



Distributed on:
MAR 7 2014
City Manager's Office

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Angelique Gaeta

SUBJECT: MEDICAL MARIJUANA -
UPDATE ON IMPLEMENTATION
OF COUNCIL DIRECTION

DATE: March 5, 2014

Approved

Date

3/6/14

INFORMATION

The purpose of this memorandum is to update the City Council on implementation of the Council's direction of December 10, 2013, regarding medical marijuana establishments operating in San José.

Background

The San José Municipal Code does not allow medical marijuana uses anywhere in the City. Therefore, all medical marijuana establishments operating in San José including, but not limited to, collectives, cooperatives, dispensaries, and delivery service businesses (hereafter, "Collective(s)") are operating illegally.

However, due to the City's limited resources for enforcement, for the past two years, the Police Department, the Department of Planning, Building and Code Enforcement, the Finance Department, the City Attorney's Office and the City Manager's Office (collectively, "the Administration") have focused their enforcement efforts on those Collectives creating a public nuisance, failing to pay the City's Marijuana Business Tax (MBT)¹ and failing to comply with State law distance requirements.

¹ Regardless of their legal status, all Collectives operating in San José are required to pay the City's MBT, currently 10% of gross receipts, pursuant to Chapter 4.66 of the San José Municipal Code. Payment of these taxes in no way legalizes business activities that are otherwise unlawful in the City.

December 10, 2013 Council Direction

On December 10, 2013, in response to increasing concerns from the community regarding the operation of Collectives in San José, the Council directed the Administration to:

- (a) ***Expand its enforcement*** efforts to include those Collectives located within:
- (1) 1,000 feet of public and private schools, child daycare centers, churches with child daycare centers, community/recreation centers, parks, libraries and other Collectives;
 - (2) 500 feet of substance abuse rehabilitation centers; and
 - (3) 150 feet of residential uses (*with immediate attention focused on those Collectives that share a "zero lot line" with residential uses*).

The Council further directed the Administration to return to the Council within ninety (90) days with a robust medical marijuana regulatory program that allows Collectives to operate in the City and takes into consideration and addresses a number of issues identified by the community, as more fully outlined in the Administration's memorandum, dated January 16, 2014 and found at <http://www.sanjoseca.gov/DocumentCenter/View/25937>.

Enforcement:

Since the December 10th Council direction, staff from the Code Enforcement Division of the Department of Planning, Building and Code Enforcement identified 28 Collectives which shared a zero lot line with residential uses. In order to manage the work required by the Code Enforcement Division, the City Attorney's Office, and the Police Department to enforce against these particular locations, Code Enforcement staff issued Compliance Orders to only about half (or 12) of the Collectives located immediately adjacent to residential uses. The 12 Collectives that were chosen to receive Compliance Orders were selected based on the fact that they were side-by-side with residential uses, facing the same direction as the residential use. The remaining 16 Collectives are back-to-back with residential uses, facing the opposite direction. The Compliance Order sent to each of the 12 Collectives required them to, within thirty (30) days of the Compliance Order, shut down their operations. Attachment "A" is an example of a Compliance Order sent to one of the 12 Collectives. In instances where the Collective and the respective property owner are one and the same, the Compliance Order is also sent to the owner of the property.

All but two (2) of the above 12 Collectives challenged the Compliance Order and requested an administrative hearing with the City. Those Collectives that challenged the Compliance Order have since proceeded through the administrative hearing process. If the hearing officer upholds the Compliance Order, affirming that the Collective must shut down its operations, the Collective can seek appeal and have the matter heard by the San José Appeals Hearing Board. The San José Appeals Hearing Board will then conduct a new hearing and exercise original jurisdiction over the matter. If the Collective does not agree with the decision of the San José

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Appeals Hearing Board, the Collective can file an appeal in State Superior Court. For reference, Attachment “B” is a table that identifies the name, address and current status in the administrative process for each of the 12 Collectives served with a Compliance Order.

As Collectives work their way through the administration process, Code Enforcement staff will review the location of the remaining Collectives and if staff confirms that they continue to be located immediately adjacent to residential uses, those Collectives will receive Compliance Orders requiring them to shut down their operations as well. Similarly, as those Collectives work their way through the administrative process, the Administration will send Compliance Orders to Collectives that exist in the remaining areas which fall within the priority criteria set by Council. Because these establishments frequently change locations, Code Enforcement staff will also make continued efforts to identify any new Collective that might meet Council’s criteria for enforcement.

