

# CITY OF OAKLAND

## AGENDA REPORT

2010 SEP 16 PM 4:42  
TO: Office of the City Administrator  
ATTN: Dan Lindheim  
FROM: Arturo M. Sanchez  
DATE: September 28, 2010

RE: **Action on a report regarding proposed Request For Permit Applications (RFPA) to operate a Medical Cannabis Cultivation Facility Pursuant to Oakland Municipal Code Chapter 5.81**

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### Summary

On July 27, 2010 The City Council Adopted Ordinance No. 13033 C.M.S. creating a regulation and permit process for City designation of four large Collective, Collaborative, and Cooperative Medical Cannabis Cultivators. The purpose of this ordinance was to create a framework for the regulation of medical Cannabis cultivation to address public health, safety, and economic impacts not accounted for within the City's current medical Cannabis system.

Council directed staff to return with a draft Request For Permit Applications (RFPA) detailing application requirements, which take into account Council policies and direction.

This report has the following attachments: (i) a draft RFPA; (ii) proposed draft regulations; (iii) Council policies used in past RFPs by other City departments and used in the development of this RFPA; and (iv) The State of California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use.

### Discussion

The attached proposed RFPA is for Council review and comment. The proposed RFPA will require Applicants to submit several documents and detail how their business model will meet six (6) major categorical elements upon which they will be scored. In addition there will be four (4) bonus point categories. The bonus point categories were chosen to address concerns expressed at the July 27, 2010 Council meeting where Council directed the development of a bonus point structure based on the following list of concerns:

- Local hire
- Wages and working conditions (if not unionized)
- Equity participation
- Employee certification
- Continuing Education
- Contracting
- Card check

- Product testing/Product safety
- Variety of environmental issues:
  - Reduction of electrical usage
  - Waste disposal
  - Reduce green house gas emissions
  - Reduce use of pesticides
  - Growing conditions that produce plants free of mold, disease and heavy metals
  - Global warming
  - Toxins
  - Water runoff

Other items mentioned (but covered in general standards)

- Minimizing neighborhood impact

As directed by council staff has further expanded on these general themes and included these concerns in the draft RFPA as subsections of four bonus point categories. The four category headings as follows:

1. Labor Practices
2. Environmental Mitigations
3. Product Safety
4. Community Benefits

Keeping in mind the concerns of Council, staff has developed an RFPA designed to address the concerns and award the most qualified Applicants with the cultivation permits.

#### **PRE-APPLICATION TIMELINE & SCHEDULE**

As explained below the proposed process will require applicants to proceed through a rigorous and blind application review process designed to assure the selection of the four best and most responsible Applicants.

Staff estimates that it will need a minimum 90 days to review and score applicants, conduct background checks, select the top six applications, administer Cannabis exams, conduct public hearings, and award permits. If no additional draft of the RFPA is required then staff expects the following schedule for the RFPA process:

<i>Informational letter to all interested individuals:</i>	<i>Monday October 11, 2010</i>
<i>Publish and Release RFPA:</i>	<i>Monday October 18, 2010</i>
<i>Mandatory Meeting for Applicants:</i>	<i>Monday October 18, 2010 6pm @ City Hall.</i>
<i>Applications and Required documents due:</i>	<i>Wednesday November 24, 2010 by 4pm</i>
<i>1<sup>st</sup> Round Scoring and Ranking of Applicants:</i>	<i>Friday December 17, 2010</i>
<i>Top 6 Applicants notified:</i>	<i>Monday December 20, 2010</i>

*Public Hearing scheduled (top 6):*  
*Permit Awardees Notified:*  
*Permits issued:*

*January 4 -January 12, 2011*  
*January 21, 2011*  
*exact day TBD January, 2011*

## **Required Application Elements**

### *Applications*

All applicants will be required to identify the name of the organization, proposed site, board members, managers, and general contact information. All board members and managers will be required to submit their personal information for a Live Scan background check to be conducted by the Oakland Police Department. Failure to submit a Live Scan form for all required members of the organization will cause applications to be considered incomplete and void from consideration. All applicants will be required to submit an application form, required attachments, and a non-refundable application fee of \$5,000 by the submission deadline, failure to do so will result in disqualification from process.

Each entity applying for a Medical Cannabis Cultivation permit will need to identify the type of business, partnership, or corporation which is applying for the permit. Applicants will be required to submit proof of corporate status or legal status of business configuration. Failure to identify the business type and provide appropriate documentation would cause the application to be considered incomplete and void from consideration. Further if the entity does not conform to state or local requirements, the City reserves the right to void the applicant from consideration.

Applicants must also identify the property which they intend to use for the Medical Cultivation Permits, and their relationship to the property. The proposed location must be located in areas where Light Manufacturing Industrial, or their equivalent use, is permitted as such use is described in the Oakland Planning Code, as may be amended.

Applicants will also be required to submit the following attachments to the application:

- Business Plan** - Each applicant must submit a business plan generally describing their business model, partnerships, and overall plans.
- Building & Construction** - Applicants should submit narrative detailing construction and timeline for construction. Attached to narrative should be a copy of design plans which include diagrams of proposed construction, electrical, plumbing, fire and security components.
- Security Plan** - Applicants must provide a detailed description of their Operation and Facility Security plan that includes an assessment of site security by a qualified security consultant; this assessment may be required every two years prior to renewal of any permit. Plans should cover in detail Operation and Facility Security.

- Fire Plan - Applicants must provide a detailed description of their Fire prevention, suppression, and alarm systems that include an assessment of the facility's fire safety by a qualified Fire prevention suppression consultant.
- Environmental Plan – All Applicants will be required to include an Environmental Compliance Plan. This plan must provide a detailed description of how the applicant will comply with all existing state and local policies
- Proof of Capitalization - Applicants must provide proof of capitalization sufficient to cover estimated costs of build, operation, compensation of employees, equipment costs, utility costs, O & M as needed, and product production. As an example, if Applicants business plan estimates that total cost of starting business from construction to production costs \$7 million then Applicant should be able to establish sufficient capital to cover this cost. Proof of capitalization can be presented in the form of Letters of Credit and bank statements. Applicants should be prepared to post a security performance bond for the full amount of their estimated cost of start up.

### **Application Review**

Applications that are timely and fully completed will be reviewed in two (2) phases as follows:

#### **PHASE I**

##### Application

Complete applications submitted by the deadline will be redacted, assigned a selection reference number, and submitted to a panel of subject matter experts in building/construction, business development, revenue, Fire, Environmental Services, Environmental, and Public safety, with Special Business permit staff acting as a second reviewer of all applicants. Staff reviews will be conducted in a blind manner (i.e. no reviewer will be privy to the names of the Applicant Corporation, or managing members).

##### Scoring

Each section will receive a score from the two reviewers, and their scores will be averaged to determine actual score for the section. In Phase I an Applicant can achieve a Maximum score of 1500 points, 1000 points from six (6) required categories and 500 from bonus section categories. Each section will be scored as follows:

1. Responsiveness: A Pass/Fail evaluation will be applied to the determination of responsiveness relative to meeting the requirements of this RFP.
2. Business Plan: maximum of 500 points

3. Building/Construction Plan: maximum of 100 points
4. Security Plan: maximum of 50 points
5. Fire Prevention Plan: maximum of 50 points
6. Capitalization: maximum of 200 points
7. Environmental Plan: maximum of 100 points
8. Additional Preference Points – additional preference points may be earned as follows:
  - a. *Labor* (100 points) - Applicants who have a history of and/or exhibit a commitment to Oakland and its residents will receive additional bonus points for their ability to meet 10 subcategories. Each subcategory can earn an applicant 10 additional points.
  - b. *Environmental* (200 points) – Bonus points will be awarded based on three sub-categories: a) Energy, Building & Climate; b) Water; and c) Materials & Waste.
  - c. *Product Safety* (100 points) – Applicants will be awarded bonus points based on their ability to show how they will produce cannabis without pesticides, free of mold, bacteria, and other harmful substances, how they intend to test the product for safety, and what steps they will take to make sure their product will be safe for consumption.
  - d. *Community Benefits* (100 points) – Applicants must demonstrate how they intend to provide their local community with community benefits and mitigate any nuisance and/or negative impacts that the facility's existence may cause. Applicants who demonstrate a commitment to their community and to improving the quality of life of their neighbors should receive additional bonus points for sustainable practices that they commit to implementing

When evaluating each section reviewers will rely on the following criteria:

1. *Overall quality of the proposal including responsiveness and conformance to RFPA requirements for content and format;*
2. *Quality and appropriateness of proposed Applicant team, professional; experience and background of prime Applicants and key sub lessees;*
3. *Appropriate personnel principals, project location, and other key personnel with required experience and skills relevant to this project;*
4. *Prime Applicants experience and ability to manage operations of proposed facility, scheduling of work and implementation necessary to operate, cost estimating and budget management;*
5. *Prime Applicant's place of residence, primary makeup of applicant corporation's board, and prior ability to work with local government agencies;*

The top six (6) highest scoring applications will proceed to Phase II.

## PHASE II

### Examination

The top six (6) applicants will be required to designate a member applicant to take a Cannabis cultivation facility exam. The member applicant should be a managing member of the Applicant Corporation, Cooperative, Association, or Collective. In instances where there will be sub lessees, the City reserves the right to require a managing member of all sub lessees to take the exam as well.

The exam will test the applicant's familiarity with Oakland and California law, as well as the Attorney General's guidelines on Medicinal Cannabis.

Examination will be scored on a 100 point scoring system. Resulting examination score will be added to total score from Phase I. For example if Applicant had a total score (RFPA + Bonus) of 1250, and scores 75 on the exam their new score would be 1325.

### Public Hearing

Public Hearings will be scheduled for these top six (6) applicants. Prior to public hearings, all proposed facility sites will be inspected by a building official to ascertain the viability of proposed site plans, current facility conditions, and to document any code violations. All Applicant facilities will be subject to a public hearing noticed to the community where the proposed facility is located. Hearings will determine community input and concerns.

All scores will be added and public hearing comments taken into consideration. The top four candidates will be the candidates with the highest overall score and a favorable hearing determination. These four Applicants will be offered permits and asked to proceed with implementation. Assuming that they abide by their construction and phase-in schedule, permits would be issued January 2011 with production beginning as soon thereafter as practicable.

### ***Practical Considerations***

Staff has developed the bonus categories based on Oakland City Council policies and Procedures (included with draft RFPA as ***Exhibit B***). It is important to note that these policies and procedures have been developed and adopted by Council for use in contracts with third parties where the City retains a proprietary interest in the services to be rendered. This proprietary interest affords the City a level of control over items such as labor practices and third party contracts. The matter before the council does not involve such a proprietary interest.

As has been previously discussed by the Office of the City Attorney the proposed RFPA merely invites applicants to apply for a special business permit and as such the City does not have the proprietary interest necessary to require the items enumerated in the

attached Oakland City Council policies and Procedures. For this reason staff has included them as considerations and items for which bonus points can be issued for an applicant that voluntarily meets these standards.

## **SUSTAINABLE OPPORTUNITIES**

### ***Economic***

The business permits issued under Title 5 of the OMC generate jobs and tax revenues for the City. It is anticipated that the addition of the four (4) cultivation facilities will generate hundreds of jobs and increase tax revenue for the City of Oakland.

### ***Environmental***

Environmental considerations are a key component to a successful Applicant. The City of Oakland has long maintained a commitment to renewable energy and waste reduction and the RFPA has been drafted in a manner that will award permits to the Applicants whose plans produce the least amount of carbon, waste, are energy efficient, and provide water protections designed to make them an environmental friendly facility.

### ***Social Equity***

Staff has drafted RFPA and the RFPA review process to ensure that the point system awards and encourages Applicants to develop proposals with an emphasis on local owned businesses and to make commitments to hire locally, buy products, supplies and materials from local companies, and improve the quality of life of Oakland residents

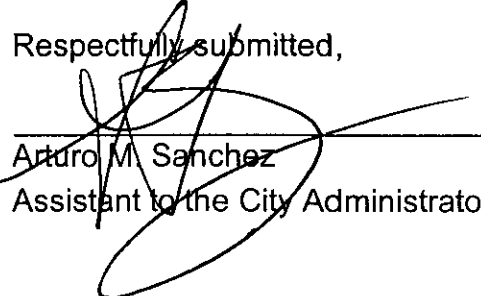
### ***Disability and Senior Citizen Access***

Staff will guide the formulation of the RFPA to ensure that the point system encourages Applicants to provide safe and equitable access to seniors and members of the Disabled community.

**Action Requested Of the City Council**

1. Accept this Staff Report
2. Review draft of the RFPA for Medical Cannabis Cultivation

Respectfully submitted,

  
\_\_\_\_\_  
Arturo M. Sanchez  
Assistant to the City Administrator

APPROVED AND FORWARDED TO THE  
CITY COUNCIL

  
\_\_\_\_\_  
Office of the City Administrator

Attachment – Draft Request For Permit Application for Medical Cannabis Cultivation Facility

Attachment - Exhibit A – Draft Operating Conditions

Attachment - Exhibit B – Oakland City Council policies and Procedures

Attachment - Exhibit C – Oakland Municipal Code Chapter 5.81 Medical Cannabis Cultivation

Attachment - Exhibit D – California Attorney general Guidelines





**CITY OF  
OAKLAND**

**THE CITY OF OAKLAND**

**SPECIAL BUSINESS PERMITS DIVISION  
OFFICE OF THE CITY ADMINISTRATOR**

**MEDICAL CANNABIS INDUSTRIAL  
CULTIVATION AND PROCESSING FACILITY  
PERMIT**

**REQUEST FOR PERMIT APPLICATIONS**

**Mandatory Pre-meeting: <sup>7:30</sup>  
Submittal Due Date:**

## INTRODUCTION

This Request for Permit Applications (RFP) is issued by the City of Oakland to identify qualified firms or individuals (Permittees), and solicit applications from such, to engage in Medical Cannabis Industrial Cultivation And Processing in order to provide safe and adequate access to patients, patient care givers, and dispensaries of medical Cannabis. Applicants will compete for one (1) of four (4) available Permits to conduct large scale cultivation of Cannabis in the City of Oakland. Selected Permittees will be required to comply with operating standards, regulations, and reporting requirements as identified by the City Administrator or designee.

