



March 5, 2020

*To:* City of Los Angeles  
*Attn:* Department of Cannabis Regulation, Executive Team & Licensing Team  
*Attn:* Cannabis Regulation Commission  
*Attn:* Honorable Members of the Rules, Elections and Intergovernmental Relations Committee  
*Attn:* City Attorney's Office  
*Attn:* Mayor Eric Garcetti's Office

**Re: Temporary Approval for Invoiced Phase 3 Retail Round 1 Social Equity Applicants**

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Dear Esteemed Representatives of the City of Los Angeles:

Thank you for your leadership on cannabis issues in the City and for your consideration of the contents of this letter. We hereby submit this letter on behalf of our clients and the Cannabis Equity Retailer Association (CERA) which was established to support the Social Equity Program's success and to represent the 100 Social Equity Applicants who were deemed eligible for further processing under the City's Phase 3 Retail Round 1 ("**Round 1**") Application Process. In accordance with Los Angeles Municipal Code (LAMC) Section 104.06.1(c), these pre-vetted Social Equity Applicants ("**Invoiced Round 1 Applicants**") secured storefront properties, submitted applications and timely paid their \$9,075 invoices issued by the Department of Cannabis Regulation ("**DCR**"), which means the City has received nearly \$1 Million from Invoiced Round 1 Applicants thus far. Naturally, these invoices were understood to be the first major step towards receiving a cannabis retail license, however Invoiced Round 1 Applicants have still yet to be allowed to make any progress towards applying for State Licensure or opening their stores in the 6+ months since they applied on September 3, 2019.

In light of the above, the purpose of this letter is three-fold. First, to inform the City of the severe financial harm being suffered by Invoiced Round 1 Applicants due to the City's repeated delays. Secondly, to seek action by the City Council to amend the Ordinance to allow DCR the ability to issue Temporary Approval to Invoiced Round 1 Applicants after the conclusion of the audit. And lastly, to urge DCR to exercise its administrative rule-making authority immediately, with the Mayor's approval, to issue local authorization to Invoiced Round 1 Applicants.

The above proposals will provide much-needed relief for Invoiced Round 1 Applicants and they can be implemented while the audit is ongoing, thus balancing the interests of Invoiced Round 1 Applicants with the City's paramount goals of ensuring the integrity and transparency of the Round 1 Application Process. As will be borne out below, if the City fails to act, many of the intended beneficiaries of the Social Equity Program will literally become bankrupted by a program that promised them economic opportunity.

**A. Invoiced Round 1 Applicants Are Suffering Extreme Financial Hardship as a Result of the City's Delays in Granting Temporary Approval.**



While we recognize and appreciate the need for an audit of the Round 1 application process to take place, we feel it is critical to inform the City of the irreparable economic harm that the Invoiced Round 1 Applicants are suffering as a result of repeated delays in the process. We appreciate the Commission and the DCR working together to put forth proposals to City Council and the Mayor's office and hope the REIG Committee will resume hearing cannabis matters and show the stakeholders that the City still considers the Social Equity Program a priority.

Attached herein, as Exhibit A, is an economic analysis that was prepared by CERA for the City's review and consideration. Therein, CERA conducted an independent investigation into the ongoing impact of the City's delay on cannabis licensing for its Invoiced Round 1 Applicant members. As shown in Exhibit A, Invoiced Round 1 Applicants have spent an alarming amount of approx. \$10 Million (aggregate) on rent and real estate holding fees over the past six (6) months. As these delays continue, Invoiced Round 1 Applicants will be forced to continue paying millions of dollars monthly for unused real estate. Now, faced with the uncertainty of the process and the ongoing audit, investors are beginning to abandon their Social Equity partners and Invoiced Round 1 Applicants are running out of time and money. As a result, many Invoiced Round 1 Applicants are beginning to seriously doubt their ability to continue holding onto property for an indefinite period of time. We anticipate that as the delays continue month-to-month, we will see an increasing number of Invoiced Round 1 Applicants lose their properties. Accordingly, if the City continues to allow delays, Social Equity Applicants will be faced with the very real threat of being bankrupted and losing their business.

