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>> Mayor Reed: This is the Rules and Open Government committee meeting for March the 9th, 2011. Any changes to the agenda order? Then we'll start with the council meeting of March 15th. Anything on page 1, note a 9:00 a.m. for start of the closed session to give us more time. Anything on page 2 or 3? I have a note that item 1.2, the IBM commendation, should have Councilmember Liccardo and Kalra on the parenthetical. Anything else on 2 or 3? Page 4 or 5 which would be the end of the afternoon part of the agenda. We need to come back and think about how we put the elections commission interviews into this queue. After we figure out what else is here. That would be an add, as item 3.4, I think. We have anything on page 6 or 7?

>> Mr. Mayor, we would like to request that the financing authority be heard right after consent, bond counsel will be present.

>> Mayor Reed: So we have several items on the financing authority, taking care of the convention center project and then we have -- are we having an evening meeting on the 15th?

>> Yes.

>> Mayor Reed: All right so we have not a lot set on the evening meeting but we're going to carry over the discussion of the hearing on the budget message, right? Because all I have is 11.1 public hearings on the consent calendar, that is it other than the (inaudible) timing of things, we have (inaudible) (inaudible) (inaudible) (inaudible) [No audio] [No audio] [No audio] out to the elections commission. Hour and 15 minutes then we're at 5:00. I don't want to run (inaudible) I suppose. Why don't we just tentatively just leave it on there.

>> Dennis Hawkins: Okay. (inaudible).

>> Mayor Reed: Just to make a little bit of room.

>> Dennis Hawkins: Mr. Mayor, there's also several items to be added to the 15th as well. We have an add-sheet.

>> Mayor Reed: Okay, let's go look at the add-sheet then before we finish this discussion. Commendation, to Washington camino contigo, a request from the auditor to amend the agreement withing Macias, Gini & O'Connell, need a sunshine waiver on that. A request for sponsored travel to a new energy forum, and request to support an overlay approach for the creation of a new area code within the 408 area code. Any other additions or changes? I don't think any of those additions are going to take any extra time, look like not much --

>> Mr. Mayor we will need a waiver on both the travel and the area code items. Those will be released by this Friday.

>> Mayor Reed: Okay the travel is for Scott Green to go to Osaka on March 20th. So we kind of need to take it up. The overlay approach on the area code, there's a hearing that's being driven by the PUC calendar so we need to take some action earlier than that.

>> City Manager Figone: Mayor, if you felt it appropriate, we could put it on consent. I don't know if you think it warrants any council discussion.

>> Mayor Reed: Yeah, I think that should just go on the consent calendar, as well. With those additions we do need those three sunshine waivers. We'll do the elections commissions last. We may have to kick some of the things on the afternoon agenda into the evening, in order to get the elections commissions done. I want to make sure they get done in the afternoon, and not have them come back in the evening. Looks like it could happen. Any ore changes? Is there a motion?

>> Councilmember Herrera: Motion to accept with the changes.

>> Second.

>> Mayor Reed: All in favor, opposed, none opposed, that's approved. March 22nd agenda. Anything on page 1? Page 2 or 3? Page 4 or 5? Nothing on page 6. Any other changes? I have no written requests for additions.

>> Councilmember Nguyen: Move for approval.

>> Second.

>> Mayor Reed: Motion is to approve. All in favor, opposed, none opposed, that's approved. March 15th Redevelopment Agency agenda, anything on page 1? Page 2 or 3?

>> Mr. Mayor, members of the committee, if I may Gary Miskimon from the agency. As you know we had no items last week for this date and now we do have these three relatively small action items however all three will require a sunshine waiver because we did not publish them by Friday of last week. Our goal is to have them out Friday morning this week and we'll have all the postings done Friday also.

>> Mayor Reed: Okay.

>> Councilmember Herrera: Motion to approve with a sunshine waiver.

>> Councilmember Nguyen: Second.

>> Mayor Reed: Motion is to approve with sunshine waiver. All in favor, opposed, none opposed, that's approved.

>> And Mr. Mayor, members of the committee the agency at this time does not have any items scheduled for the March 22nd date. We'd reserve until next week if we're going to cancel that and if we did we'd still have a possibility with a closed session in the morning with the city or if there's any joint items to be heard for the city council, we would be there for that.

>> Mayor Reed: There's at least one budget item, the March budget message. We'll take that up next week if there's anything to do or not. (inaudible).

>> Mayor Reed: Still on? Still working, whatever that was. Next item for us to consider is legislative update. Anything from the state legislature? Betsy Shotwell.

>> Betsy Shotwell: Thank you mayor members of the committee, Betsy Shotwell, Director of Intergovernmental Relations the ongoing debate discussions is continuing. On Monday, five what some call moderate Republicans generated a letter to the governor wishing that some of these priorities that they included in their letter were being included in the discussion of the overall budget debate, but haven't been. And their top priorities in their correspondence was wanting a spending cap, a long term spending cap and reforms, reform of the pension system. There's been some discussions that maybe there will be some sort of short term gap, spending cap that would last as long as the five years that the ballot measures get on the ballot and succeed to have the tax extenders for five years. Included in their correspondence was also save but reform redevelopment agencies and enterprise zones. That was Monday. Sometimes I feel it is a lifetime ago. There's now discussions of course whether or not there will be a vote tomorrow in the senate and perhaps the assembly to put the tax extenders on the June 7th ballot as well as accept the 12 billion plus in cuts from the joint conference committee last week. Remains to be seen whether the votes are there or not, as of 2:10. May know more tonight or tomorrow morning. But that's where things are at the moment.

>> Mayor Reed: It's an up or down vote on whatever the conference committee came up with. Is that the way it goes back to the senate and the assembly?

>> Betsy Shotwell: I can't answer that as far as I can't say if things may be carved out or not. But you know the vote to accept the tax cuts, I noticed in the conference committee it wasn't up and down. There were times when the Republican members of the committee supported some of the cuts and other times they didn't. It wasn't

unanimous in the conference committee other than the final vote on the document but there were pieces that were left undecided. Unknown at this time whether there will be the votes.

>> Mayor Reed: Well, particularly understood in the Redevelopment portion of it which doesn't require a two-thirds vote necessarily, but changes the effective date whether or not they can get urgency legislation passed or not.

>> Betsy Shotwell: Of course and the whole prop 22 issue remains as well.

>> Mayor Reed: All right, any other questions? That's the report. Thank you very much. Nothing on the federal side. Although some of us will be in Washington next week. Talking to members of the administration and our delegation. Public record anything in the public record the committee would like to pull for discussion?

>> Councilmember Nguyen: Motion to note and file.

>> Second.

>> Mayor Reed: Motion is to note and file, have one request to speak on the public record, Mr. Wall.

>> David Wall: Good afternoon, Your Honors, it's always a pleasure and an honor to be in your presence. In reference to item number G. There was an attachment to this letter. Which was the complete employment contract of the City Manager. A public record by any stretch of the imagination. And yet, it was censored from being attached to this on the City's web page. To my knowledge this was done by the City Clerk, for reasons that he alone can explain. The censorship of this public record raises a number of federal questions. Chief amongst them is accessibility for Americans with disabilities. Who cannot come down to the City Clerk's for whatever reason to check out the documents so referenced in this document. As to the employment contract of the City Manager which is a dutifully entered into agreement I'm of the opinion that she's entitled to everything that was contained in the four quarters of the agreement. My reference to it is the incongruencies and the media

excoriating city employees for sick time payouts when sick time is a bargained for contractual agreement and the City Manager is entitled to that reinstatement and she's entitled to everything in that document. So there was no disrespect shown but the document itself speaks for itself, and denying it is an objection because it's arbitrary and capricious. It's ash industry. Where's the limit for this? I don't think it should be unless it's profane or there's some type of state secret involved as far as censoring. But for honest public record documents they should be in toto, without any commentary or capricious interference from the City Clerk. Thank you.

>> Mayor Reed: I think that's all of the testimony on the public record. We have a motion to note and file. All in favor? Opposed, none opposed, that's approved. I think our next item is agenda item H-2. Which is a memorandum from councilmembers Nguyen, or Vice Mayor Nguyen, Councilmember Herrera, Liccardo and constant, recommending that weigh accept the establishment of maximum number and streamlined application process for medical marijuana establishments and forward recommendation to the city council for action on March 29th. So we have a memorandum and a few people who want to speak on it. We'll get to that in a little bit. Vice Mayor.

>> Councilmember Nguyen: Thank you, mayor. Let me just start by explaining why we're putting this memo forward. I, along with my colleagues, councilmembers Sam Liccardo, Rose Herrera and Pete Constant put this memo with the intent of laying the groundwork for a more thorough and productive discussion at the council level on March 29th. We can't deny that the proliferation of medical marijuana collectives is spinning out of control and seriously draining the city resources especially in the police fire and code enforcement departments. I get calls and I'm sure all my colleagues do, too, from residents complaining about the odors, the congregation of people who do not live in the neighborhood, and the illegal zoning of these medical marijuana collectives and their close proximity to schools and community centers. So for these and other reasons, we think that it's critical that we move forward in addressing this groping epidemic that continues to afflict our city. Now I understand that folks in the medical marijuana community may have concerns about the cap, we are open to listen to anyone who feel that ten collectives may not be adequate for the size of our community. We are almost at a million with the recent census that just came out. However we focus on the need and not the demand but you all have an opportunity to talk with us to let us know what that adequate number is between now and March 29th. Again the intent of the

memo is to lay the groundwork for a more productive discussion. And we hope to come up with meaningful mechanism to regulate marijuana, medical marijuana establishment in our city while at the same time continue to support those individuals who actually use medical marijuana for million reasons not recreational purposes. Councilmember Liccardo is here and Councilmember Herrera is here and I'm sure they want to speak to the issue.