## BACKGROUND

### The Statewide Cannabis Movement

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

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

### Medical Cannabis in Oakland

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

While Oakland, and for that matter the State, has created a method for dispensing medical cannabis, there is no established structure for its production, growth and cultivation. This, combined with the City of Oakland's low priority enforcement policy, has made it difficult for OPD to regulate production within the structure of dispensary collectives.

On July 27, 2010 the Oakland City Council Adopted Ordinance No.13033 C.M.S. creating a regulation and permit process to designate four large-scale Medical Cannabis Industrial Cultivation and Processing Facilities. The purpose was to provide a framework for the regulation of large-scale medical cannabis cultivation that would address the public health, safety, and economic impacts currently not accounted for within the city's medical cannabis system.

#### Number of Permits

To balance the objectives of sufficient scale and ease of implementation, the City Council approved four (4) Medical Cannabis Industrial Cultivation And Processing Facility Permits in the interim phase of the program. Following the first year of implementation, the City Administrator is to return to Council with a review of the performance and impact of cultivation, production, and manufacturing under the ordinance. Council would then have the option of developing a permanent ordinance and issuing additional Permits based on a determination of whether market demand for medical cannabis is sufficient to absorb further production, and whether the issuance of additional Permits would serve the interests of the City.

#### DEFINITIONS

The following words or phrases, whenever used in this RFPA and attached regulations, shall be given the following definitions:

- A. "Aeroponics" is the process of growing plants in an air or mist environment without the use of soil or an aggregate medium (known as geponics). The word "aeroponic" is derived from the Greek meanings of "aero" (air) and "ponos" (labour). Aeroponic culture differs from both conventional hydroponics and in-vitro (plant tissue culture) growing. Unlike hydroponics, which uses water as growing medium and essential minerals to sustain plant growth, aeroponics is conducted without a growing medium.
- B. "Applicant" as used only in this Chapter shall be any individual, firm, cooperative, association, collective, or corporations that applies for a Medical Cannabis Industrial Cultivation And Processing Facility permit via the RFPA process described herein.
- C. "Batch" as used only in this Chapter shall be defined by City Administrator to mean a discrete quantity of dried cannabis or less, produced and sold together.
- D. "Cannabis" or "Marijuana" as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 8.46.020.
- 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. "Carbon neutrality" having a net zero carbon footprint, refers to achieving net zero carbon emissions by balancing a measured amount of carbon released with an equivalent amount sequestered or offset, or buying enough carbon credits to make up the difference.

G. "Carbon Sequestration" is defined as "The process of removing carbon from the atmosphere and depositing it in a reservoir. It may also be a geoengineering technique for long-term storage of carbon dioxide or other forms of carbon to mitigate global warming. It has been proposed as a way to mitigate accumulation of greenhouse gases in the atmosphere, which are released by burning fossil fuels.

H. "City Administrator" as used only in this Chapter shall mean the City Administrator for the City of Oakland.

I. "Collective" is any association, Medical Cannabis Association, cooperative, affiliation, or collective of persons where three or less "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, collectively or cooperatively join to provide education, referral, or network services; and facilitation or assistance in the lawful production, acquisition, and distribution of medical cannabis.

J. "Cultivation Area" as used only in this Chapter hereinafter shall mean the actual area in use for the entire cultivation process of cannabis plants (including seedling production, vegetation, and maturation), as well as reasonable walking space, such that, for example, two trays used for maturation, each measuring 10 square feet and stacked vertically on top of each other shall be counted as 20 square feet of cultivation area.

K. "Efficient Energy Use, sometimes simply called Energy Efficiency" using less energy to provide the same level of energy service. For example, insulating a home allows a building to use less heating and cooling energy to achieve and maintain a comfortable temperature. Efficient energy use is achieved primarily by means of a more efficient technology or processes rather than by changes in individual behavior.

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

M. "Hydroponics (From the Greek words hydro, water and ponos, labor)" a method of growing plants using mineral nutrient solutions, in water, without soil. Terrestrial plants may be grown with their roots in the mineral nutrient solution only or in an inert medium, such as perlite, gravel, mineral wool, or coconut husk.

N. "HVAC" is an acronym that stands for the closely related functions of "Heating, Ventilating, and Air Conditioning"—the technology of indoor or automotive environmental comfort. HVAC is particularly important in the design of medium to large

industrial and office buildings such as skyscrapers and in marine environments such as aquariums, where safe and healthy building conditions are regulated with temperature and humidity, as well as "fresh air" from outdoors.

O. "Industrial Cannabis Cultivation, Processing, Manufacturing Facility" hereinafter "cultivation and manufacturing facility" as used only in this Chapter shall mean any facility used by any association, medical cannabis association, cooperative, affiliation, or collective, or other entity authorized under, in possession of identification cards, or written recommendations, 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., and in conformance with California and local law, for the possessing, cultivating, growing, processing, and/or manufacturing of cannabis in an area greater than more than ninety six (96) square feet of cultivation area, and/or possessing more than forty-eight (48) ounces of dried processed, and/or packaged Cannabis, in One Parcel of Land, for subsequent transfer to a licensed medical cannabis dispensary that supplies to qualified patients or primary caregivers. Any establishment engaged in, permitted to be engaged in or carrying on any medical cannabis cultivation, processing, or manufacturing or other activity mentioned in this chapter shall be deemed an Industrial Cannabis Cultivation and Manufacturing Facility as described in section 5.81.040.

P. "Leadership in Energy & Environmental Design (LEED)" is an internationally recognized green building certification system, providing third-party verification that a building or community was designed and built using strategies intended to improve performance in metrics such as energy savings, water efficiency, CO2 emissions reduction, improved indoor environmental quality, and stewardship of resources and sensitivity to their impacts.

Q. "Local" – means residing in the Oakland City proper limits.

R. "Medical cannabis collective, association, or cooperative" as used only in this Chapter shall be the same, and as may be amended, as is defined in OMC 5.80.010

S. "Primary caregiver" as used only in this Chapter shall be the same, and as may be amended, as is defined in OMC 5.80.010

T. "Qualified patient" as used only in this Chapter shall be the same, and as may be amended, as is defined in OMC 5.80.010

U. "Serious medical condition" shall have the same definition as California Health and Safety Code Section 11362.7 et seq, and as may be amended, including but not limited to:

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); or
  - b. If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

V. "Written recommendation" as used only in this Chapter shall be the same, and as may be amended, as is defined in OMC 5.80.010

W. "Zero Waste" a philosophy that encourages the redesign of resource life cycles so that all products are reused. Any trash sent to landfills is minimal. The process recommended is one similar to the way that resources are reused in nature. In industry this process involves creating commodities out of traditional waste products, essentially making old outputs new inputs for similar or different industrial sectors.

### PURPOSE

The purpose of this Request for Permit Applications, hereinafter RFPA is to solicit applications for large scale Medical Cannabis Industrial Cultivation And Processing Facility Permits.

The RFPA will consider 6 key components and 4 categories for bonus points.

1. Business Plan
2. Building Construction – Plans and Schedule

3. Security Plan
4. Fire Protection Plan
5. Environmental Plan
6. Capitalization

4 Bonus Categories:

1. Labor & Employment Practices
2. Environmental Mitigations
3. Product Safety
4. Community Benefits

## PHASE I

### Application

All Applicant groups will be required to submit an application form, with required attachments, and non refundable application fee of \$5,000. Attachments to application will include, but may not be limited to: 1) Address of proposed facility for mapping purposes (Staff will work with planning department to map proposed site). Facility must be located in an area zoned for Light Manufacturing Industrial; 2) Live scan submission for all business partners and managers operating the facility; 3) Business Plan; 4) Building and Construction Plan; 5) Security Plan; 6) Fire prevention plan; 7) Health and Construction Plan; 8) Environmental Plan; 9) Proof of Capitalization; 9) Proof of Insurance; and 10) Incorporation documents, if applicable.

Complete applications submitted by the deadline will all be redacted, assigned a reference number, and submitted to a panel of subject matter experts in the fields of building/construction, business development, revenue, Fire, public safety, and environmental planning, with Special Business permit staff acting as a second reviewer of all applicants. Staff's review will be conducted in a blind manner with no reviewer knowing the identity of the applicants.

The top six (6) applications will proceed to Phase II.

## PHASE II

### Examination

All Applicants will be required to designate a member applicant to take a Cannabis Cultivation Facility exam. The member applicant should be a managing member of the Applicant's Collective. In instances where there will be sub lessees, the City reserves the right to require a managing member of any sub lessee to take the exam as well.

The exam will test the applicant's familiarity with Oakland and California law, as well as the Attorney General's guidelines on Medicinal Cannabis.

### Public Hearing

The top six (6) applicants will be scheduled for public hearings. Prior to public hearings, all proposed facility sites will be inspected by a building official to ascertain viability of proposed site plan, current condition of facility, and to document code violations. If any of the top six (6) applicants are disqualified prior to their public hearing, the next highest Applicant will have a public hearing scheduled for their application. A total of six (6) Applicants must proceed to a public hearing. All Applicant facilities will be subject to a public hearing noticed to the community where the proposed facility is located. Hearing decisions and recommendations will be based primarily on community input, site inspection results, business feasibility, and the viability of the proposed location. The City Administrator or designee will rely on the hearing recommendations, in conjunction with RFPA score and exam results, to award Permits.

All scores will be added and public hearing comments taken into consideration. The top four candidates will be offered Permits and asked to proceed with implementation. Assuming they abide by their construction and phase in schedule, Permits would be issued January 2011.

### **SUBMITTAL REQUIREMENTS**

Please submit one (1) copy of the completed proposal and transmittal letter to the City Administrator's Office, Special Business Permit Division, 1 Frank H. Ogawa Plaza, 11<sup>th</sup> Floor, Oakland, CA 94612, no later than 5:00 p.m., **TBD**, 2010. The City reserves the right to accept or reject any or all proposals received not received on time, without appropriate attachments, or submitted at the incorrect location.

All proposals submitted via US Mail or common carrier must be delivered in a sealed package and must reference the RFPA, Applicant's location, submittal date, time and location of the proposals on the outside of the package or the documents **may not be** accepted.

#### A. Required Proposal Elements And Format

##### 1. Transmittal Letter

- a. Addressed to Mr. Arturo M. Sanchez, Assistant to the City Administrator, Special Business Permits Division.
- b. Signed by an officer of the Applicant Corporation, Association, Cooperative, or Collective and who is a Patient/Patient Care giver member. In case of joint venture or other joint-prime relationship, an officer of each venture partner shall sign.

##### 2. Applicant Business Plan



- a. In response to this RFP, the primary contact/applicant shall be a patient/patient care giver as defined pursuant to the California Health and Safety Code.
- b. Include incorporation documentation, and/or documentation establishing valid Cooperative, Association, or Collective in conformance with the Attorney General's guidelines.
- c. Sub-lessee/contractor: In instances where the proposed business includes sub-lessee Dispensaries, Cooperatives, Associations, or Collectives list addresses, telephone numbers and qualifications as patient/patient care giver for each sub lessee entity. Briefly describe the project responsibility of each team member. All managing members will be required to go through Live Scan process:
- d. Identify proposed site and provide proof of ownership, lease, and or letter of landlord's commitment to lease upon issuance of a permit to this site.
- e. Identify all proposed managers and executives of the business and submit Live Scan applications for each person identified.

**B. Submit all of the following documents with your proposal.**

1. Business Plan
2. Building and Construction – detailed description
3. Security Plan – detailed description
4. Fire Plan – detailed description
5. Environmental Plan
6. Proof of Capitalization

**C. A proposal will be rejected for any of the following reasons:**

1. The proposal is delivered to the wrong location by TBD, 2010 at 5:00 p.m. local time;
2. The proposal is received at designated location after designated time;
3. The proposal is not in compliance with the City of Oakland's RFP requirements and/or any of the required Schedules are missing, proposed Applicants fail to submit all eligible member managers for Live Scan background check by application deadline;
4. The proposal does not contain the required elements or is not organized in the required format;
5. The proposal contains a disclaimer;

Once the final award is made, all RFP responses, except financial and proprietary information, become a matter of public record and shall be regarded by the City as public records. The City shall not in any way be liable or responsible for the disclosure of any

such records or portions thereof if the disclosure is made pursuant to a request under the Public Records Act or the City of Oakland Sunshine Ordinance.

