STATE OF CONNECTICUT | SOCIAL EQUITY COUNCIL
February 17, 2022, Special Meeting 11 A.M.
Virtual Meeting via TEAMS

MEETING MATERIALS

- Attorney General Office - guidance document, Role of Social Equity Council in Reviewing, Denying and Approving License Applications (see below pdf).
- Legislative Proposals document from the Policy Committee (see below pdf).

MINUTES (DRAFT)

A special meeting of the Social Equity Council (SEC) was held virtually via TEAMS on February 17, 2022.

This meeting was recorded and posted to YouTube - To watch, visit:
https://youtu.be/eHLnf1C91gQ

1. Call to order

   Meeting was called to order by Andréa Comer at 11:03 a.m.

2. Attendance

   Kyle Abercrombie (Designee for David Lehman)
   Jeffrey Beckham (Designee for Melissa McCaw)
   Marilyn Alverio
   Corrie Betts
   Andréa Comer
   Avery Gaddis
   Subira Gordon
   Michael Jefferson
   Ojala Naeem
   Christine Shaw (Designee for Shawn Wooden)
   Edwin Shirley
   Kelli Vallieres
   Joseph Williams

   Council members absent:
   Ramón Arroyo
   Fabian Durango

   Staff: Ginne-Rae Clay, Interim Executive Director, SEC and Jennifer Edwards, Program Manager, SEC

3. Office of the Attorney General - Discussion.
AAG Christine Jean-Louis from the office of the Attorney General provided a summary of the guidance document, Role of Social Equity Council in Reviewing, Denying and Approving License Applications, that focused on the Social Equity Council's review of a Social Equity Applicant's status. The memo points to the public act and focuses on licensing under social equity status. She noted it is not uncommon to delegate duties in the public act as needed to get the job done. She spoke of application requirements for an applicant's social equity application. She suggested that the information is important to the public act, and so it should be easy to find on the SEC site. AAG Jean-Louis spoke of the information needed to confirm social equity applicant status and how the application process would work after the status is either confirmed or denied and the interaction with DCP. She spoke of possible conflicts among council members and staff employees and encouraged review of section 51. She reviewed quorum requirements. She reviewed administrative appeal to the Superior Court which is limited to the appeal of the denial of social equity applicant status. AAG Jean-Louis suggested that the council members and staff are trained on meeting procedures, FOIA requirements and how to prepare a record. A discussion ensued.

4. SEC Legislative Proposals

Policy Committee Chair Ed Shirley reviewed the legislative changes that are recommended by the committee to the full council.

1. Sec. 149 - Currently, there is no limit on the number of SEAs that can apply for DIA cultivator licenses if they pay a $3 million fee to forego the lottery process. This could potentially result in market oversaturation. He noted that the 90-day application window for these applicants has opened already and is a one-time opportunity. Legislative change would take effect after that window closes. Therefore, no proposed legislative language change at this time. A discussion ensued.

2. Sec. 40 - This language does not limit the number of EJVs for certain license types. As a result, a multistate operator could have an unlimited number of EJVs with a social equity applicant. While the resources, knowledge and infrastructure support would certainly benefit those SEAs that find an MSO partner, those less "attractive" SEAs, the ones who most need a leg up, could be left out of the market, which could easily become oversaturated with unlimited EJVs. He noted that imposing a limit on EJVs would lessen the likelihood that larger entities would dominate the market through EJV creation via the lottery process, but would not impact producers and retailers that create EJVs. No proposed legislative language change to the section. A discussion ensued about the number of applications that can be expected.

3. Sec. 27 - This section allows producers converting to an expanded producer license to pay a reduced fee if they form two EJVs, however that requirement has no associated timeline. He noted that the legislative language should require producers to establish an EJV no later than one year after receiving a hybrid license. Sec. 27(g) If a producer had paid a reduced conversion fee as described in subsection (b) of section 26 of this act at the time of conversion application, and subsequently did not create at least two equity joint ventures under this section that each obtained a final license within fourteen months of that conversion application, the producer shall be liable for the remainder of the full conversion fee of three million dollars. Also proposed is (h) An expanding producer shall create not

more

than two equity joint ventures, unless such additional equity joint ventures, in conjunction with the same producer, have obtained provisional licenses by effective date of this section. No equity joint venture that shares a common individual that satisfies the requirements of Section 1 (48)(A) and (B) with another equity joint venture shall be approved by the council.

