

Barbara B. Killey
Attorney At Law
7 M'Iss Lane
San Rafael, CA 94901
415-254-8234/killeyb@yahoo.com

Mayor Chuck Reed
San Jose City Council Members
San Jose City Hall
200 East Santa Clara Street
San Jose, CA 95113

Re: Perils of a do-nothing approach regarding medical cannabis dispensary permits
and a code enforcement approach to controlling those that open

Dear Mayor Reed and City Council Members:

I am writing because, as the administrator of Oakland's medical cannabis dispensary permit program from 2004 through 2009, I am concerned that San Jose will be making a serious and costly mistake if you decide to do nothing until after the November elections regarding the issue of medical cannabis dispensaries. To prevent a potential explosion of additional unpermitted dispensaries in San Jose, I strongly advocate a regulatory ordinance be adopted as soon as possible and that an emergency moratorium be established in the meantime.

Oakland's Medical Cannabis Dispensary Permit Ordinance was adopted in 2004 in response to the problems created by a proliferation of unpermitted dispensaries that opened prior to the ordinance. These problems included:

- Blatantly open re-sales on the streets surrounding the dispensaries
- Armed robberies of both the dispensaries and exiting buyers
- Reduction in customers for businesses in the vicinity of the dispensaries

Adoption of the Medical Cannabis Dispensary Permit Ordinance eliminated all of these problems. Oakland's permitted dispensaries are now considered to be some of the safest areas of Oakland. Other businesses actually appreciate their presence, due to the high levels of security required of permittees. Additionally, the dispensaries have provided two revenue streams to the City:

1. Annual permit fees of \$30,000 per dispensary, a total of \$120,000 from the four dispensaries allowed by the ordinance
2. A business tax percentage that is 15 times higher than that of other retail businesses and that is estimated will generate over half a million dollars annually

I understand that over 40 medical cannabis dispensaries have opened in San Jose since last summer. Without either a moratorium or a regulatory ordinance that number could easily double. Oakland maintains a list of people who have expressed interest in opening a dispensary if permits become available – there are more than 100 names on the list. As the word spreads

that cannabis dispensaries are opening in San Jose, many of those parties may tire of waiting for permits in Oakland and pitch their tents in San Jose. I understand that some of San Jose's dispensaries relocated after being closed by Los Angeles, and that migration is likely to continue as well.

In his memo dated March 16, 2010, the City Attorney acknowledges that the Code Enforcement approach to closure of the unpermitted dispensaries will "create a demand on Code Enforcement." He also acknowledges the limited success that is achieved by such action, stating:

To date, Code Enforcement has received and investigated complaints of seven (7) medical marijuana dispensaries operating in violation of land use regulations. The property owners and businesses were issued compliance orders requiring that the dispensing of medical marijuana cease by the end of February 2010. **One of the businesses ceased operations due to a temporary injunction obtained by the property owner, although that business has simply moved to a different location in San Jose.** (emphasis added)

The City Attorney then outlines plans to bring the non-compliant dispensaries before the San Jose Appeals Hearing Board. Failure to close would result in administrative fines. He notes that 17 additional businesses that may be operating as medical cannabis dispensaries have been notified of possible land use violations.

A code enforcement process for eliminating and preventing medical cannabis dispensaries has several flaws:

1. Considering the budget crisis faced by California cities, including San Jose, and the resulting staffing constraints, committing the personnel that would be required to close the currently known dispensaries is a waste of precious resources. If conducted in a timely fashion, closing just the 24 dispensaries known to the City could create a crushing workload of confirmation activities, hearing preparation and follow-up enforcement.
2. Oakland's experience with closure attempts by Code Enforcement mirrors San Jose's. The dispensaries either didn't respond or they closed and moved to a new location in Oakland. Injunctions and criminal prosecution by the Oakland Police Department for violation of the ordinance were much more efficient and effective in closing dispensaries and preventing new ones from opening.
3. Unless the administrative fines are crippling, the dispensaries may continue doing business, deciding that the fines are the price of operating a cannabis dispensary.
4. The slowness and ineffectiveness of the Code Enforcement process, combined with the potential for money to be made by dispensaries during the process, will encourage the growth of additional dispensaries, even as the City is working on closing currently known ones.
5. It will be difficult for the City to know where all the unpermitted dispensaries are located. The City Attorney's letter indicates the City is aware of 24 possible medical cannabis dispensaries, while people in the medical cannabis

movement believe there are more than 40. If a permit ordinance is enacted, permitted dispensaries will become a vocal, reliable source of information regarding any dispensaries that attempt to operate illegally.

The real solution is a regulatory ordinance. Mayor Reed's memo dated March 25, 2010 states that "Regulation, control and taxation of medical marijuana will be reconsidered if the 'Regulate, Control and Tax Cannabis Act of 2010' is approved by the voters in November. Mayor Reed misunderstands the proposed Act. It will not affect the medical cannabis laws at all. Rather, it will allow for adult use of cannabis by anyone, not just those with a medical condition that can be helped by the use of cannabis. If the Act passes, the experience gained by the City and the structure created by having a regulatory scheme in place for medical cannabis would greatly facilitate the regulation and control of sales to adults in general.

Staff resources and cost should not be deterrents to the adoption of a regulatory ordinance. Existing ordinances provide templates upon which San Jose could build, reducing the cost of drafting. If staff resources are not available, an outside consultant could be used to draft the ordinance and staff report. Whether City staff or consultants are used, the costs incurred could be recouped through the application fees paid by permit applicants. A consultant may agree to postpone his billing until application fees are in the City's coffers.

However, if there are other reasons for delaying a regulatory ordinance, the City should at least establish a moratorium to prevent the proliferation of additional dispensaries prior to the adoption of the ordinance.

I am unable to attend the March 30 Council meeting at which this issue will be discussed. However, I would like to help San Jose avoid the pitfalls Oakland experienced, and I would be happy to discuss that experience, the competitive application process I developed, changes I would recommend if Oakland's ordinance is used as a template for San Jose, or any other questions the City may have regarding this issue. I am available by phone or email or could meet in person if that would be helpful.

Sincerely,

Barbara B. Killey

Barbara B. Killey