## EVALUATION OF PROPOSALS

### General Criteria

Applications for the Medical Cannabis Industrial Cultivation and Processing Facility Permits received by the deadline set forth above will be reviewed for completeness. Application will be voided if Applicant fails to submit all of the required information, including but not limited to: 1) Address of proposed facility for mapping purposes (Staff will work with planning department to map proposed site). The proposed location must be located in areas where Light Manufacturing Industrial, or their equivalent use, is permitted as such use is described in the Oakland Planning Code, as may be amended; 2) Live scan submission for all business partners and managers operating the facility; 3) Business Plan; 4) Schematic drawing of facility and proposed construction; 5) Security Plan; 6) Fire Plan; 7) Proof of Capitalization; 8) Proof of Insurance, and 9) non-refundable application fee in the amount of \$5000.00.

The City of Oakland is seeking in particular submissions that identify the best "green" cultivation practices, while employing "sustainable" energy and waste solutions, and implement the "best practices" available in the agricultural and industrial cultivation arenas. The best submissions will be forward thinking and deploy solutions designed to reduce and address any actual or potential concern the City may have.

No late submissions will be accepted. Incomplete submission will not advance to Phase I consideration and be voided.

1. All proposals will be evaluated by a panel composed of City staff and other parties with expertise or experience in business, fire inspection, police and Community Policing Through Environmental Design (CPTED), Revenue, Nuisance, Building and Construction design. The panel will rank and score all complete applications in their respective areas of expertise. The evaluation of the proposals shall be within the sole judgment and discretion of the panel.
2. Proposals will be numerically ranked. The top six (6) proposals will be submitted in rank order to the City Administrator's designee for examination and scheduling of a public hearing.

### Specific Criteria

A. The following specific criteria will be used in evaluating and rating the proposals:

1. Overall quality of the proposal including responsiveness and conformance to RFP requirements for content and format;
2. Quality and appropriateness of proposed Applicant team, professional; experience and background of prime Applicants and key sub lessees;

3. Appropriate personnel principals, project location, and other key personnel with required experience and skills relevant to this project;
4. Prime Applicants experience and ability to manage operations of proposed facility, scheduling of work and implementation necessary to operate, cost estimating and budget management;
5. Primary makeup of applicant corporation's board, and prior ability to work with local government agencies;
6. Quality and appropriateness of proposed project site, business model, organization, and their knowledge and experience in working with specific legal codes and regulations.
7. Applicants use and implementation of "sustainable" energy and waste solutions, "best practices" available in the agricultural and industrial cultivation arenas, and deployment of solutions designed to reduce and address any actual or potential concerns of the City and its residents.

B. Submissions will be reviewed to determine how the applicant meets the following 6 major categories.

#### **CATEGORIES FOR APPLICATION**

**1) Overall Business Plan** – Each applicant should submit a business plan generally describing their business model and plans. Plans will provide a description of proposed operation and completely detail the overall make up of the corporate entity that will be operating pursuant to the permit. Each plan should detail and articulate all scope of work proposed, partnerships, property and location, relationship to owner, and provide as much detail as possible into the day to day operation of the facility. The plan should identify types of cultivation that will be conducted aeroponics, hydroponics, greenhouse, as well as whether facility will be organic, and provide a copy of their Integrated Pest Management (IPM) Plan. Business plan should also identify how clients, purchases, and product will be tracked and monitored. Applicants should identify methods and manners in which they will provide information required by the City to track product in order to prevent diversion. The plan should also articulate how Applicants business will conform to the regulations of the City of Oakland and the State of California, including but not limited to operating as a not for profit entity or other accepted business model as recognized by the Attorney general's guidelines.

**2) Building and Construction** – Applicants should submit a narrative outlining the elements of proposed construction and improvements; timeline for proposed construction and improvements; detailing type and number of anticipated building and construction permits that may be required and factoring in time for acquiring building and construction permits into implementation schedule. Any proposed public right of way improvements for access and safety of employees and customers shall be clearly

identified; proposed sewer improvements that may be deemed necessary to meet demands of proposed facility; proposed sidewalk improvements (if any); proposed traffic engineering improvements anticipated to be needed to mitigate impact to traffic and or neighborhood; proposed lighting improvements designed to improve visibility and safety in conjunction with overall safety and fire plan. Reviewers recognize that these items may be subject to change once permit applications are submitted to building services. Such improvements will be a significant element to a winning proposal if facility is located in an existing industrial area with aging infrastructure.

If the facility is already constructed then proof that work was done with such building and construction permits and approved by building services (if possible), all construction (new or existing) should meet building code. All facilities will be subject to initial inspection for viability by building official.

Attached to narrative should be a copy of design plans which include diagrams of proposed construction, electrical, plumbing, fire and security elements.

3) Security Plan – Applicants should provide a detailed description of their security plan that includes an assessment of site security by a qualified security consultant, this assessment may be required every two years prior to renewal of any permit awarded. The following items are broken down into operational and facility security categories. Appropriate plans will have considered all potential security threats and planned for any contingency needed for these situations. A successful Applicant will have both written and physical mechanisms in place to deal with each specific situation. A detailed schematic diagram of alarm systems and placements that also details by when all security measures will be operational will be required.

#### *Operational Security*

Applicants will detail their operational security including but not limited to general security policies for the facility, employee specific policies, training, sample written policies, transactional security, visitor security, 3<sup>rd</sup> part contractor security, and delivery security. This list is not intended to fully capture all areas for applicant consideration but to guide applicants into thinking about all possible security concerns related to the operation of a cultivation facility. Operational portions of a security plan will be scored based on the level of consideration applicant has given to every possible scenario and response to scenario.

#### *Facility Security*

Applicants should provide a description and detailed schematic of the overall facilities security. In particular the applicant should address ingress and egress access, perimeter security, product security (at all hours), internal security measures for access (area specific), types of security systems (alarms and cameras), and security personnel that will be employed.

4) Fire Plan - Any proposed facility with a group U occupancy (agricultural buildings & greenhouses) and group F-1 occupancy (assembling, packaging, manufacturing hemp products) classifications for their building / structure shall be in compliance with current California Fire Code requirements for fire & life safety. Any occupancy change or remodel will require upgrade or installation of modern fire protection systems in compliance with OMC, CBC and CFC regulations.

Applicants should provide a detailed description of their Fire prevention, suppression, and alarm systems that includes an assessment of the facility's fire safety by a qualified Fire prevention suppression consultant. A fire inspection will be required annually prior to renewal of any permit awarded, to assure the City that adequate fire safety measures remain in place. An appropriate plan will have considered all possible fire, hazardous material, and inhalation issues/threats and will have both written and physical mechanisms in place to deal with each specific situation. A detailed schematic diagram of alarm systems and placements that also details by when all fire prevention measures will be operational will be required.

*Minimum requirements*

An automatic fire sprinkler system shall be provided throughout all buildings containing F-1 occupancy per 903.2.3 CFC. This fire sprinkler system shall be monitored and the system shall alert the occupants of the building or structure on activation and notify the Fire Department of an alarm.

Per 901.4.3 CFC in occupancies of a hazardous nature, where special hazards exist in addition to the normal hazards of the occupancy, or where the Fire Code Official determines that access for fire apparatus is unduly difficult, the Fire Code Official shall have the authority to require additional safeguards. Such safeguards include, but shall not be limited to, the following: automatic fire detection systems, fire alarm systems, automatic fire extinguishing systems, standpipe systems, or portable or fixed extinguishers. Fire protection equipment required under this section shall be installed in accordance with this code and the applicable referenced standards.

Any additional fire protection systems required by the Fire Code Official shall be installed forthwith, with required plans and building and construction permits submitted for approval to and by the City of Oakland per 105.7 CFC.

Per 105.6.7 CFC, a Combustible Fibers permit shall be obtained annually for the storage and handling of combustible fibers (hemp) in quantities greater than 100 cubic feet (2.8m<sup>3</sup>).

An annual Inspection of operations and fire / life safety systems shall be a condition of obtaining both building and construction permits & Fire Department clearance.

5) Environmental Plan Please include an Environmental Compliance Plan as a required element of the submission. This plan must provide a detailed description of how the applicant will comply with all existing state and local policies, including:

A. Stormwater Management – Meet Provision C.3 requirements by developing and implementing both a Stormwater Pollution Prevention Plan to minimize potential runoff pollution during construction and a Stormwater Control Plan to minimize potential runoff pollution and runoff flows for the life of the project.

B. Discharge into Stormwater System – Obtain a Non Point-source Discharge & Elimination Permit from the State and comply with the City’s Municipal Regional Permit regulated by the State

C. Discharge into Sanitary Sewer System – Obtain a discharge permit from EBMUD and City building and construction permits for plumbing.

D. Energy – Comply with Title 24 statewide building energy code.

E. Identify number and types of PGE energy vaults transformers that will be installed, including placement on facility (if applicable).

F. Green Building – Comply with Oakland Green Building Ordinance.

G. Recycling – Comply with Oakland’s Construction and Demolition Debris Recycling Ordinance

H. Recycling – Comply with Oakland’s Recycling Space Allocation Ordinance in the Planning Code.

I. Recycling – Comply with the countywide ban on plant debris disposal in the garbage.

J. Recycling – Provide mandatory weekly garbage collection.

K. Air Quality – Obtain permits from the Bay Area Air Quality Management District for backup diesel generators or other equipment requiring such permits.

L. Describe with specificity the number and types of air filters to be used in facility. Describe how air filtration system will be used to create negative or positive pressure to reduce odor and emissions into the facility and out into the neighboring areas.

M. Hazardous Materials – Develop a Spill Prevention, Control and Countermeasure plan if storing more than 1,350 gallons of liquid hazardous materials.

N. Hazardous Materials – Prepare a Hazardous Materials Business Plan (HMBP) as necessary.

O. Provide information on pesticides that will be used onsite, or whether facility will be organic or cultivate in an organic manner. Information should be folded into IPM.

In addition, this plan must describe how the Applicant will comply with the following additional requirements, including:

- Achievement of energy performance at least 10% superior to latest version of Title 24 code adopted by the State
- Ban on disposal of organics in the garbage

6) Capitalization – A successful Applicant will have sufficient capital in place to build, secure, and start up their proposed facility. Such costs must incorporate the City's permit fee. The Applicants must provide proof in the form of Letters of Credit sufficient to cover construction, start up, equipment, and product production. Financial information should include estimated costs of build, operation, compensation of employees, equipment costs, utility costs, and other O & M as needed.

Applicants should provide the following documents to substantiate their ability to operate proposed facility:

- A. Letter of Credit
- B. 3 years of Corporate Audited Financials and Tax Returns (if entity has existed for 3 years otherwise documentation of when entity was established and articles establishing entity)
- C. 3 years of financials and taxes for any individual with 20% or greater interest in the business
- D. Sources and Uses – Sources of capital and how these sources are expected to be expended.
- E. 3 year Performa

### BONUS POINTS

The Oakland City Council has determined that bonus points should be awarded to RFPA applicants who set out standards, measurable, and or written commitments (contracts or letters of intent) by which they intend to meet Council Adopted Policies and Procedures, attached here to this RFPA as Exhibit B. The following general criteria areas will be considered when awarding bonus points:

1) Labor & Employment Practices (100 Points) Applicants who have a history of and/or exhibit a commitment to Oakland and its residents should receive additional bonus points for the following labor and employment practices:

- A. Applicants that provide compensation to and opportunities for continuing education and training of their employees. Applicants should provide proof of their policy and regulations – (10 points)
- B. Applicants that indicate they will be a card check-neutral employer (10 points)
- C. Applicants with pre-existing union recognition, collective bargaining agreements, and community- benefits-labor-peace-agreement (10 points)
- D. Equity participation: Applicants that are 30% local owned and operated. Local owned means 30% of the Applicants not for profit entity board is comprised of Oakland residents. (10 points)
- E. Applicants that demonstrate a commitment to hire Oakland residents. Such commitment will be made a condition of the permit issued should the Applicant be successful. (10 points)
- F. Applicants that make a commitment in writing to, whenever feasible, buy from local Oakland products, equipment, materials, and hire only local firms for construction. Should the Applicant be successful their commitment would become a condition of their permit, and the City would reserve the right to audit their expenditures to assure that they are complying with their local purchase requirements. (10 points)
- G. Applicants that demonstrate a commitment to responsible labor standards. Ownership, Ethnicity and Gender of Employees. (10 points)
- H. Applicants that provide a living wage to their employees. Wage scale should be provided in writing for all levels of employment at the facility (10 points)
- I. Applicants should provide Equal Benefits and sign Declaration of Non-Discrimination (10 points)
- J. Applicants should provide Declaration of Compliance with Americans with Disabilities Act (10 Points)

2) Environment (Bonus Points 200) Bonus points will awarded based on three categories:  
a) Energy, Building & Climate; b) Water; and c) Materials & Waste.

