



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** October 5, 2016

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**SUBJECT: PP16-076: AMENDMENTS TO TITLE 20 (ZONING CODE) OF THE SAN JOSE MUNICIPAL CODE TO REVISE LAND USE PROVISIONS FOR MEDICAL MARIJUANA COLLECTIVES**

## **RECOMMENDATION**

The Planning Commission voted 4-0-3 (Ballard, Bit-Badal, and Yesney absent) to recommend that the City Council: (i) consider and approve the Third Addendum to the Negative Declaration pursuant to the California Environmental Quality Act; (ii) approve the proposed amendments to Title 20 (the Zoning Code) of the San José Municipal Code as recommended by the Director of Planning, Building and Code Enforcement; and (iii) to direct staff to explore and analyze non-vertical models and licensing stand-alone medical marijuana manufacturers.

## **OUTCOME**

If adopted by the City Council, the proposed ordinance would amend the Zoning Code provisions pertaining to Medical Marijuana Collectives based on City Council direction to staff as discussed in public hearings held on December 8, 2015 and March 29, 2016.

## **BACKGROUND**

On September 28, 2016, the Planning Commission conducted a public hearing on the proposed amendments to the Zoning Code. The attached Staff Report to the Planning Commission provides a full analysis, description of public outreach, and coordination conducted on the proposed item.

## **ANALYSIS**

At the Planning Commission public hearing, City staff summarized the proposed amendments to the Zoning Code and explained the context of Council direction for changes to the City's Medical Marijuana Program.

## **Public Testimony**

At the Planning Commission hearing, two members of the public spoke on the proposed Zoning Code amendments.

The first speaker, who identified herself as both a resident of San José for 11 years and a medical cannabis patient who suffers from fibromyalgia, stated that after previous Zoning Code amendments were approved by Council as part of the City's Medical Marijuana Program (Program), her quality of life and access to medical marijuana decreased substantially, and that the current Program's regulations have resulted in a situation that puts an extreme burden on the most disabled and vulnerable medical patients of collectives. She stated that she is functionally house-bound, that she used to go to a dispensary near her pharmacy, but that now she has to drive 20 to 25 minutes to her dispensary. She added that she very rarely leaves her house for commerce and losing access to a delivery service for her medical marijuana has made a huge difference in her accessibility to her medicine. She expressed support for expanding the availability of cultivation space and for letting collectives share cultivation areas. She added that the changes to the Zoning Code would increase the accessibility of some of the more specialty medicines, which are now less available from most dispensaries under the City's current Program because collectives have to do everything in-house. She suggested that dispensaries that are able to work together and share a product line can help to ease the access again to medical marijuana. She asked that the Council consider these changes, to give back some of the access that was previously available before the City implemented its current Program. She additionally expressed support for the Council allowing delivery to patients such as herself.

A speaker who identified herself as representing manufacturing in the cannabis industry (industry) and engaging in manufacturing since 2004, said that she had been following good manufacturing practices as defined by the FDA [U.S. Food and Drug Administration], and that she wants to bring the same standards to the cannabis industry. She said that she works with some of the 16 dispensaries in San José. She expressed concern that on December 18, 2016, third-party transactions are scheduled to end, and that she did not see any proposal for an extension to that deadline. She requested more information on what is expected after December 18<sup>th</sup>. She said that if manufacturers outside San José are not allowed to do transactions inside San José, and if collectives that produce products inside San José are not allowed to do transactions outside San José, then the industry would have challenging limitations on how it can conduct its business. She requested that the Zoning Code provisions for manufacturing in San José be less stringent because cultivators /manufacturers-only have less foot traffic in comparison to dispensaries that are open to the public. She concluded her comments by thanking City staff.

## **Planning Commission Discussion**

In response to comments from the public, staff stated that it had received specific Council direction for the proposed changes, to address input from stakeholders representing medical marijuana collectives on adding more flexibility to the program. Staff added that Council's

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direction was also intended to maintain quality control over registered medical marijuana collectives' operations and products dispensed to patients.

Staff clarified that many of the proposed changes would be to Title 6 (Business Licenses and Regulations) of the San José Municipal Code, under Chapter 6.88, and that these changes could include provisions for delivery and an extension to the deadline of December 18, 2016. The proposed changes are scheduled for a public hearing with the City Council on October 18, 2016.

Commissioner Allen commented that the staff report was very thorough, and he thanked staff for its diligence to address the concerns of the industry as much as possible. He said he was pleased that San José may be setting a precedent that could be utilized by other municipalities, particularly if State Proposition 64 is approved this November. He agreed with staff's recommendation on changes to the Zoning Code, and he suggested an additional recommendation for the Council to consider exploring non-vertical models and licensing manufacturing-only operations to make the industry more competitive, viable, and to help some small businesses that are not engaged in distribution.

Chair Abelite asked staff to confirm that there are no changes proposed to the current minimum setback distances from collectives to sensitive receptors and that what is being proposed is eliminating the 50-foot minimum required distance between cultivation-only sites operated by different collectives. Staff confirmed that was the proposal and explained that cultivation-only sites would not be open to the public.

Commissioner Allen made a motion to recommend to the City Council the approval of the Third Addendum to the Negative Declaration pursuant to CEQA and approval of the amendments to the Zoning Code as recommended by staff with the additional recommendation for Council to consider exploring non-vertical models and licensing manufacturing-only operations [note from staff that this recommendation would require additional environmental clearance]. The motion passed 4-0-3 (Commissioners Ballard, Bit-Badal, and Yesney absent).

### **EVALUATION AND FOLLOW UP**

Approving the proposed amendments to the Zoning Code would modify provisions pertaining to Medical Marijuana Collectives that implement City Council direction to staff as discussed in public hearings held with Council on December 8, 2015 and March 29, 2016.

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## **POLICY ALTERNATIVES**

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

**Pros:** Not approving the changes to the Zoning Code would maintain the status quo.

**Cons:** Not approving changes to the Zoning Code would not implement Council direction from March 29, 2016.

**Reason for not recommending:** Staff was directed by Council to propose changes to the Zoning Code to allow additional opportunities for cultivation by collectives that are registered in San José.

## **PUBLIC OUTREACH**

For the proposed Municipal Code changes, including Zoning Code amendments discussed in this staff report and Title 6, City staff from the Department of Planning, Building and Code Enforcement, the City Manager's Office, and the Police Department facilitated a community meeting during the evening of July 26, 2016 at City Hall. Public comments and staff responses are summarized in the Staff Report to the Planning Commission.

## **COORDINATION**

The preparation of the proposed ordinance and this memorandum were coordinated with the City Attorney's Office and City Manager's Office. This item was referred to the Santa Clara County Airport Land Use Commission (ALUC). On August 24, 2016, at their public hearing, the ALUC determined that the proposed amendments to the Zoning Code are consistent with the policies contained within the San José International Airport (SJC) and Reid-Hillview Airport (RHV) Comprehensive Land Use Plans (CLUPs).

## **CEQA**

Negative Declaration (File No. PP11-039, Resolution No. 75984), as addended by File Nos. PP11-076, PP14-030, and PP16-076.

/s/  
HARRY FREITAS, SECRETARY  
Planning Commission

For questions, please contact Jenny Nusbaum, Supervising Planner, Ordinance and Policy Team, Planning Division at (408) 535-7872.



# Memorandum

**TO:** PLANNING COMMISSION

**FROM:** Harry Freitas

**SUBJECT:** See Below

**DATE:** September 19, 2016

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**SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 20 OF THE SAN JOSE MUNICIPAL CODE (THE ZONING CODE) BY AMENDING SECTION 20.50.100 OF CHAPTER 20.50 "INDUSTRIAL ZONING DISTRICTS"; AMENDING SECTION 20.70.100 "DOWNTOWN ZONING REGULATIONS" OF CHAPTER 20.70; AMENDING SECTION 20.80.775 "RESTRICTIONS AND CONDITIONS" OF PART 9.75 OF CHAPTER 20.80; SECTION 20.100.1530 OF CHAPTER 20.100 TO: ADD "MEDICAL MARIJUANA COLLECTIVE, DISPENSARY SITE ONLY" AS A NEWLY ENUMERATED RESTRICTED USE IN SPECIFIED INDUSTRIAL ZONING DISTRICTS AND THE DOWNTOWN PRIMARY COMMERCIAL ZONING DISTRICT; AND TO REMOVE THE FIFTY (50) FOOT MINIMUM REQUIRED DISTANCE BETWEEN MEDICAL MARIJUANA COLLECTIVES, CULTIVATION SITES; AND MAKING OTHER TECHNICAL, NON-SUBSTANTIVE, OR FORMATTING CHANGES WITHIN THOSE SECTIONS OF TITLE 20**

## RECOMMENDATION

Recommend that the Planning Commission consider the Negative Declaration and addenda thereto and recommend to the City Council the approval of an ordinance amending Title 20 of the San José Municipal Code (the Zoning Code) to revise land use provisions for Medical Marijuana Collectives as described above.

## OUTCOME

If adopted by the City Council, the proposed ordinance would amend the Zoning Code provisions pertaining to Medical Marijuana Collectives based on City Council direction to staff as discussed in public hearings held on December 8, 2015 and March 29, 2016.

## BACKGROUND

### **Program History**

On December 10, 2013, in response to numerous concerns from the public regarding the impacts of collectives operating in San José, the Council directed the Administration to prepare ordinances to establish clear regulations for Medical Marijuana Collectives by amending the Zoning Code pertaining to land use and Title 6 (Business Licenses and Regulations) of the Municipal Code addressing operations.

On June 17, 2014, after several public hearings, the Council approved the City's Medical Marijuana Program (Program) including new regulations in the Municipal Code. Additionally, the City Manager promulgated regulations for administering the Program.

### **Current Zoning Code Provisions**

The Zoning Code currently enumerates two types of Collectives as "Restricted" uses:

1) "Medical Marijuana Collective", which includes dispensing and can also include cultivation; and 2) "Medical Marijuana Collective, Cultivation Site Only".

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

"Cultivation Site" is defined in Title 6 as "the property, location, or premises where medical marijuana is cultivated, stored, manufactured or processed by the members of a collective on behalf of that collective." "Manufacturing" is defined in Title 6 as "converting, producing, deriving, concentrating, making, cooking, baking, transforming, packaging, or preparing medical marijuana, including the production of concentrated cannabis, the production of edible medical marijuana products, and/or the production of medical marijuana infused products."

### Cultivation

The current Municipal Code regulations provide on-site cultivation of Medical Marijuana at the same location from which Medical Marijuana is dispensed by a "Registered" Collective in the City, or cultivation off-site, at a Cultivation-Only site that is separate from the dispensing location and not open to the public. Currently, each Registered Collective is eligible for only one cultivation site; the cultivation site can either be combined with the Collective's sole dispensing location or at a separate location. If the cultivation is at a separate location, then that location can be either within the City or in the counties of Santa Clara, Alameda, Merced, Monterey, San Benito, San Mateo, San Joaquin, Santa Cruz, or Stanislaus.