4. Sec. 145 - This section allows a dispensary converting to a hybrid-retailer license to pay a reduced fee if they form two EJVs, however that requirement has no associated timeline. Legislative language should require dispensaries to establish an EJV no later than one year after receiving a hybrid license. He noted Sec. 145 (g) If a dispensary facility has paid the reduced conversion fee at the time of conversion application, in accordance with subsection (a) of this section, and did not subsequently create at least one equity joint venture under this section that obtained a final license within fourteen months of that conversion application, the dispensary facility shall be liable for the remainder of the full conversion fee of one million dollars, established under section 34 of this act. (h) A converting dispensary shall create not more than two equity joint ventures, unless such additional equity joint ventures, in conjunction with the same converting dispensary facility, have obtained provisional licenses by the effective date of this section. No equity joint venture that shares a common individual that satisfies the requirements of Section 1(48) (A) and (B), with another equity joint venture shall be approved by the council.

5. 1 (48) This section defines "social equity applicant". Mr. Shirley spoke of the recommendations from IMRP UCONN study: Allow SEC to make changes to the "Social Equity Applicant" definition on an ongoing basis. Remove income caps. Add drug related arrest, conviction, incarceration. Add family impacted family member. Model: Massachusetts (only one): They have resided in an area of disproportionate impact for at least 5 of the past 10 years; • They have a past drug conviction, and they have been residents of Massachusetts for at least the preceding 12 months; or • They have been married to or are the child of a person with a drug conviction and they have been residents of Massachusetts for at least the preceding 12 monthsAmend language as follows:

"Social equity applicant" means a person that has applied for a license for a cannabis establishment, where such applicant is at least sixty-five per cent owned and controlled by an individual or individuals, or such applicant is an individual, who: (A) Has a past drug arrest, conviction or incarceration and they have been residents of Connecticut for at least the preceding 12 months; or (B) (i) Was a resident of a disproportionately impacted area for not less than five of the ten years immediately preceding the date of such application; or (ii) Was a resident of a disproportionately impacted area for not less than nine years prior to attaining the age of eighteen;" or has been married to or is the child of a person with a drug arrest, conviction, or incarceration and has been a resident of Connecticut for at least the preceding 12 months.

5. Sec. 1 (17) - This section defines "disproportionately impacted area." Per the recommendation from IMPR UCONN study:
Allow SEC to make changes to the "Disproportionately Impacted Area" definition on an ongoing basis. Remove unemployment rate and replace with poverty rate. Additional considerations: Replace drug-related offenses with all criminal justice convictions; add race and ethnicity. Model: Illinois (only one) • the area has a poverty rate of at least 20%

according to the latest federal decennial census • 75% or more of the children in the area participate in the federal free lunch program according to reported statistics from the State Board of Education; • at least 20% of the households in the area receive assistance under the Supplemental Nutrition Assistance Program; • the area has an average unemployment rate, as determined by the Illinois Department of Employment Security, that is more than 120% of the national unemployment average, as determined by the United States Department of Labor, for a period of at least 2 consecutive calendar years preceding the date of the application; • has high rates of arrest, conviction, and incarceration related to the sale, possession, use, cultivation, manufacture, or transport of cannabis. "Disproportionately impacted area" means a United States municipality, census tract or other geographic area in the state that has, as determined by the Social Equity Council under section 22 of this act, (A) a historical conviction rate for drug-related offenses greater than one-tenth, or (B) an area poverty rate of higher than of at least 20 per cent.

Andréa Comer asked for a motion to approve recommendations with regards to the legislation as well as to include the areas of concern, that councilmembers Jefferson and Shaw pointed out, particularly to Sec. 149 not having a limit of applications to as well as a further evaluation of the IMAP study recommendations.

Motion – Joe WIlliams
2nd – Michael Jefferson

Discussion. Christine Shaw asked if there was any part of the AG's review, that would warrant further review of the statute. There was none. Kelli Valleries – asked about the motion and Ms. Comer clarified that motion is to approve the recommendations that have been discussed and to include the concerns regarding Sec. 149 not having a limit and to further evaluate the proposals that were provided through the study.

