



Memorandum

TO: Community & Economic
Development (CED)
Council Subcommittee

FROM: Councilmember Matt Mahan

**SUBJECT: REVIEW OF CANNABIS
LAND USE AND
REGULATORY
PROVISIONS**

DATE: June 28, 2021

APPROVED:

RECOMMENDATION:

Adopt Staff's recommendation with the following modifications:

1. Assess allowing 10 new equity-owned, non-storefront delivery-only businesses instead of five storefront businesses as recommended in staff recommendation #6;
2. Assess the potential for a policy or a funding goal in which a certain percentage of general funds, benchmarked against projected cannabis tax revenues, may be made available and allocated towards equity-related initiatives that address the disproportionate impacts of the multi-decade "War on Drugs" on communities of color in San José, such as but not limited to San José Promise, San José Learns, San José Works, and San José Aspires; and,
3. Present these staff assessments at the July 2021 Planning Commission hearing on this matter and include the feedback from that hearing from both Commissioners and members of the public in the staff report to Council for the final vote later this year.

BACKGROUND:

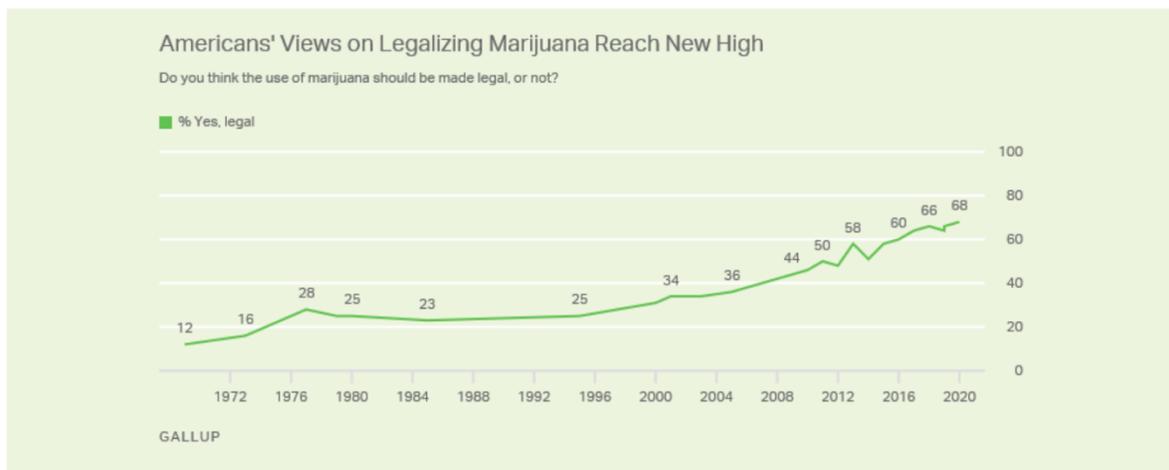
Thank you to city staff, businesses, equity advocates and members of the public who have all participated in the various community conversations leading up to the staff recommendations before this Council subcommittee. I appreciate the many well-considered staff recommendations. My recommendations above are meant to ensure that our cannabis land-use program is as equitable as possible.

In 1996, California voters passed Proposition 215, the Compassionate Use Act, making it the first state in the union to legalize marijuana for medical use. Over the next 19 years, a medical marijuana market emerged that was largely unregulated, although some local jurisdictions chose to permit and regulate certain commercial marijuana activity on their own.

In 2015, after almost two decades without regulation at the state level, California lawmakers enacted Assembly Bills 243 and 266 and Senate Bill 643, collectively known as the Medical Marijuana Regulation and Safety Act (MCRSA). These bills established a state-level licensing and regulatory framework for medical marijuana. At this same time in December of 2015, under Mayor Chuck Reed, the City of San José created its own licensing and regulatory process which resulted in the reduction of the total number of cannabis businesses down from more than one hundred thirty (130+) outlets to sixteen (16) licensed and regulated retailers under the purview of the Division of Cannabis Regulation (DCR) housed in the San José Police Department (SJPD).

Building on this framework, in 2016 voters approved Proposition 64, the Adult Use of Marijuana Act, legalizing personal use of cannabis for those 21 years of age and older.

