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OAKLAND

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CITY ATTORNEY'S OFFICE

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# OAKLAND CITY COUNCIL

## ORDINANCE NO. 18504 C.M.S.

INTRODUCED BY CITY ADMINISTRATOR SABRINA LANDRETH

**ORDINANCE AMENDING PERMITTING REQUIREMENTS FOR  
MEDICAL AND ADULT-USE CANNABIS DISPENSARIES,  
CULTIVATION, MANUFACTURING AND OTHER FACILITIES  
(CHAPTERS 5.80 AND 5.81 OF THE OAKLAND MUNICIPAL CODE)  
TO:**

- 1) **DELETE SECTION 5.81.110(B), WHICH PROHIBITS ENFORCEMENT OF VIOLATIONS OF CHAPTER 5.81 ONCE A PERMIT APPLICATION IS PENDING;**
- 2) **ALIGN CHAPTER 5.81 PERMIT TYPES WITH STATE LAW BY ADDING PACKAGING AND INFUSION PERMIT CATEGORIES;**
- 3) **LIMIT THE NUMBER OF DISPENSARY PERMITS TO TWO PER INDIVIDUAL OR ENTITY;**
- 4) **CLARIFY THE DISTANCE REQUIREMENTS BETWEEN CANNABIS FACILITIES AND SCHOOLS;**
- 5) **LIMIT THE NUMBER OF SPECIAL EVENT PERMITS FOR CANNABIS ACTIVITIES;**
- 6) **ALLOW ANCILLARY CANNABIS ACTIVITIES, INCLUDING BUT NOT LIMITED TO PACKAGING, DISTRIBUTION, AND INFUSION, AT THE SITE OF A PERMITTED DISPENSARY; AND**
- 7) **ADD A PUBLIC NOTICE REQUIREMENT FOR ALL CANNABIS USES WITHIN 300 FEET OF A RESIDENTIAL ZONE**

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

**WHEREAS**, in 2004, Senate Bill 420 was enacted (codified at Health and Safety Code section 11362.7 *et seq.* and titled the "Medical Marijuana Program Act") to clarify

the scope of the Compassionate Use Act of 1996. The Medical Marijuana Program Act allows cities and other governing bodies to adopt and enforce laws consistent with its provisions; and

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

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

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

**WHEREAS**, in 2015, Assembly Bills 243 and 266 and Senate Bill 643 were enacted (codified at Business and Professions Code section 19300 *et seq.* and titled the "Medical Cannabis Regulation and Safety Act"). These bills also amended provisions of the Medical Marijuana Program Act related to the cultivation of medical marijuana; and

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

**WHEREAS**, the voters of California approved Proposition 64 on November 8, 2016, legalizing the use of cannabis for persons aged 21 or older under state law and establishing certain sales and cultivation taxes; and

**WHEREAS**, in 2017 the State legislature passed S.B. 94, or the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), the reconciliation legislation merging the regulation of medical and adult-use cannabis at the State level as much as possible. S.B. 94 generally imposes the same requirements on both commercial medicinal and commercial adult-use cannabis activity, with specific exceptions. The governor signed S.B. 94 on June 27, 2017; and

**WHEREAS**, the City of Oakland has been a leader in regulating medical cannabis and adult use cannabis businesses to protect the public health, safety and general welfare of the community, as well as the interest of patients who qualify to obtain, possess and use cannabis for medical purposes; and

**WHEREAS**, in parallel with developments in state law, the City of Oakland amended its cannabis ordinances, Oakland Municipal Code (“OMC”) Chapters 5.80 and 5.81 in May 2016 to create a permitting process for the entire supply chain of cannabis businesses; and

**WHEREAS**, the City of Oakland adopted a landmark Equity Permit Program in the spring of 2017 to promote equitable ownership and employment opportunities to decrease disparities in life outcomes for marginalized communities of color and to address the disproportionate impacts of the war on drugs in those communities; and

**WHEREAS**, the City of Oakland began receiving permit application for the entire supply chain of cannabis businesses in May 2017;

**WHEREAS**, based on over a year of experience implementing this cannabis permitting process, the City of Oakland now proposes a handful of technical amendments to improve implementation; and

**WHEREAS**, The City Council independently finds and determines that this action does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) based on: (1) CEQA Guidelines, 14 California Code of Regulations, Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and (2) CEQA Guidelines, 14 California Code of Regulations, Section 15378 because it has no potential for resulting in either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

**WHEREAS**, the City Council further independently finds that even if this action does comprise a project for CEQA analysis, the following CEQA Guidelines, 14 California Code of Regulations, exemptions apply to this action: (1) CEQA Guidelines Section 15061(b)(3) (general rule exemption), and (2) CEQA Guidelines section 15301 (existing facilities exemption), each of which provides a separate and independent basis for CEQA clearance and when viewed together provide an overall basis for CEQA clearance; now, therefore

The City Council of the City of Oakland Does Ordain as Follows:

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

**SECTION 2. Purpose and Intent.** It is the purpose and intent of this Ordinance to improve implementation of its cannabis permit process to preserve the public peace, health, safety, and general welfare of the citizens and residents of the City of Oakland.

**SECTION 3. Amendments to Oakland Municipal Code Chapter 5.80.** Oakland Municipal Code Chapter 5.80 is hereby repealed and reinstated as follows. Additions are shown in underline and deletions are shown as ~~strikethrough~~.

## **Chapter 5.80 - MEDICAL AND ADULT-USE CANNABIS DISPENSARY PERMITS**

### **5.80.010 - Definitions**

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

- A. "Applicant" shall mean any individual or business entity that applies for a permit required by this chapter.
- B. "Cannabis" or "Marijuana" shall have the same definition as Business and Professions Code Section 19300.5(f), as may be amended, which, as of March 2016, defines "cannabis" as all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound. Manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Health and Safety Code Section 11018, "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant which is incapable of germination. "Cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.
- C. "Cannabis dispensary" or "Dispensary" shall mean a facility where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale or in exchange for entrance to an event, to either adults over 21 years of age, qualified patients or primary caregivers. This includes an establishment that delivers cannabis and cannabis products as part of a retail sale.
- D. "City Administrator" means the City Administrator of the City of Oakland or his/her designee.

- E. "Collective" means any association, affiliation, or establishment jointly owned and operated by its members, which facilitates the collaborative efforts of qualified patients and primary caregivers, as described in State law.
- F. "Commercial Zone" means any zone in the Planning Code with a name that contains the words "Commercial Zone."
- G. "Delivery" means the commercial transfer of cannabis or cannabis products from a dispensary to adults over 21 years of age, a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. "Delivery" also includes the use by a dispensary of any technology platform that enables adults over 21 years of age, qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of cannabis or cannabis products.
- H. "Delivery only dispensary" means a cannabis dispensary that provides cannabis or cannabis products to adults over 21 years of age, primary caregivers or qualified patients as defined in Section 11362.7 of the Health and Safety Code exclusively through delivery.
- I. "Equity Applicant" shall mean an Applicant whose ownership/owner:
  - 1. Is an Oakland resident; and
  - 2. In the last year, had an annual income at or less than 80 percent of Oakland Average Medium Income (AMI) adjusted for household size; and
  - 3. Either (i) has lived in any combination of Oakland police beats 2X, 2Y, 6X, 7X, 19X, 21X, 21Y, 23X, 26Y, 27X, 27Y, 29X, 30X, 30Y, 31Y, 32X, 33X, 34X, 5X, 8X and 35X for at least ten of the last twenty years or (ii) was arrested after November 5, 1996 and convicted of a cannabis crime committed in Oakland, California.
- J. "General Applicant" shall mean an Applicant other than an Equity Applicant.
- K. "Industrial Zone" means any zone in the Planning Code with a name that contains the words "Industrial Zone."
- L. "Medical marijuana" or "Medical cannabis" means marijuana authorized in strict compliance with Health and Safety Code Sections 11362.5, 11362.7 et seq., as such sections may be amended from time to time.

