

Cannabis Regulatory Commission

Regular Meeting

Thursday, March 15th, 6:30 p.m.
Council Chambers, City Hall, One Frank H. Ogawa Plaza

AGENDA

Members:

Lanese Martin	District 1	Frank Tucker	District 7
Chang Yi	District 2	A. Kathryn Parker	At Large
Zach Knox	District 3	Stephanie Floyd-Johnson	Mayor
Jin Jack Shim	District 4	Vacant	City Auditor
Matt Hummel	District 5	Greg Minor	City Administrator
Derreck Johnson	District 6		

Available on-line at: <http://www.oaklandnet.com/measurez>

MEETING AGENDA

- A. Roll Call and Determination of Quorum
- B. Open Forum / Public Comment
- C. Review of the Pending List and Additions to Next Month's Agenda
 - *Medical cannabis permitting process (since July 2017)*
 - *Use of cannabis tax revenues (since July 2017)*
 - *Annual report (since September 2017)*
 - *Cannabis advertising (since September 2017)*
 - *Additional 2016 enforcement data (since September 2017)*
 - *Onsite consumption/lounges (since October 2017)*
 - *Microbusinesses (since October 2017)*
 - *Cannabis tax rates (since November 2017)*
 - *Event permitting (since December 2017)*
 - *Dispensary applicant runner-ups (since December 2017)*
 - *Adjusting meeting time/day (since January 2018)*
- D. Approval of the Draft Minutes from the Cannabis Regulatory Commission meeting of February 2018.
- E. Reports for Discussion and Possible Action
 1. Updated 2016 OPD Cannabis Enforcement Data and OPD Training Bulletin re Medical Marijuana
 2. Review Process for Alternative Locations for Cannabis Facilities

Persons may speak on any item appearing on the agenda; however a Speaker Card must be filled out and given to a representative of the Cannabis Regulatory Commission. Multiple agenda items cannot be listed on one speaker card. If a speaker signs up to speak on multiple items listed on the agenda, the Chairperson may rule that the speaker be given an appropriate allocation of time to address all issues at one time (cumulative) before the items are called. All speakers will be allotted 3 minutes or less – unless the Chairperson allots additional time.

♿ This meeting is wheelchair accessible. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in the meetings of the Cannabis Regulatory Commission, please contact the Office of the City Clerk (510) 238-3612. Notification two full business days prior to the meeting will enable the City of Oakland to make reasonable arrangements to ensure accessibility. In compliance with Oakland's policy for people with chemical sensitivities, please refrain from wearing strongly scented products to events.

Questions or concerns regarding this agenda, or to review any agenda-related materials, please contact the Cannabis Regulatory Commission at (510) 238-3301.

3. Sanctuary City Policies for Cannabis
4. Cannabis Tax Rates
5. Pending State Cannabis Legislation
6. Moving Time and Date of Regular Cannabis Regulatory Commission Meeting

F. Announcements

G. Adjournment

Cannabis Regulatory Commission

Regular Meeting

Thursday, February 15th, 6:30 p.m.
Council Chambers, City Hall, One Frank H. Ogawa Plaza

MINUTES

Members:

Lanese Martin	District 1	Frank Tucker	District 7
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Jin Jack Shim	District 4	Vacant	City Auditor
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Available on-line at: <http://www.oaklandnet.com/measurez>

MEETING AGENDA

A. Roll Call and Determination of Quorum

Members Present: Martin, Yi, Shim, Hummel, Tucker, Parker, Floyd-Johnson, Minor
Members Not Present: Knox, Johnson

B. Open Forum / Public Comment

Speakers spoke about their concern regarding cannabis operators displacing residents of 5733 San Leandro Street and the broader impact of the cannabis industry on industrial areas and non-cannabis businesses. Office of Councilmember Kaplan offered a proposal that included prohibiting displacement of residential tenants. Former Member Gieringer mentioned pending state legislation re cannabis, including proposals to automatically expunge cannabis convictions and anti-discrimination at work.

C. Review of the Pending List and Additions to Next Month's Agenda

- *Medical cannabis permitting process (since July 2017)*
- *Use of cannabis tax revenues (since July 2017)*
- *Annual report (since September 2017)*
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- *Dispensary applicant runner-ups (since December 2017)*
- *Adjusting meeting time/day (since January 2018)*

Regarding adjusting meeting time/day, staff reported that the Council Chambers was available at 5:00pm on third Thursdays. Chair Hummel expressed his preference at continuing to meet at 6:30pm to maximize public

participation. Members then asked staff to explore whether the room was available on other Thursdays at 6:30pm.

D. Approval of the Draft Minutes from the Cannabis Regulatory Commission meeting of November 2017.

Minutes were approved with no objection.

E. Reports for Discussion and Possible Action

1. Updated 2016 OPD Cannabis Enforcement Data

This item was re-scheduled to the next CRC meeting, however, Member Floyd-Johnson expressed frustration with the lack of context for OPD data included in the agenda packet and Members Shim and Hummel requested that the issue of expungement of cannabis offenses be put on future agenda.

2. Cannabis Donation Programs

Public speakers spoke of the need for ensuring that donation based programs that serve sick individuals or veterans with cannabis continue under the new state regulatory structure. Specifically, speakers advocated for reducing or eliminating any taxes for donation based programs or businesses.

Members Yi, Shim, Parker and Hummell all expressed support for compassion program either through creation of new license type or waiving fees for donation based transactions.

Member Tucker made a motion to recommend that all taxes be waived for compassion programs at all levels of the supply chain. Members Shin, Floyd-Johnson, Tucker and Hummel voted in support. Member Yi voted against and Members Minor and Martin abstained.

Member Yi then made motion to recommend that City Council adopt a new licensing category for compassionate microbusiness. Member Shim seconded the motion. Member Martin expressed uneasiness with the conversation and the possibility of people marketing their business at the expense of the sick. Members Tucker, Martin and Minor abstained; Members Yi, Shim, Hummel, Parker, and Floyd-Johnson voted in support. Member Tucker requested that a representative of the City Attorney's Office attend future meetings.

3. Cannabis Impact on Housing

Public speakers expressed concern regarding cannabis businesses displacing live-work residents at 5733 San Leandro and other industrial locations and encouraged the commission to adopt language from Councilmember Kaplan's recommendation.

Chair Hummel and Member Shim expressed support for avoiding displacement from the cannabis industry.

Member Tucker made motion to support Councilmember Kaplan's recommendation that the City Council prohibit issuance of cannabis permits for facilities that have, are, or will displace residential tenants. Member Floyd-Johnson seconded the motion. Member Yi opposed the motion, Member Minor abstained, all other Members voted in support of the motion.

Member Shim then requested that Councilmember Kaplan's third recommendation regarding creating a review process for alternative locations for cannabis facilities be added to next month's agenda.

4. AB 2020- Special Events

Staff summarized pending state legislation to allow for cannabis special events in urban jurisdictions. Members Parker and Hummel requested information on all other cannabis-related pending state legislation at next month's meeting.

Member Tucker requested that the topic of a cannabis sanctuary city policies be on next month's agenda.

F. Announcements

Vice-Chair Parker announced that she will be leaving the commission in a few months due to a scheduling conflict.

G. Adjournment

CANNABIS REGULATORY COMMISSION

ITEM E (1)



INTER OFFICE MEMORANDUM

TO: Gregory Minor
Assistant to the City Administrator

FROM: Timothy Birch
Police Services Manager I

SUBJECT: Information for Cannabis Commission

DATE: March 12, 2018

This memorandum is responsive to recent questions from the Cannabis Commission concerning the Oakland Police Department and enforcement of cannabis and other laws.

The data provided separately in a spreadsheet includes all marijuana arrests and citations for 2016. As provided in the Citation Summary and Arrest Summary worksheets, there were 508 citations issued and 318 arrests made. The raw data includes the date, time, address where the arrest took place as well as the arrest beat, specific Health and Safety Code, age when arrested, race, and gender.

Concerning arrests and citations on public versus private property, there is, unfortunately, no way for OPD to determine whether the arrest or citation was in a public or private space short of individually reviewing every single report. What may be worth understanding is that any arrest or citation would only take place in a private space if OPD had a legitimate reason to be there – such as in response to a call; exigent circumstances; service of a warrant; etc.

Concerning the Oakland Airport, that is the jurisdiction of the Alameda County Sheriff's Department. OPD does not have statistics for the airport and OPD would not feel comfortable speaking on another jurisdiction.

Concerning the number of DUI arrests for cannabis, there is, unfortunately, no specific Vehicle Code section for being under the influence of cannabis.

Concerning the number of arrests and citations for unpermitted vending in 2016, OPD works with other City of Oakland entities to ensure that unpermitted vendors are provided with information about how to be properly permitted and be a licensed vendor in the City of Oakland. OPD is unaware of any arrests or citations for unpermitted vending in 2016.

There were 341 arrests for being drunk in public (California Penal Code Section 647(f)) in 2016.

Respectfully submitted,

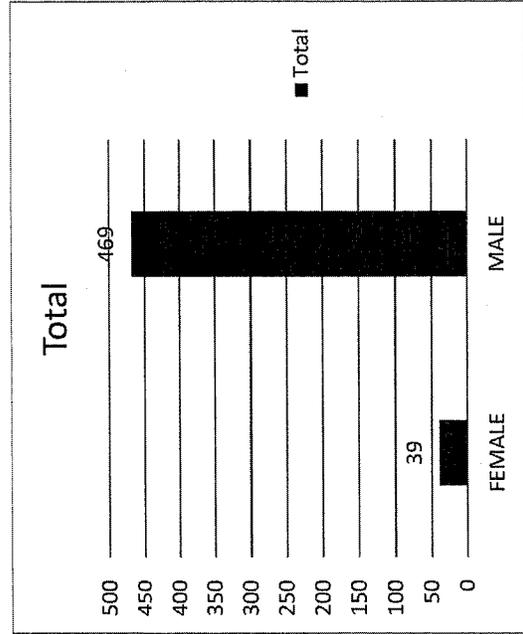
TIMOTHY BIRCH
Police Services Manager I
Research and Planning
Oakland Police Department

Citations

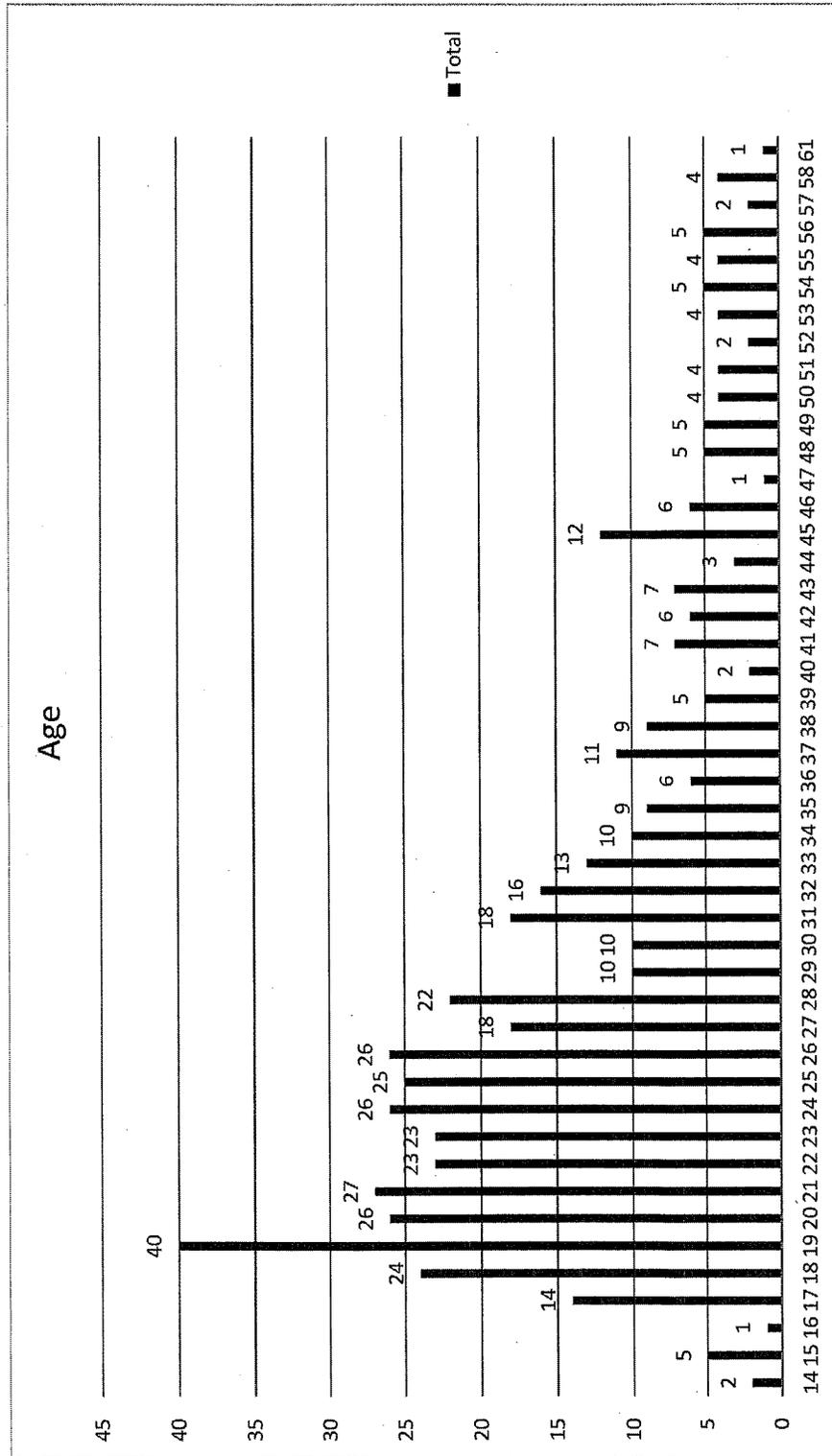
Statute Code	Statute Code Description	Count of Statute Code
HS11357 (A)		34
	POSSESS CONCENTRATED CANNABIS	2
	POSSESS MARIJUANA/HASHISH	32
HS11357 (B)		165
	POSSESS MARIJUANA 28.5 GRAMS OR LESS OR W/PRIOR	165
HS11357 (C)		12
	POSSESS MARIJUANA OVER 28.5 GRAMS	12
HS11357 (E)		2
	MINOR POSSESS MARIJUANA ON GROUNDS DURING SCH ACTIVITIES	2
HS11358		13
	PLANT/CULTIVATE/ETC MARIJUANA/HASHISH	13
HS11359		251
	POSSESS MARIJUANA/HASHISH FOR SALE	251
HS11360 (A)		18
	SELL/FURNISH/ETC MARIJUANA/HASHISH	18
VC23222 (B)		13
	POSS MARIJUANA W/DRIVING	13
Grand Total		508

