

4.1 Cannabis Business Regulations and Annual Operating Fee Comparisons.

Recommendation:

As recommended by the Public Safety, Finance and Strategic Support Committee on February 15, 2024, accept the report on how San José's cannabis regulations compare to State of California regulations and how San José's cannabis business annual operating fee compares to other jurisdictions.

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

[Public Safety, Finance and Strategic Support Committee 2/15/2024 – Item (d)5]

[Deferred from 3/12/2024 – Item 4.1 (24-73508)]



COUNCIL AGENDA: 3/19/2024

ITEM: 4.1

FILE NO: 24-73508-01

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Toni J. Taber, CMC
City Clerk

SUBJECT: SEE BELOW

DATE: March 19, 2024

SUBJECT: Cannabis Business Regulations and Annual Operating Fee Comparisons

Recommendation

As recommended by the Public Safety, Finance and Strategic Support Committee on February 15, 2023, accept the report on how San José's cannabis regulations compare to State of California regulations and how San José's cannabis business annual operating fee compares to other jurisdictions.

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[Public Safety, Finance and Strategic Support Committee 2/15/24 – Item (d)5]

[Deferred from 3/12/2024 - Item 4.1 (24-73508)]



Memorandum

TO: PUBLIC SAFETY, FINANCE AND
STRATEGIC SUPPORT COMMITTEE

FROM: Anthony Mata

SUBJECT: SEE BELOW

DATE: January 31, 2024

Approved

Date

2/6/2024

**SUBJECT: CANNABIS BUSINESS REGULATIONS AND ANNUAL OPERATING FEE
COMPARISONS**

RECOMMENDATION

Accept the report on how San José's cannabis regulations compare to State of California regulations and how San José's cannabis business annual operating fee compares to other jurisdictions.

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 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.

ANALYSIS

The City of San José's Cannabis Regulations were originally approved in July 2014, making the City one of the first in the State of California (State) to develop this type of program. Since 2015, 16 cannabis businesses successfully registered and have been operating in the City.² The State

¹ October 19, 2023 Public Safety, Finance and Strategic Support Committee Meeting, Item (d)3. CC 23-221
[Memorandum from Jimenez 10192023.pdf \(legistar.com\)](#)

² Cannabis Regulation information can be viewed here: <https://www.sjpd.org/about-us/organization/chief-executive-officer/cannabis-regulation>

implemented a regulatory program for adult-use (recreational) and medicinal cannabis in January 2018.

Comparison of San José’s Medical and Non-medical Cannabis Regulations to State Regulations

Age – Purchase, Employment, and Verification

Purchase

Under San José’s regulatory program, only persons aged 21 or older are allowed on a cannabis business’s location or premises, or to purchase cannabis from San José’s cannabis businesses (whether on-site or via delivery). Under State regulations, adults aged 21 and older are allowed to possess, purchase, cultivate, and consume cannabis in limited quantities for personal use (“Adult Use”). Additionally, adults aged 18 and older are allowed to possess, purchase, cultivate, and consume cannabis for medicinal purposes with a valid physician’s recommendation (“Medicinal Use”). San José’s regulatory program predates the State’s regulations and established the higher minimum age for purchase to help ensure cannabis and cannabis products do not easily make their way into the hands of San José’s youth.

If San José were to align its regulations with the State’s by allowing persons under 21—which would include many area high school students—to remain on a cannabis business’s property and/or purchase medicinal cannabis from San José retailers, it would facilitate easier access to cannabis and products containing cannabis for area high schoolers. These concerns are heightened by the fact that under the State’s regulations qualified medicinal patients can purchase more cannabis daily than an adult-use customer, and are allowed access to concentrated cannabis products that contain higher concentrations of THC (the psychoactive component in cannabis) per package than adult-use products. By maintaining the aged 21 or older restriction to be on a cannabis business’s property for both medical and adult use customers, San José’s regulatory program limits access to these high concentration products which could be easily diverted to our youth.

Employment

In regard to employment, San José’s regulations align with the State’s in that both require persons retained to work within or at a cannabis business’s location or premises to be at least 21 years of age.

Verification

Both San José's and the State's regulations require age verification prior to purchase; however, they differ in how that is accomplished. San José regulations require use of an electronic age verification device which scans a government-issued identification (driver license, identification card, passport, etc.) and displays the person's age. The State's regulations require "inspecting" a valid form of identification (ID). This leaves it up to the person inspecting the ID to know the "age 21 by" date, and/or to do the math to determine if the presenter of the ID is under 21 years old. In addition to the requirement for San José businesses to use electronic age verification, they are required to provide the results of age scans (date, time, and age) to San José's Division of Cannabis Regulation (Division) staff for analysis. Combined with the Division's ability to monitor video surveillance (discussed below), staff routinely confirms businesses are turning away persons (and parties with persons) under the age of 21.

In summary, aligning San José's age requirements to the State's would make it easier for high school students to obtain cannabis in San José by befriending or becoming an 18- to 20-year-old qualified medical patient. It would also remove the Division's ability to effectively review and monitor the presence of underage individuals purchasing cannabis at San José's dispensaries by removing the age verification logs routinely audited by Division staff.

	San José Regulations	State Regulations	Alignment
Age (Adult Use Purchase)	21 and older	21 and older	Aligned
Age (Medicinal Use Purchase)	21 and older	18 and older	Not aligned
Age (Employment)	21 and older	21 and older	Aligned
Age (Verification Method)	Electronic ID scanning	Inspecting ID	Not aligned

Identification Badge - Background and Display RequirementsBackground Checks

San José requires a criminal background investigation on all persons involved in the cannabis business – inclusive of owners (more than 10% aggregate interest, legal or equitable, or otherwise), managers (including but not limited to officers of a corporation and/or board members) and employees. This criminal background investigation reviews State criminal histories. The State evaluates state and federal criminal histories of owners (aggregate ownership interest of 20% or more) and individuals who manage, direct, or control a cannabis business (including but not limited to corporate officers or a member of the board of directors of a nonprofit).

	San José Regulations	State Regulations	Alignment
Background Required			
• Owners	more than 10%	20% or more	Not Aligned
• Board Members	Yes	Yes	Aligned
• Corporate Officers	Yes	Yes	Aligned
• Managers	Yes	Yes	Aligned
• Drivers	Yes	No	Not Aligned
• Employees	Yes	No	Not Aligned

San José regulations prohibit persons from owning, managing, or working at a cannabis business if the person has a disqualifying conviction³ within the last ten (10) years or in their lifetime for a crime of moral turpitude. The State may deny a license to an owner if they have a disqualifying felony conviction⁴. The State does not specify a time frame for the conviction but does take into consideration the number of years that have elapsed since the date of the offense. The crimes for which convictions could lead to disqualification or denial of a license are similar between San José and the State, and include crimes such as violence, force, fear, fraud, deception, theft, embezzlement, firearms, illicit drugs (excluding cannabis). Both San José and the State require all persons with a financial interest in the business be disclosed; however, only those persons who meet the above-described criteria are backgrounded.

As a part of the City's criminal history background check of specified persons working at or for the cannabis business, for delivery drivers, the Division verifies the driver has a valid driver license and insurance before issuing the identification badge. Another check important to delivery operations is the verification that the owner of the delivery vehicle (some are owned by the cannabis business, but many are not) knows the vehicle will be used to deliver cannabis. Similar to the requirement that property owners acknowledge the use of their property for cannabis operations, the Division thinks it is important for vehicle owners to know how their vehicles will be used.

People working in these businesses have behind-the-scenes access to cannabis, money, and sensitive business information such as building layouts and security measures. One of the concerns raised by the industry is the number and extent of burglaries associated with cannabis businesses, both here and in other cities. Including employees and managers – not just owners – in these background checks promotes a safer work environment in a sensitive industry.

³ San Jose Municipal Code Section 6.88.450.A.2 and 6.88.450.A.3

⁴ California Business and Professions Code Section 26057 and Department of Cannabis Control Medicinal and Adult-Use Commercial Cannabis Regulations (November 2023)

Display of Identification Badges

Both San José's regulations and the State's regulations require persons working at certain cannabis businesses to wear a specific identification badge; however, they differ greatly in purpose. The identification badge issued by the Division is issued after an individual has been fingerprinted as part of the criminal background investigation. By wearing the badge, it allows for quick and easy identification of those persons who have initiated the background process versus those who have not. The State requires an identification badge issued by the cannabis business be displayed by all employees working for a retail sales licensee or participating in a temporary cannabis event. This badge does not assist Division staff in determining who is undergoing the background check and who is not.

If San José's criminal background check and identification display requirements were removed, it would adversely disrupt the business' normal operations. Persons with identified criminal convictions involving violence, theft, or unlawful possession of firearms in the past ten years or crimes of moral turpitude at any point in time would have behind-the-scenes access to business operations, cannabis, and cash. During inspections, Division staff would need to contact each employee individually and have them stop working so they could retrieve their government-issued identification for comparison to our list of persons who have started the background process. For smaller businesses with less employees, this would be disruptive in their ability to conduct daily operations and assist customers. An additional benefit of the current identification badge issuance process is it affords the Division the opportunity to ascertain accurate employee counts to ensure compliance with Labor Peace Agreement requirements. The Division-issued badge serves as a simple visual indicator of whom the Division has processed as an owner, manager, or other employee, and who has not.

Security – Alarms, Secure Storage, Video Surveillance, Personnel

Alarms

In the area of property and product security, there are a few key differences between San José's regulations and the State's. San José requires each business to install and maintain a UL (Underwriters Laboratories) listed burglar alarm system. A UL-listed alarm system with a "Mercantile" certificate – a standard similar to jewelry stores – is required. The UL listing is a certification that indicates a product is safe to use and has undergone rigorous testing to meet specific safety standards. A UL burglar alarm system uses extensive sensors to detect any intrusion and trigger the alarm. San José's regulations also prescribe a specific response by the business: a security guard must respond within 20 minutes and attempt to verify the alarm, and the alarm company must also notify a representative of the business who must be available to respond to the location within one hour of being notified. In the event a break-in is verified (either by the guard or by video surveillance monitored by the business), the police department must be notified for a response. These regulations are intended to ensure alarm systems are robust and any response to the alarm is timely, to minimize loss. The State's regulations also

require an alarm monitored by an alarm company or agent but do not specify the standards of the alarm system (i.e.: extensive motion detection throughout the premises versus merely placing sensors on doors and windows) or the timeliness and nature of the response to an alarm activation.

