



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Edgardo Garcia

**SUBJECT: UPDATES TO THE MEDICAL  
MARIJUANA PROGRAM**

**DATE:** October 31, 2017

Approved

Date

11-3-17

## RECOMMENDATION

In addition to the recommendations from the Planning Commission, Items 4.3 (a and b), it is recommended that the City Council:

- (c) Consider an ordinance of the City of San José amending Title 6 (Business Licenses and Regulations) of the San José Municipal Code by amending Chapter 6.88 to:
- (1) Allow each Registered Collective to conduct non-medical (“recreational/adult-use”) cannabis activities;
  - (2) Allow each Registered Collective to deliver non-medical cannabis to customers and establish the parameters under which deliveries could take place;
  - (3) Approve other changes to update the Code to align with new State laws, amend not-for-profit requirements, update definitions; and
  - (4) Make other technical, non-substantive, or formatting changes.

## OUTCOME

If adopted by the City Council, the proposed ordinance would allow the existing 16 Registered Medical Marijuana Collectives to conduct specified non-medical (“recreational / adult-use”) cannabis activities, if they obtain a State license to do so.

## EXECUTIVE SUMMARY

San José currently has 16 Registered Collectives operating under the purview of the Medical Marijuana Program. Adoption of the staff recommendation would:

- Allow existing Registered Collectives that receive a State license to conduct non-medical cannabis activities in San José.
- Allow existing Registered Collectives that receive a State license to deliver non-medical cannabis to their customers.
- Make other changes to the Code, including updating definitions and removing the not-for-profit restriction.

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## **BACKGROUND**

### **San José's Medical Marijuana Program**

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

December 18, 2015 marked the City's deadline for San José collectives to obtain Registration. By the deadline, 16 medical marijuana collectives achieved successful registration with the City of San José. During fiscal year 2016-2017, the Registered Collectives served approximately 245,000 patients and completed over 1.5 million transactions.

The City is not accepting new applications, and only Council action can re-open the registration period. The changes proposed in this memorandum would apply to existing Registered Collectives only.

### **State Regulations**

On November 8, 2016, California voters approved Proposition 64, the Adult Use of Marijuana Act which legalized the adult use (or recreational use) of marijuana by individuals age 21 and older. Under the proposition, individuals age 21 and older are allowed to smoke or ingest marijuana products as well as possess, process, transport, purchase, obtain, or give away without compensation of any sort, marijuana, and marijuana products, subject to the following limitations:

- Not more than 28.5 grams of cannabis (not concentrated cannabis);
- Eight grams of concentrated cannabis including that contained in cannabis products;
- Six living plants per residence (including possession of the cannabis produced by those plants); and
- Public consumption is not allowed, except in limited circumstances, and consumption in motor vehicles is prohibited.

Beginning in January 2018, the State will issue licenses to medical and non-medical cannabis dispensaries, cultivators, manufacturers, distributors, transporters, and testing laboratories. To obtain a state license, the applicant must first have a local permit, license, or other authorization.

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The State makes a clear distinction between “personal use” cultivation by patients<sup>1</sup>, caregivers<sup>2</sup>, or persons age twenty-one (21) or older, and “commercial use” requiring licensure. The State will issue detailed regulations for licensees. It is anticipated that in mid-to-late November 2017, the State will issue emergency regulations applicable to distributors, transporters, dispensaries, cultivators, manufacturers and licensing of cannabis.

The State anticipates the regular rulemaking process to begin in early 2018. After the required public comment process, the State will issue final regulations. Staff continues to monitor the progress of State regulations, engage with the State agencies, and is working closely with the Registered Collectives so that San José operations will be compliant with State regulatory requirements by January 1, 2018.

## **ANALYSIS**

With the State implementing a comprehensive licensure program, staff is recommending changes to San José’s program, while maintaining the goals of keeping cannabis out of the hands of children and youth, providing safe access to medical marijuana to patients and caregivers, continuing comprehensive regulation, and discouraging illegal cultivation, manufacturing, and sales.

