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CITY OF OAKLAND
2019 MAY 29 PM 3:58

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Greg Minor
Assistant to the City
Administrator

SUBJECT: Community Engagement Procedures
in Cannabis Permitting

DATE: May 21, 2019

City Administrator Approval

Date:

5/29/19

RECOMMENDATION

Staff Recommends That The City Council Receive An Informational Report And Recommendation On Defining And Improving The City of Oakland's Community Engagement Procedures For The Cannabis Dispensary Permitting Process.

EXECUTIVE SUMMARY

At the request of Councilmember Nikki Fortunato Bas, the April 11, 2019 City Council Rules and Legislation Committee requested the City Administrator prepare an informational report regarding the City of Oakland's community engagement procedures in the cannabis permitting process. This report provides an overview of the City's community engagement procedures for cannabis businesses, answers the specific questions raised by Councilmember Bas in her April 11, 2019 Memorandum (**Attachment A**), surveys practices in other jurisdictions, and recommends improving the City's current procedures by adopting more precise approval criteria in order to provide greater clarity for dispensary operators, the public, and staff.

BACKGROUND / LEGISLATIVE HISTORY

Federal Cannabis Policy Unsettled But Generally Deferential to States

Cannabis remains a Schedule One controlled substance under federal law, however, since the 2013 Department of Justice "Cole Memorandum"¹ and the 2015 Fahr-Rohrbacher federal budget amendment,² state compliant cannabis facilities have generally been shielded from federal prosecution. The Trump Administration has at times threatened to interrupt this status

¹ The Cole Memorandum can be found here:
<https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>

² The Fahr-Rohrbacher amendment states: "None of the funds made available in this Act to the Department of Justice may be used, with respect to the States of... California... to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana."

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quo, however, Congress has consistently extended the Fahr-Rohrbacher amendment and the federal government has not prioritized cannabis prosecutions.

California Initiates Statewide Cannabis Regulation

Although medical cannabis has been legal in California longer than anywhere in the country, until the passage of the Medical Cannabis Regulation and Safety Act (MCRSA) in 2015, California maintained one of the least structured regulatory frameworks in the United States. MCRSA created a comprehensive regulatory framework for the cultivation, production, transportation and sale of medical cannabis in California, all overseen by a new state bureau. In November 2016, the people of California enacted the Adult-Use of Marijuana Act (AUMA) or Proposition 64, which among other actions, established a licensing and taxation scheme for the non-medical adult-use of cannabis in California. Then in June 2017, the state legislature consolidated the MCRSA and AUMA into the Medical and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). State agencies have been implementing MAUCRSA ever since, including through the issuance of multiple sets of regulations governing cannabis operations.

Oakland's Cannabis Regulatory History and Policies

The City of Oakland has been a leader in regulating cannabis. Following the federal closure of Oakland Cannabis Buyers Club (OCBC), the City's initial medical cannabis provider under OMC Chapter 8.46, in 2004 the City of Oakland enacted OMC Chapter 5.80, which established the nation's first permitting process for medical cannabis dispensaries. This included provisions specifying a public hearing and noticing process for new dispensaries that is still in effect today. In 2011, the City of Oakland expanded the number of available dispensary permits under Chapter 5.80 from four to eight and adopted OMC Chapter 5.81 establishing a permitting process for the cultivation of medical cannabis under OMC 5.81. However, due to uncertainties regarding federal intervention and the lack of comprehensive state law, the City of Oakland was unable to implement Chapter 5.81 during this time.

In parallel with developments at the state level, the City of Oakland began exploring approaches to legalizing the entire cannabis industry within Oakland around 2015. This culminated with the passage of a legislative package in the spring of 2017 that created a permitting process under Chapters 5.80 and 5.81 for the full cannabis supply chain and the nation's first equity permit program to prioritize those most impacted by the war on drugs in the City of Oakland.³ This initial legislative package did not require non-dispensary cannabis businesses,⁴ which are not open to public, to undergo a public noticing or hearing process. In the fall of 2018 the City Council added a requirement for non-dispensary cannabis businesses within 300 feet of a

³ OMC 5.80.010 and OMC 5.81.020 define an "Equity Applicant" as "an Applicant whose ownership/owner: 1. Is an Oakland resident; and 2. In the last year, had an annual income at or less than 80 percent of Oakland Average Medium Income (AMI) adjusted for household size; and 3. Either (i) has lived in any combination of Oakland police beats 2X, 2Y, 6X, 7X, 19X, 21X, 21Y, 23X, 26Y, 27X, 27Y, 29X, 30X, 30Y, 31Y, 32X, 33X, 34X, 5X, 8X, and 35X for at least ten of the last twenty years or (ii) was arrested after November 5, 1996 and convicted of a cannabis crime committed in Oakland, California."