- M. "Ownership" shall mean the individual or individuals who:
- (i) with respect to for-profit entities, including without limitation corporations, partnerships, limited liability companies, has or have an aggregate ownership interest (other than a security interest, lien, or encumbrance) of 50 percent or more in the entity.
  - (ii) with respect to not for-profit entities, including without limitation a non-profit corporation or similar entity, constitutes or constitute a majority of the board of directors.
  - (iii) with respect to collectives, has or have a controlling interest in the collective's governing body.
- N. "Parcel of land" means a single contiguous parcel of real property as identified by the county assessor's parcel number (APN), which is used to identify real property and its boundaries for legal purposes.
- O. "Premises" shall have the same definition as California Business and Professions Code Section 26001, as may be amended, which as of March 2018, defines "Premises" as "the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted" but shall be construed to mean the portion of a property or structure where the commercial cannabis activity will be or is conducted.
- P. "Primary caregiver" shall have the same definition as California Health and Safety Code Section 11362.7, as may be amended, which, as of March 2016, defines "Primary Caregiver" as an individual designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include a licensed health care facility, a residential care facility, a hospice, or a home health agency as allowed by California Health and Safety Code Section 11362.7(d)(1)—(3).
- Q. "Qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., as may be amended, which, as of March 2016, means a person who is entitled to the protections of California Health and Safety Code Section 11362.5. For purposes of this ordinance, qualified patient shall include a person with an identification card, as that term is defined by California Health and Safety Code Section 11362.7 et seq.
- R. "Principal Street" means on interior lots, the street that abuts a lot. On corner lots and through lots, the principal street is the street that abuts the lot that is highest on the street hierarchy as defined in the Land Use and Transportation Element of the General Plan. Where streets have the same street hierarchy, the principal street shall be determined by the Zoning Administrator based on the street widths, traffic capacity, land uses, transit activity, bicycle and pedestrian uses, and control of intersections.

- S. "Smoking" shall have the same definition as Oakland Municipal Code Chapter 8.30, which as of March 2017 means "inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, weed, or other combustible substance."
- T. "Youth Center" means a community or recreation facility that primarily serves persons eighteen (18) years or younger.
- U. "Work/Live" means permitted uses that fall under any of the following use activity or facility types of the Oakland Planning Code: Work/live unit (as defined in Subsection 17.73.040.B in a CIX, IG, and IO Zone); or Work/live nonresidential facilities (as defined in Chapter 17.101E in a D-CE-5 Zone); or Live/work facilities (as defined in Chapters 17.65 and 17.101E in HBX and D-CE Zone); or Work/live nonresidential facilities (as defined in Chapters 17.65 and 17.101E in a D-CE-3 or D-CE-4 Zone); or Joint work and living quarters (as defined in Section 17.102.190); or Residentially-oriented joint living and working quarters (as defined in Section 17.102.195) or such unpermitted uses that involve a work and live component.

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

- A. Except for hospitals, research facilities, state licensed entities issued a special event permit under Section 9.52, or an entity authorized pursuant to Section 8.46.030, it is unlawful for any owner, operator, or association to own, conduct, operate, maintain, participate therein, or to cause or allow to be conducted, operated, or maintained, any dispensary, delivery or delivery only dispensary in or into the City unless there exists a valid business permit in compliance with the provisions of Chapter 5.02 and a permit issued under this chapter. However, entities authorized under OMC Chapter 8.46 must abide by the same requirements imposed herein on dispensaries.
- B. This chapter, and the requirement to obtain a business permit, do not apply to the individual possession or cultivation of cannabis for personal use, nor does this chapter and such requirement apply to the usage, distribution, cultivation or processing of cannabis by qualified patients or primary caregivers when such group is of three (3) or fewer individuals, and distributing, cultivating or processing the cannabis from a residential unit or a parcel of land. Such associations shall not be required to obtain a permit under Chapter 5.80, but must comply with applicable State law.
- C. The City Administrator shall issue no more than eight new valid permits for the operation of dispensaries in the City per calendar year, with a minimum of half of the dispensary permits issued each calendar year issued to Equity Applicants. Delivery only dispensaries shall not be subject to these limits. Dispensary permits shall be issued through an equity permit process done in collaboration with the

department of race and equity. No individual or entity shall have a direct or indirect interest in more than two (2) dispensary permits.

D. In addition to the requirements specified in Section 5.02.020 for business permits, the application for a dispensary permit shall set forth the following information:

1. Unless the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public evidence that the proposed location of such dispensary is not within six hundred (600) feet of a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive (but not including any private school in which education is primarily conducted in private homes), another dispensary or youth center, unless the school or youth center moved into the area after the dispensary was issued a permit under this chapter. The distance between facilities shall be measured via path of travel from the closest door of one facility to the closest door of the other facility unless otherwise prescribed by state law. The proposed dispensary must be located in a commercial or industrial zone, or its equivalent as may be amended, of the City. The proposed delivery only dispensary must also be located in a Commercial or Industrial Zone, excluding the CN Neighborhood Center Commercial Zones and the D-BV Broadway Valdez District Commercial Zones, or their equivalent as may be amended, of the City. Delivery only dispensaries shall not occupy more than one thousand (1,000) square feet of ground floor storefront space in a building facing a Commercially zoned principal streets. The limitations on locations for delivery only dispensaries shall apply to those applicants who submit applications after the effective date of these amendments.
2. A plan of operations that will describe how the dispensary or delivery only dispensary will operate consistent with State law and the provisions of this chapter, including but not limited to:
  - a. Controls to ensure cannabis will be dispensed only to adults over 21 years of age, qualified patients and or primary caregivers, and
  - b. Controls to acquire, possess, transport and distribute cannabis to and from State licensed cannabis entities.
3. A security plan, as a separate document, outlining the proposed security arrangements to deter and prevent unauthorized entrance into areas containing cannabis or cannabis products and theft of cannabis or cannabis products at the dispensary, in accordance with minimum security measures required by State law. The security plan shall be reviewed by the Police Department and the Office of the City Administrator and shall be exempt from disclosure as a public record pursuant to Government Code Section 6255(a).



4. A community beautification plan to reduce illegal dumping, littering, graffiti and blight and promote beautification of the adjacent community within 50 feet of the dispensary or delivery-only dispensary.
5. If the applicant is an Equity Applicant, information documenting such status, as described in Section 5.80.045 and any applicable administrative guidelines.
6. Such other information deemed necessary to conduct any investigation or background check of the applicant, and for the City Administrator to determine compliance with this chapter, the City's Municipal Code and Zoning Code.
  - a. Background checks shall only apply to Dispensary and Delivery-Only Dispensary Applicants and they shall be limited to determining whether in the last seven (7) years an Applicant has been convicted or plead nolo contendere or guilty to a violent offense or crime of fraud or deceit as defined by the City Administrator's administrative guidelines.
  - b. Applicants with recent relevant convictions may still petition the City Administrator for reconsideration if they can demonstrate evidence of rehabilitation, such as participation in rehabilitative services and payment of restitution.
7. An applicant for a dispensary permit shall not be disqualified from receiving a permit under this Chapter on the ground that the applicant also operates or intends to operate in a cannabis-related field by providing additional, non-dispensary activities (such as cultivation).

