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2016 NOV -9 PM 1:21

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Darlene Flynn
Director, Department of
Race and Equity

SUBJECT: Equity Analysis of Proposed Medical
Cannabis Ordinance Amendments

DATE: November 8, 2016

City Administrator Approval

Date:

11/9/16

SUPPLEMENTAL REPORT

REASON FOR SUPPLEMENTAL

At the November 1, 2016 City Council meeting, the Council requested that staff conduct an equity analysis of proposals to amend Oakland Municipal Code Chapters 5.80 and 5.81, the City's medical cannabis ordinances, that would be considered at the special Council meeting on November 14, 2016. This report provides information and requests direction in response to that request.

RECOMMENDATION

Staff Recommends That The City Council:

- 1. Adopt The Racial Equity Outcome for the Cannabis Ordinance Amendments; And**
- 2. Direct Staff To Conduct A Racial Equity Analysis Of Proposed Amendments to Oakland Municipal Code 5.80, Medical Cannabis Dispensary Permits, And Oakland Municipal Code 5.81, Medical Cannabis Cultivation, Manufacturing And Other Facility Permits, Applying The Racial Equity Outcome.**

EXECUTIVE SUMMARY

In anticipation of the November 14, 2016 Special City Council Meeting to discuss proposed amendments to the City's medical cannabis ordinances, Oakland Municipal Code (OMC) 5.80 and 5.81, the Oakland City Council asked staff on November 1, 2016 to perform an equity analysis of all proposals. Given this short period of time, this report provides the framework for such an analysis and recommends that the City Council direct staff to conduct a meaningful analysis of the various proposals after the City Council reaches consensus on its racial equity outcome.

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BACKGROUND / LEGISLATIVE HISTORY

In light of changing federal policy and the passage of California's Medical Cannabis Regulation and Safety Act (MCRSA), in May 2016 the Oakland City Council adopted amendments to the City's medical cannabis ordinances to regulate the full spectrum of medical cannabis activities. These amendments included the Equity Permit Program, which requires that at least half of all permits issued under these chapters go to applicants that meet the following criteria:

1. Oakland resident who,
2. Resides for at least two years prior to the date of application in Oakland Police Department Beats 26Y, 30X, 30Y, 31Z, 32Y, and 34X or; those individuals who, within the last ten years, have been previously incarcerated for marijuana-related offenses as a result of a conviction arising out of Oakland, California.
3. Maintains not less than a 50% ownership in the applicant entity partnership, Limited Liability Corporation, collective, corporation, worker cooperative or other recognized ownership entity.

Since May, the following members of the public and Oakland City Councilmembers submitted proposals to further amend OMC 5.80 and 5.81 for discussion at the September 27, 2016 Public Safety Committee Meeting.

1. Oakland Diversity & Equity Cannabis Coalition (OakDECC), **Attachment A**;
2. President Pro Tem Larry Reid, Councilmembers Brooks and Gallo, **Attachment B**;
3. Vice Mayor Campbell Washington, Councilmembers Kalb and Guillen, **Attachment C**;
4. Councilmember Kaplan, **Attachment D**.

Although no consensus was reached over the above proposals at the September 27th Public Safety Committee Meeting, the full council has scheduled discussion of all these proposals before the full council at a Special Meeting on November 14, 2016.

ANALYSIS AND POLICY ALTERNATIVES

The foundation for a racial equity analysis is based on the following assumptions¹:

- The cause of racial inequity in life outcomes at the statistical level is the failure of societal structures to produce social equity;
- The condition of social inequity is the result of historical and present day unequal access to wealth building, and social, political and economic resources of U.S. society;
- The perpetuation of multi-generational poverty and the impacts of race, class and ethnicity on these outcomes;
- Failure to address and change these factors will continue to produce "durable poverty that is highly racialized".

