



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Angelique Gaeta

SUBJECT: SEE BELOW

DATE: May 7, 2015

Approved

Date

5/7/15

SUBJECT: MEDICAL MARIJUANA - EXTENSION OF DEADLINE FOR COLLECTIVES TO BECOME REGISTERED WITH THE CITY

RECOMMENDATION

Approve an ordinance amending Chapter 6.88 of Title 6 of the San José Municipal Code to:

- (a) Extend the deadline for Medical Marijuana Collectives that meet certain criteria to obtain a Notice of Completed Registration from the City Manager;
- (b) Require the City Manager Regulations for Medical Marijuana to be posted on the City's website to become effective;
- (c) Clarify when Medical Marijuana Collectives are required to submit a new or amended Application for Registration as a Medical Marijuana Collective;
- (d) Replace language requiring the use of specific security mechanisms to prevent unauthorized entry into a Medical Marijuana Collective with language that requires the use of appropriate security mechanisms to prevent authorized entry into a Medical Marijuana Collective;
- (e) Allow Medical Marijuana Collectives to maintain records required under Chapter 6.88 of Title 6 in electronic format;
- (f) Change the date by when a Medical Marijuana Collective must file an audit of its financial operations for the previous calendar year; and
- (g) Make other technical, non-substantive, or typographical changes to Chapter 6.88 of Title 6.

OUTCOME

Approval of the proposed ordinance will provide the Medical Marijuana Collectives that have substantially complied with the City's Medical Marijuana Program requirements extra time to obtain a Notice of Completed Registration; allow for the streamlining of revisions to the City Manager Regulations; streamline the process for when Medical Marijuana Collectives need to submit a new or amended Application for Registration as a Medical Marijuana Collective; provide Medical Marijuana Collectives with discretion in choosing appropriate security mechanisms to prevent unauthorized entry into their premises; provide for easier record keeping

May 7, 2015

Subject: Medical Marijuana – Extension of Deadline to Register

Page 2

for Medical Marijuana Collectives; and, provide Medical Marijuana Collectives with more time to file an audit of their financial operations. Approval of the proposed ordinance will also allow staff to make other technical, non-substantive, and formatting changes to the existing Medical Marijuana Regulatory Ordinance.

BACKGROUND

Since 2009, the San José City Council has held numerous public hearings to determine the best course of action with respect to how medical marijuana is collectively cultivated, produced, and dispensed within the City. The Council has considered policy options ranging from banning medical marijuana establishments (including, but not limited to, collectives, cooperatives, dispensaries and delivery service businesses (hereafter collectively referred to as “Collectives”)) to regulating their locations and operations.

On June 17, 2014, the Council adopted ordinances amending Title 20 of the San José Municipal Code (Code), to provide siting criteria for Collectives (the Land Use Ordinance); and, Title 6 of the Code, to provide operational regulations for Collectives (the Regulatory Ordinance). Together, these ordinances make up the City’s current Medical Marijuana Program (Program).

The ordinances took effect on July 18, 2014. Pursuant to the ordinances, Collectives had ninety (90) days (until October 17, 2014) to apply to register with the City under the Program as a compliant Collective; and a full year (until July 17, 2015) to relocate to an area identified in the ordinances and begin operating in full compliance with the Program.

In turn, the registration process required Collectives to submit: (1) An Application for a Zoning Code Verification Certificate (Zoning Application) establishing that they were operating in an area that complied with the Program’s Land Use Ordinance; and (2) An Application for Registration as a Medical Marijuana Collective (Registration Application) establishing they would operate in compliance with the Program’s Regulatory Ordinance.

By April 2015, twenty-nine (29) Collectives had received a Zoning Code Verification Certificate (Zoning Certificate)¹ and began proceeding through the second phase of the registration process, the review and processing of their Registration Application. Review and processing of the Registration Application is conducted by the City’s Finance Department, the Department of Planning, Building and Code Enforcement (PBCE) Code Enforcement Division and the Police Department. The process involves verification of payment of the City’s Marijuana Business Tax (MBT), a criminal background check of individuals involved in the Collective’s operations and a site inspection of the Collective’s premises.

