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OFFICE OF THE CITY CLERK
OAKLAND

2016 JAN 29 AM 9:02 **AGENDA REPORT**

TO: Sabrina B. Landreth
City Administrator

FROM: Greg Minor
Assistant to the City Administrator

SUBJECT: Amendments to Medical Cannabis
Ordinances

DATE: January 23, 2016

City Administrator Approval

Date:

[Signature]
1/28/16

RECOMMENDATION

Staff Recommends That The City Council Conduct A Public Hearing And Upon Conclusion Adopt The Following Two Pieces Of Legislation: 1) An Ordinance Amending Oakland Municipal Code Chapter 5.80, Medical Cannabis Dispensary Permits, To Align With California's Medical Marijuana Regulation And Safety Act And Adopting CEQA Exemptions, And 2) An Ordinance Amending Oakland Municipal Code Chapter 5.81, Medical Cannabis Cultivation Facility Permits, To Align With California's Medical Marijuana Regulation And Safety Act And Adopting CEQA Exemptions.

EXECUTIVE SUMMARY

To date, the only aspect of the medical cannabis industry regulated by the City of Oakland is the providing of medical cannabis to qualified patients at retail through licensed dispensaries. This lack of regulation for the rest of the industry, particularly medical cannabis cultivation and manufacturing, has negatively impacted the City in a number of ways, including burglaries, fires, and lost revenue.

However, with California's passage of the Medical Marijuana Regulation and Safety Act (MMRSA), Oakland is poised to overcome historical obstacles to regulating non-dispensary facilities. MMRSA establishes a comprehensive regulatory system for California's medical cannabis industry. In turn, MMRSA allows cities like Oakland to regulate medical cannabis activities without federal intervention as the Department of Justice has stated and federal courts have confirmed that the federal government will not interfere with cannabis activity permitted under robust state regulations.

In reliance on this guidance and direction from the December 2014 Public Safety Committee and City Council Policy Directive number 14 of the Fiscal Year (FY) 2015-2017 Adopted Policy Budget, staff has drafted amendments to OMC Chapters 5.80 and 5.81 to align with MMRSA. These amendments allow the City to finally put public health and safety measures in place for the full spectrum of medical cannabis activities, including cultivation, manufacturing, distributing, testing, and dispensing of medical cannabis. The proposed amendments should reduce electrical fires and burglaries in Oakland, ensure that medical cannabis activities situate in appropriate locations, provide clarity to law enforcement and the medical cannabis industry

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February 9, 2016

alike, and allow for the collection of appropriate revenue from existing and new medical cannabis businesses.

REASON FOR URGENCY

As of this writing, MMRSA contains a provision that requires local jurisdictions to enact regulations for cannabis cultivation or else on March 1, 2016 the state will become the sole licensing authority for cannabis cultivation in that jurisdiction.¹ However, it is expected that this deadline, which has been acknowledged as a mistake by its author, should not impact Oakland for multiple reasons. First, AB 21 (Wood), a state bill specifically aimed at removing this deadline, is currently moving through the state legislature. Second, the City of Oakland already has existing regulations for cannabis cultivation in the form of OMC 5.81; the current proposal to align Oakland's medical cannabis ordinances with MMRSA merely amends existing law. Third, the proposed ordinances will be enacted by March 1, 2016 if they are heard by the Public Safety Committee on February 9th and then approved by the full City Council on February 16th and March 1st. Finally, the Medical Cannabis Cultivation Program under the State Department of Food and Agriculture, the department that MMRSA tasks with regulating cannabis cultivation, has yet to be established.

BACKGROUND / LEGISLATIVE HISTORY

For a thorough review of federal, state and local laws and policies regarding medical cannabis please view the January 12, 2016 Informational Report to the Public Safety Committee regarding new state medical cannabis law and proposals to align the City of Oakland's medical cannabis ordinances with new state law (see **Attachment 4** of this Agenda Report).

ANALYSIS AND POLICY ALTERNATIVES

In order to align with new state licensing categories, staff has developed amendments to OMC Chapters 5.81 and 5.80 in consultation with the City's Cannabis Regulatory Commission. The following overview highlights the proposed amendments and related policy issues.

OMC Chapter 5.81 Medical Cannabis Cultivation, Manufacturing and Other Facility Permits

In conjunction with MMRSA's licensing categories, staff proposes to amend both the title and the text of OMC Chapter 5.81 to create local permitting processes for medical cannabis cultivation, distribution, laboratory, manufacturing and transporting facilities. MMRSA requires that all cannabis produced by a cultivation or manufacturing facility be sent to a licensed distributor that then checks for quality assurance and verifies that the cannabis is tested by a licensed laboratory before being offered to a patient at a dispensary. Additionally, MMRSA

¹ "If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the division shall be the sole licensing authority for medical marijuana cultivation applicants in that city, county, or city and county." AB 243 Section 6, Health and Safety Code 11362.777 (c)(4).

requires that only licensed transporters move cannabis between different state licensees. Accordingly, staff recommends creating local licensing categories under OMC Chapter 5.81 that align with MMRSA's cultivation, manufacturing, distribution, and transporting requirements. By aligning with state law, the City will minimize bureaucratic obstacles for medical cannabis businesses seeking to comply with MMRSA's licensing categories and thus encourage unregulated medical cannabis operators in Oakland to come into the light.

Rather than restrict the number of these facilities, the proposed amendments require that these uses situate in appropriate zones within the city and meet applicable performance and operating standards promulgated by the City Administrator. This application of administrative standards parallels the structure of OMC Chapter 5.80, which has successfully allowed staff to update its standards for medical cannabis dispensaries over time. The intent of these performance and operating standards is to minimize the effects of any permitted medical cannabis facility on nearby properties. Consequently, the City Administrator will require security plans, inspections to verify building and fire code compliance, odor mitigation measures, as well as quarterly reports to demonstrate compliance with MMRSA. Further, the City Administrator will impose economic justice requirements, such as local hiring and professional development opportunities, to ensure that residents of Oakland play a role both as employees and operators of these facilities.

In terms of location restrictions, given the sensitivity of residential areas the proposed amendments guide commercial cannabis activities towards commercial and industrial areas of the city. Along those lines, staff proposes situating the most hazardous uses, such as manufacturing using volatile solvents (e.g., butane hash oil extraction) in more restrictive industrial areas whereas more innocuous uses, like manufacturing using nonvolatile solvents (e.g., cookie baking) may locate in less restrictive industrial or commercial areas. See **Attachment 3** for maps of proposed facility locations. However, in order to support small scale edible producers, staff suggests allowing small scale producers that meet the restrictions for cottage food operations under California's Homemade Food Act to situate in residential areas. Similarly, staff proposes maintaining the existing permit exemption for small scale and personal cultivation under OMC 5.81.101.

In order to avoid these facilities from becoming targeted for burglary and other crimes, the proposed amendments do not require public hearings for non-dispensary facilities. This approach is consistent with that taken by the City of Denver, Colorado, which only requires those cannabis facilities open to the public, dispensaries, to be subject to a public hearing process. In light of this approach, though, staff recommends reserving 600 foot buffers from sensitive uses, namely schools and youth centers, under proposed OMC 5.81.030(F).

OMC Chapter 5.80 Medical Cannabis Dispensary Permits

In response to new state law and recommendations from the City's Cannabis Regulatory Commission, staff also developed amendments to the City's medical cannabis dispensary ordinance. A number of these amendments are substantive, while others are minor in nature and simply reflect updates in state law.

In terms of substantive amendments, staff's proposal updates the definition of "dispensary," establishes a distinction between brick and mortar and delivery-only dispensaries, allows for

non-smoking onsite consumption, eliminates superfluous location restrictions, and increases the number of dispensaries allowed within the City. The following subsections contain further details on each.

A. Replace definition of "dispensary" with new state definition.

As mentioned above, staff's intent in aligning local and state definitions is to facilitate medical cannabis businesses seeking to work within the state's new regulatory framework. Consequently, City staff adopted MMRSA's definition of a "dispensary." This amendment also cures a concern that the existing definition of "dispensary" is so broad that it overly restricts activities that the City would like to permit, as the current definition includes medical cannabis cultivation and manufacturing in the same category as medical cannabis retail facilities.

B. Establish permitting process for delivery-only dispensaries.

Medical cannabis delivery services unaffiliated with licensed brick and mortar dispensaries have operated in and out of Oakland for several years, largely in a clandestine fashion. Medical cannabis publications and other sources indicate that more than a dozen delivery services already operate in Oakland. Further, that number could rise as smart phone app delivery services continue to develop and satisfy the consumer demand for convenience. Delivery services also serve an important function for elderly and disabled individuals who cannot easily travel to brick and mortar facilities.

While delivery services may not pose the same potential nuisance issues as brick and mortar dispensaries that are open to the public, unregulated deliveries raise public health and safety concerns of their own, particularly regarding the source of their medicine and their method of delivery. Accordingly, staff proposes establishing a permitting process for these "delivery only dispensaries" to ensure they situate in appropriate locations, follow security protocols to minimize robberies upon delivery, and comply with the provisions of MMRSA.

C. Allow non-smoking medical cannabis consumption on dispensary premises.

Advocates have long requested the City of Oakland allow patients to consume cannabis at the site of licensed dispensaries in order to establish safe places of consumption, particularly for patients residing in federally subsidized housing, and to allow for communal experiences. While Oakland has maintained a strict ban on onsite consumption, nearby jurisdictions such as Berkeley and San Francisco have allowed onsite consumption and their regulators report receiving no complaints from this approach. Continuing to prohibit onsite consumption will also have the predictable outcome of encouraging patients to consume in public or other improper places, such as their cars.

As a result, staff proposes allowing certain forms of onsite consumption, namely vaporizing, in order for dispensaries to provide a communal space for consumption while still minimizing the concerns of neighbors and public health officials. Dispensaries interested in allowing onsite consumption will have to meet the City Administrator's performance standards and operating guidelines for onsite consumption, which will be centered on avoiding drugged driving and disturbing neighboring properties.

D. Eliminate dispensary location restrictions other than distance separation requirements from schools and youth centers.

Since neighbors of proposed dispensaries will always have an opportunity to express concerns at public hearings before any dispensary is permitted, most current location restrictions are overly rigid and superfluous. In their place, staff recommends implementing the more flexible restrictions imposed on new alcohol establishments, codified in proposed OMC 5.80.020 (D)(4), as they would allow dispensaries to cluster in certain areas and not in others, depending on the character of the area. At the same time, staff recommends maintaining the existing 600 foot distance separation under OMC 5.80.020(D)(1) between dispensaries and schools and youth centers to preserve buffers between adult-oriented dispensaries and youth.

E. Increase the number of permitted dispensaries.

The January 12th Informational Report discussed at length the pros and cons to maintaining versus increasing the existing number of dispensaries, as well as removing any numeric limitation altogether. Ultimately, staff recommends substituting the cap on the total number of dispensaries with a limitation of eight new brick and mortar dispensaries each year in conjunction with additional administrative restrictions in the dispensary application process (see proposed OMC 5.80.020(C) and OMC 5.80(D)(4)). Including these policy considerations up front should directly address the concerns regarding an uncapped number of dispensaries, while an annual growth limitation will provide staff and policymakers with time to ensure that this new approach maintains the City's successful track record of permitting well run dispensaries. As delivery only dispensaries are not open to the public and pose less of a concern to neighboring properties, staff recommends not limiting the number of these facilities.

For comparative purposes the below chart outlines the number of permitted dispensaries and populations of Oakland and other cities:

| CITY | POPULATION | PERMITTED DISPENSARIES | DISPENSARY TO POPULATION RATIO |
|-------------------|------------|------------------------|--------------------------------|
| Oakland, CA | 413,775 | 8 | 1: 51,722 |
| San Francisco, CA | 852,468 | 28 ² | 1: 30,445 |
| Berkeley, CA | 118,853 | 4 | 1: 29,713 |
| San Jose, CA | 1,015,785 | 16 | 1: 63,487 |
| Sacramento, CA | 479,686 | 30 | 1: 15,990 |
| Los Angeles, CA | 3,928,864 | 100 ³ | 1: 39,289 |
| Denver, CO | 663,862 | 204 ⁴ | 1: 3,254 |
| Seattle, WA | 668,342 | 198 ⁵ | 1: 3,375 |

² In addition to 28 existing dispensaries, San Francisco reportedly has 18 dispensary applications pending approval.

³ While Los Angeles has 100 dispensaries in compliance with their regulations, Los Angeles reports receiving business taxes from 447 dispensaries operating in the city.

⁴ 61 of Denver's 204 dispensaries offer only medical cannabis; the remaining 143 offer both medical and recreational cannabis.

⁵ Seattle, WA has approved 228 dispensaries, but has only issued 198 dispensary permits as of this time.

F. Non-substantive amendments.

Non-substantive amendments to OMC Chapter 5.80 include eliminating outdated references, unused definitions and unnecessary language. Specifically, staff recommends removing references to the 2008 California Attorney General Guidelines, condensing the definition of "primary caregiver" and deleting the definition of "serious medical condition" as these terms are sufficiently covered by other references to state law.

FISCAL IMPACT

While difficult to predict, the proposed amendments could have considerable positive fiscal impacts.

As a result of Oakland voters' passage of Measure F in 2009, codified in OMC Section 5.04.480, medical cannabis businesses in Oakland are taxed at elevated rates compared to other businesses. Creating a permitting process for previously unpermitted commercial medical cannabis activities should result in new revenue for the City from these new businesses paying taxes at elevated rates. Delivery only dispensaries similarly offer an opportunity for new revenue, though depending on the location of the business and individual transactions, the City may not receive all sales tax revenue. While staff cannot specify exactly how many new medical cannabis businesses will take advantage of this new permitting process, staff estimates issuing approximately 60 permits in 2016 based on inquiries from interested businesses, attendance at public meetings and industry trends. For some perspective, the City's eight licensed medical cannabis dispensaries contributed over \$4 million in taxes in 2015.

The proposed amendments will require staff time to cover both the application process and ongoing monitoring. Staff time will include the City Administrator's Office reviewing and processing applications, conducting site inspections, and issuing findings and a determination, as well as inspections and reviews by Police, Fire and Planning and Building Departments. Thus, staff will be proposing annual regulatory and initial application fees in the near future to ensure full cost recovery and compliance with Proposition 26, likely as part of a forthcoming package of amendments to the Master Fee Schedule.

Establishing a permitting process for industrial medical cannabis activities may also have fiscal impacts on industrial businesses in the City as medical cannabis businesses will likely lead to an increase in industrial rents based on anecdotal information gathered from Oakland thus far and the experience of jurisdictions like Denver, Colorado that authorized cannabis production and manufacturing. Staff is working with Economic Development staff on proposals to mitigate any deleterious impacts in this regard, including incentivizing medical cannabis business towards underutilized industrial spaces and allocating a portion of medical cannabis revenue for Façade and Tenant Improvement programs in industrial areas.

PUBLIC OUTREACH / INTEREST

The proposed amendments are the product of extensive public outreach that included three public presentations to the City's Cannabis Regulatory Commission over the course of 2015 and an informational report to the Public Safety Committee on January 12, 2016.

Staff proposes to implement essentially all of the recommendations from the Cannabis Regulatory Commission with the exception of increasing the personal and small collective cultivation exemptions to the maximum possible under MMRSA. Staff recommends maintaining the City's existing personal and small scale cultivation exemptions, which allow 32 and 96 square feet of cultivation area, respectively, rather than expand to 100 and 500 respective square feet of exempt cultivation permitted under MMRSA as these larger amounts of cultivation resemble commercial activity that ought to be located in appropriate non-residential areas. Under MMRSA, the City may establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity, but not less than the state standard. Maintaining the 96 square foot threshold will also help to discourage diversion to inappropriate markets. This recommendation is consistent with jurisdictions like Denver, Colorado, which only exempts cultivation of 36 total plants from its cultivation regulations.

COORDINATION

Several City departments were consulted in the preparation of this report, including the Planning and Building Department, the Fire Department, the Police Department, the Revenue Management Bureau, the Office of the City Attorney, the Controller's Bureau, and the Budget Office. Likewise, staff consulted with outside agencies as well, including the City and County of San Francisco, the City of Berkeley, the City of Richmond, Alameda County, and the Port of Oakland.

SUSTAINABLE OPPORTUNITIES

Economic: The proposed amendments should positively affect the local economy by generating new employment opportunities for Oakland residents and generating revenue to support City services.

Environmental: The proposed amendments and forthcoming performance and operating standards will promote the cultivation, manufacturing and distribution of medical cannabis in an environmentally sound manner.

Social Equity: These amendments will both provide employment opportunities as well as safe access to medical cannabis.

CEQA

The adoption of amendments to existing citywide medical cannabis regulations is exempt from CEQA review pursuant to CEQA Guidelines sections 15061(b)(3) (general rule), 15183 (projects consistent with a community plan, general plan, or zoning), 15301 (existing facilities), 15308 (actions by regulatory agencies for protection of the environment), and 15309 (inspections). Each of these exemptions provides a separate and independent basis for CEQA exemption and when viewed collectively provide an overall basis for CEQA exemption.

Staff believes that the modifications to the existing regulations will enable the City to legalize existing unregulated medical cannabis businesses that are currently operating within the City. The City Administrator will develop operating and performance standards that will apply to these businesses, which will require inspections and review and approval by the City's Fire Department and Building Department before issuance of a permit. The purpose of the amendments is to license and regulate largely unregulated medical cannabis businesses in the interest of public health, safety and general welfare, and staff believes they will result in increased safety and protective measures, fewer safety hazards and more code enforcement.

These regulations will also apply to new small scale operations and other medical cannabis businesses, including cultivation and manufacturing, which will not be open to the public or generate large amounts of traffic. The purpose of the amendments is to align with MMRSA, which sets minimum statewide standards for pesticides in marijuana cultivation, maximum tolerances for pesticides and other foreign object residue, production and labeling of all edible cannabis products, requires establishment of uniform health and safety standards, testing standards, and security requirements at dispensaries and during transport of the product, and specifies minimum testing requirements. The new state regulatory scheme also specifically directs expanded enforcement efforts to reduce adverse impacts of marijuana cultivation, including environmental impacts such as illegal discharge into waterways and poisoning of marine life and habitats. These new minimum standards promote the public's health, safety and/or general welfare.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council conduct a public hearing and adopt the proposed ordinances.

For questions regarding this report, please contact Greg Minor, Assistant to the City Administrator, at (510) 238-6370.

Respectfully submitted,



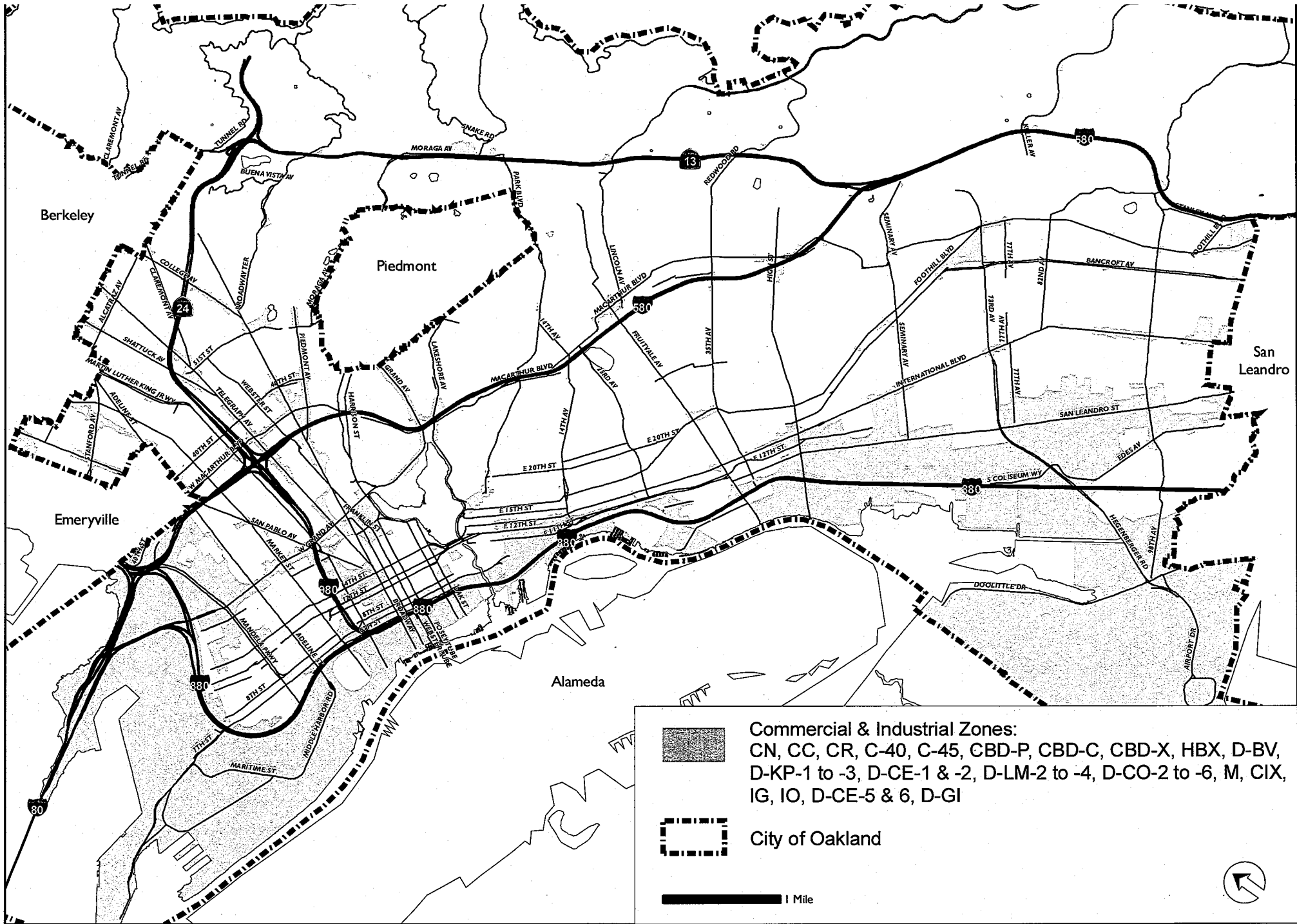
GREG MINOR
Assistant to the City Administrator

Reviewed by:
Christine Daniel, Assistant City Administrator
Joe DeVries, Assistant to the City Administrator

Attachments (4):

1. Ordinance amending OMC 5.80, Medical Cannabis Dispensary Permits.

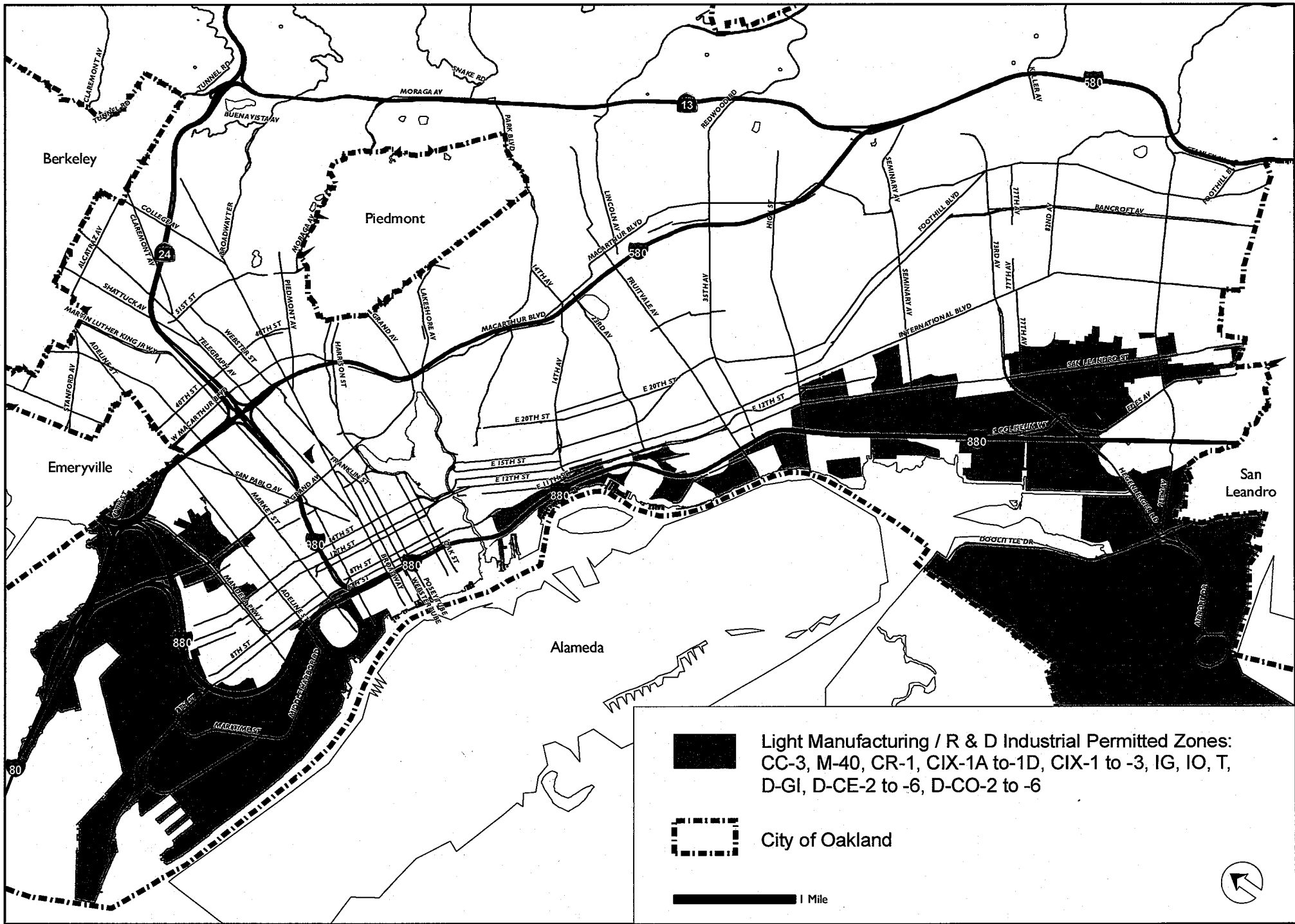
2. Ordinance amending OMC 5.81, Medical Cannabis Cultivation, Manufacturing and Other Facility Permits.
3. Maps of Proposed Locations for Medical Cannabis Facilities.
4. Informational Report dated January 12, 2016 (without attachments).



