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CANNABIS NEWS

THE CANNABIS INDUSTRY BOOMED DURING COVID-19 CLOSURES

Over the last year, much of the American economy slowed or halted entirely due to the COVID-19 pandemic and related stay-at-home orders. Yet while too many businesses closed their doors permanently due to the economic impacts of the coronavirus, cannabis business was booming.

Background

Early in the pandemic, California declared all commercial cannabis businesses "essential," allowing them to remain open during the stay-at-home orders which were put in place beginning in March 2020. Other states followed similar paths, ensuring that legal cannabis remained readily available even when other products, including toilet paper, were suddenly scarce. In Nevada, for example, Las Vegas became the layoff epicenter of the United States last March, and the sales on the "Strip", usually focused on hard-partying tourists, dropped off dramatically. Yet cannabis cultivators saw an opportunity in the pandemic-related stress and anxiety that gripped the nation, and Nevada cultivators pivoted towards a much broader market.

The gambit worked, and legal cannabis sales in the United States passed $17.5 billion in 2020, a 46 percent increase over sales in 2019. For many Americans, cannabis became an essential product during the pandemic, and the cannabis industry ensured supply kept up with growing demand.

Replacing the Tourist Economy

In places like Las Vegas, tourist dollars needed to be replaced by local residents. With two million locals, the loss of traveling customers did not ultimately mean lower demand for products. The commercial cannabis industry nationwide tends to rely on cannabis tourism as well—people travel to Colorado and California in part because of the legal recreational market—but quality has become a key differentiator in the industry. Competition with the illicit cannabis marketplace has always been a challenge for legal operators, but people stuck in their homes became more discerning about their cannabis, and tended to prefer the higher quality selection available from legal dispensaries to what they could find through illegal channels.

Even as tourists slowly begin to return, the local market that grew during the shutdown shows no signs of slowing down.

Increased Market Not Limited to Recreational Users

Even in states where recreational cannabis remains illegal, sales boomed during the pandemic. In Florida, roughly half a million residents hold medical cannabis cards, and many medical dispensaries offered deals to attract those customers. In Massachusetts, which is the only state to distinguish between medical cannabis distributors and adult-use retailers (despite the fact that recreational cannabis use is fully legal there), many dispensaries were thrown when recreational cannabis was not deemed "essential." Though the shutdown for adult-use retailers lasted only a few months, it changed the way many dispensaries thought about their businesses going forward. In places where internet access is less pervasive, some dispensaries created telephone order systems to replace the in-store experience, with budtenders guiding customers through a virtual shopping experience over the phone. Some dispensaries report that such telephone preorder systems have become nearly 100 percent of their business over the past year—and that business looks brighter than it did before COVID-19.

Conclusion and Implications

The COVID-19 pandemic created an early stress-test for recreational cannabis markets nationwide, and the industry has passed with flying colors. Sales are up, innovation has changed the way many dispensaries operate, and the industry has lived up to its frequent designation as "essential," even without cannabis tourism to drive those dollars. As recreational cannabis becomes mainstream across the nation, local markets will likely become as central to the industry's success as cannabis tourism, and if the past year is any indication, the country's cannabis boom may be just beginning.

(Jordan Ferguson)

LEGISLATIVE DEVELOPMENTS

NEWLY-ADOPTED CALIFORNIA BUDGET INJECTS $100 MILLION IN GRANTS TO BOOST LEGAL CANNABIS MARKET

On June 14, 2021, the California Legislature adopted the Budget Act of 2021—Senate Bill (SB) 112. With that budget, the Legislature approved a $100,000,000 grant program proposed by Governor Newsom to boost California's struggling legal cannabis industry. Legal cannabis businesses have been struggling over the years to gain traction over the still-thriving illegal market due to the strict requirements set forth under regulatory frameworks that state and local officials have put in place to ensure legal cannabis does not endanger public health, safety, and welfare. With the $100,000,000 in grant funding being made available to certain local governments, Governor Newsom and the Legislature are hoping to kickstart local processing of applications for cannabis businesses to remove some of these regulatory burdens.

Background

Since voters authorized adult use cannabis in November 2016 by approving proposition. 64, the legal cannabis industry has struggled to take off for several reasons. Two of the biggest reasons have been competition from the illicit cannabis market and the comprehensive regulatory schemes established by the state as well as local governments. Over the four and a half years since proposition. 64, the state regulatory system has undergone a near-constant metamorphosis to streamline licensing and enforcement.

The same cannot be said for the regulations imposed at the local level. Since the legalization of cannabis at the local level is left at the discretion of each municipality and county throughout the state, each that has authorized some type of commercial cannabis activity has developed ordinances and has implemented processes to review applications and enforce its ordinances against licensed cannabis businesses. Local jurisdictions considering some degree of legalization frequently tread a fine line between those constituents arguing in favor of legalization and those who express concerns regarding public health, safety, and welfare. The result of this balance is frequently a regulatory scheme that calls for very detailed review of applications and requires frequent checks on cannabis activity once operational to ensure compliance.