>> Mayor Reed: They do Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor, thank you, Vice Mayor Nguyen. This is an issue I've been concerned about for some time and became much more concerned the last time it came before council when we heard some very serious concerns being raised by our police department and by the District Attorney's office and those concerns were about the proliferation of these dispensaries and also, the amount of resources that we are being -- that are being used by our police department to deal with robberies and other kinds of crimes associated with the dispensaries. So that's a role concern, in terms of the utilizing of police resources when we have a \$110 million budget deficit. I know it was down graded to 105 but it's a moving target by any accounts probably going to go up unfortunately. We need to apply our scarce and precious police resources to help our community. I can tell you in District 8 we hear about folks talking about burglaries and all kinds of crimes going on in the neighborhoods and to think that not taking hold of a policy and managing it if that is actually increasing police resources being used elsewhere then that's something we have to get on top of. The other idea is even though at that point back and I'm forgetting when exactly that last meeting was, I think it was before January, when we had that meeting, we heard a certain number of collectives that existed at that time. And I think it was 100. They're continuing to expand so we're seeing clubs growing in spite of the fact that we no longer supply business licenses. So you know there is a need to say to put a number on it and I think ten's reasonable. I mean we have about -- a club per thousand residents. That's probably more than the oncologists out in the community, gerontologists or doctors that are out there. You know how many do we really need? And the other issue is that finally the current configuration of dispensaries don't meet -- they're not legal according to what we heard from the police department, the District Attorney, what we really want in this city are collectives. We want to really have organizations that are following the spirit of the law. In terms of providing medical marijuana to those who really

need it. And that should be provided to people who have serious medical issues. And I've seen a list of some of the things that are considered serious medical issues. They certainly don't meet my test of serious. The thing that happened in the state in terms of supporting medical marijuana was the realization or the acknowledgment by our voters that there are people who have serious medical issues and they should not be denied access to medical marijuana and I totally agree with that, the voters agreed with that and that's why we are even looking at having collectives in our city. But I think we have to be consistent with state law and we need to have a vehicle that meets that and that would be a collective. So this is a pathway to making sure that we're consistent with that law. This is a pathway of going from dispensary to collective. And we are settling the number at ten. I think that is the right number. I certainly want to hear from other folks. You know had proposition 19 passed we'd be in a different situation right now but it didn't. And so I think we really need to be mindful of what kind of community we want. And I think we need to hear from San José residents not only those who are running our current dispensaries and those who frequent them, but the rest of the citizens of the city about how they want to see our city deal with this issue. And can I tell that you I hear from residents who are very unhappy with the proliferation of these clubs. And so I hope my colleagues will be supporting the memo that we put together, that my colleagues and I put together. And I will certainly want to hear from the public that is here today too and I know Councilmember Liccardo is going to be speaking to it.

>> Mayor Reed: Councilmember Oliverio did you want to speak?

>> Councilmember Oliverio: I'll let the memo go forward first.

>> Mayor Reed: Councilmember Liccardo did you want to speak on the memo?

>> Councilmember Liccardo: Thank mayor. My colleagues put it very well. Obviously the challenge of distinguishing medical need from recreational demand or the challenge of distinguishing collective from money making business is not something that cities are particularly well equipped to be able to accomplish. We recognize that. And frankly we're not in the medical product regulation business. What we need to do is somehow or another get the number of dispensaries down to a manageable level so that we can regulate them in some

way. Right now we are at a point now where we simply have an overload in terms of what we are able to handle with the resources we have in police and code enforcement. So really what we are seeing here is an effort to accelerate what I think we all agree is the inevitable. I think there is a broad consensus on the council, what I've heard formally and informally, that we want to shrink the number of dispensaries or collectives to something that is more manageable. The challenge is that the work plan as it was laid out would simply push this decision out fairly far into June. And knowing where we're going to be with the budget, and it's quite likely we wouldn't see it until the fall or later. And so the idea is to try to accelerate this decision so we can get a better handle on at least the number as we're working out some of the details around the regulation. The one request I'd make for whoever might make the motion is for conversations with the City Manager's office there was some concern about ensuring that we had an application fee also in front of council on the 29th of March so I just ask the maker of the motion if they would include that as part of the recommendation so that way, we have a means of actually paying for this process going forward. Thank you very much.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. I just want to go back historically why this conversation's happening today in a committee room in the City of San José. So if we look back historical 1996, the voters approved prop 215, that's the state law that we operate under. We don't operate under federal law with this we operate under state law with the 15 other states that have a legal medical cannabis. And our role is not to be in that person's life, whether they have a medical condition or don't. It's just the same way I don't involve myself in someone's pharmaceutical prescription whether they need it or not. But more importantly with President Obama's reversal of the Bush policy, opened the doors to medical cannabis in all states that had it legal. So I laid out a groundwork, and a pathway, and what I felt was a conservative approach back in October 27th, 2009, where I laid out the idea of limited number, limited places, regulated and taxed. And the key is, limited number. That took a long time to ever get before the city council. And when we did get back to the city council, in March, I proposed again, a limited number. But there was no support on council. March 29th, 2010. So we didn't have any support for council for a limited number at that point. Then when the council heard this again, back on June 18th, we laid out some principles on land use. Because we are a city, we control land, and we said if you're by a sensitive use,

we should focus on closing collectives that are next to sensitive uses. And so we passed it as a council. Then as late as December 10th, 2010, I again called for a limited number, a cap. And again, no support on the council to do a limited number. So what we've done over 18 months, with no ability to say a limited number or a cap, is that we've essentially allowed the use. Issue is now, with a shrinking of the current use by 90%, is I feel we're going to open ourselves up to litigation. Because there's going to be that 90% of collectives that have made their investments in time, capital et cetera, that are going to choose the legal route based under prop 215 to sue. And I don't think, nor want, to have that type of litigation cost for the city in this time the people have brought up budget. So I think that's extremely difficult. The other item is we just approved a work plan to get to a regulation. So we could have criteria on who stays open and who doesn't. We don't have a criteria today, and my concern is, how do we get to that number? Who stays open, who doesn't? There's -- we don't have that list. We have a new District Attorney now. That new District Attorney carries a different view of medical cannabis than the prior District Attorney. We are about to hear something from that District Attorney in the coming weeks on some advisement and that was part of the idea on the work plan to incorporate those views into San José's eventual ordinance. At the same time we have a new attorney general who again had a different view on her opponent that won on medical cannabis and she will be issuing some guidance. We approach June as the idea where we could envelop some ideas and get to the goal of June. We've talked about this numerous times on the council but we've always been stuck on the numerous regulatory things that could happen. I suggested a working group of medical collective owners, public safety city to try to work out those things but we haven't got there. What we have done is we've done regulation by taxation. We passed, the City of San José residents passed measure U by almost 80%. That itself offers regulation, that offers financial audits proving they operate as nonprofits which must be done under state law as well as it provides them the ability to have -- pay the 7% gross receipts tax and nonpayment is one qualifier for not remaining open. As much as I would appreciate the cap and I would have appreciated it the three other times it went to council, I don't know how we get there without litigation and not having criteria to determine what's going to be there. If we want to manage the nuisances, because one is next to a sensitive use as this council has already voted on, to not allow it by then, then let's do that. Let's focus our efforts there. AB 2650 actually increased the -- the city originally had 500 feet from schools, residential, et cetera. AB 2650 increases it to 600. So let's focus our efforts there. Because if we are saying the single most important issue in our city and all police and code enforcement should go to that I would say that's not the case in

a city of a million people. I have residents where a falling chimney is almost going to fall on someone's house and it's difficult to get someone out there. Other things are going on in the city. Not that it hasn't provided some nuisance opportunities for -- in some in the community. But I think we voted on land use. Let's implement the land use and close those ones that are next to sensitive uses. I also don't want to have the knee-jerk reaction on some of the things that come from when residents raise issues and legitimate issues. But at the end of the day if a resident is unhappy with a medical collective, even if you have ten, that 10th one might be next to them, and they'll never be happy. The other idea is that there is this association of crime with these medical collectives. The reality is that if you look at the statistics of robbery in San José, we have much higher incidents of robbery at other locations, bank, jewelry store, convenience store, liquor store, shopping mall parking lot, those are things that we're not regulating or saying we're limiting. Not saying that we don't need a limit, because I've actually proposed it three different times. But I think that is something we have to acknowledge, that it is not the only source of crime in the city. The other thing is there's a reference to grow-houses here. We would be -- I would think it would be safe to say, prior to 1996 or the passage of 215, or prior to October 2009, with the Obama reversal of the Bush policy, suffice it to say someone was procuring marijuana in the City of San José and that was done through a legal means, whatever the cartel or someone growing at their house, it was done in Almaden, it was done in Berryessa, it was done in Cambrian. It was done by the suburban drug dealer. Grow houses, regardless of what this city council does, will continue to happen. And part of my original memo to council was, in trying to manage the inventory for the collective, was that we should have a permit process in place that has the fire department go out to those people that want to grow it to make sure that they're doing it in a way that doesn't cause a fire to their home and endangers their neighbors. And prop 215 allowed someone with a doctor's permission to grow their own at home regardless of what we do as a city. So I'm appreciative of the memo. But at the same time, I think it's problematic and I'm not sure, you know, how we get to 10 or how we get at you know again we've decided not to do a cap for 18 months. And now we have a large usage. If we want to get to a lower number then let's act on land use and/or we can do it the same way the card clubs do it. Our card clubs are regulated by the city. They visit our police department for background checks. They pay for those background checks. So it's revenue-neutral. If we want to look at lowering the numbers then we can have background checks done on all the collective members and figure out if there's something that we view as not in Public Safety's mind, then we can

make sure that they're no longer part of those collectives, again, reducing the number. Some thoughts I throw out there but I have concerns.

