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AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Greg Minor
Assistant to the City
Administrator

SUBJECT: Analysis of Proposed Expansion of
Locations for Cannabis Businesses

DATE: January 23, 2018

City Administrator Approval

Date:

2/2/18

RECOMMENDATION

Staff Recommends That the Public Safety Committee Receive An Informational Report Analyzing Councilmember Kaplan's Proposal to Amend Oakland Municipal Code Chapter 5.81, Cannabis Cultivation, Manufacturing and Other Facility Permits, To Specify the Process For Determination When An Applicant Requests An Alternate Location.

EXECUTIVE SUMMARY

Over the last several months, the Public Safety Committee has considered several proposals to expand the approved locations for cannabis businesses in the City of Oakland. On September 26, 2017, the Public Safety Committee heard an initial proposal from Councilmember Kaplan and continued the item to the December 6, 2017 committee meeting based on concerns regarding a lack of community outreach and the need for a staff analysis of the proposal.

Attachment A is the latest proposal from Councilmember Kaplan, which creates a process for considering alternative locations for cannabis businesses on a case by case basis.

Within this report, staff outlines concerns that this latest proposal lacks clear decision-making criteria, does not align with established land use policy, and would expend limited staff resources on an unfunded process.

Staff recommends the Public Safety Committee reconsider Councilmember Kaplan's September 26, 2017 proposal to expand approved locations for non-volatile manufacturers (**Attachment B**), however, with the addition of existing procedures required, and findings to be made, for conditional approval of an activity, as well as required buffers between individual cannabis facilities to avoid oversaturation of these uses in commercial corridors. This proposal could balance the interests of the cannabis industry with other industries, lower barriers for small manufacturers struggling to enter the regulated cannabis market, and provide clear guidelines for staff to implement.

Item: _____
Public Safety Committee
February 13, 2018

BACKGROUND / LEGISLATIVE HISTORY

The City of Oakland (City) has been a leader in regulating medical cannabis dispensaries and most recently centering cannabis regulations around equity. In 2004, the City enacted Oakland Municipal Code (OMC) Chapter 5.80, which created a permitting process for medical cannabis dispensaries. Rather than issuing dispensaries Conditional Use Permits, which include vested rights that run with the land, OMC Chapter 5.80 established a special business permit process to make it easier for the City to revoke permits if necessary. OMC Chapter 5.80 also limited the location of dispensaries to Commercial and Industrial Zones.

With the passage of statewide medical cannabis regulations in 2015 via the Medical Cannabis Regulation and Safety Act (MCRSA), the City updated its regulations to reflect the full scope of the industry. In determining where to situate each cannabis activity, the City elected to limit the location of each cannabis use to where the equivalent non-cannabis use is permitted by right under the Planning Code. For example, cannabis non-volatile (edible) manufacturers are limited under OMC Chapter 5.81 to areas where "Custom Manufacturing Industrial"¹ Activity is permitted by right under the Planning Code. Staff recommended this policy to best integrate cannabis activities within the City's existing land use framework. To address issues unique to cannabis activity, such as potential odor and security impacts on neighboring properties, the permitting process under OMC Chapters 5.80 and 5.81 requires cannabis operators to produce odor mitigation and security plans that are reviewed and approved by City staff. Additionally, OMC Chapters 5.80 and 5.81 require buffers between cannabis uses and sensitive uses, such as schools; and dispensaries must also be 600 feet away from youth centers and other licensed dispensaries.

ANALYSIS AND POLICY ALTERNATIVES

Below staff offers analysis of both the current proposal for alternate locations as well as the previous proposal from Councilmember Kaplan to expand approved locations for non-volatile manufacturers.

Concerns Regarding Alternative Locations Proposal

While the alternate locations proposal appears to be based on existing discretionary review processes, the proposal omits the decision-making criteria that those existing review procedures possess. For example, the only affirmative direction provided to the public under proposed OMC 5.81.045(C) is for applicants to describe why allowing their desired location "would not be problematic." Since what may not be "problematic" to one individual may be extremely "problematic" to another, the proposed language offers insufficient guidance to the public through this vague criterion. Likewise, proposed OMC 5.81.045(C) directs the Director of

¹ Custom Manufacturing Industrial Activities includes "the small-scale production of artisan and/or custom products. This activity typically includes the production of finished parts or products by hand, involving the use of hand tools and small-scale equipment within enclosed buildings... This classification includes, but is not limited to, the production of: A. Beverages (including alcoholic) and food (excluding the production of highly pungent, odor-causing items, such as vinegar and yeast) with ten thousand (10,000) square feet or less of floor area." OMC 17.10.550.