An issue that often arises from this legalization at the local level is a lack of resources to fund the increased demands on the staff tasked with implementing the local cannabis licensing schemes. This results from the costs of implementing the regulatory scheme leading months, or sometimes years, ahead of the revenue stream that cannabis businesses represent for a local jurisdiction. The "Local Jurisdiction Assistance Grant Program" adopted with the Budget Act of 2021 is designed to help relieve some of these pressures at the local level.

Grant Program Details

In designing this grant program, Governor Newsom and the California Legislature aimed to create a program that assists those local jurisdictions that had the largest backlog. The Budget Act of 2021 states:

> . . .local jurisdictions that are eligible for funding… represent those with significant numbers of provisional licenses and legacy applicants, and provisional licensees with greater California Environmental Quality Act compliance requirements.

The Budget Act of 2021 restricts the eligible uses of these grant funds to the following expenses incurred by local jurisdictions:

- Local government review, technical support, and certification for application requirements.

- Local government or other professional preparation of environmental documents in compliance with the California Environmental Quality Act for permits, licenses, or other authorizations to engage in commercial cannabis activity.

•Mitigation measures related to environmental compliance, including water conservation and protection measures.

•Other uses that further the intent of the program as determined by the Department of Cannabis Control.

The following uses of grant funds are expressly prohibited and subject a local jurisdiction to having to return funds to the state:

•Costs of fees related to litigation.

•Payment of fines or other penalties incurred for violations of environmental laws and regulations.

•State or local commercial cannabis license or application fees, excluding fees related to California Environmental Quality Act compliance and review.

•Supplanting existing cannabis-related funding.

•Other prohibited uses as determined by the Department of Cannabis Control.

The local jurisdictions earmarked for receiving funds under the Local Jurisdiction Assistance Grant Program and the amount they are allocated under the Budget Act of 2021 are listed as follows:

City of Adelanto – $972,696
City of Commerce – $416,870
City of Desert Hot Springs – $822,160
County of Humboldt – $18,635,137
County of Lake – $2,101,143
City of Long Beach – $3,935,942
City of Los Angeles – $22,312,360
County of Mendocino – $18,084,837
County of Monterey – $1,737,035
City of Oakland – $9,905,020
County of Nevada – $1,221,188
City of Sacramento – $5,786,617
City of San Diego – $764,261
City and County of San Francisco – $3,075,769
City of Santa Rosa – $775,841
County of Sonoma – $1,158,023
County of Trinity – $3,295,102

Conclusion and Implications

Ultimate allocation of funds will be determined by the California Department of Cannabis Control. If the Department of Cannabis Control does not disburse any funds to the above-listed jurisdictions, or reduces the disbursed amount, any excess funds are available to any other local jurisdiction that is eligible for funding under the Local Jurisdiction Assistance Grant Program, though these funds must be disbursed by June 30, 2025. The history and full text of the Budget Bill is available online at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB112.
(Andreas L. Booher)

CONNECTICUT USHERS IN ADULT USE RECREATIONAL CANNABIS—SALES SHOULD BEGIN IN 2022

Connecticut Governor Ned Lamont has signed legislation, on June 22, 2021, legalizing recreational possession and use of marijuana for adults. It is anticipated that retail sales will begin sometime in 2022.

Background

The Connecticut Senate voted Thursday June 17, 2021 to legalize the recreational use of cannabis for adults, the final legislative action for a bill that lays the groundwork for the new industry in Connecticut and attempts to address racial inequities stemming from the nation's war on drugs. https://www.norwichbulletin.com/story/news/state/2021/06/17/connecticut-set-legalize-marijuana-beginning-july-1-2021/7736148002/

The Senate approved the legislation on a 16 to 11 vote. Four Democrats joined all the Republicans in attendance in opposition. Nine senators were absent for the vote.

Under the bill, Senate Bill 1201, it will be legal for individuals 21 and older to possess and use cannabis beginning July 1. A person would be allowed to

have up to 1.5 ounces, with an additional five ounces secured in their home or vehicle. Retail sales of recreational cannabis in Connecticut are not expected to begin until May 2022, at the earliest. https://www.norwichbulletin.com/story/news/state/2021/06/17/connecticut-set-legalize-marijuana-beginning-july-1-2021/7736148002/

Upon signing the bill into law, Governor Lamont stated:

