

# DRAFT POLICY RE FUTURE REGULATION OF MEDICAL MARIJUANA FACILITIES

## I Purpose and Intent

It is the purpose and intent of this Chapter to create a policy guide for future regulation of Medical Marijuana Facilities or Dispensaries in order to promote the health, safety, morals, and general welfare of residents and businesses within the City of Milpitas. It is neither the intent nor the effect of this Chapter to condone or legitimize the use of cannabis contrary to existing law.

## II Definitions

A Medical Marijuana Dispensary (hereafter, "Dispensary") is defined as a "collective", "cooperative" or "Dispensary" and includes any facility or location where the allowed primary purpose is to dispense medical cannabis (marijuana) as a medication that has been prescribed and/or recommended by a physician, and where medical cannabis is made available or distributed by a primary caregiver to a qualified patient in strict accordance with California Health and Safety Code Section 11362.5 *et seq.* A Dispensary may or may not be operated in conjunction with cultivation of marijuana at the Dispensary site. Except as allowed herein, sales, distribution and dispensing of marijuana at a Dispensary is forbidden. A determination that a Dispensary is operated "in accord with law" shall mean in accord with the provisions of Proposition 215, the Compassionate Use Act and the Medical Marijuana Program Act and this Chapter.

## III Limitations on quantity of dispensaries and location

No more than two (2) medical cannabis Dispensaries shall be located within the limits of the City of Milpitas. No such Dispensary shall be located within a 1,000 foot range of another Dispensary, nor within 1000 feet of a residential area, school, park, library, day care facility, religious institution or other facility dedicated to use by minors.

The distance between a Dispensary and above listed uses shall be made in a straight line from the boundary line of the property on which the Dispensary is located to the boundary of the property on which the building or structure, or portion of the building or structure, in which the above listed use occurs or is located.

## IV Application Procedure

### A. Dispensary Review Process.

Any person, firm or corporation intending to operate a Dispensary must follow the review process of the City to determine compliance with these provisions. An application for review must be first filed with the Planning Division of the City to begin the review process. Applications shall be reviewed and a determination whether the Dispensary is "in accord with law" shall be made by the City on each application in the order the completed applications are filed. Fees covering the cost of the review process shall be paid at the time of filing the application for review. Such fees shall be determined by Council action and set forth in the City's Master Fee Schedule. In addition to the fees facilitating Dispensary review referred to herein, all fees necessary for issuance of an occupancy permit for the specific Dispensary structure and location must also be paid and occupancy permit issued in order to operate the Dispensary.

## **B. Application Filing.**

A complete application submittal packet shall be submitted including all necessary fees and all other information and materials required by the City and this Chapter. All applications for review shall be filed with the City of Milpitas, using forms provided by the City. It is the responsibility of the applicant to provide information required to facilitate meaningful review. The application shall be signed under penalty of perjury by a person eligible for filing an application as described below.

## **C. Eligibility for Filing.**

Applications may only be filed by the owner of the subject property, or person with a fully executed lease signed by the owner or duly authorized agent. In addition, the City will require:

- Written permission of the property owner, in which the property owners acknowledge being aware that the intended purpose is to operate a Medical Marijuana Dispensary.

## **D. Filing Date.**

The filing date of any application shall be the date when the City receives the last submission of information or materials required in compliance with the submittal requirements specified herein.

## **V Effect of Other Permits or Licenses.**

The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of complying with the review process set forth herein.

## **VI Submittal Requirements.**

Any application for review shall include the following information:

- 1) Applicant(s) name. The full name (including any current or prior aliases, or other legal names the applicant is or has been known by, including maiden names), present address, and telephone number of the applicant;
- 2) Applicant(s) mailing address. The address to which notice of action on the application is to be mailed;
- 3) Previous addresses. Previous addresses for the past five years immediately prior to the present address of the applicant;
- 4) Verification of age. Written proof that the applicant is over the age of eighteen (18) years of age;
- 5) Physical description. Applicant's height, weight, color of eyes and hair;
- 6) Photographs. Passport quality photographs for identification purposes;
- 7) Employment history. All business, occupation, or employment of the applicant for the five years immediately preceding the date of the application;

- 8) Tax and permit history. The Dispensary business tax history of the applicant, including whether such person, in previously operating in this or in another city, county or state under license has had a business license or license or permit to operate a marijuana Dispensary, cooperative, cultivation facility or other marijuana-related business, revoked or suspended, the reason therefore, and the status of the business or activity or occupation subsequent to such action of suspension or revocation;
- 9) Management information. The name or names and addresses of the person or persons who will manage the Dispensary;
- 10) Criminal background. Authorization to conduct a complete background (at applicant's expense separate from fees applicable under section **IV A**, above) investigating whether the person or person having the management or supervision of applicant's business has been convicted of a crime(s), the nature of such offense(s), and the sentence(s) received therefore;
- 11) Employee information. Names and number of employees, volunteers, and other persons who will work at the Dispensary including drivers License numbers and Social Security number;
- 12) Statement of Dispensary need. A statement and/or information to establish the need for the additional Dispensary to serve qualified patients in the area;
- 13) Plan of Operations. A plan of operations describing how the Dispensary will operate consistent with the intent of state law and the provisions of this ordinance, including but not limited to:
  - (a) Ensuring cannabis is not purchased or sold by the Dispensary in a manner that would generate a profit.
  - (b) Controls that will assure medical cannabis will be dispensed to qualifying patients or caregivers only.
  - (c) Controls that will ensure limitation on numbers of patients is adhered to.
  - (d) Controls that will ensure access to Dispensary premises is adequately monitored and restricted to pre-approved qualified patients and caregivers.
  - (e) Method for ensuring that a qualified patient's physician is not recommending cannabis for less than medically appropriate reasons.
- 14) Written Project Description. A written description summarizing the proposed Dispensary use size, number of patients, characteristics and intent.
- 15) Written response to Dispensary standards. The applicant shall provide a comprehensive written response identifying how the Dispensary plan complies with each of the standards for review in this Chapter, specifically the Limitation on Number and Size, Limitation on Location, and Operating Requirements sections.
- 16) Security plan. A detailed security plan outlining the proposed security arrangements for insuring the safety of persons and to protect the premises from theft. The plan shall include

installation of security cameras, a robbery alarm system monitored by a licensed operator, and a security assessment of the site conducted by a qualified professional;

17) Floor plan. A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the Dispensary. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches;

18) Site plan. A sketch or diagram showing exterior configuration of the premises, including the outline of all structures, parking and landscape areas, and property boundaries. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions to an accuracy of plus or minus six (6) inches;

19) Neighborhood context map. An accurate straight-line drawing depicting the building and the portion thereof to be occupied by the Dispensary, all properties and uses within 1,000 feet of the boundaries of the property on which the Dispensary permit is requested, and: (1) the property line of any Dispensary within 1,000 feet of the primary entrance of the Dispensary for which a permit is requested; and (2) the property lines of any school, park, or residential zone or use within 1,000 feet of the primary entrance of the Dispensary;

20) Lighting plan. A lighting plan showing existing and proposed exterior premise and interior lighting levels that would be the minimum necessary to provide adequate security lighting for the use and comply with all City standards regarding lighting design and installation;

21) City authorization. Written authorization for the City, its agents and employees to seek verification of the information contained within the application;

22) Applicant's certification. A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct.

