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**CITY OF OAKLAND**  
**AGENDA REPORT**

TO: Oakland City Council Public Safety Committee  
ATTN: Larry Reid, Chair  
FROM: Council Member Rebecca Kaplan and Council Member Larry Reid  
DATE: July 13, 2010

RE: **AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE SECTION 5.80 TO INCREASE THE NUMBER OF PERMITTED MEDICAL CANNABIS DISPENSARIES FROM FOUR (4) TO SIX (6) AND AN ORDINANCE PERMITTING A FOUR (4) MEDICAL CANNABIS CULTIVATION, MANUFACTURING AND PROCESSING FACILITIES AS A BUSINESS PERMIT THROUGH THE CITY ADMINISTRATOR'S OFFICE**

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**SUMMARY**

On February 17, 2004, the City of Oakland adopted Ordinance No. 12585, permitting distribution of medical cannabis to authorized patients through four licensed dispensaries. The City of Oakland's process for administering these permits and monitoring the dispensaries is considered successful, and has become a role model for the nation.

In the approval of the dispensary ordinance, concerns were raised regarding the limited number of permits not ensuring that the diversity of Oakland's many communities would be served. The City's Business Tax Revenue Division reports that Oakland's four permitted dispensaries generated 28 million dollars in gross sales last year. By expanding the number of dispensaries, the city will ensure that it does not promote a situation where the market is dominated by a small number of participants who are able to collectively exert control over supply and the market prices of medical cannabis, and insure that the diversity and different communities of Oakland are served by encouraging that dispensaries reflect and serve the cultural and geographic diversity of Oakland.

At the same time, the cultivation of medical cannabis in Oakland has not been regulated and occurs entirely in small-scale home operations or larger-scale illicit warehouses. These unregulated operations have led to public safety hazards, including fires, burglaries and home invasions, health risks to patients, and related response costs to the City.

Council is being asked to (1) approve the attached resolution and ordinance amendment (a) increasing the number of medical cannabis dispensaries that can be permitted by the city Administrator from four (4) to six (6) under OMC 5.80, (b) adopting an ordinance establishing a large-scale medical cannabis cultivation program through the issuance of Cannabis Cultivation,

Manufacturing and Processing Facility permits, to be administered by the City Administrator's Office as special activity permits and adding a new Chapter 5.81 to Title 5: Business Taxes, Permits & Regulations. and c) creating "Responsible Transfer Permits" for California dispensaries outside of Oakland to purchase from permitted Oakland cultivators.

This amendment to the medical cannabis dispensary ordinance and new cannabis cultivation ordinance will address the public safety and health concerns of an unregulated cannabis cultivation industry. As proposed, it is expected that this would be a cost-recovery program that is self sustaining.

## **BACKGROUND**

### **The Statewide Cannabis Movement**

On Nov. 6, 1996 Proposition 215, the California Compassionate Use Act, was enacted by the voters and took effect as California Health & Safety Code 11362.5. The law makes it legal for patients and their designated primary caregivers to possess and cultivate cannabis for their personal medical use given the recommendation or approval of a California-licensed physician. This was expanded on January 1, 2004 to allow patients to form medical cultivation "collectives" or "cooperatives"; and established a voluntary state ID card system run through county health departments. SB 420 also establishes guidelines or limits as to how much patients can possess and cultivate, protecting legal patients who stay within the guidelines from arrest.

The Regulate, Control and Tax Cannabis Act, on the California ballot this November, would legalize adult recreational cannabis in California if passed, but gives localities discretion to allow, regulate and tax production and distribution.

### **Medical Cannabis in Oakland**

On February 17, 2004, the City of Oakland adopted Ordinance No. 12585, permitting distribution of medical cannabis to authorized patients through four licensed dispensaries. The City's of Oakland's process for administering these permits and monitoring the dispensaries is considered successful, and has become a role model for the nation. In June 2009, Measure F, the taxation of Oakland's medical cannabis dispensaries, passed in a special election by 80% with no formal opposition, indicating recognition by Oakland residents the dispensaries' role in providing a legitimate service to the community.

While Oakland, and for that matter the State, has a method for dispensing medical cannabis there is no established structure for its production, growth and cultivation.

## **KEY ISSUES AND IMPACTS**

### **Key Issues Related to Dispensaries**

Dispensary sales increased by 40% between 2008 and 2009, with Oakland's four permitted dispensaries generating 28 million dollars in gross sales last year. The City Administrator's waiting list of interested applicants combined with the weekly requests for information by prospective dispensaries at the Small Business Assistance Center indicate that there continues to be business opportunities in dispensing medical cannabis in Oakland.

A limitation to the program is that it is not fully cost recovering. The administrative costs of regulating four dispensaries exceed one administrative level FTE. Finance Department and the City Administrator's office have been consulted and have provided fully loaded staffing costs which will be addressed in an amendment of the Master Fee Schedule.

### **Key Public Health & Safety Issues Related to Cultivation**

The \$28 million of gross sales in medical cannabis in 2009 represent approximately 6,000 pounds of cannabis, which would occupy approximately 45,000 square feet of cultivation space, grown entirely unregulated in homes within residential neighborhoods throughout the city and illicitly in larger warehouses throughout the region.

The Oakland Fire Department reported 7 cannabis-related electrical fires in 2008 and 2009, and many more cannabis-related fires have likely gone unreported. Residential electrical fires in Oakland rose from 133 in 2006 to 170 in 2007, 290 in 2008, and 276 in 2009. At least part of this rise is likely attributable to indoor cannabis cultivation; fire chiefs across the Bay Area cite this residential cultivation as a significant problem. Unregulated large residential and warehouse grows are also highly vulnerable to violent crime, not only for their product but also for their equipment. In 2008 and 2009, there have been 8 robberies, 7 burglaries, and 2 homicides clearly linked to cannabis cultivation. Again, these statistics are likely to understate the extent of the problem.

Currently there is no comprehensive system or method for testing medically used cannabis at the dispensary level. Further, since medical cannabis is a high-value crop, there is a strong economic incentive for cultivators to make heavy use of pesticides and fertilizers that put public health at risk and are not consistent with the crop's medical purpose.

It is reported that there are many un-permitted facilities throughout Oakland's industrial areas ranging from 1,500 s.f.– 25,000 s.f. cultivating for collectives throughout the northern California region. These unregulated operations create hazards to public health and safety that have had a cumulative fiscal impact on the City which is responsible for responding to and addressing these unintended consequences.

## **PROGRAM / POLICY DESCRIPTION**

### **A. Dispensaries**

Currently the City of Oakland has authorized four (4) dispensary permits be issued by the City Administrator's Office. It is proposed that this number be expanded by two to permit six (6) total dispensaries.

Of the four issued in 2009, three have renewed their permits for 2010, and one dispensary, Oakland Patient Center, whose dispensary was revoked in December 2009 for violations of Oakland Municipal Code Chapter 5.02, unlawfully transferring a non-transferable permit. With this one exception the dispensary permitting process and operations have done exceedingly well in the City of Oakland. Dispensary operators have been compliant with all other regulations and have developed a strong working relationship with staff, Ms. Barbara Killey prior to 2010 and now with Mr. Arturo M. Sanchez, who assumed the responsibilities of Ms. Killey upon her retirement.

The work of Ms. Killey and Mr. Sanchez has resulted in the diagnosis of several minor modifications to the existing dispensary ordinance. These modifications include adding performance standards consistent with those developed for cultivation facilities, language intended to clarify the appeals process, and a more detailed auditing authority requirement to assure that the City has the appropriate authority to review all financial information. (see proposed Ordinance attached.)

In background checks of employees of both Dispensaries and Cultivators will be conducted, disqualification of an employee based on their criminal history will exclude non-violent cannabis related crimes.

