



Office of the City Manager

ACTION CALENDAR
September 29, 2015

To: Honorable Mayor and Members of the City Council
 From: *DWR* Dee Williams-Ridley, Interim City Manager
 Submitted by: Eric Angstadt, Director, Planning and Development Department
 Subject: Report on the Process Currently Underway to Select the City's Fourth Authorized Cannabis Dispensary

RECOMMENDATION

- 1) Review the selection process to date;
- 2) Consider the letter from Community Partnership 4 Health regarding the status of its dispensary application; and
- 3) Adopt a Resolution amending Resolution No. 66,711-N.S. to alter the selection process to allow the Council to consider all of the applicants currently deemed complete.

SUMMARY

As part of Round 1 of the selection process to select a fourth medical cannabis dispensary, City staff reviewed the 12 applications submitted by the deadline for completeness. All of the applicants were given an opportunity to submit information identified by staff as missing, and to submit any other information that they felt would improve their application. After the revised information was submitted, staff again reviewed the applications for completeness and found that four were still not complete. Representatives of the four dispensary candidates were notified of this determination and told that their applications would not be considered further.

One of the applicants, Charles Pappas of Community Partnership 4 Health (CP4H), asked the Council members to reconsider his application and allow his dispensary to continue to be considered for the fourth dispensary slot.

During this time, the selection process has continued. One other applicant withdrew from consideration, and two applications chose to consolidate into one proposal, leaving six complete applications. These applicants are now planning their community outreach meetings as required for Round 4. A decision on the top five candidates is being withheld pending a Council decision on the next steps in this process.

Because of the limited number of complete applications submitted, staff recommends modifying the selection process so that all six of the remaining applications can be

considered by the Council, rather than limiting the number to five as currently required by Resolution No. 66,711-N.S.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

As part of Round 1 of the dispensary selection process, staff determined that four applications were incomplete and therefore not eligible to continue in the selection process. Under Resolution No. 66,711-N.S., staff decisions are final. Staff sent a letter informing the representatives of these four dispensaries of this decision on May 13, 2015.

Since May 13, the selection process has continued as outlined in the Ranking and Allocation document. A three-person panel selected by the City Manager reviewed and ranked the seven remaining applications with feedback from staff members with expertise related to the mandatory elements (Business Plan, Safety and Security Plan and the Neighborhood Compatibility Plan). Since there were only seven applications deemed complete (after one applicant withdrew for personal reasons), all were forwarded to Round 3, where they were reviewed and ranked based on the optional bonus point elements of their applications. After two applications consolidated at this stage, the total number of remaining applications is six.

According to the approved Ranking and Allocation document, only the top five applicants should proceed to Round 4, the final round. Because this report suggests changing this process, staff will wait to announce the rankings until after Council has made a decision regarding this item.

After May 13, Charles Pappas, a representative of one of the dispensaries deemed incomplete, CP4H, and Chair of the City's Medical Cannabis Commission, corresponded extensively with staff via phone calls and e-mail regarding the determination that his application was incomplete. Many of the e-mails were copied to members of the City Council. Staff repeatedly explained the reasoning for the determination, and on May 21, sent a final response to Mr. Pappas. On June 16, 2015, Mr. Pappas sent an e-mail to each of the Council members (dated June 12, 2015 – see Attachment 2). On June 23, 2015, Mr. Pappas spoke at a City Council meeting regarding the staff decision related to his application. In the letter and in his comments, he reiterated concerns that he had expressed earlier to Planning staff:

- a) The receipt from a processing company stating that “your incorporation documents have been sent to the State of California” should have sufficed for proof of organizational status required as part of the application and specifically requested by staff in the March 30 letter.
- b) The request for information from the landlord was unclear, since it did not specify that this particular application was missing this information. The applicant

assumed that the signed agreement with the business owner tenant currently occupying the space met this requirement.

- c) His organization should be given extra time to submit the required information because 1) it is a local enterprise, 2) the missing information was omitted based on a misunderstanding of the process requirements, and 3) there are fewer than 10 applicants being considered at this time.

BACKGROUND

The following section summarizes the development of the selection process and how it has been implemented.

