



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Angelique Gaeta

**SUBJECT: MEDICAL MARIJUANA
BALLOT INITIATIVE**

DATE: October 17, 2014

Approved

Date

10/17/14

RECOMMENDATION

- (a) Accept staff's report analyzing "An Initiative Ordinance Amending Title 6 and Title 20 of the San José Municipal Code to Include Medical Marijuana Collectives As An Allowed Land Use In Agricultural, Commercial Pedestrian, Commercial Neighborhood, Industrial Park, Light Industrial and Heavy Industrial Zoning Districts, and to Establish a Registration Process and Zoning Code Verification Certificate Process" (Initiative) pursuant to California Elections Code Section 9212; and
- (b) Direct staff to return on November 4, 2014, to approve one of the following options:
 - (1) Adopt the proposed Initiative as submitted;
 - (2) Adopt a resolution calling an election to submit the Initiative to the voters at a Special Municipal Election on a date to be decided; or
 - (3) Adopt a resolution calling an election to submit the Initiative to the voters at the next General Election on Tuesday, June 7, 2016.

OUTCOME

Should the City Council accept staff's report and staff's recommendation, staff will return on November 4, 2014 for the Council's discussion regarding the Initiative and the Council's direction whether to adopt the Initiative or call an election to submit the Initiative to the voters at either a Special Municipal Election or at the next General Election.

EXECUTIVE SUMMARY

On September 30, 2014, the City Clerk advised the Council that pursuant to the California Elections Code, the County Registrar issued a Certificate of Sufficiency certifying enough signatures had been gathered for the Initiative to move forward for consideration by the Council. In response, the Council directed staff to prepare a California Elections Code Section 9212 report regarding the effects of the Initiative, to be presented to the Council no later than October 30,

2014. In addition, the Council directed staff to address the questions raised in the Mayor's September 29, 2014 memorandum found at <http://sanjoseca.gov/DocumentCenter/View/35701>.

Attachment "A" to this memorandum is the Section 9212 report the Council requested. It summarizes the impacts the Initiative would have on the City's regulation of medical marijuana establishments operating in San José and responds to the Mayor's questions.

BACKGROUND

On March 21, 2014, advocates for "The City of San José Control and Regulate Medical Cannabis Act" filed a Notice of Intent to Circulate Petition (Notice) to effectively begin the process of gathering signatures in support of the Initiative. The purpose of the Initiative was to replace the City's Medical Marijuana Regulatory Program (Program) approved by the City Council on June 17, 2014 to regulate medical marijuana establishments, including collectives, cooperatives and dispensaries (hereafter individually referred to as "dispensary" and collectively referred to as "dispensaries") that cultivate, manufacture or dispense medical marijuana in San José with provisions that would:

- Permit dispensaries in the Agricultural, Commercial Pedestrian, Commercial Neighborhood, Industrial Park, Light Industrial and Heavy Industrial zoning districts of the City;
- Modify the fee schedule put in place by the Council to recover the City's cost of allowing dispensaries to operate in the City and regulate those dispensaries;
- Reduce the fine amounts for violation of the City regulations; and
- Remove distance restrictions put in place by the Council to maintain a buffer between dispensaries and residential uses; places where youth congregate; substance abuse treatment facilities; emergency housing facilities; adult day care facilities; and, places of religious assembly.

On September 30, 2014, the City Clerk advised the Council that enough signatures had been gathered by the advocates of the Initiative and that in accordance with the California Elections Code, the Council had three options:

- (1) Adopt the Initiative exactly as written;
- (2) Place the Initiative on the ballot, either at a Special Election or General Election; or
- (3) Order a report on the effects of the Initiative, to be presented in 30 days.

Council chose the third option and directed staff to write a "Section 9212 report" and include in that report answers to the questions raised by the Mayor's September 29, 2014 memorandum.

ANALYSIS

After Council is presented with the Section 9212 report, Council has the following options:

- (1) Adopt the Initiative exactly as written;
- (2) Place the Initiative on the ballot at a Special Election; or
- (3) Place the Initiative on the ballot at the next General Election Date.