Over the past year, since the adoption of the new State laws, the cannabis landscape has changed dramatically in California. Around the State, a number of cities and counties have begun to adopt regulatory programs for various aspects of the industry. San José currently has 16 Registered Collectives providing medical cannabis. Staff’s proposed changes will allow those existing 16 Registered Collectives to add specified non-medical cannabis activities to their operations.

Staff recommends making January 1, 2018, the effective date of the changes to the San José Municipal Code, if approved by City Council, which will coincide with the State issuing the first cannabis licenses.

This memo will cover the following policy decisions before the Council:

- Non-medical cannabis activities
- Non-medical cannabis deliveries
- Code updates

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<sup>1</sup> Under State law, a patient may cultivate, possess, store, manufacture, or transport cannabis for his or her personal medical use, but cannot provide, donate, sell, or distribute to any other person without obtaining a state license.

<sup>2</sup> Under State law, a primary caregiver may cultivate, possess, store, manufacture, transport, donate, or provide cannabis for no more than five specified qualified patients (as defined in Section 11362.7 of the Health and Safety Code), but cannot receive remuneration for these activities except for compensation in full compliance with subdivision (c) of Section 1132.765 of the Health & Safety Code without obtaining a state license.

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### **Concerns**

The Police Department does have some concerns with increasing access to cannabis.

**State Regulatory Capacity:** The State regulatory program is new and untested. The State will issue both non-medical (adult-use) and medical licenses with a simultaneous effective date of January 1, 2018. Staff would have preferred that the State medical licensing program be well-established before adding adult-use, however, the provisions of Proposition 64 require otherwise.

**Youth Access:** Other states have seen increases in youth experimentation and use of cannabis following legalization of adult-use cannabis. The California Department of Public Health just launched its “Let’s Talk Cannabis” public education campaign in September 2017 with information for youth, parents, and mentors, as well as information about responsible use of cannabis, including pregnancy and breastfeeding. It remains to be seen how much public education will be done at the local level; staff will monitor what the State is doing and report back to Council.

**Driving Under the Influence:** The Department has concerns about increased access leading to an increase in drivers operating a vehicle under the influence of cannabis. The State will be funding research on this issue statewide.

**Local Regulatory Capacity:** The Police Department’s Division of Medical Marijuana Control is currently staffed to provide regulatory oversight for 16 registered medical marijuana collectives and their daily operations. Given the newness of the Division, which was created in the 2016-2017 budget, the Department continues to review the program needs and plans to return to City Council with an estimate for the costs associated with the following:

- Increased regulatory staffing level to more appropriately monitor cannabis operations; and,
- Increased enforcement efforts related to illegal cannabis operations.

For the reasons outlined above, the Police Department is not in support of increasing the number of cannabis businesses beyond allowing the existing Registered Medical Marijuana Collectives to add non-medical cannabis. The Division’s current staffing does not provide adequate capacity to initiate a new registration process, or to regulate and monitor additional businesses. As it is, staff will closely monitor the proposed limited expansion into non-medical cannabis and report to Council through the appropriate processes should concerns about regulatory capacity arise.

### **Non-medical Cannabis Activities – Recommendation (c)(1)**

Staff recommends that each Registered Collective be allowed to cultivate, process, manufacture, distribute, and sell medical and non-medical cannabis to persons age 21 or older, if they obtain a State license to do so, beginning in 2018. The Registered Collectives will have to continue to meet all local requirements (including inspection and security) and obtain local permits/licensure/authorization as well as obtain a State license to operate.

Staff is not recommending any changes to existing zoning districts or sensitive use buffers. Staff is not recommending opening the registration process to new registrants.

Regulations for non-medical cannabis cultivation, processing, manufacturing, distributing, and selling to persons age 21 or older will be added to the existing City Manager Regulations for Medical Marijuana Collectives. By including these requirements in the City Manager Regulations, staff can respond quickly to changing conditions, technological advances, and State requirements.

Prior to beginning non-medical cannabis operations, a Registered Collective will be required to fill out a "Registered Collective – Non-Medical Cannabis Application," including a detailed Operations Plan and Security Plan, as well as pay associated fees. The City will issue a "Notice of Completed Registration – Non-Medical Cannabis" to those Registered Collectives meeting the requirements for operating a non-medical cannabis business and will list those meeting the requirements on the Program's website.