Proposed Locations for Dispensaries & Delivery-Only Dispensaries

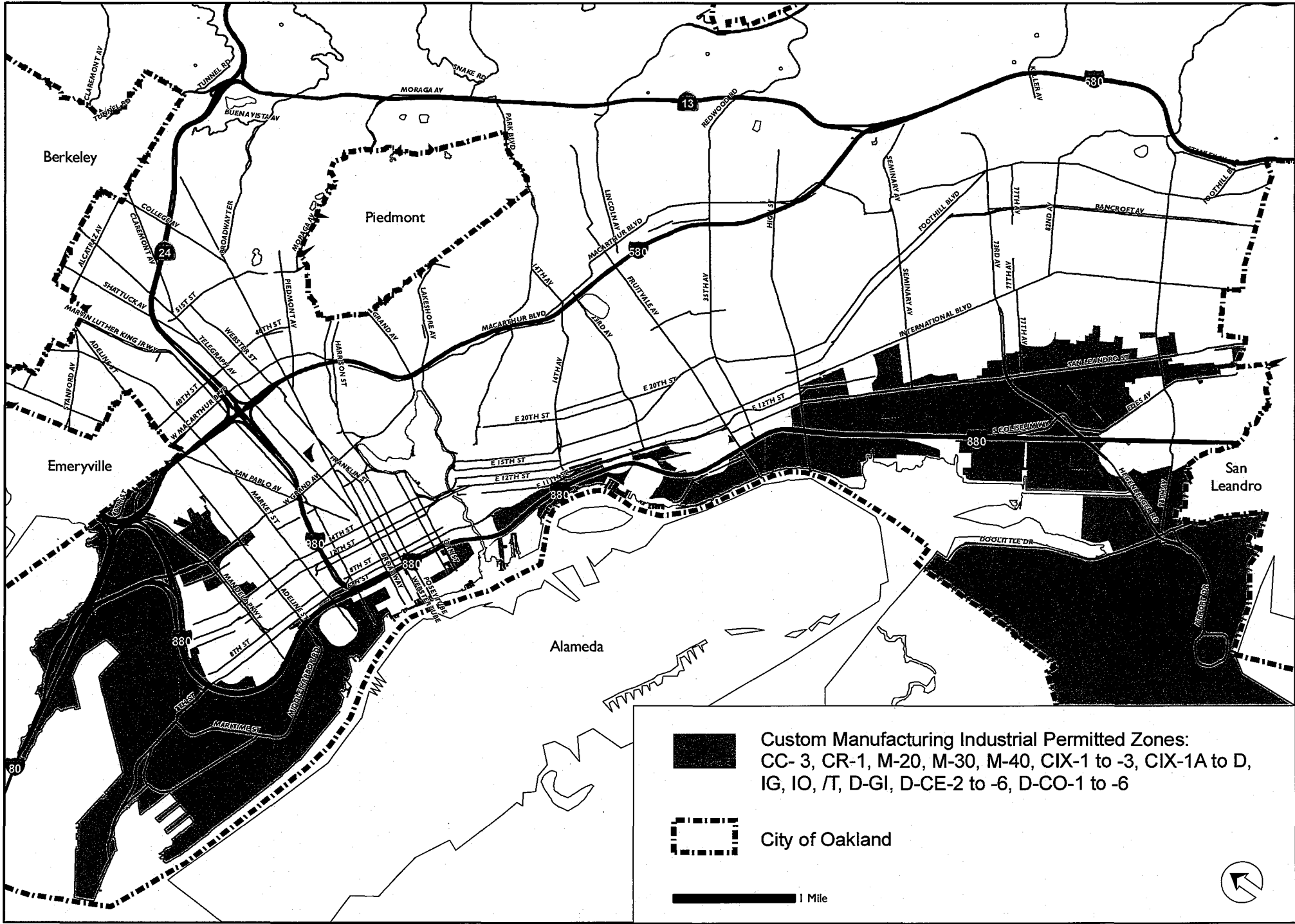
Planning and Building Department
 January 21, 2016

Attachment 3

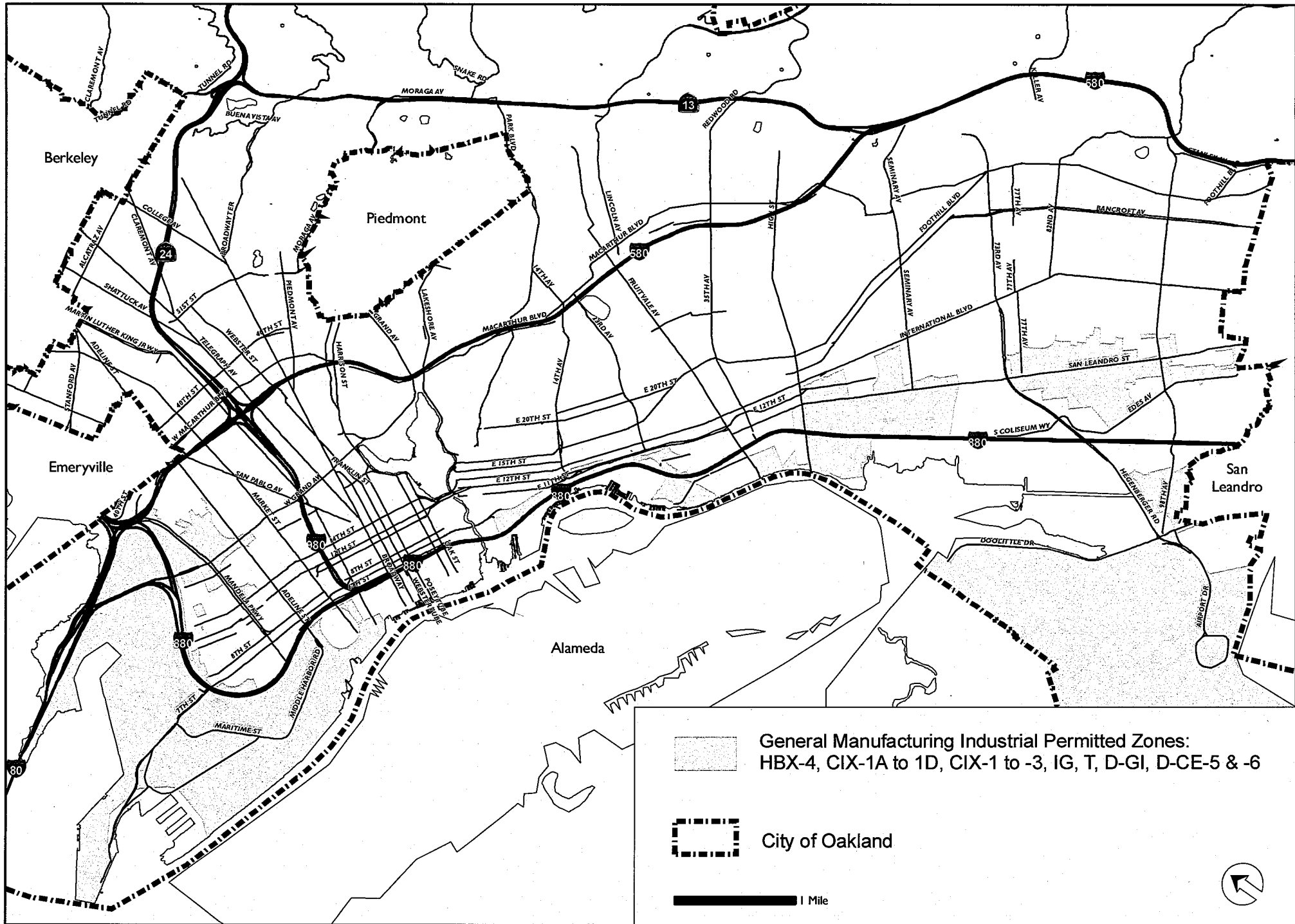


Proposed Locations for Cultivation, Distribution, Laboratory or Transporting Facilities

Planning and Building Department
 January 21, 2016

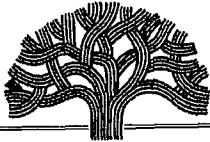


Proposed Locations for Non-Volatile Manufacturing



Proposed Locations for Volatile Manufacturing

Attachment 4



CITY OF OAKLAND

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2015 DEC 30 PM 3:31

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Greg Minor
Assistant to the City Administrator

SUBJECT: Update on State Medical
Cannabis Law and Local Proposals

DATE: December 21, 2015

City Administrator Approval

Date:

12/30/15

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff Recommends That The Public Safety Committee Receive This Informational Report And Provide Feedback Regarding The New State Medical Cannabis Law And Proposals To Align The City Of Oakland's Medical Cannabis Ordinances With New State Law.

EXECUTIVE SUMMARY

This informational report provides an update on new state and federal regulations which allow Oakland to address longstanding medical cannabis issues. These changes allowed staff to craft proposed amendments which will be presented in a forthcoming legislative proposal to the City Council for adoption.

The State of California established, through the passage of the Medical Marijuana Regulation and Safety Act (MMRSA), a comprehensive regulatory system for California's medical cannabis industry, replacing roughly 20 years of legal ambiguity with a dual state and local licensing system for all commercial medical cannabis activity from "seed to sale." This legislative development is extremely significant to Oakland. The lack of regulation of non-dispensary medical cannabis facilities has negatively impacted the City in a number of ways, including burglaries, fires, and lost revenue.

At the December 2014 Public Safety Committee and in the City Council Policy Directive number 14 of the Fiscal Year (FY) 2015-2017 Adopted Policy Budget, the City Council asked staff to work with the City's Cannabis Regulatory Commission on addressing this lack of local regulation through amendments to the City's medical cannabis ordinances. The proposed amendments align Oakland's ordinances with the MMRSA and allow the City to finally put public health and safety measures in place for the full spectrum of medical cannabis activities, including cultivation, manufacturing, distributing, testing, and dispensing of medical cannabis. Altogether, these updates should reduce electrical fires and burglaries, ensure that medical cannabis activities situate in appropriate locations, provide clarity to law enforcement and the medical cannabis industry, and allow for appropriate revenue collection from existing and new medical

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cannabis businesses. The proposed amendments, which will come as proposed legislation in an upcoming City Council meeting, will present changes which reflect the state and federal law changes and address these concerns.

BACKGROUND/LEGISLATIVE HISTORY

Federal Government Guidance

Cannabis remains a Schedule I controlled substance under federal law; however, 35 states have enacted laws allowing medical cannabis to some extent and several jurisdictions have legalized recreational or adult non-medical cannabis use.¹ These state laws legalizing cannabis are valid, yet the federal government may also prohibit cannabis activities under its own laws.

Consequently, the Obama administration has outlined an enforcement compromise, and in 2013, the Department of Justice (DOJ) issued formal guidance from Deputy Attorney General James M. Cole that the DOJ will not prioritize federal marijuana prohibition enforcement in states with robust regulatory systems that comply with eight "guidelines" intended to address federal concerns, with the following goals:

1. Prevent the distribution of marijuana to minors;
2. Prevent revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
3. Prevent the diversion of marijuana from states where it is legal under state law in some form to other states;
4. Prevent state-authorized marijuana activity from being used as a cover or pretext for trafficking of other illegal drugs or other illegal activity;
5. Prevent violence and the use of firearms in marijuana cultivation and distribution;
6. Prevent drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
7. Prevent marijuana growing on public lands due to the public safety and environmental dangers posed by marijuana production on public lands; and
8. Prevent marijuana possession or use on federal property.²

In the FY 2015-2016 Federal budget, Congress went a step further with the Fahr-Rohrbacher amendment, which prohibits the use of federal funds to prevent states from implementing their

¹ Blue Ribbon Commission on Marijuana Policy, Progress Report, March 2015, p.3, available at: <https://www.safeandsmartpolicy.org/wp-content/uploads/2015/03/Blue-Ribbon-Commission-report-March-20-2015-FINAL.pdf>.

² Cole, James M., Guidance Regarding Marijuana Enforcement, U. S. Department of Justice, August 29, 2013 ("Cole Memorandum").

own state laws that authorize the use, distribution, possession, or cultivation of medical marijuana.³ This restriction would have to be specifically renewed in the next federal budget.

Although the DOJ initially scoffed at the Fahr-Rohrbacher amendment limiting its authority, in U.S. v. Marin Alliance for Medical Marijuana, the United States District Court for the Northern District of California held otherwise. The court forbade the DOJ from continuing to enforce an injunction against one of California's oldest permitted medical cannabis operators in light of Congress' new spending restrictions. Judge Breyer found that the DOJ's interpretation of the Fahr-Rohrbacher amendment "defies language and logic" and that the plain language and intent of Fahr-Rohrbacher shields state-licensed medical cannabis facilities from federal prosecutions.

While this area of the law and policy remains in flux, the steps taken in California and the City of Oakland occur within this national context.

Medical Cannabis in California

Medical cannabis has been legal in California longer than anywhere else in the country. However, until the recent MMRSA passage, California's system of medical cannabis was one of the least structured regulatory frameworks in the United States.⁴

In 1996, California voters legalized medical cannabis through Proposition 215, the Compassionate Use Act. The Compassionate Use Act provided criminal immunity for patients and their designated primary caregivers to possess and cultivate cannabis for their personal medical use if a licensed physician has recommended cannabis for medical use (see California Health & Safety Code, § 11362.5).

California legislators then expanded on this concept with the adoption of Senate Bill (SB) 420 in 2003. SB 420 created a voluntary state identification card system operated through county health departments, allowed patients to form medical collectives or cooperatives, and established guidelines as to how much marijuana patients can possess and cultivate without resulting in an arrest (see California Health & Safety Code, § 11362.7 et seq).

Nonetheless, neither the Compassionate Use Act nor SB 420 provided an effective statewide system for regulating and controlling medical cannabis, leaving cities and counties on their own to create a patchwork of different rules. This lack of uniform regulation created uncertainty about the legality of medical cannabis activities and endangered the safety of end users, who

³ Section 538 of the Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. 113-235, 128 Stat. 2130 (2014) ("2015 Appropriations Act").

⁴ Blue Ribbon Commission on Marijuana Policy, Progress Report, March 2015, p.5, available at: <https://www.safeandmartpolicy.org/wp-content/uploads/2015/03/Blue-Ribbon-Commission-report-March-20-2015-FINAL.pdf>.

have not had the benefit of a monitored supply chain for medical cannabis, quality control, testing or labeling requirements.⁵

On October 9, 2015, Governor Brown and the state legislature filled this longstanding legislative void by enacting a comprehensive regulatory framework for the cultivation, production, transportation and sale of medical cannabis in California through MMRSA. MMRSA consists of SB 643 (McGuire), Assembly Bill (AB) 266 (Bonta, Cooley, Jones-Sawyer, Lackey, Wood) and AB 243 (Wood). It is codified in the California Business and Professions Code sections 19300 – 19360. MMRSA requires all applicants engaging in commercial cannabis activity to obtain both a state and a local license to operate legally in California. State licenses will consist of the classification types listed below.

State License Types:

- Type 1 = Cultivation; Specialty outdoor; Small.
- Type 1A = Cultivation; Specialty indoor; Small.
- Type 1B = Cultivation; Specialty mixed-light; Small.
- Type 2 = Cultivation; Outdoor; Small.
- Type 2A = Cultivation; Indoor; Small.
- Type 2B = Cultivation; Mixed-light; Small.
- Type 3 = Cultivation; Outdoor; Medium.
- Type 3A = Cultivation; Indoor; Medium.
- Type 3B = Cultivation; Mixed-light; Medium.⁶
- Type 4 = Cultivation; Nursery.
- Type 6 = Manufacturer 1.
- Type 7 = Manufacturer 2.
- Type 8 = Testing.
- Type 10 = Dispensary; General.
- Type 10A = Dispensary; No more than three retail sites.
- Type 11 = Distribution.
- Type 12 = Transporter.

MMRSA breaks up the current “vertical integration” model of a closed loop of patient members from seed to sale and in its place mandates a detailed supply chain between licensed entities. Specifically, MMRSA requires licensed cultivators and manufacturers to send all their medical cannabis and medical cannabis products to licensed distributors who will verify quality assurance and that the cannabis is tested by a licensed laboratory before it is finally sold to the public at licensed dispensaries. Transporters are those licensed to transport medical cannabis and medical cannabis products between licensees. Throughout this process, MMRSA requires

⁵ California Assembly Committee on Business and Professions Bill Analysis, AB 266, April 27, 2015, p. 14.

⁶ MMRSA caps indoor cultivation using exclusively artificial lighting at 22,000 square feet of total canopy size per premises and outdoor cultivation using no artificial lighting at one acre of total canopy per premises. Consequently, cultivation sites in Oakland may not exceed these thresholds.

that medical cannabis and medical cannabis products be tracked via unique identifiers, similar to tracking methods currently utilized in the states of Colorado and Washington.

The Department of Food and Agriculture will oversee state licenses for cultivators, the Department of Public Health will oversee manufacturers and testing laboratories, and the newly created Bureau of Medical Marijuana Regulation in the State Department of Consumer Affairs will oversee distributors, dispensaries and transporters. While these agencies will establish baseline statewide standards, MMRSA maintains California's existing framework of local control by establishing a dual licensing structure mandating that all state license applicants obtain local approval as a pre-requisite to obtaining a state license.

Medical Cannabis in Oakland

The City of Oakland has been a leader in regulating medical cannabis dispensaries. In 1998 the City authorized the Oakland Cannabis Buyer's Cooperative (OCBC) as the administrator of the City's Medical Cannabis Distribution Program under the Oakland Municipal Code (OMC) Chapter 8.46. After the United States Supreme Court upheld a federal injunction against OCBC, the City enacted OMC Chapter 5.80, authorizing four medical cannabis dispensaries in 2004 before adding four more in 2011 via Ordinance No. 12585 C.M.S.

While the City of Oakland's process for administering medical cannabis dispensary permits and monitoring dispensaries has been considered successful, Oakland has fallen behind other jurisdictions, namely those outside of California, by not regulating other medical cannabis activities. Unregulated non-dispensary activities have resulted in electrical fires (stemming from flawed indoor cannabis cultivation), violent crime (such as robberies, burglaries and even homicides), and the use of pesticides and fertilizers that run counter to the crop's medical purpose.

This lack of local regulation is not due to a lack of effort on the City's part, but rather federal intervention, absence of clear state law, and different local interests as seen in the City's pre-MMRSA attempts at regulating cultivation in 2010, 2011 and 2014. In 2010, the City enacted OMC Chapter 5.81 to allow four industrial cultivation facilities unaffiliated with Oakland dispensaries; U.S. Attorney Melinda Haag responded by threatening to prosecute if the law was implemented, thus the legality of the proposal was brought into question. Additional proposals in 2011 and 2014, tailored to then existing state law, attempted to limit licenses to Oakland dispensaries but those also failed to move forward.

ANALYSIS AND POLICY ALTERNATIVES

In response to the aforementioned issues and legislative developments, as well as the direction of the December 2014 City Council Public Safety Committee and City Council Policy Directive number 14 of the FY 2015-2017 Adopted Policy Budget, staff developed amendments to the existing citywide medical cannabis regulations, OMC Chapters 5.80 and 5.81, in consultation with the City's Cannabis Regulatory Commission. Staff will present legislation for those amendments at a future City Council meeting upon direction from the City Council through this

informational report. The following overview outlines the proposed amendments and related policy issues which the future legislation will address.

OMC Chapter 5.81 Medical Cannabis Cultivation, Manufacturing and Other Facility Permits

In conjunction with MMRSA's licensing categories, staff proposes to amend both the title and the text of OMC Chapter 5.81 to create local permitting processes for medical cannabis cultivation, distribution, laboratory, manufacturing and transporting facilities. Under MMRSA, medical cannabis operators must obtain local approval before applying for a state license. By aligning with state law, the City will minimize bureaucratic obstacles for medical cannabis businesses seeking to comply with MMRSA's licensing categories. This will encourage unregulated medical cannabis operators in Oakland to come into the light.

Rather than restrict the number of these facilities, the proposed amendments require that these uses situate in appropriate zones within the city, namely industrial areas, and meet applicable performance and operating standards promulgated by the City Administrator. This application of administrative standards parallels the structure of OMC Chapter 5.80, which has successfully allowed staff to update its standards for medical cannabis dispensaries over time. The intent of these performance operating standards is to minimize the effects of any permitted medical cannabis facility on nearby properties. Consequently, the City Administrator will require security plans, inspections to verify building and fire code compliance, odor mitigation measures, as well as quarterly reports to demonstrate compliance with MMRSA. Further, the City Administrator will impose economic justice requirements, such as local hiring and professional development opportunities, to ensure that Oakland residents play a role both as facility operators and employees.

Overall, establishing these public health and safety requirements for additional medical cannabis activities will only improve the City's ability to monitor and address federal government concerns, as articulated in the Cole Memorandum.

OMC Chapter 5.80 Medical Cannabis Dispensary Permits

In response to new state law and recommendations from the City's Cannabis Regulatory Commission, staff also developed amendments to the City's medical cannabis dispensary ordinance. A number of these amendments are substantive, while others are more minor in nature.

In terms of substantive amendments, staff's proposal updates the definition of "dispensary," establishes a distinction between brick and mortar and delivery-only dispensaries, allows for non-smoking onsite consumption, eliminates superfluous location restrictions and increases the number of dispensaries allowed within the City.

- A. Replace definition of "dispensary" with new state definition

As mentioned above, staff's intent in aligning local and state definitions is to facilitate medical cannabis businesses seeking to work within the state's new regulatory framework. Consequently, City staff adopted MMRSA's definition of a "dispensary." This amendment also cures a concern that the existing definition of "dispensary" is so broad that it unintentionally prohibits activities that the City would like to permit, such as cultivation and manufacturing.

B. Establish permitting process for delivery-only dispensaries

Medical cannabis delivery services unaffiliated with licensed brick and mortar dispensaries have operated in and out of Oakland for several years, largely in a clandestine fashion. Medical cannabis publications and other sources indicate that more than a dozen delivery services already operate in Oakland. Further, that number could rise as smart phone app delivery services continue to develop and satisfy the consumer demand for convenience. Delivery services also serve an important function for elderly and handicapped individuals who cannot easily travel to brick and mortar facilities.

While delivery services may not pose the same nuisance issues as brick and mortar dispensaries open to the public, unregulated deliveries raise public health and safety concerns of their own, particularly regarding the source of their medicine and their method of delivery. Accordingly, staff proposes establishing a permitting process for these "delivery only dispensaries" to ensure they situate in appropriate locations, comply with the provisions of MMRSA and follow security protocols to minimize robberies upon delivery.

C. Allow non-smoking consumption of medical cannabis on the premises of a dispensary

Advocates have long requested that the City of Oakland allow patients to consume cannabis at the site of licensed dispensaries in order to establish safe places of consumption, particularly for patients residing in federally subsidized housing, and allow for communal experiences. While Oakland has maintained a strict ban of onsite consumption, nearby jurisdictions such as Berkeley and San Francisco have allowed onsite consumption and their regulators report receiving no complaints from this approach. Continuing to prohibit onsite consumption will also have the predictable outcome of encouraging patients to consume in public or other inappropriate places, such as their cars.

As a result, staff proposes allowing certain forms of onsite consumption, namely vaporizing, in order for dispensaries to provide a communal consumption space while still minimizing the concerns of neighbors and public health officials. Dispensaries interested in allowing onsite consumption will have to meet the City Administrator's performance standards and operating guidelines for onsite consumption, which will be centered on avoiding drugged driving and disturbing neighboring properties.

D. Eliminate dispensary location restrictions other than distance separation requirements from schools and youth centers

Since neighbors of proposed dispensaries will always have an opportunity to express themselves at public hearings before any dispensary is permitted, most current location

restrictions are superfluous. Additionally, allowing dispensaries to locate near each other will allow dispensaries to situate closer to downtown transit facilities, which should mitigate any issues created by patients consuming at dispensaries. Additionally, the close proximity of multiple dispensaries might help with public safety concerns.

E. Increase the number of permitted dispensaries

There are pros and cons to maintaining and increasing the existing number of dispensaries and removing any numeric limitation on dispensaries altogether.

The City's current structure of limiting the total number of dispensaries and requiring applicants to undergo a scrutinized Request for Proposals (RFP) process has resulted in well run dispensaries that produce virtually no complaints. This is likely due in part to the high value of holding one of the City's limited number of permits, which encourages operators to police themselves and ensure their businesses remain in compliance with the City Administrator's operating standards. In contrast, adding too many dispensaries runs the risk of both creating a monoculture of cannabis retail in certain areas and oversaturating a more limited economic market than that of non-dispensary medical cannabis operators who serve the entire Bay Area or state. This could lead to dispensaries cutting corners and falling out of compliance with required operating standards, which in turn would burden staff resources with revocation proceedings and additional compliance inspections. Also, reducing the number of dispensaries via revocation would likely be more difficult than adding dispensaries in the future, given the controversial nature of the industry and analogous examples like liquor stores that persist despite countless community complaints. Finally, staff has not received any complaints from patients claiming they cannot access medical cannabis in Oakland with only eight permitted dispensaries.

That said there are several factors in support of increasing the current number of eight dispensary permits. First, there appears to be a continued increase in patient demand as revealed by a steady increase in business and sales tax from the City's eight licensed dispensaries with 2015 tax revenue projected to increase 28 percent over the year prior. Second, allowing onsite consumption offers a new economic opportunity for dispensaries and likely will further increase consumer demand. Third, more dispensaries may result in more employment opportunities in the City. Lastly, increasing the number of competing businesses generally benefits consumers by lowering prices and providing more options.

One possible compromise in this regard would be to substitute the cap on the total number of dispensaries with a limitation on the number of new dispensaries each year in conjunction with additional administrative restrictions. For example, the following findings required for new alcohol establishments could be added to the existing dispensary application process:

- a. That the proposal will not contribute to undue proliferation of such uses in an area where additional ones would be undesirable, with consideration to be given to the area's function and character, problems of crime and loitering, and traffic problems and capacity;

- b. That the proposal will not adversely affect adjacent or nearby churches, temples, or synagogues; public, parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds;
- c. That the proposal will not interfere with the movement of people along an important pedestrian street;
- d. That the proposed development will be of an architectural and visual quality and character which harmonizes with, or where appropriate enhances, the surrounding area;
- e. That the design will avoid unduly large or obtrusive signs, bleak un-landscaped parking areas, and an overall garish impression;
- f. That adequate litter receptacles will be provided where appropriate; and
- g. That where the proposed use is in close proximity to residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep between the hours of 10:00 p.m. and 7:00 a.m.

Adding these policy considerations to the application process should address the concerns regarding an uncapped number of dispensaries, while an annual growth limitation would provide staff and policymakers with time to ensure that this new approach maintains the City's successful track record of permitting well run dispensaries.

Staff also proposes a number of non-substantive amendments to OMC Chapter 5.80, including eliminating outdated references, unused definitions and unnecessary language. These and the other amendments discussed will be included in the forthcoming legislative proposal to the City Council for adoption.

FISCAL IMPACT

While difficult to predict, the proposed amendments could have considerable fiscal impacts.

As a result of Oakland voters' passage of Measure F in 2009, codified in OMC Chapter 5.04.480, medical cannabis businesses in Oakland are taxed at elevated rates compared to other businesses. Creating a permitting process for previously unpermitted commercial medical cannabis activities, such as cultivation, distribution and manufacturing, should result in new revenue for the City from these new businesses paying taxes at elevated rates. Delivery only dispensaries similarly offer an opportunity for new revenue, though depending on the business location and the individual transaction locations, the City may not receive all sales tax revenue. While staff cannot specify exactly how many new medical cannabis businesses will take advantage of this new permitting process, staff estimates issuing approximately 60 permits in 2016 based on inquiries from interested businesses, attendance at public meetings and industry trends. To put in perspective, the City's eight licensed medical cannabis dispensaries contributed over four million dollars in taxes in 2015.

The proposed amendments will require staff time to cover both the application process and ongoing monitoring. Staff time will include the City Administrator's Office reviewing and processing applications, conducting site inspections, and issuing findings and a determination, as well as inspections and reviews by police, fire and building departments. Thus, staff proposes to update the annual regulatory fee and initial application fee in conjunction with proposed ordinance amendments to ensure full cost recovery and compliance with Proposition 26.

Establishing a permitting process for industrial medical cannabis activities may also have fiscal impacts on industrial businesses in the City as medical cannabis businesses will likely lead to an increase in industrial rents based on anecdotal information gathered from Oakland thus far and the experience of jurisdictions like Denver, Colorado that authorized cannabis production and manufacturing. Staff is working with Economic and Workforce Development staff on proposals to mitigate any deleterious impacts in this regard.

PUBLIC OUTREACH

The proposed amendments are the product of extensive public outreach that included three public presentations to the City's Cannabis Regulatory Commission over the course of 2015. Specifically, staff met with the Commission in February, July and October 2015, at which point staff offered proposed amendments to the City's medical cannabis ordinances and received feedback from commissioners and the public alike.

Staff proposes to implement essentially all of the recommendations from the Cannabis Regulatory Commission with the exception of increasing the personal and small collective cultivation exemptions to the maximum possible under MMRSA. Staff recommends maintaining the City's existing personal and small scale cultivation exemptions, which allow 32 and 96 square feet of cultivation area, respectively, rather than expand to 100 and 500 square feet of exempt cultivation permitted under MMRSA as more than 96 square feet of cultivation resembles commercial activity that ought to be located in appropriate non-residential areas. Under MMRSA, the City may establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity, but not less than the state standard. Maintaining the 96 square foot threshold will also help to discourage diversion to inappropriate markets. This recommendation is consistent with jurisdictions like Denver, Colorado, which only exempts cultivation of 36 total plants from its cultivation regulations.