> It's fitting that the bill legalizing the adult use of cannabis and addressing the injustices caused by the war of drugs received final passage today, on the 50-year anniversary of President Nixon declaring the war. The war on cannabis, which was at its core a war on people in Black and Brown communities, not only caused injustices and increased disparities in our state, it did little to protect public health and safety. That's why I introduced a bill and worked hard with our partners in the legislature and other stakeholders to create a comprehensive framework for a securely regulated market that prioritizes public health, public safety, social justice, and equity. It will help eliminate the dangerous unregulated market and support a new, growing sector of our economy which will create jobs," Lamont said in a statement. https://www.nbcconnecticut.com/news/local/ct-senate-passes-legal-marijuana-bill-bill-heads-to-governor/2510325/

Senate Bill 1201: An Act Concerning Responsible and Equitable Regulation of Adult-Use Cannabis

A Summary of What the New Law Accomplishes

SB 1201 is a very comprehensive bill that deserves some time to make it through all 300 pages of text. Obviously, the legislators who sponsored the bill, and the two houses of government that modified the bill, spent time looking at the laws of the many other states that have gone down the path of legalization—and considered some of the problems and challenges those states have encountered in the first years of legalization Social Equity concerns most certainly played a large role in Connecticut's plans for legalization. In summary form, according to one news source, the new law accomplishes the following:

- It would allow adults 21 and older to possess up to 1.5 ounces of cannabis starting on July 1 and establish a retail market. Legislative leaders anticipate sales would launch in May 2022.

- Regulators with the Department of Consumer Protection (DCP) would be responsible for issuing licenses for growers, retailers, manufacturers and delivery services. Social equity applicants would be entitled to half of those licenses.

- Equity applicants could also qualify for technical assistance, workforce training and funding to cover startup costs.

- A significant amount of tax revenue from cannabis sales would go toward broader community reinvestment targeting areas most affected by the criminal drug war.

- Home cultivation would be permitted—first for medical marijuana patients and later for adult-use consumers.

- Most criminal convictions for possession of less than four ounces of cannabis would be automatically expunged beginning in 2023.

- Beginning July 1, 2022, individuals could petition to have other cannabis convictions erased, such as for possession of marijuana paraphernalia or the sale of small amounts of cannabis.

- The smell of cannabis alone would no longer be a legal basis for law enforcement to stop and search individuals, nor would suspected possession of up to five ounces of marijuana.

- Absent federal restrictions, employers would not be able to take adverse actions against workers merely for testing positive for cannabis metabolites.

- Rental tenants, students at institutions of higher learning, and professionals in licensed occupations

would be protected from certain types of discrimination around legal cannabis use. People who test positive for cannabis metabolites, which suggest past use, could not be denied organ transplants or other medical care, educational opportunities or have action taken against them by the Department of Children and Families without another evidence-based reason for the action.

•Cannabis-related advertising could not target people under 21, and businesses that allow minors on their premises would be penalized. Products designed to appeal to children would be forbidden.

•Licensees who sell to minors would be guilty of a Class A misdemeanor, punishable by up to a year in prison and a $2,000 fine. People in charge of households or private properties who allow minors to possess cannabis there could also face a Class A misdemeanor.

•Adults 18 to 20 years old who are caught with small amounts cannabis would be subject to a $50 civil fine, although subsequent violations could carry a $150 fine and/or mandatory community service. All possession offenses would require individuals to sign a statement acknowledging the health risks of cannabis to young people.

•Minors under 18 could not be arrested for simple cannabis possession. A first offense would carry a written warning and possible referral to youth services, while a third or subsequent offense, or possession of more than five ounces of marijuana, would send the individual to juvenile court.

•Local governments could prohibit cannabis businesses or ban cannabis delivery within their jurisdictions. Municipalities could also set reasonable limits on the number of licensed businesses, their locations, operating hours and signage.

•Municipalities with more than 50,000 residents would need to provide a designated area for public cannabis consumption.

•Until June 30, 2024, the number of licensed cannabis retailers could not exceed one per 25,000 residents. After that, state regulators will set a new maximum.

•Cannabis products would be capped at 30 percent THC by weight for cannabis flower and all other products except pre-filled vape cartridges at 60 percent THC, though those limits could be further adjusted by regulators. Medical marijuana products would be exempt from the potency caps. Retailers would also need to provide access to low-THC and high-CBD products.

•The state's general sales tax of 6.35 percent would apply to cannabis, and an additional excise tax based on THC content would be imposed. The bill also authorizes a 3 percent municipal tax, which must be used for community reinvestment.

•Existing medical marijuana dispensaries could become "hybrid retailers" to also serve adult-use consumers. Regulators would begin accepting applications for hybrid permits in September 2021, and applicants would need to submit a conversion plan and pay a $1 million fee. That fee could be cut in half if they create a so-called equity joint venture, which would need to be majority owned by a social equity applicant. Medical marijuana growers could also begin cultivating adult-use cannabis in the second half this year, though they would need to pay a fee of up to $3 million.

