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OAKLAND

17 SEP 14 PM 3:44

# AGENDA REPORT

**TO:** City Council

**FROM:** Councilmember Kaplan

**SUBJECT:** Ordinance Clarifying Allowed Locations for Delivery Only Dispensaries and Expanding Allowable Areas for Non-Volatile Medical Cannabis Manufacturing and Cultivation

**DATE:** September 14, 2017

## RECOMMENDATION

Councilmember Kaplan recommends that the City Council adopt the following:

Ordinance Amending: 1) Oakland Municipal Code Chapter 5.80 to Clarify Allowed Locations for Delivery Only Medical Cannabis Dispensaries; and 2) Oakland Municipal Code Chapter 5.81 to Allow Cultivation, Distribution, Testing, Transportation, and Non-Volatile Manufacturing of Medical Cannabis Within Specified Commercial Zoning Districts; and Adopting California Environmental Quality Act (CEQA) Exemption Findings

## EXECUTIVE SUMMARY

As Oakland has begun the process of launching our 2017 cannabis permitting system, some issues have arisen which would benefit from clarification and amendment. This proposal would expand allowable locations for producing cannabis products, into areas identified as having substantial available locations which are well-suited to food production and similar cannabis preparation activities, in specified Community Commercial zones.

In addition, we seek to address concerns about excessive loss of retail space to other uses (such as delivery-only dispensaries), by incorporating limits on the use of retail storefront space for non-retail cannabis activities. This proposed Ordinance would exclude delivery-only dispensaries from the CN Neighborhood Center Commercial Zones and the D-BV Broadway Valdez District Commercial Zones of the City. It would require that delivery-only dispensaries not occupy more than 3,000 square feet of ground floor storefront space in a building facing a Commercially zoned principal street. It also clarifies that delivery-only dispensaries are not open to the public.

It would amend Oakland Municipal Code Section 5.81 to expand the allowable locations for cultivation of medical cannabis to include non-storefront buildings in the CC Community Commercial Zone, excluding any area such zoned on Broadway, Telegraph Avenue, or San Pablo Avenue.

Item: \_\_\_\_\_  
Public Safety Committee  
September 26, 2017

It would amend Oakland Municipal Code Section 5.81 to expand the allowable locations for manufacturing of medical cannabis products (that do not use volatile solvents) *including* the production of infused edible cannabis products and topicals to include: i) non-storefront buildings or non-storefront areas of buildings in the CC Community Commercial Zone; and ii) storefront areas in the CC Commercial Zone occupying no more than 35 feet of frontage facing the principal street (no such manufacturing operation occupying a storefront in the CC Commercial Zone shall be located within a 300-foot radius of any other such operation).

This proposal does **not** expand areas in which "volatile" manufacturing is allowed. It does somewhat expand areas in which lower-impact non-volatile manufacturing (such as brownie making) is allowed. We recognize that this proposal does not address all of the issues about cannabis permitting in Oakland, and it would be reasonable to also pursue additional strategies to address availability of spaces, especially for equity applicants, as well as industrial preservation issues, etc. However, we are pleased to present these amendments now to help remediate some of the concerns and support effective implementation.

Oakland already has a strong history and presence in the food industry, and can harness cannabis edibles production for local jobs and other benefits. Simultaneously, we can act to help protect and strengthen our retail storefronts.

None of the permits described in this proposed Ordinance shall require a Conditional Use Permit.

#### **BACKGROUND / LEGISLATIVE HISTORY**

On March 28, 2017, the City Council enacted medical cannabis ordinances centered around an Equity Permit Program that seeks to minimize disparities within the cannabis industry. These ordinances also directed City Staff to report back in July 2017 regarding the implementation of those ordinances and any issues that had arisen.

On July 18, 2017, City Council received City Staff's update on the implementation of the medical cannabis ordinances. During this update, Councilmember Kaplan presented a list of proposals addressing issues raised in Staff's cannabis permitting update and by members of the public. The Council referred Councilmember Kaplan's list with Councilmember Kalb's amendments to staff to review and return later.

The first legislative proposal on Councilmember Kaplan's scheduling motion was to allow cannabis cultivation and manufacturing within specified Commercial zoning districts. Councilmember Kaplan is proposing this amendment because the City of Oakland's location regulations for cannabis permitting currently prohibit certain sites for cannabis cultivation, manufacturing, and related uses, in sites which appear to be well-suited to these uses.

