

San Jose Downtown Association
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San Jose, CA 95113



sjdowntown.com
408.279.1775

February 15, 2022

The Honorable Mayor Sam Liccardo and City Council
City of San José
200 East Santa Clara Street
San José, CA 95113

RE: Items [8.1](#) & [10.2](#): Cannabis Equity Assistance Program & Review of Cannabis Land Use and Regulatory Provisions

Dear Mayor Liccardo and City Councilmembers,

The San Jose Downtown Association (SJDA) has represented downtown for 35 years and together with more than 1,800 current businesses and property owner members we strive to increase the vitality of our downtown. SJDA has reviewed the staff recommendation and supports the requested amendments to the current municipal cannabis ordinances as this can help activate underutilized spaces, mitigate vacancy rates and increase activity in our community.

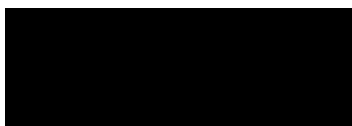
Since July 2014, when the Medical Marijuana Regulatory Program was initiated, we have appreciated how careful the city has been in limiting the number of permits as well as the areas cannabis establishments could locate. We believe the city has now reached the moment to safely increase the permits and allow areas like downtown to accept – and model – new retail stores in this expanding, well-regulated industry.

An important component of this process is security. Per the staff memo, based on the 16 registered dispensaries, the total average crime rate was significantly less on blocks containing dispensaries and this is due to the increased security required as well as the additional accountability of the city staff to check in with these establishments. As part of supporting the staff recommendation, we agree that more resources will need to be allocated to the planning and police departments.

While we are at it, this is also the time for the city to consider new safe social consumption policies as well, beginning with a pilot project at some of downtown's special events to demonstrate a prototype program – think San Francisco's "Grasslands" in Golden Gate Park for the Outside Lands festival.

We appreciate the City Council's consideration for this item and look forward to working with the city and these retail establishments in our downtown.

Cordially,



Scott Knies
Executive Director



Sharmi Shah

VIA E-MAIL ONLY to CityClerk@sanjoseca.gov

February 14, 2022

Office of the City Clerk at San José
City Hall
200 E. Santa Clara Street
Tower 14th Floor
San José, CA 95113

Re: February 15, 2022 Council Meeting – Agenda Items 8.1 and 10.2

Dear Mayor and Councilmembers:

I represent ten (10) of the seventeen (17)¹ San José registered cannabis businesses. In addition to my existing ten (10) clients, I assisted three (3) of the other registered cannabis businesses with obtaining their registrations.

I would like to convey my appreciation to city staff for their hard work in revising Title 6 and Title 20 and especially their open communications with those in the industry.

My comments herein have been expressed to staff; however, I have been advised that I should also provide them to the Council.

Title 6

1. **Request:** Change of the terms “dispensary” and “collective” to retailer.

Reason: The use of the terms dispensary and collective connote that these facilities are still medical only in nature and harkens back to the days of Proposition 215. While cannabis businesses do provide a necessary service in selling medical cannabis, they also sell recreational cannabis. The term “retailer” is used by the State of California and Department of Cannabis Control.

2. **Request:** Correction of the following typographical errors and references in SJMC Section 6.88.203:
 - a. Change of “proprietorship” to “sole proprietorship”
 - b. Change of “disclosure schedule” to appropriate term.

Reason: There is no entity known as a proprietorship. There are no disclosure schedules required by the City of San Jose. Accordingly, it is unknown what disclosure schedule means as used in this definition.

¹ San José currently has 17 registered cannabis businesses – 16 with retail operations and 1 without.

3. **Request:** Change of definitions pertaining to equity applicants to ensure the city is not creating a situation wherein the equity businesses are “straw man” operations for multi-state operators.

Reason: The current definitions for equity applicants only address “ownership” (e.g., 51% of the cannabis business must be “owned” by a person that qualifies as an equity applicant). This same definition has been used in other jurisdictions in California and I have personally seen it used as a means of creating straw man operations in cities such as Oakland and Los Angeles. There is a misconception held as to the meaning of ownership in that ownership is not the same thing as share of profit. When this same language is used in other jurisdictions, I have seen situations where an entity is created in which the equity applicant owns a 51% interest, but a separate agreement is drafted wherein the 49% owner receives 100% of the profit. Thus, in those situations, the equity applicant does not benefit from their 51% ownership other than to receive, in most cases, some nominal fee for remaining a 51% owner. If the city truly wants to create an equity program where equity applicants will be true participants, the city cannot continue to use the same failed language other jurisdictions have used.

