

Cannabis Ordinance Update, August 2021 – PP21-002

1. Hello and thank you for taking the time to view our presentation on proposed changes to regulations that dictate where and how many cannabis businesses may locate within the city of San José. My name is Alex Hughes, and I am a Planner with the Planning, Building, and Code Enforcement department of San José, and we are working closely with the San José Police Department—the lead agency on this policy work
2. This presentation will cover an overview of where we are in the update process, I will explain the components of cannabis regulation, the current regulations, the proposed changes, and finally, I'll go over the next steps and how you can contact city staff with questions and comments.
3. First, let's talk about how this project started and where we are now. Back in March 2019 the City Council held their annual priority session where they directed staff to review and propose an update to the city's cannabis regulations. They specifically directed evaluating an increase in the number of cannabis businesses allowed in the city, revising the zoning ordinance so that cannabis retail businesses can locate in commercial zones, and other changes that we will discuss in this presentation.

Although this work was slowed due to the pandemic, throughout 2019 and 2020 staff researched, evaluated, and formed an initial recommendation on proposed changes. A survey to get public input was posted for a month in March 2021. This survey generated a total of approximately 950 responses and was available in three different languages. Staff also held a virtual community meeting in April 2021 to present potential changes gain additional input.

In that same month staff's initial draft proposal was presented to the Community and Economic Development Committee of the City Council for further direction. The Committee directed several changes from staff's initial proposal, which were then brought back to the Committee for review in June 2021. The committee gave more direction about the proposed changes and instructed staff to conduct additional outreach and then return to the full City Council with a draft ordinance for a decision. This presentation is part of that additional outreach.

4. Now that you are more familiar with where we are in the process I'm going to talk briefly about the components of cannabis regulation because it's important to know how San José currently regulates cannabis businesses so that you can better understand the proposed changes. There are four major components of cannabis regulation which are:
 - State Regulations – These set the minimum requirements necessary for operating in the State of California. While San José can't be less restrictive than the State it can be and is in some respects, more restrictive. You can find out more information regarding what these regulations are on our website under the Cannabis Business Ordinance Update section.
 - The Municipal Code – The municipal code, often called muni-code for short, addresses how cannabis businesses may operate in the city;
 - The City Manager regulations – address how many cannabis businesses may open in the city.
 - Last is the Zoning Ordinance - This controls where cannabis businesses can locate within the city.

5. Of the four components of cannabis regulation there are three areas the City is looking to change. These are the Municipal Code, City Manager Regulations, and the Zoning Ordinance.
6. The Municipal Code, Specifically Title 6 of the municipal code, sets location and operational conditions for cannabis businesses. For example: only one dispensary is allowed per registered business, there are public safety requirements like security guards and video surveillance, and regulation that outlines what "good neighbor" requirements are—like trash clean up and no on-site consumption of cannabis or cannabis products. This section is also responsible for creating the Equity Assistance Program
7. The change here is limited to adding definitions for Cannabis Storefront and Delivery Only uses and defining what an Equity Applicant is to help facilitate the upcoming Equity Applicant Program launch.
8. The City Manager Regulations determine when Cannabis registration for new applicants is open or closed. It is currently closed for dispensary and cultivation businesses, but it is open for manufacturing, distribution, and testing labs. It also prohibits delivery only uses and requires all businesses to obtain a Notice of Completed Registration before operation (8).
9. The changes to the City Managers Regulations include allowing delivery only cannabis uses within the city, and opening registration for 10 new cannabis equity applicants for either retail storefront or delivery only locations. Up to five of these ten new locations could be retail storefronts. The draft proposal also would allow the sixteen existing businesses to open a second retail storefront.
10. The zoning ordinance determines where cannabis businesses may locate. For example, all cannabis uses are limited to Industrial Zoning Districts and they may not open or operate in Enterprise Zones which are the North San José Area Development Policy, Edenvale Area Development Policy area, and the International Business Park. The zoning ordinance also prevents cannabis uses from locating within certain distances from sensitive uses, such as schools and parks. This section also requires a Zoning Verification Certificate which is a required component for a Cannabis Business to register with the City. The Zoning Verification Certificate is the step in the registration process where the city staff make sure a cannabis business will locate in a place that is consistent with the zoning ordinance restrictions.
11. If you look at where cannabis businesses are located today it's clear that the zoning ordinance created a concentration of these businesses in two council districts—district 3 and 7. These districts have between them have roughly 85% of all sites that meet the current zoning ordinance standards, and are home to 14 out of the 16 cannabis businesses. One of the goals of this policy update is to diversify where cannabis businesses may potentially locate throughout the city.

