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CITY OF OAKLAND
AGENDA REPORT

TO: Office of the City Administrator
ATTN: Ms. Deborah Edgerly
FROM: Office of the City Administrator, Special Activity Unit
DATE: April 12, 2005

RE: Review of the First Seven Months of Operation of Oakland's Four Permitted Medical Marijuana Dispensaries

SUMMARY

This report provides information regarding the operation of Oakland's permitted medical marijuana dispensaries during their first seven months of operation, June through December, 2004. The purposes of the report are to 1) evaluate whether the current dispensaries adequately serve the needs of Oakland patients, 2) provide an update on the issue of onsite consumption, 3) present an overview of Berkeley's Peer Review Process, and 4) compare the permitting fees paid to the costs of implementation and oversight. The report summarizes data submitted by the dispensaries and the patient ID card supplier regarding the numbers of patients served. It also provides feedback from City departments, medical providers and non-profit organizations that work with constituencies that are eligible to use medical marijuana.

FISCAL IMPACTS

As this is an informational report, there are no fiscal impacts.

BACKGROUND

On November 5, 1996 California voters passed Proposition 215, the Compassionate Use Act of 1996. SB420 codified and clarified the scope of the Compassionate Use Act and authorized cities to adopt laws consistent with it. On February 3, 2004, the Oakland City Council unanimously passed an ordinance that added Chapter 5.80 to the Oakland Municipal Code (OMC). Chapter 5.80 legislates a business permitting process, regulations, and regulatory fees for the establishment and monitoring of up to four (4) medical marijuana dispensaries in the City of Oakland. (OMC section 5.80.020.)

The Administrative Hearing Officer of the City Administrator's Office accepted applications, conducted public hearings, and approved four applications to receive

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permits. The permits were effective June 6, 2004 for three of the dispensaries. The fourth was permitted effective December 6, 2004, as its approved facility was occupied by the Democratic Party through the November, 2004 elections.

<u>DISPENSARY</u>	<u>ADDRESS</u>	<u>PERMIT DATE</u>
C.A.R.E. ¹	1900 Telegraph Ave.	6/6/04
SR71 Coffeeshop	377 17 th St.	6/6/04
OCRC ²	578 W. Grand	6/6/04
Compassionate Caregivers	2135 Broadway	12/6/04

KEY ISSUES AND IMPACTS

1. Capacity of the four permitted dispensaries to serve the needs of Oakland residents

On January 20, 2005, this office mailed each of the dispensaries a letter requesting the following information:

1. Days and hours of operation
2. Number of patient/caregiver visits to the dispensary by month for the period of June through December 2004
3. Within that number, the number of Oakland residents, by month
4. How many visits each month are new patient/caregivers and how many are existing patient/caregivers?
5. Any patient/caregiver reports the dispensary has received regarding;
 - a. Accessibility/need for wider geographical distribution of dispensaries
 - b. Excessive wait time at the dispensary or other dispensaries
 - c. Over-crowding at the dispensary or other dispensaries
 - d. Need for expanded hours of operation
 - e. Availability of product at the dispensary or other dispensaries
6. Any additional information that would be useful to the analysis

Additionally, Oakland's designated patient identification card supplier, the Oakland Cannabis Buyer's Cooperative (OCBC), was queried as to the following:

1. Days and hours of operation
2. Number of patients and caregivers issued cards by month for the period of June through December 2004
3. Within that number, the number of Oakland residents, by month
4. Breakdown of patients by "serious medical condition" category, as defined by Oakland Municipal Code Section 5.08.010D

¹ California Advocate Relief Exchange

² Oakland Compassionate Resource Center

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5. Any patient/caregiver reports received regarding;
 - a. Accessibility/need for wider geographical distribution of dispensaries
 - b. Excessive wait time at dispensaries
 - c. Over-crowding at dispensaries
 - d. Need for expanded hours of operation
 - e. Availability of product at dispensaries
6. Any additional information that would be useful to the analysis

Dispensary Statistics

On January 28, 2005, dispensary representatives and OCBC met with City staff to submit their responses to the January 20 queries and to discuss other issues of concern. The following summarizes the dispensaries' submitted responses:

1. Days and Hours of Operation

OMC Section 5.80.030 authorizes dispensaries to operate between the hours of 7 a.m. and 8 p.m. None of the dispensaries open at 7 a.m. Two operate from 8 a.m. to 8 p.m. seven days a week. A third is open from 9 a.m. to 7:30 p.m. Monday through Saturday and 10 a.m. to 5:00 p.m. Sunday. The fourth is open 9 a.m. to 8 p.m. Monday through Friday and 10 a.m. to 8 p.m. weekends.