In addition, we have been approached about and discussed with staff, the concern about excessive use of retail storefront spaces by non-retail uses, (which, if excessive, could undermine retail attraction and retention efforts) and thus, have incorporated recommended amendments limiting such use into this proposal.

## ANALYSIS

### *Rationale for Limiting the Allowable Locations for Delivery-Only Dispensaries*

Delivery-only dispensaries provide medical cannabis to primary caregivers or qualified patients exclusively through delivery. They are not open to the public, and therefore do not attract commercial traffic to their facilities. The CN Neighborhood Center Commercial Zones and the D-BV Broadway Valdez District Commercial Zones of the City cater to foot traffic and retail that is open to the public. Because delivery-only dispensaries are not open to the public, they are excluded from these zones, to preserve the limited space for facilities that serve the commercial and community-serving purposes for which those zones were created.

This proposed ordinance requires that delivery-only dispensaries not occupy more than 3,000 square feet of ground floor storefront space in a building facing a Commercially zoned principal street to preserve this limited square footage for cannabis and non-cannabis facilities that are open to the public and perform on-site services for residents of the surrounding community. It also limits how many such uses may be located near one another to prevent loss of retail corridors.

### *Rationale for Expanding the Allowable Locations for Cultivation and Manufacturing of Medical Cannabis Products*

Since the City of Oakland cannabis permitting system has started, several sites which appear well-suited to cannabis production, and which are not near homes nor schools, have been eliminated from eligibility due to zoning regarding Commercial areas. This decision was made to protect retail storefronts from becoming production sites, but it currently excludes even buildings without storefronts, and with a history of industrial use, from being used for cannabis production, simply because they fall within a Commercial zone.

Amending the City of Oakland's location regulations for cannabis permitting to allow cannabis cultivation and manufacturing within specified Commercial zones, while adding limits on uses of retail storefront spaces, would make it easier for cannabis producers to find spaces in which to operate permitted, tax-paying facilities, thus creating local jobs and increased tax revenue for the City of Oakland.

This proposed Ordinance would allow for the **cultivation** of medical cannabis in non-storefront buildings in the CC Community Commercial Zone, excluding any area such zoned on Broadway, Telegraph Avenue, or San Pablo Avenue. This will expand allowable locations for cannabis cultivators, while preserving areas better suited for retail or redevelopment purposes.

This proposed Ordinance would allow for the **manufacturing** of edibles, topicals, and medical cannabis products (which do not use volatile solvents) in non-storefront buildings or non-storefront areas of buildings in the CC Community Commercial Zone. This will expand allowable locations without infringing on storefronts that are high in demand for cannabis and non-cannabis industry alike, and which are valuable for attracting visual attention to a business and its merchandise.

The production of items such as cannabis edibles does not require heavy machinery, loud noise, or industrial equipment, and thus, does not need to be limited to industrial areas. However, in this proposal these storefronts must not occupy more 35 feet of frontage facing the principal street, and are limited relative to one-another. In this way, the proposed Ordinance lessens the burden of finding allowable space for cannabis producers, but does not allow them to take over entire areas or push out retailers.

This proposed Ordinance will expand citywide permitting of regulated cannabis activities in a manner that protects the public health, safety and general welfare of the community, as cannabis cultivation and manufacturing facilities will still need to abide by all the various rules and regulations, pay taxes and have inspections.

### **FISCAL IMPACT**

Adding to the allowable locations for permitted cannabis businesses will help encourage more such businesses to be able to become permanent, tax paying businesses to the City of Oakland, and thus will likely create jobs and increase City of Oakland tax revenue. In addition, adding to the allowable locations for permitted cannabis businesses will likely prevent loss of industrial jobs by reducing pressure on cannabis cultivators and edibles producers to locate in buildings that could otherwise be used by traditional heavy industry. By reducing pressure on industrial zones which threatens to displace non-cannabis industry, this could help ensure that the City attracts and retains other industrial uses in Oakland. By incorporating protections for retail store-front spaces, we seek to prevent displacement of retail uses by non-retail uses.

### **PUBLIC OUTREACH / INTEREST**

Councilmember Kaplan received input for this legislation from numerous stakeholders concerned with the medical cannabis ordinances.

### **COORDINATION**

Councilmember Kaplan's office consulted with the City Administrator's Office, the Planning and Zoning Departments, and the City Attorney's Office in preparing this legislation.

