



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Councilmember Jimenez
Councilmember Torres
Councilmember Cohen
Councilmember Ortiz
Councilmember Foley

SUBJECT: SEE BELOW

DATE: June 7, 2024

Approved:

Date: 6/7/2024

SUBJECT: Approval of the 2024-2025 Operating and Capital Budgets for the City of San José and Schedule of Fees and Charges

RECOMMENDATION

1. Revise the Police Department's Cannabis Annual Fee in 2024-2025 to \$48,000 per year, per location.
2. Staff shall make appropriate reductions to General Fund revenue estimates for Fees and Charges.
3. Staff shall implement appropriate changes to the Police Department staffing given the new fee structure.
4. Have the Department of Cannabis Regulation (DCR) bring forward the following changes back to Council in Fall 2024:
 - a. Revisions to Chapter 6.88 to remove all regulations which are addressed by the State of California, without changing:
 - i. The City Manager's authority to issue registrations and regulations;
 - ii. The limitation on sales to persons under the age of 21;
 - iii. The number of cannabis businesses permitted in the city of San José.
 - b. Revisions to Chapter 6.88 to allow transfers of Notice of Completed Registration.
 - c. Revisions to Chapter 6.88 to remove requirement for fire alarms in retail only businesses.
5. Have the Department of Cannabis Regulations (DCR) bring the following items to a future PSFSS Committee:
 - a. Banning the sale of chemically synthesized hemp in the city of San José.

- b. Requiring registration of industrial hemp retailers.

BACKGROUND

San José has been a pioneer in cannabis-related land use and regulations, leading the way before the State and most local jurisdictions. While being at the forefront has its advantages, it has also led to unique policies being created to regulate a new industry.

In response to the evolving landscape of cannabis regulation, San José established the Division of Medical Marijuana Control within the Police Department in June 2016, which was later renamed the Division of Cannabis Regulation in January 2018.

This Division, which started in the City Manager’s Office with two people, was moved to the Office of the Chief of Police and increased to approximately 6 full time employees. The Division’s sole focus is the regulation of 15 registered cannabis businesses within the City – of which 14 are open.

State Law and Regulations

In June of 2017, SB94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”) was passed by the legislature and signed into law by Governor Brown. MAUCRSA incorporated many of the provisions of AUMA. MAUCRSA and its implementing regulations went into effect on January 1, 2018.

Enforcement by the Department of Cannabis Control

Initially, the State of California had three different State agencies regulating cannabis businesses within the State; however, now, all cannabis businesses are regulated by the Department of Cannabis Control (the “DCC”) under consolidated regulations found within [California Code of Regulations Title 4, Division 19](#). In 2023, the DCC ramped up its enforcement against licensed cannabis businesses by hiring additional personnel to conduct inspections, review records, etc. Thus, the DCC is already regulating San José’s cannabis businesses. See <https://cannabis.ca.gov/cannabis-laws/compliance-with-state-law/>.

Proliferation of Chemically Synthesized Hemp

The City of San José has seen a proliferation of chemically synthesized hemp being sold in purported “vape shops” and “smoke shops”.

On April 26, 2024, “Governor Newsom directed the California Department of Public Health (CDPH) and the California Department of Alcoholic Beverage Control (ABC) to issue notices addressing the sale and distribution of illegal hemp products.” See <https://www.gov.ca.gov/2024/04/26/california-takes-action-to-protect-youth-from-illegal-hemp-products/>.

Now, it is time for the City of San José to support the State’s efforts in ensuring chemical synthesized hemp is not sold in the city.

Illegal cannabis sales in California and San José are a significant issue despite the legal market. In the first four months of 2024, California's Unified Cannabis Enforcement Taskforce (UCETF) seized over \$61 million worth of illegal cannabis products, including 36,619 pounds of unlicensed cannabis and 62,135 unlicensed cannabis plants. This task force, established in 2022, has conducted numerous raids to dismantle illegal operations that undermine the legal market and pose risks to public health and safety see <https://www.gov.ca.gov/2024/05/14/california-seizes-illegal-cannabis-products-worth-61-million-since-start-of-2024/> and <https://cannabis.ca.gov/2024/04/ucetf-seizes-53m-worth-of-unlicensed-cannabis/>

Despite these efforts, the illegal market continues to thrive. Many unlicensed dispensaries operate semi-openly, often out of storefronts that disguise their true nature.

The persistence of the illegal market is partly due to high taxes and stringent regulations on legal cannabis, which make illicit products more attractive to price-sensitive consumers. In San José illegal purchases are, on average, 40% cheaper for the consumer than legal cannabis products. Additionally, only about 40% of local jurisdictions in California permit cannabis stores, leaving a significant portion of the market to unlicensed sellers.

The State's ongoing struggle to balance enforcement with support for the legal market highlights the complexities of cannabis regulation in California and mirrors issues we are having in San Jose. Efforts to crack down on illegal operations are crucial for protecting consumers and ensuring the success of licensed businesses, but the enduring presence of a robust black market indicates that more comprehensive solutions may be needed to address this multifaceted issue <https://cannabis.ca.gov/2024/04/ucetf-seizes-53m-worth-of-unlicensed-cannabis/>

When the San José Ordinances were adopted, there were no comprehensive State regulations. Even in 2018, when the State passed MAUCRSA, there were three separate sets of regulations. Now, after six years of trial and error, the State has a set of comprehensive regulations. As such, the city needs let the state be involved in regulating legal cannabis businesses.

Conclusion:

It is our sentiment that the cannabis industry should be treated like any other business entity within the city. Last year alone, the legal cannabis industry contributed upwards of \$15 million in taxes. Given the uncertain financial outlook for city finances, it is crucial that we streamline operations and support the success of this industry, ensuring the continuation and growth of this vital tax revenue stream that helps to fund crucial services and be the only legal venue for safe legal avenue for citizens to access cannabis and combat the illegal market.

As the industry evolves, it is imperative that San José evolve with it to remain competitive. For these reasons, we believe that aligning the fees with a narrower approach to oversight and regulation is the best path forward, especially given State oversight and regulations. The fees for retail are configured to be per location. With a max of two locations possible per dispensary, the total fee assessed matches staff's alternative 2. We feel this is a good compromise that allows the oversight and in-turn fees, to grow as the businesses grow into a second location.

Additionally, we feel it is important that the topic of banning the sale of chemically synthesized hemp in the city of San José as well as requiring registration of industrial hemp retailers is

conversation worth having given the impacts on our children as well as on the legal businesses' ability to remain viable.

The signers of this memorandum have not had, and will not have, any private conversation with any other member of the City Council, or that member's staff, concerning any action discussed in the memorandum, and that each signer's staff members have not had, and have been instructed not to have, any such conversation with any other member of the City Council or that member's staff.