E. Applications for dispensaries shall be subject to a public hearing with public notice of the hearing in accordance with Section 5.02.050. While aApplications for delivery only dispensaries shall not be subject to a hearing requirement, such applications are subject to public notice and applicants must participate in a community meeting before the City Administrator issues a permit if the premises identified in the application are within 300 feet of a residential zone. This 300-foot distance shall be determined via a straight line from the property line of the residential zone to the closest property line of the parcel on which the delivery only dispensary is to be located without regard to intervening structures. The City Administrator shall be the investigating official referred to in Section 5.02.030 to whom the application shall be referred. All General applicants shall pay an application fee, a permit fee, and all inspection and notification fees that may be required as part of the application process, as specified in the City's Master Fee Schedule. There shall be no application fee for Equity Applicants.

- F. All dispensary permits shall be special business permits and shall be issued for a term of one year. No property interest, vested right, or entitlement to receive a future license to operate a cannabis business shall ever inure to the benefit of such permit holder.

**5.80.025 - Onsite consumption permit**

- A. A dispensary must obtain a secondary onsite consumption permit in order for cannabis to be consumed on the premises of the dispensary.
- B. An onsite consumption permit may be issued at the discretion of the City Administrator to existing dispensaries in good standing following a public hearing conducted according to the requirements of Chapter 5.02 and based on an evaluative point system that takes into consideration the operating history and business practices of the applicant, and any other factors that are deemed necessary to promote the peace, order and welfare of the public. An application for an onsite consumption permit may be denied for failure to meet requirements of the City Building Code, City Fire Code, City Planning Code, this chapter, and/or any violation of State or local law relevant to the operation of dispensaries.
- C. The City Administrator shall establish conditions of approval for each onsite consumption permit, including but not limited to a parking plan, ventilation plan, anti-drugged driving plan, and set hours of operation. Set hours of operation may only be adjusted by submitting a written request to and obtaining approval from the City Administrator's Office.
- D. The permit shall be subject to suspension or revocation in accordance with Section 5.80.070, and the owner/operator shall be liable for excessive police costs related to enforcement.
- E. The application fee and annual fee for the onsite consumption permit shall be specified in the City's Master Fee Schedule.
- F. All onsite consumption permits shall be special business permits and shall be issued for a term of one year. No property interest, vested right, or entitlement to receive a future license to operate a cannabis business shall ever inure to the benefit of such permit holder as such permits are revocable at any time with our without cause by the City Administrator subject to Section 5.80.070.

### **5.80.030 – Special Events**

No more than twelve (12) permits for a Special Event, as that term is defined in Chapter 9.52, involving the sale and/or consumption of cannabis, may be issued for the same location or the same individual or entity per calendar year. Such permits shall be issued in accordance with state law and Chapter 9.52.

### **5.80.03035 - Regulations**

The City Administrator shall establish administrative regulations for the permitting of dispensaries, delivery only dispensaries, and onsite consumption, and may set further standards for such operations and activities through administrative guidance and formal regulations. In order to maintain a dispensary or delivery only dispensary permit in good standing, each dispensary and delivery only dispensary must meet all the operating criteria for the dispensing of cannabis required pursuant to State law, the City Administrator's administrative regulations, and this Chapter.

### **5.80.03540 – Prohibition on Disclosing Applicant Information with the Federal Government**

The City of Oakland shall not disclose any Applicant information to the federal government unless disclosure of such information is required by law including but not limited to a warrant, subpoena, or Court order. In addition, the City shall comply with the California Public Records Act (Government Code Section 5250 et seq.) and the City of Oakland's Sunshine Ordinance (Oakland Municipal Code Section 2.20.180 et seq.) and will protect privacy and safety to the extent permitted by law.

### **5.80.04045 - Performance and operating standards**

The City Administrator shall develop and implement performance and operating standards consistent with those set forth in Ordinance No. 12585 in the Office of the City Administrator Guidelines and shall modify such Guidelines from time to time as required by applicable law and consistent with public health, welfare and safety. Noncompliance of such operating standards shall constitute a breach of the permit issued hereunder and may render such permit suspended or revoked based upon the City Administrator's determination.

The following performance standards shall be included in the City Administrative regulations:

- A. No cannabis shall be smoked inside the premises of the dispensary.
- B. The dispensary shall not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages.

- C. Dispensaries must maintain a staff comprised of at least fifty percent (50%) Oakland residents and twenty-five percent (25%) Oakland residents in census tracts identified by the City Administrator as having high unemployment rates or low household incomes. The City Administrator's guidelines and regulations may provide details of these requirements, including for phasing in this requirement for existing facilities.
- D. Dispensaries and delivery only dispensaries that hire and retain formerly incarcerated current Oakland residents may apply for a tax credit or license fee reduction based on criteria established by the City Administrator.
- E. All dispensary employees and delivery only dispensary employees shall be paid a living wage as defined by OMC Chapter 2.28.
- F. Dispensaries and delivery only dispensaries must implement a track and trace program as prescribed by state law that records the movement of cannabis and cannabis products in their custody and make these records available to the City Administrator upon request.
- G. No cannabis odors shall be detectable outside of the permitted facility.
- H. Delivery-Only dispensaries are not open to the public.

**5.80.04550 - Equity Permit Program.**

- A. Equity Criteria. Applicant ownership/owner must satisfy the following criteria:
  - 1. Be an Oakland resident; and
  - 2. In the last year, had an annual income at or less than 80% Oakland average median income (AMI) adjusted for household size; and
  - 3. Either (i) has lived in any combination of Oakland Police Department Beats 2X, 2Y, 6X, 7X, 19X, 21X, 21Y, 23X, 26Y, 27X, 27Y, 29X, 30X, 30Y, 31Y, 32X, 33X, 34X, 5X, 8X and 35X for at least ten of the last twenty years; or (ii) was arrested after November 5, 1996 and convicted of a cannabis crime committed in Oakland, California.
- B. Review of Criteria.
  - 1. Proof of Income shall be supported with federal tax returns and at least one of the following documents: two months of pay stubs, current Profit and Loss Statement, or Balance Sheet, or proof of current eligibility for General Assistance, Food Stamps, Medical/CALWORKs, or Supplemental Security Income or Social Security Disability (SSI/SSDI)

2. Residency must be for a total of ten years in any combination of the designated Oakland police beats as set forth in Section 5.80.010.H.3. A minimum of two of the documents listed below, evidencing 10 years of residency, shall be considered acceptable proof of residency. All residency documents must list the applicant's first and last name, and the Oakland residence address in the police beats set forth in Section 5.80.010.H.3:
    - California driver's record; or
    - California identification card record; or
    - Property tax billing and payments; or
    - Verified copies of state or federal income tax returns where an Oakland address within the police beats is listed as a primary address; or
    - School records; or
    - Medical Records; or
    - Banking records; or
    - Oakland Housing Authority records; or
    - Utility, cable or internet company billing and payment covering any month in each of the ten years.
  3. Proof of Conviction should be demonstrated through federal or state court records indicating the disposition of the criminal matter.
- C. Assistance. Equity Applicants will be eligible for participation in the Equity Assistance program, which will include industry specific technical assistance, business ownership technical assistance, no interest business start-up loans, and waivers from City permitting fees.
- D. Initial Permitting Phase.
1. The period of time before the Equity Assistance Program referred to in OMC 5.80.045(C), is established, funded and implemented shall be referred to as the Initial Permitting Phase
  2. At any point during the Initial Permitting Phase, a minimum of fifty (50) percent of all permits collectively issued under OMC Chapters 5.80 and 5.81 shall be issued to Equity Applicants. This excludes the permits issued to the initial eight (8) dispensaries.