COORDINATION

Several City departments were consulted in the preparation of this report, including Building Services, Planning Bureau, the Fire Department, the Police Department, the Revenue Management Bureau, the Office of the City Attorney, and the Controller's Bureau. Likewise, staff consulted with outside agencies as well, including the City and County of San Francisco, the City of Berkeley, the City of Richmond, Alameda County and the Port of Oakland

SUSTAINABLE OPPORTUNITIES

Economic: The proposed amendments that will come in the future proposed legislation should positively affect the local economy by generating new employment opportunities for Oakland residents and generating revenue to support City services.

Environmental: The proposed amendments and forthcoming performance and operating standards that will come in the future proposed legislation will promote the cultivation, manufacturing and distribution of medical cannabis in an environmentally sound manner.

Social Equity: The amendments that will come in the future proposed legislation will both provide employment opportunities as well as safe access to medical cannabis.

CEQA

The adoption of amendments to existing citywide medical cannabis regulations is exempt from CEQA review pursuant to CEQA Guidelines sections 15061(b)(3) (general rule), 15183 (projects consistent with a community plan, general plan, or zoning), 15301 (existing facilities), 15307 (actions by regulatory agencies for protection of natural resources), 15308 (actions by regulatory agencies for protection of the environment), and 15309 (inspections). Each of these exemptions provides a separate and independent basis for CEQA exemption and when viewed collectively provide an overall basis for CEQA exemption.

Staff believes that the modifications to the existing regulations will enable the City to legalize existing unregulated medical cannabis businesses that are currently operating within the City. The City Administrator will develop operating and performance standards that will apply to these businesses, which will require inspections and review and approval by the City's Fire Department and Building Department before issuance of a permit. The purpose of the amendments is to license and regulate largely unregulated medical cannabis businesses in the interest of public health, safety and general welfare, and staff believes they will result in increased safety and protective measures, fewer safety hazards and more code enforcement.

These regulations will also apply to new small scale operations and other medical cannabis businesses, including cultivation and manufacturing, which will not be open to the public or generate large amounts of traffic. The purpose of the amendments is to align with MMRSA, which sets minimum statewide standards for pesticides in marijuana cultivation, maximum tolerances for pesticides and other foreign object residue, production and labeling of all edible cannabis products, requires establishment of uniform health and safety standards, testing standards, and security requirements at dispensaries and during transport of the product, and specifies minimum testing requirements. The new state regulatory scheme also specifically directs expanded enforcement efforts to reduce adverse impacts of marijuana cultivation, including environmental impacts such as illegal discharge into waterways and poisoning of marine life and habitats. These new minimum standards promote the public's health, safety and/or general welfare.

Sabrina B. Landreth, City Administrator

Subject: Update on State Medical Cannabis Law and Local Proposals

Date: December 21, 2015

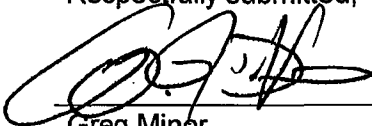
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ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council receive this informational report and provide feedback regarding new state medical cannabis law and proposals to align the City of Oakland's medical cannabis ordinances with new state law.

For questions regarding this report, please contact Greg Minor, Assistant to the City Administrator, at (510) 238-6370.

Respectfully submitted,

 on behalf of:

Greg Minor

Assistant to the City Administrator

Reviewed by:

Joe Devries, Assistant to the City Administrator

Christine Daniel, Assistant City Administrator

Attachments:

- A. California Assembly Bill 266 (Bonta, Cooley, Jones-Sawyer, Lackey, Wood)
- B. California Assembly Bill 243 (Wood)
- C. California Senate Bill 643 (McGuire)
- D. City Council Policy Directive for Fiscal Year 2015-2017 Budget

Item: _____
Public Safety Committee
January 12, 2016



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OFFICE OF THE CITY CLERK
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AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Greg Minor
Assistant to the City
Administrator

SUBJECT: Amendments to Medical Cannabis
Ordinances Supplemental Report

DATE: April 11, 2016

City Administrator Approval

Date:

4/14/16

RECOMMENDATION

Staff Recommends That The City Council Conduct A Public Hearing and Upon Conclusion Adopt The Following Pieces Of Legislation:

- 1) Ordinance Amending Oakland Municipal Code (OMC) Chapter 5.80, Medical Cannabis Dispensary Permits, To Align With California's Medical Marijuana Regulation And Safety Act And Adopting California Environmental Quality Act (CEQA) Exemption Findings;**
- 2) Ordinance Amending Oakland Municipal Code Chapter 5.81, Medical Cannabis Cultivation Facility Permits, To Align With California's Medical Marijuana Regulation And Safety Act And Adopting CEQA Exemption Findings;**
- 3) Ordinance Amending The FY 2015-16 Master Fee Schedule (Ordinance No. 13320 C.M.S., As Amended) To Modify And Establish Permit Application And Annual Regulatory Fees For City of Oakland Licensed Medical Cannabis Facilities And Adopting CEQA Exemption Findings;**
- 4) Resolution Authorizing The City Administrator To Transfer Four Hundred Thousand Dollars (\$400,000) Of Medical Cannabis Cooperative Project (A252610) Funds Within The General Purpose Fund (1010) From The Office Of The City Administrator To The Fire Department And The Planning And Building Department.**

REASON FOR SUPPLEMENTAL

At the February 9, 2016 Public Safety Committee meeting, members of the Public Safety Committee requested clarification on several topics, including local hiring requirements, additional buffer restrictions, security at licensed facilities, onsite consumption, industrial tenant improvement program, administrative discretion, proximity to residential uses, and access to banking. This supplemental report addresses these topics and also includes two additional pieces of legislation: an Ordinance amending the Master Fee Schedule and a Resolution authorizing an interdepartmental transfer of funds to add necessary staff to implement the new medical cannabis regulations.

Item: _____

Finance and Public Safety Committee
April 26, 2016

ANALYSIS

I. Committee Inquiries

A. Local Hiring

At the suggestion of the Public Safety Committee, staff has explicitly included in proposed OMC 5.80 and 5.81 local hiring requirements for licensed medical cannabis facilities with the goal of reducing unemployment in the City of Oakland and improving equity within the medical cannabis industry. Specifically, revised OMC 5.80.040 and 5.81.070 require licensed medical cannabis facilities to maintain a staff of at least 50 percent Oakland residents, including 25 percent of all staff from census tracts high in unemployment. The revised amendments to OMC 5.80 also prioritize future dispensaries owned and operated by Oakland residents, in particular, those Oakland residents in census tracts identified as having high unemployment rates. Further, permittees under proposed OMC 5.80 and 5.81 who hire and retain formerly incarcerated Oakland residents may be eligible for tax credits or license fee reductions. Finally, the permit fee for medical cannabis facilities covers the cost of a full time Contract Compliance Officer who will ensure that licensed facilities implement these local hiring requirements.

B. Additional Buffers

Proposed amendments to OMC 5.80 and 5.81 already restrict medical cannabis facilities to specific zones and require a 600 foot buffer from schools. In addition, the proposed OMC 5.80 imposes additional limitations on dispensaries, including a 600 foot buffer from youth centers and consideration of churches, parks, playgrounds and other dispensaries. Property owners uncomfortable renting to medical cannabis businesses add yet another existing limitation on locations accessible to medical cannabis operators. Consequently, adding further location restrictions such as a 1,000 foot buffer between licensed facilities may render compliance impossible, resulting in medical cannabis operations remaining underground and the City's public health, safety, and revenue goals unfulfilled. Therefore, staff recommends against any additional buffers around medical cannabis facilities as extra buffers threaten to undermine the fundamental purpose of this legislative proposal of bringing medical cannabis operators into the light.

More significantly, there appears to be no basis for additional buffers as crime statistics suggest licensed medical cannabis facilities have zero to negative impact on crime.¹ For example, on average, calls for service to the Oakland Police Department went down 2.5 percent within 500 feet of a City Of Oakland licensed dispensary the year after the dispensary opened compared to the year prior. In one case calls for service dropped 29 percent from 830 to 592 calls for service within one year of operating. Similarly, only one robbery of a licensed Oakland dispensary has taken place over the last ten years, while more than 245 robberies have taken place at Oakland

¹ Regional and national studies have arrived at the same conclusion. See Kepple, N.J. & Freisthler, B. (July 2012). Exploring the Ecological Association Between Crime and Medical Marijuana Dispensaries. Journal of Studies on Alcohol and Drugs, 73(4) 523-530 (concluding Sacramento dispensaries are not associated with higher crime rates); see also Morris RG, TenEyck M, Barnes JC, Kovandzic TV (2014) The Effect of Medical Marijuana Laws on Crime: Evidence from State Panel Data, 1990-2006. PLoS ONE 9(3) e92816. Doi:10.1371/journal.pone.0092816 (finding medical marijuana legalization does not result in increased crime and may result in reduction in homicide and assault rates).

banks/ATMs, another cash-based business, during that same period. This data is not surprising, though, given the security protocols in place at licensed dispensaries as well as the additional eyes on the street generated by dispensaries.

Further, non-dispensary facilities will not be open to the public and pose less risk of being a nuisance. Thus adding extra distance buffers around medical cannabis manufacturing facilities would be equivalent to imposing buffers on alcohol breweries or bottling facilities, which the City only limits via basic zoning requirements.

C. Security

Much like existing licensed dispensaries, new medical cannabis facilities authorized under proposed OMC 5.80 and 5.81 will be required to submit and implement security plans to deter, track and thwart crime in and around their facilities. These plans will include installation of surveillance camera systems that monitor the street outside of medical cannabis facilities and administrative conditions will require operators to report crimes and share surveillance footage with OPD and the City Administrator when a crime occurs. This will benefit the surrounding community not only in preventing cannabis-related crime but in helping document and diminish other crimes, including illegal dumping and graffiti near licensed medical cannabis facilities.

D. Onsite Consumption

The revised dispensary regulations include a separate onsite consumption permit process outlined in proposed OMC 5.80.025. This onsite consumption permit is analogous to the extended hours cabaret permit, a secondary permit that existing operators in good standing can apply for provided they can address any concerns related to this extra activity. In the case of onsite consumption, dispensary applicants will be required to demonstrate measures to address parking concerns, ventilation issues, and avoidance of drugged-driving.

Revised OMC 5.80 also adds the definition of "smoking" from the City's existing smoking ordinance, OMC 8.30, in order to clarify the prohibition of "smoking" inside the premises of the dispensary in OMC 5.80.040.

E. Industrial Tenant Improvement Program

The staff report for the February 9th Public Safety Committee alluded to an industrial tenant improvement program as a measure to address the potential negative impact of increased industrial rents as a result of establishing a permitting process for medical cannabis manufacturing and production. Industrial vacancy in Oakland is at an all-time low, approximately 2.4 percent according to a recent Colliers International report (Quarter 4, 2015), and formalizing industrial medical cannabis uses may reduce industrial vacancy even further due to the profitability of medical cannabis and cannabis operators' ability to afford higher rents. This could threaten the existing rich diversity of industrial activities, including space for private, port-related uses, space for industrial artists and makers, as well as lessen our overall ability to prosper with changing economic conditions.

An industrial tenant improvement program funded by revenue from licensed medical cannabis facilities that promotes a diverse industrial sector and serves small industrial non-cannabis

tenants could help mitigate these undesirable effects. Ultimately, this program would depend on a City Council allocation of funds, most likely after new medical cannabis facilities have been operating for at least a year to assess the feasibility of this proposal.

F. Administrative Discretion

At the request of Councilmember Kalb, staff inserted discretionary language in revised OMC 5.81.030(F) to parallel language in OMC 5.80 that allows the City Administrator to reconsider a particular location requirement if the City Administrator determines that the location will not impact the peace, order and welfare of the public.

One example where the City Administrator applied this discretionary language in the past was in 2013 with a proposed dispensary on Telegraph Avenue that was located within 600 feet of a residential zone. The City Administrator evaluated the proposed operation and security plan for the dispensary, the dilapidated and vacant status of the existing facility and concluded waiving the residential zone requirement would not harm the peace, order and welfare of the public. This determination proved correct in that the opening of this dispensary reduced police calls for service in the area by 29 percent in one year, preserved a historic building and the dispensary continues to be referred to favorably by neighboring residents.

G. Residential Proximity

Another issue raised by the February 9th Public Safety Committee was the proximity of medical cannabis facilities to residential uses.

Proposed OMC 5.80 continues to limit the location of dispensaries to commercial or industrial zones and requires a public hearing for dispensary applicants. However, in place of a fixed buffer of 600 feet from a residential zone, which in addition to other buffers has made it difficult for operators to find compliant locations, revised OMC 5.80.020 requires confirmation that a proposed dispensary will not negatively impact nearby residential uses.

Similarly, the permitted facilities outlined in proposed OMC 5.81 are restricted to areas where industrial uses (e.g. "light manufacturing industrial" and "research and development") are allowed under the Planning Code. The only exception to these general restrictions are for small edible manufacturers that meet the same criteria as a "cottage food operator" under state law, which authorizes small scale home businesses of non-hazardous food, and for personal medical cannabis cultivation limited to less than 96 square feet, which has been the City's policy for several years.

H. Access to Banking

Finally, the Public Safety Committee also inquired about what role the City of Oakland can play in improving medical cannabis businesses' access to financial institutions. While banking access remains limited due to federal prohibition of cannabis and banks' reliance on the Federal Reserve, the state legislature and others across the country are examining remedies. In the meantime, revised OMC 5.80.040(F) and 5.81.070(B)(6) require permittees to implement track and trace programs that promote the transparency that helps banks work with cannabis businesses and comply with the Department of Treasury Financial Crimes Enforcement

Network ("FinCEN"). The City Administration will continue to follow state and federal developments closely and support any developments that reduce medical cannabis businesses' reliance on cash transactions.

II. Additions and Modifications

In light of this supplemental opportunity, staff is bringing two additional items to the Council for its consideration, Master Fee Schedule amendments and a Resolution authorizing interdepartmental transfer of funds to add necessary fire and building staff. Likewise, staff has also made two substantive amendments to February's proposed OMC 5.80 and 5.81 beyond the Public Safety Committee's inquiries and staff has highlighted these changes below.

A. Master Fee Amendments

Amendments are needed to the Master Fee Schedule to cover the costs of regulating new medical cannabis facilities under OMC 5.80 and 5.81, which are summarized below and itemized in more detail in **Attachments 3 and 4**.

The application process will require a variety of staff time. For example, CAO staff will need to design an application process and forms, develop performance and operating standards, respond to email and telephone inquiries concerning the application process, notify the public regarding the application process, receive and file applications, review applications, coordinate with other departments involved in the application process, conduct site visits of proposed facilities and ultimately make a determination to approve or deny each application. Similarly, Oakland Police Department and Revenue Management Bureau staff will spend time reviewing and providing feedback on applicants' security and business plans, respectively. Planning staff will also play a role mapping proposed locations of medical cannabis facilities to identify zoning compliance and proximity to sensitive uses.

Ongoing monitoring will require even more staff time. For instance, CAO staff will need to prevent and address any complaints associated with permitted facilities through phone calls, emails, site visits and permit suspension and revocation proceedings as well as request and review quarterly reports from permitted facilities, respond to related inquiries via telephone and email, and provide input and staff support to the Cannabis Regulatory Commission during its monthly meetings. Likewise, the City Attorney's Office will provide legal advice on medical cannabis issues, representation at administrative hearings and defend the City in any lawsuits related to its medical cannabis program. In addition, Revenue Management Bureau staff will spend time processing fee and tax payments from medical cannabis permittees, which often requires more time than other businesses due to all cash payments, time auditing medical cannabis facilities to ensure tax compliance, and time involved in any tax enforcement proceedings. Contracts and Compliance will also spend time monitoring local hiring and wage requirements. Finally, Oakland Police Department time will be spent coordinating enforcement actions against unpermitted operators, which requires investigating, documenting, and testifying.

While Building Bureau and Fire Department staff will be essential in the permitting of new medical cannabis facilities, their time is not included in the basic application and permit fee;

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rather Fire and Building will recover their fees as part of their normal fee-charging process. Staff elected to pursue this approach as Building and Fire inspectors' time varies significantly depending on the building and issues they encounter during their inspections.

In determining 98 as the number of anticipated permits, staff examined a variety of factors. These factors included: the number of existing cannabis related business licenses, which grew by 60 new businesses at the end of 2015; opinions of industry experts; attendance at public meetings discussing OMC 5.80 and 5.81 amendments that has at times exceeded capacity of an 85 person room; the quadrupling of the City's Cannabis Commission's email list serve to over two hundred individuals in the last year; and the constant permit inquiries received by staff over the last few months. Similarly, in determining the amount of time medical cannabis regulating may require of City staff, each department took into consideration the activities and services they would provide and analyzed what percentage of time those activities and services would require of each position. For example, medical cannabis regulation will require 100 percent of both a tax auditor and contracts and compliance officer as auditing as well as monitoring local hiring and wage provisions more than 50 businesses requires a full time auditor and contracts and compliance officer, respectively.

Small scale medical cannabis facilities, such as cottage food operators under California's Homemade Food Act will pay a reduced fee compared to other medical cannabis facilities to reflect the reduced staff time involved with these small-scale facilities. The legal threshold for these small operations is gross receipts of \$50,000 or less. Similarly, medium sized medical cannabis facilities with gross receipts between \$50,000-\$150,000 will pay a slightly reduced fee. These incremental fee levels should allow for small and mid-size medical cannabis operators an opportunity to compete within Oakland's regulated medical cannabis industry.

B. Resolution Authorizing Fund Transfer to Building and Fire Departments

The City Administrator recommends transferring existing medical cannabis regulatory funds from the City Administrator's Office to the Oakland Fire Department and the Planning and Building Department in order to ensure sufficient staffing to inspect new medical cannabis facilities. Specifically, the proposed Resolution (**Attachment 5**) authorizes the City Administrator to transfer \$200,000 to the Fire Department to add one full fire prevention bureau inspector and 60 percent of an Office Assistant plus \$200,000 to the Planning and Building Bureau to fund a full civil engineer. These positions are of a limited duration for one year, after which they will need to be funded by ongoing fees.

Building and Fire staff will be essential in verifying that licensed facilities are safe and operating in a safe manner. Accordingly, the City Administrator suggests this proactive interdepartmental fund transfer to begin adding appropriate building and fire staff as soon as possible.

C. Defining and Removing "Youth Center"

Public comments before and after the February 9th Public Safety Committee meeting questioned the ambiguity of the term "youth center" in OMC 5.80 and the appropriateness of including it as a buffer from medical cannabis facilities under proposed OMC 5.81. In response, staff has offered a definition for the term "youth center" in revised OMC 5.80 to provide a measure of

clarity for operators and regulators alike, and removed the term from proposed OMC 5.81. A "youth center" buffer for non-dispensary facilities is unnecessary given the existing buffer from schools and the fact that they are not open to the public and do not pose the same risk of nuisance as a dispensary.

D. Clarifying Multiple Uses Allowed at Same Site, Permit Required per Operator

In response to inquiries from medical cannabis operators, staff clarified under revised OMC 5.81.030(E) that different uses may situate on the same property but that each operator will be required to obtain a permit for each respective use. This approach will allow for economies of scale and encourage shared and efficient facility use by operators of varied sizes. Additionally, this will facilitate each operator's ability to demonstrate that he or she has obtained a local permit when applying for a state license.

FISCAL IMPACT

As discussed in the February 9th Public Safety Committee staff report, the proposed amendments could have considerable positive fiscal impacts resulting from new businesses paying taxes at the City's elevated medical cannabis business tax rate. While staff cannot specify exactly how many new medical cannabis businesses will participate in the new permitting process, staff estimates issuing 98 permits based on inquiries from interested businesses, attendance at public meetings and industry trends. To put in perspective, the City's eight licensed medical cannabis dispensaries contributed over four million dollars in taxes in 2015.

The revenue generated from permit and application fees arising under revised Chapters OMC 5.80 and 5.81 are expected to be budget neutral. The proposed fee structure is meant to recover the City's costs including staff time for the application process and ongoing monitoring described in detail above. After experience is gained from the expansion of the ordinance, staff will analyze workload, revenues and fees and return to the City Council with any necessary adjustments.

In addition, the proposed resolution recommends using one-time funds of \$400,000 available in the General Purpose Fund (1010), City Administrator Administration Org (02111), Cannabis Cooperative Project (A252610) to add building and fire inspection and administrative staff for a limited duration to accommodate the anticipated expansion of licensed medical cannabis facilities. The Fire Department will receive \$200,000 to fund 1.0 Fire Prevention Bureau Inspector, Civil and 0.60 Office Assistant I, PPT positions, and the Planning and Building Department will receive \$200,000 to fund a 1.0 Civil Engineer (Office) position. Initially these positions will be on a limited duration of one year, and Staff will assess if the workload and fee revenue associated with the medical cannabis facilities can support the positions on an ongoing basis.

PUBLIC OUTREACH

Staff met twice with the Cannabis Regulatory Commission (CRC) since the February 9th Public Safety Committee meeting to discuss the issues raised by the Committee. The CRC meetings have been well attended since the Public Safety Committee considered the proposals in

February, and the CRC provided a venue to receive a variety of input from a wide cross-section of the community.

Specifically, the Commission's February meeting resulted in the following motions:

1. Supporting the removal of buffers for non-dispensary and non-cultivation purposes and limiting the buffer to K-12 schools.
2. Supporting the addition of wording to the ordinances that require cannabis businesses to address blight, graffiti, and illegal dumping in the area surrounding their business.
3. Supporting a 50 percent local hire requirement on all cannabis businesses.
4. Opposing a 1,000 foot buffer; supporting allowing the clustering of cannabis businesses.
5. Supporting increasing local, minority ownership in the cannabis industry.
6. Supporting the City's investigation of ways for the cannabis industry to utilize traditional banking methods.

Similarly, at the March CRC meeting the Commission voted in favor of supporting efforts to employ chronically unemployed and formerly incarcerated Oakland residents.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council conduct a public hearing and adopt the following pieces of legislation:

- 1) Ordinance Amending Oakland Municipal Code (OMC) Chapter 5.80, Medical Cannabis Dispensary Permits, To Align With California's Medical Marijuana Regulation And Safety Act And Adopting California Environmental Quality Act (CEQA) Exemption Findings;
- 2) Ordinance Amending Oakland Municipal Code Chapter 5.81, Medical Cannabis Cultivation Facility Permits, To Align With California's Medical Marijuana Regulation And Safety Act And Adopting CEQA Exemption Findings;
- 3) Ordinance Amending The FY 2015-16 Master Fee Schedule (Ordinance No. 13320 C.M.S., As Amended) To Modify And Establish Permit Application And Annual Regulatory Fees For City of Oakland Licensed Medical Cannabis Facilities And Adopting CEQA Exemption Findings;
- 4) Resolution Authorizing The City Administrator To Transfer Four Hundred Thousand Dollars (\$400,000) Of Medical Cannabis Cooperative Project (A252610) Funds Within The General Purpose Fund (1010) From The Office Of The City Administrator To The Fire Department And The Planning And Building Department.

For questions regarding this report, please contact Greg Minor, Assistant to the City Administrator, at (510) 238-6370.

Respectfully submitted,



GREG MINOR
Assistant to the City Administrator

Reviewed by:
Joe DeVries, Assistant to the City Administrator

Attachments:

1. Revised Ordinance amending OMC 5.80, Medical Cannabis Dispensary Permits.
2. Revised Ordinance amending OMC 5.81, Medical Cannabis Cultivation, Manufacturing and Other Facility Permits.
3. Ordinance amending Master Fee Schedule
4. Supporting Documentation to Master Fee Schedule Amendments
5. Resolution Authorizing Interdepartmental Fund Transfer

- 9.1** Subject: Amendments To Medical Cannabis Ordinances
From: Office Of The City Administrator
Recommendation: Conduct A Public Hearing And Upon Conclusion Adopt The
Following Pieces Of Legislation:

1) An Ordinance Amending Oakland Municipal Code Chapter 5.80, Medical Cannabis Dispensary Permits, To Align With California's Medical Marijuana Regulation And Safety Act And Adopting CEQA Exemption Findings ; And
[15-0587](#)

Attachments: [View Report](#)
[View Supplemental Report](#)

Upon the reading of Item 9.1 by the City Clerk, the Public Hearing was opened at 11:03 p.m.

47 individuals spoke on this item.

Councilmember Brooks made a motion, seconded by President Pro Tempore Reid, to close the Public Hearing, and hearing no objections, the motion passed by 8 Ayes: Brooks, Campbell Washington, Gallo, Guillén, Kalb, Kaplan, Reid and President Gibson McElhaney.

Councilmember Brooks made a motion, seconded by President Pro Tempore Reid, to approve the Ordinance on introduction as amended as follows:

1. Add to Definitions Section 5.80.010 the following: Section M. "General Application permit" shall mean all applications issued under OMC 5.80 with the exception of Dispensary Equity Permits issued under section 5.80.040.

2. DISPENSARY PERMIT APPLICATION:

a. Section 5.80.020 (E) delete the following: "Priority shall be given to dispensary applications owned and operated by Oakland residents, in particular applicants owned and operated by Oakland residents in census tracts identified by the City Administrator as having high unemployment rates."

b. Section 5.80.020(E) add the following: "Fifty percent (50%) of all permits issued under OMC 5.80 shall be issued to an Oakland resident who meets the Dispensary Equity Permit Program requirements set forth in Section 5.80.050. At no time shall the number of new General Application permits exceed the number of Dispensary Equity Permits issued by the City Administrator. The eight (8) existing Dispensary Operators are exempt from the 50% requirement."

3. Add the following to Section 5.80.040 - Performance and Operating Standards:

i. Section G. Fifty percent (50%) of all dispensary applications issued under OMC 5.80 shall be issued to an Oakland resident who meets the Dispensary Equity Permit Program requirements set forth in Section 5.80.050 below.

ii. Section H. At no time shall the number of new General Application permits exceed the number of Dispensary Equity Permits issued by the City Administrator.

4. **Add new Section 5.80.050 -DISPENSARY EQUITY PERMIT PROGRAM:**
 - i. **Section A: CRITERIA. Applicant must have at least one member who meets all of the following criteria:**
 1. **Be an Oakland resident who,**
 2. **Resides for at least two years prior to the date of application in Oakland Police Department Beats 26Y, 30X, 30Y, 31Z, 32Y, and 34X (Oakland Police Department Beat Map is attached and incorporated herein by reference); or those individuals who, within the last ten years, have been previously incarcerated for marijuana-related offense as a result of a conviction arising out of Oakland, California;**
 3. **Maintains not less than a 50% ownership in the Dispensary applicant entity, partnership, limited liability corporation, collective, corporation, worker cooperative or other recognized ownership entity; and**
 4. **Prior marijuana or cannabis conviction shall not be a bar to equity ownership.**
5. **Add the following: Section 5.80.020(4)(h) - That no cannabis or cannabis odors shall be detectable by sight or smell outside of a permitted facility.**
6. **Renumber the balance of the sections accordingly.**

The Council directed the City Administrator to include the following in the implementation regulations:

1. Strengthened Enforcement of Local Hiring Provisions. Strengthen enforcement of local hiring provisions by creating statutory fines for shortfalls and permit revocation for repeated noncompliance. Additionally, onsite consumption permits should be denied to dispensaries that do not meet the local hiring requirements at the time of their application.

5. Advocate for and Assist Formerly Incarcerated Permit Holders with State Suitability Process. Earmark resources for Oakland to proactively lobby on behalf of licensed local businesses during the state licensing process so that business owners with prior criminal offenses will not be frozen out of the state system.

