



The City of San Diego

Staff Report

DATE ISSUED: July 5, 2023  
TO: Land Use and Housing Committee  
FROM: Development Services Department, Cannabis Business Division  
SUBJECT: Cannabis Social Equity and Economic Development ("SEED") Program Updates to the San Diego Municipal Code and the Local Coastal Program.

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**Council District(s):** Citywide

**OVERVIEW:**

This informational report provides an update on ongoing discussions related to the proposed changes to the Land Development Code ("LDC") to implement the tools and regulatory compliance assistance that would help to eliminate some of the barriers to entry into cannabis business opportunities identified in the City's [Cannabis Equity Assessment](#) ("Equity Assessment"). The City Council adopted the Equity Assessment by a unanimous vote in October 2022. The policy intent is to level the cannabis business playing field and promote participation in the City of San Diego's regulated cannabis market by the people who were most harmed by the inequitable prosecution of the War on Drugs related to cannabis.

The City recently received \$882,000 in state grant funding as well as \$1,000,000 in City funding for FY 24 to fund cannabis equity program implementation based on the adoption of the Equity Assessment. The proposed code amendment package is tied to the state funding, which requires a program to be established and includes adopting municipal code amendments for cannabis equity permits and processes. The state funding is set to expire in October 2024 and does not allow for any time extensions.

The initial policy proposal included amendments to the San Diego Municipal Code to reflect the following changes:

1. Codifying Equity Assessment Chapter 7 Cannabis Social Equity and Economic Development ("SEED") applicant and business ownership criteria;
2. Allowing 36 additional cannabis outlets for eligible SEED applicants City-wide and establishing a Cannabis Outlet SEED Overlay Zone (COSEED OZ) that includes a broad range of commercial zones within Transit Priority Areas (TPAs);
3. Reducing some of the strict sensitive use restrictions and distance requirements for new SEED cannabis outlets and production facilities;
4. Allowing SEED cannabis outlets as a Limited Use and allowing applicants to qualify for the program prior to securing a cannabis outlet location;
5. Waiving or reducing licensing, permitting and inspection fees for SEED applicants by backfilling the

- Enterprise fund from other funding sources
6. Expanding cannabis outlet hours of operation in conformance with the state rules; and,
  7. Establishing a Cannabis SEED Incubator Program

As part of the ongoing dialogue that was sought from stakeholders, the public and from workshops with the [Economic Development and Intergovernmental Relations \(EDIR\) Committee](#) and [Planning Commission](#), staff received additional feedback from stakeholders that have informed this staff report.

### **Hiring Practices and Labor Code Language**

In order address public comment regarding including criteria on hiring practices and labor language, CBD staff is preparing language to include in the cannabis code amendment package. However, staff would like input from Committee members and stakeholders on potential provisions to include in the code package as this would be applicable to existing and future cannabis operators.

CBD staff is considering a requirement for hiring locally. This could involve setting specific targets or quotas for prioritizing the employment of individuals with prior cannabis convictions or from marginalized backgrounds and neighborhoods. Language could include requiring all operators with at least 10 employees to enter into labor peace agreements. It is staffs understanding that this requirement will become state law starting June 1, 2024. The City of National City recently created a guidebook for incorporating hiring practices and labor code language. Attachment 1 contains language from the National City guidelines for reference.

### **Cannabis Business Tax**

The Cannabis Business Tax (CBT) is a general tax, and monies collected go directly to the general fund to be allocated annually through the budgetary process. The CBT for FY23 was initially requested to be budgeted at \$27.4 million, which was prior to the approval of the tax reduction for production facilities. The amount was reduced by \$1.7 million to \$25.7 million as a result of the cannabis production facility tax reduction from 8% to 2% in 2022. This tax reduction was supposed to be offset by more production facilities paying taxes; however, this did not occur. In 2022, CBD staff removed twelve production facility permits from the list of CUP's because they had expired or were rescinded. As of June 29, 2023, the Office of City Treasurer has collected CBT in the amount \$16.3 million in FY23. As a comparison, this time last year the City collected \$20 million. The bulk of the decrease is attributed to a reduction in taxable gross receipts reported by retail outlets.

### **DISCUSSION**

The San Diego Municipal Code ("SDMC") allows for 38 Cannabis Outlet storefront retailers for medicinal and adult-use sales, and a total of 40 Cannabis Production Facilities (CPF) citywide for cannabis cultivation, manufacturing and distribution activities. To date, DSD has issued Conditional Use Permits (CUPs) for 34 retail cannabis outlets (25 in operation), with 5 applications for new outlets currently pending review and approval by a decision maker. Based on the current number of applications in process, it is likely that all 38 cannabis outlet permits could be issued to non-equity applicants in the near future. Of the 34 permits issued, 82% of the current cannabis outlets are located within the City's transit priority area (TPA). Furthermore, 52% of outlets are located in a commercial zone and 48% are located in an industrial zone, respectively. See Attachment 2, Cannabis Outlet Zoning and TPA Summary for further detail.

