

CANNABIS IN SAN DIEGO – HOW IS IT GOING?

SUMMARY

California legalized recreational cannabis in 2016 when Proposition 64 passed. In the same year, the City of San Diego passed Measure N creating policies and procedures for the cannabis industry in San Diego. This Grand Jury Report does not discuss whether cannabis should be legal—California voters decided that question in 2016—or possible changes to the law. This Grand Jury Report instead discusses the resulting financial, health, and law enforcement impacts of cannabis legalization and recommends actions that should be taken to better inform the public about these impacts in San Diego.

The Grand Jury recommends the City of San Diego develop and publish reports that document the fiscal and law enforcement impacts of cannabis legalization, and to develop a public education campaign that highlights the health impacts of cannabis on children and seniors. The Grand Jury recommends the San Diego Police Department and San Diego County Sheriff's Department collaborate to develop and implement strategies to target unlicensed delivery services. Finally, the Grand Jury recommends the San Diego Board of Supervisors direct County staff to develop and publish reports that document the health and law enforcement impacts of cannabis legalization.

BACKGROUND

Medical use of cannabis became legal in California in 1996 with the passage of Proposition 215, the Compassionate Use Act of 1996, but recreational use of cannabis remained illegal. In 2016, Proposition 64 asked California voters whether adults 21 years of age or older should be legally permitted to grow, possess, and use marijuana for nonmedical purposes. Proposition 64 promised that, if passed, the state would regulate nonmedical marijuana businesses and tax the growing and selling of medical and nonmedical marijuana. The Legislative Analyst's office said that, if Proposition 64 were approved, most of the revenue from the resulting taxes would be used to support youth programs, environmental protection, and law enforcement.¹ In anticipation of the passage of Proposition 64, voters of the City of San Diego passed Measure N in 2016 to regulate and tax the cannabis industry in the City of San Diego.

Beyond the specific ballot language, arguments for and against Measure N painted vastly different views of a world with legalized cannabis. "Arguments in Favor" described a city with the resources to properly regulate the new cannabis industry, while "Arguments Against" described a future of uncertain revenues and costs, increased problems with teen drug use, law enforcement issues, and mental health problems.² To date there have been no published comprehensive reports or studies documenting the results of cannabis legalization. The Grand Jury decided to review the San Diego cannabis program to determine the impact of cannabis legalization seven years after the passage of Measure N.

METHODOLOGY

- The Grand Jury reviewed literature concerning the legalization of cannabis, the amount and use of cannabis revenue, and health and law enforcement issues resulting from cannabis usage in San Diego.
- The Grand Jury interviewed City of San Diego staff administering the cannabis program, members of pro-and anti-cannabis groups, county health officers and school organizations as well as other interested parties.
- The Grand Jury interviewed representatives from the San Diego City Attorney’s office, the District Attorney’s office, the San Diego Police Department (SDPD), and the San Diego County Sheriff’s Department.

DISCUSSION

Measure N

The ballot language for Measure N stated the City of San Diego would adopt an ordinance imposing a tax on cannabis gross receipts, to be used for general revenue purposes. Beyond the specific Measure N ballot language, arguments for and against the measure were included in the ballot pamphlet. While these partisan arguments do not carry any force of law, they likely influenced some voters in their vote.

Arguments in favor of the measure included:

- By proactively imposing a gross-receipts tax on recreational marijuana, **the city’s budget will be protected** from any new costs associated with marijuana legalization. (emphasis added)

Arguments against the measure included:

- The marijuana tax percentages recommended in this ballot measure **will NOT compensate in any way** for the increased teen marijuana use, drug addiction, marijuana impaired driving, poisonings from marijuana concentrates and edibles, nor mental health problems, that will come from increased recreational use of marijuana.³ (emphasis added)

On December 13, 2016, the City of San Diego adopted Ordinance Number O-20776 implementing the results of the election. In 2017 the City of San Diego began accepting permit applications to grow, manufacture and/or sell recreational marijuana products. Also, in 2017 the State of California Bureau of Cannabis Control (BCC) was created. The BCC is responsible for licensing retailers, distributors, testing laboratories, microbusinesses, and temporary cannabis events.

Revenue

Measure N proponents claimed that the cannabis tax would not have a negative impact on city finances. From the Measure N “Argument in Favor”: “The purpose of Measure N is to ensure that the City has the resources to properly regulate the marijuana industry without hurting our investment in core city services ... the city’s budget will be protected from any new costs associated with marijuana legalization.”⁴

Proponents of cannabis legalization implied revenues would support youth programs, environmental protection, and law enforcement. Measure N, however, created a general tax, not a special tax, which means the revenue goes to the general fund and is allocated through the annual budget process. Consequently, there is no direct correlation between cannabis tax proceeds and the allocation of those taxes to city services. This makes it difficult to determine the impact of cannabis revenue on the City or on any program and has resulted in an inability to trace where the revenue from cannabis taxes is used.