A motion was made by Brooks, seconded by Reid, that this matter be Approved As Amended On Introduction and Scheduled for Final Passage to the Meeting of the Oakland City Council. The motion carried by the following vote:

Aye: 8 - Brooks, Campbell Washington, Gallo, Guillén, Kalb, Kaplan, Reid, and Gibson McElhane

2) Ordinance Amending Oakland Municipal Code Chapter 5.81, Medical Cannabis Cultivation Facility Permits, To Align With California's Medical Marijuana Regulation And Safety Act And Adopting CEQA Exemption Findings; And [15-0589](#)

Councilmember Brooks made a motion, seconded by President Pro Tempore Reid, to approve the Ordinance on introduction as amended as follows:

1. Cultivation, Distribution, And Manufacturing Permit Application. Add to Definitions Section 5.81.020 the following: Section W. "General Application permit" shall mean all applications issued under OMC 5.81 with the exception of Dispensary Equity Permits issued under section 5.81.030.

2. On page 8, Section 5.81.030 insert: Section G. Fifty percent (50%) of all permits issued under OMC 5.81 shall be issued to an Oakland resident who meets the Equity Permit Program requirements set forth in Section 5.81.030(H) below. At no time shall the number of General Application permits issued under 5.81 in total exceed the number of Equity Permits under 5.81 in total issued by the City Administrator.

a. Add Section H. Cultivation, Manufacture, Distribution Equity Permit Program Criteria. Applicant must have at least one member who meets all of the following criteria:

1. Be an Oakland resident who,

2. Resides for at least two years prior to the date of application in Oakland Police Department Beats 26Y, 30X, 30Y, 31Z, 32Y, and 34X (Oakland Police Department Beat Map is attached and incorporated herein by reference); or those individuals who, within the last ten years, have been previously incarcerated for marijuana-related offense as a result of a conviction arising out of Oakland, California;

3. Maintains not less than a 50% ownership in the Dispensary applicant entity, partnership, limited liability corporation, collective, corporation, worker cooperative or other recognized ownership entity; and

4. Prior marijuana or cannabis conviction shall not be a bar to equity ownership.

This Ordinance was Approved As Amended On Introduction and Scheduled for Final Passage.to the Meeting of the Oakland City Council to be heard 5/17/2016

Aye: 8 - Brooks, Campbell Washington, Gallo, Guillén, Kalb, Kaplan, Reid, and Gibson McElhaney

3) An Ordinance Amending The FY 2015-16 Master Fee Schedule (Ordinance No. 13320 C.M.S., As Amended) To Modify And Establish Permit Application And Annual Regulatory Fees For City Of Oakland Licensed Medical Cannabis Facilities And Adopting CEQA Exemption Findings; And [15-0811](#)

A motion was made by Brooks, seconded by Reid, that this matter be Approved On Introduction and Scheduled for Final Passage to the Meeting of the Oakland City Council, to be heard 5/17/2016. The motion carried by the following vote:

Aye: 8 - Brooks, Campbell Washington, Gallo, Guillén, Kalb, Kaplan, Reid, and Gibson McElhaney

4) A Resolution Authorizing The City Administrator To Transfer Four Hunder Thousand Dollars (\$400,000) Of Medical Cannabis Cooperative Project (A242610) Funds Within The General Purpose Fund (1010) From The Office Of The City Administrator To The Fire Department And The Planning And Building Department [15-0814](#)

Councilmember Brooks made a motion, seconded by President Pro Tempore Reid, to adopt the Resolution as amended with the following addition: "And be it Resolved that staff shall report back to City Council no later than one year from the date of adoption of this action, providing information about the implementation, review of effectiveness of the included standards, including equity standards, issues that have arisen, if any, and whether any changes are recommended."

A motion was made by Brooks, seconded by Reid, that this matter be Adopted as Amended. The motion carried by the following vote:

Aye: 8 - Brooks, Campbell Washington, Gallo, Guillén, Kalb, Kaplan, Reid, and Gibson McElhane

ACTION ON OTHER NON-CONSENT CALENDAR ITEMS:

10 THIS NUMBER INTENTIONALLY NOT USED

11 Subject: Establishing An Alameda County Community Choice Energy Program
From: Councilmember Kalb & Alameda County Community Development Agency
Recommendation: Receive An Informational Status Report On The Process And Progress Of Establishing An Alameda County Community Choice Energy Program, Including Level Of Progress, Process Going Forward, Including Eventual Next Steps From Oakland And Other Participating Cities And The County
[15-0820](#)

Attachments: [View Report](#)

There were 7 speakers on this item.

A motion was made by Kalb, seconded by Kaplan, that this matter be Received and Filed. The motion carried by the following vote:

Aye: 8 - Brooks, Campbell Washington, Gallo, Guillén, Kalb, Kaplan, Reid, and Gibson McElhane

FILED
OFFICE OF THE CITY CLERK
OAKLAND

REVISED AT COUNCIL 5/3/16

2016 MAY -5 PM 4:45

APPROVED AS TO FORM

INTRODUCED BY COUNCILMEMBER _____


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.80, MEDICAL CANNABIS DISPENSARY PERMITS, TO ALIGN WITH CALIFORNIA'S MEDICAL MARIJUANA REGULATION AND SAFETY ACT AND ADOPTING CEQA EXEMPTION FINDINGS

WHEREAS, in 1996, California voters approved Proposition 215 (codified at Health and Safety Code section 11362.5 and titled the "Compassionate Use Act of 1996"), which provides criminal immunity for patients and primary caregivers for the cultivation and possession of cannabis if a doctor has recommended the cannabis for medical purposes; and

WHEREAS, in 2004, Senate Bill 420 was enacted (codified at Health and Safety Code section 11362.7 *et seq.* and titled the "Medical Marijuana Program Act") to clarify the scope of the Compassionate Use Act of 1996. The Medical Marijuana Program Act allows cities and other governing bodies to adopt and enforce laws consistent with its provisions; and

WHEREAS, neither the Compassionate Use Act of 1996 nor the Medical Marijuana Program Act provided an effective statewide regulatory system for the medical cannabis industry, and this lack of uniform regulation created uncertainty about the legality of medical cannabis activities and endangered the safety of end users, who have not had the benefit of a monitored supply chain for medical cannabis, quality control, testing or labeling requirements; and

WHEREAS, in 2004, the Oakland City Council adopted Ordinance No. 12585 C.M.S. to establish citywide medical cannabis dispensary regulations (codified at Oakland Municipal Code ("OMC") Chapter 5.80), consistent with the Medical Marijuana Program Act, to protect the peace, health, safety and welfare of patients and the community as a whole; and

WHEREAS, the City of Oakland's medical cannabis dispensary regulations were subsequently amended in 2010 through Ordinance No. 13049 C.M.S., and in 2011 through Ordinance No. 13086 C.M.S.; and

WHEREAS, the purpose of citywide regulation of medical cannabis dispensaries is to regulate the sale and distribution of cannabis in the interest of patients who qualify to obtain, possess and use cannabis for medical purposes under state law, and to provide safe medical cannabis product and inventory; and

WHEREAS, in 2011, Assembly Bill 2650 was enacted (codified at Health and Safety Code section 11362.768). This law affirms that cities can adopt ordinances that restrict the location and establishment of medical marijuana collectives, cooperatives, and dispensaries; and

WHEREAS, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court concluded that nothing in the Compassionate Use Act or the Medical Marijuana Program Act precludes a local jurisdiction from regulating or prohibiting facilities that distribute medical marijuana; and

WHEREAS, in 2015, Assembly Bills 243 and 266 and Senate Bill 643 were enacted (codified at Business and Professions Code section 19300 *et seq.* and titled the "Medical Marijuana Regulation and Safety Act"). These bills also amended provisions of the Medical Marijuana Program Act related to the cultivation of medical marijuana; and

WHEREAS, the Medical Marijuana Regulation and Safety Act establishes a long-overdue comprehensive regulatory framework for medical cannabis in California (including production, transportation and sale of medical cannabis), requires establishment of uniform state minimum health and safety standards, testing standards, mandatory product testing, and security requirements at dispensaries and during transport of the product, and provides criminal immunity for licensees; and

WHEREAS, the Medical Marijuana Regulation and Safety Act preserves local control in a number of ways: (1) by requiring medical cannabis businesses to obtain both a state license and a local license or permit to operate legally in California, (2) by terminating the ability of a medical cannabis business to operate if its local license or permit is terminated, (3) by authorizing local governments to enforce state law in addition to local ordinances, if they request that authority and it is granted by the relevant state agency, (4) by providing for civil penalties for unlicensed activities, and continuing to apply applicable criminal penalties under existing law, and (5) by expressly protecting local licensing practices, zoning ordinances, and local actions taken under the constitutional police power; and

WHEREAS, the Medical Marijuana Regulation and Safety Act authorizes medical cannabis businesses to vertically integrate their business and hold multiple state licenses if they are located in jurisdictions that adopted a local ordinance, prior to July 1, 2015, allowing or requiring qualified businesses to cultivate, manufacture, and dispense medical cannabis or medical cannabis products; and

WHEREAS, the City of Oakland's medical cannabis regulations have allowed and will continue to allow an individual qualified business to cultivate, manufacture, and dispense medical cannabis or medical cannabis products; and

WHEREAS, the City of Oakland wishes to amend OMC Chapter 5.80 to continue and expand citywide regulation of medical cannabis activities in a manner that protects the public health, safety and general welfare of the community, and in the interest of patients who qualify to obtain, possess and use marijuana for medical purposes, consistent with the Compassionate Use Act of 1996, the Medical Marijuana Program Act, and the Medical Marijuana Regulation and Safety Act; and

WHEREAS, the City of Oakland has a compelling interest in protecting the public health, safety, and welfare of its citizens, residents, visitors and businesses by developing and implementing strict performance and operating standards for dispensaries; and

WHEREAS, it is the City of Oakland's policy in the permitting of medical cannabis facilities to encourage the hiring of high unemployment groups, including Oakland residents that were formerly incarcerated; and

WHEREAS, communities of color have been negatively and disproportionately impacted by disparate enforcement of cannabis laws; and

WHEREAS, police arrest data reported to the Cannabis Regulatory Commission reflect disproportionately higher arrests for cannabis offenses in certain police beats; and

WHEREAS, individuals arrested or previously incarcerated for cannabis related offenses face significant barriers to obtaining employment, financial aid, public housing, and other economic opportunities; and

WHEREAS, the City of Oakland seeks to provide equity in ownership in the cannabis industry through the incorporation of a Dispensary Equity Permit Program; and

WHEREAS, as part of its efforts to develop comprehensive amendments to the existing citywide medical cannabis regulations, staff conducted extensive public outreach, including public presentations to the City's Cannabis Regulatory Commission in February, July, and October 2015; and

WHEREAS, after duly noticed public meetings on February 9, 2016, and April 26, 2016, the Public Safety Committee voted to recommend the proposal to the City Council with the inclusion of an equity component that requires 50% of all new cannabis permits be issued to applicants who reside in police beats negatively and disproportionately impacted by enforcement of cannabis laws; and

WHEREAS, the City Council held a duly noticed public hearing on May 3, 2016, to consider the proposed amendments and all interested parties were provided an ample opportunity to participate in said hearing and express their views; and

WHEREAS, nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. § 841 or to license any activity that is prohibited under said Act except as mandated by State law; and

WHEREAS, nothing in this Ordinance shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance; or (2) allow the use of cannabis for non-medical purposes; or (3) allow any activity relating to the sale, distribution, possession or use of cannabis that is illegal under state or federal law; and compliance with the requirements of this Ordinance shall not provide a defense to criminal prosecution under any applicable law; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The City Council finds and determines the foregoing recitals to be true and correct and hereby adopts and incorporates them into this Ordinance.

SECTION 2. Purpose and Intent. It is the purpose and intent of this Ordinance to clarify and expressly authorize medical cannabis dispensaries and delivery-only dispensaries, in order to preserve the public peace, health, safety, and general welfare of the citizens and residents of, and travelers through, the City of Oakland, as authorized by the Medical Marijuana Regulation and Safety Act.

SECTION 3. Amendment of Chapter 5.80 of the Oakland Municipal Code. Oakland Municipal Code Chapter 5.80 is hereby amended to read as follows (additions are shown in double underline and deletions are shown as ~~strikethrough~~):

Chapter 5.80 - MEDICAL CANNABIS DISPENSARY PERMITS

5.80.010 – Definitions.

The following words or phrases, whenever used in this Chapter, shall be given the following definitions:

A. ~~“Attorney General Guidelines” shall mean the California Attorney General Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use, issued by the Attorney General’s Office in August 2008, as amended from time to time, which sets regulations intended to ensure the security and non-diversion of marijuana grown for medical use by qualified patients or primary caregivers.~~

AB. “Cannabis” or “Marijuana” shall have the same definition as Business and Professions Code section 19300.5(f), as may be amended, which, as of March 2016, defines “cannabis” as all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound,

manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Health and Safety Code § 11018, as amended from time to time, which defines "cannabis" as all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant which is are incapable of germination. "Cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

BC. "Cannabis dispensary" or "Dispensary" shall mean a collective or cooperative that distributes, dispenses, stores, exchanges, processes, delivers, makes available, transmits and/or gives away marijuana in the City for medicinal purposes to four or more qualified patients and/or primary caregivers pursuant to California Health and Safety Code Sections 11362.5, 11362.7 et seq. a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers medical cannabis and medical cannabis products as part of a retail sale.

CD. "City Administrator" means the City Administrator of the City of Oakland or his/her designee.

DE. "Collective" means any association, affiliation, or establishment jointly owned and operated by its members that facilitates the collaborative efforts of qualified patients and primary caregivers, as described in the Attorney General GuidelinesState law.

E. "Delivery" means the commercial transfer of medical cannabis or medical cannabis products from a dispensary to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. "Delivery" also includes the use by a dispensary of any technology platform that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

F. "Delivery only dispensary" means a cannabis dispensary that provides medical cannabis or medical cannabis products to primary caregivers or qualified patients as defined in Section 11362.7 of the Health and Safety Code exclusively through delivery.

GF. "Medical marijuana" or "Medical cannabis" means marijuana authorized in strict compliance with Health & Safety Code §§ 11362.5, 11362.7 et seq., as such sections may be amended from time to time.

HG. "Parcel of land" means one piece of real property as identified by the county assessor's parcel number (APN) that is one contiguous parcel of real property, which is used to identify real property, its boundaries, and all the rights contained therein.

IH. "Primary caregiver" shall have the same definition as California Health and Safety Code Section 11362.7, and as may be amended, and which, as of March 2016,

defines "Primary Caregiver" as an individual designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include a licensed health care facility, a residential care facility, a hospice, or a home health agency as allowed by California Health and Safety Code Section 11362.7(d)(1)-(3), any of the following:

~~1. In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the California Health and Safety Code; a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the California Health and Safety Code; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2 of the California Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2 of the California Health and Safety Code; a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2 of the California Health and Safety Code; the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.~~

~~2. An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.~~

~~3. An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.~~

~~4. "Qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., and as may be amended, and which, as of March 2016, means a person who is entitled to the protections of California Health & Safety Code Section 11362.5. For purposes of this ordinance, qualified patient shall include a person with an identification card, as that term is defined by California Health and Safety Code Section 11362.7 et seq.~~

~~J. "Serious medical condition" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., and as may be amended, and which means all of the following medical conditions:~~

- ~~1. Acquired immune deficiency syndrome (AIDS);~~
- ~~2. Anorexia;~~
- ~~3. Arthritis;~~
- ~~4. Cachexia;~~
- ~~5. Cancer;~~
- ~~6. Chronic pain;~~
- ~~7. Glaucoma;~~
- ~~8. Migraine;~~

- ~~9. Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis;~~
~~10. Seizures, including, but not limited to, seizures associated with epilepsy;~~
~~11. Severe nausea;~~
~~12. Any other chronic or persistent medical symptom that either:~~
~~a. Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101 336).~~
~~b. If not alleviated, may cause serious harm to the patient's safety or physical or mental health.~~

~~K. "Written documentation" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., and as may be amended, and which defines "written documentation" as accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of California Health and Safety Code Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.~~

~~K. "Smoking" shall have the same definition as Oakland Municipal Code Section 8.30, which as of March 2016 means "inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, weed, or other combustible substance."~~

~~L. "Youth Center" means a community or recreation facility that primarily serves persons 18 years or younger.~~

~~M. "General Application permit" shall mean all applications issued under OMC 5.80 with the exception of Dispensary Equity Permits issued under section 5.80.040.~~

5.80.020 – Business permit required and application for permit.

A. Except for hospitals, research facilities, or an entity authorized pursuant to Section 8.46.030, it is unlawful for any owner, operator, or association to own, conduct, operate or maintain, or to participate therein, or to cause or to allow to be conducted, operated, or maintained, any dispensary, delivery or delivery only dispensary in or into the City unless there exists a valid business permit in compliance with the provisions of Chapter 5.02 and a permit issued under this Chapter. However, entities authorized under OMC Section 8.46 must abide by the same requirements imposed herein on dispensaries.

B. This Chapter, and the requirement to obtain a business permit, does not apply to the individual possession or cultivation of medical marijuana for personal use, nor does this Chapter apply to the usage, distribution, cultivation or processing of medical marijuana by qualified patients or primary caregivers when such group is of three or less individuals, and distributing, cultivating or processing the marijuana from a residential unit or a single non-residential parcel of land. Associations of three or less qualified patients or primary caregivers shall not be required to obtain a permit under Chapter 5.80, but must comply with applicable State law and the Attorney General Guidelines.

C. The City Administrator shall issue no more than eight new valid permits for the operation of dispensaries in the City per year. Delivery only dispensaries shall not be subject to this limit.

D. In addition to the requirements specified in Section 5.02.020 for business permits, the permit application for a dispensary shall set forth the following information:

1. Unless the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public, evidence that the proposed location of such dispensary is not within 600 feet of a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive (but not including any private school in which education is primarily conducted in private homes), public library, or youth center (serving youth age 18 and under), parks and recreation facilities, residential zone or another dispensary. The proposed dispensary or delivery only dispensary must be located in a commercial or industrial zone, or its equivalent as may be amended, of the City.

~~2. A complete description of the type, nature and extent of the enterprise to be conducted, with evidence satisfactory to the City Administrator that the enterprise is either a collective or cooperative, as described in the Attorney General Guidelines.~~

~~3. A plan of operations that will describe how the dispensary or delivery only dispensary will operate consistent with the intent of State law, and the provisions of this Chapter and the Attorney General Guidelines, including but not limited to:~~

~~a. Controls to verify membership in collectives and cooperatives to ensure medical marijuana will be dispensed only to qualified patients and primary caregivers, and~~

~~b. Controls to acquire, possess, transport and distribute marijuana to and from state licensed medical cannabis entities members, and plans to ensure marijuana is acquired as part of a closed circuit of marijuana cultivation and consumption.~~

~~4. A security plan, as a separate document, outlining the proposed security arrangements to deter and prevent unauthorized entrance into areas containing medical cannabis or medical cannabis products and theft of medical cannabis or medical cannabis products at the dispensary, in accordance with minimum security measures required by State law for ensuring the safety of persons and to protect the premises from theft. The security plan shall be reviewed by the Police Department and the Office of the City Administrator and shall be exempt from disclosure as a public record pursuant to Government Code Section 6255(a).~~

4. Confirmation of the following criteria:

a. That the dispensary or delivery only dispensary will not contribute to undue proliferation of such uses in an area where additional ones would be undesirable, with consideration to be given to the area's function and character, problems of crime and loitering, and traffic problems and capacity;

b. That the dispensary or delivery only dispensary will not adversely affect adjacent or nearby churches, temples, or synagogues; public,

parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds;

c. That the dispensary or delivery only dispensary will not interfere with the movement of people along an important pedestrian street;

d. That the dispensary or delivery only dispensary will be of an architectural and visual quality and character which harmonizes with, or where appropriate enhances, the surrounding area;

e. That the design will avoid unduly large or obtrusive signs, bleak unlandscaped parking areas, and an overall garish impression;

f. That adequate litter receptacles will be provided where appropriate;

g. That where the dispensary or delivery only dispensary is in close proximity to residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep.

h. That no cannabis or cannabis odors shall be detectable by sight or smell outside of a permitted facility.

5. Such other information deemed necessary to conduct any investigation or background check of the applicant, and for the City Administrator to determine compliance with this Chapter, the City's Municipal Code and Zoning Code.

E. Applications for dispensaries shall be subject to a hearing and must provide public notice of the hearing in accordance with on the application shall be given as provided in Section 5.02.050. Applications for delivery only dispensaries shall not be subject to a hearing requirement. The City Administrator shall be the investigating official referred to in Section 5.02.030 to whom the application shall be referred. In recommending the granting or denying of such permit and in granting or denying the same, the City Administrator shall give particular consideration to the capacity, capitalization, and complaint history of the applicant and any other factors that in the City Administrator's discretion he/she deems necessary to the peace, order and welfare of the public. Priority shall be given to dispensary applicants owned and operated by Oakland residents, in particular applicants owned and operated by Oakland residents in census tracts identified by the City Administrator as having high unemployment rates. Fifty percent (50% of all permits issued under OMC 5.80 shall be issued to an Oakland resident who meets the Dispensary Equity Permit Program requirements set forth in Section 5.80.045. At no time shall the number of new General Application permits exceed the number of Dispensary Equity Permits issued by the City Administrator. The eight (8) existing dispensary operators are exempt from the 50% requirement. All applicants shall pay an application fee, a permit fee, and all inspection fees that may be required as part of the application process, as specified in the City's Master Fee Schedule.

F. At the time of submission of dispensary permit application, the applicant shall pay a dispensary permit application fee. The fee amount shall be set ~~by City Council resolution~~ in the City's Master Fee Schedule.

G. All dispensary permits shall be special business permits and shall be issued for a term of one year. No property interest, vested right, or entitlement to receive a future license to operate a medical marijuana business shall ever inure to the benefit of such permit holder as such permits are revocable at any time with our without cause by the City Administrator subject to Section 5.80.070.

5.80.025 – Onsite consumption permit.

A. An applicant must obtain a secondary onsite consumption permit in order for cannabis to be consumed on the premises of the dispensary.

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. An application for an onsite consumption permit may be denied for failure to meet requirements of the City Building Code, City Fire Code, City Planning Code, this Chapter, and/or any violation of State or local law relevant to the operation of dispensaries.

C. The City Administrator shall establish conditions of approval for each onsite consumption permit, including but not limited to a parking plan, ventilation plan, anti-drugged driving plan, and set hours of operation. Set hours of operation may only be adjusted by submitting a written request to and obtaining approval from the City Administrator's Office.

D. The permit shall be subject to suspension or revocation in accordance with Section 5.80.070, and the owner/operator shall be liable for excessive police costs related to enforcement.

E. The application fee and annual fee for the onsite consumption permit shall be specified in the City's Master Fee Schedule.

F. All onsite consumption permits shall be special business permits and shall be issued for a term of one year. No property interest, vested right, or entitlement to receive a future license to operate a medical marijuana business shall ever inure to the benefit of such permit holder as such permits are revocable at any time with our without cause by the City Administrator subject to Section 5.80.070.

5.80.030 – Regulations.

The City Administrator shall establish administrative regulations for the permitting of dispensaries and delivery only dispensaries, and may set further standards for operation of dispensaries and delivery only dispensaries. The dispensary shall meet all the operating criteria for the dispensing of medical marijuana required pursuant to State law California Health and Safety Code Section 11362.7 et seq., the City Administrator's administrative regulations, and this Chapter.

5.80.040 – Performance and operating standards.

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

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

- A. No cannabis shall be smoked, ~~ingested or otherwise consumed on~~ inside the premises of the dispensary.
- B. The dispensary shall not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages.
- C. Dispensaries must maintain a staff comprised of at least 50% Oakland residents and 25% Oakland residents in census tracts identified by the City Administrator as having high unemployment rates. The City Administrator may promulgate standards for phasing in this requirement for existing facilities.
- D. Dispensaries and delivery only dispensaries that hire and retain formerly incarcerated Oakland residents may apply for a tax credit or license fee reduction based on criteria established by the City Administrator.
- E. All dispensary employees and delivery only dispensary employees shall be paid a living wage as defined by OMC Chapter 2.28.
- F. Dispensaries and delivery only dispensaries must implement a track and trace program that records the movement of medical cannabis and medical cannabis products in their custody and make these records available to the City Administrator upon request.
- G. Fifty percent (50%) of all dispensary applications issued under OMC 5.80 shall be issued to an Oakland resident who meets the Dispensary Equity Permit Program requirements set forth in Section 5.80.045 below.
- H. At no time shall the number of new General Application permits exceed the number of Dispensary Equity Permits issued by the City Administrator.

5.80.045 – Dispensary Equity Permit Program.

A. Criteria. Applicant must have at least one member who meets all of the following criteria:

1. Be an Oakland resident who,

2. Resides for at least two years prior to the date of application in Oakland Police Department Beats 26Y, 30X, 30Y, 31Z, 32Y, and 34X; or those individuals who, within the last ten years, have been previously incarcerated for a marijuana-related offense as a result of a conviction arising out of Oakland, California;
3. Maintains not less than a 50% ownership in the Dispensary applicant entity, partnership, limited liability corporation, collective, corporation, worker cooperative or other recognized ownership entity; and
4. Prior marijuana or cannabis conviction shall not be a bar to equity ownership.

5.80.050 – Regulatory fees; seller's permit.

- A. In addition to the dispensary application fee, the dispensary shall pay an annual regulatory fee at the same as applying for the business tax certificate or renewal thereof. The dispensary shall post a copy of the business tax certificate issued pursuant to Chapter 5.04, together with a copy of the dispensary permit and onsite consumption permit (if applicable) issued pursuant to this eChapter and Section 5.02.020, in a conspicuous place in the premises approved as a dispensary at all times.
- B. The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a seller's permit from the State Board of Equalization.
- C. The fees referenced herein shall be set by the Master Fee Schedule ~~Council resolution~~, as modified from time to time.

5.80.060 – Profit Sales.

~~The dispensary shall not profit from the sale or distribution of marijuana. Any monetary reimbursement that members provide to the dispensary should only be an amount necessary to cover overhead costs and operating expenses.~~

Retail sales of medical marijuana that violate California law or this eChapter are expressly prohibited.

5.80.070 – Revocation, suspension and appeals.

Notwithstanding Chapter 5.02, any decision by the City Administrator, except for the suspensions or revocations of permits, shall be final and conclusive, and there shall be no right of appeal to the City Council or any other appellate body.

For suspensions or revocations the City shall follow the procedures set forth in Section 5.02.080, ~~except an independent hearing officer shall make the initial determination as to whether to suspend or revoke the permit.~~ The appeal authorized in Section 5.02.100 shall be to the City Administrator an independent hearing officer, and such request for appeal must be made in writing within 14 days of the ~~hearing officer's~~ City

Administrator's decision. The decision of the City Administrator independent hearing officer shall be final and conclusive.

5.80.080 – Prohibited operations; nonconforming uses.

A. All dispensaries in violation of California Health and Safety Code Section 11326.7, et seq., and 11362.5, and this Chapter are expressly prohibited. It is unlawful for any dispensary in the City, or any agent, employee or representative of such dispensary, to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct on the premises of the dispensary or during the delivery of medical cannabis.

B. Except for uses established pursuant to Chapter 8.46, no use which purports to have distributed marijuana prior to the enactment of this Chapter shall be deemed to have been a legally established use under the provisions of the Oakland Planning Code, this Code, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim legal nonconforming status.

C. Any violations of this Chapter, including administrative regulations authorized by this Chapter, may be subject to administrative citation, pursuant to Chapters 1.08 and 1.12, and other applicable legal, injunctive or equitable remedies.

5.80.090 – Liability and indemnification.

A. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Chapter shall not become a personal liability of any public officer or employee of the City.

B. To the maximum extent permitted by law, the permittees under this Chapter shall defend (with counsel acceptable to the City), indemnify and hold harmless the City of Oakland, the Oakland City Council, and its respective officials, officers, employees, representatives, agents and volunteers (hereafter collectively called City) from any liability, damages, actions, claims, demands, litigation, loss (direct or indirect), causes of action, proceedings or judgment (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, any medical cannabis-related approvals and actions and comply with the conditions under which such permit is granted, if any. The City may elect, in its sole discretion, to participate in the defense of said Action and the permittee shall reimburse the City for its reasonable legal costs and attorneys' fees.

