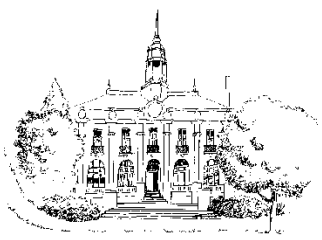

Ben Bartlett

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CONSENT CALENDAR
November 13, 2018

To: Honorable Mayor and Members of the City Council
From: Councilmember Ben Bartlett & Kriss Worthington
Subject: Providing Requested Direction to the City Manager and Planning Department on ~~the Number of~~ Cannabis Retail Establishment~~s~~ and the Creation of an Equity Program

RECOMMENDATION

That the Council provides requested direction to the Planning Department on how to proceed with the Equity Program recommended by the Cannabis Commission in the October 9, 2018 staff report~~:~~. with the following specifications:

Recommendation of creating 1 new dispensary license for equity applicants ~~ing allowing 4 equity applicants.~~

It is envisioned as new licenses are created, such as, delivery, manufacturing, and micro-business, permits will be reserved for equity applicants for each new category.

BACKGROUND

At the City Council special meeting on October 9, 2018, the Planning and Development Department and the City Manager requested direction from the Council on six main issues: quotas, buffers, discretion, equity, retail nurseries, and residential collectives. There were clear recommendations for many of the options presented by staff that work to complete Berkeley's comprehensive cannabis ordinances for Council consideration.

However, at the special meeting, the City Council did not provide specific recommendations regarding the creation of the proposed Equity Program and the number of equity and non-equity applicants that are able to apply.

On March 15, 2018, the Cannabis Commission held a meeting and made recommendations for the implementation of the City's Equity Program for Cannabis retailers. Recommendation No.1 outlines a clear need for an "Equity-based selection process." This will "prioritize businesses that are at least 51% owned by equity candidates" and ensure that those negatively affected by past Cannabis prohibition have a chance to enter the Berkeley Cannabis business and reap the benefits of the growing industry. This selection process will provide access to a group of business owners that would otherwise face significant barriers.

On October 9, 2018, the Planning Department and City Manager recommended slight changes to the Cannabis Commission's considerations while defining equity candidates in the same way as in the Commission proposal:

> "Staff recommends an equity program that would prioritize businesses that at are at least 40% owned by equity candidates... These candidates would be selected through a lottery and allowed time to identify and secure locations before applications from non-equity candidates would be considered."

~~Firstly, t~~his item seeks to support the Planning Department and the City Manager's recommendation on the issue of equity. Berkeley is well behind the curve on using a specific equity process in the selection of retailers. Other cities such as Oakland and San Francisco have already implemented policies that prioritize equity candidates in their selection processes, which seek to allow impacted and historically disenfranchised groups to enter the Cannabis industry with little to no barriers. To bridge the gap between our City and others, the Council should move forward with the Cannabis Commission's proposal for an Equity Program as amended by the Planning Department and City Manager.

~~Secondly, this item also provides the Council with the opportunity to provide a more clear direction on how to proceed with the number of Cannabis retail establishments. The clear direction being that the Council allows~~ one ~~four equity and two non-equity applicants to apply to become storefront Cannabis retailers and that the City processes these applicants within 2 years of their application.~~

FISCAL IMPACTS OF RECOMMENDATION:
Minimal.

ENVIRONMENTAL SUSTAINABILITY:
No significant impact.

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ATTACHMENTS:

1. Equity Program Staff Report, Cannabis Commission Meeting 3-15-18
2. Options for Cannabis Regulations and Cannabis Business Selection Process Staff Report, City Council Special Meeting 10-09-18

Attachment 1

TO: Berkeley Cannabis Commission

FROM: Commissioner Brewster

RE: Berkeley Equity Program

Task: We have been asked to make a recommendation to the City Council regarding the City's Equity Program including defining language and recommendations for implementation. Specifically, I was tasked with working on the language of our Equity criteria for presentation to the Commission.

