

MEMORANDUM

TO: Members of the San Leandro City Council Rules Committee

FROM: Eric Engelbart, Assistant to the City Manager

DATE: December 9, 2015

RE: Modifications to the City's Medical Cannabis Dispensary Ordinance

Per the direction of the City Council, this memorandum provides the City Council Rules Committee with an overview of several outstanding matters related to the implementation of San Leandro's medical cannabis dispensary ordinance. Staff also requests direction from the Rules Committee on the following issues: 1) Timing of any amendments to the Medical Cannabis Dispensary Ordinance; and 2) Whether the City Council should consider adopting a resolution regulating or banning medical cannabis cultivation, the deadline for which is prior to March 1, 2016 per the recently enacted state law.

Lastly, this memo also provides a preview of procedural issues related to awarding a second dispensary permit that will be discussed in more detail at the January City Council Rules Committee meeting.

Background:

Following extensive dialogue with the community and numerous City Council discussions, on December 16, 2013, the City Council approved a medical cannabis dispensary ordinance to facilitate the approval, regulation and operation of medical cannabis dispensaries in San Leandro. Contained within that ordinance was Section 4-33-200(c), which states: "The City shall issue no more than one (1) valid permit for the operation of dispensaries in the City."

Overview of Dispensary Operator Selection Criteria

In order to assist in implementing the ordinance, on September 15, 2014 the City Council adopted objective criteria that was used by City staff and its consultant to evaluate and screen applications from medical cannabis dispensary operators that were interested in operating the one dispensary. Phases II and III of the criteria were implemented using a point allocation system, as outlined below:

Phase I: Criminal Background Investigation

Phase II – Initial Ranking Criteria (650 max. points)

- Business plan/ budgets
- Proof of Capitalization
- Overview of management team, demonstrated experience
- Security plan

Phase III – Final Scoring (300 max. points)

- Labor and employment practices
- Environmental Plan (including minimizing off-site impacts)
- Product safety & labeling
- Community benefits

Selection Phase

Interviews / site visits / reference checks

Overview of Selection Process

The City received applications from 15 teams as part of the first two phases of the program, out of which the eight top-scoring teams were invited to participate in Phase III. All eight of the top scoring teams chose to proceed to Phase III. After ranking and scoring the Phase III proposals, the six highest-scoring teams were invited to participate in interviews. Of those six teams, site visits and reference checks were conducted for the three teams that demonstrated the optimal combination of knowledge, expertise, experience, and alignment with the Council-adopted criteria. On September 8, 2015, the City Manager's recommendation was presented to the City Council, and the Council unanimously voted to award the permit to Harborside San Leandro.

Timing of Ordinance Modifications

Subsequent to the above actions, during the October 5, 2015 and November 2, 2015 regular City Council meetings, several members of the Council expressed interest in modifying the adopted ordinance in order to facilitate the approval of a second dispensary. Before scheduling any related actions for March, 2016, the Council directed the Rules Committee to further explore the issue.

Staff now requests direction from the Rules Committee regarding whether San Leandro Municipal Code Section 4-33-200 (c) should be modified to allow a second dispensary. If that is the recommendation of the Committee, staff also requests direction as to when such modifications should be brought forward for Council consideration. It is also important to note that before the Council would be able to award a second permit, it would need to conduct a first and second reading of the ordinance amendments. The ordinance would become effective 30 days after the second reading.

Outstanding Issues Related to Recently Adopted Statewide Medical Cannabis Legislation

On October 9, 2015, Governor Brown signed into law three "triple-joined" bills (AB 266, AB 243, and SB 643), which collectively constitute the Medical Marijuana Regulation & Safety Act. This legislation is the culmination of a broad coalition of local government, public safety, labor, dispensary and patient advocates who worked together to craft a statewide regularity framework for medical cannabis. A summary of the major provisions of the legislation is attached.

It is important to note that AB 243 provides that cities that do not have Municipal code provisions adopted before March 1, 2016 that expressly regulate or prohibit cultivation of medical cannabis will lose their local authority to do so indefinitely. In the absence of such a local regulation, the state will become the sole licensing and regulatory authority for cultivation of medical cannabis after March 1st. While the author has agreed to fix this language via clean-up legislation next year, the League of California Cities advises local agencies adopt relevant resolutions or ordinances before March 1st should they wish to retain local control over issues surrounding cultivation of medical cannabis, including prohibiting cultivation. Therefore, staff requests direction from the Rules Committee regarding whether such a resolution should be developed and presented for the Council's consideration prior to March 1st.

Procedural Considerations for a Second Dispensary

In advance of the next Rules Committee meeting in January, staff also wanted to provide a preview of some of the other outstanding issues upon which the Rules Committee will need to provide direction, presuming the City moves forward with amending the ordinance to issue a second dispensary permit. Specifically, staff will ask the Rules Committee in January for direction on the following matters:

- 1) *Selection Procedures*

Presuming the City Council were to issue a second dispensary permit, staff will need direction regarding how the selection process should be conducted. Several related variables that should be considered include:

- A) Determining what entities should be invited to participate, e.g. only top scoring teams who participated in Phase III, or a sub-set thereof.
- B) Determining whether the same selection and scoring criteria should be used
- C) Determining whether the same application fee(s) should apply
- D) Determining what additional materials should be requested from applicant teams.

At a minimum, staff recommends the following information be requested:

- a. an affidavit confirming that none of the applicant team members have been arrested or convicted of any of the crimes enumerated in the ordinance since submittal of the original application,
 - b. updated pro forma financial projections and proof of capitalization documentation, and
 - c. updated community benefits proposals.
- E) Confirmation as to what role the Council wishes to play in selecting the awardee for the permit

enclo: San Leandro Medical Cannabis Dispensary Ordinance
Summary of Medical Marijuana Regulation & Safety Act

cc: City Manager Chris Zapata
Assistant City Manager Lianne Marshall
City Attorney Richard Pio Roda
City Clerk Tamika Greenwood