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>> Mayor Reed: Good afternoon. Everybody please take a seat. I'd like to get the city council meeting started. This is a special meeting on medical marijuana. Not the first, probably not the last, one of a series. We have a few hours that we can devote to this this afternoon. And we're going to have some expensive presentation from our staff and public testimony. What I anticipate as to how we will manage this meeting is have all the staff presentations done, presentation from maybe one or two organized groups, public testimony and back for council questions and discussions. Let me turn it over to our City Manager. Deb.

>> City Manager Figone: Mr. Mayor, members of coin council, I do want to clarify the administration's goal today which is represented in the staff work that's before you. And as you can see from the staff report this is a complex multifaceted issue. Calling owl the areas where there is policy flexibility and alternatives for the council to consider. And this is our goal, which is to provide the city council with the various policy options and alternatives that are available to you today. I know that this is an issue that raises passionate points of view on both sides and I am aware that some have raised questions whether staff brings bias to its work on medical marijuana. So I wanted to be clear that the staff proposals and alternatives are based on the City's legal review and advice and are within the law. Simply put staff will not propose policy options on alternatives that in our professional view exceed the law and during the presentation you will hear from our City Attorney in this regard. Additionally as you listen to today's presentation please keep in mind that the analysis of adding to the number of medical marijuana collectives includes an assumption that the city council will act to close the approximate 98 exichght medical marijuana establishments. Existing establishments then the council will need to consider the resources required to enable the City's enforcement of illegal or nonregistered medical marijuana establishments, in addition to the staff resources proposed to regulate registered collectives. The assumption of closing the existing establishments is not a bias against medical marijuana it is part of what must be considered to achieve the goal to regulate medical marijuana collectives if that's what the city council decides to do. It is to use our limited resources effectively and to address the collectives. A discussion of regulating collectives must include a discussion of how to address the existing medical marijuana establishments wand that I will turn it over to Deanna Santana, deputy City Manager to get us started.

>> Deanna Santana: Good afternoon. As already City Auditorred dation special city council meeting is focused on medical marijuana and the various options available to the city council on how it would like to proceed. As we all know for over the past year the city council has been dlebting and taking action on various issues related to medical marijuana. As background in March the city council directed the staff to develop a medical marijuana regulatory program that went beyond the land use controls regulatory program and while the city council decided to defer the actions on regulations the council did provide regulation on how to focus limited code resources on uses and or collectives located outside the commercial general zoning druct. Then in August the city council took action to approve a ballot measure that 10% effective March 1st, twefn. With the city council's staff on how it would like to proceed with respect to implementing the marijuana business tax that may go into effect this March. Today we will be providing a series of presentations on the various components that require city council ukes if there is a decision to regulate and or tax medical marijuana. The city attorney's office will begin by providing a review of the legal analysis for which our proposed collective regulatory program is based and the related policy alternatives. Additionally today we're joined by Mr. Frank caruba an assistant deputy District Attorney, on million marijuana. I'd like to thank Mr. Caruba for joining us today to participate in the very important city council discussion. After the legality analysis we will dmrnlg establishments and some local municipal issues that have dpopped. We will also with respect to regulations. Before the staff presentation, we willing also provide the city council with possible actions that can be taken today to provide further direction to staff. Then we can jump into the presentations regarding land use and collective operation as well as the marijuana business tax and the 100% cost recovery program that's been proposed. As part of the presentation we will also highlight the policy alternatives along the way so that the council can have full awareness of all of the different options available to it so that you can make decisions as needed. So let's begin with the discussion today with the legal analysis presentation. I'll hand it over to Rick.

>> City Attorney Doyle: Thank you, Deanna. In the last year we have had three -- this is our third meeting on this topic and it is -- I think what we've been seeing is, there's a need for some kind of regulation, a desperate need. I liken this to the wild West out there because we've had nothing but a proliferation of collectives and cooperatives and at the same time, we've got less certainty I believe in termination of public's eye of what's legal and what's not legal. Our job today, I want to thank staff, I think they've done a tremendous job in general with the -- looking at

the staff memo and trying to set the -- what the issues are and proposing possible alternatives. But right now we'll kick it off Angelique Nedro and Patty Degnan will kick it off with legal analysis and then Frank Caruba from the District Attorney's office will give the District Attorney's view as well.

>> Thank you, good afternoon, mayor and members of the council. Generally the cultivation, use and sale of marijuana remain illegal today under both federal and state law. In 1996, the voters approved what's known as the compassionate use act. The intent of the act is obtain and use marijuana for medical purposes. The act is actually an affirmative defense for patients and primary care givers for cultivation of medical marijuana. In short, it provides that a patient or primary caregiver who possess and cultivate medical marijuana for the purposes of that patient shall not be subject to criminal sanctions. The act goes on to define a patient as a seriously ill person whose use of marijuana has been recommended by a treating physician. It defines a primary caregiver as an individual qualified responsible for the housing, health or safety of that person. In other words it's not enough for the caregiver to provide marijuana to the patient. He actually has to engage in a number of other activities to show that he is consistently caring for that person. What the act did not do at this point was define a collective. And what that looks like. And that's why we're here today. Several years later, in 2003, the legislature passed the medical marijuana program act. The intent of that act was to clarify the scope and application of the compassionate use act. And to extend the immunizations provided, or affirmative defenses provided by the compassionate use acts. It went on to say that solely on the basis of certain individuals engage in certain activity they would not be subject to criminal sanctions. And I'll run down prosecution. The first group of individuals that would be immunized from prosecution are qualified patients or persons with identification cards who transport or possess marijuana for their own personal use. The difference between a qualified patient and a person with a card is each one has a patient but one has a card that's issued by the county and one does not. They both enjoy the immunization under this act. The next group of individuals would be the primary caregivers or those individuals that patients designate their primary caregivers. Those individuals are immunized from transporting processing delivering or giving away marijuana for medical purposes to the patient that's designated them as their primary caregiver. And then the final set of individuals would be those individuals who provide assistance to qualified patients or their primary caregivers in administering medical marijuana or acquiring the skills to cultivate or administer the marijuana. The individuals who are not qualified to administer emergency instruct them in how to do that without them being subject to

criminal secretaries. And then together qualified patients and primary caregivers can actually cultivate marijuana for medical purposes to be used by the patient. And that activity as well would not subject them to criminal sanctions. You have activities ooms and the qualified patience who could come together collectively to help each other cultivate marijuana so that the patients could actually use it. It's important to note that these affirmative defenses or immunizations however you want to refer to them are not global in nature. Again they apply to a specific group of individuals and specific activity and they offer affirmative defenses to specific charges. What the medical marijuana program act does not do is intact that they can never be charnlgtd. So if these individuals or the collective is getting together and doing -- or gauging in activity beyond what I just described then they subject themselves to potential prosecution. The MMPA or medical marijuana program act also specifically provides that it doesn't authorize an individual to smoke or otherwise consume marijuana Nos. authorized by the statute. So the things I just discussed are activities they can engaged in and if it's not pes pes states that nothing authorizes any individual or group to cultivate or distribute it marijuana for profit. And that's expressly taughted in the statute. Several years after the enactment of the medical marijuana program act the state attorney general issued guidelines to help interpret the statute and provide some guidance. These guidelines were adopted in August of 2008, and though they are nonbinding they are given weight by the courts. legal entities and provide that a proper reply organized andons dispenses marijuana through a store front may be lawful. They also provide that a retail type dispensaries are likely unlawful. A little over a year later the U.S. attorney issued guidelines as well. In October of 2009, the U.S. attorney provide guidelines that indicated where states authorize medical use of marijuana, federal prosecutors should not focus federal resources on individuals whose actions are in clear and unambiguous compliance with existing state laws, providing for the use of medical marijuana. What these guidelines essentially did was to indicate that the federal government was not going to focus on states where they had medical marijuana laws in place. It didn't prevent the federal government laws, it also didn't prevent the federal government from going after those individuals that appear to be complying with the state medical marijuana laws in the event that they thought that something else was occurring they could still go in and investigate. It simply gave guidance to federal prosecutors to focus their resources on other areas where it was clear that folks were violating the controlled substances act. So in short, the guidelines do not legalize marijuana or provide a legal defense to violation of a prosecutorial discretion. Then we come to the case law. What we will do here is actually a summary of the most relevant cases, the ones that have been the result of a number of

issues coming up. And will help you understand those cases. There actually are a number of cases out there, trying to interpret the compassionate use act and the medical marijuana program act. But again we're just going to focus on the ones that are most important for our use today. The first one is the earth C Ciano. September 12th of 2009. It is a court of appeal case which affirms medical marijuana program act. What it does is just runs through medical marijuana program act in the same way I have done with you today and calls out the individuals that we have immunized, the conduct that's immunized and the charges that they could raise affirmative defenses to. But this case goes on to conclude that the medical marijuana program act contemplated the formation and cooperatives that would receive reimbursement for marijuana and conjunction with the provision of marijuana and a lot of advocates read that case to believe that it allows for the actual sale of medical marijuana and that's one of the biggest issues before us today. However, three years later we've got a California Supreme Court decision in the people versus mench, it's issued November 24th, 2008. It's also coming three months after the guidelines issued by the state attorney general. And what this case does is it actually grace that the million marijuana program act contemplates the formation of cooperatives and reimbursement for marijuana and for services. It also states that cooperative and collectives -- cooperatives and collectives cannot be primary caregivers. It distinguishes itself from the earthsell case caregivers and that way sales would not be allowed. If next relevant case is the city of Claremont versus Cruise. This case goes to the preemption case. This is a Court of Appeals case in August 27th of 2009. And the court upheld a city's moratorium on marijuana dispensaries. The court runs through the compassionate use act and the medical marijuana program act and indicates that these acts are actually, as I indicated before, they allow for affirmative defenses. They don't address land use or zoning in any way, shape or form. There is no preemption, there is no indication that local governments cannot zone in manners to protect the Public Health, safety and welfare. They indicate or the court indicates that the compassionate act or the medical marijuana program act do not address civil processes or land use regulations. And that case is good law today. Then we have the qualified patients association versus city of Anaheim. That's on August 18th, 2010 case, and it centers around a City's ban on medical marijuana dispensaries. This case actually was never decided the ultimate issue of whether or not the City's preempted by the compassionate use act or the medical marijuana program act from bang medical marijuana dispensaries and the court actually remanded the case back to the trial court to decide that ultimate issue. What that means is the Claremont case is still good law and again the Claremont case deals with a moratorium but basically the holding in that case is that neither the compassionate

using act or the medical marijuana program act do anything to regulate or prohibit the regulation of land use by the cities in terms of medical marijuana. But what does this all mean? As I indicated before, together, the compassionate use act and the medical marijuana program act and some of the cases that I just discussed basically immunize activity by certain groups of people, and they provide for affirmative defenses to certain charges that could potentially be brought against them in criminal court. What you see in that slide is the breakdown of what the different groups of individuals would be immune from or it could raise affirmative defenses to. Activity that's not immunized by the compassionate use act or the medical marijuana program act is the sale of marijuana, the transfer of marijuana for profit or any activity which exceeds acts which is a slide that was just before you and lays out in detail who can do what. So the compassionate use act and the marijuana program act and the Mench case and the Claremont case in addition to another -- a number of other cases, a number of other regulations that we looked at from other cities, all are the basis for the framework that we laid out in the draft regulations that we brought before you for consideration in June and also, are to be discussed today. The main component of those regulations is the definition of the collective. And that is because who can do what under the compassionate use act and the medical marijuana program act is very specific. By coming up with this definition staff felt it was the best way to approach the regulation of medical marijuana and allow those individuals to access marijuana in the manner allowed by law. So our definition of collective in the draft regulations is an incorporated or unincorporated association, it need not be a legal cooperative composed of four or more qualified patients and designated primary caregivers of primary patients. So those individuals that fit along with the definition that I went over earlier, again it is four or more. So if it's less than four it's not considered a collective and they would not be subject to the regulations if approved by council. Who associate at a particular location to collectively or in strength accordance with California health and safety code sections and those sections are the compassionate use act and the medical marijuana program act which are codified in the health and safety code. And that's the framework that is starting for our draft regulations today. Thank you.

>> Deanna Santana: So from here we'll pass off to Mr. Frank Carruba for a legal perspective from the District Attorney's office. Frank.

>> Thank you. Good afternoon, Mr. Mayor and members of council. Thank you for having me here today. First I'm not here as an advocate for or against medical marijuana. I've spent -- I supervise the narcotics unit at the Santa Clara County District Attorney's office and I have done so for a number of years, been in the office for about 20 years and I've spent a significant amount of time over the last year researching medical marijuana through every avenue possible that's available within the state of California, through the California narcotics officers association, through City Attorneys from here to Los Angeles, from the Los Angeles county District Attorney's office and as a matter of fact, three members of the Los Angeles county District Attorney's office and members of the L.A. police department actually came up here and did some training for both my office, City Attorneys throughout the county of Santa Clara and members of the law enforcement community on the legalities of medical marijuana. So before we conducted any types of law enforcement related operations and/or prosecutions we were as educated as possible on the legalities of medical marijuana. This is confusing. It is poorly yifn. However, based on some case law we have now, it is not extensive but it does exist. This is what we have been able to decipher oochtion provide a defense to the sales of medical marijuana. Group cultivation, immunity ends at the conclusion of cultivation, i.e. harvest. Postharvest group activity is illegal. Section 11362.765 (c) health and safety code, is the only section that immunizes, under California law and that section is limited to primary caregivers. Therefore, marijuana sales remain illegal per se and run afoul of the collective cooperative conceptual an I'll explain what I mean. First I want to get into the immunity for group actively. Cooperatives and collectives. The code section that deals with that is 11362.775 of the health and safety code. I'm going to read what it says. It says qualified persons, persons with designated primary caregivers of qualified patients and patients with identification cards who associate within the state of California in order to collectively or cooperatively cultivate marijuana for medicinal purposes shall not solely on the basis of that fact be subject to state criminal sanctions under a number of health and safety code sections, 11357, 66.5 and 570 . As you can tell by the reading of that statute it ends at the cultivation of marijuana. The plain language of that connection provides immunity for groups to cultivate. Floss immunity expressed for any specific actions engaged after cultivation ends, i.e. after the marijuana is harvested. goes beyond 11362.7 survived immunized range of conduct. If the legislator is intended to immunize Poe they would have been mentioned. They were not. In furtherance of the legislature's intention to enhance access, the legislature did not stop, immunized, however they also expressly immunized postharvest conduct but for individuals. 11362.765 subdivision B of the health and safety code says a qualified patient or a patient with an

identification card who transports or processes marijuana for his own or her own personal medicinal use is immunized. A designated primary caregiver who transports for medical purposes is someone who is immunized and that person can be compensated for their out of pocket cost. Transport and or process that marijuana for personal use and primary caregivers can individually transport, process, administer or deliver or give away that marijuana but only to the qualified patient of the primary caregiver and that's the key here. The legislature spented postharvest immunity to apply to individuals and not to groups. I want to talk a little bit about primary caregivers because I think there's a confusion here and I want to break down the difference between a cooperative and a collective and what it means to a primary caregiver. I know a lot of falls from the cases that have been cited by the City Attorney and I've been provided with many, many pages of materials over the last few years regarding medical marijuana. The first thing I find most abused over time is the -- are the guidelines that were written by the attorney general's office. Keeping in mind that those guidelines were written by a gentleman by the name of Mr. Mayor, I actually went to a training that he provided last year and he he himself say those guidelines were obsolete at this point they were mench explains defines and articulates many of the things that are inside the guidelines and now the guidelines in most part of obsolete. Additionally they're guidelines. They're not case law, they're not citable by any court. They can be used as guidance and that's it. A cooperative or collective can exist like this. A number of people who are all qualified patients that have a recommendation for a physician from a physician can get together and they can group-cultivate. One person may have some property. One person may have the ability to farm because of some expert training. One person may have the facilities necessary, grow lights, whatever's needed. Those people can get together and they can cultivate marijuana. Once they harvest that marijuana they can use it and they are immunized by the statute transport it for themselves. They cannot sell that marijuana to anyone else. They cannot provide it to other groups or other cooperatives or collectives. There's nothing in the law that allows for that or any type of sale. With the exception of a primary caregiver relationship. A primary caregiver has been tweend as a person who provides consistent, first has been designated by the patient and then has provided consistent health, safety, housing, transportation for that patient. It has to go beyond just someone who provides marijuana, and the cases are very clear on that. The mench case patient. What you have is the situation where in the menCH case, Mr. Mench actually did provide some care for his patients. And he actually drove a couple of them to medical appointments. One of them was living in his house for a period of time. Even that type of relationship, the court said was not enough. It has to be a consistent, primary caregiver

