



**COUNCILMEMBER CHRIS CATE
CITY OF SAN DIEGO
SIXTH DISTRICT**

M E M O R A N D U M

DATE: May 1, 2017

TO: Honorable Members of the Committee on Public Safety and Livable Neighborhoods

FROM: Councilmember Chris Cate, Chair, Committee on Public Safety and Livable Neighborhoods 

SUBJECT: Memo Requesting Ideas for Strategies to Improve Enforcement of Illegal Marijuana-Related Business Operations

As Chair of the Committee on Public Safety and Livable Neighborhoods, one of my top priorities is to protect the quality of life for residents and families throughout San Diego. A challenge that continues to impact communities throughout the City is the existence of illegal marijuana outlets. Thanks to the collaboration between the Code Enforcement Division, San Diego Police Department, and the City Attorney's office, progress has been made, however communities are demanding that the City do more to ensure effective and timely enforcement. The City Council established a framework that allows for legal marijuana outlets to operate since the passing of Proposition 64. It is imperative that we work hard to enforce our policy and shut down illegal operations before legal recreational outlets come online.

On June 7, 2017, the Committee on Public Safety and Livable Neighborhoods will be receiving an update from the Code Enforcement Division and the City Attorney's Office on enforcement efforts relating to illegal marijuana business operations. As part of the conversation, we will be discussing various ideas and proposals on how the City Council can provide additional tools and strategies for more effective and timely enforcement.

This is an important issue that impacts every community and has been expressed as a top priority by many Councilmembers. It is important that we as a City Council focus on providing additional solutions. In an effort to start a robust discussion, I am calling on my Committee colleagues to submit your ideas to my Committee Consultant, Allen Young, by May 15, 2017. Below are some of my ideas to more effectively shut down illegal marijuana-related businesses and ensure the safety of all communities. I request that members of the Committee share their ideas as part of this conversation.

❖ ***Declare Any Unlicensed and Unpermitted Marijuana Outlet or Business a Public Nuisance***

The City should add a provision to the Municipal Code that declares all marijuana-related businesses within the City that are unlicensed, unpermitted, or in violation of any provisions of the municipal code, permitting requirements, and State law, a public nuisance and shall be abated by all available means. Many municipalities throughout California, such as Anaheim and Burbank, have included public nuisance provisions relating to illegal marijuana businesses within their municipal codes. Adding an explicit public nuisance clause to the Municipal

Code that applies to all illegal and unpermitted marijuana-related businesses would greatly help the City Attorney's office when making their legal arguments to prove an illegal operation is a public nuisance and therefore help fast track the abatement of illegal operations. This provision would also provide the City Attorney's office with an additional legal tool to more effectively prosecute and shut down illegal operations.

❖ ***Shut Off Water and Electric Services to Unpermitted and Unlicensed Marijuana Outlets and Businesses***

Unpermitted and unlicensed marijuana-related businesses that refuse to cease operations after numerous warnings, citations, and orders issued by the City should not be given the resources to continue their illegal business. The City should explore taking a more aggressive approach to ensure these illegal businesses are shut down by turning off the water and electric services to the locations. Other cities, such as Anaheim, have taken this approach. By removing access to basic utilities, continuing the operation of an illegal marijuana business would become extremely difficult. The City should work with the Public Utilities Department and partner with San Diego Gas and Electric to explore this option as an additional tool the City can utilize in our quest to more effectively shut down illegal operations.

❖ ***Amend Land Development Code Section 121.0302***

The City of San Diego's Land Development Code Section 121.0302 allows for the criminal prosecution of any person that maintains or uses any premises in violation of any of the provisions of the Land Development Code, without a required permit, contrary to permit conditions, or without a required variance. Currently, when illegal marijuana-related business operators get cited or prosecuted under this specific code section, it is often unclear what type of business the operator was running. This makes it harder for the City to track repeat illegal marijuana operators, who can easily be missed by those approving new permits should they apply for other permits in the future.

