



# Memorandum

**TO:** THE HONORABLE MAYOR &  
CITY COUNCIL

**SUBJECT:** AMENDMENT OF THE CITY'S  
POLICY ON CANNABIS

**FROM:** Councilmember Lan Diep

**DATE:** 11/13/2017

Approved

Date

11/13/17

## RECOMMENDATION

Roll up the directions outlined herein with the suggestions from the Chief of Police and the Interim Director of PBCE into a spliff of recommendations to be adopted in its entirety:

1. Allow the transfer of one's ownership of a licensed dispensary – in its entirety or by fractional share – to a new owner by sale, inheritance, or other legal means;
2. Limit any single entity from owning or having a controlling stake in no more than two licensed dispensaries within San José;
3. Require that only persons 21 years of age or older may be permitted to deliver cannabis;
4. Return to Council by the autumn of 2018 to provide an update on the impacts of the commercial cannabis program, such as revenues generated, associated illegal activities, code enforcement complaints, impacts to staff time and administrative resources;
5. Study the viability of an impact fee to counteract the adverse impacts of commercial cannabis, and the possibility of achieving the following with the revenue from such fees:
  - a. Campaigns educating minors about the dangers of cannabis;
  - b. More police staff to regulate the commercial activity of nonmedicinal cannabis and to combat the sale of marijuana from unlicensed sources;
  - c. More planning department staff to study and align San José's zoning with its general plan, as a prerequisite to considering the possibility of allowing the sale of cannabis outside of the currently designated areas.

## BACKGROUND

In November of 2016 voters approved Proposition 64, legalizing recreational-marijuana-use for adults and blazing a new chapter for the budding relationship between cannabis and the State of California. The pending decriminalization of pot statewide in 2018 is uncharted territory for municipalities and has created a haze of uncertainty as to the impacts on communities. Happily, the drafters of Prop 64 were kind and included a cure for municipal anxiety by allowing local governments to have joint-powers to regulate ganjapreneurers and to impose taxes on the growing and selling of both medical and nonmedical cheeba. We should take more than a toke

-n analysis of the possibilities before us.

The State's laws go into effect in 2018. These impending changes make the subject of cannabis more than just topical. San José is well-positioned to deal with nonmedicinal-left-handed-cigarettes as they diffuse across California because we already have regulations to deal with medicinal laughing-grass. But the time to dab in reefer-regulation is over. This council should dispense with any trepidation and concentrate our efforts to hash out a potent policy on commercial cannabis. Our policy should not be a blunt instrument but rather a high-quality model for other cities to clone. Through smart regulations and taxes, we can weed out bad actors and get our general fund revenues high.

## ARGUMENT

Passage of Prop 64 lit a fire under local governments in California, forcing them to collectively ponder how to best regulate the legitimate sale of sticky icky as the industry steps out of the dank shadows of the black market and into the mainstream. Commercial cannabis is an industry that has the potential to replenish the drained bowl that is our general fund. While there are many strains of thought on the morality of marijuana, we should recognize that commercial cannabis is a business enterprise and treat it as such, taking into consideration its undesirable effects.

The profit motive lies at the heart of microeconomic theory. Businesses exist to make a profit, and the ability to sell one's business for profit or to stem losses from an unsuccessful venture are key. Yet San José's rules do not allow transfer of ownership of a cannabis license through sale, devise, or other legal means. Recognizing that *fail fast* is a mantra of the Silicon Valley, San José should allow cannabis licenses to change ownership so that entrepreneurs may exit the market.

Because San José only allows 16 licenses to legally sell wacky tabacky within city limits, allowing transfer of ownership may result in undesirable monopolies. But the proverbial ounce-of-prevention can be applied while still respecting free market principles, if we limit a single entity from owning a controlling stake in more than two licensed dispensaries in San José. This will guarantee that there will always be at least eight distinct competitors in the market.

Finally, this council should not Bogart and squander this opportunity. As soon as the commercial cannabis industry inhales its first legitimate breaths, it will become increasingly difficult to backroll to more stringent rules. Thus, the Council should study and impose fees on the industry as soon as possible to counter resulting social harms. These fees should be used to fund campaigns educating minors about the dangers of cannabis use before the age of 21; to fund more police to regulate the legitimate sale of the green, and to combat the unauthorized sale of it; and to fund the planning department to study the possibility of expanding the zones where commercial cannabis might be sold, by first aligning our city's zoning with the general plan.

## CONCLUSION

The Council should satiate its hunger for sound public policy by adopting this memo by at least a five-eighths margin.