>> Mayor Reed: Thank you. I have a couple of comments. First, let's make it really clear: Based on everything I've heard from all of our lawyers every time we've talked about this, the 110 dispensaries, clubs or whatever they are that are operating in San José are illegal. They are not allowed under our zoning code. None of them has a right to be here. We just don't have enough people like Mike Hannon, code compliance officers, to chase them all down and comply with our zoning code. And the council's decided we'd use our scarce resources in certain areas where they are causing most trouble for the neighborhoods and residential areas and things like that just a pure allocation of resources. So I don't think anyone's got a right to continue in business just because they've opened illegally. That isn't a question for me. The question is really what can we accomplish on March 29th in a council meeting and what are the issues that the council could decide that would move us forwards all of the work that we've been trying to do to establish a regulatory framework? There's no time for additional staff work between now and March 29th. But a great deal of work has been done. I do think we'll probably have some guidance from Jeff Rosen, our district attorney. I talked to him this morning. It probably will have something out by then but no guarantee on that. Lots of people think our attorney general Kamala Harris will have something out soon but I haven't gotten any dates of estimate of when that will be. We may not know anything more on the 29th than we do right now. So I'm assuming we don't. What is it we could do on the 29th that would help other than having another meeting where we say well, we're going to limit it to 10 and somehow the 110 that are already here are going to mysteriously disappear without adding a couple of dozen more code compliance officers? Because I don't think anybody is going to leave town when they can make a lot of money. How do we do something on the 29th that will help us either move on the regulatory system or help get rid of the ones that are offending the neighbors? Now, we could set the number at 10. That's a decision that we have to make. Will we have a cap? And what's the number? And that's the decision we could make it so we know what it is, whatever the definition is they'll eventually have to comply with state law as interpreted by the District Attorney and the attorney general. It's something we can accomplish but it's not going to deal with the 110 that are already here I don't believe. When you say the maximum is ten how do you choose the ten? If you are going to be one of the ten at least you have to be in compliance with all the laws and regulations of the City of San José. Including the paying of taxes, the tax

has already been levied and approved by the voters. So that's one thing. Maybe we could come up with limited criteria that we could agree upon that whatever the definition coming from the state is they all got to comply with certain things locally. We could perhaps do that on the 29th. I don't know. I'd like to hear from our staff. What are the things that if you could get an answer on the 29th would be helpful in moving along towards all the work that you've laid out that needs to be done to get to a regulatory system? Because I really don't think that we're in a position where we could adopt the regulatory system on the 29th. Based on the staff work that remained, the last time we looked at the work plan. So if you want to take a crack at if you could get answers from us, what question would you like to ask?

>> Ed Moran, assistant City Attorney. As you know, mayor and councilmembers, we have drafted, our office, along with the City Manager, staff has drafted regulations and we have drafted regulations which we thought were following the direction that we had gotten so there are, and Angelique Gaida from our office is here she is give us some of the details of the ordinances that we had drafted for your consideration. The new proposal would allow us to maybe more -- to fine tune the ordinance but still it's not clear to us what the streamlining would entail. It's not clear to us, as well, how you would, as the mayor indicated, how we would come down to the number 10 at the point. Any direction from any discussion would clearly give us more information on how you want an ordinance done but we have brought to the council a couple of drafts of ordinances and those ordinances are still in place but we are open to any direction you have on that. And just to look back on what the mayor has said, we have consistently informed the public that any of the businesses that are operating, are operating illegally. So there should be no reliance on the fact that our office our this council has indicated that they can operate legally in the City of San José.

>> Mayor Reed: Vice Mayor.

>> Councilmember Nguyen: Thank you. I guess I just want to be a little bit clear in terms of the intent of this memo my colleagues can definitely weigh in but our intent is to have this discussion on March 29th having the full council weigh in in terms of what is the cap, what is -- the adequate number should be, as well as setting the criteria. Obviously we can't do it here but by moving this memo forward we will have that discussion and I'm

hoping that at that meeting we can fine-tune that everything we need to do to accelerate this process and give direction to the city attorney's office, in terms of how to fine-tune that ordinance. And so that's the intent. We can't vote on anything today in terms of setting the criteria or setting what is the right number but I'm hoping that the full council will have an opportunity to weigh in taking into consideration Councilmember Oliverio and his suggestions and all the work which he has done which we're very appreciative of. I think by moving this forward we have the opportunity to do that and we have the opportunity to reach out to the medical marijuana community which we have been engaging them in the process and so we're hoping by doing this we can accelerate this process and we have that opportunity then a couple of weeks from now to do that.

>> Mayor Reed: Rose.

>> Councilmember Herrera: I think staff, and what I heard from staff and the police department and the District Attorney and everyone that spoke back in December, was that they want us to set some policy. We need to let staff know where we want to go with that. That's 80 participated in writing this memo. Ten is a low number, it's sort of giving an indication of where we want to go. I'm certainly negotiable about that. But what I don't want to do is to have the impression that 110 is okay, or that 200 is okay. I think we need to say something, we need to have a firm message from policy makers that we want to see the number go down dramatically. And I think that's only right in terms of the community, in terms of staff so they know where we're trying to go and also for the collectives that will emerge out of this. And those I expect to be able to have some collectives that are meeting the requirements and that want to work with the city. And that can continue to provide medical marijuana in a way that conforms with the requirements of the state. So that's -- I think we need to set some policy and I think Pierluigi is right. I even remember when he called for a ban last year. I've heard -- you know or moratorium. Not a ban, a moratorium on new clubs and so he offered a lot of different solutions. I know at the last meeting I was calling for a ban so I've moved from wanting a ban to saying let's have a certain number of collectives and yes, the old setup in terms of dispensary would go away. So we -- they would be reformulated as collectives, and maybe there are some out there now that are collectives, true collectives, and those folks could apply and be part of the ten or whatever number, that turns out to be very low number that would exist. They would be how I would see it is, they would be able to apply to be part of that and those who want to continue to do business in -- that does not

conform that are dispensaries, where I walked into one of these shops out in Evergreen and they had marijuana on sale. They were eager to tell me that. I was told that I could get a doctor's appointment, if I wanted to get some marijuana. That sort of thing, I don't think, should exist. I think it needs to be really for those who are very seriously ill, in the form of a collective, not having membership in sort of soliciting new members, in a way that I think goes beyond the intent of the proposition. And I think we really should support -- make sure that this really meets the needs of very seriously ill people. I didn't define that; that was in 215. It didn't say for hangnails, it said for seriously ill people. So I think that's -- for medical, serious medical illness. So that's why we need to look at this. That's why we're contemplating having collectives. And I would like to make a motion at this time to move my memo, along with my other colleagues, I would like to move this memo forward to council.

>> Councilmember Nguyen: Would you add the application, please?

>> Councilmember Herrera: And add the application, determining an application fee for this.

>> Councilmember Nguyen: Second.

>> Mayor Reed: All right, we have a motion to move this on to the council agenda on the 29th. I think we'll have some further discussion before we take the vote and I've got some public testimony before we take the vote. Councilmember Liccardo, what are the things we can do on the 29th that would be productive?

>> Councilmember Liccardo: Yeah, and I appreciate the question. That's an important one. In this city, we have experience with franchise agreements of all kinds, in which we set criteria for businesses that want to do business in the city. And we score the criteria based along objective -- well, to the extent we can possibly be objective, criteria are announced well in advance, and everybody knows the rules of the game before they apply. It seems to me that the extent that staff has some clarity about what the criteria ought to be let's see if we can get that out there in some way on the 29th. And you know in terms of winnowing down the number obviously we need an application process so it starts with the application. When staff is ready with an application we get out there. When we come back and identify the top ten or 12 or however many number it is we settle on, that's the

date from which all the other businesses have notice they've got 60 or 90 days or how many ever days it may be to close down and to settle their operations. I think the critical thing is that we shouldn't be spending enormous amount of time settling on the regulations which I think can get us into the weeds for a very long period of time. Trying to sort out what the regulations ought to be before we at least get to a manageable number that we can regulate. We have regulations now around the locations of these clubs and in fact, we're not enforcing them now because they're all illegal because the number is just well beyond our capacity. So I think it helps to start with a manageable number and we'll get the regulations in place as we hear more from the attorney general and the District Attorney.

>> Also, I want to make it clear as we're looking at the regulation we're looking at two parts of the regulation. The first is a land use regulation as to whether or not we want to allow them in San José and what parts of San José they will operate. The second is a regulation part. If we do allow them how much regulation do we want. I know the City Manager has her staff here and the police department, probably responsible for the regulation part, Planning Department will be involved primarily with the land use part. We have to keep in mind those are the two sections we have to talk about. We're talking about streamlining. The question is how are we going to streamline those two parts of the ordinance.

