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AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Greg Minor
Assistant to the City
Administrator

SUBJECT: Update on Implementation of Medical
Cannabis Ordinances

DATE: June 26, 2017

City Administrator Approval

Date: 7/5/17

RECOMMENDATION

Staff Recommends That the City Council Receive A Status Report On Implementation Of Medical Cannabis Ordinances And Provide Feedback Regarding New State And Local Issues.

EXECUTIVE SUMMARY

On March 28, 2017, the City Council enacted medical cannabis ordinances centered around an Equity Permit Program that seeks to minimize disparities within the cannabis industry. These ordinances also directed City staff to report back in July 2017 regarding the implementation of those ordinances and any issues that have arisen.

Accordingly, this status report highlights some initial trends as demonstrated in the type and number of applications received thus far as well as legislative language in need of clarification. Further, this report offers updates on related federal and state policies so that the City Council may provide staff with policy direction before staff returns to the City Council in the fall of 2017 with regulations for the adult use of cannabis and clean-up amendments to the medical cannabis ordinances.

BACKGROUND / LEGISLATIVE HISTORY

Federal Cannabis Policy Unsettled but Generally Deferential to States

Cannabis remains a Schedule I controlled substance under federal law, however, since the 2013 Department of Justice "Cole Memorandum" and the 2015 Fahr-Rohrbacher federal budget amendment, state compliant medical cannabis facilities have generally been shielded from federal prosecution. The Trump Administration, specifically Attorney General Jeff Sessions, has broadly threatened to interrupt this status quo, but as of this writing the Administration has not rescinded the Cole Memorandum and in May 2017, Congress extended the Fahr-Rohrbacher amendment until September 30, 2017 at which point Congress will need to renew its provisions.

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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's system of medical cannabis was 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 Bureau of Medical Cannabis Regulation (BMCR). Then 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.

On April 28, 2017, the BMCR took a major step in bringing these regulatory frameworks to reality when it posted proposed state licensing regulations for medical cannabis. The proposed regulations totaled around two-hundred pages and encompassed the California Department of Food and Agriculture, California Department of Public Health, as well as the BMCR itself. The proposed regulations also featured two new licensing categories, a Type P license for businesses that only package and/or label another manufacturer's products and a Type N license for businesses that only conduct infusions, such as creating edibles or topicals. While the proposed regulations promote a well-regulated industry, the City Administration submitted a public comment encouraging the BMCR to consider the equity impacts of the proposed regulations, including the proposed restriction limiting one licensee per premises.

Also in April 2017, Governor Brown proposed consolidating the MCRSA and AUMA into the Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), codified as Assembly Bill 110 and Senate Bill 94. The intent of the MAUCRSA is to harmonize the regulatory structures offered under the MCRSA and AUMA by establishing one regulatory structure that incorporates the provisions of both laws. This includes authorizing the co-location of medical and adult use operations and adding the AUMA license category of a "microbusiness" to the list of medical cannabis licenses.¹

Oakland Establishes Equitable Framework for Cannabis Industry

While the City of Oakland has been a leader in regulating medical cannabis dispensaries, federal intervention and the absence of clear state law historically prevented the City from regulating non-dispensary facilities. This lack of regulation has resulted in burglaries, fires, lost revenue, and disparities in enforcement of drug laws.

However, in 2016 the Oakland City Council updated the City's medical cannabis regulations to cover the full spectrum of medical cannabis activities, including cultivation, manufacturing, distributing, testing, dispensing, and consumption of medical cannabis. Then in the spring of 2017 the City Council further updated the City's medical cannabis ordinances to include an Equity Permit Program that built on staff's race and equity analysis and recommendations.

¹ A "Microbusiness" license allows for the cultivation of cannabis on an area less than 10,000 square feet and to act as a licensed distributor, [non-volatile] manufacturer, and retailer. Business and Professions Section 26070(a)(3)(A).

The Equity Permit Program addresses past disparities in the cannabis industry by prioritizing the victims of the war on drugs and minimizing barriers of entry into the industry. Specifically, in the initial phase of permitting a minimum of half of all permits will be issued to equity applicants.² Similarly, under the Equity Incubator Program, general applicants receive permitting priority if they provide equity applicants with free rent for a minimum of 1,000 square feet of space to operate their business.

On May 23, 2017, the City Administration released medical cannabis permit applications for individuals interested in cultivating, manufacturing, delivering, distributing, testing or transporting medical cannabis in Oakland. Permits for dispensaries, which are limited by ordinance to eight new permits per year, will be issued through a separate process later this year.

ANALYSIS AND POLICY ALTERNATIVES

As of this writing, medical cannabis permit applications have been available for all non-dispensary uses for slightly over one month. Below staff has provided data on the initial applications received and highlighted some trends and legislative issues for the City Council's review and feedback.

General Trends

Initial applications reveal a few trends:

1. Numerous cannabis operators have submitted live scans but many have not yet applied for a permit.
2. Applications are evenly split between general and equity applicants.
3. Most equity applicants have not identified a property to operate their business, while most general applicants have identified such a property.
4. Most applicants have not yet partnered with a general or equity applicant.
5. Most applicants are cultivators and few applicants are testing laboratories, transporters or delivery only dispensaries.

These early trends suggest there is strong potential for incubator partnerships if qualifying general applicants with property connect with qualifying equity applicants in need of a property to operate. Additionally, these trends raise questions regarding the absence of numerous cannabis operators operating throughout the City, including whole categories such as delivery-only dispensaries. As staff gathers more application data and feedback from cannabis operators (see Public Outreach section below), staff will examine process and legislative revisions as appropriate.