### **SUSTAINABLE OPPORTUNITIES**

**Economic:** Please see "Fiscal Impact" statement above.

**Social Equity:** Per Staff's Status Report on the implementation of the medical cannabis ordinances, "most equity applicants have not identified a property to operate their business, while most general applicants have identified such a property." (July 18, 2017 Update on Implementation of Medical Cannabis Ordinances, Page 3.) By adding to the allowable locations for permitted cannabis production, this could help alleviate the pressure on the market and open potential locations for equity applicants to operate their businesses.

**ACTION REQUESTED OF THE CITY COUNCIL**

For questions regarding this report, please contact Laura Holtan, Policy and Legislative Director, at 510-238-7081.

Respectfully submitted,



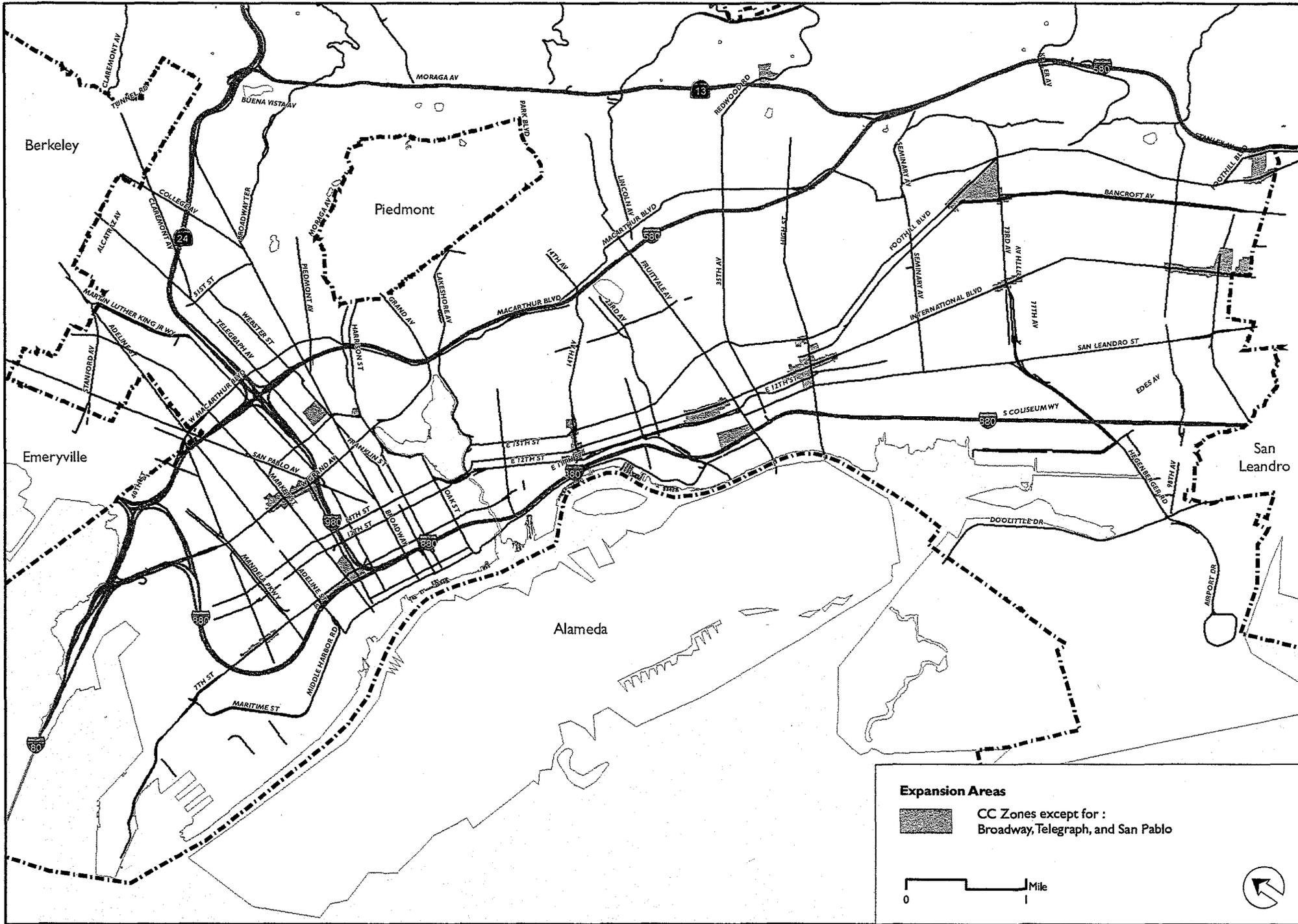
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Councilmember Rebecca Kaplan  
Oakland City Council

