia can open from where our children congregate. I request the minimum of a thousand feet. Thank you.

>> Shawn Spano: Thank you, and let's go over here. Alex you can --

>> Thank you. My name is Sue Campbell and I'm owner of alphabet soup preschool on de Anza boulevard in San José. Our school has been in operation for 29 years in the same location. In 2006 I had the honor of being

selected outstanding coordinator for childcare for the City of San José. Now my school is in jeopardy, and I feel that the city that once honored me and recognized the importance of early childhood intervention and early childhood education may possibly let me down. December 9th a smoke shop selling drug paraphernalia was allowed to open up next to my school. On May 4th a medical marijuana dispensary opened in the same building. Coincidence? Regulatory legislature must include language to limit placement of these facilities to a thousand feet from early childcare facilities as well as K-8. As a childcare facility owner I'm required a use permit, state licensing, staff finger printing, criminal use checks William alternatively and professional reference checks, what's required of the owners and employees of these dispensaries? There is no security surrounding this building. How does San José intend to protect my children? The mercury recently reported a similar facility being robbed at gunpoint. If a facility requires security, should it be located next to a preschool or a daycare, or a public school, sorry? Parents have informed me of an adult male urinating in the parking lot, of seeing drug paraphernalia after garbage pickup in our parking lot, of loitering, making them uncomfortable and feeling unsafe. This was never a complaint in the past 28 years. Purple People Meds allows members to pick up marijuana every two hours up to three times a day. Clearly we will have members driving in and out of the parking lots under the influence. How will the city protect our roadways and in particular my families as they pick up and drop off their children. Prospective parents may not consider our program due to the presence of these buildings directly next door. Legislation must be put in place to include language to limit placement of these facilities. I'm asking 1,000 feet from early childhood facilities as well as K-12 schools. I recognize the needs for patients to gain relief from pain and I also recognize the lure of added revenue to the city but don't put these issues above the safety of our children. Thank you.

>> Hi, my name is Casey Ogawa, and I'm one of the parents of the alphabet soup preschool in San José. One of the reasons why we chose Sue Campbell's school was to provide an environment for our children that was going to be safe and secure. And you know, that is one of the things that I battle with every day as a stay-at-home mother of two. That I want to have an environment where the kids feel they can be themselves. When I learned of the dispensary that had gone into our neighborhood, I was very disappointed to see that that had happened. Our children are at an impressionable age right now when everything that they see and hear around them, they're attuned to them. They want to know why it's there and what people are doing. I have a child that always asks, why

why why, why is this happening, why is that happening, I couldn't even answer for him tonight why I was here. I always feel they have a need to constantly feel safe and secure in their environment and again, that's why I chose the environment that Sue Campbell and her staff have to offer. As you may or may not know, as Sue had brought up, she was commended by the City of San José and Mayor Gonzales back in 2006 for her outstanding contributions to childcare. In this commendation it stated that the quality of early care and education are essential for the long-term stability of our community, health and security for the families, of employers, growth and prosperity of San José businesses. I strongly urge the council and the City of San José to place dispensaries in areas that are further away from our residential neighborhoods, including the preschools, the daycare centers, private and public schools, and other areas frequented by our families. I'd like to give my child the type security and stability and the future they deserve, so I would hope that the council will help them to help our children to grow up to be responsible citizens of their communities. Thank you very much.

>> Shawn Spano: Thank you. And before we move to Dr. Nemkov, I'll call down -- you can come to either Alex or Vilcia -- Nanette Donohue, Darlene Welch, and Roger Jackowitz. Please.

>> Hi, my name is Dr. Sasha Nemkov, and I'm a health care advocate for the City of San José. I don't think the number of collectives limited to 10 is a very good idea. I think it should be determined by the market, if there's a demand for it. More or less, it should be based on that. And naturally, if there is too many, the clubs will die out on its own. It's not our place to determine especially a specific number. I also think that to rush and have an emergency ordinance on June 22nd, that's not realistic. You're asking people to grow onsite, and setting that operation takes a lot of time. There's no way it can be done within two or three weeks from today. And I also think another reason is that there should have been a moratorium imposed from the last meeting. Because it's gotten to a point where there are enough clubs to support the City's needs, and, you know, until the November ballot I don't think the city should be wasting any more time. I mean, I don't think the city -- this is on the list of priorities for the city. The number of medical marijuana patients and people who are concerned about this matter is a very small population. From I've read it's under 1%. And I think the City of San José we have bigger issues such as the budget and you know, the list goes on and on. We shouldn't rush into this matter. Do I support medical marijuana and I do support the collectives. I think we should wait until what the state ballot says because we could be

wasting all of our time and money drafting an ordinance and then by November we're going to have to waste more money fixing it. So it just doesn't make sense. I just don't think June 22nd is an appropriate date. [applause]

>> Hello. My name is Nanette Donahue, and I've been an educator in and around the San José area for the past 11 years. I appreciate that Senator Simitian put together a bill, AB 2650, regarding marijuana dispensaries being located within 1,000 feet of public schools. I think he has the right intentions and as the teacher of young children I'm grateful for his efforts. Unfortunately I feel that senator Simitian's bill falls short, as he has neglected to include daycares, preschools, and private schools in the wording of this legislation. In addition to being an elementary school educator, I'm a working mom to a six-year-old son who attends daycare in the afternoons, and to a four-year-old daughter who goes to alphabet soup preschool on de Anza road. This preschool has two new neighbors and is now located directly next to a smoke shop and a marijuana dispensary. Regardless of my opinion on marijuana dispensaries and smoke shops, I don't believe that they should be located next door or even near preschools, daycares or K-12 schools. Not only do shops like monsters of rock sell paraphernalia used for the ingestion of marijuana masked as use of tobacco or Hooka, but they also sell the paraphernalia used for the ingestion of methamphetamines, crack, and other serious street drugs. The element that these types of stores bring distracts from the community innocence and safety that we as parents come to expect from our children's schools. I am asking that the City of San José not only limit the number of dispensaries and head shops but also require that they not be located within 1,000 feet of a preschool, daycare or private school. Regardless of whether AB 2650 passes it will not protect the youngest and most vulnerable of our children because it only protects our public schools. Thank you.

>> Shawn Spano: Thank you.

>> Hi, I'm Darlene Welch and I'm nearly 50 years old. I've had multiple sclerosis for 25 years, my doctors advised me to use medical marijuana. I have been blind for several times and it has helped me, safe place to go to get my medicine. I live in a city where I don't know anyone, I have lived in San Francisco but moved away, met people who I would never have met in my life if we had places dispensaries, there are too many in San José. I agree with these

people. I'm a mom, too. I don't want my children to be subjected to it any more than these parents do. And I think that a thousand feet from multihousing is good, too. I think that all of that needs to be taken into consideration. But one of my concerns also, is that I don't want to go to an industrial area when it's late and I get off work. I think that in my past when I've been sick and I've had to depend on other people to drive me and pick me up, I think if I have to go someplace, that's a long ways away. It will be harder to get there, harder for me to find a ride. And I'm thinking of other people who are on Social Security who need medicine who don't drive anymore, who can't see anymore, who ride the bus. They should have easy access to it. If they have to go too far, I would like to see the dispensaries be spread out, enough dispensaries to accommodate the need. But not too many. When I hear that people are out smoking pot in the parking lot, and that's just I find affilatey and disgusting. I talk to my children about drugs a lot. I have as I said lived here grew up here in San José in the '70s when there was a lot of drug use. I know what addiction is, I've seen and lost people to addiction and I try to educate my children about that. And I don't want them to be subjected to it any more than these parents and I don't blame them. But -- and also, one more thing that I would like to add. Is you mentioned something about growing onsite. I honestly believe that that is a very bad idea. I think that we're advertising to criminals, here's where it is. Come and get it when we're closed as 8:00. And also, as a person who worked in 17 years in retail for a major grocery store, we were robbed three times. I know what a robbery is and I know how frightening it can be. When you are robbed you give away what you have and you hope that they go away and nothing else happens. I don't see how having a security guard, a person that really don't even have the ability to use a gun or have a gun, is really going to help. I think our best defense are cameras located so that they can't just take the tape and it's on the Internet. We have technology that we can use to protect these places. We can see who these people are. We should have that kind of technology. I don't think one person is really going to make a difference. I think that I touched on everything that I wanted to. I'm sure I have plenty more to say and in the future I hope that the discussions will continue. And we will continue to see things grow and change, and that South Carolina can be a part of studying a standard to live by for our country.

>> Shawn Spano: Thank you. Before we hear from Mr. Jackowitz let me call down three more speakers. Susan landry, Tanya Nguyen and Andy Schroeder. You can come down either to Vilcia or to Alex. I have Tonia. Is there a Tonia Nguyen here? Maybe I'm reading that wrong, it must be you Tony. Roger.

>> Hello, my name is Roger Jackowitz of doctors referral collective. I want to first say I applaud the suggestion and the motion to really cement the regulation process as well as the lottery. The regulation process because I was one of the ones who got evicted the day I was supposed to open because of the article in the San José Mercury News threatening the landlords. My landlord got scared and actually asked me to leave on the day we were supposed to open. Which was okay I understood that. But simultaneously somebody else signed a lease and took out a business license saying consulting. And though I got kicked out, a week later this other company listed as consulting began selling medical marijuana in the location I had earmarked, and negotiated, and actually got the phone number, the Internet, everything all set up, and a tremendous expense for us that went just down the drain. While we watched this subversive company, who actually took out the license in the wrong name, and pulled the wool over the landlord's eyes. Becoming a major success and opening a second location as a result. So although it seems like I'm a little dismayed about my bad luck, I went down to City Hall and to the landlord, told the truth, listed medical marijuana, got all licensed, everything I was supposed to do, thus got evicted for telling the truth. So I flawed regulation process. I would -- applaud the regulation process. I would love to just put my name, the collective name, into the hat for that person -- for that lottery. However number the city council agrees. I just want to be sure everyone's on the same playing field, legitimacy is added, and that medical marijuana is not given a bad name by subversive or otherwise unscrupulous people or intentions opening up clubs probably for profit. Thank you very much.

>> Shawn Spano: Thank you.

