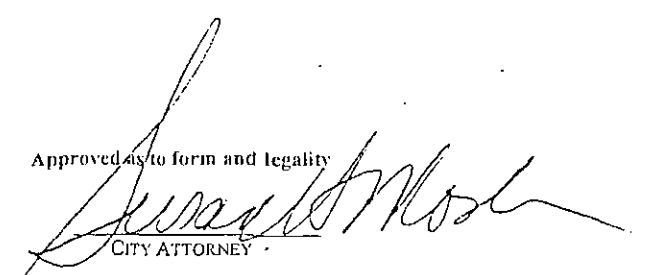


FILED
OFFICE OF THE CITY CLERK
OAKLAND

10 NOV 15 PM 4:02
INTRODUCED BY COUNCILMEMBER REID AND KAPLAN

Approved as to form and legality


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 EIGHT
(8), AND INCREASE FEES, DELETE AND MOVE SECTION 5.80.040
"PERFORMANCE STANDARDS" TO CITY ADMINISTRATOR
GUIDELINES, AND ADD APPEAL TIMELINE.

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:

04.11.20

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), Existing Facilities {Sec.15301}, General Rule {Sec.15061(b)(3), Consistent with General Plan/Zoning {Sec 15183}, Infill Projects {Sec.15332}, Other {Sec. 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 , or written recommendation, come together to provide education, referral, or network services, and facilitation or assistance in the lawful production, distribution, cultivation, acquisition, and distribution of medical cannabis. All Dispensaries must have an approved lawful permit issued by the City of Oakland.

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 reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of California Health and Safety Code Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.

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

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

H. "Medical Cannabis Collective" means a cooperative affiliation association or collective of persons comprised of no more than three "qualified Patients" and/or their "primary caregivers" with valid identification cards or written recommendations that come together to provide care, education, referral or network services to facilitate/assist in the lawful production, cultivation, acquisition, distribution, processing and provision of medical marijuana from residential unit or one non-residential parcel of land to their qualified patients.

1. "One 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 dDispensary 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)~~ eight (8) 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 dDispensary is not within one thousand (1,000) six hundred (600) 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 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 aApplicants shall pay an application fee, a permit 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

The City Administrator, or his/her designee, shall include this Section, "Performance Standards, into the Office of the City Administrator Guidelines, which are subject to change as the law requires.

~~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. Non violent cannabis related crimes would not be reason to deny employment.~~

~~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.~~

~~HI. 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.~~

5.80.050 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.

5.80.0560 Regulatory Fees

Every person conducting, managing or maintaining the business of a Dispensary in the City shall, in addition to the application fees of five thousand dollars (\$5,000), shall pay a regulatory permit fee of sixty thousand dollars (\$60,000) 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. The fees in this section are also specifically set forth in Section 6. Master Fee Schedule.

5.80.0760 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.

5.80.0870 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.

5.80.0890 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. No cannabis shall be smoked, ingested or otherwise consumed on the premises. 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.

5.80.100 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 application fee of five thousand dollars (\$5,000) 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).~~ After filing an application, if awarded an Oakland Dispensary Permit, the fee for that permit is an additional sixty thousand dollars (\$60,000). This permit fee is due each year upon renewal of permit.

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: _____