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APPROVED AS TO FORM

DRAFT

CITY ATTORNEY'S OFFICE

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.80, MEDICAL CANNABIS DISPENSARY PERMITS, TO AMEND AND REFINE THE EQUITY PERMIT PROGRAM.

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"). These bills also amended provisions of the Medical Marijuana Program Act related to the cultivation of medical marijuana; and

WHEREAS, the Medical Marijuana Regulation and Safety Act preserves local control in a number of ways: (1) it requires medical cannabis businesses to obtain both a state license and a local license or permit to operate legally in California, (2) it terminates the ability of a medical cannabis business to operate if its local license or permit is terminated, (3) it authorizes 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) it provides for civil penalties for unlicensed activities, and continues to apply applicable criminal penalties under existing law, and (5) it expressly protects 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 if the certain conditions set forth in AB 266 are met; 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, the City of Oakland wishes to amend OMC Chapter 5.80 to continue and expand citywide regulation of medical cannabis activities to protect 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 dispensaries; and

WHEREAS, the City of Oakland's policy in the permitting of medical cannabis facilities encourages the hiring of high unemployment groups, including Oakland residents who were formerly incarcerated; and

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

WHEREAS, since the adoption of the Dispensary Equity Permit Program more accurate police arrest data has been gathered and reported to the Cannabis Regulatory Commission that reflects 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 Dispensary Equity 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 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, on June 16, 2016, the Cannabis Regulatory Commission considered additional refinements and proposed amendments to the Dispensary Equity Permit Program for consideration by the City Council; and

WHEREAS, the City of Oakland wishes to make additional amendments to ensure that its medical cannabis regulatory framework is constructed to be competitive

with other localities in retaining and attracting businesses, minimizes unintended negative consequences, and incentivizes equity in ownership, while accomplishing the goals of protecting public health and safety; and

WHEREAS, the City of Oakland wishes to provide material economic support to applicants qualifying for an Equity Program to reduce barriers to ownership and provides the greatest opportunity to succeed; and

WHEREAS, the City of Oakland wishes to ensure qualification criteria for the Equity Program is inclusive of all communities impacted by disparate enforcement of cannabis laws while avoiding arbitrary exclusion of Oakland residents who seek to operate cannabis businesses; and

WHEREAS, the six police beats selected for inclusion in the Dispensary Equity Permit Program was based on the data from one year, 2013, only;

WHEREAS, an analysis of more comprehensive historic arrest data provided by the Oakland Police Department, spanning a greater cross-section of recent years, including data for 2015 provided after May 2016, illustrates that heavily impacted beats can vary greatly between any given year, and supports expanding the number of police beats included in the Equity Program; 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

WHEREAS, in 2014, the OPD reported that from 2005 to 2014, the Oakland Police Department Beats 2X, 2Y, 6X, 7X, 19X, 20X, 21Y, 23X, 26Y, 27X, 27Y, 29X, 30X, 30Y, 31Y, 31Z, 32X, 32Y, 33X, 34X and 35X have been the subject of the highest number of arrests for marijuana-related offenses; and, 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 medical cannabis dispensaries and delivery-only dispensaries, 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 5.80 of the Oakland Municipal Code.
Oakland Municipal Code Chapter 5.80 is hereby amended to read as follows (additions are shown in double underline and deletions are shown as ~~strikethrough~~):

Chapter 5.80 - MEDICAL CANNABIS DISPENSARY PERMITS

5.80.010 - Definitions.

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

- A. "Applicant" - means any individual or business entity that applies for a permit required under this chapter.
- B. "Businesses Entity" – means a nonprofit entity, for profit partnership, limited liability company, collective, corporation, or other business entity, worker cooperative or other recognized business entity.
- C. "Cannabis" or "Marijuana" shall have the same definition as Business and Professions Code Section 19300.5(f), as may be amended, which, as of March 2016, defines "cannabis" as all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Health and Safety Code Section 11018, "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant which is incapable of germination. "Cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.
- ~~BD.~~ "Cannabis dispensary" or "Dispensary" shall mean a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers medical cannabis and medical cannabis products as part of a retail sale.
- ~~CE.~~ "City Administrator" means the City Administrator of the City of Oakland or his/her designee.
- ~~DE.~~ "Collective" means any association, affiliation, or establishment jointly owned and operated by its members that facilitates the collaborative efforts of qualified patients and primary caregivers, as described in State law.