Secure Storage

Both San José's regulations and the State's regulations require cannabis and cannabis products be stored indoors; however, San José additionally requires cannabis and cannabis products be stored in a safe, vault, or other secure storage inside the premises. This additional requirement is meant to make it more difficult to obtain and divert cannabis and cannabis products in the event of burglary. While alarm and secure storage regulations cannot prevent persons from breaking into a business, they can make it difficult and slow would-be burglars down. Staff have reviewed surveillance video of burglaries at San José businesses and it was apparent that perpetrators obtained less product than they would have obtained without a secure storage requirement.

Video Surveillance

Video camera systems are required by both San José and the State; however, video storage is another area in which San José's regulations differ from the State's. San José requires video be stored and made available to regulators or law enforcement for thirty (30) days, while the State requires video be retained and made available for ninety (90) days. Since the State's requirement is more restrictive, all San José businesses must follow the State's storage requirement of 90 days.

Personnel

Another difference in San José's security requirements versus the State's is the area of delivery vehicles. San José requires delivery vehicles employ a dual facing video camera system which records the view in front of the vehicle as well as inside the passenger compartment. This regulation is intended to provide a measure of safety and security in the event of theft or robbery. It also serves as a tool to assist the Division in determining if a delivery was made to a park or school. Delivery vehicle video is not required by the State and is therefore subject to San José's 30-day retention requirement.

Comparison of San José's Cannabis Business Annual Operating Fee to Other Jurisdictions

Cannabis Regulation Responsibilities

The Annual Operating Fee is intended to recover 100% of the costs incurred by the City to pay for the multi-department staff for their professional responsibilities and other costs needed to sustain the full scope of the City Council's policy direction for the Program, as set forth below.

- **City-Wide Policy Coordination, Implementation, and Sustainment:** Cannabis policy analysis requires coordination of multiple departments, including: each division of the Department of Planning, Building and Code Enforcement, the Fire Department, the Finance Department, the Police Department, and the City Attorney's Office. The Police Department's Division of Cannabis Regulation provides Program oversight and serves as the point of contact for the registered businesses and the policy development and implementation lead.
- **Non-criminal Law Enforcement and Investigation:** The Division of Cannabis Regulation is responsible for the coordination of the regulatory law enforcement and compliance work, administering internal enforcement procedures and training on such procedures, and serving as a liaison between the City and other law enforcement agencies. Staff are responsible for performing the day-to-day regulation of the businesses, including conducting inspections, and regulating and taking civil action against businesses if they are not in compliance with the Program regulations.
- **Code Enforcement and Zoning:** Planning and Code Enforcement staff provide resources for the necessary ongoing inspections for compliance with the Program regulations as they relate to both land use and business operations. Staff conduct repeated inspections of business sites, meet with business representatives to ensure compliance with Program regulations, 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.
- **Financial and Compliance Review:** Staff review the financial records of all businesses and coordinate with the City Manager's Office, the City Attorney's Office, the Police Department, and the Code Enforcement Division on financial investigations and financial audits of the businesses to ensure fiscal compliance with the Program regulations.
- **Legal:** The City Attorney's Office staff provide legal advice, support in interpreting the regulatory ordinances, and support in drafting updates to ordinances and policies related to the Program. In addition, the attorneys are charged with bringing legal civil action against businesses operating in violation of the Program regulations. Those actions could include preparing cases for and representing the City at administrative officer hearings, hearings before the Appeals Hearing Board, and civil court.

Comparison of Operating Fees or Permits

Staff reviewed the annual operating fee for cannabis business activities for notable neighboring California cities (Mountain View, Oakland, Sacramento, and San Francisco). The information is provided below. The operating fees vary between being charged per permit type, cannabis activity, or business. When the fee is based on permit type or activity, it is important to note one business may hold multiple permits or conduct multiple activities, and the total fee each business pays is based on the number of permits/activities.

	Number of Businesses or Permits	Annual Operating Fee
San José	16 Businesses (plus up to 10 equity allowed)	Per Business \$139,406
Mountain View	1 Business (maximum of 3 allowed)	Per Business \$139,619
Oakland	266 Businesses (including 106 equity)	Per Permit ranging from \$509.75 to \$17,618*
Sacramento	291 Permits (including 41 equity)	21 Permit Types ranging from \$2,590 to \$36,800 each*
San Francisco	108 Permits (including 40 equity)	Per Activity \$5,000*

* one business may hold multiple permits or have multiple activities; the fee paid by each business varies based on the number of permits/activities

San José's Annual Operating Fee Per Business

As stated above, San José's 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. Since the cannabis regulatory program was moved to the Police Department, the annual operating fee regulatory staffing levels have decreased from 11.33 to 7.25. The annual operating fee is currently based on 16 registered businesses.

Fiscal Year	16-17	17-18	18-19	19-20	20-21	21-22	22-23	23-24
Police	3.94	3.38	4.89	5.17	5.11	5.11	5.07	5.02
Finance	1.75	1.69	1.69	1.54	1.34	1.19	0.98	0.98
CMO	0.14	0.10	0.22	-	-	-	-	-
CAO	3.50	2.70	2.27	1.15	1.15	1.04	1.04	0.74
PBCE	2.00	1.91	0.94	1.09	0.81	0.81	0.33	0.51
Total FTE	11.33	9.78	10.01	8.95	8.41	8.15	7.42	7.25
Annual Fee	\$149,132	\$131,846	\$150,610	\$138,148	\$143,333	\$147,645	\$130,345	\$139,406

In addition to the regulations themselves, San José, the State, and other municipalities each take different approaches to their programs. San José's regulatory structure is one of full cost recovery and is reflected in the fees. The State's fee structure is based on the size and type of business and is not based on full cost recovery. Other cities devote staff to regulate cannabis businesses, but their fees are also not based on a full cost recovery model. A robust set of regulations paired with an appropriately staffed oversight program helps ensure these businesses are operating as expected. Additionally, having local staff in addition to State regulators monitoring cannabis businesses provides additional oversight and more robust safety protections.

Cannabis Regulatory Code Violations in Fiscal Year 2022 – 2023

Division Staff routinely monitor registered businesses in San José to ensure compliance with the Code, State laws, and regulations. This monitoring includes keeping track of identification badges issued and returned; ensuring delivery drivers hold valid driver licenses, delivery vehicles are registered, insured, and are equipped with secure storage containers; cannabis deliveries are not made to schools or parks; government-issued identifications are scanned by age verification devices and persons under age 21 are turned away; video cameras remain operational and function as required; and business operations and premises are not modified without notice or required building permits. Additionally, Division Staff are being trained in the State's Track-and-Trace system, which will allow Division Staff to supplement State regulators with tracking product through San José's cannabis businesses. During this routine monitoring, violations can be addressed informally in conversations with the businesses, formally via written warnings, or by issuance of a citation. Division Staff prefer to educate business operators through informal or formal warnings rather than by citation. Since Division Staff have 24/7 access to video camera and delivery vehicle GPS systems of San José's registered businesses, staff can do much of this monitoring without visiting each business in person. Video monitoring and GPS tracking of delivery vehicles can be done daily. State regulators do not have direct access to these video or GPS systems; therefore, State regulators must visit each business to ensure compliance. In conversations with businesses, it appears the State visits San José businesses about once a year, versus Division Staff constantly monitoring the businesses remotely throughout the year.

Staff formally reviewed 25 potential code violations which occurred during Fiscal Year 2022-2023. Some of the incidents investigated were violations of multiple code sections. For example, San José has a code section requiring compliance with all State codes; thus, a violation of a State code is also a violation of San José's Municipal Code. In reviewing these incidents, Staff issued 13 warning notices for violations ranging from repositioned cameras to inadequate camera failure notification systems or video storage to persons not displaying identification or visitor badges as required under local and State regulations. Three violations resulted in citations issued to two registered businesses, one of which is no longer operating. Additionally, there were three citations issued to registered businesses which Division Staff did not seek or investigate, but which Division Staff worked with another City Department to reevaluate and cancel.

Compliance is the goal of regulation. When violations of regulations occur, staff prefers to work with the businesses to develop a plan to ensure these violations are not repeated rather than to issue citations. The annual renewal of each business includes a thorough review of all forms, plans, a walk-through of each location and premises, and verification of tax compliance. Any issues uncovered during this review are typically addressed informally with business representatives to further the goal of ensuring our regulated businesses are operating as our community expects.

Under the State's regulatory program, cannabis businesses are required to have local approval to operate in addition to a State license. This allows local jurisdictions to draft and enforce local

regulations of importance to our communities. If San José were to rely solely on State regulators to monitor cannabis businesses in San José, it is highly unlikely that many of the previously discussed potential violations would have been discovered or addressed. State regulators must manage over 9,700 active licenses across all jurisdictions in California. Having local regulators monitor local businesses allows the City to maintain focus on those issues most important to the concerns of our community. Additionally, each business in San José has dedicated local personnel to whom they can ask questions and get timely answers.

Future Cannabis Regulatory Program Review

Staff is 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 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.

COST SUMMARY/IMPLICATIONS

The costs associated with the cannabis regulatory functions are 100% recovered by the registered businesses for a net-zero impact on the General Fund.

COORDINATION

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

PUBLIC OUTREACH

This memorandum will be posted on the Public Safety, Finance and Strategic Support Committee Agenda website for the February 15, 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.



ANTHONY MATA
Chief of Police

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.



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

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

SUBJECT: SEE BELOW

DATE: March 15, 2024

Approved:

Date: 3/15/2024

SUBJECT: Cannabis Business Regulations and Annual Operating Fee Comparisons

Recommendation:

1. Reduce the Cannabis Storefront Retail annual fee to \$30,000 per year and in future years allow a reasonable annual CPI adjustment, not to exceed 3%, to maintain cost recovery but not increase scope of regulation without an additional City Council vote.
2. In direct relation to the decrease of annual fee, align our city's regulations with state regulations, by identifying and eliminating duplicative and burdensome regulations within the San José Municipal Code. Staff is tasked to make the necessary cuts to the Division of Cannabis Regulation to make the program cost recovery within the lower fee structure and without shifting any cost to the General Fund.

Background:

Historical Context

Proposition 215, also known as the Compassionate Use Act of 1996, was a landmark California law enacted on November 5, 1996, through voter initiative, authorizing the use of medical cannabis. Medical marijuana was used by caregivers to assist AIDS patients in easing suffering and as palliative care. It passed with approximately 55.6% approval (5,382,915 votes for and 4,301,960 against). This act allowed patients with a valid doctor's recommendation, and their designated Primary Caregivers, to possess and cultivate marijuana for personal medical use, significantly impacting the legal framework around cannabis. Proposition 215 not only marked the beginning of legal medical marijuana in California but also set a precedent for state-level cannabis reforms across the United States, highlighting the tension between cities and states' rights and federal law.