Local Initiative Measure:

On January 13, 2014, Dave Hodges, founder of the San José Cannabis Buyers Collective and A2C2-All American Cannabis Club, filed a Notice of Intent to Circulate Petition with the City Clerk for an initiative measure entitled “Medical Marijuana Regulation of San José Act of 2014” (hereafter, “Measure”).

Mr. Hodges and his supporters have until July 28, 2014, to circulate the petition for signatures in support of the Measure. On or before August 27, 2014, the Registrar of Voters (City Clerk) must count and verify signatures. If enough valid signatures are gathered, the Council has the option of either adopting the Measure or sending the Measure to the voters of San José for approval.

Although the City Charter prohibits the Council from submitting an alternative ballot measure to the voters at the same time, the City Charter does not preclude the Council, through its legislative powers, from enacting its own medical marijuana ordinances at any time during the initiative measure process.

For convenience, Attachment “C” to this memorandum is a side-by-side comparison of some of the provisions of the Measure versus those that will be contained in the Council directed medical marijuana ordinances. The categories selected for comparison are those which have been identified by both the Collectives and the community as areas of concern.

Timeline:

As indicated, on December 10, 2013, the Council directed the Administration to return within 90 days with a robust medical marijuana regulatory program for its consideration. Although the Administration was committed to return to the Council in March, the Council also directed the Administration to explore an allowance for the Collectives to engage in off-site cultivation of

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medical marijuana. In order to return with a regulatory program that allows for off-site cultivation, the Administration is first required to conduct environmental clearance review and bring the land use component of what will be the proposed medical marijuana regulatory program before the Planning Commission for public hearing and the Planning Commission's recommendations. In light of this additional required level of review, the Administration anticipates a Planning Commission hearing in April 2014. In turn, the complete proposed medical marijuana program, which will include both the land use component and the regulatory component, would come back to the Council for consideration in May 2014. In the interim, the Administration will continue its enforcement efforts as directed by the Council on December 10, 2013.

/s/

ANGELIQUE GAETA

ASSISTANT TO CITY MANAGER

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

Attachments

CITY OF SAN JOSE – COMPLIANCE ORDER

Department of Planning, Building and Code Enforcement
200 E. Santa Clara Street, San Jose, CA 95113

Case No: 201311295
Permit No: N/A
Violation Address: 1530 ALUM ROCK AV
Inspection Date: October 3, 2013
Compliance Date: January 31, 2014

Owner: WEAVER LAND CORPORATION
Mailing Address: 1530 ALUM ROCK AVE
SAN JOSE CA 95116-2432
Occupant: I & I COLLECTIVE
1530 ALUM ROCK AVE

AN INSPECTION OF THE PROPERTY FOR WHICH YOU ARE RESPONSIBLE HAS IDENTIFIED THE FOLLOWING VIOLATIONS OF THE SAN JOSE MUNICIPAL CODE:



COPY

Compliance
Confirmed

Code Section	Violations and Corrections Required	Compliance Confirmed
1.13.040	<p>Public nuisance prohibited.</p> <p>No person may maintain or use property or allow their property to be maintained or used in a manner that creates or fosters the creation of a public nuisance.</p>	
1.13.050A3	<p>Public nuisance defined.</p> <p>A. For purposes of this chapter, a public nuisance is:</p> <p>3. . The maintenance or use of property in the city in a manner that violates, or real property that has been the situs of a violation of, any provision of this code or any other city, state or federal law or regulation;</p> <p>The use of this property as a Medical Marijuana Collective violates San Jose Municipal Code Title 20 and is therefore a Public Nuisance.</p>	
20.10.030	<p>Compliance required</p> <p>No person shall use, allow or suffer the use of any land, building or structure except in strict compliance with the provisions of this Title 20 (of the San Jose Municipal Code), including the development and performance standards herein, and any Permit issued pursuant hereto. The temporary or transitory nature of a use does not exempt it from this requirement.</p>	
20.40.010 B	<p>Commercial Zoning Districts</p> <p>No building, structure, or land shall be used, and no building or structure shall be erected, enlarged, or structurally altered, in the CO, CP, CN and CG Commercial Districts except as set forth in this Chapter (20.40 of the San Jose Municipal Code).</p>	
20.40.100F	<p>Allowed uses and permit requirements.</p> <p>F. Land uses not Permitted are indicated by a "-" on <u>Table 20-90</u>. Land uses not listed on <u>Table 20-90</u> are not permitted.</p> <p>The use of this property as a Medical Marijuana Collective is not permitted in a commercial zone and is in violation of Title 20 of the San Jose Municipal Code.</p>	

