



Office of the City Manager

PUBLIC HEARING
November 18, 2014

To: Honorable Mayor and Members of the City Council
 From:  Christine Daniel, City Manager
 Submitted by: Eric Angstadt, Director, Planning and Development
 Subject: Fees for Medical Cannabis Dispensary Applications

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt a Resolution establishing two separate fees:

1. A graduated fee schedule for Medical Cannabis Dispensary applications ranging from \$878 for Round 1, \$2,948 for consideration in Round 2, and \$2,948 for consideration in Round 3. An additional fee of \$2,000 would be required in Round 2 for each additional location submitted with an application; and
2. A fee of \$71 for the Police Department review of the Live Scan criminal record reports.

This report applies only to fees for the application process for one additional dispensary. Other fees, such as annual review fees for existing dispensaries, will be the subject of future reports.

SUMMARY

On July 8, 2014, the City Council approved new regulations for dispensaries, which allows for a fourth dispensary to be considered in Berkeley. At the same time, the Council approved a ranking and allocation process to select the fourth dispensary. Staff has evaluated the selection process and determined the staff time that would be needed to review applications for a new dispensary. Based on this evaluation, staff recommends the following fees to recover staff costs:

Task	Tasks involved	Proposed fee
Round 1	Determine completeness of application and eligibility of Principals	\$878
Round 2	Staff review of mandatory categories	\$2,948 (\$2,000 for each additional

		location included with an application)
Round 3	Staff review of bonus categories for top 10 candidates	\$2,948
Round 4	Community meetings for top five candidates, review by MCC, and ranking and selection by Council	No additional fee
Criminal Record review	Police department review of Live Scan report to determine eligibility of dispensary Principals.	\$71

FISCAL IMPACTS OF RECOMMENDATION

If adopted, this Resolution would allow the City to recover the staff costs involved in the review of Medical Cannabis Dispensary applications. The rates used in calculating costs were that of the Planning staff hourly rate and Administrative Use Permit (AUP) Tier 1 and Tier 3, which were approved by Council Resolution No. 64,918 N.S. dated June 1, 2010. Total revenues that will be generated by the proposed fees will not exceed costs as shown on Attachment 2, attached with this report. The fees submitted for the application process would be deposited into Fund 833. Funds would be transferred to other accounts as needed to reimburse staff in departments outside of the Planning and Development Department. The fees for the Live Scan review would be collected when the Live Scan application is submitted to the Police Department and would be deposited into account 010-7104-328.25-00 (Miscellaneous Permit/Misc.Police Permits).

CURRENT SITUATION AND ITS EFFECTS

It is unknown how many applications will be submitted for the fourth dispensary, but staff is anticipating a great deal of interest. The selection process will have four rounds and will involve staff from various departments to review the information in the applications and a panel of three staff members appointed by the City Manager to rank the applications.

This report outlines two sets of fees: the application fee for staff review of the application, and the criminal record review fee that will be charged by the Police Department.

Application Fee

Administration of the application process and primary review of the applications will be conducted by the Planning and Development staff.

Some information submitted as part of Rounds 2 and 3 will involve specific knowledge or experience will be reviewed by staff with special expertise. It is anticipated that Round 2 would require 16 hours of review divided between Police, Fire, Economic Development and Land Use staff, and Round 3 would require 13.5 hours of review divided between Environmental Health, Economic Development, Energy and Sustainable Development, City Attorney and Land Use staff.

Staff recommends that the fee for the application be linked to the rounds in the selection process. The recommended fees would cover the following staff activities:

- Round 1: Determine completeness of applications, process applications, administer medical cannabis competency test, correct tests, and notice applicants of status. (The criminal review through the Live Scan process and the Police Department review of the results would occur at this stage in the process, but would be charged separately, as mentioned below.)
- Round 2: Review of four mandatory categories by Planning, Police, Fire and Economic Development staff, review and ranking by review panel, and notice applicants of status.
- Round 3: Review of nine bonus categories by Land Use, Environmental Health, Economic Development, Energy and Sustainable Development, and City Attorney staff, review and ranking by review panel, and notice applicants of status.
- Round 4: Coordination with applicants regarding location of public meeting, send notices to the public, attend meeting, draft and present reports to the MCC and City Council.

Linking the fees to the rounds instead of having one flat fee for all applications will place the cost of the review process on those applications that pass various rounds and require more review.