2. Number of patient/caregiver visits by month

Three dispensaries provided exact counts for each month. SR71 Coffeeshop responded "approximately 8000 visits per month". Based upon their responses, the cannabis dispensaries serviced a substantial and relatively consistent number of patient visits during 2004. Although some of the dispensaries limit patients to one visit per day, it is not known what percentage of these numbers reflect multiple visits by the same patients during any month.

June	July	August	September	October	November	December ³
12,817	12,578	12,476	12,550	12,084	12,133	13,985

3. Number of visits by Oakland residents per month

None of the dispensaries was able to provide this information. Prior to receiving the January 20, 2005 letter, the dispensaries had been told, through their Conditions of Approval, to maintain only total counts of patients and caregivers and weekly or monthly visit counts. The regulations attached to their permit also specify maintain records of all patients and their primary caregivers using only the identification card number. The dispensaries agreed that they would maintain the additional information in the future.

³ Compassionate Caregivers commenced operation December 15, 2004.

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4. Number of visits per month by new versus existing patients

The dispensary that reported "approximately 8000 visits per month" did not separate new and existing patient visits and is therefore, not included in this chart. Totals for the other three indicate that they continue to add new patients while maintaining their existing patient bases.

	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
New	1723	1032	753	895	543	493	702
Existing	1156	2477	3130	3548	3534	3874	5784

5. Capacity Related Feedback

None of the permitted dispensaries has received complaints about excessive wait times or overcrowding. One Oakland dispensary owner, however, noted "word of mouth" reports that patients were traveling to other cities due to excessive wait time in Oakland.

One Oakland dispensary owner believes that more geographical distribution of dispensaries is needed to accommodate the large volume of patients and caregivers who are not Oakland residents and must travel long distances to reach the center of Oakland.

Two of the owners report that some of their patients work later than the dispensaries are allowed to be open. One of these owners submitted a petition containing 372 names requesting later hours. The reasons given by most who signed the petition were working late, convenience, and traveling from distant places such as Yosemite, Salinas, Sacramento, and Riverside.

Representatives from C.A.R.E., SR71 Coffeeshop, OCRC, and OCBC who met with City staff on January 28, 2005, voiced their general support for more dispensaries on the grounds that 1) more dispensaries mean more variety of product and better price competitiveness, 2) more dispensaries would allow for more diverse ethnic representation among dispensary operators and better geographic coverage, 3) since patients shop where they buy their medication, Oakland gains economic benefit from the existence of the dispensaries, 4) more dispensaries could be a good thing if they were controlled, as the existing four are controlled.

The dispensaries' remaining responses are discussed below under "Concerns of the Cannabis Dispensary Owners."

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Identification Card Supplier Statistics⁴

1. Days and Hours of Operation

OCBC issues ID cards Monday through Friday from 10 a.m. to 5 p.m. and Saturday from 10 a.m. to 3 p.m.

2. Number of ID cards issued by month

OCBC did not provide this information by month but reported that, during the period of June through December, 2004, OCBC issued 8016 new ID cards to patients and caregivers and 2,927 renewal ID cards for a total of 10,943. Of that total, 1,424 were issued to Oakland residents. (See chart below.) Although the focus of this report is the first seven months of permitted dispensary operation, OCBC also provided some operation-to-date statistics. As of March 9, 2005, OCBC had issued ID cards to 38,000 individuals since they began issuing cards in 1997. OCBC's cards must be renewed annually to remain active, and OCBC estimates there are between 10,000 and 15,000 currently active patients and caregivers. Of that total, OCBC estimates that 2,000 active patients and caregivers are Oakland residents as of March 9, 2005.

3. Number of ID cards issued to Oakland residents by month

	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total
Patients	177	191	172	208	175	175	233	1331
Care-givers	8	15	19	11	15	12	13	<u>93</u>
								1424

4. Breakdown of Patients by Serious Medical Condition

OCBC did not report conditions by number of patients. OCBC reported the following as the ten most listed conditions for patient enrollment:

- Chronic Pain
- HIV/AIDS (wasting syndrome)
- Cancer
- Psychiatric Disorders (ie Depression, PTSD, Anxiety)
- Hepatitis B & C
- Glaucoma
- Multiple Sclerosis
- Arthritis/Osteoarthritis
- Paraplegia/Quadriplegia
- Migraines

⁴ A spokesman for OCBC explained that it was very time consuming and difficult to gather the requested data, but that a computer system, currently being implemented, would provide it in the future.

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OCBC'S remaining responses are discussed below under "Concerns of the Cannabis Dispensary Owners."