2016 CANNABIS CITATIONS

Age	Citations
Under 18	22
18-20	90
21-24	99
25-29	101
30-34	67
35-39	40
40-49	54
50+	35
Total	508
Gender	
Male	469
Female	39
total	508



2016 CANNABIS CITATIONS

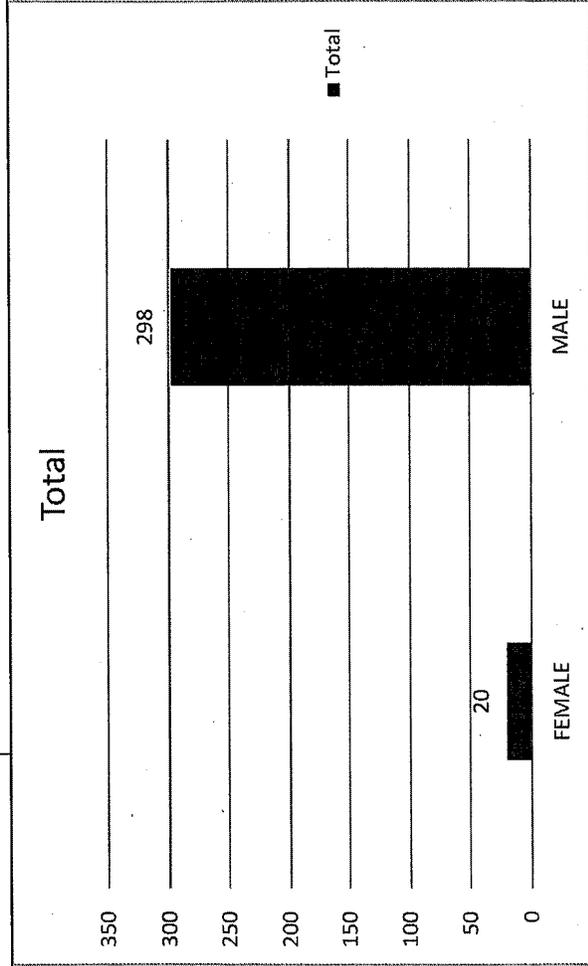


Arrests

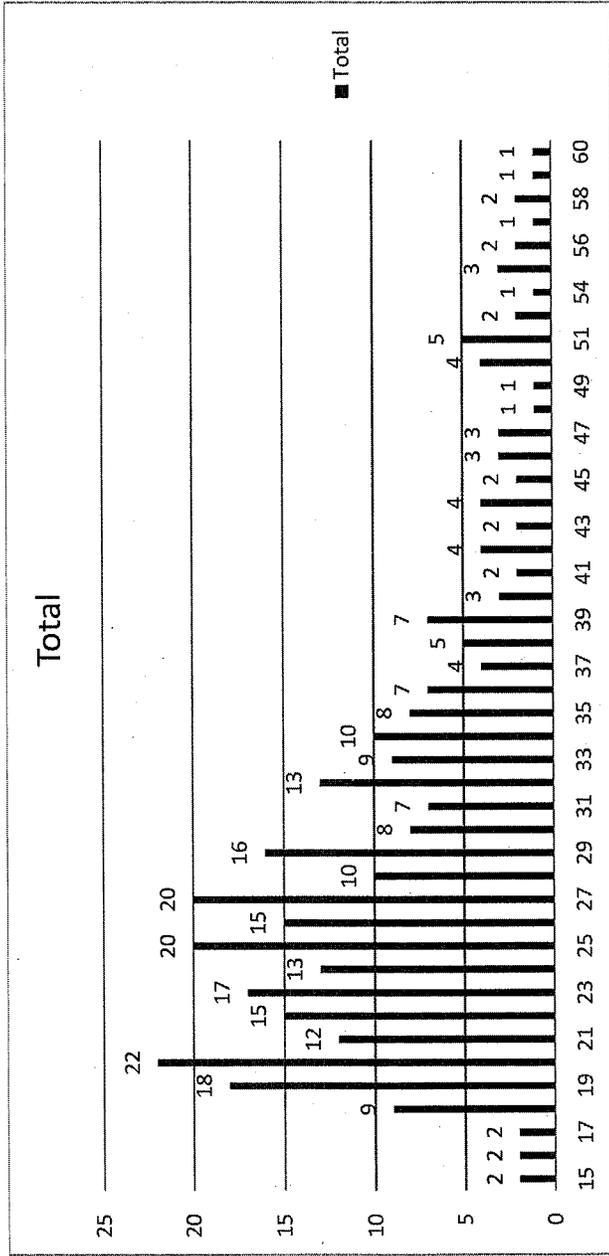
Statute Code	Statute Code Description	Count of Statute Code
HS11357 (A)	POSSESS MARIJUANA/HASHISH	16
HS11357 (B)	POSSESS MARIJUANA 28.5 GRAMS OR LESS OR W/PRIOR	16
HS11357 (C)	POSSESS MARIJUANA OVER 28.5 GRAMS	4
HS11357 (E)	MINOR POSSESS MARIJUANA ON GROUNDS DURING SCH ACTIVITIES	2
HS11358	PLANT/CULTIVATE/ETC MARIJUANA/HASHISH	13
HS11359	POSSESS MARIJUANA/HASHISH FOR SALE	250
HS11360 (A)	SELL/FURNISH/ETC MARIJUANA/HASHISH	17
Grand Total		318

2016 CANNABIS ARRESTS

Age	Citations
Under 18	6
18-20	49
21-24	57
25-29	81
30-34	47
35-39	31
40-49	25
50+	22
total	318
Gender	
Male	298
Female	20
	318



2016 CANNABIS ARRESTS





Department Training Bulletins shall be used to advise members of current police techniques and procedures and shall constitute official policy."

CITY OF OAKLAND'S MEDICAL MARIJUANA LAW ENFORCEMENT POLICY

I. INTRODUCTION

The policy of City Council is to ensure that residents suffering from serious illness should have access to a safe and affordable supply of medical marijuana to alleviate the pain and discomfort of their suffering.

This Training Bulletin establishes Department policy and procedures regarding arrests and investigations involving persons asserting a right to medical marijuana under Proposition 215, the Medical Marijuana Program (MMP) set forth in SB 420, and/or subsequent case law.

II. DEFINITIONS & TERMINOLOGY

- A. **Physician's Recommendation:** A verbal or written statement by a physician in good standing with the California Medical Board indicating that a patient has a serious medical condition and that marijuana would be a beneficial treatment for that condition.¹
- B. **Primary Caregiver:** A person that is both (1) designated by a qualified patient, and (2) "has consistently assumed responsibility for the housing, health, or safety" of the patient.²
Supplying and instructing on the use of marijuana alone do not qualify a person as a primary caregiver. A person may serve as a primary caregiver to "more than one" patient, provided that the patients and caregiver all reside in the same city or county. A primary caregiver may receive compensation for actual expenses, including reasonable compensation for costs incurred in ID card acquisition and marijuana cultivation.³
- C. **Qualified Patient:** A person whose physician has recommended the use of marijuana to treat a serious illness.⁴
- D. **Indicia of Illegal Activity:** Facts and circumstances indicating unlawful marijuana possession or cultivation, including weapons, evasive action, illicit drugs, packaging for sale, and excessive amounts of cash.

¹ H&S § 11362.5(d); *Conant v. Walters* (9th Cir. 2002) 309 F.3d 629, 632; *U.S. v. Oakland Cannabis Buyers Cooperative* (9th Cir. 1999) 190 F.ed 1109, 1113-15.

² H&S § 11362.5(e) and 1362.7(d)(2); *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1395, 1400; *People v. Mentch* (2008) 45 Cal4th 274, 288-89

³ H&S § 11362.765(c)

⁴ H&S § 11362.5(b)(1)(A)



Medical Cannabis, Index Number III-W

- E. **Hashish:** The State of California has defined medical marijuana to include concentrated cannabis (hashish or hashish oil).⁵
- F. **California Medical Cannabis Patient/Caregiver Cards:** A card issued pursuant to a person's voluntarily participation in the state MMP. The card sets forth that the identified person is authorized to use and possess marijuana grown for medical purposes and is issued only after the person has successfully completed the application process. Authorized ID cards have a unique identification number and a verification database is available online (www.calmmp.ca.gov) to confirm its validity. The card contains the name and photograph of the patient or caregiver, a 24-hour verification telephone number, and a one-year expiration date.⁶ Exemplar cards are attached at the end of this Bulletin.
- G. **Medical Marijuana Dispensaries:** Under the authority of OMC 5.80, the City Administrator's Office permits only four (4) medical marijuana dispensaries in Oakland. OMC 5.80.010 defines a "medical cannabis dispensary" as an association, cooperative, affiliation, or collective with four or more qualified patients and/or primary care givers that facilitates or assists in the production, acquisition, and/or distribution of medical marijuana. Confirmation of whether a dispensary is permitted by the City of Oakland may be sought from the Special Activities Permits unit of the City Administrator's Office at (510) 238-6914.⁷ OMC 5.80.030 requires dispensaries to close between 2000 and 0700 hours the next day.

III. APPLICABLE LAWS

- A. **Proposition 215- The Compassionate Use Act of 1996:** Proposition 215 decriminalizes the cultivation and use of marijuana by seriously ill individuals upon a physician's verbal or written recommendation. Proposition 215 became law after the November 5, 1996 election in which voters approved the ballot measure, "To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction."
- B. **Senate Bill 420 – The Medical Marijuana Program Act:** The Medical Marijuana Program Act (MMP) establishes a framework for the furtherance of Prop 215. It requires the California Department of Public Health (DPH) to establish and maintain a program for the *voluntary* registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system.⁸

⁵ Opinion of the Attorney General's Office 03-411

⁶ H&S §§ 11362.735(a), 11362.745

⁷ At the time of this document's completion the four permitted dispensaries are located at 415 4th St. (D.B.A. Purple Heart Patient Center); 1840 Embarcadero (D.B.A. Harborside Center); 701-721 Broadway (D.B.A. Oakland Patient Center); and 377 17th St. (D.B.A. BlueSky Coffeeshop). This list is subject to change at any time. Less than four businesses may be properly permitted at any time.

⁸ H&S §§ 11362.7 - 11362.83



IV. VALIDATING A CLAIM

- A. A valid MMP Card provides a patient/caregiver with immunity to arrest, absent indicia of illegal activity.

Validating a MMP Card: Officers may validate a California Medical Cannabis Patient (or Caregiver) Identification Card issued in California by: checking the expiration date and identity; by calling the telephone number printed on the card; or by accessing DPH's card verification website www.calmmp.ca.gov. Absent indicia of illegal activity, officers *shall not cite or arrest* an individual with a valid ID card and the marijuana shall not be seized or destroyed.

- B. Absent a valid California Medical Marijuana Patient (or Caregiver) Identification Card, officers must decide whether a claim is valid by assessing the totality of the circumstances including the following:

1. Review other forms of documentation presented in support of the claim (e.g., other medical marijuana patient cards or a written recommendation from a physician) to determine the validity of the medical-use claim; OR
2. Consider the person's verbal claim of a physician's recommendation; however, the officer is not obligated to accept the person's verbal claim of a physician's recommendation if it cannot be readily verified.
3. Indicia of illegal activity, defined above, may constitute probable cause for arrest regardless of whether a person presents a medical marijuana claim.

V. DECISION TO CITE/ARREST

- A. If the officer reasonably believes, based on facts known at the time, that the medical-use claim (as a patient or caregiver) is valid, and no indicia of illegal activity are evident, the officer shall not cite or arrest the individual, nor seize or destroy the marijuana.
- B. If the officer reasonably believes, based on facts known at the time, that the medical-use claim (as a patient or caregiver) is NOT valid, the officer may cite or arrest the individual and seize the marijuana only after receiving approval from his/her supervisor or commander.

The officer shall document, in the appropriate offense report, the basis for his/her conclusion, including, but not limited to, the following: the quantity of marijuana; packaging for sale; evasive action; the presence of weapons; illicit drugs; and/or large amounts of cash. If the officer is relying on excessive quantities of marijuana alone to justify an arrest, refer to Possession Guidelines in Section VI.

- C. **Defendants, Probationers, and Parolees:** Criminal defendants and probationers must have the written consent of the court to use medical marijuana while they are released on bail or probation in order to be immune from arrest. Likewise, parolees must have the parole board's written consent stated as a condition of parole authorizing the use of medical marijuana during the period of parole⁹ in order to be immune from arrest. A valid MMP Card and/or physician's recommendation is insufficient alone to provide immunity from arrest of criminal defendants, probationers and parolees.

⁹ H&S § 11362.795



- D. **Search Warrants:** An officer serving a warrant for the seizure of marijuana, presented with a valid medical marijuana claim, shall not arrest the person or seize the marijuana. In lieu of seizure, the officer must record the basic information and/or documentation presented to support the claim and photograph any evidence, if possible. The officer shall prepare the appropriate offense report documenting the search and indicating that marijuana was found, but not seized due to a valid medical marijuana claim. Additionally, the officer shall complete and file the Return of Warrant as required.

VI. POSSESSION GUIDELINES

A. Possession Limits:

The California Supreme Court: On January 21, 2010, the California Supreme Court struck down as unconstitutional limits set forth in the MMP on how much medical marijuana patients can possess and cultivate.¹⁰ Even if a medical claim is valid, state law allows a medical marijuana patient to possess and cultivate only as much marijuana as is “reasonably related” to the patient’s current medical needs. Since there is no bright-line State rule limiting the quantity of medical marijuana a patient may possess or cultivate, officers shall use the City of Oakland guidelines.

City of Oakland Guidelines: Officers shall enforce the Oakland policy which provides that a patient with a valid medical claim is *immune to arrest* so long as there are no indicia of illegal activity and the amount in possession/cultivation is within the following possession limits¹¹:

1. 3 pounds of dried marijuana, **AND**
2. 72 indoor plants in a maximum growing area of 32 square feet, **OR**
3. 20 outdoor plants.