4. **Request:** Revise the definition of “business entity” in SJMC Section 6.88.203 or “manager” is SJMC Section 6.88.225

Reason: The revised definition of “manager” includes “business entity”, when read together, would read as follows:

“Manager” means an individual who, directly or indirectly, is engaged in the management of a Cannabis Business, or any business entity [any organization or enterprise including, but not limited to, a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, association, or nonprofit organization, if the business entity or any parent, subsidiary, or otherwise related business entity has an interest in real property in San Jose, or does business or plans to do business or has done business in San Jose at any time during the two years prior to the date the disclosure statement is required to be filed] owning a cannabis business, or any business entity [any organization or enterprise including, but not limited to, a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, association, or nonprofit organization, if the business entity or any parent, subsidiary, or otherwise related business entity has an interest in real property in San Jose, or does business or plans to do business or has done business in San Jose at any time during the two years prior to the date the disclosure statement is required to be filed] owned by a cannabis business, as may be evidenced by the individual being responsible for the establishment, organization, registration, supervision, or oversight of the operation of the business and/or its employees, which oversight may include but not be limited to the following: performing the functions of president, vice president, board member, director, owner, operating officer, financial officer, secretary, treasurer, supervisor or manager.

The revised definition would require a property owner that is leasing property to a cannabis business would have to undergo a background check. This is too far-reaching.

5. **Request:** Revise the definition of “owner” in SJMC Section 6.88.255.

Reason: The definitions of Owner and Manager appear to overlap. Based upon the revision, officers/directors/etc. of an entity owner would be deemed “owners” and “managers”. Which would take precedence?

6. **Request:** Revise the phrase “Business registered on or before December 18, 2015, and continuously registered since that date” in Table 6.88-310 to “Business with valid Notice of Completed Registration for retail sales as of December 15, 2021”.

Reason: Per the table, only a “Business registered on or before December 18, 2015, and continuously registered since that date” would be eligible to have two dispensary (retail) locations. It is my understanding that most, if not all, of the businesses in San Jose have changed since they were initially registered on December 18, 2015. Most of the cannabis business in San Jose changed their ownership entity in 2018 after the State regulated the industry and allowed for cannabis businesses to operate as for profit businesses (previously, all of the registered cannabis businesses in San Jose operated as non-profit mutual benefit corporations pursuant to the Attorney General Guidelines for Proposition 215 businesses). Further, since 2018, there have been new operators that have obtained licenses in San Jose by acquiring an existing cannabis business. I do not believe it was Staff’s intent to preclude any current operator with a retail cannabis business in San Jose from opening a second location, as such, I suggest the phrase “Business with valid Notice of Completed Registration for retail sales as of December 15, 2021” as this is the most recent registration issued to the cannabis businesses in San Jose. Failure to correct this language would result in substantial harm to the existing retail cannabis businesses in San Jose which have been advised that they will be permitted to open a second location.

7. **Request:** Remove Notes 1 and 3 in Table 6.88-310.

Reason: These Notes appear to limit all delivery operations in San Jose to industrial areas. The State allows all cannabis storefront cannabis retailers to conduct retail sales in-store and via delivery. By the language of these Notes, a cannabis business in San Jose that opens a retail facility in the commercial zone would not be permitted to conduct delivery operations from the new location and would, instead, have to maintain two locations. I understand that the city would like stand-alone non-storefront (delivery) retailers to be located in the industrial zone, but this should not preclude storefront retailers in commercial zones from conducting sales via delivery. Additionally, by preventing storefront retailers from conducting delivery operations, the city is requiring existing cannabis businesses to retain their current locations in the industrial zones thereby ensuring that the concentration of businesses in the industrial areas remains.

8. **Request:** Revise Note 4 in Table 6.88-310

Reason: This Note appears to state that, if an existing cannabis business currently owns more than one cannabis business in San Jose, they would be limited to only opening one additional location. I believe it was the intent of the city to allow each of the 16 cannabis retail businesses to open a second location. There are some cannabis businesses that own more than one location in San Jose

Office of the City Clerk at San José

Re: February 15, 2022 Council Meeting – Agenda Items 8.1 and 10.2

February 14, 2022

Page Four

so those businesses would and should be required to open a second location per existing registration.

9. **Request:** Add language allowing cannabis businesses to open the second location under a different entity.

