



CITY HALL 2011 JAN 27 PM 4:13 FRANK M. OGAWA PLAZA - OAKLAND - CALIFORNIA 94612

Desley A. Brooks
Vice Mayor
Councilmember- District 6
e-mail: dbrooks@oaklandnet.com

(510) 238-7006
FAX (510) 238-6910
TDD (510) 839-6451

January 27, 2011

To: Council President Larry Reid and Members of the Council.

From: Council Members Brooks and Reid.

Re: Introduction of modified Cultivation Ordinance Oakland Municipal Code Chapter 5.81 et seq.

Attached please find a draft revision to the Cultivation Ordinance adopted by the Oakland City Council in July 2010. The revisions are intended to bring our ordinance into compliance with the Compassionate Use Act (proposition 215), the Medical Marijuana program, and the Attorney General's guidelines regarding medical cannabis.

As you know there have been several comments made in press articles regarding the legality of our ordinance. Although this council has not had direct communication from any outside agency regarding the legality of our ordinance we had directed Staff and the Office of the City Attorney to prepare legislation that would accomplish at minimum the following:

- 1) Clearly and unambiguously be in compliance with existing laws (state and local); and
- 2) Prevent the unlawful marketing and selling marijuana for profit (diversion/profit of relationship/not for profit status)

The attached ordinance accomplishes this by providing a closed loop system between cultivation and dispensing. This is accomplished by empowering the cultivators to both cultivate and dispense medical cannabis. The cultivators would be required to:

1. Have two business locations one site for cultivation and second for dispensing
2. Identify both a location and dispensing site that fall within the framework outlined in this ordinance
3. Grow at least 70% of the medical cannabis they dispense
4. Maintain a relationship between patient and their collective collection sufficient to meet the requirements of state law; and
5. Cap the square footage of their grow space.

We believe that these modifications will provide for a framework that will address the concerns which have been broadly discussed, although never formally raised. In reviewing these changes there remain several open questions that this Council must address and for which direction to staff must be provided:

- Should the current dispensaries remain intact? (Note: this ordinance leaves open the question of what happens to our current dispensary ordinance and un-issued permits)
- If so do they get phased out as their permits expire?
- The permit fee will need to be revised as this new model provides for additional revenue sources for the cultivators. It is an issue that must be raised during ordinance consideration.

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OFFICE OF THE CITY CLERK
OAKLAND

REVISED

2011 JAN 27 PM 2:12 City Attorney

INTRODUCED BY COUNCILMEMBERS REID AND KAPLAN

Ordinance No. C.M.S.

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

Preamble

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 cannabis differently. Indeed, California's medical cannabis 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 cannabis, 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 cannabis, but instead exercised the state's reserved powers to not punish certain cannabis 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 cannabis from the scope of the state's drug laws, this Office recommends that state and local law enforcement officers not arrest individuals or seize cannabis under federal law when the officer determines from the facts available that the cultivation, possession, or transportation is permitted under California's medical cannabis laws.

Pursuant to the authority granted under Health and Safety Code section 11362.77, the City of Oakland enacts the following:

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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, medical cannabis cultivator's cultivating space should be sufficient to meet the needs of their patient members such cultivation space will be capped at 50,000 square feet; such a cap will assure that the City can adequately monitor and track medical cannabis to assure that there is a closed loop delivery between the cultivator; 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; and

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WHEREAS, such cultivation activity in order to meet the requirements of state law and the Attorney General's guidelines must ensure a closed loop delivery system of medicine to its patient members; and

WHEREAS, a component of such lawful cultivation and delivery of medical cannabis is the storefront collective, cooperative, and dispensary models now implemented throughout the state; and

WHEREAS, the Council desires to assure that the permitting system it establishes meets the requirements of state law; 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.

SECTION 4. Oakland Municipal Code Chapter 5.80 is hereby amended to read as follows; additions are indicated by underscoring and deletions are indicated by strike-through-type; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed:

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

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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, and Dispensing Facility that applies for a permit required under this Chapter.
- B. "Attending physician" means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of cannabis is appropriate.
- C. "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.
- 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.