- B. **Possession Limits Exception:** Patients who have a licensed physician’s recommendation that states Oakland’s medical cannabis guidelines do not meet the qualified patient’s medical needs may possess up to the amount of marijuana stated in the recommendation.¹²
- C. **Dried Marijuana:** Only the dried mature processed flowers (or “buds”) of the female cannabis plant should be considered when determining allowable quantities of medical marijuana.¹³
- D. **Hashish:** The State of California has defined medical marijuana to include concentrated cannabis (hashish or hashish oil).¹⁴ In determining whether the amount of concentrated cannabis is lawful, officers should use their sound professional judgment. The DEA’s online guide for law enforcement states that, on average, 1-2 drops of hashish oil on a tobacco cigarette is equivalent in psychoactive effect to one marijuana joint.¹⁵

¹¹ See Memo to Members of City Council from Ignacio De La Fuente dated July 24, 2001 and attached proposed “*City of Oakland’s Medical Cannabis Low Law Enforcement Policy*”

¹² H&S § 11362.77(b)

¹³ H&S § 11362.77(d)

¹⁴ Opinion of the Attorney General's Office 03-411

¹⁵ <http://www.usdoj.gov/dea/pubs/abuse/7-pot.htm#Hashish>



- E. **Caregiver Aggregation:** A Primary Caregiver may possess the amounts specified above for each patient for whom written proof of primary caregiver or medicinal patient status made available to the officer.¹⁶ For example, applying Oakland's possession limits, if a caregiver is responsible for three patients, the caregiver may possess up to nine pounds of dried marijuana (three pounds per patient).
- F. **Collective or Cooperative Aggregation:** The California Attorney General's Office states that collectives and cooperatives may cultivate and transport marijuana in aggregate amounts tied to their membership numbers. Any member exceeding individual possession guidelines must have supporting records readily available when transporting other members' medical marijuana and at any location used for cultivation or distribution. For example, applying Oakland's possession limits, if a cooperative has ten patient members, it may cultivate 720 indoor plants (72 plants per member).

NOTE: Only patients and their caregivers may be members of a collective or a cooperative.

VII. PROPERTY SPECIFIC ENFORCEMENT CONCERNS

- A. **Transportation with valid medical claim:** Limited transportation of medical marijuana is lawful. The present test in establishing whether transport is lawful is whether, "...the quantity transported and the method, timing and distance of the transportation are reasonably related to the patient's current medical needs."¹⁷
- B. **Prohibited Places:** Medical marijuana may not be smoked:
1. Where smoking is prohibited by law;
 2. In or within 1000 feet of a school, recreation center, or youth center (unless the medical use occurs within a residence);
 3. On a school bus; or
 4. In a moving motor vehicle or boat.¹⁸
- C. Chapter 8.30 of the Oakland Municipal Code prohibits smoking in many public areas, including¹⁹:
1. Places of employment;
 2. Dining areas, including unenclosed dining areas;
 3. Service areas (areas used to receive or wait to receive a service, enter a public place, or make a transaction, for example, ATMs, bank teller windows, telephones, ticket lines, bus stops, waiting rooms, and cab stands);
 4. Common areas in any multi-unit housing (unless designated a smoking area by conspicuous signage); and

¹⁶ H&S § 11362.77(a)

¹⁷ *People v. Trippet* (1997) 56 Cal.App.4th 1532, 1551

¹⁸ H&S § 11362.79

¹⁹ H&S § 11362.79



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5. Within 25 feet of any entrance, exit, window, or vent of a building in which smoking is prohibited, except bars.

If any of the violations in Part V, (B or C) above occur, officers may issue a citation for both the OMC Chapter 8.30.110 and H&S Section 11362.79 (both infractions), and also seize the marijuana as evidence.

D. Referrals and Legal Remedies:

1. **Criminal Prosecutions:** In addition to the charges against individuals for buying, selling and possessing marijuana addressed above, charges may be brought against the owner(s) and/or partners of a business that participates in illegal drug activity under theories of criminal conspiracy and racketeering. Attorneys from the Office of the City Attorney (OCA), District Attorney's Office and Drug Enforcement Administration can assist with these cases, depending on the nature of criminal enterprise.
2. **Civil Liability:** The owner of any business or property where marijuana is used, sold, or cultivated for non-medical purposes may be subject to civil liability under the Drug Nuisance Abatement provisions of Health and Safety Code section § 11570. This statute includes residential and commercial operations. Cases may be referred to the OCA for Drug Nuisance Abatement prosecutions.
3. **Administrative Action:** OMC 1.08 authorizes fines against a business or property owner for, "The occurrence of anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances..." Officers may refer complaints regarding unpermitted activity to the Office of the City Administrator.

VIII. RETURN OF SEIZED MARIJUANA

Return of Marijuana: A person whose marijuana is seized by law enforcement may be entitled, pursuant to a court order, to the return of their seized marijuana.²⁰ Notably, state law enforcement officers who handle controlled substances in the course of their official duties are immune from liability under the Controlled Substances Act.²¹

²⁰ *City of Garden Grove v. Superior Court*, (2007) 157 Cal.App.4th 355, 386 - 391

²¹ 21 U.S.C. § 885(d)



**ID CARD EXEMPLAR 1
VALIDATION OF PRIMARY CAREGIVER STATUS**

The following are only examples of what identification cards may look like.

**California Medical Cannabis Caregiver
Identification Card**



Date of Expiration:
2002-10-16

Michael L. Cook
Oakland 94612

ISSUED: 2001-11-15

To verify Caregiver status visit:
<https://verify.rxcbc.org>

Caregiver #473

W. Cook

Validation of Caregiver Status

This certifies that on file with the undersigned agent of the Patient ID Center is a signed and verified Primary Caregiver Certification by a Physician, licensed by the California Medical Board for the Caregiver identified on the reverse side, who having satisfied all conditions of caregiver status and is recognized as a caregiver in good standing of the

Patient ID Center
with all benefits and subject to all conditions that it has established in accordance with its rules and Protocols. This allows him/her to cultivate, manufacture, produce and transport medical cannabis products.

Caregiver Verification
<https://verify.rxcbc.org>
Daytime office number (323)952-1030
24 Hr Emergency voicemail/pager service (for Law Enforcement use only)
1-888-940-1260

Jeffrey W. Jones
Jeffrey W. Jones
Executive Director



**ID CARD EXEMPLAR 2
PATIENT CERTIFIED BY PHYSICIAN**

**California Medical Cannabis Patient
Identification Card**



Date of Expiration:

2004-10-07

**Michael L. Cook
San Francisco 94102**

ISSUED: 2003-10-18

To verify patient status visit:
<https://verify.rxcbc.org>

Member # 473



Validation of Patient Status

This certifies that on file with the undersigned agent of the Patient ID Center is a signed and verified statement of a Physician, licensed by the California Medical Board recommending or approving medical cannabis therapy for the patient identified on the reverse side, who having satisfied all conditions of patient status and is recognized as a Member in good standing of the

Patient ID Center

with all benefits and subject to all conditions that it has established in accordance with its rules and Protocols. This allows him/her to use, cultivate, manufacture, produce and transport medical cannabis products.

Patient Verification

<https://verify.rxcbc.org>

Daytime Office number (424) 852-4030

24 hr Emergency voicemail pager
service (for Law Enforcement use only)
1-800-340-1260

Jeffrey W. Jones
Executive Director

CANNABIS REGULATORY COMMISSION

ITEM E (2)

2018 FEB -2 AM 9:35 |



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 oversaturation, 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.
- J. "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: _____

CANNABIS REGULATORY COMMISSION

ITEM E (3)

- D. The permit shall be subject to suspension or revocation in accordance with Section 5.80.070, and the owner/operator shall be liable for excessive police costs related to enforcement.
- E. The application fee and annual fee for the onsite consumption permit shall be specified in the City's Master Fee Schedule.
- F. All onsite consumption 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 cannabis business shall ever inure to the benefit of such permit holder as such permits are revocable at any time with our without cause by the City Administrator subject to Section 5.80.070.

5.80.030 - Regulations

The City Administrator shall establish administrative regulations for the permitting of dispensaries, delivery only dispensaries, and onsite consumption, and may set further standards for such operations and activities through administrative guidance and formal regulations. In order to maintain a dispensary or delivery only dispensary permit in good standing, each dispensary and delivery only dispensary must meet all the operating criteria for the dispensing of medical-marijuana cannabis required pursuant to State law, the City Administrator's administrative regulations, and this Chapter.

5.80.035 – Prohibition on Disclosing Applicant Information with the Federal Government

The City of Oakland shall not disclose any Applicant information to the federal government unless disclosure of such information is required by law including but not limited to a warrant, subpoena, or Court order. In addition, the City shall comply with the California Public Records Act (Government Code Section 5250 et seq.) and the City of Oakland's Sunshine Ordinance (Oakland Municipal Code Section 2.20.180 et seq.) and will protect privacy and safety to the extent permitted by law.

5.80.040 - Performance and operating standards

The City Administrator shall develop and implement performance and operating standards consistent with those set forth in Ordinance No. 12585 in the Office of the City Administrator Guidelines and shall modify such Guidelines from time to time as required by applicable law and consistent with public health, welfare and safety. Noncompliance of such operating standards shall constitute a breach of the permit issued hereunder and may render such permit suspended or revoked based upon the City Administrator's determination.

The following performance standards shall be included in the City Administrative regulations:

- A. No cannabis shall be smoked inside the premises of the dispensary.

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.

5.81.035 – Prohibition on Disclosing Applicant Information with the Federal Government

The City of Oakland shall not disclose any Applicant information to the federal government unless disclosure of such information is required by law including but not limited to a warrant, subpoena, or Court order. In addition, the City shall comply with the California Public Records Act (Government Code Section 5250 et seq.) and the City of Oakland’s Sunshine Ordinance (Oakland Municipal Code Section 2.20.180 et seq.) and will protect privacy and safety to the extent permitted by law.

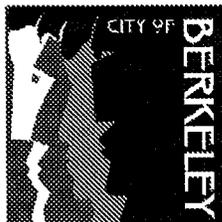
5.81.040 - Cultivation, distribution, testing and transporting of cannabis medical marijuana

- A. Proposed cultivation, distribution, testing or transporting locations shall be in areas where "light manufacturing industrial," "research and development," 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.

5.81.045 - Manufacturing of cannabis medical marijuana

- A. Proposed locations for manufacturing of medical cannabis products using nonvolatile solvents shall be in areas where "custom manufacturing industrial," or its equivalent use, is permitted by right under the Oakland Planning Code, as may be amended, or in 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 commercial zones where commercial kitchens are allowed.



Office of the Mayor

CONSENT CALENDAR

February 13, 2018

To: Members of the City Council

From: Mayor Jesse Arreguin, Councilmember Ben Bartlett and
Councilmember Cheryl Davila

Subject: Declaring Berkeley a Sanctuary for Adult-Use Cannabis Customers,
Providers, and Landlords

RECOMMENDATION

Adopt a Resolution declaring that Berkeley will be a sanctuary for adult-use cannabis customers, businesses, providers, and landlords, specifying procedures regarding staff interaction with the Drug Enforcement Administration related to the enforcement of federal drug laws.

BACKGROUND

The residents of Berkeley have a long commitment to reforming marijuana laws. In 1979, voters passed the Berkeley Marijuana Initiative, which recognized negative impact of prosecuting marijuana users, called for the city government to support all efforts towards the reform of marijuana laws, and directed the Berkeley Police Department to give the lowest priority to the enforcement of marijuana laws.

In 2008, the City Council adopted Resolution No. 63,966-N.S., declaring the City of Berkeley a sanctuary for medical cannabis patients and providers, and opposing attempts by the U.S. Drug Enforcement Administration (DEA) to close medical marijuana dispensaries. Most recently, in 2016, 83% of Berkeley voters and 57% of Californians voted in favor of Proposition 64, a statewide ballot initiative to legalize adult recreational cannabis for persons over 21 years old.

The federal government continues to classify marijuana as a Schedule I drug under the Controlled Substances Act, and therefore does not recognize medical or recreational marijuana. However, in 2011, as national and statewide momentum for cannabis legalization was growing, the Department of Justice issued guidance for federal prosecutors in what became known as the "Cole Memo", named after the authoring attorney. The memo delivered some legal clarity as to the federal government's priorities, which were primarily to prevent cartel activity and sales to minors. Additionally, it stated that marijuana enforcement and regulation should be left to state and local law enforcement.

In January 2018, U.S. Attorney General Jeff Sessions disseminated a memorandum titled "Marijuana Enforcement" rescinding these guidelines. Without guidelines as to how the federal government will or will not engage with cannabis related businesses, there is increased confusion about the legal risk of entering the newly regulated market in the state of California. Marijuana is currently legal in some form in 28 states and the District of Columbia. Therefore, this action by the Department of Justice represents an attack on cities where legal, safe sale and use occurs, and the majority of states where voters have made their voices heard loud and clear.

Increased federal enforcement of marijuana will have serious social and economic consequences. Uncertainty about potential enforcement and or enforcement itself may force established medical and adult-use cannabis-related businesses to close or move underground, which could impede the development of the newly regulated market and threaten public safety. Economically, with California expected to generate \$1 Billion in tax revenue and Berkeley estimated to generate \$3 million dollars annually, the impacts of enforcement could be massive. The cannabis economy is also generating hundreds, if not thousands, of well-paying jobs with benefits that would be threatened by increased federal enforcement.

Legalizing marijuana is widely considered an important social justice issue. Millions of peaceful Americans have been fined, arrested, imprisoned, or otherwise needlessly criminalized and stigmatized, sometimes for life, because of their use of marijuana. This "War on Drugs", initiated by President Richard Nixon in the 1970s, has cost over \$1 trillion dollars and turned the United States into a nation of mass incarceration — imprisoning 2 million American citizens, which represents the highest incarceration rate of any nation on Earth and 25% of the world's prisoners. Worse, the enforcement of marijuana and other drug laws has had a disproportionate impact on people of color. Despite white and black people using marijuana at equal rates, a black person is nearly four times as likely to be arrested for marijuana possession.

For twenty years the City of Berkeley has permitted medical cannabis dispensaries, authorized under state Proposition 215 and local law, to safely deliver medicine to patients. This activity has not had a negative impact on the surrounding community or resulted in any increases in crime. Additionally, the City of Berkeley staff and local cannabis businesses have been working hard to improve on the already robust regulations in place for medicinal cannabis, in preparation for the introduction of adult-use cannabis. In June 2017, Governor Brown signed SB94 the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). This bill is the foundation for the state's regulatory and enforcement framework for the burgeoning legal cannabis industry.

This item reiterates Berkeley's strong position in favor of marijuana reform and legalization, preventing any of the city government's resources or staff to assist in the federal enforcement of drug laws related to cannabis.