Reason: Most, if not all, of the cannabis businesses operating in San Jose are owned by entities (either corporations or limited liability companies). As with most businesses (not just cannabis) that operate in the world, there are various reasons to have an entity as the operator including, but not limited, multiple owners, liability, risk, taxes, etc. By precluding the existing cannabis businesses from creating a new entity to open their second location, the city is infringing on a fundamental right of the cannabis business owners to own their property in a form of their choosing. I understand the staff's concerns that they do not want new operators to use this as a method to obtain a license in San Jose. There is a method by which to alleviate staff's concerns and still allow for the existing businesses to create a new entity for their second location. Currently, businesses must disclose all entities that have an ownership interest in any cannabis business until they reach the individual owners. For the second locations, the existing cannabis businesses can be allowed to create a new entity with the limitation that the new entity have the same ownership as the current entity under which it operates. This would alleviate the concerns of staff while allowing cannabis businesses to mitigate harm they may face in having two businesses operating at two different locations under the same entity.

10. **Request:** Remove *SJMC Section 6.88.600*. This section requires all cannabis businesses to submit an annual audit to the city.

Reason: The audit required is not a financial audit but an operational audit. The audits are expensive (average costs is approximately \$30,000.00+), unnecessary, ineffective, and unduly burdensome on the cannabis businesses. The audits are unnecessary from a financial perspective because the city's Finance Department conducts its own audits of the financials. The audits are unnecessary from an operational perspective because the San Jose Police Department conducts its regular inspections of the businesses to confirm that operations are compliant. As existing cannabis businesses struggle with this requirement, it would also be difficult and expensive for the equity applicants. Accordingly, before equity applicants become registered in the city, it would be best, and equitable, to relieve all cannabis businesses of this requirement.

Sincerely,


Sharmi Shah, Esq.

Enclosures

cc: Sean Kali-rai; Clients (via email)

Comment on Item 8.1 Cannabis program

Ann Chung <[REDACTED]>

Mon 2/14/2022 2:44 PM

To: City Clerk <[REDACTED]>

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Hi,

This is regarding City Council Agenda Item 8.1 Cannabis Program.

I am opposed to increasing cannabis dispensaries in San Jose if the primary goal is to squeeze out more money out of locals. Also, some people said that it is still federally illegal, so I don't know how the city would work that out.

Second,

this is regarding the proposed redevelopment of Cambrian Village in district 9 (not on the agenda this week I believe). I am opposed to the building of more low income housing and redevelopment of Cambrian Village because it will lead to more traffic problems, and increased crime rates in the Cambrian Village area.

Thanks,
Ann

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Richard De La Rosa](#)
To: [REDACTED] [District1](#); [District2](#); [District3](#); [District4](#); [District5](#); [District 6](#); [District7](#); [District8](#); [District9](#); [District 10](#); [City Clerk](#); [City Clerk](#)
Subject: Re: Concerns on City Council Item 8.1 and 10.2 San Jose Cannabis Equity Program and Cannabis Title 20 and Title 6 Expansion
Date: Tuesday, February 15, 2022 10:32:46 AM

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Apologies for previous misformatted email.

1. Proposed Zoning changes were not expanded enough to provide the desired number of potential locations. Following more state sensitive use distances is a better solution.
2. Giving the current 16 dispensaries the opportunity and ample time to find a new location and/ or 2nd storefront ahead of any equity storefronts. Allowing at least 6 months to find a new location(s) should be considered.
3. With the addition of 2nd storefronts, reduced registration fees for 2nd location should be evaluated to insure lower cost to cannabis operators.
4. Equity cannabis program should be further studied to make sure that loopholes within the program do not create unintended consequences and prevent its true intention.

See attached article... On Equity Programs, its not very long.

<https://www.ganjapreneur.com/social-equity-is-the-hunger-games-for-bipoc-formerly-incarcerated-cannabis-founders/>

On Tue, Feb 15, 2022, 1:10 AM Richard E De La Rosa <[REDACTED]> wrote:

Honorable Mayor and Council Members,

Rich De La Rosa representing Canna Culture Corporation [REDACTED]

First of all, my apologies for our late input to these import Council items, but until today (Monday) we were not sure where we stood on the subject of Equity programs and the proposed changes to Zoning and Title 6. For the

most part we are ok with most of the Title 6 enhancements to the program. We have serious concerns with the Equity program. (see embedded article below)

Concerns:

1. **Proposed Zoning changes were not expanded enough to provide the desired number of potential locations. Following more state sensitive use distances is a better solution.**
2. **Giving the current 16 dispensaries the opportunity and ample time to find a new location and/ or 2nd storefront ahead of any equity storefronts. Allowing at least 6 months to find a new location(s) should be considered.**
3. **With the addition of 2nd storefronts, reduced registration fees for 2nd location should be evaluated to insure lower cost to cannabis operators.**
4. **Equity cannabis program should be further studied to make sure that loopholes within the program do not create unintended consequences and prevent its true intention.**

See attached article... On Equity Programs, its not very long.

