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APPROVED TO FORM
DRAFT

INTRODUCED BY COUNCILMEMBER _____

CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.81, MEDICAL CANNABIS CULTIVATION FACILITY PERMITS, TO AMEND AND REFINE THE EQUITY PERMIT PROGRAM.

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 preserves local control in a number of ways: (1) it requires medical cannabis businesses to obtain both a state license and a local license or permit to operate legally in California, (2) it terminates the ability of a medical cannabis business to operate if its local license or permit is terminated, (3) it authorizes 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) it provides for civil penalties for unlicensed activities, and continues to apply applicable criminal penalties under existing law, and (5) it expressly protects 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 if the certain conditions set forth in AB 266 are met; 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 to protect 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, the City of Oakland's policy in the permitting of medical cannabis facilities encourages the hiring of high unemployment groups, including Oakland residents who were formerly incarcerated; and

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

WHEREAS, since the adoption of the Dispensary Equity Permit Program more accurate police arrest data has been gathered and reported to the Cannabis Regulatory Commission that reflects 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, on June 16, 2016, the Cannabis Regulatory Commission considered additional refinements and proposed amendments to the Dispensary Equity Permit Program for consideration by the City Council; and

WHEREAS, the City of Oakland wishes to make additional amendments to ensure that its medical cannabis regulatory framework is constructed to be competitive with other localities in retaining and attracting businesses, minimizes unintended negative consequences, and incentivizes equity in ownership, while accomplishing the goals of protecting public health and safety; and

WHEREAS, the City of Oakland wishes to provide material economic support to applicants qualifying for an Equity Program to reduce barriers to ownership and provides the greatest opportunity to succeed; and

WHEREAS, the City of Oakland wishes to ensure qualification criteria for the Equity Program is inclusive of all communities impacted by disparate enforcement of cannabis laws while avoiding arbitrary exclusion of Oakland residents who seek to operate cannabis businesses; and

WHEREAS, the six police beats selected for inclusion in the Dispensary Equity Permit Program was based on the data from one year, 2013, only;

WHEREAS, an analysis of more comprehensive historic arrest data provided by the Oakland Police Department, spanning a greater cross-section of recent years, including data for 2015 provided after May 2016, illustrates that heavily impacted beats can vary greatly between any given year, and supports expanding the number of police beats included in the Equity Program; 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

WHEREAS, in 2014, the OPD reported that from 2005 to 2014, the Oakland Police Department Beats 2X, 2Y, 6X, 7X, 19X, 20X, 21Y, 23X, 26Y, 27X, 27Y, 29X, 30X, 30Y, 31Y, 31Z, 32X, 32Y, 33X, 34X and 35X have been the subject of the highest number of arrests for marijuana-related offenses; and, 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.

C.

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.

D.

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.

E.

The primary purpose and intent of this chapter is to regulate 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.
- 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.
- E. "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."
- F. "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 forty-eight (48) ounces of dried cannabis and/or to plant, grow, harvest, dry, cure, grade or trim cannabis in an area greater than ninety-six (96) square feet of total area within one parcel of land.
- 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. "Entity In Good Standing" – is an existing cannabis business that is registered with the City of Oakland, has a City business license and is compliant with State and City of Oakland laws and regulations and permit requirements.

K.

"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.

L.

~~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.~~

M.

"Medical cannabis collective" as used only in this chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.

~~M.~~

N.

"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.

~~N.O.~~

"Ownership" with respect to:

- 1) non-profit entities, including without limitation a non-profit corporation or similar entity, a person has an ownership interest in the organization or entity if he or she is the executive director or a member of the board of directors,
- 2) worker-owned associations or cooperatives, a person has an ownership interest if he or she is a member of the worker-owned association or cooperative, and
- 3) for profit-entities, including without limitation corporations, partnerships, limited liability companies, a person has an ownership interest if he or she has an aggregate ownership interest (other than a security interest, lien, or encumbrance) of 20 percent or more in the entity. In addition, if the entity is publicly-traded, a person has an ownership interest if he or she is the executive director or a member of the board of directors.

P.

"Parcel of land" as used only in this chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.

~~O-Q.~~

"Permit" means an official document granted by the City that specifically authorizes a person or an entity to conduct commercial medical cannabis activity/activities in the City of Oakland.

R.

"Permittees" as used only in this chapter are individuals or businesses that have obtained a permit under this chapter to cultivate, distribute, manufacture, test or transport.

P.S.

"Primary caregiver" as used only in this chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.

Q.T.

"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.U.~~

"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.V.~~

"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.W.~~

"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.X.~~

"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.Y.~~

"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.

~~W.~~

~~"General Application permit" shall mean all applications issued under OMC Chapter 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 cultivate, distribute, manufacture, test or transport 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.

B.

The City Administrator shall issue, as detailed below, special business permits for medical cannabis cultivation, distributing, manufacturing, testing and transporting. All applicants shall pay any necessary fees including without limitation application fees, inspection fees and regulatory fees that may be required hereunder. Entities qualifying under Section 5.81.030 H might be eligible for partial or full deferment of some fees.

C.

All cultivation, distribution, manufacturing, testing and transporting 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 or without cause by the City Administrator subject to Section 5.81.120.

D.

Cultivation, distribution, manufacturing, testing, and transporting 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), unless those facilities move into the area after a permitted cannabis business was in operation at that location, 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 Chapter 5.81 shall be issued to an Oakland resident who meets the Equity Permit Program requirements set forth in Subsection 5.81.030(H) below. At no time shall the number of general application permits issued under Chapter 5.81 in total exceed the number of equity permits under Chapter 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:~~

~~a.~~

~~Resides for at least two (2) 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 (10) years, have been previously incarcerated for marijuana-related offense as a result of a conviction arising out of Oakland, California;~~

~~b.~~

~~Maintains not less than a fifty percent (50%) ownership in the dispensary applicant entity, partnership, limited liability corporation, collective, corporation, worker cooperative or other recognized ownership entity; and~~

~~2.~~

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

City desires to use its regulatory and land use powers to support several social and economic justice goals within the cannabis industry. Those applicants and licensees who meet and maintain the following criteria for the duration of the license, will be entitled to receive financial and other support services as detailed below.

a. Criteria. Applicant must meet one of the following criteria:

1. Business ownership: At least one of the owners has an Ownership interest in a non-profit, worker cooperative, or for profit business whose gross receipts for the past five years did not exceed \$250,000 per year, is an Oakland resident and:
 - i. has resided for at least five (5) years at any point prior to 2016 in Oakland Police Department Beats 2X, 2Y, 6X, 7X, 19X, 20X, 21Y, 23X, 26Y, 27X, 27Y, 29X, 30X, 30Y, 31Y, 31Z, 32X, 32Y, 33X, 34X and 35X, and has had an annual income for the past five years less than 80% of AMI; and/or
 - ii. has a California conviction for a marijuana-related offense within the last ten years prior to the date of application and whose annual income for the past five years has been less than 80% of AMI; and/or
 - iii. whose parent or spouse was incarcerated for marijuana related offense in California and whose annual income for the past five years has been less than 80% of AMI; and/or
 - iv. is a veteran and has had an annual income for the past five years less than 80% of AMI.

2. Small business that operated in Oakland for at least two consecutive years, whose gross receipts for the past five years did not exceed \$250,000 per year, that employs a minimum of twenty five percent (25%) Oakland residents (who must reside in Oakland Police Department Beats 2X, 2Y, 6X, 7X, 19X, 20X, 21Y, 23X, 26Y, 27X, 27Y, 29X, 30X, 30Y, 31Y, 31Z, 32X, 32Y, 33X, 34X and 35X), or proposes to employ a minimum of twenty five percent (25%) Oakland residents in the proposed permitted business (who must reside in Oakland Police Department Beats 2X, 2Y, 6X, 7X, 19X, 20X, 21Y, 23X, 26Y, 27X, 27Y, 29X, 30X, 30Y, 31Y, 31Z, 32X, 32Y, 33X, 34X and 35X), or that employs a minimum of twenty-five percent (25%) formerly incarcerated Oakland residents.

At the time that a business seeks its annual permit renewal, the applicant shall provide all documentation the City Administrator deems is necessary to determine if the business still meets at least one of the qualification criteria in Section 5.80.045 A.

Businesses that at the time of renewal do not meet criteria of Section 5.80.045.A for Equity Benefits, will be phased out of the program and financial benefits outlined in

Section 5.80.045.B. The City Administrator shall determine the phase out conditions at the time of renewal, and may allow such businesses to continue to receive benefits under Section 5.80.045.B.

Ineligibility due to change in nature of ownership. If a permitted business receiving benefits specified in 5.80.045.B changes or alters its ownership, or otherwise alters its structure, in a manner that alters its eligibility for the criteria under Section 5.80.045 A, it shall notify the City administrator in writing within 30 days. Upon written notice by a business of its potential ineligibility pursuant to this section, the City Administrator shall determine what, if any, phase-out conditions of the benefits received by the business under 5.80.045.B are appropriate, provided that a businesses that ceases to be eligible shall not continue to receive benefits for more than one year from the date of its written notification.

b. Benefits. Businesses that qualify under Section 5.80.045 A. shall, for no more than five years of operation following its receipt of a cannabis business permit, be eligible for the following benefits:

1. Eligibility for access to the Equity Business Development and Loan Fund.
2. Eligibility for expedited permit application review and issuance and renewal of annual cannabis businesses license.
3. Deferment of the annual regulatory fee for up to two years. The deferred payment and the second annual regulatory fee can be paid on a quarterly basis in the second and third years of operations. If the said entity goes out of business, the deferred fees will be forgiven provided documentation of dissemination of that entity.
4. Annual tax incentive payment equal to fifty (50) percent of local business payments made to the City by the cannabis businesses for up to two years after receiving an initial permit if the gross receipts are less than \$500,000.
5. Access to the job and business training programs sponsored by the City of Oakland.

