



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Chris Burton

**SUBJECT: CANNABIS BUSINESS ORDINANCE
REVISIONS**

DATE: October 28, 2022

Approved

Date

10/28/2022

REASON FOR SUPPLEMENTAL

This memorandum provides additional information to supplement the [Early Consideration Response Form](#) dated October 19, 2022 related to [Cannabis Business Ordinance Revisions agenda item 3.5](#).

BACKGROUND

At its March 5, 2019 priority setting meeting, the City Council prioritized updating the Cannabis Land Use and Regulatory Provisions to allow an expansion of the number of cannabis businesses in the City, to allow cannabis retail in more locations, and to address the concentration of cannabis businesses in Council District 7.

[On February 15, 2022](#), City Council adopted amendments to the Zoning and Regulatory Ordinances that allow the 16 existing businesses and up to five new equity businesses to open a new retail location in commercial areas outside of Council District 7. The revised zoning criteria includes new or updated distance requirements to sensitive uses such as schools, day care facilities, youth centers, etc. These provisions were crafted based on analysis of best practices from other jurisdictions, input from the local cannabis businesses, input from the public (including a survey with approximately 950 responses), and check-ins with the Community and Economic Development Committee to refine City Council direction.

ANALYSIS

At the time when the ordinance was adopted, using the updated zoning criteria, staff analysis found approximately 1,400 sites that could be eligible for a cannabis retail businesses based on geographic information system analysis. However, the true number of available sites (and the effectiveness of the ordinance updates) is ultimately determined by the process of the industry looking for sites and contacting prospective landlords that may or may not wish to rent their properties for this use. Staff believed the criteria adopted by City Council in February 2022

provided enough opportunity for new retail locations, even with the understanding that many of the 1,400 sites identified in the analysis would not actually be viable due to being occupied or otherwise unavailable, and/or not being suitable for a cannabis retail business.

No business has been able to find a new location approximately eight months since the ordinance became effective. Factors contributing to this outcome include the presence of more sensitive receptors than were identified in the initial analysis and which affect site availability in some commercial areas (particularly the presence of day care facilities), and the unique constraints on this industry due to its illegal federal status that results in many property owners being either reluctant or unable to lease to a cannabis business. These constraints are discussed in detail in the September 21, 2022, Information Memorandum.¹

CONCLUSION

It has become clear that although staff completed the technical aspects of City Council direction from the 2019 priority setting process, the updated zoning criteria have not achieved the intended goals (that is, the expansion of cannabis businesses, additional retail locations, and a reduced concentration of cannabis businesses in Council District 7). In its initial Early Consideration Form, staff yellow lit the direction in the Memorandum from Councilmembers Foley, Peralez, Carrasco, and Jones due to existing workplans and limited staff capacity based on those workplans. If City Council accepts the recommendations put forth in the Cannabis Business Ordinance Revisions memorandum, there may be an opportunity for staff to complete these revisions within this fiscal year.

EVALUATION AND FOLLOW-UP

On October 28, 2022, a [memorandum was submitted](#) by Mayor Liccardo, Vice Mayor Jones, and Councilmember Davis for the Joint Meeting for the Rules and Open Government Committee titled City-Initiated General Plan Amendment for Public/Quasi-Public Land Use Designation – Defining Permanent Supportive Housing. The direction in this memorandum—if approved by the Committee and the full City Council—directly impacts the workplan of the Planning Division team that would be completing the ordinance revisions on the cannabis item. As such, if that direction is approved, it would create capacity in the Planning Division team to complete the cannabis ordinance work and bring back a draft ordinance for adoption in late spring 2023.

¹ <https://www.sanjoseca.gov/home/showpublisheddocument/89731/637995463391970000>

CLIMATE SMART SAN JOSE

The recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council agenda website for the November 1, 2022 Council meeting.

COORDINATION

This memorandum has been coordinated with the City Manager's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-007, Preliminary direction to staff and eventual action requires approval from decision-making body.

/s/
CHRIS BURTON
Director,
Planning, Building and Code Enforcement

For questions, please contact Martina Davis, Division Manager, at martina.davis@sanjoseca.gov or (408) 535-7888.