Fourth dispensary selection process: On July 8, 2014, the City Council adopted specific regulations for medical cannabis dispensaries, as called for in Measure T. Since these new regulations would allow a fourth dispensary to operate in Berkeley, a Ranking and Allocation (selection) process was adopted at the same time.

The selection process was made up of four Rounds:

- 1) Round 1: Determination of Eligibility and Application (evaluate all applications for completeness and principal eligibility. Incomplete applications would not be forwarded to Round 2.)
- 2) Round 2: Initial Ranking (rank the applications based on the mandatory elements of the applications)
- 3) Round 3: Second Ranking (rank the top ten applications based on the bonus elements of the applications)
- 4) Round 4: Selection (the top five ranked applications would hold public meetings and be considered by the MCC before the Council would make the final ranking and selection)

See Attachment 3 for a complete description of these Rounds in Resolution 66,711-N.S., approved by Council on July 1, 2014.

Process to date: Once the selection process was approved, staff worked to develop the items necessary to conduct the selection process. An application form, guidelines and fees were developed and posted on the City's website. Staff also developed a competency test for the Principals. In December, interested parties were informed that the application period would begin in January and the related forms were posted on the website. See Attachment 4 for a copy of the guidelines developed by staff.

The application period ran from January 12 until March 20, 2015. Applications were only accepted if they had the initial fee, proof that the Principals had applied for a background check with the City of Berkeley's Police Department, and a proposed location. Twelve applications were received by the March 20th deadline. Staff reviewed the applications to determine whether information was missing from the applications. Based on the selection process guidelines, staff sent letters to all of the applicants,

giving each specific details regarding the information that was missing and encouraging each applicant to review the application and submit anything else that they felt was missing or could improve their application. Missing or incomplete information related to bonus elements were not considered by staff, since the bonus elements are optional.

In addition, staff asked each applicant to submit a letter from the property owner stating the owner's awareness of the application and willingness to consider renting the property to a medical cannabis dispensary. This was requested because it was unclear from some of the applications whether the location was truly valid, i.e., one which could actually be used for a dispensary based on both the location and the owner's willingness to rent to the applicant. While this information from the owner was not specifically required as part of the selection process approved by Council, it was requested in order to meet the purpose of the selection process, which was to choose a location and its associated operator. The applicants were given 30 days, until April 29th, to submit this information. The letters sent to the four applicants eventually deemed incomplete are included with this report as Attachment 5.

On May 13, 2015, staff finished the review of the revised information. Four applications were deemed incomplete and were dropped from the selection process.

Applications deemed incomplete: In May 2015, staff finished review of the revised information. Four applications were deemed incomplete at the end of Round 1 for the following reasons:

Table 1: Reasons dispensary applications were deemed incomplete

	Missing property owner verification	Missing proof of organizational status	Principal did not take mandatory competency test
CP4H	X	X	
Forty Acres	X	X	X
reLeaf Alternative Healing	X		
Berkeley Alternative Medicine	X	X	

See Attachment 6 to view the letters sent to these applicants on May 13, 2015 which explained that these applications were incomplete and would no longer be considered for the fourth dispensary.

Mr. Pappas, along with one other dispensary applicant, felt that the decision was not valid and asked staff to reconsider. Staff did so, but concluded that the original decision was appropriate. Per the Ranking and Allocation document, this decision is not subject to appeal, and staff did not make any changes to the original decision.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

Staff's review of the applications for completeness followed the Council-approved selection process. The process was designed to consider only those applications which were deemed complete at the beginning of the process. All of the applicants were given the opportunity to include information that was deemed incomplete by staff and to reconsider all other portions of their application for completeness.

Since Round 1 ended, staff has continued to evaluate the remaining applications in order to process the applications in as timely a fashion as possible. Rounds 2 and 3 have been completed, and the applicants are in the midst of planning the community meetings required in Round 4.

Reintroducing candidates into the process will slow the selection of a fourth dispensary. It may also affect whether the existing applicants deemed complete will be able to continue in the process. Most of the applicants have negotiated some kind of agreement with the property owners to hold the site contingent on the process taking a set amount of time. Increasing the time of the selection process could mean that the applicants need to pay more money upfront before any decision is made, or could lead to property owners choosing to lease their property to another business that can be established more quickly.