During the Prop. 215 era, prior to the establishment of any local or state regulations, San José faced a situation where over 100 medical cannabis storefronts operated without any oversight. Under the stewardship of Mayor Reed and the City Council, it was recognized that there was an urgent need for structured regulation, therefore the City Council embarked on creating a legal framework to address this issue.

Registration and Compliance Timeline

In September 2013, the City acknowledged the necessity for regulation, leading to the development and approval of the Medical Marijuana Land Use Ordinance and the Medical Marijuana Regulatory Ordinance by June 2014. These ordinances aimed to establish control and set operational standards for medical cannabis establishments within the city. At the time, the State had not promulgated any regulations.

The city set a series of deadlines to streamline the registration and compliance process for cannabis collectives. Initially, all operating collectives were required to submit their registration applications by October 17, 2014, with 63 out of an estimated 90 cannabis collectives meeting this deadline. The next phase required these collectives to obtain a Zoning Code Verification Certificate by July 17, 2015, a milestone achieved by only 30 cannabis collectives. The compliance requirements were stringent, involving the submission of detailed building plans, payment of all Marijuana Business Taxes (past and present) and other fees, and the conducting of background checks. By November 20, 2015, the number of cannabis collectives still in the running had dwindled to 19, following additional screenings and compliance checks. On December 18, 2015, San Jose was left with only 16 cannabis collectives receiving the Notice of Complete Registration, allowing them to legally operate.

Financial Impact and Taxation

On November 2, 2010, Measure U was passed by San Jose voters, authorizing the city to impose a tax on all marijuana-related businesses. The Marijuana Business Tax (now Cannabis Business Tax or “CBT”) is levied at a rate of 10% of the gross receipts from all retail sales. In addition to retail sales, cannabis businesses pay a 3% tax on gross sales of all goods sold by their manufacturing operations and a 2% tax on gross sales of all goods transported by their distribution operations. The regulation of cannabis has had a notable financial impact on the city. Since its implementation, this tax has generated over \$50 million highlighting the economic benefit of the regulated cannabis industry to the municipal coffers. In 2023, the city received over \$15 million. This revenue supports various city services and underscores the importance of the cannabis sector as a contributing factor to the local economy.

Division of Cannabis Regulation (“DCR”)

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 was moved to the Office of the Chief of Police, collaborates with various city departments to ensure that cannabis businesses comply with both local and state regulations. The Division's responsibilities include safeguarding community health and safety, accommodating the needs of medical patients, preventing the distribution of cannabis to minors, and implementing strong enforcement measures to prevent criminal enterprises from infiltrating

the cannabis market. This comprehensive regulatory approach underscores San José's commitment to a safe and well-regulated cannabis industry.

Legalization of Non-Medical Cannabis

On November 8, 2016, voters approved the legalization of non-medical cannabis for use by adults aged 21, with the passage of Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”). In San José, Proposition 64 passed in every City Council District. Continuing to be at the forefront of legalization and social justice, the San José City Council adopted local regulations accordingly. By November 14, 2017, the Council had authorized registered medical cannabis collectives to extend their operations to include non-medical, adult-use cannabis activities, effective beginning January 1, 2018 (when the State regulations would go into effect).

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. The regulations are now found within California Code of Regulations Title 4, Division 19.

Analysis:

Duplication with the State

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 certain policies becoming outdated. The industry is evolving, and it is imperative that San José evolves with it to remain competitive.

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.

In a memorandum written by Councilmember Jimenez, dated October 19, 2023, to Public Safety, Finance and Strategic Support Committee (PSFSS), he suggested that we needed to conduct a deeper analysis to ensure city regulations around cannabis align with state regulations. To that end we have made some changes aligning operation hours with state regulations which was a sensible step that was adopted by the Council.

As staff begins to re-align their scope of work in relation to the decreased annual fee, we have identified several areas where changes seem sensible. In a comparison between the City of San José's cannabis regulations and those set by the State, we have identified specific areas where local ordinances may be duplicative or more burdensome than necessary compared to state regulations. Below is a breakdown of the duplicative City and State Regulations:

1. Surveillance Cameras

Current Regulation: Both the State (4 CCR §15044) and San José (SJMC Section 6.88.420.A and CMO Regulation 4-1.A) have similar regulations regarding the use of surveillance cameras.

Solution: Eliminate the city's duplicative regulations.

2. Burglar and Fire Alarms

Current Regulation: State regulation (4 CCR §15047) and city regulations (SJMC Section 6.88.420.B and CMO Regulations 4-1.B, 4-1.C) overlap, with the city requiring UL certification, which the industry considers onerous.

Solution: Remove the city's additional UL certification requirement.

3. Door Locks

Current Regulation: Similar regulations exist at the state level (4 CCR §15046) and within San José (SJMC Section 6.88.420.G-H and CMO Regulation 4-3.B).

Solution: Eliminate the city's duplicate regulations.

4. Security Guards

Current Regulation: State (4 CCR §15045) and City (SJMC Section 6.88.420.K) regulations overlap.

Solution: Eliminate the city's duplicative regulation.

5. Identification Badges

Current Regulation: State regulations allow businesses to issue their own identification badges, conflicting with SJMC Section 6.88.425.E and city practices. Also, the City badges do not comply with State regulations.

Solution: End the city's practice of issuing badges and update the local regulation to match state law.

6. Deliveries

Current Regulation: State regulations (4 CCR §§15414-15421) cover the same aspects as CMO Regulation 4-5.

Solution: Eliminate the City's regulation on deliveries.

7. Disciplinary Action:

Current Regulation: State (4 CCR §17808) and City (SJMC Section 6.88.490) regulations are similar.

Solution: Remove the City's duplicate regulation.

8. Record Maintenance:

Current Regulation: Overlaps between state (4 CCR §145037) and City (SJMC Section 6.88.500) regulations.

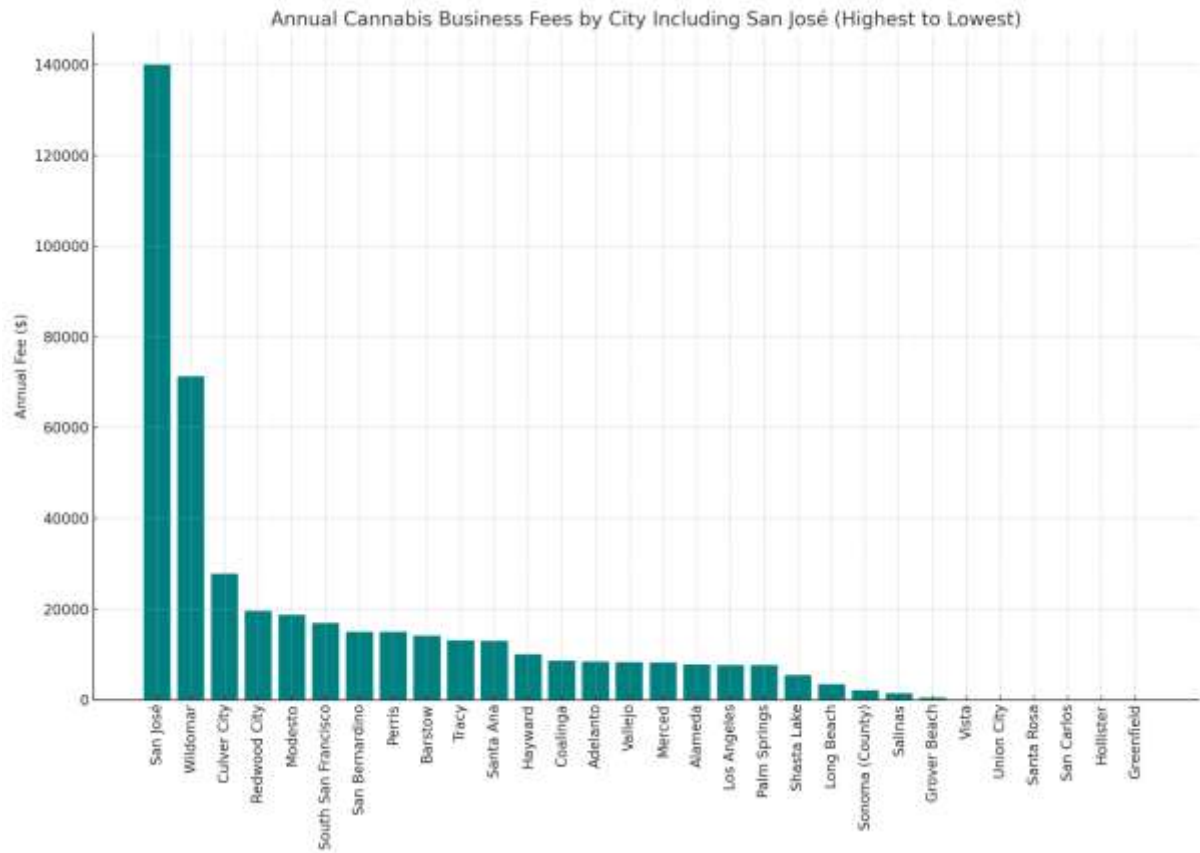
Solution: Eliminate the City's duplicate record-keeping requirements.

By removing these duplicative regulations, the DCR could refocus its efforts primarily on registering new cannabis businesses and renewing registrations along with ensuring compliance with age restrictions, particularly preventing sales to individuals under 21. This approach aims to streamline the regulatory process, reduce administrative burdens, and avoid any costs that might be shifted to the General Fund with the reduction of the annual fee.

Highest Fees in the State

San José has the highest annual fee structure and requirements compared to other jurisdictions. Since its inception no cannabis retailer has had its registration suspended (except recently for the failure to pay the CBT). On a comparative basis it appears that the current annual fees imposed on cannabis businesses by the DCR may be burdensome and excessive.

Below is a visual representation of San José's fees compared against local municipalities that allow and have operational cannabis **retail storefronts**.



Annual Cannabis Business Fees by City

City	Annual Fee
San José	\$139,000
Wildomar	\$71,307.80
Culver City	\$27,771.00
Redwood City	\$19,599.00
Modesto	\$18,732.00
South San Francisco	\$16,931.00
San Bernardino	\$15,015.55
Perris	\$15,008.45
Barstow	\$14,107.85
Tracy	\$13,100.00
Santa Ana	\$12,968.00
Hayward	\$10,000.00
Coalinga	\$8,576.00
Adelanto	\$8,460.00
Vallejo	\$8,288.00
Merced	\$8,209.00
Alameda	\$7,770.00
Los Angeles	\$7,691.00
Palm Springs	\$7,656.00
Shasta Lake	\$5,445.02

Long Beach	\$3,435.00
Sonoma (County)	\$2,163.00
Salinas	\$1,443.25
Grover Beach	\$500.00
Greenfield	Admin. Fee \$200.00 plus Actual Costs (\$5,000 initial deposit)
San Carlos	Actual cost with \$3,000 deposit
Hollister	\$0.00
Santa Rosa	\$0.00
Union City	\$0.00
Vista	\$0.00

We want to extend our gratitude to the staff for their diligent work on this issue and appreciate the active participation from the industry.