Considerations: it has become apparent that Berkeley is well behind the curve on addressing Equity as related to Cannabis. Jurisdictions including Oakland, San Francisco, and Portland have comprehensive (although arguably flawed) policies on the books. Municipalities that do not, Seattle for example, are feeling the negative effects. As a progressive City that supports inclusion and progressive values, it is incumbent on us to put forth clear and comprehensive language that demonstrates our support for the promotion of diversity within the Cannabis industry.

It is also apparent after speaking with other local jurisdictions, that Berkeley must devote additional effort (man-power) into getting the City's Equity program off the ground in a timely fashion. Cannabis is a multi-million-dollar industry and the City of Berkeley needs an "Office of Cannabis," and/or a "Cannabis Director," (or some other titled) City Administrator to exclusively oversee these efforts. Such a position may be created and funded from the revenue created from the Recreational Cannabis tax revenue and it is my strong suggestion that the Cannabis Commission immediately recommend the City Council create and fund such a position as soon as possible.

In terms of the Equity Program, I have approached it from the top-down and have endeavored to define our goals on a large scale and then move into the specifics. I have also included "recommendations" and "notes on recommendations," so that the Commission may consider my reasoning.

Equity Statement

The City recognizes that certain communities have been disproportionately and generationally affected through law enforcement actions including: detentions, arrests, and convictions for cannabis, and cannabis *related (see "Related" below)* offenses. These communities also regularly and continually suffer economic disparities. The City intends to recognize and identify programmatic opportunities to address issues of equity by creating the NAME. The NAME will address these past disparities in the cannabis industry by:

- Identifying and minimizing barriers of entry into the emerging Cannabis industry for these affected individuals;

  - ***Recommendation No. 1 (ADD) and***

- *Dedicate a portion (1%?) of the recreational sales tax revenue towards investment into communities disproportionately impacted by Cannabis prohibition*.

To support this effort, the City will:

1. Develop an Equity based selection process to ensure that individuals who were directly, and generationally affected by previous Cannabis prohibition enforcement efforts, participate and are supported in the City's Cannabis industry. This process will identify applications in which 50% or more of owners can demonstrate that they, or their parent/guardian were directly impacted by the War on

Drugs. Applicants may demonstrate this personal impact when they meet criteria (A) or (B). Criteria (C) will be considered a preferential factor.

A. Any conviction within the state of California, prior to January 2017, for a cannabis offense
- ***Recommendation No. 2 (ADD) or*** a *cannabis related* offense including both non-violent felonies and misdemeanors; OR

B. Three (3) more citations or arrests within the State of California, prior to January 2017, for a cannabis, or cannabis *related* offense;
   - *To qualify as a related offense pursuant to this section, the applicant must demonstrate to the satisfaction of the City that the citation, arrest, or conviction, was directly attributable to a cannabis offense. The applicant may demonstrate that the offense was Cannabis related by submitting a personal statement which shall be supported by admissible official documentation. Examples of related offenses could include: Health & Safety Code violations: 11350, 11351.5, 11352, 11364, or Penal Code Sections 148(a) or 69.*
   - Driving Under the Influence (DUI) shall not be considered a related offense for purposes of this section.

C. The following documentation (or any combination thereof) may satisfy sections (A) & (B): Department of Justice Criminal History Summary, local agency police record, local agency police report, local agency citation, Municipal/Superior Court charging document, or any certified record of a court of competent jurisdiction;

- ***Recommendation No. 3*** *treat the Low-Income Threshold as a preferential, but not qualifying factor.*

D. The applicants who demonstrate that they meet the Low-Income Threshold will be given additional preference in the application process when 50% or more of the principal applicants earned <80% AMI in the year immediately preceding the application.
   - The following documentation (or any combination thereof) will satisfy this section: Tax Returns, CalFresh, Housing Vouchers ….