>> Mayor Reed: Well I think streamlining is an interesting question. First you need an it. We don't at this point have it yet to streamline. Occurs to me that we could make a decision on the 29th on the number. Maybe it's a long debate, maybe not. But it's a number. That would help, be helpful to moving along towards a regulatory system. We could also probably make a decision on the zoning issues, in terms of well, if we have, whether there's ten or 20 or 12 or nine, where would they go? And you don't need to know how they're going to operate necessarily in terms of the whole regulatory system to make the decision about where they can go. And we've already had some debate and lots of suggestions on that. I think that one is kind of ripe, in the sense of it's ready for the council to make a decision. So those would be two big things to decide that would be helpful in streamlining the work to get to a streamlined regulatory system. Would you agree, Councilmember Liccardo?

>> Councilmember Liccardo: I would but may I also suggest that to the extent the staff has clear sense of criteria that would be used in whatever process we have, this application that that might be a good time for us to be vetting it and discussing it as a council as well.

>> Mayor Reed: You mean compliance with the tax?

>> Councilmember Liccardo: That's a pretty simple one and I think we'd all agree with it.

>> Mayor Reed: Well I wouldn't anticipate the staff is going to go out and get a bunch of staff work because if they do they need to get the memo out tomorrow probably. We have work that's already been done and recommendation that has been made, I haven't looked at that for a long time but there is a body of work that we need to decide from.

>> Councilmember Liccardo: I didn't know if there was sunshine requested -- Deb --

>> City Manager Figone: To the degree we can summarize any of the work that has been done to help inform this conversation we would need a sunshine waiver. And if I could just ask a question of Joe, right now we have a memo teed up for the 17th Public Safety, finance, strategic support committee on land use issues. Does it make sense to not bring that forward on the 17th or is this a parallel path?

>> Joe Horwedel: Parallel evident and I'm reading it as the conversation's going on trying to match up of the different topics that we've already covered. We do raise -- there's six issues that we raise in that that I think the council, our goal is to council would ultimately be weighing in is which zoning districts do we require a conditional use permit, or we just verify zoning, is there noticing that would go on to the community around what is the separation uses for different parts of uses, is it only the state, or do we go broader, the total number, and transferability. Can it float between different districts. The whole question of criteria from staff point is the most concerning that if we're going to be doing use permits or zoning verifications? Is it my staff that will be winnowing it down to 10, or does it ultimately, when it comes down to the police permit side, that that's where the criteria

lives? So that's the discussion I think we need to have on the 29th, and so we do need to get back and see what discussions we've had internally around that. But I think the memo that we've done for public safety, you know my goal would be to put a cover memo on top of this and to bring that to council because I think the analytics are there. I don't know if there's value in keeping it on for the -- that committee, if we're going to be at the council at the end of the month. So I do believe it is an opportunity to maybe vet out some of this coming into council. There may be some value to kind of talk it through a bit and therefore we're more effective at the council meeting.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: For my colleagues that signed the memo I'm just curious, is there any -- you can share back on the prior three times we talked about limited number and a moratorium, that at that time, it wasn't the right way to support it. If someone can tell me why the difference changed.

>> Councilmember Liccardo: Sure. The moratorium as I recall we had some concerns expressed by the city attorney's, that doing something to legalize what is currently invalid zoning for all these operations and so for the council to take that step would essentially concede a point that we're not willing to concede, which is the collectives and dispensaries that exist now are illegally zoned. So as I also recall, there was a proposal, I remember hearing the number 30 come up, around limits. I wasn't comfortable with a number that was that large. But I also know that we ran out of time in December, I think, when all these issues were being debated. We were losing a quorum, as I recall, and we were losing councilmembers, and we were ready to take on all these issues. And I think I would have been very happy to discuss this at that time. We simply ran out of councilmembers and time.

>> Councilmember Oliverio: And I have to ask the City Attorney, when I first started the topic, I and my staff formed a Brown Act. And so that entails myself, Mayor Reed, former Vice Mayor Chirco and then signatures on this memo, which puts us at six. So is Brown Act only for the memo? Or the topic? I just want to --

>> It's the recommendation. I mean the items, the item of medical marijuana is going to carry through through a lot of different recommendations and items. So to the extent that the recommendation, the people who are on your recommendation may overlap on this one. This is a different recommendation that you were involved with the last time.

>> Councilmember Oliverio: Thank you for the clarification.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Just wanted to address Councilmember Oliverio's question. So very similar to what Councilmember Liccardo just said, I was concerned the moratorium, the feedback from staff, and also that meeting in December I remember as people were walking out and we lost a quorum I was -- made a motion to ban them. So my thinking about this has moved, I realize that my real concern is the number that are there, trying to reduce it, trying to have a reasonable number of collectives, and I remember your proposals were more than I thought I could support. I think 30 was one. I want remember the others. But that is why I didn't support it.

>> Mayor Reed: Let me go back to my question of what could we do on the 29th that would be helpful in moving this towards a solution. I think this is hearing number eight for me, counting rules committee as well as councilmember hearings. And it's sort of the same debate over and over and over. So I'm anxious to make decisions, win, lose or draw on the decisions, and get them done so we can move it along. Can we, within the time frame we have, put the zoning stuff in front of the council that Joe's got teed up? Any issue with getting that in front of the council? I think making those decisions would be helpful.

>> Joe Horwedel: It certainly would be helpful for our code enforcement staff to have some clarity about how we should be enforcing these and moving forward. We do have a draft ordinance. It doesn't reflect the state law change where it went to 600 feet so we do need to do some work on that but I think that's a pretty minor change. Staff is also work on some more information mapping the city of what those different radiuses look like around zoning districts both commercial and industrial and looking at just schools which the state regulates and

then the broader criteria the city council asked us to look at to see what areas are really available to do medical marijuana if we were to do it. So I think we would be ready to have that direction on the 29th, and to move forward with an ordinance on the 29th.

>> Mayor Reed: So you say you have a memo that you could put a cover on to get it out so we are more than ten days out, so that would be good.

>> Joe Horwedel: Yes.

>> Mayor Reed: And then if there's any supplemental information the manager wanted to get out it would be supplemental, you wouldn't need a sunshine waiver for supplemental information.

>> Joe Horwedel: Right. The piece that's missing is the criteria discussion how we would go from 100 down to 10.

>> Mayor Reed: Are you as a staff ready to make directions on that or has that been done?

>> City Manager Figone: I had asked Deanna to help me understand what the difference is between what's being advanced in this memo and where we were at in December. So the main concern is, how to determine which collectives to select, so at this point, we would use the draft regulations that we had as criteria, correct, Angelique? And given however those would be based in the understanding of the law. So to the degree Jeff Rosen comes out with some other interpretation, or there are other moving parts that could change. But the only basis we have -- and again, I'm looking at Angelique -- is basically what we've already told you so we could summarize that for you mayor to help sum up the conversation.

>> If I could interject, the District Attorney is going to comous with his opinion as to whether or not the use of medical marijuana is a crime under certain circumstances. The city still has a right to regulate under its land use requirements. So there's no requirement that the city allow businesses to operate in San José. It is clear that

people have a right to use medical marijuana under the state law and they -- and the D.A. will determine who to prosecute and who not to prosecute. The city still has a right to regulate under its land use regulations and its business regulations what businesses operate in San José.

>> Mayor Reed: Are you at a City Attorney ready to get that criteria out.

>> City Manager Figone: I guess it would have to technically require a waiver. I don't think we could get it out before next week. And again, I'm looking to the staff who would need to do the heavy lifting. But we could get out something simple, mayor, to help guide the council discussion. The other issue has already been added to the motion, and that is we do need a cost recovery fee program. And so I'm not sure how much of a fee program we will have, but that's another big missing piece for us.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Under the original regulatory, I believe the selection would be under a lottery system. So would that be the way we would move forward, because there's some issues with providing via lottery to someone who is not responsible as others may be.

>> I think Angelique may be able to address that.

>> For the processes and the regulations right now --

>> Mayor Reed: Little closer to the microphone. Not picking pickup.

>> For the processes and the regulation right now there is a simple one page sheet that all the collectives would complete and it's a preliminary phase that they go through to get a lottery number. If they pass a simple qualifications, then they get to move to the lottery and then those folks that are left each get a lottery number go through that process and then you just go in order. So if there are for example 100 and each one are given their

own number from those 100 we go through the first ten and make sure they meet further set of qualifications in terms of the zoning requirements, where they're going to be located, make sure there's no fire code invitations, no building code invitation, also that they have proper lighting, things that would offer protection for the businesses and for the public as well, those kind of things. And if they meet those requirements, then they would be issued a registration. If they don't then, we move on to the next, the 11th in line, 12th in line if 10 is what your number ends up being. So there are qualifications to get you a lottery number in the beginning, and then if you get into the lottery and get a number, there are further qualifications that you need to meet. So it is sort of a two-part process but there are specific qualifications already in the draft recollections.

>> Mayor Reed: If we treat these as franchise, can we auction them off? I'm a fan of eBay, since they're a home-grown company. No?

>> No.

>> Mayor Reed: Why not?

>> Well, because we don't want to get in the business of letting people get through a process and then sell their lottery -- you're talking about selling a lottery number?