23) Other information. Such other identification and information as deemed necessary by the City of Milpitas to demonstrate compliance with this Chapter and City Codes, including operating requirements established herein;

## **VII Investigation and Action on Application**

After the making and filing of a complete application for review and the payment of the fees, the City of Milpitas Police Department shall conduct a background check of the applicant and all employees and conduct an investigation of the application. All information submitted or discovered for purposes of complying with or undertaking the background check shall be considered confidential to the extent allowed by law. The investigation shall be completed within 60 working days. The City shall take action as follows:

The City of Milpitas shall refer the application to any other City departments as necessary as part of the investigation relative to the application.

Within 60 days after completion of the investigation, the City of Milpitas shall determine whether the application is in compliance with law and in accordance with the provisions of this Chapter.

In determining whether an application is in accord with law, the City of Milpitas may impose conditions, restrictions or require revisions to the proposal in order to comply with the purpose and intent of this Chapter and other applicable law.

The City of Milpitas shall cause a written notice of its determination of whether an application is in accord with law to be mailed to the applicant by U.S. mail.

Notwithstanding the provisions of this Section, the City of Milpitas, in its discretion, may refer a staff determination of compliance with these provisions to the City Manager, whose decision shall be the final administrative decision of the City.

The City of Milpitas may determine that the application does not comply with law for any of the following reasons, or for any other reason consistent with the provisions of this Chapter:

- 1) Conviction, (a plea of nolo contendere shall be considered a guilty plea for purposes of this Chapter), or violation of any crime of violence, any crime involving narcotics, fraud, gambling, loan sharking, bookmaking, theft, moral turpitude, or any crime involving evasion of taxes, or any other crime of moral turpitude indicating a lack of business integrity or business honesty, whether committed in the State of California or elsewhere, whether denominated as a felony or as a misdemeanor and committed within 7 years of the date of application;
- 2) Failure of the business as proposed to be operated in compliance with state or City law or regulation;
- 3) The applicant, or any principal thereof, having been identified by any law enforcement agency, legislative body or crime commission as a member of, or an associate of, organized criminal elements;
- 4) Making any false statement in the application or as to any other information presented as part of the application process;
- 5) Evidence of direct association with current or prior unlawful or nuisance-creating operation in this or another jurisdiction;
- 6) Applicant is presently under indictment or the subject of a criminal complaint for any of the crimes described in subsection 1) of this section;
  - a) Failure of any person named in the application when summoned by the City of Milpitas or his or her agent(s) to appear and testify and provide additional information at such time and place as the City of Milpitas or his or her agent(s) may specify;
- 7) Failure to provide a complete application. Upon notification that an application submittal is incomplete, the applicant shall be allowed to submit all materials required to complete the application except that failure to submit all required information within 180 days of the original application submittal shall be deemed unequivocal withdrawal of the application and a new application submittal and fees shall be required in order to proceed with the subject request;
- 8) Proposed location in an area as mentioned in this Chapter and an occupancy permit for said Dispensary use at the proposed location has not been obtained;

- 9) If any person listed on the application as an owner, officer, board member, operator, or on-site general manager has been involved in any prior operation of an unpermitted Dispensary, collective or cooperative, or has in any manner dispensed or transferred cannabis without legal authorization.

## **VIII Criteria for Review**

The review authority shall consider the following criteria in determining whether the application is in compliance with law, and annual reviews:

- That the Dispensary permit is consistent with the intent of Proposition 215 and related state law, the provisions of this Chapter and the City Municipal Code, including the Application submittal and Operating requirements herein.
- That the Dispensary location is not identified as having significant crime issues (e.g., based upon crime reporting district/statistics as maintained by the police department).
- That there have not been significant numbers of calls for police service, crimes or arrests in the area or to an existing Dispensary location.
- That an applicant or employee is not under eighteen (18) years of age.
- That all required application materials have been provided and/or the Dispensary has operated successfully in a manner that shows it would comply with the Operating Requirements and standards specified in this Chapter.
- That all required application or annual renewal fees have been paid and reporting requirements have been satisfied in a timely manner.
- That an appropriate limit on size of the Dispensary has been established and the use would not exceed limitations on number of patients and/or Dispensaries allowed by this Chapter.
- The Dispensary size requested is justified to meet needs of residents at this location.
- That the site plan, floor plan, and security plan have incorporated features necessary to assist in reducing potential crime-related problems and as specified in the Operating Standards section.
- That no Dispensary use, owner, agent, or employee has violated any provision of this Chapter including grounds for suspension, modification or revocation of a permit.
- That all reasonable measures have been incorporated into the plan and/or consistently taken to successfully control the establishment's patrons' conduct resulting in disturbances, vandalism, crowd control inside or outside the premises, traffic control problems, illegal ingesting cannabis in public, or creation of a public or private nuisance, or interference with the operation of another business.
- That the Dispensary would not adversely affect the health, peace or safety of persons living or working in the surrounding area, overly burden a specific neighborhood with special needs or high impact uses, or contribute to a public nuisance; or that the Dispensary has resulted in repeated nuisance activities including disturbances of the peace, illegal drug activity, illegal ingesting cannabis in public, harassment of passerby, excessive littering, excessive loitering, excessive loud noises, especially late at night or early in the morning hours, lewd conduct, or police detentions or arrests.
- That any provision of the City Code or condition imposed by a City, or any provision of any other local, state or federal law, regulation, or order in compliance with those laws has not been violated.
- That the applicant has not violated any local or state law, statute, rule or regulation respecting the distribution, possession, or consumption of cannabis.

- That the applicant has not knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application for a permit.
- That the applicant, his or her agent or employees, or any person who is exercising managerial authority on behalf of the applicant has not been convicted of a felony, or of a misdemeanor involving moral turpitude, or has engaged in misconduct related to the qualifications, functions or duties of a Dispensary. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
- That the applicant has not engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

## **IX Appeal from City of Milpitas' Determination**

An application for review and subsequent determination that a Dispensary is in accord with law or is not in accord with law shall be made by the Director of Planning and Neighborhood Services. An applicant aggrieved by the City of Milpitas' decision may appeal such decision to the City Manager by filing a written notice stating all grounds on which the appeal is based and by paying the applicable appeal fee with the City Clerk within ten (10) working days of the decision by the Department Head. If an appeal is not taken within such time, the City of Milpitas' decision shall be final.