¹ Adapted from work by John A. Powell, Kirwan Institute/Hass Institute - Berkeley

A Racial Equity Analysis involves the following steps:

- 1) Identify racial inequity area(s) that might be impacted by the proposed action area.
 - a. In this case, community economic development - access to living wage employment and local ownership of assets and wealth building.
- 2) Draft a racial equity outcome goal for the action area(s).
 - a. A racial equity outcome could include the following: Promoting Equitable Ownership And Employment Opportunities In The Cannabis Industry In Order To Decrease Disparities In Life Outcomes For Marginalized Communities Of Color And To Address The Disproportionate Impacts Of The War On Drugs In Those Communities.
- 3) Inform evaluation of the proposals with racially specific disparity data to identify marginalized or impacted groups to be evaluated for inclusion in equity program and consulted during vetting of specific strategies.
 - a. Sample data provided below; staff analysis will include additional data.

Racial Group	Population	Unemployment Rates	Poverty Rates	Arrest Rates
White	31%	4.2%	3.2%	4%
Black/African American	30%	14.0%	22.9%	77%
Hispanic/Latino	30%	6.7%	24.6%	15%
Asian	7%	8.4%	17.6%	2%
Native HI/Pacific Islander	> 1%	10% (County)	23.1%	-
American Indian/AK Native	> 1%	10.4% (County)	8.7% (County)	-

(Data Sources: Oakland and Alameda County 2016 Data Snapshot and 2015 OPD cannabis citation data disaggregated by Race)

- 4) Identify potential equity opportunities and/or potential detrimental impacts on or barriers to equity for identified groups.
 - a. To be clarified by staff analysis.
- 5) Adjust preliminary assumptions about the disparities with any information gathered from specific marginalized racial group(s) perspectives to deepen understanding of the causes of disparities and/or barriers to equity related to the identified determinants.
 - a. To be completed as part of staff analysis.

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- 6) Consider adoption of approaches to maximize benefits and minimize burdens for marginalized racial groups related to achieving identified racial equity outcome.
 - a. Staff analysis and recommendations to be provided.

FISCAL IMPACT

A racial equity analysis has no fiscal impact in and of itself; however applying an equity lens to cannabis ordinances has the potential to identify equity investments that would be necessary in the cannabis industry to achieve the desired racial equity economic outcomes.

PUBLIC OUTREACH / INTEREST

Targeted outreach to marginalized community members will be conducted to gather perspectives on efficacy of proposed amendments.

COORDINATION

The Department of Race and Equity coordinated with the Special Activity Permits Division in the City Administrator's Office and the Department of Human Services in the drafting 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:

1. **Adopt The Racial Equity Outcome for Cannabis Ordinance Amendments; And**
2. **Direct Staff To Conduct A Racial Equity Analysis Of Proposed Amendments to Oakland Municipal Code 5.80, Medical Cannabis Dispensary Permits, And Oakland Municipal Code 5.81, Medical Cannabis Cultivation, Manufacturing And Other Facility Permits, Applying The Above Racial Equity Outcome.**

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November 14, 2016

For questions regarding this report, please contact Darlene Flynn, Director, Department of Race and Equity, at (510) 238-2904.

Respectfully submitted,



Darlene Flynn
Director, Department of Race and Equity

Reviewed by:
Joe DeVries, Assistant to the City Administrator

Prepared by:
Greg Minor, Assistant to the City Administrator

Attachments:

- A. Oakland Diversity & Equity Cannabis Coalition (OakDECC) proposed amendments;
- B. President Pro Tem Larry Reid, Councilmembers Brooks and Gallo proposed amendments;
- C. Vice Mayor Campbell Washington, Councilmembers Kalb and Guillen proposed amendments;
- D. Councilmember Kaplan proposed amendments.

Attachment A

Oakland Diversity & Equity Cannabis Coalition (OakDECC) consists of individuals, advocates, movement groups, social justice community based organizations, and businesses including existing and potential dispensaries, manufacturers, cultivators, and distributors, represented by employees, managers, and operators, with an emphasis on diversity of gender, class, and race. We are committed to the successful implementation of the current Equity Program and to a prosperous and diverse medical cannabis business community in Oakland. We support the following recommendations from the Cannabis Regulatory Commission.