Other Feedback

In addition to the dispensaries and the ID card supplier, this office queried City departments and outside organizations that were likely to have contact with the cannabis dispensary patient population. City departments and other organizations were asked whether they had received any complaints regarding lack of access, excessive wait times, or any other problem that would indicate inadequate capacity of the cannabis dispensaries.

1. Councilmember Nadel's office has received complaints from a Berkeley-based provider, Berkeley Patients Group, about being overwhelmed by Oakland patients. Several of this provider's patients also contacted Councilmember Nadel's office to express their desire to have a dispensary that is more accessible to their neighborhood.
2. Councilmember Brooks' office has received complaints from a prospective dispensary operator, Keith Stevenson, and from Debby Goldsberry of Berkeley Patients Group about lack of geographic accessibility. Both Mr. Stevenson and Ms. Goldsberry submitted applications for dispensary permits during Oakland's original permitting process and have continued to express interest in obtaining Oakland permits. They also provided input to this survey. Their concerns are discussed in items 8 and 9 below.
3. The other five (5) City Council offices have received no complaints or other concerns about the existing dispensaries.
4. The Oaklander's Assistance Office has not received complaints regarding lack of capacity.
5. The Medical Director of HIV Access at Alameda County Medical Center, Highland Hospital, has documented patient diagnosis for ID card purposes for at least fifty (50) low income Alameda County patients, most of whom reside in Oakland. That office had received no complaints about difficulty in obtaining medication from Oakland dispensaries or regarding the price of the medication.
6. The AIDS Project East Bay, reports receiving no complaints about long lines or inability to access medical cannabis from Oakland dispensaries.
7. The Medical Director of the East Bay AIDS Center, has received no reports from his patients regarding lack of access to cannabis.
8. Keith Stephenson, speaking as an African American, a medical marijuana patient, and a prospective dispensary operator, expressed that the Oakland

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patient community feels greatly underserved. He wrote that San Francisco has 700,000 residents and twenty-four cannabis dispensaries, San Leandro has 135,000 residents and six dispensaries,⁵ and Oakland has 400,000 residents and only 4 dispensaries. He opined that the shortage and central location of Oakland's dispensaries is forcing Oakland patients to dispensaries in neighboring cities. Mr. Stephenson believes a dispensary is needed in East Oakland. Mr. Stephenson is also concerned that there is no minority ownership of Oakland's permitted dispensaries.

9. Debbie Goldsberry, director of Berkeley Patients Group (BPG) wrote that prior to June, 2004, BPG registered approximately 20 Oakland residents per month. Since then BPG registers an average of 97 Oakland patients per month. Ms. Goldsberry states that 2226 Oakland patients are registered compared to 1226 Berkeley residents, and approximately 40 Oakland residents visit per day according to Ms. Goldsberry. She also reports that 40% of the low-income patients registered for free medicine and additional services are from Oakland. Prior to the issuance of Oakland's fourth dispensary permit, Ms. Goldsberry applied to operate a cannabis dispensary at 2747 San Pablo Avenue.

2. On-site Consumption

At the January 28, 2005 meeting, the dispensary representatives unanimously voiced that their greatest concern is the ban against on-site consumption, which they feel can lead to dangerous behavior, such as patients medicating in their cars on the way home. They are also concerned that they are losing patients to Berkeley, Hayward, Alameda County, and other jurisdictions that do not have the prohibition. They are aware of the complications involving state and local smoking laws, but feel that there are alternatives such as vaporizers that could be allowed.

According to the letter submitted by Debby Goldsberry, Berkeley Patients Group encourages patients to vaporize their medical cannabis, and "since these devices are cost prohibitive for at-home use, our facility has a well-ventilated area for patients to use their medicine most safely." The City of Berkeley has grandfathered its three existing dispensaries without a formal permitting process, and, for these three dispensaries, Berkeley has remained silent on the issue of on-site consumption. However, the Director of Berkeley's Health and Human Services Department relayed to Oakland City staff that Berkeley's Ballot Measure R would have permitted cannabis dispensaries as of right and

⁵ The Planning Manager of the City of San Leandro clarified that the City of San Leandro, with a population of just under 80,000, has one medical marijuana grower and no dispensaries and that the City currently has a moratorium on both dispensaries and growers. County Supervisor Nate Miley's office confirmed that there are at least six dispensaries in the unincorporated area and that the County is currently in the process of developing an ordinance to deal with the issue.

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that its defeat by Berkeley's voters means that if any additional dispensaries are permitted, they will be required to obtain a conditional use permit under the City's existing zoning ordinance.

