

City of Oakland
Agenda Report

To: Council President De La Fuente and
Members of the City Council
From: Lupe Valdez, City Council Legislative Analyst
Arturo Sanchez, Policy Analyst to Councilmember Jean Quan
Date: February 3, 2004

- Re: A) **A RESOLUTION DECLARING A LOW POLICE PRIORITY
RELATED TO THE DISTRIBUTION OF MEDICAL MARIJUANA
CONSISTENT WITH OAKLAND MUNICIPAL CODE SECTION
5.80 AND SB 420; AND RESCINDING RESOLUTION NO. 72516
DECLARING INVESTIGATION AND ARREST OF INDIVIDUALS
INVOLVED WITH MEDICAL MARIJUANA A LOW
PRIORITY**
- B) **AN ORDINANCE AMENDING TITLE FIVE OF THE OAKLAND
MUNICIPAL CODE ENTITLED BUSINESS LICENSES AND
REGULATIONS TO INCLUDE CHAPTER 5.80 PERTAINING TO
MEDICAL CANNABIS DISPENSARY PERMITTING**
- C) **AN ORDINANCE AMENDING SECTION 8.46.030 OF THE
OAKLAND MUNICIPAL CODE ENTITLED MEDICAL CANNABIS
DISTRIBUTION PROGRAM TO DESIGNATE ONE (1) ENTITY
AS A MEDICAL CANNABIS PROVIDER**

SUMMARY

The City Council is being asked to adopt an ordinance, jointly sponsored by Council President De La Fuente, and Councilmember Quan, amending the City's municipal code to include a chapter in the business license section to establish a permitting process for a maximum of 4 (four) medical cannabis dispensaries. In order to insure compliance with the ordinance, a resolution re-establishing the city's low police priority policy for persons involved with the use and distribution of medical marijuana has been prepared for the Council's approval as well. Finally, an amendment to the City's municipal code establishing the Medical Marijuana Distribution Program is proposed that will amend the number of entities the City Manager may designate as a medical cannabis provider association from one or more to not more than one.

BACKGROUND

The City Council has long been on record supporting various state and federal bills facilitating the use of cannabis for medicinal purposes. Starting in 1995 public hearings

were held and testimony received by the City's Health Commission, the City Council Public Safety Committee and the City Council Health and Human Services Committee, on the medical benefits of Marijuana and the Oakland Cannabis Buyers' Club (OCBC) desire to help severely ill patients safely obtain medical marijuana. Pursuant to those hearings the City Council adopted Resolution 72516 supporting the activities of the Oakland Cannabis Buyers Club and declaring that the investigation and arrest of individuals involved with the medical use of marijuana shall be a low priority for the City of Oakland.

In 1996, California voters passed Proposition 215, the Compassionate Use Act insuring the right of seriously ill Californians to obtain and use medical marijuana. Cities were left to develop their own plans for safe and affordable distribution of medical marijuana.

On October 13, 1998, the federal district court issued a preliminary injunction ordering the Oakland Cannabis Buyer's Cooperative to cease engaging in the manufacture and distribution of marijuana. In an effort to offer some legal protection to OCBC, the City Council adopted Ordinance No. 12077 establishing a Medical Cannabis Distribution Program and designating OCBC as the City's medical cannabis provider association.

On September 23, 2003, the Public Safety Committee received a report from the City Manager on the growing number of medical cannabis entities operating without a medical cannabis provider association designation from the City. City staff and some Council offices toured several cannabis outlets and found that the majority were not in compliance with ADA regulations or fire code regulations.

On September 10, 2003, the California State Legislature passed Senate Bill 420 Controlled Substances (Vasconcellos), to clarify the scope of the Compassionate Use Act, establish protocols and promote uniform and consistent application among all state jurisdictions.

All three proposed pieces of legislation before the Council for adoption have been developed consistent with the guidelines established in the SB420.