### Zoning Code Verification Certificate

The Zoning Code provides that "Restricted" land uses may occur in designated zoning districts if specific provisions of the Zoning Code are met, but only upon issuance of and in full compliance with a valid and effective Zoning Code Verification Certificate. A Zoning Code Verification Certificate is non-transferable to different locations or to a different Collective operator at the same location. Each location needs its own Zoning Code Verification Certificate to determine if the site meets the Zoning Code provisions. No Planning Permit is required to be issued for the "Restricted" uses to occur in the locations verified by Zoning Code Verification Certificates.

### Zoning Districts for Medical Marijuana Collectives to Locate as a Restricted Use

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

- *DC-Downtown Primary Commercial (excluding ground-floor uses):* This zoning district is focused in the Downtown area of San José with a mix of business, cultural, and residential uses, and good access to public transit.
- *CIC-Combined Industrial/Commercial:* This zoning district allows a broad mix of commercial and industrial uses. This district is found in a variety of non-residential contexts.
- *IP-Industrial Park:* This zoning district is primarily intended for research and development, manufacturing, and offices.
- *LI-Light Industrial:* This zoning district allows warehousing, light manufacturing, and other industrial activities, typically not in pedestrian- or transit-oriented locations.
- *HI-Heavy Industrial:* This zoning district is intended for industrial uses with nuisance or hazardous characteristics that are best segregated from other uses. Extractive and primary processing industries are typical.

#### Excluded Geographic Areas

In consideration of the Envision San José 2040 General Plan's emphasis on job creation, the City Council excluded some key employment areas from eligibility for siting Medical Marijuana Collectives when they approved the Code amendments that established the Program. As stated in the Zoning Code, these excluded areas are the North San José Area Development Policy Area, the Edenvale Development Policy Area, and the International Business Park area (bounded by Interstate Highway 880, Montague Expressway, Trade Zone Boulevard, the Union Pacific Railroad line, Murphy Avenue, and Brokaw Road). Additionally, retail shopping centers 40 acres or larger are excluded for siting Collectives.

To minimize impacts of Collectives to neighboring land uses and occupants, the Zoning Code requires minimum distances between a variety of types of sensitive uses and Collectives including sites where dispensing occurs and Cultivation-Only sites. These buffers are as follows:

- At least 1,000 feet from schools, daycare, community centers, parks or libraries
- 500 feet from substance abuse/rehab facilities and emergency residential shelters
- 150 feet from places of religious assembly, adult care facilities, or residential uses\*
- 50 feet from another Collective\*
- \*Measured parcel line to parcel line.

To help monitor regulatory compliance and control the quality of products dispensed, the Program is intended ultimately to be a "closed-loop" and vertically integrated system of operation by each Registered Collective.

With vertical integration, a Collective that is "Registered" in compliance with Title 6 provisions of the Municipal Code may:

- Dispense in certain zoning districts in San José medical marijuana and marijuana-infused products the collective grows/cultivates and manufactures
- Grow and manufacture marijuana and marijuana-infused products in certain zoning districts in the City, in Santa Clara County, and in neighboring counties, and
- Exchange marijuana and marijuana-infused products with other registered Collectives.

Registered Collectives are required to operate within the limits of the City's and State of California's regulatory framework. This framework governs where and how Collectives can operate, and who can operate Collectives. They may have a maximum of one dispensary location and one cultivation/manufacturing facility. Collectives have the following options as to where these facilities can be located: one dispensary/cultivation/manufacturing co-facility located in the City of San José, one dispensary and one cultivation/manufacturing facility both located in San José, or one dispensary located in San José and one cultivation/manufacturing facility located in either Santa Clara, Alameda, Merced, San Benito, San Mateo, San Joaquin, Santa Cruz, or Stanislaus counties.

Registered Collectives in San José may not transact/transfer medical marijuana and/or marijuana products between collectives not registered in San José. Additionally, currently, Registered Collectives may not deliver medical marijuana and/or marijuana products to their patients, who may reside outside of San José and must travel to the collective or have a qualified care-giver pick up the patient's medical marijuana and/or marijuana products.

There are sixteen Registered Collectives located on seventeen sites in the City of San José (one of the sixteen Collectives has one site for dispensing and a second site for Cultivation only in the City) (see Attachment 1). Under current Code provisions, potentially the sixteen Registered Collectives could be located on up to thirty-two sites, assuming one dispensary site and one Cultivation-Only site both located in San José for each Registered Collective. Currently, there are no approved facilities located outside of San José.

### **State Licensing Program**

On October 9, 2015, the State of California created its licensing program under the Medical Cannabis Regulation and Safety Act. The State's implementation of its program is in process. San José's vertical integration model was created in the absence of a State licensing program. Now that the State will be licensing all aspects of the industry, including dispensaries, manufacturers and cultivators, (starting in 2018), the Council has asked staff to conduct analysis on expanding the vertical integration model. The first phase of proposed provisions for expansion of this model is scheduled for a public hearing with the City Council on October 18, 2016.

### **City Registration Deadline**

December 18, 2015 marked the City's deadline for San José collectives to obtain Registration. Sixteen Collectives met Registration requirements. Each Registered Collective serves between several hundred to approximately 20,000 patients per month.

On December 8, 2015, in response to collectives' concerns that they needed more time to cultivate and manufacture products, the Council approved an amendment to the Program for Registered Collectives to "share" product among themselves. Council also approved a one-year "carry-over" period, so that Registered Collectives could dispense medical marijuana products obtained from third-party vendors through December 18, 2016 – providing collectives a full year to get their cultivation underway.

With the State creating its own program to issue licenses to cultivators and manufacturers, the Council has asked staff to analyze how the City's program could be amended to allow transactions/transfers with registered/licensed/permitted cultivators and manufacturers statewide. There are many challenges because the State is in a transition period right now. The State program is not yet issuing licenses, and many cities have not started issuing registrations or permits. The State has not yet issued guidance as to whether it will require local jurisdictions to have certain minimum regulations in place before it will recognize applicants from those jurisdictions as suitable for licensing.



### Number of Registered Collectives to Remain Unchanged

The City Council did not direct staff to analyze or recommend changes to the Program for a new registration process for unregistered collectives.

## ANALYSIS

### **Proposed Changes to the Program in 2016**

Based on input from stakeholders, particularly from representatives of the medical marijuana industry, in December 2015 and March 2016, the City Council directed staff to analyze the following proposed changes to the Program, and bring to Council recommendations in the fall of 2016 for transactions/transfers with registered/licensed cultivators and manufacturers statewide. This could entail amendments to Title 6 and the Zoning Code for:

- Secondary/multiple cultivation/manufacturing locations;
- Offsite cultivation locations anywhere in the State;
- Sharing Cultivation-Only sites;
- Eliminating the minimum 50-foot buffer from each Cultivation-Only site to each other; and
- Delivery by Registered Collectives that are not Cultivation-Only Sites (i.e., from locations with a dispensary on-site).

### Secondary Locations

Concerns raised by stakeholders regarding a potential lack of competition in the marketplace resulted in Council direction for staff to analyze Code changes for second locations for cultivation. The City's consideration of second locations for cultivation, manufacturing, and extraction for registered collectives (not including dispensing locations) requires changes to Title 6 and the Zoning Code:

- *Assumptions* – No changes to current zoning districts or sensitive-use buffers;
- *Recommendation* – Up to two (2) locations per Registered Collective for cultivation / manufacturing; and
- *Outcome* – Each Registered Collective could have up to a total of three locations in the City – a dispensing location and two off-site cultivation/manufacturing locations potentially with no limit on square footage.

### Cultivation anywhere in the State of California where allowed/licensed/registered

Stakeholder feedback from the industry on this item has ranged from concerns around the creation of monopolies to requests that no limit be set. In response, Council directed staff to analyze Code changes to allow one additional site that is limited to Cultivation-Only and can be outside of the City and the contiguous counties. A site anywhere in California would be one of the three total sites per Registered Collective. The three sites could consist of one dispensary site plus two Cultivation-Only sites. The various site options for each Registered Collective could include: one Cultivation-Only site in San José, one Cultivation-Only site outside of San José; or two Cultivation-Only sites in San José (Council direction is to consider allowing each individual collective one cultivation – not manufacturing – location anywhere in the State of California that would count towards the maximum two locations). Consideration of up to three sites requires changes to Title 6 and the Zoning Code:

- *Assumptions* – No changes to current zoning districts or buffers;
- *Recommendation* – One (1) “cultivation-only” location outside of San José and neighboring counties, and anywhere in the State; and
- *Outcome* – Each Registered Collective could have up to a total of three locations including at least one in the City – a dispensing location – and at most one Cultivation-Only Site potentially with no limit on square footage anywhere allowed/licensed/registered in California (State law has limits on canopy size for crops).

#### Removal of 50-Foot Buffer and Sharing Cultivation-Only Sites

Consider Code changes to eliminate the 50-foot restriction between Cultivation-Only sites so that Registered Collectives could inhabit a single location/site for multiple crops of various medical marijuana strains. Given concerns for cross-contamination and the need to track the product from seed to sale to protect the public health, Council directed that no more than two collectives cultivate per site, crops must be kept separate and the facility not be open to the public. A Cultivation-Only site would have to be separated by at least 50-feet from a dispensing location operated by another Registered Collective.

These particular locations would not be open to the public. Buffers would remain in place between dispensing locations and between dispensing and Cultivation-Only sites.

- *Assumptions* – Zoning Code changes to add “Medical Marijuana, Dispensary Site Only” as a new Restricted use in current zoning districts and remove the 50-foot buffer between Cultivation-Only sites. No changes to sensitive-use buffers.
- *Recommendation* – Maximum of two collectives sharing a cultivation site.
- *Outcome* – Currently the City’s program does not allow collectives to share their cultivation sites with other collectives. With this change, they can share their space and expense of a single cultivation site.

#### Allowing Delivery

Currently the Program does not allow delivery. The City Council has asked staff to bring forward analysis on allowing Registered Collectives to deliver medical cannabis to qualified patients. Some of the factors to be considered include: ensuring delivery is made to qualified patients; ensuring deliveries aren’t made to minors; tracking the product; tracking the transactions; protocols for driver safety, etc.

- *Assumptions* – No changes to the Zoning Code. Not within the scope of the Planning Commission’s review for recommendations on changes to the Zoning Code.

#### Third-Party Transactions Statewide

Currently, the Program requires Registered Collectives to set up a vertically-integrated operation. This means Collectives must cultivate and manufacture any products they wish to dispense in San José.

- Third-Party Transactions are currently temporarily allowed through December 18, 2016.
- The State won’t be issuing licenses until 2018.
- Few cities and counties are issuing registrations or permits; context changes weekly.

- Issues around pesticides, potency, contaminants, and food safety.
- Issues around lack of testing being done and/or consistency of the testing.
- State's "track and trace" system not implemented yet.
- *Requires* – Changes to Title 6. Not foreseen to require changes to the Zoning Code.
- *Assumptions* – The State is expected to implement "track and trace" system and issue licenses in 2018.
- *Next Steps* – Third-Party transactions are not within the scope of the Planning Commission. Staff will consider making recommendations to phase-in a track-and-trace procedure. Ultimately, the objective is to require vendors to hold a State license. Revisit when State measures are implemented.

### **Explore Possible Future Changes to the Program in 2017**

Council asked staff to explore greenhouse (outdoor) cultivation, but not sun-grown cultivation in Industrial Zoning Districts and allowing transactions/transfers with registered/licensed/permitted cultivators and manufacturers statewide.