**B. City Council Should Move to Amend the Ordinance to Allow DCR the Ability to Issue Temporary Approval to Invoiced Round 1 Applicants.**

At the February 6, 2020 meeting of the Cannabis Regulation Commission (the "*Commission*"), DCR Executive Director Cat Packer noted that "current law does not provide a mechanism for [Invoiced Round 1 Applicants] to receive Temporary Approval." Under the current Ordinance, Invoiced Round 1 Applicants would have to go through the full annual licensing process in order to become operational. (See, LAMC § 104.06.)

We strongly urge City Council to amend the Ordinance to allow DCR the ability to issue Temporary Approval to Invoiced Round 1 Applicants. Given the fact that the Ordinance was previously amended in November 2018 to give DCR the ability to issue Temporary Approval to Phase 2 Non-Retailers (the majority of which were not even Tier 1 or Tier 2 Social Equity Applicants), it would defy logic and reason to deny this same relief to Invoiced Round 1 Applicants. Indeed, the goals of the Social Equity Program would hardly be advanced if the City drove low-income Invoiced Round 1 Applicants into further debt by forcing them to continue holding property (without the ability to operate) throughout the entire duration of the City's lengthy annual licensing process. (For reference purposes as to timing, Phase 1 opened over two years ago in January 2018 for Existing Medical Marijuana Dispensaries (EMMD) and DCR has still yet to issue a single annual license to an EMMD.) Because the City's licensing process is at a complete standstill anyways due to the ongoing audit, the operative provisions of the Ordinance amendment would not trigger until after the completion of the audit.



Accordingly, we respectfully request that LAMC Section 104.06(a) be amended as indicated in red italics below:

**Storefront Retailer Commercial Cannabis Activity.** With respect to an application for a License for Storefront Retailer Commercial Cannabis Activity or for Microbusiness Commercial Cannabis Activity that includes Storefront Retailer Commercial Cannabis Activity, DCR shall either deny the issuance of the License with no hearing at any time during application processing or, within 60 days of the date DCR deems the application and pre-licensing inspection complete, make a recommendation to the Commission to issue the License. *An Applicant who applies for a License under this subsection (a) and who is eligible for further processing in Round 1 as determined by DCR under Section 104.06.1(c) shall receive a Temporary Approval to engage in Storefront Retailer Commercial Cannabis Activity at its Business Premises pending the review of its License Application. ~~If DCR recommends issuance of a License, DCR, at its discretion, may issue the Applicant a Temporary Approval to engage in Storefront Retailer Commercial Cannabis Activity at its Business Premises.~~ DCR shall revoke the Temporary Approval *if the DCR denies the issuance of the License or if* the Commission denies issuance of a License.*

**C. Even in the Absence of an Ordinance Amendment by City Council, DCR Has the Authority to Issue Local Authorization to the Invoiced Round 1 Applicants, With the Mayor’s Approval.**

DCR is an administrative agency vested with all the “powers, duties and responsibilities” set forth in the Los Angeles Administrative Code (LACC) and elsewhere in the City Charter and the LAMC. (LACC § 22.1130.) In light of DCR’s administrative authority, we urge DCR to immediately promulgate a rule that allows for Invoiced Round 1 Applicants to receive local authorization to apply for a state provisional license -- again, one of the same benefits that was previously afforded to Phase 2 Non-Retailers.