Including all six of the applicants in Round 4 would avoid concerns, if any, regarding the validity of ranking staff's decisions, and might allow the process to proceed more smoothly. Allowing one additional candidate in Round 4 would have the following minor impacts:

1. Community meetings: Staff would need to generate a 300-foot noticing list for one additional meeting. Staff would also need to attend and observe one additional community meeting, and document this meeting, along with the other five, in a staff report to the MCC and Council.
2. Selection process: The MCC and Council would need to consider six candidates rather than five, and the Council would need to select one proposal from a group of six.

To add other applications at this point, particularly ones which lack a feasible location, would slow down the process and add an element of uncertainty regarding the viability

of a dispensary at a newly added location. Moreover, it would be impossible to rank the four incomplete applications *because* they are incomplete.

However, if the Council is inclined to consider an application which was deemed incomplete earlier in the process, in the interest of fairness it should consider all four of the dispensaries which were removed from the selection process after Round 1. All of these applications had similar reasons for being removed from the dispensary selection process, namely a lack of verification of property owner support for the location proposed with the original application. Selecting only one of the incomplete applicants would appear to favor one candidate over all of the others, including those deemed complete.

ALTERNATIVE ACTIONS CONSIDERED

Staff has developed three alternative actions for the Council to consider:

- 1) Take no action. Keep the selection process as originally approved and only have the Council consider the top five applicants in Round 4 of the selection process. This option would not change the selection process, but would prohibit the Council from considering one other application which could be close in ranking to the top five candidates.
- 2) Adopt a Resolution amending Resolution No. 66,711-N.S. to give the Council authority to reverse the staff decision as to eligibility, allow late information to be considered for the incomplete dispensary/ies, and requiring consideration of application that do not meet the application criteria.
- 3) Stop the current selection process and start a new process to allow new information to be considered for all dispensaries and restart the selection process. At least two of the four dispensaries considered incomplete were trying to submit new locations as part of their revised information. The other two dispensaries may have lost the opportunity to use their proposed site due to the initial incomplete letter.

If the Council is inclined to give the four incomplete dispensaries an opportunity to compete again, it may need to allow new locations to be considered. This would require completely new applications to be submitted, since the location plays a key role in many of the elements of the application, including the Safety and Security Plan and the Neighborhood Compatibility Plan. In the interest of fairness, if these four applicants are allowed to completely revise their applications, the same opportunity should be given to the applications currently considered complete. This would put an end to the existing process which has been proceeding since January.

CONTACT PERSON

Elizabeth Greene, Senior Planner, Planning and Development, 981-7484

Attachments:

1. Resolution
Exhibit A – Revisions to Resolution No. 66,711-N.S. Exhibit A
2. June 12, 2015 letter from Community Partnership 4 Health
3. Resolution No. 66,711-N.S., approved by Council July 1, 2014
4. Application Guidelines developed by staff, November 2014
5. March 30, 2015 letter sent to the four applicants later deemed incomplete
6. May 13, 2015 letters sent to the four applicants deemed incomplete

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

AMENDING RANKING AND ALLOCATION CRITERIA AND PROCEDURE FOR
MEDICAL CANNABIS DISPENSARIES

WHEREAS, on July 1, 2014, the City Council adopted Resolution 66,711-N.S., establishing a Ranking and Allocation Process to allocate limited dispensary slots among applicants; and

WHEREAS, the Ranking and Allocation Process limited the number of applications to be considered in Round 3 to 10 and the number of applicants to be considered in Round 4 to 5; and

WHEREAS, the number of applicants deemed complete was relatively small, resulting in no more than seven applicants evaluated in Rounds 2 and 3; and

WHEREAS two applicants have chosen to consolidate their applications, resulting in six applications at the end of Round 3; and

WHEREAS, evaluating one additional applicant in Round 4 will not result in substantial additional staff, Commission or Council time; and

WHEREAS, eliminating one applicant that may be very similar in ranking to the other five applications may remove a worthwhile applicant from Council consideration.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Exhibit A attached to Resolution No. 66,711-N.S. shall be amended to read as indicated in Exhibit A to this resolution to allow for all applications to move to the Selection process in Round 4.