EG. "Delivery" means the commercial transfer of medical cannabis or medical cannabis products from a dispensary to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. "Delivery" also includes the use by a dispensary of any technology platform that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

FH. "Delivery only dispensary" means a cannabis dispensary that provides medical cannabis or medical cannabis products to primary caregivers or qualified patients as defined in Section 11362.7 of the Health and Safety Code exclusively through delivery.

~~G.~~ "General Application permit" shall mean all applications issued under OMC with the exception of dispensary equity permits issued under.

GI. "Entity In Good Standing" – is an existing cannabis business that is registered with the City of Oakland, has a City business license and is compliant with State and City of Oakland laws and regulations and permit requirements.

J. "Medical marijuana" or "Medical cannabis" means marijuana authorized in strict compliance with Health and Safety Code Sections 11362.5, 11362.7 et seq., as such sections may be amended from time to time.

KJ. ——— "Ownership" with respect to:

- 1) non-profit entities, including without limitation a non-profit corporation or similar entity, a person has an ownership interest in the organization or entity if he or she is the executive director or a member of the board of directors.
- 2) worker-owned associations or cooperatives, a person has an ownership interest if he or she is a member of the worker-owned association or cooperative, and
- 3) for profit-entities, including without limitation corporations, partnerships, limited liability companies, a person has an ownership interest if he or she has an aggregate ownership interest (other than a security interest, lien, or encumbrance) of 20 percent or more in the entity. In addition, if the entity is publicly-traded, a person has an ownership interest if he or she is the executive director or a member of the board of directors.

K-L. "Parcel of land" means one piece of real property as identified by the county assessor's parcel number (APN) that is one contiguous parcel of real property, which is used to identify real property, its boundaries, and all the rights contained therein.

L-M. "Primary caregiver" shall have the same definition as California Health and Safety Code Section 11362.7, as may be amended, which, as of March 2016, defines "Primary Caregiver" as an individual designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include a licensed health care facility, a residential care facility, a hospice, or a home health agency as allowed by California Health and Safety Code Section 11362.7(d)(1)—(3).

~~M.-N.~~ "Qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., as may be amended, which, as of March 2016, means a person who is entitled to the protections of California Health and Safety Code Section 11362.5. For purposes of this ordinance, qualified patient shall include a person with an identification card, as that term is defined by California Health and Safety Code Section 11362.7 et seq.

~~N.-O.~~ "Smoking" shall have the same definition as Oakland Municipal Code Chapter 8.30, which as of March 2016 means "inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, weed, or other combustible substance."

~~O.-P.~~ "Youth Center" means a community or recreation facility that primarily serves persons eighteen (18) years or younger.

~~Q.~~ "Permit" means an official document granted by the City that specifically authorizes a person or an entity to conduct commercial medical cannabis activity/activities in the City of Oakland.

~~R.~~ "Permittees" as used only in this chapter are individuals or businesses that have obtained a permit under this chapter.

5.80.020 - Business permit required and application for permit.

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

The City Administrator in collaboration with Race and Equity Department will develop a request for proposal (RFP) process to award a -minimum of four cannabis Dispensary permits per year to businesses eligible for Equity Program and up to an additional four cannabis Dispensary permits to businesses that are not eligible for Equity Program.

Applications from dispensary applicants seeking Equity Program benefits shall be reviewed and issued in Phase 1, and remaining dispensary applications shall be reviewed and issued in Phase 2.

