



AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: Greg Minor
Assistant to the City
Administrator

SUBJECT: Amendments to Utilize State Grants
for Cannabis Equity Program and Fee
Extensions for Burglarized Cannabis
Businesses

DATE: October 12, 2020

City Administrator Approval 

Date: Nov 3, 2020

RECOMMENDATION

Staff Recommends That The City Council Adopt the following legislation:

(A) A Resolution Amending Resolution No. 88162 C.M.S. To:

- (1) Authorize The City Administrator Or His Or Her Designee To Convert The Use Of Up To \$2,010,239 Of Previously Awarded State Of California, Office Of The Governor “Go-Biz” Equity Act Grant Funds, From Revolving Loans To Local Equity Licensees And Applicants, To Loans To Fund The Purchase Of Real Property(ies) For Use By Multiple Equity Licensees And Applicants, Which May Be Forgiven Upon A Licensee’s And Or Applicant’s Successful Compliance With Program Loan Terms;
- (2) Authorize The Use And Allocation Of Up To \$500,000 Of “Go-Biz” Funds Previously Appropriated For The Revolving No-Interest Loan Program For Loans For The Purchase Of Real Property(ies) For Use By Multiple Equity Licensees And Applicants; and
- (3) Authorize The Use And Allocation Of Up To \$50,000 Of “Go-Biz” Funds Previously Appropriated For The Revolving No-Interest Loan Program For Equity Licensees’ And Applicants’ Utilization Of Shared-Use Manufacturing Facilities; And Make Appropriate California Environmental Quality Act (CEQA) Findings

(B) An Ordinance Changing Permitting Requirements For Cannabis Businesses
By:

- 1) Amending Oakland Municipal Code Sections 5.80.050 And 5.81.060 To Allow A Cannabis Business Permit Applicant Who Previously Met The Income And Oakland Residency Criteria To Qualify As An “Equity Applicant” To Receive Equity Assistance Program Services Up To Four Years From The Date Such Applicant Was Verified As An Equity Applicant, Regardless Of The Applicant’s Current Income Or Residency;
- 2) Extending The Due Date For Cannabis Business Permit Fees For Certain Burglarized Businesses;
- 3) Adopting CEQA Exemption Findings.

Oakland City Council
November 10, 2020

EXECUTIVE SUMMARY

The City Council established the nation's first Cannabis Equity Program ("**Equity Program**") in the spring of 2017, following a race and equity analysis that identified strategies to promote equitable ownership and employment opportunities in the cannabis industry, and to address the disproportionate impacts of the war on drugs in marginalized communities of color. In the last year, the City of Oakland has received two state grants to support the City's Equity program, a \$1,657,201.65 grant from California's Bureau of Cannabis Control ("**BCC**") and a \$6,576,705.76 grant from the Governor's Office of Business and Economic Development ("**Go-Biz**"). On February 4, 2020, the City Council enacted Resolution No. 88030 C.M.S. to receive and appropriate the BCC grant award. In addition, on June 16, 2020, the City Council enacted Resolution No. 88162 to receive and appropriate the Go-Biz grant. Together these state grants will facilitate grants and loans to equity operators for start-up and ongoing costs, shared-use commercial kitchens, workforce development programs, and to purchase of property(ies) that will support multiple equity operators.

To most effectively utilize these state grants, staff recommends the City Council authorize the following:

- (1) Extending equity applicants' eligibility for loans and grants for up to four years from their initial verification as an equity applicant;
- (2) Converting mandatory repayment loans under the real property purchase program to loans that may be forgiven upon the applicant's successful compliance with the program's loan terms; and
- (3) Allowing up to \$500,000 of funds available for loans for all eligible purposes to be available as forgivable loans for the purchasing of property that support multiple equity operators that may be forgiven upon the application successful compliance with program loan terms.

In addition, staff recommends Council amend Chapters 5.80 and 5.81 to ratify the fee and permit extension provided by City Administrator Emergency Order Number Seven for cannabis businesses burglarized in late May and early 2020, consistent with the City Council's June 16, 2020 Declaration of Emergency in Resolution No. 88169.

