

CANNABIS PROGRAM:

Management fundamentals needed to improve regulation of emerging industry

January 2020



**Program
strategy**

**Licensing
data**

**Enforcement
data**

**Budget
and fees**



PORTLAND
CITY AUDITOR
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Cannabis Program:

Management fundamentals needed to improve regulation of emerging industry

Background

New regulatory structure created to respond to legalization

The State of Oregon legalized the sale of recreational cannabis in 2014, and in early 2016 the City of Portland began regulating businesses that grow, produce, or sell cannabis. City Council directed the Office of Community and Civic Life (at the time Office of Neighborhood Involvement) to develop and manage the regulatory process.

The purpose of the regulation is to protect and preserve the public health, safety, and general welfare of Portland communities by setting requirements for the licensing and siting of cannabis businesses. Specifically, Council directed Civic Life to enforce the City's cannabis regulation and manage complaints and community expectations related to the sale and consumption of cannabis.

Recreational cannabis sale and consumption was not regulated until 2016. City Council did not know how the new recreational cannabis industry would affect the City's businesses and residents. Council established in an ordinance the purpose of regulation but didn't set specific regulatory processes. Instead, it asked Civic Life to be responsive to the developing industry, while balancing business and public health needs, as they developed the process for cannabis regulation and proposed City Code.

Timeline: Recreational Cannabis



Various City and State agencies involved

While Civic Life oversees the City’s recreational cannabis regulation, the full process involves different City bureaus and the State. The Oregon Liquor Control Commission administers the State recreational cannabis regulation and issues licenses to businesses. The Commission was charged with inspecting all cannabis businesses that operate in Oregon to ensure they meet the various State requirements.

Businesses that operate in Portland must get both a license from the State and a license from Civic Life. Civic Life inspectors conduct onsite inspections to verify that businesses are meeting all City requirements.

CITY REGULATION			
Division	Directive	Enforcement	Application
Development Services	Housing and Zoning	Issues permits depending on business type, location and building Conducts inspections for fire safety, occupancy, building safety, chemicals and equipment, etc. Charges fees for permits and collects tax	Requirements that apply to all businesses
Revenue Bureau	Tax and business		
Environmental Services	Environmental		
Fire Bureau	Safety		
Police Bureau	Security		
Audit Focus	Community and Civic Life	Issues City Cannabis Business License, requires State Cannabis Business license Conducts inspections for location, inventory safety, security alarm, floorplans, odor control, etc. Charges fees for City Cannabis Business License	Some overlap in requirements with State of Oregon to obtain cannabis license

STATE REGULATION			
Division	Directive	Enforcement	Application
Oregon Liquor Control Commission	State cannabis laws	Issues State Cannabis Business License Conducts inspections for location, inventory, safety, security alarm, floor plans, odor control, etc. Charges fee for State Cannabis Business License	Some overlap in requirements with City of Portland to obtain cannabis license

Like other businesses that operate in Portland, cannabis businesses must meet various building, safety and environmental requirements. When a cannabis business applies for a license, it may have to work with the Bureaus of Development Services, Fire and Rescue, and Environmental Services to obtain the necessary permits to operate. Businesses are also required to register with the Revenue Bureau for tax collection purposes and comply with general business requirements.

This audit is focused on the responsibilities and activities of Civic Life. We did not include a review of the permitting process at the other City bureaus, such as Development Services or Revenue.

Audit Result

Management fundamentals needed to improve regulation

Building a new regulatory program from scratch is challenging, particularly for an industry that didn't legally exist five years ago and is still not legal at the federal level. To be effective, the program would need to:

- Develop a clear strategy to guide program actions
- Budget to implement the planned actions
- Collect program workload and industry information
- Report on progress to inform needed adjustments to the strategy and respond to evolving industry

Civic Life's Cannabis Program is missing these fundamentals.

Strategy not completed

Civic Life has various goals for the Cannabis Program, and in 2018 drafted a 'Vision for Portland's Cannabis Future' to guide the work. This vision document was finalized in Fall 2019 when our fieldwork for this audit ended. The three goals are: sensible regulation; sustainable, regional cannabis; and equity and community involvement. This vision document will guide the strategic development of program activities.