² An Equity Applicant is an Oakland resident who has an annual income at or less than 80 percent of the Oakland Average Medium Income AND either has a cannabis conviction out of Oakland OR has lived for ten of the last twenty years in police beats that experienced a disproportionately higher amount of law enforcement with respect to cannabis.

TABLE 1: LIVE SCANS AND APPLICATIONS RECEIVED AS OF JUNE 26, 2017

Total Individuals that Have Submitted Live Scans ³	Approximately 270
Total Complete & Incomplete Applications	50
Total Complete Applications	47
Complete General Applications	22
Complete Equity Applications	25
Equity Applications Based on Residency	22
Equity Applications Based on Conviction	3
Incubators	4
Interested in Incubating	3
Complete Applications with Property Identified	25
Complete Applications No Property Identified (Equity)	19
Complete Applications No Property Identified (General)	3

TABLE 2: COMPLETE APPLICATIONS RECEIVED BY BUSINESS TYPE AS OF JUNE 26, 2017

TYPE	GENERAL	EQUITY	INCUBATOR	INTERESTED IN INCUBATING	TOTALS
Delivery	2	3	0	0	5
Cultivator (Indoor)	5	10	3	3	21
Cultivator (Outdoor)	0	1	0	0	1
Manufacturing – Volatile	3	0	1	0	4
Manufacturing – Non-volatile	2	5	1	0	8
Testing Lab	0	0	0	0	0
Distributor	2	5	0	0	7
Transporter	0	1	0	0	1
TOTALS	14	25	5	3	47

Medical Cannabis Ordinances Clean-Up Issues

The City's medical cannabis ordinances may benefit from clarifying a few unclear aspects. Below staff has highlighted some of these issues and offered recommended changes for the City Council's review and feedback:

³ All Applicant board members, partners and managers must complete a Live Scan background check.

- 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?
 - 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.
- 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?
 - 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.
- 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?
 - Recommendation: Replace the word adjacent with a specific distance that has a reasonable nexus from the facility, such as 50 feet.
- 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.
 - Recommendation: Simply replace the word incarceration with the word conviction to reflect the actual ordinance requirements.
- 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?
 - 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.

In addition to clarifying the above issues, City Council may consider revising the Equity Permit Program supporting documentation requirements. In general, applicants have expressed difficulties in obtaining proof of ten 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. As staff gathers more specific feedback, particularly via the survey referenced under Public Outreach, staff may propose amendments when returning to Council this fall.

Upcoming Issues Regarding Adult Use Ordinances

As the City Council moves toward adopting a regulatory structure for adult use, the City Council should consider what aspects of the state regulatory structure it wishes to adopt and in what form. Below staff has highlighted some issues related to adult use and offered recommended changes for the City Council's review and feedback:

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- Issue: Under State law operators may act as a retailer, cultivator, distributor, and non-volatile manufacturer under the umbrella of one “microbusiness” license. Accordingly, the City could add “microbusiness” as a separate permitting category.
 - Recommendation: Since the City already allows for all the business types comprising a “microbusiness,” maintain the existing license framework but allow operators to pursue such a license at the state level.
- Issue: The City Council has limited the number of medical cannabis dispensaries as they are open to the public and potentially more of an impact than other cannabis business types on surrounding properties. Accordingly, how many adult use dispensaries should the City permit?
 - Recommendation: Continue the City’s policy of limiting the number of public facing cannabis business but select one overall number rather than one for adult use and one for medical cannabis as the threat of nuisance is essentially the same and one overall number will allow the market to determine how many medical vs. adult use dispensaries are needed.
- Issue: State law may allow an individual dispensary to operate as both a medical and adult use dispensary but there are significantly higher state and local taxes on adult use operations that may encourage a joint use facility to underreport its adult use sales as medical sales.
 - Recommendation: Restrict a dispensary to operating as either a medical dispensary or an adult use dispensary to discourage fraud and improve revenue collection.

FISCAL IMPACT

There is no direct fiscal impact associated with this informational report.

As noted in previous reports, implementing a regulatory process for the full scope of the cannabis industry could have considerable positive impacts from new businesses paying taxes at the City’s elevated medical cannabis business tax rate of five percent of gross receipts and ten percent of gross receipts for non-medical cannabis businesses.

In March 2017 the City Council determined that the initial \$3.4 million in cannabis tax revenue received after March 7, 2017 must go towards the creation and implementation of the Equity Assistance Program (see Resolution No. 86633). As of this writing, approximately \$350,000 in such cannabis tax revenue has been received thus far.

The City will incur costs regulating the medical cannabis industry, however, the medical cannabis permit application and permit fees will support these costs.

PUBLIC OUTREACH / INTEREST

In advance of permit applications being available, the City Administrator’s Office’s Special Activity Permits Division held a Medical Cannabis Incubator Mixer at City Hall on May 6th with over four hundred attendees. The mixer offered information on the permitting process as well as networking opportunities for general and equity applicants.

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More recently, the City Administrator's Office's Special Activity Permits Division has sent a survey to its cannabis email listserv of 1,000 plus individuals to obtain specific feedback on the application process. The Special Permits Division hopes to have the results of this survey available in time for the July 18th City Council meeting.

COORDINATION

The City Administrator's Office's Special Activity Permits Division consulted with the Department of Race and Equity, the Oakland Police Department, the Revenue Management Bureau and the Office of the City Attorney in the drafting of this report.

FOLLOW-UP

Staff will return to council in the fall of 2017 with recommendations for local implementation of adult use regulations and clean up amendments to the City's medical cannabis ordinances based on feedback received from City Council.

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 A Status Report On Implementation of Medical Cannabis Ordinances And Provide Feedback Regarding New State And Local Issues.

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

Reviewed by: Stephanie Hom
Deputy City Administrator