FINANCIAL IMPLICATIONS

None. Federal enforcement could have serious negative impacts in local tax revenues.

ENVIRONMENTAL SUSTAINABILITY

A regulated cannabis industry means cannabis cultivation will require stricter controls on energy use, chemical and pesticide application, and water consumption, all of which contribute to a healthier and more sustainable environmental impact than an underground cannabis economy that will persist despite federal enforcement.

CONTACT PERSONS

Mayor Jesse Arreguin	(510) 981-7100
Ben Bartlett, Councilmember, District 3	(510) 981-7130

Attachment:

1. Resolution

RESOLUTION NO. ##,###- N.S.

DECLARING THE CITY OF BERKELEY AS A SANCTUARY FOR RECREATIONAL CANNABIS AND OPPOSING ATTEMPTS BY THE U.S DRUG ENFORCEMENT ADMINISTRATION TO CLOSE CANNABIS BUSINESSES

WHEREAS, since the adoption of the Berkeley Marijuana Initiative by voters in 1979, Berkeley has recognized the harmful impacts of prosecuting marijuana users, instructs the city government to support all efforts towards the reform of marijuana laws, and directs the Berkeley Police Department to give the lowest priority to the enforcement of marijuana laws; and

WHEREAS, the federal government continues to classify all forms of cannabis as Schedule I under the federal Controlled Substances Act, and therefore does not recognize medical or recreational marijuana; and

WHEREAS, Resolution No. 63,966-N.S. adopted in 2008, declares the City of Berkeley as a sanctuary for medicinal cannabis and opposes attempts by the U.S. Drug Enforcement Administration to Close Medical Marijuana Dispensaries; and

WHEREAS, legalizing marijuana is an important social justice issue; and

WHEREAS, millions of peaceful Americans have been fined, arrested, imprisoned, or otherwise needlessly criminalized and stigmatized, potentially for life, because of their use of marijuana; and

WHEREAS, over \$1 trillion dollars has been spent enforcing drug laws, including those pertaining to marijuana, since the War on Drugs was initiated by President Richard Nixon in the 1970s; and

WHEREAS, because of aggressive enforcement of drug laws, including marijuana laws, the United States has become a nation of mass incarceration – imprisoning 2 million American citizens which represents the highest imprisonment rate of any nation on Earth, representing 25% the world's prisoners; and

WHEREAS, the enforcement of marijuana and other drug laws has had a disproportionate impact on communities of color– evidenced by the fact comparable usage by whites and Blacks, a Black person is four times as likely to be arrested for marijuana possession than a white person; and

WHEREAS, an April 2, 2014, Pew Research Center poll found that 75% of Americans believe the use and sale of marijuana will eventually be legal in the United States nationwide; and

WHEREAS, in November 2016, 57% of California voters and 83% of Berkeley voters voted in favor of Prop 64 to legalize adult recreational cannabis for persons over 21 years old; and

WHEREAS, Prop 64 includes an important provision for anyone who has been or currently is imprisoned, on probation, or on parole to apply for resentencing or redesignation – a small but important step in reducing the unjust and unequal impact of decades of harmful and costly marijuana laws and prosecution; and

WHEREAS, in 2011, when national and statewide momentum for cannabis legalization was growing, the Department of Justice issued guidance for federal prosecutors widely known as the “Cole Memo” that outlined both the Department’s enforcement priorities and that state and local law enforcement and regulation should “remain the primary means of addressing marijuana-related activity” when there is a strong and effective regulatory and enforcement system in place; and

WHEREAS, for 20 years, the City of Berkeley has permitted medical cannabis dispensaries, authorized under state Proposition 215 and local law, to safely delivered medicine to patients. These established businesses have not had a negative impact on the surrounding community or resulted in any increase in crime; and

WHEREAS, the City of Berkeley staff and local cannabis businesses have been working diligently since the passage of Proposition 64 to build upon the City’s robust regulatory and enforcement system for medicinal cannabis in preparation for statewide legal adult-use cannabis, a system that is designed to explicitly address the concerns in the Cole memo; and

WHEREAS, in June 2017 Governor Brown signed SB94 the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), wherein the State of California formally recognized adult-use cannabis cultivators, testing laboratories, distributors and retailers (dispensaries), as legally taxable entities; and

WHEREAS, as a result of Prop 64 and MAUCRSA the State of California could potentially generate \$1 Billion annually in tax revenue and \$100 million in savings; and

WHEREAS, the City of Berkeley will also generate significant tax revenue locally, with estimates of up to \$3 million dollars annually; and

WHEREAS, in January 2018, U.S. Attorney General Jeff Sessions presented a Memorandum on Marijuana Enforcement which rescinded previous guidelines, including those established by the Cole Memo, increasing confusion about the legal risk of cannabis-related activity in the State of California; and

WHEREAS, because marijuana is currently legal in some form in 28 states and the District of Columbia, this action represents an attack on cities where legal, safe, and

highly regulated recreational sale and use occurs, and the majority of states where the voters have made their voices heard; and

WHEREAS, prior activities of the Drug Enforcement Administration to shut down medical marijuana dispensaries and collectives by targeting their landlords and seizing their landlord's properties will have serious consequences if they are repeated and targeted at either the medical or adult-use cannabis industry; and

WHEREAS, increased federal enforcement may force established medical and adult-use cannabis-related businesses to close or move underground, impeding the development of a newly regulated market, and threatening public safety; and

WHEREAS, the economic impact to cities and the statewide economy would be significant with hundreds of existing workers statewide will lose well-paying jobs with benefits and the state and City of Berkeley will lose significant amounts of tax revenue; and

WHEREAS, it is fundamental that the City of Berkeley take a strong stance against threats by the Trump Administration to interfere with the right of the State of California to tax and regulate cannabis, and protect our patients and local economy.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley is declared to be a sanctuary for recreational cannabis customers, providers, and landlords.

BE IT FURTHER RESOLVED that no department, agency, commission, officer or employee of the City of Berkeley shall use any City funds or resources to assist in the enforcement of Federal drug laws related to cannabis.

BE IT FURTHER RESOLVED that the City of Berkeley does not support cooperation with the Drug Enforcement Administration in its efforts to undermine state and local marijuana laws, and further calls upon the Berkeley Police Department, the District Attorney for the County of Alameda, the Alameda County Sheriff's Department, and the Attorney General of the State of California to uphold the laws of the State, and specifically to not assist in the harassment, arrest or prosecution of cannabis landlords, owners, cultivators, distributors, retailers, laboratory testers, or customers who are licensed and attempting to comply with MAUCRSA and local laws and regulations.

BE IT FURTHER RESOLVED that the City Attorney shall transmit copies of this Resolution to the California Attorney General, the Governor of California, and to Senators Dianne Feinstein and Kamala Harris and U.S. Representative Barbara Lee.

CANNABIS REGULATORY COMMISSION

ITEM E (4)

5.04.480 - Medical cannabis businesses.

For the purposes of this section:

- A. "Medical Cannabis Business" means any activity regulated or permitted by Chapter 5.80 and/or Chapter 5.81 of this Code that involves planting, cultivating, harvesting, transporting, dispensing, delivering, selling at retail or wholesale, manufacturing, compounding, converting, processing, preparing, storing, packaging, or testing any part of the plant *Cannabis sativa* L. or any of its derivatives, pursuant to Health and Safety Code Sections 11362.5 and 11362.7-11362.83.
- B. Every person engaged in a "medical cannabis business" not otherwise specifically taxed by other business tax provisions of this chapter, shall pay a business tax of \$50.00 for each \$1,000.00 of gross receipts or fractional part thereof.

(Res. No. 82949, § 2, 7-26-2010; Res. No. 81925, § 2, 4-21-2009)

Editor's note— Res. No. 82949, § 2, adopted July 26, 2010, changed the title of Section 5.04.480 from "Cannabis" to "Medical cannabis businesses." The historical notation has been preserved for reference purposes.

5.04.481 - Non-medical cannabis businesses.

For the purpose of this section:

- A. "Non-medical cannabis business" means any of the activities described in Subsection 5.04.480 A. that are not conducted pursuant to Health and Safety Code Sections 11362.5 and 11362.7-11362.83, but are otherwise authorized by State law.
- B. Every person engaged in a "non-medical cannabis business" not otherwise specifically taxed by other business tax provisions of this chapter, shall pay a business tax of \$100.00 for each \$1,000.00 of gross receipts or fractional part thereof.

(Res. No. 82949, § 2, 7-26-2010)



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AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Katano Kasaine
Finance Director

SUBJECT: Cannabis Business Tax
Policy Analysis

DATE: February 1, 2018

City Administrator Approval

Date:

2/15/18

RECOMMENDATIONS

Staff Recommends That The City Council Receive An Informational Report On Cannabis Tax Policy To Maximize City Tax Revenue, Economic Growth, And Jobs.

EXECUTIVE SUMMARY

This Cannabis Business Tax Policy Analysis, requested by Council President Larry Reid and directed by the Rules and Legislation Committee on November 2, 2017, is to provide the City Council an in-depth look at the application of the business tax on cannabis businesses, the challenges associated with the tax policy for the administration and for the businesses, and the options in addressing these challenges, with an eye kept on the overall mission of any tax policy, which is generating revenue to support the community's needs and helping in the formation and the growth of entrepreneurship.

This tax policy analysis is drawn upon the work done 1) by Marijuana Policy Group ("MPG"), whose July 13, 2017 tax policy paper titled Oakland Cannabis Cultivation and Manufacturing Market Share (Attachment A), was prepared for the organization called Oakland Citizens for Equity and Prosperity¹; 2) by the University of the Pacific ("UOP"), Center for Business & Policy Research, whose October 17, 2016 Economic Impact Study of the Cannabis Sector in the Greater Sacramento (Attachment B), was prepared for the Truth Enterprises, Inc.²; and 3) from the City Finance Department, Revenue Management Bureau ("RMB") staff's experience in working with the local cannabis businesses, perhaps the most experienced and the most successful group of cannabis businesses in the state, collectively.

The City of Oakland has always been on the cutting edge of cannabis policy. The Cannabis Business Tax Policy Analysis is intended to establish a decision-making framework for the Oakland City Council to evaluate and decide the appropriate tax policy related to the Cannabis Business Tax authorized under the Oakland Municipal Code Chapter 5.04. Based on analysis, the following are possible policy options for the City Council's consideration:

1. Option 1: Keep existing tax rates as they currently are at 5% and 10% of gross receipts on cannabis businesses, including specialized segments of the industry, such as cultivators,

¹ RMB could not verify the existence of this organization through official records, such as the office of the California Secretary of State and the Alameda County Clerk's Recorder Office.

² Corporate Status: Suspended

manufacturers, and transportation paying both rates. Administratively, staff has already identified a reasonable approach as to which tax rates specialized cannabis businesses, such as cannabis cultivators and manufacturers need to pay annually (see page 9, *Application of Oakland Cannabis Business Tax on Cannabis Businesses Other Than Dispensaries*).

2. Option 2: Return to voters seeking approval to authorize the City Council the flexibility in setting the tax rates, as they are currently set at 5% and 10%, and the ability to promulgate and adopt tax rules and regulations, such as the frequency of tax reporting and tax payment requirements, that are intended to apply to the cannabis industry without impacting other industries.
3. Option 3: Return to voters seeking approval to authorize the City to repeal and replace the existing tax rates with the new set of tax rates as follows:
 - a. A tax rate up to a maximum of 5% applicable to medical cannabis businesses dispensing cannabis to medically-needed patients with proper state identifications
 - b. A tax rate up to a maximum of 10% applicable to non-medical cannabis businesses dispensing cannabis to adults 21 and older for non-medically needed purposes
 - c. A tax rate of minimum two dollars (\$2) to a maximum of five dollars (\$5) per ounce of cannabis produced, weighed and distributed to the cannabis retailer/dispensary applicable to cannabis cultivators
 - d. A tax rate of a minimum 3% to a maximum of 7% of gross receipts applicable to cannabis manufacturers and for cannabis transport businesses.

BACKGROUND / LEGISLATIVE HISTORY

In July 2009, Oakland voters approved Measure F making Oakland the first City in the nation to impose a tax on medical cannabis businesses. The tax rate was at \$18 per \$1,000, or 1.8 percent, of gross receipts. The City had four approved medical cannabis dispensary businesses at the time.

In November 2010, Oakland voters approved Measure V increasing the tax rate on medical cannabis businesses from 1.8% to five percent (5%) and creating a new tax rate of 10 percent (10%) of gross receipts on non-medical cannabis businesses, referred to as adult-use or recreational. The additional 10 percent adult-use tax rate was put forth in anticipation of Proposition 19 being passed in the same election. Proposition 19 failed at the ballot box. As a result, Oakland never implemented the adult-use tax rate. Oakland's adult-use tax rate became effective for the first-time January 1, 2018 following the passage of Proposition 64 statewide in November 2016. In 2010, the City also approved four additional dispensaries, making the total of eight approved dispensaries in the city since. This year, the City is slated to approve eight additional dispensaries and unlimited number of cultivation, manufacturing, distribution, delivery or lab-testing operations, as long as certain requirements are met. On January 31, 2018, the City selected the winners of the eight additional dispensaries. Currently less than 30 percent of cities and counties in California are allowing cannabis business and, of those who are, not all are allowing all aspects of the supply chain. Always on the forefront of the cannabis industry, Oakland is one of the few cities that allows the industry to operate from seed to sale.

The passage of Proposition 64 created two new State cannabis taxes³:

1. A 15 percent excise tax imposed upon the purchasers of cannabis and cannabis products.
2. A cultivation tax imposed upon cannabis cultivators on all harvested cannabis that enters the commercial market. The cultivation tax is:
 - \$9.25 per dry-weight ounce of cannabis flowers that enter the commercial market,
 - \$2.75 per dry-weight ounce of cannabis leaves that enter the commercial market, and
 - \$1.29 per ounce of fresh cannabis plant⁴.

Under Proposition 64 and other legislation, a current system of dual licensure became effective this year. The entire supply chain must be licensed, including cultivation, manufacturing, distribution and transportation, laboratory testing, and retail. State law requires businesses to obtain authorization from the local authority where the business is located prior to obtaining a license from the state. There are three different licensing authorities at the State level:

1. Department of Food and Agriculture, licensing nurseries, cultivation and processing.
2. Department of Public Health- Office of Manufactured Cannabis Safety, including extraction, infusion, packaging or repackaging of cannabis products, and labeling or relabeling of the packages of cannabis products.
3. Department of Consumer Affairs, Bureau of Cannabis Control, covering retailers, distributors, distributor transport, testing laboratories and micro businesses.