To date, staff has completed a preliminary review of each Registration Application. Five (5) of the Collectives have been disqualified for reasons ranging from failure to pay the City’s MBT to failure to provide information required. The remaining twenty-two (24) remain in the review process; however, thirteen (13) of those Collectives have yet to pursue and obtain City

¹ Twenty-nine Collectives received Zoning Certificates to operate from a total of thirty-two (32) sites in the City.

May 7, 2015

Subject: Medical Marijuana – Extension of Deadline to Register

Page 3

development permits, permit adjustments and/or building permits required to complete site and tenant space improvements needed to operate their dispensing and/or cultivation sites in a manner that complies with the Regulatory Ordinance. As a result, staff is not able to conduct a final inspection of these Collectives' operations to ensure compliance with the Regulatory Ordinance.

The other eleven (11) Collectives have undergone the preliminary plan review/special tenant improvements review with or submitted an application for building permits to the PBCE Building Division and of those eleven, four (4) have received building permits required to make site and tenant improvements to their facilities and prepare for final operational inspection by the City.

Meetings with Dispensaries:

Following the April 20, 2015 Medical Marijuana Study Session with the Council, a number of Collectives, including those represented by Susan Landry, Richard De LaRosa, Sean Kali-Rai, James Anthony, Jerry Strangis and Joe Guerra reached out to the Administration to discuss compliance with the Regulatory Ordinance. During the discussions with the Collectives and/or their representatives, requests were repeatedly made for an extension of the July 17, 2015 deadline of at least three (3) months to allow Collectives more time to obtain a Notice of Completed Registration. Topics discussed with some Collectives also included: the City Manager Regulations becoming effective upon their posting on the City's website; streamlining the process for making specific changes to a Collective's registration information; allowing Collectives discretion to choose appropriate security mechanisms to prevent unauthorized entry into their premises; changing the date for Collectives to file the required annual audit of their financial operations to April 15th of each year (versus the current February 15th requirement of each year); and, allowing Collectives to maintain required records in electronic format.

Discussions with Other Agencies:

For those Collectives choosing to manufacture and provide medical marijuana in the form of edibles, the Santa Clara County Department of Environmental Health (County DEH) has advised that it will review plans and schematics for a Collective's commercial kitchen facilities if a Collective submits the same to the County DEH or if the City of San Jose Building Department requires Collectives to do so. The County DEH further advised that its plan review process can take approximately 20 days from the date a Collective submits an application. The County DEH also stated that it will not inspect or regulate these facilities' ongoing operations until it develops and implements edible safety regulations. In addition, on March 26, 2015, the County DEH held a food facility plan check informational meeting and invited Collectives to learn about food regulations and commercial kitchen requirements. Staff is also scheduled to meet with the County DEH prior to the May 19, 2015 Council meeting and will continue to collaborate as the County DEH develops regulations for edibles and related food products.²

² The County is also exploring options for regulating the cultivation of medical marijuana by patients and their primary caregivers in the unincorporated areas of the County. Staff attended a community outreach meeting on the

May 7, 2015

Subject: Medical Marijuana – Extension of Deadline to Register

Page 4

The Administration also reached out to Pacific, Gas & Electric (PG&E) to better understand the process Collectives may need to undergo to ensure they have the electric power supply needed to engage in their operations, including onsite cultivation. According to PG&E, for any business, not just a Collective, the process to bring additional power to a specific facility can take several weeks, if not months. In addition, in San José, the addition of a new utility box, either on the exterior of a building or in the public right-of-way, can trigger additional permit requirements or permit adjustments which need to be obtained from the City's Departments of Planning, Building and Code Enforcement and/or Public Works.

ANALYSIS

Given the feedback from the stakeholders and other agencies, **the Administration is recommending an ordinance extending the July 17, 2015 deadline for Collectives to obtain a Notice of Completed Registration to December 18, 2015. The deadline for Collectives to obtain a Zoning Code Verification Certificate would remain July 17, 2015.**

If the Council were to approve the recommended extension on May 19, 2015, Collectives would effectively have an additional 7 months to come obtain a Notice of Completed Registration from the City.