C. Within ten (10) calendar days of the service of the pleadings upon the City of any Action as specified in Subsection B above, the permittee shall execute a Letter of Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment or invalidation of the medical cannabis-related approval. Failure to timely execute the Letter of Agreement does not relieve the applicant of any of the obligations contained in this Section or any other requirements or performance or operating standards that may be imposed by the City.

5.80.100 – Examination of books, records, witnesses—Penalty.

A. Permittees must provide the City Administrator with access to any licensed dispensary during normal business hours to verify compliance with this Chapter.

BA. Permittees must provide ~~t~~The City Administrator shall be provided with access to any and all financial information regarding the dispensary at any time, as needed to conduct an audit of the permittees under this ~~e~~Chapter to verify tax compliance under Chapter 5.80 and/or gross receipts tax requirements.

CB. The City Administrator is authorized to examine the books, papers, tax returns and records of any permittee for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax due.

DC. The City Administrator is authorized to examine a person under oath, for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax, registration or permit fees due under this ~~e~~Chapter. In order to ascertain the business tax, registration or permit fees due under this ~~e~~Chapter, the City Administrator may compel, by administrative subpoena, the production of relevant books, papers and records and the attendance of all persons as parties or witnesses.

ED. Every permittee is directed and required to furnish to the City Administrator, the means, facilities and opportunity for making such financial examinations and investigations.

EE. Any permittee refusal to comply with this section shall be deemed a violation of this ~~e~~Chapter, and administrative subpoenas shall be enforced pursuant to applicable law.

SECTION 4. Reporting. City staff shall report back to City Council no later than one year from the date of adoption of this legislation, providing information about the implementation, review of effectiveness of the included standards, including equity standards, issues that have arisen, if any, and whether any changes are recommended.

SECTION 5. California Environmental Quality Act. The City Council independently finds and determines that this action is exempt from CEQA pursuant to CEQA Guidelines sections 15061(b)(3) (general rule), 15183 (projects consistent with a community plan, general plan, or zoning), 15301 (existing facilities), 15308 (actions by regulatory agencies for protection of the environment) and 15309 (inspections), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance. The Environmental Review Officer or designee shall file a Notice of Exemption with the appropriate agencies.

SECTION 65. Severability. The provisions of this Ordinance are severable, and if any section, subsection, sentence, clause, phrase, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is for any reason

held to be invalid, preempted by state or federal law, or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. It is hereby declared to be the legislative intent of the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

SECTION 76. Ordinance Effective Date. Pursuant to Section 216 of the Charter of the City of Oakland, this Ordinance shall become effective immediately upon final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption by the Council of the City of Oakland.

SECTION 87. General Police Powers. This Ordinance is enacted pursuant to the City of Oakland's general police powers, including but not limited to Sections 106 of the Oakland City Charter and Section 7 of Article XI of the California Constitution.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND PRESIDENT GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.80, MEDICAL CANNABIS DISPENSARY PERMITS, TO ALIGN WITH CALIFORNIA'S MEDICAL MARIJUANA REGULATION AND SAFETY ACT AND ADOPTING CEQA EXEMPTION FINDINGS

This ordinance amends the City of Oakland's existing citywide medical cannabis regulations to align with new state law, the Medical Marijuana Regulation and Safety Act, by revising the permitting process for medical cannabis dispensaries.

2016 MAY -5 PM 4:45

APPROVED AS TO FORM


CITY ATTORNEY'S OFFICE

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.80, MEDICAL CANNABIS DISPENSARY PERMITS, TO ALIGN WITH CALIFORNIA'S MEDICAL MARIJUANA REGULATION AND SAFETY ACT AND ADOPTING CEQA EXEMPTION FINDINGS

WHEREAS, in 1996, California voters approved Proposition 215 (codified at Health and Safety Code section 11362.5 and titled the "Compassionate Use Act of 1996"), which provides criminal immunity for patients and primary caregivers for the cultivation and possession of cannabis if a doctor has recommended the cannabis for medical purposes; and

WHEREAS, in 2004, Senate Bill 420 was enacted (codified at Health and Safety Code section 11362.7 *et seq.* and titled the "Medical Marijuana Program Act") to clarify the scope of the Compassionate Use Act of 1996. The Medical Marijuana Program Act allows cities and other governing bodies to adopt and enforce laws consistent with its provisions; and

WHEREAS, neither the Compassionate Use Act of 1996 nor the Medical Marijuana Program Act provided an effective statewide regulatory system for the medical cannabis industry, and this lack of uniform regulation created uncertainty about the legality of medical cannabis activities and endangered the safety of end users, who have not had the benefit of a monitored supply chain for medical cannabis, quality control, testing or labeling requirements; and

WHEREAS, in 2004, the Oakland City Council adopted Ordinance No. 12585 C.M.S. to establish citywide medical cannabis dispensary regulations (codified at Oakland Municipal Code ("OMC") Chapter 5.80), consistent with the Medical Marijuana Program Act, to protect the peace, health, safety and welfare of patients and the community as a whole; and

WHEREAS, the City of Oakland's medical cannabis dispensary regulations were subsequently amended in 2010 through Ordinance No. 13049 C.M.S., and in 2011 through Ordinance No. 13086 C.M.S.; and

WHEREAS, the purpose of citywide regulation of medical cannabis dispensaries is to regulate the sale and distribution of cannabis in the interest of patients who qualify to obtain, possess and use cannabis for medical purposes under state law, and to provide safe medical cannabis product and inventory; and

WHEREAS, in 2011, Assembly Bill 2650 was enacted (codified at Health and Safety Code section 11362.768). This law affirms that cities can adopt ordinances that restrict the location and establishment of medical marijuana collectives, cooperatives, and dispensaries; and

WHEREAS, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court concluded that nothing in the Compassionate Use Act or the Medical Marijuana Program Act precludes a local jurisdiction from regulating or prohibiting facilities that distribute medical marijuana; and

WHEREAS, in 2015, Assembly Bills 243 and 266 and Senate Bill 643 were enacted (codified at Business and Professions Code section 19300 *et seq.* and titled the "Medical Marijuana Regulation and Safety Act"). These bills also amended provisions of the Medical Marijuana Program Act related to the cultivation of medical marijuana; and

WHEREAS, the Medical Marijuana Regulation and Safety Act establishes a long-overdue comprehensive regulatory framework for medical cannabis in California (including production, transportation and sale of medical cannabis), requires establishment of uniform state minimum health and safety standards, testing standards, mandatory product testing, and security requirements at dispensaries and during transport of the product, and provides criminal immunity for licensees; and

WHEREAS, the Medical Marijuana Regulation and Safety Act preserves local control in a number of ways: (1) by requiring medical cannabis businesses to obtain both a state license and a local license or permit to operate legally in California, (2) by terminating the ability of a medical cannabis business to operate if its local license or permit is terminated, (3) by authorizing local governments to enforce state law in addition to local ordinances, if they request that authority and it is granted by the relevant state agency, (4) by providing for civil penalties for unlicensed activities, and continuing to apply applicable criminal penalties under existing law, and (5) by expressly protecting local licensing practices, zoning ordinances, and local actions taken under the constitutional police power; and

WHEREAS, the Medical Marijuana Regulation and Safety Act authorizes medical cannabis businesses to vertically integrate their business and hold multiple state licenses if they are located in jurisdictions that adopted a local ordinance, prior to July 1, 2015, allowing or requiring qualified businesses to cultivate, manufacture, and dispense medical cannabis or medical cannabis products; and

WHEREAS, the City of Oakland's medical cannabis regulations have allowed and will continue to allow an individual qualified business to cultivate, manufacture, and dispense medical cannabis or medical cannabis products; and

WHEREAS, the City of Oakland wishes to amend OMC Chapter 5.80 to continue and expand citywide regulation of medical cannabis activities in a manner that protects the public health, safety and general welfare of the community, and in the interest of patients who qualify to obtain, possess and use marijuana for medical purposes, consistent with the Compassionate Use Act of 1996, the Medical Marijuana Program Act, and the Medical Marijuana Regulation and Safety Act; and

WHEREAS, the City of Oakland has a compelling interest in protecting the public health, safety, and welfare of its citizens, residents, visitors and businesses by developing and implementing strict performance and operating standards for dispensaries; and

WHEREAS, it is the City of Oakland's policy in the permitting of medical cannabis facilities to encourage the hiring of high unemployment groups, including Oakland residents that were formerly incarcerated; and

WHEREAS, communities of color have been negatively and disproportionately impacted by disparate enforcement of cannabis laws; and

WHEREAS, police arrest data reported to the Cannabis Regulatory Commission reflect disproportionately higher arrests for cannabis offenses in certain police beats; and

WHEREAS, individuals arrested or previously incarcerated for cannabis related offenses face significant barriers to obtaining employment, financial aid, public housing, and other economic opportunities; and

WHEREAS, the City of Oakland seeks to provide equity in ownership in the cannabis industry through the incorporation of a Dispensary Equity Permit Program; and

WHEREAS, as part of its efforts to develop comprehensive amendments to the existing citywide medical cannabis regulations, staff conducted extensive public outreach, including public presentations to the City's Cannabis Regulatory Commission in February, July, and October 2015; and

WHEREAS, after duly noticed public meetings on February 9, 2016, and April 26, 2016, the Public Safety Committee voted to recommend the proposal to the City Council with the inclusion of an equity component that requires 50% of all new cannabis permits be issued to applicants who reside in police beats negatively and disproportionately impacted by enforcement of cannabis laws; and

WHEREAS, the City Council held a duly noticed public hearing on May 3, 2016, to consider the proposed amendments and all interested parties were provided an ample opportunity to participate in said hearing and express their views; and

WHEREAS, nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. § 841 or to license any activity that is prohibited under said Act except as mandated by State law; and

WHEREAS, nothing in this Ordinance shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance; or (2) allow the use of cannabis for non-medical purposes; or (3) allow any activity relating to the sale, distribution, possession or use of cannabis that is illegal under state or federal law; and compliance with the requirements of this Ordinance shall not provide a defense to criminal prosecution under any applicable law; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The City Council finds and determines the foregoing recitals to be true and correct and hereby adopts and incorporates them into this Ordinance.

SECTION 2. Purpose and Intent. It is the purpose and intent of this Ordinance to clarify and expressly authorize medical cannabis dispensaries and delivery-only dispensaries, in order to preserve the public peace, health, safety, and general welfare of the citizens and residents of, and travelers through, the City of Oakland, as authorized by the Medical Marijuana Regulation and Safety Act.

SECTION 3. Amendment of Chapter 5.80 of the Oakland Municipal Code. Oakland Municipal Code Chapter 5.80 is hereby amended to read as follows (additions are shown in double underline and deletions are shown as ~~strikethrough~~):

Chapter 5.80 - MEDICAL CANNABIS DISPENSARY PERMITS

5.80.010 – Definitions.

The following words or phrases, whenever used in this Chapter, shall be given the following definitions:

~~A. “Attorney General Guidelines” shall mean the California Attorney General Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use, issued by the Attorney General’s Office in August 2008, as amended from time to time, which sets regulations intended to ensure the security and non-diversion of marijuana grown for medical use by qualified patients or primary caregivers.~~

AB. “Cannabis” or “Marijuana” shall have the same definition as Business and Professions Code section 19300.5(f), as may be amended, which, as of March 2016, defines “cannabis” as all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound,

manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Health and Safety Code § 11018, as amended from time to time, which defines "cannabis" as all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant which is are incapable of germination. "Cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

BG. "Cannabis dispensary" or "Dispensary" shall mean a collective or cooperative that distributes, dispenses, stores, exchanges, processes, delivers, makes available, transmits and/or gives away marijuana in the City for medicinal purposes to four or more qualified patients and/or primary caregivers pursuant to California Health and Safety Code Sections 11362.5, 11362.7 et seq. a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers medical cannabis and medical cannabis products as part of a retail sale.

CD. "City Administrator" means the City Administrator of the City of Oakland or his/her designee.

DE. "Collective" means any association, affiliation, or establishment jointly owned and operated by its members that facilitates the collaborative efforts of qualified patients and primary caregivers, as described in the Attorney General Guidelines State law.

E. "Delivery" means the commercial transfer of medical cannabis or medical cannabis products from a dispensary to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. "Delivery" also includes the use by a dispensary of any technology platform that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

F. "Delivery only dispensary" means a cannabis dispensary that provides medical cannabis or medical cannabis products to primary caregivers or qualified patients as defined in Section 11362.7 of the Health and Safety Code exclusively through delivery.

GF. "Medical marijuana" or "Medical cannabis" means marijuana authorized in strict compliance with Health & Safety Code §§ 11362.5, 11362.7 et seq., as such sections may be amended from time to time.

HG. "Parcel of land" means one piece of real property as identified by the county assessor's parcel number (APN) that is one contiguous parcel of real property, which is used to identify real property, its boundaries, and all the rights contained therein.

IH. "Primary caregiver" shall have the same definition as California Health and Safety Code Section 11362.7, and as may be amended, and which, as of March 2016,

defines "Primary Caregiver" as an individual designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include a licensed health care facility, a residential care facility, a hospice, or a home health agency as allowed by California Health and Safety Code Section 11362.7(d)(1)-(3).any of the following:

~~1. In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the California Health and Safety Code; a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the California Health and Safety Code; a residential care facility for persons with chronic life threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2 of the California Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2 of the California Health and Safety Code; a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2 of the California Health and Safety Code; the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.~~

~~2. An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.~~

~~3. An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.~~

Jl. "Qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., and as may be amended, and which, as of March 2016, means a person who is entitled to the protections of California Health & Safety Code Section 11362.5. For purposes of this ordinance, qualified patient shall include a person with an identification card, as that term is defined by California Health and Safety Code Section 11362.7 et seq.

~~J.~~ "Serious medical condition" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., and as may be amended, and which means all of the following medical conditions:

- ~~1. Acquired immune deficiency syndrome (AIDS);~~
- ~~2. Anorexia;~~
- ~~3. Arthritis;~~
- ~~4. Cachexia;~~
- ~~5. Cancer;~~
- ~~6. Chronic pain;~~
- ~~7. Glaucoma;~~
- ~~8. Migraine;~~

- ~~9. Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis;~~
- ~~10. Seizures, including, but not limited to, seizures associated with epilepsy;~~
- ~~11. Severe nausea;~~
- ~~12. Any other chronic or persistent medical symptom that either:

 - ~~a. Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).~~
 - ~~b. If not alleviated, may cause serious harm to the patient's safety or physical or mental health.~~~~

~~K. "Written documentation" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., and as may be amended, and which defines "written documentation" as accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of California Health and Safety Code Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.~~

K. "Smoking" shall have the same definition as Oakland Municipal Code Section 8.30, which as of March 2016 means "inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, weed, or other combustible substance."

L. "Youth Center" means a community or recreation facility that primarily serves persons 18 years or younger.

M. "General Application permit" shall mean all applications issued under OMC 5.80 with the exception of Dispensary Equity Permits issued under section 5.80.040.

5.80.020 – Business permit required and application for permit.

A. Except for hospitals, research facilities, or an entity authorized pursuant to Section 8.46.030, it is unlawful for any owner, operator, or association to own, conduct, operate or maintain, or to participate therein, or to cause or to allow to be conducted, operated, or maintained, any dispensary, delivery or delivery only dispensary in or into the City unless there exists a valid business permit in compliance with the provisions of Chapter 5.02 and a permit issued under this eChapter. However, entities authorized under OMC Section 8.46 must abide by the same requirements imposed herein on dispensaries.

B. This Chapter, and the requirement to obtain a business permit, does not apply to the individual possession or cultivation of medical marijuana for personal use, nor does this eChapter apply to the usage, distribution, cultivation or processing of medical marijuana by qualified patients or primary caregivers when such group is of three or less individuals, and distributing, cultivating or processing the marijuana from a residential unit or a single non-residential parcel of land. Associations of three or less qualified patients or primary caregivers shall not be required to obtain a permit under Chapter 5.80, but must comply with applicable State law and the Attorney General Guidelines.

C. The City Administrator shall issue no more than eight new valid permits for the operation of dispensaries in the City per year. Delivery only dispensaries shall not be subject to this limit.

D. In addition to the requirements specified in Section 5.02.020 for business permits, the permit application for a dispensary shall set forth the following information:

1. Unless the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public, evidence that the proposed location of such dispensary is not within 600 feet of a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive (but not including any private school in which education is primarily conducted in private homes), public library, or youth center ~~(serving youth age 18 and under)~~, parks and recreation facilities, residential zone or another dispensary. The proposed dispensary or delivery only dispensary must be located in a commercial or industrial zone, or its equivalent as may be amended, of the City.

~~2. A complete description of the type, nature and extent of the enterprise to be conducted, with evidence satisfactory to the City Administrator that the enterprise is either a collective or cooperative, as described in the Attorney General Guidelines.~~

~~23. A plan of operations that will describe how the dispensary or delivery only dispensary will operate consistent with the intent of State law, and the provisions of this Chapter and the Attorney General Guidelines, including but not limited to:~~

~~a. Controls to verify membership in collectives and cooperatives to ensure medical marijuana will be dispensed only to qualified patients and primary caregivers, and~~

~~b. Controls to acquire, possess, transport and distribute marijuana to and from state licensed medical cannabis entities members, and plans to ensure marijuana is acquired as part of a closed circuit of marijuana cultivation and consumption.~~

~~34. A security plan, as a separate document, outlining the proposed security arrangements to deter and prevent unauthorized entrance into areas containing medical cannabis or medical cannabis products and theft of medical cannabis or medical cannabis products at the dispensary, in accordance with minimum security measures required by State law for ensuring the safety of persons and to protect the premises from theft. The security plan shall be reviewed by the Police Department and the Office of the City Administrator and shall be exempt from disclosure as a public record pursuant to Government Code Section 6255(a).~~

4. Confirmation of the following criteria:

a. That the dispensary or delivery only dispensary will not contribute to undue proliferation of such uses in an area where additional ones would be undesirable, with consideration to be given to the area's function and character, problems of crime and loitering, and traffic problems and capacity;

b. That the dispensary or delivery only dispensary will not adversely affect adjacent or nearby churches, temples, or synagogues; public,

parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds;

c. That the dispensary or delivery only dispensary will not interfere with the movement of people along an important pedestrian street;

d. That the dispensary or delivery only dispensary will be of an architectural and visual quality and character which harmonizes with, or where appropriate enhances, the surrounding area;

e. That the design will avoid unduly large or obtrusive signs, bleak unlandscaped parking areas, and an overall garish impression;

f. That adequate litter receptacles will be provided where appropriate;

g. That where the dispensary or delivery only dispensary is in close proximity to residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep.

h. That no cannabis or cannabis odors shall be detectable by sight or smell outside of a permitted facility.

5. Such other information deemed necessary to conduct any investigation or background check of the applicant, and for the City Administrator to determine compliance with this Chapter, the City's Municipal Code and Zoning Code.

E. Applications for dispensaries shall be subject to a hearing and must provide pPublic notice of the hearing in accordance with on the application shall be given as provided in Section 5.02.050. Applications for delivery only dispensaries shall not be subject to a hearing requirement. The City Administrator shall be the investigating official referred to in Section 5.02.030 to whom the application shall be referred. In recommending the granting or denying of such permit and in granting or denying the same, the City Administrator shall give particular consideration to the capacity, capitalization, and complaint history of the applicant and any other factors that in the City Administrator's discretion he/she deems necessary to the peace, order and welfare of the public. Fifty percent (50% of all permits issued under OMC 5.80 shall be issued to an Oakland resident who meets the Dispensary Equity Permit Program requirements set forth in Section 5.80.045. At no time shall the number of new General Application permits exceed the number of Dispensary Equity Permits issued by the City Administrator. The eight (8) existing dispensary operators are exempt from the 50% requirement. All applicants shall pay an application fee, a permit fee, and all inspection fees that may be required as part of the application process, as specified in the City's Master Fee Schedule.

F. At the time of submission of dispensary permit application, the applicant shall pay a dispensary permit application fee. The fee amount shall be set by ~~City Council~~ resolution in the City's Master Fee Schedule.

G. All dispensary permits shall be special business permits and shall be issued for a term of one year. No property interest, vested right, or entitlement to receive a future license to operate a medical marijuana business shall ever inure to the benefit of such

permit holder as such permits are revocable at any time with our without cause by the City Administrator subject to Section 5.80.070.

5.80.025 – Onsite consumption permit.

A. An applicant must obtain a secondary onsite consumption permit in order for cannabis to be consumed on the premises of the dispensary.

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. An application for an onsite consumption permit may be denied for failure to meet requirements of the City Building Code, City Fire Code, City Planning Code, this Chapter, and/or any violation of State or local law relevant to the operation of dispensaries.

C. The City Administrator shall establish conditions of approval for each onsite consumption permit, including but not limited to a parking plan, ventilation plan, anti-drugged driving plan, and set hours of operation. Set hours of operation may only be adjusted by submitting a written request to and obtaining approval from the City Administrator's Office.

D. The permit shall be subject to suspension or revocation in accordance with Section 5.80.070, and the owner/operator shall be liable for excessive police costs related to enforcement.

E. The application fee and annual fee for the onsite consumption permit shall be specified in the City's Master Fee Schedule.

F. All onsite consumption permits shall be special business permits and shall be issued for a term of one year. No property interest, vested right, or entitlement to receive a future license to operate a medical marijuana business shall ever inure to the benefit of such permit holder as such permits are revocable at any time with our without cause by the City Administrator subject to Section 5.80.070.

5.80.030 – Regulations.

The City Administrator shall establish administrative regulations for the permitting of dispensaries and delivery only dispensaries, and may set further standards for operation of dispensaries and delivery only dispensaries. The dispensary shall meet all the operating criteria for the dispensing of medical marijuana required pursuant to State law ~~California Health and Safety Code Section 11362.7 et seq.~~, the City Administrator's administrative regulations, and this Chapter.

5.80.040 – Performance and operating standards.

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

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

A. No cannabis shall be smoked, ingested or otherwise consumed on inside the premises of the dispensary.

B. The dispensary shall not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages.

C. Dispensaries must maintain a staff comprised of at least 50% Oakland residents and 25% Oakland residents in census tracts identified by the City Administrator as having high unemployment rates. The City Administrator may promulgate standards for phasing in this requirement for existing facilities.

D. Dispensaries and delivery only dispensaries that hire and retain formerly incarcerated Oakland residents may apply for a tax credit or license fee reduction based on criteria established by the City Administrator.

E. All dispensary employees and delivery only dispensary employees shall be paid a living wage as defined by OMC Chapter 2.28.

F. Dispensaries and delivery only dispensaries must implement a track and trace program that records the movement of medical cannabis and medical cannabis products in their custody and make these records available to the City Administrator upon request.

G. Fifty percent (50%) of all dispensary applications issued under OMC 5.80 shall be issued to an Oakland resident who meets the Dispensary Equity Permit Program requirements set forth in Section 5.80.045 below.

H. At no time shall the number of new General Application permits exceed the number of Dispensary Equity Permits issued by the City Administrator.

5.80.045 – Dispensary Equity Permit Program.

A. Criteria. Applicant must have at least one member who meets all of the following criteria:

1. Be an Oakland resident who,
2. Resides for at least two years prior to the date of application in Oakland Police Department Beats 26Y, 30X, 30Y, 31Z, 32Y, and 34X; or those individuals who,

- within the last ten years, have been previously incarcerated for a marijuana-related offense as a result of a conviction arising out of Oakland, California;
3. Maintains not less than a 50% ownership in the Dispensary applicant entity, partnership, limited liability corporation, collective, corporation, worker cooperative or other recognized ownership entity; and
 4. Prior marijuana or cannabis conviction shall not be a bar to equity ownership.

5.80.050 – Regulatory fees; seller’s permit.

A. In addition to the dispensary application fee, the dispensary shall pay an annual regulatory fee at the same as applying for the business tax certificate or renewal thereof. The dispensary shall post a copy of the business tax certificate issued pursuant to Chapter 5.04, together with a copy of the dispensary permit and onsite consumption permit (if applicable) issued pursuant to this eChapter and Section 5.02.020, in a conspicuous place in the premises approved as a dispensary at all times.

B. The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a seller's permit from the State Board of Equalization.

C. The fees referenced herein shall be set by the Master Fee Schedule Council resolution, as modified from time to time.

5.80.060 – Profit Sales.

~~The dispensary shall not profit from the sale or distribution of marijuana. Any monetary reimbursement that members provide to the dispensary should only be an amount necessary to cover overhead costs and operating expenses.~~

Retail sales of medical marijuana that violate California law or this eChapter are expressly prohibited.

5.80.070 – Revocation, suspension and appeals.

Notwithstanding Chapter 5.02, any decision by the City Administrator, except for the suspensions or revocations of permits, shall be final and conclusive, and there shall be no right of appeal to the City Council or any other appellate body.

For suspensions or revocations the City shall follow the procedures set forth in Section 5.02.080, ~~except an independent hearing officer shall make the initial determination as to whether to suspend or revoke the permit.~~ The appeal authorized in Section 5.02.100 shall be to ~~the City Administrator~~ an independent hearing officer, and such request for appeal must be made in writing within 14 days of the ~~hearing officer's~~ City Administrator's decision. The decision of the ~~City Administrator~~ independent hearing officer shall be final and conclusive.

5.80.080 – Prohibited operations; nonconforming uses.

A. All dispensaries in violation of California Health and Safety Code Section 11326.7, et seq., and 11362.5, and this eChapter are expressly prohibited. It is unlawful for any dispensary in the City, or any agent, employee or representative of such dispensary, to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct on the premises of the dispensary or during the delivery of medical cannabis.

B. Except for uses established pursuant to Chapter 8.46, no use which purports to have distributed marijuana prior to the enactment of this eChapter shall be deemed to have been a legally established use under the provisions of the Oakland Planning Code, this Code, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim legal nonconforming status.

C. Any violations of this Chapter, including administrative regulations authorized by this Chapter, may be subject to administrative citation, pursuant to Chapters 1.08 and 1.12, and other applicable legal, injunctive or equitable remedies.

5.80.090 – Liability and indemnification.

A. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this eChapter shall not become a personal liability of any public officer or employee of the City.

B. To the maximum extent permitted by law, the permittees under this Chapter shall defend (with counsel acceptable to the City), indemnify and hold harmless the City of Oakland, the Oakland City Council, and its respective officials, officers, employees, representatives, agents and volunteers (hereafter collectively called City) from any liability, damages, actions, claims, demands, litigation, loss (direct or indirect), causes of action, proceedings or judgment (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, any medical cannabis-related approvals and actions and comply with the conditions under which such permit is granted, if any. The City may elect, in its sole discretion, to participate in the defense of said Action and the permittee shall reimburse the City for its reasonable legal costs and attorneys' fees.

C. Within ten (10) calendar days of the service of the pleadings upon the City of any Action as specified in Subsection B above, the permittee shall execute a Letter of Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment or invalidation of the medical cannabis-related approval. Failure to timely execute the Letter of Agreement does not relieve the applicant of any of the obligations contained in this Section or any other requirements or performance or operating standards that may be imposed by the City.

5.80.100 – Examination of books, records, witnesses—Penalty.

A. Permittees must provide the City Administrator with access to any licensed dispensary during normal business hours to verify compliance with this Chapter.

BA. Permittees must provide ~~The City Administrator shall be provided with~~ access to any and all financial information regarding the dispensary at any time, as needed to conduct an audit of the permittees under this ~~e~~Chapter to verify tax compliance under Chapter 5.80 and/or gross receipts tax requirements.

CB. The City Administrator is authorized to examine the books, papers, tax returns and records of any permittee for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax due.

DC. The City Administrator is authorized to examine a person under oath, for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax, registration or permit fees due under this ~~e~~Chapter. In order to ascertain the business tax, registration or permit fees due under this ~~e~~Chapter, the City Administrator may compel, by administrative subpoena, the production of relevant books, papers and records and the attendance of all persons as parties or witnesses.

ED. Every permittee is directed and required to furnish to the City Administrator, the means, facilities and opportunity for making such financial examinations and investigations.

EE. Any permittee refusal to comply with this section shall be deemed a violation of this ~~e~~Chapter, and administrative subpoenas shall be enforced pursuant to applicable law.

SECTION 4. Reporting. City staff shall report back to City Council no later than one year from the date of adoption of this legislation, providing information about the implementation, review of effectiveness of the included standards, including equity standards, issues that have arisen, if any, and whether any changes are recommended.

SECTION 5. California Environmental Quality Act. The City Council independently finds and determines that this action is exempt from CEQA pursuant to CEQA Guidelines sections 15061(b)(3) (general rule), 15183 (projects consistent with a community plan, general plan, or zoning), 15301 (existing facilities), 15308 (actions by regulatory agencies for protection of the environment) and 15309 (inspections), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance. The Environmental Review Officer or designee shall file a Notice of Exemption with the appropriate agencies.

SECTION 6. Severability. The provisions of this Ordinance are severable, and if any section, subsection, sentence, clause, phrase, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is for any reason held to be invalid, preempted by state or federal law, or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. It is hereby declared to be the legislative intent of

the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

SECTION 7. Ordinance Effective Date. Pursuant to Section 216 of the Charter of the City of Oakland, this Ordinance shall become effective immediately upon final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption by the Council of the City of Oakland.

SECTION 8. General Police Powers. This Ordinance is enacted pursuant to the City of Oakland's general police powers, including but not limited to Sections 106 of the Oakland City Charter and Section 7 of Article XI of the California Constitution.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND PRESIDENT GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.80, MEDICAL CANNABIS DISPENSARY PERMITS, TO ALIGN WITH CALIFORNIA'S MEDICAL MARIJUANA REGULATION AND SAFETY ACT AND ADOPTING CEQA EXEMPTION FINDINGS

This ordinance amends the City of Oakland's existing citywide medical cannabis regulations to align with new state law, the Medical Marijuana Regulation and Safety Act, by revising the permitting process for medical cannabis dispensaries.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

REVISED AT COUNCIL 5/3/16

2016 MAY -5 PM 4:45

APPROVED AS TO FORM


CITY ATTORNEY'S OFFICE

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.81, MEDICAL CANNABIS CULTIVATION FACILITY PERMITS, TO ALIGN WITH CALIFORNIA'S MEDICAL MARIJUANA REGULATION AND SAFETY ACT AND ADOPTING CEQA EXEMPTION FINDINGS

WHEREAS, in 1996, California voters approved Proposition 215 (codified at Health and Safety Code section 11362.5 and titled the "Compassionate Use Act of 1996"), which provides criminal immunity for patients and primary caregivers for the cultivation and possession of cannabis if a doctor has recommended the cannabis for medical purposes; and

WHEREAS, in 2004, Senate Bill 420 was enacted (codified at Health and Safety Code section 11362.7 *et seq.* and titled the "Medical Marijuana Program Act") to clarify the scope of the Compassionate Use Act of 1996. The Medical Marijuana Program Act allows cities and other governing bodies to adopt and enforce laws consistent with its provisions; and

WHEREAS, neither the Compassionate Use Act of 1996 nor the Medical Marijuana Program Act provided an effective statewide regulatory system for the medical cannabis industry, and this lack of uniform regulation created uncertainty about the legality of medical cannabis activities and endangered the safety of end users, who have not had the benefit of a monitored supply chain for medical cannabis, quality control, testing or labeling requirements; and

WHEREAS, in 2010, the Oakland City Council adopted Ordinance No. 13033 C.M.S. to establish citywide medical cannabis cultivation facility regulations (codified at OMC Chapter 5.81), to protect the public health, safety and welfare of patients and the community as a whole, but to date, the City has neither enforced these provisions nor issued any licenses or permits pursuant to these regulations; and

WHEREAS, in 2011, Assembly Bill 2650 was enacted (codified at Health and Safety Code section 11362.768). This law affirms that cities can adopt ordinances that

restrict the location and establishment of medical marijuana collectives, cooperatives, and dispensaries; and

WHEREAS, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court concluded that nothing in the Compassionate Use Act or the Medical Marijuana Program Act precludes a local jurisdiction from regulating or prohibiting facilities that distribute medical marijuana; and

WHEREAS, in 2015, Assembly Bills 243 and 266 and Senate Bill 643 were enacted (codified at Business and Professions Code section 19300 et seq. and titled the "Medical Marijuana Regulation and Safety Act"); and

WHEREAS, the Medical Marijuana Regulation and Safety Act establishes a long-overdue comprehensive regulatory framework for medical cannabis in California (including production, transportation and sale of medical cannabis), requires establishment of uniform state minimum health and safety standards, testing standards, mandatory product testing, and security requirements at dispensaries and during transport of the product, and provides criminal immunity for licensees; and

WHEREAS, the Medical Marijuana Regulation and Safety Act preserves local control in a number of ways: (1) by requiring medical cannabis businesses to obtain both a state license and a local license or permit to operate legally in California, (2) by terminating the ability of a medical cannabis business to operate if its local license or permit is terminated, (3) by authorizing local governments to enforce state law in addition to local ordinances, if they request that authority and it is granted by the relevant state agency, (4) by providing for civil penalties for unlicensed activities, and continuing to apply applicable criminal penalties under existing law, and (5) by expressly protecting local licensing practices, zoning ordinances, and local actions taken under the constitutional police power; and

WHEREAS, the Medical Marijuana Regulation and Safety Act authorizes medical cannabis businesses to vertically integrate their business and hold multiple state licenses if they are located in jurisdictions that adopted a local ordinance, prior to July 1, 2015, allowing or requiring qualified businesses to cultivate, manufacture, and dispense medical cannabis or medical cannabis products; and

WHEREAS, the City of Oakland's medical cannabis regulations have allowed and will continue to allow an individual qualified business to cultivate, manufacture, and dispense medical cannabis or medical cannabis products; and

WHEREAS, extensive medical cannabis activities, including cultivation and manufacturing, currently occur in the City and have not been expressly regulated; and

WHEREAS, these activities have caused and continue to cause ongoing adverse impacts that can be harmful to the health, safety and welfare of Oakland residents and constitute a public nuisance, including without limitation damage to buildings containing indoor medical cannabis cultivation facilities, including improper and dangerous

electrical alterations and use, inadequate ventilation leading to mold and mildew, increased frequency of home-invasion robberies, and similar crimes; and

WHEREAS, many of these community impacts have fallen disproportionately on residential neighborhoods. These impacts have also created an increase in City response costs, including code enforcement, building, fire, and police staff time and expenses; and

WHEREAS, absent appropriate regulation, these unregulated medical cannabis activities pose a potential threat to the public health, safety and welfare;

WHEREAS, the City of Oakland wishes to amend OMC Chapter 5.81 to continue and expand citywide regulation of medical cannabis activities in a manner that protects the public health, safety and general welfare of the community, and in the interest of patients who qualify to obtain, possess and use marijuana for medical purposes, consistent with the Compassionate Use Act of 1996, the Medical Marijuana Program Act, and the Medical Marijuana Regulation and Safety Act; and

WHEREAS, the City of Oakland has a compelling interest in protecting the public health, safety, and welfare of its citizens, residents, visitors and businesses by developing and implementing strict performance and operating standards for medical cannabis cultivation, manufacturing and other facilities; and

WHEREAS, it is the City of Oakland's policy in the permitting of medical cannabis facilities to encourage the hiring of high unemployment groups, including Oakland residents that were formerly incarcerated; and

WHEREAS, communities of color have been negatively and disproportionately impacted by disparate enforcement of cannabis laws; and

WHEREAS, police arrest data reported to the Cannabis Regulatory Commission reflect disproportionately higher arrests for cannabis offenses in certain police beats; and

WHEREAS, individuals arrested or previously incarcerated for cannabis related offenses face significant barriers to obtaining employment, financial aid, public housing, and other economic opportunities; and

WHEREAS, the City of Oakland seeks to provide equity in ownership in the cannabis industry through the incorporation of a Cultivation, Manufacturing, Distribution, Testing, and Transporting Permit Program; and

WHEREAS, as part of its efforts to develop comprehensive amendments to the existing citywide medical cannabis regulations, staff conducted extensive public outreach, including public presentations to the City's Cannabis Regulatory Commission in February, July, and October 2015; and

WHEREAS, after a duly noticed public meetings on February 9, 2016, and April 26, 2016, the Public Safety Committee voted to recommend the proposal to the City Council with the inclusion of an equity component that requires 50% of all new cannabis permits be issued to applicants who reside in police beats negatively and disproportionately impacted by enforcement of cannabis laws; and

WHEREAS, the City Council held a duly noticed public hearing on May 3, 2016, to consider the proposed amendments and all interested parties were provided an ample opportunity to participate in said hearing and express their views; and

WHEREAS, nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. § 841 or to license any activity that is prohibited under said Act except as mandated by State law; and

WHEREAS, nothing in this Ordinance shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance; or (2) allow the use of cannabis for non-medical purposes; or (3) allow any activity relating to the sale, distribution, possession or use of cannabis that is illegal under state or federal law; and compliance with the requirements of this Ordinance shall not provide a defense to criminal prosecution under any applicable law; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The City Council finds and determines the foregoing recitals to be true and correct and hereby adopts and incorporates them into this Ordinance.

SECTION 2. Purpose and Intent. It is the purpose and intent of this Ordinance to clarify and expressly authorize non-dispensary medical cannabis activities, including the cultivation of medical cannabis, in order to preserve the public peace, health, safety, and general welfare of the citizens and residents of, and travelers through, the City of Oakland, as authorized by the Medical Marijuana Regulation and Safety Act.

SECTION 3. Amendment of Chapter 5.81 of the Oakland Municipal Code. Oakland Municipal Code Chapter 5.81 is hereby amended as follows (additions are shown in double underline and deletions are shown as ~~strikethrough~~):

Chapter 5.81 – MEDICAL CANNABIS CULTIVATION, MANUFACTURING AND OTHER FACILITY PERMITS

5.81.010 – Findings and purpose.

A. The City Council, based on evidence presented to it in the proceedings leading to the adoption of this Chapter hereby finds that the lack of regulation of medical cannabis facilities other than medical cannabis dispensaries, including unregulated cultivation, manufacturing and processing of medical cannabis in the City has caused and is causing ongoing impacts to the community. These impacts include damage to buildings containing indoor medical cannabis cultivation facilities, including improper and

dangerous electrical alterations and use, inadequate ventilation leading to mold and mildew, increased frequency of home-invasion robberies and similar crimes, and that many of these impacts have fallen disproportionately on residential neighborhoods. These impacts have also created an increase in response costs, including code enforcement, building, fire, and police staff time and expenses.

B. The City Council further finds that the creation of a permitting process implementing public health and safety standards for medical cannabis facilities other than dispensaries will not only improve public health and safety but provide a measure of certainty for legitimate businesses and thus encourage them to situate in Oakland.

CB. The City acknowledges that the voters of the State have provided an exemption to prosecution for the cultivation, possession of cannabis for medical purposes under the Compassionate Use Act (CUA), but that the CUA does not address land use or building code impacts or issues arising from the resulting increase in cannabis cultivation within the City.

DC. The City acknowledges that sales of medical marijuana are subject to taxation by both the City and the State and that the California State Board of Equalization (BOE) is also requiring that businesses engaging in such retail transactions hold a seller's permit.

ED. The primary purpose and intent of this Chapter is to regulate the cultivation and processing of non-dispensary medical cannabis facilities, including the cultivation of medical cannabis, in a manner that protects the public health, safety and welfare of the community, as authorized by the Medical Marijuana Regulation and Safety Act.

5.81.020 – Definitions.

The following words or phrases, whenever used in this Chapter, shall be given the following definitions:

A. “Applicant” as used only in this Chapter shall be any industrial cannabis cultivation, processing, manufacturing facility that applies for a permit required under this Chapter.

B. “Batch” as used only in this Chapter shall be defined by the City Administrator to mean a discrete quantity of dried cannabis produced and sold together.

C. “Cannabis” or “Marijuana” as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010-8.46.020.

D. “Cannabis concentrate” as used only in this Chapter shall mean manufactured cannabis that has undergone a process to concentrate the cannabinoid active ingredient, thereby increasing the product’s potency.

ED. “Cannabis Dispensary” as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010 and is also referred to herein as “dispensary.”

FE. “City Administrator” as used only in this Chapter shall mean the City Administrator for the City of Oakland and his or her designee.

G. "Cultivate" as used only in this Chapter shall mean to plant, grow, harvest, dry, cure, grade or trim more than 48 ounces of dried cannabis and/or to plant, grow, harvest, dry, cure, grade or trim cannabis in an area greater than 96 square feet of total area within one parcel of land.

~~F. "Cultivation Area" as used only in this Chapter hereinafter shall mean the actual area in use for the entire cultivation process of cannabis plants (including seedling production, vegetation, and maturation), as well as reasonable walking space, such that, for example, two trays used for maturation, each measuring ten square feet and stacked vertically on top of each other shall be counted as 20 square feet of cultivation area.~~

~~G. "Industrial Cannabis Cultivation, Processing, Manufacturing Facility" hereinafter "cultivation and manufacturing facility" shall mean any facility used for cultivating, warehousing, storing, processing and/or manufacturing more than 48 ounces of dried cannabis, and/or cultivating or storing medical cannabis in an area greater than 96 square feet of total area within one parcel of land. Any establishment engaged in, permitted to be engaged in or carrying on any medical cannabis cultivation, processing, or manufacturing or other activity mentioned in this Chapter shall be deemed a an industrial cannabis cultivation and manufacturing facility as described in Section 5.81.040.~~

H. "Distribute" as used only in this Chapter shall mean the procurement, sale, and transport of medical cannabis and medical cannabis products between state licensed medical cannabis entities.

I. "Edible cannabis product" as used only in this Chapter shall mean manufactured cannabis that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum.

J. "Manufactured cannabis" as used only in this Chapter shall mean raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product.

K. "Manufacture" as used only in this Chapter shall mean to produce, prepare, propagate, or compound manufactured medical cannabis or medical cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

L.H. "Medical cCannabis cCollective" as used only in this Chapter shall be the same, and as may be amended, as isf defined in Section 5.80.010.

M. "Medical marijuana" or "Medical cannabis" as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.

Nf. "One-Parcel of lLand" as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010mean any single piece of real property as identified by the County Assessor's parcel number (APN) that is used to identify real property, its boundaries, and all the rights contained therein.

OJ. "Permittees" as used only in this Chapter are individuals or businesses cultivation and manufacturing facilities that have obtained a permit under this Chapter to cultivate, distribute, manufacture, test or transport.

PK. “Primary cGaregiver” as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.

QL. “Qualified pPatient” as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.

R. “Testing” as used only in this Chapter shall mean the conducting of analytical testing of cannabis, cannabis-derived products, hemp, or hemp-derived products.

S. “Topical cannabis” as used only in this Chapter shall mean a product intended for external use such as with cannabis-enriched lotions, balms and salves.

T. “Transport” as used only in this Chapter means the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity, as defined by state law.

U. “Transporter” as used only in this Chapter means a person licensed to transport medical cannabis or medical cannabis products between state licensed medical cannabis facilities.

V. “Volatile Solvents” as used only in this Chapter shall mean those solvents used in the cannabis manufacturing process determined to be volatile by the California Department of Public Health or Oakland Fire Department.

~~M.~~ ~~“Written Recommendation” as used only in this Chapter shall be the same, and as may be amended, as if defined in Section 5.80.010.~~

W. “General Application permit” shall mean all applications issued under OMC 5.81 with the exception of Cultivation, Manufacturing, Distribution, Testing, and Transporting Equity Permits issued under section 5.81.030.

5.81.030 – Permit required.

A. Except for hospitals and research facilities that obtain written permission for cannabis cultivation under federal law, it is unlawful to ~~establish any cultivation, distribute, and manufacturing, test or transport facility~~ without a valid business permit issued pursuant to the provisions of this Chapter. Possession of other types of State or City permits or licenses does not exempt an applicant from the requirement of obtaining a permit under this Chapter. ~~It is unlawful for any entity organized on a for-profit basis, except for hospitals and research facilities, to engage in any medical cannabis cultivation whatsoever.~~

B. The City Administrator shall issue, as detailed below, special business permits for the ~~operation of industrial~~ medical cannabis cultivation ~~processing, distributing, and manufacturing, testing and transporting facilities.~~ In recommending the granting or denying of such permit and in granting or denying the same, the City Administrator shall give particular consideration to the capacity, capitalization, complaint history of the proposed cultivation and manufacturing facility as detailed in Section 5.81.040, and any other factors that in her/his discretion she/he deems necessary to the peace and order and welfare of the public. ~~All applicants shall pay any necessary fees including without~~

limitation application fees, inspection fees and regulatory fees that may be required hereunder.

~~C. The City Administrator shall issue in the first year of this cultivation and manufacturing facility program no more than four permits. Two years after the first permit has been issued, the City Administrator shall return to the City Council to report on the development of this program, and determine how additional permits to meet the needs of medical cannabis dispensaries and other lawful cannabis providers shall be administered, if any.~~

CD. All cultivation, distribution, and manufacturing, testing and transporting facility permits shall be special business permits and shall be issued for a term of ~~one~~two years, subject to annual review one year from the date of prior issuance. No property interest, vested right, or entitlement to receive a future license to operate a medical marijuana business shall ever inure to the benefit of such permit holder as such permits are revocable at any time with our without cause by the City Administrator subject to Section 5.81.120.

DE. Cultivation, distribution, and manufacturing, testing, and transporting facility permits shall only be granted to entities operating legally according to State law.

E. More than one medical cannabis operator may situate on a single parcel of land, however, each operator will be required to obtain a permit for their applicable permit category.

F. No proposed use under this Chapter shall be located within a 600 foot radius of any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive (but not including any private school in which education is primarily conducted in private homes) nor situate in an area other than as prescribed below unless the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public.

G. Fifty percent (50%) of all permits issued under OMC 5.81 shall be issued to an Oakland resident who meets the Equity Permit Program requirements set forth in Section 5.81.030(H) below. At no time shall the number of General Application permits issued under 5.81 in total exceed the number of Equity Permits under 5.81 in total issued by the City Administrator.

H. Cultivation, Manufacturing, Distribution, Testing, and Transporting Equity Permit Program Criteria. Applicant must have at least one member who meets all of the following criteria:

1. Be an Oakland resident who,
2. Resides for at least two years prior to the date of application in Oakland Police Department Beats 26Y, 30X, 30Y, 31Z, 32Y, and 34X (Oakland Police Department Beat Map is attached and incorporated herein by reference); or those individuals who, within the last ten years, have been previously incarcerated for marijuana-related offense as a result of a conviction arising out of Oakland, California;
3. Maintains not less than a 50% ownership in the Dispensary applicant entity, partnership, limited liability corporation, collective, corporation, worker cooperative or other recognized ownership entity; and

4. Prior marijuana or cannabis conviction shall not be a bar to equity ownership.

5.81.040 – Industrial eCultivation, distribution, testing and transporting of medical marijuana.

~~A. Any use of activity that involves possessing, cultivating, processing and/or manufacturing and/or more than 96 square feet of cultivation area shall constitute industrial cultivation of medical cannabis and shall only be allowed upon the granting of a permit as prescribed in this Chapter. Possession of other types of State or City permits or licenses does not exempt an applicant from the requirement of obtaining a permit under this Chapter.~~

~~AB. The pProposed location of a cultivation, distribution, testing or transporting and manufacturing facilitylocations shall be in areas where “light manufacturing industrial,” “research and development,” or their equivalent use, is permitted by right under the Oakland Planning Code, as may be amended; provided, however, that no vested or other right shall inure to the benefit of any cultivation, distribution, testing or transporting and manufacturing facility permittee. Public notice shall be given as provided in Section 5.02.050, and the investigating official referred to in Section 5.02.030 to whom the application shall be referred, shall be the City Administrator.~~

~~B. The aforementioned location restrictions shall not apply to existing dispensary cultivation facilities located at a retail location if the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public.~~

~~C. The maximum size of any areas of cultivation shall not exceed any limitations or restrictions set forth in State law.~~

5.81.045 – Manufacturing of medical marijuana.

~~A. Proposed locations for manufacturing of medical cannabis products using nonvolatile solvents shall be in areas where “custom manufacturing industrial,” or its equivalent use, is permitted by right under the Oakland Planning Code, as may be amended, or in residential zones if the manufacturing is compliant with the restrictions imposed on cottage food operators under the California Homemade Food Act, Chapter 6.1 (commencing with Section 51035) of Part 1 of Division 1 of Title 5 of the Government Code.~~

~~B. Proposed locations for manufacturing of medical cannabis products using volatile solvents shall be in areas where “general manufacturing industrial” or its equivalent use, is permitted by right under the Oakland Planning Code, as may be amended.~~

5.81.050 – Application for permit.

A. All applicants shall pay an application fee as specified in the Master Fee Schedule.

B. ~~All applicants shall submit written information to the City Administrator including, but not limited to, that shall include, as applicable, plans for security, odor mitigation, waste disposal, pest management, product testing, worker safety and compensation, local hiring, non diversion of product, facility location, capitalization, business plans, applicant complaint history, criminal background checks, plan for minimizing environmental impacts, compliance with City building and fire codes, and any additional information deemed necessary by the City Administrator. The City Administrator may design application forms specific to each permitted category and require inspections of proposed facilities before issuing a permit under this Chapter.~~

C. ~~All applicants shall be ranked by a point or similar system established by the City Administrator based on information submitted by each applicant and any additional information that may be submitted to or discovered by the City Administrator. The City Administrator shall establish criteria for minimizing the carbon footprint, environmental impact and resource needs of permitted facilities. Applicants that demonstrate they can satisfy this environmental criteria, such as cultivators seeking to operate greenhouse facilities, will be given preference in the processing of their application.~~

D. All applicants shall demonstrate compliance with State law, during the course of the permit application procedure described under this Section, prior to issuing any permit, and upon the issuance of a permit, thereafter.

5.81.070 – Operating and performance standards.

A. Facilities permitted under this Chapter shall not be open to the public. The City Administrator shall establish operating and performance standards for permittees. The intent of these operating and performance standards is to minimize any negative effects and enhance the benefits of permitted facilities on the surrounding community.

B. The following standards shall be included in the City Administrator's regulations:

1. No cannabis or cannabis odors shall be detectable by sight or smell outside of a permitted facility.

2. Permitted facilities must install security cameras capable of documenting activity inside and outside the facility, as determined by the Oakland Police Department.

3. Permitted facilities shall maintain a staff that is at least 50% Oakland residents and at least 25% Oakland residents in census tracts identified by the City Administrator as having high unemployment rates. The City Administrator may promulgate standards for phasing in this requirement for existing facilities.

4. Permitted facilities that hire and retain formerly incarcerated Oakland residents may apply for a tax credit or license fee reduction based on criteria established by the City Administrator.

5. All employees shall be paid a living wage as defined by OMC Chapter 2.28.

6. Permitted facilities must implement a track and trace program that records the movement of medical cannabis and medical cannabis products in their

custody and make these records available to the City Administrator upon request.

C. Noncompliance of such operating standards shall constitute a breach of the permit issued hereunder and may render such permit suspended or revoked based upon the City Administrator's determination.

5.81.080 – Examination of books, records, witnesses—Information confidential—Penalty.

A. The City Administrator shall be provided access to any licensed medical cannabis cultivation, manufacturing, and other facility during normal business hours to verify compliance with this chapter.

AB. The City Administrator shall be provided access to any and all financial information at any time, as needed to conduct an audit of the permittees under this Chapter to verify tax compliance under Chapter ~~5.80~~ 5.81 and/or gross receipts tax requirements.

BC. The City Administrator is authorized to examine the books, papers, tax returns and records of any permittee for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax due.

The City Administrator is authorized to examine a person under oath, for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax, registration or permit fees due under this Chapter. In order to ascertain the business tax, registration or permit fees due under this Chapter, the City Administrator may compel, by administrative subpoena, the production of relevant books, papers and records and the attendance of all persons as parties or witnesses.

CD. Every permittee is directed and required to furnish to the City Administrator, the means, facilities and opportunity for making such financial examinations and investigations.

DE. Any permittee refusal to comply with this Section shall be deemed a violation of this Chapter, and administrative subpoenas shall be enforced pursuant to applicable law.

5.81.100 – Liability and indemnification.

A. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Chapter shall not become a personal liability of any public officer or employee of the City.

B. To the maximum extent permitted by law, ~~the~~ permittees under this Chapter hereby agree to save, shall defend (with counsel acceptable to the City), indemnify and keephold harmless the City of Oakland, the Oakland City Council, and its respective officials, officers, employees, representatives, agents and volunteers (hereafter collectively called "City") from any all-liability, damages, actions, claims, demands,

litigation, loss (direct or indirect), causes of action, or proceedings, or judgment (including legal costs, these for attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, any medical cannabis-related approvals and actions in consequence of the granting of this permit, and will in all things strictly comply with the conditions under which this such permit is granted, if any. The City may elect, in its sole discretion, to participate in the defense of said Action and the permittee shall reimburse the City for its reasonable legal costs and attorneys' fees.

C. Within ten (10) calendar days of the service of the pleadings upon the City of any Action as specified in Subsection B above, the permittee shall execute a Letter of Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment or invalidation of the medical cannabis-related approval. Failure to timely execute the Letter of Agreement does not relieve the applicant of any of the obligations contained in this Section or any other requirements or performance or operating standards that may be imposed by the City.

5.81.101 - Residential Personal use and individual limits for non-licensed medical cannabis cultivation.

Notwithstanding State law regarding medical cannabis cultivation, no qualified patient or primary caregiver may cultivate medical cannabis in an area of more than 32 square feet on one parcel of land, unless they form a cooperative or collective.

A collective or cooperative of qualified patients or primary caregivers, may cultivate medical cannabis covering an area of no more than 32 square feet in a residential unit or if in a nonresidential building on one parcel of land per each member of the cooperative or collective, up to a maximum of 216 cannabis/marijuana plants within a maximum growing area of 96 square feet indoor or 60 outdoor cannabis/marijuana plants on one parcel of land.

In the absence of a permit under this Chapter, such cultivation shall be subject to the following operating standards:

A. Cultivation, processing, possession, and/or manufacturing of medical marijuana in any residential areas shall be limited to qualified patients, primary caregivers, and medical cannabis collectives or cooperatives comprised of no more than three qualified patients and/or their primary caregivers. Every member of the medical cannabis collective or cooperative shall possess an identification card issued by the County of Alameda, or the State of California, or another agency recognized by the City pursuant to California Health and Safety Code Section 11362.7 et seq.

B. Cultivation, processing, possessing, and/or manufacturing of medical cannabis in residential areas shall be in conformance with the following standards:

1. The residential facility shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities. Medical cannabis cultivation, processing, possession, and/or manufacturing shall remain at all times secondary to the residential use of the property;

2. Cultivation possession, processing and/or manufacturing of medical cannabis in residential areas shall occur only in a secured residences occupied by the qualified patient or primary caregiver;
3. No individual residential facility or other facility housing the cultivation, processing and/or manufacturing of medical cannabis shall contain more than 48 ounces of dried cannabis, and/or more than 96 square feet of cultivation area;
4. If required by the building or fire code, the wall(s) adjacent to the indoor cultivation area shall be constructed with 5/8" Type X fire resistant drywall;
5. The cultivation area shall be in compliance with the current adopted edition of the California Building Code ~~§ 1203.4 natural ventilation or § 402.3 mechanical ventilation (or its equivalent(s));~~
6. The cultivation area shall not adversely affect the health or safety of the residence or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;
7. All high amperage electrical equipment (exceeding six amps) used in the cultivation of medical cannabis, (e.g., lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired; the use of extension cords to supply power to high amperage electrical equipment (exceeding six amps) used in the cultivation of medical cannabis is prohibited;
8. Any electrical rewiring or remodeling shall first require an electrical permit from the City;
9. The use of butane gas products for personal use medical cannabis cultivation is prohibited; and
10. From a public right-of-way, there shall be no exterior evidence of medical cannabis cultivation occurring at the property.

C. If a qualified patient or primary caregiver who is cultivating, possessing, processing and/or manufacturing medical cannabis for personal use at the residence has a doctor's recommendation that the above allowable quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs, as specified by such doctor.

5.81.110 – Prohibited operations.

A. AllAny cultivating, distributing, processing, and manufacturing, testing, or transporting facilities that do not have without a permit under this Chapter are expressly prohibited. No use that purports to have cultivated, distributed, manufactured, tested or transported or processed marijuana shall be deemed to have been a legally established use under the provisions of the Oakland Planning Code, the Oakland Municipal Code, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim a vested right, legal nonconforming or other similar status. However, for the limited purpose of state licensing priority, operators may submit a

petition to the City Administrator's Office for a determination of good standing prior to January 1, 2016.

B. Any violations of this Chapter may be subject to administrative citation, pursuant to Chapters 1.08 and 1.12, and other applicable legal, injunctive or equitable remedies. No enforcement of this provision shall take place, though, until after the City Administrator has published information on how to apply for cultivation, distribution, laboratory, manufacturing and transporting permits and no enforcement shall take place against a permit applicant while their application is pending.

5.81.120 – Revocation, suspension and aAppeals.

Notwithstanding Section 5.02.100, any decision, except for suspension and or revocation, pursuant to this Chapter by the City Administrator or his/her designee shall be final and conclusive, with no appeal to the City Council or any other appellate body. For suspensions and/or revocations the City shall follow the procedures set forth in Section 5.02.080 only the City Administrator ~~an independent hearing officer shall make an initial determination with an appeal to an independent hearing officer the City Administrator~~ in writing within 14 days of the City Administrator's Administrative Hearing Officer's decision in accordance with procedures in set forth in Section 5.02.100. The decision of the independent hearing officer shall be final and conclusive.

SECTION 4. Reporting. City staff shall report back to City Council no later than one year from the date of adoption of this legislation, providing information about the implementation, review of effectiveness of the included standards, including equity standards, issues that have arisen, if any, and whether any changes are recommended.

SECTION 5. California Environmental Quality Act. The City Council independently finds and determines that this action is exempt from CEQA pursuant to CEQA Guidelines sections 15061(b)(3) (general rule), 15183 (projects consistent with a community plan, general plan, or zoning), 15301 (existing facilities), 15308 (actions by regulatory agencies for protection of the environment) and 15309 (inspections), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance. The Environmental Review Officer or designee shall file a Notice of Exemption with the appropriate agencies.

SECTION 65. Severability. The provisions of this Ordinance are severable, and if any section, subsection, sentence, clause, phrase, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is for any reason held to be invalid, preempted by state or federal law, or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. It is hereby declared to be the legislative intent of the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

SECTION 76. Ordinance Effective Date. Pursuant to Section 216 of the Charter of the City of Oakland, this Ordinance shall become effective immediately upon final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption by the Council of the City of Oakland.

SECTION 87. General Police Powers. This Ordinance is enacted pursuant to the City of Oakland's general police powers, including but not limited to Sections 106 of the Oakland City Charter and Section 7 of Article XI of the California Constitution.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND PRESIDENT
GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.81, MEDICAL CANNABIS CULTIVATION FACILITY PERMITS, TO ALIGN WITH CALIFORNIA'S MEDICAL MARIJUANA REGULATION AND SAFETY ACT AND ADOPTING CEQA EXEMPTION FINDINGS

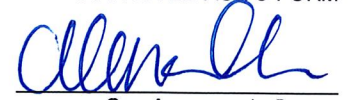
This ordinance amends the City of Oakland's existing citywide medical cannabis regulations to align with new state law, the Medical Marijuana Regulation and Safety Act, by establishing permitting processes for medical cannabis cultivators, manufacturers, testing laboratories, distributors and transporters.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

REVISED AT COUNCIL 5/3/16

2016 MAY -5 PM 4: 45

APPROVED AS TO FORM


CITY ATTORNEY'S OFFICE

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.81, MEDICAL CANNABIS CULTIVATION FACILITY PERMITS, TO ALIGN WITH CALIFORNIA'S MEDICAL MARIJUANA REGULATION AND SAFETY ACT AND ADOPTING CEQA EXEMPTION FINDINGS

WHEREAS, in 1996, California voters approved Proposition 215 (codified at Health and Safety Code section 11362.5 and titled the "Compassionate Use Act of 1996"), which provides criminal immunity for patients and primary caregivers for the cultivation and possession of cannabis if a doctor has recommended the cannabis for medical purposes; and

WHEREAS, in 2004, Senate Bill 420 was enacted (codified at Health and Safety Code section 11362.7 *et seq.* and titled the "Medical Marijuana Program Act") to clarify the scope of the Compassionate Use Act of 1996. The Medical Marijuana Program Act allows cities and other governing bodies to adopt and enforce laws consistent with its provisions; and

WHEREAS, neither the Compassionate Use Act of 1996 nor the Medical Marijuana Program Act provided an effective statewide regulatory system for the medical cannabis industry, and this lack of uniform regulation created uncertainty about the legality of medical cannabis activities and endangered the safety of end users, who have not had the benefit of a monitored supply chain for medical cannabis, quality control, testing or labeling requirements; and

WHEREAS, in 2010, the Oakland City Council adopted Ordinance No. 13033 C.M.S. to establish citywide medical cannabis cultivation facility regulations (codified at OMC Chapter 5.81), to protect the public health, safety and welfare of patients and the community as a whole, but to date, the City has neither enforced these provisions nor issued any licenses or permits pursuant to these regulations; and

WHEREAS, in 2011, Assembly Bill 2650 was enacted (codified at Health and Safety Code section 11362.768). This law affirms that cities can adopt ordinances that

restrict the location and establishment of medical marijuana collectives, cooperatives, and dispensaries; and

WHEREAS, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court concluded that nothing in the Compassionate Use Act or the Medical Marijuana Program Act precludes a local jurisdiction from regulating or prohibiting facilities that distribute medical marijuana; and

WHEREAS, in 2015, Assembly Bills 243 and 266 and Senate Bill 643 were enacted (codified at Business and Professions Code section 19300 et seq. and titled the "Medical Marijuana Regulation and Safety Act"); and

WHEREAS, the Medical Marijuana Regulation and Safety Act establishes a long-overdue comprehensive regulatory framework for medical cannabis in California (including production, transportation and sale of medical cannabis), requires establishment of uniform state minimum health and safety standards, testing standards, mandatory product testing, and security requirements at dispensaries and during transport of the product, and provides criminal immunity for licensees; and

WHEREAS, the Medical Marijuana Regulation and Safety Act preserves local control in a number of ways: (1) by requiring medical cannabis businesses to obtain both a state license and a local license or permit to operate legally in California, (2) by terminating the ability of a medical cannabis business to operate if its local license or permit is terminated, (3) by authorizing local governments to enforce state law in addition to local ordinances, if they request that authority and it is granted by the relevant state agency, (4) by providing for civil penalties for unlicensed activities, and continuing to apply applicable criminal penalties under existing law, and (5) by expressly protecting local licensing practices, zoning ordinances, and local actions taken under the constitutional police power; and

WHEREAS, the Medical Marijuana Regulation and Safety Act authorizes medical cannabis businesses to vertically integrate their business and hold multiple state licenses if they are located in jurisdictions that adopted a local ordinance, prior to July 1, 2015, allowing or requiring qualified businesses to cultivate, manufacture, and dispense medical cannabis or medical cannabis products; and

WHEREAS, the City of Oakland's medical cannabis regulations have allowed and will continue to allow an individual qualified business to cultivate, manufacture, and dispense medical cannabis or medical cannabis products; and

WHEREAS, extensive medical cannabis activities, including cultivation and manufacturing, currently occur in the City and have not been expressly regulated; and

WHEREAS, these activities have caused and continue to cause ongoing adverse impacts that can be harmful to the health, safety and welfare of Oakland residents and constitute a public nuisance, including without limitation damage to buildings containing indoor medical cannabis cultivation facilities, including improper and dangerous

electrical alterations and use, inadequate ventilation leading to mold and mildew, increased frequency of home-invasion robberies, and similar crimes; and

WHEREAS, many of these community impacts have fallen disproportionately on residential neighborhoods. These impacts have also created an increase in City response costs, including code enforcement, building, fire, and police staff time and expenses; and

WHEREAS, absent appropriate regulation, these unregulated medical cannabis activities pose a potential threat to the public health, safety and welfare;

WHEREAS, the City of Oakland wishes to amend OMC Chapter 5.81 to continue and expand citywide regulation of medical cannabis activities in a manner that protects the public health, safety and general welfare of the community, and in the interest of patients who qualify to obtain, possess and use marijuana for medical purposes, consistent with the Compassionate Use Act of 1996, the Medical Marijuana Program Act, and the Medical Marijuana Regulation and Safety Act; and

WHEREAS, the City of Oakland has a compelling interest in protecting the public health, safety, and welfare of its citizens, residents, visitors and businesses by developing and implementing strict performance and operating standards for medical cannabis cultivation, manufacturing and other facilities; and

WHEREAS, it is the City of Oakland's policy in the permitting of medical cannabis facilities to encourage the hiring of high unemployment groups, including Oakland residents that were formerly incarcerated; and

WHEREAS, communities of color have been negatively and disproportionately impacted by disparate enforcement of cannabis laws; and

WHEREAS, police arrest data reported to the Cannabis Regulatory Commission reflect disproportionately higher arrests for cannabis offenses in certain police beats; and

WHEREAS, individuals arrested or previously incarcerated for cannabis related offenses face significant barriers to obtaining employment, financial aid, public housing, and other economic opportunities; and

WHEREAS, the City of Oakland seeks to provide equity in ownership in the cannabis industry through the incorporation of a Cultivation, Manufacturing, Distribution, Testing, and Transporting Permit Program; and

WHEREAS, as part of its efforts to develop comprehensive amendments to the existing citywide medical cannabis regulations, staff conducted extensive public outreach, including public presentations to the City's Cannabis Regulatory Commission in February, July, and October 2015; and

WHEREAS, after a duly noticed public meetings on February 9, 2016, and April 26, 2016, the Public Safety Committee voted to recommend the proposal to the City Council with the inclusion of an equity component that requires 50% of all new cannabis permits be issued to applicants who reside in police beats negatively and disproportionately impacted by enforcement of cannabis laws; and

WHEREAS, the City Council held a duly noticed public hearing on May 3, 2016, to consider the proposed amendments and all interested parties were provided an ample opportunity to participate in said hearing and express their views; and

WHEREAS, nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. § 841 or to license any activity that is prohibited under said Act except as mandated by State law; and

WHEREAS, nothing in this Ordinance shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance; or (2) allow the use of cannabis for non-medical purposes; or (3) allow any activity relating to the sale, distribution, possession or use of cannabis that is illegal under state or federal law; and compliance with the requirements of this Ordinance shall not provide a defense to criminal prosecution under any applicable law; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The City Council finds and determines the foregoing recitals to be true and correct and hereby adopts and incorporates them into this Ordinance.

SECTION 2. Purpose and Intent. It is the purpose and intent of this Ordinance to clarify and expressly authorize non-dispensary medical cannabis activities, including the cultivation of medical cannabis, in order to preserve the public peace, health, safety, and general welfare of the citizens and residents of, and travelers through, the City of Oakland, as authorized by the Medical Marijuana Regulation and Safety Act.

SECTION 3. Amendment of Chapter 5.81 of the Oakland Municipal Code. Oakland Municipal Code Chapter 5.81 is hereby amended as follows (additions are shown in double underline and deletions are shown as ~~strikethrough~~):

Chapter 5.81 – MEDICAL CANNABIS CULTIVATION, MANUFACTURING AND OTHER FACILITY PERMITS

5.81.010 – Findings and purpose.

A. The City Council, based on evidence presented to it in the proceedings leading to the adoption of this Chapter hereby finds that the lack of regulation of medical cannabis facilities other than medical cannabis dispensaries, including unregulated cultivation, manufacturing and processing of medical cannabis in the City has caused and is causing ongoing impacts to the community. These impacts include damage to buildings containing indoor medical cannabis cultivation facilities, including improper and

dangerous electrical alterations and use, inadequate ventilation leading to mold and mildew, increased frequency of home-invasion robberies and similar crimes, and that many of these impacts have fallen disproportionately on residential neighborhoods. These impacts have also created an increase in response costs, including code enforcement, building, fire, and police staff time and expenses.

B. The City Council further finds that the creation of a permitting process implementing public health and safety standards for medical cannabis facilities other than dispensaries will not only improve public health and safety but provide a measure of certainty for legitimate businesses and thus encourage them to situate in Oakland.

CB. The City acknowledges that the voters of the State have provided an exemption to prosecution for the cultivation, possession of cannabis for medical purposes under the Compassionate Use Act (CUA), but that the CUA does not address land use or building code impacts or issues arising from the resulting increase in cannabis cultivation within the City.

DC. The City acknowledges that sales of medical marijuana are subject to taxation by both the City and the State and that the California State Board of Equalization (BOE) is also requiring that businesses engaging in such retail transactions hold a seller's permit.

ED. The primary purpose and intent of this Chapter is to regulate the cultivation and processing of non-dispensary medical cannabis facilities, including the cultivation of medical cannabis, in a manner that protects the public health, safety and welfare of the community, as authorized by the Medical Marijuana Regulation and Safety Act.

5.81.020 – Definitions.

The following words or phrases, whenever used in this Chapter, shall be given the following definitions:

A. “Applicant” as used only in this Chapter shall be any industrial cannabis cultivation, processing, manufacturing facility that applies for a permit required under this Chapter.

B. “Batch” as used only in this Chapter shall be defined by the City Administrator to mean a discrete quantity of dried cannabis produced and sold together.

C. “Cannabis” or “Marijuana” as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010-8.46.020.

D. “Cannabis concentrate” as used only in this Chapter shall mean manufactured cannabis that has undergone a process to concentrate the cannabinoid active ingredient, thereby increasing the product’s potency.

ED. “Cannabis Dispensary” as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010 and is also referred to herein as “dispensary.”

FE. “City Administrator” as used only in this Chapter shall mean the City Administrator for the City of Oakland and his or her designee.

G. "Cultivate" as used only in this Chapter shall mean to plant, grow, harvest, dry, cure, grade or trim more than 48 ounces of dried cannabis and/or to plant, grow, harvest, dry, cure, grade or trim cannabis in an area greater than 96 square feet of total area within one parcel of land.

~~F. "Cultivation Area" as used only in this Chapter hereinafter shall mean the actual area in use for the entire cultivation process of cannabis plants (including seedling production, vegetation, and maturation), as well as reasonable walking space, such that, for example, two trays used for maturation, each measuring ten square feet and stacked vertically on top of each other shall be counted as 20 square feet of cultivation area.~~

~~G. "Industrial Cannabis Cultivation, Processing, Manufacturing Facility" hereinafter "cultivation and manufacturing facility" shall mean any facility used for cultivating, warehousing, storing, processing and/or manufacturing more than 48 ounces of dried cannabis, and/or cultivating or storing medical cannabis in an area greater than 96 square feet of total area within one parcel of land. Any establishment engaged in, permitted to be engaged in or carrying on any medical cannabis cultivation, processing, or manufacturing or other activity mentioned in this Chapter shall be deemed a an industrial cannabis cultivation and manufacturing facility as described in Section 5.81.040.~~

H. "Distribute" as used only in this Chapter shall mean the procurement, sale, and transport of medical cannabis and medical cannabis products between state licensed medical cannabis entities.

I. "Edible cannabis product" as used only in this Chapter shall mean manufactured cannabis that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum.

J. "Manufactured cannabis" as used only in this Chapter shall mean raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product.

K. "Manufacture" as used only in this Chapter shall mean to produce, prepare, propagate, or compound manufactured medical cannabis or medical cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

LH. "Medical cCannabis cCollective" as used only in this Chapter shall be the same, and as may be amended, as isf defined in Section 5.80.010.

M. "Medical marijuana" or "Medical cannabis" as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.

NI. "One-Parcel of lLand" as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010mean any single piece of real property as identified by the County Assessor's parcel number (APN) that is used to identify real property, its boundaries, and all the rights contained therein.

OJ. "Permittees" as used only in this Chapter are individuals or businesses cultivation and manufacturing facilities that have obtained a permit under this Chapter to cultivate, distribute, manufacture, test or transport.

PK. “Primary cGaregiver” as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.

QL. “Qualified patient” as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.

R. “Testing” as used only in this Chapter shall mean the conducting of analytical testing of cannabis, cannabis-derived products, hemp, or hemp-derived products.

S. “Topical cannabis” as used only in this Chapter shall mean a product intended for external use such as with cannabis-enriched lotions, balms and salves.

T. “Transport” as used only in this Chapter means the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity, as defined by state law.

U. “Transporter” as used only in this Chapter means a person licensed to transport medical cannabis or medical cannabis products between state licensed medical cannabis facilities.

V. “Volatile Solvents” as used only in this Chapter shall mean those solvents used in the cannabis manufacturing process determined to be volatile by the California Department of Public Health or Oakland Fire Department.

~~M.~~ ~~“Written Recommendation” as used only in this Chapter shall be the same, and as may be amended, as if defined in Section 5.80.010.~~

W. “General Application permit” shall mean all applications issued under OMC 5.81 with the exception of Cultivation, Manufacturing, Distribution, Testing, and Transporting Equity Permits issued under section 5.81.030.

5.81.030 – Permit required.

A. ~~Except for hospitals and research facilities that obtain written permission for cannabis cultivation under federal law, it is unlawful to establish any cultivation, distribute, and manufacturing, test or transport facility without a valid business permit issued pursuant to the provisions of this Chapter. Possession of other types of State or City permits or licenses does not exempt an applicant from the requirement of obtaining a permit under this Chapter. It is unlawful for any entity organized on a for-profit basis, except for hospitals and research facilities, to engage in any medical cannabis cultivation whatsoever.~~

B. ~~The City Administrator shall issue, as detailed below, special business permits for the operation of industrial medical cannabis cultivation processing, distributing, and manufacturing, testing and transporting facilities. In recommending the granting or denying of such permit and in granting or denying the same, the City Administrator shall give particular consideration to the capacity, capitalization, complaint history of the proposed cultivation and manufacturing facility as detailed in Section 5.81.040, and any other factors that in her/his discretion she/he deems necessary to the peace and order and welfare of the public. All applicants shall pay any necessary fees including without~~

limitation application fees, inspection fees and regulatory fees that may be required hereunder.

~~C. The City Administrator shall issue in the first year of this cultivation and manufacturing facility program no more than four permits. Two years after the first permit has been issued, the City Administrator shall return to the City Council to report on the development of this program, and determine how additional permits to meet the needs of medical cannabis dispensaries and other lawful cannabis providers shall be administered, if any.~~

CD. All cultivation, distribution, and manufacturing, testing and transporting facility permits shall be special business permits and shall be issued for a term of onetwo years, subject to annual review one year from the date of prior issuance. No property interest, vested right, or entitlement to receive a future license to operate a medical marijuana business shall ever inure to the benefit of such permit holder as such permits are revocable at any time with our without cause by the City Administrator subject to Section 5.81.120.

DE. Cultivation, distribution, and manufacturing, testing, and transporting facility permits shall only be granted to entities operating legally according to State law.

E. More than one medical cannabis operator may situate on a single parcel of land, however, each operator will be required to obtain a permit for their applicable permit category.

F. No proposed use under this Chapter shall be located within a 600 foot radius of any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive (but not including any private school in which education is primarily conducted in private homes) nor situate in an area other than as prescribed below unless the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public.

G. Fifty percent (50%) of all permits issued under OMC 5.81 shall be issued to an Oakland resident who meets the Equity Permit Program requirements set forth in Section 5.81.030(H) below. At no time shall the number of General Application permits issued under 5.81 in total exceed the number of Equity Permits under 5.81 in total issued by the City Administrator.

H. Cultivation, Manufacturing, Distribution, Testing, and Transporting Equity Permit Program Criteria. Applicant must have at least one member who meets all of the following criteria:

1. Be an Oakland resident who,
2. Resides for at least two years prior to the date of application in Oakland Police Department Beats 26Y, 30X, 30Y, 31Z, 32Y, and 34X (Oakland Police Department Beat Map is attached and incorporated herein by reference); or those individuals who, within the last ten years, have been previously incarcerated for marijuana-related offense as a result of a conviction arising out of Oakland, California;
3. Maintains not less than a 50% ownership in the Dispensary applicant entity, partnership, limited liability corporation, collective, corporation, worker cooperative or other recognized ownership entity; and

4. Prior marijuana or cannabis conviction shall not be a bar to equity ownership.

5.81.040 – Industrial eCultivation, distribution, testing and transporting of medical marijuana.

~~A. Any use of activity that involves possessing, cultivating, processing and/or manufacturing and/or more than 96 square feet of cultivation area shall constitute industrial cultivation of medical cannabis and shall only be allowed upon the granting of a permit as prescribed in this Chapter. Possession of other types of State or City permits or licenses does not exempt an applicant from the requirement of obtaining a permit under this Chapter.~~

~~AB. The pProposed location of a cultivation, distribution, testing or transporting and manufacturing facility locations shall be in areas where “light manufacturing industrial,” “research and development,” or their equivalent use, is permitted by right under the Oakland Planning Code, as may be amended; provided, however, that no vested or other right shall inure to the benefit of any cultivation, distribution, testing or transporting and manufacturing facility permittee. Public notice shall be given as provided in Section 5.02.050, and the investigating official referred to in Section 5.02.030 to whom the application shall be referred, shall be the City Administrator.~~

~~B. The aforementioned location restrictions shall not apply to existing dispensary cultivation facilities located at a retail location if the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public.~~

~~C. The maximum size of any areas of cultivation shall not exceed any limitations or restrictions set forth in State law.~~

5.81.045 – Manufacturing of medical marijuana.

~~A. Proposed locations for manufacturing of medical cannabis products using nonvolatile solvents shall be in areas where “custom manufacturing industrial,” or its equivalent use, is permitted by right under the Oakland Planning Code, as may be amended, or in residential zones if the manufacturing is compliant with the restrictions imposed on cottage food operators under the California Homemade Food Act, Chapter 6.1 (commencing with Section 51035) of Part 1 of Division 1 of Title 5 of the Government Code.~~

~~B. Proposed locations for manufacturing of medical cannabis products using volatile solvents shall be in areas where “general manufacturing industrial” or its equivalent use, is permitted by right under the Oakland Planning Code, as may be amended.~~

5.81.050 – Application for permit.

A. All applicants shall pay an application fee as specified in the Master Fee Schedule.

B. ~~All applicants shall submit written information to the City Administrator including, but not limited to, that shall include, as applicable, plans for security, odor mitigation, waste disposal, pest management, product testing, worker safety and compensation, local hiring, non diversion of product, facility location, capitalization, business plans, applicant complaint history, criminal background checks, plan for minimizing environmental impacts, compliance with City building and fire codes, and any additional information deemed necessary by the City Administrator. The City Administrator may design application forms specific to each permitted category and require inspections of proposed facilities before issuing a permit under this Chapter.~~

C. ~~All applicants shall be ranked by a point or similar system established by the City Administrator based on information submitted by each applicant and any additional information that may be submitted to or discovered by the City Administrator. The City Administrator shall establish criteria for minimizing the carbon footprint, environmental impact and resource needs of permitted facilities. Applicants that demonstrate they can satisfy this environmental criteria, such as cultivators seeking to operate greenhouse facilities, will be given preference in the processing of their application.~~

D. All applicants shall demonstrate compliance with State law, during the course of the permit application procedure described under this Section, prior to issuing any permit, and upon the issuance of a permit, thereafter.

5.81.070 – Operating and performance standards.

A. Facilities permitted under this Chapter shall not be open to the public. The City Administrator shall establish operating and performance standards for permittees. The intent of these operating and performance standards is to minimize any negative effects and enhance the benefits of permitted facilities on the surrounding community.

B. The following standards shall be included in the City Administrator's regulations:

1. No cannabis or cannabis odors shall be detectable by sight or smell outside of a permitted facility.

2. Permitted facilities must install security cameras capable of documenting activity inside and outside the facility, as determined by the Oakland Police Department.

3. Permitted facilities shall maintain a staff that is at least 50% Oakland residents and at least 25% Oakland residents in census tracts identified by the City Administrator as having high unemployment rates. The City Administrator may promulgate standards for phasing in this requirement for existing facilities.

4. Permitted facilities that hire and retain formerly incarcerated Oakland residents may apply for a tax credit or license fee reduction based on criteria established by the City Administrator.

5. All employees shall be paid a living wage as defined by OMC Chapter 2.28.

6. Permitted facilities must implement a track and trace program that records the movement of medical cannabis and medical cannabis products in their

custody and make these records available to the City Administrator upon request.

C. Noncompliance of such operating standards shall constitute a breach of the permit issued hereunder and may render such permit suspended or revoked based upon the City Administrator's determination.

5.81.080 – Examination of books, records, witnesses—Information confidential—Penalty.

A. The City Administrator shall be provided access to any licensed medical cannabis cultivation, manufacturing, and other facility during normal business hours to verify compliance with this chapter.

AB. The City Administrator shall be provided access to any and all financial information at any time, as needed to conduct an audit of the permittees under this Chapter to verify tax compliance under Chapter ~~5.80~~ 5.81 and/or gross receipts tax requirements.

BC. The City Administrator is authorized to examine the books, papers, tax returns and records of any permittee for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax due.

The City Administrator is authorized to examine a person under oath, for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax, registration or permit fees due under this Chapter. In order to ascertain the business tax, registration or permit fees due under this Chapter, the City Administrator may compel, by administrative subpoena, the production of relevant books, papers and records and the attendance of all persons as parties or witnesses.

CD. Every permittee is directed and required to furnish to the City Administrator, the means, facilities and opportunity for making such financial examinations and investigations.

DE. Any permittee refusal to comply with this Section shall be deemed a violation of this Chapter, and administrative subpoenas shall be enforced pursuant to applicable law.

5.81.100 – Liability and indemnification.

A. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Chapter shall not become a personal liability of any public officer or employee of the City.

B. To the maximum extent permitted by law, the permittees under this Chapter hereby agree to save, shall defend (with counsel acceptable to the City), indemnify and keephold harmless the City of Oakland, the Oakland City Council, and its respective officials, officers, employees, representatives, agents and volunteers (hereafter collectively called "City") from any all liability, damages, actions, claims, demands,

litigation, loss (direct or indirect), causes of action, or proceedings, or judgment (including legal costs, those for attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, any medical cannabis-related approvals and actions in consequence of the granting of this permit, and will in all things strictly comply with the conditions under which this such permit is granted, if any. The City may elect, in its sole discretion, to participate in the defense of said Action and the permittee shall reimburse the City for its reasonable legal costs and attorneys' fees.

C. Within ten (10) calendar days of the service of the pleadings upon the City of any Action as specified in Subsection B above, the permittee shall execute a Letter of Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment or invalidation of the medical cannabis-related approval. Failure to timely execute the Letter of Agreement does not relieve the applicant of any of the obligations contained in this Section or any other requirements or performance or operating standards that may be imposed by the City.

5.81.101 - Residential ~~Personal~~ use and individual limits for non-licensed medical cannabis cultivation.

Notwithstanding State law regarding medical cannabis cultivation, no qualified patient or primary caregiver may cultivate medical cannabis in an area of more than 32 square feet on one parcel of land, unless they form a cooperative or collective.

A collective or cooperative of qualified patients or primary caregivers, may cultivate medical cannabis covering an area of no more than 32 square feet in a residential unit or if in a nonresidential building on one parcel of land per each member of the cooperative or collective, up to a maximum of 216 cannabis/marijuana plants within a maximum growing area of 96 square feet indoor or 60 outdoor cannabis/marijuana plants on one parcel of land.

