



CITY OF OAKLAND  
Office of the City Auditor

## INVESTIGATION

**DATE:** January 6, 2021

**TO:** Mayor Schaaf, Council President Bas, Members of the City Council, City Administrator Reiskin, City Attorney Parker, and Oakland Residents

**FROM:** City Auditor Courtney Ruby, CPA, CFE

**SUBJECT:** **Cannabis Dispensary Permit Application Process**

---

### Background

#### **The City of Oakland's Cannabis Dispensary Permit Process**

Oakland Municipal Code (OMC) Chapter 5.80 tasks the City Administrator's Office with regulating cannabis dispensaries pursuant to State law, the City's Municipal Code, and the City's administrative rules. This includes the annual issuance of cannabis dispensary permits.

In 2019, the City announced it would award eight cannabis dispensary permits. Four of these permits would be issued through a public drawing/lottery of equity applicants,<sup>1</sup> and the other four would be identified based on a standard scored application process. For the 2019-2020 application cycle, the City Administrator's Office selected eight applicants to proceed to the final phase of the cannabis dispensary permit process.

The final phase requires applicants to: 1) identify locations for their dispensaries that comply with OMC 5.80, 2) pass public scrutiny of their proposed locations, 3) obtain conditional

---

<sup>1</sup> Half of the dispensary permits issued each year must be issued to "equity applicants" who meet residency and income requirements. Equity applicants must also have been affected – in specific ways – by the Oakland Police Department's past enforcement of cannabis-related infractions.

---

approval to operate at the proposed locations, and 4) secure the right to use the proposed locations.

## Investigation History

In July 2020, the City Auditor’s Office received a complaint alleging City staff allowed an applicant to apply for a third dispensary permit even though the City has a limit of two dispensary permits per applicant, allowed conflicts of interest by allowing a member of the Cannabis Regulatory Commission to also apply for permits, incorrectly scored dispensary permit applications, and provided inadequate communication to applicants.

A preliminary review of the allegations produced enough evidence to proceed with a full investigation. Accordingly, the Office of the City Auditor launched a full investigation in August 2020.

## Investigation Objectives

The objectives of the investigation were to substantiate or refute the Whistleblower’s allegations by answering the following questions:

1. Was there an ineligible applicant?
2. Were there conflicts of interest, and if so, did they lead to an applicant inappropriately being awarded a dispensary permit?
3. Were applications incorrectly scored?
4. Was the communication to applicants inadequate?

To meet these objectives, we completed work summarized in the “Methodology” section of this report on page 8.

## Investigation Conclusions

The investigation substantiated two of the Whistleblower’s allegations and did not substantiate the other two.

Unsubstantiated allegations:

- ✓ The investigation did not substantiate there was an ineligible applicant allowed to participate in the permitting process.
- ✓ The investigation determined that allowing members of the Cannabis Regulatory Commission to apply for dispensary permits presents conflicts of interest but did not substantiate that conflicts of interest led to a member of the Cannabis Regulatory Commission being awarded a cannabis dispensary permit.

Substantiated allegations:

- ✓ The investigation substantiated that dispensary applications were incorrectly scored during the standard scored application process.
- ✓ The investigation substantiated that the Cannabis Dispensary Permit Application Process had inadequate quality control and communication procedures.

Overall, the investigation determined administrative and policy changes are needed to improve the performance and accountability of the Cannabis Dispensary Permit Application process.

# Investigation Findings

## **1. The investigation did not substantiate there was an ineligible applicant allowed to participate in the permitting process**

OMC 5.80.020/C states: “No individual or entity shall have a direct or indirect interest in more than two (2) dispensary permits.” The investigation did not find violations of this rule. The investigation found:

- An individual was awarded a permit in 2018 for which the individual held a majority interest. This same individual applied for a second permit during the 2019-2020 application cycle.
- The aforementioned applicant sat on the Board of Managers of another Oakland dispensary between April 2019 and January 2020. The applicant resigned from the Board in January 2020, before applying for a second dispensary permit in February 2020.
- The aforementioned applicant’s 2019 Statement of Economic Interests (Form 700)<sup>2</sup> reported “no reportable interests.” This fails to account for the applicant’s majority interest in their 2018 permitted dispensary noted above.
- This investigation found the City does not currently have the capacity to identify, track, and enforce instances of permit holders having interest in more than two dispensary permits. For example, if one company has interest in two City of Oakland dispensary permits and it offers members of the public the opportunity to buy company shares, upon purchasing a share, a member of the public would now own an interest in two dispensaries.<sup>3</sup> If this shareholder now applies for a dispensary permit, they would be precluded from being issued a permit, since no individual or entity can have a direct or indirect interest in more than two dispensary permits. As the number of permit holders in the City grows, so does the need for identifying, tracking, and enforcing limits on interest in dispensaries.

---

<sup>2</sup> The Statement of Economic Interest (Form 700) is a public statement to be completed by California elected officials and public employees who make or influence governmental decisions. The Form 700 provides transparency and ensures accountability by providing necessary information to the public about an official’s personal financial interests to ensure that officials are making decisions in the best interest of the public and serves as a reminder to the public official of potential conflicts of interest, so the official can abstain from making or participating in governmental decisions that are deemed conflicts of interest.