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- E. "Oakland Cannabis Dispensary" ("Dispensary"), shall be construed to include any association, Medical Cannabis Association, cooperative, affiliation, or collective incorporated, or unincorporated association composed of four (4) or more "qualified patients" and/or "primary care givers" in possession of an identification card, or written recommendation, issued by the County of Alameda, or the state of California, or another agency recognized by the City of Oakland pursuant to California Health and Safety Code Section 11362.7 et seq, or written recommendation, come together to provide education, referral, or network services, and facilitation or assistance in the lawful production, distribution, cultivation, acquisition, and distribution of medical cannabis. All Dispensaries must have an approved lawful permit issued by the City of Oakland. For the purposes of this chapter "any association, Medical Cannabis Association, cooperative, affiliation, or collective incorporated, or unincorporated association" shall have the same meaning as a dispensary.
- F. "City Administrator" as used only in this Chapter shall mean the City Administrator for the City of Oakland and his or her designee.
- G. "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.
- H. "Department" means the State Department of Health Services.
- I. "Identification card" means a document issued by the State Department of Health Services that document identities a person authorized to engage in the medical use of cannabis and the person's designated primary caregiver, if any.
- J. "Management Member" means a medical marijuana collective, cooperative, or dispensary member with responsibility for the establishment, organization, registration, supervision, or oversight of the operation of a collective, including but not limited to members who perform the functions of president, vice president, director, operating officer, financial officer, secretary, treasurer, or manager of the collective, cooperative, or dispensary.
- K. "Medical Cannabis Cultivation, Processing, Manufacturing, and Dispensing Facility" hereinafter "cultivation and dispensing 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

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medical cannabis in an area greater than ninety six (96) square feet; and dispensing such cannabis from a second property via a storefront Dispensary. Any establishment engaged in, permitted to be engaged in or carrying on any medical cannabis cultivation, processing, manufacturing, or distribution or other activity mentioned in this chapter shall be deemed a Cannabis Cultivation and Dispensing Facility as described in section 5.81.040. "Cultivation and Dispensing Facility" as used in this chapter is defined to mean a facility as described and for which a permit is issued by the City Administrator or her/his designee to allow a medical cannabis collective, cooperative, and dispensary to operate to cultivate and distribute medical cannabis.

- L. "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.
- M. "Permittees" as used only in this Chapter are cultivation and dispensing facilities that have obtained a permit under this Chapter.
- N. "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.
- O. "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:
 - (1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.
 - (2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every

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qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

- (3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.
- P. Primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.
- Q. "Property" as used in this chapter means the location or locations within the boundaries of the City of Oakland at which the Cultivation and Dispensing Facility members and management members associate to collectively or cooperatively cultivate or distribute medical marijuana exclusively for the collective members and management members.
- R. "Qualified patient" means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.
- S. "Reasonable compensation" means compensation commensurate with reasonable industry wide competitive wages and benefits paid to employees of IRS-qualified nonprofit organizations who have similar job descriptions and duties, required level of education and experience, prior individual earnings history, and number of hours worked. The payment of a bonus shall not be considered "reasonable compensation".
- T. "Serious medical condition" means all of the following medical conditions:
- (1) Acquired immune deficiency syndrome (AIDS).
 - (2) Anorexia.
 - (3) Arthritis.
 - (4) Cachexia.
 - (5) Cancer.
 - (6) Chronic pain.
 - (7) Glaucoma.
 - (8) Migraine.
 - (9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.

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- (10) Seizures, including, but not limited to, seizures associated with epilepsy.
- (11) Severe nausea.
- (12) Any other chronic or persistent medical symptom that either:
 - i. 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).
 - ii. If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

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

~~"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.~~

~~"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.~~

~~"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.~~

~~"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"~~

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

~~"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, vegetative, 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.~~

~~"Industrial Cannabis Cultivation, Processing, Manufacturing Facility" hereinafter "cultivation and manufacturing facility" shall mean any facility used for cultivating,~~

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~~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.~~

~~"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.~~

~~"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.~~

~~"Permittees" as used only in this Chapter are cultivation and manufacturing facilities that have obtained a permit under this Chapter.~~

~~"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~~

~~"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~~

~~"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-dispensing facility without a valid business permit issued pursuant to the provisions of this Chapter. It is unlawful for any entity, dispensary, management member, or member, organized on a for-profit basis, except for hospitals and research facilities, to engage in any medical cannabis cultivation whatsoever.
- B. The City Administrator shall issue, as detailed below, special business permits for the operation of industrial-medical cannabis cultivation, processing, —and manufacturing, and dispensing 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-dispensing

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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-dispensing facility program no more than four-five (54) 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-dispensing 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. These permits shall grant the Permittee the right to maintain two distinct business locations for the purposes of lawfully cultivating and distributing medical cannabis to its dispensary member. ~~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.~~ The Permit will automatically be renewed upon payment of their annual permit fee, which is assessed and due quarterly installment payments, unless there is sufficient evidence to show why the permit should be denied.
- E. Cultivation and manufacturing-dispensing facility permits shall be granted to entities operating legally according to state law.