The California Department of Taxes and Fee Administration ("CDFTA"), formerly the Board of Equalization, is responsible for collecting the excise taxes from businesses that cultivate, manufacture, distribute, and sell cannabis in California. In the City of Oakland, the City Administrator's office handles the City's cannabis regulatory program and all related application, licensing, permitting and renewal processes. The City Finance Department's Revenue Management Bureau handles the rules, regulations and collection of cannabis business tax annually.

MPG Tax Policy Paper⁵

As the title indicates, the MPG's Oakland Cannabis Cultivation and Manufacturing Market Share Tax Policy Paper focused on the cultivation and manufacturing segments of the cannabis industry because these segments "are the foundation of the industry." MPG estimated that these segments in California "could produce \$4.2 billion in total direct and indirect economic activity and 36,000 jobs, retail not included." Because these segments are the foundation of the industry, MPG concluded that 1) "if Oakland hopes to capture a significant portion of the local and regional market - and the associated benefits - the City will need to adopt policies that are more attractive to cultivation and manufacturing businesses than those in competing jurisdictions," and 2) "lower tax rates provide a significant incentive to businesses that hope to compete on price in a large and competitive market for wholesale cannabis products."

³ Taxes will be adjusted for inflation starting in 2020

⁴ To qualify for the "fresh plant" category, the unprocessed cannabis must be weighed within two hours of harvesting

⁵ Prepared for the Oakland Citizens for Equity and Prosperity

UOP Economic Impact Study⁶

The UOP Economic Impact Study, completed prior to the passage of Proposition 64, focused on the potential economic impact of the legal cannabis sector in the Greater Sacramento Area⁷. The study laid out three scenarios: 1) the cannabis industry is limited and tightly controlled ("Limited scenario"), 2) the cannabis industry primarily serves regional demand ("Local scenario"), and 3) the cannabis industry exports a significant amount of cannabis products to other areas in the state ("Cluster scenario").

Under the Limited scenario where cannabis is mostly imported from other parts of the state, the study estimated that the cannabis industry in the Greater Sacramento Area under the Limited scenario would produce about 1,600 up to 1,900 local jobs and have an output between \$322 and \$386 million.

Under the Local scenario where cannabis is produced enough to support the local demand, the study estimated that the cannabis industry in the Greater Sacramento Area would produce about 8,000 to 9,200 local jobs and have an output of \$1.6 to \$1.9 billion.

Under the Cluster scenario where cannabis is not only produced enough to support the local demand but also exported to other parts of the state, the study estimated that the cannabis industry in the Greater Sacramento Area would produce about 17,000 to nearly 20,000 jobs and have an output of \$3.5 to \$4.2 billion.

ANALYSIS

What Do These Studies Mean For Cannabis Businesses In Oakland?

A basic principle of economies that lowering taxes and having less regulatory restriction will attract businesses, jobs and therefore will increase output (as in the income for the businesses, citizenry and additional revenue for the government), could accurately apply to all cities, states and countries around the world. For the cannabis industry, as Federally uncertain as the cannabis industry, it is the level of tolerance and acceptance by the residents and, by extension, their elected officials that is the cornerstone of either helping the industry thrive, or making it too restrictive or expensive for the industry to make a profit, thereby preventing it from flourishing. Oakland residents and elected officials have consistently and wholeheartedly supported the cannabis industry ever since the passage of Compassionate Use Act in 1996.

Furthermore, the cannabis market, particularly regarding adult-use of cannabis, is still very much in its infancy. In fact, in California, it is one month old. As such, it limits the confidence in relying on the data assumed and compiled for another area and applied to a larger area, such as the Bay Area with a combined population that is three times (~7.5 million vs. ~2.5 million) the size of the Greater Sacramento Area. In addition, the composition of these areas is very much different. Bay Area is densely populated with little open space to allow a concentrated area for cannabis cultivation and manufacturing while the Greater Sacramento is still growing.

⁶ Prepared for Truth Enterprise Inc.

⁷ Greater Sacramento area is composed of eight counties (Douglas, El Dorado, Nevada, Placer, Sacramento, Sutter, Yolo & Yuba). The area has a population of about 2.5 million.

The implementation and the application of Oakland's adult-use tax rate of 10% has already generated a good share of inquiries from residents, business owners, attorneys representing business owners and the members of the Oakland City Council. The addition of State's excise tax and the latest directive from the CDFTA regarding the computation of State's sales tax have also contributed to these inquiries.

What Is The Main Objective Of Oakland Cannabis Business Tax Policy?

As with any tax program, whether the basis for the tax is on the physical goods, in-person services, gross receipts, income, or otherwise, the main objective is to fund the government to address the highest priorities that the community needs, whether ensuring the safety of the public, educating children and adults about diseases, healthy food or drink choices, improving streets, upgrading public facilities, etc. The Oakland's Cannabis Business Tax is to support all those priorities but also address the impacts of cannabis industry and to encourage the industry to operate legally and not in the unregulated market.

Who Are Oakland's Competitors?

Currently, less than 30 percent of cities and counties in California are allowing cannabis business (not limited to personal indoor grow). The listing below consists of jurisdictions that authorized cannabis business-related activities as of January 1, 2018. If a jurisdiction is not listed, cannabis business-related activity is not authorized. Jurisdictions, marked with an asterisk (*) in the list, are either in the process of evaluating and creating a regulatory or tax program for cannabis business-related activity.

Jurisdiction	JURISDICTIONS WITH APPROVED CANNABIS BUSINESS-RELATED ACTIVITIES ⁸																					
	Medical-Use (as of January 1, 2018)					Adult-Use (as of January 1, 2018)																
	Home Grown		Commercial Grown		Distribution	Manufacturing	Sales	Testing	Home Grown		Commercial Grown											
Indoor	Outdoor	Indoor	Outdoor	Indoor					Outdoor	Indoor	Outdoor											
<u>ALAMEDA COUNTY</u>																						
Alameda (*)	X				X	X	X															
Berkeley	X				X	X	X														X	
Hayward	X	X		X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	
Oakland	X	X		X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	
San Leandro	X	X		X	X	X	X														X	
<u>CONTRA COSTA COUNTY</u>																						
Richmond	X			X	X	X	X														X	
<u>SAN FRANCISCO COUNTY</u>																						
San Francisco (*)	X	X		X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	
<u>SANTA CLARA COUNTY</u>																						
Palo Alto ⁹	X	X																				X
San Jose	X			X	X	X	X					X	X	X	X	X	X	X	X	X	X	X
<u>SAN MATEO COUNTY</u>																						
Brisbane	X	X			X	X	X														X	X
Pacifica	X	X			X	X	X														X	X
Portola Valley	X	X		X			X														X	X
San Carlos	X	X		X	X	X	X					X	X	X	X	X	X	X	X	X	X	X
<u>NOTABLE JURISDICTIONS</u>																						
Los Angeles	X	X		X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X
Sacramento	X			X	X	X	X					X	X	X	X	X	X	X	X	X	X	X

⁸ For the purpose of showing cannabis business-related activities, jurisdictions with laws authorizing home-grow of cannabis for personal use are purposely left out

⁹ City of Palo Alto's Ordinance No. 5419 adopted in November 2017 authorized only the delivery of cannabis from a business located outside of the city of Palo Alto.

JURISDICTIONS WITH APPROVED CANNABIS BUSINESS-RELATED ACTIVITIES ³																
Jurisdiction	Medical-Use (as of January 1, 2018)						Adult-Use (as of January 1, 2018)									
	Home Grown		Commercial Grown		Testing	Sales	Manufacturing	Distribution	Home Grown		Commercial Grown		Testing	Sales	Manufacturing	Distribution
	Indoor	Outdoor	Indoor	Outdoor					Indoor	Outdoor	Indoor	Outdoor				
Santa Rosa	X			X		X	X	X					X	X		X
San Diego	X		X	X		X	X	X					X	X		X

What Are The Tax Rates In Jurisdictions That Allow Sales Of Cannabis?

Jurisdiction	No. of Authorized Dispensaries	Retail Medical	Retail Adult-Use	Cultivation	Manufacturing	Delivery	Testing
Berkeley	6	2.5%	10%	N/A	N/A	N/A	N/A
Hayward ¹⁰	3	Up to 15%	Up to 15%	Up to 15%	Up to 15%	Up to 15%	Up to 15%
Los Angeles ¹¹	98 ¹²	5%	10%	2%	2%	1%	1%
Oakland	8	5%	10%	5% & 10%	5% & 10%	5% & 10%	5% & 10%
Richmond	3	5%	5%	5%	5%	5%	5%
Sacramento	30 ¹³	4%	4%	4%	4%	4%	4%
San Diego ¹⁴	36	5%	5%	5%	5%	5%	5%
San Jose	16	10%	10%	10%	10%	10%	10%
San Leandro ¹⁵	3	Up to 10%	Up to 10%	Up to 10%	Up to 10%	Up to 10%	Up to 10%
Santa Rosa ¹⁶	32 ¹⁷	0%	3%	2%	1%	N/A	N/A

While the City and County San Francisco authorizes the operating of cannabis business, it “does not currently tax cannabis beyond the standard sales tax. Local officials and members of the public are beginning to convene to decide on a tax measure to put before voters in an upcoming election¹⁸.”

How Are Existing Oakland’s Cannabis Dispensaries Doing In Relation to San Jose’s?

From the financial perspective and for the purpose of comparison based on public information, the average Oakland dispensary outperformed the average for a dispensary (16 approved dispensaries total) located in the city of San Jose by a margin of about 40 percent during the last two fiscal years (FY 2015-16 & FY 2016-17) where regulations and the efforts in reducing illegal operations in both cities are beginning to have an effect. This is supported by taking the average

¹⁰ City of Hayward’s Measure EE authorized the City to impose a tax rate up to 15%. The City is in the process of finalizing the regulatory framework and approval of the tax rate to be imposed on approved businesses.

¹¹ City of Los Angeles’ Measure M (March 2017)

¹² City of Los Angeles does not place the limit on the number of authorized dispensaries. The limit will be the number of approved businesses by a yet-to-be-determined date. As of January 2018, 98 are approved.

¹³ City of Sacramento’s maximum number of authorized dispensaries was based on the number of applicants approved by the deadline of May 31, 2015. 30 dispensaries were approved then and remain in place since

¹⁴ City of San Diego’s current Tax Rate is 5%, going up 8% in July 2019. The maximum tax rate is 15%.

¹⁵ City of San Leandro’s Measure NN authorized the City to impose a tax rate up to 10%. On March 20, 2017, the San Leandro City Council set the tax of 6%, 7% beginning July 2019 and 8% beginning July 2021.

¹⁶ City of Santa Rosa’s Measure D authorized the City to impose a tax rate up to \$25 per square foot or 8% of gross receipts. Any tax rates set by the Council is for a minimum term of two years, but the Council may establish longer terms if desired. The initial tax rates are current set as outlined in the table, including 0% for retail of medical-use.

¹⁷ City of Santa Rosa approved 32 cannabis businesses as of January 12, 2018. 18 more are pending.

¹⁸ http://sf-hrc.org/sites/default/files/11.19.2017_Cannabis_Equity_Report.pdf

tax payment of about \$450,000 per Oakland dispensary paying at the five percent (5%) medical-use tax rate and compared against the average tax payment of about \$544,000 per San Jose dispensary paying at the 10 percent medical-use tax rate. If Oakland's medical-use rate were at 10 percent, the average tax payment per Oakland's dispensary would be at about \$900,000 per dispensary.

One could argue that Oakland's medical-use tax rate, at one-half of San Jose's, is a contributing factor to the amount of businesses generated in Oakland. From appearance, the argument seems to have merit, but the underlying factor is in the demand of cannabis. Staff, through reviewing and analyzing data obtained from a variety of sources, including the comparison of cannabis retail prices readily available online, estimated that Oakland has a much larger customer-base than San Jose. Having a larger customer-base means the demand for cannabis is higher in Oakland than that of San Jose, even though Oakland faces more competition than San Jose where it is the only City authorizing the sale of cannabis in Santa Clara County. The high demand does not necessarily drive down the prices because the supply, with the legalization of adult-use, is very much in demand statewide.

Year	City of Oakland				City of San Jose			
	BT Revenue	No. of Dispensaries	Tax Rate	Average	BT Revenue	No. of Dispensaries ¹⁹	Tax Rate	Average
FY 11-12	\$1,480,424	4	5%	\$370,106	\$4,000,000	107	7%	\$37,383
FY 12-13	\$2,421,721	6	5%	\$403,620	\$4,200,000	87	7%	\$48,276
FY 13-14	\$2,648,371	7	5%	\$378,339	\$6,100,000	73	10%	\$82,192
FY 14-15	\$2,733,706	8	5%	\$442,717	\$5,600,000	44	10%	\$88,636
FY 15-16	\$3,533,044	8	5%	\$441,631	\$8,100,000	16	10%	\$506,250
FY 16-17	\$3,639,035	8	5%	\$454,879	\$9,300,000	16	10%	\$581,250
Average	\$3,586,040	8	5%	\$448,255	\$8,700,000	16	10%	\$543,750

What Are The Challenges And Options To Address The Challenges Related To Oakland Cannabis Business Tax?

Under Oakland's municipal code, the current tax structure for cannabis business is all inclusive regardless of where a business operates within the supply chain. The tax of either 5 or 10 percent is assessed each step of the way along the supply chain, from seed to retail sale.

1. Application of Oakland Cannabis Business Tax on Cannabis Businesses Other Than Dispensaries:

At the dispensary level, the application of the 5 percent medical and 10 percent recreational gross receipts tax is simple. However, there is difficulty when these taxes are applied on the downstream supply chain. The issue is which tax rate, 5 percent or 10 percent, the cannabis cultivators and manufacturers will need to remit as they are not the ones selling or distributing

¹⁹ The number of dispensaries for the City of San Jose is approximate due to the City's continued enforcement activities that resulted in the fluctuation in the number of dispensaries paying the Marijuana Business Tax throughout the year.

cannabis directly to the consumers, and therefore do not have the ability to differentiate the type of clientele.

If the current all-inclusive tax structure remains, and as authorized under the Oakland Municipal Code Section 5.04.090, the Finance Department is considering one of the following:

- a. Authorize cannabis cultivators and manufacturers to delay the filing and the payment of cannabis business tax up to 45 days beyond the annual March 1 deadline; or,
- b. Require cannabis cultivators and manufacturers to declare the amount gross receipts generated in the prior year by the March 1 deadline but authorize an extension of payment of cannabis business tax up to 45 days beyond the annual March 1 deadline.