The City Manager shall consider the appeal within 45 days of the date of filing the appeal. The City Clerk shall give 10 days notice to the person filing the appeal of the time and place of the meeting scheduled on the appeal by serving notice personally or by depositing it in the United States Post Office at Milpitas, California, postage prepaid, addressed as shown on the appeal papers. The City Manager shall have the authority to determine all questions raised on such appeal. No such determination shall conflict with any substantive provision of this Chapter. The decision of the City Manager shall be the final administrative decision of the City.

### **Effect of Determination on Application**

When the City of Milpitas shall have made a determination as to whether an application under this Chapter is or is not in accord with law and the time for appeal has lapsed, or, if after appeal, the staff decision has been affirmed by the City Manager, no new application for review shall be accepted from the applicant for a period of three years after the action determining the application is not in accord with law.

### **Suspension and Revocation**

Any determination that an application is in accord with law made under the terms of this Chapter may be reviewed by the City of Milpitas when it shall appear to staff that the Dispensary is not being operated in accord with law, in that it is operated in a manner that violates the provisions of this Chapter, including the Criteria for Review and Operation Standards sections, or conflicts with state law as hereafter amended or interpreted by the Courts of the State of California. Except as otherwise provided in this Chapter, no review by virtue of this section shall take place until written notice of the intent to consider such review has been served upon the person to whom the permit was granted at least twenty-five (25) days prior to the date set for such review. Such notice shall contain a brief statement of the grounds to be relied upon for determining the Dispensary is not being operated in accord with law. Notice may be given either by personal delivery to the person to be notified, or by depositing it in the U.S. mail in a sealed envelope,

postage prepaid, return receipt requested, addressed to the person to be notified at his/her address as it appears in his/her application for a permit.

If any person who is an applicant or manager of a Dispensary is convicted of a public offense in any court for the violation of any law which relates to his or her operation of a Dispensary, the City Manager may temporarily suspend operation of the Dispensary, subject to formal review as set forth above, based on a finding of immediate health and safety threat to the public. Notice shall immediately be given to the Applicant and manager of a Dispensary and shall be posted at the property site.

### **Transfer of Use**

No person shall operate a Dispensary under the authority of a City determination that it is in accord with law at any place other than the address of the Dispensary stated in the application for review.

The determination that a Dispensary is operated in accord with law is based upon the specific investigation of facts set forth in the application and requires a new application for any transfer of ownership or control of a Dispensary to another person. No new application for review of a Dispensary at a given location shall be accepted or considered if notice of a possible determination that the Dispensary is not being operated in accord with law has been sent to the applicant or manager of the Dispensary.

Any attempt to transfer management or control of a permit either directly or indirectly in violation of this section is hereby declared void and the Dispensary shall be conclusively determined to be operated in violation of law.

### **General Tax Liability**

An operator of a Dispensary shall also be required to apply for and obtain a general City tax certificate or exemption as a prerequisite to obtaining review under an application filed under this Chapter, as required by the State Board of Equalization.

### **Imposition of Fees**

Every application for a permit or renewal shall be accompanied by a nonrefundable fee, as established by resolution of the City Council from time to time. This application or renewal fee shall not include fingerprinting, photographing, and background check costs and shall be in addition to any other business license fee or permit fee imposed by this code or other governmental agencies. Fingerprinting, photographing, and background check fees will be as established by resolution adopted by the City Council from time to time. All fees shall not exceed the cost of providing the service.

### **Operation Standards**

Any facility is required to abide by the Santa Clara County District Attorney's Medical Marijuana Prosecution Protocol as may be amended from time to time or modified by decisions of the Courts of the State of California. Approval of any proposed cooperative/collective should require a written statement from the organizers that they understand they are required to follow these guidelines.

Failure to follow the guidelines should be grounds for the City to revoke their authorization to operate.

A. Dispensary operations shall be established and managed only in compliance with the following standards:

B. Hours of Operation should be limited to 11am to 7pm.

C. Minors

It shall be unlawful for any manager, operator, or other person in charge of any Dispensary to employ any person who is not at least eighteen (18) years of age.

(1) Persons under the age of eighteen (18) shall not be allowed on the premises of a Dispensary unless they are a qualified patient or a primary caregiver and they are in the presence of their parent or guardian.

(2) The entrance to a Dispensary shall be clearly and legibly posted with a notice indicating that persons under the age of eighteen (18) are precluded from entering the premises unless they are a qualified patient or a primary caregiver and they are in the presence of their parent or guardian.

D. Consumption Restrictions

(1) Cannabis shall not be consumed on the premises of the Dispensary. The term "premises" includes the actual building, as well as any accessory structures, parking areas, or other surroundings within 200 feet of the Dispensary's entrance.

(2) Dispensary operations shall not result in illegal redistribution of medical cannabis obtained from the Dispensary, or use in any manner that violates local, state or City Code

(3) Patients shall not openly medicate in public places.

E. Retail Sales

A Dispensary shall meet all the operating criteria for the dispensing of medical cannabis as is required pursuant to California Health and Safety Code sections 11362.5. *et seq.*

(1) Cannabis product names should not have the connotation of recreational use.

F. Operating Plans.

(1) Floor plan. A Dispensary shall have a lobby "waiting area" at the entrance to receive clients, and a separate and secure designated area for Dispensing Medical Cannabis to qualified patients or designated caregivers.

(2) The primary entrance shall be located and maintained clear of barriers, landscaping and similar obstructions so that it is clearly visible from public streets, sidewalks or site driveways.

- (3) Storage. A Dispensary shall have a suitable locked safe on premises, identified as a part of the security plan, for after-hours storage of Medical Cannabis
- (4) Processed marijuana and marijuana products should be kept in locked storage containers
- (5) Locations should be well lit (interior and exterior).
- (6) Minimum staffing levels. The premises shall be staffed with at least one person during hours of operation, who shall not be responsible for dispensing medical cannabis.

G. Odors control. A Dispensary shall have an air treatment system that ensures off-site odors shall not result.

H. No more than 60% of window surface should be covered or obstructed during normal business hours, to allow visibility into the location from the exterior (this should only apply to those areas where customers congregate and sales or transactions take place)

I. Security plans. A Dispensary shall provide adequate security on the premises, as approved by the City of Milpitas, including lighting and alarms, to insure the safety of persons and to protect the premises from theft. The following shall be adhered to:

- (1) Security cameras – **recorded**- [camera views shall cover all areas storage areas, entry doors and exit doors]. The recordings should be made available to law enforcement within 24 hours of a request for recorded footage.
- (2) Window and door shall be locked and reinforced (example: bars or equivalent).
- (3) Active burglary/fire alarm system with 24 hour monitoring.
- (4) Security personnel shall be employed to monitor site activity, control loitering and site access.