While it is true that DCR is required to administer the Rules and Regulations adopted by the City Council, it is also equally true **that DCR may promulgate and enforce its own Rules and Regulations related to the City’s Cannabis Procedures. (LAMC § 104.16.) Those Rules and Regulations, when adopted by order of DCR’s Executive Director, are subject only to the approval of the Mayor. (See, Charter § 506; LAAC § 21.1.)**

DCR’s functions as an administrative agency are very different from that of the legislative branch of government. (See, Charter § 2.1 [stating that all legislative power of the City is vested in the City Council]; *California Radioactive Materials Management Form v. Department of Health Services* (1993) 15 Cal. App. 4th 841, 869-970.) The California Supreme Court succinctly described the differences in the function of these two branches of government, stating:

“It is the function of the Legislature to declare a policy and fix the primary standard. To promote the purposes of the Legislation and carry it into effect, the authorized



administration or ministerial officer may fill up the details by prescribing administrative rules and regulations.”

(*Knudsen Creamery Co. v. Brock* (1951) 37 Cal.2d 485, 492.)

Thus, the legislative branch declares **public policy** and makes provisions for the ways and means of accomplishing policies, while **carrying out those declared policies** is a function of the administrative branch. (*California Radioactive Materials Management Forum v. Department of Health Services*, 15 Cal.App.4th at 870, 872.)

Here, a DCR rule allowing for the issuance of local authorization to Invoiced Round 1 Applicants would not constitute a policy change (and thus a legislative act) because the local authorizations would be non-operational in nature, just as they were for Phase 2 Non-Retailers. Moreover, DCR’s granting of local authorization to Invoiced Round 1 Applicants would actually carry out the Social Equity policies declared by City Council and carry them into effect. (See, *Knudsen Creamery Co.*, *supra*, 37 Cal.2d at 492.) For instance, LAMC Section 104.00 specifically provides that the purposes of the Social Equity Program are to:

- “to promot[e] equitable ownership ....opportunities in the Cannabis industry;”
- “to decrease disparities in life outcomes for marginalized communities and to address disproportionate impacts of Cannabis prohibition in adversely-impacted and lower income communities;”
- “to issue licenses in an orderly and transparent manner to eligible applicants;” and
- “to mitigate the negative impacts brought by unregulated Cannabis businesses.”

(LAMC § 104.00.)

Because the grant of local authorization to Invoiced Round 1 Applicants would further all of the above declared policies (see, Exhibit A), the promulgation of such a rule would fall within DCR’s rule-making authority so long as it is approved by the Mayor. (See, LAMC § 104.16; Charter § 506; LAAC § 21.1; *Knudsen Creamery Co.*, *supra*, 37 Cal.2d at 492.) And to be clear, local authorization would not vest Invoiced Round 1 Applicants with the right to operate at their Business Premises while the audit is pending or while their license is under review -- Invoiced Round 1 Applicants would merely be allowed to apply for a state provisional license from the California Bureau of Cannabis Control (the “**BCC**”). If the audit findings show errors in the Round 1 process that require an overhaul of Round 1, then the City could just deny Temporary Approval. This small concession by the City would make Round 1 investors less likely to abandon their Social Equity partners due to timeline uncertainty and would significantly lessen the downtime for Invoiced Round 1 Applicants to become operational. By issuing local authorization, we estimate that Invoiced Round 1 Applicants would be relieved of approximately 3 to 4 months of unnecessary downtime.<sup>1</sup>

Accordingly, we respectfully request that DCR promulgate the following regulation with the Mayor’s approval:

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<sup>1</sup> This estimate is based upon our experience with the BCC licensing process. Recently, the average processing time for BCC provisional applications has been approximately 3 to 4 months.



**Regulation No. 14 Local Authorization for Round 1 Applicants.**

*If DCR determines that an Applicant is eligible for further processing in Round 1 under Section 104.06.1(c), DCR shall provide the Applicant with local authorization to apply for a provisional license from the Bureau of Cannabis Control. This local authorization shall not permit an Applicant to engage in commercial cannabis activities unless DCR grants the Applicant a Temporary Approval.*