The Medical Director of the East Bay AIDS Center spoke against on-site use, stating that patients leaving a facility in an altered state due to on-site consumption could create problems for the facility, the City, the patient, and the public.

The Medical Director of HIV Access at Alameda County Medical Center, Highland Hospital, favors on site consumption utilizing supervised vaporizers, on the grounds that it avoids both the negative personal health issues associated with smoking and the potential public safety dangers involved when patients medicate in their cars.

3. City of Berkeley's Peer Review Process

Berkeley's Measure R, The Patients Access to Medical Cannabis Act of 2004, would have codified a peer review process through the establishment of a Peer Review Committee composed of no more than two spokespersons from each of the existing collectives and dispensaries. The duties of the Committee would have been to monitor the collectives and dispensaries for compliance with safety and operating standards, which were not defined by the ordinance. Additionally, the Committee would screen potential collectives and dispensaries to certify that the prospective facilities had a strategy for compliance with the standards.

Measure R failed in the November 2004 election. Nevertheless, according to Berkeley staff, a peer committee has developed and provides oversight of Berkeley's three cannabis outlets. The peer committee establishes working relationships with the neighbors, deals with criminal activity, and develops standards for dispensary operations.

The City of Berkeley is not involved with the peer committee and, according to Berkeley staff, the City has received no complaints about the three operating dispensaries. The City's position is a 'one strike' policy. The dispensaries are on notice that they can be shut down for almost any negative behavior. For example, one of Berkeley's original four dispensaries was closed due to a combination of problems, including several armed robberies that occurred on the premises and bad relations with the neighbors.

4. Permitting Fees Paid and Implementation/Oversight Costs

The fee schedule established by OMC Chapter 5.80 was based upon the projected number of patients and caregivers and an amount not to exceed the actual cost of administration and implementation as follows:

<u>Number of Patients and Caregivers</u>	<u>Annual Permit Cost Not to Exceed</u>
4 – 500	\$ 5,000

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501 – 1000	\$10,000
1001 – 1500	\$15,000
1501 +	\$20,000

The first three dispensaries were permitted at the \$10,000 level. The fourth was permitted at the \$20,000 level but the fee was prorated at \$10,000 because the permit was issued for 6 months, so that its expiration date would coincide with that of the other three. The City therefore collected \$40,000 in permit fees.

The cost of the time spent by City staff on permitting and monitoring the cannabis dispensaries is already well in excess of the first year fees paid by the dispensaries. The previous Administrative Hearing Officer developed the applications, processed eight applications and conducted at least sixteen public hearings prior to selecting the four dispensaries that ultimately received the permits. This consumed the majority of his time from March through May of 2004.

The Zoning Department provided analyses of whether the dispensaries met the requirements for distance between each other and from sensitive uses such as schools, libraries, and parks. Additionally the Building Inspection Department and the Fire Department provided inspections for many more locations, as some applicants submitted multiple sites due to concerns about the distance requirements.

Although all but one permit was issued prior to the current Administrative Hearing Officer assuming that role, dispensary issues continue to consume an average of one to two days per week. These issues include the permitting of the fourth dispensary, fielding calls and questions from the existing dispensaries, dispensary hopefuls, patients and citizens at large, reviewing data submitted by the dispensaries, and dealing with complaints.

The Administrative Regulations of the Dispensary Permits specify that a Hearing Officer is responsible for hearing complaints about the Dispensaries. Staff has recently received several complaints regarding rude treatment of patients, collection of confidential medical data, and receipt of less product than purchased. Complaints that warrant hearings will consume additional staff time in amounts that are difficult to predict at this early stage. Title 5 of Oakland's Municipal Code controls permitting of medical cannabis dispensaries. A public hearing is required to suspend or revoke any permit issued under this title. No fee is charged for the public hearing.

The time required for dispensary oversight will increase dramatically as reporting and operating regulations are established. Currently, although authorized to audit the dispensaries, there are no regular reporting regulations in place to ensure that the dispensaries are complying with such basics as federal, state, and local tax and payroll

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requirements, that they are maintaining adequate liability and worker's compensation insurance, and that they are not "excessively profitable."⁶

The City has promulgated few operating standards beyond those specified in the ordinance and the dispensaries have been left to develop their own. The recently received complaints raise concerns regarding self-regulation and signal the need for additional operating standards and regulations and perhaps an annual audit.

Regular review of dispensary financial reports would be required to monitor the excessive profits provision of the ordinance. Physical monitoring of the dispensaries should also be done to ensure compliance with both the existing provisions of the OMC and any new regulations promulgated. Although the functions may not all reside in one person, the projected oversight responsibilities performed by the City would require at least one full time equivalent. Funding this would require doubling the dispensary permit fees.