Reviewed by: Amadis Sotelo, Deputy City  
Attorney

Prepared by: Laura Holtan  
Policy Director for Councilmember Kaplan

Attachments (#): Expansion Area Map (Cultivation and Distribution) and Expansion Area Map (Manufacturing)



**EXPANSION AREA FOR CULTIVATION, DISTRIBUTION, TESTING & TRANSPORTING**

Planning & Building Department  
September 14, 2017



*Arnold S. Selt*

CITY ATTORNEY'S OFFICE

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OFFICE OF THE CITY CLERK  
OAKLAND

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## OAKLAND CITY COUNCIL

## ORDINANCE NO. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCILMEMBER REBECCA KAPLAN

**ORDINANCE AMENDING: 1) OAKLAND MUNICIPAL CODE CHAPTER 5.80 TO CLARIFY ALLOWED LOCATIONS FOR DELIVERY ONLY MEDICAL CANNABIS DISPENSARIES; AND 2) OAKLAND MUNICIPAL CODE CHAPTER 5.81 TO ALLOW CULTIVATION, DISTRIBUTION, TESTING, TRANSPORTATION, AND MANUFACTURING OF MEDICAL CANNABIS WITHIN SPECIFIED COMMERCIAL ZONING DISTRICTS; AND ADOPTING CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) EXEMPTION FINDINGS**

**WHEREAS**, the City of Oakland's location regulations for cannabis permitting currently prohibit certain sites for cannabis, cultivation, manufacturing and related uses, in sites which appear to be well-suited to these uses; and

**WHEREAS**, these sites which appear well-suited to cannabis production, and which are not near homes nor schools, are being eliminated from eligibility due to zoning regarding Commercial areas; and

**WHEREAS**, a decision which was made for the purpose of protecting retail storefronts from becoming production sites has been written in a way that excludes even buildings without storefronts, that have a history of industrial use, from being used for cannabis production, simply because it falls within a Commercial zone; and

**WHEREAS**, these restrictions also put more pressure on non-cannabis industrial uses, which we do not want to lose from Oakland, by putting cannabis facilities in more extreme direct competition for sites that could be used for more traditional, heavy-duty industry; and

**WHEREAS**, the production of items such as cannabis edibles does not require heavy machinery, and, in fact, is similar to non-cannabis food production and thus does not need to be so heavily limited; and

**WHEREAS**, amending the location requirements to allow cannabis cultivation and manufacturing within specified commercial districts would likely have a positive fiscal impact by making it easier to find space in which to operate a permitted, tax-paying facility, thus creating increased tax revenue and local jobs for the City of Oakland; and

**WHEREAS**, amending the location requirements to allow cannabis cultivation and manufacturing within specified commercial districts could also help reduce pressure on industrial zones that threatens to displace non-cannabis industry, and thus, could help ensure that the City of Oakland attracts and retains other industrial uses in Oakland; and

**WHEREAS**, cannabis cultivation and manufacturing facilities will still need to abide by all the various rules and regulations; and

**WHEREAS**, the City of Oakland wishes to amend Oakland Municipal Code Chapters 5.80 and 5.81 to continue and expand citywide regulation of medical cannabis activities in a manner that protects the public health, safety and general welfare of the community, and in the interest of patients who qualify to obtain, possess and use marijuana for medical purposes, consistent with the Compassionate Use Act of 1996, the Medical Marijuana Program Act, and the Medical Marijuana Regulation and Safety Act; and

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

**WHEREAS**, individuals arrested or previously incarcerated for cannabis related offenses face significant barriers to obtaining employment, financial aid, housing, and other economic opportunities; 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. Amendment of Section 5.80.010 of the Oakland Municipal Code.** Oakland Municipal Code Section 5.80.010 is hereby amended as follows. Additions are shown in underline and deletions are shown as ~~strikethrough~~.