There are a limited number of locations available to lease or purchase for cannabis businesses. When the City's sensitive use separation requirements are added, areas of the City that allow cannabis outlets are even further restricted. Current restrictions limit cannabis outlets a maximum of four per council district, with most of these spots already taken. It is extremely difficult to find locations for the opportunities that remain.

Similar programs in other cities preceding this effort have shared their trial and errors of practices. The

City of San Diego's SEED Program has been informed by the knowledge gained by reviewing the after-action reports of other programs. CBD staff specifically evaluated programs underway in Los Angeles, Oakland, and in San Jose. These peer municipalities mirror the scope of San Diego's efforts and have reported many successes and failures. San Diego's intent to establish SEED Cannabis Outlets within commercially zoned corridors is based upon lessons learned by other jurisdictions. In addition, a number of the barriers to entry into the cannabis industry identified in equity listening sessions have been directly translated into code language and can be found in the proposed SDMC code language and use tables that are included as Attachment 3. The following provides an overview of policy considerations:

### **Cannabis SEED Applicant and Ownership Criteria**

Chapter 7 of the Equity Assessment includes cannabis SEED applicant and ownership criteria and a residency map. This chapter will serve as a basis for SEED equity applicant criteria. One amendment under consideration is the removal of the 1980 incarceration date reference and instead allow residents who had been convicted of a cannabis arrest prior to the passage of Proposition 64 in 2016 to be eligible for the program.

An area that has caused significant concerns from some stakeholders includes the SEED ownership and permit transferability criteria. When the Equity Assessment was adopted in October 2022, it was anticipated that the SEED Task Force would be formed immediately thereafter and would provide additional recommendations and direction into the development of the ownership criteria. Since this is now slated to occur in the Fall of 2023, staff recommends removing this piece of the code amendment package until further discussion and recommendations by the SEED Task Force can occur. Therefore, this portion of the code amendment package will be removed and will be brought forward once the SEED Task Force has provided their recommendation on ownership and permit transferability. The City Council recently allocated funding to hire a task force facilitator. It is expected that the SEED Task Force will convene their first meeting in late 2023.

### **Proposed Cannabis Outlet SEED Overlay Zone (COSEED OZ), Saturation Per Capita and Zoning**

- **COSEED OZ**

The purpose of the COSEED OZ is to assist in diversifying the economy of the City of San Diego by establishing allowable uses within TPAs that support regulated SEED cannabis-based businesses. The COSEED OZ is intended to provide a regulatory framework for new SEED outlets in commercial zones along transit corridors. Allowing new SEED cannabis outlets within urbanized commercial corridors would not only provide additional opportunities to SEED applicants but would also provide better access to cannabis products for adults 21 years of age and older.

The proposed amendments would make 36 new SEED cannabis outlet permits available to SEED applicants. Eligible SEED applicants could also apply for available production facility permits. The initial SEED code amendment package allowed all 36 equity permits to be issued citywide. The permits were proposed to not be limited to specific Council districts and would allow for delivery services.

The revised proposal maintains 36 phased cannabis permits. However, to address concerns regarding potential over-saturation, permits could be:

- Phased over a four-year period.
  - The permits could be subject to 1,000-foot separation requirements from other cannabis businesses and could otherwise be subject to the State of California's sensitive receptor separation requirements of 600 feet.
  - The permits could be broken into three City-wide COSEED zones (Attachment 4). Locations within the Coastal Zone are anticipated to be allowed in years three and four due to the Coastal Commission regulatory approval process for

Coastal Development Permits. As such the following phasing is proposed for discussion and consideration by the Committee and the public.

### **Cannabis Store Saturation Per Capita**

A concern that has been raised is the over concentration of cannabis outlets in San Diego. As a result, CBD staff researched other comparable cities and prepared an analysis of cannabis outlets per capita for the City of San Diego (Attachment 5). The analysis includes a breakdown by council district for currently operational and approved cannabis outlets. The Council District with the lowest per capita operational cannabis outlets is Council District 5 with 1.25 legal retailers per 100,000 and the highest is Council District 1 with a per capita of 3.18 per 100,000. Taking into consideration future allowable cannabis outlet permits (38 approved), the Council District with the lowest per capita operational cannabis outlets is Council District 5 with 2.51 legal retailers per 100,000 and the highest is Council District 1 with a per capita of 3.18 per 100,000.