#### Future Phase: Greenhouse Cultivation

Currently the Program limits cultivation to indoors and prohibits outdoor cultivation of any kind within the San José city limits. Registered Collectives can grow outdoors or in greenhouse at a cultivation site outside the City limits if that site is located in a city or county that allows outdoor or greenhouse cultivation. Allowing greenhouses in San José requires significant CEQA review due to potential odors and other impacts on neighbors.

As directed by Council staff is exploring this potential Code change for greenhouse, but not sun-grown, cultivation in the current Industrial Zoning districts. Initial feedback from the sixteen Registered Collectives is that there is no interest if greenhouses would not be allowed in the A-Agricultural Zoning District. Therefore, the industry might not be interested in pursuing this potential option.

- *Requires* – Future changes to Title 6 and 20, environmental and odor analysis, land-use compatibility, determination of size and number of structures, and review of safety security measures.
- *Assumptions* – No changes to current zoning districts or buffers.
- *Next Steps* – CEQA, Planning Commission, City Council (Spring 2017).

#### Future Phase: Distributorships

Distributorships would be a separate land use and require a separate Regulatory framework.

- *Requires* – Changes to Title 6 and 20, environmental and odor analysis, land-use compatibility, determination of size and number of structures, and review of safety security measures.

#### Conclusion

The Planning Commission is encouraged to provide specific input on proposed changes to the Zoning Code to remove minimum distance criteria between Medical Marijuana Collective, Cultivation-Only sites, add "Medical Marijuana Collective, Dispensary-Only" as a newly enumerated "Restricted" land use in the CIC, IP, LI, HI and DC Zoning Districts and other minor proposed revisions to the Zoning Code for the Council's consideration.

If the City Council approves the proposed ordinance amending the Zoning Code (see Attachment 2) and pending changes to Title 6, the ordinance could facilitate the legal operation of Medical Marijuana Collectives in San José by adding more flexibility for siting Cultivation-Only Medical Marijuana Collectives.

For the Planning Commission's reference, attached to this report is a summary of the proposed amendments to Title 6 of the Municipal Code regarding the operational regulations for Medical Marijuana Collectives (see Attachment 3).

### **PUBLIC OUTREACH/INTEREST**

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

Numerous community and stakeholder meetings have occurred on the topic of Medical Marijuana Collectives since the City proposed the concept of a Medical Marijuana program in 2009. For the most recent specific proposed Municipal Code changes, including Zoning Code amendments discussed in this staff report and Title 6, City staff from the Department of Planning, Building and Code Enforcement, the City Manager's Office, and the Police Department facilitated a community meeting during the evening of July 26, 2016 at City Hall. Public comments and staff responses are summarized below.

### **Questions and Comments from the Public with City Staff Responses (*Italicized*)**

#### **Vertical Integration/Closed-Loop/Closed Registration**

1. What is the difference between a Registered Collective and an unregistered Collective?  
*Does the City have any future plans for new registration?*
2. It is in San José's best interest to extend the deadline and allow for more collectives.
3. Open up closed-loop to third-parties?
4. The City is creating a challenging business environment for any newcomers given the delayed regulations that were previously proposed by Council to be enacted and no plans to reopen registration for new collectives.
5. Existing 16 Registered Collectives will "monopolize" the market in San José.
6. Has the City looked at other frameworks, such as the one in Oakland, that makes their medical marijuana program part of an economic development program?
7. Vertical integration keeps small business out of the local industry.
8. Oakland and other cities' models foster competition rather than vertical integration.

9. Why is there no new registration allowed, which would increase competition?
10. How does the City plan to reconcile its vertical integration model with the Medical Cannabis Regulation and Safety Act/MCRSA (the Act formerly known as MMRSA)?
11. How can we merge the City's vertical integration with the State's structure?

*The San José Municipal Code defines a Collective in the City of San José as four or more patients collectively cultivating cannabis for medical purposes and sharing it among the members of the collective. A Collective must meet all of the criteria in the Municipal Code and follow State law. Registered Collectives are legal in the City, and unregistered Collectives are not legal in the City. The City's registration period ended, and only the City Council can resurrect it. There are sixteen (16) Registered Collectives in the City, and they range widely in number of employees and scale. They are diverse in size, scale, management, and approach to the industry.*

*The City's program was developed prior to the State's Medical Cannabis Act. San José continues to work with the State on implementation and licensing. The new State law includes vertical integration in two ways: 1) the 10A license is a license for vertically integrated licensees and includes dispensing, cultivating, and manufacturing; and 2) there is an exemption or grandfather clause for vertically integrated operations that were operational as of January 1, 2016. That exemption category is in place for 10 years.*

*It is important to note that the State's implementing regulations are still being worked out. The State is in a transition period through 2018. The State will not be taking applications for licenses until January of 2018.*

*The City's Registration deadlines are in the Municipal Code and were put in place by the City Council. Reopening Registration requires a vote by the City Council. Only the City Council can reopen Registration. The Council has indicated that it wants to wait until the State's licensing process is in place before revisiting Registration. Similarly, the time to revisit the City's vertical integration model would be after the State's license process is in place.*

### Testing

1. How will testing work?
2. Quality control and pesticides – has San José had any instances of bad product so far?

*Under the new State law, medical marijuana products will be tested, beginning in 2018. The State will require independent testing labs.*

*Currently, though, labs testing medical cannabis are not State-regulated. Some certified labs exist and some Collectives and manufacturers are testing products, but testing is not State-mandated until 2018.*

*Currently the City cannot verify the food-safety or the potency of the products.*

### Delivery

1. Does the City allow for independent delivery service?

*No.*

2. How much delivery is happening in the City now illegally?

*A lot. It can result in jail and fines. Most jurisdictions in the County do not allow delivery.*

3. What were Council's concerns with delivery?
4. Accessibility constraints can be addressed with options for delivery.
5. In favor of regulated delivery so patients can access medicine safely, quickly and easily. Also in favor of delivery and accessing medicines outside vertical integration model.
6. A stakeholder identified herself as a patient and stated that she cannot have a gap in obtaining product, so the City should extend the City's date for allowing vendors to supply Registered Collectives with product, and she needs more convenient locations for dispensing only. Delivery might also address this issue.
7. Technology exists for delivery, i.e. Instacart.

*Several attendees stated they were in favor of delivery. The City Council directed staff to analyze feasibility of delivery in the City of San José by Registered Collectives. Delivery would be tracked by the City. The method of tracking would have to be approved by the City Council or the City Manager. The Council has concerns about delivery, and wants to prevent access by children and drivers being robbed. Staff has been tasked with analyzing how to do delivery responsibly and how to tie delivery to the patient in order to track the product. Outside, independent delivery service was not part of Council direction.*

#### Cannabis Commission

1. Is there a cannabis commission in the City? We need that long-term; other jurisdictions have that.
2. Does the City have plans to create a cannabis commission?
3. Support creation of a cannabis commission; an information liaison is needed with other cities and counties.

*San José does not have a cannabis commission. There are no plans to create one at this time because the City does not have the resources to staff a commission.*

#### Cultivation

1. Request that Council consider allowing more than two (2) locations.
2. Is the dispensing location different from the cultivation/manufacturing location?
3. Can a Registered Collective have a separate dispensary from a cultivation site in the City?

*Yes, a Registered Collective can have a dispensing location separate from a cultivation/manufacturing location under the current Code provisions. The cultivation/manufacturing location can be in the City of San José or in one of the "contiguous counties" (Alameda, Merced, Monterey, San Mateo, Santa Clara, Santa Cruz, Stanislaus.) To have a cultivation/manufacturing location in one of those counties, medical marijuana cultivation/manufacturing must be permitted in that other jurisdiction. The Registered Collective would need to get authorization from that jurisdiction and review under the City of San José's program before dispensing that medical marijuana in the City of San José.*

*Staff has been directed to analyze allowing up to three sites for a Registered Collective: one dispensing location and two cultivation/manufacturing locations. One of the cultivation sites could be outside of the City, and Council has directed staff to expand the allowed locations from the contiguous counties to anywhere in the State of California where cultivation is allowed by the local jurisdiction.*

*If a Registered Collective chose to co-locate its dispensary and cultivation/manufacturing site, it would be allowed one additional offsite cultivation/manufacturing location, either inside or outside of San José.*

*Under this change, a Registered Collective also could have one dispensary and two cultivation/manufacturing locations in the City of San José.*

*Cultivation/manufacturing sites must be closed to the public.*

*It is important to note that the Medical Cannabis Regulation and Safety Act places limits on the size of cultivation sites, depending on the license type.*

*The City Council asked staff to move forward on two additional changes for cultivation sites:*

*-- Allowing Registered Collectives to share an offsite cultivation site, with no more than two (2) Registered Collectives sharing the cultivation site.*

*--Eliminating the 50-foot buffer that the Zoning Code currently requires between Registered Collectives for "Cultivation Only Sites" that are not open to the public.*

#### Allowing Greenhouses as a future amendment to the Municipal Code:

At the community meeting held on July 26, 2016 a member of the public stated that one Registered Collective was now interested in greenhouses in the HI-Heavy Industrial Zoning District, particularly if the Municipal Code regulations were changed to allow many Collectives to share one greenhouse for cultivation.

Greenhouses or outdoor cultivation is not currently allowed in San José. If off-site cultivation is done in other jurisdictions that allow outdoor or greenhouse cultivation, it must be legal in that jurisdiction to be allowed for a Registered Collective that operates in the City of San José.

Council has directed staff to explore allowing greenhouses in the current Industrial Zoning Districts. This would require CEQA review and changes to the Zoning Code and to the Title 6 Regulations. Staff surveyed all sixteen (16) Registered Collectives, and none indicated that they are interested in pursuing greenhouses in the current industrial zones.

Greenhouses for personal cultivation are not allowed in the City of San José. This prohibition is not proposed to be changed. State law has cultivation size limits for personal cultivation also.

#### Manufacture

1. How does the City define stand-alone manufacturer?
2. Between December 2016 and 2018 how do we implement the program to ensure patient safety with stand-alone manufacturers in the City of San José?

*Stand-alone manufacturing would be a facility that makes medical marijuana-infused products (such as edibles, topicals, or oils) and transfers them to dispensaries. Currently the City doesn't allow stand-alone manufacturing. Under San José's vertical integration model, manufacturing is allowed only as part of a Registered Collective's operations.*

*Allowing stand-alone manufacturing would require changing the Zoning Code and the Regulatory Code, and that process would require environmental review under the California Environmental Quality Act (CEQA).*

*Only the City Council can change the Municipal Code to allow stand-alone manufacturing. In March of 2016, the City Council did not ask staff to look into stand-alone manufacturing.*

### California Environmental Quality Act (CEQA)

1. Who is paying the CEQA costs involved for these code changes?  
*Ultimately, all of the Registered Collectives.  
CEQA costs will be added to registration costs for Collectives.*
2. Can we rely on CEQA done elsewhere (e.g., the State is conducting CEQA clearance for its proposed regulations)? *No. Under CEQA, the City is obligated to conduct project-specific environmental review for projects within the City's jurisdiction.*
3. Would like an update on CEQA process and timelines.  
*Staff will provide updates through web-postings and e-mail blasts as well as legal notifications.*

### Extending the "carryover period" past the December 18, 2016 Deadline

1. How does Council plan to handle the gap in time between the December 2016 (City of San José deadline) and January 2018 (when the State begins its licensure process)?
2. Extend the deadlines for achieving closed-loop/vertical integration.
3. In favor of extending the deadline beyond December 2016 – would allow more time for collectives to design, permit, and build manufacturing facility.
4. October seems late to discuss this issue.
5. A patient wants access to medical products in spite of Council deadlines.
6. A Registered Collective representative stated that until the State regulations are in place, he recommends extending the deadlines rather than working with two different sets of regulations – the City's and the State's.
7. Recommend that until the State provides standardized testing procedures and limits, the City extend its deadline.
8. We want one uniform standard statewide.