>> My name is Andy Shwadworth and I operate farmers health center cooperative based in San José. I just want to be clear that we current have 500 patients in San José that are patients of medical cannabis. We have been dealing with a lot of bumps in the road even though we were in contact with the city even prior to opening and we're really concerned on a couple of recurring themes that keep recurring in regards to the city, it is a mindset that's based on prejudice. This is not a drug anymore when patients are utilizes of utilizing it, it's patients. Moms dads brothers sisters all of us have had family members who have had cancer or someone who has been through a horrible health experience. Ostracizing these people in any way is a crime. Prop 215 was passed 14 years ago

or over 14 years ago. SB 420 was passed over six years ago to add more clarity to it, and we're still playing games today. My cooperative which once again wasn't mentioned in any of the things, is a cooperative, California cooperative corporation, and these types of things have been around for a long time, and there's thousands of them operating within the state of California. We're a nonprofit we follow virtually every guideline that you've mentioned here today and we're still getting major scrutiny all the time that isn't really directed at us, it is tactics that are going on with other players, as far as mentioned by the last woman, too, of forcing landlords and other people to start questioning what's occurring. When in truth the people who have structured themselves correctly and are operating in San José are operating legally within California. And the fact that it's constantly being pushed that we're doing illegal things is wrong. We've been trying to work with the city and will continue to do so and want the city and been pushing for the city to adopt a reasonable regulation early on. Before there was even five collectives we were urging this to take place. We were number two and now look at the situation, we're up to 70 now and you're still not putting a moratorium or other things in place. We're going to be 150 and then what are we going to do? We're going to be in a worse situation than L.A. I realize the budget in San José just got cut back, but yet we still want to burn resources on fighting something that's already been passed 14 years ago doesn't make much sense to a lot of us from the outside looking in. I'm a parent I have two children and I love kids and the fact that any of my operations and the few collectives aim aware of that operation is operate, they don't jeopardize the safety of anyone around them at all. And the negative social stigma keeps driving that mindset into people is really disturbing. That's supported by local people. We want to protect patients' civil rights and safe access. Reasonable regulation not based on fully prejudice and in lieu of a reasonable regulation, San José officials must back off towards current landlords and stop trying to run legal cooperatives out of town. AB 2650 which is passed by the California assembly, and they specifically had to drop a lot of the land use verbiage that was within the bill. Within the bill initially it specifically specified schools, child daycare centers, churches, community centers, parks. And the list went on of about 20 more things. They backed it off completely to 600 feet from schools because they don't have any data to support that there's any danger to society any other way. Thank you very much. [applause]

>> Hi, my name is Tony Nguyen and I've only got a couple of things to say. Overall I'm really friendly towards medicine. However, I really, short yes on the meds however I'm concerned about the drug lords. I'm assuming

that all the meds that are coming through are legal however there is illegal stuff coming through. I appreciate the fine line that you guys have to walk between access as well as protecting the population. Couple points. I think you should limit the number of dispensaries based upon need, not on a lottery. We can't you know supply enough for all the cancer patients so the ones that didn't meet the quota, you guys go and do something else. Second in your owners you got to plan in there somewhere home delivery. Your model says people show up in a shop. Nowadays there is home delivery. The third thing is that somewhere in your model you ought to put in there labor laws. Are you guys getting paid minimum wage, are you guys getting health care? Somewhere in there the labor laws ought to be -- adhere. I think it's a great idea having this talk, I think it's a great idea that we talk about the ordinances. At a minimum we got to have zoning laws so that we don't create nuisances and you don't have clashes. Thank you very much.

>> Shawn Spano: Thank you. [applause]

>> Shawn Spano: The next three speakers before we hear from Ms. Landry are Laurine Vasquez, John Shannon and David Tinsly.

>> My name is Susan Landry, and I'm a resident of San José. My brother passed away last year from cancer. And I watched him for two years deteriorate, and marijuana was the one thing that gave him comfort and relief. So I'm an advocate of its use. I think the city's done a pretty good job so far in this ordinance. I know it's been under the gun. Do I have some comments and some input. I think a two-year length of a business is a very short time based on all the requirements that you're going to have. It may take a business six to nine months just to get up and operating and then tell them they can only operate for two years? I think four years or six years is a better length. I think there needs to be a definition in there between a smoke shop, where you actually ingest your medicines. And a dispensary where you can pick up and buy. They can be two different things, or they can be one and the same. I support the daycare issue of being over a thousand feet. I think that's very important to add that. I see one of the problems with your membership policies? There's a lot of hipaa requirements on confidentiality, and by putting my name on a list and saying I'm a member or having it public even with the city I think is going to be a problem because of hipaa. If you are a member of only one collective, or whatever you're

going to call them, then I can't shop around and if their costs are too high I'm stuck and I can't get it any cheaper. Currently I've heard it's about 285 an ounce in San Francisco and over 400 here in San José. So we need to be thinking about the other cities around here and think about what they're doing because we can go shop around. I'm almost done. I like the idea of putting warning labels, a lot of places that I've seen, keep out of reach of children or have them in child safe containers. I think putting things strictly in industrial areas for growing are very limiting and I think your thing says there's only 111 sites in the whole city where somewhere in the city it says under consideration there's only 111 sites by ten businesses. That's getting pretty limited and you're asking for all these regulations. You're going to limit them right out of business. You're going to limit patients from having available medicine. I think a citizen's advisory committee similar to homeless and trail projects I think we need a liaison between citizens, patients dispensaries and the police department. I think there's still some negative energy in the police department and an average dispensary is going to be up against the law to obstacles and if they can establish a committee to be a liaison, I think that would be great. Several place necessary San Francisco have what they call a code of conduct and this is also in the city zoning ordinance under homeless shelters. Where can I smoke? Can it be 50 feet from my dispensary or can it be around the corner by the daycare center? And I think these things need to be defined. Thank you. [applause]

>> Shawn Spano: Okay, Alex.

>> I'm David tinsley from Norcal care. As an experienced businessman in town, I'd like to make clear and concise rules and regulations allowed to me to acquire the proper permits and compliance with established requirements.

Norcal care is in favor with the limited amount of permits to help the city in the effort to collect taxes and restore financial stability for San José. The city should look at other licensing procedures, medical tobacco and liquor, industries to create fair and proper guidelines for distributing medical cannabis to be prescribed to patients. The medical cannabis industry should not be looked down upon by other cities as we are simply trying to establish professionalism in the constant growth of medical cannabis cooperatives. Thank you, Norcal care.

>> Shawn Spano: You can go ahead here.

>> Hello, my name is Loren Vasquez. I'm a land use attorney. Every day I advise medical cannabis patients and providers on how to comply with state law. I'm also director of the Silicon Valley chapter of Americans for safe access. We're a community organization he dedicated to protecting the rights of medical cannabis patients and providers. We are an all-volunteer organization. We are not a dispensary or a collective. We do not distribute medicine in any way. What we do is, we stand up for patients. I would like to say first off that we support the preschool mom. We don't want dispensaries next to our children. We completely agree with you. I think we just maybe disagree with the mechanics. A thousand foot blanket regulation might be impractical. What is there is a railroad tracks, what is there is a wall, what if there's an impenetrable barrier? I would say a thousand feet with a waiver, in case those conditions exist. What I would also advise is that staff refer to the Mountain View City Attorney's report on medical cannabis dispensaries that was released last week. That report is the complete opposite of what has been presented today. It is a detailed and understanding study of state law and it is composed of very reasonable recommendations for regulating dispensaries in Mountain View and I think that staff could learn allot by referring to that report. Because frankly, I'm extremely disappointed by many of the recommendations in this report. In fact they are laughable. It's clear to me that not only staff or the City Attorney don't understand the law. Not only that, but it seems the City Attorney is rewriting the law as he sees fit. The city doesn't understand distribution and the practical ways that this business works. They also don't seem to understand the needs of patients. To say that a cap of ten location is suitable for the thousands of patients who live in this city is unacceptable and a number closer to 100 is more suitable for the number of patients residing in the City of San José. County wide there's estimated to be 35,000 medical cannabis patients, and approximately 15 to 20,000 of those live in the City of San José. And San José is a huge geographic area. To limit 10 I'm in Blossom Hill, there's 50 in the city right now, I've got one within a reasonable distance from me. I'd also like to say that our members are very against the 3% proposed tax. They would think something more like 2% is reasonable. When it comes to the personal use regulation that's not what the council asked for. In fact much of this is not what the council asked for. Repeatedly we have tried to meet with the city attorney's office. We have met with city staff and councilmembers. But really, the city attorney needs to meet with us and understand the law and listen to patient needs so that we don't have to waste our time and come back with another report that looks like this. In fact what's happening here is you are inviting serious threats of litigation because in more than a few ways you are violating the right of patients, to collectively associate to distribute medical cannabis. More

specifically I'd say if you pass the urgency ordinance expect to get sued. I also respectfully disagree with the parameters of drafting the ordinance. [applause]

>> Second, the way collectives have been defined you've completely left out cooperative and you are over defining them in including small patient cooperatives that shouldn't be included. A lottery is not democratic, it's not fair. You're leaving patient needs up to the whim of a lottery? A lottery is unacceptable. Prohibiting the sale of the devices patients need, the paraphernalia, the tools they need to ingest their medicine, that's unnecessary. Having police access to membership records, unacceptable. Age requirements, or residency restrictions violates our right to associate both statutory and constitutional. In addition, if you limit a patient to joining one collective, you're also violating their statutory and constitutional rights to associate. Your understanding of the nonprofit requirements are completely misguided. A collective can operate as a nonprofit and bring in a profit. It just matters what do they do with their net retained earnings? How do they spend them? We're not giving people bonuses and unreasonable salary. We're not giving out capital returns do investors. What we are is, we're pooling the resources of patients and redistributing them. And if that includes other services that are needed like homeopathic services, chronic pain management, nutritional counseling, well, then so be it. To say that the sales of medical cannabis is illegal is also inviting litigation. That's already you know what resulted Los Angeles in their current situation. They have been sued by our parent association, Americans for safe access. And finally I would just say that there's too much in this report that is wrong for me to go on here and waste time. So I think that the staff needs to be receptive to our invitations. The City Attorney needs to talk to us. They need to talk to somebody who understands the law. Because I don't want to waste any more time, and I don't want the City of San José get sued. I want safe access in San José, and I want it now. Thank you. [cheering and applause]

>> Shawn Spano: Thank you. Before we hear from Mr. Shannon I'm going to call down three more speakers. Sue Bachanez, Vinny Bachanez, and I apologize for if I mispronounced that, and Germaine King. Mr. Shannon.

>> I have never been charged with, tried, convicted, or sentenced to a crime. To me, a layman, that means I'm not a criminal. I go to cannabis clubs. To me, that means that less than 100% of the people going to cannabis .

clubs are criminals. On the way down here I passed a school. It was surrounded by law offices. Last time I checked, every murderer rapist mugger and child molester is guaranteed 100% access to an attorney. So I've got less than 100% going to a cannabis club, 100% going to attorneys. You apply whatever thousand foot limit you want to cannabis clubs but I'm going to be back in 60 days to insist that you apply the same limits to attorneys' offices. Me and my family don't want criminals being brought into our neighborhood. I checked with the city staff. You people don't even know how many attorneys are practicing in the City of San José. I checked with your permit office. There are no prohibitions against attorneys setting up anywhere in this city, including their own homes. So I could have Charlie Manson's illegitimate offspring visiting my neighborhood on a regular basis, and you don't care. As to the young people who are going to the daycare center, I'm somebody's child and I'm just as valid as you are. [Cheering]

>> Shawn Spano: Okay, Vilsia. You're up sir.

>> My name is Vinny Bacones. I've been a middle school teacher here in San José for 30 years and my concern is strictly the zoning. I'm very concerned not only for the safety of the children that I teach, but for my wife and my daughter who teach at alphabet soup right now with a very close proximity of one of the facilities. And I'm fearful of what happened a few weeks ago, could occur right next to where my wife and daughter work. And it's a very close proximity where something could happen to them, possibly in a situation where the people who are doing these bad deeds possibly could use these people as a situation. I'm also concerned about my campus, having a facility close by. Should the facilities exist I agree with that. But I'm fearful of situations of outsiders. And the safety of the people that use these facilities, also. It's the people that are using perhaps bad ways of stealing, and robbing, as I'm concerned about. So I would hope that within the premise there was just more than just security. But there is a great deal of zoning, away from schools where I teach, where my daughter and wife teach, not only for the safety of the users but also for us who are close by. Thank you. [applause]

>> My name is Sue Bachanes, and as my husband said, I teach at alphabet soup which has been in existence since 1961. Literally we are next door to a cannabis club that moved in a few months ago. My concern is the location, not that they are there. I brought a book and I pulled a letter that was written in 2008 from one of our

students' parents. And in it it says it has been an honor for our son to be a student at your excellent school. His days have been full with happiness and he comes home every day with new experiences. At each time I've been able to attend a special event at school this year I've been so impressed and touched with the detail, experience, and safety involved. Also, it's so obvious that these events are guided by such important values for the children to learn joy, sharing, gratitude and celebration. I'm also so struck by your dedication to children and the school. It is profound that the school just keeps going strong in spite of the fact that the city has grown up around it with highway 85 as well as the new development behind the yard. We all know you could have easily moved on but you stayed there and made a little slice of heaven for these young children. You are a true leader and I thank you so much for the opportunity to have our son attend alphabet soup. There will always be a happy memory and a model for excellence and that's all I'm asking is that these places be a way from where our children are. Thank you. [applause]

>> Shawn Spano: Very good and just before we go Mr. King I'm going to call down three more speakers. James Silva, Kira Pullman and Dave Hodges. Mr. King.

