

REVISED LEGISLATIVE DIGEST
(Amended in Committee - September 23, 2021)

[Police Code - Cannabis Regulation]

Ordinance amending the Police Code to 1) allow Cannabis Business Permit applicants to qualify as Equity Incubators by supporting Equity Applicants prior to Cannabis Business Permit issuance and not only after permit issuance; 2) specify that Equity Incubators must provide support to Equity Applicants with which the Equity Incubators and their Owners have no ownership or profit-sharing arrangement in order to qualify as Equity Incubators; 3) give first priority for permit application processing to Equity Applicants that are sole proprietors or whose business is 100% owned by a combination of Owners that are verified Equity Applicants, give second processing priority to holders of Temporary Cannabis Business Permits that commit to sharing use of their facilities with one or more Equity Applicants, and add to the sixth (formerly fourth) processing priority Applicants that previously held Temporary Cannabis Permits, in addition to those that currently hold such permits; 4) prohibit transfers of more than a 50% ownership interest in a Cannabis Business for five years after the Office of Cannabis acknowledges receipt of an application for a Cannabis Business Permit for that Cannabis Business, instead of ten years from the date of permit issuance; 5) exempt transfers of ownership in a Cannabis Business triggered by an Owner's death from transfer limits that would otherwise apply; 6) require that a Cannabis Business seeking a permit amendment tied to reduction in the combined ownership interest of all verified Equity Applicants in that Cannabis Business below 20% meet substantial equity commitments as a condition of amending the permit; 7) establish that an Applicant's withdrawal of a Cannabis Business Permit application, unlike the abandonment of an application, will not bar a subsequent application from that Applicant from qualifying for priority processing; and 8) authorize the Director of the Office of Cannabis, at any point after an Applicant has submitted a Cannabis Business Permit application, to require an Applicant to submit needed information or documentation within 45 days, and declare an application abandoned if the Applicant fails to comply with the deadline without showing good cause for the failure; and affirming the Planning Department's determination under the California Environmental Quality Act.

Existing Law

Section 1604(c) of the Police Code allows a non-Equity Applicant to qualify for priority processing as an Equity Incubator by providing rent-free commercial space or equivalent financial support to an Equity Operator, which is an Equity Applicant that has received a Cannabis Business Permit, and continuing to provide such support to the Equity Operator for a minimum of three years, in addition to other commitments by the Equity Incubator. Section 1604(c) does not allow an Equity Incubator to qualify as such based in whole or in part on

support the Equity Incubator provides to an Equity Applicant before that Equity Applicant receives its Cannabis Business Permit.

Section 1604(c) of the Police Code allows a non-Equity Applicant to qualify for priority processing as an Equity Incubator by providing support to any Equity Applicant, including an Equity Applicant in which the Equity Incubator has an ownership interest or profit-sharing arrangement.

Section 1606(c) of the Police Code sets forth the following processing priorities for Cannabis Business Permit applications: (1) Equity Applicants; (2) Equity Incubators; (3) Applicants that operated in compliance with the Compassionate Use Act of 1996 and were forced to discontinue operations due to federal prosecution or the threat of federal prosecution, and applicants that registered with the Office of Cannabis (“OOC”) as pre-existing non-conforming operators; (4) Medical Cannabis Dispensaries, current holders of Temporary Cannabis Business Permits, and Applicants that were operating in compliance with the Compassionate Use Act of 1996 as of September 1, 2016; (5) Applicants showing a commitment to provide community benefits; and (6) all other applications.

Section 1608(c)(5) of the Police Code prohibits transfer of an aggregate ownership interest of 50% or more in a Permittee to any Person that was not an Owner of the Permittee at the time of Cannabis Business Permit issuance for ten years from the date of Permit issuance. This section does not include any exception for testamentary or intestate transfers of ownership triggered by an Owner’s death.

Section 1608(c)(9) of the Police Code requires a Permittee to obtain a permit amendment if a change in ownership results in a decrease in an Equity Applicant’s ownership interest in the Cannabis Business, or a change in the Equity Applicant’s role or participation in the direction, control or management of the Cannabis Business, but this section does not specify criteria the OOC Director should apply in determining whether to grant or deny such permit amendment.

