



CITY OF OAKLAND
Office of the City Administrator

NUISANCE ABATEMENT • SPECIAL ACTIVITY PERMIT
1 Frank H. Ogawa Plaza, 11th Floor • Oakland, CA 94612

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April 8, 2019

To Whom It May Concern:

The City Administrator has adopted the enclosed findings and recommendation of the Administrative Hearing Officer approving the applications of Telegraph Patients Group (TPG) to (1) relocate TPG's dispensary permit from 3003 Telegraph Avenue to 1836 Park Boulevard, (2) transfer its dispensary permit from TPG to the Parkway Theater, Inc., (3) and add a cannabis onsite consumption permit for the 1836 Park Boulevard location.

Pursuant to Oakland Municipal Code (OMC) Section 5.02.100 and OMC Section 5.80.070 any person excepting to the granting of a permit may appeal this action by filing with the City Administrator a written notice of such appeal setting forth the specific grounds thereof. **The appeal must be submitted no later than 5:00 p.m. on Tuesday April 23, 2019 to the following address:**

Office of the City Administrator, attn: Special Activity Permits Division
1 Frank H. Ogawa Plaza, 1st Floor, Room 123
Oakland, CA 94612

The appeal must include a \$763 special activity permit appeal filing fee in accordance with the City of Oakland Master Fee Schedule. Payment shall be made out to the City of Oakland via check or money order. After receipt of a timely appeal request, the appellant will be notified of an appeal hearing before an independent hearing officer.¹

Sincerely,

Greg Minor
Assistant to the City Administrator

¹ Per OMC Section 5.80.070, "The City Administrator's decision to issue or deny a permit shall be subject to an appeal by the Applicant pursuant to Section 5.02.100, except that the appeal authorized in Section 5.02.100 shall be to an independent hearing officer and not the City Council. The request for an appeal must be made in writing within fourteen (14) days of the City Administrator's decision. The decision of the independent hearing officer shall be final and conclusive."



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April 2, 2019

FINDINGS AND RECOMMENDATION OF HEARING OFFICER ON APPLICATION OF TIDEWATER PATIENTS GROUP (TPG) TO (1) MOVE ITS DISPENSARY FROM 3003 TELEGRAPH AVENUE TO 1836 PARK BOULEVARD, OAKLAND, CA 94606, (2) TRANSFER ITS DISPENSARY PERMIT FROM TPG TO THE PARKWAY THEATER, INC., AND (3) ADD A CANNABIS ONSITE CONSUMPTION PERMIT FOR THE PROPOSED 1836 PARK BOULEVARD LOCATION.

Pursuant to Oakland Municipal Code (OMC) Section 5.80.020(E), a public hearing on the above application was held on March 4, 2019 in Hearing Room 1, City Hall, 1 Frank H. Ogawa Plaza, Oakland, California.

Presented below are the Findings and Recommendation of the Hearing Officer:

FINDINGS

A. LEGISLATIVE HISTORY AND BACKGROUND ON TELEGRAPH PATIENTS GROUP

1. Since 2004 the City of Oakland has regulated the retail sale of cannabis under Ordinance Number 12585 CMS, codified as OMC 5.80. Initially OMC 5.80 authorized the sale of medical cannabis to patients and primary caregivers through four dispensaries licensed by the City Administrator. OMC 5.80 also authorized the City Administrator to promulgate regulations for the permitting and operation of medical marijuana dispensaries including security concerns. In 2011 the Oakland City Council amended OMC 5.80 to increase the total number of dispensary permits issued by the City Administrator to eight.
2. In 2012 the City of Oakland selected Tidewater Patients Group (TPG) as one of four new groups to operate a dispensary.
3. The City Administrator selected TPG and three other operators via a Request for Permit Applications (RFP) process that consisted of two phases:
 - a. Under Phase I a panel of City employees scored applicants' business plans, proof of capitalization and community benefits plans. The RFP allocated up

to 700 points on the business plan, 200 points on capitalization, and 100 points on community benefits.

- b. Under Phase II, a panel of City employees scored the top ten applicants from Phase I based on their labor & employment practices and product safety. The RFPA allocated up to 230 points for labor and employment practices and up to 200 points for product safety. In addition, Phase II applicants took an exam on state and local cannabis law for up to 100 points and the City Administrator's Office required applicants to undergo a public hearing for their proposed dispensary site. As provided in the RFPA, the hearing decision, recommendations, and conditions were based primarily on community input, site inspection results, business feasibility, and the viability of the proposed location.
4. Regarding community benefits, the RFPA allocated points based on two elements:
 - a. First, "Applicants must show how they plan to have minimal nuisance or negative impacts on their neighbors and community. Nuisance/negative impacts include but are not limited to: noise, odor, increased foot or vehicle traffic, increase in waste or water production, and or increase in safety related concerns."
 - b. Second, "Applicants must provide to the City how their entity will develop and implement a Community Benefits Program. Programs should be designed to give back to the community and Oakland residents by assisting in the provision of necessary support services."
 - c. The community benefits section concludes by stating, "Applicants must detail how they will revitalize the building/site, provide neighborhood improvements and will be a beneficial/positive neighbor to the neighborhood."
 5. TPG was one of eleven groups that submitted a complete and timely application to the RFPA.
 6. Applying the assessment process as outlined in the September 7, 2011 RFPA, the City evaluated TPG as follows:
 - a. TPG received 590 points on their business plan, 185 points for capitalization, and 87.5 points for community benefits for a Phase I score of 862.5, which ranked third amongst all applicants. Had TPG received zero points for community benefits, TPG would have still ranked within the top ten of all Phase I applicants and been eligible for Phase II of the RFPA.
 - b. Under Phase II, TPG received 96 points on the examination and 327 bonus points giving TPG a total score of 1,292.5, which ranked second among all applicants. Had TPG received zero points for community benefits, TPG still would have been eligible for the four dispensary permits available as they would have moved from being the second to the fourth highest ranked applicant.

7. TPG's initial proposal centered around a dispensary and cultivation facility at 4709 Tidewater Ave. TPG's community benefit proposal included providing capital for infrastructure improvements in the Tidewater/Lesser Street area, operating a free shuttle to Fruitvale BART, local jobs, and committing a specific percentage of annual gross receipts to local non-profits.
 - a. The budget TPG submitted as part of its initial application highlighted these commitments by featuring infrastructure improvement and community benefit line items totaling approximately \$1.1 million over three years. This budget also included a cultivation cost reduction line of approximately the same amount to reflect the savings the dispensary would receive by producing its own product at the Tidewater location.
8. After a public hearing on January 4, 2012, the City Administrator's Office rejected the proposed site of 4709 Tidewater, largely due to the proximity to a public park and youth-oriented boating center. While rejecting the Tidewater location, the City Administrator's Office offered TPG the opportunity to identify an alternate site.
9. Subsequently, TPG underwent public hearings for three alternative locations, 3020 Broadway, 3974 Manila, and 1924 Franklin on July 19, 2012. The City Administrator's Office ultimately rejected these sites as well.
10. Finally, after a public hearing on October 4, 2013 the City Administrator's Office approved TPG to operate a dispensary at 3007 Telegraph Avenue.
11. In the 2013 Hearing Decision, the Hearing Officer noted that "Mr. Koziol and the board of TPG presented updated financial and security plans. The plans were reviewed and approved by the hearing officer."
 - a. In contrast with the initial financial plans for 4709 Tidewater Avenue, the updated financial plans for 3007 Telegraph (as well as the Manila, Franklin and Broadway locations) did not include a line item for community benefits, infrastructure improvements, or cultivation cost reduction. This is consistent with the fact that only the Tidewater location included a cultivation operation in addition to the dispensary.
12. For the remainder of 2013 and the first half of 2014, TPG obtained approvals from the planning, building and fire departments as it renovated the historic building at 3007 Telegraph and prepared to open for business.
13. In January 2014, there was a transition in City leadership whereby Greg Minor succeeded Arturo Sanchez in supervising the Special Activity Permits Division in the City Administrator's Office, including the permitting of cannabis businesses in the City of Oakland.
14. The City Administrator's Office issued TPG its initial dispensary permit in August of 2014.
15. The City Administrator's Office attached conditions of approval to TPG's 2014 dispensary permit that included a Community Benefits section that stated:

