



AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: Alexa Jeffress
Director, Department of
Economic and Workforce
Development

SUBJECT: Supplemental Report for
Emerald New Deal

DATE: June 23, 2022

City Administrator Approval

Date: Jun 24, 2022

RECOMMENDATION

Staff Recommends That The City Council Accept This Supplemental Report Regarding A Resolution On The City Council's Own Motion Submitting To The Voters At The November 8, 2022 General Municipal Election An Amendment To The Oakland City Charter To Add Article XVII To: (1) Establish The "Emerald New Deal Fund" For Cannabis Business Tax Revenue To Be Used For Services And Programs To Address Racially Inequitable Impacts Of The War On Drugs On Individuals, Families, And Communities In The City Of Oakland; And (2) Re-Establish The Cannabis Regulatory Commission, As The "End-Harm Cannabis Regulatory Commission," With Revised Membership And Responsibilities, Including To Advise The Council On Expenditure Of The Emerald New Deal Fund; And Directing The City Clerk To Take All Actions Necessary Under Law To Submit This Item To The Voters At The November 8, 2022 General Election

REASON FOR SUPPLEMENTAL

On June 9, 2022, the Rules and Legislation (Rules) Committee requested a supplemental report from the City Administration following a discussion on the proposed ballot initiative titled the Emerald New Deal (END). This supplemental report addresses the questions raised by the Committee, including questions regarding the City's current funding of services identified in the END, what organizations the END proposes to fund, the race and equity impact of the END, and the Cannabis Regulatory Commission's position on the END.

Previously, on May 5, 2022, the Rules Committee requested a supplemental report from the City Administration regarding an informational report on the END presented to the Community Economic Development (CED) Committee Special Meeting on May 24, 2022. Specifically, on May 5th the Rules Committee asked staff to analyze (i) whether the City of Oakland (City) already funds the services and programs included in the END, (ii) what overlap there may be between existing City commissions and the new commission proposed under the END, and (iii) the fiscal impact of the END. The initial supplemental report on the END provided to the CED is available [here](#).

Rules and Legislation Committee
June 23, 2022

EXECUTIVE SUMMARY

The END proposes moving the City's cannabis taxes revenues from the General Purpose Fund (GPF) to a special fund focused on services for those disproportionately impacted by the War on Drugs (WOD). More specifically, END proposes that up to 50 percent (50%) of cannabis tax revenues go towards services provided by external organizations, up to 35 percent (35%) for City programs, and up to 15 percent (15%) on administrative costs. Currently, the City Council can in fact allocate and direct cannabis business tax revenue in the GPF to the programs and services identified in the END without having to initiate a ballot measure.

As proposed, the END would result in an approximately \$8M annual loss of revenue to the City's GPF. It is important to note that the City Council is considering a separate ballot measure that would change the existing business tax structure to generate tens of millions of dollars in additional revenue for the GPF. The proposed END would place the cannabis business tax revenue into a special fund, which would diminish the expected revenue gains from the new tax measure.

Finally, the updated version of the END proposes enhancing the current functions of the Cannabis Regulatory Commission (CRC) to develop plans for the disbursement of cannabis tax revenues, which the City Council then may ratify or deny. The END would also amend the composition of the CRC to require that six of the eleven members be directly impacted by incarceration associated with the War on Drugs and five members either be directly impacted by the War on Drugs, have expertise in finance or be in the cannabis industry.

BACKGROUND / LEGISLATIVE HISTORY

A. Oakland's Cannabis Regulatory History

The City of Oakland has been a leader in regulating cannabis. After California voters legalized medical cannabis in 1996 via Proposition 215, the City established Oakland Cannabis Buyers Club (OCBC) as its medical cannabis provider in 1998 under Oakland Municipal Code (OMC) 8.46. Following the federal closure of OCBC, the City of Oakland enacted OMC 5.80 in 2004, which established the nation's first permitting process for medical cannabis dispensaries. In 2011 the City of Oakland 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 OMC 5.81; however, threats of federal intervention and the lack of comprehensive state law prevented any implementation of OMC 5.81.

After the passage of the Medical Cannabis Regulation and Safety Act (MCRSA) in 2015 and the Adult-Use of Marijuana (AUMA) or Proposition 64 in 2016, the City of Oakland adopted the nation's first Equity Program through amendments to OMC 5.80 and 5.81 that also legalized the adult-use of cannabis and established a permitting process for the cannabis industry's entire supply chain in the spring of 2017. Oakland's pioneering race and equity analysis of the cannabis industry and Equity Program has inspired jurisdictions across the country to pursue similar programs and the State of California to dedicate annual grants to support local

jurisdictions' cannabis equity programs. Since 2019, the City of Oakland has received either the largest or second largest portion of these grant funds, including \$1,657,201.65 in 2019; \$6,576,705.76 in 2020; \$2,434,712.51 in 2021; and most recently \$5,435,140.82 in 2022.