Without a clearly defined strategy, the program may miss opportunities to support the growing industry and address community concerns. For example, through ride-alongs with inspectors and discussions with businesses owners, we observed the complexity of regulation:

- There is some overlap in the cannabis regulatory requirements from the State and the City. According to Civic Life, the State's and City's overlapping licensing and inspection requirements create consistency, ensure that city regulatory requirements are met and allow the City to backfill if the State processes lag. However, they can also create duplication of effort and undue burden on applicants. The Program does not currently track how often the City is duplicating rather than backfilling for the State.
- As the bureau charged with developing cannabis regulation, Civic Life had not effectively coordinated with other bureaus in the process. For example, building and fire code guides needed to be updated to address safety issues that are specific to a cannabis producer. Inspectors needed to learn the unique safety challenges for a business that produces cannabis oil or edible products. We learned that Denver's cannabis regulation program created a collaborative model where all bureaus involved with cannabis businesses meet regularly to ensure they are meeting the industry regulation needs.

Other issues raised during this audit included lack of law enforcement for illegal cannabis sales and continued barriers to entry for business owners of color. Civic Life noted they don't have the authority to compel other bureaus to collaborate or dedicate resources to cannabis regulation. However, in the absence of a clearly defined strategy, Civic Life risks a scattershot approach that does not support citywide collaboration and does not respond to emerging concerns.

**Budget and fees
not based on
strategy or
workload**

The Cannabis Program is funded entirely by license fees. The fees exceeded program expenses after the initial startup – which could be expected because the scope of the Cannabis Program had not yet been developed. But when the bureau proposed lowering those fees in September 2018, and Council approved it, the new fees were still not based on program strategy or an analysis of program workload.

Each year since FY 2017, the Cannabis Program’s revenue exceeded program expenditures. Without defined program activities and accurate information about workload, management must rely on anecdotal information and can’t assess budget requirements or identify appropriate licensing fees.

	Revenue	Expenditures
2018-19	\$1,192,649	\$936,019
2017-18	\$1,154,301	\$939,928
2016-17	\$1,131,847	\$834,361

Civic Life acknowledged that they have not yet developed performance metrics and need to improve data collection. A regulatory program that doesn’t assess performance and outcomes is in jeopardy of not meeting what Council and the public expect and may be wasting resources.

Data on licensing, enforcement, and complaints not reliable

Civic Life has been processing applications for licenses and enforcing the regulation since 2016, but does not have a system in place to ensure data on the licensing and enforcement process is valid and complete and has not formalized a plan to do so.

Regulatory programs should document data on key processes, such as the number of applications processed, timeliness of the process, and enforcement actions taken. A regulatory program also needs to track complaints from the community and how these complaints are addressed. This information should be used to assess performance outcomes, including establishing staffing and budgeting requirements. These practices ensure that decisions are data driven and that the process informs the evolving regulation requirements.

Licensing data may not be reliable: The Cannabis Program uses an Excel spreadsheet to track the processing of license applications, including data on the type of application, location of business, fees assessed, and renewals of licenses. The data reported to the public are the number of applications processed, active licenses, and the type of licenses.

However, this large spreadsheet is prone to crashing, and staff cannot use it to develop accurate management reports, such as inspector workload or application processing time, average days to obtain a permit, or processing time for new permits.

Licensing data is not maintained in a form useful to program managers.

*Right (screenshot):
A portion of the
program's spreadsheet.*



The screenshot shows a portion of a spreadsheet. At the top, there is a large orange rectangular box with the text "DO NOT SORT!!!!" in bold black font. Below this box is a row of spreadsheet columns. The columns are labeled: "Entity", "DBA", "Address", "MRL#", "Endorse Type", and "Lic Ty". Each column has a small downward-pointing arrow icon at the bottom right corner, indicating that the columns are sortable.

Complaint and enforcement data not centralized: Enforcement actions and public complaints are logged on various systems, including an Excel spreadsheet, the program's electronic files, email archive, and even hardcopy files. Using these various tools for data tracking leads to inaccurate and incomplete data.

Staff are not consistent in how they log complaints from the public or actions taken on these complaints. Information such as number of complaints per neighborhood, number of complaints substantiated, and timeline of investigations is not readily available to management. Without this information, the program does not have the ability to compile a valid and complete picture of complaint data and trends that would help them identify areas that may require additional enforcement resources.