#### **Non-medical Cannabis Deliveries – Recommendation (c)(2)**

Staff recommends that each Registered Collective be allowed to add non-medical delivery services beginning in 2018. The Registered Collectives will have to continue to meet all local requirements (including inspection and security) and obtain local permits/licensure/authorization as well as obtain a State license to operate.

The delivery of medical marijuana is currently allowed in San José. The illegal delivery market continues to operate throughout the State in violation of local and State law, and enforcement has been a challenge given limited resources.

To protect against diversion of cannabis to children and youth and to protect the safety of delivery drivers, staff recommends following the same parameters under which medical cannabis deliveries currently follow:

- Only Registered Collectives may apply to operate delivery service;
- A Registered Collective providing delivery services must continue to maintain its Registered Collective dispensing site in addition to operating as a delivery service;
- Deliveries may only be made to individuals that are age 21 or older;
- Delivery hours will be restricted to the hours of 8 a.m. to midnight;
- Orders must be placed with the Registered Collective, not with the driver;
- Delivery drivers must be employees of the Registered Collective and must obtain a Driver badge from the Police Department;
- Delivery drivers will be required to undergo an additional background check by the Police Department that includes a review of their driving record;
- Cannabis must be securely stored in the vehicle;
- Vehicles must be inspected by the Police Department;

- Vehicles must be outfitted with GPS tracking devices and cameras to protect against diversion of cannabis;
- No logos, advertising, or other identifying information can be used on the vehicle; and
- All cannabis must be packaged and labeled to meet all packaging and labeling requirements of the Code.

Regulations for non-medical cannabis deliveries to persons age 21 or older will be added to the existing City Manager Regulations for Medical Marijuana Collectives. By including these requirements in the City Manager Regulations, staff can respond quickly to changing conditions, technological advances, and State requirements.

Prior to beginning non-medical cannabis deliveries, a Registered Collective will be required to fill out a "Registered Collective – Non-Medical Cannabis Delivery Service Application," including a detailed Operations Plan and Security Plan, as well as pay associated fees. The City will issue a "Notice of Completed Registration – Non-Medical Cannabis Delivery Service" only to those Registered Collectives meeting the requirements for operating a non-medical cannabis delivery service and will list those meeting the requirements on the Program's website.

#### **Municipal Code Updates – Recommendations (c)(3) & (c)(4)**

The draft ordinance contains a number of language changes/technical changes to update the Code with respect to the purpose and intent, definitions, non-profit status, cultivation requirements, packaging requirements, personal use cultivation, registration submittal procedures, updated registration forms, identification badges, participation in a collective, fees, membership requirements, transfer of ownership, and other administrative changes.

Due to changes at the State level, staff is proposing updating the language in the Code in the following areas:

- ***Purpose and Intent*** – Add language recognizing the intent of the chapter to accommodate persons age twenty-one (21) and older who want safe access to cannabis from licensed providers.
- ***Definitions*** – Replace the term "marijuana" with the term "cannabis," where practicable. Add definitions including "Cannabis Business," "Delivery," "Non-medical Cannabis," "Non-medical Cannabis Transfers," and other administrative updates.
- ***Nonprofit status*** – Remove the "for profit" prohibition and add language allowing "cannabis businesses" as State law no longer requires cannabis operations to be not-for-profit.
- ***Cultivation Requirements:*** Mandate that all cultivation of cannabis be entered into the State's track and trace system. Remove the onsite cultivation requirement.
- ***Packaging Requirements:*** Update to require adherence to the State's packaging regulations, which include tamper-evident and child-resistant packaging of cannabis.
- ***Personal Use Cultivation:*** Extend the existing prohibition of outdoor cultivation and other personal use cultivation restrictions to apply to the cultivation of non-medical cannabis for personal use.