As we move forward, it is essential that we maintain a balanced approach that supports the growth and regulation of the cannabis industry while ensuring the safety and well-being of our community. A failure of the San José Cannabis Industry in succumbing to the illegal market is the worst possible outcome for the City of San José. We look forward to engaging in fruitful discussions and making informed decisions that reflect the evolving landscape of cannabis regulation.

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.

San José Police Department Cannabis Regulations

City Council Meeting
March 19, 2024
Item 4.1

Presenters:
Wendy Sollazzi, Division Manager
Sergeant David Woolsey

Public Safety, Finance, and Strategic Support Committee Direction

- Provide an update on the following topics:
 - 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
 - Comparing San José's annual fees for cannabis operations with other jurisdictions.

Comparison of Cannabis Regulations

- San José's regulations originally drafted in 2014
- State of California regulation of commercial cannabis businesses began in 2018
- California's program was designed to allow local regulation and taxation
 - Empowers municipalities to regulate at the local level
 - If regulations conflict, the strictest regulation prevails
- Enables Cities and Counties to regulate issues important to each community

Age Comparison

- Purchase, Employment, and Verification

	San José Regulations	State Regulations	Alignment
Adult Use Purchase	21 and older	21 and older	Aligned
Medicinal Use Purchase	21 and older	18 and older	Not aligned
Employment	21 and older	21 and older	Aligned
Verification Method	Electronic ID scanning	Inspecting ID	Not aligned

Identification Badge Comparison

- Background and Display Requirements

	San José Regulations*	State Regulations**	Alignment
Owners	more than 10%	20% or more	Not Aligned
Board Members	Yes	Yes	Aligned
Corporate Officers	Yes	Yes	Aligned
Managers	Yes	Yes	Aligned
Drivers	Yes	No	Not Aligned
Employees	Yes	No	Not Aligned

* San Jose requires a badge issued by the Police Department be displayed which represents the individual has been backgrounded.

** State requires a badge issued by the business be displayed.

Security Comparison

- Alarms, Secure Storage, and Video Surveillance

	San Jose Regulations	State Regulations	Alignment
Alarm	UL Listed Mercantile Burglar Alarm System	Alarm monitored by alarm company or agent	Not Aligned
Alarm Response	Prescribed Response	No specified timeliness and nature of response	Not Aligned
Product Storage	Stored Indoors	Stored Indoors	Aligned
Secure Storage	Stored in a safe, vault, or other secure storage	Not specific	Not Aligned
Storefront Video Surveillance	Required; Retained 30 days	Required; Retained 90 days	Not Aligned
Delivery Vehicle Video Surveillance	Required; Dual facing video camera system	Not Required	Not Aligned

Comparison of Operating Fees or Permits

	Number of Businesses or Permits	Annual Operating Fee
San José	16 Businesses (plus up to 10 equity allowed)	Per Business \$139,406
Mountain View	1 Business (maximum of 3 allowed)	Per Business \$139,619
Oakland	266 Businesses (including 106 equity)	Per Permit ranging from \$509.75 to \$17,618*
Sacramento	291 Permits (including 41 equity)	21 Permit Types ranging from \$2,590 to \$36,800 each*
San Francisco	108 Permits (including 40 equity)	Per Activity \$5,000*

* one business may hold multiple permits or have multiple activities; the fee paid by each business varies based on the number of permits/activities

Cannabis Regulation Annual Operating Fee

	FY 16-17	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22	FY 22-23	FY 23-24
Police	3.94	3.38	4.89	5.17	5.11	5.11	5.07	5.02
Finance	1.75	1.69	1.69	1.54	1.34	1.19	0.98	0.98
CMO	0.14	0.10	0.22	-	-	-	-	-
CAO	3.50	2.70	2.27	1.15	1.15	1.04	1.04	0.74
PBCE	2.00	1.91	0.94	1.09	0.81	0.81	0.33	0.51
Total FTE	11.33	9.78	10.01	8.95	8.41	8.15	7.42	7.25
Annual Fee*	\$149,132	\$131,846	\$150,610	\$138,148	\$143,333	\$147,645	\$130,345	\$139,406

* Intended to be 100% cost recovery

Resources: San Jose – Police Department

ILLEGAL SALES OF CANNABIS, MUSHROOMS, FENTANYL, AND OTHER ILLEGAL SUBSTANCES

- If you witness drug dealing, 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: <https://www.sjpd.org/services/automated-services/contact-form?strtopic=drugs>
 - Under the “Topic” dropdown, please select “Drug Enforcement/Narcotics”

COMPLAINTS ABOUT REGISTERED CANNABIS BUSINESSES

- Contact the Division of Cannabis Regulation
- <https://sjpd.org/exo/dcr>
- Email: DCR@sanjoseca.gov
- Phone: 408-537-1420

Resources: San Jose – PBCE

CODE ENFORCEMENT

- Respond to municipal code violations on private property such as zoning, building, and blight violations.
- Address unregistered cannabis businesses, cannabis cultivated for personal use, or cannabis odor.
- Service requests
 - <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

Resources: State of California

DEPARTMENT OF CANNABIS CONTROL (DCC)

- Investigates complaints of unlicensed or illegal cannabis activity
- Stops the sale of cannabis to minors
- Prevents unsafe products from entering the cannabis market
- To file a complaint with the State: <https://cannabis.ca.gov/resources/file-complaint/>

OFFICE OF YOUTH TOBACCO ENFORCEMENT (OYTE)

- Investigates flavored tobacco and sales to minors
- <https://www.cdph.ca.gov/Programs/CEH/DFDCS/Pages/OfficeofYouthTobaccoEnforcement.aspx>
- Email: OYTE@cdph.gov
- Phone: 1-800-5-ASK-4-ID (800-527-5443)

Future Cannabis Regulatory Program Review

- Staff is 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.

Staff Recommendation

- Accept the report on how San José's cannabis regulations compare to State of California regulations and how San José's cannabis business annual operating fee compares to other jurisdictions.

San José Police Department Cannabis Regulations

City Council Meeting
March 19, 2024
Item 4.1

Presenters:
Wendy Sollazzi, Division Manager
Sergeant David Woolsey

From: sean kali-rai [REDACTED]
Sent: Wednesday, February 14, 2024 3:46 PM
To: Wilcox, Leland [Leland.Wilcox@sanjoseca.gov]
Subject: Fw: Staff Memo for cannabis - we need to create a rebuttal letter and talking points
Attachments: <httpssanjose.legistar.comView.pdf>; 2024-02-14 - San Jose Staff Memo - Industry Response.pdf

Categories: Email from Lee's Inbox

[External Email]

[External Email]

Lee,

Happy Wednesday.

I just sent the e-mail and the attachments below to PSFSS Committee Members.
Please let me know if you want to get on a call and discuss before tomorrow.

Thank you,
-Sean

----- Forwarded Message -----

From: sean kali-rai [REDACTED]
To: Sergio Jimenez <sergio.jimenez@sanjoseca.gov>; Bien Doan <firemandoan@yahoo.com>; Rosemary Kamei <rosemary.kamei@sanjoseca.gov>; arjun.batra@sanjoseca.gov <arjun.batra@sanjoseca.gov>; Omar Torres <omar.torres@sanjoseca.gov>
Cc: Jonathan Fleming <jonathan.fleming@sanjoseca.gov>; David Gomez <david.gomez@sanjoseca.gov>; Michele Dexter <michele.dexter@sanjoseca.gov>; Kiara Arreola <kiara.arreola@sanjoseca.gov>
Sent: Wednesday, February 14, 2024 at 03:40:09 PM PST
Subject: Staff Memo for cannabis - we need to create a rebuttal letter and talking points

Dear Chair and PSFSS Committee Members,

On October 19, 2023 the Public Safety, Finance and Strategic Support Committee (PSFSS) adopted the memorandum put forth by Chairperson Jiminez (**attached below**) granting the Division of Cannabis Control (staff) four months (one more than the memo stated and three additional months for item 3.c.) to return to the committee to do the following:

Direct staff to report back to the PSFSS Committee within the next three months on the following topics:

- a. The possibility of aligning our city's regulations with state regulations, including but not limited to Identification Badge Requirements, while maintaining the age of purchase at 21 years in San Jose;*
- b. How San Jose compares with other jurisdictions on the annual fees for cannabis operations;*
- c. The possibility of expanding the scope of Department of Cannabis Regulations to include Vape and Smoke shops.*

As we return to PSFSS Committee on February 15th to discuss the pressing issues facing the cannabis industry, with the backdrop of two cannabis retailers closed in recent months due to financial strain, we are presented with a Staff report that ignores the very spirit and direction of Chair Jiminez's memorandum as adopted by the PSFSS Committee and its Members.

The local cannabis industry is made up of responsible compliant businesses that contribute approximately \$15 million to the general fund, employ almost 1,000 direct and indirect employees and contribute to local charities and organizations.

On the whole the Cannabis Industry, as represented by the Silicon Valley Cannabis Alliance, is deeply disappointed with the Staff response to Chair Jiminez's Memorandum and the direction of the PSFSS Committee. Staff's memorandum dated January 31, 2024 is written to obfuscate people rather than enlighten them. It is full of red herrings, incomplete information, presentation of selective information to bias the reader and in one case a factual inaccuracy (lie). **Attached below is the Staff Memo with industry rebuttals inserted into the document.**

According to a Gallup Poll article dated October 13, 2023 local government satisfaction is at 67% (<https://news.gallup.com/poll/512651/americans-trust-local-government-congress-least.aspx>.) In letter grade terms that is a D (a D+ if one is generous). Either way it is an epic fail and much lower than anyone should expect from government, as you are well aware since you are on the frontline of interacting with the residents of the City - citizen distrust and dissatisfaction of government is palpable. Creating trust in government is difficult and harder still with Staff work like this.