*Under San José's vertical integration model, Registered Collectives must cultivate and manufacture the medical marijuana and infused products they provide to patients. Knowing that it would take time to establish cultivation and manufacturing, the City Council gave them one (1) year from initial registration (until December 18, 2016) as a "carryover period," in which they could continue to obtain products from third-party vendors.*

*Council has directed staff to analyze allowing Registered Collectives to obtain products from licensed/permitted/registered vendors statewide. Staff is doing so now. In that analysis, staff will bring forward options regarding the carryover deadline to the City Council in a public hearing scheduled for October of this year.*

### Taxes

1. MBT taxes – in favor of renegotiating how this money is spent because currently costs get passed on to consumer and make businesses less competitive.



2. Additional taxes on collectives support black market demand.

*Under current State law, local taxes must be approved by voters. The City's Marijuana Business Tax rate is a minimum of 7% and a maximum of 10%. The City Council cannot raise or lower the tax outside that window. The only way to amend the tax would be through a vote of the people.*

*Currently, medical marijuana is subject to State sales tax. There are bills pending in the State legislature that would create additional taxes on medical cannabis. The City and the League of Cities are monitoring these bills and talking to the State about its proposed taxes.*

Limits on Daily Purchases - Disagreement with once-a-day restriction on visiting a Collective.

*Staff will research other potential options that are less restrictive as changes to Title 6.*

Privacy - Concerns expressed with camera requirements and privacy.

Program Management by Police Department - Questions on timing of the program transition from the City Manager's Office (CMO) to the San José Police Department (PD).

*The program is transitioning from CMO to PD now. The program will transition over the course of the year as new staff is brought on and responsibilities shift.*

Second-hand Smoke – Concerns raised about the health impacts of second-hand smoke from medical marijuana (see attached public correspondence). Questions on how the City can prohibit it in private residential dwelling units and on private balconies.

*The City regulates smoking, whether tobacco, vapor, or medical marijuana, per provisions in the Municipal Code, which do not cover smoking in private residences. If there is a Homeowners' Association, that Association can include restrictions on smoking in their Covenants, Conditions, and Restrictions (CC&Rs) as a private matter that is not enforced by the City.*

## **COORDINATION**

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

## **CEQA**

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

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

In 2011, the City Council adopted a ND for which an Initial Study was prepared that evaluated the potential environmental impacts of land use regulations for Medical Marijuana Collectives registered in San José (File No. PP11-039, Resolution No. 75984). The Initial Study and ND circulated for public and agency review between May 25, 2011 and June 15, 2011. This ND was subsequently addended in accordance with CEQA to document and disclose minor changes to the above-referenced regulations (File Nos. PP11-076 and PP14-030).

The City has concluded that the Project would not result in any new impacts not previously disclosed in the circulated IS/ND; nor would it result in a substantial increase in the magnitude of any significant environmental impact previously identified (none were identified). For these reasons, an addendum to the approved IS/ND would be sufficient to meet the requirements of CEQA. According to CEQA Guidelines Section 15164, an addendum need not be circulated for public review but can be included in or attached to the final adopted negative declaration. The City must consider the Addendum with the adopted IS/ND prior to making a decision on the Project. The Addendum, along with the adopted IS/ND and addenda thereto, are available for review at <http://www.sanioseca.gov/index.aspx?NID=5211>.



HARRY FREITAS, DIRECTOR  
Planning, Building and Code Enforcement

Attachments:

- 1) List of Registered Medical Marijuana Collectives in San José as of September 13, 2016
- 2) Draft Ordinance amending Zoning Code
- 3) Summary of Title 6 Proposed Changes
- 4) Public Correspondence

## Office of the City Manager

Community

Business

Visitors

Government

Environment

### Office of the City Manager

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List of Registered Collectives

Forms to Renew/Update/Amend Registration

Staff Reports / Council & Committee Meetings

Maps

Marijuana Business Tax

Ordinances & Regulations

Info. about Measure C (June 7, 2016 ballot)

## San José Registered Collectives

### Medical Marijuana Collectives Receiving Notices of Completed Registration (as of 5 p.m., December 18, 2015)

The San José Municipal Code prohibits medical marijuana businesses from operating without a Notice of Completed Registration as a Medical Marijuana Collective. The City is not taking Applications for Registration at this time.

For Patients and Primary Caregivers: Please note that only the medical marijuana collectives on this list are registered to do business in the City of San José. Any operators not on this list are violating local and state law.

Currently, delivery businesses are illegal in San José, and any businesses that deliver in San José are doing so in violation of local and state law. Patients and caregivers are cautioned to not patronize illegal businesses.

#	Registered Collective Name	Address	Phone Number	Date Issued
1	Buddy's Cannabis Patient Collective	1075 N 10th	(408) 298-8837	12/14/15
2	Airfield Supply Company	1190 Coleman Ave.	(408) 320-0230	12/15/15
3	The Guild San Jose	2943 Daylight Way	(408) 224-0420	12/16/15
4	Caliva	1695 S 7th	(408) 297-2615	12/16/15
5	Natural Herbal Pain Relief	2121 S 10th	(408) 283-9333	12/16/15
6	Herbs	543 Parrott Street	(408) 297-0543	12/17/15
7	Elemental Wellness Center	985 Timothy Drive	(408) 443-3344	12/17/15
8	Purple Lotus Patient Center	752 Commercial	(408) 456-0420	12/17/15
9	Canna Culture	3591 Charter Park Drive	(408) 264-7877	12/17/15
10	White Fire, Inc.	111 Old Tully Road	(408) 564-4512	12/17/15
11	Haze, Inc.	1731 Smith Ave & 1761 Smith Ave.	(408) 266-4293	12/18/15
12	Santa Cruz Genetics, Inc	92 Pullman Way	(408) 960-8309	12/18/15
13	CA Collective	210 Phelan Ave.	(408) 809-4301	12/18/15
14	Theraleaf Relief, Inc.	1014 Timothy Drive	(408) 849-3706	12/18/15
15	Harborside Health Center San Jose	1365 N 10th	(888) 994-2726, ext 4	12/18/15
16	Lux	1859 Little Orchard	(408) 982-3170	12/18/15

### San José City Hall

200 E. Santa Clara St.  
San José, CA 95113  
408 535-3500 Main  
408 294-9337 TTY  
Directions



The City of San José is committed to open and honest government and strives to consistently meet the community's expectations by providing excellent service, in a positive and timely manner, and in the full view of the public.

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**DRAFT**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 20 (ZONING) OF THE SAN JOSE MUNICIPAL CODE TO AMEND SECTION 20.50.100 OF CHAPTER 20.50; TO AMEND SECTION 20.70.100 OF CHAPTER 20.70; TO AMEND SECTION 20.80.775 OF CHAPTER 20.80; AND TO AMEND SECTION 20.100.1530 OF CHAPTER 20.100 TO ADD "MEDICAL MARIJUANA, COLLECTIVE, DISPENSARY SITE ONLY" AS A NEWLY ENUMERATED RESTRICTED USE IN SPECIFIED INDUSTRIAL ZONING DISTRICTS AND THE DOWNTOWN PRIMARY COMMERCIAL ZONING DISTRICT AND TO REMOVE THE FIFTY (50) FOOT MINIMUM REQUIRED DISTANCE BETWEEN MEDICAL MARIJUANA COLLECTIVES, CULTIVATION SITES ONLY AND TO MAKE OTHER TECHNICAL, NON-SUBSTANTIVE CHANGES**

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

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

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

**WHEREAS**, this City Council has reviewed and considered the adopted Negative Declaration and related City Council Resolution No. 75984, as addended, prior to taking any approval actions on this Ordinance;

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

SECTION 1. Table 20-110 of Chapter 20.50 of Title 20 of the San José Municipal Code is amended to read as follows:

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

Use	Zoning District					Applicable Sections & Notes
	CIC	TEC	IP	LI	HI	
<b>Industry</b>						
Auction	C	C	C <sup>GP</sup>	C <sup>GP</sup>	-	
Industrial services	-	-	-	P	P	
Laboratory, processing	P	P	P	P	P	
Manufacturing and assembly						
Light	P	P	P	P	-	
Medium	P	P	P	P	P	
Heavy	-	-	-	-	P	
Research and development	P	P	P	-	-	

Catalog and mail order	P	P	P	P	-	
Construction/corporation yard	-	-	-	S	S	
Establishment for the repair, cleaning of household, commercial or industrial equipment or products	-	-	-	P	P	
Extraction of minerals from the ground, including quarrying	-	-	-	-	C	
Hazardous materials storage facility	-	-	-	C	C	
Hazardous Waste Facility	-	-	-	-	C	
Junkyard	-	-	-	-	C	
Miniwarehouse/Ministorage	-	-	-	P	P	
Outdoor uses or storage, industrial	-	-	-	S	P	Section 20.50.210
Private Electrical Power Generation Facility	C	C	C	C	C	
Stockyard, including slaughter	-	-	-	-	C	
Warehouse/distribution facility	P	P	P	P	P	
Wholesale sale establishment	P	S	S	P	P	
Wineries, breweries	P	P	P	P	P	
<b>Additional Uses</b>						
Any use not set forth in Tables 20-30, 20-50, 20-90	-	-	-	-	C	

Any use without a permanent fully enclosed Building on-site	C	C	C	S	S	
Commercial support	-	P	P	-	-	Note 5; Section 20.50.110
Retail sales, goods and merchandise	P	P	-	-	-	Note 5; Section 20.50.110
Retail Art Studio	P	P	-	-	-	
Off-sale, Alcoholic Beverages - beer and/or wine only	C	C	-	-	-	Note 5; Section 20.50.110
Off-sale, Alcoholic Beverages, full range of Alcoholic Beverages	C	C	-	-	-	Note 5; Section 20.50.110
Off-sale, Alcoholic Beverages - beer and/or wine only and incidental to a winery/brewery	C	C	C	C	C	Note 12; Section 20.50.110
Off-sale, Alcoholic Beverages - distilled spirits only and incidental to a distillery	C	C	C	C	C	Note 12; Section 20.50.110
Bakery, retail	P	P	-	-	-	Note 5; Section 20.50.110
Aquaculture; Aquaponics	S	S	S	S	S	
Certified Farmers' Market	-	S	S	-	-	Part 3.5, Chapter 20.80
Certified Farmers' Market - Small	-	P	P	-	-	Part 3.5, Chapter 20.80
Food, beverage, groceries	P	P	-	-	-	Note 5; Section