BACKGROUND / LEGISLATIVE HISTORY

Federal Cannabis Policy Unsettled but Generally Deferential to States

Cannabis remains a Schedule One controlled substance under federal law. However, since

the 2013 Department of Justice “Cole Memorandum”¹ and the 2015 Fahr-Rohrbacher federal budget amendment,² state compliant medical cannabis facilities have generally been shielded from federal prosecution. The Trump Administration has threatened to interrupt this status quo by rescinding the Cole Memorandum. Nonetheless, Congress has consistently extended the Fahr-Rohrbacher amendment, and the federal government has not prioritized cannabis prosecutions.

California Initiates Statewide Cannabis Regulation

Although medical cannabis has been legal in California longer than anywhere in the country, until the passage of the Medical Cannabis Regulation and Safety Act (the “**MCRSA**”) in 2015, California’s system of medical cannabis was one of the least structured regulatory frameworks in the United States. The MCRSA created a comprehensive regulatory framework for the cultivation, production, transportation and sale of medical cannabis in California, all overseen by a new state bureau. In November 2016, the people of California enacted the Adult-Use of Marijuana Act (the “**AUMA**”) also known as Proposition 64, which, among other actions, established a licensing and taxation scheme for the non-medical adult-use of cannabis in California. Then, in June 2017, the State legislature consolidated the MCRSA and AUMA into the Medical and Adult-Use Cannabis Regulation and Safety Act (the “**MAUCRSA**”). State agencies have been implementing MAUCRSA ever since and have issued multiple sets of regulations governing cannabis operations.

Oakland’s Cannabis Regulatory History

The City of Oakland has been a leader in regulating cannabis. Following the federal closure of Oakland Cannabis Buyers Club (“**OCBC**”), the City’s initial medical cannabis provider under Oakland Municipal Code (**O.M.C.**) Chapter 8.46, in 2004 the City enacted O.M.C. Chapter 5.80, which established the nation’s first permitting process for medical cannabis dispensaries. In 2011, the City expanded the number of available dispensary permits from four to eight and attempted to establish a permitting process for the cultivation of medical cannabis under O.M.C. Chapter 5.81, however, threats of federal intervention and the lack of comprehensive state law prevented any implementation of O.M.C. Chapter 5.81.

Oakland Examines Equity Within Cannabis Industry

In anticipation of the State legalization of the cannabis industry’s supply chain and the adult use of cannabis, the City began exploring approaches to legalizing the cannabis industry within Oakland in 2015 and 2016. City Council discussions centered around one question: Who benefits from cannabis legalization?

¹ The Cole Memorandum can be found here:
<https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>

² The Fahr-Rohrbacher amendment states: “None of the funds made available in this Act to the Department of Justice may be used, with respect to the States of... California...to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

This inquiry led the City Council in the fall of 2016 to adopt the goal of promoting equitable ownership and employment opportunities in the cannabis industry to address the disproportionate impact of the war on drugs on marginalized communities of color and to direct the City Administration to conduct a race and equity analysis of proposed medical cannabis regulations.

In March 2017, staff returned with a race and equity analysis that identified barriers to achieving a more equitable cannabis industry and strategies to remove those barriers. For example, the analysis found disparities within the cannabis industry in access to capital and real estate, as well as disparities in operators' familiarity with the "red tape" involved in governmental processes and operating a compliant cannabis business. In response, the analysis recommended the creation of several measures to prioritize lower-income Oakland residents that either had a cannabis conviction arising out of Oakland or had lived in areas of Oakland that experienced disproportionately higher levels of cannabis related law enforcement.³

Strategies identified to prioritize equity applicants included the following:

- Free industry specific and business ownership technical assistance;
- A no-interest revolving loan program funded by new cannabis tax revenue;
- A phased permitting process whereby the City Administrator must issue half of all permits under O.M.C. Chapters 5.80 and 5.81 to equity applicants during the initial phase;
- An incubator program that prioritizes general applicants who provide three years of free space and security to equity applicants; and
- Application and permit fee exemptions for equity applicants.