We respectfully ask that at the upcoming PSFSS Committee hearing you do the following:

- 1) Reject the staff report
- 2) Reduce of the annual fee
- 3) Refocus of the Division of Cannabis Control away from paperwork and toward stopping illegal cannabis delivery into San Jose and the sale of illegal cannabis at smoke and vape shops

Sincerely,
-Sean

SEAN KALI-RAI

Silicon Valley Cannabis Alliance

[REDACTED] (mobile)

[REDACTED]

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Memorandum

TO: PUBLIC SAFETY, FINANCE AND
STRATEGIC SUPPORT COMMITTEE

FROM: Councilmember Jimenez

SUBJECT: SAN JOSE POLICE DEPARTMENT
CANNABIS REGULATIONS

DATE: October 19, 2023

Approved

Date 10/19/2023

RECOMMENDATION:

1. Accept the update on staff's proposed changes to the Administrative Citation Schedule of Fines for violations of Chapter 6.88 of Title (Business Licenses and Regulation) of the San José Municipal Code for the Cannabis Regulatory Program, including the following:
 - a. Aligning the hours of operation with the state, which would make the new operating hours 6:00 a.m. – 10:00 p.m. Pacific Time.
2. Cross-reference this report to be heard at the November 14, 2023, City Council meeting.
3. Direct staff to report back to the PSFSS Committee within the next three months on the following topics:
 - a. The possibility of aligning our city's regulations with state regulations, including but not limited to Identification Badge Requirements, while maintaining the age of purchase at 21 years in San Jose;
 - b. How San Jose compares with other jurisdictions on the annual fees for cannabis operations;
 - c. The possibility of expanding the scope of Department of Cannabis Regulations to include Vape and Smoke shops.

DISCUSSION:

I thank staff for their work on this issue and appreciate the participation from the industry partners. No matter what one's personal feelings are about cannabis and its allowable use, the voters of our state have spoken, and we as a city have decided to allow operations in our jurisdiction.

San Jose was a leader in cannabis-related land use and regulations long before the state and other jurisdictions followed suit. Being at the forefront of the legal industry has had its benefits, but it's also caused our policies to grow stale as evidenced by the fines structure that we are now changing. The industry is evolving, and San Jose needs to evolve with it.

I share the sentiment that this industry should be treated as any other business entity operating with the city. Last year, the legal industry paid upward of \$18 million dollars in taxes. Given the precarious financial outlook for city finances in the next couple of years, we should do all we can to streamline and ensure success of this industry so that the city continues to maintain and grow this crucial tax revenue that allows us to adequately serve our residents.

Changing the schedule of fines for violations is a step in the right direction, but I think a deeper analysis needs to be done related to how the city regulations around cannabis align with the state regulations. Time and again we as Council have taken up the issue of "cleaning up" regulations that seemingly should be aligned with the state, and this issue is no different. Where there is alignment, no further action is necessary. Where alignment does not exist, we should have a debate as to why and whether such misalignment makes sense. As an example, aligning the hours of operation with the state seems to be a logical approach that the Council should discuss, and that is why I have included it in the direction when cross-referenced to full Council.

Along the same lines, there is a debate as to whether the annual fee is appropriate when compared to other jurisdictions along with issues around requirements for badging. My hope is that staff can bring back information on these topics so that we can make informed decisions as a committee before referring to the full Council for discussion.

Lastly and potentially most important, a conversation about expanding the scope of the Department of Cannabis Regulations to include Vape and Smoke shops is warranted. There are many stories tied to Vape and Smoke shops selling Hemp-based THC, which is illegal. Considering that this is happening, it begs the question: should we provide compliance oversight to these shops? The scope exploration for Vape and Smoke shops is not meant to be a path forward to legalization of these establishments. The 16 cannabis retailers along with the second locations and the equity licenses granted by the City Council shall be the only retailers allowed to sell cannabis in the City of San Jose.



COMMITTEE AGENDA: 02/15/2024
ITEM:

Memorandum

TO: PUBLIC SAFETY, FINANCE AND
STRATEGIC SUPPORT COMMITTEE

FROM: Anthony Mata

SUBJECT: SEE BELOW

DATE: January 31, 2024

Approved

Date

2/6/2024

**SUBJECT: CANNABIS BUSINESS REGULATIONS AND ANNUAL OPERATING FEE
COMPARISONS**

RECOMMENDATION

Accept the report on how San José's cannabis regulations compare to State of California regulations and how San José's cannabis business annual operating fee compares to other jurisdictions.

REBUTTAL

Staff does not address the Public Safety, Finance, and Strategic Support Committee's (the "Committee") direction. This "report" is a red herring meant to distract from the issue at hand which is that San Jose no longer requires San Jose's Division of Cannabis Regulation ("DCR") to mimic what the State's Department of Cannabis Control already does. This report should be rejected as being non-responsive to the Committee's direction.

Also, the DCR fundamentally ignores the very real fact that all of San Jose's business are compliant. Indeed, they have very reason to be compliant because, if they are not, they will lose their livelihoods and all of their investment in these businesses.

With the State's oversight and the cannabis businesses' own desire to be compliant, there is no reason for the continued existence of the DCR.

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 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.

ANALYSIS

The City of San José's Cannabis Regulations were originally approved in July 2014, making the City one of the first in the State of California (State) to develop this type of program. Since 2015, 16 cannabis businesses successfully registered and have been operating in the City.² The State implemented a regulatory program for adult-use (recreational) and medicinal cannabis in January 2018.

Comparison of San José's Medical and Non-medical Cannabis Regulations to State Regulations

Age – Purchase, Employment, and Verification

Purchase

Under San José's regulatory program, only persons aged 21 or older are allowed on a cannabis business's location or premises, or to purchase cannabis from San José's cannabis businesses (whether on-site or via delivery). Under State regulations, adults aged 21 and older are allowed to possess, purchase, cultivate, and consume cannabis in limited quantities for personal use ("Adult Use"). Additionally, adults aged 18 and older are allowed to possess, purchase, cultivate, and consume cannabis for medicinal purposes with a valid physician's recommendation ("Medicinal Use"). San José's regulatory program predates the State's regulations and established the higher minimum age for purchase to help ensure cannabis and cannabis products do not easily make their way into the hands of San José's youth.

If San José were to align its regulations with the State's by allowing persons under 21—which would include many area high school students—to remain on a cannabis business's property and/or purchase medicinal cannabis from San José retailers, it would facilitate easier access to

¹ October 19, 2023 Public Safety, Finance and Strategic Support Committee Meeting, Item (d)3. CC 23-221 [Memorandum from Jimenez 10192023.pdf \(legistar.com\)](#)

² Cannabis Regulation information can be viewed here: <https://www.sjpd.org/about-us/organization/chief-executiveofficer/cannabis-regulation>

cannabis and products containing cannabis for area high schoolers. These concerns are heightened by the fact that under the State's regulations qualified medicinal patients can purchase more cannabis daily than an adult-use customer, and are allowed access to concentrated cannabis products that contain higher concentrations of THC (the psychoactive component in cannabis) per package than adult-use products. By maintaining the aged 21 or older restriction to be on a cannabis business's property for both medical and adult use customers, San José's regulatory program limits access to these high concentration products which could be easily diverted to our youth.

REBUTTAL

Staff begins this Memo with confirming that the Committee's direction was to address how to align the State's regulations with the City's regulations while maintaining the age of 21 for purchase of cannabis. Despite the Committee's clear instruction that the age for purchase would not be changing, Staff begins their Memorandum address why the age for purchase to remain 21. This is a red herring to make the Committee believe that a reduction in age is being sought by the industry. It is not. No business and no Committee member has requested a change in the age for purchase. Instead, Staff is being asked to enforce the age restriction against unregistered businesses who are selling cannabis to people under the age of 21.

In October 2023, a list of unregistered delivery businesses was provided to Staff. If Staff is really concerned about underage persons gaining access to cannabis, has Code Enforcement cited any of these unregistered business for violation of any of the following?

- 6.88.300(A-D) – Registration Required?
- 6.88.320(D) Registration Submittal?
- 6.88.400(C) Operating Regulations and Conditions
- 6.88.410 Compliance with the Code?
- 6.88.440(I) [No Medical Cannabis Transfers shall be made by a Cannabis Business to a person under the age of twenty-one (21).]?
- 6.88.440(J) [No Medical Cannabis shall be provided, sold, or transferred to any person who is not a Qualified Patient or Primary Caregiver, and who is not age twenty-one (21) or older.]?
- 6.88.440(K) [No Non-medical Cannabis shall be provided, sold, or transferred to any person who is not age twenty-one (21) or older.]?

Solely as a result of Code Enforcement's failure to cite unregistered businesses, persons under the age of 21 are getting access to cannabis. This must stop.

Employment

In regard to employment, San José's regulations align with the State's in that both require persons retained to work within or at a cannabis business's location or premises to be at least 21 years of age.

Verification

Both San José's and the State's regulations require age verification prior to purchase; however, they differ in how that is accomplished. San José regulations require use of an electronic age verification device which scans a government-issued identification (driver license, identification card, passport, etc.) and displays the person's age. The State's regulations require "inspecting" a valid form of identification (ID). This leaves it up to the person inspecting the ID to know the "age 21 by" date, and/or to do the math to determine if the presenter of the ID is under 21 years old. In addition to the requirement for San José businesses to use electronic age verification, they are required to provide the results of age scans (date, time, and age) to San José's Division of Cannabis Regulation (Division) staff for analysis. Combined with the Division's ability to monitor video surveillance (discussed below), staff routinely confirms businesses are turning away persons (and parties with persons) under the age of 21.

In summary, aligning San José's age requirements to the State's would make it easier for high school students to obtain cannabis in San José by befriending or becoming an 18- to 20-year-old qualified medical patient. It would also remove the Division's ability to effectively review and monitor the presence of underage individuals purchasing cannabis at San José's dispensaries by removing the age verification logs routinely audited by Division staff.

	San José Regulations	State Regulations	Alignment
Age (Adult Use Purchase)	21 and older	21 and older	Aligned
Age (Medicinal Use Purchase)	21 and older	18 and older	Not aligned
Age (Employment)	21 and older	21 and older	Aligned
Age (Verification Method)	Electronic ID scanning	Inspecting ID	Not aligned

REBUTTAL

This is another red herring. Neither the Committee nor the industry has requested a change in how age is verified. Cannabis businesses are happy to continue using age verification software. What is an issue is that the DCR seeks to justify its existence based upon their reviewing video footage of customers to ensure that customers are over the age of 21. There are several issues with this: (1) the age verification software is the best tool to determine the validity of an ID; (2) while the cameras are of the highest quality, it is nearly impossible to tell the difference between a 20 year old and a 21 year old through video surveillance; and (3) the DCR has not established that any business has ever allowed a person under the age of 21 on site.

Recently, the DCR, has been personally visiting cannabis businesses to request age verification logs. This information can be emailed to them (the same as it is emailed to the Department of Cannabis Control). Why is the DCR wasting resources by personally visiting cannabis businesses

to obtain a report they can get by email? Again, this shows that the DCR's enforcement and the State's enforcement are the same – they are both reviewing reports. The city does not need to duplicate this work.

