



SENT TO COUNCIL:

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City Manager's Office

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Scott P. Johnson
Joseph Horwedel

SUBJECT: SEE BELOW

DATE: February 11, 2011

Approved

Date

2/14/11

INFORMATION

SUBJECT: MARIJUANA BUSINESS TAX OUTREACH PLAN AND IMPLEMENTATION AND STATUS OF REGULATIONS AND ENFORCEMENT ACTIVITIES

The purpose of this informational memorandum is to provide the outreach and implementation plan to be undertaken by the City to assure that marijuana businesses in the City are aware of, and understand, the Marijuana Business Tax ("MBT") to be imposed on these businesses. Effective March 1, 2011, any person engaged in marijuana business in the City shall pay a MBT of 7% of gross receipts to the City. The first tax remittance is due April 30, 2011 for gross receipts for the prior calendar month. Details of the MBT are included in the attached brochure, as well as in San José Municipal Code Chapter 4.66. Additionally, this memo provides a brief summary of the City's current position on Medical Marijuana regulations and enforcement, in light of past City Council action.

Outreach

HempCon 2011 Medical Marijuana Convention

The Finance Department ("Finance") participated in the HempCon 2011 Medical Marijuana Convention held in the Convention Center's South Hall on January 28 through January 30, 2011. Finance had a booth (provided complimentary by HempCon) where staff handed out brochures explaining the MBT and answered any related questions. Staff proactively visited all marijuana businesses in attendance to assure they received the MBT brochures.

HempCon is a medical marijuana show catering to those who may benefit from the medical use of marijuana and industry participants. The event included a number of exhibits including medical marijuana dispensaries, collectives, caregivers, products, evaluation services, legal services, educational institutes, equipment, and accessories. More information on HempCon can be found at www.hempcon.com.

Newspapers/Journals

Prior to the effective date of the MBT, Finance will place public notices and articles in various publications to further the efforts to ensure that all marijuana businesses in the City are informed of MBT. Publications will likely include the San Jose Metro, San Jose Mercury News, El Observador, and local business organization newsletters.

Training Seminar

Finance will hold a training seminar on Monday, February 28, 2011 from 9:00 – 11:00 am in the Council Chambers to review the MBT ordinance, and the preparation of the MBT return and registration form. Letters will be sent to all known marijuana businesses operating in the City inviting them to the 2-hour seminar.

Implementation

In order to properly staff for the implementation of the MBT, Finance will add over-strength positions. Staff will be responsible for monitoring remittances, identifying non-remitters, assessing penalties and interest, and generating management reports (statistics). In addition, staff will conduct site audits of each marijuana business in two-person teams to ensure compliance with the MBT ordinance and validate the gross receipts reported to the City and the related remittances. It is anticipated that site visits will commence in May 2011, to coincide with the first MBT tax remittance due on April 30, 2011.

Status of Regulating Medical Marijuana Establishments

At the December 13, 2010 City Council Special Meeting on medical marijuana, the City Council directed staff to cease issuing business licenses to new medical marijuana establishments and to continue those enforcement priorities approved by the City Council on June 22. As of December 13, 2010, the Finance Department has ceased accepting Business Tax Registration Forms for new medical marijuana establishments.

In addition, staff was directed to return to the Rules Committee with a work plan and meeting schedule to complete the review of medical marijuana regulations that result in the adoption of ordinances providing:

- (a) Land Use Restrictions;
- (b) Business Operating Regulations
- (c) Budget action that results in a 100% Cost Recovery Program for the regulatory program;
- (d) Authorization of the addition of staff to support the regulatory program; and,
- (e) Establishment of fines for various violations related to the regulations.

HONORABLE MAYOR AND CITY COUNCIL

February 11, 2011

Subject: Marijuana Businesses Tax Outreach Plan and Implementation and Status of Regulations and Enforcement Activities

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The City of San Jose has not adopted ordinances that would allow or regulate medical marijuana collectives. A draft ordinance was discussed in June and December 2010, and Council deferred further consideration until spring 2011. Because San Jose does not have an ordinance regulating *or allowing* these collectives, all medical marijuana businesses currently are considered a nuisance and are not allowed under the Municipal Code. The proposed work plan is scheduled to go to the Rules Committee on February 23, 2011 for consideration.