relationship. And obviously, if that's not enough, someone entering a store front dispensary providing a recommendation that's on paper asking to become a member, and I'm making a quotation mark because I'm going to talk a little bit about what a member means in a minute. Has to become a member and signs a piece of paper saying they are a member does not then allow that cooperative or collective to sell medical marijuana to that person under any theory. First of all they are not a member of that cooperative and collective really. Nor are they a primary caregiver for that person because they have never even met them before. Never mind being designated and or being provided consistent care for the housing and safety of that person. Now the question often comes up well is that person a member? When you go in there and you pay a membership fee are you contributing to the cooperative and clefn? The courts have said no. The mench court specifically says no and basically what you're doing is you're comparing a situation that's not that different than a Costco, for example. You go in a Costco and you pay your membership fee and they give you a card that says you're a member. ability to shop there? Absolutely not. Have you contributed to their business model? Are you a voter, in their board of -- their board of directors? Absolutely not. So you are truly not a member of Costco even though the card says you are. The same thing holds true for these cooperatives and collectives. You cannot be considered a member of a cooperative and collective just by signing a piece of paper saying that you are. So that's really a situation we have, whether or not you are a member of that cooperative or collective. Even if you were, even if I took this a step further and I'm supping that you oar member because you say you are a member, they could still not sold you medical marijuana under any theory. The primary caregiver relationship is the only one that allows for that. You could engage pursuant to 11362.775, in activity with that group if you oar member that ends with cultivation. Anything beyond cultivation is not immunized. So then we come back to the primary caregiver relationship and the question then becomes, are you truly a patient of these medical marijuana dispensaries? And the toons this that question is obviously no. They have provided you with no significant consistent care giving health safety transportation or anything that's been defined in 11362.765 of the health and safety code. So therefore based on our reserves and can I answer any questions if anyone has them, the Urzusani case, advocates put in their brief an their materials and I've had an opportunity to look at some of the stuff that was provided today by complplet 3 and some other groups. I've looked at them in the past. I've also communicated with John Harlan from the L.A. county District Attorney's office, he is widely considered the medical marijuana experkt in California. He's a certified instructor and I've met him many times and I talked to him a little bit about

rumpletZISANU can a, the people versus URZUsanu He he reiterated what I already mench case which came after the Urzisanuing California Supreme Court case, Urzisanu is a California appellate case, what is in mench is the law at this point, it is the closest we have to a definition of what is legal and what is not legal. And in mench and I'm going to cite a couple of quotes from mench. splice a baisht with marijuana has no deives under the act when they mean act they mean the medical marijuana act, there has to be something more to be a caregiver than simply providing marijuana. Otherwise there would be no reason to have the definition of the caregiver because anybody would be providing, anybody who would be providings marijuana and related services would qualify as the caregiver. Proposition 215 allows patients to cultivate their pone marijuana simply because federal laws prevent the sale of marijuana and a state initiative cannot overrule those laws. But as the focus is on the seriously and terminally ill alternative for those unable to act on their pone behalf accordingly the act allows for primary caregivers the same authority to act on behalf of those too ill or bedridden to do so and they are citing people versus Lundgren and perone and that portion of the case. And then lastly in speaking to Mr. Mench and his activities, it says as it is undisputed mench did much more than administer advice and council, the program provided him no defense. They are saying the trial court did not err in the way the trial court ruled in this case and the California Supreme Court ruled that Mr. Mench was not a primary caregiver under the health and safety code, 1162.365 and therefore partial immunity as a caregiver requires consistent care giving independence of taking medical marijuana at or before the time the defendant assisted with medical marijuana. I could go further into detail but I think I would be belaboring the point. If any other information or anybody has any questions I'd be happy to answer them.

>> Mayor Reed: Take questions later because I want to get through the staff presentation.

>> Thank you.

>> Deanna Santana: So let's continue on with the staff's portion of the presentation. The legal review and presentation set the foundation for staff's proposed regulations on the collective model. I'm waiting for the slide here on what's happening on San José. Here it is. This slide shows the rapid growth over the past year in the absence of regulation or a set limit on the number of blimghts allowed. As I noted last month through our manual

tracking system, state blimghts. As of December we are now aware of 98 in the City of San José. Given this rabid growth staff is concerned about whether regulations alone can result in a set limit for collectives or whether regulations sufficiently address the current terrific Public Health and safety. For instance, city staff has responded to a number of residential grow homes involving 3,000 marijuana plants and unsafe electrical wiergs. The street value for these 3,000 plants are police department, and significant safety issues for our neighborhood and residents. City staff has received numerous complaints regarding public nuisance and request for code enforcement actions. Laurel can discuss later the issue regarding code enforcement resources and the concern for a lack of staff resources to apply in other neighborhood code enforcement areas beyond medical marijuana. And lastly staff, dispensary dmoas and customers as well as the residents nearby. The staff reports provides a fuller picture of the municipal issues but before we get into the regulation it's important for staff to ensure that the city council was aware of the current health and Public Safety issues. I also want to cover very quickly what's happening in Santa Clara County. As the council decides on how it would like to proceed with addressing medical marijuana we do want to share today as we know it the current status of county cities. This slide shows the actions as we know them of the county cities by observation you can see that some cities have adopted bans, moratoria and still somewhere in process of developing regulations while others have chosen to use land use controls. So while we have already presented a lot of information I want to go into our council discussion as well as possible action. You've already heard a lot of content and we have more coming. You'll soon discover that the council has many choices as it makes its decision on whether to regulate marijuana. For purposes of framing possible actions I need to point out a couple of things that the council should know. First that if the council decides to regulate medical marijuana collectives the proposed cost recovery staffing planned regulations assume that the existing 98 establishments will close to enable the establishment of the proposed 10 marijuana collectives. If the city council takes no action to close the existing approximate 98 medical marijuana establishments, then continue to exist, while the council adds ten collectives. That's adding to the rapid growth of medical marijuana establishments. As tatted our proposed staffing plan is based on ten collectives only and assumes that the existing establishments will clough. Without any ban or council action we will need more staff to sustain enforcement on illegally or nonregistered operating establishments while the proposed staffing plan is left to focus on the regulated and registered collectives. The second issue: The city council should know that it can take action on the marijuana business tax consider today as well. And last, if the council decides to regulate

medical marijuana it is likely that you will need to hold future meetings on this topic given that there is a lot of ground to cover today and staff needs direction on these various areas. So we have added a council action for staff to develop a work plan and meeting schedule to pace these discussions amongst competing priorities. With that I'll hand off the presentation to Laurel to begin the land use discussion.

>> Laurel Prevetti: Good afternoon, Laurel Prevetti, assistant director of Planning, Building, and Code Enforcement. Thank you. The proposed regulations for appropriate collectives considers the appropriate zoning location for these types of operations, and based on our analysis, we are continuing to recommend the commercial general zoning district. This is a zoning district that is typically accessible via public transit and makes those patients who need to have access available for them. We are proposing distance requirements to sensitive uses so that way we can ensure that the collectives as defined are good neighbors. So our proposal is 600 feet of a distance between residential, schools, chumpings with daycare, parks and other collectives as well as the other uses listed on the slide. The maximum of ten clerves. We are also recommending that we would do a zoning verification to verify that in fact the proposed operation is in the correct zoning district and needs distance requirements as noted. We did think about some other options which I'll review shortly but in this particular case there would not be a requirement for a land use permit. The zoning verification would not be transferable, either to another collective at the same location, or to the same collective, at a different location. And this is primarily because of the dynamic use of land, land ability to make sure that the conditions are still operating against the proposed regulations. We did consider some options per your direction, we did consider the strult zoning district, such as the industrial park or the combined industrial-commercial zoning, the combined industrial zoning might be another approach. This is a intradder zoning district that allows for compatible industrial and commercial uses. However, as staff thinks hard about our continuing jobs housing community we are holding with our recommendation of the general commercial and during discussion we can talk about this further. We also looked at some options with respect to sensitive uses. We could certainly increase the distance to sensitive uses to 1,000 feet. Since our original proposal, we could have a new law, AB 2650, that mandates a minimum of 600 feet from public or private schools so we could have that as our minimum distance to sensitive uses or we could have a starting point of the 600 feet to schools and then add additional uses as you wish. It's certainly possible that the council may wish to increase or decrease the number of proposed collectives. 10 seem to be a reasonable

number given our population and demographics. We could also consider an option for a conditional use permit, this would require a full public hearing before our Planning Commission and would be appealable to you if there was an appeal, so the city council would make the final determination. We've decided or are recommending against this because conditional use permits run with the land and as you will hear shortly our proposed regulations for title 6 are very carefully crafted to ensure the appropriate operation of these facilities. Even with a zoning verification, however, the council could create a noticing process. That way, neighbors would be advise they'd a proposal is before the city, and that way the community could provide comment to the police department which might be useful as he they consider various operational considerations and we would be he very careful to have this not introofl a public land use item. For that background on land use we'll move forward on the actual regulations for title 6. Thank you.

>> Deanna Santana: And I'll going to pass that off for deputy chief Dave Hobert. Sphwhrps bring you through our draft ordinance and this obviously has been a team effort. And as Frank has described it, it is somewhat confusing. And so what we've tried do is do everything that we can so that we're not violating any of the criminal law while allowing the immediate is than purposes for the use. So there are nine main parts to the ordinance. Which are listed there. What I'm going to do is go through the main parts of each of these, and then we have policy alternatives on the bottom of these slides in red. Additionally, behind tab 2, of the information that you were provided today, it goes into much more detail. I'm just going to give you a general overview of much of these things. So we'll start with part 1. The purpose and intention of truly Angelique Website through that well with the CUA and the MMP. So we'll move to definitions. And again Angelique covered this. Primary it's four or more qualified patients or designated primary caregivers of designated patients. Obviously a policy alternative here is to change the number threshold of qualified patients and qualified caregivers who would be considered a collective. That brings us to part 3, registrations. What we have tried to do is come up with a based this because we there is no specific way to regulate through state and the laws leave it to the local groups. What we've done is drawn from the way we current regulate in the city and kind of mirrored that from title 6 primary with ways we regulate night clubs and also looking ow the ABC regulates as much of their issues. nude some of these issues with regulation. So the section establishes the registration process, outlines the various requirements and sets the grounds for disqualification from the registration process. Paying all registration fees. The registration has been

accepted as complete by the Chief of Police and the term of the registration would be for one year unless a proposed ordinance sunsets before that time. Obviously a policy alternative here could be you decide to adjust the term of registration beyond one year. If that were to occur the fees of the cost recovery program would need to be adjusted accordingly if we went past that one year time period. The next section, the maximum medical marijuana collective number, currently we're suggesting ten desks in the city. And I know there's been some he question as to how we came one that. And quite frankly we were trying to balance the needs of the people that have medical purposes for using this. We've looked at other cities, San Francisco I understand has 14. Oakland 4. Los Angeles I believe 70. And these are ones that we believe are currently given a registration or permitting process or something like that. In looking at that we felt that ten collectives balanced that need in the City of San José. Obviously a policy alternative could be to expand or decrease the number of collectives. Our full fee recovery comes from the personnel that we believe at this time it would take us to regulate those ten collectives. So obviously if you increased it we would probably need more personnel to properly regulate. Next aspect of registration comes in the priority order. In other words, and we've talked about this. How would we actually determine what medical marijuana collectives we would select? In the code right now it's called a lottery but the way we think best to address that would be that we open it up to a process wherein we tell the collectives that we're going to have a certain window, maybe 30 days where people would come in, they would have to have all of the forms filled out, they would turn those in and then the window would close. And we would have that number of collectives, we would then start going through them from the first that turned it in until the last that turned it in. And we would start going through and seeing if they met with qualifications had they fully filled out the application and were they in other words, or not disqualified in some other means through some of the things that I'm going to go through. And through that process we would pick as we went through from the numbered order, the 10 collectives, if they weren't disqualified it would be the first ten. If one was disqualified we would go to the 11th and so on. That was one way and truly the most objective way we thought. Now there's been discussion around why not doing it to some sort of an RFP type of a process, in other words, people turn them in, we go through, let's say that there's 50 that turn in their information. We go through the 50 and we select the best ten out of that 50? Quite frankly we don't believe we have the expertise to say this one is better than this one, and also we don't believe it's as objective in doing the way I had described but of course that's a policy option as well. next, we go into the operating regulations and conditions. And we start with the security requirements and these

are some pretty commonsensical things, having web based closed circuit television, centrally monitored fire and burglar alarm systems, safes to store the records in, security guard, uniformed security guards and specific standards to prevent unauthorized entry. Moving on with other operating regulations and conditions, we have in here that the operation of specifically with cultivation there's been discussion around this. We talk about collective cultivation at the site. And our suggestion at this point would be that the marijuana be cultivated at the site but there's been a lot of discussion arounds that as well. And the reason why we have suggested that the cultivation take place on site is because then we can very closely monitor where the marijuana is coming from and we know where the marijuana is coming from. If it's cultivated in an offsite or several offsites we can't tell exactly where that marijuana is coming from. That presents several concerns for us. One, could that marijuana be coming from an ill list it sources, can it be coming from organized crime sources? Another is the production of the marijuana. Is it beings produced in a way we're not seeing and brought to the collective so there could be health hazards with its? So those are some of the things that we have thought about. Now a policy alternative could be that we do allow it to be offsite and quite frankly it might be difficult and some of the collectives have brought this up, it polite be difficult to cultivate the marijuana that they need in that one location. So a policy alternative would be that perhaps they're allowed to cultivate in one offsite location and that's the only other place that that collective is able to obtain that marijuana from, so that we don't have to deal with our cerchtion about where is it really coming from? And it keeps it in a closed loop or a closed circuit type of a situation. We went through things with the operating regulations obviously we would want that to be locked should not be seen from outside of the business and that kind of thing. The next slide, no collectives to possess more dried marijuana or plants per member other than the amounts permitted by state law. Next. No collective shall possess or provide marijuana other than marijuana that was cultivated 50 collective at the location, in strict accordance, that's what I was just discussing. If marijuana is grown out of doors so let's say that the marijuana is grown outside and not inside of that collective it must being grown in an area immediately adjacent to the physical structure. And there must be proper security. And obviously the policy alternative was the one I was just describing allowing multiple locations for the cultivation of medical marijuana. Next, the hours of operation. 9:00 a.m. to 8:00 p.m. and we came up with that from looking at a cursory manner in what are the general times that pharmacies are open. Obviously you could adjust the proposed hours of operation. The prohibition of operating for profit clearly I think the attorneys have addressed why we believe that it's illegal to operate for profit. Additionally, prohibition of sale of medical marijuana

or products because again the legal analysis is that the sale is also illegal. And prohibition, obviously, for the diversion of medical marijuana to nonqualified patients, prohibition on the consumption of medical marijuana and alcoholic beverages on site. Obviously you could change or have a different policy alternative on that. Wherein you might allow consumption of alcoholic beverages and marijuana on site. We thought that was not a good idea because again the idea is to cultivate so the patients could have their marijuana and we didn't want to get into issues that we might have with the consumption of alcohol and that kind of thing on site. That brings us to owner manager and member requirements when I was previously describing ways that a collective might get disqualified. Some of those would be that in being owners or managers were convicted of certain types of crimes. In other words we wouldn't want the owners or managers to be convicted of these types of crimes, and that would be crimes that involved the transportation of a controlled substance, or the use of money to engage in criminal activity. And that would be for convictions of such. Next we would suggest that no member under the age of 21 should be a manager for or engage directly or indirectly in the management of the collective. Obviously a policy alternative could be to lower that age. We came up with that age based on the fact that we believe that somebody who is 21 is more mature, also that obviously, to serve alcoholic beverages and that kind of thing in the state the age is 21. That brings us to the packaging of medical marijuana. And what we came up with in section A there that no medical marijuana shall be dispensed by the collective or any of its members to a member more than once per day, feeling that once per day would allow those who need their medical marijuana to obtain it once a day. And then we went into issues such as the safety of the marijuana once it is dispensed and we went through the fact that we felt that marijuana should be dispensed in child proof containers much like you would get any other type of pharmaceutical drug. We thought that the legal name of the qualified patient should be on it. In those kinds of issues that you would find on any other prescription bottle. Obviously, the policy alternatives would be that you would increase or eliminate the number of times that a collective could dispense medical marijuana and you could increase lessen or eliminate the above packaging requirements. And that brings us to part 5, the maintenance of records. And here's what we're looking at is the specific records to be kept by the collective. And that they are kept there until such time that the police department or anybody else who is conducting audits of the collective would be able to go and look at those. And the types of things that we were talking about that they have would be information on the collective, the -- who the members are of their collective, who the primary caregivers are of the collective, their financial information, inventory and transaction accounts, any complaints that they have

received, and also, audits that have been conducted and I'm going to talk about here in a moment that's an audit that an independent auditor would be conducted wuns year. Policy alternatives there would obviously be that you could increase lessen or eliminate the need of the maintenance of these records. Obviously, if the collective doesn't keep those, and we need to go and do an audit then it would take time for us to tell them that they needed to could that. We might be involved in having to do that kind of thing so we thought that if at the front end we were requiring them to keep those things that it would make it less time consuming to staff and less easy to validate that type of information. The next part talks about part 6 audits, and there is an audit of operations in which they are required by a certified independent certified public accountant to be turned in no later than February faints of each year that that audit occurs. And then part 7 goes into smedges and enforcement. And this would allow for any official charge with nursing collective, and recordings and records maintained at any time during business hours. And this again follows the way that the ABC regulates, and with ABC laws, the police and reergts can go inand check its at any time, what is transpiring in that establishment. And again, policy alternatives could be that you could increase, lessen or eliminate the inspection and enforcement of these requirements. Part 8, other legal duties. Establishes the requirement for et cetera and specifically that not properly registered within the city would have to immediately cease operations once these went into effect. Contains a release of liability, hold harmless clause and also sets a sunset clause for when the draft ordinance would expire and that is two years. Obviously a policy alternative would be to adjust the length of the sunset clause or remove it altogether. And in part 9, the final part here, is titled person use requirements and regulations. Really what this deals with is personal cultivation. And we put this in here primarily to deal with some of the house fires that we've seen recently at grow houses that have been converted from residential homes to growing places. And so what we put in here were that residents at all times shall remain a residence with legal and functioning cook sleeping and sanitation facilities. The cultivation should remain at all times secondary to the residential use, qualified patient or primary caregiver must reside in the residence where the medical marijuana is being cultivated. Shall be in compliance with California building code and other issues such as not allowing any other type of electrical, what we've seen oftentimes in these grow houses is they're subverting the way the electricity is set up underdmeet the house and that has created issues that has leads to the fires and we would say that that would not be allowed as well. And that is primarily and very quickly how we have set up the draft regulations that we are suggesting at this time.

