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OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND
SUPPLEMENTAL AGENDA REPORT.

TO: 2011 Office of the City Administrator
ATTN: P. Lamont Ewell, Interim City Administrator
FROM: Arturo M. Sanchez, Assistant to the City Administrator
DATE: July 12, 2011

Re: ALTERNATIVE RECOMMENDATION RE: ORDINANCES AMENDING TITLE 5 OF THE OAKLAND MUNICIPAL CODE, ENTITLED BUSINESS LICENSES AND REGULATIONS, TO AMEND OAKLAND MUNICIPAL CODE CHAPTER 5.80 "MEDICAL CANNABIS DISPENSARY PERMITS" & CHAPTER 5.81 "CULTIVATION OF MEDICAL CANNABIS"

SUMMARY

On February 17, 2004, the City of Oakland adopted Ordinance No. 12585 C.M.S., permitting distribution of medical cannabis to authorized patients through four licensed dispensaries. The City of Oakland's process for administering these permits and monitoring the dispensaries is considered successful and has become a role model for the nation.

In 2010, the Oakland City Council considered several amendments to the Dispensary ordinance including, but not limited to, increasing the number of Dispensary permits and modifying local law to clarify regulations. The Council approved such an ordinance in early December 2010. Subsequently, the Council was advised by the City Attorney's Office of growing federal enforcement concerns regarding our local ordinances. At which time the City Council decided to revisit the ordinances so that the matter could be reviewed in light of potential legal risk to the City. The matter was referred to outside Counsel, Meyers Nave, and a professional legal corporation, experienced in municipal law and with experience in medical cannabis legislation.

Meyers Nave has drafted the attached ordinance modifications intended to bring our local legislation into greater conformance with State law.

Staff has previously submitted a staff report containing much of the same information, however upon further consideration of the proposed modifications including the addition of up to eight cultivation permits staff would like to offer the following alternative recommendation to Council:

1. Adopt an ordinance amending the existing dispensary ordinance and increasing the number of medical cannabis dispensaries that can be permitted by the City Administrator from four (4) to eight (8) under OMC 5.80. The amendment to the medical cannabis dispensary ordinance will address one of the issues raised to the Council by other government agencies. In the prior approval of the modifications proposed last year, concerns were raised regarding the limited number of permits not ensuring that the diversity of Oakland's many communities would be served. The City's Business Tax Revenue Division reports that Oakland's four permitted dispensaries generated 28 million dollars in gross sales last year. By expanding the number of dispensaries, the City will ensure that it does not promote a situation where the market is

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dominated by a small number of participants who are able to collectively exert control over supply and the market prices of medical cannabis. Additional dispensaries will also allow the diverse communities of Oakland to be served in a more effective manner.

2. Adopt an ordinance amending the existing cultivation ordinance that was adopted in 2010 and whose implementation was stopped pursuant to concerns expressed by other government agencies. The cultivation amendments are intended to require the issuance of a separate license for cultivation, with a separate licensing fee; each medical marijuana dispensary would be a cooperative or collective, with all members thereof being a primary caregiver, a qualified patient, or a person with an ID card, as those terms are used in the Health & Safety Code. Only members of the dispensary could engage in cultivation under the license; only a medical marijuana dispensary, licensed by the City, could apply for a cultivation license; The Industrial Cultivation Ordinance requires compliance with Attorney General Guidelines for cultivation facilities and sets a limit of 25,000 square feet for each cultivation location. An industrial cultivation facility permit may include more than one cultivation facility, but the maximum amount of cultivation permissible under an industrial cultivation facility will be based on the allowable amount of cultivation for each member of the affiliated dispensary. All medical cannabis cultivated at an industrial cultivation facility shall only be sold to the affiliated dispensary. The cultivation site would not have to be at the same site as the dispensary.

3. Staff is requesting direction to return in September with a proposed regulatory department with sufficient staffing capacity to appropriately monitor and oversee the implementation of the cannabis ordinances approved by council. The 2010 staffing plan had been based on 12 total facilities, 8 dispensaries and 4 cultivation sites; the current proposal has a total of 16 facilities with up to 8 of each respectively. It remains unclear whether or not the current proposed staffing levels, staffing configurations, and fee structure afford the City the most appropriate level of oversight in a cost covering manner. By adopting the ordinances now and directing staff to return with a proposed regulatory department and application process the City can be assured that it will have the most appropriate team together to adequately monitor, tax, and prevent diversion from the permitted facilities.