Staff is proposing updating/clarifying the language in the Code in the following areas based on the City's experience administering the program:

- **Registration Submittal Procedures** – Since the registration time period has passed, clarify that registration submittal is only open to those entities possessing a valid Notice of Completed Registration from the City Manager as of December 18, 2015.
- **Updated Registration Forms** – Only require the signature of the person authorized to sign on behalf of and legally bind the collective or cannabis business for any forms submitted, rather than each and every owner and manager to sign.
- **Identification Badges** – Have the collectives be responsible for confiscating ID badges within twenty-four (24) hours of employee termination or resignation, but can return them to the Police Department within seventy-two (72) hours. Require the ID badges be kept at the collective/business, unless required during the course and scope of an employee's duties to be away from the collective to help reduce the number of lost badges.
- **Participation in a Collective** - Update the employment ineligibility to exclude convictions for marijuana-related offenses from the list of crimes disqualifying people from working at a collective or cannabis business.
- **Fees** – Enumerate an existing fee in Title 6 to match those listed in the Fees and Charges Schedule to allow staff to reflect the actual pass through costs of GPS tracking devices and monitoring.
- **Membership Requirements** – Add language requiring collectives and cannabis businesses to not only terminate relationships with members, but to ban or refuse entry to other persons who violate the provisions of this chapter, whether a member or customer.
- **Transfer of Ownership** – Clarify that while the Notice of Completed Registration is nontransferable from the collective or business entity, a change of ownership can occur, if all specified procedures are followed.

## **EVALUATION AND FOLLOW-UP**

This report fulfills Council direction provided on October 18, 2016 regarding evaluating Proposition 64 and the next steps for the City.

## **POLICY ALTERNATIVES**

***Alternative #1: Continue to ban the sales and delivery of non-medical cannabis in San José.***

**Pros:** Continuing the ban of non-medical sales and delivery services maintains the status-quo.

**Cons:** Continuing the ban on sales and delivery of non-medical cannabis will not meet the will of the voters and will not provide a safe alternative to the illegal non-medical cannabis market. Additionally, San José will not see additional tax revenue from non-medical cannabis sales.

**Reason for not recommending:** Regulated cannabis activity and delivery is a safer option for consumers than the illegal, unregulated cannabis market.

## **PUBLIC OUTREACH**

Staff held a public outreach meeting on October 30, 2017 regarding the changes recommended in this memo. Email announcements about the Planning Commission and City Council hearings were emailed to lists maintained by the Department of Planning, Building and Code Enforcement and City Manager's Office. Additionally, staff invited the 16 Registered Collectives and their representatives to a briefing on September 27, 2017. This memorandum will be posted on the City's Council Agenda website for the November 14, 2017 Council Meeting, and a link will be sent to the Police Department's medical marijuana email list.

## **COORDINATION**

This memorandum has been coordinated with the Department of Planning, Building and Code Enforcement, the Finance Department, the City Manager's Budget Office, and the City Attorney's Office.

## **COMMISSION RECOMMENDATION/INPUT**

On November 8, 2017, the Planning Commission will conduct a public hearing on the proposed amendments to the Zoning Code. Staff will provide a supplemental memorandum providing the recommendations of the Planning Commission meeting.

## **COST SUMMARY/IMPLICATIONS**

### **Costs**

The regulatory staffing in the Division of Medical Marijuana Control and other City departments is based on regulatory and enforcement operations related to 16 Registered Medical Marijuana Collectives. The costs for the program are paid by the Registered Collectives in their annual registration fee and other fees-for-service. There will be additional costs to regulate non-medical cannabis operations, and staff will monitor and return to Council with recommendations through the budget process, as appropriate.

### **Revenues**

In 2016-2017, the City received \$10.5 million in Marijuana Business Tax from the Registered Collectives. These revenues are expected to increase if Council approves the 16 Registered Collectives to provide non-medical cannabis. Staff will monitor actual collections and bring forward recommended budget adjustments, as appropriate, through the budget process.



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**CEQA**

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

/s

EDGARDO GARCIA  
Chief of Police

EG:WS

For questions, please contact Wendy Sollazzi, Division Manager, San José Police Department, at (408) 537-9890.