>> Deanna Santana: We did have some additional referrals that the council directed earlier this year and we'll just close those out as part of the discussion. The council had suggested that we look at inventory limits and we did explore that issue and our suggestion is we leave it to the collective's needs. We did establish a policy alternative that the city council could substantial a maximum amount. The second was the issue regarding transportation and deliveries beyond the primary caregivers, and based on the legal analysis and review there are no policy alternatives for that referral. And then the last is, we had talked earlier this year about business plans or operational issues so that it's fully disclosed to minimize the need to apply resources for regulation. We are interested in the idea of receiving business plans or operational plans. The policy alternative there is to direct staff not to pursue this effort. So with that I'll pass it over to Scott to talk about the taxation analysis.

>> Scott Johnson: Thank you, Deanna, Mr. Mayor, members of council, Scott Johnson, director of finance and I'd like to give you a brief overview on the taxation issues. The first slide, this is just an update with regard to existing taxes. As you recall our existing business tax ordinance calls for the model where we tax based on number of employees in each business. As Deanna mentioned earlier in the overview we have now determined that there are 98 medical marijuana businesses here in the city. And we are taxing -- 88 have paid their business tax and we are currently investigating the other ten, some of them have not actually started business but they have established a business name. We've collected a total of \$13,412 from the City's business tax from these medical marijuana businesses. In regards to the California sales tax you may recall that we gave an update at the last meeting in regards to the state Board of Equalization. We did receive a letter from the state board confirming our assumptions regarding the taxability of collectives. And I just wanted to quote the letter that we received from the state board in July. They state that under the provisions of section 6006 subsection (c) of the California sales and use tax law, reimbursements by members of a collective for their pro rata share for the cost of medical marijuana are sales for the purposes of sales tax law when tangible option for such reimbursement or any other consideration. These types of transaction are subject to the tax. And in regards to the sales tax that the city has received related to our 1%, year-to-date through June 30th of 2010, we received approximately \$71,000. On this next slide, related to the new ordinance and measure U, as you know on November 2nd the voters overwhelmingly approved measure U which gives the council the opportunity to impose a rate up to 10% of gross receipts. 2011. Just want to reiterate, the state law prohibits clerks from generating a profit. The tax would

be imried provided by police towards the collectives overhead expenses. The potential tax revenues generated on the collective model, however, are a bit limited than what we're usually accustomed to in a retail model when those retail models are for profit purposes. The current proposal from staff is to propose tax rate set at 5% for all marijuana business, operating legally or illegally. And staff has outlined a policy alternative and under this alternative the collectives operation pursuant to the California health and safety code and rules and regulations would receive the benefit of being taxed at a lower rate and all other marijuana businesses be taxed at a mier rate pursuant to council's direction. Just to give you an estimate in regards to sales tax based on the last quarter's information that he we have from the state Board of Quabltion, if the council were to reported the city would receive about \$845,000. If we imposed a 10% rate overall, that revenue would be about \$1.7 million. And so of course that would vary depending on what rate structure council would choose to move with should you choose to impose such a tax. And with that I would like to turn it over to Deanna for the conclusion of the presentation.

>> Deanna Santana: The cost recovery program as I stated earlier the proposed council 100% cost recovery program assumes that staff is focused on regulating the 10 blimghts. To the extent possible, the staffing plan rhymes on existing administrative and enforcement structure to keep cost down for the collectives. Also as the city expands noted in our presentation then we would need to consider whether more staff is needed. That being said we all know how quickly our organization structure and resources are changing and as council deliberates on the budget and to the extent that our administrative resources and capacity changes we will need to bring this to the council's attention to resolve. The proposed staffing plan place any form of effective regulation. This slide shows how staff is proposing five new staff positions to sustain regulations if that's what the city council decides to do. Three of the staff would be in the police department, and the other two would be in the City Manager's office and finance department. The staff report goes into detail about the responsibility of each of the departments and related staff and also through overhead the city attorney's office and fire and Planning Department's cost would be recovered. The council directed 100% cost recovery plan results in a registration fee of just \$104,000. Now I want to spend a little time talking about the Oakland cost, because \$104,000 registration fee as it compares to Oakland apples \$35,000. As we know it Oakland did not add law enforcement and investing regulatory staff. So if finance department's staff would it bring you in a range of about \$300,000 of cost which by comparison would set our registration fee absent police department staffing at about \$30,000. So that is largely the discrepancy when

we are compared to Oakland's permit fee, is that we have taken the initiative to add law enforcement and investigative staff because we know they will be needed to regulate these establishments. I should add just close that slide by saying any lower registration fee would mean that the city agrees to absorb the cost or not necessarily add all of the staff that we feel is needed to sustain an effective regulatory program. So this is the last slide of our staff presentation. It just restates the council options available. We did cover a lot of ground. We know that there's a lot of questions. We're prepared to take questions today and certainly to move on the agenda.

>> Mayor Reed: Thank you. City Manager anything to do before I turn to the --

>> City Manager Figone: No, Mr. Mayor, we turn it back to you, thank you.

>> Mayor Reed: Okay. What I'd like to do is to have a presentation by Americans for safe access because they have organized themselves into a collective. That's a novel idea. For testimony so we'll have ten minute presentation from that group. In lieu of everybody speaking. Then we have about, well, a big stack of people who want to speak, looks like everybody in the audience practically. We will be limiting public testimony to one minute because we do have work we've got to get done here this afternoon.

>> Hello counsel we thank you for taking the time to once again seriously consider this issue. We are Americans for safe access and we are here to ensure that we have reasonable regulations and what we mean by reasonable is regulations that keep us and the community safe but that are not based on misplaced fears and prejudice. You've asked us to share with you today what's worked and what hasn't worked. Here's an overview of some of the things we will discuss. I have reviewed almost every ordinance currently in place in the state of California, establishing regulations for medical cannabis dispensaries. And what has not worked is the that the city illegal. San malt yow county they don't have any dispensaries. When the law is gray you don't get the to color it in. What the DA and the city attorney's office has presented to you is a minority view. It's the losing view. They talk to the attorneys who lost the cases. I've spoken to the attorneys who won the cases. And they disagree with the position of city staff and the county D.A. office. Prop 215 pretty plain and simple one major error is that this is not an affirmative defense. This is immunity from prosecution. Legally that is a big difference. We don't go to court

we don't prove our innocence, we skip that step entirely. I would refer you to the Mower decision certain conduct what they didn't explain is what that conduct is. That conduct includes possession, possession for sale, sales, maintaining a place for sales, managing or controlling a place for sales. Sales is written one two three times. Three four statutes, specifically addressing the issue of sales, are outlined in this statute giving us our immunity. No court has ever said that our immunity ends at cultivation. No court has ever addressed the issue of membership requirements and the courts have addressed the issue of caregivers but not in the context of collectives and cooperatives. Because collectives and cooperatives are not caregivers. What they do is, under prop 215 only caregivers could distribute to patients. Patients couldn't share medicine with other patients. That's what SB 480 was intended to understand that under California law, we have one statute that prohibits distribution. Whether you sell it whether you barter and trade when you give it away it's all illegal under the same statute, the statute that we are immune to under 11362.775. The Mench case is irrelevant in this case option cooperative they don't have to provide any additional care giving services. I really hope that they do. But that's not what's required under the law. What I really want to focus on today is the role of city regulations. Your job here is to ensure compliance with state law. In our opinion, state law is not enough. All you have to do is be a patient or caregiver, verify that patient sign them up as a and there you go. We want to raise the bar and we want to ready a race to the top so we have the most safe secure access for patients here in San José. What do patients care about? We care about privacy, we care about affordability, accessibility and our safety. And those are the guiding principles that I would like to address when it comes to the specific regulations that you're proposing. Land use regulations, we agree we want to limit any impact on the surrounding communities. What we don't want to see are regulations that are arbitrary, expensive and limit safe access. Sensitive uses anything beyond schools we're really not clear on what the purpose behind that is. Some existing laws already prohibit dispensaries from being located 60000 feet from schools, you ,000 feet from crearks centers, you are not allowed to take your mrn to high school if you are an 18 year old patient. These laws already exists. We don't understand why churches trails these types of uses would be told that their places we're basically not welcome. We are not going to go to these places and hand out medicine and smoke in front of children and cause a nuisance. That's not what we're here, what we're about. So when it comes to land use regulations, sensitive uses, please don't arbitrarily restrict access. disoanrtion I don't see why those zones would not work in San José. They are currently working right now. And really it comes down to also allowing commercial cultivation. You cannot just regulate the distribution from the store fronts. You also

need to regulate the back end and allow for commercial cultivation. Because as was previously said, you want to be able to allow dispensaries to bring in electricians to establish safe places for this medicine to be grown that can be secure. And when you allow dispensaries and collectives to grow their own medicine it brings down the cost for patients exponentially. Operating requirements, we agree there should be some operating requirements. There already are some operating requirements given to you by state law. All of these issues are locally regulated, security record keeping other cities have option labeling requirements requiring a community relations contact requiring good neighbor policies some even restrict advertising. Onsite consumption, we would like to see onsite consumption have an exception for employees who have to work all day. Also I would like to see it limited to smoking onsite because some patients might be able to eat an edible or use lotions while they're working. Doesn't seem to be a security or safety threat to allow employees to do that. We would like to see an end to searching for problems that you have solutions for. There are a lot of regulations that are trying to address issues that just don't currently exist. One of the most important things we think as patients is the permit application process. We disagree with the lotteries process. What we want to see is a race to the top a competitive permit application process. We would like to see the review authority to be someone other than the police department, my -- understand that just makes the patients uncomfortable. [applause]

>> Thank you. A numerical limit, cities of similar size have a lot more than 10 dispensaries in their cities. The city of Denver, 600,000 people, 400 store front kiss pens rise, according 100 permitted dispensaries in our city. [applause] Annual renew with audits go for it. Fees keep them reasonable like was explained if you keep law enforcement out it cuts the cost. It is my understanding that law enforcement is already budgeted to target drug crimes. That's their predefined job. That's why they're here. I would think this actually makes their job easier. They have registered people places to go registered crime. We are taking a huge chunk out of the illegal market making it legal. a city like Oakland can do it, we can do it. [applause] So the competitive process this is really where it's at. This is where the city can get collectives and cooperatives to do what can you not force them to do under the law. They can volunteer to limit their membership. This can volunteer to allow only 21 and over members to come to their collective. Background checks, fine. Look at the actual proposed locations that these places want to operate. Don't look at hypothetical operations. Is it really too close to the park or there a four lane highway between them and the high school? Look at what they actually propose to do before setting ash trite

restrictions that keep people out completely. Many cities do the RFP process and they ask for applicants to submit all the following information. Security plans, operating plans, what they planned to pay their employees, their boards of directors, their price structures, the services they want to provide for patients. We don't want objectivity, objectivity cost not give us safe access. We want the best of the best in San José, we want the most affordable, the best quality, the safest places to go in this city, right here in San José. We don't want to have to go somewhere else to get the medicine we need or to feel safe or to not have to pay a tax. Because frankly the tax is unacceptable. Right now we already pay 9.25% sales tax. Prescription medicines are not subject to sale tax but we have a special exception. We pay an 80% prohibition tax. Really this is a plant, it grows on trees but it's valued at 200 to 400 dollars an ounce. That is one zip log baggie oops according to the American academy of medicine \$500 a year in taxes foster for if average patient. We're not talk about the critically ill. The more ill you are the more medicine you require the more taxes you pay thunder scheme. What we are asking is you not tax our medicine at all, zero percent. Thank you very much.

>> Mayor Reed: Sorry your time is up. We have another collective group here to speak, I've got ten minutes for medicinal cannabis collective cooperative. I'm not sure who the speaker is going to be, please come on down.

>> Good afternoon. It's been a long day already. My name is James Anthony, I'm a land use attorney and medical cannabis regulatory policy proponent. I'm requesting to introduce the executive director of the medicinal cannabis collectives coalition, Mr. Paul Stewart and he's going to speak about some of their policy recommendations which I have up on the chart. Just briefly in response to some of what we've heard this morning, we've seen a fair bit of recycling of previous staff reports from this process. Based on misunderstandings of medical cannabis law. I think if you'll look at the supplemental staff report of September 8th starting at page 8 you'll see about an eight page rebuttal there. That's the staff report under the City Manager's offering today. And that spoons an argument and one derived from Los Angeles county which has been rebuked in several ways it's interesting that they did not speak with City and County San Francisco or Alameda County. The city of Los Angeles took a similar approach although it did not go to the extreme of banning sales. Nevertheless, last Friday a partial injunction issued against the city of Los Angeles's ordinance that case was brought by the national office of the Americans for safe access. That might be good to look at. This eems ideology is aimed at frugs traiting state law. Among the

organizations involved in that betides Los Angeles District Attorney who of course was recently not elected attorney general -- [applause]

>> Are the California narcotics officers association, an infamous source of misinformation, including the assertion that marijuana is not medicine which throbs from their Website. I would ask you to consider the source and consider the information that you heard this morning, I believe it's already been mentioned that the mench case is relevant only to caregivers and not to collectives. What is clear is that under state law which is intended to allow for the safe and affordable distribution of medical cannabis, that that cannabis can be allocated by a collective for fees that cover overhead cost and operating expenses. Before I introduce Mr. Stewart I just want to say that staff has done a lot of work here and has provided you some guidance and some good policy alternatives. I just want to point to a few of those. Other alternatives of course you will have to add based upon your own policy make prerogative. Let me see if that will focus. Yes. Some of the policy alternatives that staff has mentioned that I would refer you to include allowing both commercial and industrial zones, a C.U.P. process in addition to a nontransferable annually expiring special permit such as that suggested out of the special permits office of the San José police department. This is akin to the model that the City of Sacramento put in place last month and which they're currently implementing although it is in fact their City Manager's office which is issuing annually expiring regulatory permits, cultivation of course is critical and should be provided offsite, as per one of staff's policy alternatives, sales I think we've been over that. Nonsmoke alternatives, medical cannabis food drink tinctures, ointments and cannot or should not smoke. Otherwise you are going to legislate mandatory smoking not always the best thing. [applause]

>> Finally the number 10 is too low to conveniently mr. Stewart. Ms. Poulan would you come up here and you can do your thing here. Mr. Stewart is the executive director of the medical cannabis collectives coalition which was formed about a year ago, to work with the city on best practices and to set some standards for this operation.

