



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: May 16, 2022

City Administrator Approval 

Date: May 19, 2022

RECOMMENDATION

Receive An Informational Report On The Emerald New Deal Healing And Reparations Fund Proposed To (A) Establish The “Emerald New Deal Fund”, A Fund Of The City Of Oakland, To Provide Community And Economic Development Services And/Or Programs That Address The Racially Inequitable Impacts Of The War On Drugs On Individuals, Families, And Communities In Our City; (B) Deposit The Revenue Of The Cannabis Business Tax Into The Hereby Established “Emerald New Deal Fund”; And (C) Establish An “Emerald New Deal Fund Oversight Commission” As A Commission Of The City Of Oakland To Recommend Strategic Investments Of The Emerald New Deal Fund.

REASON FOR SUPPLEMENTAL

On May 5, 2022, the Rules and Legislation Committee requested a supplemental report from the City Administration regarding an informational report on a proposed ballot initiative titled the Emerald New Deal (END) scheduled for the Community Economic Development Committee Special Meeting on May 24, 2022. Specifically, members of the Rules and Legislation Committee asked staff to analyze (i) whether the City of Oakland 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.

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 of Oakland 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 approximately an \$8M annual loss of revenue to the 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.

Furthermore, the proposed END caps the amount of administrative spending at 15 percent (15%) of the revenue from cannabis business taxes and removes the City Council's flexibility with respect to cannabis tax rates authorized under the 2018 Measure V. This means that the GPF would cover all costs that exceed the cap of 15 percent (15%) as allocated by END, and the City Council would no longer have the flexibility to optimize tax policy as needed.

Finally, the END also proposes establishing a Planning and Oversight Commission with jurisdiction over a broad scope of services that could overlap with existing City commissions, including homelessness, workforce development, parks and recreation, public safety/violence prevention, and the Sugar Sweetened Beverage Tax. The proposed new commission would also overlap with the Cannabis Regulatory Commission (CRC) with regards to the CRC's original intent in overseeing the disbursement of cannabis revenue, and its current function of advising the City on implementing the cannabis Equity Program.

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.

In November 2018, Oakland voters approved the 2018 Measure V allowing cannabis businesses to pay business taxes quarterly, cannabis manufacturing and/or cultivation

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>

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

INITIAL ANALYSIS

The following preliminary analysis addresses the three initial questions raised by the Rules and Legislation Committee: (i) whether the City of Oakland 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.

A. END Services and Programming

The END proposes to spend the City's cannabis tax revenues in the following manner:

- Category One: Up to 15 percent (15%) for the City's costs of administering the END³
- Category Two: Up to 35 percent (35%) towards City of Oakland programs that support individuals and neighborhoods most impacted by the War on Drugs.
- Category Three: Up to 50 percent (50%) to private, non-profit, and public agencies that support individuals and neighborhoods most impacted by the War on Drugs.

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

³ Under the END, the fifteen percent of cannabis tax revenues that can be used towards the City's costs of administering the END does not include the costs of the actual Planning and Oversight Commission, which include annual stipends for Commission members.

Category One costs of administering the END would include staffing the END's proposed Planning and Oversight Commission, drafting mandated reports, drafting and process multiple Requests for Proposals (RFPs), processing subsidies for commission members, and monitoring the use of cannabis tax revenues. These costs would be new costs to the City as the City does not currently specifically track and produce reports on the use cannabis tax revenues. Staff anticipates these new functions would require approximately two to three full time equivalent (FTE) positions in the Economic and Workforce Development Department (EWDD), one FTE position in the Finance Department, and a portion of new positions in the Offices of the City Auditor and City Attorney.

Allocating up to fifteen percent (15%) of cannabis tax revenues to the administration of the END should be sufficient to cover the costs of administering the END assuming revenue from cannabis business tax remains at or above \$8 million annually. However, as currently drafted, the END specifies that the costs of cannabis equity assistance programs, such as loans and technical assistance to cannabis equity applicants, fall under administrative costs (See proposed OMC 4.58.030 (B)(e)). Given the costs of operating a cannabis business and the fact that there are over three-hundred unique verified equity applicants, 15 percent (15%) of cannabis tax revenues could be inadequate to funding these cannabis equity program services plus new City administrative costs.