•Licensing fees for social equity applicants would be 50 percent of open licensing fees. Applicants would need to pay a small fee to enter a lottery, then a larger fee if they're granted a license. Social equity licensees would also receive a 50 percent discount on license fees for the first three years of renewals.

•The state would be allowed to enter into cannabis-related agreements with tribal governments, such as the Mashantucket Pequot Tribe and the Mohegan Tribe of Indians.

[*See:* https://www.marijuanamoment.net/connecticut-governor-signs-marijuana-legalization-into-law/; *and see:* https://cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2021&bill_num=1201]

Conclusion and Implications

Connecticut is the fourth state in 2021 that has legalized adult use of cannabis, with New York,

Virginia and New Mexico preceding it this year. Very few states have legalized recreational cannabis use by adults via legislation. Most states have only accomplished legalization through the initiative and referendum process. The law almost didn't come to fruition after Governor Lamont threatened to veto SB 1201 when it attempted to allow people with past cannabis arrests and convictions—as well as their parents, children and spouses—to qualify for social equity status when applying for marijuana business licenses. With that provision removed, the bill became law with Lamont's signing on June 22, 2021. The process to establish regulations consistent with the very long and detailed bill will now begin. As we have seen with other states that have come before it, it will probably take years to determine what works and what doesn't.
(Robert Schuster)

MINNESOTA LEGISLATION ALTERS THE STATE'S MEDICINAL CANNABIS LAW

New legislation in the State of Minnesota, some seven years after the state first legalized cannabis use for medicinal purposes, now allows using leaves directly from the plant. The new legislation also allows for a caregiver to represent several patients in the process of acquiring the leaf for smoking.

Background

Medical cannabis use was legalized in the State of Minnesota in May 2014. This legalization was accomplished via "Senate File 2470." Under the law, the Minnesota Commissioner of Health was tasked with the comprehensive regulating the SF 2470, including "patient" registry and the production and distribution of medical cannabis.

The law allows for the creation of two in-state manufacturers of medical cannabis—each has opened four dispensaries—which means that within the entire state, there are (as of late 2019), eight operational dispensaries in Minnesota. Home cultivation is not allowed.

For a patient to receive medical cannabis, the law requires that a licensed health care practitioner certify that the patient has one or more of the qualifying conditions. A "health care practitioner" is defined as a Minnesota-licensed doctor of medicine, a Minnesota-licensed physician assistant acting within the scope of authorized practice, or a Minnesota-licensed advanced practice registered nurse who has primary responsibility for care and treatment of the patient's qualifying medical condition.

'Qualifying Medical Conditions'

Qualifying conditions currently include:

- Cancer associated with severe/chronic pain, nausea or severe vomiting, or cachexia or severe wasting
- Glaucoma
- HIV/AIDS
- Tourette Syndrome
- Amyotrophic lateral sclerosis (ALS)
- Seizures, including those characteristic of epilepsy
- Severe and persistent muscle spasms, including those characteristic of multiple sclerosis
- Inflammatory bowel disease, including Crohn's disease
- Terminal illness, with a probable life expectancy of less than one year
- Intractable pain
- Post-traumatic stress disorder
- Autism

- Obstructive sleep apnea
- Alzheimer's disease
- Chronic pain
- Sickle cell disease (effective Aug. 2021)
- Chronic motor or vocal tic disorder (effective Aug. 2021)

https://www.health.state.mn.us/people/cannabis/patients/conditions.html

Anyone with a condition that is not included in the accepted conditions list can petition the Minnesota Department of Health to:

> . . .add a qualifying medical condition or an approved medical cannabis delivery method/ approved form of medical cannabis. The department accepts petitions from June 1 to July 31 each year. https://www.health.state.mn.us/people/cannabis/rulemaking/index.html

'Health Care Practitioner'

A qualifying health care practitioner is defined by state statute as follows:

> A "Health care practitioner" means a Minnesota licensed doctor of medicine, a Minnesota licensed physician assistant acting within the scope of authorized practice, or a Minnesota licensed advanced practice registered nurse who has the primary responsibility for the care and treatment of the qualifying medical condition of a person diagnosed with a qualifying medical condition. https://www.health.state.mn.us/people/cannabis/practitioners/types.html

Certification and Registration

In order for someone who visits a health care practitioner to start the process to obtain medicinal cannabis, the patient must first wait for that practitioner to inform the Office of Medical Cannabis. This is known as certification by the practitioner. After that the patient will receive an email from the Office of Medical Cannabis.