Abstain – Jeff Beckham, Kelli Vallieres
In favor –
Kyle Abercrombie
Marilyn Alverio
Corrie Betts
Andréa Comer
Avery Gaddis
Subira Gordon
Michael Jefferson
Ojala Naeem
Christine Shaw
Edwin Shirley
Joseph Williams
Nays – none

5. Adjournment - Andréa Comer asked for a motion to adjourn.
Motion – Michael Jefferson
2nd – Corrie Betts
All In Favor - All
The meeting adjourned at 12:00 noon
Minutes are a draft until approved at a subsequent meeting.

MEMORANDUM

To: Ginne-Rae Clay, Interim Executive Director, Social Equity Council
Andrea Comer, Council Chairwoman, Social Equity Council

From: Christine Jean-Louis, Assistant Attorney General
Cara Tonucci (Keefe), Assistant Attorney General

Date: February 16, 2022

Subject: Role of Social Equity Council in Reviewing, Denying and Approving License Applications; Matter No. TR2200914

****This memo is the informal opinion of the undersigned and does not constitute a formal opinion of the Attorney General.****

On January 28, 2022, an initial meeting was held to discuss the scope of guidance the Social Equity Council ("SEC") needed as it relates to the SEC's review, denial and approval of license applications under the Responsible and Equitable Regulation of Adult-Use Cannabis Act ("RERACA"), P.A. 2021-1, which is the statutory scheme for the cultivation, production, and sale of recreational adult-use cannabis in Connecticut as administered by the Department of Consumer Protection ("DCP").

This memo addresses the items discussed during that meeting as follows:

I. Role of Employees Hired By the SEC, aka "Office of Social Equity"

Section 22 of the RERACA establishes the SEC within the Department of Economic and Community Development ("DECD") for administrative purposes. The SEC consists of fifteen (15) members. During our initial meeting, there were several references to understanding the role of the "Office of Social Equity," which are the employees hired by the SEC, such as the executive director, administrative assistants, program manager, staff attorney, etc. It is important to note that there is no reference in the RERACA to an "Office of Social Equity."

The RERACA contemplates that the SEC would "appoint an executive director and such other employees as may be necessary for the discharge of the duties of the council." *See* Sec. 22(c). To further that role, the Council should adopt policies and procedures for how and when certain

duties are delegated to employees. In addition, the Council may "adopt regulations . . . as it may deem necessary to carry out the duties of the council." *See* Sec. 22(e)(7). Regulations usually outline the requirements and procedures that apply to third parties, or in this instance applicants and ongoing compliance requirements. The SEC also has a right to hold "public hearings", which is not limited in scope or to any specific issue. *See* Sec. 22(e)(5). As a result, the SEC can also use public hearings in the manner the SEC deems necessary.

However, any decisions made by the Executive Director and other employees of the "Office of Social Equity" will be the decisions of the SEC, and the SEC will be responsible for the duties delegated to its staff.

A. Role of Interim Executive Director

In addition, during the initial meeting, there was discussion on whether the executive director role had any limitations if serving as "interim" as provided under the RERACA. Subsection (c) of Section 22 provides the following:

> The Governor shall appoint an interim executive director to operationalize and support the council until, . . . the council appoints an executive director.

There is nothing in the RERACA to suggest that the "interim" nature of an appointment would include any specific limitations to the duties and responsibilities expected of an executive director who was not serving in an "interim" capacity.

II. Review, Denial and Approval of "Social Equity Status" of Applicants

The SEC identifies the criteria and necessary supporting documentation to identify "social equity applicants" and must publicize the "documentation necessary for applicants to submit to establish that ownership, residency and income requirements for social equity applicants are met." *See* Sec. 35(a). The SEC is required to "post such necessary documentation requirements on its Internet web site to inform applicants of such requirements prior to the start of the application period." *Id.* As of February 16, 2022, the SEC website did not have an area specifying the documentation necessary to qualify for "social equity status." This is a concern that should be addressed immediately. Applicants must know in advance what documentation is needed to qualify for social equity status and posting on the SEC website is mandatory.

