

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: October 24, 2016

To: Rules, Elections, Intergovernmental Relations, and Neighborhoods Committee

From: Sharon M. Tso, Chief Legislative Analyst 

Subject: **MARIJUANA REPORT BACK #7 – SOCIAL JUSTICE AND EQUITY ISSUES (C.F. 14-0366-S5)**

During its consideration of a joint report from the City Administrative Officer (CAO) and the Chief Legislative Analyst (CLA) regarding options to regulate marijuana-related businesses within the City (C.F. 14-0366-S5), your Committee requested the CLA to report on an analysis of the social justice and equity issues relative to marijuana regulation.

Defining Equity and Social Justice in the Context of Marijuana Regulation

Equity or social justice could be understood in several contexts, depending on how marijuana is viewed:

<i>Context in which marijuana is viewed</i>	<i>Policy Goal</i>	<i>Example of Policy Response</i>
Medicine	Accessibility	Expand access by increasing number of dispensaries.
Recreation	Public Health/Safety	Limit accessibility and control proliferation in communities most affected or vulnerable.
Business Commodity	Equality of opportunity and Equality of result	Expand access to permitting process. Set goals/targets for licence distribution based on desirable criteria, such as geographic distribution, race/socioeconomic status, etc.).

Accordingly, the definition of 'equity' will dictate how a permitting process would be structured and ultimately who will be able to participate in the legal marijuana industry.

As for social justice, discussions within the context of the marijuana industry have been propagated in the media and advocated by trade associations, civil rights organizations, and others. For example, the Drug Policy Alliance (DPA) broadcasts a narrative that recounts President Nixon's War on Drugs and its disproportionate impact on Black and Latino communities. It commonly reports that nearly half a million people were arrested in California for marijuana offenses over the last decade, with laws unequally enforced against the Black and Latino population. DPA references this social justice narrative to urge support for Proposition (Prop) 64, or the Adult Use of Marijuana Act, which would legalize recreational marijuana in California if passed in November.

In addition to the objections against the historically discriminate enforcement of marijuana-related offenses, there is a prevalent concern that the legal marijuana market will continue to exclude communities of color, particularly those lacking access to capital and land. Individuals wishing to open a dispensary, for instance, do not qualify for a small business loan, because banks are insured by Federal agencies and marijuana is still considered illegal by the Federal government. An example of a policy that would address such barriers to entry is the creation of a Social Venture Fund, which could provide funding, education, and other forms of community assistance to those who have traditionally been excluded from the market. Such a fund could be financed either by requiring marijuana industry participants to contribute a percentage of their profit, or via matching funds provided by the licensing authority. Consequently, prioritizing social justice might be at the expense of efficiency. In this context, efficiency could be understood to be maximizing tax revenue, or allowing robust competition to optimize the market through product diversification, quality, lower prices, etc.

How Prop 64 Would Address Equity/Social Justice Issues

The following are some of the provisions in Prop 64 that might address the issue of social justice, as defined by popular rhetoric:

- \$50 million from tax revenue to be dedicated to grants for economic development of communities affected by prohibition;
- Many misdemeanors made legal;
- Many felonies reduced to misdemeanors;
- Retroactive relief for cannabis offenders who are already facing prosecution or sentencing;
- Allows priors to be expunged and/or reduced;
- No jail for underage offenders and records sealed;
- Prior convictions may not prohibit licensing; and
- Legal cannabis no longer grounds for police search.

How Equity/Social Justice Issues are Addressed in Other Cities

California law (Prop 209) prohibits priority licensing to address affirmative action goals/policies. As such, the City of Berkeley and Oakland have made attempts to find other ways of rectifying the inequities perpetuated by past marijuana-related enforcement.

Oakland

- 'Dispensary Equity Permit Program' that gives special consideration to applicants that include Oakland residents who have been wronged by past marijuana-related enforcement
- Require dispensaries to hire at least 50% Oakland residents and 25% Oakland residents in certain census tracts
- Incentives given to dispensaries to hire formerly incarcerated Oakland residents
- Considering proposed mandate that would require that the City of Oakland is a 25% owner of certain new marijuana businesses

