



AGENDA REPORT

TO: Steven Falk
Interim City Administrator

FROM: Greg Minor
Assistant to the City
Administrator

SUBJECT: City Administrator Authority to Award
Grants to Cannabis Equity
Applicants and Licensees

DATE: April 24, 2020

City Administrator Approval

Date: 4-29-2020

RECOMMENDATION

Staff Recommends That The City Council:

Adopt A Resolution Amending Resolution No. 88030 C.M.S., Which Among Other Things Authorized The Acceptance and Appropriation of One-Million, Six-Hundred and Fifty-Seven Thousand, Two-Hundred and One Dollars and Sixty-Five Cents (\$1,657,201.65) In State of California, Equity Act Grant Funding To Authorize The City Administrator Or His Designee To Award Said Grant Funds To Local Equity Licensees And Applicants To Be Determined And Without Return To City Council: (A) In An Amount Up To Fifty Thousand Dollars (\$50,000) Per Grant To Fund Business Start-Up And Operating Costs; (B) In An Amount Up To Two-Hundred And Fifty Thousand Dollars (\$250,000) Per Grant For The Development And/OR Lease Of Commercial Kitchen(s) And To Fund Events Featuring Cannabis Equity Businesses; And (C) At A Cumulative Grant Amount For The Above-Mentioned Awards Not To Exceed One Million Three Hundred Thousand Dollars (\$1,300,000).

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 to address the disproportionate impacts of the war on drugs in marginalized communities of color. In the fall of 2019, the California Bureau of Cannabis Control (BCC) awarded the City of Oakland \$1,657,201.65 in local equity grant program funding to support the City of Oakland's Equity Program. On February 4, 2020, the City Council enacted Resolution No. 88030 C.M.S. to receive and appropriate the BCC grant award to facilitate grants to equity operators, investment in commercial kitchens for equity manufacturers, support for events featuring equity operators, workforce development programs within the cannabis industry, and a program analyst to assist with grant and Equity Program administration.

Staff recommends that the City Council adopt a Resolution amending Resolution No. 88030 C.M.S. clarifying that the City Council authorizes the City Administrator to distribute grants to cannabis equity operators through the use of BCC grant funds. This clarification will enable the City Administrator's Office to proceed with distributing grants to equity operators to support their start-up and ongoing costs. Since cannabis operators cannot obtain bank loans and are not likely to be eligible for any federal support for small businesses due to federal prohibition of cannabis, distributing the BCC funding is critical for low-income cannabis operators to compete with well-capitalized operators and persevere through the coronavirus pandemic.

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 (MCRSA) in 2015, California's system of medical cannabis was one of the least structured regulatory frameworks in the United States. 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 (AUMA) or 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 (MAUCRSA). State agencies have been implementing MAUCRSA ever since, including through the issuance of multiple sets of regulations governing cannabis operations.

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.

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 (OMC) 8.46, in 2004 the City of Oakland enacted OMC 5.80, 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.

Oakland Examines Equity Within Cannabis Industry

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

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 impacts of the war on drugs in 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 enforcement.³ Strategies identified to prioritize equity applicants included:

- 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 OMC 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.

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."

In the spring of 2017, the City Council passed a legislative package (Ordinance No. 13424 C.M.S. and Resolution No. 86633 C.M.S.) enacting 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 2018 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 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

On February 4, 2020, the City Council adopted Resolution No. 88030 C.M.S., to receive and appropriate the BCC funding towards grants to operators, support for shared manufacturing facilities and events featuring equity operators, workforce development programs, and a program analyst position to support grant and Equity Program administration.

More recently, on April 21, 2020 the Governor's Office of Business and Economic Development (GO-Biz) announced that the City of Oakland is eligible for \$6,576,705.76 in a separate grant program to support local jurisdictions' equity programs. The City of Oakland's award is the largest out of any local jurisdiction in California and an acknowledgement of the City's groundbreaking work establishing and implementing the nation's first cannabis Equity Program. Staff intends on gathering public input over the next month from the Cannabis Regulatory Commission and equity applicants and licensees on how to best to utilize these additional funds. After gathering this input, staff will present a recommendation to the City Council for its consideration.

