



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Toni J. Taber, CMC
City Clerk

SUBJECT: SEE BELOW

DATE: May 14, 2024

SUBJECT: Cannabis Regulation of Tobacco Retailers Status Report

Recommendation

As recommended by the Public Safety, Finance and Strategic Support Committee on April 18, 2024, accept the status report on the possibility of expanding the San José Police Department Division of Cannabis Regulation's responsibilities to include regulating licensed tobacco retailers.

CEQA: Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action. (Police/Planning, Building and Code Enforcement)

[Public Safety, Finance and Strategic Support Committee referral – 4/18/2024 Item (d)3]



Memorandum

TO: PUBLIC SAFETY, FINANCE AND
STRATEGIC SUPPORT COMMITTEE

FROM: Paul Joseph
Christopher Burton

**SUBJECT: CANNABIS REGULATION OF
TOBACCO RETAILERS STATUS
REPORT**

DATE: April 4, 2024

Approved

Date

4/9/2024

RECOMMENDATION

Accept the status report on the possibility of expanding the San José Police Department Division of Cannabis Regulation's responsibilities to include regulating licensed tobacco retailers.

BACKGROUND

Based on the Public Safety, Finance, and Strategic Support Committee's direction on October 19, 2023,¹ staff is providing an update on the following topic:

- The possibility of expanding the scope of the Division of Cannabis Regulation to include vape and smoke shops.

ANALYSIS

As an evolving issue that requires multiple city department efforts, it is important that staff consider the scope of the problem, enforcement tools and resources already in place, constraints, and additional enforcement tools and resources that may be required to implement a successful strategy to address vape and smoke shops.

¹ October 19, 2023 Public Safety, Finance, and Strategic Support Committee Meeting, Item (d)3. CC 23-221
[Memorandum from Jimenez 10192023.pdf \(legistar.com\)](https://sanjose.legistar.com/Memorandum%20from%20Jimenez%2010192023.pdf)
<https://sanjose.legistar.com/View.ashx?M=F&ID=12383993&GUID=EEC9F294-5869-4CB6-813E-CE7AFB092CB2>

Scope of the Problem

In recent months, staff has received reports from various stakeholders regarding concerns about illegal products being sold, such as cannabis, cannabis-adjacent or cannabis-like products, mushrooms, and other substances, at vape and smoke shops or other businesses throughout the city. In addition, Code Enforcement staff has observed cannabis-adjacent, cannabis-like, and mushroom products being offered for sale in some Tobacco Retail License businesses and has received several complaints reporting illegal cannabis products for sale at smoke shops. Furthermore, the Division of Cannabis Regulation staff recently referred a report of a Tobacco Retail License business selling cannabis to a minor to an enforcement unit within the Police Department for further investigation and enforcement.

Current Regulations and Enforcement

Division of Cannabis Regulation

The Division of Cannabis Regulation (DCR) is responsible for performing the day-to-day regulation of the registered cannabis businesses, including conducting inspections and taking civil action against businesses if they are not in compliance with the cannabis regulatory program regulations. San José's cannabis regulation staffing is based on regulatory and enforcement operations related to the registered cannabis businesses; registered businesses pay the regulatory program costs through various fees.

As currently structured, DCR staff is entirely funded through fees that allow for full-cost recovery. This means that staff are unable to perform tasks not associated with the cannabis regulatory program unless either (1) General Fund resources were made available or (2) new cost recovery fees were imposed to pay for such tasks.

Code Enforcement Division

Cannabis Regulation

With regards to registered cannabis regulation, Code Enforcement staff conduct proactive inspections for regulatory compliance, meet with business representatives, issue administrative citations and/or compliance orders to non-compliant businesses, and appear before administrative bodies and in court to support the City in its enforcement actions. Code Enforcement staff are also responsible for responding to complaints from the public involving cannabis-related municipal code violations such as illegally operating cannabis businesses, odor, or personal cultivation. In fiscal year 2022-2023, there were 31 complaints regarding cannabis. Currently, there are 51 open cannabis cases.

Tobacco Retail License Program

State law allows local jurisdictions to develop and implement a Tobacco Retail License (TRL) program. San José Municipal Code (SJMC) Section 6.87 prohibits retailers from engaging in the sale of tobacco products and paraphernalia without first obtaining and maintaining a valid tobacco retail license. The regulatory system specified in Ordinance 28875 became effective on February 11, 2011. On September 28, 2021, the City Council adopted the following amendments to the Tobacco Retail License Ordinance²:

- Prohibit the sale of flavored tobacco and e-cigarettes, including menthol-flavored products beginning July 1, 2022;
- Prohibit new tobacco retailers within 500 feet of another tobacco retailer and within 1,000 feet of a youth-sensitive receptor (effective November 19, 2021); and
- Remove current Tobacco Retail License exemptions for adults-only retailers (effective November 19, 2021).