June 20, 2016

To: The Oakland City Council
From: Matt Hummel, Chairperson, Cannabis Regulatory Commission
Re: Proposed Amendments to Improve Medical Cannabis Equity Permit Program

City Council President Gibson-McElhaney and Honorable Members of the Oakland City Council:

In an effort to refine the recently passed ordinances (5.80 and 5.81) designed to regulate Cannabis cultivation, production, and sales in the City of Oakland, the Cannabis Regulatory Commission discussed and unanimously approved the below recommendations at its June meeting.

Proposed Amendments to 5.80 and 5.81

Expanded Eligibility Criteria

1. Expand to include Oakland residents incarcerated for cannabis offenses anywhere in California, in addition to those arising out of Oakland.
2. Expand to include spouses and children of Oakland residents incarcerated for cannabis offenses anywhere in California.
3. Expand to include individuals incarcerated for cannabis offenses at any point, not just those incarcerated in the last 10 years.
4. Expand included police beats based on a 5 year historical data set, instead of just one year. The broader data set supports inclusion of the following beats as disproportionately impacted by cannabis enforcement: 2x, 2y, 6x, 7x, 19x, 20x, 21y, 23x, 26y, 27x, 27y, 29x, 30x, 30y, 31y, 31z, 33x, 34x, 35x.
5. Modify the language in Item 4 of each Ordinance's Equity Requirement to state that ANY prior conviction shall not be a bar to equity ownership (or employment).

Existing Businesses

1. Clarify that businesses that can prove existing operation in Oakland have a clear path to be issued permits if they meet operating requirements.
2. Add a right to appeal a permit application denial.

Create Economic Benefits for Equity Permits

1. Expedited consideration for the equity permit applicants.
2. Defer first year permit fee, allow for quarterly payment permit fee rather than an upfront lump sum.
3. Waive or reduce the application fee.
4. Temporary partial relief from the 5% cannabis business tax rate.

Cottage Licenses

1. The City of Oakland should take a formal position in favor of AB 2516.
2. Implement permits for cottage cultivation if AB 2516 passes.
3. Include a provision in 5.81 that allows for non-volatile manufacturing of cannabis infused edibles in existing commercial kitchens in commercially zoned areas.

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Attachment B



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Councilmember – District 6
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September 22, 2016

To: Chairperson Brooks and Members of the Public Safety Committee.

From: President Pro Tem Larry Reid, Councilpersons Desley Brook and Noel Gallo.

RE: Motion Amending Ordinances 5.80 and 5.81.

Chairperson Brooks and Members of the Public Safety Committee:

We have listened to the comments and concerns about the initial draft amendments we submitted on September 6, 2016. We have addressed those concerns and submit these revised amendments to you for consideration.

The City has approved important legislation to regulate a burgeoning industry both locally and nationally; the Cannabis industry. It is important as this industry moves from being illegal to a legal status that we, as legislators, ensure there is equity and fairness in the process. Our failure to do so will set-up a two-tiered system that advantages those who were given a head start, and disadvantages those who were shut out. In an effort to ensure that Oakland establishes regulations that provides a meaningful opportunity for all to compete we move the following amendments to Ordinances 5.80 and 5.81:

1. **Have the City Attorney's office draft appropriate findings for all Cannabis legislation.**
2. **Reduce the Equity Ownership requirement from 50% to 49%.**
3. **Add the following Definitions:**
 - I. **"Applicant,"** for purposes Ordinance, means the following:
 - (1) Owner or owners of a proposed facility, including all persons or entities having ownership interest other than a security interest, lien, or encumbrance on property that will be used by the facility.

(2) If the owner is an entity, "owner" includes within the entity each person participating in the direction, control, or management of, or having a financial interest in, the proposed facility.

(3) If the applicant is a publicly traded company, "owner" means the chief executive officer or any person or entity with an aggregate ownership interest of 5 percent or more.

- II. **"Permit"** means an official document granted by the City that specifically authorizes a person to conduct commercial cannabis activity/activities in the City of Oakland.
- III. **"Person"** means an individual, firm, partnership, joint venture, trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.
- IV. **"Commercial Cannabis Activity"** means cannabis activity that includes cultivation, possession, manufacturer, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product.
- V. **"Fund"** means the Cannabis Equity Fund established pursuant to Section
- VI. **"Distributions"** means payments from business entity, fund or profit. May include monies from earnings, dividends, capital gains from sale of portfolio holdings and return of capital.

