



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Mayor Reed

SUBJECT: MEDICAL MARIJUANA
BALLOT INITIATIVE

DATE: September 29, 2014

Approved

Chuck Reed

Date

9/29/14

RECOMMENDATION

- A) Waive the 10-day noticing requirement and approve the placement of Item 3.3 on the agenda; and
- B) Accept the Certificate of Sufficiency issued by the County Registrar of Voters; and
- C) Order a report on the effects of the proposed ordinance consistent with California Elections Code Section 9212 to be presented to the Council no later than October 30, 2014.

BACKGROUND

A marijuana-industry sponsored initiative appears to have gathered sufficient signatures to move forward in the initiative process. State election law limits the City Council's options today. We can:

- 1) Adopt the marijuana-industry's initiative exactly as written; or
- 2) Place the initiative on the ballot, either at a Special Election or the next General Election;
or
- 3) Order a report on the effects of the ordinance to be presented in 30 days.

The City of San José has worked hard to develop a strong and effective regulatory and enforcement system for medicinal marijuana that protects children and neighborhoods, addresses threats to public safety, health and other law enforcement interests through robust controls and procedures that are effective in practice. We adopted a comprehensive regulatory system earlier this year and are in the process of implementing it. To date, six collectives have received Zoning Verification, and others are in process.

A small group of marijuana-industry advocates has attempted to thwart our efforts to protect children and neighborhoods. A few years ago, they forced us to repeal medical marijuana

regulations, to the detriment of many of our neighborhoods. More recently, they attempted a referendum to overturn our new regulations. Now, they are pushing an initiative that would remove many of the patient protections in San José's rules and make it easier for youth to access marijuana. It would allow marijuana sales in neighborhood business districts and urban villages, even next-door to homes and day-care centers. This initiative eliminates all guidelines for how marijuana is grown or obtained by the collectives, allowing for a product produced by drug cartels, in illegal grow houses, or manufactured with harmful chemicals.

CONCLUSION

I have grave concerns about this initiative. The proponents told those signing that it would protect children and neighborhoods, but as with any legislation, the devil is in the details.

State law only allows us to take one of two actions. We can either enact this measure EXACTLY as written OR we can place it on the ballot in a general election. However, we don't have to make that decision today. We can and should ask staff for a detailed report on the effects of the proposed ordinance on our city, its neighborhoods, and our residents.

It's clear this initiative will have a significant impact on the City of San José. It is imperative that we fully assess those impacts before deciding how to move forward.

A few questions that I have for inclusion in the report:

Zoning and Locations

- 1) Would this initiative allow a medical marijuana dispensary to locate next door to a home?
- 2) Under this initiative, could a dispensary open next door to day care center? Does this initiative completely replace the medical marijuana rules that the City Council put in place earlier this year?
- 3) 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?
- 4) 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?

Source of Marijuana

- 1) Does this initiative provide any protection for seriously ill patients about the source of the medical marijuana they are buying?
- 2) Does this initiative place any restrictions or create any framework for where the cannabis sold at dispensaries can be grown?
- 3) Under this initiative, could a dispensary source its products from illegal growhouses or drug cartels?

Standards for Operators and Staff

On page 17, Section 6.88.450 of the initiative lays out requirements for Senior Managers and members who participate in cultivation or distribution of medical cannabis.

- 1) Under this initiative, could a former leader of a narcotics ring who was convicted ten years ago open a dispensary in San José but has served their time and isn't on parole or probation?
- 2) What about someone convicted of gang activities?
- 3) What about someone convicted of operating illegal grow houses?

Applicability of the Ordinance to Recreational Marijuana Sales

Initiative Section 14 reads as follows:

“Initiative Not to be Amended Other Than by Voters. This initiative and every part thereof can only be amended by the voters of the San José and cannot be amended by the City of San José City Council except as specifically provided above, or until the Legislature or the Voters of the State of California pass statewide legislation controlling and regulating cannabis cultivation for medical or other use, at which time the City Council shall have only the power to conform this initiative to those new laws so as to provide registered collectives with the maximum recognition, protection, and approval available to city-licensed collectives under those new laws, or until three years from the effective date of this initiative ordinance at which time the City Council shall have all power to amend.”

- 1) 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?
- 2) 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?

Compliance with Federal Guidelines and State Law

- 1) Is this initiative in compliance with the federal guidelines on cannabis cultivation and sales?
- 2) Is this initiative in compliance with state law?