Like the Division of Cannabis Regulation, Code Enforcement's TRL compliance program is fully funded by cost recovery fees.

The City of San José Tobacco Retail License Ordinance and related TRL program are designed to encourage the responsible sale of tobacco products and discourage violation of tobacco-related laws. San José requires that positive ID be shown for all persons purchasing tobacco products. If a retailer is found selling tobacco products to persons under age 21, they will be fined \$2,500 for each violation. For repeated violations, the City may revoke the retailer's Tobacco Retail License, and the retailer may no longer be able to legally sell tobacco products.

To ensure regulatory compliance, the TRL program conducts a minimum of one proactive inspection of each business annually and responds to complaints from the public regarding unpermitted businesses and operations. In fiscal year 2022-2023, staff completed 457 required proactive annual inspections, responded to 20 complaints, canceled 28 TRLs, and issued 33 citations. The TRL program also reconciles the TRL program roster with State Licensed Tobacco retailers each year to ensure the program is capturing all businesses subject to the TRL Ordinance. When a business is found to be selling tobacco products without a TRL, staff proceeds with enforcement to ensure either a license is obtained, if eligible, or the business ceases tobacco product sales.

Sales of cannabis or cannabis-related products are not administrative violations of the City's TRL Ordinance; rather, they are treated separately under other City Ordinances as appropriate.

² September 28, 2021 City Council Meeting, Item 7.1, [City of San José - File #: 21-2110 \(legistar.com\)](https://sanjose.legistar.com/legislationdetail.aspx?ID=5136662&GUID=DCB57F22-3735-45FA-82EF-C230E6663FEA&Options=ID|Text|&Search=tobacco)
<https://sanjose.legistar.com/legislationdetail.aspx?ID=5136662&GUID=DCB57F22-3735-45FA-82EF-C230E6663FEA&Options=ID|Text|&Search=tobacco>

Licensed Tobacco Retailers in San Jose

Any business that sells tobacco products is required to obtain City and State tobacco retail licenses. There are approximately 580 TRL holders in San José. There may be additional businesses commonly known as vape or smoke shops that may not be required to have a TRL if they don't sell tobacco products. If there are complaints associated with vape and/or smoke shops selling flavored tobacco, cannabis, or other illegal products, Code Enforcement and Police Department staff investigate as resources and competing priorities allow. It is important to note that each department must inspect and enforce within the bounds of its authority, with Code Enforcement addressing administrative violations and the Police Department addressing criminal activity.

Current Resources

State Department of Justice Grant

In addition to the current inspection and enforcement model, Code Enforcement received State Department of Justice grant funding for enforcement administered by the County of Santa Clara Public Health Department (PHD). Staff worked in partnership with the Santa Clara County PHD to reestablish a youth decoy program to enforce laws prohibiting the sale of tobacco products to minors. In fiscal year 2022-2023, staff conducted 92 decoy operations resulting in 20 citations. While the youth decoy program is currently on hold due to a lack of available decoys, the TRL program is considering alternatives such as partnering with the Police Department's Explorer Cadet program to conduct decoy operations. Staff is also pursuing enforcement to revoke licenses for repeat offenders and is continuing inspection and enforcement in accordance with program performance measures and the SJMC.

Reporting a Complaint

Tobacco-Related Issues

The Office of Youth Tobacco Enforcement (OYTE) investigates flavored tobacco and sales to minors. To report illegal tobacco sales to minors call 1-800-5-ASK-4-ID (800-527-5443). For more information on OYTE click [Office of Youth Tobacco Enforcement \(ca.gov\)](https://www.cdph.ca.gov/Programs/CEH/DFDCS/Pages/OfficeofYouthTobaccoEnforcement.aspx)³ or email OYTE@cdph.gov.

Illegal Drug Sales

If you witness illegal sales of fentanyl, mushrooms, or other illegal substances, call 9-1-1 or 408-277-8911.

If you suspect (but don't see) drug dealing, call (408) 277-8900 or [submit a tip online](#). Under the "Topic" dropdown, be sure that "Drug Enforcement/Narcotics" is selected.

³ <https://www.cdph.ca.gov/Programs/CEH/DFDCS/Pages/OfficeofYouthTobaccoEnforcement.aspx>

Code Violations

To file a complaint about a vape or smoke shop, tobacco retailer, or unpermitted cannabis operations or activity, fill out a form on the Code Enforcement website.