Staff also prepared an analysis that took into account the proposed three zones (Attachment 4) that are discussed in more detail in this report:

- Zone 1 which includes 30 community planning areas in the northern portion of the City with a population of 717,436 currently has a 1.95 per capita per 100,000 population for existing cannabis outlets which, if twelve (12) new SEED outlet permits were added over a four-year phase in period would increase to 4.04 per capita in Year 4.
- Zone 2 which includes 10 community planning areas in the central area of the City with a population of 329,640 currently has a 1.51 per capita per 100,000 population for existing cannabis outlets which, if twelve (12) new SEED outlet permits were added over a four-year phase in period, would increase to 5.15 per capita in Year 4.
- Zone 3 which includes 9 community planning areas in the southern area of the City with a population of 324,299 currently has a 1.54 per capita per 100,000 population for existing cannabis outlets which, if twelve (12) new SEED outlet permits were phased in over a four-year period would increase to 5.24 per capita in Year 4. Attachment 3 provides the data.

### **Zoning**

A number of stakeholders raised concerns with the expansion of cannabis SEED outlets into new commercial zones because it would create an unfair advantage over existing general operators. As a result of public input, CBD has revised the proposed zone changes to greatly reduce the number of allowable new commercial zones. See Attachment 6 for a comparison of current, original proposed and amended proposed allowable zoning. Furthermore, staff created a [map](#) that illustrates potential new zones and separation requirements to help further analyze the proposed zoning.

In relation to allowing cannabis outlets in commercial zones that allow residential, concerns were raised in relation to how separation of these uses would be addressed. As currently proposed, the 100-foot separation requirement would not apply to SEED outlets. CBD received Planning Commission feedback regarding a request to determine how other major jurisdictions regulate cannabis outlets in mixed-use projects. CBD staff are currently in the process of evaluating other large jurisdictions and their mixed-use codes.

Locating new equity-based SEED cannabis outlets within transit priority areas may also potentially reduce greenhouse gas ("GHG") emissions because patrons (many who reside along and adjacent to transit corridors) will not have to rely on an automobile to access these outlets as is the case for most outlets now. Furthermore, many of these areas have smoke shops and hookah lounges that sell/serve unregulated intoxicating hemp-derived products that are allowed under the regulatory framework of the 2018 Farm Bill and are shown in Attachment 7. By allowing well-regulated SEED cannabis operators to locate within these areas, this may assist in removing the market share that unregulated, highly potent, manufactured intoxicating hemp products are gaining and may also help to increase the City's cannabis tax revenue.

## **Proposed Cannabis Sensitive Uses and Separation Requirements**

To provide an opportunity for cannabis SEED applicants, CBD recommends reducing some, but not all, of the current sensitive use restrictions. The SDMC currently recognizes resource and population-based city parks, other cannabis outlets, churches, childcare centers, playgrounds, libraries owned and operated by the City of San Diego, minor-oriented facilities, residential care facilities, schools, and residential zones as sensitive uses. In order to provide SEED applicants a greater opportunity to locate new SEED cannabis outlets within the COSEED Overlay Zone, the proposed amendments would remove resource and population-based city parks, churches, playgrounds, libraries owned and operated by the City of San Diego, residential care facilities and residential zones as sensitive uses to align with current state requirements. Childcare centers, minor oriented facilities and schools would remain as sensitive uses per state law. Attachment 8 includes a comparison of separation requirements for the State of California, other large California cities as well as local cities.

The SDMC sets the distance between all current sensitive uses at 1,000 feet from all permitted cannabis outlets. For cannabis SEED applicants, the proposed amendments would change the distance between City recognized sensitive uses to 600 feet. Amendments would also change how the 600-foot distance would be measured. The remaining sensitive uses would be measured between property lines and be measured horizontally in a straight line between the two closest points of the property lines, buildings, or use locations. The distance would be measured horizontally without regard to topography or structures that would interfere with a straight-line measurement, to align with current State law.

## **SEED Cannabis Outlets as a Limited Use and Allowing Equity Applicants to Qualify for the Program Prior to Securing a Location**

In order to provide cannabis SEED applicants with a licensing process that is simplified and would not require real estate requirements to submit an application, the CBD has prepared Attachment 9, proposed Limited Use Code Amendments, that would allow a new cannabis limited use permit.

Since access to capital is one of the identified equity barriers that prevents historically marginalized populations from owning or leasing real estate appropriate for cannabis business operations, requiring a SEED cannabis operator to own or lease a property before applying for a City permit only promises further disparity. Information gathered from the cannabis equity listening sessions found that very few potential SEED applicants are well-funded or are well-connected to deep financial networks as many of the existing operators are.

