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APPROVED AS TO FORM


CITY ATTORNEY'S OFFICE

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.81, MEDICAL CANNABIS CULTIVATION FACILITY PERMITS, TO ALIGN WITH CALIFORNIA'S MEDICAL MARIJUANA REGULATION AND SAFETY ACT AND ADOPTING CEQA EXEMPTION FINDINGS

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

WHEREAS, in 2004, Senate Bill 420 was enacted (codified at Health and Safety Code section 11362.7 *et seq.* and titled the "Medical Marijuana Program Act") to clarify the scope of the Compassionate Use Act of 1996. The Medical Marijuana Program Act allows cities and other governing bodies to adopt and enforce laws consistent with its provisions; and

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

WHEREAS, in 2010, the Oakland City Council adopted Ordinance No. 13033 C.M.S. to establish citywide medical cannabis cultivation facility regulations (codified at OMC Chapter 5.81), to protect the public health, safety and welfare of patients and the community as a whole, but to date, the City has neither enforced these provisions nor issued any licenses or permits pursuant to these regulations; and

WHEREAS, in 2011, Assembly Bill 2650 was enacted (codified at Health and Safety Code section 11362.768). This law affirms that cities can adopt ordinances that

restrict the location and establishment of medical marijuana collectives, cooperatives, and dispensaries; and

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

WHEREAS, in 2015, Assembly Bills 243 and 266 and Senate Bill 643 were enacted (codified at Business and Professions Code section 19300 et seq. and titled the "Medical Marijuana Regulation and Safety Act"); and

WHEREAS, the Medical Marijuana Regulation and Safety Act establishes a long-overdue comprehensive regulatory framework for medical cannabis in California (including production, transportation and sale of medical cannabis), requires establishment of uniform state minimum health and safety standards, testing standards, mandatory product testing, and security requirements at dispensaries and during transport of the product, and provides criminal immunity for licensees; and

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

WHEREAS, the Medical Marijuana Regulation and Safety Act authorizes medical cannabis businesses to vertically integrate their business and hold multiple state licenses if they are located in jurisdictions that adopted a local ordinance, prior to July 1, 2015, allowing or requiring qualified businesses to cultivate, manufacture, and dispense medical cannabis or medical cannabis products; and

WHEREAS, the City of Oakland's medical cannabis regulations have allowed and will continue to allow an individual qualified business to cultivate, manufacture, and dispense medical cannabis or medical cannabis products; and

WHEREAS, extensive medical cannabis activities, including cultivation and manufacturing, currently occur in the City and have not been expressly regulated; and

WHEREAS, these activities have caused and continue to cause ongoing adverse impacts that can be harmful to the health, safety and welfare of Oakland residents and constitute a public nuisance, including without limitation 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

WHEREAS, many of these community impacts have fallen disproportionately on residential neighborhoods. These impacts have also created an increase in City response costs, including code enforcement, building, fire, and police staff time and expenses; and

WHEREAS, absent appropriate regulation, these unregulated medical cannabis activities pose a potential threat to the public health, safety and welfare;

WHEREAS, the City of Oakland wishes to amend OMC Chapter 5.81 to continue and expand citywide regulation of medical cannabis activities in a manner that protects the public health, safety and general welfare of the community, and in the interest of patients who qualify to obtain, possess and use marijuana for medical purposes, consistent with the Compassionate Use Act of 1996, the Medical Marijuana Program Act, and the Medical Marijuana Regulation and Safety Act; and

WHEREAS, the City of Oakland has a compelling interest in protecting the public health, safety, and welfare of its citizens, residents, visitors and businesses by developing and implementing strict performance and operating standards for medical cannabis cultivation, manufacturing and other facilities; and

WHEREAS, it is the City of Oakland's policy in the permitting of medical cannabis facilities to encourage the hiring of high unemployment groups, including Oakland residents that were formerly incarcerated; and

WHEREAS, communities of color have been negatively and disproportionately impacted by disparate enforcement of cannabis laws; and

WHEREAS, police arrest data reported to the Cannabis Regulatory Commission reflect disproportionately higher arrests for cannabis offenses in certain police beats; and

WHEREAS, individuals arrested or previously incarcerated for cannabis related offenses face significant barriers to obtaining employment, financial aid, public housing, and other economic opportunities; and

WHEREAS, the City of Oakland seeks to provide equity in ownership in the cannabis industry through the incorporation of a Cultivation, Manufacturing, Distribution, Testing, and Transporting Permit Program; and

WHEREAS, as part of its efforts to develop comprehensive amendments to the existing citywide medical cannabis regulations, staff conducted extensive public outreach, including public presentations to the City's Cannabis Regulatory Commission in February, July, and October 2015; and

WHEREAS, after a duly noticed public meetings on February 9, 2016, and April 26, 2016, the Public Safety Committee voted to recommend the proposal to the City Council with the inclusion of an equity component that requires 50% of all new cannabis permits be issued to applicants who reside in police beats negatively and disproportionately impacted by enforcement of cannabis laws; and

WHEREAS, the City Council held a duly noticed public hearing on May 3, 2016, to consider the proposed amendments and all interested parties were provided an ample opportunity to participate in said hearing and express their views; and

WHEREAS, nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. § 841 or to license any activity that is prohibited under said Act except as mandated by State law; and

WHEREAS, nothing in this Ordinance shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance; or (2) allow the use of cannabis for non-medical purposes; or (3) allow any activity relating to the sale, distribution, possession or use of cannabis that is illegal under state or federal law; and compliance with the requirements of this Ordinance shall not provide a defense to criminal prosecution under any applicable law; now, therefore

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

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

SECTION 2. Purpose and Intent. It is the purpose and intent of this Ordinance to clarify and expressly authorize non-dispensary medical cannabis activities, including the cultivation of medical cannabis, in order to preserve the public peace, health, safety, and general welfare of the citizens and residents of, and travelers through, the City of Oakland, as authorized by the Medical Marijuana Regulation and Safety Act.