Adopt The Initiative Exactly As Written:

Under City Charter Section 1603 (a) (1) and California Elections Code §9214 (a), the Council may adopt the Initiative, without alteration, at the regular meeting at which the Section 9212 report is presented; or, within 10 days after the report on the Initiative is presented. Therefore, if the Council wishes to adopt the Initiative exactly as written, the Council must do so no later than November 7, 2014.

Place the Initiative on the ballot at a Special Election:

If the Council does not adopt the proposed Initiative in its entirety, then under City Charter Article 16, Section 1601 (e), a vote of ten Council Members can call a Special Municipal Election. By November 4, 2014, the Council would have to adopt a resolution with a vote of at least 10 affirmative votes calling an election to submit the Initiative to the voters at a Special Municipal Election on a date to be decided by the Council. The date of that Special Election could be no earlier than 88 days from the date of said resolution;

Place the Initiative on the ballot at the next General Election:

If the Council does not adopt the proposed Initiative in its entirety or vote to call a Special Municipal Election, then under City Charter Article 16, Section 1603 (a) (2), if the petition supporting the proposed Initiative is signed by at least five percent (5%) of eligible registered voters in effect at the time the Notice is published, then the Initiative, without alteration, shall be submitted by the Council to the voters at the next General Election. The next General Election is June 7, 2016. Therefore, the Council should adopt a resolution to submit the proposed Initiative to the voters by November 4, 2014.

COST SUMMARY/IMPLICATIONS

In considering election costs, one of the biggest variables is whether or not the election is consolidated with any other election. For a special election, not consolidated with another election, the City of San José would bear the full cost of the election, including: printing, mailing and personnel costs with the Santa Clara County Registrar of Voters. The Office of the City Clerk obtained cost projections from the Santa Clara County Registrar of Voters and for a stand-alone San José Citywide Measure; the estimated total cost to the City is \$3,797,115. For a

consolidated election at the next General Election in June 2016, the estimated total cost to the City is \$894,189.

EVALUATION AND FOLLOW-UP

Following presentation of the Section 9212 report to the Council, staff will update the Council on a quarterly basis with information regarding the status of the Program approved by the Council and support for the Initiative.

POLICY ALTERNATIVES

Alternative #1: The Council could elect to hold a Special Election

Pros: The time allowed to see whether the community favored the Initiative over the City's Medical Marijuana Regulatory Program would be lessened.

Cons: The cost for the special election could exceed \$3.5 million.

Reason for not recommending: The City needs time to see whether the Medical Marijuana Regulatory Program approved by the Council could be successful. The cost for a Special Election is high.

Alternative #2: The Council could elect to consolidate to the next General Election.

Pros: The next General Election is in June 2016.

Cons: None.

Reason for recommending: Placing the Initiative on the June 2016 ballot would provide the City with time needed to fully implement its Medical Marijuana Regulatory Program and study the effects of the Medical Marijuana Regulatory Program on the community and the industry.

Alternative #3: The Council could choose to adopt the Initiative exactly as written.

Pros: None

Cons: The Initiative ignores the work staff has done for the past four (4) years to create a Medical Marijuana Regulatory Program that would allow for safe access while protecting the public's health, safety and welfare.

Reason for not recommending: The Initiative undoes a substantial amount of the Medical Marijuana regulations approved by the Council on June 17, 2014. There are also serious concerns as to the Initiative's compliance with recent Federal guidelines regarding enforcement in states allowing the medicinal use of marijuana.

PUBLIC OUTREACH

This memorandum will be posted on the City's website for the October 28, 2014 Council Meeting Agenda.

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COORDINATION

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

CEQA

Not a Project, File No. PP 10-069, Staff reports and informational memos.