In either case, the objective is to allow RMB staff time from the annual deadline of March 1 to compile statistical information related to the gross receipts generated and reported by the cannabis dispensaries for the medical-use and for the adult-use. Once statistical information is compiled and analyzed, RMB would inform cannabis cultivators and manufacturers the fixed percentage of their gross receipts that are to be taxed at either 5% or 10%.

The rationale for both approaches is to provide a reasonable basis upon which the percentage of which tax rate cultivators and manufacturers must pay. After all, they are the ones supplying cannabis to the dispensaries. The taxes owed are ultimately based on the gross receipts they generated from their sale and distribution of cannabis to local dispensaries.

2. Apportionment of Gross Receipts

The apportionment of Gross Receipts, as outlined by the City Finance Director's Ruling No. 10 (Attachment C) is not a challenge facing RMB. However, it is included herein for the purpose of answering Council President Reid's request.

To determine whether an individual or a business could apportion the gross receipts, one must establish that the business activities occur inside and outside of the city of Oakland. If it does, the Director of Financing Ruling No 10 would be applicable for which one can use as a basis to calculate the amount to apportion the gross receipts. The following questions are designed to use as a basis to determine whether an apportionment could be granted:

1. Where is the sales office? This would be the place where the sale activities are negotiated, solicited, directed or controlled by the company's employees.
2. Where are the orders accepted or approved? The acceptance or approval shall be deemed to take place at the location of the sales office, as specified in item #1 above, unless there is clear and conclusive evidence that a binding acceptance or approval occurs elsewhere.
3. Where is the merchandise stored immediately prior to shipment or delivery?
4. Where are the billing/invoicing procedures performed?
5. Where is the collecting of receipts and account maintenance performed?
6. Where are the places where merchandise is delivered to, either by vehicles operated by the company or by third-party transportation carriers? A listing of businesses/clients and their respective locations could help. In addition, if merchandise is physically delivered to places outside of the city of Oakland by the company's employees, a copy of the Business

License Tax Certificate number or the Business Tax Certificate number for the city in which the company, through physical presence, carries out the business is requested.

3. Tax Payment Cycle

Currently, all newly established business taxpayers are required to pay the mandated fees associated with the registration of the business. Taxpayers, as authorized by the Oakland Municipal Code Section 5.04.110, have the option to either elect to pay the full estimated tax at the time of registration or pay the first-year tax on or before March 1 of the second year. Most taxpayers elect to pay the first-year tax in the second year.

When the business taxpayer returns the following March 1 to pay retroactively for the first-year tax using the actual gross receipts generated in the first year, the taxpayer is also required to pay the second year using the same amount of gross receipts generated during the first year. The cycle continues to the future tax years where taxpayer continues to pay the tax using the gross receipts generated in the prior year.

The inherent issue associated with allowing taxpayers making the first and second year tax payment at the same time creates a cash-flow issue for certain businesses, but more so for cannabis businesses due to higher tax payments that must be paid at once, and the inability for the cannabis industry to access traditional banking options. This resulted in RMB having to continuously provide payment plans to facilitate the payments of cannabis business tax. Generally, the payment plan spreads over a 10-month period with equal monthly installments. Once a payment plan is satisfied, the subsequent tax year is due, and the cycle of providing payment plan continues.

Given the option to elect making payment for the first tax year resides with the business taxpayer, as authorized in the Oakland Municipal Code, RMB does not have the mandate to require businesses to make an estimated tax payment.

4. Tax Reporting Cycle

Cannabis Business Tax is included as part of the Oakland Municipal Code Chapter 5.04, which covers many different types of businesses and industries that are common and general in nature. The cannabis industry, on the other hand, is regulated and being taxed at rates that are unique. The rules and regulations related to taxation will need to be kept up as the industry evolves and matures, and making changes to the current Oakland Municipal Code Chapter 5.04 intended for cannabis industry may inadvertently result in unintended consequences that will affect other industries unless the City Council could return to the voters seeking approval for the flexibility in adopting rules and regulations specifically for the cannabis industry. In addition, the tax payment cycle, as discussed in question 4 above, would also be minimized if the tax reporting cycle and payment requirement change from once a year to quarterly reporting and payment structure.

What Are Other Challenges That Affect Oakland Cannabis Businesses?

1. Deduction for Business Expenses:

In 1982, Congress enacted Section 280E in the Internal Revenue Code, which disallowed businesses from deducting ordinary and necessary business expenses if such business or trade or the activities which comprise such trade or business consists of trafficking in controlled substances within the meaning of Schedule 1 and 2 of the Controlled Substances Act. Cannabis is listed as a Schedule 1 in the Controlled Substances Act. This results in cannabis businesses facing much higher federal tax rates than similar businesses operating in other industries.

2. Application of Sales Tax at State Level:

As part of its overall responsibility in the administration of the Cannabis Tax Law, the CDTFA published a Tax Guide²⁰ for Cannabis Businesses on its website. One of the topics involves the application of Sales Tax as it relates to Local Government Cannabis Business Taxes.

In this topic, the CDTFA states, "Generally, whenever an expense of the retailer is separately added to any taxable sale, the expense is also subject to sales tax." The CDTFA illustrates the application of the tax by providing an example of the Sales Tax calculation as follows:

Selling price of cannabis, including excise tax	\$35.00
Cannabis 10% business tax	<u>\$3.50</u>
Subtotal (\$35.00 + \$3.50)	\$38.50
Sales tax (\$38.50 × 9.25%)	<u>\$3.56</u>
Total due (\$38.50 + \$3.27)	<u>\$42.06</u>

As the example illustrated, Sales Tax is being applied to the Cannabis Business Tax, making the total due higher than a typical sale transaction that customers and business owners are accustomed to.

What Are The Decision-Making Criteria For The City Council?

1. Can the City Council vote to increase, decrease, extend or expand existing taxes?

State law requires that any increase, extension or expansion of a tax requires voter approval. The decreasing of the Oakland's fixed Cannabis Business Tax rates of 5% and 10% would have been acceptable had the language in Measure V, passed by the voters in 2010, provided the flexibility. Unfortunately, the Measure V language did not include such language.

2. Is a City interest served by lowering the cannabis tax rates or creating different tax rates for different parts of the industry?

As mentioned above, the cannabis market, particularly the consumption side of the equation on the part of adults using cannabis for recreational purpose, is still very much in its infancy. In fact, in California, it is one month old. From the competitive side of the equation, it is one of

²⁰ <https://www.cdfta.ca.gov/industry/cannabis.htm#Retailers>

the main criteria in which businesses make decision to relocate to a jurisdiction. However, and as also mentioned above, cannabis industry requires tolerance and acceptance by the electorates, and not many jurisdictions have thus far.

3. What are the risks to the City to keep the existing tax rates as they currently are?

The risks of keeping the existing tax rates could result in businesses moving to a jurisdiction where the taxes are lower. There is also a risk that cannabis business already operating within Oakland will remain on the unregulated market due to the City's current tax rate coupled with the State's tax rates.

4. Are there other tax methods to consider beside gross receipts tax?

The Council could, and perhaps should, consider adopting different cannabis business tax rates for various parts of the supply chain.

- Per-Unit Taxation:

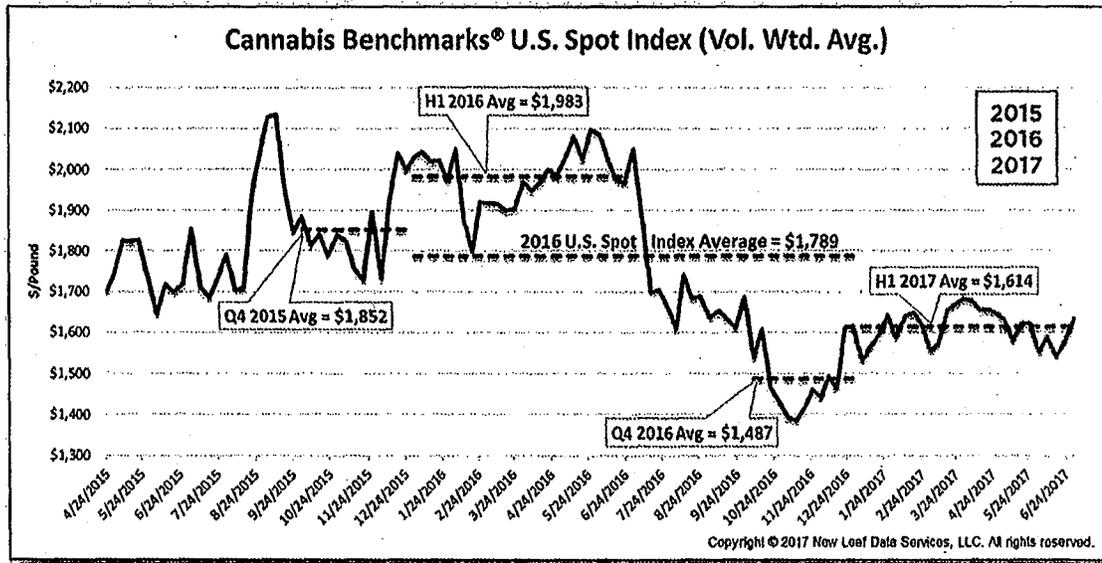
The state's taxing of cultivators based on the weight of harvested cannabis that enters the commercial market is a form of per-unit taxation. This taxing scheme should provide a stable stream of revenue because prices tend to drop, especially during the fall when outdoor cultivators harvest their annual crop.

On the other hand, taxing cannabis cultivators on its weight may inadvertently incentivize producers to cultivate stronger cannabis, as in the way cannabis is grown to produce a higher level of THC²¹ content. The higher the level of THC content, the higher the sale price. Yet, it would be subject to the same tax rate as cannabis with lower level of THC content.

In order to set the tax rates, similar to that of the State, the production or the yield of cannabis will need to be calculated. In general, an indoor space consists of 4 feet by 4 feet, which equates to a 16-square feet space, and equipped with a 1,200 watts lighting, would yield approximately two pounds of cannabis. At two pounds for every 16 square feet, a 10,000 square feet space would yield approximately 1,250 pounds of cannabis (10,000 / 16 x 2)

According to Cannabis Benchmarks, a leading provider of financial, business and industry data for the North American cannabis markets, the price of cannabis is at \$1,350 per pound for the month of February 2018. At this price, 1,250 pounds would generate approximately \$1.7 million (\$1,350 x 1,250 per pound). Historically, cannabis prices range from approximately \$1,300 to over \$2,100 per pound according the following chart compiled by Cannabis Benchmarks and published in the Forbes magazine in September 2017 (Attachment D).

²¹ Tetrahydrocannabinol (THC) is a cannabinol found in cannabis with powerful psychotropic and therapeutic properties



Based on the foregoing where yield and revenue for the cultivators can be estimated, the rates could be set as follows:

Tax Payment by Percentage of Gross Receipts

Space Size	Yield Rate (2 Lbs./16 Sq.ft.)	Price per Pound	Revenue for Cultivators	Tax Payment Using Gross Receipts				
				2%	3%	4%	5%	10%
10,000 Sq. Ft.	1,250	\$1,500	\$1,875,000	\$37,500	\$56,250	\$75,000	\$93,750	\$187,500
10,000 Sq. Ft.	1,250	\$1,350	\$1,687,500	\$33,750	\$50,825	\$67,500	\$84,375	\$168,750
10,000 Sq. Ft.	1,250	\$1,200	\$1,500,000	\$30,000	\$45,000	\$60,000	\$75,000	\$150,000
10,000 Sq. Ft.	1,250	\$800	\$1,000,000	\$20,000	\$30,000	\$40,000	\$50,000	\$100,000

Tax Payment by Per-Pound of Cannabis

Yield Rate in Pounds	10,000 Square Feet of Growing	Tax Rate by Per-Pound of Cannabis					
		\$25	\$30	\$40	\$50	\$100	\$120
1 Lb. / 16 Sq.ft.	625 Lbs.	\$15,625	\$18,750	\$25,000	\$31,250	\$62,500	\$75,000
2 Lbs./ 16 Sq.ft.	1,250 Lbs.	\$31,250	\$37,500	\$50,000	\$62,500	\$125,000	\$150,000

Tax Payment by Per-Ounce of Cannabis

Yield Rate in Ounce	10,000 Square Feet of Growing	Tax Payment by Per-Ounce of Cannabis					
		\$1	\$2	\$3	\$4	\$5	\$9
16 Oz. / 16 Sq.ft.	10,000 Oz.	\$10,000	\$20,000	\$30,000	\$40,000	\$50,000	\$92,500
32 Oz. / 16 Sq.ft.	20,000 Oz.	\$20,000	\$40,000	\$60,000	\$80,000	\$100,000	\$185,000

Administratively, if Oakland were to seek voter approval to adopt this type of taxation to align with the state and make it applicable only to cultivators and manufacturers, it would make it easier for the cultivators and manufacturers to pay the tax, as opposed to waiting

for the City to determine the percentage of gross receipts subject to each of the two tax rates they will need to pay.

The taxing of cannabis via the level of THC content would be adaptable for the manufacturing segment of the cannabis industry, but it would have to wait until the California Department of Public Health ("CDPH") finalized its regulations with respect to labeling, the amount of THC per serving and the maximum of THC per package. CDPH published a summary of public comments on September 28, 2017²², but it has yet to announce the date when the final regulation is to be expected.

The other form of Per-Unit Taxation is on the number of plants. Each plant is taxed at a certain rate.

- Value-Base Taxation

Gross receipts tax and sales tax are this form of taxation. They are measured by sales.

- Square Footage of Business or Grow Space

The taxing using the square footage of a cannabis business or the grow space in a cannabis business is a common among local jurisdictions, such as the City of Long Beach that imposes a tax of up to \$15.00 per square foot under cultivation, the City of Rancho Cordova imposes a tax of \$100 per square foot on all business improvements occupied by the cannabis business.

This taxing structure also provides a stable revenue stream because the tax is fixed. Any consideration of taxing cannabis based on grow or occupied space will need to take into account that businesses maximizing the space by possibly creating a multi-level of shelving system. Counting the space by each level of shelving for taxing purpose is an option. The taxing of cannabis based on grow or occupied space could also lead to the increase in consumption of California's most precious resource - water.