Calculating the actual cost of the selection process is difficult because of two unknown variables: the number of applications received and the information that will be included with each application. This is especially true of Rounds 2 and 3, in which descriptions of required plans, such as a business plan, could vary greatly depending on the application. In Round 3, the applicants may choose not to submit information for bonus points in categories such as environmental benefits or labor and employment. Planning staff and staff from departments most likely to review some aspect of the applications have estimated the time deemed necessary based on review of similar documents.

The cost of staff time is based on the hourly rates of the departments involved in the administration and review of the applications. The hourly rates for the City Attorney and the Police Department reflect a direct cost of staff time, while the hourly rates for the other departments includes indirect expenses.

The fees are based on the Planning and Development Department's fees for Administrative Use Permits (AUP). The work load and review process involved in the Tier 3 (\$878) and Tier 1 (\$2,948) types of AUP projects are similar to that anticipated for the different levels of this application review, and the AUP fees are comparable to the anticipated cost of staff review.

The total fee that an applicant who reaches Round 3 or Round 4 would pay is \$6,774. This fee would be comparable with the fees required by other local jurisdictions. The City of Oakland charges a flat fee of \$5,000 per application, and the City of San Francisco charges a flat fee of \$8,661.

Applicants may submit more than one location per application for consideration. This is to acknowledge the difficulty that applicants may experience when trying to locate a dispensary. Because review of additional locations would require additional staff time, staff recommends applying the following fee per additional location:

- Round 2 - \$2,000 to cover Police, Fire and Land Use staff review of the safety and security plan and neighborhood compatibility plan for each location.

Only one location would be approved for the new dispensary. At Round 3, applicants with more than one proposed location would need to select a single location for further consideration.

Criminal Record Review Fee

As part of the application process, the principals of each dispensary must pass a criminal record review using the Live Scan process. During the dispensary application period, each principal must apply for a Live Scan record search at the Berkeley Police Department. The principal will pay for both the record search (with the results to be sent to the Berkeley Police Department) and a fee to cover Police Department staff time to analyze the results. The Police review will determine whether the principal meets the eligibility requirements of Section 12.27.030 of the new dispensary ordinance. The Police Department will then notify the Planning Department whether the applicant has passed or failed the criminal record review; that information will then be added to the application.

Live Scan sets its own fees for the record search. The \$71 recommended staff review fee is based on the cost of a half-hour of police staff time, which would cover the time anticipated to review an average Live Scan report and notify the Planning Department of the results.

BACKGROUND

In November 2010, voters passed Measure T, which modified the Zoning Ordinance to allow for a fourth dispensary in Berkeley, but only after Council approval of new dispensary regulations and a selection process. On July 8, 2014, the Council voted to

approve new regulations for medical cannabis dispensaries. Approval of these regulations allows the City to approve a fourth dispensary.

At the same meeting the Council adopted a ranking and allocation process that details how a fourth dispensary would be selected. The application process consists of four stages:

- Round 1: Determination of Eligibility. Principals for each application would need to pass a criminal record review and medical cannabis competency test in order for the application to be considered. The criminal record review would be covered by the Live Scan application
- Round 2: Initial Ranking and Minimum Qualifications. Each application would be evaluated and ranked in terms of four categories: proposed location(s), business plan, neighborhood compatibility plan and safety and security plan. The top ten applications would go on to Round 3.
- Round 3: Second Ranking – Bonus Points. The ten applications would be evaluated and ranked in terms of nine optional categories: on-site professional services, enhanced product safety, environmental benefits, community benefits, labor and employment, local enterprise, final location, qualification of principals and consolidation of applications. The top five applications would go on to Round 4.
- Round 4: Selection. The remaining five candidates would each conduct a public meeting at or near the location or the proposed dispensary. The applications shall be presented to the Medical Cannabis Commission, which may make a recommendation to the City Council. The City Council would then establish a final ranking of the applications and make its selection from among the five candidates.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

The fee is expected to cover the cost of staff review of applications for Berkeley's fourth medical cannabis dispensary.

ALTERNATIVE ACTIONS CONSIDERED

Setting the Medical Cannabis Dispensary application fee at a flat rate.