Exhibit A – Revisions to Resolution No. 66,711-N.S. Exhibit A

RANKING/ALLOCATION PROCESS FOR MEDICAL CANNABIS DISPENSARIES

INTRODUCTION

This process is adopted pursuant to and to implement Berkeley Municipal Code Chapter 12.27. The competitive process and criteria below will be used for determining which Dispensaries may fill any unoccupied slots under the City's 4-dispensary cap, adopted in 2010, and codified in Section 12.26.130. As of the adoption of this Process, there were three operating Dispensaries, and one open slot, however additional slots may become available in the future either as a result of attrition or amendment of Section 12.26.130, or for other reasons.

PUBLIC INFORMATION

Applications and associated materials in the possession of the City are public records. While certain information will likely be exempt from disclosure, other information will not be, and some information will necessarily be made public as part of the ranking process. In complying with the Public Records Act, the City will make reasonable efforts to keep sensitive information from being disclosed, but cannot guaranty that information an applicant may want to be kept confidential will not be disclosed. The City will make reasonable efforts to notify applicants whenever requests for disclosure of their information are received. The City shall not in any way be liable for the disclosure of any such records or portions thereof if the disclosure is made pursuant to a request under the Public Records Act, and applicants assume the risk of such disclosure by submitting their applications.

SUMMARY OF PROCESS

The ranking/allocation process shall consist of a single comprehensive application, and four rounds of evaluation, which are summarized below.

Round 1: Application and Determination of Eligibility

Staff will conduct a background and criminal history check and evaluate whether an application demonstrates eligibility under Section 12.27.030.

Each Principal must attain a passing grade on a Medical Cannabis competency test.

Successful applicants whose applications meet these requirements will be forwarded on to Round 2.

Materials submitted by applicants who do not pass the qualification round will be returned to them, and all copies of those materials will be destroyed.

Round 2: Initial Ranking – Minimum Qualifications

Applicants will be ranked based on criteria below.

- Proposed Location(s) of business
- Business Plan
- Neighborhood Compatibility Plan
- Safety and Security Plan

The top 10 applicants would move on to Round 3.

Round 3: Second Ranking – Bonus Points

Points will be awarded based on the categories listed below. ~~All The top five~~ applications would move to the Selection process.

- Availability of Professional Services
- Community Benefits
- Enhanced Product Safety
- Environmental Benefits
- Labor & Employment
- Local Enterprise
- Location (final)
- Qualifications of Principals
- Consolidation

Round 4: Selection

The City Council will then make the final decision from among the ~~final top five~~ candidates.

DESCRIPTION OF PROCESS

A. Round 1 – Application and Determination of Eligibility

1. Application Requirements

Before accepting applications, the City will give at least 60 days public notice that applications to operate a Dispensary or Dispensaries will be accepted pursuant Chapter 12.27. The notice shall specify a deadline for submission of applications, as well as the number of Dispensaries for which applications will be accepted.

All Applicants will be required to submit an application on a form provided by the City. Applications shall be signed by a Principal under penalty of perjury that she or he has personal knowledge of the information stated in the application and that it is true.

The application shall include such information as the City may require that demonstrates compliance with applicable provisions of Chapter 12.27, as well as the following:

1. The name of a single point of contact for the applicant, who shall be a Principal.
2. All information required by Section 12.27.040.
3. A description of the Dispensary and its proposed location(s), including the address of any proposed facility with proof of ownership, lease, and or letter of owner's willingness to lease. *A signed lease is not to be given any additional consideration until Round 3.*
4. Plans for alteration of any existing buildings.
5. Business Plan. The business plan must contain as much detail as possible on the day-to-day operation of the Dispensary and how it will conform to applicable state and local laws and the Attorney General's Guidelines. The business plan shall describe: mechanisms for ensuring that the Dispensary will operate on a Not-for-Profit basis; a description of how Medical Cannabis will be tracked and monitored to prevent diversion, such as by verifying the status of recommending physicians and retaining all written recommendations from recommending physicians; a schedule for beginning operation, including a narrative outlining any proposed construction and improvements and a timeline for completion. The business plan shall include a budget for construction, operation, maintenance, compensation of employees, equipment costs, utility costs, and other operation and maintenance costs, and shall demonstrate sufficient capital in place to pay startup costs and at least three months of operating costs, as well as a description of the sources and uses of funds. Proof of capitalization shall be in the form of documentation of cash or other liquid assets on hand, Letters of Credit or other equivalent assets. The business plan shall also include a pro forma for at least three years of operation.
6. Neighborhood Compatibility Plan. The application must describe how the Dispensary, including its exterior areas and surrounding public areas, will be managed so as to avoid becoming a nuisance or having impacts on its neighbors and the surrounding community.
7. Location(s). The application must describe the proposed location or locations of the Dispensary, all confronting and abutting uses, transit access and accessibility and nearby sensitive uses.
8. Safety and Security Plan. The application shall include a detailed description of Fire prevention, suppression, HVAC and alarm systems that includes an assessment of the facility's fire safety by a qualified Fire prevention suppression consultant. An appropriate plan will have considered all possible fire, hazardous