5.81.040 Medical Cannabis Cultivation and Dispensary Facilities

A Medical Cannabis and Dispensing Facility Permittee will be permitted to maintain a cultivation facility with a maximum of 50,000 square feet of cultivation space and a separate and distinct storefront dispensary. Such permitted business will be required to abide by operating standards and conditions as required by this chapter and developed by the City Administrator or her/his designee.

A. ~~Industrial~~ Cultivation of medical marijuana

- 1. 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

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other types of state or City permits or licenses does not exempt an Applicant from the requirement of obtaining a permit under this Chapter.

2. 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.

B. Storefront Dispensary for Cultivation and Dispensing Facility

1. Except for hospitals, research facilities, or an entity authorized pursuant to OMC Section 8.46.030 and primary caregivers, as defined in Section 5.80.010 B (1), it is unlawful for any owner, operator, or association to own, conduct, operate or maintain, or to participate therein, or to cause or to permit to be conducted, operated, or maintained, any Dispensary with four or more "qualified patients" and caregivers with valid ID pursuant to California Health and Safety Code Section 11362.7 et seq., or to distribute cannabis in accordance with state law, in the city of Oakland unless there exists a valid permit therefore, granted and existing in compliance with the provisions of Chapter 5.02.

2. The proposed location of such Dispensary is not within six hundred (600) feet of a public or private school or a public library or youth center (serving youth eighteen (18) and under), or parks and recreation facilities or residential zone, unless the City Administrator or his/her designee in their discretion determines that the location will not impact the peace and order and welfare of the public. The proposed location must be located in a commercial or industrial zone, or its equivalent as may be amended, of the City. Public notice shall be given as provided in Section 5.02.050, and the investigating official referred to in Section 5.02.030 to whom the application shall be referred, shall be the City Administrator. 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 applicant and any other factors that in their discretion she/he deems necessary to the peace and order and welfare of the public. All applicants shall pay an application fee, a permit fee, and all inspections fees that may be required.

5.81.050 Application for Permit

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

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- 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 at the time of application for a permit will be required to submit the following documentation:
 - 1. Proof that they have secured two (2) locations, one (1) location for cultivation and a second location for their storefront dispensary;
 - 2. that the cultivation location referenced in number C-1 above has sufficient cultivation space to be able to produce at least 70% of the cannabis required to serve their 3rd year patient pool identified in their year projection requested in C-3 below;
 - 3. three (3) years of patient growth projections and timeline for how they will develop and reach their full cultivation operational capacity to serve this patient pool;
 - 4. architectural renderings for both cultivation and dispensary location.

- D. 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.

- E. 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.

5.81.060 Operating Requirements For A Cultivating Medical Dispensary.

(A) Medical cannabis dispensaries shall be operated only as collectives or cooperatives in accordance with California Health and Safety Code Section 11362.7 et. Seq. All patients or caregivers served by a medical cannabis dispensary shall be members of that medical cannabis dispensary's collective or cooperative.

(B) The medical cannabis dispensary shall receive only compensation for actual expenses, including reasonable compensation incurred for services provided to qualified patients or primary caregivers to enable that person to use or transport cannabis pursuant to California Health and Safety Code Section 11362.7 et. Seq. or for payment for out-of-pocket expenses incurred in providing those services, or both. Sale of medical cannabis for excessive profits is explicitly prohibited.

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(C) Medical cannabis dispensaries shall sell or distribute only cannabis manufactured and processed in the City of Oakland and has not left the city of Oakland before arriving at the medical cannabis dispensary.

5.81.070 Guidelines for the Lawful Operation of a Cooperative or Collective:

Pursuant to Oakland Municipal Code and California law medical cannabis patients and primary caregivers may “associate within the State of California in order collectively or cooperatively to cultivate cannabis for medical purposes.” (§ 11362.775.)

A. Cooperatives or Collectives Generally: Cultivating and Dispensing facilities should be organized with sufficient structure to ensure:

1. security,
2. non-diversion of cannabis to illicit markets, and
3. compliance with all state and local laws.

B. The Cooperative or Collective must operate as a Non-Profit Operation: Nothing in Proposition 215 or the MMP authorizes collectives, cooperatives, or individuals to profit from the sale or distribution of cannabis. (See, e.g., § 11362.765(a) [“nothing in this section shall authorize . . .any individual or group to cultivate or distribute cannabis for profit”].)

