

JUNE 7TH PUBLIC MEETING SUMMARY

1. Land Use, Zoning & Sensitive Uses

Public testimony regarding staff's proposed commercial zoning did not result in clear audience consensus on the preferred zoning area for collectives. While some collective owners prefer industrial zoning over commercial, citing the reduced costs of maintaining a business in an industrial space and the ability to maintain a larger space; other speakers expressed that commercial zoning is the right zoning for collectives. These speakers raised some concerns with industrial zoning, including safety issues since industrial areas tend to be unpopulated and desolate, lack public transportation access, and the potential stigma resulting from patients having to travel to collectives in industrial areas. There appeared to be general consensus that collective owners, patients, and community members need to work together to come to an agreement on the appropriate distance between collectives and schools (including pre-schools) and day care centers. General comment focused on the need to be mindful of the proximity of Collectives to schools, pre-schools, and/or day care centers. Staff did have some level of disagreement regarding the proposed requirement to restrict collectives 1,000 feet from single and two-family residential. A few speakers felt that exceptions (less than 1,000 feet) should be allowed if there are impenetrable barriers already in place (e.g. train tracks, bridges, walls, freeways, etc). Lastly, speakers pointed out the need for Collectives to be accessible to individuals with disabilities and by public transportation, provide adequate parking, and mitigate traffic impacts to neighborhoods.

2. Onsite Cultivation

Many speakers raised concerns with the proposed requirement for onsite cultivation of medical marijuana, explaining that onsite cultivation is unfeasible because of the space needed for cultivation, high costs associated with commercial zoning, and safety risks for collective employees and patients. Some speakers expressed that onsite cultivation would make Collectives vulnerable to armed robberies and other types of crimes.

3. Conditions of Operation & Selection Process

Many speakers expressed strong concerns over the fairness of the proposed lottery concept, citing the lack of ability of the City to ensure the quality of the businesses selected and the inability to ensure a fair geographical distribution of collectives throughout the City to accommodate patient needs. It was suggested that the City develop a selection process based on qualifications, such as a Request for Proposals competitive process. A small handful of speakers added that the City should develop a medical marijuana advisory group or task force to help guide City staff on the appropriate refinements to the ordinances. In addition, there was disagreement over the City's statement in the presentation that the sale of medical marijuana is illegal. Many speakers expressed disagreement with the City's legal analysis, noting conflicting interpretations of the Attorney General and State Board of Equalization guidelines. Lastly, some speakers also expressed disagreement over the proposed regulation that prohibits the sale of paraphernalia, as well as ancillary products and other services. Speakers felt that collectives should be able to purchase items that help them ingest medical marijuana, as well as other ancillary and manufactured products.

4. Maximum Number of Medical Marijuana Collectives Allowed

Many speakers, including collective representatives, stated that the proposed 10 maximum number of Collectives is too low to meet patient need/market demand. Several speakers noted the need to broaden the placement of collectives throughout the City for the purposes of mitigating an

overabundance of Collectives in one geographic area and the direct and indirect impacts on neighborhoods. Some speakers offered alternatives to the City's proposed maximum collective number. Suggestions include:

- Set the number of collectives at 60 or 100 (minimum); 36 (based on the estimated total number of McDonald restaurants in San Jose); or, after the total number of pharmacies in San Jose.
- Use the population of the San Jose metropolitan area to set the number proportionally Citywide.
- Allow for market demand to dictate the number of collectives.
- Use dispensary, collectives, cooperatives and/or club numbers in other cities as a benchmark/guide for setting the final number of collectives allowed in San Jose. Cities suggested include: San Francisco (14 for approximately 747,000 population), Los Angeles (70 for approximately 3.8M), and State of New Mexico (5 collectives for 2.2M population).

5. Membership Requirements & Privacy Concerns

Various speakers raised strong concerns about the proposed patient record keeping requirements, proposed San Jose residency requirement, and the proposed membership limitation to one collective within the City of San Jose. More specifically, speakers raised legal issues regarding privacy rights of personal health care information under the Health Insurance Portability Accountability Act (HIPAA), as well as fears of patient incrimination.

6. Taxation of Cannabis

Some speakers felt that the proposed minimum of 3% tax rate on gross receipts is too high, and it should be lowered to no more than 2% in order to keep costs for patients, especially those on fixed income, reasonable.

7. Safety and Monitoring of Medical Marijuana

Several speakers noted disappointment with the City's proposal to not allow the consumption of medical marijuana on-site at the location of the collectives (including the parking areas). A number of speakers explained that many patients need a safe place to self-medicate, without fear of incrimination or ridicule from others. While there was general consensus that the safety of medical marijuana located at collectives is a priority, a speaker specifically in particular voiced serious concerns over the need for a medical marijuana safety monitoring program. More specifically, one individual spoke at length suggesting a program through an independent medical marijuana testing lab that provides for the quality assurance testing of medical marijuana for potency, product quality, mold, fungus, pesticide contamination, etc., and sets appropriate packaging requirements, dosage suggestions and lists the pesticides and additional additives used during the growth process and manufacturing process of the medical marijuana.

8. Medical Marijuana Policy Development Process and Sunset Requirement

Some speakers expressed concerns about this project's accelerated schedule and cautioned staff to not rush into making decisions regarding medical marijuana that could result in bad policy. Speakers felt that staff should have the more time to work with stakeholders to develop a collaborative and thoughtful public policy. Some speakers also raised concern over the amount of staff resources and time devoted to developing the two medical marijuana ordinances in midst of the City's budget deficit and uncertainty around the November 2010 ballot measure.