12. Most of the proposed changes we are presenting to you are in the zoning ordinance. Changes include allowing Retail Cannabis storefronts in commercial zoning districts and disallowing any new retail cannabis storefront from opening in industrial zoning districts, updating distance criteria from sensitive uses, and allowing a zoning verification certificate to expire if a holder of that certificate doesn't take steps to implement a cannabis use.
13. Let's talk about sensitive uses. Currently, cannabis dispensaries and cultivation uses are prohibited from opening
 - within 1000 feet of a public or private preschools, elementary or secondary schools, child day care centers, community or recreation centers, parks, or libraries
 - 500 feet from substance abuse rehabilitation centers, and emergency residential shelters
 - 150 feet from religious assembly, adult day care centers, and any residential use
 - 50 feet from another dispensaryCannabis uses now are restricted from opening in the North San José Area Development Policy boundary, the Edenvale Area Development Policy Boundary, and the International Business Park. Also, no cannabis uses may locate on the ground floor in the Downtown Primary Commercial Zoning District or on a parcel or parcels totaling over 40 acres in size
14. This proposal for changes to distance requirements to sensitive receptors reflects the most recent Community and Economic Development Committee direction. One thing that would change adding different distance requirements to sensitive uses for properties that are located in Downtown or an Urban Village. These different distance requirements are because downtown and urban villages are denser mixed-use areas where everything is in closer proximity.

For everywhere in the city outside of downtown and urban villages the distance requirements to sensitive uses would be largely kept the same. This proposal would add youth centers to the list of sensitive uses that must be at least 1000 feet from a cannabis retail use. The two proposed changes are changing the way we measure the required distance between a cannabis retail use and a residential use and to increase it from 150 feet to 300 feet. Also, the distance requirement between cannabis retail uses would increase from 50 feet to 1000 feet.

For the Downtown Area, which is defined by the General Plan, much of the ordinance will align with the minimum distances required by the State with a few tweaks. The state requires 600 feet from schools, child day care centers, and youth centers, but for Downtown, this proposal would increase the requirement from schools to 1,000 ft. There is no proposed distance required from residential uses downtown, and the distance required from another dispensary is reduced to 500 ft from the 1,000 ft required outside of Downtown.

Urban Villages, also defined by the General Plan, would be similar to downtown, but all of the state mandated distances would be increased from 600 feet to 1000 feet. Like downtown, no distance to residential uses would be required.

Throughout the entire city 500 feet distance would be required from a substance abuse rehabilitation center and an emergency residential shelter.

Distances are measured for all sensitive uses—except residential ones—from the closest property line of the sensitive use to nearest building or portion of a building containing a cannabis business. I will cover how the distance measurement from residential uses would change in upcoming slides.

The restriction from opening on a parcel of over 40 acres in size would remain.

One important change is that cannabis retail businesses would not be allowed to open in areas of the city that are in a Police Beat which reports 20% above the City average crime rate, with downtown and urban villages being excluded from this restriction.

15. Here is a map of the properties where retail/dispensaries and delivery only businesses could potentially locate based on the proposed criteria I just explained. Our research found close to 1,400 potentially eligible sites for retail storefronts and approximately 1,300 for delivery only businesses.

It's important to note that this analysis is just a snapshot in time based on the best available information we have at this time. Also, just because a site is potentially eligible based on the proposed zoning criteria it does not mean the site is available or suitable for a cannabis business.

16. Now, let's go through some examples of how these requirements would be applied to a real property in San José, comparing the current regulations and the proposed ones. It's important to know that each of these examples are for illustrative purposes only and there are no actual cannabis uses being proposed at these locations

17. Our first example is a commercial building on 96 South 1st Street

18. Here is what the building looks like. It might be familiar to you

19. Based on the current distance requirement of 1,000-feet from a cannabis use to a daycare, library, park, or community center, this property would not be eligible.