Social Equity and Cannabis

Tue / Feb 1st by **Christine De La Rosa** (no relation to me)

This

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editorial was contributed by Christine De La Rosa, co-

founder and CEO of [REDACTED], a

California-based and equity-focused multistate

cannabis operator. [Full story after the jump.](#)

A WORD FROM OUR SPONSORS:



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You know that old saying, “I am sick and tired of being sick and tired” — that is how I feel about the term social equity (SE) as it is used in the cannabis space. I am sick of social equity not being social equity.



According to the National Association of Cannabis Businesses, “The goal of social equity laws is to ensure that people from communities disproportionately harmed by marijuana prohibition and discriminatory law enforcement are included in the new legal marijuana industry.”

When social equity first started back in 2016 in Oakland, it was truly intended to make the upcoming California adult-use cannabis licenses accessible to the population most affected

by the War on Drugs. This included those currently incarcerated (to be swiftly expunged upon legalization in each state), the formerly incarcerated, and the communities (mostly Black and LatinX) that were over-policed (terrorized) during that same time period. It was a beautiful dream that turned into a nightmare for many of the people it was intended to assist with the creation of jobs, ownership, and generational wealth.

Who does social equity work for?

Honestly, with a few exceptions, no one. Social equity has been an abject failure across all states where cannabis is currently regulated.

Who is profiting from social equity initiatives?

As far as I can tell, the lawyers and consulting firms that are writing the applications. Lobbyists, activists, advocates, and policy wonks who charge fees to governments and private companies to “consult” on their social equity initiatives, often with very little or no connection to the needs and wants of the SE operators they are supposed to be championing in the cannabis industry.

Who is *not* profiting from any state social equity initiatives or legislation?

The SE operators and prospective operators. For the most part, they bear the financial burden of the initiatives and legislation influenced and in some cases written by lobbyists, activists, advocates, and policy wonks. I want to believe that this is just about not knowing better but regardless of intent, harm is being done. For example:

- Instead of advocating for access to capital, they advocated for business loans and high taxes.
- Instead of advocating for entrepreneurship classes, they advocated for job training classes.
- Instead of advocating for transition programs to assist legacy operators, they advocated for fee waivers.

None of these are inherently bad, but they are not helpful in creating an equitable cannabis industry. We can see their failures right now, in real-time. Too little too late, without meaningful impact.



Social equity failures

Saying you have a social equity program is not the same as actually having social equity.

California

- Fresno gave out four SE dispensary licenses and none of those licenses went to BIPOC operators.
- Oakland gave out loans, not grants, to SE operators who were never able to realize the full potential of their license due to not having access to capital, and in late 2021 sent those operators to collections.

San Francisco gave out grants but initially required the SE operators to come out of pocket for their startup expenses and then submit receipts to the city for reimbursement.

- Los Angeles did a lottery in 2019 that was tied up in litigation for two years and has had very few of the 300 SE dispensary licenses actualized.

Illinois

- Did not learn from LA's failure and did a lottery.
- Two years later and after multiple lawsuits, there are zero social equity dispensaries open in spite of the fact that they were the first state to include social equity language in their legalization legislation.
- Illinois had a \$1.2+ billion-dollar industry as of November 2021; none of that revenue was generated by a BIPOC or formerly incarcerated SE operator — that's because as of this Op-Ed, no SE operators exist.

Colorado

- In 2021 Colorado reserved the delivery licenses to be awarded to SE operators exclusively for three years. The catch? They can't own inventory; they have to work with an existing dispensary. Dispensaries can wait and let the SE operators be the canaries in the coal mine, see if it works, and wait to potentially pick up distressed SE delivery licenses after 3 years.
- December 2021 license demographic data shows 83.4% of owner licenses are held by Caucasians, compared to 2.8% by Black and 7.9% by Hispanic/Latino.

The list of social equity's many failures to materialize at scale goes on and on.

Will New York be the new Illinois?

Now all eyes are on New York, the state and the city. So what are the potholes in their road ahead? And will they end up like Illinois who started with the best of intentions but is for all intents and purposes a failed cannabis state?