c. Equity Business Development and Loan Fund uses:

- 1) Direct assistance to businesses qualifying under Equity Application Program:
 - a. No and low interest Loans
 - b. Business startup costs (start-up capital)
 - c. City of Oakland licenses fees if business orts out of the deferment of the fees.
 - d. Business consulting/Management training
 - e. Costs for individuals seeking to expunge their marijuana conviction criminal records

f. State licensing fee(s)

2) City Business development training programs, including but not limited to the creation of jobs and business training centers. (RFP process – for qualifying organizations to apply)

3) Lobbying the state on behalf of business owners with criminal records if allowed under state law as implemented in 2018 (reference state law)

d. Equity Business Development and Loan Fund financing:

- Portion of annual 5% Cannabis taxes and/or
- In 2017 only – Loan from the general fund that will be reimbursed from the future 5% Cannabis taxes
- 10 percent of City of Oakland cannabis gross receipts taxes
- Outside grants
- Annual Cannabis license fees

E. Environmental provisions to encourage Greenhouses, avoid excess energy and water consumption and provide an option for cultivation that does not require using all indoor warehouses.

- Administration to report back on places where greenhouses could go, identify publicly-owned sites that could be options, and potential leases for sites for greenhouses.
- Explore potential grow light impact fee, report back by January 1, 2018 on community feedback and recommendations for legislation or ballot Measure for implementation.
- Administrative regulations to promote utilization of water-saving technologies, especially for cultivation, including water catchment and re-use

F. The City Administrator will develop regulatory requirements for Cottage Businesses to implement new license type 1C in the City of Oakland created by AB 2516.

5.81.040 - Cultivation, distribution, testing and transporting of medical marijuana.

A.

Proposed cultivation, distribution, testing or transporting 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 facility permittee.

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. Applicants seeking to engage in the production of infused edible cannabis products may be located in permitted commercial kitchens located in commercial zones.

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 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.

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.

E. Criminal history or convictions of marijuana-related offenses alone shall not be a bar to applying or securing a cannabis license.

F. An Equity Plan. The City Administrator and/or her designee in collaboration with Race and Equity Department will develop detailed criteria for the Plan.

If permittees do not act upon their plans with specific and quantifiable results, the City reserves a right to reject any and all cannabis business license permit applications submitted by such permittee in the second or subsequent years for renewal.

G. Whether the applicant wishes to be considered for Equity program benefits. If so, applicants must provide plans to maintain the qualifying criteria in Section 5.81.030 H.

H. The City Administrator shall develop criteria for registering existing commercial cannabis activities established prior to January 1, 2016 which will allow City of Oakland to make a determination that the cannabis business was in operation and in good standing with the City of Oakland by January 1, 2016, for purposes of Business and Professions Code section 19321 (c) eligibility for priority processing of state license applications under the MCRSA and for the purposes of the September 1, 2016 deadline specified by Business and Professions Code Section 26054.2(b) of the Adult Use of Marijuana Act.

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 fifty percent (50%) Oakland residents and at least twenty-five percent (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 in Section 5.81.030 H.

5.

All employees shall be paid at minimum wage rates, or higher and provided leave and other benefits as required under OMC Chapter 5.92. 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.

D. A Community Beautification Plan to promote clean-ups, reduce illegal dumping and graffiti, general blight and promote beautification of the adjacent community, and which confirms Confirmation of the following criteria:

- a. That the proposed business will not negatively impact the area's function and character, or create problems of crime and loitering, and traffic problems and capacity;
- b. That the proposed business will not interfere with the movement of people along an important pedestrian street;
- c. That the proposed business will be of an architectural and visual quality and character which harmonizes with, or where appropriate enhances, the surrounding area;
- d. That the design will avoid unduly large or obtrusive signs, bleak unlandscaped parking areas, and an overall garish impression;
- e. That adequate litter receptacles will be provided where appropriate;
- h. That no cannabis or cannabis odors that constitute a nuisance shall be detectable by sight or smell outside of a permitted facility.

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.

B.

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 5.81 and/or gross receipts tax requirements.

C.

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.

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

E. 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 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 strictly 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.

5.81.101 - 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 thirty-two (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 thirty-two (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 two hundred sixteen (216) cannabis/marijuana plants within a maximum growing area of ninety-six (96) square feet indoor or sixty (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 (3) 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 forty-eight (48) ounces of dried cannabis, and/or more than ninety-six (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;
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 (6) 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 (6) 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.

Any cultivating, distributing, manufacturing, testing, or transporting without a permit under this chapter is expressly prohibited. No use that purports to have cultivated, distributed, manufactured, tested or transported 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 shall make an initial determination with an appeal to an independent hearing officer in writing within fourteen (14) days of the City Administrator's decision. 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: _____

16 NOV -9 PM 4:29

NOTICE AND DIGEST

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.81, MEDICAL CANNABIS CULTIVATION FACILITY PERMITS, TO REFINES THE EQUITY PERMIT PROGRAM.

This ordinance amends the City of Oakland's existing citywide medical cannabis regulations to refine equity permit program. .