material, and inhalation issues/threats and will have both written and physical mechanisms in place to deal with each specific situation.

The security plan shall include a description and detailed schematic of the overall facility security. Applicants shall detail their operational security including but not limited to general security policies for the facility, employee specific policies, training, sample written policies, transactional security, visitor security, 3rd party contractor security, and delivery security. In particular Applicants should address ingress and egress access, perimeter security, product security (at all hours), internal security measures for access (area specific), types of security systems (alarms and cameras), and security personnel to be employed. The security plan shall also include an assessment of site security by a qualified security consultant. Security plans shall not be made public.

During the evaluation period, security plan details that could aid persons who wish to commit security violations shall be considered to be confidential and shall not be released unless ordered by a court.

9. Environmental Benefits. The application must describe any proposed “green” business practices relating to energy and climate, water conservation, and materials and waste management. Specific “green” practices that are encouraged are:
 - a. maximizing energy efficiency;
 - b. where applicable, applying for and using available PG&E programs for free technical assistance for design and construction of building shell, tenant improvements, building systems and processes;
 - c. using renewable energy;
 - d. reducing transportation emissions (e.g., use of biofuels, electric vehicles);
 - e. using green building measures;
 - f. any other efforts to reduce or offset any greenhouse gas emissions
 - g. reuse and remediation of Brownfield sites;
 - h. water conservation, including recycling and on-site treatment, if permitted
 - i. developing a zero waste plan for operations;
 - j. minimizing packaging and using recycled content, recyclable and reusable materials, throughout the supply chain;
 - k. implementing a reuse plan for materials used;
 - l. providing a prediction of and implementing an operational phase waste stream broken down by refuse, recycled materials and composted materials by volume;
 - m. using organic fertilizers and pest control measures; and
 - n. minimizing use of hazardous or toxic substances and preventing them from entering the soil, air or water.
10. Community Benefits. The application shall describe benefits that the Dispensary would provide to the local community. Examples of such benefits are:
 - a. providing re-entry jobs and job training to the unemployed;
 - b. contributing to/supporting domestic violence prevention programs;

- c. contributing to/supporting Parks and Recreation Centers, libraries, or funding for arts, culture, and environmental programs;
 - d. contributing to/supporting Children/Youth programs and intervention services;
 - e. contributing to/supporting substance abuse education and rehabilitation programs;
 - f. funding foreclosure prevention and foreclosure abatement programs, including eviction defense following foreclosure; and
 - g. any other neighborhood improvements.
11. Enhanced Product Safety. The application shall state how the Dispensary will ensure enhanced consumer safety by testing for biological and chemical contaminants, specified by the City Manager pursuant to state or federal standards for food, drugs or tobacco.
12. Labor and Employment. The application shall describe to what extent the Dispensary will adhere to heightened pay and benefits standards and practices, including recognition of the collective bargaining rights of employees. Specific practices that are subject to consideration include the following:
- a. providing compensation to and opportunities for continuing education and training of employees/staff (applications should provide proof of the Dispensary's policy and regulations);
 - b. being a "card check-neutral" facility;
 - c. having obtained pre-existing recognition from a certified labor union;
 - d. being party to a collective bargaining agreement with a certified labor union; and
 - e. providing a "living wage" to facility staff and employees. Wage scale should be provided in writing for all levels of employment at the facility. "Living Wage" shall mean 200% of the minimum wage mandated by California or Federal law, whichever is greater.
13. Local Enterprise. The application shall state the extent to which the Dispensary will be a locally managed enterprise whose Principals reside within Berkeley and/or the following adjacent cities: Albany, Kensington, Oakland and Emeryville.
14. Availability of Professional Services. The application shall state the extent to which the Dispensary will provide professional services related to the use of Medical Cannabis to Members, whether on- or off-site. Such services may include, but are not necessarily limited to, medical or technical consulting, referrals to providers of such services, mental health services, alternative health care to the extent permitted by state law, diet and nutritional advice, and similar types of services, but shall not include recommending the use of Medical Cannabis.
15. Qualifications of Principals. The application shall include information concerning any special business or professional qualifications or licenses of principals that would add to the number or quality of services that the Dispensary would