Microbusiness licenses appear to be the most cost-effective option for BIPOC (Black, Indigenous People of Color) and formerly incarcerated communities to participate in the industry, except there are limits on how much these license-holders can cultivate and what

they can sell. Why are there limits on the very people who were harmed the most? Seriously, sit with that. Policymakers seem to be saying, “We harmed you and your communities, and now we will allow you to participate in the billion- and soon to be trillion-dollar industry, but only a little bit.”

But microbusinesses can only sell the product they make. Under New York’s current legislation, microbusinesses are not allowed to sell anyone else’s products. This means smaller operators can’t support each other and larger operators are not incentivized to work with microbusinesses.

Investors can’t invest in more than three companies in New York. Raise your hand if you think there is going to be a stampede to invest in BIPOC, legacy, and companies run by formerly incarcerated founders. I can tell you from experience there will not be.

New York has threatened heavy fines for those operating in the legacy market. What do you think will happen to those who can’t afford to cover those fines? Which racial/ethnic groups do you think will be most impacted? This is a repurposing of harm: a new, buttoned-up drug war.

New York, like many states before them, is set to enter into a Hunger Games-like competition and may the odds be ever in your favor.

How we fix it

First, we stop calling it social equity because the process, initiatives, and legislation have not been equitable for any of us. Social equity has been co-opted as a catchphrase, and we deserve more than that.

Second, we need to solve the problems facing SE operators. We are four years into the use of the term social equity — what we didn’t know then, we absolutely know now. It is not working to undo the harm, it is not adding SE operators to the industry, we have no wins, at scale, to celebrate. Not only do qualified SE operators need access to capital, but they also need to learn how to access capital. Access to capital includes how to build a data room, understanding what a capital stack is, knowing when to use debt financing, equity financing, or a combination of both.



We must advocate for amnesty for community members still in the legacy market so they can transition to the legal market without fear of repercussions. We need our federal, state, and municipal governments, who invested TRILLIONS into the War on Drugs, to reroute those funds to provide startup capital for founders who were harmed by the ongoing war. Policymakers must stop using taxes as an incentive to regulate. This might be my most controversial statement but hear me out: for decades, we paid taxes that were spent on the War on Drugs that harmed our communities. Now, we are told that we need to pay high taxes on our cannabis products to repair the harm done to our communities. We paid for the harm, and now we are expected to pay for the repair? That is absurd, and it doesn't work, but that's another op-ed.

Social equity isn't working. We must acknowledge this and stop what we are doing, make it right, assess, fix, and do it again, marking our success with metrics that prove it is working as represented by the numbers and success of people who have paved the way for the entire industry. We need to be creative. We need to be brave. We must create a new system that is equitable with the operators' needs in mind. The one-size-fits-all model does not work. We, as an industry, have the opportunity to create a truly equitable cannabis market if we learn from the mistakes of our past and aim for equity until we have reached it. Then we celebrate.

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FREE CONSULTATION: Preventative security solutions for cannabis operators

Reactive security solutions such as alarms and glass break sensors can alert you that a break-in has occurred, but they do little to prevent costly incursions. A better solution is to dissuade would-be burglars from breaking in altogether.

END



AUTHORED BY:

Christine De La Rosa



Christine De La Rosa was recently named one of '22 Cannabis Leaders Who Will Shape the Industry in 2022.' In 2021, she made the list for '10 Women to watch out for: Industry luminaries and rising stars,' and was also included among the '35 Most Influential Women in Cannabis in 2020.' As a thought leader and one of the most sought-after advisors in the cannabis industry, she sits on the advisory boards of Tetragram, Regennabis, and Cannabis Doing Good.

Thank you,

Richard E. De La Rosa

Forest Consulting



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February Council Agenda Item 8.1 :Actions Related to the Cannabis Equity Program

Aurelia Sanchez <[REDACTED]>

Tue 2/15/2022 5:47 AM

To: City Clerk <[REDACTED]>

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Hello Mayor and Council members,

As a long time resident of District 3, I am very disappointed in the expansion of the cannabis clubs especially in Downtown, Urban Villages and near transit areas. It appears to me again residents in neighborhoods like mine will once again bear the brunt of these new policy changes. District 3 carries the load for affordable and supportive housing but now council is leaning towards shifting the burden of cannabis stores to the poor areas of our district where few residents voice their opposition and the city profits while the residents suffer from neglect of city services and economic development.

If council wishes to support these policies please consider the following:

1)Address the concerns of the police department regarding YOUTH ACCESS, DRIVING UNDER THE INFLUENCE AND LOCAL REGULATORY CAPACITY.

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