KEY ISSUES AND IMPACTS

Oakland is not alone in having to review their medical cannabis policies as medicinal use of cannabis continues to evolve in an ever changing landscape of court decisions and public tolerance. Two other local cities, Hayward and Berkeley, have had to address the impacts of medical cannabis outlet operations due to neighborhood concerns about crime, secondary sales, loitering, etc. Berkeley is exploring the use of a conditional use permit process and Hayward does not have any formal regulation but has made verbal agreements with the dispensaries and limited the number to three.

San Francisco has maintained a don't ask/don't tell policy but will soon be looking at promulgating regulatory options as a result of pressure from neighborhood community groups about where cannabis outlets are situated. Even the San Francisco medical

cannabis patient community wants regulation to address a lack of courtesy to patients and their concern about price gouging. San Francisco cannabis outlet owners/operators want regulations to establish credibility in the market place.

Adopt a New Low Police Priority Policy

Resolution No.72516 declares that the investigation and arrest of persons for cultivating, purchasing, possessing and /or distributing marijuana is a low police priority if such persons purchase or possess marijuana for, and/or distribute marijuana to qualified patients. The resolution was never amended when the city adopted the Medical Marijuana Distribution Program creating a safe environment for marijuana retail outlets to flourish without concern for obtaining an official designation. Consequently, the city has had no control over where outlets are located or their operations. Addressing concerns about irresponsible outlet operators or complaints from the community about smells related to smoke or plants and loitering has been awkward at best.

The proposed resolution rescinds Resolution No. 72516 for the sole purpose of clearly identifying which entities should appropriately be covered by the City's low police priority policy consistent with the entities defined in SB 420 and the proposed ordinance establishing a medical cannabis business permit. The entities under SB 420 allowable groups would be comprised of qualified patients, and or primary caregivers with an identification card, issued pursuant to California Health and Safety Code Section 11362.7 et seq. or a medical cannabis collective comprised of no more than three qualified patients or their primary caregivers. An association, collective, group, collaborative, or any other association with four or more qualified patients or caregivers would be deemed a Dispensary and would be required to apply for one (1) of four (4) permits issued pursuant to the proposed ordinance.

Business Permit for Medical Cannabis Dispensaries

The proposed ordinance establishes a new chapter in the Business License section of the municipal code (5.20 O.M.C.) Permitting up to four (4) medical cannabis dispensaries to operate in the City. Cannabis outlets without a license would not be allowed to operate and would not be subject to the City's low priority policy. Further, no cannabis outlets purporting to have distributed marijuana prior to the enactment of the proposed ordinance would be entitled to claim legal nonconforming status.

The proposal to limit the number of dispensary licenses to four was determined by an assessment of the number of potential patients/patient caregivers unable to grow their own cannabis and currently receiving assistance by the existing cannabis outlets that reside within the City of Oakland. There are an estimated 3000 Oakland residents purchasing their cannabis from these locations. A well capitalized and developed cannabis dispensary could serve between 500 to 1500 qualified patients/caregivers conceivably making the 4 dispensary limit adequate enough to serve the needs of Oakland residents. Staff recommends that the City Council review the 4 dispensary limit policy in one year to learn if Oakland residents are being adequately served.

The proposed ordinance also calls for establishes site restrictions prohibiting a Dispensary from locating within One thousand (1000) feet of a public or private school or a public library or youth center (serving youth 18 and under), or parks and recreation facilities or residential zone or another Dispensary. The proposed location must be located in a commercial or manufacturing zone, or their equivalent as may be amended, by the City.

A regulatory fee structure has been developed to cover the level of staff resources needed to assure that 4 dispensaries are complying with the provisions of OMC including site visits by Code Enforcement Inspector, Oakland Police Officer and City Manger's Office representatives. Code inspectors will need to conduct an assessment of the conditions of the facility in relation to the Oakland building and housing code, verify necessary permits for additions or proposed additions that were/are applied for and received. Police services will be required to make assessment as to security and crime prevention plans and strategies in place by Owner Operators and staff. Relevant background checks will have to be made as dispensary staff turns over. City Manager staff will review applicant's credentials, conduct site visits to verify quantities of cannabis in relation to the number of patients, conduct audits of the records maintained by Dispensary to assure operators are not earning excessive profits. Total staff time would be the equivalent of .5 FTE at a cost of \$50,000 to the city.

Factoring in the administrative support, file management, ongoing inspection and audit requirements that may be required by the CMO, as well as the costs of investigating complaints against the owner operators, and/or patient/caregivers the administrative overhead involved in monitoring the permits will require an additional \$30,000.

The proposed regulatory fee structure is as follows:

- A. Dispensary with four (4) to five hundred (500) qualified patients or Caregivers: five thousand dollars (\$5000.00) nonrefundable annual regulatory fee.
- B. Dispensary with five hundred and one (501) to one thousand (1000) "qualified patients" or "Caregivers": ten thousand dollars (\$10,000.00) nonrefundable annual regulatory fee.
- C. Dispensary with one thousand and one (1001) to one thousand five hundred (1500) "qualified patients" or "Caregivers": fifteen thousand dollars (\$15,000.00) nonrefundable annual regulatory fee.
- D. Dispensary with one thousand five hundred and one (1501) or greater "qualified patients" or "Caregivers": twenty thousand dollars (\$20,000.00) nonrefundable annual regulatory fee.

The proposed ordinance limits medical cannabis collectives/collaborative/associations to a group no larger than three patients and/or their caregivers.

The City Manager may promulgate rules and regulations in conformance with the proposed ordinance and sets out performance standards including but not limited to:

- A. Pursuant to California Health and Safety Code Section 11362.77 dispensaries may possess no more than eight ounces of dried marijuana per qualified patient or caregiver. In addition, a qualified patient or primary caregiver may also maintain no more than six mature or 12 immature marijuana plants per qualified patient.
 - i. If a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs.
 - ii. Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section.
- B. Dispensary shall conduct background investigations of all employees, except those that are medical cannabis patients, to ensure that no persons with criminal convictions are hired as employees.
- C. No cannabis shall be smoked, ingested or otherwise consumed on the premises.
- D. 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.
- E. Dispensary shall maintain records of all patients and or patient caregivers using only the Identification Card number issued by the county, or its agent, pursuant to California Health and Safety Code Section 11362.7 et seq., as a protection of the confidentiality of the cardholders.
- F. Dispensary shall allow the City Manager or his/her designee to have access to the entities' books, records, accounts, and any and all data relevant to its financial activities for the purpose of conducting an audit or examination. Books, records, accounts, and any and all relevant data will be produced no later than 24 hour after City Manager or his/her designees request.

- G. The Dispensary shall provide litter removal services twice each day of operation on and in front of the premises and, if necessary, on public sidewalks within hundred (100) feet of the premises.
- H. The Dispensary shall provide adequate security on the premises, including lighting and alarms, to insure the safety of persons and to protect the premises from theft.
- I. Signage for the establishment shall be limited to one wall sign not to exceed ten (10) square feet in area, and one identifying sign not to exceed two square feet in area; such signs shall not be directly illuminated.
- J. The Dispensary shall provide City Manager or his/her designee, the chief of police and all neighbors located within fifty feet of the establishment with the name, phone number and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the establishment. The dispensary shall make every good faith effort to encourage neighbors to call this person to try to solve operating problems, if any, before any calls or complaints are made to the police department or the zoning administrator.
- K. The dispensary shall meet any specific additional operating procedures and measures as may be imposed as conditions of approval by the City Manager or his/her designee at the time of issuance of the special use permit in order to insure that the operation of the dispensary will not adversely affect surrounding uses.

Finally, the proposed ordinance prohibits excessive profits. Permitted dispensaries will be allowed to cover the cost of operations but will be monitored for profiting from the sale of medical cannabis.

Ordinance Amending the Provisions of the Medicinal Cannabis Distribution Program

The existing code allows the City Manager to designate **one or more** medical cannabis provider association entities. The ordinance will amend the code so the City Manager can designate no more than one entity. The Oakland Cannabis Buyer's Club is the only entity with the designation on record with the City and will continue to retain that designation.

Time Frame for Implementation

Staff is proposing that all three pieces of legislation have an effective date of June 1, 2004 in order to establish the following transition schedule:

February 18, 2004	Send written notices to cannabis outlets regarding new policy and new permit requirements and application process.
March 31, 2004	Deadline for application submittal to City Manager.
April 1 – April 16, 2004	City Manager screens and evaluates applications.
April 19, 2004	1) City Manager sends qualifying and rejection notices. 2) The public notice process is initiated pursuant to Section 2.02.050 O.M.C.
May 17, 2004	City Manager makes final application determination.
June 1, 2004	City's new cannabis policies become effective and cannabis outlets out of compliance must cease operations.

Evaluation Criteria

During the period of March 1 through March 31, 2004, the City will accept applications for permits to operate a dispensary. The applications will contain all the necessary information as required under OMC 8.50 as well as any other information that is requested by the Oakland City Manager. The issuance of the licenses will be based upon the qualifications of the applicant, their ability to meet the criteria under 5.80, as well as their strength in three overall categories:

- 1) Capacity: to serve medical cannabis qualified patients or caregivers, protect the confidentiality of the members, adhere to SB 420 and OMC 5.80 including reporting and auditing requirements, staffing, security, and medical supervision.

- 2) Capitalization: the dispensaries monetary ability to provide for and care for their qualified patients and caregivers, to implement infrastructure and systems to deal with the level of demand, and to find a safe and ideal location for dispensary.

- 3) Complaint History: The history of a particular association, collective, or provider will weigh heavily in the determination of the CMO, including but not limited to the number of calls for OPD service to their location, number of citizen complaints for code or fire violations, and history of compliance with Oakland requirements.

SUSTAINABLE DEVELOPMENT

Economic: The proposed ordinances and resolutions will bring all medical cannabis providers into compliance with state requirements and assure that they are well operated and funded to continue to provide this assistance to Oakland residents.

Environmental: The proposed resolutions and addition to the Oakland Municipal Code will insure that operations that provide medical grade cannabis produce and distribute the medical cannabis in a manner that is safe for the environment, prevent smoking in public places, and assure that waste is disposed of in an environmentally safe manner.

Social Equity: The City of Oakland will continue to lead the nation by assuring safe, accessible, and humane access for the most vulnerable and seriously ill population of the City.

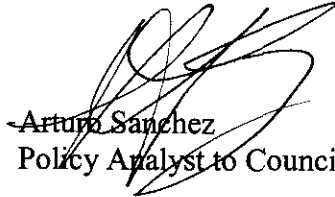
RECOMMENDATION

- 1) Adopt the proposed ordinance establishing a medical cannabis permitting process.
- 2) Schedule a one year review of the ordinance and effectiveness of the 4 dispensary limit.
- 3) Amend the municipal code related to the Medical Cannabis Distribution Program to limit the number of designations.
- 4) Adopt the resolution establishing a new low priority policy related to medicinal marijuana activities.

Respectfully submitted,



Lupe Valdez
City Council Legislative Analyst



Arturo Sanchez
Policy Analyst to Councilmember Jean Quan

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBERS JEAN QUAN AND IGNACIO DE LA FUENTE

A RESOLUTION DECLARING A LOW POLICE PRIORITY RELATED TO THE DISTRIBUTION OF MEDICAL MARIJUANA CONSISTENT WITH OAKLAND MUNICIPAL CODE SECTION 5.80 AND SB 420; AND RESCINDING RESOLUTION NO. 72516 DECLARING INVESTIGATION AND ARREST OF INDIVIDUALS INVOLVED WITH MEDICAL MARIJUANA A LOW PRIORITY POLICY