⁴ Non-dispensary cannabis uses are those uses not open to the public, such as cannabis cultivators, manufacturers, distributors, testing laboratories, and delivery-only dispensaries.

residential zone to undergo a public noticing process and participate in a community meeting prior to receiving a permit.

ANALYSIS AND POLICY ALTERNATIVES

Overview of Current Cannabis Permitting Process (Question 8)

8) What requirements must applicants meet to be eligible for a cannabis permit-both as required by the Oakland Municipal Code and via administrative regulations;

The requirements for non-dispensary cannabis businesses are similar to those for non-cannabis businesses, with a few significant exceptions. For example, like other businesses, non-dispensary cannabis operations must locate in a zone approved for that activity, pay required City taxes, and comply with any requirements from the Bureaus of Building and Fire Prevention. In addition to these baseline requirements, cannabis operators must also undergo a background check,⁵ provide odor mitigation, community beautification, and security plans, pass a security inspection by the Oakland Police Department, and comply with the City of Oakland's equity permit program. Finally, as noted in the previous section, since the fall of 2018, all proposed cannabis business within 300 feet of a residential zone undergo a public noticing process and participate in a community meeting prior to receiving a permit.

The requirements for dispensary operators are the same as those for non-dispensary cannabis operators, except that dispensaries must undergo a public noticing and hearing process, dispensaries must have security personnel onsite, and dispensary permits are issued through a separate permitting process since OMC 5.80 limits the number of cannabis dispensary permits the City Administrator may issue.

Once permitted, cannabis operators must then comply with local and state laws and regulations that govern the operation of cannabis businesses. State cannabis regulations can be found here: <https://cannabis.ca.gov/cannabis-regulations/>. City of Oakland 2018-2019 administrative regulations and performance standards for cannabis operators can be found here: <http://www2.oaklandnet.com/oakca1/groups/cityadministrator/documents/procedure/oak071140.pdf>

Community Engagement Processes Prior to Permit Issuance (Questions 1-7)

1) What is the process for determining how public hearings and other community engagement forums will occur on issuing cannabis permits-both as required by the Oakland Municipal Code and via administrative regulations;

2) Clarify the process for determining which projects will be subject to a hearing requirement;

⁵ The purpose of the background check is to determine whether an individual has been convicted or plead guilty or nolo contender to violent offenses or those involving fraud or deceit in the last seven years. Applicants with such a conviction or guilty plea are offered an opportunity to present evidence of mitigation or rehabilitation. Prior drug offenses are not considered in the background check.

- 3) *What are the procedures for providing notice and outreach in advance of an[sic] public meeting or hearing for dispensary projects- both as required by the Oakland Municipal Code and via administrative regulations;*
- 4) *What is the process for collecting community input on community benefits for dispensary projects;*
- 5) *What is the process for collecting community input on project details for dispensary projects and what information is made available to the public and in what manner;*
- 6) *How does community input impact the outcome of issuing cannabis permits;*
- 7) *How does community input on proposed community benefits for dispensary projects impact the outcome of issuing cannabis permits;*

Dispensary Permit Community Engagement Requirements

Dispensaries, which are open to the public and thus potentially impactful on their surrounding neighborhood, must undergo a public notice and hearing process prior to receiving a permit. Specifically, OMC 5.80.020(E) requires dispensaries undergo the public hearing and noticing process prescribed under the City of Oakland's general business permit ordinance, OMC Chapter 5.02 with the City Administrator as the investigating official. In turn, Chapter 5.02.050 requires that notice of the public hearing be provided at least thirty days before the hearing date and this notice must be posted on the proposed location of the dispensary, the City of Oakland's bulletin board, and the City of Oakland's official newspaper, as well as mailed to all property owners within three-hundred feet of the proposed dispensary. In addition to providing information on the public hearing itself, the notice also provides contact information for the Special Activity Permits Division in the City Administrator's Office. In response, neighbors of proposed dispensaries often contact the Special Activity Permits Division to ask questions or express support or opposition to a proposed dispensary.