>> Thank you. My name is Germain King and I am a San José resident. I commend and applaud the City of San José and especially Pierluigi for making the efforts to address the needs of medical cannabis patients. Although I'm in agreement with some of the proposed framework introduced today such as proposed commercial zoning, safety requirements, limiting the number of collectives, and keeping all the collectives a thousand feet from children. There's still some serious, serious concerns with what was introduced today. The proposed framework still needs considerable modification surrounding the operational framework, and mainly, if something like this is proposed and goes into law, the HIPAA laws surrounding the proposal is just not going to fly. And there's no need for us having the City of San José that's already strapped, you know, having to deal with these frivolous lawsuits. Also, there's going to be privacy of the cannabis patients. I do not feel as though the city should interfere with the medical information of cannabis patients if the members have a current recommendation from a doctor. Since when is the city involved in being doctors? That's pretty much all I have to say. I do appreciate the efforts of the city and I just hope that we start looking at those cities that actually already have this in play and move forward with what we have proposed here. Thank you. [applause]

>> Good afternoon. My name is James Silva, and I am an attorney practicing in Oakland, California, and I'm very grateful to the city council here in San José, as well as staff, city attorney's office, the Chief of Police, zoning, and all the other members that have taken this issue up under consideration. This is not an easy issue for you. The state law in and of itself is very convoluted, so you do have your test cut out for you. I have to tell you, I must concur with attorney Vasquez who spoke earlier. I will just concur in her fire and brimstone. You can all just realize, I don't have to go over that again. But there are several considerations which do expose the city of San José under this current draft ordinance to a myriad of civil liability. For instance, the city should take into consideration the recent ruling of a judge down in Los Angeles, in his consideration of an ordinance and an injunction wherein he stated that injunctive relief would be available in the future to those applicants on the basis of a fourth amendment violation, and I'm speaking in particular to the consideration that law enforcement provides such severe oversight in the scrutiny of establishments in San José. I concur with another one of the speakers who spoke earlier who said there should actually be a panel assembled for oversight, wherein law enforcement could participate in that process. But if law enforcement is going to require as part of the preapplication process or as part of existence of any entity that inspection be made, you're really asking for a waiver of someone's fourth amendment right to be free of unreasonable search and that is unreasonable. Also, city council should take into consideration that the original marijuana law that was passed by the federal government in 1937, as to marijuana tax stamp act was found to be unconstitutional on the basis of requiring people to give information for themselves under circumstances that might incriminate them. And what you're really asking applicants in this process to do is admit things that might actually tend to incriminate them. So we understand that the current state law is difficult for you to wrap your local legislation around. We're asking you to understand that there's difficulty in every individual who wants to comply with that state law in having adequate assurances that they are not giving up information which is going to tend to incriminate them, as well. So another problem that you I see with the ordinance that you're proposing is that yes, it's fine to create a collective model as you're calling it. But then, to mandate that there be essentially no profit or really no generation of revenue, in addition to all of the other almost cost prohibitive requirements is to give with one hand and take away with the other. I'd like you to reevaluate all of the security and all of the consideration such as the packaging, onsite growing, all these amount to cost and expenses which are going to be very difficult for any particular individual or entity to meet if they can't somehow

otherwise generate revenue, and that speaks directly to the ordinance's prohibition on the for-profit sale of ancillary goods whether they are nonmarijuana related edibles or other retail goods which can be sold for profit. I think in that respect, the city council, the ordinance is beyond its scope. The limit on the number of the associations or enterprise that you can have in San José would I submit to you is a violation of the First Amendment. And any such violation of the First Amendment would require strict scrutiny. What you're essentially saying by saying we can only have ten is, people are forced to associate with certain other people, or simply speaking, in I wanted to associate with somebody, I couldn't, in this regard, and that's really my choice under my First Amendment right. So I think that in many respects you are opening yourself up to a myriad of litigation problems. I welcome the city council, the city attorney's office and law enforcement to contact my offices. I would be more than welcome to discussing the dynamics of the state law with you, so that you could create something that is more reasonable and that could be applied more locally here in San José. Thank you. [applause]

>> My name is Kyra Pulliam. I'm a resident of San José. There are just a couple of aspects of this ordinance that I disagree with. First of all, limiting the number of collectives to ten is way too small. San José is extremely large geographically. It is one of the largest cities in California. And limiting to a specific -- not only to a specific commercial zone but only to a number such -- so low it limits patients' ability for those with limited mobility to get to their medicine. As far as growing marijuana onsite not only is it dangerous for those who grow it, it's also danger -- it's also just a legal gray area. For those members who wish to contribute to the co-op by donating like their private stock, it's -- you can't really enforce that. That would be a legal gray area for you. As far as excluding paraphernalia from sales, you wouldn't tell a pharmacy that they can't sell syringes to diabetics. I just ask that when you consider this ordinance that you start looking at marijuana as more of a medicine instead of just a drug. [applause]

>> Shawn Spano: Before we hear from Mr. Hodges I'm going to call three more speakers. Margaret Bennett, Jen Hong Chen and Hector Gonzales. Mr. Hodges.

>> Hi, I'm Dave Hodges. I'm the founder of SJCBC, we are first ones in San José, opened about a year ago, next month we'll be a year old. It is really unfortunate what the city has been doing. This current draft is outrageous

and it's legally a trap for San José. I really, highly recommend the City of San José reevaluate its legal advice. I believe the City Attorney is bringing you down a very dangerous path. My current lawsuit against the city already speaks to that. I advise you to try to put yourself in our shoes and look at this more as almost a civil rights type movement. Many of the people that use medical cannabis use it recreationally, hold it just as dear as their skin color. What you're doing is equivalent to trying to chase us out of town. It's illegal and it violates our constitutional rights and our civil liberties. I ask again, please, please, seek better legal advice. So we don't endanger the city further. Thank you. [applause]

>> This is Chen Hom Chen. I come here because like Silicon Valley is famous technology, it is definitely not like a drug city, so we come here. And like this issue is a pretty serious concern, and we hope that like this it can issue be in control, which means like council in like middle size or larger size of like a hospital or medication place, it definitely should not go to like the public or commercial area. Yeah, thank you.

>> Good afternoon, members of San José, my name is Hector Gonzales. I'm the executive director director of Arc healing center. I'm also an active member of Americans for Safe Access. I want to start by echoing all the words that Loren Vasquez said, because there's a lot of truth to everything in there. I'm not going to go over all of that, I'm going to pick a few points that you all made. Find some use in knowing. Onsite cultivation. To limit a collective to cultivate all the medicine in all the different varieties that comes in onsite really doesn't make sense. You have everything from the flowers themselves that are either smoked, you have tinctures and lotions and edibles, and to require all that to happen on one location logistically isn't feasible. I do know that you've had these kind of points brought up before. I don't know if they've been truly considered but I just want to reiterate that simple fact. Patient records, I want to reiterate what Andy Schwarzer said, you need to look into this like medicine. To ask a collective to give you all the records of its patients is simply unconstitutional. I think you should really reconsider asking someone to bring that up to provide all that. I do, you know, I respect that you want to have full transparency. I would say that 100% of the collectives in San José, and either who are operating or want to operate would want full transparency. But to require that they provide all the records of their patients seems somewhat beside the point which goes along with collective model that I know Mr. Silva already left but he -- you know he makes a good point in that having a collective model that doesn't allow for any sales of the

medicine isn't -- doesn't make sense in the real world. And so you know those are really my three big points. I do want to again, I appreciate all the work that's being put into this. I do believe there's a lot of resources legally out of there. Other attorneys who have spent years and years understanding these issues, who can bring real insight for the staff for the attorney's office that doesn't seem to be utilized and you know I would urge you to go and seek those out. I know those resources are seeking you out. They are making contact with you. I just hope that you take those into consideration and really make sure that they get incorporated somehow and not just brushed over. So that's pretty much it. Thank you. [applause]

>> I see that our third speaker submitted a card for e-mail distribution only so our next three speakers are Carla Estrada, Patricia Grogan and Erica Montgomery.

>> Hi there, my name is Erica Taylor Montgomery. I'm a fibromyalgia patient, and I also have other medical conditions that necessitate the use of medical cannabis. And I do echo the responses of several other folks that said that it's very important that you begin looking at this strictly as a medicine and not a drug. And to that end I want to address some specific concerns in your proposal. One regarding residency. I'm particularly a resident of Campbell. I don't reside in the City of San José. But before cannabis collectives opened in the City of San José, my choices as a patient were to either go to Santa Cruz, San Francisco or to Oakland. Which are very far for me with my medical condition to drive those long distances and to be in cars that long. It's just not practical. And my other resort if I didn't go to the outlying cities would be to go on the street and buy drugs illegally. Have I done that before? Yes, I am willing to admit it, that I have bought drugs illegally, because I didn't have a choice. Now I'm able to come to a neighboring city San José that's close by my home, I can buy medication where it's close by and I know it's regulated and I know what I'm getting in terms of a product and I don't have to rely on street drugs and that's very important to me. I'd hate to, say, have the City of San José put something in place regulating collectives that says no, other neighboring cities can't come. It's just not fair and for me as a patient it's just not reasonable. Another concern I have is being a member of only one cooperative or collective at a time. You don't tell me that I can only go to one Walgreen's or one CVS to have my other prescriptions filled, and it's not practical that you tell me that I can only go to one collective. I should be able to be a member of as many collectives as I want to be and I should have a choice. That's what the free market is all about. Growth onsite, I've heard a lot of

people comment on that and I agree as a patient it seems unreasonable to me. If someone who is able to legally grow medical cannabis at home and have a certain number of plants. A space, the 50 square feet should be able to provide all the medicine that's needed to all the patients in the City of San José, just doesn't seem reasonable to me in terms of size or just being able to manage that kind of an operation and supply patients with everything they need. And lastly I'd like to say that I agree that all collectives should not be relegated solely to industrial areas. I do agree, I'm a parent myself, I don't want to see collectives right next door to daycare centers either. But I also don't want to be in industrial areas late at night or during any time of the day where I'm not feeling safe, and especiall industrial areas are not as well lit as someone mentioned. I believe that should be taken into consideration as well. And lastly for people who take public transportation and aren't able to drive or have this easy access to collectives, if they're only in industrial areas, public transportation doesn't provide an option there and that should be something taken into consideration as well. Thank you very much. [applause]

>> Good evening, my name is Patrick Gagen not Patricia. I'm an attorney from San Francisco. I was recently appointed to the attorney seat for the medical cannabis advisory task force. I think a lot of salient points have been made on both sides of the aisle and what I encourage everybody in the room is to not pit sides against one another. This is for the use that we've accepted and that we all need to work together in our communities and our neighborhoods to live be to one another and to not bad-mouth each other. So I call out to let's all work together on this. This process is an important process that really requires a balancing act. As we've heard tonight there are many different opinions. So we need balance, and we need fairness. As far as the zoning issues go, if there are going to be thousand-foot buffers there needs done some flexibility. And for that what was mentioned earlier was possible physical barrier waivers that might include railroads, bridges, major thoroughfares and such. Also, if we're going to consider moving to commercial zoning, we ought not to just X out industrial zoning, and a compromise might be light industrial and commercial. Finding a balance, again, is something that's fortunate. With respect to the lottery. One thing that hasn't been said is that you could end up with a lottery system with a cap of ten and not get the best operators. So I think from that standpoint -- [applause]

>> -- if San José wants the best operators, that it not -- well, it really, get rid of the idea of a lottery. Thirdly, to the gentleman that addressed the police issues, I want to say that legally, sales are okay. Sales are allowed under

conveys law. They've by designated okay 50 attorney general. Perhaps we're involved in an issue of semantics but the key here is being able to get compensation for your expenses and so forth. And when they talk about nonprofit, again, revenues can be generated by nonprofits above and beyond their expenses. It's just a matter of '06. And what we're talking about is having operators get reasonable compensation, not profiteering. The final point, the final point is with respect to member patients. Not only under hipaa are the records confidential but their information is confidential, that's names and addresses. So we really have to identify the fact that hip AA includes everything with respect to our patients, thank you.