>> Mayor Reed: No, I'm talking about buying it from us. So you go through that process to find out whether or not you're qualified to bid and then we have an eBay auction to the top 10 bidders that are qualified are the ones who get to do it and we take the money and we pay for all those code enforcement officers to chase the other 105 out of town.

>> Mayor, I don't know if we've looked at that particular question. So I don't know that we can opine right now. But we can give you that answer by the 29th.

>> At the very least we will have a cost recovery for the process of going through the application for the registration and also for staff's time looking at the zoning as certification from planning so there will be cost recovery associated with that. To the extent that we at some point get regulations in place and those regulations require enforcement there would be another aspect of the cost recovery associated with that as well.

>> Mayor Reed: Well the federal government auctions off radio spectrum and that's how it gets divvied up and they raise lots of money doing that. We have franchise agreements in geographic areas of the city, car towing for example and there's revenue that comes to us as part of that.

>> Again mayor I'm not saying -- I don't know and I don't know that we've looked at that issue but we will look at the issue and we can get you the information by the 29th.

>> Mayor Reed: Okay, well you know this criteria is a complicated one and is as long as staff is prepared to make some recommendations we can put it before the council and hopefully make some progress on it. So I'm feeling a little better this is not an exercise in futility. Already been through that a couple of times and don't need to do it depend. Any other conversation from the committee or City Manager?

>> City Manager Figone: Mayor not to keep revisiting this but I guess I'm depending on Angelique and the team to affirm whether or not we'd have enough substance to come before the council again. What I've understood is that we would draw upon on the draft regulations that we have been developing all along. Is that not correct?

>> That's correct. And we would have enough there, I think, for what we need to bring forward.

>> Mayor Reed: Let me ask the maker of the motion to perhaps amend the motion. Instead of just having the cap that we put all over the land use regulations as part of what comes to council, the cap is just one element of that.

>> Councilmember Herrera: Yep, we definitely add that.

>> Mayor Reed: To the seconder?

>> Councilmember Nguyen: That's fine.

>> Mayor Reed: All right, so the motion is amended, and those land use regulations would include the selection process to get to whatever the number is.

>> Mayor could I chime in?

>> Mayor Reed: Yes please.

>> I want to clarify, there's two criteria. There's the land use criteria but then from our regulatory perspective we have criteria as well. And that's where we get more into the give and take. And those areas are do people have convictions for certain types of crimes. There is also those criteria that we need to look at no, ma'am not just the land use criteria.

>> Mayor Reed: I get that. I wasn't contemplating we make those decisions, but I was thinking -- and maybe I'm thinking wrongly here -- is that the criteria for the decision making would assume you could meet all the criteria that the police have on the regulatory side. That's just a minimum criteria for even moving along anywhere in the process.

>> That's what I understood you to mean. From from the zoning perspective and from the regulatory perspective, that's what we would bring forward on the 29th.

>> Mayor Reed: Even though we don't know what that criteria is, eventually people will have to comply with it before we get there. So we're not going to be issuing permits to people for anything until we have the regulatory

system in place and the criteria and all that sort of stuff. But if we can make some decisions on the 29th that will make it easier for you to get the rest of the work to us, I think, I'm hoping. Councilmember Oliverio.

>> Councilmember Oliverio: So assuming all this comes to council and we have this discussion on the topics that have been on the motion, what's the logistic time frame that that would occur? Let's say council says hey we're going to do something and you give it to staff. Well then what would be the amount of time -- because I've never -- things sort of take a while and so I mean I don't think things get done you know very quickly sometimes just because of the bandwidth and logistics and all that stuff. So has anyone prepared a guess on that?

>> City Manager Figone: I think we could tell you on the 29th. You know, staff has planned six months for this work. And there are a lot of the same people who are doing many, many things. So I think we have to be just very honest with you on the 29th as to what you could expect.

>> Councilmember Oliverio: So might very well likely be June?

>> City Manager Figone: Um I don't know.

>> Joe Horwedel: Reality, even on the 29th if council adopted an ordinance it wouldn't be effective until six weeks after that at the absolute minimum. It's a matter then of what changes we would have to make coming from the 29th of how long Angelique and the rest of the team are working through that to get the changes done and approved by the council to then set that six-week clock running.

>> It appears that basically what Joe is saying and Angelique is that at least the land use portion of it you could look at an ordinance on that day and have the land use ordinance approved, have a first approval of that land use ordinance and having that moving forward while you're still discussing the regulatory part of it.

>> Councilmember Oliverio: So Joe we had originally done something on land use back in June with the CIC and commercial general.

>> Joe Horwedel: Correct, we were talking about different zoning districts the CG and I think the combined industrial commercial zone.

>> Councilmember Oliverio: And 500 feet.

>> Joe Horwedel: Right.

>> Councilmember Oliverio: What are you going to present that's different?

>> Joe Horwedel: We do have to account for the state law change on the 600 feet and one of the questions on the table was did we broaden from just commercial to do other zoning districts.

>> Councilmember Oliverio: Light industrial.

>> Joe Horwedel: Light industrial, industrial park. I any that's why the maps would be helpful to show which parts of the city would be available or not available.

>> Councilmember Oliverio: So again really fine tuning what was already there. The bone structure is there. The question whether we add some other zoning districts or as a result of that something other criteria or overlays that would go in that would make that nor complicated so that's what we just want to double-check.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: I just want to confirm. One of my big concerns is we have collectives, collectives in the true sense of the word. That's part of the regulatory framework we're talking about so the police department how much would you be involved in helping us make sure that happens? Because if going forward we have collectives, and we have a very limited number, then, you know, the land use issues, I mean we definitely want

them in a certain area but whether they're in this specific area or we expand that a little, that's less important to me, if we know there's only ten of them. So -- or 15, or whatever it turns out to be, and that they're really collectives.

>> And so we have the two parts. We have the land use and those are the draft regulations I think Joe was speaking to. We also have the draft regulations for what we believe the regulation could be. And perhaps that's something that council could look at as well. That draft ordinance is already done. It's just a question as do we want to change some of those things kind of what we're talking about with land use. And quite frankly for us and when we're talking about the time frame for us to start regulating, we really can't start regulating until those regulations are adopted by you, whether you change them or not. They have to be in place before we can really move forward with any of these things. So if we're looking at a time frame that might also be something that you review as well.

>> Councilmember Herrera: Can we have that brought forward at this same time? I guess I'm asking staff to comment on it.

>> City Manager Figone: I think we could bring you a summary. I don't know it would be in detail again I'm looking at staff and maybe one other dimension here. I understand the sense of urgency and maybe a tolerance for vetting out some of the finer details afterwards. But I think we need to come to some agreement on that. Because as I was talking to staff this morning, PD has been thinking about the security expectations for the establishments, and the auditing expectations for the establishments. I don't think we could bring you a complete framework. So we're going to have to make some priority choices, I would think, Angelique, as we have these discussions on the 29th.

>> I think it boils down to how much you want to get into the meat of the whole program. We brought it in June and we brought it again in December and we could very well put a new cover sheet on it and bring it to you on March 29th. All the issues that you are concerned about are covered in the regulations. The land use are in the ordinance that amends title 20 and the police regulatory provisions are in the ordinance that amend title 26. It's all

there, it's a matter of how you want us to tweak it and what issues you want to cover first. If it's just you want to tell these folks where they can be, and how many there can be, that's the land use part of it. If you want to make sure you know who's there that's the application through the police and if you want to stop there what you leave off are the regulations that chief Hober was discussing and so what you might end up with are people located where you want them to be, and the number you want it to be, and you know who's there but they're unregulated until we come back in June with regulations that have been vetted out through the committee that has been assigned to review it. If you want to move more quickly on it, it would be a matter of going through what we gave you in December and June and there are attached staff memos that are quite deep I think 30 pages long that go through the draft of each of those ordinances and describe what's there and why staff made those recommendations.

>> Councilmember Herrera: Well I'd like to see whatever can be brought forward so we can have at least the visibility to look at it. I don't think it hurts to have a memo, an info memo, or whatever you guys can provide, so that we can see what work has been done. Because it sounds a lot of work has been done, you know, since the last time we heard this. And I'm certainly not saying that we should get into the weeds and solve the entire thing on the 29th. I think we should move forward on what we can as far as limiting and land use but I think we should move as quickly as we can given staff constraints forward on the regulatory portion too. But again if going forward we know where they are we've picked the locations we've limited the number that reduce test scope of what we have to deal with so I think that's an important first piece of it and then move as quickly as we can on the other piece.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Joe, how long have we spent on the sign code. I'm guessing 18 months to two years.

>> Joe Horwedel: Yes.

>> Mayor Reed: How about ten years?

>> Joe Horwedel: The most recent major effort has been 18 months.

>> Councilmember Oliverio: So 18 months to two years on law that's set, not that law that's moving, on things that are -- I mean, the totality of work is completely different. And then the way we move through outreach and sunshine it just takes a lot of time. So I just want to manage expectations because when we put out something that says in 30 days, you know realistically that's not good to happen and I think having a sense of urgency on the council on any topic has to be realistic because a one day headline versus the reality of implementation are two different things.

>> Joe Horwedel: That's correct is that at the end of the day whatever law gets enacted both Dave's staffs and my staff then are challenged to go off and enforce that and whether it's getting a letter out and enforcement to 100 businesses, and their property owners saying you are now illegal and the city's adopted rules and that you can't become legal or here's where you can that by itself doesn't make the problem go away. As I'm envisioning we'll be spending a significant amount of time and it will probably take upwards to a year to work through that.