In the spring of 2017, the City Council passed a legislative package (consisting of Ordinance No. 13424 C.M.S. and Resolution No. 86633 C.M.S.), which enacted these recommendations, and the City Administrator's Office began accepting applications for non-dispensary permits in May of 2017.

Growth of a Larger Movement and State Grant Awards

Oakland's pioneering race and equity analysis of the cannabis industry and creation of an Equity Program inspired jurisdictions across the country to pursue and support similar programs. For example, the City and County of San Francisco, the City of Los Angeles, the City of Sacramento, the State of Massachusetts, and State of Illinois have conducted similar analyses or enacted their own equity programs.

In the fall of 2019, the State of California set aside \$10 million in one-time funding to support local jurisdictions' cannabis equity programs through Senate Bill (SB) 1294, the California

³ OMC 5.80.010 and OMC 5.81.020 define an "Equity Applicant" as "an Applicant whose ownership/owner: 1. Is an Oakland resident; and 2. In the last year, had an annual income at or less than 80 percent of Oakland Average Medium Income (AMI) adjusted for household size; and 3. Either (i) has lived in any combination of Oakland police beats 2X, 2Y, 6X, 7X, 19X, 21X, 21Y, 23X, 26Y, 27X, 27Y, 29X, 30X, 30Y, 31Y, 32X, 33X, 34X, 5X, 8X, and 35X for at least ten of the last twenty years or (ii) was arrested after November 5, 1996 and convicted of a cannabis crime committed in Oakland, California."

Cannabis Equity Act of 2018. Of this \$10 million, the BCC awarded the City of Los Angeles and the City of Oakland the largest portions of the available funding in the fall of 2019, awarding them \$1,834,156.38 and \$1,657,201.65, respectively.⁴

Similarly, in early 2020 Go-Biz made \$30 million available to local jurisdictions with cannabis equity programs through a competitive grant solicitation. In April 2020, Go-Biz awarded the City of Oakland \$6,576,705.76, the largest out of any local jurisdiction in California. This award is an acknowledgement of the City’s groundbreaking work establishing and implementing the nation’s first cannabis Equity Program and an exciting opportunity to elevate the City’s existing Equity Program.

ANALYSIS AND POLICY ALTERNATIVES

Figure 1 offers a summary of the uses of BCC funds previously approved by City Council and the level of funding proposed for each use. **Figure 2** provides an overview of current approved and staff proposed uses of Go-Biz funds consistent with the attached Resolution.

Figure 1- Use of BCC Grant Funds

Current Use of BCC FUNDING	
Grants to Operators for All Eligible Expenses	\$850,000
Shared-Use Manufacturing Facility	\$250,000
Additional Shared-Use Manufacturing Facility (in light of COVID-19 restrictions prohibiting events)	\$200,000
Workforce Development	\$200,000
Program Analyst Position	\$150,000
TOTAL BCC FUNDING	\$1,650,000

⁴ For a complete list of local equity grant funding recipients, please visit:
https://bcc.ca.gov/about_us/documents/media_20191009.pdf

Figure 2- Current and Proposed Use of Go-Biz Grant Funds

Category	Current	Proposed	Notes
Grants to Operators for All Eligible Expenses	\$1,510,239	\$1,510,239	No change
No Interest Revolving Loans to Operators for All Eligible Expenses	\$1,510,239	\$960,239	Reduce by \$550,000
No Interest Loans to Purchase Property	\$1,510,239	\$2,010,239	Increase by \$500,000, Convert to Forgivable
Utilization of Shared-Use Manufacturing Facilities	\$0	\$50,000	Complements BCC Investment in Manufacturers
Workforce Development	\$800,000	\$800,000	No Change
Loan and Grant Administration	\$350,000	\$350,000	No Change
Technical Assistance	\$250,000	\$250,000	No Change
Legal Assistance	\$165,000	\$165,000	No Change
City Staff Costs Administering Equity Program	\$480,987	\$480,987	No Change
TOTAL GO-BIZ FUNDING	\$6,576,705	\$6,576,705	No Change

Recommendations to Maximize Usage of State Grant Funds

- A. Proposed Amendments to Chapters 5.80 and 5.81 OMC to Extend Equity Applicants' Eligibility to Equity Assistance Program Services Such as Loans and Grants for Up to Four Years from Their Initial Verification.