After the SEC identifies the criteria and required documentation for "social equity applicants," DCP may begin accepting applications. *See* Sec. 34(a). The application will require the applicant to "indicate whether the applicant wants to be considered for treatment as a social equity applicant." *Id.* Once applications are received by DCP, the social equity applications will be sent

to the SEC for review of the "ownership information and any other information necessary to confirm that an applicant qualifies as a social equity applicant." *See* Sec. 35(a).

As an initial matter, DCP is required to determine the maximum number of applications it will consider for each license type and fifty percent (50%) of the maximum number must be designated through a "social equity lottery" and "reserved by the department for social equity applicants." *See* Sec. 35(b). When an applicant designates itself for consideration as a social equity applicant, the SEC is tasked with identifying for DCP whether the applications qualify as "social equity applicants" under SEC's criteria and, as a result, may proceed for further review by DCP for purposes of awarding a provisional license. *See* Sec. 35(d)(3).

There is nothing that would suggest that the SEC administers a lottery. It is evident from the language of the RERACA that DCP is responsible for administering any lottery and, once applicants are identified and randomly selected from the lottery, DCP provides the SEC with the "social equity" related documentation that DCP receives during the application process. *See* Sec. 35(d)(1). DCP is precluded from providing to the SEC any "identifying information beyond what is necessary to establish social equity status." *See* Sec. 35(d)(1). Once that information is received, the SEC will "determine whether the applicant meets the criteria for a social equity applicant." *Id.* If the SEC determined that an applicant does not qualify, the application shall not be further reviewed by DCP for purposes of receiving a license designated for social equity applicants. *Id.* However, the non-qualifying application will be entered into the general lottery if the applicant pays the full fee for entry into that lottery within five (5) business days of the SEC notifying the applicant[1] that it does not qualify as a social equity applicant and that the application will be reviewed further by DCP if selected from the general lottery. *Id.*

Once the SEC determines that an application selected through the social equity lottery does not qualify for consideration as a social equity applicant, DCP will request that the "third-party lottery operator identify the next-ranked application in the applicable lottery." *See* Sec. 35(d)(2). If the SEC determines that the application qualifies, the SEC notifies DCP of qualification and DCP continues further review of the application for compliance with DCP requirements.

A. No Conflict with Council Role and Community Engagement/Initiatives

RERACA contemplates that the SEC would "promote and encourage full participation in the cannabis industry by persons from communities that have been disproportionately harmed by cannabis prohibition and enforcement." *See* Sec. 22(f). In doing so, the RERACA calls on the SEC to administer various programs, such as mentorships, business accelerator program, workforce training programs, loan programs, etc. *See*, *e.g.*, Sec. 22(l), Sec. 38, Sec. 39, and Sec. 135.

[1] The SEC should consider regulations on how it wants to notify applicants that are denied for failure to qualify under the social equity status criteria.

Because the SEC is not involved with (i) the initial selection of applications that will be reviewed by the SEC for social equity status or (ii) the further review to completion of an application for the license and final approval to issue that license, there does not appear to be a conflict between the public engagement role that the SEC plays and the SEC's ultimate review of social equity status on applications that are randomly selected by a third party and presented to SEC for review.

However, all members of the SEC should read, understand, and follow the State of Connecticut rules on ethics. As already contemplated, section 51 of the RERACA outlines the scope of conflict of interest concerning members of the SEC and any employee of the SEC and the instances the RERACA finds a conflict to exist.

Additionally, there was discussion that some members of the SEC believe that all SEC members must vote in order for a vote to be valid. That is incorrect. Section 22(d) of the RERACA provides that a "majority of the members of the council shall constitute a quorum for the transaction of any business." Since there are fifteen (15) council members under the public act, you will need eight (8) members to obtain a quorum. There is no requirement in RERACA that provides a specific number to obtain a majority vote on any business transaction. As a result, a simple majority of those in quorum would generally suffice. For example, five (5) members out of the minimum eight (8) members in quorum would be a majority vote. It seems like it would be helpful for new and/or existing members of the SEC to get training from DCP on meeting procedures and Freedom of Information Act ("FOI") requirements.