C. The Cooperative or Collective must obtain: 1) a City of Oakland Business License, 2) pay Sales Taxes, and 3) possess a Seller’s Permit: The State Board of Equalization has determined that medical cannabis transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical cannabis must obtain a Seller’s Permit.

D. Statutory Cooperatives:

1. 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).)

2. Cooperative corporations are “democratically controlled and may not be 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.)

3. The earnings and savings of the business must be used for the benefit of the community and the residents of the City of Oakland

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4. 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.)

5. 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.)

6. Agricultural cooperatives share many characteristics with consumer cooperatives. (See, e.g., *id.* at § 54002, et seq.)

E. **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” shall mean an organization that merely facilitates the collaborative efforts of patient and caregiver members –

1. Collectives may allocate costs and revenues on behalf of its members.
2. A collective may organize as some form of business to carry out its activities.
3. The collective should not purchase cannabis from, or sell to, non-members;
4. Collectives should only provide a means for facilitating or coordinating transactions between members.

F. **Cultivating and Dispensing facilities Location.** The proposed cultivation location of a Cultivating and Dispensing 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 Cultivating and Dispensing 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.

G. **Board/Ownership/Management Requirements.** Forty percent of the Governing Board members, owners, officers, managers must be Oakland residents and reflective of the diversity of the City of Oakland; or if the Cultivating and Dispensing facilities has no employees and is wholly owned by the employees at least 40% of its members must be residents of Oakland and reflective of the diversity of the City of Oakland.

8.81.080 Cooperative, Collective, Dispensary Membership

A. All Members will be required to complete a written Membership Application.

B. The Membership Application will be used to:

1. To verify the individual’s status as a qualified patient or primary caregiver. Unless he or she has a valid state medical cannabis identification card, this should involve personal contact with the recommending physician (or his or her agent);

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2. Verify of the physician's identity, as well as his or her state licensing status;
3. Verify the primary caregiver status and should include contact with the qualified patient;
4. Validate the patient's recommendation. Copies should be made of the physician's recommendation or identification card, if any.

C. The Membership Application must expressly:

1. Require the individual to agree not to distribute cannabis to non-members;
2. Require the individual to agree not to use the cannabis for other than medical purposes;

D. Maintenance and Use of Membership Application:

1. Membership records shall be maintained on-site and shall be reasonably available;
2. The Membership Application shall be used to track when members' medical cannabis recommendation and/or identification cards expire; and
3. The Membership Application shall be used to enforce conditions of membership by excluding members whose identification card or physician recommendation are invalid or have expired, or who are caught diverting cannabis for non-medical use.
4. Confidentiality – such application and information retained by the permittee but such maintenance of records will abide by all relevant and applicable confidential and privacy requirements of federal, state, and local laws relating to patients.

5.81.090 Medical Board and Doctors

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.)

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5.81.100 Cultivating and Dispensing Facilities Must Acquire, Possess, and Distribute Cannabis Lawfully Cultivated In The City Of Oakland:

- A. Cultivating and Dispensing facilities must cultivate cannabis for their members;
- B. Cultivating and Dispensing facilities must cultivate on-site at their approved location 70% of all cannabis distributed or allocated, either for a fee or free to its members. The Facilities may acquire 30 % of their cannabis from patient and patient care giver members that they provide to their constituent members, because only cannabis grown by a qualified patient or his or her primary caregiver may lawfully be transported by, or distributed to, other members of a Cultivating and Dispensing facilities. (§§ 11362.765, 11362.775.)
- C. The Cultivating and Dispensing facilities may then allocate the cannabis to other members of the group.
- D. Nothing allows cannabis to be purchased from outside the Cultivating and Dispensing facilities for distribution to its members. Instead, the cycle should be a closed circuit of cannabis cultivation and consumption with no purchases or sales to or from non-members. To help prevent diversion of medical cannabis to nonmedical markets.
- E. Cultivating and Dispensing facilities should document each member's contribution of labor, resources, or money to the enterprise.
- F. Collectives or cooperatives should track and record the source of their cannabis.

