

# Agency Preliminary Findings Meeting

Agency: OLCC  
Date: 9/20/22  
Time: 12:00pm

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## Attendees

### Agency

Steve Marks, Executive Director  
Amanda Borup, Marijuana Policy Analyst  
Andy Jurik, OLCC Licensure Program Director

### Audit Team

Olivia Reched, Audit Manager  
Kyle Rossi, Principal Auditor  
Hillary Hahn, Staff Auditor  
Nicole Barrett, Staff Auditor

## Agenda

1. Discuss purpose of the meeting, which is to share preliminary findings and solicit agency feedback. Use template below: You may provide the agency officials with a brief findings summary they can retain. It must be marked "Confidential, Not for Release" on each page.
2. Inquire regarding the status of any on-going investigations, legal issues, federal or internal audits, or private reviews that were shared during the Entrance Conference.
  - a. None were noted at that time, have any arisen?
3. Discuss the reporting process and estimated timeline
  - a. We will prepare the working draft report and complete an internal quality assurance process to help ensure its accuracy.
  - b. We will provide OLCC with the working draft report, which we anticipate late November/early December.
  - c. Within the following 10 working days, we will schedule and hold an exit conference and receive OLCC's feedback on that draft report.
    - i. Please send us suggested revisions/comments (using track changes) prior to the exit conference.
  - d. We will send OLCC a final response draft that includes any necessary changes based on the agency's feedback.
  - e. The agency then has 5 working days to provide a written response to the report. The report, which has the OLCC's response attached, is anticipated to be released January 2023.
4. Depending on the outcome of this meeting, prior to sending the working draft, the team may schedule a separate meeting to obtain OLCC's feedback on recommendations.

## Preliminary Finding One – Regulations place burdens on cannabis businesses that other industries do not face.

### Current state of affairs

#### State Considerations

- Cannabis businesses face additional regulations (security measures, product tracking, inspection rigor, etc.), and costs that adjacent industries do not face.
- Oregon’s regulatory system was designed around federal guidance that has since been repealed
  - This system of regulation appears to be designed to avoid federal intervention and has been successful thus far.
  - This system of regulation has undergone some iteration since its inception.
- Oregon’s cannabis system has been in a licensing moratorium (first production/grower, now all types except for testing labs) for three years and (currently set) to sunset March 2024.
- OLCC provides a platform for licensees to engage the decision-making (rulemaking) process which plays a role in the regulations licensees must follow.
- Business Oregon refuses to work with Cannabis businesses due to federal illegality.
- Despite its willingness to collect license fees and taxes, Oregon has not provided much in the way of services, grants, loans, or other means of support for this industry to offset the unwillingness of agencies like Business Oregon to work with cannabis businesses.
  - Potential licensees must either have startup funding or be forced to seek out high-cost private loans/investors that could be detrimental to their success in the industry.

#### Federal Considerations

- Marijuana and Hemp (cannabis) and their derivatives are illegal under federal law (Controlled Substances Act of 1970).
  - Banks tied into the federal banking system cannot work with cannabis businesses.
- Cannabis businesses incur higher costs stemming from federal tax prohibitions
  - Every month, cannabis businesses have to pay state taxes in person, with cash (unlike other Oregon based businesses) at the Department of Revenue in Salem.

### Potential Recommendations

- OLCC should identify and reform regulations which are in place solely due to prevent federal intervention, serve no greater purpose for the state and its businesses, and treat cannabis businesses inequitably to adjacent industries.
- The Legislature and Governor should direct Business Oregon to make its programs available to all legal Oregon businesses.
- Business Oregon should take operating directions from the Legislature and the Governor regarding provision of services to cannabis businesses.
- OLCC, the Legislature, and the Governor should all continue to support cannabis reform at the national level.
- When considering the future of the adult recreational cannabis industry, OLCC should continue to provide a platform for all licensees and prospective licensees to engage in the decision-making process with regards to a moratorium and a potential move away from an open licensing system.