>> Thank you, James. Mr. Mayor, members of the council, my name is Paul Stewart. I'm the executive director of immediate is than cannabis collectives coalition. Legal in California and it is a wise and compassionate thing. Let

me digress for a second and tell you why. I'm not only an advocate, we have met, we have met with city staff, I am also a patient. I got tired of walking in mud from Vicodin after a quadruple bypass, dwoddenectomy I found this alternative worked, I could function, I could talk on the phone, I could work on a computer, and the pain went away. It was an alternative choice that I made to traditional pharmaceuticals. [applause]

>> Many responsible cities regulate and tax collect cultivation and distribution. Now, as you see on the overhead, to maintain high standards, assure public safety and public access and collect significant tax revenue to medicine for patients, the city must take three steps. Step one: The city must recognize that sales are legal as allowed by state law. The language of California health and safety code section 11362en 775 exempts public as James mentioned earlier that would include not just smoked cannabis but edibles, oils, lotions, et cetera. Because when someone has emphysema they are not going to smoke their medicine. When someone has severely degenerative arthritis someone is not going to smoke their medicine he they are going receipts on a Willie maze autographed baseball. My point is this, ten cities already have a sales tax in place for the sales of medicinal cannabis. And there are 45 cities in Northern California alone that have somehow found the statutory authority to allow the sale of cannabis within their municipalities. One of the things the city council should be waiver, with a measure U established at 5%, using a simple formula based on 30 collectives as an example, as a discussion-starter, the city can realize \$4.5 million in tax revenue alone from the measure you tax. Now, that -- last time I checked you guys have starring at a \$70 million and the A's have the gotten here yet to take up the slack on that. Yea, A's fans, me too. Second, pes strict regulation is critical to public safety while allowing collectives with you and with city staff on this point. Centralized efficient scale cultivation allows lawful collectives, lawful cleives, unlike the example of the gang in your staff report, to pay a gross receipts tax and sales tax, cultivation is a compatible on or off site use but only in industrial zones is more than ancillary. There is no conversion of land use, and in fact, this may provide more jobs than in some traditional industrial uses. More importantly, the draft requirements require cultivation on site. That is both impractical and sufficient to meet the needs of the patients of the City of San José. Of course your ordinance also says a clerve is only four people. Centralized efficient scale cultivation will provide the city with yet another source of revenue. Step number 3, the regulations must be reasonable, but strict. Collectives should be allowed to locate in both commercial and strum zones. Retail ooms commercial and industrial

sites. Commercial zones are accessible to patients while industrial zones are more excluded and secure but both can handle the traffic flow, have sufficient parking, and support needed economic activity.

>> Mayor Reed: Your time is up. I'm sorry, time is up, ten minutes is gone. We now have lots of other people who wish to speak and I'm going to give everybody a chance to speak. Your time is up. I gave you ten minutes. You use it how you wish. Somebody else. I'm going to call some names. Please come down to the front so you're close to the front when it's your time to speak, so we can speed things along. Again it's one minute per speaker. Julie Englebrecht, Paul Peris, Par Silva.

>> Good afternoon, many of you remember me, I've been to every one of these medical marijuana meetings. The late notice and timing of this meeting has denied many parents whose school children's events around this week, directions of the City's medical marijuana policy and the safety of their children creating a more balanced mirror of the issue. But I'm here because although the city was successful in closing the purple elephant next door home, one block of our home one which opened 48 hours up after the purple elephant was closed and located directly across the street. I urge the city to consider this carefully. No club can or will control the activities that happen outside their club and the council cannot begin to recover the recovery cost without considering narcotics vice units in and around the area of these clubs. I can only speak to the enormous personal cost to my family which has been far too great to tolerate any longer.

>> Mayor Reed: Your time is up.

>> Every child should be safe not just mine.

>> Mayor Reed: Paul Pease, (saying names).

>> Good afternoon, mayor. Councilmen, thank you, members. My name is Paul Pais. I'm a patient with MS. I've been diagnosed since 2006, September of 2008 was my last episode with smmplet. I was paralyzed for two weeks was not able to walk or use the right side of my body. First they gave me steroids which worked to help me

get -- get over that episode but I was not fully able to recover, I have constant pain in my muscles and bones. Ibuprofen Vicodin were prescribed for my pain. Next is an injection of interfereon which sleeplessness, medical cannabis helps with these issues. So having a safe place to get my meds is important to me. HPMI is a club that makes me feel safe.

>> Mayor Reed: Sorry your time is up. Elia Sar Silva followed by Carla Nesfobi. Go ahead.

>> Hi city council members, my name is Eli Sar Silva. I'm a patient myself, use it for anxiety, major depression and nausea. But at these collectives I would be forced to go to the streets and buy from a drug use were it's no need to do that, very dangerous to do that. It is safe practices, safe right now and stay if way it is. Thank you. [applause]

>> Mayor Reed: Carla Nestpoli. (saying names).

>> Hi I'm Carla Nespoli mother of three i'm glad we're all here to figure out the regulation of all this but what we have before us is a lose lose lose. I know we can come together and get a win win win for everyone in this room. Keep safe access. Don't make me go get the medicine of my choice for my teenage son illegally on the streets. Keep businesses thriving here. HPMI retains 12 full time employees. Keep entrepreneurs doing their thing. We have taken the guidelines and created a nonprofit beautiful business model with an outreach program, we are training people to work one on one with hospice care. Come care with us to our senior citizens. Come drum with us and witness where this medicine is vital for our liberty and pursuit of happiness. Let HPMI beyond the seat as Pierluigi sucks in his.

>> Mayor Reed: Sorry your time is up.

>> Thank you for your time and service.

>> Mayor Reed: Van Hovy. Followed by Thomas McConnell and (saying names).

>> My name is Thomas Hovy. We have 50 or 100 members here today who are all in faimp of HPMI and the tremendous community service we are offering. This is a Public Health issue we are face being and HPMI is on the front lines, thank you for your time.

>> Mayor Reed: Thomas McConnell, Lardine Westin. Don't come down until I call your name, a lot of people want to speak.

>> Arnold smut.

>> Mayor Reed: What's your name glm Arden Smith.

>> Mayor Reed: I didn't call your name. Thomas McConnell are you here?

>> Yes. I'm a patient the medication helps me quite a bit. I wouldn't want my kids growing up to the pot heads. Hi a lot of trouble back in the early '70 tion with marijuana when I started experimenting with it. I should have listened to my parents about the dangers of street drugs and everything but 30 years ago you couldn't even walk half a block out here without someone approaching you to sell you a dime bag of American on the street. It isn't that way anymore. Thank you. [applause]

>> Mayor Reed: Lardene Westin. (saying names).

>> My name is Lordene Westin. I'm a veteran. First of all I'd like to say HPMI doesn't just hand out medicine. They have drums, places we he can hang out with, they have parties for us. They help us, if I can talk to them. If I talk to my psychiatrist for ten minutes, it's \$300. My mom passed away, my brother had triplets two of them died, one of my sisters is in mental hospital, they found me out in the park. I'm having problems but with HPMI and the medicine I think I can make it. [applause]

>> Mayor Reed: Margaret Schulte followed by Michael gamino and David Reagan.

>> HPMI has been a very supportive place for me. More than therapy they help me out with my medicine also. A lot of my conditions I have to have medicine to help me out also to get through my day. I wish you would consider them keeping them on the committee. Very positive. Thank you.

>> Mayor Reed: Michael gamino, David Reagan and then William bell.

>> My name is Michael Gamino and I wish to ask you all to please give us our rules, give us our regulations. This is a no-brainer. Medicinal marijuana is here to stay, it's going nowhere. It's here to stay. The medicinal marijuana I no longer want to be a criminal, I'm a patient. Thank you so much.

>> Mayor Reed: David Reagan. David Reagan followed by William bell and Adam Smith.

>> Hi my name's David Reagan. I'm patient. It happens that I have worked at HPMI coincidence small world. I've also been a bartender. I can tell you that cannabis is better medicine, not associated with domestic violence or any kind of violence. All these scare tactics. I don't see what it's about. I've seen a lot of good dispense reiteration and a lot of good behavior. In any Kay San José seems to recognize that this is here to stay and I thank you all for embracing it. I hear kafka in a defective sense it already is, you seem to be acknowledging it. I encourage you to keep moving that direction, thank you.

>> Mayor Reed: William bell, then Adam Smith and Alicia Gonzales.

>> Hello my name is William Bell, disabled vet, ex alcoholic, speed freak tobacco user and I'm a member of HPMI medical marijuana user. It's helped me a lot with issues with anger and physical issues that do I have and I'm glad that it's hopefully one day going to become completely legal. Thank you for y'all support if y'all give it to us. God bless y'all.

>> Mayor Reed: Adam Smith followed by Alicia Gonzales and Debra Perez.

>> My name is Adam Smith, I'm a veteran U.S. army. I was on a tanker. It was a rigorous job left me with insom knee a awmg my symptoms. And I really appreciate you guys don't shut them all down, because of this, thank you. That's it.

>> Mayor Reed: All right. Alicia Gonzales followed by Debra Perez and Bonita Ortega.

>> I was diagnosed with scoliosis when I was 13. I was on Vicodin, I was physical therapy, this is probably the only place coy get my medicine efficiently and safely and also have proper knowledge about it, HPMI doesn't give you your medicine and leave, they give you the knowledge and the educational to understand what you're doing with this medicine. I encourage you getting this regulated properly. Thank you.

>> Mayor Reed: Gutierrez, followed by Bonita Ortega and (saying names).

>> My name is Debra Perez and I am an HPMI patient for medical marijuana. A month ago I was being treated with various medications and synthetic narcotics. I gave those up and the quality of my life has increased to just he tremendous levels. I'm very grateful that I'm able too have this alternative. I believe that my family and friends are glad that this is a better way of life for me and I'm a much better person and a healthier person now. Thank you. [applause]

>> Mayor Reed: Bonita ortate ah.

>> I'm glad I'm a patient over at HP mimplet, every since that, hiding from this guy, I buy my Shit the right way and my anxiety is gone, I'm happy as can be.

>> Mayor Reed: Everly Bachu (saying names).

>> My name is Beverly Bachu. I am the office manager for HPMI. Why I believe our operational design should be the business model for your legislative considerations. We design programs to reach out to the community. We do that with the moneys that come in in trade for medicine. We encourage memberships and employees to be champions of charity work peer group discussions and industry specific educational talks. HPMI debt cads resources and time collective and these times HPMI is a gateway for those without jobs looking for annal trusktive famlg and hair vegs the medicine it's about reaching out to the community. Our work with our group and our volunteer programs we supplied more than 300 people who work thousands of hours in efforts that make a different beyond the medicine. And our outreach programs aren't when the machining.

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Tony Nguyen. [cheering and applause]

>> Hi, my name is Tony Nguyen. I live in District 2. I'm normally here pleading for library funds, but I decided to take the day off. I also think that if this thing passes, that there should be some sort of oversight committee, regulating this that goes on. And it shouldn't be part of the police branch but it should be part of the business branch of the city. Also I think that having just ten cooperatives creates problems. My position is simple, yes on meds, no on drug lords and by having just ten place operating I fear that you're going to have big box types of places our end up having just too much concentration. I actually think you should leave this to the free market actually so you don't regulate meds but that's all I really have to say. I think you've been right on this since day 1.

>> Mayor Reed: Jeannie Rutherford followed by Phyllis Stevens and pandy Arieta.

>> Hi I'm Jenny ruth ford, I run a small cooperative here in San José. I'm not hears to explain my collective but the point of view of all of your constituents it will. Clearly that's what the people the voters want. This law has been here since 1996. It's time to accept it before we get taken over like L.A. did. You know I understand the position of

the different and the police but there's a saying that you'll never convince a man of something that's not in his best interest to believe. I hope you'll also take the other opinions of you voters into account when drafting reasonable regulation ordinances and regulations. Thank you.

>> Mayor Reed: Phyllis Stephens followed by Pandy Arieta snoims gnomes.

>> My name is Phyllis Stephens, I'm catastrophically ill with lupus, I've also had DES, had 14 major surgeries. Had to be resuscitated, been in a coma, life support, amazing number of drugs, some then taken off the market, some of them limited by the pharmacies and some of them given the wrong medication to the wrong case. Nonetheless, I've been using medical marijuana since I was 16 years old in college and I continue to use it. I've had over 14 major surgeries been in a coma life support blah blah. This is the way to go. Now we need places to get the medication safely. We need access to it. We're not able to drive. We're not able to see. We need buses, we need everything open until 9:00, 10:00 at night like real people have cars and vision. That's all, thank you. [applause]

>> Mayor Reed: Pandy areita, followed by Naples.

>> Hello mayor councilmembers staff and everybody else here too. I'm 51 years old. I'm a mother of two. A lot of people look at me and they think, she's really healthy. Why should she need cannabis as medicine? When I was 17 years old, I was diagnosed with severe psoriasis. It covered my hands, my arms, my legs, my feet, I had to quit doing karate because people didn't want me to kick them. It has been debilitating, humiliating, and cannabis has helped me tremendously. I'm almost clear right now, I used to take very heavy medicines, they laid me in a tar bed, it didn't work. Cannabis works. Make sure you regulate it that as my son was bringing home stronger medicine than I was able to get let's make that not happen. Stop the raids. You're raiding peaceful people. You are instilling --

>> Mayor Reed: Sorry your time is up.

>> Thank you very much.

>> Mayor Reed: Reyna Burns pch followed by (saying names).

>> My name is Reyna one of the department managers for HPMI. working at HPMI has been such a blessing to me I am very much a people person. I was raised that marijuana was bad, there was a bad stigma around it now I can actually look people in the face and see them for who they are, not what I've been told and I've actually benefited from it myself in my needs and alternative medicine. I love having safe access at HPMI. It's wonderful to go somewhere and get my medicine where I'm not being offered a gun or knife for a good price. It is like a pharmacy, like walking into Walmart or Walgreen's, having my medicine evaluated and knowing it's safe and it's tested. Thank you very much for your time you have a wonderful day God bless. [applause]

>> Mayor Reed: Michelle Hovey, (saying names).

>> Thank you honorable mayor and city council members for taking the time and dedicating your resources regarding medical marijuana collectives in San José. My name is Michelle Hovey and I'm the daughter of Van Hovey, the founder of the holistic pain management center or HPMI efficiently like HPMI it can be an extremely positive thing for the community. Our volunteers dedicate their time and energy to educate inspire and contribute to the cause. Thank you for witnessing these people's pain and I support the City of San José in creating a medical marijuana committee and policies that benefit the entire community. Thank you. [applause]

>> Mayor Reed: Danielle Sadler, Adam mints and Frances Schmidt.

>> I'm Danielle Sadler. I volunteer at second harvest food bank sacred heart, I did San José leadership academy junior year. I took that job at HPMI because every member's voice is heard. They're so involved with the community and it's only getting better. Thank you. [applause]

>> Mayor Reed: Adam mints, Frances Schmidt, James Hart.

>> My name is Adam mints. I'm a medical marijuana patient. I suffer from extreme crompletE, if you thought you were joke because of medical marijuana I'm able to relieve many of the symptoms that I have and regards to speaking in front of people being around people, in addition to that I used to work as a lung function technician doing diagnostic test being and I can tell you now any patient, medical marijuana patient who can't take their sicker someone with COPD or asthma or any other lung condition will not be able to get their medication if they cannot take it orally. I hope that you take the time to look at edibles very seriously and realize they are a very important type of medication. Thank you for your time.

>> Mayor Reed: Frances Schmidt followed by James Hart and Wade Ederbury.

>> I appear as the acting general manager of harbor side center of San José. Option we would appreciate knowing now if that is the case. So that we may proceed to disband in an orderly fashion and thereby protect our patients and our staff police department to cease participation in raids against our dispensaries which are in full compliance with the attorney general's tbiens regarding immediate ices nail marijuana dispensaries, thank you for your time.

>> Mayor Reed: James Hart followed by Wade adderbury and Mary Gonzales.

>> Hello, thank you for having us here today. I want to keep it simple and short. I'm actually a news HPMI patient. Ever since I was 18 or so I've had to go out to various people, nefarious characters and such and I got my medicine from them. I'm very glad that I had the opportunity to have access to herbal remedies, something I've never had before. I've taken them for all sorts of illnesses, insomnia, anxiety, I still have anxiety to date from basically the police and stuff like that so I'm glad that hopefully this legislation will continue to make it more accessible to people and patients and stuff so that's pretty much it, I want to say thank you very much.