>> Councilmember Oliverio: Could you say that again?

>> Joe Horwedel: It will probably take upwards of a year to work through the balance of businesses to finally clear the books.

>> Councilmember Oliverio: Thank you.

>> Councilmember Herrera: So we might as well start now.

>> Mayor Reed: I'm going to go back to Councilmember Herrera's question and suggestion we have other information in front of us. The question is what is going to be in front of the council for decision? What we are

begin by way of information is secondary. The question is what do you want in front of the council? Are you asking to have in front of the council the ability to make the decision on the regulatory framework?

>> Councilmember Herrera: No, I'm not. No, I'm just saying if there's other info memos --

>> Mayor Reed: There is lot of info. It all depends on what gets agendized. Because that's a lot longer meeting I think.

>> We can provide in the agenda the option for the council to take action with regard to regulations, to the extent it wants to. I think it appears that what the council may definitely take action on is the land use, so we can have an adoption of an ordinance so that it's the first reading at least for the land use part of it. We can also agendize a discussion of the regulations that have already been proposed in the past. We can have staff, our office as well as the city manager's office discuss what previously has been proposed as regulations and the council can decide whether it has sufficient information and whether it wants to follow that path or a different path. So the options will be made available to the council to take action, on the land use part of it alone or take action on the land use and the regulation part as well.

>> Mayor Reed: Well I think we should decide if we're going to take action on the regulations. If we're not going to take actions on the regulations let's not say that and then get everybody engaged on that issue when we're not prepared to deal with it. Personally, I'm ready to decide. I'll decide today. Okay, I've had enough. I've heard enough. I'm ready to make the decisions. But I also know that I'm going to do that over the objections of hundreds of people, and we have in the past been able to work things long enough, hard enough to either grind people down, or maybe they move out of town. I don't know. If you work these things three or four years you can begin to get to a place where you don't have as much opposition. But whatever we do on the 29th will be done over opposition, I can guarantee you that. And I'm going to demonstrate that in a minute just by reading these cards and letting people come talk. So if the council is ready to do that, and you know not work it through, with outreach and task force and committees and committees and committees, you know we could make decisions on the 29th. Because we certainly have got lots of information and data and I'm for one prepared to make the decision,

but I haven't sensed that the council has been ready to do that in the last few times that we've had it in front of us.

>> Councilmember Liccardo: I could offer my two cents. Mayor, certainly this panel's empowered to put that in front of the council, and I think I certainly have no objection to doing it. For me it was a concern about staff workload in terms of working out all these details and whether or not they felt as though it was fully cooked from the staff level. If they feel it is I say let's go full speed ahead. My concern was allowing all that work on the regulations to take place first before we really get to this issue of our land use and cutting the number down because that's really the one that's having the most impact on the communities.

>> Mayor Reed: Okay. City Manager anything to add to that?

>> City Manager Figone: Well I guess it's my understanding it's not fully cooked and what we could bring before you is the criteria, correct, and again I'm looking to Angelique. So could you recap what you believe, or you and Joe believe we could have in front of the council on the 29th?

>> Okay, I'm sorry I missed the first part of what Councilmember Liccardo said so I'm -- not important, okay.

>> City Manager Figone: He was saying that he's sensitive to what it would take on staff's part to bring fully --

>> Regulations?

>> City Manager Figone: Yes.

>> Okay, the regulation are done. What we would be bringing before the public safety/finance committee are those regulations and describing and explaining why they are what they are and getting feedback from the committee. Absent any feedback from the committee, my understanding was, they were going to pretty much stay the same. So the land use and the regulation components are done and have been done for a number of

months. It's just a matter of, people having the time and opportunity to get their heads around it and understand it and give us feedback on it. So if you wanted to entire thing brought forward that's what we could do. It sounds like a matter of wanting to take one step at a time doing the land use stuff first then having some time to vet out the regulations and what those look like and get some feedback from the committee. So it's entirely up to you.

>> Mayor Reed: Maker of the motion what do you want to do?

>> Councilmember Herrera: I mean I'm ready to have the whole thing brought forward if staff's ready. I think if they've done their work and they say they're ready to bring it forward, let's bring it forward.

>> Councilmember Liccardo: Mayor may I make one suggestion? There's a concern about waiver of sunshine and bringing it all forward, if it means pushing this out from March 29th a couple of weeks would enable staff to have everything and put it out in the way it complies to sunshine, given the fact that obviously, there's going to be opposition to whatever we decide, maybe that would be the smarter course, taking the whole thing up all at once in April. But that's just a suggestion if we do decide to take on the regulations.

>> Councilmember Herrera: And I'd be happy to amend my motion if staff thinks that's a good idea.

>> City Manager Figone: Yes, I think it would be a good idea and again looking to the staff doing the heavy lifting, what would another two weeks be helpful?

>> Sure.

>> Councilmember Herrera: Okay. What date is that so I would -- April 13th. So I would change the motion to April 13th.

>> Councilmember Nguyen: That's fine.

>> Mayor Reed: So the motion would be to get this on the council agendas on April 13th with everything. For the council to make a decision, if the council can reach a decision, and that would be the land use as well as the regulatory framework and the criteria for --

>> Right and my understanding is the council wants the option to be able to take all of it or just the land use if in fact they think that the regulations still need more work, they can still move forward on the land use.

>> Mayor Reed: Yeah but we always have the option of taking no action.

>> Correct.

>> Mayor Reed: But we need to agendize it in case council does want to take action. So that is the revised motion. I think now is the time to hear from the people who have come to talk. I've got a lot of people here who want to speak. I want to make sure everybody has a time to speak before we adjourn. I'm going to limit your time to one minute. Please come on down front so the second person is ready to go while the person in front of them is speaking. I think we have enough time to get everybody to speak before we get done. Hope we don't have much more work on this agenda. Let me just check. Couple more things to do as well. Paul Stewart, David Wall, Stephen Zacuski.

>> Mr. Mayor, members of the committee my name is Paul Stewart. I live at 248 Lychee Court in District 7. 110 is probe too much. 10 is way too little to serve a population of almost a million. You will need to reconsider that. Secondly, in the memo it talks about setting up a streamlined situation. You've already had a discussion about that. In fact, Councilmember Herrera, you have had a draft ordinance on your table or in your files metaphorically speaking since justify of last year and do you know why no action was taken? Because the proposed draft ordinance in all due respect to the City Attorney and our fine representatives from SJPd have parts of it that are illegal or some questionable or some impractical. That's why you have a situation that is not moved forward. I would recommend and I would serve myself as a co-chair of a blue ribbon task force selected by the mayor and members of this committee including staff including patients and operators to go through these

regulations and bring back recommendations to the council or this committee as would be appropriate. Thank you.

>> Mayor Reed: David Wall Stephen Zakusky, I'm going to get that name right.

>> David Wall: Very quickly, Councilmember Oliverio is to be credited for all efforts in this matter. The loss of quorum gives rise to an issue of excuse-making by councilmembers and perhaps a performance appraisal subject to them should be in order. The issue of winnowing out this process is easily done through a fee structure. The application process should be significant. I would I say \$250,000 alone just for the application. The use of City Hall an ex and the application fee to rebuild the annex in order to operate a collective right out of City Hall should be explored. The use of asset seizure is on the books. It is time to give notice if you wish but the law does not say to give notice. Asset seizure, closing these places down and seizing the assets, the property assets, cars, property, houses, whatever the property is defined as a revenue stream for the city to fund not only the overhead cost and the maintenance cost.

>> Mayor Reed: Sorry your time is up. Stephen Zackowitz. Give me correct pronunciation of your last name. I didn't get it right, I'm sure.

>> Ziscavicz.

>> Mayor Reed: Okay, I wasn't even close, sorry.

>> I'm the treasurer for Americans for safe access Silicon Valley. I don't know where to begin. Try to open a collective a few years ago they said you can't do it you know you can't get the zoning for that as all these have done and you said they're illegal so where can someone apply and actually open one legally if you say these are illegal? It just seems ridiculous. You know there's different problems you say like fire. I think the most recent fire was in elementary schools so maybe we should shut them down. The most recent robbery was a convenience store so maybe we should shut them down or limit their number. Maybe we should go after the specific collectives

that have issues. Here's the 1997 ordinance. Has anyone not seen this one from San José? You can take a look at it.

>> Mayor Reed: Sorry your time is up. Michael Hoveland. Followed by Michael Gamino.

>> Hi, good afternoon. I'm a voting member and in Councilwoman Rose Herrera's district and I am a business owner in Madison Nguyen's district. Keep them in light industrial. They're not around residents. Light industrial zoning is not near residents who have less complaints than doing so. Look at the BOE taxes. Who has been paying their BOE taxes the longest, go bark and do that. On March 30th, I'm sorry March 29th Mr. Mayor you said you would frown on businesses that opened after that. Stick to it. Look at who's been around the longest, look at who's been paying the BOE tax the longest, look at who's opened up since those time periods, look who's been paying taxes it's a big thing can you go not state the B OE can produce those and can you look at the actual collectives that have been doing that. Ten is not enough. They said 50 to 60,000 people have patient cannabis cards in San José and that number is consistently growing. I see it growing by hundreds every day.

>> Mayor Reed: Sorry your time is up. Michael Gamino followed by Robert Chance.