Planning or Planning Commission to base their decision on “whether the proposal conforms to the needs of the surrounding area [and] other applicable use permit criteria.” This language offers no clear decision-making criteria, inasmuch as a surrounding area’s “needs” vary significantly depending on one’s perspective; similarly, since no use permit is being sought in this process, there is no “use permit criteria” for the Director of Planning or Planning Commission to apply. As a result, this proposal could allow and possibly encourage inconsistent and arbitrary outcomes, which run counter to consistent land use planning.

This proposal would also extend the Planning Bureau’s limited staff resources beyond a viable management capacity, with no proposed mechanism for methods to offset associated administrative costs. Staff resources are already attenuated implementing the cannabis policies already adopted by City Council and this proposal contains no amendment to the city’s fee schedule to cover the additional work that would be required by Planning staff. Further, adding a discretionary Planning review process for cannabis operators will hinder the City Administrator Office’s efforts to bring the cannabis industry into the regulated market by allowing operators to remain in regulatory limbo for extended periods as they await their alternate location decision.

Finally, it is the City’s established policy to limit cannabis activities to where its equivalent non-cannabis activities are permitted by right under the Planning Code. If a cannabis operator wishes to change the zoning for his/her property so that they may conduct a cannabis activity at that location, then the City can accommodate such a request through the existing rezoning and law change process in Planning Code Chapter 17.144.

Limited Expansion of Locations for Non-Volatile Cannabis Manufacturing More Advisable

Councilmember Kaplan’s prior proposal to expand the allowable locations for non-volatile cannabis manufacturers would be relatively straightforward to implement.

Cannabis manufacturing employs a high number of people and is possibly among the most sustainable non-retail cannabis operations for the City by its nature as a value-added product suited to varying scales of production and given Oakland’s location within the region and existing commercial and industrial real estate. If combined with safeguards to avoid oversaturation, allowing non-volatile cannabis manufacturers within Commercial Zones would allow smaller operators to take advantage of existing commercial kitchen infrastructure, thus lowering the cost of starting a cannabis manufacturing business as compared to properties in Industrial Zones that would require building this infrastructure from scratch.

However, since cannabis manufacturing is closed to the public, staff recommends minimizing the potential detrimental impacts on existing pedestrian or retail activities resulting from any extension of cannabis manufacturing into Commercial zones by including a buffer of at least 600 feet between individual cannabis facilities to avoid oversaturation of these non-public uses along the City’s commercial and pedestrian corridors.

Additionally, any extension of cannabis manufacturing into areas where non-cannabis manufacturing is not permitted by right must include comportment with all existing procedures required for conditional approval of activities, including notification of neighboring properties and satisfaction of required findings. This ensures that cannabis activities are treated the same as their non-cannabis counterparts.

FISCAL IMPACT

In general, the permitting of cannabis businesses should result in new revenue from these businesses paying the City's business tax rates for medical and non-medical cannabis businesses of 5 and 10 percent of gross annual receipts pursuant to OMC Sections 5.04.480 and 5.04.481. Also, additional areas for high employment cannabis uses such as manufacturing could result in additional local jobs and related benefits. However, the corresponding costs and benefits of Councilmember Kaplan's current proposal are difficult to measure. Cannabis businesses' ability to outbid non-cannabis businesses suggest that expanding too broadly the amount of approved areas for cannabis uses could result in over-saturation, leading to a less diverse economy, if not properly regulated. Therefore, it is important to regulate the extent to which cannabis businesses can operate within the city's Commercial Zones.

As noted earlier in the report, in terms of staff costs, the current proposal does not include fees to cover the additional work required by the Planning Bureau.

PUBLIC OUTREACH / INTEREST

No public outreach was required for this report outside the standard agenda noticing process.

COORDINATION

The City Administrator's Office coordinated with the Planning Bureau and the City Attorney's Office in the 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 Public Safety Committee Receive An Informational Report Analyzing Councilmember Kaplan's Proposal to Amend Oakland Municipal Code Chapter 5.81, Cannabis Cultivation, Manufacturing and Other Facility Permits, To Specify the Process For Determination When An Applicant Requests An Alternate Location.