## **Preliminary Finding Two – Oregon failed to consider or include equity provisions when developing its cannabis laws, rules, procedures, and regulations and is now struggling to address equity in a meaningful and impactful way.**

### **Current state of affairs**

- Oregon does not currently have any equity provisions (licenses, grant or fee programs, etc.) in its cannabis laws, rules, and procedures.
  - Concepts of social equity, reparations, inclusion, etc., were not considered when developing Oregon’s cannabis laws and rules.
  - In recent legislative sessions, there have been attempts to develop a cannabis social equity program have failed, leaving Oregon without a cannabis social equity program in statute.
- Many states, including Oregon, have been exceedingly cautious developing programs that are targeted to assist specific racial groups.
  - Legal challenges related to affirmative action precedent and debates about how far the government and institutions should go to repair the harm caused by racial discrimination are ongoing.
  - OLCC leadership and state lawmakers expressed concern that adding race-specific language to eligibility criteria for cannabis social equity programs will lead to expensive lawsuits against the state alleging racial discrimination.
- The recently passed HB 4016 allows for a “marijuana license assignment program.” Under this statute, the OLCC could re-issue retail licenses that have been forfeited, revoked, cancelled, or not previously issued to applicants based on criteria it develops.
  - No new licenses have been issues yet under the authority of HB 4016, however, OLCC is working with the Department of Justice and the Governor’s Office to determine the best route forward for allowing applicants under the license reassignment program to apply during the current licensing moratorium.
  - Additionally, OLCC is currently developing the administrative rules to outline applicant eligibility, anticipating the rules will be drafted prior to 2023 legislative session.
- Due to limitations with its current licensing system, the OLCC does not possess the ability to gather and develop reports with reliable demographic data of its cannabis licensees. Thus, OLCC is not currently able to perform any type of analysis outlined in the State of Oregon’s Diversity, Equity, and Inclusion Action Plan.
- Oregon’s cannabis system has been in a licensing moratorium (first production/grower, now all types except for testing labs) for three years and (currently set) to sunset March 2024.
  - Oregon instituted the current licensing moratorium in response to concerns regarding an over-crowded and oversupplied market and increased out-of-state diversion.
  - An unintended consequence of the licensing moratorium is increased barriers to entry into the industry; this is mostly felt financially in that licenses are being sold at vastly inflated costs.
- Due to federal prohibition, Marijuana, and Hemp (cannabis) and their derivatives are still illegal under federal law (Controlled Substances Act of 1970). As a result, traditional sources of financing are unavailable to social equity cannabis entrepreneurs.
- Most cannabis businesses are self-funded, with 84% of businesses relying upon the cumulative wealth or savings of the owner to launch their business, while only 1% of businesses were able to obtain a loan with a bank or state agency. The Oregon Cannabis Association estimates that it requires up to \$400,000 in startup capital to open a plant-touching cannabis business.

- In 2019, the US Federal Reserve reported that the median net worth of a white family was \$188,200 while the median net worth of a Black family was \$24,100. Hispanic families' median net worth was \$36,100.

### Potential Recommendations

- The OLCC should engage with the Legislature and the Governor's Office, to ensure that programming, services, laws, and rules related to cannabis are aligned with the diversity, equity, and inclusion values of the state.
- As OLCC develops its replacement licensing system it should ensure the replacement system has the capacity to gather demographic data and generate reports encouraged by the Oregon's DEI Action Plan.
- The OLCC, Governor, and Legislature should continue to seek federal support for SAFE banking, and or federal legalization/decriminalization of cannabis.
- Recommendation from finding 1 related to Business Oregon is applicable for both findings.