J. Emergency contact. A Dispensary shall provide the City Manager with the name, phone number and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the Dispensary. The Dispensary shall make every good faith effort to encourage neighborhood residents to call this person to try to solve operating problems, if any, before any calls or complaints are made to the City.

K. Signage and Notices.

The building entrance to a Dispensary shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming cannabis on the premises or in the vicinity of the Dispensary is prohibited.

- (1) Signs on the premises shall not obstruct the entrance or windows.
- (2) "No Loitering" signs should be posted and enforced.

L. Law Enforcement

- (1) A current after hours emergency contact list should be kept current with police dispatch at all times.
- (2) Law enforcement should have unrestricted access to all business records involving the sale and furnishing of marijuana as well as the location of grow sites and the name and birth date of those persons selling or providing marijuana to the facility.

M. Employee Records. Each owner or operator of a Dispensary shall maintain a current register of the names of all employees currently employed by the Dispensary, and shall disclose such registration for inspection by any City officer or official for purposes of determining compliance with the requirements of this section.

N. Patient Records. A Dispensary shall maintain records of all patients and primary caregivers using only the identification card number issued by the County, or its agent, pursuant to California Health and Safety Code Section 11362.71 *et seq.*, as a protection of the confidentiality of the cardholders, or a copy of the written recommendation from a physician or Doctor of Osteopathy stating the need for medical cannabis.

O. Staff Training. Dispensary staff shall receive appropriate training for their intended duties to ensure understanding of rules and procedures regarding dispensing in compliance with state and local law, and properly trained or professionally-hired security personnel.

P. Site Management.

The operator of the establishment shall take all reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, alleys and areas surrounding the premises and adjacent properties during business hours if directly related to the patrons of the subject Dispensary.

- (1) "Reasonable steps" shall include calling the police in a timely manner and requesting those engaging in objectionable activities to cease those activities, unless personal safety would be threatened in making the request.
- (2) "Nuisance" includes but is not limited to disturbances of peace, open public consumption of cannabis or alcohol, excessive pedestrian or vehicular traffic, illegal drug activity, harassment of passerby, excessive littering, excessive loitering, illegal parking, excessively loud noises, especially late at night or early in the morning hours, lewd conduct or police detentions and arrests.
- (3) The operator shall take all reasonable steps to reduce loitering in public areas, sidewalks, alleys and areas surrounding the premises and adjacent properties during business hours.

- (4) The operator shall ensure that the hours of operation shall not be a detriment to the surrounding area.
- (5) The operator shall provide patients with a list of the rules and regulations governing medical cannabis use and consumption within the City and recommendations on sensible cannabis etiquette.

**Q. Trash, Litter, Graffiti**

- (1) The operator shall remove all graffiti from the premises and parking lots under the control of the operator within 72 hours of its application
- (2) The operator shall remove all trash and litter from the premises and parking lots under the control of the operator within 72 hours of its application.

**R. Compliance with Other Requirements.** The operator shall comply with all provisions of all local, state or federal laws, regulations or orders, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders.

**S. Display of Determination of Dispensary Operation in Accord with Law.** Every Dispensary shall display at all times during business hours the determination that it is operated in accord with law in a conspicuous place so that the same may be readily seen by all persons entering the Dispensary.

**T. Reporting and Payment of Fees.** Each applicant shall file a sworn statement with the City Manager indicating the number of patients served by the Dispensary within the previous calendar year, and pay any annual fees.

**Annual Renewal**

A yearly review of the determination that the Dispensary is operated in accord with law is required. Applications for annual review shall be accompanied by the following minimum information:

- A. The operator shall report the number of patients served and pay applicable fees, as required by this Chapter.
- B. The operator shall provide a detailed description of any adjustments and changes proposed or that have occurred in Dispensary operations to address issues, or comply with laws.
- C. The operator shall identify any problems encountered during operations and how they have been addressed.
- D. The operator shall identify how the Dispensary has managed its operations to comply with the Operating requirements of this Chapter and with state law.

**Enforcement of Chapter**

The City of Milpitas may investigate and enforce any violations of this Chapter, and to report and enforce against any violations of the conditions of approval. The Chief of Police may report violations of these provisions to the City Manager and City Attorney for possible enforcement action under this Chapter or other applicable law.

### **Violations and Penalties**

Any violation of this Chapter shall be deemed a misdemeanor, unless the circumstances that create the violation are subject to prosecution under state or federal law. Any violation of this Chapter shall also be deemed a public nuisance and may be enforced by any remedy available to the City for abatement of public nuisances.



# **CITY COUNCIL TRANSPORTATION & LAND USE SUBCOMMITTEE Approved Meeting Minutes**

**Date/Time:** Tuesday, September 27, 2011

**Where:** City Hall Committee Conference Room

**Attendants:** Council Member Gomez (Chair), Council Member Polanski,

*Quorum was established*

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## **1. Call to order**

The meeting was called to order at 6:00 pm.

## **2. Public Forum *Please limit comments to 3 minutes***

There were no comments during Public Forum

## **3. Approval of Agenda & Minutes\***

*The agenda and minutes were approved.*

## **4. Announcements**

*There were no announcements*

## **5. Receive Testimony and discussion regarding medical marijuana facilities**

Council Member Gomez shared an outline to discuss Medical Marijuana (MM) facilities in the City of Milpitas. He outlined 3 reasons for discussing: Compassion, Budget and Legal.

- Compassion- have testimony at a future meeting
- Budget- taxation and regulation fees. The City's potential of what to get as far as revenue and cost-benefit
- Legal- recent legal developments and safety implications with these facilities.

In the event that legislation would require providing these facilities, Council Member Gomez believes an ordinance should be in place. This would also be analysis for revenue.

Council Gomez asked if the inquiry can be added in the City's poll work. City Manager Williams stated this can be added to the questionnaire that will be reviewed by the City Council prior to distribution.

The City Attorney's office clarified if on-site versus off-site cultivation. Staff will review both.

Council Member Gomez discussed timeline to complete the research by the end of the [calendar] year and begin the vote in early 2012. The potential timeline would be as follows:

- October- Compassion, need, taxation and legal
- November- Land Use and Regulatory
- December or January- City Council discussion.

There were continued discussions on taxing, potential legal issues, and scheduling the next meetings as the holidays will be coming up.

The Subcommittee requested the Committee Room in City Hall.

## **6. Adjourn**

The Subcommittee was adjourned at 6:24 pm.