4. Add the following new Sections:

Pre-Existing Manufacturing and/or Cultivating Commercial Cannabis Activities

Any Applicant, who at any time prior to June 30, 2016 did any of the following:

- a) Engaged in Cannabis Cultivation; or
- b) Engaged in Manufacturing Cannabis and/or Cannabis products; or
- c) Owned or leased a physical location where cannabis cultivation or manufacturing of cannabis derived products were produced;

Is expressly prohibited from conducting business in the City of Oakland unless and until they secure a Certificate of Compliance.

Certificate of Compliance issuance.

- 1. All pre-existing Manufacturing and Cultivation Cannabis Activities mentioned in Section 1 (a), (b), and (c) above must obtain a certificated of compliance.
- 2. Prior to the issuance of a Certificate of Compliance, Applicant must Execute a Contract with the following terms: Designate, in perpetuity, to the City of Oakland 25% of the Applicant's profit; and a minimum of one (1) seat on the Board of Directors of said Commercial Cannabis Activity and its affiliates; Agree to provide Audited financial accountings for said Commercial Cannabis Activity and

its affiliates; and agree that Distributions to the City of Oakland shall be made on a quarterly basis. Failure to disclose the Commercial Cannabis Activity's affiliates shall result in automatic revocation of any Certificate of Compliance and automatic revocation of any permit issued pursuant to Ordinances 5.80 and 5.81 regardless of when the affiliate information is discovered;

3. Is prohibited from commencing any Commercial Cannabis Activity in the same location; and shall not own, or have an ownership interest in any commercial cannabis activity at the same location. Certificate of Compliance will be issued upon inspection of the old and new locations.
4. Failure of the Applicant to disclose on the Certificate of Compliance application the existence of the prior Commercial Cannabis Activity shall result in the applicant automatically being barred from applying for, or receiving, any permit issued pursuant to O.M.C. 5.80 and/or 5.81 for a period of 5 years.
5. Certificates of Compliance must be submitted as part of Applicant's permit application.

The Cannabis Equity Fund annual allocations shall be as follows:

1. The revenues received pursuant to section _____ above shall be deposited into the Cannabis Equity Fund.
2. Thirty-Three percent (33%) to establish and fund three (3) training programs. Each program will annually receive 11% of the funds allocated to this category. The designated Training programs shall be One Fam/Bikes 4 Life, the Private Industry Council, and Hispanic Engineers, Builders & Contractors of California.
3. Forty-two percent (42%) to establish a revolving loan fund for Equity Permit applicants. Said fund shall be used to provide no and low interest loans.
4. Fifteen percent (15%) to establish a Council District Grant and Activities Fund. Said fund shall annually be distributed equally to each Council office.
5. Ten percent (10%) to establish a Community Beautification fund to promote clean-ups, reduce illegal dumping and graffiti, general blight and promote beautification of the community. Said funds shall annually be distributed equally to each Council District.

Residency Requirement and Proof of Residency.

- I. There shall be a five (5) year Oakland residency requirement for all persons applying for a permit for Commercial Cannabis Activities issued under Ordinances 5.80 and 5.81. Additionally, Equity applicants must reside for 2 years in the specified Police Beats as set forth in Section _____.
- II. One of the following types of documents must be submitted to establish that a person's residence is in Oakland as required by Section 1 above.

- a) Duly authenticated copies of the following documents may be taken into account to establish Oakland residency: A current driver's license with address, property tax receipts, copies of income tax returns where an Oakland address is listed as the primary address, motor vehicle or vessel registrations, and other public records evidencing place of residence.

Limitation on Number of Permits.

A Commercial Cannabis Activity Permittee may only hold an Oakland permit in up to two separate permit categories consistent with California State law Section 19328.