To provide an incentive for Collectives to meet the new deadline and acknowledge the good-faith efforts of those that have participated in the City's registration process, the Administration would update the City Manager's Regulations for Medical Marijuana³ to provide that only those Collectives that have met the following criteria by the following deadlines be eligible for the extension:

July 17, 2015 Deadline:

By July 17, 2105, each Collective must have accomplished the following:

- (1) Completed a preliminary plan review/special tenant improvements review with the PBCE Building Division;
- (2) Scheduled an appointment through the special tenant improvements program for plan review, submitted applications and paid all application fees for any building permit required for the build out of each location the Collective will be operating from in the City of San José;
- (3) Remained current on its payment of Marijuana Business Taxes due to the City;
- (4) Paid all application processing fees for the City to process its Registration Application;

regulation held by the County on May 5, 2015 and will continue to track this issue and, if necessary, return to Council with further amendments to the City's Program.

³ As authorized by San José Municipal Code Section 6.88.315 and found at the following link:

<http://www.sanjoseca.gov/DocumentCenter/View/33062>.

May 7, 2015

Subject: Medical Marijuana – Extension of Deadline to Register

Page 5

- (5) Responded to all requests for further information from the City related to its Registration Application within fourteen (14) calendar days of the date a letter was served by the City seeking the requested information; and
- (6) Had all of its owners, managers and individuals engaged in the cultivation, processing, manufacturing, transporting or dispensing of medical marijuana fingerprinted by the Santa Clara County Sheriff's Office.⁴

If a Collective does not meet all the above criteria by July 17, 2015, the City Manager, pursuant to the authority granted by the Regulatory Ordinance, would disqualify the Collective from the registration process and the Collective would need to cease all medical marijuana operations in the City of San José.

September 18, 2015 Deadline:

To further provide an incentive for Collectives to meet the new deadline, the proposed ordinance provides that a Collective will have until **September 18, 2015 to obtain all required site development permits and building permits from the City of San José**. If a Collective does not obtain all required permits by the September 18, 2015 deadline, it will be disqualified from the registration process.

November 20, 2015 Deadline:

In addition, the proposed ordinance includes a provision that each Collective will have until **November 20, 2015 to complete its preliminary inspection with the City of all of its locations, dispensing and cultivation, whether inside or outside of San José, to check compliance with the Regulatory Ordinance**. If a Collective has not had its preliminary inspection of all its locations completed by November 20, 2015, it will be disqualified from the registration process.

December 18, 2015:

Under the proposed ordinance and updated City Manager Regulations, a Collective that meets the above criteria by November 20, 2015 must then **complete the following steps by December 18, 2015:**

- (1) Successfully pass a final inspection of all of its medical marijuana dispensing and cultivation locations inside and outside of San José;
- (2) Pay the Medical Marijuana Annual Operating Fee to the City;
- (3) Sign and submit to the City Manager the required Hold Harmless / Release of Liability form; and
- (4) Obtain a Notice of Completed Registration from the City Manager.

⁴ Any new personnel added after July 17, 2015 would be required to undergo fingerprinting prior to commencing involvement with the Collective's cultivation, processing, manufacturing, transporting or dispensing of medical marijuana.

The proposed ordinance and the updated City Manager Regulations would further provide that any Collective not meeting the above criteria by the given deadlines would be disqualified from the registration process and therefore should immediately cease all medical marijuana operations in the City of San José.

For Collectives that complete the steps necessary to have their deadline extended, during the extension period those Collectives will continue to be expected to comply with all good neighbor provisions of the Regulatory Ordinance⁵ (i.e., security, screening of medical marijuana from public view, prohibition of outdoor cultivation, hours of operation, not allowing consumption of medical marijuana within 300 feet of the Collective, property maintenance, performance standards, etc.) and all health and safety provisions of the Regulatory Ordinance (i.e., not allowing anyone under 21 years of age on site, not allowing consumption of medical marijuana on-site, use of childproof containers to package medical marijuana, not packaging medical marijuana in containers that are attractive to children or imitate candy, etc.). A Collective's failure to comply with good neighbor and health and safety provisions during the extension period would result in immediate disqualification from the registration process.