Obtaining a CUP often comes down to who can hire consultants to put together an application, and an applicant's ability to lease or own real estate until they get approved. This can result in opening the door to predatory partnerships that can strip away control of businesses from the people these programs are meant to help. Accordingly, the SEED Program recommends allowing operators to apply for a permit and be approved for the program before they need to invest any resources on leasing or purchasing a space for both SEED cannabis outlets and production facilities. The proposed new Limited Use permit would facilitate this. Grant funding obtained through the State of California GO-BIZ grant would be used to provide grants to SEED operators to help offset some of the costs for leasing and/or purchasing a building.

## **Waiving or Reducing Licensing, Permitting and Inspection Fees for Equity Applicants**

As part of the cannabis equity program development and as discussed in the Equity Assessment, it will be important to waive licensing, permitting, and inspection fees to reduce the financial barriers for eligible SEED applicants. The cost would be backfilled by the State grant funding that was recently received.

## **Operating Hours**

The SDMC currently allows cannabis outlets to operate between the hours of 7:00 a.m. and 9:00 p.m. seven days a week. State law allows cannabis outlets to operate between 6:00 a.m. and 10:00 p.m. The initial amendment would align with State regulations by allowing SEED cannabis outlets to operate between 6:00 a.m. and 10:00 p.m. seven days a week. The revised proposal would allow all operators to utilize the expanded hours allowed by the State of California, which are 6:00 a.m. until 10:00 p.m.

### **Cannabis SEED Incubator Program**

Recognizing that not every SEED applicant will be able to realize their own operation, the City is following the example of the City of Oakland and would like to embark on establishing a SEED cannabis incubator program that connects SEED applicants with existing cannabis businesses. City staff have included this initiative as part of the workplan and will provide further details once more research is completed.

### **State of California Grant Deliverables and Future Grant Opportunities**

California cities and counties are eligible to apply for grants from the Cannabis Equity Grants Program for Local Jurisdictions ("CEG Program"). The City was awarded \$764,000 in grant funding to help support equity licensees move through the local and state processes. These funds are being used to hire consultants for the following initiatives:

- (1) Development of a Accela Cannabis Module
- (2) Contractor to develop training tools for cannabis applicants/licensees; and
- (3) Contractor to aid future equity applicants with the application and permitting processes.

On December 11, 2022, the City applied for a Type II grant from the State of California's Governor's Office of Business ("GOBIZ") Phase II grant funding. On January 31, 2023, the City was awarded a \$882,840 grant from the state. Phase II grant funding is anticipated to provide grants to SEED applicants to pay for permit fees, legal fees and licenses, initial business operation expenses such as leases and other building expenses as well as a grants administrator. The 18-month grant will expire on October 3, 2024.

As part of the FY24 budget adoption, the City Council allocated \$1,000,000 for the Cannabis SEED Program. City staff is currently working on programing the funds but expects to utilize them not only to be a match for the upcoming Go-BIZ grant application that opens in October 2023, but also to help support grants funding and permit issuance support.

### **City of San Diego Strategic Plan**

This item relates to the Strategic Plan's Priority Area: Foster Regional Prosperity. The proposed code amendment package supports business practices to improve opportunities to retain, attract, and expand businesses.

### **Outreach**

On March 8, 2023, the CBD updated the Economic Development and Intergovernmental Relations ("EDIR") Committee on the division's progress implementing the SEED Cannabis Equity Assessment and Program. The [staff report](#) provided the initial proposal to be brought before a decision-making body. At that meeting, Council President Pro-Tem Montgomery Steppe expressed the importance of moving cannabis social equity forward.

The initial code amendment proposal was available for public review and comment from May 21, 2023, to June 21, 2023. It was also presented as an information item to the San Diego Chamber of Commerce Cannabis Subcommittee on May 17, 2023, the Community Planners Committee on May 23, 2023, and the Planning Commission on June 8, 2023. The CBD held three (3) working group meetings during the month of May with stakeholders representing cannabis general operators and social equity advocates to develop a better understanding of the ongoing issues they are facing in the cannabis industry which helped inform the package. Staff continues to welcome additional stakeholder feedback and public input.

## Next Steps

City staff will consider input from the Land Use and Housing Committee and plans to return to the Planning Commission for their input as a next step. CBD staff anticipates that a revised code package could be brought forward in the Fall with the draft ordinance for consideration by the City Council.

Respectfully submitted,

*Lara Gates*

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### Attachments:

1. City of National City Cannabis Labor Code and Hiring Practices Language
2. Cannabis Outlet Zoning and TPA Summary
3. Proposed SDMC Code Amendment Package
4. COSEED Overlay Zone Phasing Map
5. Cannabis Outlet Per Capita Data Analysis
6. Zoning Comparison of Current, Original Proposed and Amended Proposed
7. Smoke and Tobacco Shop Locational Map
8. Cannabis Sensitive Receptor Separation Chart
9. Limited Use Permit Code Language