Operating without A License

- I. A person engaging in commercial cannabis activity without a license required by this Ordinance shall be subject to civil penalties of up to twice the amount of the license fee for each violation, and the court may order the destruction of medical cannabis associated with that violation in accordance with Section 11479 of the Health and Safety Code. Each day of operation shall constitute a separate violation of this section. All civil penalties imposed and collected pursuant to this section by a licensing authority shall be deposited into the Equity Fund Account established pursuant to Section _____.
- II. If an action for civil penalties is brought against a licensee pursuant to this Ordinance by the city attorney or city prosecutor, the penalty collected shall be paid to the treasurer of the city for deposit to the Equity Fund.
- III. Notwithstanding foregoing (a), criminal penalties shall continue to apply to an unlicensed person engaging in commercial cannabis activity in violation of this Ordinance.

Applicants Must Provide Accurate Information

1. An Applicant must provide accurate information to the City during the entire Application process.
2. If an Applicant provides inaccurate information to the City, the Applicant's application shall be denied.

Thank you for your consideration.

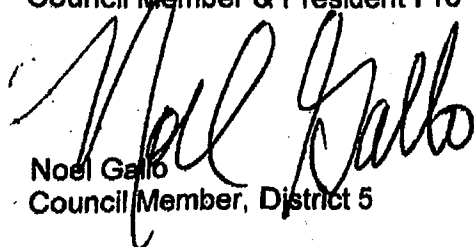
Respectfully submitted,



Desley Brooks
Council Member, District 6



Larry Reid
Council Member & President Pro Tem



Noel Gallo
Council Member, District 5

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Agenda Memo

CITY HALL - ONE FRANK H. OGAWA PLAZA, 2ND FLOOR - OAKLAND - CALIFORNIA - 94612

FROM:

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ANNIE CAMPBELL WASHINGTON
Vice Mayor, Councilmember District 4

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TO: Oakland City Council Public Safety Committee

SUBJECT: Amendments to Chapter 5.80 – Medical Cannabis Dispensary Permits and Chapter 5.81 – Medical Cannabis Cultivation, Manufacturing and Other Facility Permits

DATE: September 27, 2016

Members of the Public Safety committee,

We respectfully ask you to consider the following:

RECOMMENDATION

In light of a large community outcry, opinions expressed by a state legislator, Councilmembers Kalb, Guillen and Campbell Washington hereby request that the Public Safety Committee and the City Council direct the City Administration in consultation with the City Attorney's Office to analyze and within 30 days return to the Council with recommended specific language for amending Ordinances 5.80 and 5.81 to meet the following objectives:

- 1. Create equitable economic growth and business opportunities for the community members and organizations that have been disproportionately affected by the war on drugs policies and practices, which have resulted in devastating social and economic consequences for many past and present Oakland residents:**

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September 27, 2016

- Create a fund to assist these individuals—primarily low-income, communities of color, and particularly African Americans—in establishing, maintaining and growing their businesses.
 - Create a set of criteria qualifying applicants for access to those funds.
- 2. Create Economic Benefits and Priority System for businesses and applicants that meet criteria of business owners disproportionately impacted by the war on drugs and “Small, Cannabis Business”:**
- Create financial incentives for cannabis businesses that meet certain criteria.
 - Develop these criteria. Different criteria may be needed for regular dispensaries and for delivery-only dispensaries in Ordinance 5.80.
 - Expedited consideration and license issuance.
 - Defer first year permit fee; allow for quarterly payment of permit fee rather than an upfront lump sum.
 - Reduce the initial application fee.
 - Temporary partial relief from the 5% cannabis business tax rate in form of partial reimbursement of paid taxes based on gross annual receipts or other appropriate criteria.
- 3. Provide pathway for existing businesses to enter the state licensing system:**
- Clarify that businesses that can prove existing operations in Oakland have a clear path to be issued the permits they need to enter the new state licensing framework, if they meet operating requirements. Prioritize issuing cannabis business licenses to businesses that meet certain criteria mentioned in section #2 above.
 - Add a right to appeal a permit application denial.

BACKGROUND

City Administration, Cannabis Regulatory Commission, several Councilmembers members of the public engaged in public deliberation about amending Ordinance 5.80 and helping to draft Ordinance 5.81 for over a year prior to the May of 2016 passage of the ordinances.

In 2014, the Oakland City Council requested that the Cannabis Regulatory Commission review the Ordinances. The Commission had several public meetings to discuss, debate, and identify recommendations. Those meetings were attended by dozens of cannabis business owners and hundreds of community members.