Once that email is received the patient must "register online" which is a defined and somewhat detailed process. https://www.health.state.mn.us/people/cannabis/docs/materials/refguideadult.pdf

Patients in the Minnesota Medical Cannabis Program must have their qualifying condition(s) recertified by their MD, Nurse Practitioner or Physician Assistant on an annual basis. Once recertified, a re-enrollment application must be submitted by the patient and approved by the Office of Medical Cannabis. https://www.health.state.mn.us/people/cannabis/patients/index.html

Recreational Cannabis Use

The State of Minnesota still characterizes all recreational marijuana possession a misdemeanor or felony. It has, however, put in place decriminalization to a degree: the possession of up to 42.5 grams of marijuana may only be punished by a fine of up to $200. Additionally, there is a conditional release policy in place for first time offenders, who can have the offense removed from their record. Offenders may also be required to complete a drug education course.

Those caught in possession of more than 42.5 grams of marijuana face more serious penalties. These crimes are prosecuted as felonies, which can be punished by five years or more in jail, and fines of $10,000 or more. https://www.medicalmarijuanainc.com/minnesota-marijuana-laws/

What Has Changed?

Recreational Cannabis

Some seven years since Senate File 2470's passage, recreational cannabis legalization has stalled. In May 2021 an "historic" bill, House File 600, was passed by the state's House of Representatives. The bill passed on a 72-61 vote—with some Republican support is the farthest the proposal has ever traveled through the Minnesota Legislature, and it follows a dozen capitol committee hearings, community meetings across the state and consultation with state agencies. But the proposal came to a sharp halt at the Minnesota Senate, where the GOP in control won't take it up. https://minnesota.cbslocal.com/2021/05/15/marijuana-legalization-bill-mn/

Changes to Medicinal Cannabis Law in Minnesota

Most recently, on May 25, 2021, Governor Walz signed into law "Chapter 30 HF 2121," which included amendments to the state's medicinal cannabis program. The new law allows patients access to more affordable cannabis products including smokable products directly from the cannabis plant. These changes are noted by some as "the most significant amendments to the state's medicinal program" and take effect March 1, 2022.

Other changes that come with the new law include allowing the state's licensed dispensaries to provide curbside pickup options and allow for designated caregivers to represent up to six registered patients at one time. https://trepanierlaw.com/recent-changes-to-minnesota-medical-marijuana-laws-as-part-of-omnibus-health-bill-and-recreational-cannabis-update/; *and see:* https://www.revisor.mn.gov/bills/text.php?number=HF2128&version=0&session=ls92&session_year=2021&session_number=0

By allowing patients access to cannabis leaf to treat their approved condition the cost of treatment by the new law is expected to substantiallybe lowered.

Conclusion and Implications

With so many states having gone the path of legalization of recreational cannabis use by adults, it may seem like a "so what" event with the passage into law of Chapter 30 HF 2121, the "Health Care Bill," but for many registered patients in Minnesota, there is a lot of excitement over finally being able to legally obtain and smoke their treatment which should be considerably less expensive than the treatments currently available.
(Robert Schuster)

JUDICIAL DEVELOPMENTS

U.S. DISTRICT COURT ISSUES PRELIMINARY INJUNCTION AGAINST CITY'S LICENSURE PROTOCOL FOR RETAILERS OF RECREATIONAL CANNABIS

Crystal Lowe v. City of Detroit, ___F.Supp.3d___, Case No. 2:2021cv10709 (E.D. MI June 17, 2021).

A federal court in Michigan was asked to temporarily block issuance of cannabis licenses for retail sales in Detroit. The court issued that preliminary injunction on the basis that plaintiff Lowe would likely succeed on the merits of her claims that the Detroit Ordinance violated the Michigan and U.S. Constitutions. With the federal governmenttreating cannabis as a schedule I drug, the federal courts have been loath to address state cannabis law matters—which makes this decision all the more interesting that the court found in part that the U.S. Constitution was likely violated by Detroit's licensure of cannabis retailers operating under Michigan's laws that legalized cannabis.

Background

Plaintiff is 33 years old and has lived in Detroit for 11 of the past 30 years. Prior to moving to Detroit, she lived in River Rouge, a bordering community, and spent time living out of state, "including with her then-husband while he was on military duty." Pl.'s Br. at 9. Although plaintiff's mother was charged with a marijuana-related offense in 2007, plaintiff was above the age of eighteen at that time. *See id.* at 2. Plaintiff therefore does not qualify as a Detroit legacy applicant.

In the instant motion, plaintiff argues that the Ordinance's Detroit legacy licensure provisions give an unfair preference to long-time Detroit residents– individuals who have lived in the City for at least 10-15 of the past 30 years. While applicants who have lived in Detroit for at least 15 of the past 30 years automatically qualify for legacy status, applicants who have resided in the city for 10-14 of the past 30 years must meet additional conditions to qualify— *i.e.*, be low-income, have a marijuana-related criminal record, or have a parent with a marijuana related criminal record. As to the parent-drug-offense condition, the offense must have occurred while the applicant was a minor. The licensure scheme provides a six-week early application period exclusively for legacy applicants, during which time the city may accept, review, and approve legacy applications prior to non-legacy applications. The ordinance also reserves at least 50 percent of all relevant recreational marijuana licenses for legacy applicants. See Ordinance § 20-6-31(d). Some of the licenses are further limited by numerical caps. For example, recreational marijuana adult-use retail licenses are capped at 75 licenses.