In the absence of a permit under this Chapter, such cultivation shall be subject to the following operating standards:

A. Cultivation, processing, possession, and/or manufacturing of medical marijuana in any residential areas shall be limited to qualified patients, primary caregivers, and medical cannabis collectives or cooperatives comprised of no more than three qualified patients and/or their primary caregivers. Every member of the medical cannabis collective or cooperative shall possess an identification card issued by the County of Alameda, or the State of California, or another agency recognized by the City pursuant to California Health and Safety Code Section 11362.7 et seq.

B. Cultivation, processing, possessing, and/or manufacturing of medical cannabis in residential areas shall be in conformance with the following standards:

1. The residential facility shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities. Medical cannabis cultivation, processing, possession, and/or manufacturing shall remain at all times secondary to the residential use of the property;

2. Cultivation possession, processing and/or manufacturing of medical cannabis in residential areas shall occur only in a secured residences occupied by the qualified patient or primary caregiver;
3. No individual residential facility or other facility housing the cultivation, processing and/or manufacturing of medical cannabis shall contain more than 48 ounces of dried cannabis, and/or more than 96 square feet of cultivation area;
4. If required by the building or fire code, the wall(s) adjacent to the indoor cultivation area shall be constructed with 5/8" Type X fire resistant drywall;
5. The cultivation area shall be in compliance with the current adopted edition of the California Building Code ~~§ 1203.4 natural ventilation or § 402.3 mechanical ventilation (or its equivalent(s))~~;
6. The cultivation area shall not adversely affect the health or safety of the residence or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;
7. All high amperage electrical equipment (exceeding six amps) used in the cultivation of medical cannabis, (e.g., lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired; the use of extension cords to supply power to high amperage electrical equipment (exceeding six amps) used in the cultivation of medical cannabis is prohibited;
8. Any electrical rewiring or remodeling shall first require an electrical permit from the City;
9. The use of butane gas products for personal use medical cannabis cultivation is prohibited; and
10. From a public right-of-way, there shall be no exterior evidence of medical cannabis cultivation occurring at the property.

C. If a qualified patient or primary caregiver who is cultivating, possessing, processing and/or manufacturing medical cannabis for personal use at the residence has a doctor's recommendation that the above allowable quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs, as specified by such doctor.

5.81.110 – Prohibited operations.

A. ~~All~~ Any cultivating, distributing, processing, and manufacturing, testing, or transporting facilities that do not have without a permit under this Chapter are expressly prohibited. No use that purports to have cultivated, distributed, manufactured, tested or transported or processed marijuana shall be deemed to have been a legally established use under the provisions of the Oakland Planning Code, the Oakland Municipal Code, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim a vested right, legal nonconforming or other similar status. However, for the limited purpose of state licensing priority, operators may submit a

petition to the City Administrator's Office for a determination of good standing prior to January 1, 2016.

B. Any violations of this Chapter may be subject to administrative citation, pursuant to Chapters 1.08 and 1.12, and other applicable legal, injunctive or equitable remedies. No enforcement of this provision shall take place, though, until after the City Administrator has published information on how to apply for cultivation, distribution, laboratory, manufacturing and transporting permits and no enforcement shall take place against a permit applicant while their application is pending.

5.81.120 – Revocation, suspension and Appeals.

Notwithstanding Section 5.02.100, any decision, except for suspension and or revocation, pursuant to this Chapter by the City Administrator or his/her designee shall be final and conclusive, with no appeal to the City Council or any other appellate body. For suspensions and/or revocations the City shall follow the procedures set forth in Section 5.02.080 only the City Administrator ~~an independent hearing officer~~ shall make an initial determination with an appeal to an independent hearing officer ~~the City Administrator~~ in writing within 14 days of the City Administrator's Administrative Hearing Officer's decision in accordance with procedures in set forth in Section 5.02.100. The decision of the independent hearing officer shall be final and conclusive.

SECTION 4. Reporting. City staff shall report back to City Council no later than one year from the date of adoption of this legislation, providing information about the implementation, review of effectiveness of the included standards, including equity standards, issues that have arisen, if any, and whether any changes are recommended.

SECTION 5. California Environmental Quality Act. The City Council independently finds and determines that this action is exempt from CEQA pursuant to CEQA Guidelines sections 15061(b)(3) (general rule), 15183 (projects consistent with a community plan, general plan, or zoning), 15301 (existing facilities), 15308 (actions by regulatory agencies for protection of the environment) and 15309 (inspections), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance. The Environmental Review Officer or designee shall file a Notice of Exemption with the appropriate agencies.

SECTION 6. Severability. The provisions of this Ordinance are severable, and if any section, subsection, sentence, clause, phrase, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is for any reason held to be invalid, preempted by state or federal law, or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. It is hereby declared to be the legislative intent of the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

SECTION 7. Ordinance Effective Date. Pursuant to Section 216 of the Charter of the City of Oakland, this Ordinance shall become effective immediately upon final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption by the Council of the City of Oakland.

SECTION 8. General Police Powers. This Ordinance is enacted pursuant to the City of Oakland's general police powers, including but not limited to Sections 106 of the Oakland City Charter and Section 7 of Article XI of the California Constitution.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND PRESIDENT GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.81, MEDICAL CANNABIS CULTIVATION FACILITY PERMITS, TO ALIGN WITH CALIFORNIA'S MEDICAL MARIJUANA REGULATION AND SAFETY ACT AND ADOPTING CEQA EXEMPTION FINDINGS


This ordinance amends the City of Oakland's existing citywide medical cannabis regulations to align with new state law, the Medical Marijuana Regulation and Safety Act, by establishing permitting processes for medical cannabis cultivators, manufacturers, testing laboratories, distributors and transporters.

Including Attachment 4 Thereto

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2016 APR 14 PM 6: 25

INTRODUCED BY COUNCILMEMBER _____

APPROVED AS TO FORM

OFFICE OF THE CITY ATTORNEY

OAKLAND CITY COUNCIL
ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING THE FY 2015-16 MASTER FEE SCHEDULE (ORDINANCE NO. 13320 C.M.S., AS AMENDED) TO MODIFY AND ESTABLISH PERMIT APPLICATION AND ANNUAL REGULATORY FEES FOR CITY OF OAKLAND LICENSED MEDICAL CANNABIS FACILITIES AND ADOPTING CEQA EXEMPTION FINDINGS

WHEREAS, in 2015, Assembly Bills 243 and 266 and Senate Bill 643 were enacted (codified at Business and Professions Code section 19300 et seq. and titled the "Medical Marijuana Regulation and Safety Act"); and

WHEREAS, in companion Ordinances, the City Council is considering amendments to existing citywide medical cannabis dispensary and cultivation regulations to align with the Medical Marijuana Regulation and Safety Act; and

WHEREAS, extensive medical cannabis activities, including cultivation and manufacturing, currently occur in the City and have not been expressly regulated; and

WHEREAS, these activities have caused and continue to cause ongoing adverse impacts that threaten the public health, safety and welfare of Oakland residents, oftentimes falling disproportionately on residential neighborhoods, including without limitation damage to buildings containing indoor medical cannabis cultivation facilities, including improper and dangerous electrical alterations and use, inadequate ventilation leading to mold and mildew, increased frequency of home-invasion robberies, and similar crimes; and

WHEREAS, these impacts have also created an increase in City response costs, including code enforcement, building, fire, and police staff time and expenses; and

WHEREAS, the City of Oakland wishes to amend the FY 2015-16 Master Fee Schedule to continue and expand citywide regulation of medical cannabis activities in a manner that protects the public health, safety and general welfare of the community, and in the interest of patients who qualify to obtain, possess and use marijuana for

medical purposes, while aligning local regulation of medical cannabis with the regulatory framework outlined in State law; and

WHEREAS, the City of Oakland periodically amends City Council Ordinance No. 13320 C.M.S. and updates its Master Fee Schedule to account for the various cost increases relating to municipal programs, services and activities; and

WHEREAS, the City has experienced and anticipates continuing increases in the costs to operate and maintain municipal government citywide; and

WHEREAS, City staff in the City Administrator's Office, Oakland Police Department, Revenue Management Bureau, Planning Bureau, Contracts and Compliance Division, and Office of the City Attorney (the "Departments") undertook analysis and evaluation of the revenue requirements to fund ongoing municipal services, programs and activities and the fee structure necessary to proportionately allocate the costs of providing these government services and programs; and

WHEREAS, the Agenda Report including Attachment 4 (herein the "Agenda Report") dated April 11, 2016, provided by the City Administrator's Office in support of the amendments to Ordinance No. 13320 C.M.S., was prepared and includes proposed fees and charges, and documentation supporting the estimated and reasonable costs for continuing to provide the various government services; and

WHEREAS, the investigations conducted by staff of the Departments reflected in the Agenda Report show that existing revenues are and will be insufficient to cover the current and projected costs of operating and maintaining identified City government activities, services and programs; and

WHEREAS, the fee modifications and additions proposed by the Departments, and the facts and analysis in support thereof are identified in the Agenda Report; and

WHEREAS, the Agenda Report shows that revenues derived from the proposed fees and charges will not exceed the funds required to provide the related government activities, services and programs of the Departments; and

WHEREAS, the Agenda Report shows that the amounts of the proposed fees and charges will not exceed the proportional cost of service provided or benefit attributable to each fee payer; and

WHEREAS, the Agenda Report shows that the proposed fees and charges for a product, benefit or service are imposed for a specific government service, benefit or product provided directly to the payer that is not provided to those not charged, and does not exceed the reasonable costs to the City of providing the service, benefit or product; and

WHEREAS, after duly noticed public meetings on April 26, 2016, the Public Safety Committee and the Finance Committee voted to recommend the proposal to the City Council; and

WHEREAS, the City Council held a duly noticed public hearing on May 3, 2016, to consider the proposed amendments and all interested parties were provided an ample opportunity to participate in said hearing and express their views; and

WHEREAS, based upon all written and oral reports and presentations to Council, including the Agenda Report and each of the Attachments thereto, the City Council finds and determines that the proposed modifications and additions to the Master Fee Schedule set forth herein are necessary to reimburse the City for the costs of performing the various municipal and regulatory functions, and that these fees do not exceed the proportional cost of the service or benefit attributable to the fee payer; and

WHEREAS, nothing in this Ordinance is intended to promote or condone the sale, distribution, possession or use of cannabis in violation of any applicable law, and compliance with the requirements of this Ordinance shall not provide a defense to criminal prosecution under any applicable law; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The City Council finds and determines the foregoing recitals are true and correct and are hereby incorporated herein as findings and determinations of the City Council.

SECTION 2. Amendment of the FY 2015-16 Master Fee Schedule. The FY 2015-16 Master Fee Schedule as set forth in Ordinance No. 13320 C.M.S., as amended, is hereby amended to modify and establish the fees assessed by the City Administrator's Office, Oakland Police Department, Revenue Management Bureau, Planning Bureau, Contracts and Compliance Division, and Office of the City Attorney as set forth in Attachment 4 attached hereto, incorporated into and made a part hereof.

SECTION 3. California Environmental Quality Act. The City Council independently finds and determines that this action is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) (general rule), and the Environmental Review Officer or designee shall file a Notice of Exemption with the appropriate agencies.

SECTION 4. Severability. The provisions of this Ordinance are severable, and if any section, subsection, sentence, clause, phrase, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is for any reason held to be invalid, preempted by state or federal law, or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. It is hereby declared to be the legislative intent of the City Council that this Ordinance would have been adopted had such provisions not

been included or such persons or circumstances been expressly excluded from its coverage.

SECTION 5. Fee Effective Date. The fees imposed by this Ordinance shall be effective on the date this Ordinance becomes final and effective.

SECTION 6. Ordinance Effective Date. Pursuant to Section 216 of the Charter of the City of Oakland, this Ordinance shall become effective immediately upon final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption by the Council of the City of Oakland.

SECTION 7. General Police Powers. This Ordinance is enacted pursuant to the City of Oakland's general police powers, including but not limited to Sections 106 of the Oakland City Charter and Section 7 of Article XI of the California Constitution.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES -BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND PRESIDENT GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

ORDINANCE AMENDING THE FY 2015-16 MASTER FEE SCHEDULE (ORDINANCE NO. 13320 C.M.S., AS AMENDED) TO MODIFY AND ESTABLISH PERMIT APPLICATION AND ANNUAL REGULATORY FEES FOR CITY OF OAKLAND LICENSED MEDICAL CANNABIS FACILITIES AND ADOPTING CEQA EXEMPTION FINDINGS

This ordinance amends the FY 2015-16 Master Fee Schedule to modify and establish permit application and annual regulatory fees for City of Oakland licensed medical cannabis facilities.

**City of Oakland
Master Fee Schedule**

Effective April 6, 2016

CITY ADMINISTRATOR

| FEE DESCRIPTION | CURRENT FEE | PROPOSED FEE | % CHANGE |
|--|--|---|----------|
| | (FY 2015-16) | (FY 2015-16) | |
| | FEE UNIT | FEE UNIT | |
| F. MEDICAL CANNABIS FACILITY DISPENSARY PERMITS | | | |
| 1 <u>Application Fee - Medical Cannabis Dispensary</u> | 8,800.00 Application | <u>3,644.00</u> Application | -58.59% |
| 2 <u>Application Fee - Non-Dispensary Medical Cannabis Facility</u> | | <u>2,474.00</u> Application | N/A |
| 3 <u>Application Fee - On-Site Consumption</u> | | <u>2,813.00</u> Application | N/A |
| 43 <u>Dispensary Renewal</u> | 500.00 Permit/Year | 500.00 Permit/Year | 0.00% |
| 3 <u>Dispensary with four (4) or more qualified patients or caregivers</u> | 60,000.00 Non-refundable-annual-regulatory fee | | N/A |
| 5 <u>Medical Cannabis Facility (> \$150,000 gross annual sales)</u> | | <u>11,173.00</u> Non-refundable annual regulatory fee | N/A |
| 6 <u>Medical Cannabis Facility (\$50,000-\$150,000 gross annual sales)</u> | | <u>5,586.00</u> Non-refundable annual regulatory fee | N/A |
| 7 <u>Medical Cannabis Facility (<\$50,000 gross annual sales)</u> | | <u>2,790.00</u> Non-refundable annual regulatory fee | N/A |
| 8 <u>On-Site Consumption</u> | | <u>1,628.00</u> Non-refundable annual regulatory fee | N/A |

CITY ADMINISTRATORS OFFICE
SPECIAL ACTIVITY PERMITS

MEDICAL CANNABIS

Application Fee for Medical Cannabis Permits

Calculations based on overall process with estimated 98 permits

| DEPT | CLASS | CLASS NAME | # Hours | Hourly Wage | RETIREMENT | FRINGE | OPEB | OVERHEAD | S+R+F+O+O | TOTAL COSTS |
|------|-------|--|---------|-------------|------------|----------|---------|----------|-----------|-------------|
| CAO | SS176 | Administrative Assistant to the City Administrator | 128 | \$ 29.65 | \$ 11.88 | \$ 20.83 | \$ 2.21 | \$ - | \$ 64.57 | \$ 8,265.30 |
| CAO | EM117 | Assistant to the City Administrator | 14 | \$ 67.96 | \$ 27.23 | \$ 47.74 | \$ 5.08 | \$ - | \$ 148.01 | \$ 2,072.17 |

| | | | | | | | | | | |
|--|--|----------|--|--|--|--|--|----------|--|--------------|
| | | | | | | | | | | \$ 10,337.47 |
| | | Supplies | | | | | | | | \$ 5,000.00 |
| | | | | | | | | Subtotal | | \$ 15,337.47 |

Total per permit baseline cost for staff time on overall application process

\$156.50

Calculations based on staff time evaluating individual permit

| DEPT | CLASS | CLASS NAME | # Hours | Hourly Wage | RETIREMENT | FRINGE | OPEB | OVERHEAD | S+R+F+O+O | TOTAL COSTS |
|-------|-------|--|---------|-------------|------------|-----------|----------|----------|-----------|-------------|
| CAO | EM117 | Assistant to the City Administrator | 9 | \$ 67.96 | \$ 27.23 | \$ 47.74 | \$ 5.08 | | \$ 148.01 | \$ 1,332.11 |
| FMA | AF022 | Tax Auditor II | 1 | \$ 40.54 | \$ 16.24 | \$ 28.47 | \$ 3.03 | | \$ 88.29 | \$ 88.29 |
| CAO | ET108 | City Administrator | 1 | \$ 150.00 | \$ 60.10 | \$ 105.36 | \$ 11.20 | | \$ 326.67 | \$ 326.67 |
| CAO | SS176 | Administrative Assistant to the City Administrator | 4 | \$ 29.65 | \$ 11.88 | \$ 20.83 | \$ 2.21 | | \$ 64.57 | \$ 258.29 |
| P & Z | TC110 | Graphic Delineator | 1 | \$ 30.72 | \$ 12.31 | \$ 21.58 | \$ 2.29 | \$ 6.61 | \$ 73.52 | \$ 73.52 |
| OPD | PS190 | Police Officer | 2 | \$ 51.03 | \$ 22.75 | \$ 34.37 | \$ 3.81 | \$ 7.84 | \$ 119.80 | \$ 239.60 |
| | | | | | | | | Subtotal | | \$ 2,318.47 |

Total Estimated Cost for Application For Medical Cannabis Permit

\$ 2,474.97

Additional Costs for Dispensaries only:

| | |
|------------------------|-------------------------|
| Notification | \$ 1,105.00 |
| Publication | \$ 65.00 |
| Total Additional Costs | (No Change) \$ 1,170.00 |

Total Estimated Cost of Application for Medical Cannabis Dispensary Permit

\$ 3,644.97

CITY ADMINISTRATORS OFFICE
SPECIAL ACTIVITY PERMITS

Annual Regulatory Fee for Medical Cannabis Facilities > \$150,000 in annual sales

| DEPT | CLASS | CLASS NAME | % FTE | STEP 5 * | 40.07% | | | 70.24% | | | 7.47% | | | TOTAL COSTS |
|---------|-------|--|-------|---------------|--------------|---------------|--------------|--------------|---------------|------|----------|-----------------|-----------------|-------------|
| | | | | | RETIREMENT | FRINGE | OPEB | RETIREMENT | FRINGE | OPEB | OVERHEAD | S+R+F+O+O | | |
| CAO | SS176 | Administrative Assistant to the City Administrator | 33% | \$ 57,819.72 | \$ 23,168.36 | \$ 40,612.57 | \$ 4,319.13 | | | | | \$ 125,919.78 | \$ 41,553.53 | |
| CAO | EM117 | Assistant to the City Administrator | 50% | \$ 132,531.48 | \$ 53,105.37 | \$ 93,090.11 | \$ 9,900.10 | | | | | \$ 288,627.07 | \$ 144,313.53 | |
| CAO | EM117 | Assistant to the City Administrator | 15% | \$ 132,531.48 | \$ 53,105.37 | \$ 93,090.11 | \$ 9,900.10 | | | | | \$ 288,627.07 | \$ 43,294.06 | |
| OCA | AL030 | Deputy City Attorney III | 10% | \$ 146,115.24 | \$ 58,548.38 | \$ 102,631.34 | \$ 10,914.81 | | | | | \$ 318,209.77 | \$ 31,820.98 | |
| Finance | AF022 | Tax Auditor II | 100% | \$ 79,053.00 | \$ 31,676.54 | \$ 55,526.83 | \$ 5,905.26 | | | | | \$ 172,161.62 | \$ 172,161.62 | |
| Finance | AF003 | Cashier | 60% | \$ 48,048.00 | \$ 19,252.83 | \$ 33,748.92 | \$ 3,589.19 | | | | | \$ 104,638.93 | \$ 62,783.36 | |
| CAO | AP153 | Contracts and Compliance Officer | 100% | \$ 92,394.36 | \$ 37,022.42 | \$ 64,897.80 | \$ 6,901.86 | | | | | \$ 201,216.44 | \$ 201,216.44 | |
| | | | | | | 44.58% | 67.36% | 7.47% | | | | | | |
| | | | | STEP 5 * | RETIREMENT | FRINGE | OPEB | OVERHEAD | S+R+F+O+O | | | | | |
| OPD | PS190 | Police Officer | 100% | \$ 111,447.00 | \$ 49,683.07 | \$ 75,070.70 | \$ 8,325.09 | \$ 17,118.26 | \$ 261,644.12 | | | \$ 261,644.12 | \$ 261,644.12 | |
| | | | | | | | | | | | | \$ 1,062,084.61 | \$ 1,062,084.61 | |

* Includes 4% COLA

City Administration Costs Only

| | |
|----------------------|---------------------|
| O & M | \$ 11,273.83 |
| Supplies & Equipment | \$ 17,000.00 |
| Continuing Education | \$ 3,000.00 |
| Vehicle usage | \$ 1,600.00 |
| TOTAL COST | \$ 32,873.83 |

Salaries & Administrative Costs

\$ 1,094,958.44

Total Based on 98 Permits

\$ 11,173.05

Annual Regulatory Fee for Medical Cannabis Facilities < or equal to \$50,000-\$150,00 in annual sales

| DEPT | CLASS | CLASS NAME | % FTE | STEP 5 * | 40.07% | | | 70.24% | | | 7.47% | | | TOTAL COSTS |
|---------|-------|--|-------|---------------|--------------|---------------|--------------|--------------|---------------|------|----------|---------------|---------------|-------------|
| | | | | | RETIREMENT | FRINGE | OPEB | RETIREMENT | FRINGE | OPEB | OVERHEAD | S+R+F+O+O | | |
| CAO | SS176 | Administrative Assistant to the City Administrator | 17% | \$ 57,819.72 | \$ 23,168.36 | \$ 40,612.57 | \$ 4,319.13 | | | | | \$ 125,919.78 | \$ 20,776.76 | |
| CAO | EM117 | Assistant to the City Administrator | 25% | \$ 132,531.48 | \$ 53,105.37 | \$ 93,090.11 | \$ 9,900.10 | | | | | \$ 288,627.07 | \$ 72,156.77 | |
| CAO | EM117 | Assistant to the City Administrator | 8% | \$ 132,531.48 | \$ 53,105.37 | \$ 93,090.11 | \$ 9,900.10 | | | | | \$ 288,627.07 | \$ 21,647.03 | |
| OCA | AL030 | Deputy City Attorney III | 5% | \$ 146,115.24 | \$ 58,548.38 | \$ 102,631.34 | \$ 10,914.81 | | | | | \$ 318,209.77 | \$ 15,910.49 | |
| Finance | AF022 | Tax Auditor II | 50% | \$ 79,053.00 | \$ 31,676.54 | \$ 55,526.83 | \$ 5,905.26 | | | | | \$ 172,161.62 | \$ 86,080.81 | |
| Finance | AF050 | Tax Enforcement Officer II | 30% | \$ 79,053.00 | \$ 31,676.54 | \$ 55,526.83 | \$ 5,905.26 | | | | | \$ 172,161.62 | \$ 51,648.49 | |
| Finance | AF003 | Cashier | 30% | \$ 48,048.00 | \$ 19,252.83 | \$ 33,748.92 | \$ 3,589.19 | | | | | \$ 104,638.93 | \$ 31,391.68 | |
| CAO | AP153 | Contracts and Compliance Officer | 50% | \$ 92,394.36 | \$ 37,022.42 | \$ 64,897.80 | \$ 6,901.86 | | | | | \$ 201,216.44 | \$ 100,608.22 | |
| | | | | | | 44.58% | 67.36% | 7.47% | | | | | | |
| | | | | STEP 5 * | RETIREMENT | FRINGE | OPEB | OVERHEAD | S+R+F+O+O | | | | | |
| OPD | PS190 | Police Officer | 50% | \$ 111,447.00 | \$ 49,683.07 | \$ 75,070.70 | \$ 8,325.09 | \$ 17,118.26 | \$ 261,644.12 | | | \$ 261,644.12 | \$ 130,822.05 | |
| | | | | | | | | | | | | \$ 531,042.31 | \$ 531,042.31 | |

* Includes 4% COLA

Salaries & Administrative Costs

\$ 547,475.23

Total Based on 98 Permits

\$ 5,586.48

Annual Regulatory Fee for Medical Cannabis Facilities < \$50,000 in annual sales

| DEPT | CLASS | CLASS NAME | % FTE | STEP 5 * | 40.07% | | | 70.24% | | | 7.47% | | | TOTAL COSTS |
|---------|-------|--|-------|---------------|--------------|---------------|--------------|--------------|---------------|------|----------|---------------|---------------|-------------|
| | | | | | RETIREMENT | FRINGE | OPEB | RETIREMENT | FRINGE | OPEB | OVERHEAD | S+R+F+O+O | | |
| CAO | SS176 | Administrative Assistant to the City Administrator | 8% | \$ 57,819.72 | \$ 23,168.36 | \$ 40,612.57 | \$ 4,319.13 | | | | | \$ 125,919.78 | \$ 10,073.58 | |
| CAO | EM117 | Assistant to the City Administrator | 13% | \$ 132,531.48 | \$ 53,105.37 | \$ 93,090.11 | \$ 9,900.10 | | | | | \$ 288,627.07 | \$ 36,078.38 | |
| CAO | EM117 | Assistant to the City Administrator | 4% | \$ 132,531.48 | \$ 53,105.37 | \$ 93,090.11 | \$ 9,900.10 | | | | | \$ 288,627.07 | \$ 10,823.52 | |
| OCA | AL030 | Deputy City Attorney III | 3% | \$ 146,115.24 | \$ 58,548.38 | \$ 102,631.34 | \$ 10,914.81 | | | | | \$ 318,209.77 | \$ 7,955.24 | |
| Finance | AF022 | Tax Auditor II | 25% | \$ 79,053.00 | \$ 31,676.54 | \$ 55,526.83 | \$ 5,905.26 | | | | | \$ 172,161.62 | \$ 43,040.41 | |
| Finance | AF050 | Tax Enforcement Officer II | 15% | \$ 79,053.00 | \$ 31,676.54 | \$ 55,526.83 | \$ 5,905.26 | | | | | \$ 172,161.62 | \$ 25,824.24 | |
| Finance | AF003 | Cashier | 15% | \$ 48,048.00 | \$ 19,252.83 | \$ 33,748.92 | \$ 3,589.19 | | | | | \$ 104,638.93 | \$ 15,695.84 | |
| Finance | AP153 | Contracts & Compliance Officer | 25% | \$ 92,394.36 | \$ 37,022.42 | \$ 64,897.80 | \$ 6,901.86 | | | | | \$ 201,216.44 | \$ 50,304.11 | |
| | | | | | | 44.58% | 67.36% | 7.47% | | | | | | |
| | | | | STEP 5 * | RETIREMENT | FRINGE | OPEB | OVERHEAD | S+R+F+O+O | | | | | |
| OPD | PS190 | Police Officer | 25% | \$ 111,447.00 | \$ 49,683.07 | \$ 75,070.70 | \$ 8,325.09 | \$ 17,118.26 | \$ 261,644.12 | | | \$ 261,644.12 | \$ 65,411.03 | |
| | | | | | | | | | | | | \$ 265,206.35 | \$ 265,206.35 | |

* Includes 4% COLA

Salaries & Administrative Costs

\$ 273,424.81

Total Based on 98 Permits

\$ 2,790.05

NOTICE AND DIGEST

ORDINANCE AMENDING THE FY 2015-16 MASTER FEE SCHEDULE (ORDINANCE NO. 13320 C.M.S., AS AMENDED) TO MODIFY AND ESTABLISH PERMIT APPLICATION AND ANNUAL REGULATORY FEES FOR CITY OF OAKLAND LICENSED MEDICAL CANNABIS FACILITIES AND ADOPTING CEQA EXEMPTION FINDINGS

This ordinance amends the FY 2015-16 Master Fee Schedule to modify and establish permit application and annual regulatory fees for City of Oakland licensed medical cannabis facilities.