The amendments introduced in May 2016, and ultimately adopted by the Council were brokered at the last moment without community outreach, including those whom the amendments were intended to help and without representatives of the Cannabis Regulatory Commission.

In the last four months the Cannabis Regulatory Commission had several publicly noticed meetings where commissioners and members of the public deliberated new cannabis Ordinances passed by the Council in May 2016. Some Councilmembers, state legislators and members of the Oakland community, including cannabis industry representatives and hopefuls from diverse backgrounds, came forward and expressed concerns and a desire to amend existing legislation.

The Rules Committee then scheduled the item to the Public Safety Committee for a hearing.

ANALYSIS

War on drugs. Drug laws have been disproportionately enforced against individuals and communities of color, resulting in devastating social and economic consequences. We maintain a commitment to developing and passing thoughtful legislation that counters the impact of past discrimination.

The war on drugs had enormous and disproportionate effects on African American and low-income communities in the United States. The proposed policy directives intend to address and mitigate these effects on families of people arrested and incarcerated because of marijuana offenses.

Oakland's leadership on cannabis issues – preserving the City's integrity. Oakland has been a leader in the medical cannabis industry for years and has developed a reputation as a cannabis-friendly city with forward-thinking and progressive policies that support businesses while ensuring safe access. Businesses were started in Oakland because of local government acceptance towards the cannabis industry and these businesses are currently creating hundreds of living wage jobs. Many businesses have been paying taxes and working as good community partners for the City and the neighborhoods wherein they operate.

Changing market and competition. Due to the passage of the Medical Marijuana Regulation and Safety Act in 2015 and its amendment in June 2016 with the passage of SB 837, Oakland is no longer the only city that is attractive for the cannabis industry. Oakland now faces rapidly growing competition across the state by numerous cities and counties that have adopted broad and open permitting ordinances in hopes of attracting away jobs and thriving existing businesses. Some municipalities known for having a large number of existing cannabis businesses have adopted policies creating retroactive January 1, 2016 "good standing" designations so that their existing businesses will be eligible for a state license priority consideration and have the most competitive position possible in the new state system.

Potential for economic growth. Oakland is facing a widening crisis of income inequality, a lack of sufficient affordable housing, and displacement of low-income residents and communities of color. Oakland has many underfunded needs. Development of a robust cannabis industry in Oakland has been and will have even greater potential for providing much needed economic

growth, an expanded tax base, and an increase in jobs with potentially good wages and benefits.

Issues with current legislation and additional amendments. The Equity Permit Program initiated an important discourse. Further consideration reveals that these amendments are having (and will continue to have) many severe consequences for minority business owners, for already vulnerable populations, existing businesses, for the city investment climate, and on our City generally.

Some of the effects could include:

- ***Creating further inequitable opportunity by excluding individuals*** in parts of Oakland other than the presently chosen beats—the Equity Permit Program should be inclusive of all individuals who have been disproportionately impacted by the war on drugs in Oakland—low-income, communities of color, primarily African Americans, across the city of Oakland. No one should be locked out of getting a permit, and the present proposal risks doing so to thousands of Oakland residents.
- ***Unfair treatment of some Oakland residents by providing overly restrictive permits.*** The way Equity Licenses are structured right now potentially restricts an owner's ability to relocate out of one of the permitted 6 beats as well as making it close to impossible to sell Equity Licenses share in the company. Equity permit holders are also effectively barred from using most traditional capital financing mechanisms predicated on sale of corporate equity, potentially forcing the businesses into debt financing.
- ***Loss of revenue for the city*** – experts have predicted that a thriving cannabis industry could generate millions into the City's general fund, millions which could be used for a multitude of citywide needs. The current Ordinances and the proposed amendments are sending clear signals to operators and prospective operators to relocate elsewhere.
- ***Potential creation of constrained market conditions in Oakland*** – wherein very few businesses owning a large share of the market due barriers to entry created by overly restrictive licensing conditions and eligibility. This limitation on competition will ultimately harm patients and consumers due to lack of competition in the market.
- ***Jeopardizing our public safety by driving existing businesses underground and forgoing the ability of the government to regulate existing cannabis businesses.*** Some people who for year derived income from cannabis business will be unable or unwilling to relocate, exposing themselves and others to unlawful operations.

