



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Edgardo Garcia
Rosalynn Hughey

**SUBJECT: CANNABIS-RELATED ITEMS
REFERRED TO PRIORITY
SETTING**

DATE: March 4, 2019

Approved

D. DSL

Date

3/4/19

SUPPLEMENTAL

REASON FOR SUPPLEMENTAL

This memorandum provides further information about the staff recommendation for grouping like items in the cannabis referrals for consideration at the March 5, 2019 Council Policy Priority Setting session:

1. Cannabis Dispensaries: Potential Land Use and Regulatory Changes (including evaluation of land use/regulatory recommendations from the San José Cannabis Equity Working Group);
2. Private Cannabis Events; and
3. Cannabis Equity Policy.

BACKGROUND

On January 15, 2019, the City Council approved the land use and regulatory ordinances allowing cannabis manufacturing, distribution, and testing facilities that obtain City registration and state licensure to locate in San Jose. At that meeting, Council referred several items related to the City's cannabis program to the next City Council Policy Priority Setting Session, to be held on March 5, 2019:

1. Assess allowing the sale of individual cannabis business (components). (Peralez/Carrasco memorandum, Item 2c)
2. Assess allowing all cannabis uses (dispensaries, cultivation) in the North San José Development Policy Area, International Business Park, and Edenvale Development Policy Area, not only manufacturing, distribution, and lab testing. (Peralez/Carrasco memorandum, Item 2d)

March 4, 2019

Subject: Cannabis Related Items Referred to Priority Setting

Page 2

3. Assess amending the San José Municipal Code to allow private events for cannabis consumption. (Perez/Carrasco memorandum, Item 2g)
4. Assess creating a cannabis equity program as outlined by the State of California in SB 1294. (Perez/Carrasco memorandum, Item 2h)
5. Evaluate implementing a cap on the number of retail cannabis businesses per Council District (Esparza memorandum)

Since January 15, 2019, the Administration has met with representatives of the San José Cannabis Equity Working Group (“CEWG”) and the local cannabis industry, as well as conducted preliminary research about the policy work involved with the above referrals. The CEWG shared a draft proposal for a San José Cannabis Equity Program including both program changes and land use/regulatory changes.

Additionally, Council Member Foley proposed a reevaluation of Title 20 cannabis policy to create an equitable distribution of dispensaries and increase tax revenue.

In addition to discussing the recommended groupings, this memorandum provides a brief overview of the existing work plan for the Police Department’s Division of Cannabis Regulation and information about the other departments whose work would be required for the proposed changes.

ANALYSIS

Cannabis Work Plan – Division of Cannabis Regulation

The Police Department’s Division of Cannabis Regulation is tasked with ensuring the City’s registered cannabis businesses comply with local regulations and, to some extent, state law. The Division performs regular and unannounced inspections, remotely monitors video surveillance feeds and delivery operations, and conducts other regulatory and compliance activities.

On March 4, the Division will also begin taking applications for cannabis manufacturing, distribution, and testing. Staff is currently preparing for this new program, which will include developing application materials, creating City Manager Regulations for the new registration categories, training City staff in other departments about the new categories and application process, and conducting outreach to educate potential applicants about the application process.

The State of California requires all licensed businesses to utilize the statewide track-and-trace system. This system tracks each cannabis plant from “seed to sale.” This is a critical step in ensuring a robust and accurate regulatory and taxation system. Based on experiences in other states, staff anticipates there may be some growing pains after the full implementation of this track-and-trace system and businesses may require technical assistance from the City or State.

March 4, 2019

Subject: Cannabis Related Items Referred to Priority Setting

Page 3

Staff proposes providing an annual report discussing cannabis regulatory data, performance measures, and updates on implementation of the above projects to the Public Safety, Finance and Strategic Support Committee beginning in Fall of 2019.

Cannabis is an evolving industry. The Division is staffed to regulate the existing program, assess and engage around evolving regulations and legislation, and ensure a safe industry for our businesses and residents. The policy work outlined below is beyond what is in the existing work plan and will require significant work from other departments. If prioritized, staff would need to adjust the existing work plan to include this additional work.

Cannabis Dispensaries: Potential Land Use and Regulatory Changes

Staff is already working on an assessment, from prior Council direction, of allowing existing registered dispensaries to open a second location in San José (without any changes to existing zoning districts). The January 15, 2019 referrals include two land use/regulatory items for staff to assess: allowing the sale of individual cannabis business components and allowing all cannabis uses in the North San José Development Policy Area, International Business Park, and Edenvale Development Policy Area. There was also a referral from Councilmember Esparza to evaluate the possibility of capping the number of dispensaries per Council district.

Additionally, within the Cannabis Equity proposal from the CEWG are several land use and regulatory items. The CEWG is proposing San José re-open the registration process to a limited number of cannabis equity applicant-owned dispensaries. Furthermore, the CEWG proposes San José allow delivery-only dispensaries, with half of the registrations reserved for cannabis equity owners, and San José expand the current “Green Zone” where dispensaries are allowed.

Finally, in the priority-setting nomination process, Councilmember Foley proposed that staff re-evaluate the land use requirements for dispensaries contained in Title 20 of the Municipal Code.

All of these items will require community outreach, environmental review, and in-depth policy analysis. A staff recommendation would need to be brought first to the Planning Commission for review, then to City Council for adoption and approval. The work would cross multiple City departments, including: Planning, Building and Code Enforcement (PBCE); Police (Division of Cannabis Regulation); Office of Economic Development; and the City Attorney’s Office. Work would be led by Planning, Building and Code Enforcement or the Police Department.

