

APR 20 2012

City Manager's Office



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Angelique Gaeta
Assistant to City Manager

SUBJECT: MEDICAL MARIJUANA
ENFORCEMENT UPDATE

DATE: April 20, 2012

Approved ^{LB} Ed Shikada Date 4/20/2012

INFORMATION

The purpose of this memorandum is to provide the City Council with an update on the City's enforcement efforts as they pertain to medical marijuana establishments operating in the City of San José.

On February 14, 2012, following the filing of a Petition for Referendum by Medical Marijuana advocates and the Council's prior action to suspend its Medical Marijuana Land Use Ordinance, the City Council repealed its Medical Marijuana Regulatory Ordinance. Due to the current status of the above ordinances, Medical Marijuana Collectives, Cooperatives, Dispensaries and Delivery Service businesses (hereafter, "Collective(s)") are not legal uses in the City of San José.

In light of the above, the Administration continues to take enforcement action against any Collective operating in the City and continues to do so according to the priorities set by the City Council. Those priorities include focusing on Collectives that create a public nuisance, fail to pay the Marijuana Business Tax (MBT)¹ and fail to comply with State law distance requirements.

Public Nuisance Activities:

When the Administration last reported to the Council on February 14, 2012, a total of 77 complaints against Collectives had been received by the City during the prior 18 months. Those complaints included building code violations, fire code violations (specifically, electrical code violations), zoning code violations and public nuisance activities which included illegal drug sales, loitering, smoking too close to schools and daycares, and disturbing the peace. After investigating each complaint, the Department of Planning, Building & Code Enforcement, the Police Department, the Finance Department and the City Attorney's Office worked together to take the following actions:

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

1. Warning letters were sent to 5 Collectives;
2. Administrative Citations were issued to 4 Collectives;
3. Compliance Orders were sent to 3 Collectives; and
4. Case files were opened with the City Attorney's Office on 4 Collectives

Of the nine Collectives that received warning letters and administrative citations, all Collectives were in violation of the City's Sign Ordinance and have since removed the prohibited signs. Of the three Collectives that received compliance orders, all were in violation of the City's Building Ordinance; two Collectives corrected the building violations and one Collective remains in violation and has advised the City that it will be closing its doors as of May 15, 2012.

With regard to the four cases referred to the City Attorney's Office, all Collectives were conducting business in a manner that created a public nuisance (which included illegal drug sales, loitering, smoking too close to schools and daycares, and disturbing the peace). After contact by the City Attorney's Office, all venues closed their doors for business; one following receipt of a pre-litigation letter sent by the City Attorney's Office and three during litigation.

Since the Administration reported to Council on February 14, 2012, four new public nuisance cases have been opened with the Code Enforcement Division. These cases include complaints of building code violations, fire code violations, zoning code violations and public nuisance activities which included, but are not limited to:

1. Disturbing the peace;
2. Illegal drug activity;
3. Harassment of passersby;
4. Loitering

In two instances, the property owners and tenants were each served with a Warning Letter and a Compliance Order warning that administrative action, including fines and penalties, would result if the property owners and tenants did not cease the illegal activity. In one case, the Collective has advised the City it will be closing its doors by June 1, 2012, and in another case, the Collective has failed to comply with the City's order that it cease the illegal activity. In that case, the Code Enforcement Division will be seeking assistance from the City Attorney's Office to obtain an Inspection Warrant for the premises.

With regard to the remaining two of the four public nuisance cases, those were referred to the City Attorney's Office for review and possible legal action. In one instance, after contact was made by the City Attorney's Office, the Collective agreed to close its doors by June 1, 2012. In the second case, following contact by the City Attorney's Office with the owner of the property, the property owner served the tenant (the Collective) with an eviction notice.

In addition to the above public nuisance case, the Code Enforcement Division has issued three Warning Notices and two Administrative Citations to Collectives for violations of the City's Sign Ordinance. At this time, each Collective has removed the illegal signage.

State Law – 600 Foot Distance From Schools

When the Administration last reported to the Council on February 14th, the Administration had received complaints of seven Collectives operating in violation of State law in that they were located too close to schools. By February 14, 2012, six of the seven Collectives had shut down following contact by the City. Following the Council meeting, the City reached out again to the seventh establishment and it closed its doors.

Recently, the Administration received complaints of ten additional Collectives operating in violation of the State law. Specifically, the complaints were that each Collective was operating as a delivery service and had as its principal place of business a location which is less than 600 feet distance from a school. The Code Enforcement Division has visited the ten sites and confirmed that three of the Collectives are actually operating in violation of the State law. As such, the Code Enforcement Division will be sending letters to these establishments advising that they must cease their operations. Should these Collectives refuse to close their doors, they will be referred to the Police Department to discuss possible criminal prosecution with the District Attorney's Office. The Administration will keep the Council posted as to the outcome of these particular establishments.

Marijuana Business Tax

With regard to the collection of the Marijuana Business Tax (MBT), on February 14th, the Administration advised the Council that all departments had coordinated over the prior 18 months to perform site visits of the Collectives and determine ownership, responsible parties, and gather contact information. Written correspondence was sent to 47 Collectives that were not remitting MBT returns or MBT payments. 43 of the 47 Collectives subsequently filed the required MBT returns and in some cases remitted MBT payments. Of the four that did not respond, the Finance Department sent MBT assessment notices which included additional penalties and interest to the MBT assessment. Three of the Collectives then filed MBT returns and remitted payments and the remaining Collective, which had already ceased its business operations, was not able to be reached for collection of the MBT assessment.

The Administration further advised that the MBT collected for FY 2011-2012 as of February 14, 2012 was \$1.8 Million (which had been calculated to include payments through the end of January 2012 for the December 2011 reporting period). With regard to the MBT collected since inception in March 2011, the amount was \$3.16 Million which was comprised of \$3.10 Million in taxes, \$61,000 in penalties and \$3,000 in interest.

Since February 14th, the Administration has continued to identify a number of Collectives which have failed to submit monthly MBT returns or remit the MBT, in violation of San Jose Municipal Code ("SJMC") Chapter 4.66. In April 2012, the Finance Department sent an additional 32 notices to Collectives that were not remitting MBT returns or MBT payments. Collectives have been advised that lack of compliance will result in an MBT assessment and the

imposition of penalties and interest. Finance staff will continue to follow-up with non-compliant Collectives on a daily basis in an effort to enforce compliance and collection of the MBT.

With regard to those Collectives that are submitting MBT returns, the Administration has learned that a number of those Collectives are claiming \$0 dollars in gross receipts and as such are not remitting any MBT payments to the City. To ensure all Collectives operating in the City are reporting and remitting the correct amount of MBT due to the City, the City's Finance Department will be conducting financial audits of the Collectives' books and records to determine the validity of the reported MBT amount remitted to the City. Upon determination that a Collective is remitting less than what is due to the City under Chapter 4.66, the City will take appropriate enforcement action against those Collectives, including, but not limited to imposing penalties and interest for the reporting periods in which MBT has been underpaid.

For the total revenue generated by collection of the MBT since February 14, 2012, the Finance Department will provide this information through its quarterly financial reporting to the Public Safety, Finance and Strategic Support Committee in May 2012 when all the payments are in and have been accounted for. By way of background, MBTs for each month are due on or before the last day of the following month. For example, for the MBT due for the month of January, the Collective has until the end of February to submit payment. Consequently, to obtain accurate numbers for the third quarter of FY 2011-2012, the Finance Department will need to wait until the end of April, when all payments for March 2012, are due.



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