- D. In addition to the requirements specified in Section 5.02.020 for business permits, the permit application for a dispensary shall set forth the following information:
1. Unless the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public evidence that the proposed location of such dispensary is not within six hundred (600) feet of a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive (but not including any private school in which education is primarily conducted in private homes), or youth center, unless those facilities move into the area after a permitted dispensary was in operation at that location. The proposed dispensary or delivery only dispensary must be located in a commercial or industrial zone, or its equivalent as may be amended, of the City.
 2. A plan of operations that will describe how the dispensary or delivery only dispensary will operate consistent with State law and the provisions of this chapter, including but not limited to:
 - a. Controls to ensure medical marijuana will be dispensed only to qualified patients and primary caregivers, and
 - b. Controls to acquire, possess, transport and distribute marijuana to and from State-licensed medical cannabis entities.
 3. A security plan, as a separate document, outlining the proposed security arrangements to deter and prevent unauthorized entrance into areas containing medical cannabis or medical cannabis products and theft of medical cannabis or medical cannabis products at the dispensary, in accordance with minimum security measures required by State law. The security plan shall be reviewed by the Police Department and the Office of the City Administrator and shall be exempt from disclosure as a public record pursuant to Government Code Section 6255(a).
 4. A Community Beautification Plan to promote clean-ups, reduce illegal dumping and graffiti, general blight and promote beautification of the adjacent community, and which confirms ~~Confirmation of~~ the following criteria:
 - a. That the dispensary or delivery only dispensary will not contribute to undue proliferation of such uses in an area where additional ones would be undesirable, with consideration to be given to the area's function and character, problems of crime and loitering, and traffic problems and capacity;
 - b. That the dispensary or delivery only dispensary will not adversely affect adjacent or nearby churches, temples, or synagogues; public, parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds;
 - c. That the dispensary or delivery only dispensary will not interfere with the movement of people along an important pedestrian street;
 - d. That the dispensary or delivery only dispensary will be of an architectural and visual quality and character which harmonizes with, or where appropriate enhances, the surrounding area;

- e. That the design will avoid unduly large or obtrusive signs, bleak unlandscaped parking areas, and an overall garish impression;
- f. That adequate litter receptacles will be provided where appropriate;
- g. That where the dispensary or delivery only dispensary is in close proximity to residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep;
- h. That no cannabis or cannabis odors shall be detectable by sight or smell outside of a permitted facility.

5. An Equity Plan. The City Administrator and/or her designee in collaboration with Race and Equity Department will develop detailed criteria for the Plan.

If permittees do not act upon their plans with specific and quantifiable results, the City reserves a right to reject any and all cannabis business license permit applications submitted by such permittee in the second or subsequent years for renewal.

6. Whether the applicant wishes to be considered for Equity program benefits. If so, applicants must provide plans to maintain the qualifying criteria in Section 5.80.045.

67. 5.—Such other information deemed necessary to conduct any investigation or background check of the applicant, and for the City Administrator to determine compliance with this chapter, the City's Municipal Code and Zoning Code.

Criminal history or convictions of marijuana-related offenses alone shall not be a bar to applying or securing a cannabis license.

E. Applications for dispensaries shall be subject to a hearing and must provide public notice of the hearing in accordance with Section 5.02.050. Applications for delivery only dispensaries shall not be subject to a hearing requirement. The City Administrator shall be the investigating official referred to in Section 5.02.030 to whom the application shall be referred. 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, and complaint history of the applicant and any other factors that in the City Administrator's discretion he/she deems necessary to the peace, order and welfare of the public. Fifty percent (50%) of all permits issued under OMC shall be issued to an Oakland resident who meets the Dispensary Equity Permit Program requirements set forth in. At no time the City Administrator. The eight (8) existing dispensary operators are exempt from the fifty percent (50%) requirement. All applicants, unless as specified in Section 5.80.045, shall pay an application fee, a permit fee, and all inspection fees that may be required as part of the application process, as specified in the City's Master Fee Schedule.

F. At the time of submission of dispensary permit application, the applicant shall pay a dispensary permit application fee, unless deferred as specified in Section 5.80.045. The fee amount shall be set in the City's Master Fee Schedule.

G. The City Administrator shall develop criteria for registering existing commercial cannabis activities established prior to January 1, 2016 which will allow City of Oakland to make a determination that the Dispensaries and Delivery Only Dispensaries were in operation and in good standing with the City of Oakland by January 1, 2016, for purposes of Business and Professions Code section 19321 (c) eligibility for priority processing of state license applications under the MCRSA and for the purposes of the September 1, 2016 deadline specified by Business and Professions Code Section 26054.2(b) of the Adult Use of Marijuana Act.

E. All dispensary permits shall be special business permits and shall be issued for a term of one year. No property interest, vested right, or entitlement to receive a future license to operate a 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 5.80.070.

5.80.025 - Onsite consumption permit.

A. An applicant must obtain a secondary onsite consumption permit in order for cannabis to be consumed on the premises of the dispensary.

B. An onsite consumption permit may be issued at the discretion of the City Administrator to ~~existing-permitted~~ dispensaries in good standing following a public hearing conducted according to the requirements of Chapter 5.02, and based on an evaluative point system that takes into consideration the operating history and business practices of the applicant, and any other factors that are deemed necessary to promote the peace, order and welfare of the public. An application for an onsite consumption permit may be denied for failure to meet requirements of the City Building Code, City Fire Code, City Planning Code, this chapter, and/or any violation of State or local law relevant to the operation of dispensaries.

C. The City Administrator shall establish conditions of approval for each onsite consumption permit, including but not limited to a parking plan, ventilation plan, antidrugged driving plan, and set hours of operation. Set hours of operation may only be adjusted by submitting a written request to and obtaining approval from the City Administrator's Office.

D. The permit shall be subject to suspension or revocation in accordance with Section 5.80.070, and the owner/operator shall be liable for excessive police costs related to enforcement.

E. The application fee and annual fee for the onsite consumption permit shall be specified in the City's Master Fee Schedule.

F. All onsite consumption permits shall be special business permits and shall be issued for a term of one year. No property interest, vested right, or entitlement to receive a future license to operate a 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 5.80.070.

5.80.030 - Regulations.

The City Administrator shall establish administrative regulations for the permitting of dispensaries and delivery only dispensaries, and may set further standards for operation of dispensaries and delivery only dispensaries. The dispensary shall meet all the operating criteria for the dispensing of medical marijuana required pursuant to State law, the City Administrator's administrative regulations, and this Chapter.

5.80.040 - Performance and operating standards.

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

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

- A. No cannabis shall be smoked, inside the premises of the dispensary.
- B. The dispensary shall not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages.
- ~~C. Dispensaries must maintain a staff comprised of at least fifty percent (50%) Oakland residents and twenty five percent (25%) Oakland residents in census tracts identified by the City Administrator as having high unemployment rates.~~
- ~~D. Dispensaries and delivery only dispensaries 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.~~
- EC. All dispensary employees and delivery only dispensary employees shall be paid at living minimum wage rates, or higher and provided leave and other benefits as defined by required under OMC Chapter 2-28 5.92.
- FD. Dispensaries and delivery only dispensaries 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.
- ~~G. Fifty percent (50%) of all dispensary applications issued under OMC shall be issued to an Oakland resident who meets the Dispensary Equity Permit Program requirements set forth in below.~~
- HE. At no time shall the number of new general application permits exceed the ~~number of dispensary equity permits issued by the City Administrator.~~

5.80.045 - Dispensary Equity Permit Program.

- ~~A. Criteria. Applicant must have at least one member who meets all of the following criteria:~~
 - ~~1. Be an Oakland resident who:~~

- a. ~~Resides for at least two (2) years prior to the date of application in Oakland Police Department Beats 26Y, 30X, 30Y, 31Z, 32Y, and 34X; or those individuals who, within the last ten (10) years, have been previously incarcerated for a marijuana-related offense as a result of a conviction arising out of Oakland, California;~~
 - b. ~~Maintains not less than a fifty percent (50%) ownership in the Dispensary applicant entity, partnership, limited liability corporation, collective, corporation, worker cooperative or other recognized ownership entity; and~~
2. ~~Prior marijuana or cannabis conviction shall not be a bar to equity ownership.~~

5.80.045 - Equity Program

City desires to use its regulatory and land use powers to support several social and economic justice goals within the cannabis industry. Those applicants and licensees who meet and maintain the following criteria for the duration of the license, will be entitled to receive financial and other support services as detailed below.