Some speakers felt that the City should have enacted a moratorium on medical marijuana collectives at the March 30th Council Meeting.

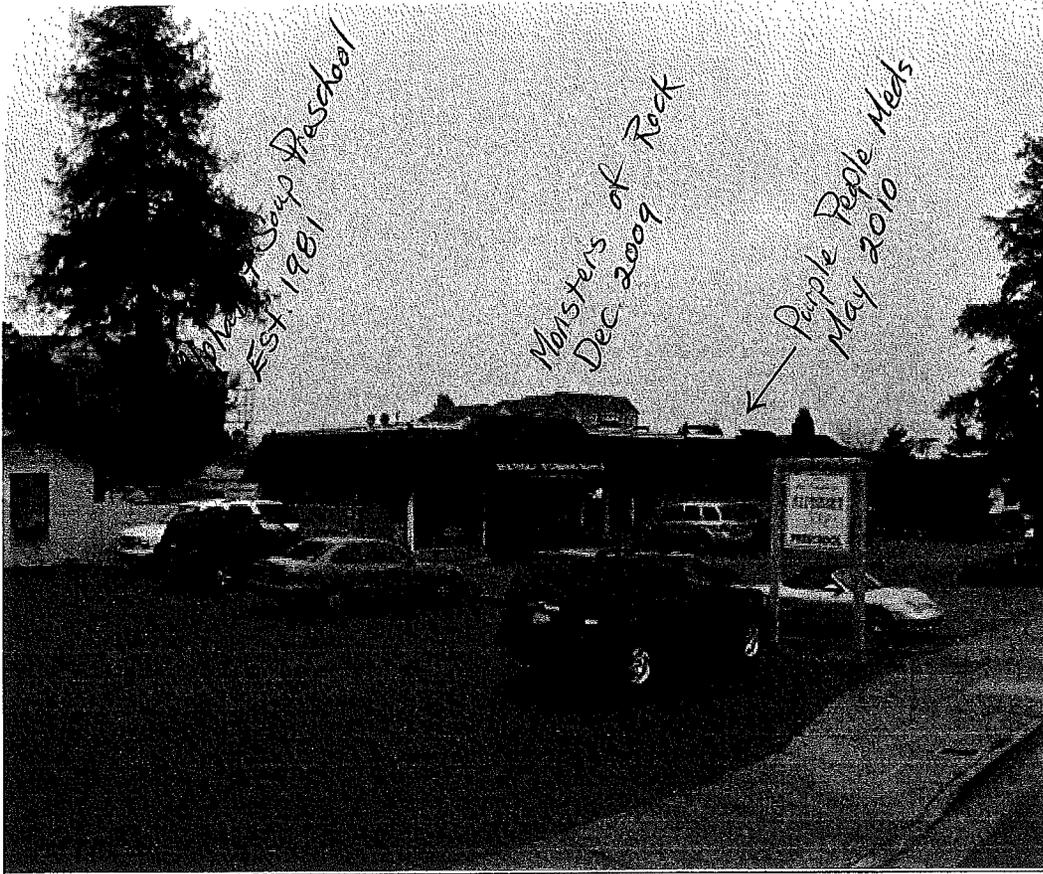
Lastly, speakers expressed concerns around the proposed two year sunset clause, citing that this period is too short, and it would not provide the City with the needed information and time to appropriately evaluate the program. Speakers proposed 4-6 years as a more reasonable time frame.

Google maps

Address 1195 S De Anza Blvd

Address is approximate

Blue awning is now Monsters of Rock with 2nd blue awning Purple People Medical Marijuana



CITY OF SAN JOSE
Commendation

WHEREAS: Sue Campbell was named the 2006 Outstanding Contributor to Child Care Center-based Award for offering excellent care to children as well as extraordinary support to their parents at the Alphabet Soup Child Care Center in San Jose; and

WHEREAS: Alphabet Soup supports the developmental stages for each child and encourages the growth of social, emotional, physical, and intellectual skills that form the foundation for successful youth and adults; and

WHEREAS: Ms. Campbell has helped prepare many of our community's youngest children to enter school with the cognitive and emotional foundation they need to achieve academic and social success throughout their lives; and

WHEREAS: Quality early care and education for children are essential for the long-term stability of our community, health, and security for the families of employers, and growth and prosperity of San José businesses;

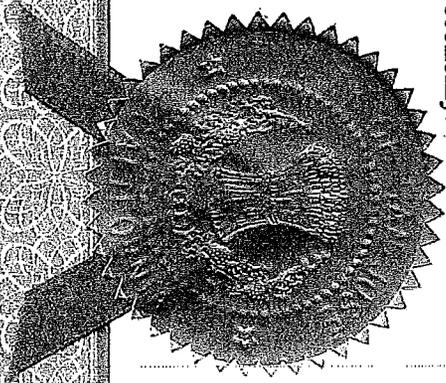
NOW, THEREFORE, I Ron Gonzales, Mayor of San José, together with Councilmember Judy Chirco and along with our colleagues on the City Council on the 18th day of April 2006 do hereby congratulate and commend

SUE CAMPBELL

for her continuing commitment to ensure the health, welfare, safety, and education of our youngest residents through effective programs and services that support families and our economy.


