

4.1 Amendment to Title 6 of the San José Municipal Code Related to Cannabis Regulations.

Recommendation:

Approve an ordinance amending Chapter 6.88 of Title 6 (Business Licenses and Regulation) of the San José Municipal Code for the Cannabis Regulatory Program to add a new Section 6.88.385 concerning payment plans and registration requirements.

CEQA: Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment. (Police/Finance)



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Anthony Mata
Rick Bruneau

SUBJECT: SEE BELOW

DATE: December 18, 2023

Approved

Date

12/18/23

**SUBJECT: AMENDMENT TO TITLE 6 OF THE SAN JOSE MUNICIPAL CODE
RELATED TO CANNABIS REGULATIONS**

RECOMMENDATION

Approve an ordinance amending Chapter 6.88 of Title 6 (Business Licenses and Regulation) of the San José Municipal Code for the Cannabis Regulatory Program to add a new Section 6.88.385 concerning payment plans and registration requirements.

SUMMARY AND OUTCOME

Adopting the changes will allow an executed payment plan to satisfy the registration requirement within Chapter 6.88 of Title 6 of the San José Municipal Code for Medical and Non-medical Cannabis.

BACKGROUND

Per San José Municipal Code Section 6.88.300, Registration Required, a cannabis business seeking registration is required to (1) provide evidence of payment of any applicable taxes due to the City pursuant to San José Municipal Code Chapter 4.66, Cannabis Business Tax, and (2) have no outstanding compliance orders under San José Municipal Code Chapter 1.14, Administrative Remedies. Additionally, San José Municipal Code Section 6.88.330, Registration Process, provides that a cannabis business may be disqualified from registration if the business or any one of its owners or managers owns or has owned or operated a cannabis business with any unpaid liability due to the City. If a registered cannabis business registration is not renewed or the registration is revoked, the cannabis business will not be allowed to re-register later. Under the current San José Municipal Code, only cannabis businesses that have been continuously registered can apply for registration.

ANALYSIS

Staff recommends amending the San José Municipal Code to allow more flexibility and discretion in the cannabis business registration process. The two noteworthy amendments include (1) the addition of an agreed upon Payment Plan Agreement as evidence of payment under San José Municipal Code Section 6.88.300 and (2) the ability for a cannabis business to renew registration after a lapse in registration. Both changes will be codified in the San José Municipal Code under a new section 6.88.385.

Payment Plan Agreement

The first change allows the Director of Finance to negotiate a payment plan with a cannabis business if the business has a tax or fee liability it is unable to satisfy prior to the end of the current registration period. If a business entered into a payment plan with the City and is current in its payment obligations, this will be considered evidence of payment of applicable taxes due to the City under San José Municipal Code Section 6.88.300, Registration Required.

Payments in a Payment Plan Agreement are typically made in monthly installments. Oftentimes, the first payment shall be due no later than 30 days from the date of execution of the agreement. The remaining payments are usually paid every 30 days thereafter until paid in full, or as set forth in the Payment Plan Agreement. Payment plans customarily include the stipulation that the plan participant remain current on their regular tax remittances and fee obligations. Failure to maintain and meet the obligations under the payment plan will be considered a breach of the agreement. Should a payment plan participant become delinquent or fail to meet the terms of the Payment Plan Agreement, the business's operations may be suspended and/or the registration may be deemed null and void.

Renew Registration After Lapse in Registration

Currently, a business with an unsatisfied tax or fee liability prior to the end of the current registration period is not eligible to renew its cannabis business registration. Additionally, since only cannabis businesses that have been continuously registered are eligible for renewal, any lapse in registration due to unpaid taxes or fees effectively shuts the business out of the San José market. The second recommended amendment allows a business to re-register after entering a payment plan for the Cannabis Business Tax (and other debts) owed to the City should there be a lapse in registration.

Future Cannabis Regulatory Program Review

Additionally, based on the Public Safety, Finance, and Strategic Support Committee's direction on October 19, 2023, staff is scheduled to report back to the Public Safety, Finance, and Strategic Support Committee on February 15, 2024 with an update on the following topics:

1. The possibility of aligning San José's regulations with state regulations, including but not limited to, Identification Badge Requirements while maintaining the age of purchase at 21 years in San José; and
2. Comparing San José's annual fees for cannabis operations with other jurisdictions.

Staff is also scheduled to review and discuss the possibility of expanding the San José Police Department Division of Cannabis Regulation's responsibilities to include regulating licensed tobacco retailers at the Public Safety, Finance, and Strategic Support Committee meeting on April 18, 2024.

EVALUATION AND FOLLOW-UP

Staff has consistently provided 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.

Approval of this recommendation will be the first reading of the ordinance. The ordinance will return to City Council for its second reading and approval on January 23, 2024.

COST SUMMARY/IMPLICATIONS

Cannabis regulation staffing is based on regulatory and enforcement operations related to the 16 registered cannabis businesses. The costs for the program are paid by the registered businesses in their annual operation fee and other fees for service. Currently, the Cannabis Business Tax rate for retail including delivery is 10%, cultivation is 4%, manufacturing is 3%, distribution is 2%, and laboratory testing is 0%. The 2023-2024 Adopted Budget estimate for Cannabis Business Tax receipts is \$15.0 million. The recommended ordinance changes are not anticipated to have a significant budgetary impact.

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 Council Agenda website for the January 9, 2024 City Council meeting.

HONORABLE MAYOR AND CITY COUNCIL

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COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a 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.



ANTHONY MATA
Chief of Police

/s/

RICK BRUNEAU
Director of Finance

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

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE TO ADD
SECTION 6.88.385 TO CHAPTER 6.88 OF TITLE 6 OF THE
SAN JOSE MUNICIPAL CODE TO AUTHORIZE PAYMENT
PLANS, AND MAKE OTHER TECHNICAL, NON-
SUBSTANTIVE OR FORMATTING CHANGES**

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the provisions of this Ordinance do not constitute a project under File No. PP17-008; and

WHEREAS, the City Council is the decision-making body for this proposed Ordinance; and

WHEREAS, the City Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this proposed Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. A new section is added to Part 3 of Chapter 6.88 of Title 6 of the San José Municipal Code, to be numbered, entitled and to read as follows:

6.88.385 Payment Plans.

- A. The director of finance is hereby authorized to enter into a payment plan for the payment of outstanding cannabis business taxes and/or fees if the director of

finance determines that entering into a payment plan is in the best interest of the City.

- B. A payment plan approved by the director of finance and executed by the Cannabis Business and director of finance for the payment of cannabis business taxes and/or fees shall meet the requirement for registration under Subsection 6.88.300.G. of providing a cannabis business tax return evidencing payment of any applicable taxes due to the City and / or fees due to the City under this Chapter.
- C. If a Cannabis Business is not eligible for a renewal of its registration based solely on its inability to provide a cannabis business tax return evidencing payment of any applicable taxes due to the City as required under Subsection 6.88.300.G., and/or inability to provide evidence showing that all fees due the City under this Chapter have been timely paid, but a payment plan is later approved by the director of finance and executed by the Cannabis Business and director of finance, then the city manager is hereby authorized to issue a renewal of the Cannabis Business's registration and date the registration such as to effectuate no lapse in the registration.
- D. If the Cannabis Business fails to comply with the terms and conditions of the payment plan, then the registration for the Cannabis Business shall be null and void, and all outstanding amounts owed the City shall be immediately due and payable.

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PASSED FOR PUBLICATION of title this _____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk