



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** November 21, 2017

**TO:** Mayor and Members of the City Council

**FROM:** Charles S. Bryant, Community Development Director  
Michael A. Guina, City Attorney  
Jennifer Tejada, Police Chief

**SUBJECT:** **Resolution Of The City Council Of The City Of Emeryville Authorizing The Police Chief To Issue A Cannabis Dispensary/Retailer Permit For A Storefront Dispensary To \_\_\_\_\_**

### RECOMMENDATION

Staff recommends that the City Council select one of the top four applicants and adopt the above-referenced resolution (see Attachment 1). Per Resolution No. 17-135, the City Council also has the discretion to select more than one applicant.

### BACKGROUND

On April 4, 2017, the City Council adopted the final reading of two ordinances to establish a local regulatory framework that would allow for commercial cannabis within the City. Ordinance No. 17-002 amended the City's Planning Regulations to allow for all commercial cannabis activity, except commercial cultivation, subject to a conditional use permit from the City's Planning Commission. The ordinance became effective on May 4, 2017, and the City's Planning Division is accepting applications for conditional use permits for cannabis businesses.

Ordinance No. 17-003 repealed and replaced Chapter 28 of Title 5 of the Emeryville Municipal Code, and requires all commercial cannabis businesses to obtain an Operator's Permit prior to commencing operation. This ordinance became effective September 1, 2017. The ordinance provides that Operator's Permit(s) for dispensary/retail businesses will issue pursuant to regulations adopted via resolution of the City Council. On September 5, 2017, the City Council adopted Resolution No. 17-135 establishing those regulations. All cannabis businesses, except for storefront dispensary/retail businesses, may apply for their Operator's Permit from the Police Department after obtaining a conditional use permit from the Planning Commission. For storefront dispensary/retail businesses, after issuing a Request for Qualifications (RFQ), the City Council will deem a business qualified to obtain an Operator's Permit from the Police Chief. The intent is to deem one applicant qualified per the RFQ, but the Council has the discretion to deem

more than one applicant qualified per the RFQ. Following selection by the City Council, the storefront dispensary/retail business(es) will then need to obtain a conditional use permit from the Planning Commission.

On September 5, 2017, the City Council adopted Resolution No. 17-136, authorizing the City Manager to issue a RFQ related to issuing one Operator's Permit for a storefront dispensary/retail business. The RFQ identified several goals to be achieved through deeming a business qualified to hold an Operator's permit for a storefront dispensary/retail business. The first goal relates to the attributes of the business. The City Council desires to issue a dispensary/retailer permit to a cannabis business with a storefront that will serve a regional customer base, and provide a location for onsite consumption. The second goal relates to the type of cannabis sold. In recognizing some of the uncertainty of the regulatory environment, the Council has indicated that it is open to a cannabis business that sells medical cannabis, recreational cannabis or both. The third goal relates to community benefits. The Council desires community benefits that are flexible and can be directed by the City. Finally, the last goal relates to "good neighbor" qualities. (See Attachment 2, p. 5.)

On September 6, 2017, City staff issued the RFQ approved by the City Council. The City received seven submittals in response to the RFQ. After representatives from the Police Department, Economic Development and Housing Division, and City Attorney's Office reviewed the initial submittals, staff sent a standard set of supplemental questions to each applicant team to answer in writing. All applicants also participated in oral interviews with City staff. At each oral interview, City staff asked five standard questions and two questions specific to each applicant during a fifty-minute period. City staff then met to rate each applicant team. The raw scores for the rating sheet represent a consensus of City staff (as opposed to an averaging of raw scores from several raters).

## DISCUSSION

As noted above, the City received seven submittals in response to the RFQ. The scores of the submittals from highest to lowest weighted score are as follows:

<b>Applicant</b>	<b>Raw Score</b>	<b>Weighted Score</b>
Rochambeau (NuLeaf)	161.5	187.5
MN Group (Green Door)	147	175.5
East Bay Therapeutics	148.25	171
GL Partners (Harvest)	130.5	150
VMK (Purple Lotus)	123.5	141
Firefly	105.25	132
Sapphire Management (Adeline Collective)	92.75	108

The name in parentheses next to the applicant's name represents another name that is associated with the applicant. Attachment 3 includes the rating sheets for all applicants. The rating sheet, as approved by Council, gave a greater weight to the scores in for

Question Nos. 17-20. The raw score represents the total sum of the scores for each question, without giving additional weight to Question Nos. 17-20.

Resolution 17-135 provides that staff will forward the top three applicants and their written materials to the Council for consideration. Based on the weighted score, the top three applicants (in order of highest score to lowest) are: Rochambeau, MN Group, and East Bay Therapeutics. All three applicants have experience in operating dispensaries in other locations, and their submittals evidence the ability to further the City's goals as articulated in the RFQ. Both Rochambeau and MN Group offer similar business models, in which the dispensary/retail outlet will focus on adult and medical sales, with a small area for onsite consumption (e.g., a "tasting area"). East Bay Therapeutics also offers a storefront dispensary/retail outlet where individuals can purchase cannabis for both adult and medical use. However, East Bay Therapeutics incorporates an incubator model into its business plan to address social equity issues in the cannabis industry and focuses on a different type of delivery model (e.g., mobile dispensary units) to serve a regional customer base.

City staff is also forwarding the fourth rated applicant, GL Partners, for the Council's consideration. Unlike Rochambeau and MN Group, GL Partners' business model is focused on a normalized retail environment for cannabis, and includes a cannabis lounge where individuals are encouraged to linger. Of the submittals received, GL Partners' has the strongest focus on onsite consumption and a strong emphasis on creating a customer experience in line with traditional retail. As staff learned through this RFQ process, successful cannabis retail operations focus on volume, and require efficient customer turnover. A successful cannabis lounge is one that depends on creating an atmosphere and place where people want to go and spend time. The two different business models capture different segments of the market, and could easily co-exist. Some even develop a symbiotic relationship. For this reason, and because GL Partners presented a strong application, staff is forwarding GL Partners for Council consideration.

With respect to the applicants' submittals, staff is unable to forward submittals in their entirety. Significant portions of the submittals are exempt from public disclosure because the submittals contain information about the applicant and owners' financial status, trade secrets, and security plans.<sup>1</sup> Therefore, for the top four applicants, staff has included the executive summaries from the proposals as Attachments 4-7, redacted as appropriate with the applicants' permission.

Below is staff's discussion on how the applicants were rated using the rating sheet attached to the RFQ, approved by Council via Resolution No. 17-136.

#### *Description of Operations (Questions 1-4)*

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<sup>1</sup> See Gov. Code, §§ 6254(n); 6255(a); Civ. Code, § 3426, et seq.; Emeryville Municipal Code, § 5-28.05(l).

Questions 1-4 are primarily objective questions, in which either the submittal addressed the questions or it did not. All of the submittals addressed the questions, and therefore, the default score was a 5. However, some submittals provided more details in their responses. For these submittals, the scores were elevated. Likewise, if a submittal did not provide adequate detail, its score was downgraded.

#### Description of Premises (Question 5)

The purpose of this question is to ensure that the applicant has considered a location for the proposed business. All applicants identified a proposed site for their business, and thus were scored at least a 5. Some applicants went beyond identification, and provided evidence of a right to secure the location if awarded the operator's permit. These applicants were awarded a higher score of 7. Rochambeau has secured the site with an executed lease and therefore received a score of 10.

Some of the proposed locations include sites located in mixed-use buildings. During the Council's study session on September 19, 2017, regarding proposed modifications to Chapter 29 of Title 5, "Smoking Pollution Control", the Council expressed concern regarding allowing smoking/vaping of cannabis at cannabis dispensaries located in mixed-use buildings. Accordingly, staff presented the following written supplemental question to the applicants:

- One of the Council's current projects is to consider amendments to the City's anti-smoking regulations. The Alameda County Public Health Department – Tobacco Control Program has commented to the City Council that no technology exists that can completely eliminate the harm from secondhand smoke from cannabis. Thus, there is concern that secondhand smoke from cannabis in a dispensary located in a multi-use building poses a threat to the residents' health. What is your response to this situation? How critical is on-site consumption of cannabis via smoking to your business plan? Please note that the term smoking includes vaping.<sup>2</sup>

All top four applicants maintain that the impacts of secondhand smoke can be mitigated. Both Rochambeau and MN Group have proposed sites located in mixed-use buildings, and both Rochambeau and MN Group ultimately will defer to the Council's direction and the neighbors' preferences regarding smoking/vaping of cannabis on-site. Rochambeau indicated a willingness to partner with nearby consumption lounges, if permitted in the future. East Bay Therapeutics and Harvest are considering sites that are not located in mixed use buildings.

#### Security Plan (Questions 6-12)

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<sup>2</sup> Applicants were not rated on their responses to this written supplemental question. Rather, the purpose was to solicit information for Council's consideration.

Questions 6-12 are designed to rate applicants on the information submitted to satisfy Section 5-28.05 of the Emeryville Municipal Code, which specifies the information to be provided in a permit application. With the exception of Questions 6 and 10, the applicants were rated solely on their written submittals and responses to the eight written supplemental questions that related to security. Higher scores indicate that the submittal provided greater detail on the security plan, and evidenced forethought into taking preventative steps to discourage public safety impacts related to cannabis. Two of the top four applicants (MN Group and GL Partners) scored a 0 in response to question 11, which addresses how the applicant proposes to limit cash on the premises. Neither of the applicants addressed this in their submittals, but such failure is not fatal to their application because this oversight can be corrected by attaching conditions of approval to the Operator's Permit.

For Questions 6 and 10, applicants were rated on their submittals and on their responses provided during the oral interview. The security related questions asked during the oral interview were:

- Please describe the philosophy of the security staff. For example, will you expect the security staff to observe and report, or to intervene?
- Please describe your overall approach to dealing with the police department. For example, when do you expect either security or other employees to call the police? Do you do citizen's arrests for misdemeanors?
- Please describe your overall approach to dealing with impaired customers. For example, do you intend to sell to impaired customers? How do you intend to deal with customers who may become impaired while consuming onsite?

The responses to the philosophy of the security staff and approach to dealing with the police department questions were considered in determining the rating for Question No. 6. The response to the question related to the approach to dealing with impaired customers was considered in determining the rating for Question No. 10.

With respect to Question 6, the top four applicants all addressed training of staff, access control, multiple stages to evaluate a customer for impairment, and overall, incorporated a proactive and preventative approach in their security plans. Both Rochambeau and GL Partners scored ten for Question 6, but for different reasons. Rochambeau scored a ten because part of their management team has experience in managing retail in the adult-use market, and therefore, has more experience in being able to manage the security at a site with adult-use sales, which presents different security concerns than strictly a medical-sales site.<sup>3</sup> GL Partners scored a ten because they have experience in turning a dispensary site from a public safety problem into a neighborhood asset. GL Partners also scored a ten for Question 10 because of their experience in operating on-site cannabis lounges and their approach to impaired customers. GL Partners' business

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<sup>3</sup> MN Group references experience in a market where adult use of cannabis is allowed, but neither their submittal nor their oral interview discussed this experience, accordingly they scored a nine.

model is one where customers are encouraged to remain on-site, and are supervised closely by staff while on-site. Other applicants also have experience in operating lounges, but only GL Partners' business model for Emeryville includes a strategic emphasis on operating a lounge, where the other applicants propose a retail store where consumption is ancillary to the retail operations.

#### Other Licenses (Questions 13-14)

With respect to Question 13, all applicants described the state licensing they planned to seek, and thus, all applicants scored a five in response to this question. With respect to Question 14, applicants who scored high on this question provided a detailed and sourced analysis in describing the intended market, and/or how they intended to reach that market. Applicants that scored ten specifically provided analysis related to the anticipated market in Emeryville. Thus, the higher the score for Question 14, the more detailed the market analysis, with specific information related to Emeryville.

#### Business Plan (Questions 15-20)

Question 15 (complement existing Emeryville businesses): This question evaluates how well the proposed business will complement existing Emeryville businesses. Applicants who scored high on this question submitted business plans in which either other Emeryville businesses or an Emeryville location is integral to their business plan. Consideration was also given to businesses who cited opportunities for cross-promotional efforts with existing businesses. For example, GL Partners scored a ten because their business plan envisions a cannabis lounge that is inclusive of and appeals to customers who may frequent Bay Street for shopping, and the new development at the Public Market, which assists in making the City's brick and mortar shopping districts relevant in the age of online retail by adding an experiential retail component. Both Rochambeau and East Bay Therapeutics scored nine because their proposed locations along the San Pablo corridor are integral to their business plan.

Question 16 (employment practices consistent with Emeryville values): Through this question, applicants are rated on their employment practices, and whether those employment practices capture Emeryville's values of fairness and inclusiveness. All four of the top overall applicants propose to pay wages above Emeryville's minimum wage, and submitted employee handbooks. Both Rochambeau and MN Group scored ten in response to Question 16 because they demonstrated that they would strive to go beyond the minimum employment standards at their Emeryville location. With respect to Rochambeau, they indicated a willingness to comply with the spirit behind the City's Fair Workweek Ordinance, even though they are not subject to it. MN Group scored a ten based on how they have conducted their business to date. MN Group takes pride in its diverse ownership/management team (which includes an individual harmed by the War on Drugs) and work force, its low employee turnover rate and preference to promote from

within, and employee team building/morale events. Both also indicated a willingness to hire locally.

Question 17 (include individuals and communities harmed by the War on Drugs): The Council has expressed a desire to ensure that individuals and communities who have been harmed by the War on Drugs benefit from the growth of the cannabis industry. All applicants scored at least a five in response to this question because they either indicated that employees would not be disqualified for cannabis convictions or they have served a community harmed by the War on Drugs. East Bay Therapeutics scored a ten for this question because their business model includes a cannabis business incubator designed to encourage black market operations to become legitimate cannabis operations by bringing them into their business. MN Group scored a nine because their applicant team includes an individual who has been harmed by the War on Drugs, and this experience by a key member has influenced how MN Group conducts itself through employment practices and philanthropic efforts.

Question 18 (other benefits to Emeryville): This question evaluates what other benefits the proposed business may offer to Emeryville. The Council has expressed a preference for benefits that are quantifiable, on-going and flexible. Applicants offered a variety of community benefit programs, with the flexibility and control offered to the City varying. Given the weight of this question, staff sent the following questions to each applicant to ensure clarity on what the applicant team was proposing:

- Please confirm the estimated dollar value of the community benefits for each program offered through your response to the RFQ.
- Please clarify the City's role in determining the recipients of the community benefits.
- Please clarify whether the City could qualify as an applicant for any grant programs offered as community benefits.

The greater the flexibility and control offered to the City through the community benefit, the higher the score for the applicant.<sup>4</sup>

Question 19 (financial feasibility): Question 19 evaluates whether the applicant has the ability and capital to deliver on its proposed business. The difference between those businesses that scored tens (Rochambeau and MN Group) and nines (VMK, GL Partners, and East Bay Therapeutics) is the evidence submitted regarding assets and access to credit, but overall, these five applicants all presented submittals that demonstrate they have the ability and capital to deliver the proposed business.

Question 20 (addressing City goals): This question evaluates applicants on how well their proposed application advances the City goals identified in the RFQ. For this question,

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<sup>4</sup> Even if staff rated the submittals solely based on the total community benefit, regardless of control or flexibility to the City, the overall ranking of the applicants would not change.

staff evaluated each applicant for each goal on a scale of 1-10. The score for each goal was added together, and then divided by 4, to give the applicant the score for this question. The rating was as follows:

<b>Applicant</b>	<b>Attributes of Business</b>	<b>Types of Cannabis</b>	<b>Community Benefits</b>	<b>Good Neighbor</b>	<b>Average Score</b>
Rochambeau (NuLeaf)	8	10	10	10	9.5
MN Group (Green Door)	9	8	9	10	9
GL Partners (Harvest)	10	9	5	10	8.5
East Bay Therapeutics	8	7	7	7	7.25
VMK (Purple Lotus)	5	7	5	5	5.5
Sapphire Management	5	7	2	1	3.75
Firefly	4	4	2	3	3.25

*Goal No. 1. Attributes of the Business:* For this goal, a higher score represents a business that includes all of the attributes that the Council seeks in a business: regional customer base, onsite consumption and retail. GL Partners scored a ten because they are an established brand in San Francisco, seeking to normalize the cannabis retail experience, which in turn captures the customers that frequent Emeryville for the shopping experience. MN Group also scored high because they are an established brand in the Bay Area, and are relying on their branding to draw customers to their location. They also have experience in operating a lounge. Both Rochambeau and East Bay Therapeutics scored well, but were not considered as strong because: Rochambeau is bringing a new, emerging brand to the Bay Area (though established in Nevada), and similarly, East Bay Therapeutics is offering a business model that is emerging (i.e. app-dispatched mobile dispensary units).

*Goal No. 2. Type of Cannabis.* Although this goal appears to be straightforward, staff had to ask a supplemental question seeking information on what type of state licensing applicants were seeking. Up until recently, dispensaries could only operate as a non-profit, selling medical cannabis. Some applicants proposed business models which seemingly focus on medical sales, although the applicants indicate they will seek a license to sell both medical and adult-use cannabis. A higher score on this goal represents that the applicant is farther along in the transition to sell both medical and adult-use cannabis as a for-profit business. Rochambeau scored a ten because members of their applicant team have experience with adult-use sales in other markets. GL Partners scored a nine because they are seeking to normalize the cannabis retail experience and capture a segment of the market that is untapped. MN Group has indicated they will be transitioning existing operations to both adult-use and recreational sales, and have the experience of taking a business public. Applicants who scored seven indicated a



willingness to transition to the adult-use market, but still focused on medical sales and experience in their proposals.

*Goal No. 3. Community Benefits.* This goal is very similar to Question No. 18. However, in rating applicants on this score, staff still considered the community benefits being offered in terms of the flexibility and the City's ability to control those benefits, but also analyzed the business' ability to deliver those community benefits.

*Goal No. 4. Good Neighbor.* This goal is designed to seek a business that will work with the neighborhood. Rochambeau, MN Group and GL Partners all scored ten for this goal. Rochambeau scored a ten because their submittal included evidence of neighbors supporting the business coming to their neighborhood, and letters of recommendation from another jurisdiction in which they operate. GL Partners scored a ten because of the evidence submitted in how they helped their displaced neighbors rebuild when a nearby mixed-use building was destroyed by fire. In addition, their business model is premised on having good neighborly relationships. MN Group scored a ten because of how they work with all neighbors at their locations. When MN Group took over a location that had been frequently used as a shelter by an individual who experienced homelessness, the MN Group found a way to include him in the business by having him do sidewalk maintenance in front of the location, instead of simply displacing the individual. MN Group also conducted outreach to the neighbors at their proposed Emeryville location. East Bay Therapeutics also scored high because of an applicant team member's experience in operating a dispensary near a sensitive site without any neighborhood complaints.

### Background Check Questions

All applicant team members completed live scans so Background Check Questions a-e could be answered prior to Council's consideration. However, because of time constraints, and the number of team member applicants, staff was not able to complete the background research necessary to answer those questions. For the applicant team selected by the City Council, the Police Department will complete that background research prior to issuing any Operator's Permit.

### **FISCAL IMPACT**

Based on the information received in the submitted proposals, all four of the top applicants will generate roughly similar amounts of business tax revenue to the City. It is presumed that they also will generate roughly the same amount of sales tax revenue because all four propose to sell both adult-use and medical cannabis.

With respect to community benefits that will have a positive impact on the City's general fund, the value is estimated to range between \$0 - \$140,000 per year. The community benefits offered by both Rochambeau and MN Group will have a positive impact on the City's general fund, with MN Group offering a more positive impact compared to Rochambeau. Neither GL Partners nor East Bay Therapeutics offered community

benefits that directly impacted the City's general fund, although both applicants offered community benefits in which the City could provide input (although not control) on philanthropic efforts.

## **STAFF COMMUNICATION WITH THE PUBLIC**

Staff received inquiries from building owners and residents regarding the status of submittals to the RFQ.

## **CONCLUSION**

Staff recommends that the City Council select one of the top four applicants and adopt the proposed resolution referenced in the title.

**PREPARED BY:** Andrea Visveshwara, Assistant City Attorney  
Chadrick Smalley, Economic Development and Housing Manager

**REVIEWED BY:** Charles S. Bryant, Community Development Director  
Jennifer Tejada, Police Chief

## **APPROVED AND FORWARDED TO THE CITY COUNCIL OF THE CITY OF EMERYVILLE:**



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Michael Guina, City Attorney

## **ATTACHMENTS**

- 1: Resolution Authorizing Police Chief to Issue Dispensary/Retailer Permit
2. RFQ (without attachments)
3. Rating Sheets
4. Executive Summary for Rochambeau
5. Executive Summary for MN Group
6. Executive Summary for East Bay Therapeutics
7. Executive Summary for GL Partners