**Energy, Building & Climate (80 points)**



- 
- A. Provide a description of how the facility and all operations will maximize energy efficiency
  - B. Apply and use available PG&E programs offering free technical assistance for design and construction of building shell, tenant improvements, building systems and processes where applicable (some may only apply to new construction)
  - C. Provide a description of how renewable energy will be used on-site or purchased (e.g., solar panels)
  - D. Provide estimates of projected total facility energy consumption and greenhouse gas emissions
  - E. Provide an estimate of energy use and a summary of the approach to be taken for lighting of cultivation area (e.g., number and type of lights per 10,000 square feet)
  - F. Provide a description of efforts to reduce transportation emissions (e.g., use of biofuels, electric vehicles)
  - G. Provide a description of any planned use of green building measures
  - H. Provide a description of any other efforts to reduce or offset greenhouse gas emissions associated with the facility and operations (e.g., achievement of climate neutrality through efficiency, renewables and offsets)
  - I. Provide a description of how existing Brownfield sites, if applicable, will be remediated and used for the planned facility

**Water (40 points)**

- A. Provide a description of how water conservation and efficiency strategies will be developed (e.g., use of EBMUD technical assistance)
- B. Provide a description of any efforts to recycle and/or treat water on-site
- C. Provide a description of how the use of toxic materials will be minimized or prohibited in all aspects of proposed operation (e.g., use of organic fertilizers, non-toxic pesticides)

**Materials & Waste (80 points)**

- A. Development of zero waste plans for operations with detail on efforts to be undertaken

- B. Provide a description of packaging to be used, including expected use of recycled content materials, recyclable materials, and reusable materials, including plans for reuse
- C. Provide a description of how others up and down the supply chain will be engaged to maximize material reuse, minimize packaging, etc. (e.g., delivery in reusable containers)
- D. Provide a prediction of operational phase waste stream broken down by garbage vs. recycled vs. composted material by volume
- E. Describe the extent to which organic fertilizers and pesticides will be used
- F. Provide a description of how toxic chemicals will be prevented from entering water, air and ground resources
- G. Provide a description of how existing Brownfield sites, if applicable, will be remediated and used for the planned facility

**3) Product Safety (100 points) Permittees will be required to abide by product safety and testing standards. Applicants whose applications consider such standards in advance will be awarded bonus points.**

- A. Applicants who detail how growing condition used to produce the plants will produce a plant free of mold, disease, heavy metals, etc.
- B. Applicants that provide product safety through UV exposure or other non-toxic treatment mechanisms to guarantee product safe for patient use
- C. Applicants who provide information on the product safety and testing standards they will employ, for mold/contaminants and how they will provide this information to the City on a quarterly basis.
- D. Applicants shall explain how, to the best of their ability, they intend to monitor product so that substances that would not be allowed by the Organic Foods Production Act (OFPA) of 1990 and regulations in Title 7, Part 205 of the Code of Federal Regulations and The National Organic Program (NOP) are not included with their product. Such monitoring may include the curing or treating of product to eliminate any such substances prior to packaging.
- E. Applicants will explain how they intend to reduce the use of pesticides and be prepared to maintain such commitment as a component of their permit to operate.

**4) Community Benefits (100 Points) - Applicants must demonstrate how they intend to provide their local community with community benefits and mitigate any nuisance**

and/or negative impacts that the facility's existence may cause. Applicants who demonstrate a commitment to their community and to improving the quality of life of their neighbors should receive additional bonus points for sustainable practices that include:

- A. Applicants must show how they plan to have minimal nuisance or negative impacts on their neighbors and community. Nuisance/negative impacts include but are not limited to: noise, odor, increased foot or vehicle traffic, increase in waste or water production, impacts to right of way access, and or increase in safety related concerns.
- B. Applicants must provide to the City how their entity will develop and implement a Community Benefits Program. Programs should be designed to give back to the community and Oakland residents by assisting in the provision of necessary support services.
  - o Areas of particular concern to the City would be:
    - Re-entry Jobs and Job Training
    - Domestic Violence
    - Revitalizing Oakland – either with improved infrastructure, providing assistance to Oakland Parks and Recreation Centers, libraries, or funding for arts, culture, and environmental programs.
    - Children and Youth programs and intervention services.
    - Cannabis-Friendly Substance Abuse Education and Rehabilitation Programs
    - Foreclosure Prevention
- C. Applicants must detail how they will revitalize the building/site provide neighborhood improvements and will be a beneficial/positive neighbor to the neighborhood.

### Scoring

1. Responsiveness – A Pass/Fail evaluation will be applied to the determination of responsiveness relative to meeting the requirements of this RFPA.
2. Business Plan (500 points) – The business plan will be evaluated based on responsiveness to items identified in RFPA, capacity to perform the work; familiarity with the difficulties, uncertainties, and risks associated with the work and knowledge of the staff qualifications necessary to the performance of the work. Furthermore, to the extent possible, bidders will be evaluated based on a demonstrated capacity to work quickly, efficiently, reliably, and with the ability to demonstrate confidence in their product vision and implementation of a cultivation facility, appropriateness of business in surrounding community, ability to clearly articulate business model, and conformance with Oakland and California State Law.

3. Building/Construction Plan (100 points) – The Building Construction plan will be scored based on feasibility, length of time needed for construction, design, overall scale, and appropriateness of facility structure/scale size in surrounding community.
4. Security Plan (50 points) – An evaluation will be made of (a) overall safety and security; (b) ability to adequately secure and protect employees, patients, patient/caregivers, client dispensaries, and the general public entering the facility; and (c) ability to adequately secure cultivation areas, product, and adhere to closed loop system that prevents diversion.
5. Fire Prevention Plan (50 points) - An evaluation will be made of (a) overall safety and security; (b) ability to adequately secure and protect employees, patients, patient/caregivers, client dispensaries, and the general public in case of a fire and/or other emergency, including plans and regular rehearsals; and (c) adequate fire prevention and suppression measures sufficient to prevent and or respond to a fire of any size.
6. Capitalization (200 points) – An evaluation will be made of the overall (a) fiscal health of the proposal; (b) experience and background of organization members in operating successful business ventures; (c) letters of credit and performance bond commitment in an amount sufficient to fulfill the commitments detailed in the overall plan; (d) feasibility and viability of plan from an economic perspective.
7. Environmental Plan (100 points) – An evaluation will be made of the applicants overall ability to meet state, federal, and local regulations regarding environmental protections.
8. Additional Preference Points – In addition preference points may be earned as follows:
  - a. *Labor & Employment* (100 points) - Applicants who have a history of and/or exhibit a commitment to Oakland and its residents will receive additional bonus points for their ability to meet 10 subcategories. Each subcategory can earn an applicant 10 additional points.
  - b. *Environmental* (200 points) – Bonus points will be awarded based on three sub-categories: a) Energy, Building & Climate; b) Water; and c) Materials & Waste.
  - c. *Product Safety* (100 points) – Applicants will be awarded bonus points based on their ability to show how they will produce cannabis without pesticides, free of mold, bacteria, and other harmful substances, how they intend to test the product for safety, and what steps they will take to make sure their product will be safe for consumption.
  - d. *Community Benefits* (100 points) – Applicants must demonstrate how they intend to provide their local community with community benefits and

mitigate any nuisance and/or negative impacts that the facility's existence may cause. Applicants who demonstrate a commitment to their community and to improving the quality of life of their neighbors should receive additional bonus points for sustainable practices that they commit to implementing

9. Examination – will be scored on a 100 point scoring system.

Each category will be reviewed by a subject matter expert and the Special Business Permits staff, by way of example the Fire Plan category will be reviewed by OFD Fire Inspector and the Special Business Permit Assistant to the City Administrator, and their respective scores will be added together to provide actual score for the section. The maximum score available for an Applicant, based on categories, would be 1000 points.

Please be advised that there is an additional 500 points available based on Applicants ability to meet the bonus requirements identified by the Oakland City Council.

Applicants that move on to Phase II of the RFPA will be subject to an examination that will be worth an additional 100 points. The examination will be taken prior to the Public Hearing that will be held for all Phase II Applicants.

#### **NOTICE OF DECISION**

Successful applicants will be notified in writing no later than December 2010. All applicants who fail to proceed to Phase II to will be notified within 10 days of the decision and they will be informed of their rank and total score. All applicants that proceed to Phase II but are unsuccessful will be notified within 10 days of decision along with rank, score, and basis for denial.

#### **THE CITY'S RESERVATION OF RIGHT'S**

The City reserves the right to reject any or all proposals, whether or not minimum qualifications are met, and to modify, postpone, or cancel the RFPA without liability, obligation, or commitment to any party, firm, or organization. In addition, the City reserves the right to request and obtain additional information from any candidate submitting a proposal. Furthermore, a proposal RISKS BEING REJECTED for any of the following reasons:

1. Proposal received after designated time and date.
2. Proposal not containing the required elements, exhibits, nor organized in the required format.
3. Proposal considered not fully responsive to this RFPA.
4. Proposal contains excess or extraneous material not called for in the RFPA.

Attachments:

General Information

Exhibit A – Draft Operating Conditions

Exhibit B – Oakland City Council policies and Procedures

Exhibit C – Oakland Municipal Code Chapter 5.81 Medical Cannabis Cultivation

Exhibit D – California Attorney general Guidelines

## GENERAL INFORMATION

1. pre-proposal conference is scheduled for:

**DATE TIME**

**1 Frank H. Ogawa Plaza, 1<sup>st</sup> Floor, Hearing Room  
Oakland, California 94612**

The pre-proposal conference will cover the following items.

- a. Project information.
- b. 5 major categories
- c. Bonus Point Categories
- d. Proposal submittal requirements.
- e. Questions by attendees.

**The City Administrator reserves the right to reject any and all applicants.**

**2. All Permit Awardees will be required to abide by Operating Conditions that meet the City of Oakland Policies and Procedures regarding product safety, environment, labor, building, and operational standards as adopted by the Oakland City Council. Attached below are draft operational conditions currently being proposed by staff for other Medical Cannabis Industrial Cultivation And Processing Facility Permits. These conditions are subject to modification prior to issuance of the permit to successful applicants. Successful Applicants applications will at a minimum clearly delineate how their proposal could meet the operating conditions as set forth below.**

# EXHIBIT A

... conditions currently being prepared ...  
... after that operation conditions currently being prepared ...



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

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

**A. Administrative**

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

**B. Security**

- (1) Cultivation and manufacturing facilities' security plans must be reviewed and approved by the Oakland Police Department, or a designee approved by the Oakland Police Department. Such security plans should aim to deter crime, conserve police

resources, and maximize the safety of the surrounding community, in coordination with the Oakland Police Department.

- (2) Cultivation and manufacturing facilities must make transactions with payment methods other than cash whenever possible, and endeavor to limit the amount of cash held at each cultivation and manufacturing facility. The City Administrator may set an upper limit of cash that may be held at a cultivation and manufacturing facility or, if feasible, may require that none of the cultivation and manufacturing facility's transactions in medical cannabis use cash as a method of payment.
- (3) Cultivation and manufacturing facilities must maintain security guards and camera coverage of their entire grounds to an extent sufficient to deter crime, as submitted in their security plan to the City Administrator. Surveillance footage must be retained for a period of 30 days and made available to the Oakland Police Department promptly upon request by the City.
- (4) The City Administrator shall set forth in her/his administrative regulations the method and manner in which employee background checks for cultivation and manufacturing facilities shall be conducted, including standards for disqualification of an employee based on criminal history. The City Administrator may in his/her discretion determine whether previous convictions for nonviolent possession or sale of cannabis may be used as a sole cause for disqualification.

#### C. Fire

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

#### D. Insurance

- (1) Before commencing operations, cultivation and manufacturing facilities must provide proof of evidence to the City Administrator

that such facility has obtained sufficient insurance including the following:

- General liability insurance, with a minimum claim limit of \$2,000,000 per occurrence
  - Automobile insurance, with a minimum claim limit of \$1,000,000 per accident
  - Worker's compensation insurance as required by state law
  - Professional liability insurance (including directors and officers if the cultivating entity has directors or officers)
- (2) The insurance held by the cultivation and manufacturing facilities must be AM Best rated A-VII or better and must be from a company permitted to do business in the state of California, but it may be from a company outside of California.
- (3) The adequacy of cultivation and manufacturing facilities insurance shall be determined by the City's Finance and Management Agency.

#### E. QUALITY ASSURANCE

- (1) Cultivation and manufacturing facilities must comply with all operating standards developed and established by the City
- (2) Cultivation and manufacturing facilities must cultivate cannabis products, in accordance with best practices, both in terms of production methods and available technology; these best practices must meet or exceed state and federal agricultural standards for food-grade products, and may at no point apply fertilizers, sprays, or other chemicals that would not meet the Organic Foods Production Act (OFPA) of 1990 and regulations in Title 7, Part 205 of the Code of Federal Regulations
- (3) Cultivation and manufacturing facilities must allow the City Administrator or his/her designee to take samples of their product at any time for testing purposes, in accordance with the procedures set out in this Chapter.
- (4) Cultivation facility must develop and integrate a system for tracking all medical cannabis from seed to harvesting. Such system should provide tracking for medical cannabis at all times to prevent diversion of product. Ex: a bar code system designed to track individual plants and subsequent umbrella and cannabis produced.
- (5) Cultivation and manufacturing facilities must carry out independent testing of medical cannabis to detect the presence of molds, yeasts, or other microbiological contaminants, heavy metals or other toxins, and pesticides or nutrients, based on standards set by the City Administrator.
- (6) Cultivation and manufacturing facilities must follow instructions of the City Administrator regarding any medical cannabis found to be non-compliant with testing standards. These instructions may

extend to any medical cannabis that may be unsafe in light of such testing results or to the relevant cultivation and manufacturing facilities' operations and practices generally.

- (7) Cultivation and manufacturing facilities must carry out independent chemical testing of every batch of medical cannabis to identify percentage content of delta-9(Trans) tetrahydrocannabinol, cannabidiol, and cannabinol, and disclose each batch's content when transferring it to a medical cannabis dispensary.
- (8) For all private testing required of them, facilities must use only testing facilities pre-approved by the City Administrator, based on a determination that the testing facility clearly has no conflict of interest with the cultivation and manufacturing facility in question.
- (9) Cultivation and manufacturing facilities must require all authorized personnel who shall be in contact with medical cannabis in any form to take sanitary precautions (washing, changing clothes, etc.) adequate to prevent contamination of cannabis from outside sources. Cultivation and manufacturing facilities must provide appropriate rooms such that employees may take required sanitary precautions.