/s/

ANGELIQUE GAETA

Assistant to the City Manager

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

CALIFORNIA ELECTIONS CODE SECTION 9212 REPORT MEDICAL MARIJUANA BALLOT INITIATIVE

INTRODUCTION

California Elections Code Section 9212 provides that the City Council may order a report on the effect of a proposed initiative and may refer the initiative measure to any city agency or agencies for such report. In ordering the report, the Council may request that the city agency or agencies address the following: fiscal impact, effect on the City's general and specific plans, including the housing element and the consistency between planning and zoning; effect on land use, including the impact on availability and location of housing; infrastructure impact; ability to attract and retain business and employment; impact on use of vacant parcels; impact on agricultural lands, open space, traffic congestion, existing business districts and areas designated for revitalization; and any other matters the Council requests to be in the report.

BACKGROUND

On September 30, 2014, pursuant to California Elections Code Section 9212, the City Council directed the City's Administration to prepare a report regarding the effects of the "Initiative Ordinance Amending Title 6 and Title 20 of the San Jose Municipal Code to Include Medical Marijuana Collectives As An Allowed Land Use In Agricultural, Commercial Pedestrian, Commercial Neighborhood, Industrial Park, Light Industrial and Heavy Industrial Zoning Districts, and to Establish a Registration Process and Zoning Code Verification Certificate Process" (Initiative). Specifically, the City Council directed the Administration to address both the list of potential impacts listed in California Elections Code Section 9212 and the questions raised in the Mayor's September 29, 2014 memorandum.¹ This report responds to that direction.

ANALYSIS

This analysis is based upon information available as of October 17, 2014. If the law develops further in this area or other factors change, the analysis may change.

A. CALIFORNIA ELECTIONS CODE SECTION 9212 ANALYSIS

(1) Fiscal Impact

As discussed in the August 5, 2014 memorandum to the City Council, staff anticipates returning to the City Council in January 2015 to establish the final staffing plan needed to operate the Medical Marijuana Regulatory Program (Program) approved by the City Council on June 17, 2014 to regulate medical marijuana establishments including but not limited to collectives, cooperatives and dispensaries (hereafter individually referred to as "dispensary" and collectively referred to as "dispensaries") that cultivate, manufacture or dispense medical marijuana in San

¹ The Mayor's memorandum can be found at: <http://sanjoseca.gov/DocumentCenter/View/35701>.

José. At that time, staff will discuss the fees associated with operating the Program on an annual basis, including an annual operating fee to be charged to each dispensary registered to operate in San Jose. The amount of that fee is dependent upon the number of dispensaries registered with the City and the final identification of resources necessary to maintain the Program on an annual basis. These variables are unknown at this time; however, by way of comparison, in 2011, the City calculated the annual costs to the City to regulate ten (10) dispensaries at approximately \$1.4 million dollars, resulting in a (cost recovery) fee of approximately \$140,000 per dispensary, per year.

The proposed Initiative would reduce any annual operating, registration and processing fees approved by the Council to a level which would not support a cost-recovery Program for the City. Specifically, the Initiative proposes a \$4,000 Biennial Operating Fee (\$2,000 annually), to be paid by dispensaries in quarterly installments of \$500. In sum, the Initiative could reduce any annual operating fee approved by the Council and charged to dispensaries from an estimated \$140,000 per dispensary to \$2,000 per dispensary.

While the Initiative acknowledges that its proposed fees will not be enough for the City to recover its costs, it contends that because the City collects a Marijuana Business Tax (MBT) from each dispensary (currently at the rate of 10% of gross receipts), there is no need for the City to seek to recover its costs to regulate dispensaries. However, the MBT is a voter-approved general tax with revenues generated budgeted in the City's General Fund. The General Fund supports many of the City's operations and programs, including but not limited to: the Fire Department, the Police Department, the Code Enforcement division of the Department of PBCE, parks, libraries, community centers, street and sidewalk repair programs, etc. Any funds paid from the General Fund to cover the cost of allowing and regulating dispensaries in the City would reduce the funds available for critical City operations and programs.