The City should consider amending this Code Section to include a sub-section under 121.0302 that would make violations relating to marijuana businesses a specific and separate violation. In addition, the City should include provisions that prevent violators of this sub-section from operating another marijuana-related business or tobacco-related business since many tobacco businesses operate as fronts for illegal marijuana businesses. The new sub-section would make it clear that the violators were running an illegal marijuana-related business, streamline the tracking of repeat offenders, and make it easier to flag them as such, should they apply for permits for marijuana or tobacco-related businesses again.

❖ ***Create an Infraction for Knowingly Purchasing Marijuana Products from an Unlicensed and Unpermitted Marijuana Retail Outlet***

The City allows legal and permitted marijuana outlets to ensure these operations are well-regulated, located in areas that protect residents and families, and to ensure marijuana products are tested, safe, and available to purchase in permitted retail outlets. Unpermitted and unlicensed illegal marijuana outlets pose a serious public health and safety concern as there is no guarantee the products sold at illegal operations are safe for consumption. However, illegal marijuana outlets still attract a significant customer base because they can sell products that are cheaper than legal retail outlets. This makes it lucrative for illegal operations to exist. The City should explore the idea of placing a level of responsibility on those who knowingly purchase marijuana at unlicensed and unpermitted retail outlets. When there is a disincentive to patronize illegal retail outlets, demand for them will go down, taking away incentives for operating illegal marijuana retail outlets. The City should consider the following:

- Amend the Municipal Code to require that all legally licensed and permitted marijuana retail outlets post signage indicating their permitted status at all public entrances and adjacent to all cash registers, giving patrons certainty that an outlet is permitted and legal.
- Create an infraction for the act of knowingly purchasing marijuana products from an unlicensed and unpermitted marijuana retail outlet with escalating fines starting at \$250.
- Examples of citing the buyer as well as the retailer:

- California B&P Code Section 25361: “Any on- or off-sale licensee, or agent or employee of that licensee, who sells, gives, or delivers to any persons any alcoholic beverage or any person who knowingly purchases any alcoholic beverage between the hours of 2 o’clock a.m. and 6 o’clock a.m. of the same day, is guilty of a misdemeanor.”

❖ ***Make Marijuana Retail Outlets a Police-Regulated Business Using the Tobacco Retailer Ordinance as a Model***

Although marijuana retail outlets will be regulated by state agencies, there are many industries that are regulated by the State, but are also locally regulated as a police-regulated occupation and business. For example, the City of San Diego currently regulates tobacco retailers as a police-regulated business, which was established under the Tobacco and Electronic Cigarette Retailer Ordinance in 2007. Tobacco retailers are required to pay for and obtain a police permit to operate their business. The San Diego Police Department utilizes this revenue to conduct overt and undercover inspections on a regular basis. Overt inspections are done to educate, gain voluntary compliance, and confirm if prior deficiencies have been corrected by retailers. Undercover inspections are done to educate and cite retailers for violations relating to sale to minors and are chosen randomly based on community complaints.

The City of San Diego should explore making marijuana retail outlets a police-regulated business that utilizes the Tobacco Retailer Ordinance as a model. Like tobacco retailers, marijuana outlets selling marijuana products or paraphernalia would be required to pay for and obtain a police permit. It is prudent to locally regulate marijuana businesses the same way San Diego regulates tobacco. The intent is to discourage violations of laws, such as prohibiting the sale or distribution of marijuana products to minors. The cost of enforcing the regulations related to the retail sale of marijuana products are borne by retailers who apply for and obtain annual police permits, and by the fees paid for violations cited. Revenue generated by the application and permit fees should be used to administer and enforce the regulations.

I look forward to a robust conversation at the June 7th Public Safety and Livable Neighborhoods Committee as we discuss solutions to this ongoing problem.

CC:ay

cc: Honorable Mayor Kevin Faulconer
Honorable City Attorney Mara Elliott
Shelley Zimmerman, Chief of Police
Bob Vacchi, Director, Development Services Department
Jeff Murphy, Director, Planning Department