# **CITY COUNCIL TRANSPORTATION & LAND USE SUBCOMMITTEE Approved Meeting Minutes**

**Date/Time:** Tuesday, October 25, 2011

**Where:** City Hall Committee Conference Room

**Attendants:** Council Member Gomez (Chair), Council Member Polanski,

*Quorum was established*

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## **1. Call to order**

The meeting was called to order at 5:30 pm.

## **2. Public Forum *Please limit comments to 3 minutes***

There were no comments during Public Forum

## **3. Approval of Agenda & Minutes\***

*The agenda and minutes were approved.*

## **4. Announcements**

*There were no announcements*

## **5. Tobacco Prevention Policies Discussion**

*Chair Gomez deferred this item to the next meeting.*

## **6. McCarthy Ranch, Mervyn's and Read Rite Site Uses**

*Chair Gomez deferred this item to the next meeting*

## **7. Receive testimony and discussion regarding medical marijuana facilities**

Chair Gomez wanted this to be a two-part process: 1) whether the subcommittee should move forward to talk about the legal issues and compassion aspects (with testimonies), and public safety 2) structuring the ordinance (if the subcommittee were to move forward

Chair invited Jennifer Griffiths-Morrissey to share a testimony. Ms. Griffiths-Morrissey is a resident of San Mateo County. She discussed her experience with medical cannabis and how it has been helpful for her 25 year old daughter to deal with the pain from the side effects of the medication used to treat Stage 3 Melanoma, skin cancer.

Chair Gomez stated he had misconceptions of medical marijuana patients and he has visited these facilities. He feels there should be safe and clean environments for people to purchase these items for care. Council Member Polanski shared that she voted on these facilities previously and believes it is worthy of discussion if there is a need.

Chair Gomez invited other testimony to speak.

Donald Irving, 507 N. Abbott Avenue discussed how he presented the City Council with a Santa Clara County Cooperative packet on June 1, 2005. He was congratulated for his work, but dismissed. As a patient of medical marijuana patient he discussed visiting dispensaries and incidences of being accosted by people outside the facilities. Mr. Irving shared 2 copies of letters and laws including crime reports and report by the East Bay Express.

Chair Gomez invited more testimony.

Steven Zyskiewitz, a software engineer has been trying to open up a dispensary/collective. In June 2011, he sent something to the Councils as a member of the American for Safe Access (ASA). He stated it is not really good to tax patients other than sales tax. It seems to be a land use issue. He stated ASA has a sample ordinance

Chair Gomez invited another testimony

Hector Gonzalez is the founder for MC3 (Medicinal Cannabis Collectives Coalition) in San Jose and the president of ARC Healing Center. He discussed the "faulty" San Jose ordinance, which is a de facto ban in the logistics of implementing something that won't attract the federal government to shut down as well as a collective to cultivate everything on site. He applauded the Subcommittee on the willingness to support this. He discussed his experience in San Jose and the inherent risk for cultivators to provide the medicine and to avoid federal intervention. Mr. Gonzales also shared his experience with patience including a range of ages and the product is not necessarily for smoking but drinking or ingestion.

Chair Gomez invited the next testimony

Kelly Reuss traveled from past South Lake Tahoe to transport a friend to the elemental wellness collective. She has been a patient since 1998. They are thrilled to have a professional, well-lit, safe place to go as a patient. She discussed, as a college student, carpools with other students were formed to go to collectives in San Francisco. Sometimes, they are caregivers to each other. She is heart-broken that people have to cultivate indoors and sited [www.ewg.org](http://www.ewg.org) that discusses clean water. She is hoping for a good, peaceful, supportive resolution and licensed facilities.

Chair Gomez invited the next testimony

Rob Means, 1421 Yellowstone, Milpitas. Mr. Means cited statistic of crime and the cost of marijuana. He stated the war on drugs failed so this was supposedly handled by the populous to go with this 15 years ago, and we are still dealing with it. He stated there are polls that 50% of voters answered yes that marijuana should be made legal nationwide. He went on to cite more reports and studies. He purged for decentralized cultivation for dispensaries and collectives. He feels are good directions for our government.

The Subcommittee thanked the members of the public for their testimony.

City Attorney Mike Ogaz discussed the legal aspect of medical marijuana. He reviewed the difference between the federal law, which there is no exception for medical marijuana, which is prohibited, and State law which allows for medical marijuana. Though the compassionate use act allows for medical marijuana for personalized use, federal legislature decriminalizes state law. He cited numerous cases included the Cities of Oakland and Long Beach and awaiting the outcome of each case to determine how the City can potentially proceed with pursuing the medical marijuana process.

The Subcommittee discussed furthermore, how an ordinance would be written to minimize any potential risk to federal law. This will be discussed further as the Subcommittee continues to review this item.

The Committee discussed the next meeting should include the following discussion:

- More testimony, including medical professionals
- Public safety discussions with the Chief of Police
- Taxation and Regulation

#### **8. Other Business**

#### **9. Adjourn**

The Subcommittee was adjourned at 6:30 pm. The next meeting will be November 17, 2011 at 5:00 pm.

Carol Baker, Tobacco Free Coalition, she shared that 1% of smokers start as adults and the rest start as children. She states there should be a better way to prevent access of tobacco for children.

Chair Gomez has fact sheets on this information and stated the subcommittee will discuss at the next meeting

## **6. Transit Area Park Land discussion**

Chair Gomez discussed the need for fields in the Transit Area Plan. He stated Council gave direction to acquire 10 acres of park land. [Zoning maps were reviewed of the parcels that staff was directed to purchase]

Chair Gomez stated the school district would acquire land for their building, and the City would acquire land for their green space/recreation facility. He suggests the partnership would include the school district purchase the 3 acres for their school building. He feels this is an opportunity for more space.

Council Member Polanski thought the 10 acres would be joint use for a school with a shared community center type (school uses in the day) plus the open space for park and school physical education.

Staff will clarify the amount of space as 10 acres or 13 acres. Staff will review the transit area specific plan.

Council Member Polanski understands a bond is needed, by the school district, to build the school. Chair Gomez stated he'd like to use some of the bond to acquire more space for a larger outdoor facility like a soccer complex.

Staff will review the direction during the Transit Area Specific Plan review and approval time.

Chair Gomez should have discussions with the school district to negotiate land use for the area. City Manager Tom Williams stated the City owns the land.

Staff will provide a status report at the next meeting.

## **7. Receive testimony and discussion regarding medical marijuana facilities**

Chair Gomez welcomed Police Chief Dennis Graham to discuss the safety issues with Medical Marijuana Facilities (MMF).

Chief Graham started stating he does understand there is a large amount of members of the community that need MMF for medical reasons. He did state it is difficult as Police Chief and a department to approve these because they take an oath to uphold the state and federal laws. Chief Graham discussed with other Police Chiefs that have MMF to discuss how they deal with safety.