With regard to the amount the City can fine a dispensary or its owners or operators for failing to comply with the Program regulations, the Council recently adopted a Resolution setting fine amounts that range from \$2,500 per violation to \$50,000 per violation – depending on the type of violation and the number of times a particular violation has occurred. The Initiative; however, limits the fine amount for all violations to \$100 per violation, regardless of the type of violation or the number of times a particular violation has occurred.

(2) Consistency with the City of San Jose's General Plan and Specific Plans

There are twelve Major Strategies contained in the Envision San Jose 2040 General Plan (General Plan). Of these twelve, the Initiative is potentially inconsistent with four.

- ❖ Major Strategy #2 – Form Based Plan: This strategy is included in the General Plan to address the form and character, as well as land uses and densities, for the future development of San José, including addressing neighborhood concerns about compatibility of new development, land uses, and the ongoing development of complete, cohesive neighborhoods. However, for three (3) years, the proposed Initiative prohibits any modifications to the provisions of the Initiative that could address neighborhood level

compatibility issues, unless said modifications are approved by a vote of San Jose citizens, State legislation or a State election. As a result, any neighborhood concerns that may arise during the first three years following any adoption of the Initiative would have to wait for an election or State legislation to be addressed. It is likely that by the time an election occurs or State legislation is passed, properties could already be developed with dispensaries, potentially making objections difficult to address by the City.

- ❖ **Major Strategy #4 – Innovation/Regional Employment Center:** This strategy focuses on growing San Jose’s role as a major employment center for the Bay Area. The City Council has repeatedly expressed the concern that should dispensaries open in the North San Jose Development Policy Area, the Edenvale Development Policy Area or the International Business Park Area, desired companies in driving industries would locate elsewhere. This Initiative would allow dispensaries and cultivation sites in all of these areas.
- ❖ **Major Strategy #8 – Fiscally Strong City:** This strategy focuses on establishing a land use planning framework that enables the City to balance revenue needed to cover the costs of delivering high-quality municipal services. However, because this Initiative does not allow the City to establish fees high enough to recover the anticipated costs of regulation associated with implementation of this Initiative, revenue that would otherwise be available for critical City services would be spent on the regulation of dispensaries.
- ❖ **Major Strategy #10 – Life Amidst Abundant Natural Resources:** This strategy focuses on preserving the City’s natural resources including the surrounding hillsides, in addition to establishing and maintaining parks and other recreational amenities. Because the Initiative contains no restrictions as to where cultivation may occur, it is possible that there could be cultivation in the open spaces that are identified for protection as natural resources in the General Plan. In addition, because the Initiative requires at least three playground apparatus in an area for purposes of establishing a minimum distance for a buffer that would limit the potential locations for dispensaries, the City would be unable to prohibit a dispensary from locating next to a park unless the requisite playground equipment were installed.

(3) Impact on the Availability and Location of Housing

This Initiative does not require buffer distances between dispensaries and residential uses. Therefore, a dispensary could locate immediately adjacent to housing.

(4) Impact on Funding for Infrastructure

Should this Initiative pass, as indicated above, the City would not be able to fully recover its regulatory costs. As a result, money in the City’s General Fund, which may have otherwise been used for critical infrastructure and maintenance needs, would instead be spent on regulating dispensaries.

(5) Ability to Attract and Retain Businesses and Employment

One continuing concern of the City Council is the potential land use incompatibility of dispensaries with other types of businesses that are located, or are considering locating, in San Jose. To protect these businesses, the City Council approved Program specifically prohibits dispensaries from locating in the Edenvale Development Policy Area, the International Business Park, and the North San Jose Development Policy Area. This Initiative would undo this part of the Program approved by Council and allow dispensaries in these areas. Allowing dispensaries in these designated areas could deter the very businesses the City is trying to attract from locating or staying in the City.

(6) Impact on Uses of Vacant Parcels of Land

Council approved dispensaries to be located in the following zoning districts:

- ❖ DC (Downtown Primary Commercial);
- ❖ CIC (Combined Industrial/Commercial);
- ❖ IP (Industrial Park);
- ❖ LI (Light Industrial); and
- ❖ HI (Heavy Industrial).