- a. "Dispensary is required to operate as a not for profit. However within one year of operation OCC [sic] will leverage its not-for-profit status to provide funding to grassroots organizations whose work matches OCC's [sic] philanthropic agendas. OCC [sic] will fund in its first five year of operations seven program areas as identified in its MCD application process. Areas of [sic] may include, but not be limited to: 1. Re-Entry Programs for Formerly Incarcerated Residents of Oakland. 2. Sports and Educational Opportunities for At-Risk Youth. Funding Process and Program will be as detailed in the Business Plan and RFPA application to conduct MCD activity submitted by OCC and upon which the City relied in selecting OCC [sic]."
16. OCC was the acronym for another group awarded a dispensary permit via the 2011 RFPA process.
17. In 2015 the City Administrator's Office renewed TPG's dispensary permit and attached the same community benefit conditions as 2014.
18. In 2016 and 2017 the City Administrator's Office renewed TPG's dispensary permit and attached the same community benefit conditions as 2014, while replacing OCC with Telegraph Patients Group.
19. TPG operated at the Telegraph location for several years without incident and its staff well exceeded the City of Oakland's fifty percent Oakland employee requirement for dispensaries.
 - a. In fact, a 2016 analysis that compared Oakland Police Department (OPD) calls for service near City of Oakland permitted dispensaries before and after they opened found that TPG's operation resulted in a bigger decrease in crime than any other dispensary in Oakland.
20. During this time, the City Council further amended OMC 5.80 and its companion OMC 5.81 (concerning the permitting of cannabis distribution, manufacturing, testing and cultivation) in 2017 and 2018 to include an equity permit program that prioritizes historically marginalized populations, legalize the cannabis industry's entire supply chain, permit both medical and adult use of cannabis, and allow the City Administrator to issue up to eight additional dispensary permits per year.
21. Around 2016 TPG became embroiled in a legal dispute with their landlord at the Telegraph site, Oakland Management Group, LLC, an entity managed and owned partially by Carlos Plazola and Laura Blair, TPG's former political consultant and general counsel, respectively.
22. After this legal dispute arose, Mr. Plazola, his counsel David Stein, and Ms. Elaine Brown began raising concerns to the City Administrator's Office about TPG's lack of compliance with community benefit requirements.
23. The City Administrator's Office inquired with TPG regarding these allegations. TPG formally responded in a February 1, 2017 letter that outlined both its permitting history, including the different financial statements presented to and accepted by the City Administrator's Office, as well as an updated community benefits plan that committed to donating \$40,000 in 2017 towards Oakland re-entry program, sports

and educational enhancement opportunities for at-risk Oakland youth, and non-profit groups in West Oakland.

24. Nevertheless, TPG's legal disputes with its landlord persisted and in January 2019 TPG closed its operations at the Telegraph site.

B. PARKWAY PUBLIC HEARING

1. In January 2019 TPG submitted applications with the City Administrator's Office to move its dispensary permit from the Telegraph Avenue location to the former Parkway theater at 1836 Park Blvd., to add an onsite consumption permit for 1836 Park Blvd., and to transfer its dispensary permit to the Parkway Theater Inc.
2. Four of the five Board of Directors for the Parkway Theater Inc. are the same as TPG's current board, with Thomas Nguyen, an Oakland resident and verified equity applicant replacing former board member and Oakland resident Ignacio De La Fuente. Sixty-percent of the board thus remains Oakland residents and forty-percent residents of outside of Oakland.
3. A public hearing regarding TPG's applications was then set for March 4, 2019.
4. Notice of the public hearing was timely provided to the applicant, mailed to neighboring property owners, and posted in the Oakland Tribune newspaper, on the City's bulletin board, as well as at 1836 Park Blvd., the proposed place of business.
5. In advance of the hearing, the Special Activity Permits Division received eleven emails in support of approving the applications and eight emails in opposition to the applications. Of those eight emails in opposition, four were from Mr. Plazola.
 - a. Emails in support of the proposal expressed support for the operators of TPG, the opportunity to revitalize the historic Parkway theater, the community outreach conducted by TPG in advance of the public hearing, the increased security that a dispensary would provide the neighborhood, and the need for former patients of TPG's Telegraph site to be able to frequent their business again.
 - b. Emails in opposition raised concerns regarding TPG's compliance with community benefits requirements, insufficient noticing of the public hearing, the authority of the City Administrator to hear this matter, TPG's ownership lacking African-Americans, gentrification, proximity to schools, and the fact that a dispensary would not be open to all ages.
6. The Special Activity Permits Division also received the results of an online poll posted by Councilmember Bas that showed 76 individuals in favor of the proposal and 21 against by the time of the hearing.
 - a. Comments submitted as part of the online poll were similar to those expressed via email. Those in opposition voiced concerns regarding gentrification, insufficient local hiring of African-Americans, and not serving the whole community. Those in support praised the revitalization of the Parkway theater and their interactions with TPG management at community meetings.