Concerns of the Cannabis Dispensary Operators

Participants in the January 28, 2005 meeting also discussed topics that, although not directly related to the issue of capacity, could have a long term effect on the viability of the cannabis dispensaries. The dispensary operators believe that their first seven months of operation has proven that cannabis dispensaries can run without creating neighborhood problems when run by responsible operators and within reasonable regulations. As their businesses are not attracting nuisance activity, they would like to reduce the 1000 foot distance required between dispensaries.

The cannabis dispensary operators unanimously voiced their appreciation to the City Council for the progressive, supportive stance the City Council has taken on the issue of medical marijuana. The dispensaries are proud of helping both Oakland residents and outsiders, and are appreciative of the City Council for permitting them to provide their services. They would like the Council members to be aware of the additional services they provide, such as clothing, meals, groceries, and charitable donations, and they issued an open invitation to Council members and their staffs to visit the dispensary facilities.

⁶ The first paragraph of section 5.80.060 specifies that dispensaries "shall receive only compensation for actual expenses." The plain meaning of that sentence is that the dispensaries would operate in a not-for-profit mode. The second paragraph of section 5.80.060 states that "Retail sales of medical cannabis for Excessive Profits are explicitly prohibited." The permitted dispensaries that attended the January 28, 2005 meeting all indicated that they were not functioning as not-for-profit businesses, but were established as profit-making businesses, pointing to the second paragraph of section 5.80.060 as the basis for a for-profit structure.

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Findings

1. That the data provided by the City's four (4) cannabis dispensaries indicates that they are consistently serving a large population of patients.
2. That the two dispensaries that were able to provide data on new and existing patients showed a pattern of adding significant numbers of new patients, while maintaining their existing base. This pattern speaks to the dispensary's ability to absorb growth, as well as to patient satisfaction with the dispensaries.
3. That non-collection of residence data by dispensaries made it impossible to tell how many of the patients are Oakland residents. However, of the total ID cards issued by OCBC during the period of June through December, 2004, thirteen (13) percent were issued to Oakland residents.
4. That, with the exception of Councilmember Nadel's office and Councilmember Brooks' office, no City departments, outside organizations, or permitted dispensaries queried have received patient complaints related to the capacity of the dispensaries to effectively serve the patient community.
5. That, although the permitted dispensaries believe they are serving their patients effectively and efficiently, they are not adverse to permitting additional dispensaries, as long as the candidates are well screened and, after being permitted, operate responsibly.
6. That, some Oakland patients are being served by a Berkeley dispensary and others may be attending San Leandro-based dispensaries.
7. That, if the dispensaries' percentages of Oakland patients and patients from other cities matches that of the ID card supplier, thirteen (13) percent of the patients served by Oakland dispensaries are Oakland residents and eighty-seven (87) percent are from other jurisdictions.
8. That the justifications for adding dispensaries provided by survey participants do not involve capacity. Rather, they involve issues of improved geographic and ethnic diversity and improved products and services based on increased competition.

SUSTAINABLE OPPORTUNITIES

Economic

Oakland's four (4) permitted cannabis dispensaries employ a total of ninety-nine (99) people. Because they are clustered in the central area, they likely increase the sales of other businesses in the area. An increase in the number of permitted dispensaries would increase employment. In December 2004, when the fourth permit was issued, the number of patients served increased significantly, providing an indication that additional dispensaries would increase, not just re-distribute, the patients served.

Environmental

There are no environmental concerns raised in this report.

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Social Equity

During their first seven months of operation, the permitted cannabis dispensaries have shown that, in general, they can function without creating a nuisance in the neighborhood or draining police resources. Some of the dispensaries provide additional social services to their patients and the surrounding community.

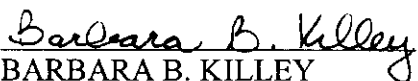
DISABILITY AND SENIOR CITIZEN ACCESS

There are no disability and senior citizen access concerns raised in this report.

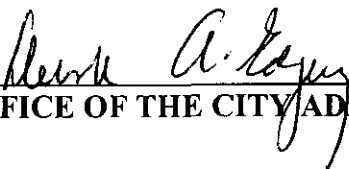
ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the Council accept this informational report on the results of the first seven months of Oakland's permitted cannabis dispensary operations.

Respectfully submitted,


BARBARA B. KILLEY
Prepared by: Barbara Killey
Administrative Hearing Officer
Special Activity Unit,
Office of the City Administrator

**APPROVED AND FORWARDED TO THE
PUBLIC SAFETY COMMITTEE.**



OFFICE OF THE CITY ADMINISTRATOR

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