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:

William Gilchrist
Director
Bureau of Planning and Building

Ed Manasse
Senior Strategic Planner
Bureau of Planning and Building

Attachment A:

Councilmember Kaplan's Alternate Location Proposal

Attachment B:

Councilmember Kaplan's September 26, 2017 Proposed Amendments to OMC 5.81

ATTACHMENT A

Ordinance Amending Oakland Municipal Code Chapter 5.81 to Specify the Process When A Cannabis Permit Applicant Requests an Alternate Location.

Oakland Municipal Code Chapter 5.81 is hereby amended as follows. Additions are shown in underline and deletions are shown as ~~strikethrough~~.

5.81.046 – Application for Alternate Location

If an applicant wishes to propose a location for a cannabis facility other than the above-listed areas, they may apply for such an allowance and provide information about why such location would not be problematic. The consideration of this request will include notification of nearby properties, and the Councilmember for the District in which it is located, and shall be reviewed based on the following procedures:

An application shall be considered by the Director of City Planning. However, the Director may, at his or her discretion, refer the application to the City Planning Commission for decision rather than acting on it himself or herself. At his or her discretion, an administrative hearing may be held. Notice shall be given by posting an enlarged notice on the premises of the subject property involved in the application; notice shall also be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the city within three hundred (300) feet of the property involved; and to the Councilmember representing the location; provided, however, that failure to send notice to any such owner where his or her address is not shown in said records shall not invalidate the affected proceedings. All such notices shall be given not less than seventeen (17) days prior to the date set for the hearing, if such is to be held, or, if not, for decision on the application by the Director. The Director shall determine whether the proposal conforms to the needs of the surrounding area, other applicable use permit criteria, and may grant or deny the application for the proposed location or require such changes in the proposed use or impose such reasonable conditions of approval as are in his or her judgment necessary to ensure conformity to said criteria. The determination of the Director of City Planning shall become final ten (10) calendar days after the date of decision unless appealed to the City Planning Commission in accordance with Oakland Planning Code Section 17.134.060. In those cases which are referred to the Commission by the Planning Director, the decision of the Commission shall become final ten (10) days after the date of decision.

The Administration may issue further regulations to effectuate this process.

ATTACHMENT B

- D. Dispensaries and delivery only dispensaries that hire and retain formerly incarcerated current Oakland residents may apply for a tax credit or license fee reduction based on criteria established by the City Administrator.
- E. All dispensary employees and delivery only dispensary employees shall be paid a living wage as defined by OMC Chapter 2.28.
- F. Dispensaries and delivery only dispensaries must implement a track and trace program as prescribed by state law that records the movement of medical cannabis and medical cannabis products in their custody and make these records available to the City Administrator upon request.
- G. No cannabis odors shall be detectable outside of the permitted facility.
- H. Delivery only facilities permitted under this Chapter shall not be open to the public.

SECTION 5. Amendment of Section 5.80.050 of the Oakland Municipal Code. Oakland Municipal Code Section 5.80.050 is hereby amended as follows. Additions are shown in underline and deletions are shown as ~~strikethrough~~.

- A. Unless exempted under OMC Section 5.80.045, in addition to the dispensary application fee, the dispensary shall pay an annual regulatory fee. The dispensary shall post a copy of the dispensary permit and onsite consumption permit (if applicable) issued pursuant to this chapter in a conspicuous place in the premises approved as a dispensary at all times.
- B. The fees referenced herein shall be set by the Master Fee Schedule, as modified from time to time.

SECTION 6. Amendment of Section 5.81.020 of the Oakland Municipal Code. Oakland Municipal Code Section 5.81.020 is hereby amended as follows. Additions are shown in underline and deletions are shown as ~~strikethrough~~.

5.81.020 - Definitions.

The following words or phrases, whenever used in this chapter, shall be given the following definitions:

- A. "Applicant" as used only in this chapter shall be any individual or business entity that applies for a permit required under this chapter.
- B. "Batch" as used only in this chapter shall be defined by the City Administrator to mean a discrete quantity of dried cannabis produced and sold together.
- C. "Cannabis" or "Marijuana" as used only in this chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.
- D. "Cannabis concentrate" as used only in this chapter shall mean manufactured cannabis that has undergone a process to concentrate the cannabinoid active ingredient, thereby increasing the product's potency.