### **B. Cannabis Cultivation, Manufacturing and Processing Facility & Responsible Transfer Permits**

The purpose of this amendment is to provide a framework for the regulation of medical cannabis cultivation that will address the public health, safety, and economic impacts currently not accounted for within the city's medical cannabis system. Central to this framework is the creation and issuance of a limited number of Medical Cannabis Cultivation, Manufacturing and Processing Facility permits and Responsible Transfer permits.

Should the Regulate, Control and Tax Cannabis Act pass this November in California, the structure outlined in this report would also be applicable for the regulation and taxation of recreational cannabis with only minor changes.

Six key areas in considering regulation for medical cannabis cultivation are:

1. Magnitude / Size
2. Number of Permits
3. Distribution and Non-diversion
4. Application and Permit Type
5. Operating Standards
6. Land Use Impact

## **1. Production Magnitude and Total Cultivation Area**

Permitting larger scale cultivation will allow for lower production costs per pound by creating economies of scale. Lower production costs will allow regulated cultivation facilities to undercut wholesale prices of cannabis grown in unregulated operations. This competition will lower the economic incentives to produce through unregulated cultivation, and the public safety risks/costs associated with those operations will decline. Home cultivation will never be entirely eliminated, as personal consumption and specialization in strain development will always exist. Dispensaries expect that they will always purchase at least 20% of their product from individual collective members.

There are current industrial cultivators that may have some claim to legality by maintaining a list of qualified patients for whom the cultivation is intended, or in at least one case, by keeping the cultivation divided into compartments, each belonging to a three-person collective. If these operations remain in existence, it will be more difficult to foster industrial cultivation in a licensed, regulated mode. The proposed ordinance clarifies that the City does not allow any industrial-scale cultivation except on a permitted basis. This will clearly establish the Cultivation, Manufacturing and Processing permit as the only legal model, and will greatly simplify police enforcement.

## **2. Number of Permits**

To balance the objectives of sufficient scale and ease of implementation, Council Members Kaplan and Reid are proposing the City Administrator issue four (4) Cannabis Cultivation, Manufacturing and Processing Facility permits in the interim phase of the program. Following the first year, the City Administrator will return to council with a review of the performance and impact of existing cultivations. At this time council can provide direction for the development of a permanent ordinance and the issuance of additional permits, based on its determination of whether market demand for medical cannabis is sufficient to absorb further production, and whether the issuance of additional permits will serve the interests of the City.

## **3. Distribution and Non-diversion**

As part of this ordinance, 'Responsible Transfer Permits,' will be issued by the Office of the City Administrator to licensed dispensaries in other California jurisdictions that would like to purchase from permitted Cultivation, Manufacturing and Processing Facilities under this ordinance.

Licensed cultivators must request a Responsible Transfer Permit for each individual out of area legal dispensary for which they plan to do business with. The City Administrator will issue permits after confirming with local authorizing bodies that the applicant is a legitimately permitted dispensary in good standing. This will help ensure that cannabis produced by Oakland Cultivation, Manufacturing and Processing facilities will only be distributed to legitimate dispensaries that are monitored and regulated, thereby reducing the risk of diversion of product to the illegal market.

As a further precaution, dispensaries holding Responsible Transfer Permits will be required to report quarterly to the City Administrator's Office the cost and quantity of medical cannabis purchased from Oakland Cannabis Cultivation, Manufacturing and Processing Facilities. Sales would be subject to the recently approved tax on medical cannabis providing additional revenue for the City through sales taxes.

Contracts / agreements must exist between the cultivation and manufacturing facilities and the dispensaries business is transacted with. A mutual, closed loop, relationship is required between the cultivation and manufacturing facilities and the Dispensaries and plant limits align with the number of members of the Dispensaries that the cultivation and manufacturing facility is providing medical cannabis to.

In the unlikely event that facilities bypass the restrictions imposed by Responsible Transfer Permits and their cultivation space become manifestly too large to be legitimate, the City Administrator will have the legal ability to limit their size.

#### **4. Application and Permit Fees**

There will be an application fee for the Medical Cannabis Cultivation, Manufacturing and Processing Facility permits of \$5,000. And a regulatory fee of \$211,000 dollars will be applied to applicants that receive permits. While Permits will be issued for the interim period of the ordinance, two (2) years, all permitted facilities are subject to annual review and payment of the regulatory fee.

The application process would be similar to that currently utilized in the dispensary permitting process with background checks, tests on legal knowledge, business plan review, site and planning review etc ranked by a point system.

Applicants for Medical Cannabis Cultivation, Manufacturing and Processing permits will be required to pay an application fee of \$5,000 to compensate the City for administrative costs. This is exclusive of the \$211,000 regulatory fee, described above.

The fee is based on the development of a program similar to the Oakland Police Department's Alcohol Beverage Action Team (ABAT) – with a team of full-time staff that will be subject matter experts with a focus on managing cannabis based issues from changing laws and field innovation, to nuisance and monitoring of permitted facilities. The team will include the City Administrator's office, City Finance and Management, the Police Department, City Attorney's office and administrative support. (see attached table) Because this is an emerging industry, in addition to permitting, enforcement and monitoring of permitted facilities, staff will work with cannabis industry representatives on an ongoing basis in the development and evaluation of standards for the operations of medical cannabis related establishments, as well as investigate reports of illicit cannabis related cultivation, manufacturing and processing activities and pursue enforcement.

In this interim phase, a portion of the Cultivation, Manufacturing and Processing permit regulatory fee will be set aside to fund a nexus study to determine impact of medical cannabis grows on existing infrastructure in Oakland's industrial areas, which will be funded in year two. Assessments exist, that identify the "Industrial District Strategy Support: Public Infrastructure Assessment and Recommendations" for East and West Oakland.

Cultivation and manufacturing facilities will be asked, though not be required, to make contributions to entirely offset the carbon emissions resulting from its utility usage. The application process would be similar to that currently utilized in the dispensary permitting process with background checks, tests on legal knowledge, business plan review, site and planning review etc ranked by a point system.

The point system shall award bonus points for preferred but not required practices, such as local ownership, preferential hiring of Oakland residents, third party regulating components, workforce development plans, demonstrated commitment to employing and serving serving the diverse communities of Oakland and community benefits. Applicants for Medical Cannabis Cultivation, Manufacturing and Processing permits will be required to pay an application fee of \$5,000 to compensate the City for administrative costs. This is exclusive of the \$211,000 regulatory fee; described above.

Responsible Transfer Permits will be required for any Medical Cannabis Dispensaries outside Oakland in order to enter into purchasing agreements with Oakland Cultivation, Manufacturing and Processing facilities. To cover administrative costs to the City, Responsible Transfer Permittees will be required to pay an annual \$5,000 fee.

## **5. Public Safety and Public Health Operating Standards**

The ordinance will impose strong operating standards on Cultivation, Manufacturing and Processing facilities to ensure protection of public health and safety and promote economic development in the City of Oakland by establishing high-quality cultivation for dispensaries in the City of Oakland.

In order to protect public safety the following will be required of any cannabis Cultivation, Manufacturing and Processing facility: security plan, security personnel, restricted access, camera surveillance, criminal background checks for employees, and inspection for building code compliance. In addition, a range of additional fire safety equipment such as fire key access boxes, emergency electrical shutoffs, and emergency dampers is thought prudent by the industry in light of high electrical usage. Thorough enforcement will be made less costly to the City by requiring cultivators be insured. As this is an emerging field, there are only a few groups that are insuring cannabis cultivation operations, and insurance firms are actively engaged in monitoring their clients' operations. Policies will be approved by the Finance and Management Agency under similar standards as used for city contractors. The insurance providers have a financial interest in preventing fires, crime, violations of city laws, etc., so its own inspections and requirements will bolster enforcement. The City will have access to inspection information and be notified of any violations.