A. Criteria. Applicant must meet one of the following criteria:

1. Business ownership: At least one of the owners has an Ownership interest in a non-profit, worker cooperative, or for profit business whose gross receipts for the past five years did not exceed \$250,000 per year, is an Oakland resident and:
 - i. has resided for at least five (5) years at any point prior to 2016 in Oakland Police Department Beats 2X, 2Y, 6X, 7X, 19X, 20X, 21Y, 23X, 26Y, 27X, 27Y, 29X, 30X, 30Y, 31Y, 31Z, 32X, 32Y, 33X, 34X and 35X, and has had an annual income for the past five years less than 80% of AMI; and/or
 - ii. has a California conviction for a marijuana-related offense within the last ten years prior to the date of application and whose annual income for the past five years has been less than 80% of AMI; and/or
 - iii. whose parent or spouse was incarcerated for marijuana related offense in California and whose annual income for the past five years has been less than 80% of AMI; and/or
 - iv. is a veteran and has had an annual income for the past five years less than 80% of AMI.
2. Small business that operated in Oakland for at least two consecutive years, whose gross receipts for the past five years did not exceed \$250,000 per year, that employs a minimum of twenty five percent (25%) Oakland residents (who must reside in Oakland Police Department Beats 2X, 2Y, 6X, 7X, 19X, 20X, 21Y, 23X, 26Y, 27X, 27Y, 29X, 30X, 30Y, 31Y, 31Z, 32X, 32Y, 33X, 34X and 35X), or proposes to employ a minimum of twenty five percent (25%) Oakland residents in the proposed permitted business (who

must reside in Oakland Police Department Beats 2X, 2Y, 6X, 7X, 19X, 20X, 21Y, 23X, 26Y, 27X, 27Y, 29X, 30X, 30Y, 31Y, 31Z, 32X, 32Y, 33X, 34X and 35X), or that employs a minimum of twenty-five percent (25%) formerly incarcerated Oakland residents

At the time that a business seeks its annual permit renewal, the applicant shall provide all documentation the City Administrator deems is necessary to determine if the business still meets at least one of the qualification criteria in Section 5.80.045 A.

Businesses that at the time of renewal do not meet criteria of Section 5.80.045.A for Equity Benefits, will be phased out of the program and financial benefits outlined in Section 5.80.045.B. The City Administrator shall determine the phase out conditions, at the time of renewal, and may allow such businesses to continue to receive benefits under Section 5.80.045.-B.

Ineligibility due to change in nature of ownership. If a permitted business receiving benefits specified in 5.80.045.B changes or alters its ownership, or otherwise alters its structure, in a manner that alters its eligibility for the criteria under Section 5.80.045 A, it shall notify the City administrator in writing within 30 days. Upon written notice by a business of its potential ineligibility pursuant to this section, the City Administrator shall determine what, if any, phase-out conditions of the benefits received by the business under 5.80.045.B are appropriate, provided that a businesses that ceases to be eligible shall not continue to receive benefits for more than one year from the date of its written notification.

B. Benefits. Businesses that qualify under Section 5.80.045 A. shall, for no more than five years of operation following its receipt of a cannabis business permit, be eligible for the following benefits:

1. Eligibility for access to the Equity Business Development and Loan Fund.
2. Eligibility for expedited permit application review and issuance and renewal of annual cannabis businesses license.
3. Deferment of the annual regulatory fee for up to two years. The deferred payment and the second annual regulatory fee can be paid on a quarterly basis in the second and third years of operations. If the said entity goes out of business, the deferred fees will be forgiven provided documentation of dissemination of that entity.
4. Annual tax incentive payment equal to fifty (50) percent of local business payments made to the City by the Dispensary or Delivery Only Dispensary for up to two years after receiving an initial permit if the gross receipts are less than \$500,000.
5. Access to the job and business training programs sponsored by the City of Oakland.

C. Equity Business Development and Loan Fund uses:

- 1) Direct assistance to businesses qualifying under Equity Application Program:
 - a. No and low interest Loans
 - b. Business startup costs (start-up capital)

- c. City of Oakland licenses fees if business opts out of the deferment of the fees.
- d. Business consulting/Management training
- e. Costs for individuals seeking to expunge their marijuana conviction criminal records
- f. State licensing fee(s)

2) City Business development training programs, including but not limited to the creation of jobs and business training centers. (RFP process – for qualifying organizations to apply)

3) Lobbying the state on behalf of business owners with criminal records if allowed under state law as implemented in 2018 (reference state law)

D. Equity Business Development and Loan Fund financing:

- Portion of annual 5% Cannabis taxes and/or
- In 2017 only – Loan from the general fund that will be reimbursed from the future 5% Cannabis taxes
- 10 percent of City of Oakland cannabis gross receipts taxes
- Outside grants
- Annual Cannabis license fees

5.80.050 - Regulatory fees; seller's permit.