**D. Summary.**

It would be no exaggeration to say that the entire Social Equity Program is currently at stake. The City should not continue to victimize the Invoiced Round 1 Applicants who are not responsible in any way for the flaws in the City's application process. While we understand that Round 1 is currently under audit, it is uncertain as to timeline for the final results, and we can probably agree that, thereafter, it will take the City some time to propose and implement appropriate policy changes if applicable. Accordingly, in consideration of the fact that these are Social Equity applicants that will be left without proper remedy if this process is delayed any further, **we urge DCR and the Mayor's office to make it a priority to promulgate the necessary Rule to issue local authorization to the Invoiced Round 1 Applicants. Moreover, we hereby request the Commission to urge the City Council to put forth a proper motion before the REIG Committee to amend the ordinance and allow Invoiced Round 1 Applicants Temporary Approval.** Alternatively, Invoiced Round 1 Applicants will be left without proper remedy and will suffer irreparable harm. We appreciate the Mayor's Office, City Council, the Commission, DCR and City Attorney's swift attention to this matter.

Very Truly Yours,

Meital Manzuri, Esq.  
Managing Partner

Alexa Steinberg, Esq.  
Partner

Michelle Mabugat, Esq.  
Partner

# Exhibit A



Cannabis Equity **Retailer Association**

March 4, 2020

To: City of Los Angeles  
Attn: Department of Cannabis Regulation, Executive Team  
Attn: Cannabis Regulation Commission  
Attn: Honorable Members of the Rules, Elections and Intergovernmental Relations Committee  
Attn: Mayor Eric Garcetti's Office  
From: Cannabis Equity Retailers Association ("CERA")

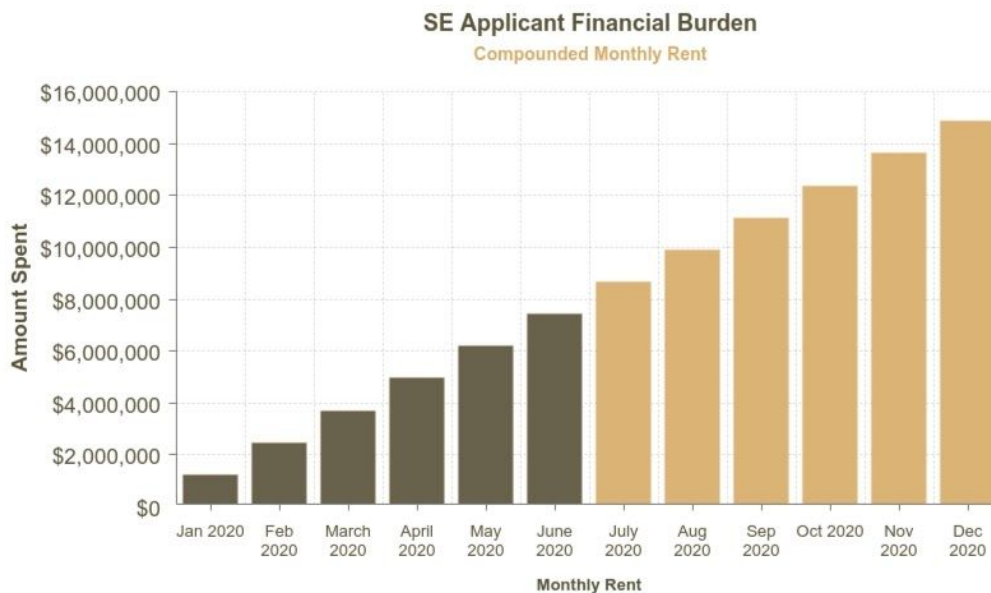
**RE: Support of Social Equity and Further Processing of Phase 3 Round 1 Invoicees**

Dear City Of Los Angeles,

Thank you for taking the time to meet with us. We appreciate your office taking a leadership role on social equity and cannabis policies in Los Angeles. Now, more than ever, we are in a crisis and in need of your assistance with ensuring the success of the Social Equity Program in our City.