3. In the Initial Permitting Phase, a General Applicant will receive the next available General Applicant permit if it serves as an Equity Incubator by providing free real estate or rent to an Equity Applicant who obtains a cannabis permit. In order to receive this permitting priority, the General Applicant must also comply with the following conditions:
  - a. The free real estate or rent shall be for a minimum of three years.
  - b. The Equity Applicant shall have access to a minimum of 1,000 square feet to conduct its business operations.
  - c. The General Applicant must provide any City required security measures, including camera systems, safes, and alarm systems for the space utilized by the Equity Applicant.
  - d. The General Applicant is otherwise compliant with all other requirements of OMC Chapter 5.80 or 5.81.
4. If a General Applicant obtains a cannabis permit utilizing the Equity Incubator priority provisions of OMC 5.80.045 (D)(3) and the Equity Applicant ceases its business operations, the General Applicant must:
  - a. Notify the City Administrator within thirty (30) days of the Equity Applicant ceasing its business operations; and
  - b. Re-apply for a cannabis permit subject to the permitting restrictions of this Chapter, including OMC 5.80.045 (D)(2).
5. Failure to notify the City Administrator, submit a new application and obtain a new cannabis permit as required under OMC 5.80.045 (D) is grounds for revocation and a violation of this chapter.

E. Renewal.

1. In order to continue to receive new Equity Assistance Program services, an Equity Applicant must provide proof that it continues to satisfy the Equity Criteria at the time of its annual permit renewal.
2. An Equity Applicant who no longer satisfies the Equity Criteria but is compliant with all other requirements of OMC Chapter 5.80 or 5.81 will be entitled to renew the permit but will no longer be entitled to receive new Equity Assistance Program services. Such an Applicant may utilize any services previously granted under the Equity Assistance Program, though, such as previously issued loans.

### **5.80.05055 - Regulatory fees; seller's permit**

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

### **5.80.060 - Sales**

Sales of cannabis that violate California law or this chapter are expressly prohibited.

### **5.80.070 - Revocation, suspension and appeals**

The City Administrator's decision to issue or deny a permit shall be subject to an appeal by the Applicant pursuant to Section 5.02.100, except that the appeal authorized in Section 5.02.100 shall be to an independent hearing officer and not the City Council. The request for an appeal must be made in writing within fourteen (14) days of the City Administrator's decision. The decision of the independent hearing officer shall be final and conclusive.

For suspensions or revocations of permits or local authorizations for temporary state licenses, the City shall follow the procedures set forth in Section 5.02.080, except that the City Administrator shall provide fourteen (14) days' notice of the hearing on the proposed action to suspend or revoke the permit. The appeal authorized in Section 5.02.400080, shall be to an independent hearing officer, and such request for appeal must be made in writing within fourteen (14) days of the City Administrator's decision. The decision of the independent hearing officer shall be final and conclusive.

### **5.80.080 - Prohibited operations; nonconforming uses**

- A. Operation of a dispensary or delivery only dispensary in violation of California Health and Safety Code Section 11326.7, et seq., 11362.5, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) and this chapter are expressly prohibited. It is unlawful for any dispensary or delivery only dispensary in the City, or any agent, employee or representative of such dispensary or delivery only dispensary, to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct on the premises of the dispensary or during the delivery of cannabis.

- B. Except for uses established pursuant to Chapter 8.46, no use which purports to have distributed cannabis prior to the enactment of this chapter shall be deemed to have been a legally established use under the provisions of the Oakland Planning Code, this Code, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim legal nonconforming status.
- C. Any violations of this chapter, including administrative regulations authorized by this chapter, may be subject to administrative citation, pursuant to Chapters 1.08 and 1.12, and other applicable legal, injunctive or equitable remedies.

#### **5.80.090 - Liability and indemnification**

- A. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this chapter shall not become a personal liability of any public officer or employee of the City.
- B. To the maximum extent permitted by law, the permittees under this chapter shall defend (with counsel acceptable to the City), indemnify and hold harmless the City of Oakland, the Oakland City Council, and its respective officials, officers, employees, representatives, agents and volunteers (hereafter collectively called City) from any liability, damages, actions, claims, demands, litigation, loss (direct or indirect), causes of action, proceedings or judgment (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "action") against the City to attack, set aside, void or annul, any cannabis-related approvals and actions and comply with the conditions under which such permit is granted, if any. The City may elect, in its sole discretion, to participate in the defense of said action and the permittee shall reimburse the City for its reasonable legal costs and attorneys' fees.
- C. Within ten (10) calendar days of the service of the pleadings upon the City of any action as specified in Subsection B. above, the permittee shall execute a letter of agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the letter of agreement shall survive termination, extinguishment or invalidation of the cannabis-related approval. Failure to timely execute the letter of agreement does not relieve the applicant of any of the obligations contained in this section or any other requirements or performance or operating standards that may be imposed by the City.

#### **5.80.100 - Examination of books, records, witnesses—Penalty**



- A. Permittees must provide the City Administrator with access to any licensed dispensary during normal business hours to verify compliance with this chapter.
- B. Permittees must provide the City Administrator with access to any and all financial information regarding the dispensary at any time, as needed to conduct an audit of the permittees under this chapter to verify tax compliance under Chapter 5.80 and/or gross receipts tax requirements.
- C. The City Administrator is authorized to examine the books, papers, tax returns and records of any permittee for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax due.
- D. 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.
- E. Every permittee is directed and required to furnish to the City Administrator, the means, facilities and opportunity for making such financial examinations and investigations.
- F. Any permittee refusal to comply with this section shall be deemed a violation of this chapter, and administrative subpoenas shall be enforced pursuant to applicable law.

#### **5.80.110 – Co-location of Medical and Adult-Use Cannabis Businesses**

- A. Any permit issued under Oakland Municipal Code Chapters 5.80 and 5.81 may be utilized for medical or adult-use purposes as authorized by the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) provided the permit holder abide by the performance and operating standards promulgated by the City Administrator, which may contain distinct requirements for medical and adult-use operations. This authorization to conduct both medical and adult-use operations does not relieve an operator from all applicable tax obligations, including paying different tax rates for medical and adult-use activities.
- B. Permittees under Oakland Municipal Code Chapters 5.80 and 5.81 must notify the City Administrator, in a form determined by the City Administrator, whether they wish to conduct medical, adult-use or both activities prior to operating or renewing a permit. Permittees who wish to add or amend their cannabis operations must notify the City Administrator, in a form determined by the City Administrator, and the City Administrator shall grant said request after

determining said permittee is in good standing with this chapter and other relevant local or state requirements.

#### **5.80.120 - Local Authorization for Temporary State Licenses**

- A. For the purpose of qualifying for a temporary state license to conduct commercial cannabis activity pursuant to California Business and Professions Code Section 26050.1, the City Administrator shall only provide local authorization to the following:
1. Individuals or entities that have been issued a permit under Oakland Municipal Code Chapters 5.80 and 5.81.
  2. Applicants with a pending application pursuant to Oakland Municipal Code Chapters 5.80 or 5.81 who have been approved by the Planning Department and Revenue Management Bureau.
- B. Temporary permits shall only be issued to applicants meeting the requirements of Oakland Municipal Code Section 5.80.120.A.2 above, and in compliance with the processing of permits during the Initial Permitting Phase of the Equity Permit Program, such that at any point in time a minimum of fifty (50) percent of all Applicants authorized under Oakland Municipal Code Sections 5.80.120.A.2 and 5.81.140.A.2 shall be issued to Equity Applicants. Likewise, a General Applicant that serves as an Equity Incubator will receive the next available General Applicant local authorization under Oakland Municipal Code Sections 5.80.120.A.2 and 5.81.140.A.2.
- C. Local authorization for Applicants under Oakland Municipal Code Sections 5.80.120.A.2 and 5.81.140.A.2 shall be provided based on the timing of the approvals received by the Planning Department and Revenue Management Bureau and the restrictions described under Oakland Municipal Code Sections 5.80.120.B and 5.81.140.B.

Nothing herein shall be construed to have the Planning Department or Revenue Management Bureau precondition any approval on the actions of another City Department. The Planning Department and Revenue Management Bureau are to act independently as quickly as practical to approve permits applicants. Approval from the Revenue Management Bureau shall be granted if the Applicant has a current business license. The foregoing includes businesses that are in the process of disputing taxes owed to the City of Oakland through the Revenue Management Bureau's formal appeals process.

**5.80.130 – Restrictions on Approvals for Properties Used for Work/Live or Residential Purposes**

- A. No permit or local authorization shall be issued under OMC Chapters 5.80 or 5.81 to a cannabis applicant at premises where either:
  - 1. Work/Live use existed as of March 6, 2018; or
  - 2. Residential use existed as of March 6, 2018.

In both the foregoing, this applies irrespective of any subsequent reconfiguration of the premises.

- B. A permit or local authorization may be issued under OMC Chapters 5.80 or 5.81 to a cannabis applicant utilizing different premises within a parcel of land that also contains Work/Live or residential uses, so long as the cannabis applicant mitigates potential impacts, if possible, as directed by the City Administrator, Fire Marshall, and/or Building Official, including any mitigations required by the Fire Marshall and/or Building Official, and so long as volatile manufacturing may only take place in a separate building with approval of the Fire Marshall and Building Official and under such mitigations as they or the City Administrator may require.
- C. The City Administrator may develop further guidelines and operating standards to implement this section.

**SECTION 4. Amendments to Oakland Municipal Code Chapter 5.81.** Oakland Municipal Code Chapter 5.81 is hereby repealed and reinstated as follows. Additions are shown in underline and deletions are shown as ~~strikethrough~~.

**Chapter 5.81 - MEDICAL AND ADULT-USE CANNABIS CULTIVATION, MANUFACTURING AND OTHER FACILITY PERMITS**

**Sections:**

**5.81.010 - Findings and purpose**

- A. The City Council, based on evidence presented to it in the proceedings leading to the adoption of this chapter hereby finds that the lack of regulation of cannabis facilities other than cannabis dispensaries, including unregulated cultivation, manufacturing and processing of cannabis in the City has caused and is causing ongoing impacts to the community. These impacts include disparities in enforcement of drug laws, damage to buildings containing indoor 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 acknowledges that the voters of the State have provided an exemption to prosecution for the cultivation, possession of cannabis for medical purposes under the Compassionate Use Act (CUA), but that the CUA does not address land use or building code impacts or issues arising from the resulting increase in cannabis cultivation within the City.
- C. The City acknowledges that sales of cannabis are subject to taxation by both the City and the State and that the California State Board of Equalization (BOE) is also requiring that businesses engaging in such retail transactions hold a seller's permit.
- D. The primary purpose and intent of this chapter is to regulate non-dispensary cannabis facilities, including the cultivation of cannabis, in a manner that protects the public health, safety and welfare of the community, as authorized by the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).

#### **5.81.020 - Definitions**

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

- A. "Applicant" as used only in this chapter shall be any individual or business entity that applies for a permit required under this chapter.
- B. "Batch" as used only in this chapter shall be defined by the City Administrator to mean a discrete quantity of dried cannabis produced and sold together.
- C. "Cannabis" or "Marijuana" as used only in this chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.
- D. "Cannabis concentrate" as used only in this chapter shall mean manufactured cannabis that has undergone a process to concentrate the cannabinoid active ingredient, thereby increasing the product's potency.
- E. "Cannabis Dispensary" as used only in this chapter shall be the same, and as may be amended, as is defined in Section 5.80.010 and is also referred to herein as "dispensary."
- F. "City Administrator" as used only in this chapter shall mean the City Administrator for the City of Oakland and his or her designee.

- G. "Cultivate" as used only in this chapter shall mean to plant, grow, harvest, dry, cure, grade or trim cannabis in an area greater than two-hundred and fifty square feet of total area within one parcel of land.
- H. "Distribute" as used only in this chapter shall mean the procurement, sale, and transport of cannabis and cannabis products between State licensed cannabis entities.
- I. "Edible cannabis product" as used only in this chapter shall mean manufactured cannabis that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum.
- J. "Equity Applicant" shall mean an Applicant whose ownership/owner:
1. Is an Oakland resident; and
  2. In the last year, had an annual income at or less than 80 percent of Oakland Average Medium Income (AMI) adjusted for household size; and
  3. Either (i) has lived in any combination of Oakland police beats 2X, 2Y, 6X, 7X, 19X, 21X, 21Y, 23X, 26Y, 27X, 27Y, 29X, 30X, 30Y, 31Y, 32X, 33X, 34X, 5X, 8X and 35X for at least ten of the last twenty years or (ii) was arrested after November 5, 1996 and convicted of a cannabis crime committed in Oakland.
- K. "General Applicant" shall mean an Applicant other than an Equity Applicant.
- L. "Infuse" as used only in this chapter shall mean to produce edible cannabis products or topical products through means other than extraction.
- ~~L~~.M. "Manufactured cannabis" as used only in this chapter shall mean raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product.
- M.N. "Manufacture" as used only in this chapter shall mean to produce, prepare, propagate, or compound manufactured cannabis or cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.
- N.O. "Medical cannabis collective" as used only in this chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.
- ~~O~~.P. "Medical marijuana" or "Medical cannabis" as used only in this chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.

~~P.Q.~~ "Ownership" as used only in this chapter shall mean the individual or individuals who:

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

~~Q.R.~~ "Package" as used only in this chapter shall mean to package or repackage cannabis products or label or relabel cannabis product containers or wrappers.

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

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

~~S.U.~~ "Premises" shall have the same definition as California Business and Professions Code Section 26001, as may be amended, which as of March 2018, defines "Premises" as "the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted" but shall be construed to mean the portion of a property or structure where the commercial cannabis activity will be or is conducted.

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

~~U.W.~~ "Qualified patient" as used only in this chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.

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

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

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

~~Y~~.AA. "Transporter" as used only in this chapter means a person licensed to transport medical cannabis or medical cannabis products between State licensed medical cannabis facilities.

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

AA.CC. "Work/Live" means permitted uses that fall under any of the following use activity or facility types of the Oakland Planning Code: Work/live unit (as defined in Subsection 17.73.040.B in a CIX, IG, and IO Zone); or Work/live nonresidential facilities (as defined in Chapter 17.101E in a D-CE-5 Zone); or Live/work residential facilities (as defined in Chapters 17.65 and 17.101E in HBX and D-CE Zone); or Work/live nonresidential facilities (as defined in Chapters 17.65 and 17.101E in a D-CE-3 or D-CE-4 Zone); or Joint living and work quarters (as defined in Section 17.102.190); or Residentially-oriented joint living and working quarters (as defined in Section 17.102.195) or such unpermitted uses that involve a work and live component.

#### **5.81.030 - Business permit and application required**

- A. Except for hospitals and research facilities that obtain written permission for cannabis cultivation under federal law, it is unlawful to cultivate, distribute, manufacture, test or transport without a valid business permit issued pursuant to the provisions of this chapter. Possession of other types of State or City permits or licenses does not exempt an applicant from the requirement of obtaining a permit under this chapter.
- B. The City Administrator shall issue, as detailed below, special business permits for cannabis cultivation, distributing, manufacturing, testing and transporting. All General Applicants shall pay any necessary fees including without limitation application fees, inspection fees and regulatory fees that may be required hereunder.
- C. All cultivation, distribution, manufacturing, testing and transporting permits shall be special business permits and shall be issued for a term of one year. No property interest, vested right, or entitlement to receive a future license to operate a cannabis business shall ever inure to the benefit of such permit holder.
- D. Cultivation, distribution, manufacturing, testing, and transporting permits shall only be granted to entities operating legally according to State law.
- E. More than one cannabis operator may situate on a single parcel of land, however, each operator will be required to obtain a permit for their applicable permit category.