>> Michael Gamino, I'm a patient and an activist. I sense a lot of confusion. I see the the same unsettledness amongst you. I could tell you for years I am not associated as a business with any of these collectives but I have observed the majority of them. I have gone and specifically selected the ones I feel are going to work with the community and have the proper mission. I see proper collectives, that should not be shut down. This place is like harbor side, elemental. These are industrial parks. There's not a problem there. There's no children around there's no issues there. These are the places I tend to go to. 110 is way too many. 10 is not nearly going to work, okay? What about our taxes, our revenue that is going to come if these collectives? Please your expertise is all sitting behind me. Do what you state. Join, have a group session here, figure it out before you make the wrong decisions. The experts are here, they have offered their help. I pray that you people use their expertise to work with them.

>> Mayor Reed: Sorry your time is up. Robert chance and then Keith freeman.

>> Good afternoon I'm Robert Chonce. I grew up playing basketball, and every coach I had would always say the same thing. He said play fast but don't play in a hurry. It strikes me you guys are playing in a hurry. If you had a meaningful proposal, a meaningful set of regulations from the police department, a meaningful set of land use regulations, and these were all ready for prime time, then we could sit and we could have a meaningful discussion about that. But simply selecting a cap that is otherwise arbitrary doesn't strike me as defensible. A cap without the means to achieve the cap or a means to reduce the number from 110 or whatever that cap is without some criteria for how it is that you're going to get there is -- it seems to me it would be truly optimistic to assume if you select 10 without a sensible set of criteria that the other 100 is simply going to vanish. I think there would be a series of arguments that would draw this out longer than it needs to go. All I'm here to do is to encourage you to have a comprehensive regulation before the board before you make a decision thank you.

>> Mayor Reed: Time is up. Keith Freeman fold heed by Jason Joshua.

>> Thank you for the opportunity to speak. I think the Bay Area has the highest cannabis use in the United States since it's had since the 1960s. Is there any correlation between cannabis use here in the Bay Area and the crime rate? I mean are there facts? There should be if it's a gate way drug shouldn't we have series hard drug problems? Do we, higher than other urban areas? Are the traffic accident rates higher? I mean there should be correlations between cannabis use and these crimes or these problems that have been associated with cannabis clubs and usage. There's a long history of informal cannabis use in sales all over the country. Why would the city want to push cannabis back out on the streets? By limiting the dispensaries you're going to push people back into --

>> Mayor Reed: Sorry your time is up. Jason Jesula followed by Tina Morrill, followed by Sasha Nemco. Go ahead Tina.

>> Hi I'm Tina Morrill. I live in the Vendome neighborhood. Thank you for letting me speak. Councilmember Pierluigi, thank you for all the work you've done on this. I know you've been pushing this a long time. I agree with the spirit of the memo. I think putting parameters and requirements on businesses like the collectives needs to happen because they need to be seen as legitimate professional businesses which many of them are. Unfortunately some of them and their patients are not, they've become a nuisance just like the bail bonds businesses that we're dealing with just like the family corner markets which are thinly disguised liquor stores which we need to limit. We need to have some parameters. We need more collectives than ten. Ten isn't enough. I looked at the Website procon.org, and there's an estimate of 202,000 medical marijuana cardholders in the state of California. And since San José is the third largest city, I think we have a lot here. So my concern about a limit of 10 is it won't serve the need so please consider more, thank you.

>> Mayor Reed: Sasha Nemkov, Zack PUCette.

>> Good afternoon, I'd like to first thank Vice Mayor Nguyen and fellow councilmembers for your efforts in coming up with the memo. I think in large we are for the most part in agreement. Where we differ like Councilmember Herrera stated was factual number. As a physician who has seen over 1500 medical cannabis patients, I know that in my own practice, the need for it is, we're swamped. 1500 patients is not a lot. So if you're taking 50,000 Bay Area or San José cannabis patients, divide that by ten, you have one club that's managing 5,000 patients. You're going to run into parking problems, congestion, Sacramento our state capitol has over 30 clubs and their model is praised because it's sensible. So in a city, San José I think we're more successful and we're larger than them so I think we can do better and I think the number just needs to be increased. Thank you.

>> Mayor Reed: Jack Puckett, followed by Van somebody, Van Harry or Harvy, I can't tell for sure.

>> Thank you. I just want you to know we're all in this together, this is our city and we want what's best for it. We can't move forward until the state attorney general comes up with her guidelines. As for the current laws they are very vague and open to interpretation. Until we get a grasp upon the laws we can't move forward with the local

ordinance. And ten is not the magic number to perceive for all the patients in something. We're the role model for the entire Bay Area and we're actually setting the tone for the entire United States as well. Thank you.

>> Mayor Reed: Van Harry, or Van Harvey, Carol Klopek.

>> My name is Van Hovey, founder of HPMI, Holistic Pain Management Institute. We're collective in San José in District 7. We have about 5,000 patients, 15 full time employees. We pay payroll taxes all the taxes on we pay our BOE taxes, business license tax. We are fully compliant with all the state regulations. We have a very large volunteer program putting volunteers back into volunteering for hospice for blood drives for raising money for food banks. We're acting in the true sense of what a collective should be. We are not for profit. We cannot afford a \$250,000 lottery fee or anything else. We are a legitimate business we want to be treated like a legitimate business. Thank you.

>> Mayor Reed: Carol Klopek followed by Douglas Klopek.

>> I am Carol Klopek with med Mar healing center I have been there about a year. I want to say I completely agree with Councilmember Oliverio. The cap will not solve your issues. I do believe as you suggested a background check I think that will eliminate a lot of your undesirables. Thank you.

>> Mayor Reed: Douglas Klopek followed by Lauren Vasquez.

>> Hello council. I addressed a number of you yesterday, and some of those who have not heard me before, my name is Doug Klopek, I'm one of the founders of med Mar healing center, a true collective in the nature of what you are asking for. We are a nonprofit. You are asking for solutions to questions that you have asked for a year and a half. Solutions are able to be found through ordinance. If you use your land use ordinance, and you have commercial general, including light industrial, and you do a 600 feet as the state has required by direct pedestrian access or vehicular route, you will weed out literally 60% of the clubs that are currently operating in this city. If you decide to do linear feet, as the crow flies, you will weed out every club in this city, and your last 18 months with

the work will be in vein because you will have no money for measure U. Please take this into consideration. Direct pedestrian access and less you already have the maps that have this.

>> Mayor Reed: Sorry your time is up. Lauren Vasquez followed by pat Noop.

>> Hello everyone my name is Lauren Vasquez I've seen you many times before I'm an attorney I'm a patient advocate and I'm loose patient my set of. A cap of ten would lied to a Walmart of weeds. The city our size that's more like 50 is more appropriate, that's based on the patient population in San José. The City Attorney is correct this has all been placed before you you have complete ordinances that you voted on in June and they were voted down for some reasons that were already mentioned but mostly because of many of the concerns we voiced and many of those concerns stem from the city attorney's legal interpretation and that's with what has stalled this process and that's why we're still here. I urge you to wait for the directive from Rosen's office. I'll be leaving here in five minutes to go straight there to meet with him and talk with him about that directive to make sure it addresses patient concern. On the 29th I think you should address zoning, sensitive uses, cap and a moratorium. We would not have this problem if you passed a moratorium a long, long time ago. Later I think we should look at the application process --

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

>> -- and the operating requirements and then we will be done and we'll go on with our lives, thank you.

>> Mayor Reed: Pat Noop, Chris Colter.

>> Hi. I just wanted to say same as everybody else is saying ten or 12 in a city this size makes no sense. The whole idea is to have safe access. As far as zones you should be looking at commercial, light industrial, all the commercial zones and evaluate each and every one on its merits. And you can get rid of a ton of them just by using the 600 foot and what other paying the state sales tax or your 7% tax. That will get rid of probably half right there. Granted, the City Attorney says that sales are illegal, but yet you're collecting the 7% sales tax so I don't

know about that. And as far as the lottery, that's just skirting your responsibility. You're going to end up with God knows who staying open. We're on the right track it's finally coming together but like I said just use the 600 foot and paying the sales tax, half are gone right there thanks.

>> Mayor Reed: Colter followed by Stephen Powell.

>> Thank you for taking the time to look into this. I -- there is a massive problem with the 100. I look to cities like Sunnyvale, Mountain View and Scots valley. When this first came up they put moratoriums in. Mary, you said we don't need a moratorium because it's illegal. Look where we got. You seem to be following the example of L.A. which was incredibly bad way of going about things. Now if you tried to go from 100 or so to 10 I don't think anybody is going to see you but a good number will. I did the simple math. On \$500 in sales a day \$3000 a week I'm giving them Sunday off, 156,000 in sales a year, 7%, \$10,920. 500 is a low number. If you go from 10 you get 109,000. If you go to 100, a million. You would be giving up nine -- close to the million dollars, in tax money, a year. Mayor you want money. I've heard you say, money. With the Councilmember Oliverio, you've said before, the regulations will limit --

>> Mayor Reed: Your time is up. Stephen Powell followed by Jade Kine.

>> Thank you mayor and esteemed council for giving me a moment. My name is Stephen Powell. I have my medicinal marijuana card because I ruptured a disk in my back, and I didn't want to take drugs like Vicodin and oxycontin. They're extremely addictive. I'm just on marijuana. I volunteer at a club called (inaudible) we're actually a 501A nonprofit, that is the same as Salvation Army. I just wanted to say there's only two outcomes if you guys limit the clubs to 10. You're going to have 5,000 patients a club, that means you'll get sheer congestion. I believe the reason you guys want to have ten clubs is you think it's going to be easier to get a million each from ten clubs than to get 100,000 from 100 clubs but I just beg you to reconsider because it's safety. Thank you.