SECTION 3. Amendment of Chapter 5.81 of the Oakland Municipal Code. Oakland Municipal Code Chapter 5.81 is hereby amended as follows (additions are shown in double underline and deletions are shown as ~~strikethrough~~):

Chapter 5.81 – MEDICAL CANNABIS CULTIVATION, MANUFACTURING AND OTHER FACILITY PERMITS

5.81.010 – Findings and purpose.

A. The City Council, based on evidence presented to it in the proceedings leading to the adoption of this Chapter hereby finds that the lack of regulation of medical cannabis facilities other than medical cannabis dispensaries, including unregulated cultivation, manufacturing and processing of medical cannabis in the City 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 Council further finds that the creation of a permitting process implementing public health and safety standards for medical cannabis facilities other than dispensaries will not only improve public health and safety but provide a measure of certainty for legitimate businesses and thus encourage them to situate in Oakland.

CB. The City acknowledges that the voters of the State have provided an exemption to prosecution for the cultivation, possession of cannabis for medical purposes under the Compassionate Use Act (CUA), but that the CUA does not address land use or building code impacts or issues arising from the resulting increase in cannabis cultivation within the City.

DC. The City acknowledges that sales of medical marijuana are subject to taxation by both the City and the State and that the California State Board of Equalization (BOE) is also requiring that businesses engaging in such retail transactions hold a seller's permit.

ED. The primary purpose and intent of this Chapter is to regulate the cultivation and processing of non-dispensary medical cannabis facilities, including the cultivation of medical cannabis, in a manner that protects the public health, safety and welfare of the community, as authorized by the Medical Marijuana Regulation and Safety Act.

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 the City Administrator to mean a discrete quantity of dried cannabis produced and sold together.

C. “Cannabis” or “Marijuana” as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010-8.46.020.

D. “Cannabis concentrate” as used only in this Chapter shall mean manufactured cannabis that has undergone a process to concentrate the cannabinoid active ingredient, thereby increasing the product’s potency.

ED. “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.”

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

G. "Cultivate" as used only in this Chapter shall mean to plant, grow, harvest, dry, cure, grade or trim more than 48 ounces of dried cannabis and/or to plant, grow, harvest, dry, cure, grade or trim cannabis in an area greater than 96 square feet of total area within one parcel of land.

~~F. "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 ten square feet and stacked vertically on top of each other shall be counted as 20 square feet of cultivation area.~~

~~G. "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 48 ounces of dried cannabis, and/or cultivating or storing medical cannabis in an area greater than 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 a an industrial cannabis cultivation and manufacturing facility as described in Section 5.81.040.~~

H. "Distribute" as used only in this Chapter shall mean the procurement, sale, and transport of medical cannabis and medical cannabis products between state licensed medical cannabis entities.

I. "Edible cannabis product" as used only in this Chapter shall mean manufactured cannabis that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum.

J. "Manufactured cannabis" as used only in this Chapter shall mean raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product.

K. "Manufacture" as used only in this Chapter shall mean to produce, prepare, propagate, or compound manufactured medical cannabis or medical cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

L.H. "Medical cCannabis cCollective" as used only in this Chapter shall be the same, and as may be amended, as isf defined in Section 5.80.010.

M. "Medical marijuana" or "Medical cannabis" as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.

Nf. "One-Parcel of lLand" as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010mean 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.

OJ. "Permittees" as used only in this Chapter are individuals or businesses cultivation and manufacturing facilities that have obtained a permit under this Chapter to cultivate, distribute, manufacture, test or transport.

PK. “Primary caregiver” as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.

QL. “Qualified patient” as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.

R. “Testing” as used only in this Chapter shall mean the conducting of analytical testing of cannabis, cannabis-derived products, hemp, or hemp-derived products.

S. “Topical cannabis” as used only in this Chapter shall mean a product intended for external use such as with cannabis-enriched lotions, balms and salves.

T. “Transport” as used only in this Chapter means the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity, as defined by state law.

U. “Transporter” as used only in this Chapter means a person licensed to transport medical cannabis or medical cannabis products between state licensed medical cannabis facilities.

V. “Volatile Solvents” as used only in this Chapter shall mean those solvents used in the cannabis manufacturing process determined to be volatile by the California Department of Public Health or Oakland Fire Department.

~~M.~~ “Written Recommendation” as used only in this Chapter shall be the same, and as may be amended, as if defined in Section 5.80.010.

W. “General Application permit” shall mean all applications issued under OMC 5.81 with the exception of Cultivation, Manufacturing, Distribution, Testing, and Transporting Equity Permits issued under section 5.81.030.