### Meeting Notes

- **Steve:** Issues related to dormant commerce clause; the residency requirement is causing issues for some states. States are having to change their approaches to equity if they used geography as part of eligibility, which is good news that we don't have a residency requirement for our cannabis program. Seems like this is going to be game changing from states that were protecting their borders – they are going to have to accommodate the dormant commerce clause.
- **Kyle:** Are there any examples of the Federal government intervening in a business or coming after funding of a state agency?
  - **Steve:** No, we've never had an issue and I can't think of an example of this happening in another state either. I don't think anyone at the leadership level is afraid of federal intervention – there just needs to be some direction from the Governor and the legislature. **R1**
- **Commissioner Maletis:** BOLI recently awarded a grant through the Future Ready Oregon Apprenticeship Grants Program for a cannabis specific training program. Good example of state agency providing cannabis industry support.
- **Steve:** I understand that Oregon has not provided much support for this industry in the way of services, grants, loans, but when the cannabis law was put in place the Legislature did do a big thing with taxes by taking the burden off of the producers and putting the burden on the consumers. It was a big decision to retail excise tax at the beginning.
- **Steve:** In the larger political scheme – equity is holding banking hostage. Banking in and of itself with help equity tremendously. Anything you can do to provide this context in the report would be good. This point has been underrated in the national conversation; banking has been underrated as a benefit to equity.
- **Steve:** We dumped the initial financial background checks that we were initially requiring for licensees. The use of criminal background checks is almost non-existent. The verification of compliance program has less to do with Federal illegality piece and more to do with factors outside of that – like SB 408. The penalty system was changed, very few things are Category 1 now. There has been movement away from the fear that the Federal government will come after us.

R1

- **Commissioner Maletis:** Tracking system has been a big thing – licensees had to do seed to sale tracking. Federal government was the reason for that. We have been discussing moving away from that.
  - **Steve:** Making tracking system more efficient. How much onus do we put on the growers? Balancing – treating it more like a crop. Track and trace – we have reasons that go beyond the original federal concerns that are more around consumer protection. One reason we haven’t made changes to track and trace so far – I expect there will be a requirement to identify illegal from legal, with interstate commerce opening up.
- **Amanda:** Just want to clarify that the OLCC does not have a lot of power around the moratorium. That would be the Legislature.
- **Steve:** Dormant commerce clause- will require better state coordination. The transition from isolated intrastate systems developed for one state to an open, interstate/federally controlled systems will present challenges, but it may be a way to model what needs to be done to make everything work better at the National level when/if it is de-scheduled. R2 The NE states are starting to coordinate on things like pesticides, labeling, etc. that need to be accounted for when developing a national set of regulations. We need to start talking amongst each other – difficulties due to not having consistent standards on things like packaging, taxes and seed to sale tracking. We may need to harmonize on trade. R3
- **Steve:** DOJ lawyer said we could go forward with license reassignment program, but we are not committed to a course yet. I think we have a lot of minority ownership – possibly better than other states, but I can’t back that up with data. We also haven’t done a disparity study to account for this. There is an opportunity afforded with those. Have you considered adding a disparity study as one of the recommendations?
  - **Kyle:** Yes, our main concern with that would be that a disparity study only accounts for that point-in-time, it’s not ongoing. Recommendation is for ongoing data needs.
- **Amanda:** When cannabis legislation was enacted they did carve out that certain cannabis crimes would not prevent you from owning a cannabis business. So, to say that equity wasn’t considered at all may not be entirely accurate. Oregon also had an open system w/ a \$250 application fee and low license fees. There was a lot of opportunity afforded with that.
- **Steve:** Reassignment of licenses is not nearly as valuable as being able to just get a regular license in an open system. If we were to open it up again – the mentoring, training, etc. becomes much more important to make it successful these equity applicants. If there is an open system, the license reassignment system doesn’t really matter.
  - **Commissioner Maletis:** Without proper training or capital for these folks if we open it up again, not many are able to make it. I have not heard of any cannabis entrepreneur making it out only spending \$400k, that may be the starting amount, but it is much steeper than that by the end of it.
- **Steve:** We can work with these recommendations; these are good.