He learned that some of the large customer base and there is a majority of these facilities used for recreational use. He stated some of the consequences include robberies, money laundering, and cartels.

Chief Graham also stated Los Angeles and San Diego reversed policies due to public outcry.

Chief Graham recommended, if the City approves MMF, that some of the restrictions be included, using the Los Angeles experience:

- Hours of operation
- Restrict Locations (500-1000 yards away from where children are present such as schools, parks, daycare)
- Restrict the number of dispensaries
  - Chief Graham calculated the Los Angeles population to the number of dispensaries allowed, 50,000 pop/1 dispensary should then require 1-2 dispensaries allowed in the City of Milpitas.
- Ensure landowners are aware of federal law when leasing space to MMF
- Providing a legal age limit for employees

Chief Graham also stated that District Attorney Jeff Rosen has a Santa Clara County Medical Marijuana Prosecution Protocol to review the guidelines to ensure the City's ordinance meets the terms of the protocol.

Chief Graham disclosed these are just a few recommendations as a flavor of what the City can include.

Chair Gomez asked Chief Graham's opinion on onsite and offsite cultivation. Chief Graham would discourage the onsite as it becomes a crime target. He stated he also heard from another Chief, there would be environmental impacts as well.

Council Member Gomez asked if there was a restriction on how much marijuana you can have at a facility. Chief Graham stated the appropriate amount for a legitimate patient would be 6-8 plants or 8 ounces of dried marijuana. He suggests the MMF should have good records open to the public and a disclosure of the number of patients to determine the amount the facility should have.

Ms. Spuller distributed a table of research of the fees collected from California cities that allow MMF. Deputy City Attorney Brian Otake stated recent court cases in Southern California suggested that voter-approved tax collection is legally safer to collect revenue.

Council Member Polanski stated that MMF is definitely for patients that really need it. She also feels the names of the medicine should be regulated instead of names with connotation towards recreational use. She feels the city should move forward with tight restrictions.

Chair Gomez stated they should manage or create a memo from the Subcommittee. He reviewed the timeline and stated a meeting to discuss land use and regulatory structure, prior to Council. He feels this discussion will be brought to the April City Council Meeting.

## **8. Consider Possible Moratorium on Land Use Conversions for Residential Development**

*This item was discussed before Item # 7*

Staff Diana Barnhart discussed there were a lot of inquiries by housing developers and rezoning our industrial areas in the California Circle/Cadillac area. Staff is opposed to



# **CITY COUNCIL TRANSPORTATION & LAND USE SUBCOMMITTEE Approved Meeting Minutes**

**Date/Time:** Tuesday, January 24, 2012, 6:00 pm

**Where:** City Hall Committee Conference Room

**Attendants:** Council Member Gomez (Chair), Council Member Polanski,

*Quorum was established*

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## **1. Call to order**

The meeting was called to order at 6:00 pm.

## **2. Public Forum *Please limit comments to 3 minutes***

*There were no comments during Public Forum*

## **3. Approval of Agenda & Minutes\***

*The agenda and minutes were approved.*

## **4. Announcements**

*The Subcommittee did not have any announcements.*

## **5. Old Business**

### **A. Receive Testimony and Discussion Regarding Medical Marijuana Facilities**

Chair Gomez informed Councilmember Polanski he had requested staff to compile, in memo format, suggestions on various land use recommendations. He reviewed the previous steps outlined in August, land use, regulations, taxation, outreach and details regarding a ballot initiative. He requested staff to put these items in a work plan. He asked the land use recommendations be discussed.

Acting Director Diana Barnhart introduced Assistant Planner Janice Spuller to present this item. Ms. Spuller reviewed a power point presentation. Land use recommendations and issues included:

- Quantity of allowable dispensaries- no more than 2
- On-site vs. Off-site cultivation
- Distance requirements prohibiting around sensitive uses such as: schools & child care facilities, residential neighborhoods, public facilities, and religious institutions. Ms. Spuller referred to two maps that illustrate a 1000' and 500 foot radius from these sensitive uses.

Ms. Spuller discussed additional land use regulations that can be incorporated such as hours of operation, lighting, signage, closed circuit TV, odor restrictions, on site consumption, and age requirements of employees.

Ms. Spuller presented the work plan which included this meeting's discussion on land use regulations; the February meeting on regulation and taxation and ballot measures; the March meeting to review the draft memo; and, the April City Council meeting for review and consideration.

Ms. Barnhart summarized the recommendations described in the memo. She stated the Highway Services zoning is the recommended location for the medical marijuana] facilities. With the sensitive receptors, the city is limited to this zoning area. Ms. Spuller referred to the maps where Highway Services are located. Councilmember Polanski pointed out industrial areas. Ms. Barnhart stated there can be exceptions to the zoning to consider the industrial areas because the numbers of dispensaries are limited.

Councilmember Polanski said the Highway Services area would make sense for one dispensary. She added that looking at the 1000' buffer, Industrial zoning can also be another location for dispensaries should the Council decide on having two in Milpitas.

Ms. Spuller offered that off- and on-site cultivation can be recommended with regulation. Producing on-site can be limited by square footage, quantity of plants, and can be in or outdoor of the property.

Chair Gomez asked if the hesitation towards industrial zones were job-based, employers, and/or office space? Ms. Barnhart agreed.

Chair Gomez asked why the dispensary in San Jose works and is in an industrial zoning. Ms. Barnhart stated staff is determining if the interpretation of cultivation is factory versus agriculture. Ms. Barnhart stated staff will actually visit a site to see the operation.

Ms. Spuller addressed Chair Gomez's questions about permitting. After reviewing with the City Attorney's office, staff recommends not requiring permitting. Some examples of approval process from other Cities are approval through staff through the City Manager's or City Clerk's office, Police Departments, and zoning administrator to name a few. Chair Gomez stated you can not necessary permit these facilities by Federal Law, but there needs to be a public process. Ms. Barnhart stated staff is providing information and desires the Subcommittee direction on how to proceed with the preferred process.

Chair Gomez asked about transferability. Ms. Spuller stated when a permit is issued or approved, it stays with the parcel, and should the business move, a new permit is required. However with this type of facility, if transferability is desired, then this is (or could be) included in the regulations.

Ms. Barnhart indicated that the Subcommittee, at its next meeting, can discuss costs associated with regulation and create a more formal recommendation on how to administer this matter.

Councilmember Polanski concurred that if there are two [dispensaries], they should be spaced 1000' apart. Also agreed no more than two [dispensaries]. Ms. Spuller clarified if the preferred buffer is 1000'. Chair Gomez agreed the 1000' buffer is more appropriate.

Chair Gomez confirmed if the meeting once a month will get the Subcommittee to the April meeting. Ms. Barnhart concurred with once a month..

Chair Gomez opened this item for public forum.