>> Mayor Reed: Jade Kine followed by Dave Hodges, I think.

>> Hi there, my name is Jade Kine, I started the can academy. It's a trade school for medical cannabis growers. I'm a cannabis writer and educator. We've been talking a lot about numbers today, what's a big number and what's a small number, 100 number seems very, very scary, 10 makes us feel warm and fuzzy, it fixes the problem on paper. It seems very simplistic. Let's talk about what really is a big number. In the South Bay area alone there are hundreds of thousands of marijuana consumers and there are tens of thousands of marijuana producers. If you think that reducing the number of clubs that these people somehow won't be able to find each other in the interconnected world here in Silicon Valley, we have twitter, Facebook, craigslist, mobile apps? They're not going to find each other? For your homework tonight look up craigslist. How many people post per hour selling medical cannabis. Then stop and think that patient to patient sales are legal in the state of California, they are not actually breaking the law so unless the grower has a medical marijuana card --

>> Mayor Reed: Your time is up. Dave Hodges, Gary Salvador.

>> Mayor and councilmembers, so I have a couple of suggestions. The first would be to start the limiting process and that's just to have every collective that's currently operating register with the police department and go through their criteria. Just as a first step to see who will keep open, and who might actually close when they find out that they need to go talk to the PD. If you did something like that, then a reasonable statement would be that anybody who doesn't register with the PD should shut down within 30, 60 days, and I think that would be something a little more enforceable. The other thing is that regarding the moratorium, I know the City Attorney had some issues. But what if we took the ban that you proposed and made it a temporary ban on new collectives? So it would shut down anything going forward from this point and we can start to get a hand on it. The problem with the cap is you get into this whole decision process of who gets to stay open and who doesn't at least this way you have a way to start limiting the clubs down and stop new potential ones from opening up. Thank you.

>> Mayor Reed: Gary Salvador, Don cues.

>> Good afternoon, city council I think there's two things we talked about originally. The number 10 came up because there is a belief there's a lot of recreation use. As a club owner when members come through the door, I

don't ask them what their problems are. They have already stopped and talked with a doctor. If you really want to control the -- what you consider recreational use talk with the doctors. When they come to my collective they've already been recommended. I'm trying to find out what can help them with their ailments. When it comes to an actual number I do have a tendency to think that 110 is too much but there's 244 pharmacies in the city. You didn't limit them and they've got some really bad things there. These are people trying to get off those things. If you think of cities San Francisco has 28 collectives. We talked about Sacramento having 30 plus collectives. We're slightly larger and a little bit for diverse than that. And trying to find out who gets to stay open, it would lead to litigation, I do have a tendency to think. Thank you.

>> Mayor Reed: John Hughes, Matt Senna.

>> Hi, John Hughes, UFCW local 5 San José. Local 5 would like the committee to recommend to council not to focus so much on the number of dispensaries but the quality of those dispensaries. A unionized dispensary will be a quality facility with a union contract. They'll be a good employer, they'll be a good neighbor. We asked the city to ask those employers who choose to be a union employer. Thank you.

>> Mayor Reed: Matt Senna followed by Donald Irving.

>> Good evening ladies and gentlemen. Here as a collective employee and also as a patient first and foremost. I see every day that the amount of time we're able to spend with our patient we're able to educate them and keep them on the right track and off of their prescription medications and sometimes wean them off of them, some that are even going through addiction kind of stuff. It would not be helpful for us to educate our patient if there's only a cap of ten, more like going through a quick sale, a three-minute transaction, rather than a ten minute transaction I'm try it for the first time and come back and saying wow I was able to sleep, wow I was able to do my errands, wow I was able to pick up my kids from school. Without the education part of that there is kind of no point in movement. So please help us educate them by making the cap a little bit bigger. So we can better serve our community. Thanks.

>> Mayor Reed: Donald Irving followed by Megan Gutierrez.

>> Good afternoon, Mr. Mayor and city council. My name is Donald Irving. I am executive director of Santa Clara Valley Cannabis Society Incorporated. We started it in November of 2005. We were up and running on Valentine's Day 2006. I have a lot of history here in Santa Clara Valley concerning cannabis. Do I not think that ten facilities is correctly representing our city. We have a lot of liquor stores. We have a lot of pharmacies. We have a lot of gas stations, a lot of auto dealerships. To limit ten gas stations I don't think would be correct or ten auto dealerships or ten pharmacies. I think we must look at the community and serve the needs of the community. Thank you very much.

>> Mayor Reed: Megan you Gutierrez followed by Jacob Garza.

>> Hello councilmembers my name is Megan Guttierrez. I am a representative from golden state collective, I'm also a patient there. We don't have the people come in and we don't expect them to pay we're a nonprofit organization. We like to give them their medication to relax and to foremost make them feel better. Not only that, when they come into our store they feel comfortable, and they feel at ease enough to talk to us and to relax with us, and we also know a lot of people by names. They come in constantly, and look for the medical -- the medical you -- they're looking for medical care and they're looking first and foremost for their well-being as well. And that's what we're trying to do. I have scoliosis myself and it constantly gets me down and without this medication I wouldn't be able to get past it.

>> Mayor Reed: Jacob Garza followed by Daniel Ayala.

>> Hi, I'm also volunteer from golden state care collective. Since I've been there they've helped me with a lot. As I first started there, I started to volunteer and I did not have any money and I was trying to find a job. It's hard to find jobs nowadays automatically they gave me a chance to start there. They paid for my medical card and automatically started training me instantly and I didn't have to pay anything. And since I've been there I've been doing a lot better. I just graduated high school. So I'm proud of that I graduated late but they helped me pursue

my -- the dream because I wanted to do better so I could go somewhere with my life. And now that I have something that I want to do it's like you guys are going to limit it and make it hard for everybody because a lot of people are really into this and they want to help the community. They want to help everybody else out, but you guys are stopping us from doing that, and we need your help to help us. But we just need whatever you can do. We're helping our patients everywhere day. Our patients come in we help them with anything. They come in talk about their problems family problems anything they would like. We sit them, we talk to them, we offer them food, we have gym facilities, they can hang out and play Foosball or play pool. And just come and hang out. It's not just about the marijuana. We care about our patients. That's why we're here.

>> Mayor Reed: Sorry your time is up. Daniel aye Al La. That's the last card I have.

>> Thank you, first off thank you council and mayor I'm here basically representing labor. And I say that because I'm 42 years old, I worked as a supervisor in various companies I've worked all my life and I'd have to say that my most atrocious labor experience has been in the cannabis dispensary. So I ask of you if you can clearly do this for me, those ten that you choose to leave open, would you make sure that they don't exploit or benefit from anybody's labor by breaking the laws of California. I try to explain to people that you're coming to California this is the state where you have to take labor very seriously because here you're guilty before you're proven not guilty. Here is where labor comes. That's why everybody keeps coming here. Because you can't be exploited in California. Well, at least I thought. So not I'm asking you to please be help the volunteers here all the people and I just want to leave it with that. Slavery was ended in 1862. Thank you.

>> Mayor Reed: That concludes the public comment on this item. Are there any other comments or -- from staff or council? We have a motion to put this on the agenda. Staff already got enough clarity on the motion to get the agenda item done. And we'll get the staff reports out that we have available and it is what it is. With whatever we've got to go.

>> City Manager Figone: Yes I think that's the caveat. With whatever we have to go and based on the discussion and I think our knowledge of this topic we'll prioritize accordingly to achieve the goals as we know they've existed and I believe we'll have it out in time 14 days in advance. So.

>> Mayor Reed: We're talking about an April 12th date now not a March 29th date.

>> City Manager Figone: Correct.

>> Mayor Reed: Probably ten days, but I don't know. You guys will figure out what the precise rules are, either ten or 14.

>> City Manager Figone: Whatever the rules are.

>> Mayor Reed: Ten days or 14. Let's just say that, so there's not any question. Ten days would be the sunshine on this committee. Committee, is that okay with the committee? And everybody, 10 days.

>> City Manager Figone: 10 days.

>> Mayor Reed: If that's a waiver, it's a waiver. If not, it's fine. On the motion, all in favor, opposed, none opposed, that's approved. April 12th will be the date to take that up on the council. Our last item of business is approval of the fourth annual Westfield Oakridge winter walk and resource fair for seniors as a city sponsored special event which allows donations to be accepted.

>> Motion to approve.

>> Mayor Reed: Motion is to approve. All in favor, opposed, none opposed, that's approved. Open forum. Mr. Wall.

>> David Wall: Before you, well heck, I don't like these things. There's some seeds. I guess you could be thankful they're not marijuana seeds. But carrot seeds are something that you should be planting along with all other sorts of vegetables in parks, schools, apparently they weren't put out before you. But anyway carrots pep you because of Kerotine that helps you see clearly. Some people say helping you see clearly might help you beat up on city employees a little more thoroughly than you have already. But in any case, the seeds are genuinely given in the spirit for which they are. Hopefully you'll grow them and get an appreciation for gardening and apply it throughout this city. That's it for today, you have had enough. Really you have.

>> Mayor Reed: That concludes the open forum, that concludes our meeting, we're adjourned.