Identification Badge - Background and Display Requirements

Background Checks

San José requires a criminal background investigation on all persons involved in the cannabis business – inclusive of owners (more than 10% aggregate interest, legal or equitable, or otherwise), managers (including but not limited to officers of a corporation and/or board members) and employees. This criminal background investigation reviews State criminal histories. The State evaluates state and federal criminal histories of owners (aggregate ownership interest of 20% or more) and individuals who manage, direct, or control a cannabis business (including but not limited to corporate officers or a member of the board of directors of a nonprofit).

	San José Regulations	State Regulations	Alignment
Background Required			
• Owners	more than 10%	20% or more	Not Aligned
• Board Members	Yes	Yes	Aligned
• Corporate Officers	Yes	Yes	Aligned
• Managers	Yes	Yes	Aligned
• Drivers	Yes	No	Not Aligned
• Employees	Yes	No	Not Aligned

San José regulations prohibit persons from owning, managing, or working at a cannabis business if the person has a disqualifying conviction³ within the last ten (10) years or in their lifetime for a crime of moral turpitude. The State may deny a license to an owner if they have a disqualifying felony conviction⁴. The State does not specify a time frame for the conviction but does take into consideration the number of years that have elapsed since the date of the offense. The crimes for which convictions could lead to disqualification or denial of a license are similar between San José and the State, and include crimes such as violence, force, fear, fraud, deception, theft, embezzlement, firearms, illicit drugs (excluding cannabis). Both San José and the State require all persons with a financial interest in the business be disclosed; however, only those persons who meet the above-described criteria are backgrounded.

³ San Jose Municipal Code Section 6.88.450.A.2 and 6.88.450.A.3

⁴ California Business and Professions Code Section 26057 and Department of Cannabis Control Medicinal and Adult-Use Commercial Cannabis Regulations (November 2023)

As a part of the City's criminal history background check of specified persons working at or for the cannabis business, for delivery drivers, the Division verifies the driver has a valid driver license and insurance before issuing the identification badge. Another check important to delivery operations is the verification that the owner of the delivery vehicle (some are owned by the cannabis business, but many are not) knows the vehicle will be used to deliver cannabis. Similar to the requirement that property owners acknowledge the use of their property for cannabis operations, the Division thinks it is important for vehicle owners to know how their vehicles will be used.

People working in these businesses have behind-the-scenes access to cannabis, money, and sensitive business information such as building layouts and security measures. One of the concerns raised by the industry is the number and extent of burglaries associated with cannabis businesses, both here and in other cities. Including employees and managers – not just owners – in these background checks promotes a safer work environment in a sensitive industry.

Display of Identification Badges

Both San José's regulations and the State's regulations require persons working at certain cannabis businesses to wear a specific identification badge; however, they differ greatly in purpose. The identification badge issued by the Division is issued after an individual has been fingerprinted as part of the criminal background investigation. By wearing the badge, it allows for quick and easy identification of those persons who have initiated the background process versus those who have not. The State requires an identification badge issued by the cannabis business be displayed by all employees working for a retail sales licensee or participating in a temporary cannabis event. This badge does not assist Division staff in determining who is undergoing the background check and who is not.

If San José's criminal background check and identification display requirements were removed, it would adversely disrupt the business' normal operations. Persons with identified criminal convictions involving violence, theft, or unlawful possession of firearms in the past ten years or crimes of moral turpitude at any point in time would have behind-the-scenes access to business operations, cannabis, and cash. During inspections, Division staff would need to contact each employee individually and have them stop working so they could retrieve their government issued identification for comparison to our list of persons who have started the background process. For smaller businesses with less employees, this would be disruptive in their ability to conduct daily operations and assist customers. An additional benefit of the current identification badge issuance process is it affords the Division the opportunity to ascertain accurate employee counts to ensure compliance with Labor Peace Agreement requirements. The Division-issued badge serves as a simple visual indicator of whom the Division has processed as an owner, manager, or other employee, and who has not.

REBUTTAL

There are several issues here:

1. The current city-issued identification badges violate State law. State law allows for businesses to issue identification badges. These badges must meet the following criteria:
 - Be laminated or plastic-coated
 - Include the licensee's "doing business as" name
 - Include the licensee's license number
 - Include the employee's first name
 - Include an employee number exclusively assigned to that employee for identification purposes, and
 - Include a color photograph of the employee that clearly shows the full front of the employee's face and that is at least 1 inch in width and 1.5 inches in height.
2. The city requires these badges to be renewed every year. As a result, businesses are unnecessarily spending thousands of dollars each year on badges.
3. Thousands of businesses throughout the State issue their own badges to employees without issue – the city can just as easily identify a cannabis business employee from their business-issued badge as they can from a city-issued badge.
4. The city pays currently pays one employee approximately \$87,248.17 to issue badges to cannabis businesses.
5. Businesses should be permitted to hire who they choose. Persons who have committed crimes involving violence, theft or unlawful possession of firearms should not be precluded from the workforce if they have served the time for their crime. The decision on whether to hire such persons who have rehabilitated themselves is not only in line with the city's equity program but should be the decision of the business - not the city. There is no data provided that a person with a criminal history violence, theft or unlawful possession of firearms is a threat to public safety because they are hired by a cannabis business to cultivate cannabis.

The DCR should not be permitted to issue badges.

Security – Alarms, Secure Storage, Video Surveillance, Personnel

Alarms

In the area of property and product security, there are a few key differences between San José's regulations and the State's. San José requires each business to install and maintain a UL (Underwriters Laboratories) listed burglar alarm system. A UL-listed alarm system with a

“Mercantile” certificate – a standard similar to jewelry stores – is required. The UL listing is a certification that indicates a product is safe to use and has undergone rigorous testing to meet specific safety standards. A UL burglar alarm system uses extensive sensors to detect any intrusion and trigger the alarm. San José’s regulations also prescribe a specific response by the business: a security guard must respond within 20 minutes and attempt to verify the alarm, and the alarm company must also notify a representative of the business who must be available to respond to the location within one hour of being notified. In the event a break-in is verified (either by the guard or by video surveillance monitored by the business), the police department must be notified for a response. These regulations are intended to ensure alarm systems are robust and any response to the alarm is timely, to minimize loss. The State’s regulations also require an alarm monitored by an alarm company or agent but do not specify the standards of the alarm system (i.e.: extensive motion detection throughout the premises versus merely placing sensors on doors and windows) or the timeliness and nature of the response to an alarm activation.

REBUTTAL

Despite having these systems in place, SJPD has never stopped a burglary from occurring. Indeed, despite having these systems in place SJPD rarely respond when the alarms are triggered. As such, there is no reason to require a UL certified system.

Secure Storage

Both San José’s regulations and the State’s regulations require cannabis and cannabis products be stored indoors; however, San José additionally requires cannabis and cannabis products be stored in a safe, vault, or other secure storage inside the premises. This additional requirement is meant to make it more difficult to obtain and divert cannabis and cannabis products in the event of burglary. While alarm and secure storage regulations cannot prevent persons from breaking into a business, they can make it difficult and slow would-be burglars down. Staff have reviewed surveillance video of burglaries at San José businesses and it was apparent that perpetrators obtained less product than they would have obtained without a secure storage requirement.

Video Surveillance

Video camera systems are required by both San José and the State; however, video storage is another area in which San José’s regulations differ from the State’s. San José requires video be stored and made available to regulators or law enforcement for thirty (30) days, while the State requires video be retained and made available for ninety (90) days. Since the State’s requirement is more restrictive, all San José businesses must follow the State’s storage requirement of 90 days.

Personnel

Another difference in San José's security requirements versus the State's is the area of delivery vehicles. San José requires delivery vehicles employ a dual facing video camera system which records the view in front of the vehicle as well as inside the passenger compartment. This regulation is intended to provide a measure of safety and security in the event of theft or robbery. It also serves as a tool to assist the Division in determining if a delivery was made to a park or school. Delivery vehicle video is not required by the State and is therefore subject to San José's 30-day retention requirement.

REBUTTAL

Video surveillance is not required because there are also GPS devices which can also confirm whether cannabis was delivered to a park or school. Again, this is another example of the DCR's being too far-reaching. To date, not a single delivery has been made by a registered business to a park or a school. Again, cannabis businesses have the most to lose therefore they have many checks and balances in place to ensure that cannabis is not being delivered to unauthorized locations.

Comparison of San José's Cannabis Business Annual Operating Fee to Other Jurisdictions***Cannabis Regulation Responsibilities***

The Annual Operating Fee is intended to recover 100% of the costs incurred by the City to pay for the multi-department staff for their professional responsibilities and other costs needed to sustain the full scope of the City Council's policy direction for the Program, as set forth below.

- **City-Wide Policy Coordination, Implementation, and Sustainment:** Cannabis policy analysis requires coordination of multiple departments, including: each division of the Department of Planning, Building and Code Enforcement, the Fire Department, the Finance Department, the Police Department, and the City Attorney's Office. The Police Department's Division of Cannabis Regulation provides Program oversight and serves as the point of contact for the registered businesses and the policy development and implementation lead.
- **Non-criminal Law Enforcement and Investigation:** The Division of Cannabis Regulation is responsible for the coordination of the regulatory law enforcement and compliance work, administering internal enforcement procedures and training on such procedures, and serving as a liaison between the City and other law enforcement agencies. Staff are responsible for performing the day-to-day regulation of the businesses, including conducting inspections, and regulating and taking civil action against businesses if they are not in compliance with the Program regulations.
- **Code Enforcement and Zoning:** Planning and Code Enforcement staff provide resources for the necessary ongoing inspections for compliance with the Program

regulations as they relate to both land use and business operations. Staff conduct repeated inspections of business sites, meet with business representatives to ensure compliance with Program regulations, issue administrative citations and/or compliance orders to noncompliant businesses, and appear before administrative bodies and in court to support the City in its enforcement actions.

- **Financial and Compliance Review:** Staff review the financial records of all businesses and coordinate with the City Manager's Office, the City Attorney's Office, the Police Department, and the Code Enforcement Division on financial investigations and financial audits of the businesses to ensure fiscal compliance with the Program regulations.
- **Legal:** The City Attorney's Office staff provide legal advice, support in interpreting the regulatory ordinances, and support in drafting updates to ordinances and policies related to the Program. In addition, the attorneys are charged with bringing legal civil action against businesses operating in violation of the Program regulations. Those actions could include preparing cases for and representing the City at administrative officer hearings, hearings before the Appeals Hearing Board, and civil court.