#### **5.81.010 - Definitions**

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

- A. "Applicant" shall mean any individual or business entity that applies for a permit required by this chapter.
- B. "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 Section 11018, "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 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.
- C. "Cannabis dispensary" or "Dispensary" shall mean 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.
- D. "City Administrator" means the City Administrator of the City of Oakland or his/her designee.
- E. "Collective" means any association, affiliation, or establishment jointly owned and operated by its members, which facilitates the collaborative efforts of qualified patients and primary caregivers, as described in State law.
- F. "Commercial Zone" means any zone with a name that contains the words "Commercial Zone."
- GF. "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.
- HG. "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.
- IH. "Equity Applicant" shall mean an Applicant whose ownership/owner:
  - 1. Is an Oakland resident; and

2. Has an annual income at or less than 80 percent of Oakland Average Medium Income (AMI) adjusted for household size; and
3. Either (i) has lived in any combination of Oakland police beats 2X, 2Y, 6X, 7X, 19X, 21X, 21Y, 23X, 26Y, 27X, 27Y, 29X, 30X, 30Y, 31Y, 32X, 33X, 34X, 5X, 8X and 35X for at least ten of the last twenty years or (ii) was arrested after November 5, 1996 and convicted of a cannabis crime committed in Oakland, California.

Jl. "General Applicant" shall mean an Applicant other than an Equity Applicant.

K. "Industrial Zone" means any zone with a name that contains the words "Industrial Zone."

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

Mk. "Ownership" shall mean the individual or individuals who:

- (i) with respect to for-profit entities, including without limitation corporations, partnerships, limited liability companies, has or have an aggregate ownership interest (other than a security interest, lien, or encumbrance) of 50 percent or more in the entity.
- (ii) with respect to not for-profit entities, including without limitation a non-profit corporation or similar entity, constitutes or constitute a majority of the board of directors.
- (iii) with respect to collectives, has or have a controlling interest in the collective's governing body.

Nl. "Parcel of land" means a single contiguous parcel of real property as identified by the county assessor's parcel number (APN), which is used to identify real property and its boundaries for legal purposes.

Om— "Primary caregiver" shall have the same definition as California Health and Safety Code Section 11362.7, as may be amended, 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).

P. "Principal street" means on interior lots, the street that abuts a lot. On corner lots and through lots, the principal street is the street that abuts the lot that is highest on the street hierarchy as defined in the Land Use and Transportation Element of the General Plan. Where streets have the same street hierarchy, the principal street shall be determined by the Zoning Administrator based on the street widths, traffic capacity, land uses, transit activity, bicycle and pedestrian uses, and control of intersections.

Qn. "Qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., as may be amended, which, as of March 2016, means a person who is entitled to the protections of California Health and 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.

- RO. "Smoking" shall have the same definition as Oakland Municipal Code Chapter 8.30, which as of March 2017 means "inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, weed, or other combustible substance."
- SP. "Youth Center" means a community or recreation facility that primarily serves persons eighteen (18) years or younger.

**SECTION 3. Amendment of Section 5.80.020 of the Oakland Municipal Code.** Oakland Municipal Code Section 5.80.020 is hereby amended as follows. Additions are shown in underline and deletions are shown as ~~strikethrough~~.

**5.80.020 - Business permit and application required.**

- 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, maintain, participate therein, or to cause or 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 Chapter 8.46 must abide by the same requirements imposed herein on dispensaries.
- B. This Chapter, and the requirement to obtain a business permit, do not apply to the individual possession or cultivation of medical marijuana for personal use, nor does this Chapter and such requirement apply to the usage, distribution, cultivation or processing of medical marijuana by qualified patients or primary caregivers when such group is of three (3) or fewer individuals, and distributing, cultivating or processing the marijuana from a residential unit or a parcel of land. Such associations shall not be required to obtain a permit under Chapter 5.80, but must comply with applicable State law.
- C. The City Administrator shall issue no more than eight new valid permits for the operation of dispensaries in the City per calendar year, with a minimum of half of the dispensary permits issued each calendar year issued to Equity Applicants. Delivery only dispensaries shall not be subject to these limits. Dispensary permits shall be issued through an equity permit process done in collaboration with the department of race and equity.
- D. In addition to the requirements specified in Section 5.02.020 for business permits, the application for a dispensary permit 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 six hundred (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), another dispensary or

youth center, unless the school or youth center moved into the area after the dispensary was issued a permit under this Cchapter. The distance between facilities shall be measured via path of travel from the closest door of one facility to the closest door of the other facility. 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. The proposed delivery only dispensary must also be located in a Commercial or Industrial Zone, excluding the CN Neighborhood Center Commercial Zones and the D-BV Broadway Valdez District Commercial Zones, or their equivalent as may be amended, of the City. Delivery only dispensaries shall not occupy more than three thousand (3,000) square feet of ground floor storefront space in a building facing a Commercially zoned principal street.

2. A plan of operations that will describe how the dispensary or delivery only dispensary will operate consistent with State law and the provisions of this Cchapter, including but not limited to:
3. 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 Cchapter, the City's Municipal Code and Zoning Code.

**SECTION 4. Amendment of Section 5.80.040 of the Oakland Municipal Code.** Oakland Municipal Code Section 5.80.040 is hereby amended as follows. Additions are shown in underline and deletions are shown as ~~strikethrough~~.

**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 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 fifty percent (50%) Oakland residents and twenty-five percent (25%) Oakland residents in census tracts identified by the City Administrator as having high unemployment rates or low household incomes. The City Administrator's guidelines and regulations may provide details of these requirements, including for phasing in this requirement for existing facilities.

- D. Dispensaries and delivery only dispensaries that hire and retain formerly incarcerated current 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 as prescribed by state law 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. No cannabis odors shall be detectable outside of the permitted facility.
- H. Delivery only facilities permitted under this Chapter shall not be open to the public.

**SECTION 5. Amendment of Section 5.80.050 of the Oakland Municipal Code.** Oakland Municipal Code Section 5.80.050 is hereby amended as follows. Additions are shown in underline and deletions are shown as ~~strikethrough~~.

- A. Unless exempted under OMC Section 5.80.045, in addition to the dispensary application fee, the dispensary shall pay an annual regulatory fee. The dispensary shall post a copy of the dispensary permit and onsite consumption permit (if applicable) issued pursuant to this chapter in a conspicuous place in the premises approved as a dispensary at all times.
- B. The fees referenced herein shall be set by the Master Fee Schedule, as modified from time to time.

**SECTION 6. Amendment of Section 5.81.020 of the Oakland Municipal Code.** Oakland Municipal Code Section 5.81.020 is hereby amended as follows. Additions are shown in underline and deletions are shown as ~~strikethrough~~.

**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 individual or business entity 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. "Commercial Zone" means any zone with a name that contains the words "Commercial Zone."
- HG. "Cultivate" as used only in this chapter shall mean to plant, grow, harvest, dry, cure, grade or trim cannabis in an area greater than two-hundred and fifty square feet of total area within one parcel of land.
- IH. "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.
- JJ. "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.
- KJ. "Equity Applicant" shall mean an Applicant whose ownership/owner:
1. Is an Oakland resident; and
  2. Has an annual income at or less than 80 percent of Oakland Average Medium Income (AMI) adjusted for household size; and
  3. Either (i) has lived in any combination of Oakland police beats 2X, 2Y, 6X, 7X, 19X, 21X, 21Y, 23X, 26Y, 27X, 27Y, 29X, 30X, 30Y, 31Y, 32X, 33X, 34X, 5X, 8X and 35X for at least ten of the last twenty years or (ii) was arrested after November 5, 1996 and convicted of a cannabis crime committed in Oakland.
- LK. "General Applicant" shall mean an Applicant other than an Equity Applicant.
- M. "Industrial Zone" means any zone with a name that contains the words "Industrial Zone."
- NE. "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.
- OM. "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.
- PN. "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.
- QQ. "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.
- RP. "Ownership" as used only in this chapter shall mean the individual or individuals who:

- (i) with respect to for-profit entities, including without limitation corporations, partnerships, limited liability companies, has or have an aggregate ownership interest (other than a security interest, lien, or encumbrance) of 50 percent or more in the entity.
- (ii) with respect to not for-profit entities, including without limitation a non-profit corporation or similar entity, constitutes or constitute a majority of the board of directors.
- (iii) with respect to collectives, has or have a controlling interest in the collective's governing body.

SQ. "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.

TR "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.

US. "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.

V. "Principal street" means on interior lots, the street that abuts a lot. On corner lots and through lots, the principal street is the street that abuts the lot that is highest on the street hierarchy as defined in the Land Use and Transportation Element of the General Plan. Where streets have the same street hierarchy, the principal street shall be determined by the Zoning Administrator based on the street widths, traffic capacity, land uses, transit activity, bicycle and pedestrian uses, and control of intersections.

WF. "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.

X. "Storefront" means the facade or entryway of a retail space typically located adjacent to the sidewalk on the ground floor of a commercial building, and including one or more display windows. A "storefront" functions to attract visual attention to a business and its merchandise.

YU. "Testing" as used only in this chapter shall mean the conducting of analytical testing of cannabis, cannabis-derived products, hemp, or hemp-derived products.

Z1V. "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.

Z2W. "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.

Z3X. "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.

Z4Y. "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.

**SECTION 7. Amendment of Section 5.81.030 of the Oakland Municipal Code.** Oakland Municipal Code Section 5.81.030 is hereby amended as follows. Additions are shown in underline and deletions are shown as ~~strikethrough~~.

**5.81.030 - Business permit and application 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 Cchapter.
- B. The City Administrator shall issue, as detailed below, special business permits for medical cannabis cultivation, distributing, manufacturing, testing and transporting. All General Applicants shall pay any necessary fees including without limitation application fees, inspection fees and regulatory fees that may be required hereunder.
- 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.
- 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 the school moved into the area after the proposed use was issued a permit under this Chapter. The distance between facilities shall be measured via path of travel from the closest door of one facility to the closest door of the other facility.
- G. An applicant for a permit under this Cchapter shall not be disqualified from receiving a permit on the ground that the applicant also operates or intends to operate in an additional cannabis related field, such as a dispensary.

**SECTION 8. Amendment of Section 5.81.040 of the Oakland Municipal Code.** Oakland Municipal Code Section 5.81.040 is hereby amended as follows. Additions are shown in underline and deletions are shown as ~~strikethrough~~.

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

- A. Proposed cultivation, distribution, testing or transporting locations shall be in: i) non-storefront buildings in the CC Community Commercial Zone, with the exception of any area such zoned on Broadway, Telegraph Avenue, or San Pablo Avenue; and ii) areas where "light manufacturing industrial," "research and development industrial," 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 that are compliant with building and fire codes.
- C. The maximum size of any areas of cultivation shall not exceed any limitations or restrictions set forth in State law.

**SECTION 9. Amendment of Section 5.81.045 of the Oakland Municipal Code.** Oakland Municipal Code Section 5.81.045 is hereby amended as follows. Additions are shown in underline and deletions are shown as ~~strikethrough~~

**5.81.045 - Manufacturing of medical marijuana.**

- A. Proposed locations for manufacturing of medical cannabis products using nonvolatile solvents shall be in: i) non-storefront buildings or non-storefront areas of buildings in the CC Community Commercial Zone; ii) storefront areas in the CC Commercial Zone occupying no more than thirty-five (35) feet of frontage facing the principal street. No manufacturing operation under this provision occupying a storefront in the CC Commercial Zone shall be located within a 300-foot radius of any other such operation; iii) areas where "custom manufacturing industrial," or its equivalent use, is permitted by right under the Oakland Planning Code, as may be amended;—or iv) 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 and topicals may be located in the same locations allowed above for the manufacturing of medical cannabis products using nonvolatile solvents—commercial zones where commercial kitchens are allowed.

- 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.

**SECTION 10. 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), and 15301 (existing facilities), 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 11. 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 12. 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 13. 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, GIBSON MCELHANEY,  
GUILLÉN, KALB, KAPLAN AND PRESIDENT REID