B. Cannabis Regulatory Commission

On November 2, 2004, Oakland voters passed Measure Z, an initiative entitled the "Oakland Cannabis Regulation and Revenue Ordinance." The ordinance enacted a City law that established a City policy making the investigation, citation, and arrest for "private adult cannabis offenses" Oakland's "lowest law enforcement priority." Measure Z also created an eleven member Community Oversight Committee to oversee implementation of the Private Adult Cannabis Offenses Policy. The Community Oversight Committee later, informally, changed its name to the Cannabis Regulatory Commission (CRC). Measure Z grants the CRC advisory power to make recommendations to the City Council regarding the licensure, taxation, and regulation of cannabis for adult use.

Although Measure Z explicitly intended to "Create a committee to oversee [the] disbursement of revenue from licensing and taxation of businesses that sell cannabis," the City Attorney's Office determined that the City Council still retains the authority over the disbursement of cannabis sales tax revenue because the provision purportedly granting the CRC the authority to oversee cannabis revenues conflicts with the City Charter, which grants the City council the authority to determine the City's budget and allocate and disburse revenues.¹ However, the City Attorney's Office has clarified that a new voter-approved ballot measure can authorize the CRC to oversee the disbursement of cannabis tax revenues.

C. Cannabis Tax Revenues

In July 2009, Oakland voters approved Measure F making Oakland the first City in the nation to impose a tax on (medical) cannabis businesses. Measure F established a tax rate of \$18 per \$1,000, or 1.8 percent (1.8%), of gross receipts.

In November 2010, Oakland voters approved the 2010 Measure V increasing the tax rate on medical cannabis businesses from 1.8 percent (1.8%) to five percent (5%) of annual gross receipts and creating a new tax rate of 10 percent (10%) of gross receipts on non-medical cannabis businesses, referred to as adult-use or recreational. The additional 10 percent adult-use tax rate was put forth in anticipation of Proposition 19, which would have legalized adult use of cannabis in November 2010. Since Proposition 19 failed at the ballot box, Oakland did not implement the adult-use tax rate until January 1, 2018 following the passage of Proposition 64 and City Council's legalization of adult use in 2017.

¹ See Office of the City Attorney Frequently Asked Questions (FAQs) Regarding the 2004 Oakland Cannabis Regulation and Revenue Ordinance ("Measure Z") and the Authority and Duties of the Cannabis Regulatory Commission available here:

<https://www.oaklandcityattorney.org/PDFS/Guides%20and%20FAQs/Cannabis%20Regulatory%20Commission%20FAQ%20Apr%202019.pdf>

In November 2018, Oakland voters approved the 2018 Measure V allowing cannabis businesses to pay business taxes quarterly, cannabis manufacturing and/or cultivation businesses to deduct the value of raw materials from gross receipts in calculating business taxes and authorizing the City Council, without returning to voters, to amend medical or nonmedical cannabis business taxes in any manner that does not increase the tax rate.

In December 2019, the Oakland City Council adopted Ordinance No. 13573 C.M.S. amending OMC Title 5, Chapter 5.04, Sections 5.04.480 and 5.04.481 to create a tiered and category-based tax structure for cannabis businesses beginning in 2020 and changing each year for 2021 and 2022 calendar years. Thereafter, the tax rate structure is scheduled to remain the same as the 2022 tax structure unless the City Council makes further changes as authorized in the 2018 Measure V.

All cannabis tax revenues are collected on a calendar year basis and deposited in the GPF. **Table 1** summarizes the reported cannabis business tax revenue for the years 2015-2022.

Table 1: Historical Cannabis Business Tax Revenue

Tax Year	Number of Business	Revenue
2022 ²	259	\$7.92 million
2021	187	\$13.47 million
2020	252	\$8.89 million
2019	195	\$12.85 million
2018	139	\$8.07 million
2017	85	\$7.48 million
2016	77	\$4.64 million
2015	70	\$3.61 million

The Finance Department recently presented an annual report on cannabis tax revenues at the Special June 13th CRC meeting on [pages 23-28 of the agenda packet](#).

SUPPLEMENTAL ANALYSIS

Below staff has addressed the questions raised by the June 9th Rules Committee to the extent feasible.

1. *How much does the City currently spend in the General Purpose Fund on programs and services that fall under the END, including the cannabis equity program?*

As noted in the Supplemental Report to the May 24th CED Committee, the END contemplates funding a wide variety of City and external programs that support those most impacted by the War on Drugs. Examples of eligible services include workforce development, blight abatement, illegal dumping removal, services for unhoused people, loans to cannabis equity businesses, mental health, housing, business support, physical health, and educational programs. The

² Through May 16, 2022: Total \$7.92M (Paid = \$2.2 million: Outstanding Balance = \$5.72 million)

2022-2023 Midcycle Budget, available at <https://www.oaklandca.gov/topics/fiscal-year-2022-2023-midcycle-budget>, offers a comprehensive view of the City's investments in these areas. In terms of the cannabis equity program, the Mayor's 2022-2023 Midcycle Budget proposes \$500,000 for workforce development and revolving loan funds.