PUBLIC OUTREACH/INTEREST

Councilmembers and staff met with representatives from the Cannabis Regulatory Commission, the Oakland Diversity & Equity Cannabis Coalition (OakDECC) and individual members of the community concerned with the current legislation throughout the summer and fall of this year.

There is strong support for creating provisions that will address true barriers to entry for the communities that the Equity Program is trying to achieve, while eliminating provisions that will clearly result in a loss of small and medium cannabis businesses, including many who are minority owned and operated.

COORDINATION

Representatives of the City Attorney were consulted in preparing this memo.

COST SUMMARY/ IMPLICATIONS

There will be potentially a large loss of already existing and projected revenue from the loss of existing and future cannabis businesses.

Respectfully submitted,



Councilmember Kalb



Councilmember Guillén



Vice Mayor Campbell Washington

Attachment D

CITY OF OAKLAND



CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612
REBECCA KAPLAN (510) 238-7008
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Dear Colleagues and Community,

I am writing to share suggestions in the hopes of finding a constructive way to move forward on Oakland's cannabis permitting system in a manner that will be effective and equitable.

The permit application process has not yet begun, and there are concerns that Oakland will not launch a process in time for people to be compliant with State deadlines, and good applicants to give up on our city, and we would lose the associated jobs and revenue.

Some other jurisdictions which have moved forward with a cannabis permitting system have ended up with historically underserved communities being entirely left out of the permit process, receiving zero permits, for example, in the State of Maryland. It is important that Oakland craft a better way forward. We should work to continue our historic role as a leader in this area, to provide for equitable local economic opportunity and tax revenue, while also providing timely and effective action. Our goals should include having a successful and financially viable program, provide funding for vital community needs, and creating opportunity for communities that have historically been underserved and/or have been targets of the "war on drugs." We have also heard of areas of our law which require clarification.

Therefore, I would suggest we take the following actions:

- 1) Clarify that Cooperatives are a model of applicant that we support and encourage, and that the percentage of cooperative members which would allow a Cooperative to be an equity applicant is the same percentage as for any other model. (For example, a Cooperative owned in equal shares by 6 people would qualify as an equity applicant if 3 members meet the criteria).
- 2) Clarify that not-for-profits are a model of applicant we welcome, and that "owners" of a not-for-profit, means the Chief Executive Officer and Members of the Board
- 3) That it is our policy to allow applicants to be any structural model, including non-profits, for-profits and cooperatives, and that we advocate for State officials to recognize all models.
- 4) Allow for Equity applicants to receive a waiver of the Permit/Application fee upon filing of documentation of financial need.
- 5) Allow for Equity applicants to receive a waiver of up to 50% of gross receipts tax, which can be sought each year for up to two years, upon filing of documentation of financial need.
- 6) Add a "findings" section with more detail about the importance of local hiring and related provisions, and the negative impacts we are seeking to ameliorate
- 7) Applicants must pay existing City of Oakland Impact Fees (eg jobs-housing linkage fee)
- 8) Oakland has the right to have access to permittees' utility bills
- 9) Create an Appeals provision and Administrative Remedies provision in the law
- 10) Add an "exhaustion of administrative remedies" provision to the law