Section 1610 of the Police Code provides that, if an Applicant withdraws an application and subsequently submits a new application, the new application shall not qualify for priority processing under Section 1606(c). The same consequence would apply if the Applicant abandoned the application, rather than withdrawing the application, and there is therefore little incentive for an Applicant to withdraw an application the Applicant does not intend to pursue.

Section 1615 of the Police Code gives the OOC Director a single opportunity to notify an Applicant that their application is incomplete, and gives the Applicant a single 90-day window in which to remedy any deficiencies before the application is deemed abandoned.

Amendments to Current Law

This ordinance would amend section 1604(c) of the Police Code to allow a non-Equity Applicant to qualify for priority processing as an Equity Incubator by providing rent-free

commercial space or equivalent financial support to an Equity Applicant, beginning at any time after the OOC Director verifies that the Equity Applicant has received all necessary approvals to begin building out its commercial space for use as a Cannabis Business, and continuing for three years from the Equity Applicant's earliest use of the rent-free space, in addition to other commitments required of the Equity Incubator.

The ordinance would amend section 1604(c) of the Police Code to specify that a non-Equity Applicant may only qualify for priority processing as an Equity Incubator by providing support to an Equity Applicant in which, or in whose Cannabis Business, the Equity Incubator and its Owner(s) have no ownership interest or profit-sharing arrangement.

This ordinance would amend Section 1606(c) of the Police Code to establish the following processing priorities for Cannabis Business Permit applications: (1) Equity Applicants that are sole proprietors or whose Cannabis Business is 100% owned by a combination of Equity Applicants; (2) Temporary Cannabis Business Permittees that hold a shared manufacturing ("Type S") license with the state, and commit to share their manufacturing facility with one or more Equity Applicants; (3) all other Equity Applicants; (4) Equity Incubators; (5) Applicants that operated in compliance with the Compassionate Use Act of 1996 and were forced to discontinue operations due to federal prosecution or the threat of federal prosecution, and applicants that registered with the OOC as pre-existing non-conforming operators; (6) Medical Cannabis Dispensaries, current or former holders of Temporary Cannabis Business Permits, and Applicants that were operating in compliance with the Compassionate Use Act of 1996 as of September 1, 2016; (7) Applicants showing a commitment to provide community benefits; and (8) all other applications.

This ordinance would amend Section 1608(c)(5) of the Police Code to prohibit transfer of an aggregate ownership interest of 50% or more in a Permittee to any Person that was not an Owner of the Permittee at the time of Cannabis Business Permit issuance for five years following the OOC Director's acknowledgment of receipt of the Permittee's initial application, reduced from ten years from the date of Permit issuance. This ordinance would further amend Section 1608(c)(5) to exempt from this transfer restriction any testamentary or intestate transfer of ownership triggered by an Owner's death.

This ordinance would amend Police Code Section 1608(c)(9) to provide that the OOC Director shall require, as a condition of granting a permit amendment to allow the aggregate ownership interest of Equity Applicants in a Cannabis Business to decrease to less than 20%, that the Cannabis Business commit to one or more actions for the life of the Cannabis Business Permit that the Director finds constitute a substantial commitment to equity, and that may include monetary contributions to community organizations serving equity goals; training mentorship, and employment opportunities to workers that meet at least three of the equity criteria set forth in Section 1604(b)(4); promotion or sale of products sourced from Equity Operators; and/or providing rent-free commercial space or other financial or technical support to Equity Operators.

FILE NO. 210421

This ordinance would amend Police Code Section 1610 to provide that an Applicant's withdrawal of an application – unlike abandonment of an application – shall not impact the eligibility for priority review of a subsequent application submitted by the same Applicant.

This ordinance would amend Police Code Section 1615 to enable the OOC Director to notify an Applicant at any time after receiving an application that the Applicant has 45 days to provide information or documentation the OOC requires to process the application, and to declare the application abandoned if the Applicant fails to provide required information or documentation and fails to demonstrate good cause for the failure to provide required information or documentation. The ordinance would enable the OOC Director to provide multiple 45-day notices to a single Applicant, in the Director's discretion, through the application process.

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