At the public hearing, dispensary operators have an opportunity to publicly present their proposal and members of the public have an opportunity to offer their perspective on the proposal. The hearing is also an opportunity for City staff to ask the operator to respond to any questions or concerns raised during the public notice or hearing process.

Pursuant to Chapter 5.02, after the hearing, City staff takes into consideration the information presented and composes a written decision to approve, deny, or approve the proposed dispensary with additional conditions. In weighing the information provided, city staff examines whether the information provided is based on facts and legally relevant. In assessing legal relevancy, the code currently contains the following language:

The City Administrator, or the investigating official acting thereon, shall deny the granting of any permit applied for if it shall appear to his or her satisfaction that the applicant has not complied with the provisions of this Code which directly pertain to the maintenance or conduct of the business, establishment, place, or other thing in question or for the violation of any law appertaining thereto; or for any other reason hereinafter in this Chapter more specifically set forth.

In granting or denying such permit, and in specifying the conditions, if any, upon which it is granted, the City Administrator or other official acting thereon, shall consider all

pertinent facts which may concern the health, safety, and general welfare of the public, and shall exercise a reasonable and sound discretion in the premises. OMC 5.02.060.

Two examples of recent dispensary hearing decisions include approvals of dispensaries relocating to Shattuck Avenue and Park Boulevard, respectively. In the first instance, some neighbors opposed the siting of a dispensary along Shattuck Avenue arguing that a dispensary would result in increased crime and a traffic backlog given the narrow street and influx of dispensary customers. In actuality, data from the City of Oakland's licensed dispensaries indicates the presence of a licensed dispensary discourages crime nearby.⁶ On the other hand, a post-hearing assessment of the site with the Department of Transportation staff revealed several traffic mitigation strategies. Based on these considerations, staff recommended the City Administrator approve the dispensary at the site, subject to these traffic mitigation measures become conditions to the dispensary permit. Similarly, members of the public raised concerns regarding a dispensary's compliance with community benefit requirements as they sought to relocate to the old Parkway theater. In response, the hearing decision reviewed the operators' compliance history and approved the dispensary's relocation to the old Parkway theater while incorporating revised community benefit commitments made by the operator, including increased transparency and free use of the theater space for community groups and non-profits, as part of the dispensary's permit conditions moving forward.

Once the hearing decision is complete, the hearing officer forwards the decision to the City Administrator who can then accept, reject, or modify the decision's recommendations. The determination of the City Administrator then is made available via the City's website and directly to anyone who requests a copy of the decision in advance or at the hearing. Anyone interested in contesting the City Administrator's determination may then appeal the determination to an independent hearing officer within 14 days of the determination. The decision of the independent hearing officer is the final administrative decision and any further appeal must be made via Superior Court.

Onsite Consumption Permit Community Engagement Requirements

Before a dispensary may obtain an onsite consumption permit, a dispensary must undergo the same public notice and hearing process as a dispensary seeking initial approval. Per OMC 5.80.025, operators seeking an onsite consumption permit must also outline their plans to avoid drugged-driving, plus any parking or odor impacts that might result from the addition of onsite consumption at their dispensary.

Non-Dispensary Permit Community Engagement Requirements

When the City of Oakland began receiving permit applications for non-dispensary uses in the Spring of 2017, the City of Oakland did not require these uses to undergo a public noticing or hearing process. The rationale behind this approach was that these uses are not open to the

⁶ To assess what impact the City of Oakland's permitted dispensaries have on crime, in 2016 the City analyzed calls for service to the Oakland Police Department within 500 feet of a licensed dispensary after one year of a dispensary operating and found that on average calls for service decreased by 2.5%. In one case calls for service dropped 29% from 830 calls to 592 calls within a year of a dispensary operating.

public and limited to situating where their equivalent non-cannabis use is permitted by right under the planning code, and thus consistent with surrounding uses. Further, publicizing the location of cannabis businesses might create an additional security risk by alerting those interested in burglarizing cannabis businesses as to their location.