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, distribute, and manufacturing, test or transport facility~~ without a valid business permit issued pursuant to the provisions of this Chapter. Possession of other types of State or City permits or licenses does not exempt an applicant from the requirement of obtaining a permit under this Chapter. ~~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 medical cannabis cultivation processing, distributing, and manufacturing, testing and transporting 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 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.~~

CD. All cultivation, distribution, and manufacturing, testing and transporting facility permits shall be special business permits and shall be issued for a term of ~~one~~two years, subject to annual review one year from the date of prior issuance. No property interest, vested right, or entitlement to receive a future license to operate a medical marijuana business shall ever inure to the benefit of such permit holder as such permits are revocable at any time with our without cause by the City Administrator subject to Section 5.81.120.

DE. Cultivation, distribution, and manufacturing, testing, and transporting facility permits shall only be granted to entities operating legally according to State law.

E. More than one medical cannabis operator may situate on a single parcel of land, however, each operator will be required to obtain a permit for their applicable permit category.

F. No proposed use under this Chapter shall be located within a 600 foot radius of any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive (but not including any private school in which education is primarily conducted in private homes) nor situate in an area other than as prescribed below unless the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public.

G. Fifty percent (50%) of all permits issued under OMC 5.81 shall be issued to an Oakland resident who meets the Equity Permit Program requirements set forth in Section 5.81.030(H) below. At no time shall the number of General Application permits issued under 5.81 in total exceed the number of Equity Permits under 5.81 in total issued by the City Administrator.

H. Cultivation, Manufacturing, Distribution, Testing, and Transporting Equity Permit Program Criteria. Applicant must have at least one member who meets all of the following criteria:

1. Be an Oakland resident who,
2. Resides for at least two years prior to the date of application in Oakland Police Department Beats 26Y, 30X, 30Y, 31Z, 32Y, and 34X (Oakland Police Department Beat Map is attached and incorporated herein by reference); or those individuals who, within the last ten years, have been previously incarcerated for marijuana-related offense as a result of a conviction arising out of Oakland, California;
3. Maintains not less than a 50% ownership in the Dispensary applicant entity, partnership, limited liability corporation, collective, corporation, worker cooperative or other recognized ownership entity; and

4. Prior marijuana or cannabis conviction shall not be a bar to equity ownership.

5.81.040 – Industrial eCultivation, distribution, testing and transporting of medical marijuana.

~~A. Any use of activity that involves possessing, cultivating, processing and/or manufacturing and/or more than 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.~~

~~AB. The pProposed location of a cultivation, distribution, testing or transporting and manufacturing facilitylocations shall be in areas where “light manufacturing industrial,” “research and development,” or their equivalent use, is permitted by right under the Oakland Planning Code, as may be amended; provided, however, that no vested or other right shall inure to the benefit of any cultivation, distribution, testing or transporting 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. The aforementioned location restrictions shall not apply to existing dispensary cultivation facilities located at a retail location if the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public.~~

~~C. The maximum size of any areas of cultivation shall not exceed any limitations or restrictions set forth in State law.~~

5.81.045 – Manufacturing of medical marijuana.

~~A. Proposed locations for manufacturing of medical cannabis products using nonvolatile solvents shall be in areas where “custom manufacturing industrial,” or its equivalent use, is permitted by right under the Oakland Planning Code, as may be amended, or in residential zones if the manufacturing is compliant with the restrictions imposed on cottage food operators under the California Homemade Food Act, Chapter 6.1 (commencing with Section 51035) of Part 1 of Division 1 of Title 5 of the Government Code.~~

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

5.81.050 – Application for permit.

A. All 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, that shall include, as applicable, plans for security, odor mitigation, waste disposal, pest management, product testing, worker safety and compensation, local hiring, non diversion of product, facility location, capitalization, business plans, applicant complaint history, criminal background checks, plan for minimizing environmental impacts, compliance with City building and fire codes, and any additional information deemed necessary by the City Administrator. The City Administrator may design application forms specific to each permitted category and require inspections of proposed facilities before issuing a permit under this Chapter.~~

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. The City Administrator shall establish criteria for minimizing the carbon footprint, environmental impact and resource needs of permitted facilities. Applicants that demonstrate they can satisfy this environmental criteria, such as cultivators seeking to operate greenhouse facilities, will be given preference in the processing of their application.~~

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

5.81.070 – Operating and performance standards.

A. Facilities permitted under this Chapter shall not be open to the public. The City Administrator shall establish operating and performance standards for permittees. The intent of these operating and performance standards is to minimize any negative effects and enhance the benefits of permitted facilities on the surrounding community.

B. The following standards shall be included in the City Administrator's regulations:

1. No cannabis or cannabis odors shall be detectable by sight or smell outside of a permitted facility.

2. Permitted facilities must install security cameras capable of documenting activity inside and outside the facility, as determined by the Oakland Police Department.

3. Permitted facilities shall maintain a staff that is at least 50% Oakland residents and at least 25% Oakland residents in census tracts identified by the City Administrator as having high unemployment rates. The City Administrator may promulgate standards for phasing in this requirement for existing facilities.

4. Permitted facilities that hire and retain formerly incarcerated Oakland residents may apply for a tax credit or license fee reduction based on criteria established by the City Administrator.

5. All employees shall be paid a living wage as defined by OMC Chapter 2.28.

6. Permitted facilities must implement a track and trace program that records the movement of medical cannabis and medical cannabis products in their

custody and make these records available to the City Administrator upon request.

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

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

A. The City Administrator shall be provided access to any licensed medical cannabis cultivation, manufacturing, and other facility during normal business hours to verify compliance with this chapter.

AB. 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~~ 5.81 and/or gross receipts tax requirements.

BC. 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.

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

DE. Any permittee refusal to comply with this Section shall be deemed a violation of this Chapter, and administrative subpoenas shall be enforced pursuant to applicable law.

5.81.100 – Liability and indemnification.

A. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Chapter shall not become a personal liability of any public officer or employee of the City.

B. To the maximum extent permitted by law, ~~the~~ permittees under this Chapter hereby agree to save, shall defend (with counsel acceptable to the City), indemnify and keephold harmless the City of Oakland, the Oakland City Council, and its respective officials, officers, employees, representatives, agents and volunteers (hereafter collectively called "City") from any all-liability, damages, actions, claims, demands,

litigation, loss (direct or indirect), causes of action, or proceedings, or judgment (including legal costs, these for attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, any medical cannabis-related approvals and actions in consequence of the granting of this permit, and will in all things strictly comply with the conditions under which this such permit is granted, if any. The City may elect, in its sole discretion, to participate in the defense of said Action and the permittee shall reimburse the City for its reasonable legal costs and attorneys' fees.

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

5.81.101 - Residential Personal use 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 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 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 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 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;

2. 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;
3. No individual residential facility or other facility housing the cultivation, processing and/or manufacturing of medical cannabis shall contain more than 48 ounces of dried cannabis, and/or more than 96 square feet of cultivation area;
4. If required by the building or fire code, the wall(s) adjacent to the indoor cultivation area shall be constructed with 5/8" Type X fire resistant drywall;
5. The cultivation area shall be in compliance with the current adopted edition of the California Building Code ~~§ 1203.4 natural ventilation or § 402.3 mechanical ventilation (or its equivalent(s));~~
6. The cultivation area shall not adversely affect the health or safety of the residence or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;
7. All high amperage electrical equipment (exceeding six 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;
8. Any electrical rewiring or remodeling shall first require an electrical permit from the City;
9. The use of butane gas products for personal use medical cannabis cultivation is prohibited; and
10. 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.

A. AllAny cultivating, distributing, processing, and manufacturing, testing, or transporting facilities that do not have without a permit under this Chapter are expressly prohibited. No use that purports to have cultivated, distributed, manufactured, tested or transported 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. However, for the limited purpose of state licensing priority, operators may submit a

petition to the City Administrator's Office for a determination of good standing prior to January 1, 2016.

B. Any violations of this Chapter may be subject to administrative citation, pursuant to Chapters 1.08 and 1.12, and other applicable legal, injunctive or equitable remedies. No enforcement of this provision shall take place, though, until after the City Administrator has published information on how to apply for cultivation, distribution, laboratory, manufacturing and transporting permits and no enforcement shall take place against a permit applicant while their application is pending.

5.81.120 – Revocation, suspension and aAppeals.

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 the City shall follow the procedures set forth in Section 5.02.080 only the City Administrator ~~an independent hearing officer shall make an initial determination with an appeal to an independent hearing officer the City Administrator~~ in writing within 14 days of the City Administrator's Administrative Hearing Officer's decision in accordance with procedures in set forth in Section 5.02.100. The decision of the independent hearing officer shall be final and conclusive.

SECTION 4. Reporting. City staff shall report back to City Council no later than one year from the date of adoption of this legislation, providing information about the implementation, review of effectiveness of the included standards, including equity standards, issues that have arisen, if any, and whether any changes are recommended.

SECTION 5. California Environmental Quality Act. The City Council independently finds and determines that this action is exempt from CEQA pursuant to CEQA Guidelines sections 15061(b)(3) (general rule), 15183 (projects consistent with a community plan, general plan, or zoning), 15301 (existing facilities), 15308 (actions by regulatory agencies for protection of the environment) and 15309 (inspections), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance. The Environmental Review Officer or designee shall file a Notice of Exemption with the appropriate agencies.

SECTION 65. Severability. The provisions of this Ordinance are severable, and if any section, subsection, sentence, clause, phrase, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is for any reason held to be invalid, preempted by state or federal law, or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. It is hereby declared to be the legislative intent of the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

SECTION 76. Ordinance Effective Date. Pursuant to Section 216 of the Charter of the City of Oakland, this Ordinance shall become effective immediately upon final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption by the Council of the City of Oakland.

SECTION 87. General Police Powers. This Ordinance is enacted pursuant to the City of Oakland's general police powers, including but not limited to Sections 106 of the Oakland City Charter and Section 7 of Article XI of the California Constitution.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND PRESIDENT
GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

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

Date of Attestation: _____

NOTICE AND DIGEST

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.81, MEDICAL CANNABIS CULTIVATION FACILITY PERMITS, TO ALIGN WITH CALIFORNIA'S MEDICAL MARIJUANA REGULATION AND SAFETY ACT AND ADOPTING CEQA EXEMPTION FINDINGS

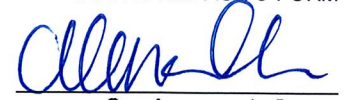
This ordinance amends the City of Oakland's existing citywide medical cannabis regulations to align with new state law, the Medical Marijuana Regulation and Safety Act, by establishing permitting processes for medical cannabis cultivators, manufacturers, testing laboratories, distributors and transporters.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

REVISED AT COUNCIL 5/3/16

2016 MAY -5 PM 4: 45

APPROVED AS TO FORM


CITY ATTORNEY'S OFFICE

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.81, MEDICAL CANNABIS CULTIVATION FACILITY PERMITS, TO ALIGN WITH CALIFORNIA'S MEDICAL MARIJUANA REGULATION AND SAFETY ACT AND ADOPTING CEQA EXEMPTION FINDINGS

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

WHEREAS, in 2004, Senate Bill 420 was enacted (codified at Health and Safety Code section 11362.7 *et seq.* and titled the "Medical Marijuana Program Act") to clarify the scope of the Compassionate Use Act of 1996. The Medical Marijuana Program Act allows cities and other governing bodies to adopt and enforce laws consistent with its provisions; and

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

WHEREAS, in 2010, the Oakland City Council adopted Ordinance No. 13033 C.M.S. to establish citywide medical cannabis cultivation facility regulations (codified at OMC Chapter 5.81), to protect the public health, safety and welfare of patients and the community as a whole, but to date, the City has neither enforced these provisions nor issued any licenses or permits pursuant to these regulations; and

WHEREAS, in 2011, Assembly Bill 2650 was enacted (codified at Health and Safety Code section 11362.768). This law affirms that cities can adopt ordinances that

restrict the location and establishment of medical marijuana collectives, cooperatives, and dispensaries; and

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

WHEREAS, in 2015, Assembly Bills 243 and 266 and Senate Bill 643 were enacted (codified at Business and Professions Code section 19300 et seq. and titled the "Medical Marijuana Regulation and Safety Act"); and

WHEREAS, the Medical Marijuana Regulation and Safety Act establishes a long-overdue comprehensive regulatory framework for medical cannabis in California (including production, transportation and sale of medical cannabis), requires establishment of uniform state minimum health and safety standards, testing standards, mandatory product testing, and security requirements at dispensaries and during transport of the product, and provides criminal immunity for licensees; and

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

WHEREAS, the Medical Marijuana Regulation and Safety Act authorizes medical cannabis businesses to vertically integrate their business and hold multiple state licenses if they are located in jurisdictions that adopted a local ordinance, prior to July 1, 2015, allowing or requiring qualified businesses to cultivate, manufacture, and dispense medical cannabis or medical cannabis products; and

WHEREAS, the City of Oakland's medical cannabis regulations have allowed and will continue to allow an individual qualified business to cultivate, manufacture, and dispense medical cannabis or medical cannabis products; and

WHEREAS, extensive medical cannabis activities, including cultivation and manufacturing, currently occur in the City and have not been expressly regulated; and

WHEREAS, these activities have caused and continue to cause ongoing adverse impacts that can be harmful to the health, safety and welfare of Oakland residents and constitute a public nuisance, including without limitation 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

WHEREAS, many of these community impacts have fallen disproportionately on residential neighborhoods. These impacts have also created an increase in City response costs, including code enforcement, building, fire, and police staff time and expenses; and

WHEREAS, absent appropriate regulation, these unregulated medical cannabis activities pose a potential threat to the public health, safety and welfare;

WHEREAS, the City of Oakland wishes to amend OMC Chapter 5.81 to continue and expand citywide regulation of medical cannabis activities in a manner that protects the public health, safety and general welfare of the community, and in the interest of patients who qualify to obtain, possess and use marijuana for medical purposes, consistent with the Compassionate Use Act of 1996, the Medical Marijuana Program Act, and the Medical Marijuana Regulation and Safety Act; and

WHEREAS, the City of Oakland has a compelling interest in protecting the public health, safety, and welfare of its citizens, residents, visitors and businesses by developing and implementing strict performance and operating standards for medical cannabis cultivation, manufacturing and other facilities; and

WHEREAS, it is the City of Oakland's policy in the permitting of medical cannabis facilities to encourage the hiring of high unemployment groups, including Oakland residents that were formerly incarcerated; and

WHEREAS, communities of color have been negatively and disproportionately impacted by disparate enforcement of cannabis laws; and

WHEREAS, police arrest data reported to the Cannabis Regulatory Commission reflect disproportionately higher arrests for cannabis offenses in certain police beats; and

WHEREAS, individuals arrested or previously incarcerated for cannabis related offenses face significant barriers to obtaining employment, financial aid, public housing, and other economic opportunities; and

WHEREAS, the City of Oakland seeks to provide equity in ownership in the cannabis industry through the incorporation of a Cultivation, Manufacturing, Distribution, Testing, and Transporting Permit Program; and

WHEREAS, as part of its efforts to develop comprehensive amendments to the existing citywide medical cannabis regulations, staff conducted extensive public outreach, including public presentations to the City's Cannabis Regulatory Commission in February, July, and October 2015; and

WHEREAS, after a duly noticed public meetings on February 9, 2016, and April 26, 2016, the Public Safety Committee voted to recommend the proposal to the City Council with the inclusion of an equity component that requires 50% of all new cannabis permits be issued to applicants who reside in police beats negatively and disproportionately impacted by enforcement of cannabis laws; and