2. ***Recommendation No. 4:*** *Develop a Community Equity Fund (CEF) which will be funded by a portion of the recreational sales tax revenue (1%?) and by voluntary contributions from General Cannabis Stakeholders during the licensing and renewal process. This fund will be used to support Equity Cannabis Business owners through fee waivers, low-interest loans, training, as well as investment in community programs directly benefiting larger populations impacted by past Cannabis prohibition enforcement actions.*

Notes:

Recommendation No. 1: We must address the inequity created by the War on Drugs on more than one front. Solely implementing an Equity based selection process alone, may provide access in the most basic sense, but it fails to support ongoing efforts to attract and sustain businesses which are substantially owned by a diverse group. In light of the reality that the very definition of the equity applicant positively considers past challenges with criminal and social justice, we must acknowledge that these applicants will lack the resources necessary to successfully participate in an industry replete with well-funded stakeholders. Therefore, the City must do more than simply articulate an Equity policy. We must put our resources where our heart is. We must dedicate no less than 1% of our recreational tax revenue to supporting Equity based businesses. Some examples of where funding could be utilized include: licensing and permitting fees for equity applicants, community Cannabis business training programs, funding of expungement efforts, mentorship programs, etc.

4. How can Berkeley integrate equity considerations into its cannabis regulations?

Current situation: There was no specific equity process in the most recent selection process for retailers in Berkeley. Other cities (Oakland and San Francisco) have adopted equity programs in order to address the effect of disproportionate enforcement of drug laws in historically disenfranchised communities.

Considerations:

- Individuals who have been arrested or incarcerated for growing or selling cannabis often lack the financial, real estate and other resources necessary to participate in the now-legal industry.
- An equity program could assist equity candidates (who meet certain criteria) by reducing barriers to entry into the cannabis industry, giving priority in a selection process, or creating a fund to assist communities that have been affected by disproportionate enforcement of drug laws.
- A cannabis business selection process that costs applicants significant time or money will harm those that are not well capitalized.
- There are substantial costs to the City to develop and run an equity program, especially one with on-going responsibilities such as collecting and distributing funds (like the Soda Tax) or monitoring business activities (like an incubator program).

Other cities: Oakland and San Francisco both have equity programs. Both programs give equity candidates priority in cannabis permit selection processes. Both programs also have options which prioritize non-equity businesses that assist (incubate) an equity business through provision of tenant space and/or sharing of business and technical expertise. San Francisco also waives permit fees for equity candidates and has a fund to provide money to equity candidates for business consulting, capital improvements and legal services. Oakland will develop a fund for equity candidates from cannabis tax revenue. Existing cannabis retailers, regardless of equity status, must submit plans to the city to demonstrate how they will further the city's equity goals. See Attachment 6 for the staff recommendation.

Commission recommendations: The Cannabis Commission recommended an equity program that would prioritize businesses that are at least 51% owned by equity candidates. Equity candidates would be defined as individuals who have been impacted either directly or generationally by the War on Drugs in one of two ways: incarcerated for cannabis crimes, or a history of arrests related to cannabis. The Cannabis Commission also suggested setting aside some of the taxes from cannabis businesses to establish a fund to support equity based businesses. See Attachment 6 for the Cannabis Commission recommendation.

The Community Health Commission recommended that if additional retailers are permitted, they be limited to a small number (1 or 2) and be restricted to equity candidates. The Planning Commission is focused on the zoning elements of Berkeley's cannabis regulations and therefore was not asked to comment on an equity program.

Staff recommendation: Staff recommends an equity program that would prioritize businesses that are at least 40% owned by equity candidates. Equity candidates would be defined in the same way as in the Cannabis Commission proposal. Half of the retail and large cultivation businesses permitted by the city moving forward would be reserved for equity candidates. These candidates would be selected through a lottery and allowed time to identify and secure locations before applications from non-equity candidates would be considered.

Other options:

- Develop an Equity Fund, funded by all cannabis businesses, to be administered by the City to fund programs and services designed to advance equity in Berkeley. Medical cannabis retailers would be exempt from this requirement since they are already required to donate the equivalent of 2% of all product sold to low-income patients.