To support equity applicants so that they may thrive and not just survive, staff recommends amending Chapters 5.80 and 5.81 OMC to allow previously verified equity applicants who no longer qualify as an applicant equity to either due to earning more than eighty percent (80%) of the average median income or no longer residing in Oakland continued access to Equity Assistance Program services for up to four (4) years from the initial date the City initially verified their equity applicant status. This will allow equity applicants that are beginning to succeed continued access to grants, loans, fee waivers, and free technical and legal assistance as they work to establish sustainable businesses. This also avoids penalizing equity applicants who have been displaced from Oakland due to the rising cost of living. Although City Council recently approved extending equity applicants access to Equity Assistance Program services for a period of two (2) years since their last verification, staff's recommendation will allow all equity applicants who have qualified since the program's inception to benefit from the State resources that have been made available this and next year.

B. Convert Mandatory Repayment Loans for Equity Applicants' Purchasing of Property that Support Multiple Equity Applicants to Loans That May be Forgiven Upon an Applicant's Successful Compliance With Loan Program Terms

As described in prior reports, the Go-Biz grant offers an opportunity for targeted investment by funding the purchasing of properties that support multiple equity operators, which will assist equity applicants beyond the one-year grant period by providing their businesses a permanent home. This is particularly important, as the three-year incubation period will soon sunset for many equity operators and they may be in need of a new site for their business. Through a Request for Proposal (RFP) process designed in coordination with the Departments of Race and Equity and Economic and Workforce Development, staff will prioritize these funds towards equity applicants who will purchase property(ies) that will serve as permanent incubators for equity operators. These shared properties can allow equity operators to benefit from economies of scale, shared equipment, and shared networks.

Staff recommends converting the mandatory repayment loans that will be made available for the purchasing of property to loans that may be forgiven upon the applicants' successful compliance with the terms of the loan in an effort to avoid burdening equity applicants with repaying these loans for the purchasing of property while also trying to build their businesses. A forgivable loan, as opposed to a grant, will also provide the City with continued oversight over the project to ensure that it is being used in alignment with the Equity Program. Moreover, in addition to securing these loans with deeds of trust, the property(ies) will be subject to recorded restrictions to ensure compliance with the intended use.

C. Authorize the use of up to \$500,000 of funds available for loans for all eligible purposes towards the purchasing property forgivable loans.

To maximize the effectiveness of investing in equity applicants' purchasing of property, staff recommends that the City Council authorize staff to allocate an additional \$500,000 towards the purchasing of property given the high cost of real estate. Currently, City Council has authorized approximately \$1.5 million of Go-Biz funds towards this program. An initial assessment by staff in the Real Estate Division of the Economic and Workforce Development Department found that allocating an additional \$500,000 could provide an additional 2,000 to 3,000 square feet in much needed space to support equity applicants. Accordingly, staff recommends that the City Council provide staff the flexibility to utilize up to \$500,000 from the Go-Biz grant currently allocated towards revolving loans for any eligible purpose towards the property purchase program. This authorization would allow staff the flexibility to fund a larger project or multiple projects depending on the responses received from the RFP process.

D. Authorize the use of up to \$50,000 of funds available for loans for all eligible purposes towards equity applicants' utilization of shared-use manufacturing facilities.

To ensure full utilization of City sponsored shared-use manufacturing facilities, staff recommends that the City Council authorize staff to allocate an additional \$50,000 towards this purpose. The pre-COVID-19 plan for utilizing the BCC grant included allocating \$250,000 towards a shared-use manufacturing facility to assist equity manufacturers' transition to a

compliant commercial kitchen and dedicating \$200,000 towards funding events that feature equity businesses. In response to COVID-19 Shelter in Place restrictions prohibiting events, the City Council approved re-allocating the \$200,000 from events towards an additional shared-use manufacturing facility; however, this left a difference of \$50,000. Staff recommends resolving this difference and fully funding both shared-use manufacturing opportunities for equity manufacturers.