- F. No proposed use under this Chapter shall be located within a 600-foot-radius feet of any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive (but not including any private school in which education is primarily conducted in private homes) unless the school moved into the area after the cannabis use was issued a permit under this Chapter. The distance between facilities shall be measured via path of travel from the closest door of one facility to the closest door of the other facility.
- G. An applicant for a permit under this chapter shall not be disqualified from receiving a permit on the ground that the applicant also operates or intends to operate in an additional cannabis related field, such as a dispensary.

**5.81.035 – Prohibition on Disclosing Applicant Information with the Federal Government**

The City of Oakland shall not disclose any Applicant information to the federal government unless disclosure of such information is required by law including but not limited to a warrant, subpoena, or Court order. In addition, the City shall comply with the California Public Records Act (Government Code Section 5250 et seq.) and the City of Oakland’s Sunshine Ordinance (Oakland Municipal Code Section 2.20.180 et seq.) and will protect privacy and safety to the extent permitted by law.

**5.81.040 - Cultivation, distribution, testing and transporting of cannabis**

- A. Proposed cultivation, distribution, testing or transporting locations shall be in areas where "light manufacturing industrial," "research and development," or their equivalent use, is permitted by right under the Oakland Planning Code, as may be amended; provided, however, that no vested or other right shall inure to the benefit of any cultivation, distribution, testing or transporting facility permittee.
- B. ~~The~~ In addition to the aforementioned location restrictions, these activities may locate at the same site of a dispensary permitted under Chapter 5.80. However, these activities may not locate along the street frontage where it may impede pedestrian oriented retail, reduce the size of the dispensary, operate without a dispensary, or operate under a project sponsor other than the dispensary. ~~shall not apply to existing dispensary cultivation facilities located at a retail location that are compliant with building and fire codes.~~
- C. The maximum size of any areas of cultivation shall not exceed any limitations or restrictions set forth in State law.

**5.81.045 – Manufacturing, Packaging and Infusion of cannabis**



- A. Proposed locations for manufacturing, packaging and infusion of cannabis products using nonvolatile solvents shall be in areas where "custom manufacturing industrial," or its equivalent use, is permitted by right under the Oakland Planning Code, as may be amended, or in residential zones if the manufacturing is compliant with the restrictions imposed on cottage food operators under the California Homemade Food Act, Chapter 6.1 (commencing with Section 51035) of Part 1 of Division 1 of Title 5 of the Government Code. Applicants seeking to engage in the production of infused edible cannabis products and topicals may be located in commercial zones where commercial kitchens are allowed.

In addition to the aforementioned location restrictions, these activities may locate at the same site of a dispensary permitted under Chapter 5.80. However, these activities may not locate along the street frontage where it may impede pedestrian oriented retail, reduce the size of the dispensary, operate without a dispensary, or operate under a project sponsor other than the dispensary.

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

#### **5.81.050 - Application for permit**

- A. All General applicants shall pay an application fee as specified in the Master Fee Schedule. There shall be no application fee for Equity Applicants.
- B. All applicants shall submit written information to the City Administrator that shall include, as applicable, plans for security, odor mitigation, waste disposal, pest management, product testing, worker safety and compensation, local hiring, non-diversion of product, facility location, applicant complaint history, criminal background checks, plan for minimizing environmental impacts, compliance with City building and fire codes, and any additional information deemed necessary by the City Administrator. The City Administrator may design application forms specific to each permitted category and require inspections of proposed facilities before issuing a permit under this chapter.
1. Background checks shall only apply to Applicants and they shall be limited to determining whether in the last seven years an Applicant has been convicted or plead nolo contendere or guilty to a violent offense or crime of fraud or deceit as defined by the City Administrator's administrative guidelines.
  2. Applicants with recent relevant convictions may still petition the City Administrator for reconsideration if they can demonstrate evidence of rehabilitation, such as participation in rehabilitative services and payment of restitution.

- C. The City Administrator shall establish criteria for minimizing the carbon footprint, environmental impact and resource needs of permitted facilities. Applicants that demonstrate they can satisfy these environmental criteria, such as cultivators seeking to operate greenhouse facilities, will be given preference in the processing of their application.
- D. All applicants shall demonstrate compliance with State law, during the course of the permit application procedure described under this section, prior to issuing any permit, and upon the issuance of a permit, thereafter.
- E. Applications for cannabis uses that identify premises located within 300 feet of a residential zone shall be subject to public notice and applicants must participate in a community meeting before the City Administrator issues a permit. This 300-foot distance shall be determined via a straight line from the property line of the residential zone to the closest property line of the parcel on which the cannabis use is to be located without regard to intervening structures. The City Administrator shall be the investigating official referred to in Section 5.02.030 to whom the application shall be referred. All General applicants subject to this public hearing requirement shall pay any additional public noticing fees. There shall be no application fee for Equity Applicants.

**5.81.060 - Equity Permit Program**

- A. Equity Criteria. Applicant ownership/owner must satisfy the following criteria:
  - 1. Is an Oakland resident; and
  - 2. In the last year, had an annual income at or less than 80% Oakland Average Median Income (AMI) Adjusted for household size; and
  - 3. Either (i) has lived in any combination of Oakland Police Department Beats 2X, 2Y, 6X, 7X, 19X, 21X, 21Y, 23X, 26Y, 27X, 27Y, 29X, 30X, 30Y, 31Y, 32X, 33X, 34X, 5X, 8X and 35X for at least ten of the last twenty years or (ii) was arrested after November 5, 1996 and convicted of a cannabis crime committed in Oakland, California.
- B. Review of Criteria.
  - 1. Proof of Income shall be supported with federal tax returns and at least one of the following documents: two months of pay stubs, current Profit and Loss Statement, or Balance Sheet, or proof of current eligibility for General Assistance, Food Stamps, Medical/CALWORKs, or Supplemental Security Income or Social Security Disability (SSI/SSDI)

2. Residency must be for a total of ten years in any combination of the designated Oakland police beats as set forth in Section 5.81.020.J.3. A minimum of two of the documents listed below, evidencing 10 years of residency, shall be considered acceptable proof of residency. All residency documents must list the applicant's first and last name, and the Oakland residence address in the police beats set forth in Section 5.81.020.J.3:
    - California driver's record; or
    - California identification card record ; or
    - Property tax billing and payments; or
    - Verified copies of state or federal income tax returns where an Oakland address within the police beats is listed as a primary address; or
    - School records; or
    - Medical Records; or
    - Banking records; or
    - Oakland Housing Authority records; or
    - Utility, cable or internet company billing and payment covering any month in each of the ten years.
  3. Proof of Conviction should be demonstrated through federal or state court records indicating the disposition of the criminal matter.
- C. Assistance. Equity Applicants will be eligible for participation in the Equity Assistance Program, which will include industry specific technical assistance, business ownership technical assistance, no interest business start-up loans, and waivers from City permitting fees.
- D. Initial Permitting Phase.
1. The period of time before the Equity Assistance Program referred to in OMC 5.81.060(C) is established, funded and implemented shall be referred to as the Initial Permitting Phase
  2. At any point during the Initial Permitting Phase, a minimum of fifty (50) percent of all permits collectively issued under OMC Chapters 5.80 and 5.81 shall be issued to Equity Applicants. This excludes the permits issued to the initial eight (8) dispensaries.

