



THE CITY OF SAN DIEGO

Report to the Planning Commission

DATE ISSUED: May 25, 2023

REPORT NO. PC-23-023

HEARING DATE: June 1, 2023

SUBJECT: Workshop to review Cannabis Social Equity and Economic Development ("SEED") Program Updates to the San Diego Municipal Code and the Local Coastal Program.

Staff Recommendation: *This is an information item. No action will be taken.*

Environmental Impact: This activity is not a project as defined by CEQA Guidelines Section 15378 and is thus not subject to CEQA pursuant to CEQA Guidelines Section 15060(c)(3). Future projects would be subject to environmental review in accordance with the Land Development Code and CEQA.

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.

SUMMARY

This informational report outlines proposed changes to the Land Development Code ("LDC") to implement the tools and regulatory compliance assistance that will help to eliminate some of the barriers to entry 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 intent is to level the 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 to assist in cannabis equity program implementation based on the adoption of the Equity Assessment. The workshop will provide a public forum to solicit feedback on the proposed code changes which include:

1. Codifying Equity Assessment Chapter 7 SEED applicant and ownership criteria in the LDC;
2. Allowing 36 additional cannabis outlets for eligible SEED applicants 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 and allowing SEED cannabis outlets as a Limited Use;
4. Allowing SEED applicants to qualify for the program prior to securing a location;
5. Waiving or reducing licensing, permitting and inspection fees for SEED applicants;
6. Expanding cannabis outlet hours of operation in conformance with the state rules; and,
7. Establishing a Cannabis SEED Incubator Program.

The discussion that follows outlines proposed changes to the LDC to implement the tools and regulatory compliance assistance that will eliminate some of the barriers to entry identified in the equity assessment.

BACKGROUND

The intent of the proposed SEED regulations is to implement the Equity Assessment by providing economic opportunities for eligible SEED applicants. This includes defining who may benefit, where they may locate, what incentives will be created, and, most importantly, why the program is necessary. The proposed changes have been created after carefully studying the pitfalls that the Los Angeles cannabis equity program encountered. San Diego's SEED applicant criteria, found in Chapter 7 of the Equity Assessment, establish the "*who*," and the proposed increased in permits and zoning where SEED cannabis outlets are allowed will help establish the "*where*" as recommended in Chapter 6 of the Equity Assessment. The changes to the separation and distance regulations establish the "*what*" and the "*why*" because the intent of the SEED Equity Program seeks to incentivize market participation and growth in the local cannabis industry while making an impact on reducing the illicit cannabis industry.

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 citywide for cannabis cultivation, manufacturing and distribution activities. To date, DSD has issued Conditional Use Permits (CUPs) for 33 retail cannabis outlets (24 in operation and 6 pending review and approval by a decision maker). Based on the current number of applications in process, all 38 cannabis outlet permits will be issued to non-equity applicants in 2023. See Attachment 1, Cannabis Outlet and Production Facility Summary for further detail.

The Equity Assessment recommends reducing zoning restrictions, providing financial assistance, establishing work programs, and reducing permit fees for both outlets and production facilities. 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. To implement the recommendations in the Equity Assessment, CBD staff is proposing adding 36 new SEED cannabis outlet permits as part of the package of SDMC amendments to incorporate cannabis equity with streamlining/prioritization processes.

Similar programs in other cities preceding this effort have shared their trial and errors of practices. The City of San Diego's SEED Program is from 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 TPA's is based upon lessons learned by other jurisdictions. In addition, a number of the barriers to entry identified in equity listening sessions have been directly translated into code language and can be found in the proposed code language and use tables that are included as Attachment 2. The following provides an overview of the requested changes:

1. Cannabis SEED Applicant and Ownership Criteria

Chapter 7 of the Equity Assessment includes cannabis SEED applicant and ownership criteria and

a residency map. After researching the equity programs of other cities and the State of California, as well as listening session stakeholder feedback, staff included these criteria in order to provide San Diegans who have been adversely affected by cannabis criminalization a path to economic and community recovery. The criteria take into account the historic patterns of redlining by banking institutions, migration that occurred because of the social and economic impacts to communities of color, and impacts that may have occurred from families being separated and having children placed into foster care. The impacts of educational opportunities that are demonstrated thru lower educational attainment as evidenced in Exhibit 13 of the Equity Assessment (Pages 2-24) that have affected disadvantaged communities (Exhibit 14, Pages 2-25) also informed the residency requirements.

2. Proposed Cannabis Outlet SEED Overlay Zone and Equity Outlet Permits

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. Please see Attachment 3 for a map of the COSEED OZ or view the [TPA map on the City's website](#). Allowing new SEED cannabis outlets within these areas 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 approved under the equity applicant criteria in Chapter 7 of the Assessment. Eligible SEED applicants could also apply for available production facility permits as well. The SEED cannabis outlet permits will be available in batches of up to nine per calendar year. Production facility permits do not have a per year cap. Attachment 4 provides a comparison of current permitted zones and Planned District Ordinances ("PDOs") with those proposed for SEED cannabis outlets. The permits would not be limited to specific Council districts and would allow for delivery services. A community beautification plan to reduce illegal dumping, littering, graffiti and blight and promote beautification of the adjacent community within 50 feet of each outlet would be required. This plan would include the planting of shade producing street trees and other landscaping improvements.