Civic Life's Cannabis Program is supposed to identify challenges and make necessary adjustments to the requirements and process. However, since staff does not have the data or tools to compile valid and complete information on licensing and enforcement trends, the program can't produce valid reports on program performance.

Civic Life explored purchasing third-party cannabis licensing management software, that would include data management of licensing and tracking of the application process. Specialized software is not needed to track data effectively. Cannabis regulation programs in other cities have used Microsoft Access databases or internally created systems to track data and inform program management. Regardless of what system Civic Life uses, it is important for staff to consistently and accurately record the licensing process and for management to use the information to assess program performance.

Data should inform future program direction

Currently, the Cannabis Program reports publicly only on cannabis business license applications received and type of licenses issued. It does not track information on industry or public safety trends. Tracking and reporting of data for a regulatory program is not only necessary to assess performance but also to adjust program strategy.

For example, the program offers license fee reductions for emerging, women-owned, minority-owned and emerging small businesses, as well as cannabis business owners or their staff with prior cannabis convictions. Civic Life created this incentive to assist businesses by removing barriers to enter the cannabis industry. However, Civic Life doesn't have the necessary data to identify what these businesses and potential business owners need or methods to evaluate program success.

In 2019, Civic Life commissioned a cannabis market study, which will provide some of the information needed to effectively manage the program and inform program direction.

Council asked that cannabis regulation be responsive and adaptive. As the industry, public consumption, and city and national policy evolves, the City's regulatory purpose and priorities may need to be revisited, but this requires information on program performance, industry needs, and public impact.

Recommendations

The Office of Community and Civic Life should:

1. Using the program's vision and goals, develop and communicate a strategy for the Cannabis Program, including coordination with other City Bureaus to streamline the licensing and enforcement process and focus work of the Cannabis Program.
2. Implement a data management system to consistently and accurately track data on licensing, complaints and enforcement processes. Use the data to manage program resources, adjust licensing fees, and report program performance.
3. To inform Council and the public about cannabis regulation, develop a monitoring report or other communication tools that include information on program performance and the cannabis industry. Use this information to revise and update the program strategy as needed.

**Objective,
Scope,
and
Methodology**

Our audit objectives were to determine whether the Cannabis Program effectively regulates Portland’s cannabis industry and identify any benefits of the Cannabis Program’s regulation.

To accomplish our audit objectives, we:

- Interviewed managers and staff from Office of Community and Civic Life, Bureau of Development Services and Fire Bureau.
- Interviewed cannabis regulation stakeholders and business owners, attended Cannabis Policy Oversight meeting, and reviewed industry feedback on regulation challenges.
- Reviewed audits and studies related to cannabis regulation in other cities and states.
- To document evolution and purpose of cannabis regulation, reviewed ballot measure documents, council sessions, ordinances, and code changes.
- Conducted ride-alongs of business inspections and enforcement actions.
- Reviewed program management, including licensing and enforcement process.
- Reviewed best practices on cannabis regulation and program management.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

RESPONSE TO THE AUDIT




**OFFICE OF
Community
& Civic Life**

Suk Rhee,
Director

Chloe Eudaly,
Commissioner

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Date: January 28, 2020
To: Mary Hull Caballero, City Auditor
From: Suk Rhee, Office of Community & Civic Life Director 
Chloe Eudaly, Commissioner-in-Charge 
Re: Cannabis Program: Management fundamentals needed to improve regulation of emerging industry

We appreciate the opportunity to respond to the Cannabis Program audit and the efforts of the Office of the Auditor. We largely agree with the recommendations but believe your report would benefit from additional context and information regarding our operations. Below we will address the areas of your report that require clarification and further detail.

Recommendation 1. Using Program’s vision and goals, develop and communicate a strategy for the Cannabis Program, including coordination with other City Bureaus to streamline the licensing and enforcement process and focus work of the Cannabis Program.

A Coordinated Response

While charged with developing cannabis regulation for the City, the bureau has no authority within the commission form of government or issuing law to compel other bureaus’ participation. To compensate for this, the program has gone to extraordinary lengths to convene, coordinate and offer opportunities to learn and work together since the program’s inception. Specifics of multiple and ongoing efforts were provided during the audit.

Further, the effort to develop a city-wide strategy requires alignment of perspectives on regulation from City Council. The program did not benefit from such alignment in the first three of its four years in existence; emerging agreement over this last year is a positive step forward for the City.