Standards are also necessary to protect the safety of patients who use medical cannabis, some of whom have immune deficiencies and other serious illnesses. Currently there is voluntary testing for molds at the dispensary level, but no comprehensive system. The Alameda County Agricultural Commissioner has the capacity and charge to assist the City with pesticide and pest testing. The Department of Weights and Measures already works with some of the dispensaries, and will expand their work to include permitted Medical Cannabis Cultivation, Manufacturing and Processing operations.

Apart from the county structure, it will be necessary to develop a comprehensive testing procedure, partly through private testing in independent laboratories and partly through random government testing, to cover not just pesticides and pests but also molds, yeasts, heavy metals, toxins, nutrients, etc. Staff will work with licensed dispensaries, facilities, testing labs and other stakeholders to develop specific testing methodology, thresholds, and methods to verify the compliance and independence of private laboratories.

To ensure greater safety and promote the cultivation of a high quality medical cannabis in Oakland, standards will have a strong presumption against the use of chemicals and other substances that would not be allowed by the Organic Foods Production Act (OFPA) of 1990 and regulations in Title 7, Part 205 of the Code of Federal Regulations and The National Organic Program (NOP). The City Administrator may implement this by identifying approved agents for third party verification/certification, similar to California Certified Organic Farmers (CCOF) but specializing in organic development within the cannabis industry.

#### *Other Operating Standards*

Occupational health and safety hazards in the normal process of cannabis cultivation include safety during chemical application as well as electrical safety. Plans to address these issues should be adequately specified in the permit application process and enforcement officials such as Code Enforcement, Fire, or related County officials as manufacturing and production plans may require should verify that these plans are complied with.

To ensure minimal impact on the surrounding community, on top of designating a contact for community complaints as is currently required for dispensaries, medical cannabis cultivation manufacturing and processing facilities will also be required to take appropriate odor-elimination measures. Odor elimination is not problematic and is usually done through air scrubbing equipment together with a negative-pressure system. It will also be helpful to charge a small (\$100) fee per community complaint, to encourage cultivation facilities to be sensitive to their surrounding community.

A draft of recommended operating conditions is attached as an example of what the City Administrator will develop for permitted Cultivation, Manufacturing and Processing facilities.



## **6. Land Use Impact**

Concerns that these permits will fuel real estate speculation—by pushing up industrial rents and driving other industrial businesses from Oakland—are largely unwarranted. Based on interviews, and informal surveys conducted by realtors, it is our understanding that a large proportion of Oakland's industrial landowners, are currently unwilling to rent to permitted Medical Cultivation, Manufacturing and Processing facilities. Unless Federal laws change, landowners' preferences are unlikely to change significantly over time, and it is unlikely that any such speculative effect will keep other businesses out of Oakland.

Cannabis Cultivation, Manufacturing and Processing is an industrial activity, which with the operating standards recommended above in place, should have no notable negative impact on surrounding industrial businesses. No retail traffic will be allowed through the permitted medical cannabis cultivation manufacturing and processing facilities and they will have less visible presence than Oakland's dispensaries have had in the industrial areas in which they are located.

The ordinance proposes recognizing medical cannabis cultivation as a production activity and allowing it in areas where Light Industrial is permitted or conditionally permitted.

### **C. Staffing**

Code Enforcement Capacity, the City Administrator's office, Finance Department, City Attorney's Office and Oakland Police Department all play important roles in the permitting, regulation and monitoring of the Cannabis Program. The staffing needs related to the activities of this chapter are about the development of monitoring and regulation for an emerging industry and not simply the regulation of a nuisance activity, and will entail fully funding six to nine positions. This level of funding will ensure that staff stay current with industry innovation, the changing county, state and federal regulatory environment and can dedicate the time needed to work with the industry in the development of standards, guidelines and systems for the implementation of a fully functioning program. It is estimated that this can be fully administered with a regulatory fee schedule of \$211,000 per Cultivation, Manufacturing and Processing permit, \$60,000 per dispensary permit.

## **ALTERNATIVES**

The proposed ordinance sets the total number of permits at four, with no square foot limitations. and if responsible transfer permits are approved, positions local cultivators to sell to dispensaries statewide. From prospective applicants approaching council offices, proposals are ranging in size from 20,000 to 100,000 s.f. This will allow for a managed roll out of the program, and controlled monitoring with a limited number of cultivators.

An alternative would be to authorize the City Administrator to issue permits to qualified applicants not to exceed establish a total square footage *of all* permitted cultivation facilities

benchmarked to a maximum % of either the Bay Area, Northern California, or Statewide consumption.

**Table 1. Cultivation Space in context of Supplying Medical Cannabis to the City, Region or State**

	<b>Oakland</b>	<b>Bay Area</b>	<b>California</b>
total annual consumption in pounds *	6000	35,000	350,000
total square feet of cultivation space required to produce	45,000	175,000	1,750,000
assumption of market share that could be produced through local cultivators/collective members	100%	60%	20%
potential for local collective member production	6,000	21,000	70,000
<b>total square feet of <u>cultivation</u> space required to produce **</b>	<b>45,000</b>	<b>105,000</b>	<b>350,000</b>
wholesale price per pound	\$ 3,000	\$3,000	\$3,000
potential gross sales - from local cultivators to dispensaries	\$18,000,000	\$ 63,000,000	\$210,000,000
cannabis local gross sales tax	0.18	0.18	0.18
potential gross sales tax on wholesale to dispensaries	\$ 3,240,000	\$ 11,340,000	\$ 37,800,000

\* Oakland consumption based in reported dispensary sales, Bay Area and State consumption conclusions are conservative and incorporate a number of sources including the Board of Equalization's estimates and conversations with various Bay Area dispensary operators and other industry representatives.

\*\* Cultivation Space is a direct reflection of potential pounds that will be produced and is differentiated from other manufacturing and production space related to drying and processing etc.

Approximately 6,000 pounds of cannabis is the annual consumption through medical cannabis dispensaries in the City of Oakland last year. (see Table 1) This represents 45,000 s.f. of cultivation space. The projected Bay Area total medical cannabis consumption is 350,000 pounds, which represents 175,000 s.f. of total cultivation space. Assuming that the Bay Area consumes 10% of the total state consumption, there is an estimated total California medical cannabis consumption of around 350,000 pounds. We know that this is a constantly changing and growing number as medical dispensary systems are being established in municipalities which will result in a growing number of patients choosing to purchase their medicine through legitimate means.

While the alternative would most likely result in more than four permits, it would promote diversity in size and business model, and allow for individual failure without significant impact to the industry or City. It is still expected that with the annual regulatory fee of \$215,000 per permit the program would be self sustaining. Industry estimates are that there are no more than 15 known/credible large scale prospective cultivators that would meet city criteria/standards for cultivation.

**Medical Cannabis Dispensary, Cultivation, Manufacturing and Processing Facility Permitting and Enforcement Program**

153934.116	Step 6 Officer	Experience from past 5 years indicates Police enforcement will be focused on illicit cultivation reported by permitted cultivators, activities will also include annual review of security plan, site visits to permitted facilities, trouble shooting and problem solving for permitted facility related security issues.
72328	car + maintenance	
226262.116	2 FTE	
87539.04	1 FTE Administrative Assistant II	
313801.156	Total OPD Costs	
\$ 150,000.00	Level 3 Tax Auditor	Will be responsible for quarterly review of financials and sales submitted by dispensaries and cultivation, manufacturing and processing facilities as well as annual review of audited financials.
\$ 300,000	2 FTE	
\$ 131,420	1 FTE Special Combination Code Enforcement Inspector III	Responsible for monitoring all the construction of building, electrical, plumbing, and other structural changes throughout the life of the permit. Complexity of the structures, electrical, and plumbing equipment installation necessary for a cultivation facility require senior level position.
\$ 108,180	1 FTE Administrative Analyst II	Primary staff to administer and over see the permit renewal, responsible transfer permits, and coordinate annual renewal documentation, application, and schedule regular site inspections;
\$ 87,539	1 FTE Administrative Assistant II	Admin Support
\$ 327,139		
\$ 75,546	.5 FTE deputy city attorney II	Due the the novel scope of regulation, subject area specialist is needed to advise on both enforcement against illicit grows and changing laws related to permitted facilities.
\$ 1,016,486	subtotal staffing costs	
17%	Central Services Overhead	
\$ 172,803		
\$ 1,189,289	Total Program Costs	
\$ 345,719	Dispensary Portion of Program	
\$ 843,570	Cultivation, Processing and Manufacturing Portion of Program	
\$ 210,893	Annual Cultivation Permit Regulatory Fee (assuming 4) *	
\$ 57,620	Annual Dispensary Permit Regulatory Fee (Assuming 6)	

\* see OPD staffing notes

## **Operating Guidelines for Medical Cannabis Cultivation, Manufacturing and Processing Facilities**

As part of receiving a Cultivation and manufacturing facility permit, Cultivation and manufacturing facilities are at a minimum expected to meet the operating standards established in these guidelines. Lack of proper compliance shall constitute breach of the permit and may render it invalid based on the determination of the City Administrator .

### **A. Administrative**

- (1) Cultivation and manufacturing facilities must substantially carry out all commitments and plans submitted in the application process, as listed in 5.81.30, except that the City Administrator may waive portions of these plans.
- (2) Cultivation and manufacturing facilities must follow all other permitting requirements established by the City Administrator .
- (3) Cultivation and manufacturing facilities must allow the City Administrator to have access to the cultivation and manufacturing facilities books, records, accounts, inventory management system, and any and all data relevant to its permitted activities for the purpose of conducting an audit or examination. Books, records, accounts, inventory management system access, and any and all relevant data shall be produced no later than twenty-four (24) hours after the City Administrator s request.
- (4) Cultivation and manufacturing facilities must sign waivers that allow PG&E to share energy use data with City staff when requested.
- (5) Cultivation and manufacturing facilities may not misinform, or fail to correct unintentional errors in reporting, Permittees are required to notify the City Administrator in writing within 72 hours of discovery of the error.
- (6) Cultivation and manufacturing facilities must submit audited financial records to the City Administrator on a quarterly basis.
- (7) The City Administrator shall notify all permittees of any breach of this Chapter and may give the permittee ten (10) calendar days to correct all violations prior to any revocation by the City Administrator upon written notice.

### **B. Security**

- (1) Cultivation and manufacturing facilities' security plans must be reviewed and approved by the Oakland Police Department. Such security plans should aim to deter crime, conserve police resources, and maximize the safety of the surrounding community, in coordination with the Oakland Police Department.
- (2) Cultivation and manufacturing facilities must make transactions with payment methods other than cash wherein possible, and endeavor to limit the amount of cash held at each cultivation and manufacturing facility. The City Administrator may set an upper limit of cash that may be held at a cultivation and manufacturing

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facility or, if feasible, may require that none of the cultivation and manufacturing facility's transactions in medical cannabis use cash as a method of payment.

- (3) Cultivation and manufacturing facilities must maintain security guards and camera coverage of their entire grounds to an extent sufficient to deter crime, as submitted in their security plan to the City Administrator. Surveillance footage must be retained for a period of 30 days and made available to the Oakland Police Department promptly upon request by the City.
- (4) The City Administrator shall set forth in her/his administrative regulations the method and manner in which employee background checks for cultivation and manufacturing facilities shall be conducted, including standards for disqualification of an employee based on criminal history. The City Administrator may in his/her discretion determine whether previous convictions for nonviolent possession or sale of cannabis may be used as a sole cause for disqualification.

C. Fire

- (1) Cultivation and manufacturing facilities must be inspected for and comply with state and local building, electrical and fire and construction codes.
- (2) Cultivation and manufacturing facilities must hold consultations with their principal utility provider regarding their specific circumstances for electrical safety, and record and follow its recommendations. In all cases, the cultivation and manufacturing facilities must ensure that:
  - Total utility usage is below the utility provider's total power capacity;
  - Any additional transformers needed for utility load are installed; and
  - The potential utility usage from the total lamp layout is below the internal power capacity of the building.

D. Insurance

- (1) Before commencing operations, cultivation and manufacturing facilities must provide proof of evidence to the City Administrator that such facility has obtained sufficient insurance including the following:
  - General liability insurance, with a minimum claim limit of \$2,000,000 per occurrence
  - *Automobile insurance, with a minimum claim limit of \$1,000,000 per accident*
  - Worker's compensation insurance as required by state law
  - Professional liability insurance (including directors and officers if the cultivating entity has directors or officers)

- (2) The insurance held by the cultivation and manufacturing facilities must be AM Best rated A-VII or better and must be from a company permitted to do business in the state of California, but it may be from a company outside of California.
- (3) The adequacy of cultivation and manufacturing facilities insurance shall be determined by the City's Finance and Management Agency.

#### E. QUALITY ASSURANCE

- (1) Cultivation and manufacturing facilities must comply with all operating standards developed and established by the City
- (2) Cultivation and manufacturing facilities must cultivate cannabis products in accordance with best practices, both in terms of production methods and available technology; these best practices must meet or exceed state and federal agricultural standards for food-grade products, and may at no point apply fertilizers, sprays, or other chemicals that would not meet the Organic Foods Production Act (OFPA) of 1990 and regulations in Title 7, Part 205 of the Code of Federal Regulations
- (3) Cultivation and manufacturing facilities must allow the City Administrator or his/her designee to take samples of their product at any time for testing purposes, in accordance with the procedures set out in this Chapter.
- (4) Cultivation and manufacturing facilities must carry out independent testing of medical cannabis to detect the presence of molds, yeasts, or other microbiological contaminants, heavy metals or other toxins, and pesticides or nutrients, based on standards set by the City Administrator.
- (5) Cultivation and manufacturing facilities must follow instructions of the City Administrator regarding any medical cannabis found to be non-compliant with testing standards. These instructions may extend to any medical cannabis that may be unsafe in light of such testing results, or to the relevant cultivation and manufacturing facilities' operations and practices generally.
- (6) Cultivation and manufacturing facilities must carry out independent chemical testing, as specified in 5.81.60 below, of every batch of medical cannabis to identify percentage content of delta-9(trans) tetrahydrocannabinol, cannabidiol, and cannabinol, and disclose each batch's content when transferring it to a medical cannabis dispensary.
- (7) For all private testing required of them, facilities must use only testing facilities pre-approved by the City Administrator, based on a determination that the testing facility clearly has no conflict of interest with the cultivation and manufacturing facility in question.
- (8) Cultivation and manufacturing facilities must require all authorized personnel who shall be in contact with medical cannabis in any

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form to take sanitary precautions (washing, changing clothes, etc.) adequate to prevent contamination of cannabis from outside sources. Cultivation and manufacturing facilities must provide appropriate rooms such that employees may take required sanitary precautions.

F. Non-Diversion

- (1) The City Administrator may limit the cultivation area a cultivation and manufacturing facility may use if he/she determines that the cultivation and manufacturing facility current or planned cultivation area is excessive in light of existing medical consumption needs.
- (2) Cultivation and manufacturing facilities may not transfer medical cannabis to any person or entity outside California, regardless of the person or entity's legal status.
- (3) Cultivation and manufacturing facilities may not transfer medical cannabis, plant cuttings (clones), or any other cannabis product to any person or entity unless it is (a) an Oakland permitted medical cannabis dispensary, or (b) a medical cannabis dispensary that holds a Responsible Transfer Permit under the provisions of Section 5.81.70.
- (4) Cultivation and manufacturing facilities may not transfer medical cannabis to any person or entity, even if legally qualified under Section 5.81.70, if they have reason to believe such person or entity is likely to divert such medical cannabis toward persons or entities unauthorized to possess it under state law, or outside of California. In such cases the cultivation and manufacturing facilities must report its grounds for such belief to the City Administrator .
- (5) Cultivation and manufacturing facilities must maintain a computerized inventory management system that:
  - a. Accounts thoroughly for all products, byproducts, and discarded items in their operations;
  - b. Uniquely tracks each batch of medical cannabis to the permitted dispensary to whom it is transferred, including each batch's active ingredient content for which testing is required under Section 5.81.50(E)(4); and
  - c. Retains all information listed above for a period of at least 120 days.
- (6) Cultivation and manufacturing facilities must limit access to crop and stock to authorized personnel only..
- (7) Contracts / agreements must exist between the cultivation and manufacturing facilities and the dispensaries business is transacted with. A mutual, closed loop, relationship is required between the cultivation and manufacturing facilities and the Dispensaries and plant limits align with the number of members of the Dispensaries that the cultivation and manufacturing facility is providing medical cannabis to.

G. Environment

- 1) Runoff and waste disposal by the cultivation and manufacturing facility must be in compliance with applicable city, county, state, and federal laws and regulations and must endeavor to use the best production practices reasonably available to minimize its environmental impact.
- 2) The cultivation and manufacturing facility shall make a contribution to entirely offset the carbon emissions resulting from its utility usage through a means approved by the City Administrator .
- 3) The City Administrator shall set forth in her/his administrative regulations the method and manner in which a cultivation and manufacturing facility shall make contributions to electric/electronic recycling programs in accordance with their level of electric/electronic waste disposal.

H. Labor

- 1) Cultivation and manufacturing facilities may not employ, or accept volunteer services from, anyone who is not a qualified medical cannabis patient under state law or under the age of 21.

I. Neighborhood Impact

- 1) Cultivation and manufacturing facilities must install and maintain appropriate equipment to reliably prevent any odor distinctive to its operations from being detectable in its surroundings and neighborhood, including the following equipment or other equipment which has the same or better effectiveness at this task:
  - An exhaust air filtration system that prevents external odor from being emitted; and
  - A system creating negative air pressure between the cultivation and manufacturing facilities' interior and exterior.
- 2) Signage for the cultivation and manufacturing facility shall be limited to one wall sign not to exceed ten square feet in area, and one identifying sign not to exceed two square feet in area; such signs shall not be directly illuminated. Signage may not include the words "cannabis," "marijuana," or any language, picture, or other representation conveying to a person without prior knowledge the nature of the business within.
- 3) Cultivation and manufacturing facilities must provide the City Administrator or his/her designee, the chief of police, and all neighbors located within fifty (50) feet of the cultivation and manufacturing facility with the name, phone number, and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the cultivation and manufacturing facility. The cultivation and



manufacturing facility shall make every good faith effort to encourage neighbors to call this person to try to solve operating problems, if any.]

- 4) Violations of this Chapter shall constitute a public nuisance and shall be investigated and abated as authorized by Title 1 of the Oakland Municipal Code and shall subject the property owner and or operator top daily penalties as authorized by Title 1.

#### **5.81.70 Product Safety.**

The City Administrator , shall develop procedures to ensure the safety and quality of medical cannabis produced by cultivation and manufacturing facilities permitted under the provisions of this Chapter. The procedures shall at minimum include the following:

- A. Standards shall be set, based on scientific and technical expertise, for safe levels of molds, yeasts, pests, or other microbiological or biological contaminants; safe levels of heavy metals or other toxins; safe levels of pesticides and nutrients, with a view toward the elimination of the use of chemical pesticides and nutrients; and full disclosure of active ingredient content (delta-9{trans} tetrahydracannabinol, cannabidiol, and other cannabinoids relevant to patients' needs) in the medical cannabis.
- B. The City Administrator may contract with an outside party to take samples of medical cannabis twelve (12) times a year or more from cultivation and manufacturing facilities for testing purposes, without prior notification to cultivation and manufacturing facilities of sampling; the party taking these samples shall provide facilities with receipts for samples taken, and shall establish a chain-of-custody system appropriate to ensure the security and identity of samples taken. Testing reports shall be furnished within seven (7) days of sampling. Samples may be taken before standards and procedures are fully established to aid in the policymaking process. Cultivation and manufacturing facilities shall contract with 3<sup>rd</sup> party laboratory designated by City Administrator for testing.
- C. Cultivation and manufacturing facilities shall regularly conduct private testing for the same standards using functionally independent testing labs which have been received prior approval from the City Administrator , and which have no conflict of interest with the licensed cultivation facilities. Private testing shall be implemented that achieves the testing of every batch of medical cannabis within a reasonably short timeframe as deemed appropriate by the City Administrator .
- D. Cultivation and manufacturing facilities shall pay for all laboratory testing conducted, whether private or government-administered.
- E. The City Administrator , may establish procedures to create quality and rating standards for medical cannabis. Such procedures shall ensure that when claims regarding these quality or rating standards are made to

- DRAFT -

dispensaries or patients, samplings and assessments may be conducted to verify those claims.

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Approved as to form and legality

INTRODUCED BY COUNCILMEMBER REID AND KAPLAN

\_\_\_\_\_  
CITY ATTORNEY

**Ordinance No. C.M.S.**

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.80  
"MEDICAL CANNABIS DISPENSARY PERMITS" TO INCREASE THE  
TOTAL NUMBER OF DISPENSARY PERMITS FROM FOUR (4) TO SIX (6)  
AND ADD REGULATORY LANGUAGE.

---

**WHEREAS**, on November 5, 1996, the voters of California passed Proposition 215, the Compassionate Use Act of 1996, by a YES vote of 55.7 percent, and the residents of Oakland voted YES for Proposition 215 by an overwhelming 70.3 percent; and

**WHEREAS**, the California State Legislature passed, and Governor signed into law, SB 420 to clarify the scope of the application of the Compassionate Use Act; and

**WHEREAS**, SB 420 allows cities and other governing bodies to adopt and enforce laws consistent with SB 420; and

**WHEREAS**, it is the desire of the City Council to establish a new section in the municipal code pertaining to the permitted distribution of medical cannabis in the City of Oakland consistent with SB 420; and

**WHEREAS**, it is the continued desire of the City Council that Oakland residents suffering from life threatening or serious illnesses have access to a safe and affordable supply of medical grade marijuana and cannabis products; and

**WHEREAS**, certain cannabis sales outlets currently operating in the City, which do not have City permits, and are not in compliance with the City's Medical Cannabis Distribution Program, provisions of SB 420, the Americans with Disability Act regulations and local health and fire safety regulations and as such are a threat to the health and safety of Oakland residents, qualified patients and qualified caregivers; and

**WHEREAS**, the City Council desires to further define and clarify a permitting process in order to impose regulations that will protect the peace, health, safety and welfare of patients, and the community as a whole;

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

**SECTION 1.** It is the intent of the City Council in enacting this ordinance, to encourage responsible businesses in the development of Oakland's cultural and entertainment sectors, while providing for the safety of Oakland residents and enabling the Oakland Police Department to be effective in preventing violence and maintaining the peace.

**SECTION 2.** The City Council finds and determines that the adoption of this Ordinance is exempt from CEQA under Sections 15061(b) (3) of the State CEQA Guidelines and authorizes the filing of a Notice of Exemption with the Alameda County Clerk.