The Ordinance

Because of the tiered approach to application submission and review, and because it is unclear whether any licenses are reserved for non-legacy applicants, the 400 certified Detroit legacy applicants could be awarded all 75 recreational marijuana retail licenses. Even if half of the licenses are reserved for non-legacy applicants, plaintiff contends that it would be unconstitutional to categorically bar such applicants, including herself, from eligibility for half of the 75 total licenses. *See* Pl.'s Reply Br. at 1, 6.

The stated purpose of the ordinance is to address a social justice component—and the need for this social justice component arises from the period in the United States' "War on Drugs":

> . . .to promote equitable ownership and employment opportunities in the cannabis industry in order to decrease disparities in life outcomes.

The ordinance uses the term "prior controlled substance record," which it defines as someone who has:

> . . .been convicted, or adjudged to be a ward of the juvenile court, for any crime relating to the sale, possession, use, cultivation, processing, or transport of marijuana prior to November 7, 2018. Ordinance § 20-6-2.

Procedural Background

This case was commenced in Wayne County Circuit Court on March 2, 2021, and was removed to the U.S. District Court on March 30, 2021. The City of Detroit was scheduled to begin accepting recreational marijuana license applications on April 1, 2021. *See*, Ordinance § 20-6-36(c). However, plaintiff filed a motion for a temporary restraining order and preliminary injunction on April 1, 2021, requesting that the District Court temporarily halt Detroit's recreational marijuana licensing process until plaintiff's constitutional challenges are resolved. *See* docket entry 4. The court held a hearing on April 7, 2021, at the conclusion of which the court granted plaintiff's motion for a temporary restraining order and established a briefing and oral argument schedule for the motion for a preliminary injunction

Plaintiff's Argument

In the instant motion, plaintiff argues that the ordinance's Detroit legacy licensure provisions (described in further detail below) give an unfair preference to long-time Detroit residents—individuals who have lived in the city for at least 10-15 of the past 30 years who have lived in Detroit for at least 15 of the past 30 years automatically qualify for legacy status, applicants who have resided in the city for 10-14 of the past 30 years must meet additional conditions to qualify—*i.e.*, be low-income, have a marijuana-related criminal record, or have a parent with a marijuana-related criminal record.

Plaintiff argues that she is likely to succeed on her equal protection challenge because "favor[ing] local merchants" is an illegitimate public purpose. (Pl.'s Br. at 13) (citations omitted) Plaintiff contends that the legacy licensing scheme:

> . . .creates precisely the type of durational residency preference that offends Michigan's Constitution. It facially discriminates against both Michiganders who live outside of Detroit and Michiganders who have lived in Detroit for less than 10 to 15 of the past 30 years.

She adds that the ordinance only serves the illegitimate purpose of "pure economic protectionism."

The District Court's Decision

Legal Standard

Judge Friedman pointed to guidance out of the Sixth Circuit Court of Appeals as follows:

> [i]n general, courts must examine four factors in deciding whether to grant a preliminary injunction: (1) whether the movant has demonstrated a substantial likelihood of success on the merits, (2) whether the movant will suffer irreparable injury absent injunction, (3) whether a preliminary injunction would cause substantial harm to others, and (4) whether the public interest will be served by an injunction. These factors are not prerequisites, but are factors that are to be balanced against each other. *Flight Options, LLC v. Int'l Bhd. of Teamsters, Loc. 1108*, 863 F.3d 529, 539-40 (6th Cir. 2017)

Addressing Lowe's Argument for Preliminary Injunction

Judge Friedman agreed with Lowe's arguments and found that the City of Detroit's marijuana ordinance gave "likely unconstitutional" advantages to long-time Detroit residents and temporarily blocked the city from processing applications for recreational marijuana licenses. (https://www.arcamax.com/currentnews/newsheadlines/s-2530855?fs)

The opinion and a preliminary injunction comes three months after resident Crystal Lowe sued the city, arguing a new city ordinance regulating licensing for recreational marijuana shops was unfair.