						20.50.110
Neighborhood Agriculture	P	P	P	P	P	
Nursery, Plant	P	P	-	C	C	
Outdoor Vending	A	A	-	A	A	Part 10, Chapter 20.80
Outdoor Vending - Fresh Fruits and Vegetables	P	P	P	P	P	Part 10, Chapter 20.80
Large Format Commercial Establishment	-	-	C <sup>GP</sup>	C <sup>GP</sup>	-	
Large Format Commercial Establishment, associated commercial	-	-	C <sup>GP</sup>	C <sup>GP</sup>	-	Section 20.50.115
Warehouse Retail	-	-	C	C	C	Section 20.50.130
Sales, office furniture, industrial equipment, machinery	P	P		C		
Seasonal sales	P	P	P	P	P	Part 14, Chapter 20.80
<b>Education and Training</b>						
Day care center	C	C	C <sup>GP</sup>	C <sup>GP</sup>	-	
School, driving (class A & B license)	-	-	-	P	P	
Instructional Art Studios	P	P	-	-	-	
Instructional Art Studios, live models	C	C	-	-	-	



Private Instruction, personal enrichment	P	P	-	-	-	
School - elementary and secondary (public or private)	C	C	-	-	-	Note 11
School, Post Secondary	C	C	C	-	-	
School, Trade and Vocational	C	C	-	C	C	
<b>Entertainment and Recreation Related</b>						
Recreation, Commercial/Indoor	P	C on lands with a General Plan land use designation of Transit Employment Center; C <sup>GP</sup> on lands with other General Plan land use designations	C <sup>GP</sup>	C <sup>GP</sup>	-	Note 5, Section 20.50.110
Recreation, Commercial/Outdoor	C	-	-	-	-	
Relocated Cardroom	C <sup>GP</sup>	C <sup>GP</sup>	C <sup>GP</sup>	C <sup>GP</sup>	-	Section 20.80.1155
Performing arts production and rehearsal space, excluding performances	P	C	C	C <sup>GP</sup>	-	
Stadium, 2,000 seats or fewer including incidental support uses	C <sup>GP</sup>	C on lands with a General Plan land use designation of Transit Employment Center; C <sup>GP</sup> on lands with other General Plan land use designations	-	-	-	Note 15
Stadium, more than 2,000 seats including incidental support uses	CC <sup>GP</sup>	-	-	-	-	Note 15; Note 16

Food Services						
Caterer	P	P	-	-	-	
Drinking Establishments	C	C	-	-	-	
Drinking Establishments interior to a full-service Hotel/Motel that includes 75 or more Guest Rooms	P	S if within 150 feet of residentially used or zoned Lot; P if not within 150 feet of residentially used or zoned Lot	P <sup>GP</sup>	-	-	Section 20.80.475; Note 13
Drinking Establishment in conjunction with a winery or brewery	C	C	C	C	C	
Public Eating Establishments	P	P	-	C	C	Note 5, Section 20.50.110 and Section 20.50.113
Outdoor dining, incidental to a public eating establishment	P	S if within 150 feet of residentially used or zoned Lot; P if not within 150 feet of residentially used or zoned Lot	-	C	C	Note 5, Section 20.50.110 and Section 20.50.113
Health and Veterinary Services						
Animal boarding, indoor	P	P	-	-	-	Note 14
Animal grooming	P	P	-	-	-	Note 14
Emergency ambulance service	C	C <sup>GP</sup>	C <sup>GP</sup>	C <sup>GP</sup>	-	
Hospital/in-patient facility	C	C	C	-	-	Note 6
Medical Marijuana Collective	R	-	R	R	R	Part 9.75,

						Chapter 20.80
Medical Marijuana Collective Cultivation Site Only	R	-	R	R	R	Part 9.75, Chapter 20.80
<u>Medical Marijuana Collective Dispensary Site Only</u>	<u>R</u>	<u>-</u>	<u>R</u>	<u>R</u>	<u>R</u>	<u>Part 9.75, Chapter 20.80</u>
Office, Medical	P	P	C	-	-	Note 5, Section 20.50.110
Veterinary clinic	P	P	-	-	-	Note 14
<b>General Services</b>						
Crematory	-	-	-	C <sup>GP</sup>	C	Note 7
Mortuary, without Funeral Services	-	-	-	P	P	
Dry cleaner	P	P	-	-	-	
Hotel/Motel	P	P on lands with a General Plan land use designation of Transit Employment Center; P <sup>GP</sup> on lands with other General Plan land use designations	C <sup>GP</sup>	-	-	Note 13
Laundromat	P	P	-	-	-	
Maintenance and repair, small household appliances	P	P	-	-	-	
Messenger services	P	P	-	-	-	
Personal Services	P	P	-	-	-	Note 5, Section 20.50.110

Photo processing and developing	P	P	P	P	P	
Printing and publishing	P	P	P	P	P	
Social Service Agency	-	C	C	C	C	
<b>Offices and Financial Services</b>						
Automatic teller machine	P	P	P	P	P	Section 20.80.200
Business Support Use	P	P	-	-	-	
Financial institution	P	P	-	C <sup>GP</sup>	-	Note 5, Section 20.50.110
Office, General Business	P	P	P	-	-	
Office, Research And Development	P	P	P	-	-	
<b>Public, Quasi-Public and Assembly Uses</b>						
Church/Religious assembly	C	C on lands with a General Plan land use designation of Transit Employment Center; C <sup>GP</sup> on lands with other designations	C <sup>GP</sup>	C <sup>GP</sup>	-	
<b>Residential</b>						
Hotel Supportive Housing	C	C	C	C	C	Note 17; Part 22 of Chapter 20.80
Emergency Residential Shelter, more than 50 beds	C	C <sup>GP</sup>	C <sup>GP</sup>	C	-	Section 20.80.500
Emergency Residential Shelter, 50	P	C	C <sup>GP</sup>	C	-	Section

beds or fewer						20.80.500
Living quarters, custodian, caretakers	-	-	-	-	C	Note 1
<b>Drive-Through Use</b>						
Drive-Through in conjunction with any use	C	C <sup>GP</sup>	C <sup>GP</sup>	C <sup>GP</sup>	-	
<b>Recycling Uses</b>						
Processing Facility	-	C	C	S	S	
Transfer Facility, Recycling	-	C	C	S	S	
Collection Facility, Large	-	-	-	-	P	
Reverse Vending Machine	A	A	A	A	A	
Collection Facility, Small	A	A	A	A	A	
<b>Transportation and Utilities</b>						
Common Carrier	-	-	-	C	P	
Common Carrier Depot	S	S	S	S	S	
Community television antenna systems	C	C	C	C	C	
Data Center	S	S	S	S	S	
Off-site, Alternating and Alternative Use Parking Arrangements	S	S	S	S	S	Section 20.90.200
Parking establishment not permitted in Tables 20-30, 20-50 and 20-90	C	C	C	C	C	

Off-street Parking Establishment	C	C	C	C	C	
Television, radio studio	C	C	C	C	C	
Utility Facilities, excluding corporation yards, storage or repair yards and warehouses	C	C	C	C	C	
Wireless Communications Antenna	C	C	C	C	C	Note 18, Sections 20.100.1300, 20.80.1915
Wireless Communications Antenna, Slimline Monopole	S	S	S	S	S	Note 18, Sections 20.80.1900, 20.80.1915
Wireless Communications Antenna, Building Mounted	P	P	P	P	P	Note 18, Sections 20.80.1910, 20.80.1915
<b>Power Generation</b>						
Base Load Power Plant	-	-	-	-	C	
Stationary Peaking Power Plant	-	-	-	C	C	
Transportable Peaking Power Plant	-	-	-	C	C	
Private Electrical Power Generation Facility	C	C	C	C	C	
Co-generation Facility	S	S	S	S	S	
<b>Stand-by/Back-up/Small-scale Renewable Power</b>						

Facilities that do not exceed noise and air standards	P	P	P	P	P	
Facilities that do exceed noise and air standards	C	C	C	C	C	
Temporary Stand-by or Backup Electrical Power Generation Facility	P	P	P	P	P	
Solar Photovoltaic Power system	P	P	P	P	P	Section 20.100.610 C.7.
<b>Vehicle Related Uses</b>						
Auto dealer, wholesale, no on-site storage	P	P	P	-	-	
Car wash, detailing	C	C	-	-	-	
Gasoline Service Station or Charge Station, excluding incidental service or repair	P	C	C <sup>GP</sup>	C <sup>GP</sup>	-	Note 2, Note 8
Gasoline Service Station or Charge Station with incidental service and repair	P	C	C <sup>GP</sup>	C <sup>GP</sup>	-	Note 3
Sale, brokerage, or lease (rental) of Passenger Vehicles, pick-up trucks not exceeding 25 feet in length, and motorcycles	C	C	-	C	-	Note 10
Warehouse Retail indoor sale of Passenger Vehicles, pick-up trucks not exceeding 25 feet in length, and motorcycles	C	C	C	C	C	Section 20.50.140

Repair and cleaning of vehicles	C	-	-	P	P	Note 4
Sale or lease of commercial trucks, buses, trailers, campers, boats, mobilehomes, construction equipment	C	-	-	C	-	
Sale, vehicle parts	P	P	-	P/S	-	Note 9
Vehicle tow yard	-	-	-	C	S	
Vehicle wrecking, including sales of parts	-	-	-	-	C	
<b>Historic Reuse</b>						
Historic Landmark Structure reuse	S	S	S	S	S	Part 8.5, Chapter 20.80

**Notes:**

1. Site must be seven (7) acres or more.
2. No incidental repair or service.
3. Incidental repair includes air conditioning service, carburetor and fuel injection service, electrical service, radiator service, and tune-up, lube, oil change, and smog check, as well as tires, batteries and accessories installation. Does not allow body repair or painting.
4. All vehicle-related repair, service, and accessory or other installation, excepting the cleaning of vehicles, shall be conducted within a fully enclosed Building.
5. Retail; recreation, commercial/indoor establishments; Public Eating Establishments; outdoor dining, incidental to a public eating establishment; financial institutions; medical clinics; medical offices; and Personal Service establishments are Permitted in the IP district subject to the limitations of Commercial Support Use, Section 20.50.110. Public Eating Establishments in the LI or HI districts are limited to a maximum of six hundred fifty (650) gross square feet in size.
6. Refer to the General Plan for criteria to determine if the use is permissible at the proposed location.
7. Crematories shall be separated by at least five hundred (500) linear feet from residential uses, schools, and day care centers, which distance(s) shall be measured from the nearest points of the Parcel boundary on which the crematory is proposed and the Parcel boundary on which the residential, school or day care center use is located.
8. Charge Stations that are incidental to a separate primary use, that do not impact on-site or off-site vehicular circulation, and that serve patrons of the primary use on-Site are Permitted in all Industrial Zoning Districts.