>> Shawn Spano: Before you go Ms. Estrada. Our next three speakers, Paul Stewart, Daniel Hovland, and Joel Gonzales. Ms. Estrada.

>> Good evening. My name is Carla Estrada. And I was born and raised in San José. I've lived here all my life, I don't know anything else but San José, and I grew up in Story and King. And many of those who do not know the Eastside, I'm so grateful that you guys are supporting these businesses, because I've lived by crack houses. I've lived by these places, and they get busted. And I know what it is to, you know, have to duck down in a drive-by and be four years old. And I understand how you guys fear for this. But trust me, I am sick. There are many of us that are sick. We want to work something out with you guys. We want protection. We see this as a medicine. We don't see this as a drug, and we totally do not support kids doing drugs or any of that. That's why we're here. We want to work with parents. We want to work with our communities. I'm here part of this community, I don't know much about the laws, but I know that I'm pretty sure that these collectives are going to be making a lot of money and since we don't want that to be a lot of profits, I'm pretty sure that collectives later on because of the zoning can you know put money into the public system because I went to public schools, I don't know if anybody knows Maxim, but I had -- it was three students to a book. If we could donate money, maybe, and have more books, more computers, I mean, there's no Apple computers in the Eastside. I'm a tutor, and I go to the Westside of San José and there's Apple computers. And I had to share three books. That's redonculous. There should be everything for every student. There's money out there. We should support these systems so that -- oh my God -- so that teachers can get money, okay? We should support these systems so that we should work together. We shouldn't be fighting each other. We should work together so that we can eliminate those illegal

activities. Because I wish that, you know, the community can grow with this and that ASA, or whoever is out there, whoever the council does decide to work with, as a patient, I wonder where does my medication come from? Where does my medical flowers coming from? I don't know if they're being provided by actual patients and actual things, I don't know. I don't know where the money is going to, I don't know any of this. As a patient, I want my community to be protected. Because I live there, I've had to dodge bullets and I don't want that to be the future for other kids, my future kids, anybody. I don't want that to have to happen. I want us to move forward. The '80's, what happened in the '80s in San José, I don't want that to happen anymore. We saw that happen. I had to grow, I was a product of that, and I don't want that to happen anymore. I don't want your kids to have to go through what I went through. So let's work together, let's work hand in hand, let's reeducate the culture, let's reeducate everybody and support this in a more formal way. I really just -- I wish that everybody in here, when you leave, to take something, that we want to work with children, we want to work with the society, we want to be safe, we want something to change. So let's be here with a more open mind, and let's move forward, let's change, let's work together, let's have it safe for us, that our patients, let's vet safe for those that are not patients. Because people like me, I live around a school, and where am I supposed to consume my medication? I live closer -- I mean, I live probably around the corner. Less than 50 -- like 50 feet away. So where am I supposed to consume my medication? Am I supposed to just go in a car and drive, like, somewhere, and then consume it, and then get stopped by police? I get persecuted by my own family because of that. So what am I to do? Where can we smoke this? If you want us to consume our medication somewhere safe, give us a spot, or you know, let us -- I don't know. You guys have to design something. Let's work together. Or so -- work together.

>> I'll wait for you to finish your text message. Chief. Oh, wait a minute, scrabble, my bad, go ahead. No, don't applause it. I play scrabble, too, okay. Anyway. My name is Paul Stewart. I'm the director of public policy for MC3. That stands for the medicinal cannabis collective coalition. It is a group of collectives that have operated under many of the standards the city is proposing in its ordinance. First of all, what are my thoughts on the key features of the city's draft ordinance? I'm disappointed, I'm very disappointed. Number one, why do you keep referring to the ordinance in Los Angeles? It took them two years to put it together. When they started there were about, hmm, 80 collectives in L.A. When it ended, there were over a thousand, none of them regulated and right now, there are still 15 lawsuits pending against an ordinance that's being held up. Why didn't you use

Oakland? San Francisco? Berkeley? West Hollywood, the one that San Diego's working on? My point is, you picked probably the worst ordinance available to try and structure something for San José. [applause] If you want to do apples to apples, talk to San Diego, talk to Oakland. At least population wise we're pretty close. Regarding specific key features, I'm not going to do what other people did, I'll cut to the chase, okay? Residency requirements are illegal, period. Sales are permitted, period. Under state law, under variety of other laws that came through AB -- SB 420 et cetera. Commercial cultivation should be allowed in industrial zones since it is primarily a White House use. Conversely, collectives should be allowed in commercial and light industrial uses. And somebody said Paul, how can you use light industrial use, the council gave staff a directive not to convert industrial to commercial use. How do you explain Costco on Senter road? Sorry. Anyway, we need to discuss more regarding the distance to sensitive uses, I feel. The arbitrary cap on the number of facilities that you are proposing is laughable. And the reason I say that is I know in our discusses with staff I have low balled the number just because I'm stupid. And I told them we had 55,000 patients in San José. Now I know I'm off by probably half that much again if not twice that month. Limiting that to 10 collectives to begin with is laughable. It is going to drive believe me even though you have an ordinance regularring it, it's going to drive patients underground to get their medicine because they're only loud ten selections. Along those lines, an representing that have been operating by the rules and others that are not members of ours that are not operating rules that could end up with guess what? The ping pong ball number 11 and they're out of business. That's not fair to the patients, it's not fair to the doctors, and it's not fair to the business owners. When I say business owners, the point I want to emphasize to you, when this whole issue started, I know, perhaps not you three, but there were some on the elected dais there and others on city staff who assumed I was representing a bunch of tie-dye-wearing, Volkswagen-driving, Grateful Dead-following hippies. When they first met with me and we discussed how to handle government relations and community outreach, I was meeting with attorneys, CPAs, investors, business people, real estate brokers, developers. Okay, not exactly the stereotype of people who are reaching out to a community that is serving terminally ill patients and people with debilitating diseases. So limiting that situation to 10 in San José, I tell you what: You go ahead and limit it to 10, and then I want to know how you're going to limit pharmacies to 10. They both dispense medicine, and you would no more limit pharmacies to ten than I could grow hair right now. My point is, 10 is too low. Whatever you arrive at needs to be substantively more than that and not using a lottery. You need to perhaps look at a competitive request for proposal so that everybody that exists now,

comes in, they meet the standard you've set up administratively, they pay the fee, they go about their business. Anyone coming in new, for example, or in the process of beginning right now goes through the same protocol. That would allow you to have the collectives existing today meet the requirements the city wants to meet, and at the same time, exist and dispense their medicine for the patients. Are there any missing features in the current draft ordinance? Well, I haven't seen the current draft ordinance. I don't think anyone else in this room has, either. I heartily await what will be public record I assume sometime over the next couple of Fridays, to read what is actually in the ordinance beyond the highlights you've given us, which have been in many cases bad enough. What questions do I have about the schedule and opportunities for public input? Regarding the collection of data, you already heard about what HIPAA requires. My question is, what happens because I'm both a patient and an advocate. So I'm not coming at this as a hired gun, kids, I'm coming at this because I use the medicine. And my point is this: What happens if I decide I don't want my name made public? If I don't want my name, despite the attempt in other areas for transparency that might make sense, I don't want that information out there? What if I don't want an employer reading in the mercury -- and I tell you, they are going to run that list, kids. I don't want an employer in the mercury seeing my name, going, we're going to hire him. Irrespective of the fact that I'm using medicinal cannabis for medicine. [applause]

>> Lastly, the concept of barter and what have you may occur. I go back to my comment about, sales are implicitly allowed under the confines of law, Prop 215, et cetera. And what you want are collectives that operate within the confines of the law. Well, they do. And do they make a profit? Based on what their CPA tells them, probably, because everyone I know operates per the dictates of Prop 215 as not for profit. To end it with the following: If you want to look at someone who also operates as a not for profit, go to Kaiser's Website. They made \$2.6 billion last year. And they're not for profit. My point is, they're allowed sales. Collectives should be allowed sales. The collective model that you're using is not bad. It's just the wrong one, if it's coming out of L.A. The last point: I've heard no one speak in opposition to this ordinance. I've heard no one speak in opposition to the collectives. The city has a chance to be in the vanguard, not only in the state of California, but in the United States of America on how to make this thing work right. For God's sake, make it work right from the get-go. Thank you. [applause]

>> Hello, my name is Joel Gonzales, I'm speaking on behalf of the cultivating side of this. The zoning for commercial cultivating to industrial and commercial seems all right but as far as the A. and security and all that is, but as far as making cultivating on site is the disencers, limits in terms of variety, there are many transout there it's very difficult to grow several transin one environment during aa that would be out of the question as far as I would say and as far as the personal cultivator you're really gearing them towards doing it illegally, as far as 50 square feet really doesn't do anything for them. You're going to force them to renovating their house into big grow-houses, and therefore you get the security problems, as far as home invasions and things like that. So I would recommend more something to the lines of 100 square feet per patient might be sufficient. Thank you.

>> Shawn Spano: Before you go, Mr. Hogland, I'm going to call three more speakers. Kim Q, Ed Esters and Nadine.

>> My name is Daniel Hovland. I'm the founder of medex collective and deliveries, I'm also the communications chair for Americans for safe access chapter here in Silicon Valley, and I'm also a member of MC3. First I would like to say thank you very much for bringing this to all of us to be able to talk about this. It is an important issue for the city, and I thank the citizens for being here in order to make public comment. It's important to hear what everybody has to say. I do believe that we are trying to work together in order to make sure that our families will be safe, which is why regulation is of highest importance for this issue. A few things that I took note to in regards to the key features. Was specifically collective limitations, that is you know, is definitely as reiterating what other people have already said, that just San José alone, per capita, we're talking you know a million people regarding you know, that's not all those people are patients but I bet you a lot of them are on the fence of becoming patients because of the fact of, you know, patient rights thus, you know, getting to the hipaa again. A couple other things again maybe there should be a minimum requirement not a maximum so that way we ensure that there are enough collectives to serve the people. [applause]

>> In regards to the lottery, again, that's definitely something that's unconstitutional. In my opinion I definitely don't think that a lottery would be a good way about going about it. It's like what do other businesses go you know do, do pharmacies have a lottery? To banks or liquor stores or any of those places have a lottery in order to operate

their businesses? That I don't know but it would be something to take consideration to. We should be treated like other businesses. You know we're not you know lepers or being thrown out cast into the shadows, we are everyday people here and we are the people that actually formed this city so you know we've got to be treated the same. Limiting the patients to one collective, again, that is also unconstitutional. We definitely have the right to be able to choose between different places. I wouldn't be forced to go only to one specific pharmacy to get my medication, there are other places to go to. Then some of the missing features are, I guess, some people have been talking about consumption, where can we excuse me. Maybe that could be considered, is there a specific are there consumption on site? Is there a place to have consumption? So there's definitely considerations that need to be taken into account. The closed loop system, now, yes, we are a closed loop system but to require only San José residents I think that is definitely unconstitutional to be and the same thing for vendors you know to have a vendor only from San José that would definitely limit your business dramatically, I mean this isn't exactly -- I marine this is a good place to cultivate but there are much better places in California to cultivate and specifically outdoors you know, San José would be required to be only an indoor facility except for one season. So -- outdoors. Then in regards to the zoning again was you know, that thousand foot limitation, I think that at least going by what AB 2650 with the 600 feet with just public schools, if you were going to limit the zoning, that would be something to take into consideration that's already been passed by state. So if that was something that we would choose in San José. And then another thing that, what was it, oh yeah, then of course on March 30th was it the mayor had said that any operations that were to open after that date, after the March 30th, would be taken very, you know not lightly, I'm not mistaken on his words, and so I think that by looking at who was operating before those dates and operating correctly, and then also after the regulations are taken in place, then going through fair practice and the proper -- in the proper what is it, processes in order to get your permits. One thing is, people that are already operating, they did pay permits and fees in order to get their place operational, they did have to use a huge overhead in order to get the improvements and all these things should be taken into consideration. Thank you for your time. [applause]