In a lengthy opinion issued on June 17,2021, U.S. District Court Judge Friedman issued a preliminary injunction. The court found that:

> because the city ordinance governing the process for obtaining a recreational marijuana retail license gives an unfair, irrational, and likely unconstitutional advantage to long-term Detroit residents over all other applicants.
>
> More specifically, the court found as follows:
>
> the Court concludes that a preliminary injunction is warranted in this case. First, plaintiff has demonstrated a substantial likelihood that

the challenged provisions of the Detroit Ordinance unconstitutionally discriminate against all applicants who have not lived in Detroit for at least 10-15 of the past 30 years, violate the fundamental right to inter- and intrastate travel, and impede interstate commerce. At a minimum, the Ordinance must pass rational basis review to be deemed constitutional under both the United States and Michigan constitutions. However, the challenged provisions of the Detroit Ordinance do not appear to be rationally related to the stated purpose of rectifying the harm done to City residents by the War on Drugs. As plaintiff convincingly states in her brief—If the City were truly worried about equity, the Ordinance would target the individuals who need social equity treatment, But, instead, the Ordinance employs a class-based distinction based on duration of residency. It thus prefers wealthy applicants who have had no interaction with the War on Drugs to low-income applicants who have been ravaged by it, so long as the wealthy applicants have lived in Detroit for the right amount of time.

Finally, the court found that:

In particular, defendant has failed to show that its stated goal of assisting those who have been harmed by the War on Drugs is advanced by reserving fifty percent or more of the recreational marijuana licenses for those who have lived in Detroit for at least ten years. Certainly, many people who have lived in Detroit for this period of time, or longer, have not been burdened with a marijuana-related arrest or conviction. And just as certainly, many people who have lived in Detroit for fewer than ten years have been significantly burdened by such an arrest or conviction. Giving "social equity" preference to the former group while denying it to the latter is irrational. It is also irrational to grant the preference to residents of Detroit but deny it to those of other communities, such as neighboring River Rouge, when residents of both cities presumably suffered from the War on Drugs to the same extent. Finally, plaintiff has demonstrated that she will suffer irreparable injury absent an injunction, as she would, at best, be significantly disadvantaged in applying for a recreational marijuana retail license (assuming fifty percent of the licenses are reserved for legacy applicants) and, at worst, be entirely eliminated from consideration for such a license (if all of the licenses are rewarded to legacy applicants). The Legacy Advocates' amicus brief and attached affidavits demonstrate that legacy applicants and their financial support networks may be economically harmed if the Detroit recreational marijuana licensure scheme is enjoined. However, any such economic harm would be the result of these applicants investing money before obtaining a license.

The City of Detroit Reacts

Kim Rustem, the City of Detroit's director of the department of Civil Rights, Inclusion and Opportunity said in a statement Thursday that:

City staff are reviewing the judge's order and developing "a revised plan to address the judge's concerns. . . .In the meantime, one thing is for certain: The city will not issue any recreational licenses unless there is legal assurance that Detroiters will receive a fair share of those licenses.

Detroit Councilman James Tate, in the aftermath of Judge Friedman's order, stated that:

Our intention for crafting such legislation was never to prevent anyone from participating in the recreational marijuana industry but to ensure that the long-standing residents of this city—residents who have endured ill effects of the nation's "War on Drugs" through mass incarceration, punitive hiring policies, blight and generational poverty—have a fair shot of participating in a potentially lucrative opportunity for Detroit. (https://www.detroitnews.com/story/news/local/detroit-city/2021/06/17/detroit-marijuana-law-likely-unconstitutional-federal-judge-says/7731248002/)

Conclusion and Implications

When devising regulations that implement state legalization of recreational cannabis sales, it's quite common for state agencies attempt to establish li-

censure regulations that accomplish the twin goals of having sales accomplished by "law abiding" applicants and favoring certain groups that have borne the largest burden of prior illegal possession of cannabis. This is a tricky balance of goals to implement, and sometimes, the best of intentions can run afoul of that state's constitutional guarantees of equal rights. Here the U.S. District Court for the Eastern District of Michigan found such constitutional guarantees likely violated by Detroit's ordinance scheme for licensure of retail cannabis sales. All eyes are now on Detroit as it reacts to the court's order and rethinks what a proper licensure scheme will be both fair and legal. The District Court's opinion is available online at: https://www.govinfo.gov/content/pkg/USCOURTS-mied-2_21-cv-10709/pdf/USCOURTS-mied-2_21-cv-10709-1.pdf
(Robert Schuster)

U.S. DISTRICT COURT REJECT'S FOURTH AND FOURTEENTH AMENDMENT CLAIMS AFTER PLAINTIFF FAILS TO SECURE A BUILDING PERMIT AND REFUSES TO ALLOW COUNTY TO INSPECT PROPERTY

In a recent order, the U.S. District Court for the Northern District of California granted defendants' motion for summary judgment as to plaintiff's claims that the County of Sonoma violated his Fourth and Fourteenth Amendment rights when it refused to grant plaintiff's request for an *agricultural exemption* to the county's building permit requirement. Plaintiff began construction on his barn without first seeking an exemption to the county's building permit requirements, or applying for a building permit. The county provided plaintiff with the opportunity for a hearing on an appeal of the county's determination, and on multiple occasions, plaintiff refused to give the county an opportunity to inspect the barn to confirm whether or not the agricultural exemption could apply.