Additional Amendments to the Regulatory Ordinance:

To address other issues discussed with some of the Collectives and/or their representatives, the Administration recommends and the proposed ordinance includes the following changes to the Regulatory Ordinance:

- (1) The City Manager Regulations become effective upon publication on the City's website;
- (2) A Collective need not submit a new Registration every time a change in the information submitted in its Registration Application occurs. Instead, a Collective would be required to submit the following forms when the following changes to its operations occur:
 - a. A new Registration Application would be required when the Collective is seeking to move to a new location and/or add an off-site cultivation-only location;⁶
 - b. Written notification would need to be submitted to the City Manager when a change is made to the information contained in the Collective's most recent Registration Application on-file with the City Manager's Office regarding persons authorized to represent the Collective and regarding the Collective's agent for service of process; and
 - c. An amended Registration Application would be required for any other changes or updates to the most recent Registration Application on file with the City Manager's Office including, but not limited to when new owners, managers or individuals engaged in the cultivation, processing, manufacturing, transporting or dispensing of medical marijuana are added to the Collective's membership;

⁵ Found at Chapter 6.88 of Title 6 of the San José Municipal Code and at the following link:
<http://www.sanjoseca.gov/DocumentCenter/View/35962>.

⁶ For a new Registration Application to be considered for A Collective seeking to move locations, it must be accompanied by a Zoning Code Verification Certificate for that new location. Collectives seeking to move location should always check with the Department of Planning, Building and Code Enforcement before moving locations.

May 7, 2015

Subject: Medical Marijuana – Extension of Deadline to Register

Page 7

- (3) Provide Collectives are required to install appropriate security mechanisms (versus the specific security mechanisms currently contained in the Regulatory Ordinance) to prevent unauthorized entry into their operations;
- (4) Extend the date by which each Collective needs to submit an audit of its financial operations from February 15th to April 15th of each year; and
- (5) Allow Collectives to maintain records in electronic format.

The Administration recommends these changes to respond to concerns raised by some Collectives and to challenges faced by staff in obtaining updated information from Collectives.

EVALUATION AND FOLLOW-UP

During the extension period, the Administration will provide monthly updates regarding Collectives that remain in the registration process.

POLICY ALTERNATIVES

Alternative #1: Do not approve ordinance as recommended by the Administration

Pros: Collectives will have until July 17, 2015 to come into full compliance with the Program requirements and those that achieve registration with the City will begin paying the Annual Operating Fee to cover the cost of the City's operation of the Program.

Cons: Many Collectives have not obtained approvals necessary to build out their locations to comply with the Program requirements and may not be able to meet the July 17, 2015 deadline to come into full compliance with the Program requirements.

Reason for not recommending: The Administration supports successful implementation of the City's Program. Extending the deadline for Collectives to obtain a Notice of Completed Registration will assist in the Program's success.

PUBLIC OUTREACH

On April 20, 2015, the Administration held a Medical Marijuana Study Session for the City Council. Collectives were invited to attend the study session and were provided an opportunity to speak during the public comment period about the current status of the registration process. In addition, following the study session, the Administration met with and spoke with a number of Collectives as well as various counsel and lobbyists representing Collectives regarding the recommendations made in this memorandum. Further, this memorandum will be posted on the City's Council Agenda website for the May 19, 2015 Council Meeting.

HONORABLE MAYOR AND CITY COUNCIL

May 7, 2015

Subject: Medical Marijuana – Extension of Deadline to Register

Page 8

COORDINATION

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

COST SUMMARY/IMPLICATIONS

No cost implications are anticipated as a result of the actions outlined above. The extensions of various deadlines should allow Collectives to come into compliance with the City's Program, and the December 18, 2015 deadline requires payment of the Medical Marijuana Annual Operating Fee to the City. The collection of this fee was factored into the development of the 2015-2016 Budget, and since it is still being collected in 2015-2016 there should not be an impact on the General Fund.

CEQA

Negative Declaration (ND) File Number PP11-039, adopted on June 15, 2011 and addenda thereto (File Numbers PP11-076 and PP14-030).

/s/

ANGELIQUE GAETA

Assistant to the City Manager

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