Category Two contemplates funding a wide variety of City programs, such as workforce development, blight abatement, illegal dumping removal, services for unhoused people, and loans to cannabis equity businesses. The current funding sources for these different City programs include various sources of funds, including the General Fund, Federal Workforce Innovation and Opportunity Act (WIOA) funds, Measure Q Parcel Tax and Measure W, Vacant Property Tax, and state grants.

Category Three envisions a broad array of external programming. Examples of potential external programs under Category Three include workforce development, services for unhoused persons, mental health, housing, business support, physical health, and educational programs. The City currently makes available funding for external organizations for these purposes, such as in Fiscal Year (FY) 21-22 the Department of Violence Prevention (DVP) oversaw contracts with community-based organizations (CBOs) of approximately \$11.7 million. The City's annual investment in homeless services 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 provides by other City departments.

B. Overlap with Existing City Commissions

While the END's proposed Planning and Oversight Commission would not overlap with most functions of the CRC, as the CRC currently does not oversee the distribution of cannabis tax revenues, the broad scope of services identified in the END would result in the new proposed commission overlapping with several existing commissions that are subject matter experts on specific issues. For example, the END contemplates funding services for unhoused persons. The END's oversight of these funds would overlap with the recently established Commission on

Homelessness. Likewise, END's oversight of funding for workforce development would overlap with the Oakland Workforce Development Board (OWDB), which has concurrent jurisdiction with the City Council on funding for workforce development. END's commission will similarly overlap with the Sugar Sweetened Beverage Community Advisory Board on health programming, the Parks, and Recreation Advisory Commission (PRAC) on parks services, and the Public Safety and Services Violence Prevention Oversight Commission (SSOC) on public safety measures.

With respect to the CRC, the END's proposed Planning and Oversight Commission would overlap with the CRC's initial intent, but not with most of the CRC's current functions. As noted earlier, the CRC was initially named the Community Oversight Committee as its proponents desired for the commission "to oversee [the] disbursement of revenue from licensing and taxation of businesses that sell cannabis." However, due to Measure Z's failure to amend the City Charter, the City Council retains the authority to determine how to spend the City's cannabis tax revenues through the Budget process. Accordingly, the CRC's function is currently limited to the following:

- Ensure timely implementation of Measure Z;
- Oversee the implementation of lowest law enforcement priority policy;
- Make recommendations to the City Council regarding implementation of the "lowest law enforcement policy;"
- Make recommendations to the City Council regarding implementation of City licenses, taxes, and regulations for adult use of cannabis; and
- Report annually to the Council on the implementation of Measure Z.

To the extent the CRC advises the City on implementing the cannabis Equity Program, the END's proposed Planning and Oversight Commission would overlap with the CRC as the END encourages ongoing funding of the Equity Program. Accordingly, if Oakland voters adopt the END as currently drafted, the City would have two separate commissions discussing how best to fund and implement the Equity Program.

C. Fiscal Impact of END to the General Purpose Fund

Revenue from Cannabis Business Tax is currently deposited into the GPF and could be expended for any purpose, including staffing costs for administration and enforcement of the tax. The proposed END would redirect all proceeds from GPF to END Fund and restrict the use of the proceeds to "no more than fifteen percent (15%) of the revenue deposited in any fiscal year" regardless of how or by what entity those administrative services are incurred.

Based on the downward trend of cannabis business tax revenue, mostly due to the 2019 City Council's approval of lower tax rates across cannabis sectors, the proposed END limits the "costs of administering the special fund" to just 15%, which would likely be insufficient to cover all expenses if cannabis revenue continues its downward trend. If the deficit occurs because the revenue from cannabis business tax could not be expended more than 15% to cover the costs, the GPF would be expected to pay for the difference.

1. Loss of Authority to Adjust the Tax Rates

The voter-approved 2018 Measure V included a provision that authorized the City Council to amend the tax rates in any manner that does not increase the tax rates, up to the maximum of 5% for medical and 10% for non-medical cannabis businesses, without returning to voters. The proposed END does not carry any provisions that would authorize the City Council the flexibility to optimize tax policy as needed.

Additionally, Section 4, Code Amendments, of the proposed END contains a provision that would delete certain sections of OMC Sections 5.04.480 and 5.04.481. However, the proposed END does not reference any of these sections.