WARNING

FAILURE TO CORRECT ALL VIOLATIONS LISTED IN THIS ORDER, BEFORE THE COMPLIANCE DATE ABOVE, MAY RESULT IN ADMINISTRATIVE PENALTIES UP TO \$2,500 PER DAY FOR EACH VIOLATION UNTIL COMPLIANCE IS ACHIEVED AS WELL AS THE ASSESSMENT OF ALL ADMINISTRATIVE COSTS. THIS ACTION IS IN ADDITION TO ALL OTHER LEGAL REMEDIES, CRIMINAL OR CIVIL, WHICH MAY BE PURSUED BY THE CITY IN RESPONSE TO ANY VIOLATION.

CITY OF SAN JOSE – COMPLIANCE ORDER

Department of Planning, Building and Code Enforcement
200 E. Santa Clara Street, San Jose, CA 95113

CORRECTIONS REQUIRED



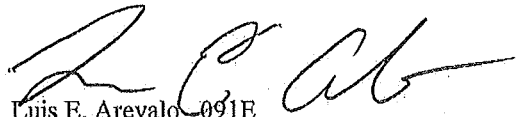
1. **On or before January 31, 2014**, "I & I Collective" must cease their operation at 1530 Alum Rock Ave San Jose CA 95116.

- See the enclosed Building and Planning "Permit Center Service Delivery" document for additional Development/Permit Center Information.
- Additional property and permit information may be found on the City's website at www.sjpermits.org/permits/ or by calling our information hotline at (408) 535-3555.

NOTE: PERMITS FROM THE BUILDING DIVISION ARE REQUIRED FOR STRUCTURAL, PLUMBING, MECHANICAL AND ELECTRICAL WORK. WORK DONE WITHOUT THE REQUIRED PERMITS IS A MISDEMEANOR AND WILL NOT QUALIFY AS COMPLIANCE.

If compliance has not been achieved by the date as reflected in this compliance order, the City of San Jose will assess a re-inspection fee of \$183.40 for each re-inspection.

December 17, 2013
Date of Notice


Luis E. Arevalo 091E
Code Enforcement Inspector

(408) 535-7814
Phone #

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CITY OF SAN JOSE – COMPLIANCE ORDER

Department of Planning, Building and Code Enforcement
200 E. Santa Clara Street, San Jose, CA 95113



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The Department of Planning, Building and Code Enforcement (Code Enforcement) has issued a Compliance Order (Compliance Order) alleging that the subject property is in violation with the San Jose Municipal Code. Failure to correct all violations listed in the order, before the compliance date may result in administrative penalties up to \$2,500 per day for each violation until compliance is achieved as well as the assessment of all administrative costs. This action is in addition to all other legal remedies, criminal or civil, which may be pursued by the city in response to any violation.

If you believe that your property is not in violation with the San Jose Municipal Code and you dispute the basis for Compliance Order, you MUST file a request for a Director's hearing within fourteen (14) calendar days of the date of the Compliance Order was mailed or personally delivered to the responsible person(s).

Your request for hearing must be mailed or personally delivered to:

City of San Jose
Code Enforcement Division
200 East Santa Clara Street 3rd flr.
San Jose Ca, 95113-1905

Your request for an appeal must be received by the City within the timeline above. If you do not file a request for hearing, the Compliance Order will become final. If a timely appeal is filed, then a hearing will be scheduled. You will receive at least seven (7) days notice that a hearing on your appeal will take place.

The Director's hearing is informal and provides you with an opportunity to present your evidence and testimony in dispute of the Compliance Order. After the close of the hearing, the Director will make a decision. The written decision will be mailed within 5 business days of the hearing. If you dispute the Director's decision, you may appeal to the San Jose Appeals Hearing Board. That Board is described at:

<http://www.sanjoseca.gov/clerk/CommissionBoard/AppealsHear.asp>

Your rights when a Compliance Order is issued are contained in the San Jose Municipal Code Section 1.14.030 and the following sections. It is available on line at www.sanjoseca.gov by clicking on the link at the right of the page, "Municipal Code."