>> Mayor Reed: Wade adderbury, Valerie Gonzales Sandra Mason.

>> Hello I want to say about HPMI there's a lot of collectives out there, I've been a lot of them to check them out. When I found them I found this is the time I want to go for my medication. I've been a two-year time cancer survivor, hospital, 45 days, couldn't eat or drink, living in a limbo, on my death bed, my friend coops yes and no and that was it. I had enough energy just to say I'm thirsty, I want some tang. I took a drink of tang, I could feel it go through my whole body. When you are going through chemotherapy, you absolutely reject anything. Ice chips, water, you have nothing that you want. That right there, saved my life. I was told I could not medicate in the hospital. It's a Catholic hospital, you can't do that here, you have a choice, can you leave or can you die here. I left. I'm 46 years old. This happened when I was 21. I cannot believe at 46 years old that can you not find a way to let us legally medicate.

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Valerie Gonzales [applause]

>> Mayor Reed: Followed by Sandra Mesa and Tracy Anderson.

>> Good afternoon, city council. My name is Valerie Gonzales and I too have been stricken with lymphoma cancer and due to HPMI I have been able to gain my appetite back. I've been able to gain more weight. I was under 85 pounds. I was six months to a year to live and thanks HPMI, I've been able to sustain my eating habits and do it well with the edibles. Thank you.

>> Mayor Reed: Sandra Mesa, followed by Tracy Anderson and Gabrielle Greenstein.

>> I'm Sandra Mesa I'm with HPMI. I have a knee tunnel. My knee goes out on me a lot. The lord says, he made all herbs. Everything in this valley. And if we need our medicine, and this helps us, he will provide for us, thank you. [applause]

>> Mayor Reed: Tracy Anderson, be Gabriel Greenstein. And.

>> Hi council. Hepatitis C diabetes anxiety. HPMI is right around the corner from my house and it's the best place I've ever been to. All the clubs around there are the best. They're close, they're friend reply and I'm happy to do anything I can for them. Thank you. [applause]

>> Hi, good afternoon I'm speaking today on behalf of the California association for the promotion of safe cannabis edibles. We're a patient advocacy group and edible cannabis has letting use for without the adverse side effects remitted to smoking. I've e-mailed you all list of recommendations based on the San Francisco medical marijuana ordinance, as the only city that regulates upset can follow. The San Francisco ordinance addresses many of the problems and cernlingsz withed ibltion including providing for safe and sanitary manufacturing conditions, labeling and packaging standards and guarding against the use of cannabis edibles by children. One step further and recommending that all edible marijuana liebled service please take a look at the handouts I e-mailed to you all and consider the issue ugh thank you .

>> Mayor Reed: Bryce Torrez followed by Bernard Miller and woody de Mayo.

>> How you doing? I'm my deepest concern is that medical marijuana patients continue to have safe access to medical marijuana products. For many patients alternative forms of ingesting and option the sick eggs of patients will benefit from this the most. Our concerns, the concerns that you may have we believe that the alternatives medicinal products make up 40% of reimbursements to collectives. If then the letting companies will leave and San José will be left with a large market that will be filled with a large inconsistent noninvolved people. These products are here to stay, they are needed, the demand will not go away, it will just go underground.

>> Mayor Reed: Bryce Torrez, Bernard Miller, woody de mayo, and Bryce Hutchins.

>> Thank you, mayor and members of council thank you for allowing me to speak. My name is Bryce Torrez, I'm a legally blind, African American albino. I do not drive, have never been able to drive. As long as my eyesight continues to be the way it is, and that is for the rest of my life, because that's what albinos deal with I will need this medication to be able to make my life easier and when I have to travel to places like San Francisco and Oakland and give those cities my tax dollars, I don't think it's fair to this city. So I just want to say that as far as banning dispensaries that work within the legal confines of the law here is wrong. So please consider that, do not close them all. I can't tell you harms to regulate but to close them is wrong. Thank you.

>> Mayor Reed: Sorry your time is up. Woody de mayo followed by Dana Hutchins and Chris Atkins.

>> I'm woody de mayo. I'm necessary and good but I am opposed to the rampant drug dealing and drug usage in Downtown San José. So I hope that the council will keep the 600 foot ordinance and I think that's a good compromise. [applause]

>> Mayor Reed: Dana hutch inns, Chris.

>> My name is Dana hutchings, I suffer from anxiety I'm a diabetic, without HPMI, I came from gills Rios to get my medicine, there is no place in Gil Rios because it's also banned. That's all I have to say. I wish you guys would kipe the doors open for us in a safe place.

>> Mayor Reed: Chris Akins, Althea Alta Morano (saying names).

>> I'm Chris Akins, I don't know about you, recall of medicine, not once has marijuana been recalled, HPMI has been providing us. That's all I can say to you guys, you tase that into consideration. [applause]

>> Hello, my name is Keith Ligans.

>> Mayor Reed: Keith, I didn't call your name, sorry.

>> I was wondering if you did.

>> Mayor Reed: (saying names) and then Victoria pena.

>> My name is Recena Altamarano, nice meeting you mayor, I'm a patient at HPMI. I suffer from depression and everything like that and I enjoy the professionalism, the safe environment and I enjoy not to have to deal with drug dealers in order to get my medication. I also feel that ten, a limit of ten dispensaries is too little but all the people we have in San José, I think it's a ridiculous number, actually. And that's what I have to say. [applause]

>> Mayor Reed: Victoria pena and then Keith Liggins and Ken Willuski.

>> Hi, my name is Victoria and I'm with HP mimplet. And HPMI is not just a collective, it's a wellness center and it's really truly a place where people could come together and use an alternative medicine that works for them. And we really enjoy having safe access, from HPMI because we don't want to go on the street and going to a person who also sells other things that are illegal. So I really love having safe access with HPMI and they have a great sense of community and we are doing a lot of outreach with people in San José, just to show them that we're not just about medical marijuana, that we have other interest in life. Thank you so much for your time. [applause]

>> Mayor Reed: Are you John?

>> No, I'm -- Kim.

>> Mayor Reed: Okay Kim.

>> I speak for her because he she uses wrong words a lot of time because of a brain injury. She was in a mountain bike accident in '04.

>> Mayor Reed: Okay, go ahead.

>> And it helps to alleviate her seizures that she has occasional and keeps her out of hyperstress and helps her get the sleep he she needs and eat, he she needs to eat a lot. And we both believe that it should be taxed and as far as people worrying about a collective being close, there's nobody getting dangerous drugs from these places. I don't understand what all the worry would be about that. I've never been into a club that didn't have signs that both of us have seen that strictly, hey, you don't hang around outside, you don't exchange money or anything with anybody around here. You come here and you go away and you behave yourself. You are polite to everybody in here and around the place.

>> Don't have to have like sometimes I trying --

>> Other stronger drugs to alleviate pain.

>> Mayor Reed: Thank you, your time is up.

>> Thank you.

>> Mayor Reed: Keith Liggins followed by David (saying names).

>> Honorable mayor and members of the council, my name is Keith Liggins delegate on the labor council one of the first things I'd like to bring up is our children are important, many of these individuals and patients care about their children, their kids. Maybe we should minimum that being said I do not think that we should limit businesses from operating. We need to create jobs right now, and in addition to that, in addition that where is supply and demand? If there's over 80 cooperatives operating right now that are creating taxable dollars, and the demand is there, why would we limit it to ten? I would like to also hands this over which is Sacramento's ordinance and also,

their research report. I think we should be more pro-business. What if we were to have done that to the Silicon Valley start July company?

>> Mayor Reed: Sorry your time is up. David Harbold, Wanda Miller, Pat Knoop or Koop.

>> I've already said my peace so I'll pass to the next.

>> Mayor Reed: Wanda Miller, Pat Noop or Koop.

>> Honorable mayor and councilmembers, my name is Wanda Miller, I'm a constituent and HPMI member. I joined the cooperative at 17 and at 18 I wanted to serve my country. Now I want to use marijuana as my medicine, because morphine is too much. And it's very invasive on my body. And you're telling me I can't do that? God put that herb on this earth for us. Please, don't limit us. Allow us to continue to receive our medication. Thank you. [applause]

>> Mayor Reed: Pat inoohP or Koop.

>> Mayor, here again, it's Noop. tough issues on its plate including a \$70 million deficit. Everybody up on stage campaigned to get there to deal with these tough issues. Each one of you wanted to be there to sit where you are sitting now and with that in mind I just respectfully ask that you stop watching the parade and start leading. [applause]

>> The citizens have overwhelmingly said they want dispensaries in San José. So let's get some sensible regulations, do it right, and be a role model. And let everybody else follow San José. Thank you. [applause]

>> Mayor Reed: Dave Hodges, followed by Douglas Chilpek and Andy Schwandire reservation.

>> Hi my name is Dave Hodges, I'm the founder of SJCBC and the CNOA and the District Attorneys from L.A. These are the ones that have '96 they have continued to pervert the law and will continue to. If we go with their advice that will lead the city to legal battles that will be the complete opposite of what measure U was designed for which is to raise money for the City of San José. So please, think again about the advice that you're getting, and you know, consider a much lower tax rate, something reasonable, around 2 or 3% like Pierluigi first suggested. And allow collectives to exist in San José. Please don't chase us out. Thank you. [applause]

>> Mayor Reed: Douglas Chilpeck, and (saying names).

>> I'm Doug Chilpeck, one of the founders of public transportation. A few of those who have spoke to you today are members of my cooperative. They do take public transportation. I am light industrial zoned and I have a public bus stop directly in front of my place and I'm less than a block away from the Diridon station. That in turn growing is what you want onsite. We assist our patients because he the we show them how to grow their own medicine. Which is what the city council would like. Let the appropriate dispensaries operate in the City of San José, with the appropriate guidelines, the appropriate taxation, work together with the members and with ASA and the other groups friek to substantial regulations instead of fighting back or creating a constant butting of heads? We would like to exist. We know you want a limit to numbers. You don't want 500, find an adequate number that adequately suits us here.

>> Mayor Reed: Sorry your time is up. Andy Schwanderer,.

>> My name is Andy Schwanderer. I'm one of the founders of council that cannabis is not the bubonic plague. In fact it's less toxic to the human body than aspirin, all right? So help us change the negative social stigma caused by unjustified prohibition. Please don't continue to push policy that weighs resources definitely should somewhere been. First one was definitely a study of the impact of closing 100 businesses on the local jobs taxes and other revenues to other local businesses that offer around the collectives in these areas. Second thing is cost of currently litigation as well as on going litigation that an unreasonable approach would cost. Third, condens being

ten megaclubs will directly cause a security risk as well as a large number of patients to reengage the black market. Tax paying upstanding citizens represent the majority of the patients --

>> Mayor Reed: Sorry your time is up. Tom Adler followed by Gary Salvador and (saying names).

>> Hello, honorable mayor and staff, my name is Tom Adler foot pain, I find edible medical marijuana is the most effective drug I've used for this pain, has revolt few side effects and I solution that allows patients like me to continue to obtain this effective medicine but also to protect any non patients like child proof packaging, warning labels, et cetera. I please ask the City of San José to have some compassion concerning patients like me for edible medical marijuana. Thank you.

>> Mayor Reed: Gary Salvador followed by (saying names).

>> My name is Gary Salvador founder of SV care. We have 2,000 pollution members, I'm glad I didn't invite them here today. We'd never get through this. Closing down is not the solution, allowing us to operate and figuring out how to work with you is industrial commercial, we're in a commercial office zone. Near other what I'd consider alternative solutions, chiropractic, holistic care, it's a great location for us and our members left coming there. It's a very safer condition and it's readily accessible to.

>>> We're right near public transportation as well too pps ten is too few. San Francisco has 28 clubs, it's on their Website. Not \$24 million for 8,000 a plant. That's really an astronomical number. You're being fed some bad information by your people. We definitely want to stay in business. Thank you.

>> Mayor Reed: Sahir Khan, Richard Sararollo, Richard (saying names).

>> Am I good to go? My name is Sahir Khan, preoncology student. I spoke about our patients who are unable to access their medication. Cutting danger. Let me put some names on the table real quickly. The collective I volunteer at has 3,000 oop let us say that the 88 functioning dispensaries have only 200 patients, one sixth of

what my collective cares for. That's 17,600 terminally ill and chronically ill patients. 35 -- 3520 ounces or 220 pounds must be grown a month. As I understand your staff are highly educated men and women, however I each month on a side or with one location adjacent to the site would be an enormous economic and safety burden on the city. I'm asking you to consider expanding the number of dispensaries to a more appropriate, safe and reasonable number. Thank you. [applause]

>> Mayor Reed: Richard Sararolo, Jim Trevino Kim (saying names).

>> Yes I'm Richard Sararolo O&M did not have ordinance on how to operate or open the collectives. The only way we had to decide who to do it, where to do it and how profitly to do it. Is that the county of Santa Clara had a Website that said what their main requirements were. Part of those many collectives opened up in industrial areas, to exclude that won't be fair to any of them. The other thing I'd like to remind the council of, March 30th meeting you said you would discourage any other collectives opening after that date. So to not allow the ones that did open before that date is not fair to them so please consider at least that date as the cut off time. Thank you.

>> Mayor Reed: Jim Trevino Kim cue, Aisha and M. Moses.

>> My name is Kim cue and I'm an operator of a 408 (c) (c). I wanted to talk a little bit about the sec and the every collective here in San José and Santa Clara County is under attack, and he we ask that you guys stand up for the collectives here in San José and get the S.E.C. S.E.T. off the guys back you guys implement a moratorium and not a ban again so that we can work with you on implementing the the ordinances to regulate the collectives in your city. And I hope you guys are familiar with the SECSET and if you're not I recommend that you guys look into it. They're funded through 2012. Thank you. [applause]

>> Mayor Reed: .

>> Good afternoon, city council. First of all, I want to thank you all for stepping up and having the courage to have this implemented to begin with . It's very obvious that I've got a lot of medical problems. I do about 18 medicines a

day, with the medical marijuana that is provided to me from Cinnabar health club I'm down to about 14 medicines. I'm off of my oxycontin, Vicodin and the others, I'm like my favorite vegetable, I'm not able to do anything. With the medical marijuana I'm able to focus, get to my home to here in my wheelchair without any problems. As far as limiting it to ten clubs, I think it's not. We've got to take the demographics of the physically ill and use the shops accordingly. The last thing I want to say as far as --

>> Mayor Reed: Your time is up.

>> Thank you very much, have a good day.

>> Mayor Reed: Aisha, followed by M. Moses and then Rick squires.

>> What's up Mayor Reed, nice to see you again, how you doing, I'm back again I'm a 36-year-old cancer patient and that's not a game, it's serious. I've been bald, I've been ugly, I've been sick. Pharmaceutical drugs make me feel like a vampire dope fiends. I nod out, I am nasty, it's terrible. I don't want to smoke weed. I have to smoke weed. Supposed to be the safest city in America provide access to patients. I'm going to buy my weed, you're not going to give it to medium plea, there's going to be a sale somewhere. Medi-Cal pays THC pills a month today to for me. I don't take them I don't get them. I'm saving you money by going to these dispensaries and buying what we need. If this weren't medication, we wouldn't be having this conversation today. Anybody that doesn't believe it's medicine what would you do if it was your relative.

>> Mayor Reed: Your time is up. We got more people that wish to speak. M. Moses, followed by Rick squires.

>> Hi, good afternoon council, thank you for hearing me. Picking up from where she was, I had a grandfather that was terminally ill that passed away, I didn't have the knowledge to guff him, maybe now it could help alleviate a lot of his page. All of you could maybe have some member of your family that this could benefit him. And at the same time, there are members who are benefiting from this. I've benefited, I've been on a couple of bad car accidents, antidepressants for my anxiety key pressing, I have chemical burnings from doing hair, I'm a hairdresser, I've

been working with HPMI on their hospice care. On that note, HP mple simplet a very patients weekly people that can't afford they have every price level, edibles tinctures oils, I have their back. Too. Thank you.

>> Mayor Reed: Rick squires.

>> Ladies and gentlemen, thank you for this moment. I am a Vietnam era veteran and I work with other Vietnam veterans and I've watched these guys come off their psychotropic medicines start to regain some semblance of life because of this medicine. When you make it harder for them you take it back to where they were and some them go all the way back into the jungle. Do we want them back or are we going to keep them bound up? Thank you. [applause]

>> Mayor Reed: That concludes the public testimony at least based on the cards that I have. We have another card coming down the stairs here please anybody else whose name I called that didn't speak? Or anybody else that wants to submit a card do it now, we got work to do and as you can tell we are running out of time and we've got to make decisions. Darlene Welch.