The Honorable Ron Gonzales
MAYOR


Judy Chirco, Councilmember



Attested to by:

Lee Price, City Clerk

From the Desk of Susan M. Landry

Environmental Architect, LA Lic. No. 3161

To: City of San Jose

Attn: City Manager
Councilmember Judy Chirco
City Clerk

Subj: Medical Marijuana

RE: Draft Ordinance for Medical Dispensaries & Smoking Facilities

I attended the Public Hearing yesterday, June 7th at City Hall. I was one of the speakers. After I spoke I thought of other issues that should be addressed in this draft ordinance. The City has a good start for the Ordinance, but there is still a lot of work to be done and some major issues still need to be addressed.

For discussions in this letter the following is defined as:

- 'Patients' are those who have a legal Medical Recommendation from a Licensed Physician, per current California laws.
- 'Medicine' is the Medical Marijuana a patient uses, can be in different forms.
- To 'Medicate' is the ingestion of 'medicine' which can include smoking, vaporizing, eating or drinking 'medicine'.
- 'Dispensaries' are places to obtain 'medicine', may or may not include a place to 'medicate'
- 'Smoking Facilities' are places to 'medicate'.

My comments on the Medical Marijuana Ordinance:

A. Patients have the right to privacy under HIPA.

1. Requiring lists of patients from Dispensaries is a violation of these privacy rights.
2. Dispensaries in other Cities do not require this information

B. Medicine

1. Proper labeling of medicine is important.
2. At a minimum a label should be on all packaging stating 'Keep out of Reach of Children'
3. To have packaging list additional information will take a lot time to work out. What and how to label will need some major discussions.

C. Where to Medicate?

1. The ballot measure regarding the general legalization of marijuana has a chance of passing in the November 2010 Elections.
2. The issue of where to 'medicate' can become extremely volatile should this ballot measure pass.
3. When passed, my guess is that people will come out in droves, smoking everywhere. Without regulations, such as not smoking cigarettes within 25' of a building

entrance, patients will not know what to do or where to go.

4. There needs to be a difference between Smoking Facilities and Dispensaries.

D. Dispensaries

1. Require Dispensaries to obtain a building permit and to register with the City's Medical Marijuana Dispensary Section.
2. Requiring Dispensaries to grow and sell in the same location will create some logistical problems
3. Requiring patients to only have one membership to one Dispensary limit their ability to get the best price for their medicine. They can just go to another City to obtain medicine.
4. Under current California Health and Safety Code patients are allowed to grow a specified number of plants. If a Dispensary grows those plants for a patient then the growing grounds become large expansive facilities
5. Plants can be grown outside or inside. If growing outside it creates problems with theft.
6. It's better to keep growing locations confidential.
7. Keep Dispensaries in Commercial Zones and growing locations in Industrial Zones
8. Establish 1,000' setbacks from ALL places that children gather, including CDC's, daycare facilities, schools, etc.
9. Limiting a business to a 2-year contract is a lot of wasted money for a business. The capitol investment for these businesses may take 4 - 6 years to re-cap their costs.
10. Make sure all facilities are ADA compliant.

E. Smoking Facilities

1. Locations of these facilities should be **immediately addressed**. Secondhand smoke is a major concern. Smoke creeps through walls and ceilings.
2. Refer to Zoning for Cigarette Smoking Shops as a starting point.
3. Apartments and multi-family homes should be addressed
4. Establish 1,000' setbacks from ALL places that children gather, including CDC's, daycare facilities, schools, etc.
5. Make sure all facilities are ADA compliant.

F. Establish a Citizen/Stakeholders Advisory Committee

1. Expecting Dispensaries to navigate the City's Regulating Process alone can cause delays and can create friction between the Dispensaries Owners and the City.
2. This Medical Marijuana Advisory Committee can be a forum for citizen's complaints and to help Owners navigate the City's Regulating Process.

G. Develop a Code of Conduct

1. Similar to the Homeless Shelter's Zoning develop a 'Code of Conduct' for Dispensaries and Smoking Facilities
2. Address such topic's as:
 - a. No Smoking within a minimum of 50' from entrances to all building, public or private
 - b. No loitering at Facilities
 - c. Keep Medicine in non-descript packaging to deter thefts

From the Desk of Susan M. Landry

Environmental Architect, LA Lic. No. 3161

d. Many San Francisco shops have Codes of Conduct that can be used as a model.

I hope this letter has provided the City with information that can be used to create an enforceable Medical Marijuana Ordinance. I am available to meet with City Staff should any additional information be needed and I would like to put my name on a list for potential Stakeholder/Citizens Advisory Committee members.

Thank you for your time,

Susan M. Landry

MEDICAL MARIJUANA ORDINANCE PUBLIC MEETING

June 7, 2010, 6:00 p.m. – 8:00 p.m.

City Hall – Council Chambers

AGENDA

Meeting Purpose Hold the first of two community meetings to ensure public participation, present the framework for the draft ordinances, collect public comment/input, and answer questions.

1. **Opening Remarks**
2. **Community Outreach Schedule**
3. **Key features of the Draft Ordinances**
 - a. **Parameters of Drafting the Ordinance**
 - b. **Operational Framework**
 - c. **Zoning/Land Use Framework**
4. **Public Comment**
 - a. **Question #1:** What are your thoughts on the key features of the City's draft ordinances?
 - b. **Question #2:** Are there any missing features in the current draft ordinances you would like to see addressed?
 - c. **Question #3:** What questions do you have about the schedule and opportunities for public input?
5. **Adjournment**

This meeting will be facilitated by Dr. Shawn Spano. Dr. Spano specializes in designing and facilitating public engagement forums and meetings.