**SECTION 3.** Oakland Municipal Code Chapter 5.80 is hereby amended to read as follows; additions are indicated by underscoring and deletions are indicated by ~~strike-through type~~; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed:

**CHAPTER 5.80 OF THE OAKLAND MUNICIPAL CODE, ENTITLED ENTITLED "MEDICAL CANNABIS DISPENSARY PERMITS" IS HEREBY AMENDED AS FOLLOWS:**

**5.80.010 Definitions**

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

A. "Oakland Cannabis Dispensary", ("Dispensary"), shall be construed to include any association, ~~M~~medical ~~C~~cannabis ~~A~~association, cooperative, affiliation, or collective of persons where four (4) or more "qualified patients" and/or "primary care givers" in possession of an identification card, or written recommendation, issued by the County of Alameda, or the state of California, or another agency recognized by the City of Oakland pursuant to California Health and Safety Code Section 11362.7 et seq, as one entity acting cohesively on one contiguous parcel of land to provide education, referral, or network services, and facilitation or assistance in the lawful production, distribution, cultivation, acquisition, and distribution of medical cannabis. Only those dispensaries lawfully permitted by the City of Oakland are Oakland Cannabis Dispensaries.

B. "Primary Caregiver" shall have the same definition as California Health and Safety Code section 11362.7 et seq, and as may be amended, and which defines "Primary Caregiver" as a individual, or "Medical Cannabis Collective" designated by a qualified patient or by a person with an identification card, or a written recommendation, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include 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.

C. "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 states a person suffering from a serious medical condition who obtains a written recommendation from a physician licensed to practice medicine in the state of California to use marijuana for personal medical purposes.

D. "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 states 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.

E. "Written Recommendation" shall have the same definition as California Health and Safety Code section 11362.7 et seq, and as may be amended, and which states a "written recommendation" is an accurate reproduction 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.

F. "Cannabis", or "Marijuana" shall be the same, and as may be amended, as is defined in OMC 8.46.020.

G. "Medical Cannabis Collective" means a cooperative affiliation, association or group collective of persons comprised of no more than 3 (three) "qualified patients" and/or their "primary caregivers" with valid identification cards, or written recommendation, to provide education, referral, or network services and to facilitate/assist in the lawful production, cultivation, acquisition, dispensation, processing, and provision of medical marijuana to their qualified patients.

H. "Excessive Profits" means the receipt of consideration of a value substantially higher than the reasonable costs of operating the facility..

- I. “One Contiguous 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.

5.80.20 – Permit required.

Except for hospitals, research facilities, or an entity authorized pursuant to OMC Section 8.46.030 and primary caregivers, as defined in Section 5.80.010 B (1), it is unlawful for any owner, operator, or association to own, conduct, operate or maintain, or to participate therein, or to cause or to permit to be conducted, operated, or maintained, any ~~d~~Dispensary with four or more "qualified patients" and caregivers with valid ID pursuant to California Health and Safety Code Section 11362.7 et seq., or to distribute cannabis in accordance with state law, in the city of Oakland unless there exists a valid permit therefore, granted and existing in compliance with the provisions of Chapter 5.02. The City ~~Administrator~~ ~~Manager~~ and/or his/her designee shall issue no more than ~~four (4)~~ six (6) valid permits for the operation of dispensaries in the city of Oakland. The application for such permit shall set forth, in addition to the requirements specified in Section 5.02.020, the fact that the proposed location of such ~~d~~Dispensary is not within one thousand (1,000) feet, unless the City ~~Administrator~~ ~~Manager~~ or his/her designee in their discretion determines that the location will not impact the peace and order and welfare of the public, of a public or private school or a public library or youth center (serving youth eighteen (18) and under), or parks and recreation facilities or residential zone. ~~or another dispensary~~ The proposed location must be located in a commercial or industrial zone, or its ~~their~~ equivalent as may be amended, of the ~~C~~city. 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 ~~Manager~~. In recommending the granting or denying of such permit and in granting or denying the same, the City ~~Administrator~~ ~~Manager~~, shall give particular consideration to the capacity, capitalization, complaint history of the applicant and any other factors that in their discretion she/he deems necessary to the peace and order and welfare of the public. All ~~a~~Applicants shall pay an application fee and all inspections fees that may be required ~~therewith~~.

**5.80.030 Regulations**

The Dispensary shall comply with ~~meet~~ all the operating criteria for the dispensing of medical marijuana as is required pursuant to California Health and Safety Code Section 11362.7 et seq. and by the Oakland City ~~Administrator~~ ~~Manager~~ or his/her designee’s administrative regulations for the permitting and operation of medical marijuana dispensaries including security concerns. It is unlawful for any person or association operating a Dispensary under the provisions of this Chapter Section or any Dispensary whatsoever in the City, or any agent, employee or representative of such person to permit

any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct, or otherwise, or to permit such Dispensary to remain open, or patrons to remain upon the premises, between the hours of ~~eight~~ 8 p.m. and ~~seven~~ 7 a.m. the next ensuing day.

#### **5.80.040 Performance Standards**

Dispensaries, once permitted, shall meet the following operating standards for the duration of the use:

A. Dispensaries may possess no more than 8 ounces of dried marijuana per qualified patient or caregiver and maintain no more than six (6) mature and twelve (12 ) immature marijuana plants per qualified patient.

1. If a qualified patient or primary caregiver has a doctor's recommendation that this 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

2. Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section

B. The City Administrator ~~Manager~~ shall set forth in her/his administrative regulations the method and manner in which background checks of employees for Dispensaries will be conducted, and which shall set forth standards for disqualification of an employee based on their criminal history.

~~C. No cannabis shall be smoked, ingested or otherwise consumed on the premises.~~

~~D. C.~~ 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 or to dispense any alcoholic beverages.

~~E. D.~~ Dispensary shall maintain records of all patients and or patient caregivers using only the Identification Card number issued by the county, or its agent, pursuant to California Health and Safety Code Section 11362.7 et seq., as a protection of the confidentiality of the cardholders, or a copy of the written recommendation.

~~FE.~~ Dispensary shall allow the City Administrator ~~Manager~~ or his/her designee to have access to the entities' books, records, accounts, and any and all data relevant to its permitted activities for the purpose of conducting an audit or examination.



Books, records, accounts, and any and all relevant data will be produced no later than 24 hour after City ~~Manager~~ Administrator or his/her designee's request.

~~GF.~~ The Dispensary shall provide litter removal services twice each day of operation on and in front of the premises and, if necessary, on public sidewalks within hundred (100) feet of the premises.

~~HG.~~ The Dispensary shall provide adequate security on the premises, including lighting and alarms, to insure the safety of persons and to protect the premises from theft.

~~IH.~~ Signage for the establishment shall be limited to one wall sign not to exceed ten (10) square feet in area, and one identifying sign not to exceed two square feet in area; such signs shall not be directly illuminated.

~~J I.~~ The Dispensary shall provide City ~~Administrator~~ Manager or his/her designee, the chief of police and all neighbors located within fifty feet of the establishment with the name, phone number and facsimile number of an on-site community relations staff person to whom a person ~~one~~ can provide notice if there are operating problems associated with the establishment. The Dispensary shall make every good faith effort to encourage neighbors to call this person to try to solve operating problems, if any, before any calls or complaints are made to the police department or other City officials.

~~K.~~ J. The Dispensary shall meet any specific, additional administrative regulations, procedures and measures as may be imposed as conditions of approval by the City ~~Administrator~~ Manager or his/her designee in order to insure that the operation of the Dispensary is consistent with protection of the health, safety and welfare of the community, Qualified Patients and Caregivers, and will not adversely affect surrounding uses.

~~L.~~ K. Dispensaries shall disclose the percentage level of delta-9(trans) tetrahydracannabinol, cannabidiol, and cannabinol in medical cannabis to qualified patients before providing medical cannabis.

~~M.~~ L. Dispensaries shall establish a system that tracks each batch of medical cannabis received from an Oakland permitted Cannabis Cultivation Facility, such that any medical cannabis subject to recall or other administrative measures by the City Administrator or his/her designee based on testing results may be readily identified. The City Administrator or his/her designee may also use this information to confirm Cannabis Cultivation Facility reports regarding quantities of medical cannabis transferred to Oakland Dispensaries.