3. In the Initial Permitting Phase, a General Applicant will receive the next available General Applicant permit if it serves as an Equity Incubator by providing free real estate or rent to an Equity Applicant who obtains a medical cannabis permit. In order to receive this permitting priority, the General Applicant must also comply with the following conditions:
  - a. The free real estate or rent shall be for a minimum of three years.
  - b. The Equity Applicant shall have access to a minimum of 1,000 square feet to conduct its business operations.
  - c. The General Applicant must provide any City required security measures, including camera systems, safes, and alarm systems for the space utilized by the Equity Applicant.
  - d. The General Applicant is otherwise compliant with all other requirements of OMC Chapter 5.80 or 5.81.
4. If a General Applicant obtains a cannabis permit utilizing the Equity Incubator priority provisions of OMC 5.81.060 (D) (3) and the Equity Applicant ceases its business operations, the General Applicant must:
  - a. Notify the City Administrator within thirty (30) days of the Equity Applicant ceasing its business operations.
  - b. Re-apply for a cannabis permit subject to the permitting restrictions of this Chapter, including OMC 5.80.045 (D) (2).
5. Failure to notify the City Administrator, submit a new application and obtain a new cannabis permit as required under OMC 5.80.045 (D) is grounds for revocation and a violation of this chapter.

E. Renewal.

1. In order to continue to receive new Equity Assistance Program services, an Equity Applicant must provide proof that it continues to satisfy the Equity Criteria at the time of its annual permit renewal.
2. An Equity Applicant who no longer satisfies the Equity Criteria but is compliant with all other requirements of OMC Chapter 5.80 or 5.81 will be entitled to renew the permit but will no longer be entitled to receive new services under the Equity Assistance Program. Such an Applicant may utilize any services previously provided granted under the Equity Assistance Program, though, such as previously issued loans.

### **5.81.070 - Operating and performance standards and Administrative Regulations**

- A. Facilities permitted under this chapter shall not be open to the public. The City Administrator shall establish operating and performance standards as well as administrative regulations for permittees under this chapter. The City Administrator may set further standards for such operations and activities through administrative guidance and formal regulations. In order to maintain a permit in good standing, operators under this chapter must meet all the operating criteria for the required pursuant to State law, the City Administrator's administrative regulations, and this Chapter. The intent of these operating and performance standards is to minimize any negative effects and enhance the benefits of permitted facilities on the surrounding community.
- B. The following standards shall be included in the City Administrator's regulations:
1. No cannabis or cannabis odors shall be detectable by sight or smell outside of a permitted facility.
  2. Permitted facilities must install security cameras capable of documenting activity inside and outside the facility, as determined by the Oakland Police Department.
  3. Permitted facilities must implement a community beautification plan to reduce illegal dumping, littering, graffiti and blight and promote beautification of the adjacent community within 50 feet of the cannabis facility
  4. Permitted facilities that hire and retain formerly incarcerated Oakland residents may apply for a tax credit or license fee reduction based on criteria established by the City Administrator.
  5. All employees shall be paid a living wage as defined by OMC Chapter 2.28.
  6. Permitted facilities must implement a track and trace program as prescribed by state law that records the movement of cannabis and cannabis products in their custody and make these records available to the City Administrator upon request.
- C. Noncompliance of such operating standards shall constitute a breach of the permit issued hereunder and may render such permit suspended or revoked based upon the City Administrator's determination.

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

- A. The City Administrator shall be provided access to any licensed medical cannabis cultivation, manufacturing, and other facility during normal business hours to verify compliance with this chapter.
- B. The City Administrator shall be provided access to any and all financial information at any time, as needed to conduct an audit of the permittees under this chapter to verify tax compliance under Chapter 5.81 and/or gross receipts tax requirements.
- C. The City Administrator is authorized to examine the books, papers, tax returns and records of any permittee for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax due.

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

- D. Every permittee is directed and required to furnish to the City Administrator, the means, facilities and opportunity for making such financial examinations and investigations.
- E. Any permittee refusal to comply with this Section shall be deemed a violation of this chapter, and administrative subpoenas shall be enforced pursuant to applicable law.

**5.81.100 - Liability and indemnification**

- A. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this chapter shall not become a personal liability of any public officer or employee of the City.
- B. To the maximum extent permitted by law, the permittees under this chapter shall defend (with counsel acceptable to the City), indemnify and hold harmless the City of Oakland, the Oakland City Council, and its respective officials, officers, employees, representatives, agents and volunteers (hereafter collectively called "City") from any liability, damages, actions, claims, demands, litigation, loss (direct or indirect), causes of action, proceedings, or judgment (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "action") against the City to attack,

set aside, void or annual, any medical cannabis-related approvals and actions and strictly comply with the conditions under which such permit is granted, if any. The City may elect, in its sole discretion, to participate in the defense of said action and the permittee shall reimburse the City for its reasonable legal costs and attorneys' fees.

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

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

A collective or cooperative of qualified patients or primary caregivers, may cultivate medical cannabis covering an area of no more than 250 square feet inside a residential unit, or if in a nonresidential building on one parcel of land.

Adults 21 years or older may also cultivate up to six plants within a single private residence, or upon the grounds of a private residence.

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 cannabis in any residential areas shall be limited to adults 21 years or older, qualified patients, primary caregivers, and medical cannabis collectives or cooperatives comprised of no more than three (3) qualified patients and/or their primary caregivers. Every member of the medical cannabis collective or cooperative shall possess an identification card issued by the County of Alameda, or the State of California, or another agency recognized by the City pursuant to California Health and Safety Code Section 11362.7 et seq.
- B. The indoor cultivation, processing, possessing, and/or manufacturing of cannabis in residential areas shall conform to the following standards:
1. The residential facility shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities. Cannabis cultivation, processing, possession, and/or manufacturing shall remain at all times secondary to the residential use of the property;
  2. Cultivation possession, processing and/or manufacturing of cannabis in residential areas shall occur only in a secured residence occupied by the qualified patient or primary caregiver;

3. No individual residential facility or other facility housing the cultivation, processing and/or manufacturing of cannabis shall contain more than two-hundred and fifty (250) square feet of cultivation area;
4. If required by the building or fire code, the wall(s) adjacent to the indoor cultivation area shall be constructed with 5/8" Type X fire resistant drywall;
5. The cultivation area shall be in compliance with the current adopted edition of the California Building Code;
6. The cultivation area shall not adversely affect the health or safety of the residence or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;
7. All high amperage electrical equipment (exceeding six (6) amps) used in the cultivation of medical cannabis, (e.g., lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired; the use of extension cords to supply power to high amperage electrical equipment (exceeding six (6) amps) used in the cultivation of medical cannabis is prohibited;
8. Any electrical rewiring or remodeling shall first require an electrical permit from the City;
9. The use of butane gas products for personal use cannabis cultivation is prohibited; and
10. From a public right-of-way, there shall be no exterior evidence of cannabis cultivation occurring at the property.

#### **5.81.110 - Prohibited operations**

- A. Any cultivating, infusing, manufacturing, packaging, testing, or transporting without a permit under this chapter is expressly prohibited. No use that purports to have cultivated, distributed, manufactured, tested or transported cannabis 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.
- B. Any violations of this chapter may be subject to administrative citation, pursuant to Chapters 1.08 and 1.12, and other applicable legal, injunctive or equitable remedies. ~~No enforcement of this provision shall take place, though, until after the City Administrator has published information on how to apply for cultivation, distribution, laboratory, manufacturing and transporting permits and no~~



enforcement shall take place against a permit applicant while their application is pending.

#### **5.81.120 - Revocation, suspension and appeals**

The City Administrator's decision to issue or deny a permit shall be subject to an appeal by the Applicant pursuant to Section 5.02.100, except that the appeal authorized in Section 5.02.100 shall be to an independent hearing officer and not the City Council. The request for an appeal must be made in writing within fourteen (14) days of the City Administrator's decision. The decision of the independent hearing officer shall be final and conclusive.