POSSIBLE POLICY OPTIONS FOR CITY COUNCIL'S CONSIDERATION

The outcome of any City Council's deliberations and subsequent decision should include, but are not limited to, the following policy options:

1. Option 1: Keep existing tax rates as they currently are at 5% and 10% of gross receipts on cannabis businesses, including specialized segments of the industry, such as cultivators, manufacturers, transportation, paying both rates. Administratively, staff has already identified a reasonable approach as to which tax rates specialized cannabis businesses, such as cannabis cultivators and manufacturers need to pay annually (see page 9, *Application of Oakland Cannabis Business Tax on Cannabis Businesses Other Than Dispensaries*).
2. Option 2: Return to voters seeking approval to authorize the City Council the flexibility in

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[https://www.cdph.ca.gov/Programs/CEH/DFDCS/CDPH%20Document%20Library/Cannabis%20Comments%20\(Final%20on%20CDPH%20Letterhead\).pdf](https://www.cdph.ca.gov/Programs/CEH/DFDCS/CDPH%20Document%20Library/Cannabis%20Comments%20(Final%20on%20CDPH%20Letterhead).pdf)

setting the tax rates, as they are currently set at 5% and 10%, and the ability to promulgate and adopt tax rules and regulations, such as the frequency of tax reporting and tax payment requirements, that are intended to apply to the cannabis industry without impacting other industries.

3. **Option 3:** Return to voters seeking approval to authorize the City to repeal and replace the existing tax rates with the new set of tax rates as follows:
 - a. A tax rate up to a maximum of 5% applicable to medical cannabis businesses dispensing cannabis to medically-needed patients with proper state identifications. This rate stays the same as it is currently set. The change is in the City Council ability to reduce or increase the tax rate to a maximum tax rate without returning to the voters.
 - b. A tax rate up to a maximum of 10% applicable to non-medical cannabis businesses dispensing cannabis to adults 21 and older for non-medically needed purposes. This rate stays the same as it is currently set. The change is in the City Council ability to reduce or increase the tax rate to a maximum tax rate without returning to the voters.
 - c. A tax rate of minimum two dollars (\$2) to a maximum of five dollars (\$5) per ounce of cannabis produced, weighed and distributed to the cannabis retailer/dispensary applicable to cannabis cultivators. Whichever the actual tax rate set by the Council would afford the cannabis cultivators the ability to know ahead of time, as opposed to waiting for RMB to set the tax rates between 5% and 10% following the analyzing of the data each year.

As illustrated in Section 4 of the Decision-Making Criteria above, a 10,000 square feet space under normal conditions could produce 20,000 ounces of cannabis. The tax payment could be from \$40,000 to \$100,000 annually.

Yield Rate in Ounce	10,000 Square Feet of Growing	Tax Payment by Per Ounce of Cannabis			
		\$2	\$3	\$4	\$5
32 Oz / 16 Sq.ft.	20,000 Oz.	\$40,000	\$60,000	\$80,000	\$100,000

- d. A tax rate of a minimum 3% to a maximum of 7% of gross receipts applicable to cannabis manufacturers and for cannabis transport businesses. Similar to the tax rates for cannabis cultivators, cannabis infused products manufacturers and cannabis transportation-related businesses would know the fixed that rate that they would need to pay, as opposed to waiting for RMB to set the tax rates between 5% and 10% following the analyzing of the data each year

Based on the average of Colorado's 215 licensed cannabis-infused products manufacturers that generated \$1.6 million in sales in 2015²³, the tax payment could be from \$48,000 to \$112,000 annually.

Average Annual Gross Receipts	Tax Payment by Per-Ounce of Cannabis				
	3%	4%	5%	6%	7%
\$1,600,000	\$48,000	\$64,000	\$80,000	\$96,000	\$112,000

²³ Consultant's report prepared for the Contra Costa County Board of Supervisors Meeting October 24, 2017

Item: _____

If the City Council decided to pursue this option, two key elements must be part of the ballot measure, and they are:

- The ballot language should clearly carry a provision that would allow the City Council the flexibility to adjust the tax rates up to the maximum for each segment of the cannabis once every two years. The purpose is to provide cannabis businesses the stability and the knowledge for business planning.
- The ballot language should be structured as a repeal and replace ballot measure. By using repeal and replace language in the ballot, the existing tax rates, fixed at 5% and 10%, would remain intact if the ballot measure failed at the election.

FISCAL IMPACT

This is an informational report; there are no budget implications associated with the report.

PUBLIC OUTREACH / INTEREST

No outreach was deemed necessary for this informational report beyond the standard City Council agenda noticing procedures.

COORDINATION

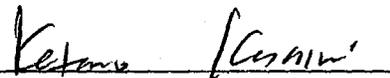
This report has been coordinated with the City Attorney's Office.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council receive an Informational Report on Cannabis Tax Policy to maximize City Tax Revenue, Economic Growth, And Jobs.

For questions regarding this report, please contact Margaret O'Brien, Revenue and Tax Administrator, at (510) 238-7480.

Respectfully submitted,



Katano Kasaine
Director of Finance
Finance Department

Reviewed by:
Margaret O'Brien
Revenue and Tax Administrator
Revenue Management Bureau

Prepared by:
Andy Best
Principal Revenue Analyst
Revenue Management Bureau

Prepared by:
Huey Dang
Tax Auditor II
Revenue Management Bureau

Attachments (4):

- A: *Oakland Cannabis Cultivation and Manufacturing Market Share*
- B: *Economic Impact Study of the Cannabis Sector in the Greater Sacramento Area*
- C: *Office of Finance Revenue Division, Director of Finance Ruling No.10*
- D: *Cannabis Wholesale Prices Have Dropped, but Markets Are Stable*

CANNABIS REGULATORY COMMISSION

ITEM E (5)

2018 Active Cannabis Legislation 2/27/2018

AB 924

(Bonta D) Indian tribes: commercial cannabis activity.

Status: 7/10/2017-In committee: Set, first hearing. Hearing canceled at the request of author.

Location: 7/6/2017-S. B., P. & E.D.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Would amend AUMA by authorizing the Governor to enter into an agreement with a federally recognized Indian tribe authorizing commercial cannabis activity that requires the tribe to establish a cannabis regulatory commission that would exercise exclusive regulatory authority over all commercial cannabis activity, by both Indians and non-Indians, in Indian country and that requires the commission to adopt standards that meet or exceed the standards adopted under the state's regulatory framework governing commercial cannabis activity.

AB 1527

(Cooley D) State and local marijuana regulatory agencies: employees.

Status: 6/26/2017-In committee: Set, first hearing. Hearing canceled at the request of author.

Location: 5/24/2017-S. B., P. & E.D.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Would prohibit a former employee of the Bureau of Marijuana Control, a licensing authority, the panel, or a local jurisdiction who had specified regulatory or licensing responsibilities from being employed by a person or entity licensed under AUMA or MCRSA for a period of one year from the last date of employment by the bureau, licensing authority, panel, or local jurisdiction.

AB 1741

(Bonta D) Cannabis: taxation: electronic funds transfer.

Status: 1/4/2018-From printer. May be heard in committee February 3.

Location: 1/3/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: The Sales and Use Tax Law authorizes, before January 1, 2022, a person issued a seller's permit for a place of business that is a dispensary, as defined in the Medical Cannabis Regulation and Safety Act, which was repealed, to remit amounts due for retail sales at the dispensary by a means other than electronic funds transfer. This bill, until January 1, 2022, would instead authorize a person licensed under MAUCRSA, whose estimated tax liability under that law averages \$10,000 or more per month, to remit amounts due by a means other than electronic funds transfer if the board deems it necessary to facilitate collection of amounts due.

AB 1744

(McCarty D) After school programs: substance use prevention: funding: cannabis revenue.

Status: 1/4/2018-From printer. May be heard in committee February 3.

Location: 1/3/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Current law establishes the After School Education and Safety Program under which participating public schools receive grants to operate before and after school programs serving pupils in kindergarten or any of grades 1 to 9, inclusive. The After School Education and Safety Program requires each program component to consist of an education and literacy element and an educational enrichment element, as specified. This bill would specifically authorize for inclusion within the education enrichment element pupil assistance to prevent and reduce substance use and improve school retention and performance.

AB 1793

(Bonta D) Cannabis convictions.

Status: 1/10/2018-From printer. May be heard in committee February 9.

Location: 1/9/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Would state the intent of the Legislature to enact legislation to allow automatic expungement or reduction of a prior cannabis conviction, as specified.

AB 1806

(Ting D) Budget Act of 2018.

Status: 1/29/2018-Referred to Com. on BUDGET.

Location: 1/29/2018-A. BUDGET

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: This bill would make appropriations for the support of state government for the 2018–19 fiscal year. This bill contains other related provisions.

AB 1863 (Jones-Sawyer D) Personal income tax: deduction: commercial cannabis activity.

Status: 1/12/2018-From printer. May be heard in committee February 11.

Location: 1/11/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Would, for each taxable year beginning on and after January 1, 2019, specifically provide in the Personal Income Tax Law for nonconformity to that federal law disallowing a deduction or credit for business expenses of a trade or business whose activities consist of trafficking specified controlled substances, only for commercial cannabis activity, as defined, authorized under MAUCRSA, thus allowing deduction of business expenses for a cannabis trade or business under the Personal Income Tax Law, as provided.

AB 1996 (Lackey R) The California Cannabis Research Program.

Status: 2/2/2018-From printer. May be heard in committee March 4.

Location: 2/1/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Would conform the name of the Cannabis Research Program, also sometimes referred to as the California Marijuana Research Program or the Center for Medicinal Cannabis Research, throughout the code, including for purposes of the appropriation made by AUMA, as the California Cannabis Research Program and would specify that the program is hosted by the Center for Cannabis Research.

AB 2020 (Quirk D) Cannabis: local jurisdiction licensees: temporary event permits.

Status: 2/6/2018-From printer. May be heard in committee March 8.

Location: 2/5/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Would authorize a local jurisdiction to apply for a temporary event license, and would generally require that local jurisdiction to comply with all existing licensure requirements that apply to any other applicant, except for specified provisions relating to background checks and prior convictions. The bill would also authorize a state temporary event license to be issued to a licensee for an event to be held at any other venue expressly approved by the local jurisdiction for events, as specified.

AB 2058 (Chau D) Vehicles: driving under the influence: statistics.

Status: 2/16/2018-Referred to Com. on TRANS.

Location: 2/16/2018-A. TRANS.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Would require any law enforcement agency, as specified, to annually report to the Department of Motor Vehicles the number of arrests made for driving under the influence and the number of those arrests in which cannabis was suspected to be the substance, or one of the substances, of which the person was under the influence. This bill contains other related provisions and other existing laws.

AB 2069 (Bonta D) Medicinal cannabis: employment discrimination.

Status: 2/8/2018-From printer. May be heard in committee March 10.

Location: 2/7/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Would prohibit an employer from engaging in employment discrimination against a person on the basis of his or her status as, or positive drug test for cannabis by, a qualified patient or person with an identification card. The bill would provide that it does not prohibit an employer from refusing to hire an individual or discharging an employee who is a qualified or person with an identification card, if hiring or failing to discharge an employee would cause the employer to lose a monetary or licensing-related benefit under federal law.

AB 2164 (Cooley D) Local ordinances: fines and penalties: cannabis.

Status: 2/13/2018-From printer. May be heard in committee March 15.

Location: 2/12/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Current law requires the ordinance adopted by the local agency to provide for a reasonable

period of time, as specified in the ordinance, for a person responsible for a continuing violation to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties, when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues, that do not create an immediate danger to health or safety. This bill would provide that the ordinance may, but is not required to, provide a reasonable time for a person responsible for a continuing violation to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties, when the violation both pertains to building, plumbing, electrical, or other similar structural or zoning issues, that do not create an immediate danger to health or safety, and exists as a result of, or to facilitate, the cultivation of cannabis.

AB 2215 (Kalra D) Medical advice: use of cannabis.

Status: 2/13/2018-From printer. May be heard in committee March 15.

Location: 2/12/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptèred
1st House				2nd House							

Summary: Would state the intent of the Legislature to enact legislation to require the Veterinary Medical Board to establish guidelines for licensed veterinarians to discuss the use of cannabis on animal patient clients and to protect state-licensed veterinarians from disciplinary action for discussing the use of cannabis on animal patient clients. This bill contains other existing laws.

AB 2255 (Lackey R) Cannabis.

Status: 2/14/2018-From printer. May be heard in committee March 16.

Location: 2/13/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptèred
1st House				2nd House							

Summary: The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidated the licensure and regulation of commercial medicinal and adult-use cannabis activities and authorizes a licensing authority to take disciplinary action against licensees. MAUCRSA provides that grounds for disciplinary action include, but are not limited to, certain actions, such as failure to comply with the provisions of MAUCRSA or any rule or regulation adopted under MAUCRSA. This bill would make a nonsubstantive change to the provision regarding grounds for disciplinary action.

AB 2402 (Low D) Cannabis: personal information.

Status: 2/15/2018-From printer. May be heard in committee March 17.

Location: 2/14/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptèred
1st House				2nd House							

Summary: The Medicinal and Adult-Use Cannabis Regulation and Safety Act, among other things, provides for the licensure and regulation of commercial cannabis activity, including cultivation, manufacturing, distribution, and retail sale. Existing law requires licensees to maintain specified records of commercial cannabis transactions. This bill would prohibit a licensee from disclosing a consumer's personal information, as defined, to a 3rd party, except to the extent necessary to allow responsibility for payment to be determined and payment to be made or if the consumer has consented to the licensee's disclosure of the personal information.

AB 2457 (Irwin D) Podiatry: Podiatric Medical Board of California.

Status: 2/15/2018-From printer. May be heard in committee March 17.

Location: 2/14/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptèred
1st House				2nd House							

Summary: Current law provides for the certification and regulation of podiatrists by the California Board of Podiatric Medicine, which is within the Department of Consumer Affairs, and establishes the Board of Podiatric Medicine Fund. This bill would change the name of the California Board of Podiatric Medicine to the Podiatric Medical Board of California and the name of the Board of Podiatric Medicine Fund to the Podiatric Medical Board Fund. The bill would make related conforming changes.

AB 2555 (Cooley D) Cannabis.

Status: 2/16/2018-From printer. May be heard in committee March 18.

Location: 2/15/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptèred
1st House				2nd House							

Summary: The Control, Regulate and Tax Adult Use of Marijuana Act of 2016 (AUMA), an initiative measure approved as Proposition 64 at the November 8, 2016, statewide general election, authorizes a person who obtains a state license under AUMA to engage in commercial adult-use cannabis activity pursuant to that license and applicable local ordinances. The Medicinal and Adult-Use Cannabis

Regulation and Safety Act (MAUCRSA), among other things, consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities. This bill would make a nonsubstantive change in those provisions.