>> I'm Darlene Welch. I missed most of the meeting. I want to thank everyone for continue being to support it, it is a stigma I've lived with for 26 years. Can you imagine having a life where you go to church and you live a certain life and then you smoke pot and you hide it from people that you know? Don't do this to other people. I agree, I'm so glad that the law did not pass to make it legal for everyone to use. I do not think that that's a good ideas. I don't think that's the way it should be done but you need to maf forward because things aren't going to change. It effects my life in soful ways. My husband, I understand drug addiction. My husband he he had asperger's he he was a very intelligent man and he he died of a drug overdose. I understand that. You need to go forward and make this drug available and send a message to our government, please, it's changing people's lives.

>> Mayor Reed: I'm not going to take testimony from people who are part of the collectives so Dave witting \$dress, we're not going to take testimony from the collectives, that's why we had a collective presentation. If you did that's why I'm not -- mark Shelton and Maria Reyes.

>> Clarify your intention regarding medical cannabis dispensation here in San José. Develop and implement suitable regulation for medical dispensaries. It is only under these conditions that we can continue with our mission to provide the most professional and compassionate service to the medical cannabis patients of San José and the surrounding area. We believe we along with other well regulated dispensaries will greatly add to the quality of life along with the tax revenue stream of the City of San José. We would ask that you assess at most a 2.5 business tax rate comparable with the City of Berkeley giving you a tax advantage to the City of Oakland the leader in the industry. This will allow us to patients and help free nonour poor and severely disabled patients. Thank you for your time.

>> Mayor Reed: Matt Lucero, Corisina Reyes (saying names).

>> Same day Councilmember Oliverio released his memo. We've learned a lot over that time not through reports and studies but through real life action and participation with a lot of sick people around here. Just a couple of points. Commercial zones were I'm not going to criticize or say anything about industrial that's your guys decision but right next to homes right into memo where the sick people live. Second thing the tax. Pigs eat hogs get slaughtered. no reason there's no reason other than opportunity to try to take money now from sick people so we're urging that is to zero. Recreational use, that did not pass. Final point number of collectives, capitalism works, we've got more than ten, 30 minute wait, 400 growers, 50,000 members, that's not what we want here, thank you. [applause]

>> Mayor Reed: Corina Reyes and then Mark Shelton.

>> City council, mayor, patients for the state who are scared to make a donation for medication which has been proven to alleviate their symptoms because patients need consistent, reliable continuum of care and we can't provide that unless a conclusion that we can't freight in this format. Without your decision patients might be too afraid to seek their medication and harmful to themselves they are employers and employees and other people. Thank you.

>> Mayor Reed: Mark Shelton.

>> Thank you, I'm Mark Shelton a Vietnam vet and a patient of Ms. Reyes's. I'm here on behalf of bolden state care collective which is always I'm on a fixed income being a disabled vet so I can't afford a lot of the dispensaries higher priced medicine but at golden state they've been compassionate and I've been able to get safe and affordable medicine and access there and treated well. As far as law, what you're looking to regulate I would look creeled state law.

>> My name is Randy Kundmiller. I'm not a member of the HP mimplet, not a medical marijuana user but a couple of points. I have been an elected official in your seat on school boards. Up this is a policy issue. We heard a lot of regulations from bureaucrats before. We heard a biased or shallow or uninformed from the D.A.'s office. This is a policy issue, affecting people, the other point I'd like to make, more than once I heard that we've got work to do. I've been in seats, this is your work, listening to what people have to say who are stakeholders. What you're going to do later is act. But this is your work right now. Thank you. [applause]

>> Mayor Reed: Thank you. Mr. Pardo, I have your card in the stack will marijuana collective we ultimately have to make some decision. So now is the time for councilmembers to get any questions addressed that we have of the staff. We had a very long staff presentation a very long time ago and so this is the opportunity, first opportunity for councilmembers to get engaged in this conversation. We have scheduled only another 53 minutes to this. I anticipate going to 5:30. We'll probably run a little bit past the 5:00 time period in order to get some work done here today as a result of all this testimony so let me come back for council comments questions of anything in the staff presentation. But before I do that I want to give the staff a chance to comment on anything that they heard in the public testimony that needs to be clarified. Kind of rebuttal if you will. City Attorney.

>> City Attorney Doyle: Yes I am going to ask my staff, seems like the 64,000 dollar question is the issue of sales. And I'd ask my staff to address that question at this point.

>> Thank you, Rick. Patty Degnan city attorney's office. I want to address the issue of the mench case. It was said that mench does not apply to collectives. But I want to -- well first of all, I want to say that the reason that we're here today is because there's not a lot of guidance out there. It's certainly not a lot of guidance with regard to collectives. The statutes don't address collectives. And the cases have just started to address the collectives issue. Urdenu case, hard to pronounce, Urdzenu case did talk about collectives in that they recognized people getting together, and under the MMPA to volunteer their services to donate time to bring patients together to collectively cultivate. The mench case talked about not only what is primary caregiver but also set forth a framework to analyze the whole MMPA. And actually, Deanna if you can get that slide up, this is a slide that we borrowed. But it does a good job of kind of laying out the three different things that you need to look at under the mench analysis when you are analyzing what part of the law applies to whom. So if you see at the top, there are categories of individuals, the patient, the caregiver, the I.D. card holder, the individual and the position. And these are specific categories of people that the MMPA recognizes. You'll note that collective is not up there. Again, this is not our presentation. This is a slide that we borrowed. So we might look at it a little bit differently, but for the purposes of this analysis, I want to primarily talk about the three different aspects of the law that you have to look at every time you're analyzing whether an immunity applies to somebody. So down in the box is the set of laws. These are all the marijuana laws that the MMPA and CUA exempt the individuals laid out there from. I believe it's 11360 is the actual sale of marijuana. So all of these laws are exempted or people are exempted of all of these laws if they fall under one of the categories in the rows. So there was again three things that mench says you have to look at. First is who -- who is the law being applied to? Second is, what activity are they doing? Those are the boxes under each of the categories of people. If you look at the caregiver, the biggest set of activities that are immune from prosecution. From those laws, and if you look at delivery, giving away, receiving compensation for services provided, receiving compensation for out of pocket expenses, those are the activities that are immune from prosecution from the sales laws. And the caregiver is the only category that those compensation, compensatory distribution type laws, basically the sale law, applies to. So even though mench, the very specific facts in mench were a caregiver and it wasn't a collective case at all, the court did say that only primary caregivers can be compensated for dispensing marijuana. They said that it was basically the whole purpose of the MMP was for primary caregivers in the form of hospice workers, parents, caring for their children, or the people character for their spouses, to not be prosecuted for purchasing marijuana, and again, for caregivers not to be prosecuted for

selling marijuana to their patients or getting reimbursed for marijuana that they gave to their patients. So this is the framework under which we -- the only thing we have to decide, you know, whether a sale is legal or not legal. And again, there's nothing up there that talks about collectives. We have to interpret the law and the way that we've interpreted the law, collectives are not allowed to sell. So that's the explanation of the sales. Also, if I may, that's also the explanation for why we don't think that collectives are allowed to hire employees. Because again, only primary caregivers under our read of the mench case are allowed to receive compensation for dispensing marijuana.

>> Mayor Reed: Anything else the staff wanted to comment on from the previous presentations?

>> Deanna Santana: Not an attorney here but would mention opportunity caregiver that is where the deliveries are covered, that is beyond the collective function.

>> Mayor Reed: All right, Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, Mayor Reed, thank you to all the speakers. I just say a few, quite a bit but I'll try to condense. One I don't think the majority of the council is here to ban medicinal cannabis in the City of San José. Would you have seen that earlier when it came before council in other times. So I think it's really grappling with the state not offering true guidelines and regulation, and each city having to grapple with that. I've said many times that I don't think the entire medical collective bargaining community will be able to obtain everything you wish. Just much like any other interest group that comes to government, there is a give and a take and this council has to balance that effort. So I appreciate the fight but it also has to be a reasonable one but it also has to be the way we present it and were informed with it. And thank you for the District Attorney's office for appearing today and the chart that we were referring to actually comes from the Los Angeles District Attorney. So that's where the chart's coming from and it's very you know and it's to your point it is confusing and per the legal analysis that came out we're stuck in the -- in an early stage of adoption of policy because there's not enough case law or published court law to determine 100% so therefore we have this area of gray with us now. I did do a memo which came out on Friday which went to the City Clerk's office but didn't get sent out today, until

Monday. And the big thing it talks about the first item is you know, we need collaboration. We need to like other cities like Los Angeles and San Francisco form a committee to hash out all these multitude of details. There's incredible A details that neither -- none of us will be experts on in the city council that was outlaid in the large PowerPoint presentation. The idea is to have a large number of people but to be a collective community to be a part of the presentation so we come back to council with a policy that's detailed, ironed out and has limited risk of litigation, putting in regulatory policy that then forces us to go to court and spend the resources of the city attorney's office would be very difficult. This is a study session, I have a question for staff. So there are cities where this is conducted today where patients with a doctor's permission are exchanging currency for medical cannabis. Is it the legal side of the fence here that you say all of those cities are breaking the law?

>> Not necessarily. Like I said earlier, there are ways where medical marijuana can be dispensed and primary caregivers can be compensated. That's what mench is all about. That's exactly what it says. That's exactly what it provides for. However, there's nothing unfortunately in the code or in any of the cases that tell us that store fronts or dispensaries or collectives that are acting as businesses can sell medical marijuana. So the answer to your question is, maybe.

>> Councilmember Oliverio: Well that was better than the answer that was definitively put on the staff report here that said no. That was it. That's much better with the background the understanding that we can't produce everything, on the staff report, but a better answer than no. An interesting he question, when we talked about the study session and members of the council said, this is a subject I want to learn about. I suggested why not invite our colleagues in other cities that have been dealing with this issue and grappling with this issue and have them come, and sit and you know, us as colleagues on the council, can then ask the policy questions that they've sat with. For example, San Francisco has a C.U.P. process, wouldn't it have been valuable for us to ask them those questions to understand how the C.U.P. process works, what doesn't work, what does? I'm just curious, I know we flew to New York City to attend a conference but why not have had those people that were local here in California dealing with state law, why weren't they invited? Because Councilmember Kalra and I went to a forum at Santa Clara university, we had the gentleman from San Francisco who runs the collectives. It was a really good discussion. People got to hear firsthand how they've been doing that. I guess the question is why not because

reinventing the wheel puts too much work on staff, if we can find things that work in other areas and we can't agree with everything but it would seem we would want to talk to our colleagues.

>> Deanna Santana: Absolutely. As part of my earlier comments I did say that we would need future meetings on this area. It is very complex. There are various areas that the council needs to issue direction. Some require specialists or experts in those specific areas. We are very welcome to receiving names as councilmember, you and I exchanged via e-mail. But for purposes of today to get forward the regulations it was important to spend the time and we've dedicated a great deal of time on the basic legal principles for which our regulations are based. That, our goal today was to establish that as the foundation and then from there we are very open, we understand that there needs to be future meetings. And other experts in the field coming to provide additional input for the council.

>> Councilmember Oliverio: Thank you, Deanna. Again I certainly think that would be beneficial to -- I know for example I know if that gentleman from San Francisco was willing to show up for a university discussion, I guarantee they would show up to other city in the Bay Area. That's of great value. Again each city is unique, we're grappling with the's absence of the state reerkt, collaboration is the idea that you know whether you like it or not the voters voted and not a dollar was spent in favor of a campaign voting yes on measure U. It was simply put on the ballot. And inerm 80% of the residents wanted to tax it and have financial taxation, so I think it's imperative for all the places that are op open that we demand a financial audit, a third party audit and that will go to a whole question that this whole CSET organization was look at. The whole premise was close these organizations down because they are exchanging currency. I know of no more common area where we are out there exchanging things and bartering my dentist and at the end of the day, we have people that are expertised in what they do, not every person can in the case of a collective be the grower, be the provider and so people exchange currency. That seems to be a basic, basic thing, and I think it's the acknowledgment of that which allows a much easier gross receipts tax. Scott Johnson, I imagine trying to imhoaz a gross receipts tax taking in contribution and what was it actually worth. Was that a dual processor on that laptop or was that a single processor? So I think it would be a lot easier. Now I've also said thought should be at 7%. Now, that's higher than some would like. It's not as high at the voter intent which was 10%. But you have to realize, I have resources being put on this topic

and I need to bring in revenue to cover those costs and until I know what my revenue is then it would be -- make more sense on how I could cost the fees out. So I could charge you zero, and charge you half a million dollars for the permit or I could have a gross receipts tax to bring in some level to manage what that permit fee will be. There will always be those that say gee, it's taxing medicines, it's taxing those that are poor. Each relationship with its patients, it can figure out who is on a sliding scale and who is needing it and who might be tear ancillary and assembly bill 2650. The council already acknowledged the primary things of what we do is zoning and land use and keeping it away from sensitive uses. Understand ladies and gentlemen that people, there's a perception out there that what is done is a medical purpose isn't necessarily thought of as a good thing so the council has to balance that. I certainly think industrial park with exceptions where either the planning director can decide it's appropriate or it's through the Planning Commission, there we certainly don't want to you know upset our mar he we marquee that's why I nightly was going. So that's why I wanted to get ahead of this. To take it down to 10 is going to be very difficult. So I'm not using any scientific formula, came up with 30. So that could go lower, that could go higher but I really think that's where things get worked out at the committee level to decide what's really feasible to what you get to. In the meantime, implementing measure U will identify those collectives that are acting for profit which is not allowed by the state. So if you are in profit collective measure U is going to catch you so you have to obey the law. So with that said the implementation of measure U might reduce that number alone without having to do anything else that number would decrease by implementing measure U. There's other items I can speak to, clearly we don't want this being passed on to anyone that doesn't are have a doctor's permission or a 99. That's why I suggest a fine the highest the state law will allow. Much like we do we don't want alcohol going to miles an hour or pharmaceutical drugs going to a patient that's sort of orch site cultivation should be an option, we're not ready for okay site consumption. I've attended all of these I want alcohol at that time facility. I've never heard that. [applause]

>> Councilmember Oliverio: I just think that's just completely strange to me. So I don't know where that came from and I'd lover to read that speaker card whoever signed it. And then I think work with the police chief as a matter of security we should determine whether or not offduty police officers could be a way to help provide security. That's where the collective would contract with them, much like a school does or an affordable housing development, event, et cetera, that would have to be decided by the chief it's under their description does the

off-duty workload enable to tackle that on. Other things in your presentation you know, again the public nuisance items, I think we've tackled through land use. The council gave guidance that we should really focus on frankly closing any facility that's right adjacent to residential or schools. I think that makes sense and then you know the amount of fires that have occurred. Well, again that's because we haven't got to the point of regulatory. And I fear this. Let's say the council flipped on a dime and decided to ban these facilities. Well then you would push this completely underground. You would push it in every attic in Almaden valley. Every home in Berryessa, every grow house I'm going to rob it. Versus, having an understanding [applause]

>> Councilmember Oliverio: Versus having an understanding where it's located. And I acknowledge, this is not a perfect process. I would prefer that prop 215 was passed with specific regulations but it wasn't. So we're kind of in the forefront with that. So this memo I feel is thoughtful, it allows for collaborative discussion. It will allow things to come back to council to have other meetings. But it would immediately implement measure U which was the will of the voters which we spent money to put it on the ballot. And I think it's a fair process. There's always room for improvement. There's room for tweaks but I would offer that as a motion.

>> Mayor Reed: Motion fails for a lack of a second. Let me suggest that we're not going to -- probably not going to get through the whole agenda on everything we need to do today but we ought to -- I did issue a memo about some of the things we ought to consider. It seems to me in the half hour we have left, we're going to start losing councilmembers at 5:00, we should at least decide whether or not we are going to implement measure U which is the tax and go through other things, which we are clearly not going to get done today with all the questions and while I would support everything in your memo, Councilmember Oliverio, there are a couple of things that I won't support. But I think we at least ought to deal with the tax issue today to try to get that done and get that moving because the voters have given some pretty good instructions on that. So that's what I'd like to do but we still have councilmember questions and we haven't had a chance to discuss much of this. But City Attorney wants to have another word on the sales issue.

>> City Attorney Doyle: Yes, thank you. Councilmember I just want to point out that you are looking at a June memo, question does state law allow for the sale of medical marijuana, answer no. Perhaps you didn't receive the December 10th update which son page 3 and 4.

>> Councilmember Oliverio: I have that as well thank you.

>> City Attorney Doyle: That goes into greater length, it shows where cash transactions can be made, just not in the form of a retail sale.