2. END Will Require Additional Staff Resources

While END allows for the funding of City programs under Category 2, the END establishes a cap of 35 percent of total cannabis tax revenues. Similarly, to the extent that external programs under END's Category 3 are not currently funded via the GPF, the END's funding of these programs represent new City costs and are not offset by a reduced need to use the GPF for these programs.

As noted above, the END will require additional staff to fulfill the END's various mandates. For example, the END will require new staff to support the new proposed Planning and Oversight Commission, disburse cannabis tax revenues through RFP processes, produce required reports and monitor the specific uses of cannabis tax revenues. The END's addition of new staff compounds the loss of GPF revenue that has gone towards supporting existing staff costs.

ALTERNATIVE APPROACHES

Below are alternative options to the current END proposal for the City Council's consideration.

A. Fund Desired Services Through Existing Budget Process

Under the City Charter the City Council has the authority to distribute cannabis tax revenues through the Budget. Accordingly, the City Council can direct the City's cannabis tax revenues towards the uses prescribed in the END through the Budget process. Utilizing the Budget process is a more direct approach to funding these services as compared to placing a ballot measure before the voters to establish a commission to then inform how the City should allocate cannabis tax revenues.

Additionally, while commissions offer an extra layer of oversight, commissions also add a layer of bureaucracy that can slow the disbursement of funds, which in turn may delay addressing various community needs. Given that the funding needed for the different community needs far exceeds the amount collected via cannabis tax revenues, the City Council should consider

whether adding a separate fund, commission, and funding process for the use of cannabis tax revenues is the best use of public resources.

B. Consolidate Existing CRC With Proposed Planning and Oversight Commission

Another alternative to consider is merging the existing CRC with the functions of the END's proposed Planning and Oversight Commission to enhance transparency over the use of cannabis tax revenues without imposing the staffing burden and potential confusion of two City commissions related to cannabis. As discussed earlier in this report, the proponents of the CRC specifically intended for the CRC (then referred to as the Community Oversight Committee) to oversee the disbursement of cannabis tax revenues, however, due to Measure Z's failure to amend the City Charter, the CRC has not realized this oversight function. Returning to the voters with a Charter amendment to provide the CRC with the function of overseeing the disbursement of cannabis tax revenues would align with what Oakland voters approved back in 2004, minimize staff costs, and empower CRC members who have experienced the frustration between Measure Z's stated intent and the CRC's current authority.

While the CRC's existing functions exceed the scope of END's proposed Planning and Oversight Commission, the need for CRC's current functions have decreased and will likely continue to decrease over the passage of time. The CRC's main functions are advising on the regulation of cannabis businesses and monitoring OPD's enforcement of private adult cannabis offenses as lowest law enforcement priority. With respect to the latter, the number of cannabis arrests and citations in Oakland has plummeted with the passage of Proposition 64 in the 2016. For example, in 2005, the year after Measure Z passed, OPD made 983 arrests for cannabis offenses;⁴ in 2020 OPD only issued 32 citations for cannabis offenses. Similarly, before, and immediately after the passage of Proposition 64 there was a need to develop regulations for adult use cannabis businesses.⁵ Over time the need for adjusting cannabis regulations will likely decline, and the City's need for a commission focused on cannabis regulations will diminish in turn.

C. Narrow the Proposed Uses of Cannabis Tax Revenues

The END features a limited funding source, cannabis tax revenues, to address a broad list of community needs resulting from the War on Drugs. Given the relatively modest amount of funds the City collects from cannabis taxes, particularly given the much greater actual costs of addressing the identified needs, the END's impact on the wide range of community needs may be minimal. Furthermore, without focusing on certain community needs, it may be difficult to determine which internal and external programs the END should fund and similarly challenging for the City Auditor and others to measure the effectiveness of END funding allocations. If no changes are made to narrow the intended uses END funds, the City Council should consider managing the public's expectations with respect to the impact of the END.

⁴ See page 61 of 2017 Cannabis Race and Equity Analysis available here: <https://cao-94612.s3.amazonaws.com/documents/Equity-Analysis-and-Proposed-Medical-Cannabis-Amendments.pdf>

⁵ See OPD's 2020 Report to Cannabis Regulatory Commission on pp.18-21 here: https://cao-94612.s3.amazonaws.com/documents/CRC-May-6.-2021-Agenda-Packet_2021-05-03-154013.pdf

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

Respectfully submitted,



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