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**MEDICAL MARIJUANA MARCH 2014 INFORMATION MEMO
ATTACHMENT "B"**

COLLECTIVE	ADDRESS	CURRENT STATUS
1) Cookies	3000 S. Bascom Ave	Relocated to 972 Rincon Cir
2) Peace of Mind	471 Willow St	Closed
3) SV Care	2591 S. Bascom Ave	Scheduled For March 27 th Appeals Hearing Board
4) La Vie MMX	945 S. Bascom Ave	Scheduled For March 27 th Appeals Hearing Board
5) I and I Collective	1530 Alum Rock Ave	Scheduled For March 27 th Appeals Hearing Board
6) YB Saratoga	4211 Barrymore Dr	Scheduled For March 27 th Appeals Hearing Board
7) Amsterdam's Garden	2142 The Alameda	Awaiting Decision From Hearing Officer
8) All American Cannabis Club	1082 Stockton Ave	Hearing Officer Upheld Compliance Order
9) Golden State Care Collective	1249 N. 1st St	Hearing Officer Upheld Compliance Order
10) SLM Collective	2417 Stevens Creek Blvd	Awaiting Decision From Hearing Officer

**MEDICAL MARIJUANA MARCH 2014 INFORMATION MEMO
ATTACHMENT "B"**

COLLECTIVE	ADDRESS	CURRENT STATUS
11) San Jose Health Center/iMeds	396 S. Bascom Ave	To Be Scheduled For Appeals Hearing Board
12) Sanative Solutions	581 E. Taylor St	Awaiting Decision From Hearing Officer

**MEDICAL MARIJUANA MARCH 2014 INFORMATION MEMO
ATTACHMENT "C"**

<u>ISSUE</u>	<u>INITIATIVE MEASURE</u>	<u>COUNCIL DIRECTION</u>
Number Of Dispensaries Allowed	Minimum Of 50.	No Maximum. Number Will Be Dictated By Proper Zones And Minimum Buffers Required Between Collectives And Sensitive Uses. (See " Requirements For Minimum Distance From Sensitive Uses " Below)
Type Of Establishments Allowed	Storefronts, Cultivation Facilities, Processing Facilities, Edible Production Facilities, Laboratory Facilities And On-Site Consumption Facilities.	Location Where Qualified Patients And Designated Primary Caregivers Can Associate And Collectively Cultivate Medical Marijuana, In Strict Accordance With California Health & Safety Code Sections 11362.5, <i>Et. Seq.</i>
Status Of Current Collectives	All Existing Collectives Would Be Allowed To Continue Operating.	Collectives Wishing To Operate Need To Go Through A Registration Process Where Owners, Managers And Establishments Are Backgrounded And Site Compliance Checks Are Performed.

**MEDICAL MARIJUANA MARCH 2014 INFORMATION MEMO
ATTACHMENT "C"**

<u>ISSUE</u>	<u>INITIATIVE MEASURE</u>	<u>COUNCIL DIRECTION</u>
Regulating Body/Agency	Requires Creation Of An 11-Member San Jose Cannabis Commission ("Commission"). 6 Members To Be Owners Of Medical Marijuana Dispensaries. The Commission Would Set Registration Fees, Recommend To The City Operational And Safety Guidelines For Dispensaries, And Monitor The Dispensaries' Compliance. An Executive Director, Reporting To The Commission Would Be Responsible For Executing Other Duties As Specified By Law Or The Commission.	City Manager's Office In Conjunction With The Police Department, The Department Of Planning, Building And Code Enforcement, And The Finance Department. Staff Would Report To The Council On The Program And Make Adjustments To The Program As Directed By Council.
Location	Allowed In Current Location Until Conformance With Siting Requirements Is Confirmed By The Executive Director Of The "Commission".	Allowed To Locate In Zones Identified By Council. (See " Zoning " Below)

**MEDICAL MARIJUANA MARCH 2014 INFORMATION MEMO
ATTACHMENT "C"**

<u>ISSUE</u>	<u>INITIATIVE MEASURE</u>	<u>COUNCIL DIRECTION</u>
Zoning	Permitted, By Right, In <u>All</u> Zones Except Residential.	Limited To The Following Zones: <ul style="list-style-type: none"> • CG-Commercial General; • DPC-Downtown Primary Commercial; • LI-Light Industrial; • CIC-Combined Industrial Commercial; And Possibly • IP-Industrial Park.
Hours Of Operation	7:00 A.M. To 10:00 P.M.	9:00 A.M. To 9:00 P.M.