20. Based on the proposed reduced distance requirements this property would become eligible.

21. However, if a cannabis use were to open here no other cannabis use could locate within 500 feet, which is illustrated by this darker orange circle.

22. This second example will focus on the how the distance requirement for cannabis retail located outside of downtown would change based on the latest proposal

23. This example is a commercial building on 1641 West San Carlos street. It's typical of a commercial area in San José where the commercial businesses front a major street and there is a residential neighborhood behind it.

24. This is a one story commercial strip mall with parking in the front.
25. This site is far enough away from sensitive uses based on both the current and draft criteria, with one exception....
26. Which is the required distance to residential uses, which are depicted in yellow on this slide. Today, 150 is required between a cannabis use and a residential property as is measured from the parcel boundary of the residential use to the parcel boundary of the cannabis use.
27. This example shows that the distance between residential and the example location is 80 ft, so it would not qualify based on the regulations today.
28. The proposed changes, though, would increase the distance from residential to 300 ft but will change the method of measurement. Instead of being a parcel-to-parcel measurement the proposal would use a pedestrian path of travel. A pedestrian path of travel is shown here in orange. This type of measurement looks at how a pedestrian would walk, unobstructed, by means of which the use may be approached, entered, and exited, where open to the public. In this example a pedestrian could walk from the corner of the residence shown along the sidewalk and through the parking lot to the front of the business. The total distance is 390 feet which would meet the distance requirements under the proposed ordinance update and would be sufficient in this example for a possible cannabis location
29. This image helps to illustrate why a pedestrian path of travel is being proposed. The sound wall between the businesses and residences offer no interfacing opportunity—meaning that if a person wanted to visit the location they would most likely have to go around this wall—whereas the parcel-to-parcel measurement now ignores the fact this wall exists. Likewise, the only entrance available to the public is in the front of the building and all entrances and exits are monitored.
30. If you would like to know more about possible cannabis locations based on the criteria and examples provided please visit the link embedded in this slide which can be found on our Cannabis Ordinance Update page. You can find these slides and a virtual map by visiting SanJoseCA.gov and searching for Cannabis Business Ordinance Update.
31. So now that you know about how the city is proposing to regulate where a cannabis business can open, let's talk about the process for opening a cannabis business. When an applicant feels that a cannabis business location qualifies they begin their process by filing an application with the San José Police Department's Division of Cannabis Regulation. This application includes things like fingerprinting and background checks, it requires at minimum a Business Plan, a Security Plan—which highlights how they will meet the municipal standards such as the types of security systems in place, where the security guard will be posted, and how identification will be conducted—a management plan, inventory control plan, and quality control plan. They also need to apply for and receive a zoning verification letter showing that they meet all zoning ordinance standards for the

site. The zoning code verification letter includes an on-site visit where staff survey the surrounding businesses to ensure nothing is missed. They also need to pass a site inspection and apply for a state license after receiving a notice of completed registration. Both are required before operation at any location. It is important to note here, that there is no public hearing process required for opening a cannabis business.

34. I will end this presentation by talking about the next steps and how you can ask questions and give us comments. The next steps in this process is to finish drafting the updates and refer the draft ordinance to the Airport Land Use Commission and Planning Commission for a recommendation, and then the City Council for a decision. We hope to have this at the Airport Land Use Commission at their meeting in late September, the Planning Commission in October, and the City Council in November, however, these dates are subject to change. You can check the website for status updates.

35. We are also in the process of studying the potential environmental impacts from these proposed policy changes as required by the California Environmental Quality Act. The environmental review will consist of what is called an Initial Study which will provide an analysis of potential impacts in a variety of areas, such as air quality, odor, and noise.

36. This document will posted online and available for public review and comment for a period of 20 days prior to the Planning Commission meeting. You can find this posted on our website for review, and you can submit comments to us.

37 For questions and comments please email the Division Manager for the Division of Cannabis Regulation, Wendy Sollazzi, at Wendy.Sollazzi@SanJoseCa.gov or myself, Planner with Planning, Building, and Code Enforcement, Alexandre Hughes, at Alexandre.Hughes@SanJoseCA.gov

Thank you so much for your time and I look forward to hearing back from you.