MEDICAL MARIJUANA COUNCIL REFERRAL

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

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

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

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

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

COMMUNITY OUTREACH SCHEDULE

Date	Topic	Location
June 7 (6 p.m.-8 p.m.)	Community outreach meeting scheduled to present key features of the proposed ordinances	City Hall, Council Chambers
June 22 (1:30 p.m.)	City Council review of staff report, urgency ordinances and summary of public input. If approved by City Council, urgency ordinances immediately in effect	City Hall, Council Chambers
July 20 (6 p.m.-8 p.m.)	Community outreach meeting scheduled to present key features of the proposed regular ordinances	Roosevelt Community Center 901 East Santa Clara Street San Jose, CA
August 3 (1:30 p.m.)	First Reading of Medical Marijuana Ordinance and a possible consideration of a ballot measure for Marijuana Tax	City Hall, Council Chambers
August 17 (1:30 p.m.)	Second Reading of Medical Marijuana Ordinance	City Hall, Council Chambers
September 17, 2010	Ordinance in effect	

July 20 Public Meeting Summary and Public Documents

This report provides a high-level summary of public input from the meeting. It does not contain an exhaustive list of every comment made at the meeting. Input obtained is only reflective of individual opinions at that meeting and should not be considered reflective of the San Jose community as a whole.

1. Registration Process & Requirements

Over 40 people participated in the small group discussion about the proposed Registration Process and Requirements. Input has been grouped into key reoccurring themes. Attendees also had the opportunity to provide input on other features of the Ordinances and/or raise other concerns. This input is captured under Other Concerns.

Lottery System: The majority of speakers expressed strong feelings against the proposed Lottery System because, according to them, it will result in an over-saturation/concentration of collectives in one geographic area of the City, and it does not provide for controls that will ensure the quality of the businesses selected. Some speakers expressed that they want the City to be “discriminatory” with their selection process so that the best operators are selected.

One suggested alternative was for the City to develop a competitive system by which collectives can be selected. No specific details were offered as to how this could be accomplished. Another suggested alternative was for collectives to bid on the “marijuana business permits.” Highest bidders would have the opportunity to operate. One speaker suggested that the Registration Process should also consist of evaluating marijuana businesses’ past operating history.

Maximum Number of Collectives: The majority of speakers expressed strong concerns over the proposed number of collectives (10 collectives); saying that this number is too low and it will not meet market demand. More specifically, speakers felt that 10 collectives will result in long lines, higher prices, and safety issues (e.g., patients will be pushed to buy from the black market). One speaker expressed concerns with patient anonymity, citing that 10 collectives do not provide sufficient options for patients to stay anonymous.

There appeared to be general consensus that the City should not have a limit on the number of collectives, but instead allow market demand to set the number, similar to how it is done in San Francisco. There was divided support among the group for the idea to allow current marijuana businesses operating within the law to be grandfathered into the system. A speaker also expressed the need for a moratorium on marijuana businesses that opened after March 30, 2010.

Finally, one speaker noted that even though the City currently has about 70 marijuana businesses in operation, this number will likely decrease significantly once sensitive uses go into effect and if delivery services are prohibited.

Registration Fee: There appeared to be general consensus that the proposed registration fee is unreasonable and would place a financial burden on marijuana businesses; especially in addition to the proposed taxation rates on gross receipts that the City is considering. Some speakers suggested having the registration fee be based on collective membership instead. Several speakers asked how the registration fee will be paid (e.g., up front, monthly/quarterly/semi-annual payments, etc.). There seemed to be a general preference for a payment plan.

Other Concerns:

Land Use, Zoning & Sensitive Uses: There was general consensus that collectives should not operate near sensitive uses. There also appeared to be general consensus that the City should consider “open zoning” and allow collectives to operate anywhere in the City, with the exception of residential areas and near sensitive uses.

Delivery System: Some speakers stated that medical marijuana delivery services are imperative and should be permitted because they allow patients who are physically handicapped, confined to their home, etc. to continue to have access to medical marijuana.

2. Operating Requirements

Over 40 people participated in the small group discussion about the proposed Operating Requirements. Input has been grouped into key reoccurring themes. Attendees also had the opportunity to provide input on other features of the Ordinances and/or raise other concerns. This input is captured under Other Concerns.

Onsite Security Guards: Speakers felt that onsite security guards should be an option for collectives because they believed that their presence creates a negative stigma with the community. If onsite security guards are to be required, the group consensus was that they should be in plain clothes. Some speakers suggested that there should be an option to use a Debit/Credit card for purchases to minimize the amount of cash onsite. However, others were concerned that a non-cash system option would expose patient personal information/identification.

On/Offsite Cultivation: Speakers felt strongly that growers should have access to special permits to cultivate medical marijuana on/offsite. Some speakers suggested that the City should have different policies for collectives and growers; rather than trying to “capture everything under one umbrella.” Several comments from group participants included requests for further clarification about cultivation and the impact on small growth operators.

There was mixed input regarding zoning. Some speakers suggested that industrial zoning should be used for cultivation; and commercial/retail zoning for distribution. Others suggested that industrial zoning be used for cultivation and distribution.

Collective Owner/Management Requirements: Several speakers felt that the Police Department should not be responsible for regulating collectives. Some suggested that another City department manage regulation; others suggested that the City create a new office responsible for regulating marijuana businesses. Some speakers also suggested that the City establish a taskforce that includes City partners and residents. Lastly, one speakers suggested that the Collective management age limit should be changed from 21 to 18 years of age, and the misdemeanor violation condition be removed.