Cannabis Program Vision

At the time of the audit review, the program vision document was being circulated in a draft form to solicit feedback from multiple partners. [The Vision for Portland’s Cannabis Future](#) has since been adopted (November 2019) and it codifies our strategy to advance equity and community involvement, sustainability and sensible regulation within the Program operations, multi-bureau collaborations and communication strategies.

“The effort to develop a city-wide strategy requires alignment of perspectives on regulation from City Council. The program did not benefit from such alignment in the first three of its four years in existence; emerging agreement over this last year is a positive step forward for the City.”

Equity and Community Involvement

The City of Portland recognizes the harm caused by cannabis prohibition to underrepresented communities, particularly communities of color. We also know that the benefits of legal cannabis are not being shared equitably. Further, we understand those communities need to meaningfully contribute to how Portland’s cannabis regulations are developed and function. As a result of our commitments to this strategy, we offer: Social Equity Fee Reductions, Social Equity Grant Program, and Multiple Pathways to Compliance through technical assistance measures.

Sustainability: Responding to Climate Change and More

Portland believes in supporting businesses that give back to the community, that are active in their neighborhoods, that pay living wages, and that work collaboratively with neighbors and other businesses. Portland also welcomes business communities that create opportunity without harming workers or the planet. Our program will support cannabis that is grown

and processed sustainably, without adversely impacting the climate, wildlife, or workers.

Sensible Regulation

One benefit of a legal, regulated cannabis industry is that it's grown, processed, and sold safely and in compliance with City and State requirements. We also know the cannabis industry was asked to join our business community very quickly, and are asked to meet a standard of regulation that other industries aren't, in part because of cannabis' Federal status. To that end, smart and thoughtful short- and long-term planning are needed.








City Bureaus' and State Partners' Roles in a Coordinated System

The Cannabis Program has three compliance specialists organized geographically who monitor 7 kinds of regulations in coordination with multiple city Bureaus, e.g. Bureau of Development Services (BDS), Portland Police Bureau (PPB), Portland Fire Bureau (PFB), Bureau of Revenue and the Oregon Liquor Control Commission (OLCC).

The 7 types of regulatory activities include those pertaining to: (1) Zoning and Land Use Permits (BDS, OLCC); (2) Building and Product Security (PPB); (3) Building Code Safety and Permits (PFB, BDS); (4) Licensing (OLCC); (5) Complaints (Trash, Noise, Odor, Public Consumption, Land Use); (6) Enforcement of unregulated businesses (OLCC, Oregon State Police); and (7) Point of Sale and Banking Systems (OLCC, Revenue).

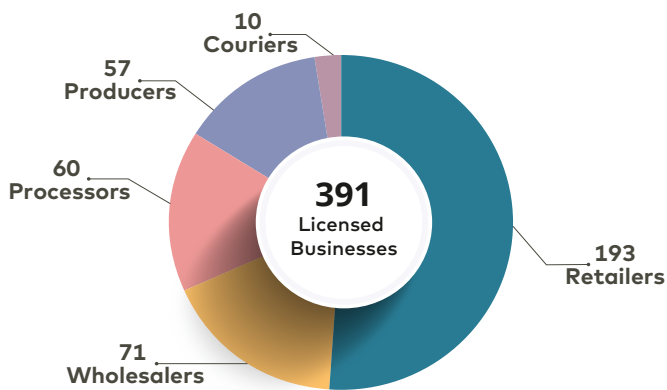
While many of the regulations for the industry are based upon state licensing requirements, The Cannabis Program's regulatory activity responds to Portland's commitment to sensible regulation, public health and safety as well as social equity. The Cannabis Program is the only means of enforcing unregulated businesses since OLCC does not have the capacity to do so. Further, once a state permit is issued, the OLCC largely defers to the Cannabis Program for regulatory activity within the city limits.