<sup>3</sup> Holding shares in a dispensary qualifies as having a direct interest in the dispensary.

## **2. Allowing members of the Cannabis Regulatory Commission to apply for dispensary permits presents conflicts of interest, but the investigation did not substantiate that conflicts of interest led to a member of the Cannabis Regulatory Commission being awarded a cannabis dispensary permit**

- The investigation determined a member of the Cannabis Regulatory Commission applied for a permit. This presents conflicts of interest because Commissioners could have inside information on the application process or be afforded special consideration, but currently the City’s regulations do not prohibit a Commissioner from applying for a permit and operating cannabis businesses in the City of Oakland.
- Although the Cannabis Regulatory Commission discussed the application process, they had no role in scoring the applications.
- Based on the evidence presented, we did not substantiate that conflicts of interest existed between the four cannabis scorers, or other City employees, and any of the dispensary applicants.

## **3. Dispensary applications were incorrectly scored during the standard scored application process**

The City received 39 applications for four dispensary permits available through the 2019-2020 dispensary permit application process. The application consists of 22 questions with varying score values ranging between one point and sixty points. The applications were scored using a scoring framework developed internally in 2017 and amended in 2019.

The investigation found:

- The City Administrator’s Office recruited four independent City employees to score the dispensary applications.
- The City Administrator’s Office made 17 errors in tallying the scores of 10 of the 39 applicants. Most of the errors did not affect the applicants’ rankings.
- Of the 39 applicants, only the top four ranked applications were invited to proceed in the application process. Scoring errors on one application resulted in City staff mistakenly ranking it fifth when it should have been ranked second.

## **4. The investigation substantiated there was inadequate quality control and notification procedures**

- Due to the aforementioned scoring errors, City staff incorrectly notified an applicant that their application was ineligible to proceed with the permitting process, when in fact, the applicant qualified to proceed in the process.

- Neither the determination letter sent to applicants nor the City's public announcement of the selected dispensaries advised applicants of their rights to an appeal.

## Recommendations

1. In consultation with the City Attorney's Office, the City Administrator's Office should establish more practical scoring methodologies.
2. The City Administrator's Office should consult the City Attorney's Office for guidance on how to cure the application process as a result of the incorrect scoring that occurred.
3. The City Administrator's Office should implement a quality control system to protect the integrity of the application process. Additionally, the City Administrator's Office should consider developing a less onerous scoring system that minimizes human errors.
4. The Cannabis Regulatory Commission and City Administrator's Office should consult with the Public Ethics Commission and the City Attorney's Office in the beginning of 2021 to identify the actions needed to effectively mitigate potential conflicts of interest that arise when members of the Cannabis Regulatory Commission operate cannabis businesses in the City.
5. The member of the Cannabis Regulatory Commission identified in our investigation should amend their Form 700 to accurately reflect their reportable business interests.
6. The City Administrator's Office should request the Public Ethics Commission provide training to the Cannabis Regulatory Commission on how to complete and submit the Form 700.
7. The City Administrator's Office should modify the dispensary application to include an acknowledgement that the applicant does not have an interest in more than two dispensaries.
8. The City Administrator's Office should incorporate the applicant's right to an appeal including relevant deadlines to appeal into the determination letter that is distributed at the conclusion of the application process.

## Methodology

The City Auditor’s Office performed a preliminary review of the whistleblower report to confirm understanding of the reported allegations, and determine if all the following four investigation criteria were met:

1. The alleged incident(s) involved City of Oakland property, infrastructure, employees, officials, or otherwise falls within the City’s jurisdiction.
2. If true, the concern meets the definition of “fraud,” “waste,” OR “abuse.”
3. The alleged incident(s) occurred within 12 months of being reported.
4. The alleged incident(s) are not known to be the subject of current litigation.

After completing the preliminary review, the Office conducted an investigation to arrive at the findings and conclusions in this report. This investigation included:

- Interviewing the Whistleblower Reporter
- Interviewing current City staff members
- Reviewing the Oakland Municipal Code
- Reviewing Whistleblower-provided files
- Reviewing City scoring documents and other documents provided by City staff
- Reviewing Federal, State, and County publicly available business information
- Reviewing the City’s filed Form 700s



# WHISTLEBLOWER HOTLINE

## To File a Complaint

Call the **WHISTLEBLOWER HOTLINE**  
1-888-329-6390 (Interpreter available)

**SUBMIT A REPORT ONLINE**  
[www.OaklandAuditor.com/Whistleblower](http://www.OaklandAuditor.com/Whistleblower)

---

## Office of the City Auditor

1 Frank H. Ogawa Plaza • 4th Floor, City Hall • Oakland, CA 94612  
(510) 238-3378  
[CityAuditor@OaklandCA.gov](mailto:CityAuditor@OaklandCA.gov)



[OaklandAuditor](https://www.facebook.com/OaklandAuditor)



[@OaklandAuditor](https://twitter.com/OaklandAuditor)

## Subscribe for Email Updates

[www.OaklandAuditor.com](http://www.OaklandAuditor.com) or  
Text AUDITOR to 22828

