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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.

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.

B.G. "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.

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

D.E. "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.

G.F. "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.

H.G. "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.

I.H. "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 ~~tThe 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.

FE. 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.