9. Vehicle parts sales are permitted in the LI district when the total floor area dedicated to retail display and open to the public occupies no more than fifteen (15) percent of the gross floor area of the individual tenant space. Vehicle parts sales establishments that exceed fifteen (15) percent of the gross floor area of the individual tenant space are subject to a Special Use Permit.
10. Any incidental vehicle-related repair, service, and accessory or other installation, excepting the cleaning of vehicles, shall be conducted within a fully enclosed Building.
11. Public schools are subject to the regulations of this Title, subject to the provisions of California Government Code Section 53094 for classroom facilities.
12. Off-sale of alcoholic beverages. The total square footage of alcoholic beverages on display in a retail area and the total square footage of retail floor area in which alcoholic beverages are displayed for sale shall be the lesser of the following:
  - a. Two hundred fifty gross square feet; or
  - b. Five percent of the winery's, brewery's, or distillery's entire gross floor area; and any and all alcoholic beverages made available for retail sale shall be limited only to those alcoholic beverages manufactured and produced on-site.
13. At least two hundred rooms and four or more stories in height are required for Hotels located in the TEC Transit Employment Center Zoning District.
14. In the TEC Zoning District, all uses involving any type of care for animals, including but not limited to grooming, boarding, and medical care, must be conducted wholly inside a Building.
15. Primary uses include sporting events, large assembly, concerts, and entertainment events of similar character and intensity. Incidental support uses include offices, locker rooms, retail, Public Eating Establishments, Drinking Establishments, Outdoor Vending Facilities, and other commercial uses of similar character and intensity.
16. Use permit applications for stadiums that consist of more than two thousand seats and that are in an airport influence area shall be referred to the Santa Clara Airport Land Use Commission prior to approval by the City.
17. Hotel Supportive Housing may be Permitted only with a Conditional Use Permit pursuant to Part 22 of Chapter 20.80 and only until December 31, 2026.
18. Certain modifications of existing Wireless Facilities may be Permitted with an Administrative Permit in accordance with Section 20.80.1915 of Chapter 20.80.

SECTION 2. Table 20-140 of Chapter 20.70 of Title 20 of the San José Municipal Code is amended to read as follows:

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

Use	Zoning District		Applicable Notes & Sections		
	DC	DC-NT1	Additional Use Regulations for the DG Overlay Area	Parking	Applicable to All Downtown Districts
<b>Offices and Financial Services</b>					
Automatic teller machine	P	P		No parking	Section 20.80.200
Business support use	P	P	S, Notes k and n	No parking	
Financial institution	P	P	S, Note n	2.5 per 1,000 sq. ft.	
Financial services	P	P	S, Notes m and n	No parking	
Offices, business and administrative	P	P	S, Notes i and n	2.5 per 1,000 sq. ft.	Section 20.70.110
Payday lending establishment	R	R			Part 12.5, Chapter 20.80; Section 20.200.875
Research and development	P	P	-	2.5 per 1,000 sq. ft.	Note 1

General Retail					
Off-sale, alcoholic beverages - beer and/or wine only	C	C		No parking	Section 20.80.900
Off-sale, alcohol beverages - full range of alcoholic beverages	C	C		No parking	Section 20.80.900
Auction	S	-	S	No parking	
Certified farmers' market	S	S		No parking	Part 3.5, Chapter 20.80
Certified farmers' market - small	P	P		No parking	Part 3.5, Chapter 20.80
Food, beverage, groceries	P	P		No parking	
Open air sales establishments and areas	S	S		No parking	
Outdoor vending	S	S		No parking	Part 10, Chapter 20.80
Outdoor vending - fresh fruits and vegetables	P	P		No parking	Part 10, Chapter 20.80
Pawn shop, pawn broker	C	C	Note b	No parking	
Retail sales, goods and merchandise	P	P	S/P, Note a	No parking	
Seasonal sales	P	P		No parking	Part 14, Chapter 20.80
Education and Training					
Day care center	P	P	S, Notes c and n	No parking	

School, post secondary	P	P	-	1 per 360 sq. ft.	
School, trade and vocational	P	P	-	1 per 360 sq. ft.	
Personal enrichment, instructional art	P	P	-, Note d	1 per 360 sq. ft.	
School, elementary (grades K - 8)	C	C	-	1 per teacher and employee	
High school (grades 9 - 12)	C	C	-	.75 per teacher and employee and 1 per each 10 students	
<b>Entertainment and Recreation Related</b>					
Amusement game arcade	S	-	S, -	No parking	
Movie theater	P	P		No parking	
Recreation commercial/indoor	P	P		No parking	
Poolroom	S	-		No parking	
Private club or lodge	P	P	-	1 per 360 sq. ft.	
Art display structure	S	-	S	No parking	Section 20.70.140
Lighting display	A/S	A/S			Note e, Section 20.70.150
<b>Food Services</b>					
Banquet - facility	P	P		No parking required	

Caterer	P	P	C, Note f	No parking	
Drinking establishments	C	C		No parking	
Drinking establishments with an approved maximum occupancy load of over 250 persons and that operate between 12:00 midnight and 6:00 a.m.	CC	-		No parking	Note 7
Drinking establishments interior to a full-service hotel/motel with 75 or more guest rooms	P	P		No parking	Section 20.80.475
Public eating establishments	P	P		No parking	Note 9
Wineries, breweries	C	C		No parking	
<b>Health and Veterinary Services</b>					
Animal grooming	P	P	-	No parking	
Animal boarding, indoor	P	P	-	No parking	
Emergency ambulance service	C	-	-	No parking	
Hospital/in-patient medical facility	C	-	-	1.5 per doctor	
Medical or dental clinic/out-patient facility	P	P	-	1.5 per doctor	
Medical Marijuana Collective	R	-	-	No parking	Part 9.75, Chapter 20.80
<u>Medical Marijuana Collective, Dispensary Site Only</u>	<u>R</u>	<u>-</u>	<u>-</u>	<u>No parking</u>	<u>Part 9.75, Chapter 20.80</u>
Veterinarian	P	P	-	1.5 per doctor	

General Services					
Bed and breakfast inn	P	P	S, Note l	.35 per room	Part 2, Chapter 20.80
Hotel/motel	P	P	-, Note l	.35 per room	
Maintenance and repair of household appliances, small	P	P	-	No parking	
Mortuary and funeral services	C	C	-	.75 per employee and vehicle	
Personal services	P	P	Note g	No parking	
Printing and publishing	P	P	Note h	No parking	
Public, Quasi-Public and Assembly Uses					
Auditorium	C	-	C	No parking	
Cemetery	C	C	-	No parking	
Church/religious assembly	P	P		No parking	
Information center	P	P		No parking	
Museums, libraries	P	-	P	No parking	
Parks, playgrounds, or community centers	P	P	S, Note j	No parking	
Residential <sup>GP</sup>					
Residential shelter	C <sup>GP</sup>	-	-	1 per 4 beds, 2.5 per 1,000 sq. ft.	

Live/work uses	p <sup>GP</sup>	S <sup>GP</sup>		1.5 per unit	Section 20.70.120
Residential multiple dwelling	p <sup>GP</sup>	p <sup>GP</sup>	-	1 per unit	
Residential care facility for seven or more persons	C <sup>GP</sup>	C <sup>GP</sup>	-	.75 per employee	
Residential services facility, for seven or more persons	C <sup>GP</sup>	C <sup>GP</sup>	-	.75 per employee	
Hotel supportive housing	C <sup>GP</sup>	C <sup>GP</sup>	-	.35 per room	Note o; Part 22 of Chapter 20.80
Single room occupancy (SRO) living unit facility	S <sup>GP</sup>	S <sup>GP</sup>	-	.6 per room	Part 15, Chapter 20.80
Single room occupancy (SRO) residential hotel	S	S	-	.6 per room	Part 15, Chapter 20.80
<b>Residential Accessory Uses</b> <sup>GP</sup>					
Accessory buildings and accessory structures	p <sup>GP</sup>	p <sup>GP</sup>	-	No parking	Note 2
<b>Recycling Uses</b>					
Reverse vending machine	S	S	-	No parking	Part 13, Chapter 20.80
Small collection facility	S	S	-	No parking	Part 13, Chapter 20.80
<b>Transportation and Communication</b>					
Community television antenna systems	C	-	-	No parking	

Off-site and alternating use parking arrangements	P	P	-	N/A	Section 20.90.200
Off-street parking establishment	P	P	-	N/A	
Private electrical power generation facility	C	C	-	1 for each vehicle used in the operation of such facility	
Standby generators that do not exceed noise or air standards	A	A	-	N/A	
Temporary stand-by/backup generators	P	P	-	N/A	
Short term parking lot for uses or events other than on-site	S	S		N/A	
Radio and television studios	P	-	Note n	No parking	
Wireless communications antenna	S	-	-	No parking	Note 10, Sections 20.80.1900, 20.80.1915
Wireless communications antenna, building mounted	P	-	-	No parking	Note 10, Sections 20.80.1900, 20.80.1915
<b>Electrical Power Generation</b>					
Solar photovoltaic power system	P	P	-	No parking	Section 20.100.610 C.7.
<b>Vehicle Related Uses</b>					



Accessory installation for cars and passenger trucks	P	-	-	No parking	
Car wash, detailing	P	-	-	No parking	
Gasoline service station or charge station	P	-	-	No parking	Note 3, Note 8
Gasoline service station or charge station, with incidental service and repair	P	-	-	No parking	Note 3
Sale and lease, vehicles and equipment (less than one ton)	P	-	-	1.5 per employee	Note 4
Tires, batteries, accessories, lube, oil change, smog check station, air conditioning	P	-	-	2 per bay or .75 per employee	Note 5
Sale, vehicle parts, new	P	-	-	No parking required	
<b>Historic Reuse</b>					
Historic landmark structure reuse	S	S		Section 20.90.220 E.	Part 8.5, Chapter 20.80

**Notes applicable to the DG area only:**

- a. Second-hand stores not dealing primarily in antiques, artworks, or vintage clothing require a Special Use Permit in the DG overlay area.
- b. Only as a use incidental to a retail jewelry store, otherwise, not Permitted.
- c. Only as a use incidental to existing on-site office use, otherwise not Permitted.
- d. Culinary/art school with public classes and public demonstrations allowed, includes such areas as dance, music, martial arts, and fine arts.
- e. Section 20.70.150 specifies the permits required under Title 20 for a lighting display.
- f. Only as a use incidental to restaurant, grocery or bakery uses for primarily on-site sales, otherwise not Permitted.

- g. Excludes check-cashing services and bail bond services.
- h. Only if dedicated primarily to on-site retail customer copy services, otherwise not Permitted.
- i. Exception for travel agencies and real estate agencies which are the only Permitted uses.
- j. Community centers are allowed with a Special Use Permit.
- k. Exception for copy shops and mail centers which are the only Permitted uses.
- l. Use of ground floor to be primarily dedicated to customer-related public services.
- m. Includes financial retail services such as payroll advances, foreign currency exchange, debit card services and related financial services products but excludes check cashing except as an ancillary use.
- n. In order to be a Permitted use, the space to be occupied shall have been vacant on January 1, 2012, the size of the space of such use shall be limited in size to a total maximum area of no greater than twenty thousand (20,000) square feet, and the space shall not be located within a corner tenant space that is directly adjacent to the intersection of two public Streets. Any use that does not meet all of the criteria specified above in this note may be allowed with a Special Use Permit, and a Special use Permit is and shall be required.
- o. Hotel Supportive Housing may be Permitted only with a Conditional Use Permit pursuant to Part 22 of Chapter 20.80 and only until December 31, 2026.