7. At the public hearing Bill Koziol presented on behalf of TPG and provided an overview of the proposed project via powerpoint in which he described the poor condition of the Parkway theater, TPG's vision for refurbishing the site, as well as new community benefits commitments that included free access to the Parkway theater for community meetings and non-profits, plus transparency in hiring and business practices.
 - a. Specifically, TPG proposes by the end of year one to have a staff composed of 80 percent Oakland residents, 50 percent equity qualified individuals, and 25 percent formerly incarcerated or convicted of a drug offense. Additionally, by year one 25 percent of their cannabis products will be from equity applicants and 40 percent of their board will consist of equity qualified individuals.
 - b. With respect to providing free space for community meetings and non-profit groups, TPG later detailed that it will commit 40 hours per month to use the theater level community space or upper mezzanine area, with priority given to groups in City Council District Two.
 - c. TPG also proposes to ost a community engagement report card that publicly presents TPG's progress towards their local hiring and business practice commitments.

8. Following TPG's presentation thirteen public speakers spoke, with eleven speakers generally in favor of the proposal and two in opposition.
 - a. Those in opposition questioned TPG's community benefits compliance, financial impropriety on the part of TPG's ownership group in the City of Richmond, and TPG's ability to provide sufficient parking for its customers and mitigate cannabis odors from exiting the facility.
 - b. Those in support applauded the creation of a lawful site for cannabis consumption and live entertainment, the revitalization of the historic Parkway that has been sitting vacant and deteriorating, and complimented TPG's past practices revitalizing a historic site on Telegraph Avenue.

APPLICABLE LAW

OMC 5.02.070 - Transfer of Permits.

No permit in this Chapter required shall be transferable, nor apply to any premises other than those originally specified as the location of the thing permitted, except upon written permission of the City Administrator, or other official originally granting such permit, granted upon written application by the transferor, made in the same manner as may be required in the instance of the original application for such permit.

OMC 5.02.025 – Onsite Consumption Permit

(B) An onsite consumption permit may be issued at the discretion of the City Administrator to existing dispensaries in good standing following a public hearing conducted according to the requirements of Chapter 5.02 and based on an evaluative point system that takes into consideration the operating history and business practices of the applicant, and any other factors that are deemed necessary to promote the peace, order and welfare of the public.

DISCUSSION

A. Relocation of the Dispensary to 1836 Park Blvd.

OMC 5.80.020(D)(1) allows dispensaries in any commercial or industrial zone provided there is a 600-foot buffer via path of travel from schools, youth centers, or another dispensary. OMC 5.80.020(D)(1) also authorizes the City Administrator to waive those buffers if in her discretion she determines the location will not impact the peace, order, and welfare of the public.

The Parkway Theater at 1836 Park Blvd. is in a commercial zone and is more than six hundred feet from any of the prescribed buffers. It is relatively close to a park, however, the City Council specifically eliminated parks as a buffer consideration for dispensaries under OMC 5.80 in 2016.

The site itself has historic value and has been vacant for several years, so its proposed revitalization, as noted by those who emailed, voted online, and spoke in favor of TPG's proposal, should benefit both the building and the surrounding community by preserving the structure and providing a gathering place, albeit primarily for adults. Further, TPG's experience revitalizing a historic site at its Telegraph location demonstrates TPG's capacity for preserving historic buildings.

With regards to providing sufficient parking, there are multiple parking lots near the Parkway that could assist with providing parking for Parkway patrons. The hearing officer encourages TPG to explore these opportunities, as well as methods of encouraging patrons to visit the Parkway through Transportation Network Companies such as Lyft and Uber, or other modes of transportation altogether. Should TPG not arrange for additional parking spots prior to opening and the operation of the Parkway become a nuisance to neighboring businesses and properties, the hearing officer will explore parking related requirements in the future.

B. Issuance of an Onsite Consumption Permit for 1836 Park Blvd.

As part of its onsite consumption permit application, TPG submitted a detailed onsite consumption plan with policies to ensure patrons do not overconsume or drive while intoxicated. Further, TPG proposes allowing only non-smoking consumption so any odor generated should be minimal and addressed via TPG's ventilation plan.

More generally, permitting safe consumption spaces is essential given prohibitions on public consumption and restrictions people can encounter consuming at home. Provided TPG implements its anti-drugged driving and odor mitigation plans and employs best practices for managing an onsite consumption lounge, such as monitoring the status of those who consume and developing additional policies as needed to preserve a safe environment, TPG's onsite consumption lounge can serve as a model for responsible consumption of cannabis.

C. Transfer of Permit to the Parkway Theater, Inc.

It is unlawful to operate a cannabis dispensary in Oakland without a permit in compliance with OMC Chapters 5.02 and 5.80. While OMC 5.80 is silent on the subject of the transfer of a dispensary permit, OMC 5.02, which governs the general issuance of business permits

in the City of Oakland, addresses restrictions around the transfer of any business permit issued by the City of Oakland as follows:

“No permit in this Chapter required shall be transferable, nor apply to any premises other than those originally specified as the location of the thing permitted, except upon written permission of the City Administrator, or other official granting such permit, *granted upon written application by the transferor, made in the same manner as may be required in the instance of the original application for such permit*” (emphasis added).