>> Hi, my name is Ed Esters, I'm here on behalf of harbor sides health centers and we're also a member of MC 3. You talk about transparency a little bit and I believe that's essential for this to work in San José. I don't just talk the talk, I walk did walk. You can ask the people that work for you. You can ask staff, Mark right here, they

inspected my books this morning. So it is essential that this happens. But it's also essential that you provide safe access to everybody in San José. Having restrictions of only ten collectives. You're not doing that you're doing an injustice of the people that live in San José. I've lived in San José my whole life. The facility that I work at is in light industrial. Again ask the members including Madison Nguyen when she inspected my facility earlier late last week or early this week. I deserve to be there. We run a very professional, white glove, five star facility that's very safe. We exceed all the standards that you have in place. Some of them, they're just not going to cut it. Demanding that we have onsite cultivation, that's ridiculous. Saying that we can do it is one thing. Demanding that we do it, again, away if you don't have the space for it. You run out of meds and then somebody says, I came here, but you don't have the Sativa that I need to take care of me. Now I got to go cross-town because there's only ten of them in San José. I now got to travel 15 -- wait a minute. I got to get on highway 87 and go the other side of town. It's going to take me an hour to get my medicine. Am I the physical condition to do that, when I just went to the place that's closest to me? Ten's not enough. What I like that I'm hearing today that I wasn't hearing before at these city council meetings is people are starting to understand is we want what the neighborhoods want. We want safe facilities. We don't want them located next door to preschools. This is not to spite the collectives that are. But I'm a parent as well. And you damn right, I don't want a collective next to the elementary school that my daughter goes to. A lottery system. Sacramento is considering doing the same thing. The reason that they're considering doing it is it's the least expensive way to go about it. It's also the least effective way to go about it. You want the most qualified people to be running your collectives here in San José. Everything that you're talking about is professional safe access. If you're going to do that then why would you pull a lottery when you don't know who it is that's going to pull that magic ball? [applause] Is

>> A 3% tax it's just too high. We ran the numbers. Anything in excess of 2% and can you go back to the Oakland ordinance on this is going to make the medicine much more expensive for the patients. There's a lot of fixed income people that are coming to see us. You don't want to make it harder for people to get their medicine. And on the residency, let's look at it this way. You have a lot of people that work for the City of San José that don't live in the city of San José. But I can tell you this. They're patients because I see them in my facility. Is it I don't think to deny them access to safe medicine? It's not. Thank you very much. [applause]

>> Hi, my name is Naveen. I work at harbor sides medical center. The only thing I want to bring up is actually the focus on how operations should be done. I've been to a number of the collectives in San José, and even outside San José. And similar to any business, if people allow negative things around their business or people to do like conduct that's not meant to be right outside the doors that's going to attract negative energy and people aren't going to like that. At harbor side, we don't allow people to smoke cigarettes, we don't allow people to use cell phones in front of our facility. This is to ensure safety and make the process as safe as possible. Focusing on location and whatnot, it is more about operations and making sure that the right people are running these facilities that they care about, the community around them, that they set up their cooperative in a way that they don't allow for certain things to happen or they definitely don't encourage them. I think if those are the type of people running these businesses then there will be a much more positive impact on them. [applause]

>> Shawn Spano: Kim Q, is Kim Q here? We're going to go on to our next set of speakers here. We have Jason inmar, Janet weeks and Auralia Sanchez.

>> Thank you, my name is Jason inman, I'm a medical cannabis patient. I also work at Harborside Health Center in San José. I'd like to thank Loren and Paul. They've covered most of what I'd like to discuss, the major issue being the onsite production. I feel like onsite production in a medical cannabis dispensary pretty much equates to asking McDonald's to carry the cattle in their parking lot. It's untenable, there is absolutely no way for the patient flow of 10 dispensaries or collectives, I'm sorry, free to ask 10 established collectives to grow all the medicine required onsite. It would be just a tremendous warehouse size operation of proportions, I don't think even think has had the math done on it. A lottery is probably the surest way to ensure the worst operators come to San José. I think that's the one system that needs to be avoided and there should be other ways to assess which collectives should be allowed to operate. Like I said Loren and Paul covered most of the affects that I want to discuss and I thank you for letting us have the opportunity to speak. Thank you.

>> Hi, my name is Dr. Janet Weis. I'm a medical toxicologist, specializing in medical and environmental toxicology and pathology. I've been in practice for 35 years and serve as a public policy expert regarding the issue of medical marijuana. I'm currently medical director of steephill lab located at Oakland. We at steep hill encourage

San José to consider two major omissions in your ordinance. One is to incorporate language that ensures that all medical marijuana provided to patients is tested for safety health and dosage and two, to require proper labeling and packaging. I suggest that your city council adopt a safety monitoring program that encompasses a formal chain of custody writing with important -- with input from the experts, specifically operating procedures that allows transparency from farm to patient. This is a simple and proven step that immediately diminishes the chance of product contamination during the growth, harvesting and distribution process. Steep hill lab pioneered the protection of medical marijuana uses through rigorous quality assurance testing provided right now to over 50 dispensaries in California. Both our rigorous quality assurance tests provides -- are well known to city leaders, during our two years of operation we've acquired extensive familiarity with the laws and regulations that govern medical marijuana in California, and we've been providing public policy assistance at no charge nationwide. We're also the largest dispensary quality assurance provider in the state. Since plant contamination can seriously injure or kill patients, unexamined medical marijuana represents a serious public health risk. We certify our dispensary clients and growers' cannabis products that are free of plant contaminants, such as pesticides, bacteria, molds and fungus. We make sure that the strength of active ingredients is accurate and that the labels contain all the ingredients so that consumers with allergies will be well informed. However we are located in Oakland not San José and if you limit those who are involved in the production of these products in San José we will be unable to test products for dispensaries. I'd like to remind you that both state and federal law, including the Sherman law, which is the health and safety code 109875 through 111915 in California and the FDA regulations at the federal level require a wide variety of consumer products including foods, drugs, medical devices, cosmetics and dietary supplements that are offered for sale be validly branded, labeled and nonadulterated. What this means is that quality assurance and safety testing is required by law. Quality assurance testing provides dosing guidance for consumers, information that must be used to identify what constitutes a dose or serving size. You certainly can't tell by looking at a product how potent they are. Our lab assistance providing dosing guidance by testing for the major active ingredients in marijuana, which are the cannabinoids, THC, CBD, and CBN. CBD is a major unique product because it's of a clear medical benefit. It is a potent anti-inflammatory, anxiolytic and analgesic, but it is not intoxicating. It is not at all psychoactive. It doesn't cause the user to get high or stoned at all. It may even antagonize some of the adverse effects of the psychoactive THC. High CBD strains are a clear medical benefit to cannabis, and this nonaddictive substance can only be detected by laboratory testing of these particular

ingredients. Your regulations must prohibit the presence of contaminants and adulterants. Mold, bacteria and pesticide contamination are a significant public health issue. Contaminants should not be in products offered for sale to consumers, period. Pathogenic molds can contaminate medical marijuana and medical products injuring and, in some circumstances, can even kill sick patients who are seeking relief of their medical problems. Particularly at risk are those patients with weakened or damaged immune systems such as patients with HIV/AIDS, cancer, and other chronic debilitating diseases. This risk might be mitigated by testing all products for mold, bacteria, pesticide residues, and this testing can be done reliably and inexpensively. The second issue I'd like to address is labeling. Proper labeling should be similar to prescription medications. The label should include the name and quantity of the active ingredient so that patients know what's in their medication, how much you use, and have clear instructions for use. This label should also state that these products are designed -- designated exclusively for the person that it was intended, that it's unlawful to give it to someone else, and that it's prohibited to divert it for the medication to minors. Adding language to your ordinance that requires quality assurance and safety testing and proper labeling to comply with California health and safety code, would provide a tremendous benefit to San José medical marijuana users without disrupting the current business model or substantially increasing cost. Steep hill lab has earned a position of trust in the cannabis community due to our statewide presence, our extensive proficiency in the cultivation process, our familiarity working with the regulatory arena, and our exceptional expertise in safety. We are uniquely suited to assist San José with the development and implementation of marijuana production safety programs, and I respectfully propose the following language. That the grower and collective/dispensary or wherever the patient receives medical cannabis, ensure that all medical marijuana and medical marijuana products provided to patients be tested for safety, including mold, pesticides, and other contaminants, and that the strength and dosage be properly labeled. The state of Rhode Island, New Hampshire, New Jersey and Maine already require testing in their medical cannabis legislation. California lags behind in this regard, an omission that can be remedied at the local level. By adopting an ordinance that specifically addresses best practices in this industry, you will add tremendous value and safety to patients who get their medications from dispensaries. Thank you.

>> Shawn Spano: Is Aurelia Sanchez -- yes, okay.

>> Hello, I'm a long-time resident of San José, and I'm here mainly because I just wanted to hear what the people who are supporting it and the people who are against it had to say. I'm really glad I came. I think everyone has brought up good points, but as a resident and a person who lives in district Lincoln, which is a high crime area, and it's not on Story and King. I just want to say I have ideal and I have a lot of contact with the police, code enforcement, antigraffiti unit, and a lot of different city services. I really feel, I know some people here are bringing up first amendment rights, bringing up Oakland, which to me is a bad example. I will never go to Oakland. A lot of people I know are scared of Oakland. So if you are going to be using an Oakland example I don't think that's a good idea but that's just me personally. One of the thing -- we have a lot of liquor stores on the street I live, we have lots of liquor stores and bars. We have shootings, even though people come to my neighborhood, my street, they say well, you have a nice neighborhood. Well, you know, after dark it gets a little scary. But I really feel that the city really has to concentrate, and people have to understand that this is a business. It's a business just like a bar a liquor store, the gambling casinos that we have here, also like a lot of supermarkets, there are regulations regarding, you can't have 10 supermarkets next to each other, because obvious, for obvious reasons, you can't have -- you know, there is regulation, not just because this is marijuana, there has to be regulation on businesses. I really feel that one of the things the city has to consider is hours. I know that we've had a liquor store in my street and it was there forever and I got an opportunity to limit the hours of the liquor store because I did a possession with San José. That really made a difference. San José is a big city. We have a lot of noise during the day and the evening is an opportunity for things to settle down. Also, we are very short on police. We're really short on any service. You know, there was a dead cat on the street. I called the city, it's going to take a week to pick it up. We no longer have tree trimming, not a lot of services that we have. If people aren't going to be able to enforce it? I don't think so. We are laying off the police, I think you have to be careful. If you would limit the number of hours it would really help the police and the business. I agree, I don't think we need security guards. Only if a business feels it they should have it. When you're not close to schools or daycares or parks or are trails or libraries, where does that leave us request many does that mean my area is going to have ten types of these businesses? So I really people we should have a cap. I feel I agree with a lot of people, maybe 10 is too low, maybe I don't know, probably 60 or 100. But it shouldn't go over a certain limit. I also feel that in the future if you are going to grant licenses to these businesses, they shouldn't all be concentrated in one district or one area. Such as the problems we've had in the Eastside with too many liquor stores, too many bars that sill liquor,

and because I do live near these areas, I can tell you you get a lot of transients, you get a lot of crime, you get people peeing. Let's say you're eligible to buy marijuana how do you keeping track if one better than is not going to all businesses? I'm not saying that people that use it are bad, but you know what, if we were all angels we wouldn't all have to be here and have all these regulations. So my question is how do you regulate one person from going to a hundred businesses in a day and maybe selling it on the side. I don't know if you would get -- the city could do something about it or if that would be a state issue, but I'm just kind of concerned about it. I'm also concerned about putting it in industrial areas or light industrial areas. Because I feel that, you know, people -- if you're warned of crowded situation, there is more ice. The police can't be everywhere, and obviously the people that are going to enforce can't be everywhere. I think the residents are the best enforcers there are. So if you're in a place where there's other businesses, if there's people behaving badly, they are more apt to be reported. So I'd really like to maybe not keep them away from industrial areas or light industrial areas and keep them more in the heavy populated areas, but really restrict the hours. And since it is a business, I also feel that the owners should have some kind of light criminal background checks, you know, they keep saying it's a business. Well you know, we have a lot of restrictions on a lot of businesses. So let's treat them like a business, you know. I also feel that -- let me see now, I think that's all I really had to say, and again, thank you for giving me an opportunity to talk. I think I learned something from here. I also feel that let's not rush into it. And that's basically it, thank you.