Oakland's Dispensary Equity Permit Program for marijuana dispensaries requires that fifty percent (50%) of all permits issued by the City of Oakland shall be issued to an Oakland resident who meets the Program's requirements, per Section 5.80.050 of the Oakland Municipal Code (OMC). At no time shall the number of new General Application Permits exceed the number of Dispensary Equity Permits issued by the City Administrator. Oakland's eight existing Dispensary Operators are exempt from the 50% requirement. To qualify for the Equity Permit Program, an applicant must have at least one member that meets all of the following criteria (OMC Sec. 5.80.050):

1. Be an Oakland resident who:
 - a. Resides for at least two years prior to the date of application in one of six enumerated Oakland Police Department Beats (concentrated in East Oakland, primarily in the district of Councilmember Desley Brooks, the author of the amendments that established the Equity Permit Program); or those individuals who, within the last ten years, have been previously incarcerated for a marijuana-related offense as a result of an Oakland-based conviction;
 - b. Maintains not less than a 50% ownership in the Dispensary applicant entity; and
2. Prior marijuana or cannabis conviction shall not be a bar to equity ownership.

In the form of performance standards, Oakland also requires dispensaries to maintain a staff comprised of at least 50% Oakland residents and 25% Oakland residents in census tracts identified as having high unemployment rates. Furthermore, dispensaries and delivery-only dispensaries that hire and retain formerly incarcerated Oakland residents may apply for a tax credit or license fee reduction based on criteria established by the City Administrator.

In addition, the Oakland City Council directed the Oakland City Administrator to include in its implementation regulations: (1) Strengthened enforcement of local hiring provisions by creating statutory fines for shortfalls and permit revocation for repeated noncompliance; and (2) Earmarked resources for Oakland to proactively lobby on behalf of licensed local businesses during the state licensing process so that business owners with prior criminal offenses will not be excluded in the State system.

To improve medical cannabis businesses' access to financial institutions, the City of Oakland requires permittees to implement track and trace programs that promote transparency, which would help banks to work with cannabis businesses and comply with the Department of Treasury Financial Crimes Enforcement Network ("FinCEN").

Finally, the Oakland City Council is planning on considering changes to its cannabis licensing rules to mandate that the City of Oakland be a 25 percent owner of certain new marijuana businesses.

Issues with Oakland's Permit Program

Current State law allows for State regulators to deny a marijuana-related license to people who have committed a crime related to the business they seek to enter. This would include a felony conviction for the illegal possession, sale, cultivation, etc., of controlled substances, such as marijuana. Given that State law requires both a State license and a local license, permit, or authorization for commercial marijuana activity, the legality of dispensaries permitted by Oakland's Equity Program might be questionable, once the State starts issuing licenses.

In addition to legal concerns, critics say that the equity requirements are so narrow that Oakland's entire marijuana permitting system could grind to a halt. According to this opposition, a single qualified equity applicant would be hard to find, thereby preventing the City of Oakland from giving out another regular license until it can find an applicant for the equity license.

Lastly, there have been concerns that it is possible for applicants that do not meet one or all of the criteria to qualify for an Equity Permit if they can simply install Oakland residents that do qualify to be puppet heads of their companies. However, note that Oakland's Equity Permit Program requires the qualified Oakland resident to own 50% of the applying entity.

Berkeley

- Flexibility in discretionary authority of City Council in determining dispensary licensees
- Set amount of medical cannabis must be provided at no cost to very low-income Berkeley residents

Much of the local legal cannabis production and distribution in Berkeley takes place in collectives. A collective medical marijuana site must serve primarily as a residence. Throughout the City of Berkeley, there are only four dispensaries. The Berkeley City Council may by resolution establish procedures and criteria for accepting applications to operate Dispensaries and determining which, if any, to approve. Therefore, although there are prescribed categories that are scored to rank applicants, the Berkeley City Council has wide discretion in picking to whom the dispensary license would be awarded. Case in point, the Berkeley City Council issued a dispensary permit to entrepreneur Sue Taylor, who became one of only a handful of African-American dispensary owners in the nation. It has been reported that Berkeley Councilmembers selected Taylor not only for her winning application, but to increase diversity among marijuana providers in the City as well.

To add, the City of Berkeley requires that at least 2% (by weight) of the annual amount of medical marijuana provided by a Dispensary to all members shall be provided at no cost to very low-income members who are Berkeley residents. This amount is calculated every six months, based on the amount dispensed during the immediately preceding six months. "Very low income" is defined as the household income prescribed by the most recent annual Berkeley City Council resolution that establishes the maximum income levels for qualification for exemption from specified local taxes and fees.