- <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/code-enforcement/request-service-check-status/code-service-request-form>
- Email: CodeComplaints@sanjoseca.gov
- Phone: 408-535-7770

Constraints

As mentioned above, DCR staff is entirely funded through cannabis program fees that allow for full-cost recovery meaning staff are unable to perform tasks not associated with the cannabis regulatory program unless either (1) General Fund resources were made available or (2) new cost recovery fees were imposed to pay for such tasks. Additionally, on March 19, 2024, the City Council directed staff to analyze and present updated Cannabis Regulatory fees through the 2024-2025 Proposed Fees and Charges which would potentially significantly reduce the Cannabis Annual Operating Fee by 78%. The potential reduction in the Cannabis Regulatory fees will have significant staffing reductions that will be necessary to accomplish the City Council direction. Expanding the scope of the Division to include regulation of vape and smoke shops would require new resources to fund the associated activities.

Possible New Regulatory Permit Process

Similar to the regulatory framework for Off-sale of Alcohol, staff is exploring an amendment to Title 20 of the SJMC that would define and establish vape and smoke shops as an enumerated use within the land use tables for zoning districts and would require a use permit to operate (specifically: a Conditional Use Permit). By establishing permit requirements, the City would be able to condition the use to ensure vape and smoke shop businesses are operating in a manner that does not adversely affect the community and surrounding land uses. The permit requirement would also allow the City to quickly take enforcement action to cease businesses operating without the required permits. Should staff be directed to move forward with this option, staff anticipates it will be able to incorporate the amendment as part of the next regular zoning update, expected to occur by the end of the calendar year.

Next steps

As noted above, the Division of Cannabis Regulation is unable to expand its current scope to include regulation of vape and smoke shops without the addition of staffing and resources. Should the City Council direct the Division of Cannabis Regulation to adopt a program to regulate vape and smoke shops, staff will need time to evaluate and develop program scope, objectives, staffing, resources, budget, and timeline for implementation on a citywide scale in

context of other city priorities and efforts. Staff anticipates staffing, resources, and funding to support a new program would be incorporated into a future budget phase.

Code Enforcement will continue to conduct annual proactive inspections of TRL businesses and regulatory compliance inspections of registered cannabis businesses. Staff will also continue to respond to complaints from the public regarding illegal cannabis activity and TRL business operations. Staff will continue to refer any criminal activity observed to the Police Department for follow-up. Staff will continue to conduct youth decoy operations as able in alignment with current grant requirements. Staff will explore an amendment to the grant in coordination with the County of Santa Clara PHD to expand the use of funds to allow partnership with the Police Department Explorer Cadet program to serve as decoys and/or use funds for Police Department enforcement efforts.

Should City Council direct staff to explore a city-initiated zoning ordinance amendment to add vape and smoke shops as an enumerated use requiring a conditional use permit, staff will develop a work plan, including research, benchmarking, outreach, etc., to develop an ordinance amendment as part of the regular zoning code update expected to occur by the end of the 2024 calendar year.

EVALUATION AND FOLLOW-UP

Staff will continue to provide the City Council with updates via informational memoranda regarding the progress of the City's cannabis regulatory program, changes in state law, and other developments potentially impacting the regulatory landscape.

Staff will also continue to provide an annual status report of the Tobacco Retail License Program at the Neighborhood Services and Education Committee as part of the 2024-2025 Committee work plan.

COST SUMMARY/IMPLICATIONS

Should the City Council direct the Division of Cannabis Regulation to adopt a program to regulate vape and smoke shops, staff will evaluate and develop program scope, objectives, staffing, resources, budget, and timeline for implementation on a citywide scale in the context of other city priorities and efforts. Staff anticipates staffing, resources, and funding to support a new program would be incorporated in the development of a future budget phase.

April 4, 2024

Subject: Cannabis Regulation of Tobacco Retailers Status Report

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COORDINATION

This memorandum was coordinated with the City Attorney's Office and the City Manager's Budget Office.

PUBLIC OUTREACH

This memorandum will be posted on the City's Agenda website for the Public Safety, Finance and Strategic Support Committee Agenda for the April 18, 2024 Committee meeting.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, Public Project File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.



PAUL JOSEPH
Acting Chief of Police

/s/

CHRISTOPHER BURTON
Director, Planning, Building and
Code Enforcement

For questions regarding cannabis regulations and operations, please contact Wendy Sollazzi, Division Manager, Division of Cannabis Regulation, San José Police Department, at wendy.sollazzi@sanjoseca.gov or (408) 537-9890.

For questions regarding code enforcement, please contact Rachel Roberts, Deputy Director, Planning, Building and Code Enforcement, at rachel.roberts@sanjoseca.gov or (408) 535-7719.