Recent shifts in public policy and public opinion regarding cannabis are part of a broader trend, with polls finding that the vast majority of Americans accept the use of legalized cannabis (graphics below from November 2020 article titled “Support for Legal Marijuana Inches Up to New High of 68%” By Megan Brennan).



Americans' Support for Legalizing Marijuana Among Demographic Groups

Do you think the use of marijuana should be made legal, or not?

	Yes, legal %	No, not legal %
Gender		
Male	69	30
Female	66	34
Age group		
18-29	79	21
30-49	75	24
50-64	60	39
65+	55	45
Education		
Not college grad	64	36
College grad	76	24
Household income		
Less than \$40,000	67	33
\$40,000-100,000	68	31
\$100,000+	74	26

GALLUP, SEPT. 30-OCT. 15, 2020

The unequal enforcement of previous legal prohibitions on marijuana against low-income, Black and Latinx communities (despite use rates being similar across racial and ethnic lines) has been one of the driving forces behind cannabis law reform and a reason many Californians cited as a reason for their support of Proposition 64 - as it promised social justice to those harmed by the War on Drugs.

As California’s cannabis policies are implemented across the state and within local jurisdictions, as we are doing now in San José, we have a unique opportunity to acknowledge and address the unequal harms of prohibition on low-income, Black and Latinx communities. A primary strategy for repairing these inequities is to create opportunities for low- income, Black, and Latinx people to obtain an equitable stake in the legal cannabis market.

The DCR and representatives from the City Manager’s Office have met many times over the past several years with Equity Advocates including Dr. William Armaline, Director of the Human Rights Institute at San José State University. One thing that has been clear in these discussions is the complexity of the issue and that the creation of a plan that benefits a few individuals, largely ignoring the greater number of those affected by the War on Drugs, falls short of voters' aspirations for social justice under Proposition 64.

Unfortunately, in other cities, the intent of cannabis-related equity programs has not been realized in practice. Below are several quotations from recent and past articles that note some of the current equity program shortcomings in a number of California cities:

There is nothing equitable about California’s cannabis social equity program for the people that were harmed by the war on drugs. The regulators have over-regulated the cannabis industry right out of the hands of the people that brought the industry here. Their stingy application processes in local jurisdictions are breaking the people that have been broken by the war on drugs even more. The very people that spent decades advocating for legalization of cannabis,

*like myself, can't qualify for any permits because I'm not a millionaire. After running 420 College, a cannabis business-consulting firm for the last 10 years, helping people get in the cannabis industry, I cannot get in the industry myself. I keep getting disqualified because "I don't have sufficient funds."*¹

*A Los Angeles city program crafted to ensure that cannabis sales licenses go to people from communities most harmed by the war on drugs has been hailed as a kind of reckoning with historic injustice. It was designed with a lofty goal: Ensure that people affected by the government's crackdown on the illicit drug trade become business owners in this emerging industry. But the city's "social equity program" is under renewed scrutiny over whether the initiative is fulfilling its promise. The latest controversy centers around 4thMVMT, a [company founded](#) by a well-to-do businessman [who partners](#) with Black entrepreneurs to obtain cannabis licenses. The company positioned itself as one of the program's biggest winners by partnering with at least 13 of the applicants scheduled to receive temporary approval this week to start operating after meeting certain conditions. An attorney who reviewed one of 4thMVMT's partnership contracts has raised alarms over what she says are "predatory" business practices baked into the agreements.*²

*"There's been a lot of people who have been getting rich, and getting paid, benefiting off the backs of people like myself that have been affected by the War on Drugs," says Richards. Richards believes that the arduous process makes it easy for his peers to get taken advantage of — especially when it comes to finding an investor partner to cover costs. "They're preying on equity applicants, trying to give them a lump sum pay, or pay them monthly," he says. San Francisco currently only allows equity partners to apply for a cannabis permit to give equity applicants a well-deserved advantage. However, this policy also encourages San Francisco vulture investors to find equity applicants they can partner with in name, but ultimately exclude from business operations and long-term financial profits. Amber Senter is an Oakland-based cannabis activist and entrepreneur who is also concerned about these investors. "You could easily have a straw man as your equity partner," Senter says. She says these cases are frequent and easy to identify, because oftentimes vulture investors all flock to the same vulnerable candidate. "You've got equity applicants who are on 12 different applications," she says.*³

Opening a storefront retail cannabis store is expensive. Anecdotal data from recent retail storefront openings in our region puts this figure at approximately \$1,500,000. These high startup costs, almost by definition, require Equity Applicants to raise significant capital from third-parties, which increases financial risk, reduces their ownership levels, and detracts from their potential future income.