Factual and Procedural Background

Sonoma County initially cited plaintiff for performing construction work on his barn without a building permit or obtaining an exemption. After the county notified plaintiff that he had violated the county building code, plaintiff chose to apply for an agricultural exemption from the building permit requirement. Sonoma County dispatched an inspector to plaintiff's barn to confirm that the barn work qualified for an agricultural exemption, and the inspector found the barn was being used to store automobiles, and not for agricultural purposes. The inspector offered to conduct a later inspection to confirm agricultural use of the barn, however plaintiff refused, arguing that such inspection would violate the Fourth Amendment of the U.S. Constitution. Plaintiff later changed his mind and allowed the inspector to return, however when the inspector returned, plaintiff had completely blocked entry into the barn with bails of hay. Because the county was not allowed access to inspect the barn, it refused to apply the building permit exemption. Plaintiff appealed the decision to the county's board of building appeals, which held a two hour hearing. During the hearing, plaintiff was offered another opportunity to schedule an inspection and refused. The board of appeals unanimously affirmed denial of the exemption.

Plaintiff then brought a lawsuit in federal court arguing that the county's denial of his application for an agricultural exemption was unconstitutional.

The District Court's Decision

After plaintiff filed his lawsuit, the county filed a motion for summary judgment. Ultimately the court granted the county's motion after finding that as a matter of law, plaintiff failed to state a cognizable claim under Title 42 § 1983 of the United States Code. Plaintiff's action under § 1983 was premised on the Fourth and Fourteenth amendments to the United States Constitution. Plaintiff's claim was principally based on the theory that the county violated plaintiff's Fourth Amendment rights when the it required inspection of the barn.

Section 1983 Claim

As the court noted, to prevail on a Section 1983 claim based on the Fourth Amendment, "a plaintiff must show that the state actor's conduct was an unreasonable search or seizure." Here, nothing showed that the county entered without plaintiff's consent. The county inspector never entered the plaintiff's property without permission, and was repeatedly denied access to the barn. Plaintiff argued that the county building code only allowed county inspectors onto their property after an agricultural exemption had already been granted, however this conflicted with a plain reading of the building code. With regard to agricultural exemptions, the building code required an inspection after a structure is completed or improved to verify that the structure is being used for the use stated in an application for an agricultural exemption. The building code assumes that an exemption will be obtained *before* construction begins, with an inspection afterward to verify proper use. Here, plaintiff began construction first and then applied for an exemption. Nothing in the building code required the county to issue an exemption for unauthorized work done before approval of an exemption in the first place.

Here, there was no evidence that the county coerced plaintiff into authorizing inspections with criminal or other penalties for declining to allow permit-related inspections. The main consequence of refusing an inspection was that the county denied an exemption. This was not a coercive penalty and was merely the consequence of plaintiff's own failure to follow the building code. Accordingly, the court concluded that there had been no Fourth Amendment violation.

Due Process Claim

The court also rejected plaintiff's claims that he was denied substantive due process under the Fourteenth Amendment. To bring successful Fourteenth Amendment claims, plaintiff would need to establish that the county's actions were arbitrary or irrational because they failed to advance any "legitimate governmental purpose". Plaintiff's argued that they met all the requirements of an agricultural exemption, and therefore the county's refusal to issue such an exemption was arbitrary and irrational. The record showed otherwise, contrary to the requirements of the building code, plaintiff failed to obtain a building permit or exemption *before* engaging in construction. When the county attempted to perform an inspection, plaintiff refused. The court concluded that the denial of the exemption was not arbitrary or irrational.

The court also rejected plaintiff's procedural due process claims. If a liberty or property interest is involved, a court must determine what process was due and whether the party was actually afforded such process. The basic requirements for adequate due process are notice and an opportunity to be heard at a meaningful time and in a meaningful manner. Here, the county's detailed building code provisions setting out a the procedure to obtain an exemption, coupled with the opportunity to be heard by inspectors and permit appeals board, were well within traditional notions of procedural due process. The court rejected plaintiff's procedural due process claims.

Conclusion and Implications

The U.S. District Court's order granting summary judgment in the *Schmidt* case highlights courts' longstanding recognition of the valid police power that local agencies have to enforce building codes and inspection requirements. So long as such codes are enforced fairly with the right to appeal such decisions and be heard, local agencies do not violate the Fourth or Fourteenth amendments to the U.S. Constitution. This case did not involve cannabis plants but the implications for the cannabis industry is obvious. (Travis Brooks)

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