Status of Enforcement Activities

Per Council's action at the June 22, 2010 City Council Meeting, the City Administration was directed to focus enforcement on the closure of any medical marijuana collective that is:

- Within 500 feet from specific sensitive uses such as residential homes, school, child day care center, churches that includes schools or day care, community or recreation centers, parks, trails, libraries, substance abuse rehabilitation centers or another medical marijuana collective.
- Outside of the Commercial General (CG) Zoning District.

All of the 100 or so marijuana businesses are subject to enforcement based on this direction; however, staff resources in Code Enforcement and the City's Attorney's Office are focused on first addressing those collectives creating a public nuisance. For example, the City was successful in the closure of the Purple Elephant establishment which was creating a nuisance to the community.

COORDINATION

The preparation of this memorandum was coordinated with the City Attorney's Office, City Manager's Office, and Police Department.

/s/

SCOTT P. JOHNSON
Director, Finance Department

/s/

JOSEPH HORWEDEL
Director, Planning, Building and Code Enforcement

For questions, please contact Wendy Sollazzi, Revenue Management Division Manager at 408-535-7005 or Laurel Prevetti, Assistant Director of Planning, Building, and Code Enforcement at 408-535-7901.

Attachment

MARIJUANA BUSINESS TAX

On November 2, 2010, the citizens of San José voted to approve Measure U which allows the City of San José (City) to tax all marijuana businesses. As a result, the Marijuana Business Tax, San José Municipal Code Chapter 4.66, was established (Resolution No. 75504).

MARIJUANA BUSINESS

The term “marijuana business” means business activity including but not limited to, planting, cultivation, harvesting, transporting, manufacturing, compounding, converting, processing, preparing, storing, packaging, wholesale, and/or retail sales of marijuana and any ancillary products in the City, whether or not carried on for gain or profit.

OTHER LICENSES, PERMITS, TAXES, FEES OR CHARGES

Nothing contained in Chapter 4.66 shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any license or permit required by, under or by virtue of any provision of any other title or Chapter of the San José Municipal Code or any other ordinance or resolution of the City or of its Council.

PLEASE NOTE: Business taxes due under San José Municipal Code Chapter 4.76 are still required to be paid in addition to the Marijuana Business Tax discussed herein.

WHO MUST PAY MARIJUANA BUSINESS TAX?

Any person engaged in marijuana business in the City shall pay a Marijuana Business Tax.

Payment of the tax does not authorize unlawful business.

WHEN AM I EXPECTED TO PAY?

The Marijuana Business Tax effective date is March 1, 2011.

HOW OFTEN AM I EXPECTED TO PAY?

Taxes are due on or before the last day of each calendar month for gross receipts from the prior calendar month. The first tax remittance is due April 30, 2011. If the due date falls on a Saturday, Sunday or holiday, the due date shall be the next regular business day on which City Hall is open to the public.

WHAT ARE THE TAX RATES?

Effective March 1, 2011, the tax rate set by Council Ordinance No. 28867 is 7% of gross receipts. Please refer to San José Municipal Code Section 4.66.090 for the full definition of “gross receipts”.

WHAT IF I DON'T FILE OR PAY?

The Director of Finance may make and give notice of an assessment of the amount of tax owed. Failure to pay on or before the due date will result in a penalty of 25% of the amount of the tax in addition to the amount of tax, plus interest on the unpaid tax. If the tax remains unpaid for a period exceeding one calendar month beyond the due date, an additional penalty of 25% plus interest on the unpaid tax and interest on the unpaid penalties is assessed.

VIOLATION OF CHAPTER 4.66

Conviction for violation of San José Municipal Code Chapter 4.66 is deemed a misdemeanor punishable by a fine of not more than \$500 or by imprisonment for a period of not more than 6 months or by both.

AUDIT

The Director of Finance shall have the power to audit and examine books and records of persons or businesses engaged in marijuana business including both state and federal income tax returns, California sales tax returns, etc.

WHERE CAN I GET REGISTRATION AND REMITTANCE FORMS?

Registration and remittance forms are available online at www.csjfinance.org. Forms may also be obtained at:

City of San José
City Hall
Customer Service Center, 1st Floor
200 East Santa Clara Street
San José, CA 95113

For additional information, please visit our website at www.csjfinance.org.

This brochure does not constitute final or complete interpretation of all legal requirements.



[BROCHURE COVER
TRI-FOLD]

**MARIJUANA
BUSINESS TAX**

(Effective March 1, 2011)

Finance Department
Revenue Management Division
City of San José
200 East Santa Clara Street
San José, CA 95113
(408) 535-7055