>> Shawn Spano: Okay, our next speakers are Robert Coe, Simon Sider and Douglas Colupek. And I apologize again if I mispronounced that.

>> My name is Simon Sidler. I'm a local attorney. I live and work here in the City of San José. I think a lot of people have voiced their opinions, and I don't want to reiterate everything that has been said. I do want to thank staff for at least going through the motions of listening to us. I do fear that some of the proposed elements of the ordinance are in conflict with some of the things that the council has asked for. I think the council reasonably asked for reasonable regulation of medicinal cannabis collectives in the City of San José. I think there's been quite a departure in what I've seen so far in that the reasonable regulation of time and place, distances from sensitive uses, are all things I think we all can agree on, and I think there's a way forward. A lot of the folks here that are working in and for medicinal cannabis collectives are also parents. We also live in neighborhoods, it's not

an us-versus-them kind of thing. The principal that we should have a certain time and place for the operation of these collectives is one I think we all embrace. One of the things that I've heard is that is a little bit more far-reaching is, the elements related to the auditability and records and transparency, under the guise of transparency. You know, on the one hand I'm not too -- I said I'm an attorney, I'm also a privacy expert. I'm not too worried about it because I understand HIPAA and California privacy law it would never fly. But I worry that the city staff and the city attorney's office are spinning cycle in areas that are unnecessary. Reasonable regulation doesn't mean that you treat medicinal cannabis collectives worse than any other business. And to basically being establish a -- an ordinance that places a cap, a minimum of 10 or even some arbitrary number, is to say that it's a de facto bad use or it's a de facto you know, nuisance in the community. And it's not that at all. I wish the principal that the city was working from is more like the people here, who are looking to provide safe access to their constituents and to their patients. One further element that seems to be you know kind of swept under the rug is that the -- the idea that you want to several limit the number and type and operations of the collectives, on the one hand, doesn't jive with the idea that you want to use it as a revenue source on the other. Because you know, you're going through some of the drafting principles and limiting the number, requiring some onerous registration, on the other hand you're going to tack on another 3% for the medicinal, we don't treat patients that way in any other forum, you know. Obviously prescription medicine is not taxed, medicine that you buy in a pharmacy, nonprescription over-the-counter medicine is not taxed. So I wish the city staff would revisit some principles that drove and even addressed what are the drivers behind these things. Fear shouldn't be a driver for, you know, over regulation. Nobody is, you know, I mean we understanding that the safety of the medicine is important. But to generate fear about the safety of the medicine, for the opportunity to regulate in an onerous fashion defeats the purpose of making access available, defeats the purpose of Prop 215. So if we could just have some visibility into the principles that are driving some of the elements of the draft ordinance, we might be able to better address those principles. Because I think on its face, it looks as though the city is putting forth two ordinances, where one might do and putting together ordinances that are on the one hand promoting the availability of medicinal cannabis but on the other hand making it so onerous that it is not a worthy endeavor and therefore chasing both patients and dispensary operators out of the city.

>> Shawn Spano: Thank you. [applause]

>> Hello, my name is Doug Kopek, I'm one of the founders of med mar healing center. Maybe I missed something but what I saw initially was you were proposing to go into two commercial zoned areas. If that is true and you proposed do go into commercial zoned areas. Then the zoning that I saw offsite cultivation at industrial zoning districts. So I'm a little confused if I have to be in the area, and grow my own, how can I do that if it has to be in an industrial area? Again, maybe I missed something. Second is, I noticed that in 1997, the city of San José drafted their first ordinance for medical marijuana. Many of those ordinances that were in place in 1997, if the cooperatives that are currently operating now, all of those, we probably wouldn't even be having this discussion. Granted that yes, as a member of the community, we don't -- no offense against some of the cooperatives or collectives that may be operating, we don't need a cooperative against a house or senior facility or next to a church or a park. I got that. That said, those who are operating currently in accordance with the guidelines that the city staff created in 1997, that have operated in accordance to X number of feet from schools, they have private off street parking, there is no adjoining neighbors, they've spent 40 or \$50,000 renovating buildings, which many of the cooperatives here have done that. Why would those cooperatives who are operating in the right manner, that are in the good nature of the law, why would it make sense to put that good operating business into a lottery system, to potentially have a bad operating business, which there's 70 of them from what I heard, about 70 in San José. Why would the city want to take that chance instead of using their code enforcement when the code format about three week ago, why not take that person or whoever is part of code enforcement and make an accurate assessment of those who are operating in accordance to the attorney guidelines, they were operating in accordance to how the City of San José wants them to operate, taking that into consideration, back in March when the city council actually asked staff to have this meeting, to come back with their results. I believe one of the other gentlemen that was here had mentioned that I believe it was the mayor had actually said that those who were also operating, they would have -- I don't know if it was necessarily preferential treatment, or they would be looked on more favorably than those who are operating after that date, because this is what, in March they were talking about the moratorium. If then a moratorium had been enacted, the other 40 clubs or so that have opened since then, we wouldn't have this issue. But now we do. And the other thing I find kind of hard is last time I looked, there was 1.8 million adults in the city of San José over the age of 18, and from what I heard here, 25 to 55,000 patients in the City of San José. Limiting those patients literally to only ten, that just seems

absurd. Now, if in fact those cooperatives have the ability to cultivate, which very few do, some may be fortunate enough to have a large enough facility to do that. That's basically like asking a CVS pharmacy to make all of their drugs in-house, and not use any drug manufacturers to supply their patients. That's what you're literally asking us cooperatives to do, if we are not able to use outside vendors that grow and distribute the medicines to the cooperatives in a manner that the patients need. Some patients need a heavy indica or a heavy fativa strain for very specific reasons, for certain ailments. And if a cooperative does not have that, and you limit that person to only going to one cooperative, or you limit that cooperative to only growing their own medication, now it's the City of San José denying that patient their right to their medicine, and that is not right. So I hope that the -- [applause]

>> I just hope that the City of San Jose takes an accurate assessment of the current cooperatives that are currently operating, look at their business model, look at how they are operating, and look to see if they are a value to the community, if they are not a detriment, if they are not next to a school or next to a church, but if they are in abundance to -- why reinvent the wheel to the ordinance in 1997, to the ordinance in San Francisco, to the ordinance in Oakland. If they are doing those, take it into consideration, please, don't enact a lottery system that will just connect chaos.

>> Shawn Spano: Very good. Robert Coe. Okay, our next speaker is Kenneth Estes, Scott Candell and Jack Nupe. And how about Eric Engstrom, too, please.

>> Good evening, my name is Scott candell. I'm an attorney. Our firm represents about 45 collectives throughout the state. We work with different local governments to help them enact regulations. I want to commend you on the effort to make this regulation. And I know some work was put into it. And I understand the problem which is both yourselves and the City Attorney have various responsibilities and lots of things that you have to do in your busy days, for you to effectively become an experts in something like this overnight, it's just not possible. I understand that. There are attorneys, this is all we do. We understand the laws, the federal, the state, how they interact. You've heard from a number of them tonight. We are offering our services to help you. We're not going to charge you. Okay, we would like to see this stuff done right. There are things in here that are unworkable, there are things in here that are illegal. And we just want to make sure that you understand that, because we don't want to

see the city go through lawsuits, we don't want to see problems. To go through a few of them, starting with the reporting. You mentioned all the transparency. I completely agree with the theory of that. You mentioned hipaa. Besides hipaa you have the problem that this is still illegal federally. And because of that, patients -- if you require patients, if you require growers to give their information to you, they're basically incriminating themselves under federal law. And you cannot require them to do that. Now, I understand it would be great if we could do that. We can't. Because there's this discrepancy between the laws. So it's not realistic, it's not possible, it's not legal to require the patients to turn over their names, collectives to turn over the names of their patients, their growers, anything like that. As far as the lottery system goes, again, it's a good idea, you know, to try to limit it to a certain number of collectives. Somebody mentioned pharmacies. Now, you didn't limit it to ten pharmacies, but granted, we don't have a thousand pharmacies in San José. Why not? Because in the system that we have, there's a survival of the fittest, and the city doesn't support a thousand pharmacies, so there aren't a thousand. There's reached an equilibrium where there is the number of pharmacies that support the number of patients. And if there's a need for another pharmacy, one would come. If there is not, one will close because they won't have enough patients. The same theory works with collectives. Now, none of us want to be L.A. We don't want a thousand collectives here. The City of San José would not support a thousand collectives. But a reasonable number that would allow this competition to take place around survival of the fittest would be around 100. Probably the city wouldn't support 100. Probably you would end up with less than 100 and the ones that are bad will not survive, and the ones that are good will. And that's how you will end up with a smaller number of quality collectives, that are serving their patients. As far as some of the other things that are mentioned, cultivating onsite, or requiring cultivation onsite only, a couple of problems with that is first of all was mentioned you have lots of different variety and strains and different patients need different things. You can't possibly have the number, the variety that you need onsite. Second problem is, due to economics, property values are high in San José. An for you to require somebody to have a 5,000, 10,000 foot warehouse where they can cultivate, there are a lot less expensive places where they can do that, and provide medicine to their patients, at a cheaper price. And that's really our goal here, is to help our patients get quality medicine at a lower price. As far as the testing I completely agree. If you want to control the quality the way to do it is not to force people to cultivate onsite or even in San José it's to test the quality of the medicine and you can require that. As far as residency requirements, you're not the first city to think of that. A lot of cities would like to do that. They don't want to get it out of control so they say

we are only going to let patients in our community use our collectives as a way to control the numbers and limit the sizes. It's unconstitutional. If you look, no city has this, no county has this. There's a reason. Okay? They've all thought about it, they've all tried it, they've done research into it and realized they can't do it so I'm asking that at least that you do the research first before you enact something that will get struck down and end up costing the city millions in litigation. Locations, understand again the thought of wanting to be in a commercial area, we don't want patients to feel outcast, they have to go to the outlying areas. We don't want it to be in an isolated area that could increase crime, agreed. However the better way that cities have found is to put criteria of what you want and to see what areas fit that criteria. A lot of times you're going to want a certain amount of parking. You're going to want certain sizes. Certain distances from other what you call sensitive uses, and those just happen to be in light industrial areas in general. You know, in a commercial area you're going to have a toy store. Is that a sensitive use? Maybe. You're going to have other things that may or may not be considered sensitive uses and at this point what would make more sense is to expand the possibilities, say yes, these are our criteria, if you find it in commercial, great. If you find it in light industrial, great. Instead of restricting it and having a problem with finding adequate places for patients to get their medicine. Finally a suggestion was made, actually one other thing as far as the paraphernalia goes, again understand the thought. However, picture the patients that are coming here. You have I don't know, a 60-year-old woman with breast cancer, doesn't know in about medicine. She comes into -- gets her recommendation comes to a collective says what do I do? I need medicine, say okay, this is the medicine that you need, here is a vaporizer that you use to use the medicine. This is how you do it. Go home, feel better, we do whatever we can to help you. As opposed to thanks for coming here, here's your medicine, go across town to a head shop to get a pipe or whatever it is, it just doesn't make sense. These are patients that are dying to service their needs, this is one of the things that they need. They need something to ingest the medicine. And finally somebody mentioned a committee which is a fantastic idea. Down in it is done in San Francisco, it is done in Berkeley. It allows, if things will come up, this is a complicated area, it is an evolving area. And you can set up the best regulations, and three months from now something is going to come up that's going to be an issue. If you don't set up a way to deal with that issue, it's going to be litigation. So instead if you set up a committee which will have members of law enforcement, members of collectives, maybe attorneys, members of government can get together and say okay, this month, this is what came up how do we handle it? That will, again, save the city a lot of time energy and money and in this economy, I think it's in everybody's

best interest to do that. Thank you again for your efforts and everything that you're doing. I appreciate it. [applause]