WHEREAS, the City Council held a duly noticed public hearing on May 3, 2016, to consider the proposed amendments and all interested parties were provided an ample opportunity to participate in said hearing and express their views; and

WHEREAS, nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. § 841 or to license any activity that is prohibited under said Act except as mandated by State law; and

WHEREAS, nothing in this Ordinance shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance; or (2) allow the use of cannabis for non-medical purposes; or (3) allow any activity relating to the sale, distribution, possession or use of cannabis that is illegal under state or federal law; and compliance with the requirements of this Ordinance shall not provide a defense to criminal prosecution under any applicable law; now, therefore

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

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

SECTION 2. Purpose and Intent. It is the purpose and intent of this Ordinance to clarify and expressly authorize non-dispensary medical cannabis activities, including the cultivation of medical cannabis, in order to preserve the public peace, health, safety, and general welfare of the citizens and residents of, and travelers through, the City of Oakland, as authorized by the Medical Marijuana Regulation and Safety Act.

SECTION 3. Amendment of Chapter 5.81 of the Oakland Municipal Code. Oakland Municipal Code Chapter 5.81 is hereby amended as follows (additions are shown in double underline and deletions are shown as ~~strikethrough~~):

Chapter 5.81 – MEDICAL CANNABIS CULTIVATION, MANUFACTURING AND OTHER FACILITY PERMITS

5.81.010 – Findings and purpose.

A. The City Council, based on evidence presented to it in the proceedings leading to the adoption of this Chapter hereby finds that the lack of regulation of medical cannabis facilities other than medical cannabis dispensaries, including unregulated cultivation, manufacturing and processing of medical cannabis in the City 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 Council further finds that the creation of a permitting process implementing public health and safety standards for medical cannabis facilities other than dispensaries will not only improve public health and safety but provide a measure of certainty for legitimate businesses and thus encourage them to situate in Oakland.

CB. The City acknowledges that the voters of the State have provided an exemption to prosecution for the cultivation, possession of cannabis for medical purposes under the Compassionate Use Act (CUA), but that the CUA does not address land use or building code impacts or issues arising from the resulting increase in cannabis cultivation within the City.

DC. The City acknowledges that sales of medical marijuana are subject to taxation by both the City and the State and that the California State Board of Equalization (BOE) is also requiring that businesses engaging in such retail transactions hold a seller's permit.

ED. The primary purpose and intent of this Chapter is to regulate the cultivation and processing of non-dispensary medical cannabis facilities, including the cultivation of medical cannabis, in a manner that protects the public health, safety and welfare of the community, as authorized by the Medical Marijuana Regulation and Safety Act.

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 the City Administrator to mean a discrete quantity of dried cannabis produced and sold together.

C. "Cannabis" or "Marijuana" as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010-8.46.020.

D. "Cannabis concentrate" as used only in this Chapter shall mean manufactured cannabis that has undergone a process to concentrate the cannabinoid active ingredient, thereby increasing the product's potency.

ED. "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."

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

G. "Cultivate" as used only in this Chapter shall mean to plant, grow, harvest, dry, cure, grade or trim more than 48 ounces of dried cannabis and/or to plant, grow, harvest, dry, cure, grade or trim cannabis in an area greater than 96 square feet of total area within one parcel of land.

~~F. "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 ten square feet and stacked vertically on top of each other shall be counted as 20 square feet of cultivation area.~~

~~G. "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 48 ounces of dried cannabis, and/or cultivating or storing medical cannabis in an area greater than 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 a an industrial cannabis cultivation and manufacturing facility as described in Section 5.81.040.~~

H. "Distribute" as used only in this Chapter shall mean the procurement, sale, and transport of medical cannabis and medical cannabis products between state licensed medical cannabis entities.

I. "Edible cannabis product" as used only in this Chapter shall mean manufactured cannabis that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum.

J. "Manufactured cannabis" as used only in this Chapter shall mean raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product.

K. "Manufacture" as used only in this Chapter shall mean to produce, prepare, propagate, or compound manufactured medical cannabis or medical cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

LH. "Medical cCannabis cCollective" as used only in this Chapter shall be the same, and as may be amended, as isf defined in Section 5.80.010.

M. "Medical marijuana" or "Medical cannabis" as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.

NI. "One-Parcel of lLand" as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010mean 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.

OJ. "Permittees" as used only in this Chapter are individuals or businesses cultivation and manufacturing facilities that have obtained a permit under this Chapter to cultivate, distribute, manufacture, test or transport.

PK. “Primary cGaregiver” as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.

QL. “Qualified patient” as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.

R. “Testing” as used only in this Chapter shall mean the conducting of analytical testing of cannabis, cannabis-derived products, hemp, or hemp-derived products.

S. “Topical cannabis” as used only in this Chapter shall mean a product intended for external use such as with cannabis-enriched lotions, balms and salves.

T. “Transport” as used only in this Chapter means the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity, as defined by state law.

U. “Transporter” as used only in this Chapter means a person licensed to transport medical cannabis or medical cannabis products between state licensed medical cannabis facilities.

V. “Volatile Solvents” as used only in this Chapter shall mean those solvents used in the cannabis manufacturing process determined to be volatile by the California Department of Public Health or Oakland Fire Department.