CONTACT PERSON

Elizabeth Greene, Secretary, Medical Cannabis Commission, 510-981-7484

Attachments:

1. Resolution
2. Cost Estimate, Medical Cannabis Dispensary Selection Process
3. Public Hearing Notice

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

ESTABLISHMENT OF A FEE SCHEDULE FOR MEDICAL CANNABIS DISPENSARY APPLICATIONS

WHEREAS, Measure T passed in November 2010, permitting the establishment of a fourth medical cannabis dispensary in Berkeley, subject to new regulations and a selection process; and

WHEREAS, on July 8, 2014, the City Council approved new medical cannabis dispensary regulations and a selection process; and

WHEREAS, the selection process consists of four rounds and will require significant staff time; and

WHEREAS, the City is allowed to recover staff costs.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council hereby sets the Medical Cannabis Dispensary application fee at:

\$878 for Round 1,
\$2,948 for Round 2, and
\$2,948 for Round 3.

BE IT FURTHER RESOLVED that the Council hereby sets the following fee to be paid by applicants submitting more than one location for consideration:

\$2,000 per additional location for Round 2.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley hereby sets the following fee for Police Department review of Live Scan results:

\$71 per record review.

Exhibit A Cost estimate, Medical Cannabis Dispensary Selection Process

	Cost	Tasks	Staff Hours	Staff cost	Fees collected
1 Application & Determination of Eligibility	\$878 per application	<ul style="list-style-type: none"> • Prep for application process (develop fact sheet, fees, application form, competency test, map of schools) (total cost) • Notify public of schedule and answer questions (total cost) • Review applications for completeness (total cost) • Administer competency test (total cost) • Correct competency test (total cost) • Notify appl. of results/next steps/need for more fees (total cost) 	<p style="text-align: center;">40 10 8 10 3 2 Total = 73</p>	<p style="text-align: center;">\$7,200 1,800 1,440 1,800 540 360 Total = \$13,140</p>	<p style="text-align: center;">Total = \$13,170 (Assuming 15 applications are received)</p>
2 Initial Ranking – Minimum Qualifications	<p>\$2,948 per application</p> <p>\$2,000 per addl location submitted per application</p>	<ul style="list-style-type: none"> • Follow up with principal review (as necessary) • Admin of applications • Staff review • Notify applicants of results/next steps/need for more fees and location/consolidation info. 	<p style="text-align: center;">3 1 2 4 2.5 3 .5 Total hours= 16 (per application)</p>	<p style="text-align: center;">\$540 180 156 568 875 540 90 Total = \$2,949 (per application)</p>	<p style="text-align: center;">Total = \$29,480 (Assuming 10 out of 15 applications get into the second phase)</p>
3 Second Ranking – Bonus Points	\$2,948 per application – limited to 10 applications	<ul style="list-style-type: none"> • Admin of applications • Staff review • Notify applicants of results/next steps 	<p style="text-align: center;">1 2 1 2 4 3 .5 Total hours = 13.5 (per application)</p>	<p style="text-align: center;">\$180 156 180 280 680 540 90 Total = \$ 2,106 (per application)</p>	<p style="text-align: center;">Total = \$29,480 (Will cover total staff costs of \$29,700 for phase 3 and phase 4)</p>
4 Selection	No fee except \$1,080 for additional locations - limit 5 applications	<ul style="list-style-type: none"> • Coordinate and advertise meetings (total cost) • Attend meetings (total cost) • Draft report to MCC (total cost) • Draft report to Council • Attend Council meeting 	<p style="text-align: center;">10 20 8 6 4 Total hours = 48</p>	<p style="text-align: center;">\$1,800 3,600 1,440 1,080 720 Total = \$8,640</p>	

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

MEDICAL CANNABIS DISPENSARY APPLICATION FEES

Notice is hereby given by the City Council of the City of Berkeley that a public hearing will be conducted by said city council of the City of Berkeley at which time and place all persons may attend and be heard upon the following:

The Department of Planning and Development is proposing to establish an application fee schedule for medical cannabis dispensaries.

Proposed Fees

\$878 – Round 1

\$2,948 - Round 2

\$2,948 – Round 3

\$2,000 – Round 2 for additional locations

\$71 – Police review of Live Scan results

The hearing will be held on Tuesday, November 18, 2014, at 7:00 p.m. in the City Council Chambers, 2134 Martin Luther King, Jr. Way.

For further information, please contact Elizabeth Greene at 510-981-7484.

A copy of the agenda material for this hearing will be available on the City’s website at www.CityofBerkeley.info as of November 6, 2014.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Published: The Berkeley Voice – 11/7/14 and 11/14/14
California Government Code §6062(a)

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on November 6, 2014.

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Mark Numainville, CMC, City Clerk

*If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 12 days prior to the public hearing.*