Doubling the number of licenses from the proposed five equity storefront licenses to ten equity non-storefront licenses creates more opportunities for equity-owner businesses with lower financial barriers to entry for these entrepreneurs. Equity-centered, non-storefront retail delivery companies can locate in industrial locations and pay lower rent than their storefront retail counterparts and, because they are not public facing retail establishments, need not spend significant sums on tenant improvements and front-desk staff.

¹ <https://www.fresnobee.com/opinion/readers-opinion/article252058588.html>

² <https://www.latimes.com/california/story/2020-06-23/cannabis-licenses-social-equity-4th-mvmt>

³ <https://www.sfweekly.com/culture/cannabis-culture/cannabis-equity-applicants-still-face-barriers/>

With the creation of more non-storefront businesses, we would also create the possibility of more owners and jobs, greater consumer choice, and enhanced public safety. Currently, of the sixteen (16) existing storefront retailers in San José only three are minority-owned businesses. With the creation of ten (10) delivery-only licenses, although not perfect, we would move closer to having the profile of local cannabis business owners reflect the diversity of our city. Greater consumer choice is enhanced by creating more competition in the marketplace. As for public safety, in December 2015, roughly one hundred fourteen (114) cannabis businesses ceased operations, and some pivoted to a home-based business model. This home-based business model is illegal, but according to an NBC News article from 2019, illegal sellers outnumber legal and regulated businesses in California by almost 3-to-1.⁴ Allowing ten non-storefront equity delivery companies should expand the market share of regulated sellers and reduce unregulated sales of marijuana in San José, which reduces the risk posed by untested, off-market cannabis products.

The War on Drugs' devastating impact on many communities of color in the United States demands a comprehensive investment in these communities that goes beyond equity-based ownership in the cannabis industry. In general, some of the revenues generated by the cannabis and other adjacent industries ought to be invested in creating broader economic opportunity and empowerment in the very communities most devastated by widespread drug-related incarceration.

Pueblo County in Colorado, for example, has expanded funding for college scholarships by pulling funds from its marijuana tax.⁵ We should strive to make similar, equity-aligned investments in our community in addition to expanding access to ownership in the cannabis industry. The War on Drugs was multi-decade and multi-pronged in its implementation and the social justice approach to ameliorating the damage of those policies should be equal in its scope and duration. As we look for ways to break the school-to-prison pipeline in our community, we are fortunate to have a bevy of innovative but underfunded local programs that fit the bill, including San José Promise, San José Learns, San José Works, and San José Aspires.

However, when it comes to increasing funding for these programs, we will have to be creative and flexible. Measure U was passed by the voters in 2010 and allowed the City Council to impose a business tax on marijuana businesses in San José at a rate of up to 10% of gross receipts. Measure U was passed as a general tax, meaning the revenues must go to the General Fund. Since its adoption, Measure U has generated approximately \$50 million in revenues contributed to the City's General Fund. In the most recent fiscal year, revenues to the General Fund are estimated to be \$17 million. While we cannot direct Measure U revenues to specific programs, I believe we should consider a generalized formula that, among other considerations, takes into account the growth in revenues the City enjoys thanks to the legalization of marijuana and estimated reductions in related law enforcement costs, and sets targets for explicit investments in economic opportunity and empowerment in low-income, Black and Latinx communities in San José.

⁴ <https://www.nbcnews.com/news/us-news/california-s-cannabis-black-market-has-eclipsed-its-legal-one-n1053856>

⁵ <https://www.koaa.com/news/covering-colorado/pueblo-county-gives-more-scholarship-money-than-ever-before-pulling-funds-from-marijuana-tax>

In conclusion, I ask my colleagues to support these recommendations in the spirit of not only implementing a more equitable cannabis land use policy but also beginning to make a down payment on the multi-generational debt owed to communities that unfairly bore the brunt of an ill-conceived and ineffective “war” on drug use in our county. Thank you for your consideration.