Documentation of the effects of the City's cannabis program involves many parts of city government (e.g., Development Services, Tax/Treasurer, SDPD), and there is no compilation of data related to total costs of administering the program. Moreover, many impacts of the legalization of cannabis affect non-City agencies, e.g., health impacts (funded by the County) and school impacts (funded by various school districts). The City of San Diego does not produce an overall report that informs San Diego citizens about the financial impact resulting from the legalization of cannabis on the City or its programs.

The City collects cannabis tax revenue from licensed businesses based on their gross receipts. Measure N also includes other fees, such as one time business license, but these are small compared to the gross receipts tax. According to a report from industry advisers, Arcview Market Research and BDS Analytics, consumers are spending roughly \$3 in the state's underground cannabis economy for every \$1 in the legal economy.⁵ This "black market" of unlicensed retail businesses do not pay taxes on their receipts, reducing the amount of tax revenue that is collected by the City. These businesses fall into two categories, storefront operations that have a physical address and delivery services that deliver cannabis directly to the consumer's home.

The City does not report cannabis revenue or costs in the city budget.⁶ Just as cannabis revenue that goes into the general fund is not identified, records of cannabis related costs to the City and its occupants are not kept. Identifying the exact effect of black-market cannabis on the City is difficult to determine, but it has a significant negative impact on the tax revenues the City collects.

Following the legalization of cannabis, the SDPD and the Development Services Division began enforcing licensing requirements for legal cannabis sales locations, which has essentially eliminated unlicensed storefront cannabis retailers in the City.⁷ However, these enforcement efforts have not been effective in shutting down the unlicensed delivery services. These services "divert" business from their licensed competitors as they have lower overhead, do not pay taxes, and conduct little, if any, quality, and health control. As a result, many legitimate producers and retailers have not entered the regulated market due to higher costs.⁸

Delivery services are also an ongoing enforcement challenge for the City because they may be based in locations outside the City limits. In interviews with city and county law enforcement, the Grand Jury did not find evidence of effective law enforcement coordination that impacted delivery services.

Law Enforcement

The rate of cannabis related crime in San Diego has ebbed and flowed since its legalization. In the 1960's, selling cannabis was a felony, in the same class as heroin, punishable by a two to ten-year prison term. In the decades since, most cannabis related arrests and prosecutions have been

for misdemeanors, not felonies. With the passage of Proposition 64, arrests in California fell by more than half, from 15,000 in 2016 to 6,000 in 2017.⁹ Police no longer spend as much time on cannabis enforcement and instead spend more time on solving more dangerous crimes.

The number of smoke shops selling CBD products in San Diego is increasing. It is illegal to sell synthetic CBD, made from hemp, in smoke shops in California (AB 45, 2021). Following seizure of several hundred pounds of synthetic CBD laced products in December 2023, San Diego issued an open letter making smoke shops aware that selling these products is illegal.¹⁰

SDPD works closely with the District Attorney on enforcement issues. But since the severity of the cannabis related laws has been reduced (felonies down to misdemeanors), members of law enforcement assert that illegal activities will continue to lack a stronger deterrent.

Health

Seniors are being treated in emergency rooms in significantly higher numbers for adverse side effects from cannabis consumption. Researchers from the University of California, San Diego (UCSD) studied the issue after they noticed a greater number of older patients ending up in the ER after using marijuana products. While the researchers did expect to see an increase, the sharpness of the increase surprised them. The reasons for an increasing number of California seniors visiting emergency rooms is that they are experiencing increased pain or are having other health issues solely related to age and are using cannabis products to self-medicate. The cannabis older adults remember from the 1960's was far less potent, less than 5% THC then, compared to 25-30% now. Cannabis-related emergency room visits for those aged 65 and over increased by 1,804% between 2005 and 2019, according to a study by the UCSD School of Medicine.¹¹

Cannabis affects youth because the human brain continues to develop and mature into the mid-twenties, and developing brains are especially vulnerable to the harmful effects of cannabis. Using cannabis often, particularly at younger ages, affects important parts of the brain that are responsible for attention, decision-making, learning, memory, and motivation. Data from 52 children's hospitals showed a 13.3-fold increase in marijuana-related hospitalizations in children under 6, with half of the patients requiring hospitalization, 15% requiring ICU care, and 4% requiring mechanical ventilation.¹²

Using cannabis often during youth is linked to:

- Lower likelihood of graduating high school,
- Lower school performance,
- Challenges with working memory,
- Higher risk of developing cannabis use disorder which peaks during late adolescence and among people in their early 20's, and
- Higher rate of self-harm.^{13,14}

Cannabis-related issues impact schools because of increased potency, increased variety (vaping, smoking, ingesting) and increased availability. Schools are fighting back against the results of increased cannabis use, as well as other drug related issues, with educational programs, such as "I Choose My Future," to try to reduce usage instead of reacting to problems later.

Frequent use of high THC cannabis in youth is also linked to higher risk for developing psychosis or psychotic disorders later in life.¹⁵ This is especially true for those with higher

genetic risk for psychotic disorders, those who start using cannabis earlier, and those who use it more often.