>> Hi, my name is Pat Nupe. I represent holistic health care. I'm a member of ASA and also of MC3, and I realize I'm going to be repeating the same things you've heard over and over, probably much more eloquently than I'm about to. But the fact you keep hearing them over and over shows you how flawed your current framework is. To the parents and teachers, hey I've lived in San José for 47 years and I'm with you, nothing against any collectives but I don't want them in sensitive areas I don't want them by my house I don't want it by the schools. What we want is sensible workable regulations and what you guys are proposing are -- just shows that you really don't know the issue, but hopefully you'll learn. Like I said, there's probably over 55,000 patients in San José, and to limit the number of dispensaries or collectives to 10, as you have heard some is absolutely ludicrous. You're doing a disservice to the city, the patients, to everybody. As far as the lottery, you're basically saying a monkey can run a collective which is far from truth. It takes a lot of work a lot of knowledge and not just anyone can run one. As far as what else? There's just so many things, I don't want to waste anybody's time. I know everybody wants to go home. We've heard the same things over and over but growing onsite it's crazy. I mean it makes absolutely no sense as far as safety, as far as even being feasible. It's just not workable. As far as limiting patients again to one collective, again, it just doesn't make any sense. I -- if I want to go to collective A because they have something, that collective B doesn't, now I'm screwed I can't I went to collective A now I can't go to collective B. It just doesn't make sense. Instead of going on and on, I think that's about it. There's going to be more people after me. But I hope you take a serious look at what's been said tonight and I hope you come up with a good ordinance. San José has a chance to do a hell of a good thing and lead the way for the rest of the country really and I hope they take the initiative and do it, thanks. [applause]

>> Shawn Spano: Okay, Kenneth Estes, Eric Engstrom, I have Carla Nespa, come on down Carla. Van Hobie, Christine Wagner and Helen Chapman.

>> Hi, my name is Carla Nespa, I'm a co-founder for holistic pain management institute. Thank you for staying and hearing our voices. Thank you Councilmember Oliverio for suggesting we stay past the 8:00 time frame. We

have an opportunity to have a win win win situation for the patients, for the city, and for business owners here. I hear on the radio you guys are trying to have more businesses move in. This is an opportunity, and I urge you before the June 22nd vote on this urgency ordinance, to meet with these other attorneys who live and breathe these ordinances before you rush a decision that might make fiduciary irresponsible decisions. I don't want to see the city nonexistent budget tied up in more litigation. I urge you to meet with these people who are volunteering their time and money and advice on these issues. I heard you say you want this to be like any other commercial business. So do we. We want to hire people, payroll taxes, sales taxes, health care, but what you are proposing is very confusing, I don't hear it being like any other commercial business. Lottery, a two year sunset, how ridiculous. You know what security systems we put in place, computer system, on and on. We built a business around this. Two year is up set? What other commercial business do you inflict on that? So I'm confused by what you say. I heard all these, you know, ill legalities, limiting to San José on and on, I urge you to talk to other attorneys about that. Harm reduction, what we do is holistic pain management, alternative pain remedies, we want to meet with the patients and get to know their illnesses some we want to get together with them to do alternative medications, yoga, meditation, drumming, to see that you would prohibit that, I don't know. Let us build our own business model and see if we can exist on our own value and merit and not regards to some lucky number. [applause]

>> You know we had to move, we had to move because of those threatening letters, reissue all those move-in fees and we moved to a light industrial area because we thought that that would be what the city wanted and our patients are happy where we're at and maybe not all light industrial areas are all the same, maybe some are. Let the patients decide where they want to go, and if we can succeed where we are, please let us. So that's just what I want to say. I really think there's an opportunity to have a win win win and I hope you do the right thing.

>> My name is Van Hovie, I'm founder of HPMI. We opened about seven months ago in a light industrial area because we thought that that was going to be the most sensitive to other uses away from the commercial zones, where lots of kids and families are going you know and so forth. We received an illegal intimidation slap-suit letter from the city's zoning department. We didn't sue we could have sued we chose not to. We thought this is not going to benefit our 2,000 plus patients. We moved to a beautiful facility down on South 10th street, very safe,

very modern, very nice, we're one of the top clubs in San José and people come to us because they like the energy from coming there, they feel safe, they feel heard they feel witnessed, they need help. We have a lot of very sick patients with fibromyalgia, cancer, AIDS, and on and on, and they get the medicine that we're looking for. There's absolutely no way that we can grow this medicine ourselves, we can grow some, one or two strains. But growing marijuana is a very complicated, very technical thing, and expecting sick patients to be able to grow quality medicine in their backyard is not workable. It's not realistic, and expecting collectives to cultivate onsite for all their patients' needs, all their needs is not founded in reality. Like much of this proposed ordinance, this is not founded in reality. You're not talking to the owners of the collectives that are on the front lines dealing with this issue. So I don't know. Is this a legitimate thing? Is this real? Do you really want collectives in San José or is this just another attempt to shut us all down, that's my question. [applause]

>> Shawn Spano: Christine Wagner, Helen Chapman. Okay we're moving on, Teresa tillory. Bates, Kuberiphnich. Stephanie Tucker and Michael cabane. Rich Serlino. Sterling Leonard. Pete Vonenberg. And you're up sir.

>> Thank you very much. I appreciate you staying late and listening to all of us. I definitely appreciate your time. My name is Batse Kaberbich, born and raised in San José California. I'm a member of the MC 3 coalition, on the standards commission, member of ASA I'm a director at meadow lease and I represent several patients who could not be here tonight, because they are sick, disenfranchised, traumatized, and they are at home. They can't possibly be here tonight. As a licensed investigator and real estate broker in California, I believe in reasonable and responsible regulation that is not overly restrictive. I agree with most of the speakers who spoke tonight especially Simon, Paul, Loren and Andy. They have some very good points they made in regards to the regulation. I'd like to lobby for special consideration for those who opened prior to March 30th and who are currently operating responsibly without complaints. I feel that the membership constraints are discriminatory and illegal. In regards to cultivation and sales, operating as a closed loop within the spirit of Butte county versus the state of California is legal. I suggest you look at the case law, Butte County versus state of California. As far as transparency goes, we believe in transparency without violating patients' rights. In regards to being regulated and administered by the police department whoop question whether they really are subject matter experts. This is a

new field. Police are not attorneys. We disagree that we'd like to be part of the community and as a not for profit we give a lot back to the community. Medi lease is only seven months old and we've already donated to over 20 different organizations in the community. We are part of the community, absolutely. As such I'm available as a resource to you and your staff. I did submit a sample ordinance to the city council at the rules committee several months ago. We'd like to work with you. We would like responsible regulation that is not overly restricted and again thank you for your time this evening, I appreciate all your efforts.

>> Good evening, my name is Sterling Leonard. I'm the chair of the board of directors of the ACLU of Santa Clara valley. I'm also the mom of two preschoolers who know that medicine is for sick people to help them feel better. I'm not threatened by another form of regulated pharmacy as a mom, and I'm saddened to hear that some are breeding intolerance by branding qualified patients as bad guys, comparing dispensaries to liquor stores, bars and hoodlum hangouts. Sure, a reasonable distance from sensitive use is appropriate, but too large a distance creates a de facto ban. Key provisions raise significant and troublesome privacy concerns including requirements for video and written records on qualified patients to be given to law enforcement upon request without process. This goes far beyond legitimate governmental concerns for public safety. And this will also serving to deter qualified patients and caregivers from obtaining the medicine that they need. Similarly the cap of ten dispensaries and location restrictions as proposed will also frustrate the existing needs of those who are currently exercising their established legal right to obtain medical cannabis to promote their health and well-being. There are also legal access limitation issues to correct. Childproof caps, restriction of cannabis form to one type, and a blanket prohibition on associated paraphernalia is inappropriate and it creates an impossible imposition on many patients that are disabled. These requirements create a barrier for the sickest patients deserving of heightened compassion. Prospective medical cannabis regulation must give consideration to the compelling needs of patients and caregivers who regrettably may face a appropriate stigma arrest, prosecution, and imprisonment. I ask that this ordinance facilitate access to medical marijuana needed medicine in a safe, secure, and dignified fasion with respect for civil liberties. Thank you. [applause]

>> Shawn Spano: I'm going to read ten names. It's the last ten speaker cards that we have. Emmanuel Mendoza, Matthew Bright, John Lustig, Julie Englebrecht. Kathleen Cohen, Chet Lockwood, Jeremy Perry, Dr. Scott Wade, Carmello, and Kim Moseley.

>> Good evening staff, fellow residents out here. My name is Emanuel Mendoza, I represent CNA number 2, we've been in San José since November of 2009. We're either the second or third to open up, we have been operating for seven months now with no issues. We have been abiding by all the attorney general guidelines, SB 420, prop 215 and we think that other regulations are, the City of San José's you know thinking of doing, are good. There are some things that are bad. We do not agree with opening up next door to a daycare in sensitive areas but also yet nobody apples ever mentioned about anybody living in a residential area that will make it convenient for them to walk when they cannot drive to a collective. We've got a couple of patients who live down the block where we're at, we're about 400 feet from there. So I just want you guys to think about being compassionate about those people's needs. We understand I do agree and I thank Mr. Oliverio for leading and being the tip of the spear so to speak on this. So everybody have a good night and thank you for your time.

>> Shawn Spano: Thank you.

>> Hello, I'm Matthew bright, direct of district 6. I want to thank again Councilmember Oliverio for the leadership on this issue. One technical point in the land use because I'm from a community that's heavily infill industrial. I want to make sure that if there's a component to the ordinance, that does ultimately involve a distance from sensitive uses, that that's ideal. If there's -- if that's removed and instead of that we have a system strictly based on zoning that would become a problem create a loophole with infill with residential and industrial next to each other. Separately with respect do auto row model, I think it makes sense to have them spread out. What we can do to mortgage them to be spread out is positive. That means to those who need access everyone has access. And then as to the number of locations if we're encouraging a smart number of locations, and I'm not the one to say what that is, but then you wind up with more legitimacy, more critical mass, you can have the right kind of security, the right kind of facilities, you have safe and stable operations. I did just a little research on my phone. I guess there are 36 McDonald's within the city limits of San José. I can't verify the stats, absolutely true,

but it is probably in the ballpark. If there are 36 McDonald's, I think everyone feels that they probably have access to McDonald's. So when I've heard that there are hundreds -- the potential for hundreds of facilities, maybe that's on the wrong side of the balance. I've heard some people say and I think the state voted for it, we have to look at it this way. Let's look at this more like a medicine and less like a drug. Just on the Website of a local dispensary here and looking at the way that some of these products are marketed, it looks a little bit more like a candy store than a pharmacy. For sale is grand daddy purple, blueberry, cherry pie, pineapple express, Mr. Nice, Chem Dawg, d-a-w-g, and super silver haze. So to me this is a little bit of Joe Camel style marketing. I don't think it's right for something that we're trying to treat like a medicine and less like a drug. As far as the business model, there's a lot in the ordinance that attempts to address the business model. I'm not the one to say what's legal and illegal, but the thing that I think we need to avoid is creating an environment where we create gold mines and we're basically granting claims to the mother load. To the extent we can keep this more about safe access and less about generating a lot of money, I think there's a huge benefit to that. As far as land use, I didn't understand this coming into it, but calling it as I see it, growing onsite doesn't seem to make sense given the amount of room they require. But growing within San José, maybe there's a room that we can use our vacant industrial land to create an ecosystem within our city and keep the money and taxes within our city.