#### F. Non-Diversion

- (1) The City Administrator may limit the cultivation area a cultivation and manufacturing facility may use if he/she determines that the cultivation and manufacturing facility current or planned cultivation area is excessive in light of existing medical consumption needs.
- (2) Cultivation and manufacturing facilities may not transfer medical cannabis to any person or entity outside California, regardless of the person or entity's legal status.
- (3) Cultivation and manufacturing facilities may not transfer medical cannabis, plant cuttings (clones), or any other cannabis product to any person or entity unless it is (a) an Oakland permitted medical cannabis dispensary, or (b) a medical cannabis dispensary that (i) holds a valid permit to operate in its local jurisdiction, (ii) complies with state regulations, and (iii) holds a valid business tax license from the City of Oakland. A file must be maintained in which all identifying and necessary information can be provided to the City Administrator's designee upon request.
- (4) Cultivation and Manufacturing Facilities will be required to maintain a database that tracks all clients, assigns an individual and distinct client number, tracks product purchased, frequency of purchase, total number of patients affiliated with the dispensary, location, local jurisdiction permit number, and all affiliated business tax license numbers.
- (5) Cultivation and manufacturing facilities may not transfer medical cannabis to any person or entity, even if legally qualified if they

have reason to believe such person or entity is likely to divert such medical cannabis toward persons or entities unauthorized to possess it under state law, or outside of California. In such cases the cultivation and manufacturing facilities must report its grounds for such belief to the City Administrator.

(6) Cultivation and manufacturing facilities must maintain a computerized inventory management system that:

- a. Accounts thoroughly for all products, byproducts, and discarded items in their operations;
- b. Uniquely tracks each batch of medical cannabis to the permitted dispensary to whom it is transferred, including each batch's active ingredient content for which testing is required under OMC section 5.81.050(E)(4); and
- c. Retains all information listed above for a period of at least 180 days.

(7) Cultivation and manufacturing facilities must limit access to crop and stock to authorized personnel only.

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

#### G. Environment

(1) Runoff and waste disposal by the cultivation and manufacturing facility must be in compliance with applicable city, county, state, and federal laws and regulations and must endeavor to use the best production practices reasonably available to minimize its environmental impact.

(2) The cultivation and manufacturing facility shall make a contribution to entirely offset the carbon emissions resulting from its utility usage through a means approved by the City Administrator.

(3) The City Administrator shall set forth in her/his administrative regulations the method and manner in which a cultivation and manufacturing facility shall make contributions to electric/electronic recycling programs in accordance with their level of electric/electronic waste disposal.

#### H. Labor

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

### I. Neighborhood Impact

(1) Cultivation and manufacturing facilities must install and maintain appropriate equipment to reliably prevent any odor distinctive to its operations from being detectable in its surroundings and neighborhood, including the following equipment or other equipment which has the same or better effectiveness at this task:

- An exhaust air filtration system that prevents external odor from being emitted; and
- A system creating negative air pressure between the cultivation and manufacturing facilities' interior and exterior.

(2) Signage for the cultivation and manufacturing facility shall be limited to one wall sign not to exceed ten square feet in area, and one identifying sign not to exceed two square feet in area; such signs shall not be directly illuminated. Signage may not include the words "cannabis," "marijuana," or any language, picture, or other representation conveying to a person without prior knowledge the nature of the business within.

(3) Cultivation and manufacturing facilities must provide the City Administrator or his/her designee, the chief of police, and all neighbors located within fifty (50) feet of the cultivation and manufacturing facility with the name, phone number, and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the cultivation and manufacturing facility. The cultivation and manufacturing facility shall make every good faith effort to encourage neighbors to call this person to try to solve operating problems, if any.

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

### Product Safety

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

- A. Standards shall be set, based on scientific and technical expertise, for safe levels of molds, yeasts, pests, or other microbiological or biological contaminants; safe levels of heavy metals or other toxins; safe levels of pesticides and nutrients, with a view toward the elimination of the use of

chemical pesticides and nutrients; and full disclosure of active ingredient content (delta-9{trans} tetrahydrocannabinol, cannabidiol, and other cannabinoids relevant to patients' needs) in the medical cannabis.

- B. The City Administrator may contract with an outside party to take samples of medical cannabis twelve (12) times a year or more from cultivation and manufacturing facilities for testing purposes, without prior notification to cultivation and manufacturing facilities of sampling; the party taking these samples shall provide facilities with receipts for samples taken, and shall establish a chain-of-custody system appropriate to ensure the security and identity of samples taken. Testing reports shall be furnished within seven (7) days of sampling. Samples may be taken before standards and procedures are fully established to aid in the policymaking process. Cultivation and manufacturing facilities shall contract with a 3<sup>rd</sup> party laboratory designated by City Administrator for testing.
- C. Cultivation and manufacturing facilities shall regularly conduct private testing for the same standards using functionally independent testing labs which have received prior approval from the City Administrator, and which have no conflict of interest with the licensed cultivation facilities. Private testing shall be implemented that achieves the testing of every batch of medical cannabis within a reasonably short timeframe as deemed appropriate by the City Administrator.
- ~~D. Cultivation and manufacturing facilities shall pay for all laboratory testing conducted, whether private or government-administered.~~
- E. The City Administrator may establish procedures to create quality and rating standards for medical cannabis. Such procedures shall ensure that when claims regarding these qualities or rating standards are made to dispensaries or patients, samplings and assessments may be conducted to verify those claims.

# EXHIBIT B



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**EXHIBIT B****COUNCIL POLICIES AND PROCEDURES**

The Oakland City council has adopted several policies and procedures regarding local business ownership, local hire, card check neutrality, living wage, and environmental standards required of our local businesses. Many of these policies and procedures apply to applicants whom receive contracts and or grants from the City of Oakland. The intent of the Council was to have successful applicants, to the extent possible, meet the standards and policies established by the Oakland City Council. The draft operating conditions are also intended to assure that permit holders are held to practices consistent with these policies and procedures. Below please find these general policies and procedures. The expectation will be that all Permittees will require their sub lessees and contractors to abide by these general policies and procedures to the extent possible.

Bonus points were developed to underscore the need for successful applicants to meet and exceed these local policies and procedures. They are provided below to help guide applicants through this process.

**1. The City's Local and Small Local Business Enterprise Program.**

The Local and Small Local Business Enterprise Program describes the objectives, goals and policies of the city regarding the participation of certified Local Business Enterprise / Small Local Business Enterprise (LBE/SLBE) in the City's design contracts. There is a twenty percent (20%) minimum participation requirement for all professional services contracts valued at fifty thousand dollars (\$50,000.00) or more. Compliance may be achieved at a rate of ten percent (10%) local and 10% small local certified business participation. The requirement may be satisfied by a certified prime and/or sub-Contractors(s) or a small local certified business may meet the twenty percent requirement. The City of Oakland's Office of Contract Compliance & Employment Services must certify a business in order to earn credit toward meeting the twenty percent requirement. A good faith effort is not required in light of the twenty percent local business participation requirement.

The twenty percent local business participation requirement will be considered a material term of every proposal. Proposals that fail to meet the 20% minimum will be deemed non-responsive.

Teams located outside the City of Oakland are encouraged to either establish a joint venture or other consulting or sub consulting arrangement with Oakland-based firms. Joint ventures will be required to conform to the pertinent laws, which govern the creation of such business arrangements. If a contractor is able to develop a Joint Venture or "Mentor-Protégé" relationship with a certified LBE or SLBE, the mentor or Joint Venture partners will enjoy the benefit of credits against the participation requirement. In order to earn credit for Joint Venture or Mentor-Protégé relationships, the Agreement must

be submitted for approval to Contract Compliance and Employment Services prior to the project bid date for construction, and by proposal due date for professional services contracts. Joint Venture Applications and elements of City approved Mentor Protégé relation are available upon request.

For tracking purposes, the contractor team is asked to show the percentage and dollar amount of MBE/WBE participation on all sub-contractor listings. Contractor Teams are asked to provide data regarding the racial, ethnic, and gender make up of listed sub-contractors and be prepared to provide documentation that demonstrates the methodology used to select all sub-contractors.

Furthermore, the City Administrator's Office will track the City's MBE/WBE utilization to ensure the absence of unlawful discrimination on the basis of racial, ethnicity or gender, and will make periodic reports to the City Council concerning such utilization. The City will report any discrimination in City contracts to the appropriate Federal and State agencies, and will take action against contractors that are found to be engaging in discriminatory acts or practices up to and including termination or debarment.

## 2. The City's Living Wage Ordinance

This Agreement is subject to the Oakland Living Wage Ordinance. The Living Wage Ordinance requires that nothing less than a prescribed minimum level of compensation (a living wage) be paid to employees of service Contractors (contractors) of the City and employees of CFARs (Ord. 12050 § 1, 1998). The Ordinance also requires submission of the Declaration of Compliance attached and incorporated herein as Declaration of Compliance – Living Wage Form; and made part of this Agreement, and, unless specific exemptions apply or a waiver is granted, the contractor must provide the following to its employees who perform services under or related to this Agreement:

- a. Minimum compensation – Said employees shall be paid an initial hourly wage rate of \$11.15 with health benefits or \$12.82 without health benefits. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor. **Effective July 1<sup>st</sup> of each year, Contractor shall pay adjusted wage rates.**
- b. Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$1.62 per hour. Contractor shall provide proof that health benefits are in effect for

those employees no later than 30 days after execution of the contract or receipt of City financial assistance.

- c. Compensated days off – Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.
- d. To inform employees that he or she may be eligible for Earned Income Credit (EIC) and shall provide forms to apply for advance EIC payments to eligible employees. There are several websites and other sources available to assist you. Web sites include but are not limited to: (1) [http://www.wwwebtax.com/credits/earned\\_income\\_credit.htm](http://www.wwwebtax.com/credits/earned_income_credit.htm) for current guidelines as prescribed by the Internal Revenue Service and (2) the 2009 Earned Income Tax Outreach Kit at <http://www.cbpp.org/eic2009/>.
- e. Contractor shall provide to all employees and to the Office of Contract Compliance, written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information.
- f. Contractor shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under this Agreement.
- g. Reporting – Contractor shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Contractor shall provide a copy of said list to the Office of Contract Compliance, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said list within five days of the due date will result in liquidated damages of five hundred dollars (\$500.00) for each day that the list remains outstanding. Contractor shall maintain employee payroll and

related records for a period of four (4) years after expiration of the compliance period.

- h. Contractor shall require sub Contractors that provide services under or related to this Agreement to comply with the above Living Wage provisions. Contractor shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Office of the City Administrator, Contract Compliance & Employment Services Division.

For more information, see: <http://municipalcodes.lexisnexis.com/cgi-bin/hilite.pl/codes/oakland/ DATA/TITLE02/Chapter 2 28 LIVING WAGE ORDIN.html?living%20wage>

### 3. Insurance Requirements

The Contractor will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of the Contractor's insurance policies if and when requested. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute grounds for rescission of the contract award.

The Contractor shall name the City of Oakland, its Council members, directors, officers, agents, employees and volunteers as additional insured in its Comprehensive Commercial General Liability and Automobile Liability policies. If Contractor submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG20 10 11 85 form and/or CA 20 48 - Designated Insured Form (for business auto insurance).

Please Note: A statement of additional insured endorsement on the ACORD insurance certificate is insufficient and will be rejected as proof of the additional insured requirement.

Unless a written waiver is obtained from the City's Risk Manager, Contractors must provide the insurance as found at <http://cces.oaklandnet.com/cceshome>. A copy of the requirements are attached and incorporated herein by reference. Liability insurance shall be required in accordance with the requirements specified.

When providing the insurance, include the Project Name and Project Number on the ACORD form in the section marked Description of Operations/Locations.

When providing the insurance, The Certificate Holder should be listed as: City of Oakland, Department of Contracting and Purchasing, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612.

### 4. City Contractor Performance Evaluation

At the end of the project, the Project Manager will evaluate the Contractor's Performance in accordance with the City Contractor Performance Evaluation program.

#### 5. Equal Benefits Ordinance

This Agreement is subject to the Equal Benefits Ordinance of Chapter 2.232.010 of the Oakland Municipal Code and its implementing regulations. The purpose of this Ordinance is to protect and further the public, health, safety, convenience, comfort, property and general welfare by requiring that public funds be expended in a manner so as to prohibit discrimination in the provision of employee benefits by City Contractors (contractors) between employees with spouses and employees with domestic partners, and/or between domestic partners and spouses of such employees. (Ord. 12394 (part), 2001)

The following contractors are subject to the Equal Benefits Ordinance: Entities which enter into a "contract" with the City for an amount of twenty-five thousand dollars (\$25,000.00) or more for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided at the expense of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of or collected by the city; and Entities which enter into a "property contract" pursuant to Section 2.32.020(D) with the City in an amount of twenty-five thousand dollars (\$25,000.00) or more for the exclusive use of or occupancy (1) of real property owned or controlled by the city or (2) of real property owned by others for the city's use or occupancy, for a term exceeding twenty-nine (29) days in any calendar year.

The Ordinance shall only apply to those portions of a Contractor's operations that occur (1) within the city; (2) on real property outside the city if the property is owned by the city or if the city has a right to occupy the property, and if the contract's presence at that location is connected to a contract with the city; and (3) elsewhere in the United States where work related to a city contract is being performed. The requirements of this chapter shall not apply to subcontracts or sub Contractors.

