



Memorandum

TO: Mayor and City Council

FROM: Councilmember Pierluigi Oliverio
Councilmember Donald Rocha
Councilmember Ash Kalra

SUBJECT: Item 3.8

DATE: April 15, 2011

Approved

Ash Kalra by D.O.
Pierluigi Oliverio Don Rocha
by DF.

Date

4/15/11

In light of the modest progress made on this issue at last week's Council meeting, it is clear that we need to significantly advance the process of developing and implementing a medicinal marijuana policy that ensures public safety, addresses the abundance of collectives currently operating within the City of San Jose, and provides safe access to those in legitimate medical need. Accordingly, we are recommending that the Mayor and Council take the following action with respect to the recommendations set forth in staff's memoranda dated April 1 and April 6, 2011 (this memorandum incorporates some but not all of the recommendations set forth in the April 8, 2011 memorandum submitted by Councilmembers Oliverio and Rocha):

A) With respect to staff's recommended registration process:

- 1) Instead of a lottery system or a traditional RFP process, create an application ranking process using objective criteria and previously-adopted Council direction so that staff can determine which applicants are most capable of operating safe, appropriate collectives
- 2) Establish a 30 day submittal period to accept applications for the operation and establishment of a Medicinal Marijuana Collective. After such date, no additional applications will be accepted and a moratorium on Medicinal Marijuana Collectives will be established pending future Council action. Staff will also return to Council within 120 days with a report on the following:
 - a. Number of collectives that have submitted applications and have met all requirements
 - b. Policy language to allow City Council to establish a maximum number of collectives and to address potential over-concentration
 - c. A map showing locations of eligible applications in order to identify the aforementioned potential areas of over-concentration
 - d. Any new legal opinions or regulations from the Santa Clara County District Attorney and/or the California Attorney General
- 3) Any collectives that have not filed an application as of July 1, 2011 should be closed

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- 4) Any applicant, collective principal, or owner with a felony conviction shall be ineligible to run a collective. Any collective member growing medical marijuana offsite for the collective must also pass a background check.
- B) With respect to staff's operational and cultivation recommendations:
- 1) Defer action on any requirement for on-site cultivation
 - 2) With respect to the issues of "sales," "employees," and "marijuana products" (such as baked goods, lotions, and ointments), we recommend adopting the revised opinions set forth in the City Attorney's memorandum dated April 15, 2011.
 - 4) For collectives with on-site cultivation 24 hour security shall be required
 - 5) Prohibit on-site consumption of any medicinal marijuana products
- C) With respect to the recommendation to amend Schedule of Fees and Charges Resolution as set forth in Item E of the April 6th memo:
- 1) Allow staff to amend its recommended fee as necessary to cover any additional processing costs that result from the application ranking process described above.

In addition, with respect to the CEQA and EIR issues discussed at last week's Council meeting, we recommend that staff be directed to conduct a general EIR/CEQA evaluation, that staff recommend a maximum number of collectives that allows for the possibility of increasing the maximum number of collectives without requiring any additional CEQA analysis on the part of the applicant or the City. Staff's evaluation and recommendation should be prepared in advance of forwarding staff's recommendations to the Planning Commission. Once Council has this important information, Council can then determine the appropriate maximum number of collectives.

Furthermore, while we believe that adoption of this memorandum in its entirety represents a cautious yet realistic and reasoned approach to the medicinal marijuana issue, if a consensus cannot be had on a whole, we recommend voting individually on the items set forth in this memo so that the Council can move past the less contentious issues and focus on resolving any remaining issues.