NOES -

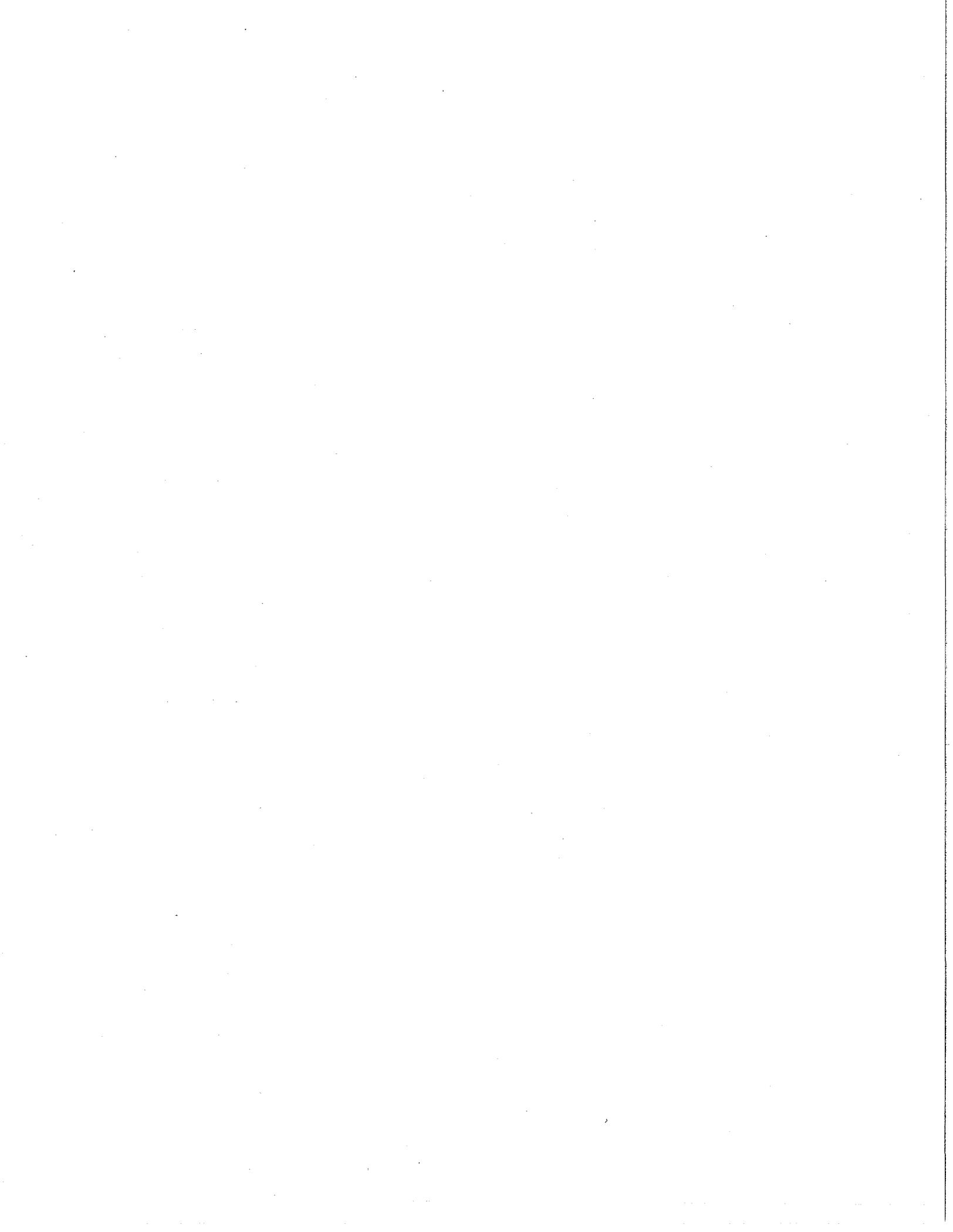
ABSENT -

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: 1) OAKLAND MUNICIPAL CODE CHAPTER 5.80 TO CLARIFY ALLOWED LOCATIONS FOR DELIVERY ONLY MEDICAL CANNABIS DISPENSARIES; AND 2) OAKLAND MUNICIPAL CODE CHAPTER 5.81 TO ALLOW CULTIVATION, DISTRIBUTION, TESTING, TRANSPORTATION, AND MANUFACTURING OF MEDICAL CANNABIS WITHIN SPECIFIED COMMERCIAL ZONING DISTRICTS; AND ADOPTING CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) EXEMPTION FINDINGS**

This ordinance amends Oakland Municipal Code (OMC) Chapter 5.80 by clarifying that delivery only dispensaries shall not be open to the public and must also be located in a Commercial or Industrial Zone, excluding the CN Neighborhood Center Commercial Zones and the D-BV Broadway Valdez District Commercial Zones, or their equivalent as may be amended, of the City. It further clarifies that delivery only dispensaries shall not occupy more than three thousand (3,000) square feet of ground floor storefront space in a building facing a commercially zoned principal street.

Currently, OMC section 5.81.040 allows cultivation, distribution, testing and transporting in areas where "light manufacturing industrial," "research and development" or their equivalent use, is permitted by right under the Planning Code. The ordinance expands the locations where such uses are authorized to include non-storefront buildings in the CC Community Commercial Zone, with the exception of any area such zoned on Broadway, Telegraph Avenue, or San Pablo Avenue.

Currently, OMC section 5.81.045.A allows manufacturing using nonvolatile solvents in areas where "custom manufacturing industrial" or its equivalent use, is permitted by right under the Planning Code. The ordinance expands the locations where such uses are authorized to include: (a) non-storefront buildings or non-storefront areas of buildings in the CC Community Commercial Zone; and (b) storefront areas in the CC Commercial Zone occupying no more than thirty-five (35) feet of frontage facing the principal street. The ordinance further provides that no manufacturing operation under this provision occupying a storefront in the CC Commercial Zone shall be located within a 300-foot radius of any other such operation.