3 Compliance Specialists Monitor 7 Types of Regulations in Coordination with Multiple City and State Bureaus

-  **Zoning & Land Use Permits:** In coordination with Bureau of Development Services & Oregon Liquor Control Commission
-  **Building & Product Security:** In coordination with Portland Police Bureau
-  **Building Code & Safety Permits:** In coordination with Bureau of Development Services & Portland Fire Bureau
-  **Licensing:** In coordination with Oregon Liquor Control Commission
-  **Complaints:** In coordination with Trash, Noise, Odor, Public Consumption & Land Use
-  **Enforcement of Unregulated Businesses:** In coordination with Oregon Liquor Control Commission & Oregon State Police
-  **Point of Sale & Banking Systems:** In coordination with Oregon Liquor Control Commission & Revenue

Recommendation 2. Implement a data management system to consistently and accurately track data on licensing, complaints and enforcement processes. Use the data to manage program resources, adjust licensing fees, and report program performance.

We agree wholeheartedly that the Program needs an improved data management system. We are currently exploring functionality and feasibility of different database options in order to find one that best suits cannabis licensing and supports efficient and effective use of resources (for both the City and the applicants). The current data management system is effective for data storage but is limited in ease and effectiveness for trend analysis. However, the Cannabis Program staff do accurately track data and use it to manage workflow, workload and regulatory processes.



Grow, Process, Sell and Deliver: Regulating a New Industry

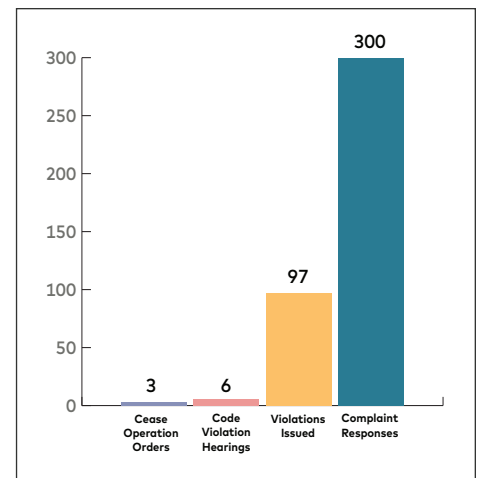
The Cannabis Program currently licenses and regulates 511 businesses representing 391 licensees and 120 active pending applications. Our licensees include 193 retailers, 71 wholesalers, 60 processors, 57 producers and 10 courier businesses. In 2016, The Cannabis Program dual licensed (recreational/medical) 93 medical dispensaries all of which have since converted to recreational businesses for its lower cost of doing business and regulatory ease. The Cannabis Program is currently monitoring state and federal regulatory

conditions for potential legalization of social consumption to prepare for the appropriate regulatory response from the City.

Since the program began, The Cannabis Program has issued 97 violations, 3 cease operations orders, initiated 6 Code Violation Hearings and responded to at least 300 complaints. Each aspect of this regulatory program entails numerous processes, many involving multiple bureaus. A statewide fire safety permit process for extraction operations is based upon the innovation of the Portland Cannabis Program. No aspect of this regulatory apparatus existed before 2016.

Cannabis Program's Work is Based Upon and Guided by Reliable Data

The audit report conflates "sorting" with "filtering" and "data analytics" with "data management". In fact, compliance workflow reports are conducted daily, while in-depth audits of the ledger are conducted weekly to direct further administrative workloads.



Daily audits of the ledger are done by Compliance to determine workflow of inspections to be scheduled, which are broken down by area districts assigned by zip codes.

An audit of the Master Ledger (Excel Spreadsheet) is done weekly to determine the following things:

- Renewal notices needed to send
- Approval letters needed to send
- Application Reviews needed to be completed
- Businesses past due on licensing fees
- Warning letters needed to be sent
- Applications with past due deadlines that need abandonment notices/denials sent out
- Land Use Compatibility Statements (LUCS) needing to be processed

Master ledger has the following tabs that contain complex formulas and functions that are auto populated through the entire document to change colors across each tab as dates are entered in to alert staff of actions that need to be taken. Tabs within the ledger are:

- Summary
- Intake
- Initial review
- Year 1 inspections
- Year 1 final review (also includes information of total processing time from application submittal to final review)
- Year 2,3,4 intake (individual tabs)
- Year 2,3,4 review, inspection, final (individual tabs by year)
- Stats (includes information such as total apps accepted, licensed, approvals, issued, conditional approvals, denials, revenue of application fees and licensing fees)
- Neighborhood stats that breaks down each license type submitted, licensed, and denied by neighborhood AND district coalitions
- Violations issued (who ,what, when, where, why and how much, paid or pending)
- A Complaint reports tab for when a complaint would come in at the beginning of the program. The use of this tab was retired when the Track-It system for complaints was implemented. When a Track-It complaint/concern is submitted Online an email is generated to all Compliance Specialists for follow-up. This email is then archived in assigned location in database.
- Region stats (shows a breakdown of zip codes, by license type and to which compliance specialist it is assigned.
- Existing licenses transferred to new locations