~~N.~~ M. Dispensaries shall follow the direction of the City Administrator or his/her designee regarding any medical cannabis found to be non-compliant with testing standards. These instructions may extend to any medical cannabis

found to be unsafe on the basis of such testing results, or to the Dispensary's operations and practices generally.

#### **5.80.050 Regulatory Fees**

Every person conducting, managing or maintaining the business of a Dispensary in the City shall, in addition to the application fees, pay a regulatory fee annually in advance, and shall keep a copy of the Business Tax Certificate issued by the Business Tax Office, together with a copy of the Dispensary permit issued pursuant to the provisions of Section 5.12.020, together with a copy of this chapter, including the regulations set forth in Section 5.80.030, posted in a conspicuous place in the premises maintained as such Dispensary at all times during which such Dispensary is being operated.

#### **5.80.060 Compensation**

Dispensary shall receive only compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card, or written recommendation, to enable that person to use marijuana pursuant to California Health and Safety Code Section 11362.7 et seq, or for payment for out-of-pocket expenses incurred in providing those services, or both.

Retail sales of medical cannabis for Excessive Profits are explicitly prohibited.

#### **5.80.070 Appeals**

Notwithstanding Section 5.02.100, any decision, except for suspension and or revocation, pursuant to this chapter by the City ~~Administrator~~ ~~Manager~~ 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, an independent hearing officer shall make an initial determination with an appeal to the City ~~Administrator~~ ~~Manager~~ in writing within fourteen (14) days of the administrative hearing officer's decision, in accordance with procedures in set forth in Section 5.02.100. The decision of the City ~~Administrator~~ ~~Manager~~ shall be final and conclusive.

#### **5.80.080 Prohibited Operations**

All Owners, Operators, collaborative, associations, and collectives operating in violation of California Health and Safety Code Section 11326.7 et seq and 11366.5, and this Chapter are expressly prohibited. Except for uses established pursuant to OMC Chapter 8.46, no use ~~that~~ ~~which~~ purports to have distributed marijuana prior to the enactment of this Chapter shall be deemed to have been a legally established use under the provisions of the Oakland Planning Code, the Oakland Municipal Code, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim legal nonconforming status.

### **5.80.090 Liability**

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 of Oakland.

### **Section 4. Severability**

This Chapter shall be enforced to the full extent of the authority of the City. If any section, subsection, paragraph, sentence or word of this chapter is deemed to be invalid or beyond the authority of the City, either on its face or as applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences, or words of this chapter, and the applications thereof; and to that end the sections, subsections, paragraphs, sentences and words of this chapter shall be deemed severable.

### **Section 5. Effective Date**

This ordinance shall take effect immediately if it is passed with six or more affirmative votes; otherwise it will take effect seven days after final passage pursuant to Section 216 of the Charter of the City of Oakland.

### **Section 6. Master Fee Schedule**

The Master Fee Schedule shall be amended to incorporate the following non-refundable regulatory fees.

A. Dispensary with four (4) or more ~~or five hundred (500)~~ qualified patients or Caregivers: shall pay a nonrefundable annual regulatory fee for the actual cost for administering and implementation of OMC Chapter 5.80, up to an amount not to exceed, ~~five thousand dollars (\$5000.00) thirty thousand dollars (\$30,000.00).~~ Sixty Thousand Dollars (\$60,000). This fee is due each year upon renewal of permit.

B. Dispensary with ~~five hundred and one (501) to one thousand (1000)~~ "qualified patients" or "Caregivers": shall pay a nonrefundable annual regulatory fee for the actual cost for administering and implementation of OMC chapter 5.80, up to an amount not to exceed, ~~seventy thousand dollars (\$70,000) ten thousand dollars (\$10,000.00)~~

~~C. Dispensary with one thousand and one (1001) to one thousand five hundred (1500) "qualified patients" or "Caregivers": shall pay a nonrefundable annual regulatory fee for the actual cost for administering and implementation of OMC chapter 5.80, up to an amount not to exceed, ninety thousand dollars (\$90,000) fifteen thousand dollars (\$15,000.00).~~

~~D. Dispensary with one thousand five hundred and one (1501) or greater "qualified patients" or "Caregivers": shall pay a nonrefundable annual regulatory fee for the actual cost for administering and implementation of OMC chapter 5.80, up to an amount not to exceed one hundred fifty thousand dollars (\$120,000.00) twenty thousand dollars (\$20,000.00).~~

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_  
LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California

**In Council, Oakland, California, \_\_\_\_\_, 2010,**

**Passed By The Following Vote:**

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL,  
QUAN, REID, and PRESIDENT BRUNNER

NOTES-

ABSENT-

ABSTENTION-

Attest: \_\_\_\_\_

2010 JUN 30 PM 6:48

INTRODUCED BY COUNCILMEMBER REID AND KAPLAN

**Ordinance No. C.M.S.**

**AN ORDINANCE AMENDING TITLE 5 OF THE OAKLAND MUNICIPAL CODE, ENTITLED BUSINESS LICENSES AND REGULATIONS, TO ADD CHAPTER 5.81, PERTAINING TO MEDICAL CANNABIS CULTIVATION FACILITY PERMITTING AND AMENDING THE MASTER FEE SCHEDULE (ORDINANCE NO. 9336, AS AMENDED) TO ESTABLISH REGULATORY FEES REGARDING THIS ACTIVITY**

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**WHEREAS**, on November 5, 1996, the voters of California passed Proposition 215, the Compassionate Use Act of 1996, by a YES vote of 55.7 percent, and the residents of Oakland voted YES for Proposition 215 by an overwhelming 70.3 percent; and

**WHEREAS**, the California State Legislature passed, and Governor signed into law, SB 420 to clarify the scope of the application of the Compassionate Use Act of 1996; and

**WHEREAS**, SB 420 allows cities and other governing bodies to adopt and enforce laws consistent with SB 420; and

**WHEREAS**, it is the continued desire of the City Council that Oakland residents suffering from life threatening or serious illnesses have access to a safe and affordable supply of medical grade marijuana and cannabis products; and

**WHEREAS**, no licensing and regulation system for medical cannabis cultivation presently exists in the City of Oakland; and

**WHEREAS**, extensive medical cannabis cultivation currently occurs in Oakland with no regulation, posing potential public harms including fires, crime, and health risks and inducing increased City response costs to address these negative impacts; and

**WHEREAS**, the establishment and expansion of permitted medical cannabis cultivation processing, and manufacturing on an industrial scale in Oakland can displace unregulated cultivation in Oakland that threatens public health, safety and welfare of Oakland residents; and

**WHEREAS**, strict operating and performance standards shall help ensure that permitted cannabis cultivation facilities do not threaten the health and safety of qualified patients or Oakland residents; and

**WHEREAS**, the California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use emphasizes that all medical cannabis must be kept in a closed loop within a cooperative or collective, with strong safeguards against diversion and overproduction, and that such collectives should not be organized to make profit from the sale or distribution of medical cannabis; and

**WHEREAS**, medical cannabis cultivated in Oakland should only be transferred to dispensaries that have been duly permitted as legitimate dispensaries by their locality and are members of the same collective as the cultivation facility, to prevent diversion and comply with state law; and

**WHEREAS**, the City Council desires to establish a medical cannabis cultivation permitting process in order to impose regulations that shall protect the peace, health, safety and welfare of patients, and the community as a whole; now therefore the Oakland City Council does hereby ordain:

**SECTION 1.** It is the intent of the City Council in enacting this ordinance, to encourage responsible businesses in the development of Oakland's cultural and entertainment sectors, while providing for the safety of Oakland residents and enabling the Oakland Police Department to be effective in preventing violence and maintaining the peace.