Given the scope of work involved, the Administration recommended combining the cannabis land use and regulatory items into one item for Council consideration on March 5. The Police Department and Department of Planning, Building and Code Enforcement would then, together with the Office of Economic Development, do a fresh citywide evaluation of retail dispensaries, including:

March 4, 2019

Subject: Cannabis Related Items Referred to Priority Setting

Page 4

- Where retail dispensaries should be located;
- Whether to allow delivery-only dispensaries;
- How many dispensaries is the right number for a city the size of San José;
- Whether and how registration should be opened to new applicants; and
- How an equity component could be built into the dispensary registration program.

While this policy work would be more extensive than each standalone item, it involves the same type of work and the same departments listed above. The resultant product would, hopefully, be long-term.

San José's current program pre-dates State law and reflects a vertically-integrated model few of the cannabis businesses have ever fully realized. Each time staff brings forward new recommendations regarding the cannabis program, additional amendments are proposed. Rather than amending and updating in a piecemeal fashion (to meet industry needs), staff proposes to look at the issue of dispensaries holistically and comprehensively while balancing public safety, neighborhood, and economic development/fiscal needs. Work would be led by Planning, Building and Code Enforcement or the Police Department.

Private Cannabis Events

One of the January 15 referrals to Priority Setting is to "Assess amending the Municipal Code to allow private events for cannabis consumption. (Peralez/Carrasco memorandum, Item 2g)"

This item requires a comprehensive look at what type of events and where they would be allowed, as well as public safety issues such as measures to prevent driving under the influence. Additionally, for decades, the City of San José has been a public health leader in preventing second-hand consumption of tobacco and cannabis smoke, and the Council has previously taken positions adding cannabis to policies prohibiting smoking on City-owned venues.

Due to the unique nature of this item and the stakeholders involved, staff does not recommend combining this item with the other cannabis land use items.

The above work requires community outreach, environmental review, and in-depth policy analysis. A staff recommendation would need to be brought first to the Planning Commission for review, then to City Council for adoption and approval. Departments and partners involved potentially would include: Planning, Building and Code Enforcement; Police (Division of Cannabis Regulation); Office of Economic Development; Office of Cultural Affairs; Team San José; the San José Downtown Association; and the City Attorney's Office. Work would be led by Planning, Building and Code Enforcement or the Police Department.

March 4, 2019

Subject: Cannabis Related Items Referred to Priority Setting

Page 5

Cannabis Equity Program

On September 26, 2018, Governor Edmund G Brown signed SB 1294, which authorized the State of California's Bureau of Cannabis Control to provide technical assistance and funding to local jurisdictions seeking to establish cannabis equity programs. At the time the Legislature found:

“Cannabis prohibition had a devastating impact on communities across California and across the United States. Persons convicted of a cannabis offense and their families suffer the long-term consequences of prohibition. These individuals have a more difficult time entering the newly created adult-use cannabis industry due, in part, to a lack of access to capital, business space, technical support, and regulatory compliance assistance.

“During the era of cannabis prohibition in California, the burdens of arrests, convictions, and long-term collateral consequences arising from a conviction fell disproportionately on Black and Latinx people, even though people of all races used and sold cannabis at nearly identical rates. The California Department of Justice data shows that from 2006 to 2015, inclusive, Black Californians were two times more likely to be arrested for cannabis misdemeanors and five times more likely to be arrested for cannabis felonies than White Californians. During the same period, Latinx Californians were 35 percent more likely to be arrested for cannabis crimes than White Californians. The collateral consequences associated with cannabis law violations, coupled with generational poverty and a lack of access to resources, make it extraordinarily difficult for persons with convictions to enter the newly regulated industry.”

Cannabis equity programs seek to provide opportunities for those disproportionately likely to have been arrested/incarcerated or otherwise impacted by previous cannabis policies to have access to employment and entrepreneurship in the new cannabis industry. Later this year, the State will issue model ordinances and policies local jurisdictions could adopt. On March 1, 2019, the State began to accept grant applications from jurisdictions seeking to develop equity programs.

Since the Council meeting on January 15, 2019, staff has met twice with representatives of the San Jose Cannabis Equity Working Group and has conducted additional research regarding cannabis equity programs. Staff has met with work2future about existing small business development and job training programs.

If Council prioritizes this item, staff will conduct additional outreach and bring forward a draft resolution or City Council Policy for adoption defining eligible equity applicants as well as a proposed work plan. If the item is prioritized, staff would submit a grant for SB 1294 funding to cover the cost of services to equity applicants. These might include providing technical assistance and subsidizing fees for equity applicants, training for prospective employees, and other services.

HONORABLE MAYOR AND CITY COUNCIL

March 4, 2019

Subject: Cannabis Related Items Referred to Priority Setting

Page 6

The Administration took to heart Council's interest in this issue and is committed to working with the CEWG and the industry on the issue of cannabis equity. The CEWG stated they were pleased to learn San José already does not consider cannabis arrests or convictions a barrier to employment or entrepreneurship in the City's cannabis industry. They were interested in seeing how existing City programs and resources could partner with this new industry.

There are several areas for collaboration, even if this item is not prioritized, however, the larger project requires significant staff effort from the Division of Cannabis Regulation, the City Manager's Office of Administration, Policy and Intergovernmental Relations, the Office of Economic Development, and other partners. Work would be led by the Police Department.

CONCLUSION

Based upon the current staffing levels in the Division of Cannabis Regulation at the Police Department, staff only has the bandwidth to focus on its current mission; the Division does not have the bandwidth to oversee the additional items suggested in this memorandum.

Additionally, as outlined in the staff report, both the Planning Division of PBCE and the Office of Economic Development have significant workload impacts from existing and proposed Council Priority items. If the above items are prioritized, staff would need to review and explore adjustments to existing work plans and staffing to include this additional work.

/s/

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/s/

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