Rob Means, 1421 Yellowstone, stated he is glad to see this item moving forward even though the populace was requesting this 10 years ago. He asked if there really is a problem with using marijuana knowing it is fine as a medicinal drug, but as a recreational drug. He suggests heavily regulating and legalizing it and gets similar results as other countries and other pharmaceutical drugs. He discussed new names for the medicine that are market tested. He referred to a letter he received with statistics on causing more health problems on criminalized rules for drugs rather than decriminalizing it and regulating. If you decriminalize and regulate it, things seem to go well. He thanked the Subcommittee for the work they are doing.

#### **B. Tobacco Prevention Policies Discussion**

Chair Gomez asked if staff performed any more research. Ms. Barnhart stated staff has not done any further research.

Chair Gomez opened the public forum.

Dr. Roger Kennedy, chair of the tobacco free coalition for Santa Clara County, thanked the Subcommittee for having them back. He addressed the recreation department. He displayed two full containers of cigarette butts that were collected in one hour's time at a local park. He discussed the risk of children eating them. He stated San Jose has a ban on smoking in parks, showing a container with less cigarette butts due to the ban.

In regards to tobacco retail licensing and referred to his experience as an internal medicine doctor. He said a life-saving intervention is to not having a kid start smoking. He said the coalition is working really hard to not smoke. He stated it is really easy for kids to get cigarettes from convenience store. He discussed statistics of childhood addiction to cigarettes. He stated there needs to be more accountability for merchants.

Vanessa Marvin, employee of the American Lung Association and member of Healthy Milpitas Coalition. They are working on smoke free parks, dining, and tobacco retail licensing. They have endorsements (shared with staff) from the Parks and Recreation and Cultural Resources commission as well as reached out at community meetings, health fairs, Milpitas library on their campaign. This is an instance where the government is not doing enough to prevent children from purchasing cigarettes. Outdoor smoking can create health issues with those who have asthma. She urged the Subcommittee to continue work on this.

Shi Yeng from Breathe California, a local non-profit, discussed smoke-free outdoor dining. Out of the 217 restaurants in Milpitas, 1/5 of restaurants have outdoor areas and half of them allow outdoor smoking. She discussed second hand smoke and how it is extremely harmful to children who are more likely to have bronchitis, asthma, irritation to eyes and ears. She stated outdoor smoking can sometimes equal indoor smoking in particulate air pollution. The public is supportive of outdoor dining restriction, with 70% of Californians and 80% Santa Clara residents feel this should be banned immediately.

The Subcommittee directed staff to work on this project.



# **CITY COUNCIL TRANSPORTATION & LAND USE SUBCOMMITTEE Approved Meeting Minutes**

**Date/Time:** Tuesday, March 27, 2012, 5:00 pm

**Where:** City Hall Committee Conference Room

**Attendants:** Council Member Gomez (Chair), Council Member Polanski,

*Quorum was established*

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## **1. Call to order**

The meeting was called to order at 5:00 pm.

## **2. Public Forum *Please limit comments to 3 minutes***

*There were no speakers during public forum*

## **3. Approval of Agenda & Minutes\***

Councilmember Polanski stated she is good with the minutes but requests that item 5b Tobacco Prevention Policies Discussion be heard before item 5a Medical Marijuana Facilities Update

Chair Gomez was agreeable to the agenda change.

## **4. Announcements**

*There were no announcements*

## **5. Old Business**

### **A. Medical Marijuana Facilities Update**

*This item was discussed after item 5b Tobacco Prevention Policies Discussion*

Chair Gomez requested an update from City Attorney Mike Ogaz.

Mr. Ogaz referred to an appellate case in the City of Lake Forrest. Lake Forrest has a similar ban in Milpitas which does not allow marijuana dispensaries in their city. He read "we conclude that local governments may not prohibit medical marijuana dispensaries all together with the caveat that the legislature allow only at sites where marijuana is collectively or cooperatively cultivated." According to this case, the state law preempts an ordinance that has a total ban because it allows the dispensaries which are in conjunction with cultivation. He stated you can not have a dispensary where the marijuana is grown somewhere else and is imported, because the transportation of the marijuana from the field to the dispensary is illegal. The only transportation allowed, according to this court, is the small amount for personal use.

Mr. Ogaz stated there are other cases that hold that the ban is okay. Staff is waiting for decisions from the US Supreme Court. He read a court ruling that some dispensaries want to operate independently of cultivation centers. There are policies outside their authorization and this should be left to the people of the legislature. He interpreted that what the City has

in the books right now should be modified, though the courts are still in disagreement, but it may be a troublesome ordinance with the existing ordinance at this time.

Chair Gomez expressed concern both he and Councilmember Polanski have regarding the courts possibly coming back and says you can't ban these all together. He said we've [Subcommittee] always felt that they should study the issue, have a well thought out ordinance that goes further than state law goes, because the state guidelines don't go far enough. He said we have discussed a lot of policy alternatives in the last meeting that goes further than the state. What he's hoping to do, as he committed to Council he would bring this issue back in April, is to discuss the different policy items on how far they should from sensitive receptors, how many [dispensaries], and the tax. He suggested the Subcommittee say we studied the issue, if the state allows them; this is where we believe we should be going [with the ordinance] and have the council have the debate instead of ignoring the issue. He would rather have an ordinance out that is well thought out, that deals with our issues, and is something catered to Milpitas.

Council Member Polanski asked if the courts rule on the state and "x" needs to happen with regulations, as a city, can our regulations be more restrictive?

Mr. Ogaz said we [City] can be more restrictive than state law, if it does not contradict state law. For example, if you wanted to put dispensaries in conjunction with cultivation sites, then you can probably limit them in certain zoning sites. He thinks there can be additional restrictions as long as it is not directly contradictive of state law.

Council Member Polanski asked because we are a general law city, versus a charter city, we go by state law and then we look at what ordinances best fit our local community. A lot of people are talking about local control. She stated it would be best to look at needs of our local city. She referred to Chief Graham as he spoke to us several meetings ago and mentioned earlier in the meeting, the shortage of resources, that it is very important there are tight guidelines, and the courts should uphold them.

Mr. Ogaz said that is certainly what this court says and it opens the door to more creative opportunities. He asked if it's the Subcommittee's desire, we can have the discussion of what may be authorized by state law and ultimately what is acceptable by the Supreme Court just so it's clear that we are in areas which are unchartered. This would facilitate a more complete discussion.

Council Member Polanski stated that she did do some research and she had staff bring copies of articles that were available at the meeting. She referred to State Assembly Member Nora Campos introducing AB 2465, which talks about medical marijuana identification cards. This was just introduced February 24, 2012. She also had some other information staff printed, which are just for interest as the City moves forward on this issue and takes it to the City Council.

Mr. Ogaz asked at the direction of the subcommittee, how to move forward with this item.