AB 2641 (Wood D) Temporary events.

Status: 2/16/2018-From printer. May be heard in committee March 18.

Location: 2/15/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Would specifically authorize the Bureau of Cannabis Control to issue the state temporary event licenses and would authorize a state temporary event license to be issued for an event to be held at any other venue expressly approved by the local jurisdiction the event, as described. The bill would specifically prohibit the bureau from issuing a state temporary cannabis event license for a particular event unless the local jurisdiction in which the event will be held has approved the event.

AB 2717 (Lackey R) Cannabis: local control: city responsibility for county regulatory function.

Status: 2/16/2018-From printer. May be heard in committee March 18.

Location: 2/15/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Would require a city to assume from the county complete responsibility for any regulatory function relating to licensees located within the jurisdictional boundaries of the city, regardless of whether the state delegates to the city full power and authority to enforce MAUCRSA and promulgated regulations. By imposing additional duties on cities, this bill would create a state-mandated local program. The bill would authorize a city to contract in writing with the county in which it is located to arrange for the county to fulfill any of the city's regulatory functions relating to licensees located within the jurisdictional boundaries of the city. This bill contains other related provisions and other existing laws.

AB 2721 (Quirk D) Cannabis.

Status: 2/16/2018-From printer. May be heard in committee March 18.

Location: 2/15/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Would make nonsubstantive changes to the quality assurance and testing requirement.

AB 2799 (Jones-Sawyer D) Adult-use cannabis and medicinal cannabis: license application: OSHA training.

Status: 2/17/2018-From printer. May be heard in committee March 19.

Location: 2/16/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Would require an applicant for a state license under MAUCRSA to provide a statement that the applicant employs, or will employ within one year of receiving a license, one supervisor and one employee who have successfully completed the Division of Occupational Safety and Health (Cal-OSHA) 30-hour general industry course given by a Cal-OSHA authorized training provider. By expanding the scope of the crime of perjury, this bill would impose a state-mandated local program.

AB 2810 (Levine D) Sun-Grown Cannabis Commission.

Status: 2/17/2018-From printer. May be heard in committee March 19.

Location: 2/16/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Would create the Sun-Grown Cannabis Commission in the state government with a prescribed membership, and would specify the powers, duties, and responsibilities of the commission board of directors. The commission board of directors would be authorized to, among other things, conduct research for specified purposes, assess and address the impact of local and state regulations on the cannabis products industries, and collect and disseminate market price information to prevent unfair trade practices.

AB 2899 (Rubio D) Cannabis: advertisements: license number.

Status: 2/17/2018-From printer. May be heard in committee March 19.

Location: 2/16/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: MAUCRSA requires all cannabis advertisements and marketing to accurately and legibly identify the licensee responsible for that content by adding, at a minimum, the licensee's license number and prohibits a technology platform from displaying the advertisement on an Internet Web page unless the advertisement displays that licensee's license number. This bill would require that the license number displayed on the advertisement be the licensee's State of California Commercial Cannabis Activity license number.

AB 2914 (Cooley D) Cannabis in alcoholic beverages.

Status: 2/17/2018-From printer. May be heard in committee March 19.

Location: 2/16/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf.	Enrolled	Vetoed	Chaptered
1st House				2nd House				Conc.			

Summary: Would prohibit a commercial cannabis licensee from also being licensed as a retailer of alcoholic beverages or tobacco products. The bill would prohibit a licensee from selling a cannabis product that is an alcoholic beverage, including, but not limited to, an infusion of cannabis into an alcoholic beverage. This bill contains other related provisions and other existing laws.

AB 2929 (Quirk D) Cannabis.

Status: 2/17/2018-From printer. May be heard in committee March 19.

Location: 2/16/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf.	Enrolled	Vetoed	Chaptered
1st House				2nd House				Conc.			

Summary: MAUCRSA requires that, with the exception of testing laboratory licenses, which can be used to test cannabis products regardless of whether for commercial adult-use or medicinal cannabis, all licenses issued under MAUCRSA bear a clear designation indicating whether the license is for adult-use activity or medicinal activity, as specified. This bill would allow a licensee to conduct any commercial cannabis activity allowed under its license with any other licensee, as specified, and would find and declare that this furthers the purpose of the initiative measure.

AB 2980 (Gipson D) Cannabis: premises: common space.

Status: 2/17/2018-From printer. May be heard in committee March 19.

Location: 2/16/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf.	Enrolled	Vetoed	Chaptered
1st House				2nd House				Conc.			

Summary: Would define premises as the area specified in the application wherein the license privileges are, or will be, exercised, as provided. The bill would require that provisions of MAUCRSA not be construed to prohibit two or more licensed premises from sharing common use areas wherein no license privileges will be exercised so long as all licensees comply with the requirements of the act, as specified. This bill contains other related provisions and other existing laws.

AB 3067 (Chau D) Internet: marketing: minors: cannabis.

Status: 2/17/2018-From printer. May be heard in committee March 19.

Location: 2/16/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf.	Enrolled	Vetoed	Chaptered
1st House				2nd House				Conc.			

Summary: Would prohibit an operator of an Internet Web site, online service, online application, or mobile application directed to minors, or an advertising service that is notified by an operator that the site, service, or application is directed to minors, from marketing or advertising any cannabis, cannabis product, cannabis business, or cannabis-related instrument or paraphernalia on the Internet Web site, online service, online application, or mobile application.

AB 3112 (Grayson D) Controlled substances: butane.

Status: 2/17/2018-From printer. May be heard in committee March 19.

Location: 2/16/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf.	Enrolled	Vetoed	Chaptered
1st House				2nd House				Conc.			

Summary: Would make it unlawful to sell to any customer any quantity of nonodorized butane. The bill would exempt from the prohibition certain consumer items such as lighters and small containers of nonodorized butane used to refill these items. The bill would authorize a civil penalty to be assessed for the violation of these provisions. The bill would authorize specified local and state officials to bring a civil action to enforce these provisions.

AB 3208 (Cooper D) Property forfeiture: local ordinances.

Status: 2/17/2018-From printer. May be heard in committee March 19.

Location: 2/16/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Would authorize the City of Elk Grove to adopt an ordinance authorizing the city, until January 1, 2024, to confiscate and seek an order of forfeiture of property, whether personal or real, if that property is used to violate city code. The bill would require any ordinance adopted pursuant to this section to provide the owner of the property with adequate notice and opportunity to challenge the grounds of the seizure, and ensure that the property is only seized to the extent that the value of the property is commensurate with the gravity of the code violation for which it was used.

AJR 27 (Low D) Cannabis.

Status: 1/10/2018-From printer.

Location: 1/9/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: This measure would urge United States Department of Justice not to direct its enforcement priorities towards California's lawfully and closely regulated cannabis industry, among other things.

AJR 28 (Jones-Sawyer D) Financial institutions: cannabis.

Status: 1/12/2018-From printer.

Location: 1/11/2018-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: This measure would urge the Congress and the President to pass legislation that would allow financial institutions to provide services to the cannabis industry.

SB 118 (Committee on Budget and Fiscal Review) Cannabis Regulation.

Status: 1/4/2018-From inactive file. Re-referred to Com. on BUDGET.

Location: 1/4/2018-A. BUDGET

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: MAUCRSA imposes various requirements on the delivery of cannabis and cannabis products, including requiring during delivery a licensee to maintain a physical copy of the delivery request, as specified, and to make it available upon request of the licensing authority and law enforcement officers. MAUCRSA defines delivery for these purposes to mean the commercial transfer of cannabis or cannabis products to a customer and to include the use by a retailer of any technology platform owned and controlled by the retailer. This bill would revise the requirement that a licensee maintain a copy of the delivery request during delivery so that the request is not required to be physical.

SB 794 (Stern D) Edible marijuana products: labeling and packaging.

Status: 6/27/2017-June 27 set for first hearing canceled at the request of author.

Location: 6/15/2017-A. HEALTH

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Would require each single serving of an edible marijuana product to be stamped, marked, or otherwise imprinted directly on the product with a universal symbol that is designed by the Bureau of Marijuana Control. The bill would specify the required size and visibility of the universal symbol. The bill would require edible marijuana products to be sold in packaging that is tamperproof, child resistant, and, if the product contains more than one serving, resealable. AUMA authorizes the Legislature to amend, by a 2/3 vote, certain provisions of the act, provided that the amendments are consistent with, and further the purposes and intent of, the act.

SB 930 (Hertzberg D) Financial institutions: cannabis.

Status: 2/8/2018-Referred to Com. on RLS.

Location: 1/25/2018-S. RLS.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Current law, the Financial Institutions Law, regulates the activities of various financial entities, including commercial banks, industrial banks, trust companies, credit unions, and savings and loan associations. This bill would state the intent of the Legislature to enact subsequent legislation that would establish a state-chartered bank that would allow a person licensed to engage in commercial cannabis activity under MAUCRSA to engage in banking activities in California.

SB 1025 (Skinner D) Probation: eligibility: crimes relating to controlled substances.

Status: 2/14/2018-Referred to Com. on PUB. S.

Location: 2/14/2018-S. PUB. S.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Current law prohibits granting probation or suspending a sentence for persons convicted of specified crimes relating to controlled substances. Current law also prohibits granting probation or suspending a sentence for persons convicted of specified crimes relating to controlled substances, including possessing for sale or selling 14.25 grams or more of a substance containing heroin and possessing for sale 14.25 grams or more of any salt or solution of phencyclidine or its analogs, among other crimes. This bill would delete various crimes relating to controlled substances, including, but not limited to, the crimes described above, from those prohibitions against granting probation or a suspended sentence. By making additional persons eligible for probation, the bill would impose a state-mandated local program.

SB 1127 (Hill D) Pupil health: administration of medicinal cannabis: schoolsites.

Status: 2/22/2018-Referred to Coms. on ED. and JUD.

Location: 2/22/2018-S. ED.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Would authorize the governing board of a school district, a county board of education, or the governing body of a charter school maintaining kindergarten or any of grades 1 to 12, inclusive, to adopt, at a regularly scheduled meeting of the governing board or body, a policy that allows a parent or guardian to possess and administer to a pupil who is a qualified patient entitled to the protections of the act medicinal cannabis, excluding in a smokeable or vapeable form, at a schoolsite. The bill would authorize the policy to be rescinded for any reason, as provided.

SB 1219 (Gaines R) Law enforcement: sharing data.

Status: 2/16/2018-From printer. May be acted upon on or after March 18.

Location: 2/15/2018-S. RLS.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: The California Values Act (act), prohibits, subject to exceptions, state and local law enforcement agencies, including school police and security departments, from using money or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, as specified, and, subject to exceptions, proscribes other activities or conduct in connection with immigration enforcement by law enforcement agencies. This bill would repeal those provisions. This bill contains other related provisions and other existing laws.

SB 1273 (Hill D) Vehicles: marijuana.

Status: 2/20/2018-From printer. May be acted upon on or after March 22.

Location: 2/16/2018-S. RLS.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Current law prohibits a person who is under the influence of alcohol, drugs, or the combined influence of alcohol or drugs from driving a vehicle. Current law also prohibits a person from driving under the influence and proximately causing bodily harm to another person, as specified. Existing law defines a drug, for purposes of these provisions as any substance, other than alcohol, which can affect the nervous system, brain, or muscles of a person in a manner that impairs the ability to safely drive a vehicle. This bill would recast these provisions to make driving under the influence of several classifications of drugs each a separate offense, with no changes to the penalty.

SB 1302 (Lara D) Cannabis: local jurisdiction: prohibitions on delivery.

Status: 2/20/2018-From printer. May be acted upon on or after March 22.

Location: 2/16/2018-S. RLS.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Would prohibit a local jurisdiction from preventing delivery of cannabis or cannabis products on public roads, or to an address that is located within the jurisdictional boundaries of that local jurisdiction, by a licensee who is acting in compliance with MAUCRSA and who is acting in compliance with any license, permit, or other authorization obtained from another local jurisdiction. This bill contains other related provisions and other existing laws.

SB 1315 (Nielsen R) Cannabis: packaging and labeling.

Status: 2/20/2018-From printer. May be acted upon on or after March 22.

Location: 2/16/2018-S. RLS.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which includes the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), enacted by the voters at the November 8, 2016, statewide general election, provides for the licensure and regulation of commercial cannabis activity. Current law places restrictions on the packaging and labeling of cannabis and cannabis products, including prohibiting the packaging and labeling from being attractive to children and prescribing statements to be printed on the packaging. This bill would make technical, nonsubstantive changes to these provisions.

SB 1318 (Mendoza D) Cannabis or cannabis products.

Status: 2/20/2018-From printer. May be acted upon on or after March 22.

Location: 2/16/2018-S. RLS.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities. The MAUCRSA prohibits a licensee from performing certain acts, including selling any cannabis or cannabis products at less than its cost for the purpose of injuring competitors, destroying competition, or misleading or deceiving purchasers or prospective purchasers. This bill would make nonsubstantive changes to these provisions.

SB 1409 (Wilk R) Industrial hemp.

Status: 2/20/2018-From printer. May be acted upon on or after March 22.

Location: 2/16/2018-S. RLS.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Current law requires that industrial hemp only be grown if it is on the list of approved hemp seed cultivars, which includes industrial hemp seed cultivars certified on or before January 1, 2013, by specific organizations, except as specified. Current law requires industrial hemp to be grown only as a densely planted fiber or oilseed crop, or both, in minimum acreages, as provided, except as specified. This bill would delete the requirement that industrial hemp seed cultivars be certified on or before January 1, 2013, in order to be included on the list of approved hemp seed cultivars.

SB 1451 (Fuller R) Licenses: sale to underaged persons: penalties.

Status: 2/20/2018-From printer. May be acted upon on or after March 22.

Location: 2/16/2018-S. RLS.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Would impose specific penalties on any licensee who holds an A-type retailer license or A-type microbusiness license who sells, furnishes, or causes to be sold or furnished cannabis or cannabis products to any person under 21 years of age on the licensed retail premises or who permits any person under 21 years of age to consume cannabis or cannabis products on the licensed retail premises, by subjecting the licensee to a suspension or revocation of its A-type and M-type retailer license and A-type and M-type microbusiness license issued for that retail premises where the violation occurred, as provided.

Total Measures: 43

Total Tracking Forms: 89