- 11) Dispensary can collect and remit gross receipts/biz license tax on behalf of small home-grow members. (Dispensary can be compliant by either verifying that their supplier is paying their taxes themselves, or by collecting and remitting on behalf of supplier)
- 12) Add definitions of *Permit*, *Person* and *Commercial Cannabis Activity* as per CM Brooks memo.
- 13) **That we create an Equity Fund** in order to help ensure that this growth in economic opportunity creates benefits for all in the community. The Equity Fund to be distributed as follows:
 - a. 1/3 to fund Job Training & Job Access Programs.
(Return to Council by _____ date with specific programs).
 - b. 1/3 for a revolving loan fund to support lower-income/equity applicants for cannabis permits to be able to have start-up capital. (After first round of loan disbursements, in future years can include other business categories)
 - c. 1/3 to Establish a Community Based Beautification, Blight Removal, and Activities Fund to provide for community supportive events, support homeless alternatives, remove illegal dumping and graffiti and reduce blight. Distributed annually in equal shares per Council office for distribution, which shall include a publicly-adopted Resolution.
- 14) Application process shall include payment of back taxes, when applicable, which shall be deposited into the equity fund
- 15) One-fifth (20%) of cannabis gross receipts taxes – as defined in Measure V passed by the voters of Oakland in 2010 -- shall be deposited into the equity fund
- 16) Pre-existing manufacturing/cultivation can receive a permit based on: demonstrated good faith compliance with what was possible before MMRSA passed, pay all applicable back taxes, and back fees. Request Attorney/Administrator provide example(s) language for options in terms of paying additional amounts or interest when paying back taxes (e.g. what is used in other situations of back taxes not involving cannabis?). Back \$ vs Forward \$? These payments to be deposited into the equity fund.
- 17) To encourage Greenhouses, avoid excess energy and water consumption and provide an option for cultivation that does not require using all indoor warehouses.
 - a. Administration to report back on places where greenhouses could go, identify publicly-owned sites that could be options, and potential leases for sites for greenhouses
 - b. Explore potential grow light impact fee, report back by January 1, 2018 on community feedback and recommendations for legislation or ballot Measure for implementation
 - c. Administrative regulations to promote utilization of water-saving technologies, especially for cultivation, including water catchment and re-use
- 18) Licensees must provide bathroom access. (customers/employees/vendors). Gender neutral, single stall facilities encouraged.
- 19) Affirm that it has been Oakland's practice to require cannabis dispensaries to be "vertically integrated" (was required historically, for non-diversion and quality control), and thus, to be able to cultivate and process, etc. and that we affirm that this continues to be allowed.
- 20) An offsite facility for this purpose, (due to better for safety and appropriate use), per permitted dispensary may be considered "pre-existing" if they go through the process in item (16)
- 21) Percentage of ownership for Equity Applicants: I propose a 40% compromise to move forward at this time. (Others had urged 25-30%. CM Brooks, Reid and Gallo proposed 49%)
- 22) Clarify that we do want the permit application process to move forward timely, and that we ask the Administration to begin issuing applications as soon as possible.

- 23) Given the widespread harm and prejudice involved in the war on marijuana, and the racially disparate impact of the targeting of marijuana law enforcement, and the ongoing suffering caused by people having a record and thus being denied access to jobs and other opportunities, ensuring access for people who have been targeted by the war on marijuana is important. Therefore, expand equity qualification criteria to include Oakland residents who have been incarcerated or holding a criminal record for cannabis activities which took place elsewhere too.
- 24) Equity program beats: Consider expanding the police beats to include a few more also identified as being heavily impacted by cannabis prohibition activities/arrests (could return to Council with the full data set to verify the specific beats). Optional: Add 5-year Oakland residency requirement for equity program?

Footnote:

City of Oakland Cannabis Tax Information

[https://ballotpedia.org/City_of_Oakland_Marijuana_Tax,_Measure_F_\(July_2009\)#cite_note-sf-6](https://ballotpedia.org/City_of_Oakland_Marijuana_Tax,_Measure_F_(July_2009)#cite_note-sf-6)

[https://ballotpedia.org/City_of_Oakland_Tax_on_Marijuana,_Measure_V_\(November_2010\)](https://ballotpedia.org/City_of_Oakland_Tax_on_Marijuana,_Measure_V_(November_2010))

Measure V: Shall the Oakland Municipal Code be amended to increase the business tax rate for “Medical Cannabis Businesses” from \$18 per \$1,000 of gross receipts to \$50 per \$1,000 of gross receipts, and creating a new “Non-Medical Cannabis Business Tax” of \$100 per \$1,000 of gross receipts, with all proceeds placed in the City’s General Fund to be used for any governmental purpose?[5]

Measure V		
Result	Votes	Percentage
✓ Yes	74,413	70.49%
No	31,148	29.51