~~M.~~ ~~“Written Recommendation” as used only in this Chapter shall be the same, and as may be amended, as if defined in Section 5.80.010.~~

W. “General Application permit” shall mean all applications issued under OMC 5.81 with the exception of Cultivation, Manufacturing, Distribution, Testing, and Transporting Equity Permits issued under section 5.81.030.

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, distribute, and manufacturing, test or transport facility without a valid business permit issued pursuant to the provisions of this Chapter. Possession of other types of State or City permits or licenses does not exempt an applicant from the requirement of obtaining a permit under this Chapter. 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 medical cannabis cultivation processing, distributing, and manufacturing, testing and transporting 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 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.~~

~~CD. All cultivation, distribution, and manufacturing, testing and transporting facility permits shall be special business permits and shall be issued for a term of onetwo years, subject to annual review one year from the date of prior issuance. No property interest, vested right, or entitlement to receive a future license to operate a medical marijuana business shall ever inure to the benefit of such permit holder as such permits are revocable at any time with our without cause by the City Administrator subject to Section 5.81.120.~~

~~DE. Cultivation, distribution, and manufacturing, testing, and transporting facility permits shall only be granted to entities operating legally according to State law.~~

~~E. More than one medical cannabis operator may situate on a single parcel of land, however, each operator will be required to obtain a permit for their applicable permit category.~~

~~F. No proposed use under this Chapter shall be located within a 600 foot radius of any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive (but not including any private school in which education is primarily conducted in private homes) nor situate in an area other than as prescribed below unless the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public.~~

~~G. Fifty percent (50%) of all permits issued under OMC 5.81 shall be issued to an Oakland resident who meets the Equity Permit Program requirements set forth in Section 5.81.030(H) below. At no time shall the number of General Application permits issued under 5.81 in total exceed the number of Equity Permits under 5.81 in total issued by the City Administrator.~~

~~H. Cultivation, Manufacturing, Distribution, Testing, and Transporting Equity Permit Program Criteria. Applicant must have at least one member who meets all of the following criteria:~~

- ~~1. Be an Oakland resident who,~~
- ~~2. Resides for at least two years prior to the date of application in Oakland Police Department Beats 26Y, 30X, 30Y, 31Z, 32Y, and 34X (Oakland Police Department Beat Map is attached and incorporated herein by reference); or those individuals who, within the last ten years, have been previously incarcerated for marijuana-related offense as a result of a conviction arising out of Oakland, California;~~
- ~~3. Maintains not less than a 50% ownership in the Dispensary applicant entity, partnership, limited liability corporation, collective, corporation, worker cooperative or other recognized ownership entity; and~~

4. Prior marijuana or cannabis conviction shall not be a bar to equity ownership.

5.81.040 – Industrial eCultivation, distribution, testing and transporting of medical marijuana.

~~A. Any use of activity that involves possessing, cultivating, processing and/or manufacturing and/or more than 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.~~

~~AB. The pProposed location of a cultivation, distribution, testing or transporting and manufacturing facility locations shall be in areas where “light manufacturing industrial,” “research and development,” or their equivalent use, is permitted by right under the Oakland Planning Code, as may be amended; provided, however, that no vested or other right shall inure to the benefit of any cultivation, distribution, testing or transporting 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. The aforementioned location restrictions shall not apply to existing dispensary cultivation facilities located at a retail location if the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public.~~

~~C. The maximum size of any areas of cultivation shall not exceed any limitations or restrictions set forth in State law.~~

5.81.045 – Manufacturing of medical marijuana.

~~A. Proposed locations for manufacturing of medical cannabis products using nonvolatile solvents shall be in areas where “custom manufacturing industrial,” or its equivalent use, is permitted by right under the Oakland Planning Code, as may be amended, or in residential zones if the manufacturing is compliant with the restrictions imposed on cottage food operators under the California Homemade Food Act, Chapter 6.1 (commencing with Section 51035) of Part 1 of Division 1 of Title 5 of the Government Code.~~

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

5.81.050 – Application for permit.

A. All 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, that shall include, as applicable, plans for security, odor mitigation, waste disposal, pest management, product testing, worker safety and compensation, local hiring, non diversion of product, facility location, capitalization, business plans, applicant complaint history, criminal background checks, plan for minimizing environmental impacts, compliance with City building and fire codes, and any additional information deemed necessary by the City Administrator. The City Administrator may design application forms specific to each permitted category and require inspections of proposed facilities before issuing a permit under this Chapter.~~

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. The City Administrator shall establish criteria for minimizing the carbon footprint, environmental impact and resource needs of permitted facilities. Applicants that demonstrate they can satisfy this environmental criteria, such as cultivators seeking to operate greenhouse facilities, will be given preference in the processing of their application.~~

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

5.81.070 – Operating and performance standards.

A. Facilities permitted under this Chapter shall not be open to the public. The City Administrator shall establish operating and performance standards for permittees. The intent of these operating and performance standards is to minimize any negative effects and enhance the benefits of permitted facilities on the surrounding community.

B. The following standards shall be included in the City Administrator's regulations:

1. No cannabis or cannabis odors shall be detectable by sight or smell outside of a permitted facility.

2. Permitted facilities must install security cameras capable of documenting activity inside and outside the facility, as determined by the Oakland Police Department.