For suspensions or revocations of permits or local authorizations for temporary state licenses, the City shall follow the procedures set forth in Section 5.02.080, except that the City Administrator shall provide fourteen (14) days' notice of the hearing on the proposed action to suspend or revoke the permit. The appeal authorized in Section 5.02.400080, shall be to an independent hearing officer, and such request for appeal must be made in writing within fourteen (14) days of the City Administrator's decision. The decision of the independent hearing officer shall be final and conclusive.

#### **5.81.130 – Co-location of Medical and Adult-Use Cannabis Businesses**

- A. Any permit issued under Oakland Municipal Code Chapters 5.80 and 5.81 may be utilized for medical or adult-use purposes as authorized by the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) provided the permit holder abide by the performance and operating standards promulgated by the City Administrator, which may contain distinct requirements for medical and adult-use operations. This authorization to conduct both medical and adult-use operations does not relieve an operator from all applicable tax obligations, including paying different tax rates for medical and adult-use activities.
- B. Permittees under Oakland Municipal Code Chapters 5.80 and 5.81 must notify the City Administrator, in a form determined by the City Administrator, whether they wish to conduct medical, adult-use or both activities. Permittees who wish to add or amend their cannabis operations must notify the City Administrator, in a form determined by the City Administrator, and the City Administrator shall grant said request after determining said permittee is in good standing with this chapter and other relevant local or state requirements.

#### **5.81.140 – Local Authorization for Temporary State Licenses**

- A. For the purpose of qualifying for a temporary state license to conduct commercial cannabis activity pursuant to California Business and Professions Code Section 26050.1, the City Administrator shall only provide local authorization to the following:
  - 1. Individuals or entities that have been issued a permit under Oakland

Municipal Code Chapters 5.80 and 5.81.

2. Applicants with a pending application who have been approved by the Planning Department and Revenue Management Bureau.
- B. Temporary permits shall only be issued to applicants meeting the requirements of Oakland Municipal Code Section 5.81.140.A.2 above, and in compliance with the processing of permits during the Initial Permitting Phase of the Equity Permit Program, such that at any point in time a minimum of fifty (50) percent of all Applicants authorized under Oakland Municipal Code Sections 5.80.120.A.2 and 5.81.140.A.2 shall be issued to Equity Applicants. Likewise, a General Applicant that serves as an Equity Incubator will receive the next available General Applicant local authorization under Oakland Municipal Code Sections 5.80.120.A.2 and 5.81.140.A.2.
- C. Local authorization for Applicants under Oakland Municipal Code Sections 5.80.120.A.2 and 5.81.140.A.2 shall be provided based on the timing of the approvals received by the Planning Department and Revenue Management Bureau and the restrictions described under OMC 5.80.120.B and OMC 5.81.140.B.

Nothing herein shall be construed to have the Planning Department or Revenue Management Bureau precondition any approval on the actions of another City Department. The Planning Department and Revenue Management Bureau are to act independently as quickly as practical to approve permits applicants. Approval from the Revenue Management Bureau shall be granted if the Applicant has a current business license. The foregoing includes businesses that are in the process of disputing taxes owed to the City of Oakland through the Revenue Management Bureau's formal appeals process.

**5.81.150 – Restrictions on Approvals for Properties Used for Work/Live or Residential Purposes**

- A. No permit or local authorization shall be issued under OMC Chapters 5.80 or 5.81 to a cannabis applicant at premises where either:
  1. Work/Live use existed as of March 6, 2018; or
  2. Residential use existed as of March 6, 2018.

In both the foregoing, this applies irrespective of any subsequent reconfiguration of the premises.

- B. A permit or local authorization may be issued under OMC Chapters 5.80 or 5.81 to a cannabis applicant utilizing different premises within a parcel of land that also contains Work/Live or residential uses, so long as the cannabis applicant mitigates potential impacts, if possible, as directed by the City Administrator, Fire Marshall, and/or Building Official, including any mitigations required by the Fire Marshall and/or Building Official, and so long as volatile manufacturing may only take place in a separate building with approval of the Fire Marshall and Building Official and under such mitigations as they or the City Administrator may require.
- C. The City Administrator may develop further guidelines and operating standards to implement this section.

**SECTION 5. California Environmental Quality Act.** The City Council independently finds and determines that this action does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) based on: (1) CEQA Guidelines, 14 California Code of Regulations, Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and (2) CEQA Guidelines, 14 California Code of Regulations, Section 15378 because it has no potential for resulting in either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment. Even if this action does comprise a project for CEQA analysis, the following CEQA Guidelines, 14 California Code of Regulations, exemptions apply to this action: (1) CEQA Guidelines Section 15061(b)(3) (general rule exemption), and (2) CEQA Guidelines section 15301 (existing facilities exemption), each of which provides a separate and independent basis for CEQA clearance and when viewed together provide an overall basis for CEQA clearance. The City’s Environmental Review Officer or designee shall file a Notice of Exemption with the appropriate state agencies.

**SECTION 6. Severability.** The provisions of this Ordinance are severable, and if any section, subsection, sentence, clause, phrase, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is for any reason held to be invalid, preempted by state or federal law, or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. It is hereby declared to be the legislative intent of the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

**SECTION 7. Ordinance Effective Date.** Pursuant to Section 216 of the Charter of the City of Oakland, this Ordinance shall become effective immediately upon final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption by the Council of the City of Oakland.

**SECTION 8. General Police Powers.** This Ordinance is enacted pursuant to the City of Oakland's general police powers, including but not limited to Sections 106 of the Oakland City Charter and Section 7 of Article XI of the California Constitution.

IN COUNCIL, OAKLAND, CALIFORNIA,

OCT 02 2018

PASSED BY THE FOLLOWING VOTE:

AYES - ~~WILLIAMS~~, CAMPBELL-WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN,  
KALB, KAPLAN ~~AND OTHERS~~ - 6

NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - 2 Brooks & Reed

ATTEST:



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

Introduction Date

SEP 17 2018

Date of Attestation:

**NOTICE AND DIGEST  
ORDINANCE AMENDING PERMITTING REQUIREMENTS FOR  
MEDICAL AND ADULT-USE CANNABIS DISPENSARIES,  
CULTIVATION, MANUFACTURING AND OTHER FACILITIES  
(CHAPTERS 5.80 AND 5.81 OF THE OAKLAND MUNICIPAL CODE)  
TO:**

- 1) DELETE SECTION 5.81.110(B), WHICH PROHIBITS ENFORCEMENT OF VIOLATIONS OF CHAPTER 5.81 ONCE A PERMIT APPLICATION IS PENDING;**
- 2) ALIGN CHAPTER 5.81 PERMIT TYPES WITH STATE LAW BY ADDING PACKAGING AND INFUSION PERMIT CATEGORIES;**
- 3) LIMIT THE NUMBER OF DISPENSARY PERMITS TO TWO PER INDIVIDUAL OR ENTITY;**
- 4) CLARIFY THE DISTANCE REQUIREMENTS BETWEEN CANNABIS FACILITIES AND SCHOOLS;**
- 5) LIMIT THE NUMBER OF SPECIAL EVENT PERMITS FOR CANNABIS ACTIVITIES;**
- 6) ALLOW ANCILLARY CANNABIS ACTIVITIES, INCLUDING BUT NOT LIMITED TO PACKAGING, DISTRIBUTION, AND INFUSION, AT THE SITE OF A PERMITTED DISPENSARY; AND**
- 7) ADD A PUBLIC NOTICE REQUIREMENT FOR ALL CANNABIS USES WITHIN 300 FEET OF A RESIDENTIAL ZONE**

This ordinance amends Chapters 5.80 and 5.81 of the Oakland Municipal Code to make technical amendments to the City's rules regulating the retail sale of cannabis as well as the cultivation, manufacturing, distribution, testing, and transportation of cannabis.