The Zoning Code provisions also potentially allow dispensaries to be located in effectuated Planned Development Zoning Districts where the General Development Standards of each effectuated Zoning District specifically allows uses of at least one of the following zoning districts, as amended: DC, CIC, IP, LI, or HI zoning district.

By contrast, the Initiative proposes allowing dispensaries to be located in the following zoning districts:

- A (Agricultural);
- CP (Commercial Pedestrian);
- CN (Commercial Neighborhood);
- IP (Industrial Park);
- LI (Light Industrial);
- HI (Heavy Industrial); and
- **All** Planned Development zoning districts, including but not limited to A(PD) [Agricultural (Planned Development)] Zoning Districts, regardless of the range of uses otherwise allowed in each specific effectuated Planned Development Zoning District, and regardless of the underlying General Plan land use designations for the areas within each Planned Development Zoning District, **and** regardless of whether or not the Planned Development Zoning District has been effectuated or not, **and** regardless of whether or not a Planned Development Permit has been filed, approved, or denied.

With the expansion of Zoning Districts allowed by the Initiative, any parcel, vacant or occupied, located in one of the listed Zoning Districts is a potential location for a new dispensary. Given the huge quantity and range of land uses located throughout the City, including but not limited to: residential, public/quasi-public, recreational, commercial, and religious assembly uses in the A-Agricultural, (PD) Planned Development, CP-Commercial Pedestrian, CN-Commercial Neighborhood, IP-Industrial Park, LI-Light Industrial, and HI-Heavy Industrial Zoning Districts, the Initiative would extensively expand the areas where dispensaries could locate, and potentially create significant land use conflicts with surrounding development.

(7) Impact on Agricultural Lands, Open Space, Traffic Congestion, Existing Business Districts and Areas Designated for Revitalization

Should this Initiative be approved, Agricultural Lands, Open Space, more Existing Business District areas, and more Areas Designated for Revitalization could become allowable locations. Therefore, additional traffic congestion and negative impacts on surrounding businesses would likely ensue. In addition, agricultural lands and open spaces are becoming scarcer in the City. Because this Initiative would allow these lands to be used for dispensaries, fewer of these lands would be available for recreation or more conventional agricultural uses.

(8) Other Matters

(a) Delivery Services

In addition to the above, this Initiative would allow for delivery-only medical marijuana businesses. By contrast, the City's Program requires all transfers of medical marijuana to occur inside the premises of the dispensary and prohibits persons under the age of twenty-one from being at the dispensary.

(b) Approval/Denial of Applications for Zoning & Registration

Under the City's Program, dispensaries have until October 17th to apply for a Zoning Code Verification Certificate and for registration as a dispensary; and, until July 17, 2015 to obtain a certificate and registration. In addition, the Program provides City staff until July 17, 2015 to review the information submitted by each dispensary in support of each application and provides staff with the time needed to do necessary inspections, investigations, background checks and requests for further information. Under the Initiative, there is no deadline by which dispensaries must apply for or obtain a Zoning Code Verification Certificate or registration. In addition, the Initiative provides the City with only thirty (30) days from the date an application for a Zoning Code Verification Certificate is submitted to issue an approval or denial; otherwise, the application will be deemed approved, whether or not the dispensary is located in an approved Zoning District. Similarly, the Initiative provides the City with only sixty (60) days from the date an application for registration is submitted to issue an approval or denial; otherwise, the application is deemed approved, whether or not any inspection, investigation or criminal backgrounding of individuals has occurred.

(c) Inspections/Investigations

Under the Initiative provisions, prior to the City Manager or the Police Department inspecting dispensaries for compliance, they must provide reasonable notice and request that they be allowed to inspect the premises. In contrast, the City's Program allows for inspection at any time during the dispensary's normal business hours and upon reasonable notice when the dispensary is closed. This approach provides enforcement staff with the element of surprise by allowing staff to drop in on the dispensaries and check for compliance with the City's Program regulations. Under the Initiative, dispensaries would have time to temporarily change their behavior to comply with the Initiative provisions during the agreed upon inspection day and time and return to noncompliance after the inspection.