provide, especially in areas related to Medical Cannabis, such as scientific or health care fields.

2. Determination of Eligibility

Staff will undertake background and criminal history checks, verify whether the applications provide complete and accurate information and demonstrate compliance with the eligibility requirements of Section 12.27.030.

If an application meets these requirements, each Principal will be required to attain a passing grade on a Medical Cannabis competency test to demonstrate a working knowledge of state and local compliance standards.

Applications that include all required information will be considered.

Late and incomplete applications will not be considered.

Applicants who pass the Medical Cannabis competency test and whose applications meet these requirements will be eligible to continue to Round 2.

~~Determinations in Round 1 will be final and not be subject to appeal.~~

3. Competitive Ranking Process

Applications that pass Round 1 will be reviewed by a three-person panel of City staff designated by the City Manager. The reviewing panel will evaluate applications in each succeeding round based on how well they satisfy the criteria for that round. In evaluating applications, the reviewing panel shall consider the quality and responsiveness of the application with respect to each of the topics covered. The evaluation and ranking of the applications and allocation of Dispensary slots shall lie within the sole judgment and discretion of the reviewers.

B. Round 2 – Initial Ranking: Minimum Qualifications

In Round 2, the reviewing panel will evaluate each application against the criteria in, and assign points based on, the following table.

Topic	Maximum Possible Points
Proposed Location(s)	400
Business Plan	300
Neighborhood Compatibility Plan	400
Safety and Security Plan	400
Total possible	1500

The top 10 applicants will move on to Round 3.

The reviewing panel will rank the remaining applicants by assigning points in each of the categories in the table below. “Consolidation” points shall be awarded for consolidation with one or more of the other top ten applications. ~~All applications~~
~~The top five applications, based on the total number of points from Rounds 2 and 3~~ will then move to the Selection process. In the case of a consolidated application, the average number of total points shall be used.

C. Round 3 – Second Ranking: Bonus Points

Topic	Maximum Possible Points
Availability of Professional Services	300
Enhanced Product Safety	200
Environmental Benefits	200
Community Benefits	300
Labor & Employment	300
Local Enterprise	500
Location (final)	500
Qualifications of Principals	500
Consolidation (with applicants that pass Round 2)	150 for each consolidation, maximum of 300
Total possible	2800 (plus up to 300 for consolidation)

D. Round 4 – Selection

Within 45 days after Round 3 is completed, each applicant shall conduct a public meeting in the area or areas proposed for its Dispensary. If no location in the immediate area is available, the applicant shall use a community facility that is as near as possible. Notice of such public meetings shall be on a form approved by the City and shall be provided as set forth in BMC Chapter 23B.32 for Use Permit public hearings. Within 5 days after notice of the public meeting is mailed, an applicant shall provide to the City a copy of the notice of the public meeting, a list of addresses to which it was sent, and an affidavit of mailing. An applicant that does not hold a public meeting within this period of time shall be disqualified.

After the public meetings are completed the applications shall be presented to the Medical Cannabis Commission, which may make a recommendation to the City Council.

The City Council will then establish the final ranking of applications and make its selection ~~from among the top five~~.

Notice of the public meetings of the Commission and Council shall be provided as set forth in BMC Chapter 23B.32 for Use Permit public hearings.