A. In addition to the dispensary application fee, the dispensary shall pay an annual regulatory fee at the same time as applying for the business tax certificate or renewal thereof. Entities qualifying under Section 5.80.045 might be eligible for partial or full deferment or cancelation of those fees. The dispensary shall post a copy of the business tax certificate issued pursuant to Chapter 5.04, together with a copy of the dispensary permit and onsite consumption permit (if applicable) issued pursuant to this chapter and Section 5.02.020, in a conspicuous place in the premises approved as a dispensary at all times.

B. The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a seller's permit from the State Board of Equalization.

C. The fees referenced herein shall be set by the Master Fee Schedule, as modified from time to time.

5.80.060 - Sales.

Retail sales of medical marijuana that violate California law or this chapter are expressly prohibited.

5.80.070 - Revocation, suspension and appeals.

Notwithstanding Chapter 5.02, any decision by the City Administrator, except for the denials, suspensions or revocations of permits, shall be final and conclusive, and there shall be no right of appeal to the City Council or any other appellate body.

For denials, suspensions or revocations the City shall follow the procedures set forth in Section 5.02.080. The appeal authorized in Section 5.02.100 shall be to an independent hearing officer, and such request for appeal must be made in writing within fourteen (14) days of the City Administrator's decision. The decision of the independent hearing officer shall be final and conclusive.

5.80.080 - Prohibited operations; nonconforming uses.

A.

All dispensaries in violation of California Health and Safety Code Section 11326.7, et seq., 11362.5, and this chapter are expressly prohibited. It is unlawful for any dispensary in the City, or any agent, employee or representative of such dispensary, to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct on the premises of the dispensary or during the delivery of medical cannabis.

B.

Except for uses established pursuant to Chapter 8.46, no use which purports to have distributed marijuana prior to the enactment of this chapter shall be deemed to have been a legally established use under the provisions of the Oakland Planning Code, this Code, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim legal nonconforming 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.

C.

Any violations of this chapter, including administrative regulations authorized by this chapter, may be subject to administrative citation, pursuant to Chapters 1.08 and 1.12, and other applicable legal, injunctive or equitable remedies.

5.80.090 - Liability and indemnification.

A.

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

B.

To the maximum extent permitted by law, the permittees under this chapter shall defend (with counsel acceptable to the City), indemnify and hold harmless the City of Oakland, the Oakland City Council, and its respective officials, officers, employees, representatives, agents and volunteers (hereafter collectively called City) from any liability, damages, actions, claims, demands, litigation, loss (direct or indirect), causes of action, proceedings or judgment (including legal costs, attorneys' fees, expert witness or consultant fees, City

Attorney or staff time, expenses or costs) (collectively called "action") against the City to attack, set aside, void or annul, any medical cannabis-related approvals and actions and comply with the conditions under which such permit is granted, if any. The City may elect, in its sole discretion, to participate in the defense of said action and the permittee shall reimburse the City for its reasonable legal costs and attorneys' fees.

C.

Within ten (10) calendar days of the service of the pleadings upon the City of any action as specified in Subsection B. above, the permittee shall execute a letter of agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the letter of agreement shall survive termination, extinguishment or invalidation of the 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.

(Ord. No. 13370, § 3, 5-17-2016)

5.80.100 - Examination of books, records, witnesses—Penalty.

A.

Permittees must provide the City Administrator with access to any licensed dispensary during normal business hours to verify compliance with this chapter.

B.

Permittees must provide the City Administrator with access to any and all financial information regarding the dispensary at any time, as needed to conduct an audit of the permittees under this chapter to verify tax compliance under Chapter 5.80 and/or gross receipts tax requirements.

C.

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

D.

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

E.

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

F.

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

5.70.050 - Repossessing property—Notice.

SECTION 5. 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 6. 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 7. 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 8. 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 9. 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

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

11-16-2017
OFFICE OF THE CITY CLERK
OAKLAND

16 NOV -9 PM 4:29

**ORDINANCE AMENDING OAKLAND MUNICIPAL CODE
CHAPTER 5.80, MEDICAL CANNABIS DISPENSARY
PERMITS, TO REFINE THE EQUITY PERMIT PROGRAM.**

This ordinance amends the City of Oakland's existing citywide medical cannabis regulations to refine equity permit program.