ANALYSIS AND POLICY ALTERNATIVES

Challenges Facing Equity Applicants

As noted in the April 9, 2019 informational report to the City Council Finance & Management Committee and the January 28, 2020 report to the Community and Economic Development Committee, the Equity Program does not exist in a vacuum. Equity applicants face many of the same challenges that confront entrepreneurs seeking to establish any business, such as securing sufficient capital, bringing a facility into compliance with building and fire codes, legal issues, scaling a business, as well as securing sales. Further, equity applicants encounter

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

many of the same challenges that any cannabis business faces operating in the infancy of cannabis legalization, such as market uncertainty, regulatory compliance, inadequate access to banking, and security concerns. While the challenges faced by equity applicants may not be unique, these challenges likely have a disproportionate impact on equity applicants due to a web of past and present policies and actions of institutions that have resulted in disparities in business ownership and access to venture capital.

Strategies for Utilizing State Funds

The BCC grant offers an opportunity to address several of the challenges confronting equity applicants and expand the Equity Program's reach into workforce development programs. **Figure 1** offers a summary of the proposed uses of BCC funds and the level of funding proposed for each use. For a detailed description of these uses please refer to the January 28, 2020 report to the Community and Economic Development Committee.

Figure 1- Proposed Use of Bureau of Cannabis Control Grant Funds

Proposed Use of BCC FUNDING	
Grants to Operators	\$850,000
Commercial Kitchens	\$250,000
Events Featuring Equity Businesses	\$200,000
Additional Workforce Development	\$200,000
Program Analyst Position	\$150,000
TOTAL BCC FUNDING	\$1,650,000

Resolution to Authorize Grant Awards

The amended Resolution clarifies the authority of the City Administrator to proceed with awarding grants to equity operators as outlined above in **Figure 1**. This clarification is essential to avoid delays in funding equity operators and bogging down the City Council with each individual grant award, particularly in light of the over three-hundred verified equity applicants that are eligible for grant awards and the many grant amendments that may transpire. Efficiency in fund disbursement will also ensure compliance with the BCC grant, which requires local jurisdictions to disburse the BCC funds within one year of receipt. Thanks to the experience over the last year and a half administering a revolving loan program for equity operators, though, the City Administrator's Office has the infrastructure in place to proceed with disbursing grants directly to equity operators once the City Council clarifies the City

Administrator's authority to do so. Once operational, the City Administrator's Office will provide the public with updates regarding the grant disbursement via the City's website and annual BCC grant reporting requirements.

Moreover, grants to equity applicants are key to addressing the fundamental barrier confronting equity applicants as they seek to gain entry and successfully operate in the state's regulated cannabis marketplace: access to capital. Grants also provide operators with flexibility to cover the variety of expenses they encounter initiating and growing their business, from completing construction, to purchasing insurance, to covering state licensing fees.

Finally, the attached Resolution also provides flexibility if public gatherings such as events featuring equity operators are not allowed over the next year in light of the coronavirus pandemic. Should such a prohibition take place, the attached Resolution allows for the City Administrator to redirect these funds towards additional grants to operators or shared manufacturing facilities, including in amounts greater than \$50,000 per operator or \$250,000 per manufacturing facility if enough remaining BCC grant funds exist.

FISCAL IMPACT

There is no fiscal impact associated with this report.

PUBLIC OUTREACH / INTEREST

In advance of applying for the BCC grant and presenting Resolution No. 88030 C.M.S. to the January 28, 2020 Community and Economic Development Committee, staff conducted surveys of equity applicants in the spring and winter of 2019 and held discussions at multiple 2019 Cannabis Regulatory Commission meetings on how to utilize BCC grant funding.

No additional public outreach was done outside of the City's standard agenda process for this report.

COORDINATION

The City Administrator's Office's Special Activity Permits Division consulted with the Budget Bureau 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 A Resolution Amending Resolution No. 88030 C.M.S., Which Among Other Things Authorized The Acceptance and Appropriation of One-Million, Six-Hundred and Fifty-Seven Thousand, Two-Hundred and One Dollars and Sixty-Five Cents (\$1,657,201.65) In State of California, Equity Act Grant Funding To Authorize The City Administrator Or His Designee To Award Said Grant Funds To Local Equity Licensees And Applicants To Be Determined And Without Return To City Council: (A) In An Amount Up To Fifty Thousand Dollars (\$50,000) Per Grant To Fund Business Start-Up And Operating Costs; (B) In An Amount Up To Two-Hundred And Fifty Thousand Dollars (\$250,000) Per Grant For The Development And/Or Lease Of Commercial Kitchen(s) And To Fund Events Featuring Cannabis Equity Businesses; And (C) At A Cumulative Grant Amount For The Above-Mentioned Awards Not To Exceed One Million Three Hundred Thousand Dollars (\$1,300,000).

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

Respectfully submitted,



GREG MINOR
Assistant to the City Administrator