



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Edgardo Garcia
Rosalynn Hughey

SUBJECT: ZONING PROVISIONS RELATED
TO CANNABIS BUSINESSES

DATE: February 27, 2019

Approved

Date

2-27-19

INFORMATION

On January 15, 2019, the City Council approved the land use and regulatory ordinances allowing cannabis manufacturing, distribution, and testing facilities that obtain City registration and State licensure to locate in San José. At that meeting, Council approved a memorandum from Councilmember Esparza that raised the following issues:

- A) Evaluate the current zoning provisions of the San Jose Municipal Code that have led to the oversaturation of retail Cannabis Collectives/Businesses in Council District 7.
- B) Provide a report back to Council clearly outlining why more than half of the total retail Cannabis Collectives/Businesses are located in Council District 7.
- C) Present options for the implementation of a cap on the number of retail Cannabis Collectives/Businesses in Council District 7.

CURRENT ZONING PROVISIONS / LOCATIONS AND IMPACTS

From 2009-2014, San José struggled with a proliferation of illegal/unlicensed medical cannabis dispensaries. In 2011, the Council approved several ordinances allowing medical cannabis collectives within City limits. The cannabis industry, unhappy with the legislation, gathered enough signatures for a referendum. This forced the Council to either put the ordinances on the ballot or repeal the regulations. The Council chose to repeal the regulations. In this period, which coincided with severe budget and staffing shortages, more than 100 medical cannabis facilities proliferated, without any City or State regulation.

In 2014, the Administration and City Council addressed the issue of medical cannabis in San José. At the time, there were no State regulations, only the broad authorization under Proposition 215 and SB 420 for patients & caregivers to “collectively cultivate” medical cannabis for personal medical use. To comply with these laws, San José used a model that was “vertically integrated” with each cannabis “collective” required to grow and process/manufacture medical

HONORABLE MAYOR AND CITY COUNCIL

February 27, 2019

Subject: Zoning Provisions related to Cannabis Businesses

Page 2

cannabis for their patient/caregiver members. Because of the industrial nature of the cultivation and manufacturing components, Council determined that the appropriate zonings for such an operation were as follows:

- CIC – Combined Industrial / Commercial
- LI – Light Industrial
- DC – Downtown Primary Commercial (Second floor and above only)
- HI – Heavy Industrial
- IP – Industrial Park

In addition, out of concern for the City's most sensitive residents, the Council also restricted medical cannabis collectives within:

- 1000 feet of: Public/Private Preschool, Elementary School, or Secondary School; Child Daycare Center; Community/Recreation Center, Park or Library
- 500 feet of: Substance Abuse Rehabilitation Center; Emergency Residential Shelter
- 150 feet of: Places of Religious Assembly; Adult Daycare; Residential Use

As well as the above restrictions around where cannabis businesses can locate, the Council provided and adopted additional restrictions for cannabis in the following development policy areas:

- North San José Development Policy Boundary
- International Business Park Boundary
- Edenvale Area Development Policy Boundary

The City Council cited the concentration of driving industry business and related manufacturing operations located in these three areas as factors for creating an exemption within those boundaries.

These zoning decisions left approximately 620 parcels where a cannabis business could operate. These parcels are largely located in District 7, as shown in Attachment A. In December 2015, 16 cannabis collectives successfully completed the full registration process.

On November 8, 2016, California voters approved Proposition 64, the Adult Use of Marijuana Act which legalized the adult use (or recreational use) of marijuana by individuals age 21 and older; licensing began in January 2018. On November 14, 2017, the City Council voted to allow the City's existing 16 Registered Collectives to sell and deliver medical and non-medical cannabis to individuals over age 21, in accordance with State law, if they met City and State regulatory requirements. All 16 former "collectives" have now converted to being cannabis businesses/dispensaries.

HONORABLE MAYOR AND CITY COUNCIL

February 27, 2019

Subject: Zoning Provisions related to Cannabis Businesses

Page 3

The following is the distribution of cannabis collectives by Council District:

- Council District 3: 3
- Council District 4: 3
- Council District 7: 9
- Council District 10: 1

POLICY OPTIONS

In response to Point C from Councilmember Esparza's memorandum, in 2011 the Council capped the maximum number of collectives at two per Council District and 10 collectives Citywide. This cap was removed when the Council repealed its regulations. In the staff report for Council Priority Setting¹, which is agendized for March 5, 2019, the Administration recommends including the evaluation of a cap on retail cannabis businesses in the combined "Review of Cannabis Land Use and Regulatory Provisions." Should Council nominate and prioritize this item, policy work would be conducted by the Police Department's Division of Cannabis Regulation, the Department of Planning, Building, and Code Enforcement, and the City Attorney's Office.

/s/

ROSALYNN HUGHEY
Director, Planning, Building and Code Enforcement

/s/

EDGARDO GARCIA
Chief of Police

For questions, please contact Wendy Sollazzi, Division Manager, San José Police Department, at (408) 537-9890 or Michael Brilliot, Deputy Director, Planning, Building and Code Enforcement at (408) 535-7831.

¹ Council Priority Setting staff report (Item 3.3 on March 5, 2019):

<https://sanjose.legistar.com/View.ashx?M=F&ID=7058199&GUID=F228B70F-E3C8-4DC7-B67B-520CFDBDAEF1>