Locating new equity-based SEED cannabis outlets within transit corridors may also potentially reduce greenhouse gas ("GHG") emissions because patrons (many who reside along and adjacent to these 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 intoxicating hemp-derived products and are shown in Attachment 5 (Approved under the 2018 Federal Farm Bill). By allowing well-regulated SEED cannabis operators to locate within these areas, this may assist in removing the market share that intoxicating hemp products are gaining and may also help to increase the City's cannabis tax revenue.

3. 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.

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. Attachment 6 shows that these changes would be in line with other large California jurisdictions as well as the State of California's sensitive use separation requirements. 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. Currently there is a 1000-foot separation requirement between cannabis outlets. As part of the amendment process, CBD is proposing to remove this requirement for SEED cannabis outlets and production facilities.

Furthermore, the potential for allowing SEED cannabis outlets permits to be a Limited Use Process 2 rather than a Conditional Use Process 3 should be considered. Currently, alcohol licenses fall under either a Limited or Conditional Use Permit process based on the proximity of the uses to sensitive receptors. The same process should be considered to be applied to SEED Cannabis outlet permits. Generally alcohol licenses are currently allowed as a limited use unless an operator is within 600 feet of a high-crime rate census tract (or within it), within 600 feet of a census tract (or within it) where a high-ratio of alcohol beverage outlets exist, within 600 feet of a public or private accredited school, a public park, a playground or recreational area, a church, a hospital, or a San Diego County welfare district office, or within 100 feet of a residentially zoned property. Attachment 7 provides the SDMC alcohol license process code section.

4. Allowing equity applicants to qualify for the program prior to securing a location

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. Almost all SEED applicants have issues with access to capital or even getting a license. Obtaining a CUP often comes down to who can hire consultants to put together an application, and an applicant's ability to sit on real estate or keep paying a lease 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 even 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. This approval may also provide SEED operators with the legitimacy needed to attract capital needed for real estate leasing or purchasing. Grant funding obtained through the State of California GO-BIZ grant will be used to provide grants to SEED operators to help offset some of the costs for leasing and/or purchasing a building.

5. 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 will be absorbed through the State grant funding that was recently received.

6. 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 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.

7. 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 establishing a SEED cannabis incubator program that connects SEED applicants with existing cannabis businesses. A SEED cannabis incubator is defined as an existing regulated cannabis business in the City of San Diego that incubates, employs, or provides financial, real estate, cannabis knowledge or legacy market transitioning support to a SEED applicant. The general operator of the SEED incubator would provide free space and technical assistance to SEED applicants for cannabis operations including outlets and production facilities. To qualify as a SEED cannabis Incubator, a general operator must provide a SEED applicant with three years free rent, access to a minimum of 1000 square feet to conduct its business operations, and any required security measures, including camera systems, safes, and alarm systems for the space utilized by the SEED applicant. This space may be located either at the general operator's place of business or in another location in zones approved for cannabis activity. The City is soliciting ideas on what benefit a general operator would receive for providing incubator space to SEED applicants.

For production facilities, a [State-issued Type S license](#) is required. Type S manufacturers operate in shared-use facilities and can extract cannabis using butter, or food grade oils, water, glycerin, vegetable oil, animal fat, or using mechanical methods; Make cannabis products through infusion; and package and label cannabis. Shared use facilities are places where multiple Type S manufacturers rotate on a schedule and share space and equipment. Currently, the City of San Diego has only one Type S license for a production facility. City staff will work to identify other production facility operators who may be amenable to applying for a Type S license along with SEED applicants. There is a potential to have grant funding cover the cost of obtaining the Type S licenses for both general production facility operators and SEED applicants.

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 will 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 that the City anticipates hiring a contractor for. The 18-month grant will expire on October 3, 2024.

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.

CBD staff is convening a series of three internal working group meetings with stakeholders to discuss the proposed amendment package. These meetings are being held on May 10th, May 17th and May 24th. A summary of the outcome of those meetings will be presented during this workshop to the Planning Commission. The proposed code amendments will also be presented to the Community Planners Committee as an information item on May 23rd.

Conclusion

CBD staff has completed significant work on advancing equity in the cannabis permitting space with the adoption of the cannabis equity assessment and the proposed SDMC amendment package. The proposed code amendments are necessary in order to commence the creation of a successful, thriving and sustainable cannabis SEED program.

Respectfully submitted,

Lara Gates

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Attachments:

1. Cannabis Outlet Locations with Zone and TPA Information
2. Proposed SDMC Code Amendment Package
3. TPA Overlay Zone Map
4. Zoning Comparison Chart
5. Smoke and Tobacco Shop Locational Map
6. Cannabis Sensitive Receptor Separation Requirement Chart
7. SDMC Alcohol License Regulations