3. Permitted facilities shall maintain a staff that is at least 50% Oakland residents and at least 25% Oakland residents in census tracts identified by the City Administrator as having high unemployment rates. The City Administrator may promulgate standards for phasing in this requirement for existing facilities.

4. Permitted facilities that hire and retain formerly incarcerated Oakland residents may apply for a tax credit or license fee reduction based on criteria established by the City Administrator.

5. All employees shall be paid a living wage as defined by OMC Chapter 2.28.

6. Permitted facilities must implement a track and trace program that records the movement of medical cannabis and medical cannabis products in their

custody and make these records available to the City Administrator upon request.

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

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

A. The City Administrator shall be provided access to any licensed medical cannabis cultivation, manufacturing, and other facility during normal business hours to verify compliance with this chapter.

AB. 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~~ 5.81 and/or gross receipts tax requirements.

BC. 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.

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

DE. Any permittee refusal to comply with this Section shall be deemed a violation of this Chapter, and administrative subpoenas shall be enforced pursuant to applicable law.

5.81.100 – Liability and indemnification.

A. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Chapter shall not become a personal liability of any public officer or employee of the City.

B. To the maximum extent permitted by law, the permittees under this Chapter hereby agree to save, shall defend (with counsel acceptable to the City), indemnify and keephold harmless the City of Oakland, the Oakland City Council, and its respective officials, officers, employees, representatives, agents and volunteers (hereafter collectively called "City") from any all liability, damages, actions, claims, demands,

litigation, loss (direct or indirect), causes of action, or proceedings, or judgment (including legal costs, those for attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, any medical cannabis-related approvals and actions in consequence of the granting of this permit, and will in all things strictly comply with the conditions under which this such permit is granted, if any. The City may elect, in its sole discretion, to participate in the defense of said Action and the permittee shall reimburse the City for its reasonable legal costs and attorneys' fees.

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

5.81.101 - Residential ~~Personal~~ use 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 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 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 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 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;

2. 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;
3. No individual residential facility or other facility housing the cultivation, processing and/or manufacturing of medical cannabis shall contain more than 48 ounces of dried cannabis, and/or more than 96 square feet of cultivation area;
4. If required by the building or fire code, the wall(s) adjacent to the indoor cultivation area shall be constructed with 5/8" Type X fire resistant drywall;
5. The cultivation area shall be in compliance with the current adopted edition of the California Building Code ~~§ 1203.4 natural ventilation or § 402.3 mechanical ventilation (or its equivalent(s))~~;
6. The cultivation area shall not adversely affect the health or safety of the residence or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;
7. All high amperage electrical equipment (exceeding six 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;
8. Any electrical rewiring or remodeling shall first require an electrical permit from the City;
9. The use of butane gas products for personal use medical cannabis cultivation is prohibited; and
10. 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.

A. ~~All~~ Any cultivating, distributing, processing, and manufacturing, testing, or transporting facilities that do not have without a permit under this Chapter are expressly prohibited. No use that purports to have cultivated, distributed, manufactured, tested or transported ~~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. However, for the limited purpose of state licensing priority, operators may submit a

petition to the City Administrator's Office for a determination of good standing prior to January 1, 2016.

B. Any violations of this Chapter may be subject to administrative citation, pursuant to Chapters 1.08 and 1.12, and other applicable legal, injunctive or equitable remedies. No enforcement of this provision shall take place, though, until after the City Administrator has published information on how to apply for cultivation, distribution, laboratory, manufacturing and transporting permits and no enforcement shall take place against a permit applicant while their application is pending.

5.81.120 – Revocation, suspension and Appeals.

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 the City shall follow the procedures set forth in Section 5.02.080 only the City Administrator ~~an independent hearing officer~~ shall make an initial determination with an appeal to an independent hearing officer ~~the City Administrator~~ in writing within 14 days of the City Administrator's Administrative Hearing Officer's decision in accordance with procedures in set forth in Section 5.02.100. The decision of the independent hearing officer shall be final and conclusive.

SECTION 4. Reporting. City staff shall report back to City Council no later than one year from the date of adoption of this legislation, providing information about the implementation, review of effectiveness of the included standards, including equity standards, issues that have arisen, if any, and whether any changes are recommended.

SECTION 5. California Environmental Quality Act. The City Council independently finds and determines that this action is exempt from CEQA pursuant to CEQA Guidelines sections 15061(b)(3) (general rule), 15183 (projects consistent with a community plan, general plan, or zoning), 15301 (existing facilities), 15308 (actions by regulatory agencies for protection of the environment) and 15309 (inspections), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance. The Environmental Review Officer or designee shall file a Notice of Exemption with the appropriate agencies.

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

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

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

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND PRESIDENT GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

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

Date of Attestation: _____

NOTICE AND DIGEST

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.81, MEDICAL CANNABIS CULTIVATION FACILITY PERMITS, TO ALIGN WITH CALIFORNIA'S MEDICAL MARIJUANA REGULATION AND SAFETY ACT AND ADOPTING CEQA EXEMPTION FINDINGS

This ordinance amends the City of Oakland's existing citywide medical cannabis regulations to align with new state law, the Medical Marijuana Regulation and Safety Act, by establishing permitting processes for medical cannabis cultivators, manufacturers, testing laboratories, distributors and transporters.