WHEREAS, on March 12, 1996, the Oakland City Council passed Resolution No. 72516 C.M.S. supporting the activities of the Oakland Cannabis Buyer's Club and declaring that the investigation and arrest of individuals involved with the medical use and distribution, processing, cultivation and purchasing of marijuana shall be a low priority for the City of Oakland; and

WHEREAS, the Compassionate Use Act was approved by the voters in November of 1996 and enacted without establishing guidelines or protocols for local jurisdictions; and

WHEREAS, lacking guidelines or protocols from the State, the Oakland City Council, adopted Ordinance No. 12076 C.M.S. on July 28, 1998 establishing a City of Oakland Medical Marijuana Distribution Program, and

WHEREAS, the California State Legislature recently adopted SB 420 to clarify the scope of the application of the Compassionate Use Act, establish protocols and promote uniform and consistent application among all local jurisdictions in the state to enhance the access of patients and caregivers to medical marijuana; and

WHEREAS, SB 420 allows cities and local governing bodies to develop laws and regulations consistent with state law; and

WHEREAS, the Oakland City Council desires to amend its medical cannabis policies to clearly define which individuals, collectives, and/or dispensaries involved with the medical use of marijuana are subject to the City of Oakland's low police priority policy consistent with the provisions of SB 420 and Oakland Municipal Code Section 5.80; now therefore be it

RESOLVED, that the Oakland City Council hereby rescinds Resolution No. 72516 C.M.S. for the sole purpose of defining which individuals, collectives or dispensaries involved with the medical use of marijuana are subject to the City's low police priority

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policy consistent with Oakland Municipal Code Section 5.80 and SB 420 and continues its support of the Oakland Cannabis Buyers Club; and be it further

RESOLVED, that the City Council hereby declares that it shall be the policy of the City of Oakland that the investigation and arrest for the activities of qualified patients, primary care givers medical cannabis collectives comprised of no more than three qualified patients or a Dispensary as defined in OMC Section 5.80[AN ORDINANCE AMENDING TITLE FIVE OF THE OAKLAND MUNICIPAL CODE ENTITLED BUSINESS LICENSES AND REGULATIONS TO INCLUDE CHAPTER 5.80 PERTAINING TO CANNABIS DISPENSARY PERMITTING (introduced concurrently on 2/3/04)] shall be a low priority for the City of Oakland and the activities of qualified patients, primary caregivers, medical cannabis collectives comprised of more than three patients or Dispensaries not in compliance with O.M.C. Section 5.80 shall not be subject to the City's low priority policy; and be it further

RESOLVED, that no use which purports to have distributed marijuana prior to the enactment of the resolution shall be deemed to have been a legally established use under the provisions of the Zoning Ordinance and such use shall not be entitled to claim legal nonconforming status; and be it further

RESOLVED, that this resolution shall become effective on June 1, 2004.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 19____

PASSED BY THE FOLLOWING VOTE:

AYES – BROOKS, BRUNNER, CHANG, DE LA FUENTE, NADEL, QUAN, REID, WAN

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
CEDA FLOYD
City Clerk and Clerk of the Council
Of the City of Oakland, California

Ordinance No. _____ C.M.S.

INTRODUCED BY COUNCILMEMBERS JEAN QUAN AND IGNACIO DE LA FUENTE

AN ORDINANCE AMENDING TITLE FIVE OF THE OAKLAND MUNICIPAL CODE ENTITLED BUSINESS LICENSES AND REGULATIONS TO INCLUDE CHAPTER 5.80 PERTAINING TO MEDICAL CANNABIS DISPENSARY PERMITTING

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

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

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

WHEREAS, it is the desire of the City Council to establish a new section in the municipal code pertaining to the permitted distribution of medical cannabis in the City of Oakland consistent with SB 420; and

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

WHEREAS, certain cannabis sales outlets currently operating in the city are not in compliance with the City's Medical Cannabis Distribution Program, provisions of SB 420, the Americans with Disability Act regulations and local health and fire safety regulations and as such are a threat to the health and safety of Oakland residents, qualified patients and qualified caregivers; and