Nevertheless, in the fall of 2018 the City Council amended OMC 5.80 and 5.81 to require non-dispensary permit applicants within 300 feet of a residential zone undergo a public noticing process and participate in a community meeting. This amendment was based on the City Administration's proposal to add a public noticing and public hearing requirement for these operations in response to residential neighbors seeking clarification about cannabis uses near their neighborhood and a voice in the permitting process. The Public Safety Committee in considering this proposal elected to modify the proposed public hearing requirement to participation in a community meeting, in recognition of all the permitting requirements cannabis operators undergo at both the local and state level, and the City Council then adopted this modification.

Community Engagement Processes Post Permit Issuance (Questions 9-11)

- 9) *What community engagement activities are required by applicants seeking a cannabis permit-both as required by the Oakland Municipal Code and via administrative regulations;*
10) *What community engagement opportunities exist after the initial cannabis permit is issued, as it relates to the planning, building, fire and police departments- both as required by the Oakland Municipal Code and via administrative regulations;*
11) *How can the public access information related to the cannabis permit applications, such as for security and onsite consumption?*

While the City of Oakland's administrative regulations require dispensary operators annually undergo a public hearing process as part of their permit renewal and dispensaries must provide a contact person for all neighbors within fifty feet of the dispensary, there are no similar requirements for non-dispensary uses. One approach that has emerged at recent community meetings is to require cannabis uses near residential zones to attend Neighborhood Crime Prevention Council (NCPC) meetings on a quarterly or bi-annual basis to ensure these operators are in communication with their neighbors. In general, nearby residents and businesses can always report any issues related to cannabis businesses to the Oakland Police Department, the Oakland Call Center, or the City Administrator's Office.

In terms of the public accessing information related to cannabis businesses in the City of Oakland, the public can find information on the cannabis permit process online at <https://www.oaklandca.gov/topics/cannabis-permits>. Specific permit applications are made available through public records requests, however, security information is not public record.

Community Engagement Procedures In Other Jurisdictions

Local governments are employing a variety of approaches to community engagement in their cannabis permitting processes. The below chart offers a summary of different local government approaches to permitting dispensaries, from which the City of Oakland can learn and adopt

strategies, including specifying more specific criteria for permit denial and noticing both nearby residents and property owners alike.

Table One: Dispensary Community Engagement Procedures Across Jurisdictions

Jurisdiction	Public Notice	Public Hearing	Approval Criteria
Oakland, CA	Posting at Proposed Location, City's Bulletin Board, Newspaper, and Notices to Property Owners Within 300 Feet	Yes	Public Health and Safety
San Francisco, CA	Posting at Proposed Location, Notice Provided to Property Owners and Residents Within 300 Feet.	Yes. Applicant Must Hold a Community Meeting, and Most Undergo Planning Commission Meeting as well.	None beyond baseline or Conditional Use Permit requirements.
Los Angeles, CA	Written Notice Provided to All Residents and Property Owners Within 500 Feet, Notice Emailed to Those Requested to Be Notified	Multiple. Applicant Must Appear Before Neighborhood Council; Department of Cannabis Regulation Holds Community Meeting; and Cannabis Regulation Commission Holds a Public Hearing.	Once Baseline Requirements Met, Denial Limited to List of Specified Reasons for Denial.
Denver, CO	Posting at Proposed Location, Notice Provided to City Council Representative and Registered Neighborhood Organizations	Yes	Reasonable Requirements of the Neighborhood and Needs and Desires of Its Adult Inhabitants
Portland, OR	Posting at Proposed Location, Notice Provided to Property Owners and Occupants Within 300 Feet, District Coalition Office, Neighborhood and Business Association, Link Posted to Their Marijuana Control Plan	None	None beyond baseline requirements.

Recommendations Moving Forward

The City of Oakland's community engagement procedures for cannabis businesses would benefit by adopting more precise approval criteria and community engagement requirements. This clarity would benefit operators, community members, and staff alike, by making clear what information is relevant, what constitutes compliance, and upon what basis an operator will be approved or denied a permit. This adjustment would also align with City staff's 2017 race and equity analysis of medical cannabis regulations, which stressed minimizing regulatory discretion where possible to avoid disparate outcomes as those with more resources are more likely to benefit in an ambiguous regulatory context.