II. Proposed Amendments to Chapters 5.80 and 5.81 OMC to Provide a One-time Extension for the Permit and Fee Due Date for Burglarized Cannabis Businesses, For One Year

In addition to the above recommendations for utilizing state grant funding, staff recommends that the City Council amend Chapters 5.80 and 5.81 OMC to ratify permit and fee extensions provided by the City Administrator for cannabis businesses burglarized during the civil unrest in late May and early June. In late May and early June 2020 numerous local businesses, including over twenty cannabis businesses were burglarized or robbed, resulting in significant economic losses and in some cases business closure. On June 16, 2020, the City Council declared a local emergency in response to serious threats to local businesses and directed the City Administrator to consider implement interim amendments to the City's business ordinances and regulations to assist impacted local businesses. Accordingly, on August 17, 2020 the City Administrator issued Emergency Order Number Seven, which provided a one year permit extension for cannabis businesses burglarized between May 25, 2020 and June 8, 2020, with no permit fee due until the end of the one-year extension. As this provision expired on October 7, 2020, staff recommends the City Council ratify and continue this permit fee extension for impacted businesses in acknowledgement of the financial hardship suffered from the unprecedented string of burglaries and robberies in late May and early June 2020.

III. Adopting CEQA Findings

The proposed Resolution and Ordinance include California Environmental Quality Act (CEQA) findings outlining each basis upon which the proposed legislation is exempt from CEQA. For example, the proposed legislation is exempt based on CEQA Guidelines sections for Existing Facilities, Conversion of Small Structures, and Projects Consistent with a General Plan.

FISCAL IMPACT

Extending equity applicant eligibility for equity assistance program services such as application and permit fee exemptions will result in decreased fee revenue. However, the majority of equity applicants have completed the permitting process and in adopting the Equity Program in 2017 the City Council has previously determined the long-term economic benefits of promoting business ownership opportunities for historically marginalized communities outweighs short-term economic loss.

Converting loans for equity applicants' purchasing of properties to forgivable loans will reduce the amount of future funding for the Equity Program but will have no direct impact on the City of Oakland's funds.

Lastly, providing cannabis businesses burglarized in late May and early June with an additional year to submit their permit fee will reduce City revenues, though given the finite period of eligibility and the fact that not all burglarized cannabis businesses had completed the permitting process by that time, the loss of permitting fees is approximately \$100,000.

PUBLIC OUTREACH / INTEREST

Staff has conducted public outreach regarding how best to utilize the Go-Biz grant through surveys of equity applicants and multiple discussions at the Cannabis Regulatory Commission in 2019 and 2020. The recommendations included in this report were approved by the Cannabis Regulatory Commission at its October 1, 2020 meeting, with the exception of the re-allocation of \$50,000 towards equity applicants' utilization of shared-use manufacturing facilities, as staff identified this proposal after the October Commission meeting.

COORDINATION

The City Administrator's Office's Special Activity Permits Division consulted with the Budget Bureau, the Department of Economic and Workforce Development, the Department of Race and Equity, and the Office of the City Attorney in preparation of this report.

SUSTAINABLE OPPORTUNITIES

Economic: Establishing a pathway to equitable cannabis industry growth will generate economic opportunities for Oakland residents.

Environmental: Encouraging local employment and business ownership can reduce commutes and related greenhouse gas emissions.

Race and Equity: Promoting equitable ownership and employment opportunities in the cannabis industry can decrease disparities in life outcomes for marginalized communities of color and address disproportionate impacts of the war on drugs in those communities.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Adopt the following legislation:

- (A) A Resolution Amending Resolution No. 88162 C.M.S. To:
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 - 3) Adopting CEQA Exemption Findings.

For questions regarding this report, please contact Greg Minor, Assistant to the City Administrator, at (510) 238-6370.

Respectfully submitted,



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