>> Mayor Reed: Okay, so councilmembers, can we take up the issue of the tax and whether or not to implement measure U and get that done in a half an hour here before we start losing people? Is that okay? Why don't we do that. Councilmember Oliverio, you want to break up your memo into individual motions? We could take them that way.

>> Councilmember Oliverio: Sure will move item 2 of my memo.

>> Mayor Reed: We do have a second on that. Any questions on the tax element? Councilmember Liccardo.

>> Councilmember Liccardo: I'm just struggling with trying to figure out what the correct number is. We are winging it to some extent like other cities have. But I certainly recognize the sincere arguments of those who have medical conditions who are concerned about the tax. I'm just wondering if the voters authorized 10%. We know that there's been an enormous amount of uncompensated staff cost police cost incurred why wouldn't we tax so we could recover that tax fully?

>> Mayor Reed: City Attorney.

>> City Attorney Doyle: Voters authorized up to 10%.

>> Councilmember Liccardo: That's right, they authorized up to 10%. I don't want to estimate how much staff time we've already spent on this but I'm looking at the number of folks here and I'm guessing we're well into six figures. So I just leave that as a question, why wouldn't we charge 10%?

>> Deanna Santana: Our staff recommendation, maybe we can pull that slide up, our recommendation was a 5% for registered collectives and our alternative was a 5% for registered collectives and a 10% for those that were not registered or illegally operating. That is on the table for the council to consider in addition to the additional that is recommended by Councilmember Oliverio.

>> Mayor Reed: That's correct, that's the motion on the floor. Councilmember Pyle.

>> Councilmember Pyle: Have a question about this. Is this 7% on top of sales tax?

>> City Attorney Doyle: Sales tax is independent of this, yes.

>> Councilmember Pyle: So what other medicine is charged any tax? [applause]

>> City Attorney Doyle: I'm not aware of --

>> Mayor Reed: Audience -- all right. Hold it down folks. We listened to you for a custom of hours. We need to get some work done. If you are going to interrupt the proceedings I'm going to have to clear the room. Calm down and let us get the room done.

>> Scott Johnson: City Attorney.

>> City Attorney Doyle: Scott knows.

>> Scott Johnson: Scott Johnson director of finance. Prescription medications where there's actually a prescription is exempt from sales tax. Over the counter medications are still subject to sales tax and given that medical marijuana is not considered a prescription drug in accordance with the federal drug guidelines, then it is still subject to sales tax and must be reported to the state board.

>> Councilmember Pyle: Here's what I'm concerned about. We're talking about all the particulars of the problems that we have to unravel. But have we looked at any other models? This past summer I went to Canada and the Canadians have a wonderful model. They do sell marijuana but they sell it at the pharmacies. And what are the advantages of that? There are like 13 of them. You don't have to worry about the age of the buyer being legitimate, you don't have to worry about the locations, there are pharmacies all over the city. You don't have to worry about theft prevention or organized crime being involved or fire being started or the quality of the product. You don't have to worry about staffing needs and cuts you don't have to worry about taxes being imposed or sorted out and a lot of staff needed for that. It's clean it's safe it's open until 8:00 or 9:00 p.m, easy to find, no restrictions on pharmacies and no need to reinvent the wheel and it can also be constructed to collect the tax. Of course we would have to work out common ground of fairness regarding workload but if we had not looked into this I would make a strong recommendation that we do. Thank you.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you. Let me start by thanking Councilmember Oliverio for bringing this to the forefront and his continuing leadership we are able that you can come down here and speak to us today which I'm very supportive of providing medical marijuana to address some of your medical needs. What I'm not supportive is the fact that some of the collectives or dispensaries are selling some of this medical marijuana for recreational usage. I'm 5 to 7% because I think if we tax it at 10% my concern is that it will trickle down to the patients, and that the price of the medical marijuana will increase and that will affect the patient's ability to use medical marijuana to address medical needs. So moving forward if we can decide somewhere along the line of taxing 5 to 7% that's pretty much where I'm comfortable with and that's why I wanted to second Councilmember Oliverio's motion, thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. The concern I have is we've been told pretty clearly by the District Attorney and the police department and the City Attorney that the sales of marijuana are problematic and that collectives or dispensaries or whatever name you may choose to call them by, are not consistent with the definition of primary caregiver as is outlined in our state law. If we continue to move forward in this direction, we are going to continue to have not only the conflict that exists between federal law and state law, but we will also have a conflict between state law and local ordinances. Which means we will continue to see enforcement actions by state enforcement agencies, and potentially, from federal enforcement agencies, in the areas that we are significantly out of whack in what we're doing compared to others. I think it sets up the businesses that establish, under the guise that they're complying with, are ordinances to fail, that we'll continue to see enforcement actions, and we really should make sure that we work out the issues related to the dispensaries, collectives, whatever you want to call them before we get to the taxation. I think we've got it a little bit backwards. I think we need to reconcile these differences. Otherwise we are going to have whether we have 1, 30, 150, it doesn't matter, he we are still going to have state agencies, DOE or DOJ or whatever it is arresting people and taking enforcement action and we're going to continue to have conflicts. I don't think that's a healthy way to go. I think we would be much better served if we stand a moratorium and set up a clear process for us to go through and attack this on some sort of specific time time line and get through these issues. I think we're going down the wrong path and I can't support the motion for that reason.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: I can't believe it but I agree with Pete. So firm first of all, the citizens should exist. And I think we have to look at that, and in terms of the vote, it was in the shadow of the, we all thought likely passage of prop 19 which also didn't pass. So I think we need to look at that. And I supported putting that on the ballot. I supported putting you on the ballot, and I think that stands there but I don't think that's the first issue we need to tackle. And I want to go back to the beginning of this discussion. Because I was one of the people that

feels, I do still feel, very compassionate about individual seriously ill patients who might need medical marijuana. And it's clear that the voters of the state felt that compassion, and that is why we have the legislation that has come forward by the District Attorney and by the City Attorney and Pete addressed a minute ago that make it very difficult for me to support the taxing without dealing with those issues. I mean, I have a question, you know, do we have any collectives in San José, or are they all dispensaries? I know the mayor wants to stick to the other question, but I have a long series of questions about what we are really dealing with here so I will be voting no on this motion.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. One thing that's confusing, I can't understand, the council majority put it on the ballot, I can't understand why we are having a discussion, to have voters overwhelmingly supported it, and just on the surface, you can imagine the average voter is going to understand when you're taxing something it is a tax based on sale. The average voter at least understood or had the impression that the point of sale it was going to be taxed. I think that the legal analysis is an opinion and I think that we should take it for that. I don't think that there is a definitive answer, as to -- as to this law, as to the case law or the interpretation of it that would disallow us from going forward with a sales tax or in this case call it a business tax but basically tax on gross receipts. Ultimately there's going to have to be more certainty given from the court level. Until then though I think we have a responsibility to the patients in need. The reason why I did not second the motion that Councilmember Oliverio first put forward was actually because of this issue of the tax. I think it's too high. I think it's far in excess of -- I think that we're trying to guess as to where it should be. I don't think we start at 7:00. I think we start far lower than that. I don't think it's fair to people that need their medicine and we have to make a choice. If we're actually going to call these medical marijuana dispensaries, if we're going to call it cannabis, let's stigma that's already attached to drug sales and marijuana, we're starting from this point of treating them as criminal operations and working from there. And I think we should start by treating them as places that dispense medicine and work from there. If we did that I don't think we would arrive at a tax rate as high as we are on top of the sales tax. So it's over 16% being taxed, obviously these aren't -- these can't be equated to prescription drugs because the federal government doesn't recognize them as such. That's the same reason why

Councilmember Pyle, I think she's right in the real world they'd be sold out of pharmacies but famplezs can't sell them because they're he not approved by federal law. We have to be real ink and hobs about the conflicts and confusion that exist with the law. I think the largest city in Northern California and I think our residents deserve to have access, as our voters have indicated time and again. One of the questions I have regarding the -- because I think that the mench law speaks more to the definition of a caregiver than anything else but according to staff presentation, how woo a quftd patient that didn't have a care givers, primary or otherwise and didn't have the capacity to cultivate, get medical marijuana? Apparently there is 92 other way too get it than have a car giver that is giving it to them or they are able to purchase it themselves? If he the they are not able to purchase it from an organization acting as a norch profit how would they deal with access legally?

>> A patient that's not able to care for himself presumably has a caregiver, it could be a family member or someone taking care of that person and going and becoming for on behalf of the patient becoming a member of a collective and participating on behalf of the qualified patient in the collective of marijuana.

>> Councilmember Kalra: I'm asking when a patient that doesn't need marijuana. You can contemplate a patient that doesn't necessarily have the necessity to cultivate but doesn't meet the definition of a caregiver under the case law.

>> Just one second.

>> City Attorney Doyle: Councilmember let me try to differentiate because you're right, mench deals with a caregiver, that's what the fact pattern was. The issue regarding the collective, I think and this is addressed in some of the moamtion as could be part of a proposal which would be that if as a member your contribution to the collective could be in the form of cash, or financial. As opposed to just -- you know whatever services you would otherwise have. The issue is, a cash transaction, is essentially buying a product, the normal so-called sale, that's what prohibited in our view. Our survey of California, while we're not here advocating one or the other, we've done a lot of research on this but it's not to say that financial contribution isn't allowed in a collect situation, it's to say that the actual sale of marijuana, you're buying it like you're buying the product, that's what's prohibitive. It might

seem like a fine line but we don't write the laws. This is what I think is scirnit with what I believe is the majority view .

>> Councilmember Kalra: Yeah, I think that there's definitely not enough certainty to come to a conclusion as to how to interpret it and now we're talking about taxing it and I think at the point at which it was put on the ballot I certainly didn't simply contemplate that we were going to tax things or barter it or fair time that was given and compensate, you know the contemplation was as I believe the voter intent, their vote was that there would be a transaction that was taxed. And I do think that a nonprofit, I agree with the argument that these nonprofits' overhead qualify for dispensaries. And I just think our legal analysis is so restrictive that it's fifying us no choice but to became of -- it's restricting what we were really supposed to do, which was to really creet a create a.

>> City Attorney Doyle: Councilmember, I just want to note. I don't disagrees that the law is restrictive, but that's the way the state law has been designed and U we don't have anything broader. I want to remind the council that the tax was put on the ballot in large part because proposition 19 was on the ballot and the council has limited ability to raise taxes under prop 218. And if you didn't do it this year which your last chance was the November election, would you have to wait until 2012. So assuming prop 19 passed you could not have taxed those until 2012. I'm saying that is another reason.

>> Councilmember Kalra: It's not the major reason. It was a side issue that up 10% is if that proposition passed. But the majority of the discussion was around medicinal cannabis and to put a structure in place to tax it.

>> City Attorney Doyle: But this is your last chance to put the tax on.

>> Councilmember Kalra: You're right it was one factor but not the definitive factor, it certainly never would have supported up to 10% for medicinal cannabis. And so at this time, I you know as far as the issue and the question on the table, I'm torn. Because I certainly want to go forward with the ability to tax and go forward with an ordinance. But I think 7% is excessive. At the same time, the voters' intent was very clearly that we do go forward

with something and so you know I'll see what the rest of the world, the council is but I still think it's excessive, especially since there's going to be a assets tax.

>> Mayor Reed: I'm going to support the motion. I would actually be supporting of 7%. We need the money. There's a huge amount of revenues so we can justify doing the work so I'm going to support at least getting started with this. This is something that can be adjusted by the council up or down after we get into this and figures out what the issues and the problems are and I think Councilmember Oliverio has put together a reasonable compromise for a starting place and I think all of these are starting places because we have to implement and figure out what works and what doesn't work so I am going to support the motion. Vice Mayor Chirco.

>> Councilmember Chirco: I have a question to the City Attorney. I thought I remembered a previous council discussion that was for a moratorium on medical marijuana outlets. Do I recall that right?

>> City Attorney Doyle: I think that's right and our recommendation was that if you were going to try to put a cease in the operations it should be in the form of a ban. Because moratoriums presume that the use is a legally permitted use and under our municipal code it is not a legally permitted use.

>> Councilmember Chirco: That was never an action taken by council?

>> City Attorney Doyle: No, it wasn't.

>> Councilmember Chirco: Because frankly I was hoping it was, but -- I do -- I agree with Nancy, Councilmember Pyle, and Councilmember Kalra, that a true medical marijuana, I believe, would be a zero tax. But the reality is, it's not legal per the federal government and as such I think the mayor captured it when he talked about we need money to begin to look at how do we shape policy and ordinances that will address what is really a true need in our community. So that's what I would -- that would be the reason I will support the 7% tax. The idea being that we can begin to create some guidance, some control, and some governing models around this. Both

staff and councilmember Pierluigi recommended a severe reduction in the number of medical marijuana outlets. So while I realize this isn't the topic that's on the table, I would also like to see a ban on medical marijuana outlets. And maybe because in February I know that the council is going to be looking at the whole list of policies that we're going to have to deal with, and how do we prioritize those, I don't know if -- and I'll ask the mayor this question -- is this very long discussion something that should be rolled into that comprehensive overview of all the policies we have lined up that all need work, but all take resources that the city may or may not have.

>> Mayor Reed: I would have to say it's unavoidable that we have to discuss in the context of everything else we're doing because everything else we're doing which have priorities as well might have to wait while staff staff works on this. It is obviously a big project and it's taken a lot of time. There is a cost to working on this instead of other things and that's part of the discussion in February.

>> Councilmember Chirco: So I see the 7% as a fee on a product that shouldn't be taxed but the reality is it needs to be because we need revenue to get a policy and ordinance in place. I don't know and I would ask Rick. Would it be possible to do a ban, so that we don't have any more opening, period, until these policies and ordinances can be addressed?

>> City Attorney Doyle: That's one of the proposals on today's agenda.

>> Councilmember Chirco: So you know, just to take a little license with the narrow scope that the mayor put forward, would -- could I put a friendly amendment out, Councilmember Oliverio, to do the 7% and then to do a ban and some of the hope would be that the 7% tax would allow for the funding to enforce some of the things we haven't been, and then defer the policy discussion until February, when there is the overarching.

>> Councilmember Oliverio: To not complicate the motion I'd prefer it to be made as a separate discussion. Because with the level of the discussion I'd hate to tweak something.

>> Councilmember Chirco: I understand, I will be supporting your 7% and I may make the ban a separate motion.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. Just on the motion, I will be supporting the motion on the tax. It's very clear that the voters sent a very clear message to all of us, the same voters that put us in these seats. And you know we need to listen to the voters. I will reserve the rest of my comments as we continue this discussion, just because I really believe that the land use is very important. What really concerns me, especially in my district, is I do not want to see the same issues that we're seeing with overconcentration of ABC licenses that we see in communities such as District 5. And so I'll be ready to make my comments and recommendations on that as we get there. Thank you.

>> Mayor Reed: I'm not promising when we'll get there. We will eventually though get there to all of these issues and there's many of them. Councilmember Oliverio.

>> Councilmember Oliverio: Just in a summation. If you support the FDA, actually dispensing marijuana in the future, and it's going to take time because it takes federal law then supporting the motion helps. Because it helps to create the need put it in practice that that's where it should go. I think eventually it might take ten years. That's a point but we don't get there unless we get there today. No, the voters on measure U did not say whether or not they wanted to dispense medical cannabis because they already agreed to it. They already agreed they wanted in 1996. The question was taxation. Discussions made way in the past, that cost is tax aches. Now, it's not the same as medical cannabis but at the end the general public may view them the same way and tobacco is 100% tax. And I really do feel that the major reason the council put measure U on the ballot was medical cannabis almost every city it goes to and every major city in the United States the margin of yes votes is between 75 and 80%. That's it.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Just in response to Councilmember Pyle's question of what other medicine is taxed, this was noted, we would love it, I'm sure all of us, if this drugs was distributed through pharmacies like every other drug and cities like San José, wouldn't have to here we are, if we're going to spend this extraordinary amount of resources on this problem, we have to find a way to pay for it. I think getting at the heart of Pete's question it seems to me an awful lot of Pete's staff as sort of the primary alternatives, really implicitly assume the conduct is going to occur that we believe is illegal, implicitly sanctions it in some way, that is, we don't believe under the law at least that collectives can accept compensation. We don't believe that employees of collectives can be -- that collectives can even have employees. When in fact, in our regulations, we're mandating security. So I assume that implicitly assumes that they're going to have employees. So is it fair to say, with us having already gone to the ballot, voters already approved a tax, the horse has left the barn on whether or not we're going to stay within the narrow confines of state law at this point? Is that fair?