- E. "Cannabis Dispensary" as used only in this chapter shall be the same, and as may be amended, as is defined in Section 5.80.010 and is also referred to herein as "dispensary."
- F. "City Administrator" as used only in this chapter shall mean the City Administrator for the City of Oakland and his or her designee.
- G. "Commercial Zone" means any zone with a name that contains the words "Commercial Zone."
- HG. "Cultivate" as used only in this chapter shall mean to plant, grow, harvest, dry, cure, grade or trim cannabis in an area greater than two-hundred and fifty square feet of total area within one parcel of land.
- IH. "Distribute" as used only in this chapter shall mean the procurement, sale, and transport of medical cannabis and medical cannabis products between State licensed medical cannabis entities.
- JL. "Edible cannabis product" as used only in this chapter shall mean manufactured cannabis that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum.
- KJ. "Equity Applicant" shall mean an Applicant whose ownership/owner:
1. Is an Oakland resident; and
 2. Has 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.
- LK. "General Applicant" shall mean an Applicant other than an Equity Applicant.
- M. "Industrial Zone" means any zone with a name that contains the words "Industrial Zone."
- NL. "Manufactured cannabis" as used only in this chapter shall mean raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product.
- OM. "Manufacture" as used only in this chapter shall mean to produce, prepare, propagate, or compound manufactured medical cannabis or medical cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.
- PN. "Medical cannabis collective" as used only in this chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.
- QG. "Medical marijuana" or "Medical cannabis" as used only in this chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.
- RP. "Ownership" as used only in this chapter shall mean the individual or individuals who:

- (i) with respect to for-profit entities, including without limitation corporations, partnerships, limited liability companies, has or have an aggregate ownership interest (other than a security interest, lien, or encumbrance) of 50 percent or more in the entity.
- (ii) with respect to not for-profit entities, including without limitation a non-profit corporation or similar entity, constitutes or constitute a majority of the board of directors.
- (iii) with respect to collectives, has or have a controlling interest in the collective's governing body.

SQ. "Parcel of land" as used only in this chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.

TR "Permittees" as used only in this chapter are individuals or businesses that have obtained a permit under this chapter to cultivate, distribute, manufacture, test or transport.

US. "Primary caregiver" as used only in this chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.

V. "Principal street" means on interior lots, the street that abuts a lot. On corner lots and through lots, the principal street is the street that abuts the lot that is highest on the street hierarchy as defined in the Land Use and Transportation Element of the General Plan. Where streets have the same street hierarchy, the principal street shall be determined by the Zoning Administrator based on the street widths, traffic capacity, land uses, transit activity, bicycle and pedestrian uses, and control of intersections.

WF. "Qualified patient" as used only in this chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.

X. "Storefront" means the facade or entryway of a retail space typically located adjacent to the sidewalk on the ground floor of a commercial building, and including one or more display windows. A "storefront" functions to attract visual attention to a business and its merchandise.

YU. "Testing" as used only in this chapter shall mean the conducting of analytical testing of cannabis, cannabis-derived products, hemp, or hemp-derived products.

Z1V. "Topical cannabis" as used only in this chapter shall mean a product intended for external use such as with cannabis-enriched lotions, balms and salves.

Z2W. "Transport" as used only in this chapter means the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity, as defined by State law.

Z3X. "Transporter" as used only in this chapter means a person licensed to transport medical cannabis or medical cannabis products between State licensed medical cannabis facilities.

Z4Y. "Volatile solvents" as used only in this chapter shall mean those solvents used in the cannabis manufacturing process determined to be volatile by the California Department of Public Health or Oakland Fire Department.

SECTION 7. Amendment of Section 5.81.030 of the Oakland Municipal Code. Oakland Municipal Code Section 5.81.030 is hereby amended as follows. Additions are shown in underline and deletions are shown as ~~strikethrough~~.

5.81.030 - Business permit and application required.

