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Agenda Memo

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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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- 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.

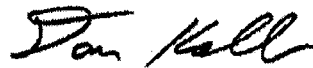
COORDINATION

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