III. Applicant's Right to File Administrative Appeal of Denial of "Social Equity Status"

Section 35(d)(1) of the RERACA outlines the SEC's review of "social equity status" and provides that an applicant that is denied as a social equity applicant by the SEC can "appeal such denial to the Superior Court in accordance with" Conn. Gen. Stat. § 4-183. However, it also provides that such appeal must be filed within thirty (30) days "after an applicant is *notified of a denial of a license application* under this subsection." It is unclear if the "denial" piece concerns the denial by the SEC of the "social equity status" or denial of the license application after re-entering the general lottery after the SEC denies the application for failing to qualify for the social equity status.

The only other section that creates an appeal right to an "applicant" is found in subsection (g) of Section 35, which permits an applicant to appeal a denial but solely as it relates to DCP's further review of an application that is disqualified on the basis of subsection (e).[2] Subsection (e) concerns the review of a "backer" of an application pulled from the general lottery or that was

[2] Section 49(c) also provides an appeal right, but it is for someone who already has a license not an applicant.

initially qualified by the SEC. Because the appeal process found in subsection (g) is limited to disqualification based on the criteria concerning a "backer", then we read subsection (d)(1)'s appeal process to be limited to the denial of an application caused by disqualification based on failure to meet criteria for "social equity status."

There is no appeal process that exists under the RERACA for a general denial of the license application.

As a result, one appeal process concerns a denial by DCP for applications that are disqualified due to a "backer" and the other appeal process concerns a denial by the SEC of applications that are disqualified due to failing to meet the criteria for "social equity status."

Please note that every record maintained and kept on file relating to the RERACA by the SEC is a public record for purposes of the Freedom of Information Act. The SEC should take special care to properly document the process to be followed in reviewing whether an application meets the criteria of "social equity status.". Further, since it appears that an appeal can be taken regarding the denial of "social equity status," it will be important for the SEC members and employees to understand the requirement of preparing a "record" under the Uniform Administrative Procedure Act ("UAPA").

A. Non-Social Equity Status Plans or Criteria Reviewed by SEC

Although the SEC is tasked with reviewing and approving or denying in writing other criteria or aspects of a cannabis business, such as workforce development plans or ownership and control of joint ventures, the denial of such plans or agreements are not subject to administrative appeal as discussed in this memo. *See* Sec. 22(j), (k), Sec. 26(c), and Sec. 145(d).

Legislative Considerations

Section	Issue	Notes	Proposed Change
149	Currently, there is no limit on the number of SEAs that can apply for DIA cultivator licenses if they pay a $3 million fee to forego the lottery process. This could potentially result in market oversaturation.	The 90-day application window for these applicants has opened already and is a one-time opportunity. Legislative change would take effect after that window closes.	No proposed legislative language change at this time.
40	This language does not limit the number of EJVs for certain license types. As a result, a multistate operator could have an unlimited number of EJVs with a social equity applicant. While the resources, knowledge and infrastructure support would certainly benefit those SEAs that find an MSO partner, those less "attractive" SEAs, the ones who most need a leg up, could be left out of the market, which could easily become oversaturated with unlimited EJVs.	Imposing a limit on EJVs would lessen the likelihood that larger entities would dominate the market through EJV creation via the lottery process, but would not impact producers and retailers that create EJVs.	No proposed legislative language change to the section; see Sections 27 and 145 below.
27	This section allows producers converting to an expanded producer license to pay a reduced fee if they form two EJVs, however that requirement has no associated timeline.	Legislative language should require producers to establish an EJV no later than one year after receiving a hybrid license.	Sec. 27(g) If a producer had paid a reduced conversion fee as described in subsection (b) of section 26 of this act at the time of conversion application, and subsequently did not create at least two equity joint ventures under this section that each obtained a final license within fourteen months of that

			conversion application, the producer shall be liable for the remainder of the full conversion fee of three million dollars. (h) An expanding producer shall create not more than two equity joint ventures, unless such additional equity joint ventures, in conjunction with the same producer, have obtained provisional licenses by effective date of this section. No equity joint venture that shares a common individual that satisfies the requirements of Section 1 (48)(A) and (B) with another equity joint venture shall be approved by the council.
145	This section allows a dispensary converting to a hybrid-retailer license to pay a reduced fee if they form two EJVs, however that requirement has no associated timeline.	Legislative language should require dispensaries to establish an EJV no later than one year after receiving a hybrid license.	Sec. 145 (g) If a dispensary facility has paid the reduced conversion fee at the time of conversion application, in accordance with subsection (a) of this section, and did not subsequently create at least one equity joint venture under this section that obtained a final license within fourteen months of that conversion application, the dispensary facility shall be liable for the remainder of the full conversion fee of one million dollars, established under section 34 of this act.