The Master Ledger is not the only location for data collection and record storage. Multiple different tools are used to ensure accurate records are kept. These include but are not limited to hard drive storage on City server, Excel Spreadsheet, Track-It,

email archives, Contact manager database linked to GIS mapping where contact information and related notes and program decisions are recorded based on location and application. This redundancy is both a safeguard for data management system in need of an upgrade and a workflow demanded by the multiple legacy technology systems in use. While our technology upgrade planning was halted in 2019 in order to coordinate with city-wide solutions, our technology upgrades are now on track for completion by the end of next fiscal year and will articulate with the new city website as well as the enterprise solutions currently being upgraded in other bureaus.

See tables below for stats broken down by year for licenses activated, changes of ownership, violations issued, and timeliness of processes. The City application processes are extremely streamlined and can move forward to conditional approval quickly if provided a complete application. The Cannabis Program has little control over when businesses are able to activate a license due to the City license being contingent on the State license and the long delays experienced by licensees at the State level.

YEAR	MEDICAL DISPENSARY	MARIJUANA RETAILER	MARIJUANA COURIER	MARIJUANA WHOLESALER	MARIJUANA PRODUCER	MARIJUANA PROCESSOR	TOTAL LICENSES
2016	93	28	0	5	5	3	134
2017	33	128	5	38	20	29	253
2018	0	31	1	12	24	24	92
2019	0	36	3	14	5	11	69
TOTAL	126	223	9	69	54	67	548

CHANGES OF OWNERSHIP 2016-19	VIOLATIONS
0	4
55	18
51	59
55	16
TOTAL	97

Recommendation 3. To inform Council and the public about cannabis regulation, develop a monitoring report or other communication tools that include information on program performance and the cannabis industry. Use this information to revise and update the program strategy as needed.

We agree with this recommendation and appreciate the affirmation of our efforts to upgrade our technological infrastructure, continue our robust community engagement practices, improve our communications tools and practices, and regularly inform Council and the public about cannabis regulation. One example of these efforts include the Cannabis Policy Oversight Team (CPOT), which has recently completed their 2019 Cannabis Policy Report. CPOT is comprised of community members and cannabis industry professionals and is tasked with helping the bureau to identify needed policies. CPOT also serves to keep the program and policy development centered in social equity, economic and social sustainability. CPOT met monthly as a group and with community members in cannabis community talks during 2019 to inform their recommendations. They plan to spend the majority of 2020 meeting with community members and organizations to build relationships and learn more about what’s working and what’s not in Portland’s cannabis policy. [You can find their complete report here.](#)

Local and National Leadership in an Emerging Landscape

Oregon was the fourth state to legalize Cannabis following Colorado, Washington, and Alaska. Cannabis decriminalization and legalization entails social, financial, administrative, political and cultural transformation affecting all Portlanders. After voters approved recreational use in 2014, The Cannabis Program convened its partner City bureaus who together traveled to Denver and consulted colleagues in other jurisdictions to develop the regulatory environment for the City. Regular monthly meetings were convened with bureau partners and the initial Codes were created. Code improvements have been made regularly in response to community and industry concerns. As a result of the collective efforts of many Portlanders, the Cannabis Program staff are a consistent source of expertise for jurisdictions around the nation.

Cannabis carries a current and historical weight that is directly tied to generations of criminalization, trauma, stigmatization and incarceration. We recognize that there are many dimensions to responsible stewardship of cannabis legalization and regulation, and it is our plan to continue to align the work of this program with the values and goals of our multiple stakeholder groups. We look forward to our continued improvement as we adapt to the emerging economic, cultural and regulatory conditions of this important initiative.



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Management fundamentals needed
to improve regulation

Report #521B, January 2020

Audit Team: Alexandra Fercak,
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Other related audit report

Recreational Cannabis Tax:
Greater transparency and accountability
needed (May 2019)



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