Furthermore, as noted in the Supplemental Report to the May 24th CED Committee, the amount the City currently invests in the programs identified by the END are far greater than the annual amount available from cannabis tax revenues. As demonstrated in **Table One**, since the legalization of adult use of cannabis and the imposition of reduced cannabis tax rates after 2019, the City receives approximately eight million dollars annually in cannabis tax revenues. However, the City's annual investment in homeless services alone totals tens of millions of dollars. Similarly, the Workforce Development Division of EWDD had a total budget for Workforce Services in FY 21-22 of approximately \$6.8 million, which does not include additional Workforce Services provided by other City departments.

- 2. How much does the City currently spend in non-General Purpose Fund sources on programs and services that fall under the END?*

The 2022-2023 Midcycle Budget, available at <https://www.oaklandca.gov/topics/fiscal-year-2022-2023-midcycle-budget> offers a comprehensive view of the City's investments.

- 3. What external organizations have been identified to receive END funds, what districts do they serve, and what will they do to serve those communities?*

The END does not identify specific organizations that will receive funding, rather under Section 1705 (C) the END states the following:

Outside Programs. Up to fifty (50%) of available funds may be allocated to private, non-profit, and public agencies, following an open and fair application process, to support existing or emerging programs that benefit Individuals Impacted by the War on Drugs, pursuant to the Strategic Investment Plan.

- 4. Do the END external organizations overlap with existing organizations or organizations that have received State of California funding?*

Since the END does not identify specific organizations that will receive funding, staff cannot determine at this point if external organizations receiving funding via END would overlap with organizations receiving state funding.

- 5. What is the race and equity impact of the END?*

It is difficult to assess the race and equity impact of the END as the use of cannabis tax revenues that the END proposes to re-allocate is not specifically tracked currently. That said, the END offers both transparency around how cannabis tax revenues will be spent in the future and intentionality to direct these funds towards those most impacted by the War on Drugs, which consists primarily of African-Americans (see [2017 cannabis race and equity analysis](#)). However, given the relatively modest amount of cannabis tax revenues collected annually, the

funding END proposes to redirect represents only a fraction of the City's current investment in END eligible service areas.

To ensure that the END produces equitable outcomes, the City would need to monitor the implementation of the END. To that end, the END includes oversight of cannabis tax revenues via the CRC and annual and bi-annual reports from the City's Finance Director and City Auditor, respectively.

6. What is Finance Department's projection for cannabis tax revenues moving forward?

The Finance Department does not have a specific projection for cannabis tax revenues in the future. However, the Finance Department anticipates cannabis tax revenues to maintain or grow in the future provided the City Council maintains the current cannabis tax rates. In 2022, previous reductions to the City's cannabis tax rates resulted in decreased cannabis tax revenues as noted in the Finance Department's annual report on cannabis tax revenues at the Special June 13th CRC meeting on [pages 23-28 of the agenda packet](#).

7. Is there an analysis of how the END has identified those impacted by the War on Drugs?

Staff is not familiar with the analysis that led to the END's definition of families or individuals impacted by the War on Drugs.

8. Is there an economic development strategy for the next phase of the cannabis industry?

The foundation of the City's cannabis program is the [City's 2017 race and equity analysis of the cannabis industry](#). In recent years City staff have recommended and City Council has approved various adjustments to the City's cannabis program, mostly through state grant funding, to address challenges facing equity operators. Staff has identified these challenges and adjustments through daily interactions with equity applicants, monthly CRC meetings, monthly meetings regarding cannabis equity loan and grant programs, and annual surveys. Additionally, in 2021 City staff worked with a University of California Berkeley Goldman School of Public Policy student who researched business ownership and workforce opportunities and challenges in Oakland's non-cannabis industries analogous to businesses along the cannabis industry supply chain. This report, which is available on [pp. 22-40 of May 2021 CRC agenda packet](#), offers insights that can guide the City's cannabis industry as the cannabis industry will most likely reflect trends in non-cannabis industries over time.

Moreover, while Oakland's cannabis operators have faced numerous challenges in participating in the regulated marketplace, particularly with recent burglaries, the total amount of gross receipts generated by cannabis operators has generally grown as demonstrated in **Table Two** below.

Table 2: Total Annual Gross Receipts from Cannabis Businesses

Tax Year	Total Gross Receipts from Cannabis Businesses
2020	\$185,692,733.24
2021	\$276,454,787.42
2022	\$258,661,277.88

9. *What is the CRC's position on the END?*

At the May 12, 2022 CRC Meeting, Member Payne made a motion for the CRC to support the END provided that the END proponents share detailed information regarding how the END will support Oakland's equity program and that they collaborate with the cannabis industry to lower cannabis tax rates. Member Corder seconded the motion.

Chair Turner then offered the following friendly amendments to Member Payne's motion: END should provide information on the organizations that they intend to work with and the END should increase the amount of the END's investment in Oakland's cannabis equity program. Member Payne accepted these friendly amendments and the motion passed with Members Armas and Minor abstaining.

RECOMMENDATION

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

Respectfully submitted,



ALEXA JEFFRESS
Director, Department of Economic and
Workforce Development

Reviewed By:
ERIN ROSEMAN
Director, Department of Finance

Prepared By:
Greg Minor
Assistant to the City Administrator