			(h) A converting dispensary shall create not more than two equity joint ventures, unless such additional equity joint ventures, in conjunction with the same converting dispensary facility, have obtained provisional licenses by the effective date of this section. No equity joint venture that shares a common individual that satisfies the requirements of Section 1(48) (A) and (B), with another equity joint venture shall be approved by the council.
148	This section caps the number of retailers and micro-cultivators a municipality can allow to one for every 25K residents. There are more than 100 municipalities in CT that fit this requirement, and was a large factor in the number of licenses DCP has agreed to hold lotteries for.	Language eliminating the cap would enable municipalities to have more than one retailer and micro, thereby increasing the number of licenses awarded in these categories.	Delete language in Sec. 148 (e).
1 (48)	This section defines “social equity applicant”	Recommendation from IMRP UCONN study: Allow SEC to make changes to the “Social Equity Applicant” definition on an ongoing basis. Remove income caps. Add drug related arrest, conviction, incarceration. Add family impacted family member. Model: Massachusetts (only one): They have resided in an area of disproportionate impact for at least 5 of the past 10 years; •	Amend language as follows: "Social equity applicant" means a person that has applied for a license for a cannabis establishment, where such applicant is at least sixty-five per cent owned and controlled by an individual or individuals, or such applicant is an individual, who: (A) Has a past drug arrest, conviction or incarceration and they have been residents of

		They have a past drug conviction, and they have been residents of Massachusetts for at least the preceding 12 months; or • They have been married to or are the child of a person with a drug conviction and they have been residents of Massachusetts for at least the preceding 12 months	Connecticut for at least the preceding 12 months; or (B) (i) Was a resident of a disproportionately impacted area for not less than five of the ten years immediately preceding the date of such application; or (ii) Was a resident of a disproportionately impacted area for not less than nine years prior to attaining the age of eighteen;" or has been married to or is the child of a person with a drug arrest, conviction, or incarceration and has been a resident of Connecticut for at least the preceding 12 months. *Original language:* *(48) "Social equity applicant" means a person that has applied for a license for a cannabis establishment, where such applicant is at least sixty-five per cent owned and controlled by an individual or individuals, or such applicant is an individual, who:* *(A) Had an average household income of less than three hundred per cent of the state median household income over the three tax years immediately preceding such individual's application; and* *(B) (i) Was a resident of a disproportionately impacted area for not less than five of the ten years immediately preceding the date of such application; or*

			(ii) Was a resident of a disproportionately impacted area for not less than nine years prior to attaining the age of eighteen;
1 (17)	This section defines “disproportionately impacted area.”	Recommendation from IMPR UCONN study: Allow SEC to make changes to the “Disproportionately Impacted Area” definition on an ongoing basis. Remove unemployment rate and replace with poverty rate. Additional considerations: Replace drug-related offenses with all criminal justice convictions; add race and ethnicity. Model: Illinois (only one) • the area has a poverty rate of at least 20% according to the latest federal decennial census • 75% or more of the children in the area participate in the federal free lunch program according to reported statistics from the State Board of Education; • at least 20% of the households in the area receive assistance under the Supplemental Nutrition Assistance Program; • the area has an average unemployment rate, as determined by the Illinois Department of Employment Security, that is more than 120% of the national unemployment average, as determined by the United States Department of Labor, for a period of at least 2 consecutive calendar years preceding the date of the application; • has	"Disproportionately impacted area" means a United States municipality, census tract or other geographic area in the state that has, as determined by the Social Equity Council under section 22 of this act, (A) a historical conviction rate for drug-related offenses greater than one-tenth, or (B) an area poverty rate of higher than of at least 20 per cent. *Original language:* *(17) "Disproportionately impacted area" means a United States census tract in the state that has, as determined by the Social Equity Council under section 22 of this act, (A) a historical conviction rate for drug-related offenses greater than one-tenth, or (B) an unemployment rate greater than ten per cent;*

		high rates of arrest, conviction, and incarceration related to the sale, possession, use, cultivation, manufacture, or transport of cannabis.	