Hours of Operation: Some speakers felt that there should be no set hours of operation for Collectives, and suggested that Collectives be allowed to set their own hours. Some speakers felt that Collectives should be allowed to stay open 24 hours or at minimum until 10 p.m. or 2 a.m.

Dispensing and Packaging of Medical Marijuana: A majority of speakers felt that Collectives should include health and safety information on every label, such as the amount, strength and strain type. The

group was divided on whether Collectives should be required to provide medical marijuana in childproof containers.

Maintenance of Records & Independent Audits: Speakers were evenly divided on this topic. A suggestion was offered for the City to work with the Collectives to establish an online system to store and manage records. Some speakers expressed concerns with patient privacy and suggested that names not be included in any onsite/or offsite records.

Sale of Ancillary: Speakers requested that this section be removed from the Ordinance. Due to time limitations, staff was unable to follow up on the group's rationale for this suggestion or alternative suggestions.

3. Taxing Marijuana Businesses

Over 20 people participated in the small group discussion about the proposed Taxing Marijuana Businesses. Input has been grouped into key reoccurring themes. Attendees also had the opportunity to provide input on other features of the Ordinances and/or raise other concerns. This input is captured under Other Concerns.

Taxing Medical Marijuana: There seemed to be strong consensus that the idea of taxing medical marijuana for individuals who are sick is morally wrong, especially given that the State already applies a sales tax to medical marijuana, and items such as prescription drugs and botanical herbs are not subject to taxes.

One individual suggested that the City should require Collectives to register as a cooperative or a non-profit organization with the State of California. This would ensure a closed-loop system and that all profits made by the Collective stay within the Collective.

Taxing Marijuana Businesses: There seemed to be general agreement that staff's proposed tax rate should be based on sound logic and have a strong rationale. There no consensus for a specific tax rate, with support divided between 0%, 0.5% or a number no more than 2% tax rate. There was a strong preference expressed for a two-tiered system, in which tax rates for medical and non-medical marijuana would be set at separate rates. Many individuals expressed serious concerns that a higher tax rate, coupled with the City's proposed registration fee, could force Collectives to pass on these extra costs to patients, forcing them to purchase marijuana through illegal avenues.

Lastly, one speaker suggested that the retail and regulation of collectives and cultivation should be addressed separately at a later date through a separate ordinance and revenue-generating cultivation fee structure (similar to that of the City of Oakland).

City Attorney Legal Opinion: There was general consensus that the City Attorney's Office needs to make a finding that the sale of marijuana is legal, rather than rely on the notion of barter and trade. It was suggested by one individual that the City look at other cities and states with more progressive policies (e.g. Colorado's For-Profit Sales License for Medical Marijuana Collectives).

Ancillary Services and Edible Products: An overwhelming number of individuals expressed concerns over the proposed regulation that prohibits ancillary services (e.g., hospice counseling, therapeutic services, grief counseling, etc.), citing that many times these services are offered in lieu of the

Collective making a profit and thus maintaining a true closed-loop system. Many speakers also felt strongly that the City should allow edibles, and questioned the logic behind this decision to prohibit them. A couple of speakers noted that a Collective's ability to offer edibles is legal, and that there is nothing stated in Prop 215 that prohibits this. One speaker noted that patients with emphysema and other respiratory ailments must rely on edible products because they are unable to smoke marijuana.

Onsite Consumption & Proposition 19: There was concern expressed over conflict or confusion between City and State Laws (if Proposition 19 passes in November). One individual, for example, noted that the City's draft ordinance does not allow for the on-site consumption of medical marijuana. However, Prop 19 does not include this stipulation/restriction.

Other Concerns: One individual expressed concerns with the sale of medical marijuana to non-medical marijuana patients or to children, and noted that measures should be put in place to prevent this.

4. Land Use Policy

Over 20 people participated in the small group discussion about the proposed Land Use Policy. Input has been grouped into key reoccurring themes. Attendees also had the opportunity to provide input on other features of the Ordinances and/or raise other concerns. This input is captured under Other Concerns.

Zoning Designation: The majority of speakers expressed concern with the Commercial General Zoning District designation, noting that there should be no zoning limitations if sensitive use requirements are met. Suggested alternatives included light industrial zoning, proximity to medical areas, and ensuring that safe locations are considered.

Distance Requirements from Sensitive Uses: Several speakers expressed views that the 500 foot sensitive use requirement should be walking distance, not linear feet, and that residential should not be on the list of sensitive uses. Accessibility and safety issues were raised as key concerns related to not being able to locate within 500 feet of a residential area.

Maximum Number of Collectives: Similar to the Registration Process and Requirements, the majority of the speakers in this group expressed strong concerns about the number of collectives that would be allowed, claiming that 10 was too low of a number for the size of the City of San Jose. Speakers expressed that limiting the number to only 10 would create negative consequences such as traffic, lines at the collectives, accessibility issues, possible crime issues considering the amount of medicine that would be stored in each location, and would make monitoring of those sites more complicated.

Speakers made note that there should be fairness and balance when looking at the current collectives, with some suggesting the possibility of grandfathering them in while also ensuring that prospective collectives are treated fairly. Speakers also said that allowing 10 collectives was not geared towards patient-care and did not maximize tax revenue possibilities. Speakers noted that the City should consider 30-100 collectives for the size of San Jose.

Other Concerns: Speakers also made note that the current collectives were creating jobs, tax revenues, patient benefit and contributing to the local economy. It was re-emphasized that the City should consider grandfathering the current collectives as long as they are operating properly and within code and regulations. Some speakers expressed the need for a moratorium now on new collectives and also recommended that that City consider outsourcing the monitoring and regulating of collectives.