Overall, it is difficult to assess the potential cost impacts of cannabis use in health care and education costs, as neither the City nor the County report costs related to cannabis-related health or education programs.

Conclusion

In summary, the Grand Jury found:

- The “Arguments For” was correct, in that revenues are (mostly) being well managed.
- The “Arguments Against” side was correct in the myriad of health and other impacts to society.
- No one (City nor County) has ever fully assessed the impacts in a comprehensive way.
- No one (City nor County) produces public reports describing the impacts of cannabis legalization in San Diego.

FINDINGS

- F1.** City cannabis tax revenues are negatively impacted by unlicensed cannabis delivery services and smoke shops selling “enhanced CBD,” operating throughout the City.
- F2.** Current Law Enforcement efforts against unlicensed delivery services and “enhanced CBD” are not effective.
- F3.** The City does not report all revenue, expenses and impacts associated with cannabis legalization, leaving citizens unaware of the full fiscal impact of Measure N.
- F4.** The County does not report the non-financial costs (e.g., health and law enforcement impacts) of legalized cannabis, leaving citizens unaware of the full non-fiscal impacts of cannabis legalization.
- F5.** Legalized cannabis has had significant health impacts on school-aged children and senior citizens.

RECOMMENDATIONS

The 2023/2024 San Diego County Grand Jury recommends that the San Diego Police Department and San Diego County Sheriff’s Department:

- R1.** Collaborate to develop and implement strategies to target unlicensed delivery services and smoke shops selling enhanced CBD products.

The 2023/2024 San Diego County Grand Jury recommends that the San Diego Mayor:

- R2.** Direct the city staff to develop and publish reports that document the fiscal and law enforcement impacts of cannabis legalization.
- R3.** Direct the city staff to create a public education campaign that details the impacts of cannabis use on children and seniors.

The 2023/2024 San Diego County Grand Jury recommends that the San Diego County Board of Supervisors:

R4. Direct the county staff to develop reports that document the health and law enforcement impacts of cannabis legalization.

¹ Legislative Analyst’s Office. “Proposition 64: Marijuana Legalization Initiative Statute”. (November 8, 2016).

<https://www.lao.ca.gov/BallotAnalysis/Proposition?number=64&year=2016>

² Ballotpedia. “San Diego, California Non-medical Marijuana Tax, Measure N.” (November, 2016)

[https://ballotpedia.org/San_Diego,_California,_Non-medical_Marijuana_Tax,_Measure_N_\(November_2016\)](https://ballotpedia.org/San_Diego,_California,_Non-medical_Marijuana_Tax,_Measure_N_(November_2016))

³ Ibid.

⁴ Ibid.

⁵ ArcView and BDS Analytics. *California: Lessons from the World’s Greatest Cannabis Market: Executive Summary*. (August 2019) https://bdsa.com/wp-content/uploads/2019/08/2019_BDS_California_CIB_Exec_Summ_Final_With_A.pdf

⁶ City of San Diego. *Fiscal Year 2024 Adopted Budget. Volume 1: General Fund Revenues*. https://www.sandiego.gov/sites/default/files/fy24ab_v1generalfundrevenues.pdf

⁶ City of San Diego Memorandum. “Marijuana/Cannabis Permitting Update”. (October 1, 2019).

https://www.sandiego.gov/sites/default/files/dsd_council_memo.pdf

⁸ Arc View and BDS Analytics (August 2019).

⁹ Becerra, Xavier [Attorney General of California]. *Crime in California 2017*. <https://data-openjustice.doj.ca.gov/sites/default/files/2022-08/cd17.pdf>

¹⁰ City of San Diego Development Services Department. “Sale of Intoxicating Hemp: (December 1, 2023)

https://www.sandiego.gov/sites/default/files/2023-12/intoxicating_hemp_business_warning_letter_12_1_23_0.pdf

¹¹ Han BH, et al. “Trends in emergency department visits associated with cannabis use among older adults in California, 2005–2019.” *J Am Geriatr Soc* 71[4] (2023): 1267-1274. doi:[10.1111/jgs.18180](https://doi.org/10.1111/jgs.18180)

¹² Bennett, Colleen, et al. “Recent trends in marijuana-related hospital encounters in young children” *Academic Pediatrics* 22[4] (2022):592-97.

¹³ National Academies of Sciences Engineering and Medicine. *The health effects of cannabis and cannabinoids: Current state of evidence and recommendations for research*. (Washington, DC, 2017).

¹⁴ Volkow ND, et al. “Effects of Cannabis Use on Human Behavior, Including Cognition, Motivation, and Psychosis: A Review.” *JAMA Psychiatry*73[3] (2016):292-7.

¹⁵ Ibid.

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding; in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code 933.05 are required from the:

| Responding Agency | Findings | Recommendations |
|--|-----------------|------------------------|
| San Diego Police Department | F1, F2 | R1 |
| San Diego County Sheriff's Department | F1, F2 | R1 |
| San Diego City Mayor | F3 | R2, R3 |
| San Diego County Board of Supervisors | F4, F5 | R4 |