BACKGROUND

The Statewide Cannabis Movement

On Nov. 6, 1996, Proposition 215 (the California Compassionate Use Act) was enacted by the voters and took effect as California Health & Safety Code 11362.5. The law makes it legal for patients and their designated primary caregivers to possess and cultivate cannabis for their personal medical use given the recommendation or approval of a licensed physician. This was expanded through SB420 on January 1, 2004 to allow patients to form medical cultivation "collectives" or "cooperatives"; and established a voluntary state ID card system run through county health departments. SB 420 also establishes guidelines or safe harbors as to how much patients can possess and cultivate, protecting legal patients who stay within the guidelines from arrest.

Medical Cannabis in Oakland

On February 17, 2004, the City of Oakland adopted Ordinance No. 12585 C.M.S., permitting distribution of medical cannabis to authorized patients through four licensed dispensaries. The City of Oakland's process for administering these permits and monitoring the dispensaries is considered successful, and has become a role model for the nation. In June 2009, Measure F, the taxation of Oakland's medical cannabis dispensaries, passed in a special election by 80% with no formal opposition, indicating recognition by Oakland residents of the dispensaries' role in providing a legitimate service to the community.

Key Issues And Impacts

Cannabis Dispensary sales increased by 40% between 2008 and 2009, with Oakland's four permitted dispensaries generating 28 million dollars in gross sales last year. The City Administrator's waiting list of interested applicants combined with the weekly requests for information by prospective dispensaries at the Small Business Assistance Center indicate that there continue to be business opportunities in dispensing medical cannabis in Oakland.

Currently, the Cannabis Dispensary permitting program is operating at a deficit. The City collects annual permit fees of \$30,000 per permit for total annual collection of \$120,000. Staff estimates the cost of administering the program at \$185,883.75 which has the program running at deficit of approximately \$65,883.75. It should be noted that this deficit estimates 50% time committed to the program by 1 Assistant to the City Administrator, 1 Administrative Assistant providing only a documentary review and oversight of reporting requirements, and 5% time of a Deputy City Attorney for legal advice. Currently the level of staffing prevents the type of oversight that a complex and burgeoning industry such as this should have.

Application and Permit Fees

The addition of Cultivation permits, which further increases the complexity of oversight, combined with the need to more adequately monitor the operations of the cannabis industry to prevent diversion, compliance with conditions, and fiscal accountability will not be possible with the current staffing levels. The 2010 proposed staffing levels were determined with a different regulatory configuration and total number of cannabis related permits throughout the City. Although the number of permits may go up as much as four fold the current number to 16, the actual costs of oversight cannot be determined in as simple a manner. Construction, electrical, financial audits, security reviews, and special operations and inspections will require a specialized group of City staff with a variety of expertise.

Where the previous report had provided the Council with a rough analysis of the permit fees and an outline of a proposed regulatory unit this report now requests that we table the discussion so that staff can, over the summer, develop a regulatory model, framework, and fee structure that will allow the program to provide the appropriate level of oversight and be cost neutral to the City. At the same time it will provide staff an opportunity to re-evaluate the framework of the Requests For Permit Applications and the application fee so that the process will conform to the final adopted ordinances approved by Council. Further, please keep in mind that until the

ordinances are approved and an appropriate application process is developed it will be difficult for staff to adequately assess the application costs and procedures most appropriate for the modified program. With council's approval staff will return in September with a complete package including a proposed budget, regulatory unit configuration and responsibilities, and master fee schedule amendments with a fee structure sufficient to provide for the level of personnel recommended by the City Administrators' Office.

Bonus Points

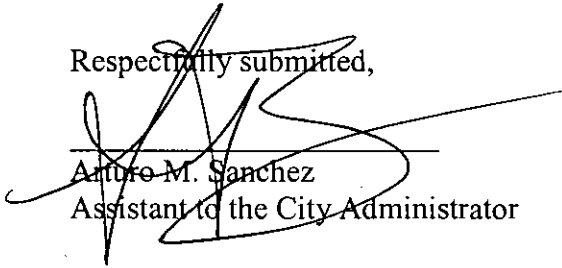
Although Staff is proposing that we table the master fee schedule amendments and proposed staffing structure, we would still request feedback and direction on the RFPA process and bonus points so that we make sure the structure that is developed for the fall is consistent with the approved application policy and process of the council.

ACTION REQUESTED OF THE CITY COUNCIL


Staff requests that the City Council:

1. Accept this report and its alternative recommendation;
2. Adopt the proposed amendments to Oakland Municipal Code Chapters 5.80 "Medical Cannabis Dispensary Permits" & 5.81 "Cultivation Of Medical Cannabis"
3. Approve and or provide direction on the Bonus points and RFPA process outlined by staff;
4. Direct Staff to prepare an appropriate regulatory framework and fee structure to be presented to the City Council in the Fall.

Respectfully submitted,


Arturo M. Sanchez
Assistant to the City Administrator

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


Office of the City Administrator
for Lamont Ewell