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

- 1. Excludes manufacturing uses.
- 2. No Lot may be used solely for an Accessory Structure or Accessory Building.
- 3. Incidental repair includes air conditioning service, carburetor and fuel injection service, electrical service, radiator service, and tune-up, lube, oil change, and smog check, as well as tires, batteries and accessories installation. Does not allow body repair or painting.
- 4. All activity must be conducted indoors.
- 5. Non-engine and exhaust-related service and repair allowed as incidental use.
- 6. Limited to instrumental and vocal music and readings. Also, notwithstanding the provisions of Section 20.200.940 B., incidental instrumental and vocal music shall be allowed between the hours of 6:00 a.m. and 12:00 a.m.
- 7. Maximum occupancy load shall be that maximum occupancy load determined by the City fire marshal.
- 8. Pedestal Charge Stations that are incidental to a separate primary use, that do not impact on-site or off-site vehicular circulation, and that serve patrons of the primary use on-Site are permitted in all Downtown Zoning Districts.
- 9. Includes on-site outdoor dining area(s).
- 10. Certain modifications of existing Wireless Facilities may be Permitted with an Administrative Permit in accordance with Section 20.80.1915 of Chapter 20.80.

SECTION 3. Section 20.80.775 of Chapter 20.80 of Title 20 of the San José Municipal Code is amended to read as follows:

**20.80.775 Restrictions and Conditions**

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

- A. At the time of issuance of a Zoning Code Verification Certificate, no Medical Marijuana Collective, Medical Marijuana Collective, Dispensary Site Only, or Medical Marijuana Collective, Cultivation Site Only shall be located closer than a minimum of one thousand (1,000) feet from any Parcel on which a public or private preschool, elementary school, or secondary school exists; and
- B. At the time of issuance of a Zoning Code Verification Certificate, no Medical Marijuana Collective, Medical Marijuana Collective, Dispensary Site Only, or Medical Marijuana Collective, Cultivation Site Only shall be located closer than a minimum of one thousand (1,000) feet from any Parcel on which any of the

following uses exist: a Child Day Care Center, a community or recreation center, a park, or a library; and

- C. At the time of issuance of a Zoning Code Verification Certificate, no Medical Marijuana Collective, Medical Marijuana Collective, Dispensary Site Only, or Medical Marijuana Collective, Cultivation Site Only shall be located closer than a minimum of five hundred (500) feet from any Parcel on which any of the following uses exist: a substance abuse rehabilitation center or an Emergency Residential Shelter; and
- D. At the time of issuance of a Zoning Code Verification Certificate, no Medical Marijuana Collective, Medical Marijuana Collective, Dispensary Site Only, or Medical Marijuana Collective, Cultivation Site Only shall be located closer than a minimum of one hundred fifty (150) feet from any Parcel on which any of the following uses exist: religious assembly or adult day care center; and
- E. The distances established in Subsections A. through D. above shall be measured as follows:
1. For a Medical Marijuana Collective, Medical Marijuana Collective, Dispensary Site Only, or Medical Marijuana Collective, Cultivation Site Only located in a multi-tenant Building with tenant spaces occupied by uses other than the collective, the distance shall be measured in a straight line from the Parcel boundary of the sensitive use to the nearest exterior wall of the collective's occupied tenant space in the shared Building.
  2. For a Medical Marijuana Collective, Medical Marijuana Collective, Dispensary Site Only, or Medical Marijuana Collective, Cultivation Site Only that is the sole occupant of a Building, the distance shall be measured in a straight line from the Parcel boundary of the sensitive use to the nearest exterior wall of the collective's Building envelope.

- F. At the time of issuance of a Zoning Code Verification Certificate, no Medical Marijuana Collective or Medical Marijuana Collective, Cultivation-Dispensary Site Only shall be located on a Parcel of real property that is closer than a minimum of fifty (50) feet from any Parcel on which another Medical Marijuana Collective or Medical Marijuana Collective, Cultivation Dispensary Site Only is located, as measured in a straight line between the boundary lines of the Parcels that are closest to one another; and
- G. At the time of issuance of a Zoning Code Verification Certificate, no Medical Marijuana Collective, Medical Marijuana Collective, Dispensary Site Only, or Medical Marijuana Collective, Cultivation Site Only shall be located on a parcel of real property that is closer than a minimum of one hundred fifty (150) feet from any residential use, including a residential legal nonconforming use, that is not incidental to a primary nonresidential use, as measured in a straight line between the boundary lines of the Parcels that are closest to one another; and
- H. At the time of issuance of a Zoning Code Verification Certificate, no Medical Marijuana Collective, Medical Marijuana Collective, Dispensary Site Only, or Medical Marijuana Collective, Cultivation Site Only, that is located in the Industrial Zoning Districts shall be located on a Parcel of real property that is within any of the following areas:
1. The area within the North San José Area Development Policy Boundary as defined in Section 14.29.020 D. of Title 14 of this Code; or
  2. The area within the Edenvale Area Development Policy boundaries, which is that area within the corporate limits of the City of San José, consisting of approximately two thousand three hundred twelve (2,312) acres, as specified and depicted in the Edenvale Area Development Policy adopted and as amended by the City Council.

3. The area within the International Business Park boundary, which for purposes of this Title means and consists of that area within the corporate limits of the City of San José bounded by Interstate Highway 880, Montague Expressway, Trade Zone Boulevard, the Union Pacific Railroad line, Murphy Avenue, and Brokaw Road.
- I. At the time of issuance of a Zoning Code Verification Certificate, no Medical Marijuana Collective or Medical Marijuana Collective, Cultivation Site Only that is located in the Light Industrial Zoning District shall be located on a Parcel of real property that is within either of the following areas:
    1. Those certain enterprise zones that have been or may be created and whose boundaries have been or may be established through a resolution adopted by the City Council or by the City Manager pursuant to a resolution adopted by the City Council; or
    2. Those other business incentive zones (such as a foreign trade zone) that may be created and whose boundaries are established through a formal, public action taken by the City Council.
  - J. No Medical Marijuana Collective shall be located on the ground floor of Structures or Buildings located on real property that, in whole or in part and at the time of issuance of a Zoning Code Verification Certificate, is within the DC-Downtown Primary Commercial Zoning District.
  - K. No Medical Marijuana Collective shall be located or shall operate on any floor of a retail commercial shopping center located on a Parcel or Parcels totaling over forty (40) acres in size.

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

SECTION 5. Chapter 20.100.1530 of Title 20 of the San José Municipal Code is amended to read as follows:

**20.100.1530 Availability of Certificate - Medical Marijuana Collective.**

- A. A Medical Marijuana Collective shall keep, or cause to be kept, a true and correct copy of the Zoning Code Verification Certificate issued by the Director for that Medical Marijuana Collective, Medical Marijuana Collective, Dispensary Site Only, and for any Medical Marijuana Collective, Cultivation Site Only, in legible condition, on the premises of that Medical Marijuana Collective, Medical Marijuana Collective, Dispensary Site Only, and on the premises of any Medical Marijuana Collective, Cultivation Site Only.
- B. A Medical Marijuana Collective shall present, or cause to be presented, the copy of its Zoning Code Verification Certificate to a City police officer or City code enforcement officer who is at the Site of the Medical Marijuana Collective immediately upon request.

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
SAM LICCARDO  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk



## **Attachment #**

### **Proposed Amendments to Chapter 6.88 of the Municipal Code (Medical Marijuana Regulatory Ordinance) to be Considered by the City Council in Fall 2016**

#### **Secondary Locations**

Staff will bring forward an amendment to allow each Registered Collective to have two locations for cultivation, manufacturing and extraction, one location in San José and one outside of San José, in addition to one dispensing-only location.

#### **Cultivation throughout California**

Staff will bring forward an amendment to allow a Registered Collective to have one offsite cultivation facility that is located outside of San José and within the State of California (subject to state and local law and regulations).

#### **Delivery**

Staff will bring forward a Code change to allow Registered Collectives to deliver medical marijuana to patients and the parameters under which deliveries could take place.

#### **Transactions/Transfers with Registered/Licensed/Permitted Cultivators & Manufacturers**

Staff will bring forward analysis and recommended amendments for allowing transactions/transfers between Registered Collectives and Registered/Licensed/Permitted cultivators and manufacturers of medical marijuana products throughout the State of California.

#### **Technical Changes to the Code**

Staff will bring forward a number of technical and clarifying changes to the operating regulations for Registered Collectives, including updating fire alarm requirements, badging procedures, crime reporting requirements, as well as clarifying Registration processes and fees.

#### **Policy Direction**

Staff will be asking Council for Policy Direction on several issues, including greenhouses and distributorships, which require extensive CEQA review.

# RE: Request for Secondhand Medical Marijuana Smoke Ordinance: July 26 Medical MJ Meeting

chinatracker2011@yahoo.com

Mon 8/15/2016 11:17 AM

To: McGurk, Michelle <Michelle.McGurk@sanjoseca.gov>;

Cc: Nusbaum, Jenny <Jenny.Nusbaum@sanjoseca.gov>;

Michelle,

Thank you for your guidance and assistance on this issue.

Frederick

-----  
On Mon, 8/15/16, McGurk, Michelle <Michelle.McGurk@sanjoseca.gov> wrote:

Subject: RE: Request for Secondhand Medical Marijuana Smoke Ordinance: July 26 Medical MJ Meeting

To: "chinatracker2011@yahoo.com" <chinatracker2011@yahoo.com>

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

Date: Monday, August 15, 2016, 10:35 AM

Frederick,

Thank you for your detailed message. We have added you to our email list for the topic of medical marijuana so you will be notified when we return to Planning Commission and City Council on this issue.

I've outlined the process for enacting a city ordinance in my prior email.

Best,  
Michelle

Michelle McGurk, Senior  
Executive Analyst  
Office of the City  
Manager

-----Original

Message-----

From: chinatracker2011@yahoo.com

[mailto:chinatracker2011@yahoo.com]

Sent: Thursday, August 11, 2016 3:09 PM

To: McGurk, Michelle <Michelle.McGurk@sanjoseca.gov>

Cc: Nusbaum, Jenny <Jenny.Nusbaum@sanjoseca.gov>

Subject: RE: Request for Secondhand Medical  
Marijuana Smoke Ordinance: July 26 Medical MJ Meeting

Hello Michelle,

We must first realize that we can't rely on an HOA board to pass a rule to limit smoking of medical marijuana because the 5-member board has 3 members who either support the use of medical marijuana or who consider medical marijuana as untouchable by virtue of the American with Disabilities Act. And the fact is, too many people do not understand the law surrounding medical marijuana. Therefore, leaving this issue to the HOA board is not an option. We need a city ordinance to override subjective HOA preferences and vagueness of the law surrounding medical marijuana.

In furtherance of my request, you have reminded me that perhaps what we're doing is comparing apples to oranges when we talk about this in terms of secondhand smoke. Let's not think of secondhand smoke from medical marijuana as if it were the same as secondhand smoke from a cigarette. If marijuana is going to claim to be "medicine" then we need to keep it within the scope of Chapter 6.88 in the municipal code for medical marijuana, which is aimed at containing marijuana specifically to medical uses. The key term is "containment." Consumption of medical marijuana must not be equal to consumption of a cigarette or other tobacco product. Marijuana is not tobacco. Smoking marijuana for medical purposes should not be mistaken for a leisure activity, as medical marijuana is reserved for treating SERIOUS MEDICAL CONDITIONS.