The Equal Benefits Ordinance requires among other things, submission of the attached and incorporated herein as Equal Benefits-Declaration of Nondiscrimination form. For more information, see [http://municipalcodes.lexisnexis.com/cgibin/hilite.pl/codes/oakland/ DATA/TITLE02/Chapter\\_2\\_32\\_EQUAL\\_BENEFITS\\_OR.html?equal%20benefits](http://municipalcodes.lexisnexis.com/cgibin/hilite.pl/codes/oakland/ DATA/TITLE02/Chapter_2_32_EQUAL_BENEFITS_OR.html?equal%20benefits)

#### 6. Prompt Payment Ordinance

**OMC Section 2.06.070 Prompt Payment Terms Required in Notices Inviting Bids, Requests for Proposals/Qualifications and Purchase Contracts**

This Agreement is subject to the Prompt Payment Ordinance of Oakland Municipal Code, Title 2, Chapter 2.06. The Ordinance requires that, unless specific exemptions apply. Contractor and its subcontractors shall pay undisputed invoices of their subcontractors for goods and/or services within twenty (20) business days of submission of invoices unless the Contractor or its subcontractors notify the Liaison in writing within five (5) business days that there is a bona fide dispute between the Contractor or its subcontractor and claimant, in which case the Contractor or its subcontractor may withhold the disputed amount but shall pay the undisputed amount.

Disputed payments are subject to investigation by the City of Oakland Liaison upon the filing of a compliant. Contractor or its subcontractors opposing payment shall provide security in the form of cash, certified check or bond to cover the disputed amount and penalty during the investigation. If Contractor or its subcontractor fails or refuses to deposit security, the City will withhold an amount sufficient to cover the claim from the next Contractor progress payment. The City, upon a determination that an undisputed invoice or payment is late, will release security deposits or withholds directly to claimants for valid claims.

Contractor and its subcontractors shall not be allowed to retain monies from subcontractor payments for goods as project retention, and are required to release subcontractor project retention in proportion to the subcontractor services rendered, for which payment is due and undisputed, within five (5) business days of payment. Contractor and its subcontractors shall be required to pass on to and pay subcontractors mobilization fees within five (5) business days of being paid such fees by the City. For the purpose of posting on the City's website, Contractor and its subcontractors, are required to file notice with the City of release of retention and payment of mobilization fees, within five (5) business days of such payment or release; and, Contractors are required to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors, within five (5) business days following receipt of payment from the City, The affidavit shall provide the names and address of all subcontractors and the amount paid to each.

Contractor and its subcontractors shall include the same or similar provisions as those set forth above in this section in any contract with a contractor or subcontractor that delivers goods and/or services pursuant to or in connection with a City of Oakland purchase contract.

The Prompt Payment Ordinance requires among other things, submission of the attached and incorporated herein as

- Prompt Payment Invoice Transmittal
- Affidavit Reporting Subcontractor Payments and
- Prompt Payment Complaint & Investigation Form.

For more information regarding submission of these documents please contact the Prompt Payment Liaison, Vivian Inman at 510-238-6261.  
<http://cces.oaklandnet.com/cceshome/FormsSchedules.asp>

#### 7. Non-Discrimination/Equal Employment Practices

Contractor shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state or local laws. During the performance of this Agreement, Contractor agrees as follows:

- a. Contractor and Contractor's sub Contractors, if any, shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment, advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b. Contractor and Contractor's Sub-contractors shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS - related complex (ARC) or disability.
- c. Contractor shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing Declaration of Compliance with the Americans with Disabilities Act, attached hereto and incorporated herein.
- d. If applicable, Contractor will send to each labor union or representative of workers with whom Contractor has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Contractor's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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- e. Contractor shall submit information concerning the ownership and workforce composition of Contractor's firm as well as its sub Contractors and suppliers, by completing the Ownership, Ethnicity and Gender Questionnaire.
  - f. The Project Contractor Team attached and incorporated herein and made a part of this Agreement, Exit Report and Affidavit, attached and incorporated herein and made a part of this Agreement.
  - g. All affirmative action efforts of Contractors are subject to tracking by the City. This information or data shall be used for statistical purposes only. All Contractors are required to provide data regarding the make-up of their sub Contractors and agents who will perform City contracts, including the race and gender of each employee and/or Contractor and his or her job title or function and the methodology used by Contractor to hire and/or contract with the individual or entity in question.
  - h. In the recruitment of sub Contractors, the City of Oakland requires all Contractors to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as well as other segments of Oakland's business community. The City Administrator will track the City's MBE/WBE utilization to ensure the absence of unlawful discrimination on the basis of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
  - i. In the use of such recruitment, hiring and retention of employees or sub Contractors, the City of Oakland requires all Contractors to undertake nondiscriminatory and equal outreach efforts which include outreach to minorities and women as well as other segments of Oakland's business community.

8. Nuclear Free Zone Disclosure

Contractor represents, pursuant to the combined form Nuclear Free Zone Disclosure Form that Contractor is in compliance with the City of Oakland's restrictions on doing business with service providers considered nuclear weapons makers. Prior to execution of this agreement, Contractor shall complete the combined form, attached hereto.

The City will immediately report evidence or instances of apparent discrimination in City or Agency contracts to the appropriate State and Federal agencies, and will take action against Contractors who are found to be engaging in discriminatory acts or practices by an appropriate State or Federal agency or court of law, up to and including termination or debarment.



9. The following City staff are available to answer questions regarding this RFPA:

- RFPA and Permit related issues:  
Mrs. Nancy Marcus, Permit Administration, (510) 238-3942
  
- Special Business Permits Division  
Arturo M Sanchez, Assistant to the City Administrator  
(510) 238-7542

10. All responses to the RFPA become the property of the City.

11. The RFPA does not commit the City to award a permit or to pay any cost incurred in the preparation of the application.

12. The City reserves the sole right to evaluate each proposal and to accept or reject any or all proposals received as a result of the RFPA process.

13. The City reserves the unqualified right to modify, suspend, or terminate at its sole discretion any and all aspects of the RFPA and/or RFPA process, to obtain further information from any and all Applicant teams and to waive any defects as to form or content of the RFPA or any responses by any contractor teams.

14. Once a final award is made, all RFPA responses, except financial and proprietary information, become a matter of public record and shall be regarded by the City as public records. The City shall not in any way be liable or responsible for the disclosure of any such records or portions thereof if the disclosure is made pursuant to a request under the Public Records Act or the City of Oakland Sunshine Ordinance.

# EXHIBIT C

1. The following information is provided for the purpose of illustrating the format of the information to be provided in the exhibit. The information is not intended to be used as a model for the information to be provided in the exhibit.

XXXXXXXXXX

XXXXXXXXXX

INTRODUCED BY COUNCILMEMBER REID AND KAPLAN

**Ordinance No. 13033 C.M.S.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**5.81.010 Findings and Purpose**

- A.** The City Council of the City of Oakland, based on evidence presented to it in the proceedings leading to the adoption of this ordinance hereby finds that the cultivation and processing of medical cannabis in the City of Oakland has caused and is causing ongoing impacts to the community. These impacts include damage to buildings containing indoor medical cannabis cultivation facilities, including improper and dangerous electrical alterations and use, inadequate ventilation leading to mold and mildew, increased frequency of home-invasion robberies and similar crimes, and that many of these impacts have fallen disproportionately on residential neighborhoods. These impacts have also created an increase in response costs, including code enforcement, building, fire, and police staff time and expenses.
- B.** The City of Oakland acknowledges that the voters of the State of California have provided 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 of Oakland acknowledges that sales of medical marijuana are subject to taxation by both the City and the State of California and that the California State Board of Equalization (BOE) is also requiring that businesses engaging in such retail transactions hold a seller's permit.
- D. The purpose and intent of this chapter is to regulate the cultivation and processing of medical cannabis in a manner that protects the public health, safety and welfare of the community.

**5.81.020. Definitions.**

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

- A. "Applicant" as used only in this Chapter shall be any Industrial Cannabis Cultivation, Processing, Manufacturing Facility that applies for a permit required under this Chapter.
- B. "Batch" as used only in this Chapter shall be defined by 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 8.46.020.
- D. "Cannabis Dispensary" as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010 and is also referred to herein as "dispensary"
- E. "City Administrator" as used only in this Chapter shall mean the City Administrator for the City of Oakland and his or her designee.
- E. "Cultivation area" as used only in this Chapter hereinafter shall mean the actual area in use for the entire cultivation process of cannabis plants (including seedling production, vegetation, and maturation), as well as reasonable walking space, such that, for example, two trays used for maturation, each measuring 10 square feet and stacked vertically on top of each other shall be counted as 20 square feet of cultivation area.
- F. "Industrial Cannabis Cultivation, Processing, Manufacturing Facility" hereinafter "cultivation and manufacturing facility" shall mean any facility used for cultivating, warehousing, storing, processing and/or manufacturing more than forty-eight (48) ounces of dried cannabis, and/or cultivating or storing medical cannabis in an area greater than ninety six (96) square feet of total area within One Parcel of Land. Any establishment engaged in, permitted to be engaged in or

carrying on any medical cannabis cultivation, processing, or manufacturing or other activity mentioned in this chapter shall be deemed an Industrial Cannabis Cultivation and Manufacturing Facility as described in section 5.81.040.

- G. "Medical cannabis collective" as used only in this Chapter shall be the same, and as may be amended, as if defined in OMC 5.80.010.
- H. "One Parcel of Land" as used only in this Chapter shall mean any single piece of real property as identified by the county assessor's parcel number (APN) that is used to identify real property, its boundaries, and all the rights contained therein.
- I. "Permittees" as used only in this Chapter are cultivation and manufacturing facilities that have obtained a permit under this Chapter.
- J. "Primary caregiver" as used only in this Chapter shall be the same, and as may be amended, as if defined in OMC 5.80.10
- K. "Qualified patient" as used only in this Chapter shall be the same, and as may be amended, as if defined in OMC 5.80.10
- L. "Written recommendation" as used only in this Chapter shall be the same, and as may be amended, as if defined in OMC 5.80.010

**5.81.030**

**Permit Required**

- A. Except for hospitals and research facilities that obtain written permission for cannabis cultivation under federal law, it is unlawful to establish any cultivation and manufacturing facility without a valid business permit issued pursuant to the provisions of this Chapter. It is unlawful for any entity organized on a for-profit basis, except for hospitals and research facilities, to engage in any medical cannabis cultivation whatsoever.
- B. The City Administrator shall issue, as detailed below, special business permits for the operation of industrial cannabis cultivation processing and manufacturing facilities. In recommending the granting or denying of such permit and in granting or denying the same, the City Administrator shall give particular consideration to the capacity, capitalization, complaint history of the proposed cultivation and manufacturing facility as detailed in section 5.81.040, and any other factors that in her/his discretion she/he deems necessary to the peace and order and welfare of the public. All Applicants shall pay any necessary fees including without limitation application fees, inspection fees and regulatory fees that may be required hereunder.
- C. The City Administrator shall issue in the first year of this cultivation and manufacturing facility program no more than four (4) permits. Two years after the first permit has been issued, the City Administrator shall return to the City

Council to report on the development of this program, and determine how additional permits to meet the needs of medical cannabis dispensaries and other lawful cannabis providers shall be administered, if any.

- D. All cultivation and manufacturing facility permits shall be special business permits and shall be issued for a term of two years, subject to annual review one year from the date of prior issuance. No vested right shall ever inure to the benefit of such permit holder as such permits are revocable at any time with or without cause by the City Administrator subject to 5.81.120.
- E. Cultivation and manufacturing facility permits shall be granted to entities operating legally according to state law.

**5.81.040 Industrial cultivation of medical marijuana**

- A. Any use or activity that involves possessing, cultivating, processing and/or manufacturing and/or more than ninety six (96) square feet of cultivation area shall constitute industrial cultivation of medical cannabis and shall only be allowed upon the granting of a permit as prescribed in this Chapter. Possession of other types of state or City permits or licenses does not exempt an Applicant from the requirement of obtaining a permit under this Chapter.
- B. The proposed location of a cultivation and manufacturing facility shall be in areas where "Light Manufacturing Industrial;" or their equivalent use is permitted under the Oakland Planning Code, as may be amended; provided, however, that no vested or other right shall inure to the benefit of any cultivation and manufacturing facility Permittee. Public notice shall be given as provided in Section 5.02.050, and the investigating official referred to in Section 5.02.030 to whom the application shall be referred, shall be the City Administrator.

**5.81.050 Application for Permit**

- A. All Applicants shall pay an application fee as specified in the Master Fee Schedule.
- B. All Applicants shall submit written information to the City Administrator including, but not limited to, plans for security, waste disposal, pest management, product testing, worker safety and compensation, non diversion of product, facility location, capitalization, business plans, Applicant complaint history, criminal background checks, and any additional information deemed necessary by the City Administrator.
- C. All Applicants shall be ranked by a point or similar system established by the City Administrator based on information submitted by each Applicant and any additional information that may be submitted to or discovered by the City Administrator.

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

**5.81.070 Operating Standards**

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

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

A. The City Administrator shall be provided access to any and all financial information at any time, as needed to conduct an audit of the Permittees under this Chapter to verify tax compliance under Chapter 5.80 and/or gross receipts tax requirements.

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

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

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

D. Any Permittees refusal to comply with this section shall be deemed a violation of this Chapter, and administrative subpoenas shall be enforced pursuant to applicable law.