Comparison of Operating Fees or Permits

Staff reviewed the annual operating fee for cannabis business activities for notable neighboring California cities (Mountain View, Oakland, Sacramento, and San Francisco). The information is provided below. The operating fees vary between being charged per permit type, cannabis activity, or business. When the fee is based on permit type or activity, it is important to note one business may hold multiple permits or conduct multiple activities, and the total fee each business pays is based on the number of permits/activities.

	Number of Businesses or Permits	Annual Operating Fee
San José	16 Businesses (plus up to 10 equity allowed)	Per Business \$139,406
Mountain View	1 Business (maximum of 3 non-storefront allowed)	Per Business \$139,619 \$1,942
Oakland	266 Businesses (including 106 equity)	Per Permit ranging from \$509.75 to \$17,618*
Sacramento	291 Permits (including 41 equity)	21 Permit Types ranging from \$2,590 to \$36,800 each*
San Francisco	108 Permits (including 40 equity)	Per Activity \$5,000*

* one business may hold multiple permits or have multiple activities; the fee paid by each business varies based on the number of permits/activities

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REBUTTAL

As shown by the notations above, this chart is incorrect. Though Mountain View's Fee Schedule shows what a storefront retail store would pay if registered, the reality is that the Mountain View Code prohibits storefront locations. See Mountain View Municipal Code Section 36.30.55 and <https://www.mv-voice.com/news/2019/05/24/council-votes-to-ban-storefront-pot-shops-in-mountain-view-allowing-only-delivery-services/>. Only non-storefront (delivery) locations are permitted and the fee is \$2,150 for the registration and then \$1,942 annually.

The DCR ignores the following jurisdictions, including the nearest comparably jurisdictions of Redwood City and Hayward.

Wildomar	\$71,307.80
Culver City	\$27,771.00
Redwood City	\$19,599.00
Modesto	\$18,732.00
South San Francisco	\$16,931.00
San Bernardino	\$15,015.55
Perris	\$15,008.45
Barstow	\$14,107.85
Tracy	\$13,100.00
Santa Ana	\$12,968.00
Hayward	\$10,000.00
Coalinga	\$8,576.00
Adelanto	\$8,460.00
Vallejo	\$8,288.00
Merced	\$8,209.00
Alameda	\$7,770.00
Los Angeles	\$7,691.00
Palm Springs	\$7,656.00
Shasta Lake	\$5,445.02
Long Beach	\$3,435.00
Sonoma (County)	\$2,163.00
Salinas	\$1,443.25
Grover Beach	\$500.00
Greenfield	Admin. Fee \$200.00 plus Actual Costs (\$5,000 initial deposit)
San Carlos	Actual cost with \$3,000 deposit
Hollister	\$0.00
Santa Rosa	\$0.00
Union City	\$0.00
Vista	\$0.00

San José's Annual Operating Fee Per Business

As stated above, San José's 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. Since the cannabis regulatory program was moved to the Police Department, the annual operating fee regulatory staffing levels have decreased from 11.33 to 7.25. The annual operating fee is currently based on 16 registered businesses.

Fiscal Year	16-17	17-18	18-19	19-20	20-21	21-22	22-23	23-24
Police	3.94	3.38	4.89	5.17	5.11	5.11	5.07	5.02
Finance	1.75	1.69	1.69	1.54	1.34	1.19	0.98	0.98
CMO	0.14	0.10	0.22	-	-	-	-	-
CAO	3.50	2.70	2.27	1.15	1.15	1.04	1.04	0.74
PBCE	2.00	1.91	0.94	1.09	0.81	0.81	0.33	0.51
Total FTE	11.33	9.78	10.01	8.95	8.41	8.15	7.42	7.25
Annual Fee	\$149,132	\$131,846	\$150,610	\$138,148	\$143,333	\$147,645	\$130,345	\$139,406
TOTAL COLLECTED	\$2,386,112	\$2,109,536	\$2,409,760	\$2,210,368	\$2,293,328	\$2,362,320	\$2,085,520	\$2,230,496
COMPENSATION PER EMPLOYEE	\$210,601	\$215,699	\$240,735	\$246,968	\$272,691	\$289,855	\$281,067	\$307,656

In addition to the regulations themselves, San José, the State, and other municipalities each take different approaches to their programs. San José's regulatory structure is one of full cost recovery and is reflected in the fees. The State's fee structure is based on the size and type of business and is not based on full cost recovery. Other cities devote staff to regulate cannabis businesses, but their fees are also not based on a full cost recovery model. A robust set of regulations paired with an appropriately staffed oversight program helps ensure these businesses are operating as expected. Additionally, having local staff in addition to State regulators monitoring cannabis businesses provides additional oversight and more robust safety protections.

REBUTTAL

As shown by the notations above, it is disingenuous for the DCR to tout the reduction in staffing levels from 11.33 FTE to 7.25 FTE when, despite this decrease, they have not decreased the fees they collect from the cannabis businesses.

As is shown above, despite a decrease in the number of FTE, the salary of each FTE has increased from \$210,601 to \$307,656 – the DCR's salaries have increased of over 46% in 8 years!

If the current 7.25 FTE were earning what the 11 FTE earned in 2016-2017, then the total operating cost would be \$1,526,857.25 or \$95,429 per business (with 16 businesses) – a savings to the businesses of over \$43,977.

Cannabis Regulatory Code Violations in Fiscal Year 2022 – 2023

Division Staff routinely monitor registered businesses in San José to ensure compliance with the Code, State laws, and regulations. This monitoring includes keeping track of identification badges issued and returned; ensuring delivery drivers hold valid driver licenses, delivery vehicles are registered, insured, and are equipped with secure storage containers; cannabis deliveries are not made to schools or parks; government-issued identifications are scanned by age verification devices and persons under age 21 are turned away; video cameras remain operational and function as required; and business operations and premises are not modified without notice or required building permits. Additionally, Division Staff are being trained in the State's Track-and-Trace system, which will allow Division Staff to supplement State regulators with tracking product through San José's cannabis businesses. During this routine monitoring, violations can be addressed informally in conversations with the businesses, formally via written warnings, or by issuance of a citation. Division Staff prefer to educate business operators through informal or formal warnings rather than by citation. Since Division Staff have 24/7 access to video camera and delivery vehicle GPS systems of San José's registered businesses, staff can do much of this monitoring without visiting each business in person. Video monitoring and GPS tracking of delivery vehicles can be done daily. State regulators do not have direct access to these video or GPS systems; therefore, State regulators must visit each business to ensure compliance. In conversations with businesses, it appears the State visits San José businesses about once a year, versus Division Staff constantly monitoring the businesses remotely throughout the year.

Staff formally reviewed 25 potential code violations which occurred during Fiscal Year 2022-2023. Some of the incidents investigated were violations of multiple code sections. For example, San José has a code section requiring compliance with all State codes; thus, a violation of a State code is also a violation of San José's Municipal Code. In reviewing these incidents, Staff issued 13 warning notices for violations ranging from repositioned cameras to inadequate camera failure notification systems or video storage to persons not displaying identification or visitor badges as required under local and State regulations. Three violations resulted in citations issued to two registered businesses, one of which is no longer operating. Additionally, there were three citations issued to registered businesses which Division Staff did not seek or investigate, but which Division Staff worked with another City Department to reevaluate and cancel.

Compliance is the goal of regulation. When violations of regulations occur, staff prefers to work with the businesses to develop a plan to ensure these violations are not repeated rather than to issue citations. The annual renewal of each business includes a thorough review of all forms, plans, a walk-through of each location and premises, and verification of tax compliance. Any issues uncovered during this review are typically addressed informally with business representatives to further the goal of ensuring our regulated businesses are operating as our community expects.

Under the State's regulatory program, cannabis businesses are required to have local approval to operate in addition to a State license. This allows local jurisdictions to draft and enforce local

regulations of importance to our communities. If San José were to rely solely on State regulators to monitor cannabis businesses in San José, it is highly unlikely that many of the previously discussed potential violations would have been discovered or addressed. State regulators must manage over 9,700 active licenses across all jurisdictions in California. Having local regulators monitor local businesses allows the City to maintain focus on those issues most important to the concerns of our community. Additionally, each business in San José has dedicated local personnel to whom they can ask questions and get timely answers.

REBUTTAL

There are many issues with the above section.

The DCR says its monitoring includes:

- Keeping track of identification badges issued and returned – **This is unnecessary monitoring. How is this improving public safety? Why does this need to be done each year?**
- Ensuring delivery drivers hold valid driver licenses – **This is unnecessary monitoring. Businesses have a vested interest in making sure their delivery drivers licensed and insured. Businesses already do this on their own and can continue to do so, they do not need SJPd's assistance. Is SJPd making sure every Doordash, Ubereats, Instacart, etc. has a valid driver's license?**
- Delivery vehicles are registered, insured, and are equipped with secure storage containers – **This is unnecessary monitoring. Businesses have a vested interest in making sure the vehicles used for delivery are registered and insured. Businesses already do this and can continue to do so. Is SJPd making sure every vehicle used for Doordash, Ubereats, Instacart, etc. is insured and registered?**
- Cannabis deliveries are not made to schools or parks – **As noted above, this is unnecessary monitoring and businesses will be compliant without the DCR. There is no evidence that businesses would delivery to schools or parks. There are other checks and balances available such as GPS tracking to ensure compliance - there is no need for video surveillance monitoring.**
- Government-issued identifications are scanned by age verification devices and persons under age 21 are turned away – **As noted above, this is unnecessary monitoring. Businesses have a vested interest in complying with age verification measures.**
- Video cameras remain operational and function as required – **This is unnecessary monitoring.**
- Business operations and premises are not modified without notice or required building permits – **This is unnecessary monitoring.**

Division Staff being trained in the State's Track-and-Trace system – **This is unnecessary. The State already has a robust Track and Trace team for this purpose. Why is the DCR wasting resources on duplicating a job the State already does?**

During this routine monitoring, violations can be addressed informally in conversations with the businesses, formally via written warnings, or by issuance of a citation. – **The lack of citations confirms that businesses are operating in compliance with the law. Business owners more than anyone have a vested interest in making sure they comply with the law - they are the ones that will lose their life savings if their businesses are not in compliance.**

State regulators do not have direct access to these video or GPS systems; therefore, State regulators must visit each business to ensure compliance. – **This is false. The State has the right to ask for video surveillance footage. They routinely do so to review for compliance. SJPd does not need to duplicate this work.**

In conversations with businesses, it appears the State visits San José businesses about once a year, versus Division Staff constantly monitoring the businesses remotely throughout the year. – **This is false. Depending on the licenses held, businesses can be visited multiple times a year by the State. Further, the State routinely requests reports, video data, and other information from licensees. This is another area where SJPd is duplicating what the State already does.**

Staff formally reviewed 25 potential code violations which occurred during Fiscal Year 2022-2023. – **How many involved an actual public safety issue?**

Verification of tax compliance – **False. If that were the case, why did no one catch Herbs' issue?**

If San José were to rely solely on State regulators to monitor cannabis businesses in San José, it is highly unlikely that many of the previously discussed potential violations would have been discovered or addressed. – **False and overreaching. Is DCR saying that all the cannabis businesses would be willfully violating the law and the only one stopping them is DCR? Many local jurisdictions don't have this overreaching oversight and businesses are in compliance. Again, the business owners have the most vested interest in staying compliant - they don't need the threat of SJPd to remain compliant.**

Future Cannabis Regulatory Program Review

Staff is 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.