Chair Gomez and Council Member Polanski decided to meet one more time to review the report to make sure they are comfortable with it. Looking at the second meeting in April, Chair Gomez deferred to staff. Councilmember Polanski reviewed the calendar for reports (ARS) to provide the information in a timely matter. She stated if looking at the second [Council] meeting, that means April 17<sup>th</sup> and asked when does the information have to be put through.

City Manager Tom Williams stated we would need the information by April 9<sup>th</sup> for the meeting on the 17<sup>th</sup>. This doesn't give enough time at all, per Chair Gomez.

Chair Gomez asked if May 1st be a problem (for City Council)? Council Member Polanski said this would allow for more time to do the comparison and reporting. She asked if staff will have the information available to meet Monday the 16<sup>th</sup>? Or during the day of the 18<sup>th</sup>? Chair Gomez said that would be okay. She requested 2pm on the 18<sup>th</sup>. Chair Gomez stated he can make that work. She asked if that works for Staff. Mr. Williams deferred to Mr. Ogaz regarding the timeline.

Mr. Ogaz asked for greater specification as to what report. Chair Gomez said the state regulations and guidelines such as sensitive receptors. Chair Gomez wanted staff to track those down and compare where Milpitas is with the guidelines. Council Member Polanski remembered that what we've seen before (in previous meetings) of what we charge for tax and fees, and what state rules can and can not be done as far as state law. She thanked Mr. Ogaz for the research and he stated you're quite welcome.

Chair Gomez opened the item up to the public for comment

Zachary Pilalas from the Other Side of the Fence Cannabis Collective brought a couple things to discuss. He said he studied so many articles for so many years. He stated that part of what the state said that you can not outright ban [them] is something to look at. Because right now, he stated, you are dealing with a law that was established so many years ago, and the City should have known by 1997 what to do, so it's way to late for that. He said you (City) should of known by 1997, and highlighted when they were actually putting a bill of for recreational [marijuana] use, it didn't pass because the people who put the bill up discovered some writing they didn't like in their own bill and they themselves put the bill down so it wouldn't pass. The next time it comes up, Mr. Pilalis shared, he feels will pass. He said just like you can't regulate where Peet's Coffee and Tea should locate, you won't be able to regulate where to put a recreational [marijuana] business as well. Part of it, he stated, is hiding it from kids and sensitive areas rather than educating them is probably why California is 47 out of 50 in education. He added, in regards to the case the state has already decided what they wanted to do. He said, they want to allow it, but not outright ban them, but you will have a choice. He said the state has said in a public press conference either the cities can tax and regulate these businesses and benefit from them, or the state will be allowed to tax and regulate, and the state will take the tax dollars and Milpitas will miss out. He talked to Mountain View & Sunnyvale about this. The best thing is to accept the fact that is recognized by medicine. The DEA, two and a half months ago, released a report that it does have medicinal purposes and they are moving forward not backward. The best thing to do is to establish their place in the industry. Thank you.

Stephen Zyszkiewicz, the Other Side of the Fence Cannabis Collective, has been looking for a place to go [for his medical marijuana business]. He said they were looking at San Jose, but that never happened. They keep going to city to city and nothing is happening. He said it is a good thing the City is going ahead with it and asked what we [city] are waiting for. He stated there are actual patients, not just those with insomnia and headaches using this as a safer medicine, but there are people with harsher diseases like multiple sclerosis and fibromyalgia. What they are doing right now might not be recognized by law enforcement if they deliver in Milpitas. He said they just want to be a small business, a few small businesses, with a few jobs. He quoted Harborside [medical marijuana facility] "out of the darkness into the light". There are people growing it and selling it [marijuana]. They just want to be a small business and part of the community. He concluded that the City of Lake Forrest case, might ask the Supreme Court to depublish the case to only the affected parties of the case, so you never know what happens.

Rob Means 1421 Yellowstone, stated there are a number of things going on. He said let's get out of the curb, because clearly the wave is coming. He quoted President Barack Obama "never has it been more important to have a national drug control strategy guided by sound principals of public safety and public health", meaning even he [Obama] is on board for medical marijuana at a national level. Mr. Means said this state is more progressive than that. He said of 70% of people asked if they think marijuana should be regulated and taxed like wine, they will answer yes. He said the populace is there, the governmental structure just hasn't caught up. He would take a conservative approach and isolate these places [for dispensaries] while we get more familiar with what's going on, meanwhile training our officers, so people are in the game, and things operate smoothly. He said so when one does open up, say in the civic center, we are more prepared for that move because of having this experience. He said they [Subcommittee] are on the right track and to keep going.

Linda Windisch, Lacey Drive. She said that Mr. Ogaz is starting to make good points. There are court cases that are contradictions. She said there are so much contradictions on what is decided, that to step into that now, she feels, would be a mistake. She says we have seen in other cities throughout California where they stepped into this, and realized they made a mistake, and they look at shutting down businesses. She feels that is unfair to allow a business, and then shut them down. She says to make sure we do it right in the first place with so much controversy and disagreement in the law, just between localities and the state, I think it would be a mistake to step into this. She said she read articles that state law contradicts federal law. Federal law states that medical marijuana is illegal. Having a business that sells medical marijuana is against the law. She said she read cases that the Federal DEA is going after the property owner, shutting down the businesses and taking the property from the land owner. She doesn't want Milpitas to be in that situation where Milpitas is shutting down businesses and having their property seized. These are solid reasons that we should not be stepping into this until the legal issues are solved. Bottom line, Ms. Windisch stated, she would rather not have at all, but if we are forced to have it in Milpitas, we should only do this if and when we are forced to do this.

Council Member Polanski thanked those that spoke. She stated we are moving into this and ensuring this is done correctly. She said this, as Council Member Gomez stated, that we want to look at all the options, court cases, and be ready in case something happened. She doesn't think we are advocating to change our current ordinance, at this time, but we need to have some strong steps in place, and that are regulations meet our needs if these other things take place.

Chair Gomez added he always thought of this as a "moving" document/policy paper that says based on what we know now, here's how to protect the schools, neighborhood, businesses. This could be coming, so we better be prepared.

Council Member Polanski said we have been studying this since September and we have been gathering as much information as possible and she appreciates staff for their work and the public that has come to the meetings.

## **B. Tobacco Prevention Policies Discussion**

*This item was discussed prior to item 5a Medical Marijuana Facilities Update.*

Chair Armando Gomez reviewed that the last meeting the Subcommittee decided there were two elements to discuss: 1) smoking in parks and 2) registration program. He believes they would start with smoking in parks then deal with the registration program at a later time.

Sergeant Kevin Corvin stated Police focused on a smoke free ordinance in parks. He stated there were definitions from the old ordinance that were change. The old ordinance stated no