Accordingly, the City Administrator has discretion to approve a transfer of a dispensary permit so long as the transferor of the permit applies for the transfer in the same manner as may be required when the permit was first applied for. Pursuant to this requirement, TPG submitted a cannabis permit application in writing to the City Administrator and underwent a public noticing and hearing process similar to the process TPG underwent in 2012 and 2013. TPG’s application included disclosing property owner and applicant information, security plan information, floor plans, an odor mitigation plan, and a community beautification plan.

TPG submitted supporting documentation that demonstrates the dispensary operation will continue to be in control of virtually all of the same directors, and the vast majority of comments submitted to the City via the public noticing and public hearing process were in favor of TPG’s proposal. Further, TPG’s proposal to transfer of its dispensary permit from its original not for profit mutual benefit corporation to a standard LLC is in line with developments in California law as state cannabis law no longer restricts cannabis businesses to operating as just a not for profit mutual benefit corporation. In light of these factors, the hearing officer finds no reason to oppose this application.

D. Compliance With Community Benefits Requirements

Had the City of Oakland approved TPG’s initial application to operate a dispensary and cultivation facility on Tidewater Avenue, there is no question that they would be required to fulfill the community benefits they articulated in their original application, including dedicating a specific percentage of their gross receipts towards local non-profits. However, the City denied TPG the opportunity to pursue this project and the record afterwards is far from clear.

On one hand, TPG revised their financial plan after the Tidewater denial, omitted any community benefits contribution, and the 2013 hearing officer reviewed and approved the revised financial plan. Moreover, the 2011 RFP’s scoring was such that even without a community benefits component, the City still would have selected TPG to receive one of the four new dispensary permits. Additionally, under community benefits, the 2011 RFP asked applicants to “show how they plan to have minimal nuisance or negative impacts on their neighbors and community” and “detail how they will revitalize the building/site, provide neighborhood improvements and will be a beneficial/positive neighbor to the neighborhood.” TPG’s restoration of an abandoned historic site and TPG’s operation at the Telegraph location which resulted in a significant the decrease in calls for service to OPD satisfy these 2011 RFP community benefits requirements.

On the other hand, the 2013 hearing decision approving the updated financial plan was silent on the specific issue of community benefits, and TPG’s dispensary permit conditions

always included language, albeit boilerplate language, requiring TPG to contribute towards the same philanthropic agenda and in the same manner as they articulated in the original RFPA.

What is clear is TPG has proposed specific measures to benefit the Oakland community going forward:

- (1) By the end of year one of the dispensary's Parkway operation, have a staff composed of 80 percent Oakland residents, 50 percent equity qualified individuals, and 25 percent formerly incarcerated or convicted of a drug offense.
- (2) By the end of year one, 25 percent of their cannabis products will be from equity applicants and 40 percent of their board will consist of equity qualified individuals.
- (3) Dedicating 40 hours per month to non-profits and community groups to use the theater level community space or upper mezzanine area, with priority given to groups in City Council District Two.
- (4) Publicly posting a community engagement report card that presents TPG's progress towards their local hiring and business practice commitments.

These new commitments can be part of a clear record moving forward, providing transparency and accountability. Further, these new measures are in addition to the 2017 commitments made by TPG to provide a minimum of \$40,000 a year to local non-profits providing re-entry programs for formerly incarcerated residents of Oakland, or sports and educational opportunities for at-risk youth.

RECOMMENDATION

For the reasons stated above, the hearing officer recommends that the City Administrator incorporate Telegraph Patient Group's (TPG) new community benefits commitments as conditions to its dispensary permit and approve (1) the relocation of TPG's dispensary permit from 3003 Telegraph Avenue to 1836 Park Blvd., (2) the change in ownership from TPG to the Parkway Theater, Inc., and (3) the addition of an onsite consumption permit for the 1836 Park Blvd. location. Said cannabis consumption shall not include any smoking, consistent with the City of Oakland's smoking ordinance, OMC 8.30.

Prior to commencing dispensary operations at 1836 Park Blvd., the Parkway Theater, Inc. must comply with all planning, building, fire, and Oakland police department requirements, and obtain final approval from the Special Activity Permits Division.



GREG MINOR, HEARING OFFICER

April 2, 2019

DATE

cc via email:
City Administrator Sabrina Landreth
Councilmember Fortunato-Bas
Officer Romero, Police Department