THE MAYOR STATED AT THE
MARCH 30TH COUNCIL MEETING
THAT ANY COLLECTIVE OPEN
AFTER THAT DATE WOULD NOT
BE LOOKED AT TO REMAIN
OPEN... THAT SHOULD BE
ENFORCED

Delivery Services

For those who are bed-ridden
perhaps their primary caregiver
could pick up their cannabis.

miforsl.

Land use policy

It was agreed that medical marijuana
collectives that were located within
500 ft. of sensitive areas would
be closed asap. The date I was
given was Aug 4, 2010. It is my
hope that this will be enforced.

*The State law being proposed
encourages 600 ft. →

Delivery Services Are Imperative.
Many Patients Are Confined To
Their Residences or Even Their Beds!

Jon Lustig

Medical Marijuana patients
are not protected under
current laws from
termination in their jobs
for positive drug tests

The idea that medical marijuana
"dispensaries" should not have
500' limit from residences is
ridiculous! Residents have
been terrorized by these clubs.
ASK 000 block of South King

The nightclub model
Should not be followed
This is not an accurate
Comparison "Look to SF 4"

System of checks and
balances should be implemented
The city needs an additional
regulatory group for Medical
Cannabis Take This Away From
The Police

We support industrial
use ✓

We need a
Moratorium ✓

Tracking usage

How will we ensure that a person purchases med marijuana the prescribed number of times, k. 1-2x/daily.

Use community based
3RD Party for
cultivator regulation

THE COUNCIL HAS INVESTED A GREAT DEAL OF TIME, ENERGY AND RESOURCES IN CONSIDERATION OF THIS VERY IMPORTANT ISSUE AND THE COMMUNITY APPRECIATES IT. IT IS IMPORTANT FOR THE HARD WORK OF THE COUNCIL AND STAKEHOLDERS TO RESULT IN A MEANINGFUL ORDINANCE. IT WOULD BE UNFORTUNATE FOR AN ORDINANCE TO BE IMPLEMENTED THAT WOULD ULTIMATELY BE STRUCK DOWN AS UNCONSTITUTIONAL BECAUSE IT VIOLATES THE PRIVACY OR SELF DETERMINED PROTECTION'S AFFORDED UNDER OUR FEDERAL AND STATE CONSTITUTIONS.

Medical Marijuana Major Issues & Concerns:

- **City regulations need to reflect Compassion**
 - Compassionate Use Act 1996 – Patients will benefit from use of MM
 - SB 420 MM Program – “Patients shall NOT . . . be subject to state criminal sanctions for their Use of MM.”
 - City needs Help. As stated in City memo dated 15 Jun '10: Dealing with the MM Program is difficult for City “given Staff’s lack of Experience with MM”
- **Do NOT Violate Patient’s HIPAA Rights**
 - Patients have a right to privacy under the regulations of HIPPA.
 - Privacy includes Non-disclosure of medical information
 - Making Dispensaries give Patient Lists to the City’s Police Department discloses that the Patient has a medical condition
- **Allow Consumption & Smoking at Collectives**
 - Currently there are no provisions for places for Patients to Medicate
 - Where in the City can a patient Medicate ??
 - Patients are not Criminals. Designate places to Medicate
- **NO Penalties now for Existing Facilities!**
 - City’s NOT Ready for Registration Process
 - Provide a 90 day Grace Period
- **Establish a Dispensary Regulations Task Force to address issues**
 - Consisting of a minimum of these positions:
 - Patient Advocate
 - Dispensaries Liason
 - Citizens Liaison
 - City Staff
 - Council Staff
- **Need a minimum of 20 Collectives**
 - Registration Fees are high for small Ma & Pa operations of 500 members or less
 - Patients have a right to go to different Dispensaries who grow plants for them
 - Patient allowed 6 mature plants & 12 immature plants at one time:
 - Each Plant in a 15 gal. Container = 2 square feet per plant
 - 2 sq.ft. x 5,000 patients = 10,000 sq.ft. min. = That’s LOTS of Space
 - Space required not suited for Commercial Store Front Areas

Medical Marijuana Dispensary

Rules of Conduct

- You must present Legal Documentation from a California Licensed Physician per Health & Safety Codes for Entry
- Conduct yourself in a Respectable Adult Manner at all times
- NO sale to anyone under the influence of Alcohol or other Illegal Substances
- NO distribution of Medical Marijuana to non-legal persons
- NO smoking Cigarettes in the Building or within 50 feet of all building entrances
- NO loud, abusive language or loud radios in parking lot or adjacent neighborhoods
- Limit 1 visit per day per patient, 20 minute time limit
- We reserve the right to refuse service to anyone, especially those breaking the Rules of Conduct

Registration Process & Requirements

General Provisions

>Priority Order/Maximum Number of Collectives

Permits will be awarded by random lottery with a limit of 10 collectives for a city of 1+ million people!?

A random lottery is the exact opposite of any intelligent approach to regulation. Collectives should be regulated like any other legal use: either by market forces, or by land use/zoning regulations, or by special use permits. But they should be regulated rationally and not through a random process that might very well close the most professional and easily accessible collectives while allowing others to stay open regardless of track record or ability. And imagine the litigation (and expense to the city) if an established collective that has been operating in a legal and professional manner gets the euphemistic permit #11. This process is anything but transparent in its operation and invites favoritism (lotteries can be rigged). In addition, a lottery definitely invites litigation against the city which would seem ill advised during this financial crisis.