How many medications do you know of that are consumed through smoking? Most medications are consumed in pill or liquid form that you swallow. Some are taken through injection. How many are actually smoked? On what occasion has a doctor ever said, "Smoke two of these and call me in the morning"? The exhalation of this particular medication is a waste byproduct that contains traces of the active ingredient THC. It is an airborne drug that takes up air space. When a physician prescribes this drug, it is done so based on the bioethics of the Hippocratic oath, which implies the concept to do no harm. Why is the City allowing patients to expose other citizens to this waste byproduct while they are assumed to be in the safety of their own homes minding their own business? When a patient uses a syringe to consume a drug, the syringe becomes a biohazardous material and must be disposed of properly. The same standard should apply to medication that is consumed by smoking. Secondhand smoke from medical marijuana should be contained and prevented from spreading outside of a strictly defined area of consumption of the drug, just as Chapter 6.88.900 defines personal use cultivation requirements and regulations for the processing of medical marijuana. Qualified patients (6.88.285) should be required to contain the waste byproduct of their marijuana consumption so that they do not contaminate the

breathable air space of those who are not qualified patients.

Perhaps a sample text to add to 6.88.900 of the San Jose Municipal Code would read like this:

PERSONAL  
USE CONSUMPTION

No qualified patient shall expose anyone residing in the comfort of their home to the waste byproduct of medical marijuana consumption in the form of secondhand smoke that is both exhaled through the lungs and that which escapes from the actual burning of the product. It is the responsibility of the qualified patient to contain their use of medical marijuana within a strictly defined airspace that does not encroach, invade, contaminate, or otherwise impose a health risk to another person's breathable air space, which is to include exclusive use common area as found in multi-family dwellings such as condominiums and apartment complexes.

Thank you for passing these suggestions to the City Council for further deliberations.

Frederick

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On Wed, 8/10/16, McGurk, Michelle <Michelle.McGurk@sanjoseca.gov> wrote:

Subject: RE:  
Request for Secondhand Medical Marijuana Smoke Ordinance:  
July 26 Medical MJ Meeting  
To: "chinatracker2011@yahoo.com"  
<chinatracker2011@yahoo.com>  
Cc: "Nusbaum, Jenny" <Jenny.Nusbaum@sanjoseca.gov>  
Date: Wednesday, August 10, 2016, 9:41 AM

Frederick,

The current Municipal Code regarding smoking is online here:

[https://www.municode.com/library/ca/san\\_jose/codes/code\\_of\\_ordinances?nodeId=TIT9HESA\\_CH9.44RESM](https://www.municode.com/library/ca/san_jose/codes/code_of_ordinances?nodeId=TIT9HESA_CH9.44RESM).

According to what I could find online, the City Council updated the Code about three years ago. As I recall, the discussion was quite robust, including whether or not multi-family balconies/patios should be included in

the prohibition.

In the short-term, one option is to work with the Homeowners Association of your building to include a prohibition in the CC&Rs for the complex.

Another option for neighbors who have disputes is to use the County's mediation program to reach common ground:

<https://www.sccgov.org/sites/ohr/mediation/Pages/Benefits-of-Mediation.aspx>.

In San José, the process for making a change to the Municipal Code starts with the City Council and their Priority Setting Process. The Council gives direction to staff on which issues they would like us to bring study, do community outreach, evaluate, and bring forward for future consideration.

When a Councilmember has an idea for a policy change, they bring it forward through the Rules and Open Government Committee. Their proposal is reviewed via the Council Priority Setting Process. Some proposals are minor and become part of the existing workplan for staff or a Council Committee. Others, such as those requiring community outreach and stakeholder engagement, or those requiring significant environmental review or legal analysis, may go through a ranking process at the Council Priority Setting Session. If the proposal requires funding, it likely will be referred to the budget process.

There are a few routes to make your concerns known to the Council:

- reach out directly to your Councilmember and his/her policy staff. Contact information and a link to the Council district map are online here: <http://www.sanjoseca.gov/index.aspx?NID=146>.
- address the Council or a Council committee during the "Open Forum" portion of their regularly scheduled meeting. Information about dates and times of these meetings is online here: <http://www.sanjoseca.gov/index.aspx?NID=399>.

The legislative calendar and agenda-setting is the responsibility of the Rules and Open Government Committee, which meets on Wednesday afternoons at 2 p.m.

- get involved with a community group already involved with and advocating on the issue.

Another practical reality

with

Code changes: Enforcement. San José's Code Enforcement team, like all City departments, is still rebuilding from the staffing and budget shortfalls experienced during the Great Recession.

I hope

this information is helpful. For the quickest resolution of your problem, your HOA and working with the neighbors may be the shortest route.

Please know that your comments and recommendations will be included in our report to the Planning Commission and City Council on the medical marijuana program.

Best,  
Michelle

Michelle McGurk, Senior Executive Analyst  
Office of the City Manager  
200  
E. Santa Clara Street, 17th Floor  
San Jose,  
CA 95113  
Phone: 408-535-8254  
Email: michelle.mcgurk@sanjoseca.gov

-----Original  
Message-----

From: chinatracker2011@yahoo.com  
[mailto:chinatracker2011@yahoo.com]

Sent: Tuesday, August 09,  
2016 9:13 PM  
To: McGurk, Michelle <Michelle.McGurk@sanjoseca.gov>  
Cc: Nusbaum, Jenny <Jenny.Nusbaum@sanjoseca.gov>  
Subject: RE: Request for Secondhand Medical  
Marijuana Smoke Ordinance: July 26 Medical MJ Meeting

Michelle,

I would like to see an ordinance that would ban secondhand smoke from medical marijuana in multi-family housing such as condominiums and apartment complexes, especially on balconies. As of now, people can smoke on their balconies in San Jose. When people smoke medical marijuana on their balconies, it invades the breathing space of other residents.

Please

see a link to a proposal from the City of Palo Alto which includes a survey to ban smoking inside of multi-family dwellings. This would also include a ban on smoking on balconies.

<http://www.cityofpaloalto.org/civicax/filebank/documents/47272>

Summary Title: Discussion  
on  
Expansion of City Smoking Ordinance  
Title:  
Discussion and  
Direction on Expansion of City Smoking Ordinance to  
Multi-Family Housing, Adding Electronic Cigarettes, and  
Restricting Sales of Tobacco Products and E-Cigarettes  
From: City Manager  
Lead  
Department: Public Works

Thank you.

Frederick

---

On Tue, 8/9/16, McGurk, Michelle <Michelle.McGurk@sanjoseca.gov>  
wrote:

Subject: RE:  
Request for Secondhand Medical  
Marijuana Smoke Ordinance:  
July 26 Medical  
MJ Meeting  
To: "chinatracker2011@yahoo.com"  
<chinatracker2011@yahoo.com>  
Cc: "Nusbaum, Jenny" <Jenny.Nusbaum@sanjoseca.gov>  
Date: Tuesday, August 9, 2016, 5:19 PM

Dear Frederick,

Thank you for your  
input.  
We  
will add your  
comments to the record for our Planning Commission and  
City Council meeting.

Under state law and the

City's local

ordinances, medical  
marijuana smoking is prohibited wherever  
tobacco smoking is prohibited. Please let me know if you  
have a question about a particular location.

Best,

Michelle

Michelle  
McGurk, Senior  
Executive  
Analyst  
Office of  
the  
City Manager

-----Original  
Message-----

From: chinatracker2011@yahoo.com  
[mailto:chinatracker2011@yahoo.com]

Sent: Tuesday, August  
09,  
2016 9:19 AM

To:  
McGurk, Michelle <Michelle.McGurk@sanjoseca.gov>  
Cc: Nusbaum, Jenny <Jenny.Nusbaum@sanjoseca.gov>  
Subject: Request for Secondhand Medical  
Marijuana Smoke Ordinance: July 26 Medical MJ Meeting

Dear Michelle,

I learned something  
from  
your  
meeting on  
Tuesday, July 26, so  
I'm glad I  
attended.  
I'm a

concerned citizen when it comes to this medical  
marijuana "business," which makes me a  
community stakeholder. And what I saw at this meeting  
which you and Jennifer Nusbaum conducted gives me reason  
for concern. The marijuana business stakeholders gave me  
the impression that they are quite aggressive about  
having their demands met. Other observations from the  
July 26  
meeting: When the topic of MBT  
came up, I detected what sounded like a threat that if  
you raise taxes on them, their clients will buy from the  
black market and bypass the city collectives. From my



perspective, the whole point of the "Compassionate Use Act of 1996" is for municipal governments to get a cut of the drug money that comes with the obsessive demand for marijuana. The bottom line IS the bottom line. It's all about money. You and the City Council need to remind these "pharmaceutical" upstarts that their raison d'etre is because of the tax potential for city coffers. "Compassionate Use" would never be allowed if it weren't for money. Don't let them use the black market to blackmail the City from imposing higher taxes on collectives. Any kind of implied collaboration between government-sanctioned marijuana collectives and black market drug dealers is anathema to the credibility of the business model that has been put in place.

The main point I would like to have noted is that the City needs to give more thought to the secondhand smoke that comes from medical marijuana, which seems to be much more potent and concentrated than other strains of cannabis. The fact is, marijuana smoke is listed as a cancer-causing carcinogen under Prop 65. When a patient takes their medication, innocent bystanders should not be forced to have to take medication that is prescribed for someone else. Imagine then, secondhand side effects originating from medication that someone else is taking! For the patient who takes marijuana for medical reasons, the responsible thing is for them to take precautions so that others are not exposed to potential side effects or potential drug interactions. If we're talking about marijuana in a medical context, then in keeping with the spirit of medicine and health, we must abide by healthy living standards. Just as municipal title 6.88.900, Item 15, requires the area used for medical marijuana cultivation, processing, manufacturing or storage to be secured in a manner so as TO PREVENT ACCESS BY ANYONE OTHER THAN A QUALIFIED PATIENT OR PRIMARY CAREGIVER, so too should the byproduct of the medical marijuana product, i.e., secondhand smoke, be prevented from intruding into the airspace of other residents. Please strengthen the city ordinance to protect others from secondhand smoke from medical marijuana. Secondhand smoke from medical marijuana must be contained and isolated to the person it has been prescribed. Another way of looking at this is that exposing other people to marijuana by secondhand smoke is a good way to spread the use of marijuana. For some, marijuana may be "medicine" but for many others it is the cause of vice and illness.

A further

observation, an article in

the SJ Mercury News quotes a lobbyist for the medical marijuana crowd as equating them to the same status as Apple and Cisco. The lobbyist declares that they should be treated "like any other business." But they are not like any other business. They are highly regulated for a very specific

reason:

they are selling a schedule I drug that is in the same group as heroin, LSD and Ecstasy. Bring these people back to reality! In the meantime, have you seen the billboard at the corner of Monterey and Tully on the way to the Santa Clara County Fair? It looks more like an advertisement for crystal meth than for medical cannabis.

Please

provide this request to the City Council for further deliberations.

Thank

you.

Frederick