>> I don't think the regulations actually contemplate an illegal operation. The regulations contemplate a collective cooperative that collective -- an organization that people collectively come together and cultivate marijuana. Knock more than that. If you marijuana it's separate from the cultivation of marijuana and won't be compensated by the primary caregivers or the patients that are members of the collective.

>> Councilmember Liccardo: But the collective needs to hire security, right or ought to?

>> The collective needs have security cameras and a person performing security. The regulations actually provide that the patients are the members of the collective, can contribute to overhead expenses to cultivate marijuana and that's where they can come in and pay for those types of services.

>> Councilmember Liccardo: Right and we accept that as being overhead, is that fair?

>> If it's not part of the -- I'm sorry, the overhead expense doesn't cover salaries and things of that nature for the people who would cultivate marijuana. Yes that would be separate if they're not touching that aspect of the business.

>> Councilmember Liccardo: How would the collective pay for security then?

>> That's part of --

>> Councilmember Liccardo: That is part of the overhead?

>> Right that's part of the overhead expenses.

>> Councilmember Liccardo: So the collective has to be compensated in order to pay for the overhead.

>> Correct.

>> Councilmember Liccardo: Frank tell me if I'm wrong, our state can't require compensation?

>> It isn't that simple Sam. The best way to look at it is a group of people either large or small can cooperatively organize to cultivate marijuana and then use it to dispense it among themselves. So the problem that we see, and what we've seen is sort of almost at an epidemic level because the reality is they have absolutely nothing to do with that collaborative or collectively. If 15 people want to get together and all pool their money the best way to look at it is do you have something to lose? For example a dispensary collects money and signs a piece of paper and pay somebody \$20 for a gram of marijuana and that dispensary doesn't exist tomorrow, I just go to the next one, I didn't lose a thing. So the best way to look at it is everybody pools their money their resources to cultivate marijuana. If that money goes to providing security if the ordinance requires it, then all of those things are acceptable. It's the sales of marijuana either for profit or not for profit under the guise of membership that the problem exists.

>> Councilmember Liccardo: I know we're running out of time.

>> Mayor Reed: We are running out of time. He we are going to lose about three councilmembers in a matter of three minutes.

>> Councilmember Liccardo: Understood.

>> Mayor Reed: Vice Mayor Chirco.

>> Councilmember Chirco: Since I'm good morning the motion he made.

>> Mayor Reed: That's a call for the question that means we're going to vote on whether or not to cut off the debate. We don't cut off the debate, we just vote on it. Scott Johnson had something.

>> Scott Johnson: Mr. Mayor, I apologize. If we can get clarification on the motion.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Item 2 in my blue memo.

>> Mayor Reed: Implementation measure U, acknowledge the exchange of currency so gross receipts can be taxed tax will be set at 7%.

>> Scott Johnson: Mr. Mayor I just want to voice a concern for administration, now if we are subject to audit and it's determined that those sales or any kind of exchange of marijuana is not within the medical cannabis definition it could pose some administrative challenges for us.

>> Councilmember Oliverio: Scott Johnson are you referring to hemp bag and things like that?

>> Scott Johnson: If a transaction transpires and it later is determined that the exchange of that marijuana was actually not due to medical purposes then we would not be able to collect the tax on that.

>> Mayor Reed: We have a ballot measure that pretty much lays that out. Vice Mayor Chirco has called for the table. She's got to leave, Pete's got to leave, Nancy's got to leave, and we need to vote on this. If we need to clarify it later, calling the question, all in favor, opposed? None is opposed to calling the question. On the motion on the floor which Councilmember Oliverio just described again and I read, all in favor? Opposed? One opposed, constant opposed, two opposed, Herrera opposed so that passes on an 8 to 2 vote with Councilmember Chu absent. [applause]

>> Mayor Reed: We at least got something accomplished today. A lot more work to be done. Would I suggest that we spend some time talking about how to move forward. Councilmember Oliverio had a suggestion, to form a committee which I don't support. I think we ought to use our existing processing with our Rules Committee and perhaps the Public Safety committee to try to move these things forward because that's probably the most efficient way. If we form another committee I worry it will be another year or two before it ever gets back to the council. Folks hold it down, we got work to do here. You're welcome to leave but take the conversation outside. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I would suggest that we refer this to either one of two places. One being the Rules Committee, some of the more entangled issues like the open government issues or the sunshine laws or the Public Safety, Finance and Strategic Support committee and I'd be comfortable with either of those.

>> Mayor Reed: Any comments on those, next year, Public Safety also members of Rules. Either way, Rules committee should look at the work plan to figure out how to come back as staff has recommended and then brought through Public Safety committee to work on it.

>> Councilmember Constant: I'll actually make that motion that we refer it to the Rules Committee for review of the work plan and ultimately to the Public Safety, Finance and Strategic Support for the work.

>> Councilmember Nguyen: Second.

>> Mayor Reed: All right we have a motion on the floor. Councilmember Oliverio.

>> Councilmember Oliverio: Thank you mayor, I'd just like to make a substitute motion of my memo minus item 2 vote it up or down. Bud I'd like to make my motion.

>> Mayor Reed: I don't know if that's a proper motion City Attorney.

>> City Attorney Doyle: If he's contemplating number 1, I think that's the proper subject that could be used as a substitute. The other is sort of outside, sort of separate issues. Some of this is procedural though I think. Would I say number 1 you're opting for a task force or outside committee made up of various represents as opposed to an existing council committee.

>> Councilmember Oliverio: Is that a definitive answer in?

>> City Attorney Doyle: I'm thinking on the fly but I think that's probably more appropriate.

>> Councilmember Oliverio: Item 1 just as a substitute.

>> Mayor Reed: The substitute motion is on the floor. Councilmember Kalra.

>> Councilmember Kalra: Yes mayor I think that going forward and having the staff continue to look at this is important but I think that we definitely need too as Councilmember Oliverio had indicated earlier do everything

that we can to get asful stakeholders and opinions in here and I think as part of the committee work I think some suggestions that were already made including looking at what other jurisdictions in California do getting expertise, experts to present in front of the committee can be incredibly valuable to all of us and definitely to the staff as well. When I see the committee I see that as a great venue for those types of activities where that knowledge can be transferred to those that have gone before.

>> Mayor Reed: All of those things are possible working through the Public Safety committee and the Rules committee. I see a citizens task force of any kind as a recipe for two years of doing this and I can't support the substitute motion. Councilmember Constant.

>> Councilmember Constant: My comments were similar. I think we have too many committees. We have the council committees which I think are prepared to deal with it and if the Public Safety, Finance and Strategic Support needs to hold an additional meeting or two or an additional meeting or two we will be more than willing to do that.

>> Mayor Reed: I think on the motion atom conversation, the substitute motion is on the floor, Councilmember Oliverio's recommendation all in favor? Opposed, we have two in favor, Kalra Oliverio and Campos and I'm losing track of the count, we're logs people. Motion fails on a 3-5 vote. That takes us to the motion in chief which is Councilmember Constant's motion to use the Rules Committee and the Public Safety committee to work this back. On that, all in favor, opposed, knopped on that one. We'll work our way through the remaining issues. p.m. I didn't get my motion called, but is there any way going to reulings and Public Safety that some of the collective voices could be heards other than just public comment?

>> Mayor Reed: There's no reason that can't be done.

>> Councilmember Oliverio: Great, thank you.

>> Mayor Reed: That motion passes that's how we'll work through the work plan issues and getting it back to the council issues and the dozens of other things that people would like to have answers for. I'd just like to make a couple of comments before we lose more councilmembers. First off, as confusing as this is, I know one thing and that's the California Supreme Court gets the last words, that's the way it is. The mench case is the last word, and until the Supreme Court tells us otherwise that's the law we pretty much have to live with. I don't see how a retail clerk can be a primary caregiver, I don't see that, it doesn't make sense to me based on the way this state law is set up. And one thing that wasn't mentioned today that I think is important when we talked about other cities. City of Oakland has received a warning from the Department of Justice that what they're doing doesn't meet federal law standards. I don't know what it means to be warned by the department of justice but it does get my attention and so I know it's something just because it's being done in some other city or some other place doesn't mean we can do it here and we rely on our staff to figure out the best policy alternative to figure out the law. I want to thank them for the work that they've done. This has been a big project dumped on our lap by the state of California and the people of California who gave us both the medicinal marijuana obligation and turned us down for recreational use in November. It's California, we'll do the best we can but we rely on our staff to do the best we can, they do a very good job of making some sense of what is a very confusing area so there's more work to be done and I look forwards to getting through this some day in the next few months, I hope. Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. So how do we address going forwards? I mean as I sat here in this meeting I heard there were 90 dispense reiteration and then there was 98. And I suspect next week there will be 108. How do we deal with that today? Is there any way we can -- and I think Vice Mayor Chirco was trying to get to that before she had to leave, a ban, a moratorium recommended what not do I want to know the appropriate wording of a motion here, maybe the City Attorney can help me here to ban this from expanding at least while we're in the process of considering what's in front of us.

>> Mayor Reed: We do have some things before us Rick Doyle.

>> City Attorney Doyle: Well, through item 3B, it really reads, policy option 2 which is the urgency ordinance which would prohibit, this is essentially our ban. And the accompanying resolution. The one thing I think you need to be aware of is, we do need a vote for an urgency ordinance, and so that's just for your information.

>> Mayor Reed: But if we have six votes we can adopt an ordinance to be effective sometime later, right?

>> City Attorney Doyle: Yes, we would have to come back for a second reading.

>> Councilmember Herrera: I would like to move a ban based on staff recommendation.

>> Mayor Reed: There is a second, the motion is for a ban. Let me clarify what the motion is, we have this discussion between moratorium and ban. And sometimes I get confused. So with the ban as proposed in the motion, based on the staff's recommendation, that would have what impact on the 98 businesses that are here legally or otherwise? Does it mean it will be easier for us to chase the ones that are operating legally?

>> City Attorney Doyle: Yes. Essentially it isn't legal in San José from the municipal code from the land use, to operate. This essentially would have an express provision which in our view is a statement of existing law. The moratorium contemplates something that legalizes, assuming something seelings legal. I used the bail bonds, I think we had that experience before. Not even if this measure passes, though, and not to complicate it but we would follow council's direction still set North June which was to look and try to move against any problem operator, because those are the ones that constitute the nuisances.

>> Mayor Reed: So if I understand the way the ban would work it is expressly saying what is already true in San José, that these are not legally allowed operation because of our lands use authority, and if we continued to focus our enforcement actions against those that are residential areas and sensitive receptors, it would essentially doing what we are doing now, give us greater capacity to bring enforcement.

>> City Attorney Doyle: Yes, a lot of confusion is, perception out there that the council has said, these are okay. And that -- the council never said that. The council said focus enforcement efforts against the problem operators.

>> Mayor Reed: And if we approved a ban today we'd have a second reading of an ordinance sometime in the future but we could still come back and say here is our regulatory system, we will Lou operations pursuant to our regulations when we get them adopted.

>> Deanna Santana: Yes, in fact that's been one of our concerns, while we've been talking about establishing collectives between 10 and 30, we haven't talked about how to bring to closure the existing establishments and not wanting to add to the rapid growth we did put forward the ban option.

>> Mayor Reed: I'll support the motion --

>> Councilmember Herrera: I'd like to speak to my motion, although you have done a very good job to speak to it. Pete wants me to wrap it up. I haven't even talked. Pete you talked for a long time usually. I think it's important thing to give our enforcement side of the housing tools this isn't going to get in our waive essentially looking at a regulatory formula when we look at that. I hope my colleagues will support the ban. I think we don't want an proliferation of yowitz lets.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: The advice Rick gave to Councilmember Chirco. It says on November 2nd, the council approved a motion by Councilmember Liccardo directing City Attorney return to council with an ordinance providing express prohibition on all new marijuana establishments. So I'm trying to understand why that wasn't something we already voted on, in which case, theoretically we would have covered any concerns about additional establishments.

>> City Attorney Doyle: Well, the council directed us to come back. You didn't have the ordinance in front of you. That's the difference.

>> Councilmember Liccardo: Okay.

>> City Attorney Doyle: .

>> City Attorney Doyle: It was direction to draft annual ordinances and come back.

>> Councilmember Liccardo: So now we're not just voting on new establishments but all establishments?

>> City Attorney Doyle: I'll have to ask my staff for clarification but the ban is essentially on all establishments.

>> To put the begin with but it would allow staff at the same time, time to go back and continue to figure this out and continue to draft the regulations and vet all those issues out, to keep as in place until then.

>> Councilmember Liccardo: So now they're superdoubly legal whereas before --

>> They've always been illegal and the direction from council is to come back with an ordinance banning them until we can figure that out. That is this ordinance.

>> Councilmember Liccardo: Counsel and Julie, I didn't mean any disrespect, I'm still trying to figure out why we are banning --

>> City Attorney Doyle: The statement of existing law in our view. The one thing if you put a ban on -- grandfathers in even problem existing operators and that would add to even more confusion.

>> Mayor Reed: All right, Laurel Prevetti.

>> Laurel Prevetti: Thank you, Mr. Mayor. What we would do from a code enforcement perspective if the ban were approved, is we would send a letter to all 98 establishments explaining that the council has approved a ban, at the same time, offer the option additional opportunity for the public too get involved. We understand that many landlords are waiting for some kind of council direction. This is exactly the kind of direction they've been looking forward to. We do .that some landlords will continue their leases however the universe of the 98 would expected to be reduced and we would take appropriate enforcement action consistent with the direction we got in June. But this would go a long way to have certainty about property owners and the council answer position, thank you.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: I just voted to tax all of them, I didn't vote to ban all of them. And I would suspect, and it's just me, that this ban would be used to close places that the council hasn't given direction in the past. We've set the 500 foot rule by residential schools and parks are the primary thing. I'm nearly that that might be interforded by closing any and all, maybe not all but more. I would really not want the growth -- problematic in itself but I really think once with the implementation of measure U we are going to thin out the herd of the bad apples, but I feel the ban is really, it could be used in a problematic way. I just want the ones within the 500 feet be done with.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: We already gave the direction to close down those that were near sensitive receptors. Shut them all down that's counter to what we've been discussing this whole last year or two. Counter to what the voters voted for with measure U, they can continue to operate if they want to, that's a ban. The landlords can choose to kick them out its gives so much -- it gives too broad of an authority to close down all these, progress today I'd to see us go forward .

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: If this motion goes forward I would ban on influence establishment so we don't issue any business license to any new establishments. What we want to do is hold the line, hold onto this motion and suggest we get a new one.

>> Mayor Reed: Let's try to vote on this motion before we run out of people. Councilmember Herrera.

>> Councilmember Herrera: As you said Councilmember Oliverio, the herd is going to get thin, significantly. There will be as few as ten. I don't know if this motion is going to do is to put forward, that is the message that we need to send, doesn't mean that every club would get closed, what's happening out there right now is not legal.

>> Mayor Reed: Okay, we have a motion on the floor. All in favor? Opposed? One opposed, Kalra, Oliverio, Campos, three, Nguyen and Liccardo opposed so that's five opposed, how many we got, three in favor. City Attorney -- I think that fails on a 3-5 vote. We need to get 6 no matter how many people we have here. City Attorney.

>> City Attorney Doyle: Councilmembers, the issue I could not recommend and again this is policy call but I could not recommend banning only new establishments and the reason is it raises serious question as to whether the new blimghts even those in sensitive areas are port wise legal. That is a situation we would have a difficult time in enforcing. I propose a possible compromise and that is banning any and all dispensaries near sensitive areas. And that would be something that I think would address a lot of the concerns. But you 92, otherwise, I would rather just have the council direction of only -- the existing direction remain and add to that, don't issue any more business licenses. Louisiana how about a motion don't issue any more business licenses?

>> Councilmember Herrera: Second.

>> Mayor Reed: On the last vote, I was in favor of that one. Too many handing foo many places. The question is, don't issue any more business license, Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. What if you did have dispensaries that often up within 500 feet of sensitive areas what happens no those?

>> City Attorney Doyle: We are under direction of the council to close those.

>> Councilmember Campos: And this motion would keep --

>> Councilmember Liccardo: Slum, shutting them down if they're close to sensitive receptors.

>> Mayor Reed: All in favor, opposed, none opposed, that motion passes, eight I believe. Anything else we want to try before we run out of people? We're well past the time for stopping. We still have public comment on open forum are on matters that were not on the agendas today. Somebody wants to speak about high speed rail, I had a card for that. I think they're not here, that concludes the public comment portion. We have a lot of work to do so we're going to finish up today, see you tomorrow on a council meeting on other matters.