

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: October 18, 2018

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Council File No. 14-0366-S5

Council District: All

To: The City Council

Attn: Rules, Elections and Intergovernmental Relations Committee

From: Richard H. Llewellyn, Jr., City Administrative Officer

Subject: **REPORT BACK ON CANNABIS SOCIAL EQUITY IN-LIEU FEE AND FEE DEFERRAL**

RECOMMENDATIONS

That the Council:

1. Instruct the City Administrative Officer, with the assistance of the Department of Cannabis Regulation, to report back with the methodology necessary to develop an in-lieu fee for the Social Equity Program based on a percentage of the actual cost paid for business space by a Tier 3 applicant; and
2. Instruct the City Administrative Officer, with the assistance of the City Attorney and the Department of Cannabis Regulation, to report back on the feasibility of creating a program whereby Cannabis Social Equity applicants would receive deferrals on application and licensing fees, based on program guidelines and methodology to be established.

SUMMARY

On June 29, 2018, the City Council requested that our Office report back with an analysis of an annual in-lieu fee as proposed under the Social Equity Program. The Chair of the Rules, Elections and Intergovernmental Relations Committee requested that we report on the issue of fee deferrals for Social Equity applicants. A Tier 3 Social Equity applicant would enter into a Social Equity Agreement with the City to provide business, licensing and compliance assistance for a period of three years to persons who meet the criteria to be a Tier 1 or Tier 2 Social Equity applicant. In addition, a Tier 3 Social Equity applicant should provide capital and leased space for a period of three years to persons who meet the criteria to be a Tier 1 Social Equity applicant. The City has established minimum requirements of the property to be provided to Tier 1 Social Equity applicants based on the type of license received. As proposed, in lieu of providing the minimum property requirements on its business premises, a Tier 3 Social Equity applicant may pay a fee established by ordinance to assist a Tier 1 Social Equity applicant with establishing an alternative business premises; or a Tier 3 Social Equity applicant may provide a Tier 1 Social Equity applicant an equivalent or greater amount of property at a different location in the City.

With regard to a fee deferral program, this report identifies some preliminary issues that should be addressed before Council consideration.

Social Equity In-Lieu Fee

The City may provide the option for a fee in-lieu for the proposed minimum space requirements and business assistance provided that the proposed in-lieu fees are comparable to the services and/or facilities intended for the Social Equity Program. One option for determining the in-lieu fee is to use the average citywide cost per square foot for commercial, industrial or manufacturing space, as appropriate, to the requested license type and adjusted annually, based on a real estate index that would measure the economic impacts on the respective type of space. However, the Department of Cannabis Regulation (DCR) is reporting that cannabis businesses are experiencing premium pricing when leasing commercial properties for their operations. As such, a base index may not properly reflect the true cost of leasing facilities for cannabis operations. Alternatively, the City may elect to base the in-lieu fee on a percentage of the actual cost paid for business space to provide a more realistic measure of the cost of leasing for cannabis businesses. This approach was conceived by DCR as a means to address the premium pricing experienced by cannabis businesses and is recommended by this Office.

To determine an appropriate in-lieu fee for the business, licensing, and compliance assistance to program participants, the level of the requisite assistance must be measureable. Once the level of support is determined, a Tier 3 Social Equity applicant could use the Social Equity vendor list for the Social Equity Program. It is anticipated that the vendor list will be established this fiscal year. We recommend that this Office be directed to report back, with the assistance of DCR, with the methodology necessary to develop an in-lieu fee for the Social Equity Program based on a percentage of the actual cost for business space by a Tier 3 applicant.

Social Equity Fee Deferral Program

There has also been discussion of establishing a Fee Deferral Program as part of the Social Equity Program. The Fee Deferral Program should provide a public benefit or purpose and any private benefit should be incidental as to not be considered a gift of public funds. The City would need to establish guidelines to determine which applicants are eligible to receive fee deferrals for licensing costs, program requirements and a mechanism to ensure repayment. It is unclear at this time how many Social Equity applicants would qualify for deferral as licensing applications are still under review. As such, the cost of the program cannot be determined until these parameters are created. It is unclear whether the DCR would have sufficient funding within the Cannabis Regulation Trust Fund to support this initiative this year and may require funding from the General Fund to support the program. We recommend that this Office, with the assistance of the City Attorney and DCR, be directed to report back on the feasibility of creating a fee deferral program.

FISCAL IMPACT STATEMENT

There is no General Fund impact based on the recommendations in this report.