**5.81.100 Liability & Indemnification**

- A. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Chapter shall not become a personal liability of any public officer or employee of the City of Oakland.
- B. The Permittees under this Chapter hereby agree to save, defend, indemnify and keep harmless the City of Oakland and its officials, officers, employees, representatives, agents and volunteers from all actions, claims, demands, litigation, or proceedings, including those for attorneys' fees, against the City in



consequence of the granting of this permit, and will in all things strictly comply with the conditions under which this permit is granted, if any.

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

Notwithstanding state law regarding medical cannabis cultivation, no Qualified Patient or Primary Caregiver may cultivate medical cannabis in an area of more than thirty two (32) square feet on One Parcel of Land, unless they form a cooperative or collective.

A collective or cooperative of Qualified Patients or Primary Caregivers, may cultivate medical cannabis covering an area of no more than thirty two (32) square feet in a residential unit or if in a nonresidential building on One Parcel of Land per each member of the cooperative or collective, up to a maximum of 216 cannabis/marijuana plants within a maximum growing area of ninety six (96) square feet indoor or 60 outdoor Cannabis/Marijuana Plants on One Parcel of Land.

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

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

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

(1) The residential facility shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities. Medical cannabis cultivation, processing, possession, and/or manufacturing shall remain at all times secondary to the residential use of the property;

(3) Cultivation possession, processing and/or manufacturing of medical cannabis in residential areas shall occur only in a secured residences occupied by the Qualified Patient or Primary Caregiver

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

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

(6) The cultivation area shall be in compliance with the current adopted edition of the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or its equivalent(s));

(7) The cultivation area shall not adversely affect the health or safety of the residence or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;

(8) All high amperage electrical equipment (exceeding six amps) used in the cultivation of medical cannabis, (e.g., lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired; the use of extension cords to supply power to high amperage electrical equipment (exceeding six amps) used in the cultivation of medical cannabis is prohibited;

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

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

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

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

#### **5.81.110 Prohibited operations.**

All cultivation, processing and manufacturing facilities that do not have a permit under this Chapter are expressly prohibited. No use that purports to have cultivated or processed marijuana shall be deemed to have been a legally established use under the provisions of the Oakland Planning Code, the Oakland Municipal Code, or any other local ordinance,

rule or regulation, and such use shall not be entitled to claim a vested right, legal nonconforming or other similar status.

**5.81.120 Appeals**

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

**Section II Severability**

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

**Section III Effective Date**

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

**Section IV Master Fee Schedule**

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

- A. Every Applicant shall pay, upon submitting an application under this Chapter, a nonrefundable application fee of five thousand dollars (\$5,000).
- B. An Applicant to receive a cultivation and manufacturing facility shall pay a nonrefundable regulatory fee of two hundred and eleven thousand dollars (\$211,000) per annum.

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

**Passed By The Following Vote:**

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

NOTES-

ABSENT-

ABSTENTION- NADEL, BRUNNER

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

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

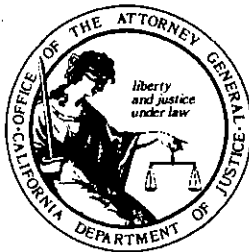
4

**PUBLIC SAFETY CMTE.**

**SEP 28 2010**

**EXHIBIT D**

**EDMUND G. BROWN JR.**  
Attorney General



**DEPARTMENT OF JUSTICE**  
*State of California*

**GUIDELINES FOR THE SECURITY AND NON-DIVERSION  
OF MARIJUANA GROWN FOR MEDICAL USE**  
*August 2008*

In 1996, California voters approved an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana. In 2003, the Legislature enacted additional legislation relating to medical marijuana. One of those statutes requires the Attorney General to adopt “guidelines to ensure the security and nondiversion of marijuana grown for medical use.” (Health & Saf. Code, § 11362.81(d).<sup>1</sup>) To fulfill this mandate, this Office is issuing the following guidelines to (1) ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets; (2) help law enforcement agencies perform their duties effectively and in accordance with California law, and (3) help patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law.

**I. SUMMARY OF APPLICABLE LAW**

**A. California Penal Provisions Relating to Marijuana.**

The possession, sale, cultivation, or transportation of marijuana is ordinarily a crime under California law. (See, e.g., § 11357 [possession of marijuana is a misdemeanor]; § 11358 [cultivation of marijuana is a felony]; Veh. Code, § 23222 [possession of less than 1 oz. of marijuana while driving is a misdemeanor]; § 11359 [possession with intent to sell any amount of marijuana is a felony]; § 11360 [transporting, selling, or giving away marijuana in California is a felony; under 28.5 grams is a misdemeanor]; § 11361 [selling or distributing marijuana to minors, or using a minor to transport, sell, or give away marijuana, is a felony].)

**B. Proposition 215 - The Compassionate Use Act of 1996.**

On November 5, 1996, California voters passed Proposition 215, which decriminalized the cultivation and use of marijuana by seriously ill individuals upon a physician’s recommendation. (§ 11362.5.) Proposition 215 was enacted to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person’s health would benefit from the use of marijuana,” and to “ensure that patients and their primary caregivers who obtain and use marijuana for

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<sup>1</sup> Unless otherwise noted, all statutory references are to the Health & Safety Code.

medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.” (§ 11362.5(b)(1)(A)-(B).)

The Act further states that “Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient’s primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or verbal recommendation or approval of a physician.” (§ 11362.5(d).) Courts have found an implied defense to the transportation of medical marijuana when the “quantity transported and the method, timing and distance of the transportation are reasonably related to the patient’s current medical needs.” (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1551.)

### **C. Senate Bill 420 - The Medical Marijuana Program Act.**

On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (MMP), became law. (§§ 11362.7-11362.83.) The MMP, among other things, requires the California Department of Public Health (DPH) to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system. Medical marijuana identification cards are intended to help law enforcement officers identify and verify that cardholders are able to cultivate, possess, and transport certain amounts of marijuana without being subject to arrest under specific conditions. (§§ 11362.71(e), 11362.78.)

It is mandatory that all counties participate in the identification card program by: (a) providing applications upon request to individuals seeking to join the identification card program; (b) processing completed applications; (c) maintaining certain records; (d) following state implementation protocols; and (e) issuing DPH identification cards to approved applicants and designated primary caregivers. (§ 11362.71(b).)

Participation by patients and primary caregivers in the identification card program is voluntary. However, because identification cards offer the holder protection from arrest, are issued only after verification of the cardholder’s status as a qualified patient or primary caregiver, and are immediately verifiable online or via telephone, they represent one of the best ways to ensure the security and non-diversion of marijuana grown for medical use.

In addition to establishing the identification card program, the MMP also defines certain terms, sets possession guidelines for cardholders, and recognizes a qualified right to collective and cooperative cultivation of medical marijuana. (§§ 11362.7, 11362.77, 11362.775.)

### **D. Taxability of Medical Marijuana Transactions.**

In February 2007, the California State Board of Equalization (BOE) issued a Special Notice confirming its policy of taxing medical marijuana transactions, as well as its requirement that businesses engaging in such transactions hold a Seller’s Permit. (<http://www.boe.ca.gov/news/pdf/medseller2007.pdf>.) According to the Notice, having a Seller’s Permit does not allow individuals to make unlawful sales, but instead merely provides a way to remit any sales and use taxes due. BOE further clarified its policy in a

June 2007 Special Notice that addressed several frequently asked questions concerning taxation of medical marijuana transactions. (<http://www.boe.ca.gov/news/pdf/173.pdf>.)

#### **E. Medical Board of California.**

The Medical Board of California licenses, investigates, and disciplines California physicians. (Bus. & Prof. Code, § 2000, et seq.). Although state law prohibits punishing a physician simply for recommending marijuana for treatment of a serious medical condition (§ 11362.5(c)), the Medical Board can and does take disciplinary action against physicians who fail to comply with accepted medical standards when recommending marijuana. In a May 13, 2004 press release, the Medical Board clarified that these accepted standards are the same ones that a reasonable and prudent physician would follow when recommending or approving any medication. They include the following:

1. Taking a history and conducting a good faith examination of the patient;
2. Developing a treatment plan with objectives;
3. Providing informed consent, including discussion of side effects;
4. Periodically reviewing the treatment's efficacy;
5. Consultations, as necessary; and
6. Keeping proper records supporting the decision to recommend the use of medical marijuana.

([http://www.mbc.ca.gov/board/media/releases\\_2004\\_05-13\\_marijuana.html](http://www.mbc.ca.gov/board/media/releases_2004_05-13_marijuana.html).)

Complaints about physicians should be addressed to the Medical Board (1-800-633-2322 or [www.mbc.ca.gov](http://www.mbc.ca.gov)), which investigates and prosecutes alleged licensing violations in conjunction with the Attorney General's Office.

#### **F. The Federal Controlled Substances Act.**

Adopted in 1970, the Controlled Substances Act (CSA) established a federal regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. (21 U.S.C. § 801, et seq.; *Gonzales v. Oregon* (2006) 546 U.S. 243, 271-273.) The CSA reflects the federal government's view that marijuana is a drug with "no currently accepted medical use." (21 U.S.C. § 812(b)(1).) Accordingly, the manufacture, distribution, or possession of marijuana is a federal criminal offense. (*Id.* at §§ 841(a)(1), 844(a).)

The incongruity between federal and state law has given rise to understandable confusion, but no legal conflict exists merely because state law and federal law treat marijuana differently. Indeed, California's medical marijuana laws have been challenged unsuccessfully in court on the ground that they are preempted by the CSA. (*County of San Diego v. San Diego NORML* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2930117.) Congress has provided that states are free to regulate in the area of controlled substances, including marijuana, provided that state law does not positively conflict with the CSA. (21 U.S.C. § 903.) Neither Proposition 215, nor the MMP, conflict with the CSA because, in adopting these laws, California did not "legalize" medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition. (See *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 371-373, 381-382.)



In light of California's decision to remove the use and cultivation of physician-recommended marijuana from the scope of the state's drug laws, this Office recommends that state and local law enforcement officers not arrest individuals or seize marijuana under federal law when the officer determines from the facts available that the cultivation, possession, or transportation is permitted under California's medical marijuana laws.

## II. DEFINITIONS

A. **Physician's Recommendation:** Physicians may not prescribe marijuana because the federal Food and Drug Administration regulates prescription drugs and, under the CSA, marijuana is a Schedule I drug, meaning that it has no recognized medical use. Physicians may, however, lawfully issue a verbal or written recommendation under California law indicating that marijuana would be a beneficial treatment for a serious medical condition. (§ 11362.5(d); *Conant v. Walters* (9th Cir. 2002) 309 F.3d 629, 632.)

B. **Primary Caregiver:** A primary caregiver is a person who is designated by a qualified patient and "has consistently assumed responsibility for the housing, health, or safety" of the patient. (§ 11362.5(e).) California courts have emphasized the consistency element of the patient-caregiver relationship. Although a "primary caregiver who consistently grows and supplies . . . medicinal marijuana for a section 11362.5 patient is serving a health need of the patient," someone who merely maintains a source of marijuana does not automatically become the party "who has consistently assumed responsibility for the housing, health, or safety" of that purchaser. (*People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390, 1400.) A person may serve as primary caregiver to "more than one" patient, provided that the patients and caregiver all reside in the same city or county. (§ 11362.7(d)(2).) Primary caregivers also may receive certain compensation for their services. (§ 11362.765(c) ["A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided . . . to enable [a patient] to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, . . . shall not, on the sole basis of that fact, be subject to prosecution" for possessing or transporting marijuana].)

C. **Qualified Patient:** A qualified patient is a person whose physician has recommended the use of marijuana to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. (§ 11362.5(b)(1)(A).)

D. **Recommending Physician:** A recommending physician is a person who (1) possesses a license in good standing to practice medicine in California; (2) has taken responsibility for some aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient; and (3) has complied with accepted medical standards (as described by the Medical Board of California in its May 13, 2004 press release) that a reasonable and prudent physician would follow when recommending or approving medical marijuana for the treatment of his or her patient.

### III. GUIDELINES REGARDING INDIVIDUAL QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

#### A. State Law Compliance Guidelines.

1. **Physician Recommendation:** Patients must have a written or verbal recommendation for medical marijuana from a licensed physician. (§ 11362.5(d).)

2. **State of California Medical Marijuana Identification Card:** Under the MMP, qualified patients and their primary caregivers may voluntarily apply for a card issued by DPH identifying them as a person who is authorized to use, possess, or transport marijuana grown for medical purposes. To help law enforcement officers verify the cardholder's identity, each card bears a unique identification number, and a verification database is available online ([www.calmmp.ca.gov](http://www.calmmp.ca.gov)). In addition, the cards contain the name of the county health department that approved the application, a 24-hour verification telephone number, and an expiration date. (§§ 11362.71(a); 11362.735(a)(3)-(4); 11362.745.)

3. **Proof of Qualified Patient Status:** Although verbal recommendations are technically permitted under Proposition 215, patients should obtain and carry written proof of their physician recommendations to help them avoid arrest. A state identification card is the best form of proof, because it is easily verifiable and provides immunity from arrest if certain conditions are met (see section III.B.4, below). The next best forms of proof are a city- or county-issued patient identification card, or a written recommendation from a physician.