>> Thank you all for staying. Can somebody flag me at about three minutes? I'll try to be brief. My name is Julie Engelbrecht, and I live downtown in San José, and I want to say to alphabet soup, we sympathize with you. We have been living next to a club for five months and we want to applaud the City of San José for doing what it can for putting an ordinance together and helping out the residents of San José when there have been issues. I have a very urgent question. Because we've heard a lot of people talk about sensitive real estate like homes, nobody has talked about homes, we've talked about the daycares, it was in the newspaper recently, everybody says we can come up with something as a compromise. I would like to ask the question, why does anyone need to suffer? And this is not just people in pain, I'm talking about children that are afraid and families that are intimidated by this. Zero feet from a house, I'm sorry, we have issues, and they were issues that a club can't necessarily control. They cannot control all of the clients that come to their club. And they cannot control the fact that many of the documents are easy to obtain. There's some of this that is systematic and cannot be handled by a city. It needs to be handled by the state at a state level, because abuses are made easy and eliminates stand-type

dispensaries are able to open up and the abuses will continue. A family should not be afraid to come home, and they should not be afraid in their home. Illegal activities that occurred just outside of some of these clubs has to be controlled, and if the club is following the letter of the law, and yet there are activities within a proximity of it, I don't consider that to be acceptable in the residential neighborhood. The volume and flow of traffic has to be regulated. These are high volume businesses, cars in and out constantly. And I believe that the location of doctors should be some distance from the dispensaries. This will help to keep from certain kinds of abuses happening where you get your prescription upstairs in 45 minutes and you can come downstairs and get your medicine. I can't do that at my doctor's office. I would ask that the city look at some things that I think might be missing. Commercial and residential can be next to each other. That's problematic. Patient ID numbers can be issued, just like most medical clinics do in which HIPAA and privacy laws can be respected, yet we can identify, identification numbers that are buying at clubs or buying at multiple clubs, in which case there might be a problem evident there. I think there needs to be a clear guideline on the city's part as to how these businesses ID themselves when they get their business tax and that they are very clear on the fact that a business tax is not a permit to operate. I think that a lottery is a poor choice. I think that the best way to go about this is to really do a sensitive evaluation of the clubs you have. If you have clubs that are responsible and acting properly, and they're in good locations and they've chosen appropriate real estate, then those are the ones you should be looking at to have the spots that San José wants. If they want to be treated as a medical marijuana facility that's like another business, then it needs to look like a legitimate business. There are some that do not and the city needs to put in this ordinance the ability to shut down a club within 24 hours if there are violations or problems that exist. This protects the residents and people that are nearby. We suffered five months trying to regain some stability in our lives. We had our club close, and three days later a club opened about 150 feet away from us. I can tell you I'm a little distressed to know that I still have what may be an issue, we have yet to see. I want to finally frame this comment because I've been a college teacher for 25 years. I have seen a lot of things. I also have a mother, had a mother who was a doctor for over 20 years at Agnews medical facility. Who suffered a very, very painful death of multiple myeloma, of bone cancer. I get this. I think everybody here gets this. But I'm going to reiterate what we said at the March 30th meetings. Not near our homes, not near our schools, not near our daycares, and not near our parks. Families and children need to be safe from threats, intimidations and illegal activity. Thank you all very much.

>> My name's Kathleen Cohen and I live on 14th street. So we've spent a lot of time working with our neighbors at the purple elephant and we're happy that they chose to go elsewhere. I don't think we're ready for an ordinance, from what I've heard tonight. The number ten is too small. Think about this daycare, if one of those clubs was chosen at that daycare, then what are you talking about, 5,000 cars a day? Even the 50 cars that were coming through our street on a daily basis is too many. Ten clubs is not enough. Also, I think you really need to look at parking. You really need to look at lighting. You really need to look at the number of handicap spaces and handicap accessibility into these buildings. There needs to be sufficient parking. There needs to be signage. There needs to be adequate spaces in the driveways themselves. While security is important other businesses and consumers in consumer areas do not necessarily want to be kind of in afternoon armed camp of security guards. If you own, say, I don't know, haircut business or something? And next door to you opens a club that has three security guards like happened on our street, that's not good. If you live on that street, you don't want to put your house up for sale, because you're not going to sell it with three guards that are there all the time. I also am very concerned about having clubs have to grow their own stuff. Just as a matter of energy if nothing else, growing inside takes huge amounts of energy. We're trying to develop a kind of green city here, that's not going to help. And you know, I think we could probably do this really well. But not in, what is it, about 15 days? This is not good. So I'm looking forward to some kind of -- I don't know, is there some way you can say just no more for right now, not a moratorium, but just not give out any business licenses additionally, until that we get like a really good law that works for everybody? This is our right to have medical marijuana. We want to have that right for people who need it. But we also you know, I don't want to have to walk by three security guards, three times a day. Thank you very much.

>> Hi, my name is Kim Moseley. Thank you for your time and in hearing our opinions on this issue. I myself am a former housing commissioner in the City of Cupertino. I served from 2003 to 2007. So I somewhat understand the processes that you're going through. I would ask that you look to models at other communities which is something that we typically did, ones that are working successfully. I understand that things have gone well in Santa Cruz, I don't know enough about the specifics there but would encourage you to take a look at that. I did look at the 1997 ordinance this afternoon and my children attend alphabet soup preschool. It seems to me that

according to that ordinance that the newly opened dispensary that is, I don't know, maybe 30 feet or so away from our school would not be allowed to operate under that ordinance. So I would ask that you speak with your staff members and see what can be done immediately to take a look at that. I know that you are going through a long process here and creating a new ordinance that would go throughout the summer, but it would seem to me that something needs to be addressed here right away. I was surprised this spring to see that the monsters of rock smoke shop was allowed to locate next to our preschool. I don't know if you are familiar with the location, but it is up at De Anza and 85 intersection there. There is a small traditional preschool, beautiful little place where children go each day. And a business closed next door, and the monsters of rock shop opened up. I tried to keep an open mind initially to kind of see how that went, and I've been told by the teachers at our school that two drug pipes have been found in the parking lot of our school since that time. I think that is alarming enough in itself, and then now that a medicinal marijuana dispensary has secretly, I guess secretly opened up next door is especially troubling. So I would again plead to you to please take a look at that and I guess to think about the values that we hold as families, as members of the community, and to restrict the location of these dispensaries to light industrial spaces. I really appreciate the members that were here that work at collectives or own collectives that talked about the fact that they also didn't believe that these should be located near schools or other special, specific uses. I think if they can say that, that we all should be able to appreciate that. So again, I thank you for your time.

>> Shawn Spano: Do we have -- sir, are you ready to speak?

>> Good evening. I want to thank you for your sense of urgency, after all, it's only been 14 years since proposition 215 became law. I'm eyely disappointed with the City Attorney and this draft. This ordinance is not only unfeasible, it's illegal. You're violating my rights at least five times in this ordinance. You have received a lot of free legal advice tonight. I suggest you take it. I find it very disappointing that the city attorney's office has not met with Americans for safe access. They speak for me. [applause]

>> Shawn Spano: Is there anybody else who would like to speak? Come on down, sir.

>> Thank you. I'll make this short and sweet. One thing I'm concerned about is, I've heard a lot of stuff tonight from the club members and they obviously, owners and their members, they obviously can draw a crowd. And you know, you've got two sides to every issue and the looks like their issue could obviously bring more people in. So I'm hoping you're not swayed by the fact that they outnumbered the rest of the citizens of San José. What I'm hoping is they don't lose track of the fact that there's a population base here in San José, there's a million people that live here. They managed to pack an odd tomorrow representing 55,000. They have that right. As a citizen of San José I have a right to live in peace and live in fair -- live without fear. Unfortunately I've had the misfortune of living next to the purple elephant for the past five months. I wouldn't wish that on my worst enemy. If you guys would have a lottery and those guys would have a lottery I would tell the people to move out of this town. They have no business running a marijuana cooperative in any city. They got thrown out of Alameda, they got thrown out of here because we took them to court, and now they're in Hayward. We'll see how long they last there. You guys have to remember that there are citizens here in San José that need your help and need your protection. The lottery is no way to go. I would also urge you to look at other cities but also look at other states. Because a lot of other states that sort of followed California are looking at California and seeing all the mistakes they made. I would urge you to look at New Mexico. I know that's sort of odd, but New Mexico has a population of 2 million people. Right now, as of end of last month, they had issued cards to a little over 1800 people. Two million people, 1800 people that were issued cards, they have five dispensaries for the state that manage to keep up with the demand. For the state, two million people, I don't get it. I don't think 10 is probably enough for San José because of the way California structured the way you can get a cannabis card. But I can guarantee you, 100 is way too many. Something's got to fall in between. Also I would encourage you to not to do this growing thing. I think that would just cause a bigger headache, and again, I would hate to have seen the purple elephant trying to grow grow in addition to distribute next to me. What I would suggest you do right now and I don't know how far you in the process you are. But we really need to look at something happening at this month encourage if this is a way to do it to go back to March 30th any clubs that opened up after March 30th are shut down. Give them 30 days' notice and shut them down. They rolled the comments, they know that the city council was working on it but they decided to get encourage you to shut 'em down. They took the risk of investing the money. They took the risk of sometimes lying to their landlords or lying on a permit. I appreciate the guys that were forthright with the city and said, hey, this is what we're doing, this is what we're here to do and we are honest

about it. Unfortunately, the purple elephant wasn't, and I was stuck next to them. But now, again, as my wife pointed out, they shut down on a Tuesday, and on Friday another club has opened up, soliciting their members in the parking lot and dragging them across the street. The same type of lemonade establishment. They don't care who they sell to, all they care about is money. What we tend to forget, this is not my number, this is U.S.A. today survey, legal medical cannabis in the U.S. is a \$20 billion business. This is a business. I don't care what they drag out here, and who they bring, and all the pitiful stories, it is still a big business. They need admit it, and they need to start acting like big businesses and professionals and controlling themselves and watching the members they have and watching the other cooperatives. So hopefully we can get something done this month to stop, because the box is open, Pandora's box is open, and we got to shut it quickly, because it's going to get out of control, just like L.A. Thank you.

>> Shawn Spano: And sir, your name for the record? Richard Smoker, thank you. Is there anybody else who would like to speak here this evening? Okay, I had mentioned at the very beginning that we would have time for questions and answers, and that time has long passed. So we will close the meeting out now. And as we close the meeting out now, let me emphasize, two points. One is the transcription from this meeting tonight, and copious notes that have been taken here, the summary that staff will put together and share that with council at their June 22nd meeting. So what you said tonight has been recorded. As a couple different speakers said, some very dominant themes emerged here tonight, and they have been captured and again, will be fed forward to council. Also, my second point, at that June 22nd council meeting is another opportunity for public comment. So I encourage you to attend. The other opportunities for public comment are July 20th, which is our next community meeting, that will be at the Roosevelt community center. And there are two scheduled council meetings in August that will address this issue, also opportunities there for public comment. Thank you for coming.

ATTACHMENT E

Medical Marijuana Ban Urgency Ordinance (See City Attorney's Office Supplemental Memorandum)