REBUTTAL

This is incorrect. Staff was directed to expand regulations to vape and smoke shops which are not necessarily tobacco retailers.

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.

COST SUMMARY/IMPLICATIONS

The costs associated with the cannabis regulatory functions are 100% recovered by the registered businesses for a net-zero impact on the General Fund.

COORDINATION

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

PUBLIC OUTREACH

This memorandum will be posted on the Public Safety, Finance and Strategic Support Committee Agenda website for the February 15, 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.

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ANTHONY MATA
Chief of Police

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.

Other Pertinent Information:

San Jose Police Department Budget

For 2023-2024, the San Jose Police Department's [budget](#) for cannabis regulation was \$1,511,417:

Police Department

Department Budget Summary

	2021-2022 Actuals **	2022-2023 Adopted	2023-2024 Forecast	2023-2024 Proposed	2023-2024 Proposed Positions
Dollars by Program*					
Crime Prevention and Community Education					
Crime Prevention	1,556,981	2,105,635	1,987,801	1,987,801	13.00
School Liaison/Truancy Abatement	1,547,606	2,106,124	2,266,805	2,266,805	6.00
School Safety	2,434,020	3,302,082	3,070,833	3,070,833	49.67
Sub-Total	5,538,607	7,513,841	7,325,439	7,325,439	68.67
Investigative Services					
Assaults	3,519,071	3,962,689	4,173,919	4,173,919	15.00
Court Liaison	1,967,175	1,971,760	1,997,805	1,997,805	12.00
Crime Analysis	2,380,576	2,753,998	2,958,606	2,958,606	18.00
Family Violence	6,118,717	6,153,695	6,284,601	6,430,399	23.00
Financial Crimes/Burglary	4,713,872	5,603,740	6,058,963	6,058,963	22.00
Gang Investigations	5,561,056	5,911,654	6,125,423	6,125,423	21.00
Homicide/Crime Scene	13,505,530	11,012,217	11,549,902	11,549,902	34.00
Internal Affairs	6,702,890	6,049,898	6,413,233	6,413,233	18.00
Investigations Administration	10,272,713	11,003,616	11,802,919	11,961,114	27.00
Juvenile/Missing Persons	1,396,537	1,453,119	1,509,757	1,509,757	5.50
Robbery	4,970,454	4,279,624	4,549,886	4,549,886	14.00
Sexual Assaults	18,815,856	18,034,348	17,107,383	17,327,383	56.00
Special Investigations	17,004,786	16,394,133	17,730,223	18,503,530	56.00
Sub-Total	96,929,233	94,584,491	98,262,618	99,559,918	321.50
Regulatory Services					
Cannabis Regulation	1,389,606	1,444,536	1,511,417	1,511,417	6.00
Gaming	1,669,868	1,628,506	1,537,416	1,537,416	7.00
Permits	1,831,070	1,984,566	1,998,510	1,998,510	10.00
Sub-Total	4,890,545	5,057,608	5,047,343	5,047,343	23.00

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The Annual Operating Fee was intended to be a “cost recovery” fee that was to be used, along with other fees noted below, to pay the salaries, bonus, and other compensation of the Department of Cannabis Regulation within the city of San Jose.

It is unclear why the San Jose Police Department is collecting \$2,230,496 from cannabis businesses when the budget for cannabis regulation is \$1,511,417. That is an excess of \$719,079.

Total Pay and Benefits for Department of Cannabis Regulation

(Source: <https://transparentcalifornia.com/>)

The Department of Cannabis Regulation within the San Jose Police Department has six full time employees as follows. The salaries of these individuals since 2018 are set forth below:

Name	Title	2018	2019	2020	2021	2022
Wendy Sollazzi	Division Manager	\$309,421.42	\$363,508.71	Not Available	\$232,796.57	\$238,535.43
David Woolsey	Police Sergeant	\$348,226.73	\$378,142.03	\$258,263.15	\$255,166.78	\$263,162.02
Dat Vu	Analyst II	\$202,306.93	\$199,639.51	\$126,100.53	\$126,278.10	\$129,794.71
Stephen Gaffaney	Analyst II	\$181,057.41	\$199,295.72	\$119,608.76	\$130,268.82	\$133,921.45
Carla Sargent	Analyst I/II	\$154,035.84	\$171,341.23	\$114,379.23	\$119,720.25	\$125,684.47
Inderpal Kaur	Staff Specialist	N/A	\$62,448.91	\$86,431.81	\$80,686.66	\$87,248.17
TOTAL		\$1,195,048.33	\$1,374,376.11	\$704,783.48 + Wendy	\$944,917.18	\$978,346.25

The San Jose Police Department’s 2022-2023 budget for cannabis regulation was \$1,444,536. The total compensation paid to the six employees was actually \$978,346.25. It is unclear why an additional \$466,189.75 was requested in the budget – and paid by the San Jose cannabis businesses.

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Police Department

Department Budget Summary

	2020-2021 Actuals**	2021-2022 Adopted	2022-2023 Forecast	2022-2023 Proposed	2022-2023 Proposed Positions
Dollars by Program*					
Crime Prevention and Community Education					
Crime Prevention	1,602,079	2,020,627	2,066,635	2,066,635	13.00
Police Activities League	0	7,888	0	0	0.00
School Liaison/Truancy Abatement	528,641	2,381,701	2,106,124	2,106,124	6.00
School Safety	835,804	2,776,862	3,302,082	3,302,082	49.67
Sub-Total	2,966,524	7,187,078	7,474,841	7,474,841	68.67
Investigative Services					
Assaults	3,701,590	4,221,196	3,962,689	3,962,689	15.00
Court Liaison	1,734,828	2,017,775	1,971,760	1,971,760	12.00
Crime Analysis	2,032,092	2,557,709	2,753,998	2,753,998	17.00
Family Violence	5,157,468	6,481,251	5,920,218	6,153,695	22.00
Financial Crimes/Burglary	4,169,591	6,006,940	5,603,740	5,603,740	21.00
Gang Investigations	5,030,703	6,140,736	5,911,654	5,911,654	21.00
Homicide/Crime Scene	12,721,828	10,889,544	11,012,217	11,012,217	34.00
Internal Affairs	6,546,915	6,143,175	6,049,898	6,049,898	18.00
Investigations Administration	8,914,587	10,762,043	11,002,616	11,003,616	27.00
Juvenile/Missing Persons	1,346,961	1,401,119	1,453,119	1,453,119	5.50
Robbery	4,110,121	4,356,590	4,279,624	4,279,624	14.00
Sexual Assaults	15,717,789	17,394,595	16,958,309	17,178,309	57.00
Special Investigations	15,874,008	16,238,305	15,905,133	16,322,133	53.00
Sub-Total	87,058,481	94,610,978	92,784,975	93,656,452	316.50
Regulatory Services					
Cannabis Regulation	1,304,438	1,428,333	1,444,536	1,444,536	6.00
Gaming	1,351,460	1,590,497	1,628,506	1,628,506	7.00
Permits	1,650,893	1,981,373	1,909,566	1,909,566	10.00
Sub-Total	4,306,791	5,000,203	4,982,608	4,982,608	23.00

A reduction in the Annual Operating Fee for cannabis business as follows is proposed. Unlike the current model where each business pays one Annual Operating Fee but can have multiple locations, the proposal is that each business will pay an Annual Operating Fee per location based upon use. This will also entice new businesses to open in San Jose as the annual fee as currently structured has been a barrier to entry for most cannabis businesses:

License Type	Annual Operating Fee
Storefront Retail	\$30,000
Microbusiness ¹ with Storefront Retail	\$30,000
Microbusiness ¹ without Storefront Retail	\$2,500
Non-storefront retail	\$2,500
Manufacturing	\$2,500
Distribution	\$2,500
Cultivation	\$2,500
Manufacturing/Distribution/Cultivation (2-3 uses at same site)	\$2,500
Testing Laboratory	\$2,500

¹Microbusiness license is a state license type where a business operates at least 3 of the following uses at one location: retail, distribution, cultivation, and/or manufacturing.

Currently there are 14 cannabis businesses that are open and operational. All of these cannabis businesses are storefront retail or microbusiness with storefront retail. This would result in revenue of approximately \$420,000.

At least 3 of the existing cannabis businesses have secured a location for their second retail store, this will result in additional revenue of \$90,000.

At least 1 of these existing cannabis businesses has a standalone manufacturing/distribution facility which will result in revenue of \$2,500.

Also, pursuant to the city's equity program there will be an additional 5 storefront and 5 non-storefront retail registrations that will be issued. It should be noted that the fees for these businesses can be paid from the grants received by the city from the Department of Cannabis Control. It is estimated that these grants total at least \$709,382.67. See Department of Cannabis Control – Grant Funding at <https://cannabis.ca.gov/about-us/grant-funding/>.

In addition to cannabis businesses, all vape shops and smoke shops should also pay a registration fee of \$2,500. There are an estimated 150 vape and/or smoke shops in San Jose – most of which do not have a business license.

With this new fee schedule, the city will receive approximately \$800,000 in revenue which is sufficient to compensate Wendy Sollazzi, Police Sergeant David Woolsey, and at least two analysts.

Source	Estimated Revenue
Cannabis Business (14 Existing Storefront Retail/Microbusiness with Storefront Retail)	\$420,000
Cannabis Business (3 New Storefront Retail)	\$90,000
Manufacturing/Distribution (1 Existing)	\$2,500
Cannabis Business (5 Equity Storefront Retail)	\$150,000
Cannabis Business (5 Equity Non-Storefront Retail)	\$12,500
Vape/Smoke Shops (Assuming 50 out of 150 to be registered)	\$125,000
TOTAL	\$800,000

These fees may increase per year per the Consumer Price Index (CPI) not to exceed 3%.