



AGENDA REPORT


TO: Jestin D. Johnson
City Administrator

FROM: Ashleigh Kanat
Director, Economic and
Workforce Development
Department

SUBJECT: California Administrative
Prosecutor Program

DATE: June 10, 2024

City Administrator Approval


Jestin Johnson (Jun 27, 2024 21:05 PDT)

Date: Jun 27, 2024

RECOMMENDATION

Staff Recommends That The City Council Adopt A Resolution Authorizing The City Administrator To Enter Into A Memorandum Of Understanding With The California Attorney General’s Office To Participate In The California Administrative Prosecutor Program To Address Illegal Commercial Cannabis Activity.

EXECUTIVE SUMMARY

Despite local and state efforts to establish a regulated cannabis marketplace, unregulated cannabis activities continue across the State of California and the City of Oakland (City). The adverse impacts of unpermitted cannabis activities include dangerous and improper electrical alterations at indoor cultivation facilities, burglaries and robberies, as well as unfair competition with permitted cannabis businesses. Compounding matters, the City’s lack of investigative and legal resources limits the City’s ability to hold unpermitted operators accountable.

Fortunately, in 2023 the Office of the Attorney General (OAG) of the State of California established the Cannabis Administrative Prosecutor Program (CAPP) to provide California cities and counties who partner with the OAG with free legal support to address illegal cannabis activity through administrative enforcement and nuisance abatement. Through administrative enforcement, the CAPP treats unpermitted cannabis activities as land use issues and unlicensed business practices. The program consists of notices of violation, citations, orders to abate, and due process hearings before an administrative hearing officer. By entering into a Memorandum of Understanding (MOU) with the OAG to participate in the CAPP the City will receive much needed legal resources to reduce unpermitted cannabis activity and support the City’s licensed cannabis businesses.

BACKGROUND / LEGISLATIVE HISTORY

Federal Cannabis Policy

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 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. Additionally, in October 2022 President Biden directed the Secretary of Health and Human services and the Attorney General to initiate the process to review how cannabis is scheduled under federal law. Finally, in May 2024 the United States Department of Justice submitted a rulemaking notice to move cannabis from a Schedule One to a Schedule III controlled substance.³

California 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.

Oakland’s Cannabis Regulatory History

The City has been a leader in regulating cannabis. In 2004, following the federal closure of the Oakland Cannabis Buyers Club, the City’s initial medical cannabis provider under Oakland Municipal Code (OMC) 8.46, the City enacted OMC 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

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.

³ Under the Controlled Substances Act, Schedule One drugs are deemed to have the highest abuse potential and Schedule Five having the lowest.

for the cultivation of medical cannabis under OMC 5.81, however, threats of federal intervention and the lack of comprehensive state law prevented 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, in 2015 and 2016, the City began exploring approaches to legalizing the cannabis industry within Oakland. 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 analysis⁴ 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.⁵ 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.

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.

⁴ <https://cao-94612.s3.amazonaws.com/documents/Equity-Analysis-and-Proposed-Medical-Cannabis-Amendments.pdf>

⁵ 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."

Growth of a Larger Movement and State Grant Awards for Equity Program

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. Then starting in 2019 the State of California has set aside annual grant funding to support local jurisdictions' cannabis equity programs.

Unregulated Cannabis Activities and Their Impacts

Despite the creation of a regulated cannabis marketplace and local and state efforts to lower barriers of entry into the regulated marketplace, unpermitted cannabis activities continue with a variety of negative impacts. First, unregulated cannabis operations place permitted cannabis businesses at a major disadvantage, as regulated operators shoulder the costs of complying with a variety of requirements that their unpermitted counterparts do not. Regulated cannabis requirements including zoning, building and fire codes, laboratory testing and track and tracing of cannabis products, as well as taxes. Second, unpermitted cannabis activity creates public safety hazards, including electrical fires and usage of diesel generators from unpermitted cultivators to burglaries and robberies both of unpermitted operators and of permitted operations in order to re-sell cannabis products illegally. Finally, unpermitted cannabis activities undermine the people of Oakland, who approved Proposition 64 by over seventy percent, by confusing consumers and reducing the amount of jobs and tax revenue generated by the regulated cannabis market.

ANALYSIS AND POLICY ALTERNATIVES

Approval of the requested action advances the Citywide priority of **housing, economic, and cultural security** by reducing the amount of unregulated cannabis activity and thus supporting business ownership opportunities for permitted cannabis operators.

California Administrative Prosecutor Program

In 2023, the California OAG established the CAPP to provide local jurisdictions with legal support to address illegal cannabis activity through administrative enforcement and nuisance abatement. While local jurisdictions, including Oakland, have legal authority to issue administrative citations to address unlawful cannabis activity, Oakland and other local jurisdictions lack the staffing capacity to respond to all unpermitted activity, including the holding of hearings if unpermitted operators or property owners appeal administrative citations. The CAPP addresses this need by providing local jurisdictions with OAG attorneys to act as administrative prosecutors before local administrative hearing bodies. The OAG's Cannabis Control section also can assist with investigative work and the administrative work necessary to provide notices, facilitate administrative procedures, and logistical issues. For more background on CAPP, please review **Attachment A**, Frequently Asked Questions Cannabis Administrative Prosecutor Program.

Staff recommends participating in the CAPP, as it would greatly expand the City's capacity to address unpermitted cannabis operations. The City lacks both investigative and legal resources

to sufficiently document and uphold enforcement actions against ongoing unpermitted cannabis activity in the City. Partnering with the OAG would thus provide the City with critically needed resources to address unregulated cannabis activity and in the process support the City's licensed cannabis businesses by levelling the playing field of California's cannabis marketplace. Accordingly, staff recommends that the City adopt a Resolution authorizing the City Administrator to enter into a Memorandum of Understanding with the OAG to participate in the CAPP (see **Attachment B**, Memorandum of Understanding).

FISCAL IMPACT

The CAPP program will provide free legal resources to the City to address unpermitted cannabis operations. Participation in the CAPP is of no cost to the City and if successful in reducing the size of the City's unregulated cannabis market, the CAPP will solidify the City's regulated cannabis marketplace, which may result in increased local employment and tax revenues.

PUBLIC OUTREACH / INTEREST

Staff from the OAG provided an overview of the CAPP program at the June 6, 2024 Cannabis Regulatory Commission (CRC) meeting. The CRC raised no objections to the City participating in the CAPP program.

COORDINATION

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

SUSTAINABLE OPPORTUNITIES

Economic: Reducing the City's unpermitted cannabis market will support the City's permitted cannabis businesses, increasing their chances of generating revenues and hiring employees.

Environmental: Supporting the City's regulated cannabis marketplace will encourage local employment and business ownership, which can reduce commutes and related greenhouse gas emissions.

Race and Equity: Reducing the unregulated cannabis market's competitive advantage over the regulated cannabis marketplace will improve the likelihood that regulated cannabis businesses can succeed, including equity-owned businesses. 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 Authorizing The City Administrator To Enter Into A Memorandum Of Understanding With The California Attorney General's Office To Participate In The California Administrative Prosecutor Program To Address Illegal Commercial Cannabis Activity.

For questions regarding this report, please contact Greg Minor, Deputy Director, Economic and Workforce Development Department, at (510) 238-6370.

Respectfully submitted,

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Attachments (2):

Attachment A: Frequently Asked Questions Cannabis Administrative Prosecutor Program
Attachment B: Memorandum of Understanding

Signature: *Ashleigh Kanat*
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