(d) Restrictions on the Use of City Funds

The Initiative expressly prohibits the City from using City resources to assist in the enforcement of Federal controlled substance laws to the extent that they are inconsistent with California medical cannabis laws unless such assistance is required by Federal or State statute, regulation or court decision. The City's Program has no restrictions on the City's ability to cooperate with a Federal investigation or Federal enforcement activities.

(e) Restrictions on Federal Funding

The Initiative expressly prohibits the City from accepting any Federal funding that would be used to investigate, cite, arrest, prosecute or seize property used on offenses otherwise legal under California medical cannabis laws. The Initiative further prohibits the City from participating in any task force that accepts any Federal funding and investigates, cites, arrests, prosecutes, or seizes property based on offenses otherwise legal under California medical cannabis laws. The City's Program has no restrictions on the City's ability to cooperate with a Federal investigation or Federal enforcement activities.

B. CONCERNS RAISED IN MAYOR'S SEPTEMBER 29, 2014 MEMORANDUM

(1) Zoning And Locations

(a) Would this Initiative allow a medical marijuana dispensary to locate next door to a home?

Yes. There are no distance requirements from residential uses provided in the Initiative.

(b) Under this Initiative, could a dispensary open next door to a day care center? Does this Initiative completely replace the medical marijuana rules that the City Council put in place earlier this year?

There are no distance requirements from day care centers provided in this Initiative. The Initiative would eliminate the provisions regarding day care centers and all other buffers from

sensitive uses that the City Council put in place with the Program it approved on June 17, 2014. For example, the proposed Initiative eliminates the following distance requirements previously approved by the Council following four years of public outreach and staff working with neighborhood communities, committees and the dispensaries:

- 1,000 feet from preschools, elementary schools, and secondary schools;
- 1,000 feet from child day care centers;
- 1,000 feet from community and recreation centers;
- 1,000 feet from libraries;
- 1,000 feet from parks;
- 500 feet from substance abuse rehabilitation centers;
- 500 feet from emergency residential shelters;
- 150 feet from adult daycare centers;
- 150 feet from religious assembly uses;
- 150 feet from residential uses; and
- 50 feet from other dispensaries

(c) Would this Initiative allow onsite consumption of medical marijuana? Would consumption be allowed in the parking lot? Or in the surrounding neighborhood? On an outdoor patio?

There are no restrictions on consumption contained in this Initiative. Therefore the only restrictions on consumption would be those that are set forth in State law, which prohibits consumption as follows:

1. Any place where smoking is prohibited by law
2. In or within 1,000 feet of a school recreation center or youth center;
3. On a school bus;
4. While in a motor vehicle that is being operated; and
5. While operating a boat.

The City's Program not only adopts the State law restrictions, it further prohibits the consumption or use of medical marijuana at any dispensary, in the parking areas of any dispensary, and on the public right of way within three-hundred (300) feet of any dispensary.

(d) Under this Initiative, could a neighborhood business district like Lincoln Avenue in Willow Glen be turned into Little Amsterdam, with dispensaries taking over entire blocks?

Because the Initiative contains no distance requirements between dispensaries, and because the Initiative allows dispensaries in the CN-Commercial Neighborhood and CP-Commercial Pedestrian Zoning Districts, such as Lincoln Avenue, multiple dispensaries could be located within the same block.

(2) Source Of Marijuana

(a) Does this Initiative provide any protection for seriously ill patients about the source of the medical marijuana they are buying?

This Initiative contains no explicit restrictions or regulations as to where the medical marijuana is originating from or what chemicals are used in its cultivation. Under this Initiative, the dispensaries are expected to self-regulate, with no accounting as to compliance with the provisions of the Initiative.