**Impact of Delays**

While we appreciate the need for an audit of the Round 1 application process to take place, given questions that have arisen about the process, we feel it is critical to inform the City of the economic harm that applicants are suffering as a result of repeated delays in the process. The graph illustrates the amount that the invoiced applicants are spending each month, to pay rent on empty storefronts.



Moreover, the City is losing out on an estimated \$4.2M in tax revenue per month, or \$50M annually, that would have been



Cannabis Equity Retailer Association

generated by these cannabis stores. Thousands of jobs that would have been created as a result of these businesses opening have also come to a pause.

### **Social Equity Applicants are Suffering Extreme Hardship and Running Out of Money**

As illustrated above, each of the invoiced applicants are paying tens of thousands of dollars each month, to rent storefront properties they expected to be able to use for business, but are now unable to use.

Based on a survey of invoiced applicants, **collectively 60 of the 100 applicants are spending \$1,238,098 a month to rent empty spaces.** As this continues month after month, Social Equity applicants are literally being bankrupted by a program that promised them economic opportunity.

We estimate that in the coming months many applicants will be forced to vacate their properties as they do not have access to the capital necessary to maintain storefront real estate without local authorization.

### **Proposed Solution**

- With DCR's administrative rule-making authority, upon the Mayor's approval, we ask they give local authorization to the invoiced Round 1 applicants. Because the local authorization would be non-operational, it would not constitute a policy change that requires City Council approval. This small "give" by the City would make investors less likely to abandon their Social Equity partners and would lessen the downtime for Round 1 applicants to become operational.
- City Council should amend the Ordinance to allow DCR the ability to issue Temporary Approval to the invoiced Round 1 applicants. The Ordinance was previously amended in 2018 to give DCR the ability to issue Temporary Approval to Phase 2 applicants (the majority of which were not even Tier 1 or Tier 2 applicants), so the same policy should be implemented for Round 1 applicants as well. It would be nearly impossible for Round 1 applicants to afford their property holding costs if they have to go through the full annual licensing process before becoming operational. For reference, Phase 2 opened in the summer of 2018 and DCR hasn't even come close to opening up annual license applications for Phase 2 applicants yet.





Cannabis Equity Retailer Association

- The proposals above can be implemented even while the audit is ongoing so it adequately balances the interests of the invoiced applicants and the City's goals of ensuring the integrity of the application process.

## CERA

The **Cannabis Equity Retailer Association (CERA)** was established to represent the 100 applicants that were invoiced by the City as part of Round 1 of Phase 3 of its program in 2019. Though these invoices were understood to be the first major step towards receiving a dispensary license, these applicants have not been allowed to make any progress towards opening their stores in the five months since they applied on September 3, 2019.

## Overview - Los Angeles' Social Equity Program

In 2017, the City of Los Angeles was one of the first jurisdictions in the United States that proactively sought to address the inequities created by The War on Drugs by developing and implementing new cannabis policies that seek to center equity in cannabis policy reform. Los Angeles adopted what was the most progressive cannabis regime of any major city in the country, centered around social equity and designed to create economic opportunities for communities devastated by cannabis criminalization.

According to the Department of Cannabis Regulation, the goal of the Social Equity Program is, “to promote equitable ownership and employment opportunities in the cannabis industry in order to decrease disparities in life outcomes for marginalized communities, and to address the disproportionate impacts of the War on Drugs in those communities.”

However, nearly three years later, in early 2020, we have much work to do to ensure that the Social Equity Program achieves its intended goals. As you are likely aware, the City of Los Angeles began accepting applications for storefront retail licenses from Social Equity Applicants on September 3, 2019. As an application requirement, Social Equity Applicants had to procure real estate before applying and submit a lease or a deed along with their application.

Reliant upon the City's assurances, more than 1800 low-income individuals have been designated by the City as the intended beneficiaries of its Social Equity Program, yet none have received a license to open up a retail cannabis store. Unfortunately, in fact, many of these individuals have incurred significant economic harm as a result of their participation in this program.