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# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Greg Minor  
Assistant to the City  
Administrator

**SUBJECT:** Amendments to Medical Cannabis  
Ordinances Supplemental Report

**DATE:** April 11, 2016

City Administrator Approval

Date:

4/14/16

## RECOMMENDATION

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

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

## REASON FOR SUPPLEMENTAL

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

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Finance and Public Safety Committee  
April 26, 2016

## **ANALYSIS**

### **I. Committee Inquiries**

#### **A. Local Hiring**

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

#### **B. Additional Buffers**

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

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

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

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

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

C. Security

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

D. Onsite Consumption

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

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

E. Industrial Tenant Improvement Program

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

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

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

F. Administrative Discretion

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

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

G. Residential Proximity

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

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

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

H. Access to Banking

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

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

## II. Additions and Modifications

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

### A. Master Fee Amendments

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

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

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

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

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

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

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

B. Resolution Authorizing Fund Transfer to Building and Fire Departments

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

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

C. Defining and Removing "Youth Center"

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

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

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

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

**FISCAL IMPACT**

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

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

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

**PUBLIC OUTREACH**

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

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

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

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

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

#### **ACTION REQUESTED OF THE CITY COUNCIL**

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

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



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

Respectfully submitted,



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GREG MINOR  
Assistant to the City Administrator

Reviewed by:  
Joe DeVries, Assistant to the City Administrator

Attachments:

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

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

APPROVED AS TO FORM

  
CITY ATTORNEY'S OFFICE

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

2016 APR 14 PM 6:25

## OAKLAND CITY COUNCIL

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

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### 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

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**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**, 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; 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 eChapter, 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 Guidelines State law.

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

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

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

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

IH. “Primary caregiver” shall have the same definition as California Health and Safety Code Section 11362.7, and as may be amended, and which, as of March 2016, defines “Primary Caregiver” as an individual designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include a licensed health care facility, a residential care facility, a hospice, or a home health agency as allowed by California Health and Safety Code Section 11362.7(d)(1)-(3), any of the following:

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

~~agency, if designated as a primary caregiver by that qualified patient or person with an identification card.~~

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

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

~~II. "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.

**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.~~

~~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.~~

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.

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. 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. 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 or 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 or 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.

**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.

#### **5.80.90 – 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 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 eChapter 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 eChapter. In order to ascertain the business tax, registration or permit fees due under this eChapter, 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 eChapter, and administrative subpoenas shall be enforced pursuant to applicable law.

**SECTION 4. 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 5. 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 6. Ordinance Effective Date.** Pursuant to Section 216 of the Charter of the City of Oakland, this Ordinance shall become effective immediately upon final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption by the Council of the City of Oakland.

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

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

Date of Attestation: \_\_\_\_\_

## **NOTICE AND DIGEST**

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

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



FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

APPROVED AS TO FORM

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

2016 APR 14 PM 6:25

  
CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**WHEREAS**, these activities have caused and continue to cause ongoing adverse impacts that can be harmful to the health, safety and welfare of Oakland residents and constitute a public nuisance, including without limitation damage to buildings containing indoor medical cannabis cultivation facilities, including improper and dangerous electrical alterations and use, inadequate ventilation leading to mold and mildew, increased frequency of home-invasion robberies, and similar crimes; and

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

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

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

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

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

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

**WHEREAS**, after a duly noticed public meetings on February 9, 2016, and April 26, 2016, the Public Safety Committee voted to recommend the proposal to the City Council; and

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

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

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

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

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

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

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

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

**5.81.010 – Findings and purpose.**

A. The City Council, based on evidence presented to it in the proceedings leading to the adoption of this Chapter hereby finds that the lack of regulation of medical cannabis facilities other than medical cannabis dispensaries, including unregulated cultivation, manufacturing and processing of medical cannabis in the City has caused and is causing ongoing impacts to the community. These impacts include damage to buildings containing indoor medical cannabis cultivation facilities, including improper and dangerous electrical alterations and use, inadequate ventilation leading to mold and mildew, increased frequency of home-invasion robberies and similar crimes, and that many of these impacts have fallen disproportionately on residential neighborhoods. These impacts have also created an increase in response costs, including code enforcement, building, fire, and police staff time and expenses.

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

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

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

ED. The primary purpose and intent of this Chapter is to regulate the cultivation and processing of non-dispensary medical cannabis facilities, including the cultivation of

medical cannabis, in a manner that protects the public health, safety and welfare of the community, as authorized by the Medical Marijuana Regulation and Safety Act.

### **5.81.020 – Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 5.81.030 – Permit required.

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

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

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

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

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

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

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

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

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

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

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

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

**5.81.045 – Manufacturing of medical marijuana.**

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

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



**5.81.050 – Application for permit.**

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

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

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

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

**5.81.070 – Operating and performance standards.**

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

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

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

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

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

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

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

6. Permitted facilities must implement a track and trace program that records the movement of medical cannabis and medical cannabis products in their custody and make these records available to the City Administrator upon request.

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

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

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

AB. The City Administrator shall be provided access to any and all financial information at any time, as needed to conduct an audit of the permittees under this Chapter to verify tax compliance under Chapter ~~5-80~~ 5.81 and/or gross receipts tax requirements.

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

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

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

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

**5.81.100 – Liability and indemnification.**

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

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

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

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

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

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

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

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

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

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

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

**5.81.110 – Prohibited operations.**

A. AllAny cultivating, distributing, processing, and manufacturing, testing, or transporting facilities that do not have without a permit under this Chapter are expressly prohibited. No use that purports to have cultivated, distributed, manufactured, tested or transported or processed marijuana shall be deemed to have been a legally established use under the provisions of the Oakland Planning Code, the Oakland Municipal Code, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim a vested right, legal nonconforming or other similar status. However, for the limited purpose of state licensing priority, operators may submit a petition to the City Administrator's Office for a determination of good standing prior to January 1, 2016.

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

#### **5.81.120 – Revocation, suspension and a Appeals.**

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

**SECTION 4. 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 5. 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 6. Ordinance Effective Date.** Pursuant to Section 216 of the Charter of the City of Oakland, this Ordinance shall become effective immediately upon final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption by the Council of the City of Oakland.

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

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

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

Date of Attestation: \_\_\_\_\_

## NOTICE AND DIGEST

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

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

Including Attachment 4 Thereto

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2016 APR 14 PM 6: 25

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

APPROVED AS TO FORM



OFFICE OF THE CITY ATTORNEY

## OAKLAND CITY COUNCIL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

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

Date of Attestation: \_\_\_\_\_

## NOTICE AND DIGEST

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

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

**City of Oakland  
Master Fee Schedule**

*Effective April 6, 2016*

**CITY ADMINISTRATOR**

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

CITY ADMINISTRATORS OFFICE  
SPECIAL ACTIVITY PERMITS

**MEDICAL CANNABIS**

Application Fee for Medical Cannabis Permits

Calculations based on overall process with estimated 98 permits

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

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

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

\$156.50

Calculations based on staff time evaluating individual permit

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

Total Estimated Cost for Application For Medical Cannabis Permit

\$ 2,474.97

Additional Costs for Dispensaries only:

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

Total Estimated Cost of Application for Medical Cannabis Dispensary Permit

\$ 3,644.97

CITY ADMINISTRATORS OFFICE  
SPECIAL ACTIVITY PERMITS

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

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

\* Includes 4% COLA

City Administration Costs Only

O & M	\$ 11,273.83
Supplies & Equipment	\$ 17,000.00
Continuing Education	\$ 3,000.00
Vehicle usage	\$ 1,600.00
<b>TOTAL COST</b>	<b>\$ 32,873.83</b>

Salaries & Administrative Costs

\$ 1,094,958.44

Total Based on 98 Permits

\$ 11,173.05

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

DEPT	CLASS	CLASS NAME	% FTE	STEP 5 *	40.07%			70.24%			7.47%			TOTAL COSTS
					RETIREMENT	FRINGE	OPEB	OVERHEAD	S+R+F+O+O	RETIREMENT	FRINGE	OPEB	OVERHEAD	
CAO	SS176	Administrative Assistant to the City Administrator	17%	\$ 57,819.72	\$ 23,168.36	\$ 40,612.57	\$ 4,319.13					\$ 125,919.78	\$ 20,776.76	
CAO	EM117	Assistant to the City Administrator	25%	\$ 132,531.48	\$ 53,105.37	\$ 93,090.11	\$ 9,900.10					\$ 288,627.07	\$ 72,156.77	
CAO	EM117	Assistant to the City Administrator	8%	\$ 132,531.48	\$ 53,105.37	\$ 93,090.11	\$ 9,900.10					\$ 288,627.07	\$ 21,647.03	
OCA	AL030	Deputy City Attorney III	5%	\$ 146,115.24	\$ 58,548.38	\$ 102,631.34	\$ 10,914.81					\$ 318,209.77	\$ 15,910.49	
Finance	AF022	Tax Auditor II	50%	\$ 79,053.00	\$ 31,676.54	\$ 55,526.83	\$ 5,905.26					\$ 172,161.62	\$ 86,080.81	
Finance	AF050	Tax Enforcement Officer II	30%	\$ 79,053.00	\$ 31,676.54	\$ 55,526.83	\$ 5,905.26					\$ 172,161.62	\$ 51,648.49	
Finance	AF003	Cashier	30%	\$ 48,048.00	\$ 19,252.83	\$ 33,748.92	\$ 3,589.19					\$ 104,638.93	\$ 31,391.68	
CAO	AP153	Contracts and Compliance Officer	50%	\$ 92,394.36	\$ 37,022.42	\$ 64,897.80	\$ 6,901.86					\$ 201,216.44	\$ 100,608.22	
						44.58%	67.36%	7.47%						
				STEP 5 *	RETIREMENT	FRINGE	OPEB	OVERHEAD	S+R+F+O+O					
OPD	PS190	Police Officer	50%	\$ 111,447.00	\$ 49,683.07	\$ 75,070.70	\$ 8,325.09	\$ 17,118.26	\$ 261,644.12			\$ 261,644.12	\$ 130,822.06	
												\$ 531,042.31		

\* Includes 4% COLA

Salaries & Administrative Costs

\$ 547,475.23

Total Based on 98 Permits

\$ 5,586.48

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

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

\* Includes 4% COLA

Salaries & Administrative Costs

\$ 273,424.81

Total Based on 98 Permits

\$ 2,790.05

## NOTICE AND DIGEST

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

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



CITY ADMINISTRATORS OFFICE  
SPECIAL ACTIVITY PERMITS

**MEDICAL CANNABIS**

On-site Consumption Permit Application Fee - 1st time only

DEPT	CLASS	CLASS NAME	# Hours	Hourly Wage	RETIREMENT	FRINGE	OPEB	OVERHEAD	S+R+F+O+O	TOTAL COSTS
P & Z	AP275	Planner III	3	\$ 46.00	\$ 18.43	\$ 32.31	\$ 3.44	\$ 9.90	\$ 110.08	\$ 330.25
CAO	SS176	Administrative Assistant to the City Administrator	2	\$ 29.65	\$ 11.88	\$ 20.83	\$ 2.21	\$ -	\$ 64.57	\$ 129.15
CAO	EM117	Assistant to the City Administrator	8	\$ 67.96	\$ 27.23	\$ 47.74	\$ 5.08	\$ -	\$ 148.01	\$ 1,184.10
										\$ 1,643.49

Administrative Fees

Notification

\$ 1,105.00

Publication

\$ 65.00

\$ 1,170.00

Total Application Cost

\$ 2,813.49

On Site Consumption Annual Regulatory Fee for Medical Cannabis

DEPT	CLASS	CLASS NAME	# Hours	Hourly Wage	RETIREMENT	FRINGE	OPEB	OVERHEAD	S+R+F+O+O	TOTAL COSTS
CAO	EM117	Assistant to the City Administrator	5	\$ 67.96	\$ 27.23	\$ 47.74	\$ 5.08		\$ 148.01	\$ 740.06
CAO	SS176	Administrative Assistant to the City Administrator	5	\$ 29.65	\$ 11.88	\$ 20.83	\$ 2.21		\$ 64.57	\$ 322.86
OCA	ALO30	Deputy City Attorney III	2	\$ 74.93	\$ 30.02	\$ 52.63	\$ 5.60		\$ 163.18	\$ 326.37
OPD	PS190	Police Officer	2	\$ 51.03	\$ 22.75	\$ 34.37	\$ 3.81	\$ 7.84	\$ 119.80	\$ 239.60

Total Annual Regulatory Cost

\$ 1,628.89

Applicant will pay all costs associated with Fire, Building, Plumbing & Electrical Inspection Permits

## PROJECTED NUMBER OF PERMITS

Dispensary	16
Cultivators	30
Delivery	12
Distributors	5
Transporters	5
Testing	2
Manufacturers	
Volatile	8
Non-volatile	20

**TOTAL**                      **98**



Office of the City Attorney

**FILED**  
OFFICE OF THE CITY CLERK  
OAKLAND

2016 APR 14 PM 6:25

# OAKLAND CITY COUNCIL

## RESOLUTION No. \_\_\_\_\_ C.M.S.

**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO TRANSFER FOUR HUNDRER THOUSAND DOLLARS (\$400,000) OF MEDICAL CANNABIS COOPERATIVE PROJECT (A242610) FUNDS WITHIN THE GENERAL PURPOSE FUND (1010) FROM THE OFFICE OF THE CITY ADMINISTRATOR TO THE FIRE DEPARTMENT AND THE PLANNING AND BUILDING DEPARTMENT**

**WHEREAS**, one-time prior year project funds are available in the General Purpose Fund (1010), Office of the City Administrator (02111), (Medical) Cannabis Cooperative Project (A252610) totaling Four Hundred Thousand Dollars (\$400,000.00); and

**WHEREAS**, ensuring licensed medical cannabis facilities are compliant with Building and Fire Codes is paramount to protecting the public's health and safety; and

**WHEREAS**, in order to ensure Building and Fire Code compliance appropriate building and fire inspection staff is needed; and

**WHEREAS**, the City Administrator recommends using one-time Medical Cannabis project funds to add building and fire inspection and administrative staff assigned to medical cannabis regulation for a limited duration to accommodate the anticipated expansion of licensed medical cannabis facilities; and

**WHEREAS**, the limited duration inspection staff can be continued only upon demonstration that workload and fees associated with the medical cannabis facilities can fully support the positions on an ongoing basis; now, therefore be it

**RESOLVED**, that the City Administrator or designee is authorized to transfer Four Hundred Thousand Dollars (\$400,000) of Medical Cannabis Cooperative project (A252610) funds within the General Purpose Fund (1010) from the Office of the City Administrator (02111) to the Fire Department (20331 - Inspectional Services Unit) totaling \$200,000 to add and fund 1.0 Fire Prevention Bureau Inspector, Civil position and 0.60 Office Assistant I, PPT for a Limited Duration of one year and to the Planning and Building Department (84431 - Building & Infrastructure Plan Check) totaling \$200,000 to add and fund 1.0 Civil Engineer (Office) position for a Limited Duration of one year; and be it

**FURTHER RESOLVED**, that the City Administrator is authorized to take any other action necessary and consistent with this Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES – BROOKS, GALLO, GUILLEN, KALB, KAPLAN, REID, WASHINGTON, 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: \_\_\_\_\_