5.81.110 Distribution and Sales to Non-Members are Prohibited

State law allows primary caregivers to be reimbursed for certain services (including cannabis cultivation), but nothing allows individuals or groups to sell or distribute cannabis to non-members. Accordingly, a Cultivating and Dispensing facilities may not distribute medical cannabis to any person who is not a member in good standing of the organization, or a licensed and permitted cooperative, collective, association, or dispensary operating in the County of Alameda and with whom the Cultivating and Dispensing facility has a contractual relationship to provide medical cannabis in a closed loop manner. A Cultivating and Dispensing facilities may credit its members for cannabis they provide to the collective, which it may then allocate to other members. (§ 11362.765(c).) Members also may reimburse the Cultivating and Dispensing facilities for cannabis that has been allocated to them.

5.81.120 Permissible Reimbursements and Allocations

Cannabis grown at a Cultivating and Dispensing facilities for medical purposes may be:

1. Provided free to qualified patients and primary caregivers who are members of the Cultivating and Dispensing facilities;
2. Provided in exchange for services rendered to the entity;

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3. Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses; or
4. Any combination of the above.

5.81.130 Possession and Cultivation Guidelines

Under California State law counties and cities may retain or enact medical cannabis guidelines allowing qualified patients or primary caregivers to exceed the state limits. To that end, patients or primary caregivers may cultivate the greater of sections A and B below, per patient, based on patient need.

A. Pursuant to California Health & Safety Code Section 11362.77 at a minimum a qualified patient or primary caregiver may possess eight ounces of dried cannabis per qualified patient. In addition, a qualified patient or primary caregiver may also maintain six mature or 12 immature cannabis plants per qualified patient. 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 cannabis (8 oz. per patient) and may grow 18 mature or 36 immature plants. Similarly, Cultivating and Dispensing facilities may cultivate and transport cannabis in aggregate amounts tied to its membership numbers; or

B. If a qualified patient or primary caregiver has a doctor's recommendation that the quantity, set forth in section above, does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of cannabis consistent with the patient's needs.

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

D Any patient or primary caregiver exceeding individual possession guidelines should have supporting records readily available when:

1. Operating a location for cultivation;
2. Transporting the group's medical cannabis; and
3. Operating a location for distribution to members of the Cultivating and Dispensing facilities.

5.81.140 Security

Cultivating and Dispensing facilities should provide adequate security to ensure that patients are safe and that the surrounding businesses are not negatively impacted by nuisance activity such as loitering or crime. Further, to maintain security, prevent fraud, and deter robberies, Cultivating and Dispensing facilities should keep accurate records

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and follow accepted cash handling practices, including regular bank mns and cash drops, and maintain a general ledger of cash transactions.

5.81.150 Enforcement Guidelines

Depending upon the facts and circumstances, deviations from the guidelines outlined above, or other indicia that cannabis is not for medical use, may give rise to probable cause for arrest and seizure. The following are additional guidelines to help identify medical cannabis Cultivating and Dispensing facilities that are operating outside of state law.

A. **Storefront Dispensaries:** Although medical cannabis “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 the Office of the California Attorney General that a properly organized and operated Cultivating and Dispensing facilities that dispenses medical cannabis 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 cannabis 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].)

B. **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 cannabis, (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.

5.81.160 Non Disclosure of Cultivation Location. The location of a premise for cultivation Operation shall be a Confidential record and shall be exempt from the Oakland’s open records act. The city shall keep the location of a cultivation operation confidential and shall redact the location from all public Records. Notwithstanding any provision of law to the contrary this information may be shared with a peace officer or a law enforcement agency.

5.81.170 Operating Standards

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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.

5.81.180 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.

5.81.1090 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.

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5.81.200101 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.

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(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.

5.81.210 Prohibited operations.

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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.

5.81.220 Cultivation and Dispensing Facility permit—Nontransferable

A Cultivation and Dispensing Facility permit issued pursuant to this chapter shall become null and void upon the cessation of the collective and/or the relocation of the collective. Holder of the permit may not transfer the same without the express approval of the City of Oakland.

B. The lawful conduct of activity regulated by this chapter by a permittee shall be limited to those activities expressly indicated on the Cultivation and Dispensing Facility permit application.

C. The holder of a Cultivation and Dispensing Facility permit shall not allow others to use or rent the permitted property. An exception shall be made for persons who are not collective members or management members and who possess a valid city issued business license which authorizes the "place to place" sale of soil and nutrients to the collective members or management members for the collective cultivation of medical marijuana by members and/or management members of the collective.

5.81.24230 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

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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) quarterly per annum.

In Council, Oakland, California, _____, 2011,

Passed By The Following Vote:

AYES-

NOTES-

ABSENT-

ABSTENTION-

Attest: _____

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