FISCAL IMPACT

There is no fiscal impact associated with this informational report.

PUBLIC OUTREACH / INTEREST

In advance of this report, staff conducted a survey of community engagement procedures in the cannabis permitting programs in similarly situated jurisdictions.

COORDINATION

The City Administrator's Office's Special Activity Permits Division consulted with the Department of Race and Equity and the Office of the City Attorney in preparation of this report.

SUSTAINABLE OPPORTUNITIES

Economic: Establishing a pathway to equitable cannabis industry growth will generate economic opportunities for Oakland residents.

Environmental: Encouraging local employment and business ownership can reduce commutes and related greenhouse gas emissions.

Social Equity: Promoting equitable ownership and employment opportunities in the cannabis industry can decrease disparities in life outcomes for marginalized communities of color and address disproportionate impacts of the war on drugs in those communities.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Receive An Informational Report And Recommendation On Defining And Improving The City of Oakland's Community Engagement Procedures For the Cannabis Dispensary Permitting Process.

For questions regarding this report, please contact Greg Minor, Assistant to the City Administrator, at (510) 238-6370.

Respectfully submitted,



GREG MINOR
Assistant to the City Administrator

Attachments (1):

A: Councilmember Bas April 11, 2019 Memorandum

ATTACHMENT A



Councilmember Nikki Fortunato Bas

CITY OF OAKLAND

CITY HALL, 1 FRANK OGAWA PLAZA, 2ND FLOOR, OAKLAND, CALIFORNIA 94612

Memorandum

DATE: April 11, 2019
TO: City Council and Members of the Public
FROM: Councilmember Nikki Fortunato Bas
SUBJECT: Informational Report and Recommendation for the Community Engagement Procedures for the Cannabis Dispensary and On-Site Consumption Permitting Process

Councilmember Bas recommends that the City Council approve an Informational Report and Recommendation from the City Administrator on the community engagement procedures for the Cannabis Dispensary and On-Site Consumption permitting process due to the high volume of questions and demand for community engagement from constituents. The Report should address the following questions:

- 1) What is the process for determining how public hearings and other community engagement forums will occur on issuing cannabis permits – both as required by the Oakland Municipal Code and via administrative regulations;
- 2) Clarify the process for determining which projects will be subject to a hearing requirement;
- 3) What are the procedures for providing notice and outreach in advance of a public meeting or hearing for dispensary projects – both as required by the Oakland Municipal Code and via administrative regulations;
- 4) What is the process for collecting community input on community benefits for dispensary projects;
- 5) What is the process for collecting community input on project details for dispensary projects and what information is made available to the public and in what manner;
- 6) How does community input impact the outcome of issuing cannabis permits;
- 7) How does community input on proposed community benefits for dispensary projects impact the outcome of issuing cannabis permits;
- 8) What requirements must applicants meet to be eligible for a cannabis permit – both as required by the Oakland Municipal Code and via administrative regulations;

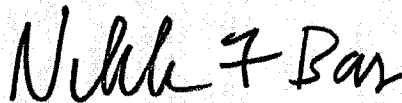
Councilmember Nikki Fortunato Bas

Subject: Informational Report and Recommendation for the Community Engagement Procedures for the Cannabis Dispensary Permitting Process

- 9) What community engagement activities are required by applicants seeking a cannabis permit – both as required by the Oakland Municipal Code and via administrative regulations;
- 10) What community engagement opportunities exist after the initial cannabis permit is issued, as it relates to the planning, building, fire and police departments – both as required by the Oakland Municipal Code and via administrative regulations;
- 11) How can the public access information related to the cannabis permit applications, such as for security and onsite consumption?

For questions regarding this informational request and action, please contact Lia Azul Salaverry, Policy Analyst and Community Liaison, Office of Councilmember Nikki Fortunato Bas, at 510-238-7246.

Respectfully Submitted,



Nikki Fortunato Bas
Councilmember, District 2

Prepared by:
Lia Azul Salaverry
Policy Analyst & Community Liaison
Office of Councilmember
Nikki Fortunato Bas