Further, the proposed ordinance says that no collective, co-op, dispensary, operator, establishment, or provider that existed prior to the enactment of the ordinance shall be deemed to be a legally established use under the provisions of the ordinance, and such collective, co-op, dispensary, operator, establishment, or provider *shall not* be entitled to claim legal nonconforming status. Actually that's backwards from prudent regulation and flies in the face of logic with regard even to as lottery. By developing a RFP process, the city creates greater regulatory control because any existing collective/co-op, dispensary, operator, establishment, or provider that is not found in compliance with the operating standards must immediately cease operation until such time, if any, when it complies fully with the requirements of same.

Recommendation: Develop a decision making framework that is based on a competitive process. This can be accomplished by requesting existing collectives, co-ops, dispensaries, operators, establishments, or providers to submit responses to a uniquely developed process that is similar to a Request for Proposals (RFP) process, applying a scoring mechanism, and selecting the highest scoring proposals to operate a collective/co-op in San Jose. It also establishes a clear, objective order of who will be allowed to operate, a sequence for processing and does not constitute a random or arbitrary system such as a lottery. ... either you meet the standards or not. Thus any existing collective/co-op or provider that does not comply with the requirements of the ordinance must immediately cease operation until such time, if any, when it complies fully with the requirements of same.

>Registration required.

The term of each registration is for one year.

Recommendation: Make the initial registration period for 24 months, but without the recommended 'Sunset Clause.' This will allow the city to gather statistics on the operation of the collectives/co-ops and thus enable the city to amend the ordinance (if necessary) sometime after 24 months without having to endure the ordinance process again.

>Patient's personal data and records must be given to the Police Department.

Under the Health Information Portability and Accountability Act (HIPAA) passed in 1996, a patient's privacy, which includes records and personal information, is inviolate! The HIPAA Privacy Rule applies to all forms of an individuals' protected health information, whether electronic, written, or oral. The SJPD's/City Attorney's solution? Circumvent patient privacy laws by requiring the collectives to secure the patient's permission upfront via release language to be added to membership forms. No mention of what the city's sanctions will be if the patient refuses.

Because medicinal cannabis remains illegal under federal law (though legal under state law), there is still considerable risk to divulging personal information about coollectice/co-op members and patient-cultivators. Member patient information is susceptible to federal subpoena and access to this information is tantamount to self-incrimination. In addition, there are additional requirements under HIPAA that may prevent local and federal officials from legally obtaining certain patient information. As such, membership information should be kept confidential and proprietary.

Each member of a legally organized and operated collective/co-op is entitled to bring medicine to the collective/co-op for provision to other members without sufficient amounts of medicine. In this regard, every collective member is a potential cultivator. Requiring disclosure of individual patient-cultivators does not recognize the state of California law, nor does it anticipate legal operation. This misguided approach assumes that collectives/co-ops acquire medicine from the illicit market, and seeks to deter, investigate, and prosecute legal medical cannabis patients whose conduct is appropriate under state law.

Recommendation: Institute a system of identifying patients, care givers, patient cultivators by other than name, address, etc. All MC3 collectives/co-ops operate with transparency. However, releasing records presents challenges in patient confidentiality and self-incrimination. In all candor, it is not wise to openly identify the patients, care givers and patient cultivators given that while SJPD and other city staff may have an arguably heightened sensitivity to working with the collectives/co-ops once the ordinance is adopted, the Drug Enforcement Administration (DEA) does not share this enlightened view and there is no guarantee of record confidentiality once the data leaves the collectives/co-ops.

>Security/Collective Operations.

Recommendation: Adopt the following:

- A. **Restricted Membership.** Membership in Collectives/co-ops shall be restricted to qualified patients and their primary caregivers only, as defined under state law. Only members may enter and receive service.
- B. **Membership Eligibility Verification.** There shall be a 2-step verification process that ensures that: 1) every qualified patient who is served, or whose primary caregiver is served, has a valid, written medical cannabis recommendation or approval issued by a physician; and 2) the physician is properly licensed in California and in good standing. Step 1 will be verified with the physician's office. Step 2 will be verified with the Medical Board of California. Collectives/co-ops may rely on a card-issuing verification agency, provided that it meets this 2-step process. State-issued proof of identity shall be required. No one shall be admitted to membership or served without meeting all these verification requirements.
- C. **Source Restrictions.** Collectives/co-ops shall distribute only cannabis cultivated by their members, forming a closed-loop system in which medicine is cultivated only by members for members.
- D. **Quantity Restriction.** Pursuant to state law, Collectives/co-ops shall provide cannabis only in amounts consistent with personal medical use.
- E. **Diversion Prohibition.** No MCC or member shall distribute cannabis to any person not a qualified patient or primary caregiver. Such diversion shall be grounds for immediate termination of membership.
- F. **Security Providers.** Collectives/co-ops shall have on duty during all hours of operation, until all employees and management have left the building, a minimum of one state-licensed security provider per each 2,000 square feet of floor area directly accessible to qualified patients and primary caregivers for services, not including restricted areas such as private offices, storage areas, break areas, and other private areas.
- G. **Safety and Surveillance.** Collectives/co-ops shall have a written security plan, an alarm system monitored by a professional alarm company, and indoor & outdoor video surveillance. Surveillance footage shall be maintained for a minimum of 7 days.
- H. **Secure Storage.** Medicine shall be stored safely and responsibly at all times. After hours, all medicine shall be stored securely and out of sight.
- I. **Loitering and Littering Prevention.** Collectives/co-ops shall have a policy to consistently and systematically prevent loitering, littering, and any other disturbances to the peace and tranquility of our neighborhoods.
- J. **Hours of Operation.** Collectives/co-ops shall only be open from 9 a.m. to 8 p.m. each day.