#### 4. Possession Guidelines:

a) **MMP:**<sup>2</sup> Qualified patients and primary caregivers who possess a state-issued identification card may possess 8 oz. of dried marijuana, and may maintain no more than 6 mature or 12 immature plants per qualified patient. (§ 11362.77(a).) But, 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." (§ 11362.77(b).) Only the dried mature processed flowers or buds of the female cannabis plant should be considered when determining allowable quantities of medical marijuana for purposes of the MMP. (§ 11362.77(d).)

b) **Local Possession Guidelines:** Counties and cities may adopt regulations that allow qualified patients or primary caregivers to possess

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<sup>2</sup> On May 22, 2008, California's Second District Court of Appeal severed Health & Safety Code § 11362.77 from the MMP on the ground that the statute's possession guidelines were an unconstitutional amendment of Proposition 215, which does not quantify the marijuana a patient may possess. (See *People v. Kelly* (2008) 163 Cal.App.4th 124, 77 Cal.Rptr.3d 390.) The Third District Court of Appeal recently reached a similar conclusion in *People v. Phomphakdy* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2931369. The California Supreme Court has granted review in *Kelly* and the Attorney General intends to seek review in *Phomphakdy*.

medical marijuana in amounts that exceed the MMP's possession guidelines. (§ 11362.77(c).)

c) **Proposition 215:** Qualified patients claiming protection under Proposition 215 may possess an amount of marijuana that is "reasonably related to [their] current medical needs." (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1549.)

**B. Enforcement Guidelines.**

1. **Location of Use:** Medical marijuana may not be smoked (a) where smoking is prohibited by law, (b) at or within 1000 feet of a school, recreation center, or youth center (unless the medical use occurs within a residence), (c) on a school bus, or (d) in a moving motor vehicle or boat. (§ 11362.79.)

2. **Use of Medical Marijuana in the Workplace or at Correctional Facilities:** The medical use of marijuana need not be accommodated in the workplace, during work hours, or at any jail, correctional facility, or other penal institution. (§ 11362.785(a); *Ross v. RagingWire Telecomms., Inc.* (2008) 42 Cal.4th 920, 933 [under the Fair Employment and Housing Act, an employer may terminate an employee who tests positive for marijuana use].)

3. **Criminal Defendants, Probationers, and Parolees:** Criminal defendants and probationers may request court approval to use medical marijuana while they are released on bail or probation. The court's decision and reasoning must be stated on the record and in the minutes of the court. Likewise, parolees who are eligible to use medical marijuana may request that they be allowed to continue such use during the period of parole. The written conditions of parole must reflect whether the request was granted or denied. (§ 11362.795.)

4. **State of California Medical Marijuana Identification Cardholders:** When a person invokes the protections of Proposition 215 or the MMP and he or she possesses a state medical marijuana identification card, officers should:

a) Review the identification card and verify its validity either by calling the telephone number printed on the card, or by accessing DPH's card verification website (<http://www.calmmp.ca.gov>); and

b) If the card is valid and not being used fraudulently, there are no other indicia of illegal activity (weapons, illicit drugs, or excessive amounts of cash), and the person is within the state or local possession guidelines, the individual should be released and the marijuana should not be seized. Under the MMP, "no person or designated primary caregiver in possession of a valid state medical marijuana identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana." (§ 11362.71(e).) Further, a "state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer

has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.” (§ 11362.78.)

5. **Non-Cardholders:** When a person claims protection under Proposition 215 or the MMP and only has a locally-issued (i.e., non-state) patient identification card, or a written (or verbal) recommendation from a licensed physician, officers should use their sound professional judgment to assess the validity of the person’s medical-use claim:

a) Officers need not abandon their search or investigation. The standard search and seizure rules apply to the enforcement of marijuana-related violations. Reasonable suspicion is required for detention, while probable cause is required for search, seizure, and arrest.

b) Officers should review any written documentation for validity. It may contain the physician’s name, telephone number, address, and license number.

c) If the officer reasonably believes that the medical-use claim is valid based upon the totality of the circumstances (including the quantity of marijuana, packaging for sale, the presence of weapons, illicit drugs, or large amounts of cash), and the person is within the state or local possession guidelines or has an amount consistent with their current medical needs, the person should be released and the marijuana should not be seized.

d) Alternatively, if the officer has probable cause to doubt the validity of a person’s medical marijuana claim based upon the facts and circumstances, the person may be arrested and the marijuana may be seized. It will then be up to the person to establish his or her medical marijuana defense in court.

e) Officers are not obligated to accept a person’s claim of having a verbal physician’s recommendation that cannot be readily verified with the physician at the time of detention.

6. **Exceeding Possession Guidelines:** If a person has what appears to be valid medical marijuana documentation, but exceeds the applicable possession guidelines identified above, all marijuana may be seized.

7. **Return of Seized Medical Marijuana:** If a person whose marijuana is seized by law enforcement successfully establishes a medical marijuana defense in court, or the case is not prosecuted, he or she may file a motion for return of the marijuana. If a court grants the motion and orders the return of marijuana seized incident to an arrest, the individual or entity subject to the order must return the property. State law enforcement officers who handle controlled substances in the course of their official duties are immune from liability under the CSA. (21 U.S.C. § 885(d).) Once the marijuana is returned, federal authorities are free to exercise jurisdiction over it. (21 U.S.C. §§ 812(c)(10), 844(a); *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 369, 386, 391.)

#### IV. GUIDELINES REGARDING COLLECTIVES AND COOPERATIVES

Under California law, medical marijuana patients and primary caregivers may “associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes.” (§ 11362.775.) The following guidelines are meant to apply to qualified patients and primary caregivers who come together to collectively or cooperatively cultivate physician-recommended marijuana.

**A. Business Forms:** Any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes should be organized and operated in a manner that ensures the security of the crop and safeguards against diversion for non-medical purposes. The following are guidelines to help cooperatives and collectives operate within the law, and to help law enforcement determine whether they are doing so.

1. **Statutory Cooperatives:** A cooperative must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. (Corp. Code, § 12201, 12300.) No business may call itself a “cooperative” (or “coop”) unless it is properly organized and registered as such a corporation under the Corporations or Food and Agricultural Code. (*Id.* at § 12311(b).) Cooperative corporations are “democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons.” (*Id.* at § 12201.) The earnings and savings of the business must be used for the general welfare of its members or equitably distributed to members in the form of cash, property, credits, or services. (*Ibid.*) Cooperatives must follow strict rules on organization, articles, elections, and distribution of earnings, and must report individual transactions from individual members each year. (See *id.* at § 12200, et seq.) Agricultural cooperatives are likewise nonprofit corporate entities “since they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers.” (Food & Agric. Code, § 54033.) Agricultural cooperatives share many characteristics with consumer cooperatives. (See, e.g., *id.* at § 54002, et seq.) Cooperatives should not purchase marijuana from, or sell to, non-members; instead, they should only provide a means for facilitating or coordinating transactions between members.

2. **Collectives:** California law does not define collectives, but the dictionary defines them as “a business, farm, etc., jointly owned and operated by the members of a group.” (*Random House Unabridged Dictionary*; Random House, Inc. © 2006.) Applying this definition, a collective should be an organization that merely facilitates the collaborative efforts of patient and caregiver members – including the allocation of costs and revenues. As such, a collective is not a statutory entity, but as a practical matter it might have to organize as some form of business to carry out its activities. The collective should not purchase marijuana from, or sell to, non-members; instead, it should only provide a means for facilitating or coordinating transactions between members.

**B. Guidelines for the Lawful Operation of a Cooperative or Collective:**

Collectives and cooperatives should be organized with sufficient structure to ensure security, non-diversion of marijuana to illicit markets, and compliance with all state and local laws. The following are some suggested guidelines and practices for operating collective growing operations to help ensure lawful operation.

1. **Non-Profit Operation:** Nothing in Proposition 215 or the MMP authorizes collectives, cooperatives, or individuals to profit from the sale or distribution of marijuana. (See, e.g., § 11362.765(a) ["nothing in this section shall authorize . . . any individual or group to cultivate or distribute marijuana for profit"].)

2. **Business Licenses, Sales Tax, and Seller's Permits:** The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a Seller's Permit. Some cities and counties also require dispensing collectives and cooperatives to obtain business licenses.

3. **Membership Application and Verification:** When a patient or primary caregiver wishes to join a collective or cooperative, the group can help prevent the diversion of marijuana for non-medical use by having potential members complete a written membership application. The following application guidelines should be followed to help ensure that marijuana grown for medical use is not diverted to illicit markets:

a) Verify the individual's status as a qualified patient or primary caregiver. Unless he or she has a valid state medical marijuana identification card, this should involve personal contact with the recommending physician (or his or her agent), verification of the physician's identity, as well as his or her state licensing status. Verification of primary caregiver status should include contact with the qualified patient, as well as validation of the patient's recommendation. Copies should be made of the physician's recommendation or identification card, if any;

b) Have the individual agree not to distribute marijuana to non-members;

c) Have the individual agree not to use the marijuana for other than medical purposes;

d) Maintain membership records on-site or have them reasonably available;

e) Track when members' medical marijuana recommendation and/or identification cards expire; and

f) Enforce conditions of membership by excluding members whose identification card or physician recommendation are invalid or have expired, or who are caught diverting marijuana for non-medical use.

4. **Collectives Should Acquire, Possess, and Distribute Only Lawfully Cultivated Marijuana:** Collectives and cooperatives should acquire marijuana only from their constituent members, because only marijuana grown by a qualified patient or his or her primary caregiver may lawfully be transported by, or distributed to, other members of a collective or cooperative. (§§ 11362.765, 11362.775.) The collective or cooperative may then allocate it to other members of the group. Nothing allows marijuana to be purchased from outside the collective or cooperative for distribution to its members. Instead, the cycle should be a closed-circuit of marijuana cultivation and consumption with no purchases or sales to or from non-members. To help prevent diversion of medical marijuana to non-medical markets, collectives and cooperatives should document each member's contribution of labor, resources, or money to the enterprise. They also should track and record the source of their marijuana.

5. **Distribution and Sales to Non-Members are Prohibited:** State law allows primary caregivers to be reimbursed for certain services (including marijuana cultivation), but nothing allows individuals or groups to sell or distribute marijuana to non-members. Accordingly, a collective or cooperative may not distribute medical marijuana to any person who is not a member in good standing of the organization. A dispensing collective or cooperative may credit its members for marijuana they provide to the collective, which it may then allocate to other members. (§ 11362.765(c).) Members also may reimburse the collective or cooperative for marijuana that has been allocated to them. Any monetary reimbursement that members provide to the collective or cooperative should only be an amount necessary to cover overhead costs and operating expenses.

6. **Permissible Reimbursements and Allocations:** Marijuana grown at a collective or cooperative for medical purposes may be:

- a) Provided free to qualified patients and primary caregivers who are members of the collective or cooperative;
- b) Provided in exchange for services rendered to the entity;
- c) Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses; or
- d) Any combination of the above.

7. **Possession and Cultivation Guidelines:** If a person is acting as primary caregiver to more than one patient under section 11362.7(d)(2), he or she may aggregate the possession and cultivation limits for each patient. For example, applying the MMP's basic possession guidelines, if a caregiver is responsible for three patients, he or she may possess up to 24 oz. of marijuana (8 oz. per patient) and may grow 18 mature or 36 immature plants. Similarly, collectives and cooperatives may cultivate and transport marijuana in aggregate amounts tied to its membership numbers. Any patient or primary caregiver exceeding individual possession guidelines should have supporting records readily available when:

- a) Operating a location for cultivation;
- b) Transporting the group's medical marijuana; and
- c) Operating a location for distribution to members of the collective or cooperative.

8. **Security:** Collectives and cooperatives should provide adequate security to ensure that patients are safe and that the surrounding homes or businesses are not negatively impacted by nuisance activity such as loitering or crime. Further, to maintain security, prevent fraud, and deter robberies, collectives and cooperatives should keep accurate records and follow accepted cash handling practices, including regular bank runs and cash drops, and maintain a general ledger of cash transactions.

C. **Enforcement Guidelines:** Depending upon the facts and circumstances, deviations from the guidelines outlined above, or other indicia that marijuana is not for medical use, may give rise to probable cause for arrest and seizure. The following are additional guidelines to help identify medical marijuana collectives and cooperatives that are operating outside of state law.

1. **Storefront Dispensaries:** Although medical marijuana “dispensaries” have been operating in California for years, dispensaries, as such, are not recognized under the law. As noted above, the only recognized group entities are cooperatives and collectives. (§ 11362.775.) It is the opinion of this Office that a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law, but that dispensaries that do not substantially comply with the guidelines set forth in sections IV(A) and (B), above, are likely operating outside the protections of Proposition 215 and the MMP, and that the individuals operating such entities may be subject to arrest and criminal prosecution under California law. For example, dispensaries that merely require patients to complete a form summarily designating the business owner as their primary caregiver – and then offering marijuana in exchange for cash “donations” – are likely unlawful. (*Peron, supra*, 59 Cal.App.4th at p. 1400 [cannabis club owner was not the primary caregiver to thousands of patients where he did not consistently assume responsibility for their housing, health, or safety].)

2. **Indicia of Unlawful Operation:** When investigating collectives or cooperatives, law enforcement officers should be alert for signs of mass production or illegal sales, including (a) excessive amounts of marijuana, (b) excessive amounts of cash, (c) failure to follow local and state laws applicable to similar businesses, such as maintenance of any required licenses and payment of any required taxes, including sales taxes, (d) weapons, (e) illicit drugs, (f) purchases from, or sales or distribution to, non-members, or (g) distribution outside of California.