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Councilmember Kaplan's Cannabis Scheduling Motion

In response to issues raised in Staff's cannabis permitting update and by members of the public, I submit the following solutions to identified issues.

Motion Scheduling for the City Administrator to Return to Council with, Information, and Legislative Proposals for the City's Regulation of Cannabis, as Follows:

- A) Amend Oakland Municipal Code Sections 5.81.040 and 5.81.045, to allow cultivation, distribution, testing, transportation, and manufacturing within specified commercial zoning districts and adopting California Environmental Quality Act (CEQA) exemption findings; (for first meeting in September)
 - *Due to the fact that we have discovered that some of the locations currently excluded by our rules appear to be well-suited for cannabis production, and not near schools or homes, but are being prohibited. Solving this would also help alleviate pressure that pushes out non-cannabis industrial uses from industrial properties.*
- B) Provide an informational report containing: a list of available eligible City-owned properties for cannabis cultivation/manufacturing (uses in 5.81), and a method for applicants to contact to consider lease/purchase; (for first meeting in September)
- C) Legislation requiring cannabis permit holders to provide, upon request of the City Administrator or designee, copies of their utility bills, to City Staff; (by first meeting in October)
- D) A Resolution establishing that it is the legislative intent of the City Council that Oakland's Lease Disposition and Development Agreements (LDDAs) and other Property Agreements, including those already entered into, for the development and leasing out of City-owned properties to various businesses/entities, do not prohibit City-permitted cannabis facilities that are otherwise compliant with our laws from locating in such locations; (for first meeting in September)
- E) Legislation amending the sections regarding forms of identification that are allowed for permit applicants under Oakland Municipal Code Chapters 5.80 and 5.81, (to establish local and/or equity status), be expanded to include school records, military documents, and other such types of documentation as may be identified by Staff as appropriate to include; (for first meeting in September)
- F) Legislative options to tax, regulate, and authorize cross-jurisdictional delivery companies; (for first meeting in September)
 - *Note that this is an area of law that is likely to continue to change as neighboring jurisdictions and the State further refine their regulations, yet currently, it is important that Oakland not miss out on vital tax revenue from cannabis deliveries taking place in Oakland – even if the delivery company is not headquartered in Oakland. Requesting staff to*

return with an action to adopt interim guidance regarding cross-jurisdictional delivery companies, which, at minimum, requires full compliance with Oakland cannabis taxes on all deliveries in Oakland, and which may, during the interim, allow for cross-jurisdictional delivery companies to not have to go through an Oakland permitting process. Staff may include additional options as well if they wish.

- G) Request for the Department of Race and Equity to report back to Council regarding whether to adopt additional options for Equity Set-Aside (Incubator), for spaces that are not divided up by square feet (e.g. edibles space divided up by time shifts); (for first meeting in October)
- *Note: Oakland's Equity Incubator matching program appears to be moving forward well with cultivators, with multiple non-equity cultivation spaces offering Equity Incubator spaces, under the policy for a 1,000-sq. ft. set-aside. This success could be expanded and replicated by allowing for options to serve other types of facilities, especially edibles production. Many food production spaces divide up use of space by time shifts, not by space. So, one commercial kitchen might house 10 different producers, but each does not have their own number of square feet, but rather, each might have their own time shift during which they have use of the kitchen. For examples like this, to devise a system to enable equity incubator set-aside, which must be approved by staff, to enable in specific cases options other than a 1000 sq. foot set-aside to serve as an equity incubator. To bring back recommendations to Council on this matter, including a method to ensure that those using a different form of equity set-aside are contributing not less than 10% of the available time/space/asset.*
- H) For the Administration to return with a budgetary Resolution to restore the Industrial Development Specialist position in Economic Development (the Resolution may recommend use of cannabis fees, or Development Services Fund 2415, or other source as Administration wishes to suggest); (no later than first meeting in October)
- *The expansion of cannabis facilities in Oakland is putting additional demand on our industrial lands and buildings. And yet, the City of Oakland has eliminated the previously-existing position of Industrial Development Specialist, not replacing the prior specialist when that person left. Such a specialist is needed both to help cannabis applicants find appropriate spaces, and also to help support and retain non-cannabis industrial businesses who are under additional pressure due to competition with cannabis facilities. To help ensure smooth operations of cannabis permitting along with retention and attraction of traditional industrial uses in Oakland, it is important to have a specialist on staff devoted to this work.*