By contrast, the City's Program requires a "closed loop" system in which all medical marijuana must be cultivated at one location that is controlled by the dispensary.

(b) Does this Initiative place any restrictions or create any framework for where cannabis sold at dispensaries can be grown?

This Initiative will allow medical marijuana to be grown in any zoning district in the City where a dispensary can locate. It would also allow the growing of medical marijuana to occur outdoors. Finally, the Initiative does not limit medical marijuana cultivation to Santa Clara County or adjacent counties.

By contrast, the City's Program requires cultivation to occur indoors and limits cultivation to the County of Santa Clara and other contiguous counties so that enforcement staff can still conduct inspections and investigations to ensure compliance with the City's regulations.

(c) Under this Initiative, could a dispensary source its products from illegal grow houses or drug cartels?

Unlike the City's Program, this Initiative contains no requirement that dispensaries document where the medical marijuana originates from. Therefore, the medical marijuana could be supplied by a local or international cartel and unless there is a law enforcement investigation, City regulators or members of the dispensary would not know this information.

(3) Standards For Operators And Staff

(a) Under this Initiative, could a former leader of a narcotics ring who was convicted ten years ago open a dispensary in San Jose but has served their time and isn't on parole or probation?

The Initiative provides that an individual interested in opening a dispensary only provide information regarding criminal convictions that occurred within the last 7 years. In addition, the Initiative requires only "senior managers" to go through a criminal background check and defines "senior managers" as those employees who are in charge of the organization, registration, supervision or oversight of the operation of the dispensary. Therefore, the employee selling medical marijuana at the counter, or the one who is growing the product, could be a

convicted felon still on probation or parole. In contrast, the City Program requires the criminal background check for any person who is an owner or manager or any person who participates in the cultivation, processing, manufacturing, transporting or dispensing of marijuana and requires those individuals to provide a criminal history for the past 10 years.

In addition, the Initiative only disqualifies from the registration process senior managers who:

- Are on parole or probation for the possession, sale, distribution or transportation of a controlled substance; or
- Have been convicted of a felony within the last seven years involving:
 - Use of violence, force, fear, fraud or deception
 - Unlawful possession, sale, distribution or transportation of a controlled substance;or
 - The use of money to engage in criminal activity.

The City Program, by contrast, disqualifies any owner, manager or person involved in the cultivation, processing, manufacturing, transporting or dispensing who is or has been:

- On parole or probation for the possession, sale, manufacture, use, distribution or transportation of a controlled substance;
- Convicted of a crime of moral turpitude;
- Convicted of a misdemeanor or felony within the last 10 years involving
 - The use of violence, force, fear, fraud or deception;
 - The unlawful possession, sale, manufacture, use, distribution or transportation of a controlled substance; and
 - Use of money to engage in criminal activity.

(b) What about someone convicted of gang activities?

If it has been longer than 7 years since that person was convicted of gang activity or if the individual is not considered to be a “senior manager,” under this Initiative, that person can potentially open a dispensary.

(c) What about someone convicted of operating illegal grow houses?

If it has been longer than 7 years since that person was convicted, or if that person is not considered to be a “senior manager,” under this Initiative, that person can potentially open a dispensary.

(4) Applicability Of The Ordinance To Recreational Marijuana Sales

(a) Does this mean that, should the voters of California legalize recreational marijuana, recreational marijuana would be allowed to be sold next door to homes? Within 101 feet of a youth center? Next door to a day care center?

Unless the voters of California choose to approve more stringent distance requirements, then the distance requirements contained in this Initiative will remain.

(b) Does Section 14 mean that if problems develop – for example, with consumption in parking lots – the City Council could only amend the Title 6 operational regulations by going to the voters? Or waiting three years for the time limit to pass?

The City Council could only amend the provisions of the proposed Initiative by going to the voters or by waiting 3 years for the time provided in the Initiative for amendments to be brought forward to expire. Specifically, if passed, the Initiative could only be amended by the following actions:

- City of San Jose voter approval;
- State Legislation;
- State of California voter approval; or
- Three (3) years have passed since the effective date of the Initiative

(5) Compliance with Federal Guidelines and State Laws

(a) Is this Initiative in compliance with the federal guidelines on cannabis cultivation and sales?