**SECTION 2.** The City Council finds and determines the forgoing recitals to be true and correct and hereby makes them a part of this ordinance.

**SECTION 3.** The City Council finds and determines that the adoption of this Ordinance is exempt from CEQA under Sections 15061(b)(3)(common sense exemption) and 153332 (in-fill exemption) of the State CEQA Guidelines and authorizes the filing of a Notice of Exemption with the Alameda County Clerk.

**5.81.010 Findings and Purpose**

- A. The City Council of the City of Oakland, based on evidence presented to it in the proceedings leading to the adoption of this ordinance hereby finds that the cultivation and processing of medical cannabis in the City of Oakland 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 of Oakland acknowledges that the voters of the State of California have provided a criminal defense to the cultivation, possession and use 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.
- C. The City of Oakland acknowledges that sales of medical marijuana are subject to taxation by both the City and the State of California and that the California State Board of Equalization (BOE) is also requiring that businesses engaging in such transactions hold a seller's permit.
- D. The purpose and intent of this chapter is to regulate the cultivation and processing of medical cannabis in a manner that protects the public health, safety and welfare of the community.

**5.81.20. 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 city administrator to mean a discrete quantity of dried cannabis or less, 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 8.46.020.
- D. "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"
- E. "City Administrator" as used only in this Chapter shall mean the City Administrator for the City of Oakland and his or her designee.
- E. "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 10 square feet and stacked vertically on top of each other shall be counted as 20 square feet of cultivation area.

- F. "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 forty-eight (48) ounces of dried marijuana, and/or cultivating or storing medical cannabis in an area greater than ninety six (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 an Industrial Cannabis Cultivation and Manufacturing Facility as described in section 5.81.040.
- G. "Medical cannabis collective" as used only in this Chapter shall be the same, and as may be amended, as if defined in OMC 5.80.010.
- H. "One Parcel of Land" as used only in this Chapter shall mean 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.
- I. "Permitees" as used only in this Chapter are cultivation and manufacturing facilities that have obtained a permit under this Chapter.
- J. "Primary caregiver" as used only in this Chapter shall be the same, and as may be amended, as if defined in OMC 5.80.10
- K. "Qualified patient" as used only in this Chapter shall be the same, and as may be amended, as if defined in OMC 5.80.10
- L. "Written recommendation" as used only in this Chapter shall be the same, and as may be amended, as if defined in OMC 5.80.010

**5.81.30 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 and manufacturing facility without a valid business permit issued pursuant to the provisions of 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 cultivation and manufacturing 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 their 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 (4) 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.*
- D. All cultivation and manufacturing facility permits shall be special business permits and shall be issued for a term of three (3) years, subject to annual review one year from the date of prior issuance. No vested right shall ever inure to the benefit of such permit holder as such permits are revocable at any time with our without cause by the City Administrator subject to 5.81.120.
- E. Cultivation and manufacturing facility permits shall be granted solely to nonprofit mutual benefit corporations, or cooperatives organized or incorporated under the California Corporations or Food and Agricultural Code

**5.81.040 Industrial cultivation of medical marijuana**

- A. Any use or activity that involves possessing, cultivating, processing and/or manufacturing and/or more than ninety six (96) square feet of cultivation area shall constitute industrial cultivation of medical marijuana 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.
- B. The proposed location of a cultivation and manufacturing facility shall be in areas where "Light Manufacturing Industrial," or their equivalent use, is permitted 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 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.

**5.81.50 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, plans for security, waste disposal, pest management, product testing, worker safety and compensation, non diversion of product, facility location, capitalization, business plans, Applicant complaint history,

criminal background checks, and any additional information deemed necessary by the City Administrator.

- 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.
- 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.

#### **5.81.70 Operating Standards**

The City Administrator shall establish operating standards for Permittees. 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.

#### **5.81.80 Examination of books, records, witnesses —Information confidential—Penalty.**

A. 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 and/or gross receipts tax requirements.

B. 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.

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

D. Any Permittees 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 & 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 of Oakland.
- B. The Permittees under this Chapter hereby agree to save, defend, indemnify and keep harmless the City of Oakland and its officials, officers, employees, representatives, agents and volunteers from all actions, claims, demands, litigation, or proceedings, including those for attorneys' fees, against the City in consequence of the granting of this permit, and will in all things strictly comply with the conditions under which this permit is granted, if any.

**5.81.101 Residential and Individual Limits for Non-Licensed Medical Cannabis Cultivation.**

Notwithstanding state law regarding medical cannabis cultivation, no Qualified Patient or Primary Caregiver may cultivate medical cannabis in an area of more than thirty two (32) square feet on One Parcel of Land, unless they form a cooperative or collective with other Qualified Patients or Primary Caregivers, in which case they may cultivate medical cannabis covering an area of no more than thirty two (32) square feet on One Parcel of Land per each member of the cooperative or collective, up to a maximum of ninety six (96) square feet on One Parcel of Land, unless the cooperative or collective has been awarded a cultivation and manufacturing facility permit under this Chapter. 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, or Written recommendation, issued by the County of Alameda, or the State of California, or another agency recognized by the City of Oakland 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;

(3) 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 in a self-contained

structure that is secured, and fully enclosed and which is the exclusive use of the Qualified Patient or Primary Caregiver.

(4) No individual residential facility or other facility housing the cultivation, processing and/or manufacturing of medical marijuana shall contain more than forty eight ounces of dried marijuana, and/or more than ninety six square feet of cultivation area.

a. If a Qualified Patient or Primary Caregiver who is cultivating, possessing, processing and/or manufacturing medical marijuana 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.

(5) If required by Building or Fire Code, the wall(s) adjacent to the indoor cultivation area shall be constructed with 5/8" Type X fire resistant drywall;

(6) 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));

(7) The cultivation area shall not adversely affect the health or safety of the residence or accessory building in which it is cultivated, 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;

(8) 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;

(10) Any electrical rewiring or remodeling shall first require an electrical permit from the City;

(11) The use of butane gas products for personal use medical cannabis cultivation is prohibited; and

(12) From a public right of way, there shall be no exterior evidence of medical cannabis cultivation occurring at the property.

**5.81.110 Prohibited operations.**

All cultivation and manufacturing facilities that do not have a permit under this Chapter are expressly prohibited. No use which purports to have cultivated 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.

**5.81.120 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 an independent hearing officer shall make an initial determination with an appeal to the City Administrator in writing within 14 days of the Administrative hearing officer's decision, in accordance with procedures in set forth in Section 5.02.100. The decision of the City Administrator shall be final and conclusive.

**Section II Severability**

This Chapter shall be enforced to the full extent of the authority of the City. If any section, subsection, paragraph, sentence or word of this chapter is deemed to be invalid or beyond the authority of the City, either on its face or as applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences, or words of this chapter, and the applications thereof; and to that end the sections, subsections, paragraphs, sentences and words of this chapter shall be deemed severable.

**Section III Effective Date**

This ordinance shall take effect immediately if it is passed with six or more affirmative votes; otherwise it will take effect seven days after final passage pursuant to Section 216 of the Charter of the City of Oakland; provided, however, permits shall not be issued under this Chapter until January 1, 2011.

**Section IV Master Fee Schedule**

The Master Fee Schedule shall be amended to incorporate the following non-refundable fees:

- A. Every Applicant shall pay, upon submitting an application under this Chapter, a nonrefundable application fee of five thousand dollars (\$5,000).

B. An Applicant to receive a cultivation and manufacturing facility shall pay a nonrefundable regulatory fee of two hundred and eleven thousand dollars (\$211,000) per annum.

In Council, Oakland, California, \_\_\_\_\_, 2010,

**Passed By The Following Vote:**

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL,  
QUAN, REID, and PRESIDENT BRUNNER

NOTES-

ABSENT-

ABSTENTION-

Attest: \_\_\_\_\_

LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California