- I) To review whether Department of Race and Equity needs additional staffing, including to oversee alternative Equity Set-Aside Program, and potential to fund such additional support, if needed; (no later than first meeting in October)
- J) To bring legislation as needed, to apply Oakland’s litter fee to cannabis permit holders, to apply Oakland’s Jobs-Housing Linkage Fee/Development Fees to cannabis permit holders; (no later than first meeting in October)
- *Note: If it is determined that this can be accomplished administratively, to bring a staff report explaining this.*
- K) Provide a budgetary Resolution to implement the Council’s previously-approved 20% set-aside of cannabis tax revenues for various specified programs (no later than with the mid-cycle budget);
- L) For the Administration to return to Council with legislation to expand location options for edibles (“non-volatile manufacturing”) production; (no later than first meeting in October)
- *Note that the staff report makes clear that edibles production applicants, including equity applicants, are having more trouble than others finding suitable locations that meet our regulations. Yet, edibles production has great promise to provide quality jobs and tax revenue for Oakland, building on our existing strength in food production. In addition, baking items like cannabis brownies does not involve any particular disruption, noise, nor other problems for the community, and requires similar equipment to the production of non-cannabis food. Thus, it would be helpful to reduce barriers to finding allowable spaces for cannabis food production. Staff to provide options; Including at least; a method to enable pre-existing non-cannabis-permitted facilities for food production (such as restaurants, bakeries) to be able to lease use of their food production site for cannabis edibles production with appropriate protections; ordinance amendment expanding the allowable zones for cannabis edibles production; and such other options as staff may wish to recommend.*
- M) To return with legislation to create the new additional micro permit category as recently added to State law; (no later than first meeting in October)
- N) To return to Council with options for action (including a closed session briefing if so determined by the City Attorney) regarding Adult Use implementation, including analysis of the City’s tax rate compared to other jurisdictions; (no later than first meeting in November)
- O) To bring an update on the status of implementation of the hiring of the technical assistance consultant and the launch of the equity loan fund; (for first meeting in September)

- P) To return to Council with options to amend the fee schedule to allow the smallest cannabis facilities to pay lower fees and to create higher fees for the largest ones; (no later than first meeting in October)
 - Q) To return to Council with information regarding required parking ratios for cannabis facilities in 5.81 and options for action to reduce them; (no later than first meeting in October)
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Proposed Response Regarding Staff Questions in July 18 Report:
(Proposed Response in *Italics*)

1. Issue: Equity applicants must have an annual income at or less than 80 percent of Oakland Average Medium Income, but over what period must this income threshold be met? Is last year's income sufficient, or does the City Council want to allow for the average of multiple years to be considered?
 - Staff Recommendation: Specify that annual income threshold must be met for the last available year. This ensures the benefits of the equity program go to those who currently need it and it provides a specific guideline for staff to apply.
 - *YES – AGREE WITH STAFF RECOMMENDATION*
2. Issue: Under OMC 5.80.045(D) it is not clear whether the dispensary permits already issued to the City's eight existing dispensaries count towards the "50-50 requirement" of a minimum of half of all permits be issued to equity applicants. Did the Council intend for no general permits to be issued until one equity applicant is permitted or eight?
 - Staff Recommendation: Since the equity permit program does not apply to the currently licensed eight dispensaries, clarify that the "50-50 requirement" does not include their permits.
 - *YES – AGREE WITH STAFF RECOMMENDATION*
3. Issue: All cannabis operators must implement a community beautification plan to reduce illegal dumping, littering, graffiti and blight and promote beautification of the adjacent community. What qualifies as adjacent though?
 - Staff Recommendation: Replace the word adjacent with a specific distance that has a reasonable nexus from the facility, such as 50 feet.
 - *PROPOSED REVISE TO STAFF RECOMMENDATION: Consider expanding to 100 Feet for cleanup AND allow for broader area for community beautification.*
4. Issue: Under OMC 5.80.045(B)(3) and 5.81.060(B)(3) the ordinance asks for proof of incarceration rather than proof of conviction, even though an equity applicant need only demonstrate a conviction.
 - Staff Recommendation: Simply replace the word incarceration with the word conviction to reflect the actual ordinance requirements.
 - *YES – AGREE WITH STAFF RECOMMENDATION*

5. Issue: OMC 5.81.045 now allows non-volatile manufacturing "to be located in commercial zones where commercial kitchens are allowed." Does this include locations where commercial kitchens are only conditionally permitted under the planning code?
- Staff Recommendation: Clarify that this applies only to areas where commercial kitchens are permitted by right under the planning code to be consistent with all other location restrictions under OMC 5.81, which limit cannabis uses to where their equivalent non-cannabis uses is permitted by right under the planning code.
 - *PROPOSED REVISE TO STAFF RECOMMENDATION: Edibles production is an important potential for Oakland for jobs and tax revenue, and this category includes many equity applicants, who are having trouble finding allowable locations, due to our very limited allowances for edibles production, even though such food production is generally non-disruptive. Instead ask staff to return with additional options to expand edibles production allowable locations, as described above, in scheduling motion item L.*
6. Issue: City Council may consider revising the Permit Program supporting documentation requirements.
- Staff Recommendation: In general, applicants have expressed difficulties in obtaining proof of often years of residency over a twenty-year period, particularly with respect to utility records. Similarly, younger applicants who have resided in Oakland as a youth have supporting records from school but lack document types required under the ordinance.
 - *YES – Agree, and direct to bring back amendments on this issue, as described above, in scheduling motion item E.*