On February 14, 2014, the United States Attorney General issued a memorandum containing eight guidelines regarding enforcement where medical marijuana is involved. Those guidelines and an analysis of whether they meet the guidelines follow:

- **Preventing the distribution of marijuana to minors:** This Initiative grants minors access to the dispensary provided that they are accompanied by their parent, documented legal guardian, or physician. The Program adopted by the Council does not allow anyone under the age of 21 on the dispensary premises. Additionally, the Program adopted by Council contains provisions on the packaging and labeling of medical marijuana, including child-proof containers.
- **Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs and cartels:** The Initiative does not contain any record keeping requirements as to how or from where the medical marijuana was obtained or to whom and in what quantities it was dispensed. By contrast, the Program adopted by Council requires every dispensary to maintain complete records regarding the amount of medical marijuana it cultivates, produces, harvests, stores and packages. In

addition, under the City's Program, each dispensary is required to maintain complete records regarding medical marijuana transfers from the dispensary's cultivation site to its dispensing site if they are not one and the same. Further, on the fifteenth day of each month, each dispensary must provide a detailed accounting of expenses to its membership. And, all accounting and record keeping must be submitted to the City's Director of Finance on a quarterly basis.

- **Preventing the diversion of marijuana from States where it is legal under State law in some form to other States (where it is not):** As stated above, the Initiative does not require recordkeeping by a dispensary documenting where the medical marijuana being dispensed was obtained.
- **Preventing State-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or illegal activity:** Unlike the Program approved by Council, the Initiative does not require dispensaries to have annual audits completed by a CPA or quarterly accountings of overhead expenses filed with the City.
- **Preventing violence and the use of firearms in the cultivation and distribution of marijuana:** The Initiative contains provisions specifying when and how firearms may be present on the premises of a dispensary.
- **Preventing drugged driving and exacerbation of other adverse public health consequences associated with marijuana use:** The only requirement in the Initiative pertaining to driving is the posting of a sign stating that it "may impair a person's ability to operate a motor vehicle." The Program approved by Council prohibits onsite consumption at dispensaries and on public property within 300 feet of a dispensary; thereby limiting the possibility of drugged driving from the dispensary.
- **Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands:** Due to the lack of a requirement for recordkeeping in the Initiative concerning where medical marijuana originated, there is no way of knowing whether or not the medical marijuana is grown on public or private lands.
- **Preventing marijuana possession or use on federal property:** California State law prohibits the consumption of medical marijuana in any location that is prohibited by law. The Initiative does not directly address this.

(b) Is this Initiative in compliance with State law?

The Initiative states that, "It shall be the responsibility of the senior managers of the collective to ensure that the collective is at all times operating in a manner compliant with all applicable State and local laws. Nothing in this Chapter shall be construed as authorizing any actions that violate State law with regard to the cultivation, transportation, provision, and sale of cannabis." The

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Initiative also requires members of a dispensary to sign an agreement with the dispensary stating that they will not distribute medical marijuana to nonmembers and that they will not use medical marijuana for other than medicinal purposes.

However, the Initiative does not contain explicit record keeping requirements that would document where a dispensary's medical marijuana was cultivated or how much medical marijuana was dispensed to each member. This lack of record keeping, coupled with the requirement that the City must provide reasonable notice before inspecting a dispensary's premise and records, may make it difficult for the City to determine if State law is being followed (e.g. that medical marijuana is only being dispensed to qualified patients and their primary caregivers and that medical marijuana is being cultivated for the collective only by members of the collective).

COORDINATION

This report was coordinated with the Police Department, the Department of Planning, Building and Code Enforcement, the Finance Department, the Clerk's Office, and the City Attorney's Office.

/s/

ANGELIQUE GAETA

Assistant to the City Manager