**MEDICAL MARIJUANA MARCH 2014 INFORMATION MEMO
ATTACHMENT "C"**

<u>ISSUE</u>	<u>INITIATIVE MEASURE</u>	<u>COUNCIL DIRECTION</u>
Requirements For Minimum Distance From Sensitive Uses	Collectives Could Not Be Located Within 1,000 Feet From A Parcel On Which A Public Or Private School Exists Or On Which A Church That Includes A School Exists.	Collectives Could Not Be Located Within: <ul style="list-style-type: none"> • 1,000 Feet Of Public And Private Schools, Child Daycare Centers, Houses Of Worship With Child Daycare Centers, Community/Recreation Centers, Parks, Libraries And Other Establishments; • 500 Feet Of Substance Abuse Rehabilitation Centers; And • 150 Feet Of Residential Uses.
If Located In The Proper Zone	Executive Director Would Issue A Zoning Code Verification Certificate Confirming The Location Of A Collective Is In Compliance With Title 20.	Director Of PBCE Would Issue A Zoning Code Verification Certificate Confirming The Location Of A Collective Is In Compliance With Title 20.
Transferability Of Zoning Code Verification Certificate	Transferrable, Without Limitation, To Another Collective Planning To Operate At The Same Site.	Not Transferrable. Certificate Is Specific To The Collective, Its Owners And Its Operators.

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ATTACHMENT "C"**

<u>ISSUE</u>	<u>INITIATIVE MEASURE</u>	<u>COUNCIL DIRECTION</u>
Security Requirements	Not Addressed.	Requires Cameras, Lighting, Alarm System, Fire Proof Safe For Records, Secure Storage, And Proper Screening From Public View.
On-Site Representative	Not Addressed.	One Person Designated To Be On-Site And Respond To Public Safety Complaints During Hours Of Operation.
Registration With City	The Specifics Of The Registration Process Are Not Addressed.	Registration Process Which Includes: <ul style="list-style-type: none"> • Criminal Background Checks Of Owners And Operators And Copy Of Physician's Recommendation • Prior History With Dispensaries • Operations Plan • Site Floor Plan • Account Information For Dispensary's Accounts • Authorization For Release Of Information; And • Consent For Audits.

**MEDICAL MARIJUANA MARCH 2014 INFORMATION MEMO
ATTACHMENT "C"**

<u>ISSUE</u>	<u>INITIATIVE MEASURE</u>	<u>COUNCIL DIRECTION</u>
Restrictions On Possession Of Firearms	Not Addressed.	Must Have License From State Or Local Agency Authorizing The Person To Be In Possession Of A Firearm.
On-Site Consumption	Allowed. "On-Site Consumption Facilities" Are One Of The Enumerated Types Of Establishments Covered By The Initiative Measure.	Not Allowed.
Accounting Requirements	Not Addressed.	Collective Must Provide An Accounting To Its Membership.
Auditing By City	Not Addressed.	Annual And Certified By Public Accountant.
Age Limitation	Not Addressed.	No One Under 18 On Premises Or Member Of Collective.
Alcohol Restrictions	Not Addressed.	No Alcoholic Beverages On-Site.
Point Of Contact For Neighborhood Complaints And Concerns	Not Addressed.	24-Hour Number For Receiving Complaints To Be Logged And Responded To By Manager.

**MEDICAL MARIJUANA MARCH 2014 INFORMATION MEMO
ATTACHMENT "C"**

<u>ISSUE</u>	<u>INITIATIVE MEASURE</u>	<u>COUNCIL DIRECTION</u>
Paraphernalia Restrictions	Not Addressed.	No Paraphernalia On-Site.
Loitering Restrictions	Not Addressed.	Prohibited.
Limitations On Owners/Managers/Growers	Not Addressed.	Cannot Have Criminal History.
Other Limitations On Location	Not Addressed.	Cannot Be The Site Of Prior Public Nuisance Activity Related To Marijuana.
Limitations On Dispensing Of Marijuana	Not Addressed.	Limited To Once Per Day Per Member.
Packing Requirements	Not Addressed.	Childproof Containers Clearly Labeled With Name Of Patient, Collective, Amount In Container, Name Of Attending Physician, Date, Chemicals Or Substances Used In Processing, Health And Safety Warnings.
Building Requirements	Not Addressed.	Building Code, Fire Code, Proper Venting, Air Scrubbers.
Auditing	Not Addressed.	Record Maintenance Annually.