- K. **Membership Rules & Regulations.** Collectives/co-ops shall have clear written Membership Rules & Regulations; shall provide them to their members and the City Manager's office; and, shall require that members sign a written agreement to uphold them. Violation of any rule or regulation shall be grounds for membership termination.
- L. **Tax Compliance.** Collectives/co-ops shall pay all applicable local, state and federal taxes, including sales tax and business license tax.
- M. **Signage Restrictions.** Collectives/co-ops shall comply with all local signage laws.
- N. **State Law Compliance.** Collectives/co-ops shall comply with all state laws.
- O. **Nondiscrimination.** Collectives shall not discriminate on the basis of age, gender, race, national origin, sexual orientation, physical disability, mental condition, or social-economic status of any member.

>No cash sales; barter & trade only.

Cash sales are permitted under state law. Health and Safety Code 11362.775 as well as Sections 11359 and 11360, and State Attorney General Jerry Brown's guidelines for operating medicinal cannabis collectives/co-ops immunizes collectives from legal sanction for sales. The City Attorney should review *People v. Urziceanu* (2005) 132 Cal. Ap. 4th 747, 785, which formed the basis for Senate Bill 420 (The 'Medical Marijuana Program Act'). It conclusively states sales by collectives are legal. They should also review *County of Butte, et. al. v. The Superior Court of Butte County (David Williams – Party in Interest)*.

Part of the function of a patients' association is to allocate the costs and benefits of the collective cultivation effort, and in this context, buying and selling cannabis within the membership of the collective/co-op is legal. In fact, Section IV(C)(1) of the Attorney General's guidelines specifically recognizes that legal collectives and cooperatives may maintain storefronts to provide medicine to members:

"Although medical marijuana 'dispensaries' have been operating in California for years, dispensaries, as such, are not recognized under the law. As noted above, the only recognized group entities are cooperatives and collectives. (Section 11362.775). It is the opinion of this Office that a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law [emphasis added], but that dispensaries that do not substantially comply with the guidelines set forth in Section IV(A) and (B), above, are likely operating outside the protections of Proposition 215 and MMP, and that individuals operating such entities may be subject to arrest and criminal prosecution under California law. For example, dispensaries that merely require patients to complete a form summarily

designating the business owner as their primary caregiver - and then offering marijuana in exchange for cash 'donations' - are likely unlawful."

It is unreasonable to arbitrarily label all of the retail collectives/co-ops operating in San Jose with the Attorney General's term "dispensaries," while ignoring the clear fact that the state's highest ranking law enforcement official specifically concedes that lawful collectives and cooperatives may sell medicinal cannabis and maintain storefronts.

Cannabis grown or obtained at a collective/co-op for medicinal purposes can be:

- a) Provided free to qualified patients and primary caregivers who are members of the collective or cooperative;
- b) Provided in exchange for services rendered to the entity;
- c) Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses; or,
- d) Any combination of the above.

Thus a collective facilitates the collaborative efforts of patient and caregiver members including the allocation of costs and revenues. As a practical matter, a collective/co-op is a not-for-profit/mutual benefit corporation organized to carry out such activities.

Recommendation: Sales of medicinal cannabis by collectives/co-ops is legal and any reference to the contrary should be stricken from the draft ordinance (such as Section 8.88.440-B) and the ordinance amended to reflect the law.

>Registration Fees

The propose fee ordinance states that the city's fee Resolution No. 72737 is amended to add Section 1.560 to authorize a "Medical Marijuana Collective Registration Fee" of **\$95,016.00!**

This is based on two erroneous assumptions that the cost recovery program for regulating collectives/co-ops will be \$950,160. First, that's a simple division of the ill-conceived limit of 10 collectives/city for a city of 1+ million people.

Second, the estimated cost recovery program includes extreme 'guesstimates' for personnel needs such as an assumption of \$366,666 for two new police officers and \$209,592 for a Sergeant. Elsewhere, the city states it will use the current permit review process already in effect by the Police Department, thus the two new officers would seem to be hired solely to visit the collectives/co-ops and the Sergeant would therefore be hired to supervise two employees (interesting ratio).

Why can't current sworn personnel visit/inspect collectives/co-ops as part of their normal duty assignment? This would save two positions already funded by the city which may be slated for elimination and thus delete the need for an additional Sergeant.

There is also \$153,310 proposed for administrative support for the three police personnel. Does this not already exist within the Permit Division of SJPD? Or as with the City Manager's Office, is there not a current position planned for elimination wherein the funding is already be accounted for?

There is also \$55,488 allotted in the City Manager's budget for a half-time Executive Analyst. Given the recent layoffs and positions that will remain unfilled (and will remain so) to eradicate the city budget deficit (though SJPD has yet to offer concessions in that process), is there not a current vacancy for a half-time analyst in the City Manager's office wherein the funding would already be in place, as this is a half-time position so regulating collectives/co-ops will not be their only work task.

Recommendation: Recalculate actual personnel and support needed for regulating collectives/co-ops (even the City Manager's report states, "staff may need to adjust its staffing plan accordingly to meet the regulatory needs.") By subtracting 50% of the proposed indirect cost rate for SJPD, all three new sworn personnel and investigate employment sharing/reshuffling within the City Manager's Department, **the city can reduce expenditures by \$652,917.**