- A. Except for hospitals and research facilities that obtain written permission for cannabis cultivation under federal law, it is unlawful to cultivate, distribute, manufacture, test or transport without a valid business permit issued pursuant to the provisions of this chapter. Possession of other types of State or City permits or licenses does not exempt an applicant from the requirement of obtaining a permit under this Chapter.
- B. The City Administrator shall issue, as detailed below, special business permits for medical cannabis cultivation, distributing, manufacturing, testing and transporting. All General Applicants shall pay any necessary fees including without limitation application fees, inspection fees and regulatory fees that may be required hereunder.
- C. All cultivation, distribution, manufacturing, testing and transporting permits shall be special business permits and shall be issued for a term of one year. No property interest, vested right, or entitlement to receive a future license to operate a medical marijuana business shall ever inure to the benefit of such permit holder.
- D. Cultivation, distribution, manufacturing, testing, and transporting permits shall only be granted to entities operating legally according to State law.
- E. More than one medical cannabis operator may situate on a single parcel of land, however, each operator will be required to obtain a permit for their applicable permit category.
- F. No proposed use under this Chapter shall be located within a 600-foot radius of any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive (but not including any private school in which education is primarily conducted in private homes), unless the school moved into the area after the proposed use was issued a permit under this Chapter. The distance between facilities shall be measured via path of travel from the closest door of one facility to the closest door of the other facility.
- G. An applicant for a permit under this Chapter shall not be disqualified from receiving a permit on the ground that the applicant also operates or intends to operate in an additional cannabis related field, such as a dispensary.

SECTION 8. Amendment of Section 5.81.040 of the Oakland Municipal Code. Oakland Municipal Code Section 5.81.040 is hereby amended as follows. Additions are shown in underline and deletions are shown as ~~strikethrough~~.

5.81.040 - Cultivation, distribution, testing and transporting of medical marijuana.

- A. Proposed cultivation, distribution, testing or transporting locations shall be in: i) non-storefront buildings in the CC Community Commercial Zone, with the exception of any area such zoned on Broadway, Telegraph Avenue, or San Pablo Avenue; and ii) areas where "light manufacturing industrial," "research and development industrial," or their equivalent use, is permitted by right under the Oakland Planning Code, as may be amended; provided, however, that no vested or other right shall inure to the benefit of any cultivation, distribution, testing or transporting facility permittee.
- B. The aforementioned location restrictions shall not apply to existing dispensary cultivation facilities located at a retail location that are compliant with building and fire codes.
- C. The maximum size of any areas of cultivation shall not exceed any limitations or restrictions set forth in State law.

SECTION 9. Amendment of Section 5.81.045 of the Oakland Municipal Code. Oakland Municipal Code Section 5.81.045 is hereby amended as follows. Additions are shown in underline and deletions are shown as ~~strikethrough~~

5.81.045 - Manufacturing of medical marijuana.

- A. Proposed locations for manufacturing of medical cannabis products using nonvolatile solvents shall be in: i) non-storefront buildings or non-storefront areas of buildings in the CC Community Commercial Zone; ii) storefront areas in the CC Commercial Zone occupying no more than thirty-five (35) feet of frontage facing the principal street. No manufacturing operation under this provision occupying a storefront in the CC Commercial Zone shall be located within a 300-foot radius of any other such operation; iii) areas where "custom manufacturing industrial," or its equivalent use, is permitted by right under the Oakland Planning Code, as may be amended; or iv) Residential Zones if the manufacturing is compliant with the restrictions imposed on cottage food operators under the California Homemade Food Act, Chapter 6.1 (commencing with Section 51035) of Part 1 of Division 1 of Title 5 of the Government Code.

Applicants seeking to engage in the production of infused edible cannabis products and topicals may be located in the same locations allowed above for the manufacturing of medical cannabis products using nonvolatile solvents-commercial zones where commercial kitchens are allowed.

- B. Proposed locations for manufacturing of medical cannabis products using volatile solvents shall be in areas where "general manufacturing industrial" or its equivalent use, is permitted by right under the Oakland Planning Code, as may be amended.

SECTION 10. California Environmental Quality Act. The City Council independently finds and determines that this action is exempt from CEQA pursuant to CEQA Guidelines sections 15061(b)(3) (general rule), 15183 (projects consistent with a community plan, general plan, or zoning), and 15301 (existing facilities), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance. The Environmental Review Officer or designee shall file a Notice of Exemption with the appropriate agencies.

SECTION 11. Severability. The provisions of this Ordinance are severable, and if any section, subsection, sentence, clause, phrase, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is for any reason held to be invalid, preempted by state or federal law, or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. It is hereby declared to be the legislative intent of the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

SECTION 12. Ordinance Effective Date. Pursuant to Section 216 of the Charter of the City of Oakland, this Ordinance shall become effective immediately upon final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption by the Council of the City of Oakland.

SECTION 13. General Police Powers. This Ordinance is enacted pursuant to the City of Oakland's general police powers, including but not limited to Sections 106 of the Oakland City Charter and Section 7 of Article XI of the California Constitution.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GIBSON MCELHANEY,
GUILLÉN, KALB, KAPLAN AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation: _____