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

THAT TITLE 5 OF THE OAKLAND MUNICIPAL CODE ENTITLED LICENSES AND REGULATIONS IS HEREBY AMENDED TO ADD CHAPTER 5.80 ENTITLED MEDICAL CANNABIS DISPENSARY PERMITS AS FOLLOWS:

Section I 5.80.010 Definitions

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

- A. "Cannabis Dispensary", hereinafter dispensary, shall be construed to include any association, Medical cannabis association, cooperative, affiliation, or collective of persons where four (4) or more "qualified patients" and/or "primary care givers", in possession of an identification card, or written recommendation, issued by the

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County of Alameda, or the state of California, or another agency recognized by the City of Oakland pursuant to California Health and Safety Code Section 11362.7 et seq, to provide education, referral, or network services, and facilitation or assistance in the lawful production, acquisition, and distribution of medical cannabis.

B. "Primary Caregiver" shall have the same definition as California Health and Safety Code section 11362.7 et seq, and as may be amended, and which defines "Primary Caregiver" as a individual, or "medical cannabis collective" designated by a qualified patient or by a person with an identification card, or a written recommendation, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

(1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the California Health and Safety Code, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the California Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2 of the California Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2 of the California Health and Safety Code, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2 of the California Health and Safety Code, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

C. "Qualified Patient" shall have the same definition as California Health and Safety Code section 11362.7 et seq, and as may be amended, and which states a person suffering from a serious medical condition who obtains a written recommendation from a physician licensed to practice medicine in the state of California to use marijuana for personal medical purposes.

D. "Serious medical condition" shall have the same definition as California Health and Safety Code section 11362.7 et seq, and as may be amended, and which states all of the following medical conditions:

- (1) Acquired immune deficiency syndrome (AIDS).
- (2) Anorexia.
- (3) Arthritis.
- (4) Cachexia.
- (5) Cancer.

- (6) Chronic pain.
 - (7) Glaucoma.
 - (8) Migraine.
 - (9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.
 - (10) Seizures, including, but not limited to, seizures associated with epilepsy.
 - (11) Severe nausea.
 - (12) Any other chronic or persistent medical symptom that either:
 - (A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).
 - (B) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.
- E. "Written Recommendation" shall have the same definition as California Health and Safety Code section 11362.7 et seq, and as may be amended, and which states a "written recommendation" is an accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of California Health and Safety Code Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.
- F. "Cannabis", or "Marijuana", means all parts of organically grown Cannabis plants, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seed or resin. It 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 mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
- G. "Medical cannabis collective" means a cooperative affiliation, association or collective of persons comprised of no more than 3 (three) "qualified patients" and/or their "primary caregivers" with valid identification cards or written recommendation, to provide education, referral, or network services and to facilitate/assist in the lawful production, acquisition, and provision of medical marijuana to their qualified patients.
- H. "Excessive Profits" means the receipt of consideration of a value substantially higher than the reasonable costs of operating the facility.

5.80.020 Permit required.

Except for Hospitals, research facilities and Primary Caregivers, as defined in 5.80.010 A (1), it is unlawful for any owner, operator, or association to own, conduct, operate or maintain, or to participate therein, or to cause or to permit to be conducted, operated, or maintained, any Dispensary with four (4) or more "qualified patients" and caregivers with valid ID pursuant to California Health and Safety Code Section 11362.7 et seq., in the city unless there exists a valid permit therefore, granted and existing in compliance with the provisions of Chapter 5.02. The City Manager and/or his/her designee shall issue no more than four (4) valid permits for the operation of Dispensary's in the City of Oakland. The application for such permit shall set forth, in

addition to the requirements specified in Section 5.02.020, the fact that the proposed location of such Dispensary is not within One thousand (1000) feet of a public or private school or a public library or youth center (serving youth 18 and under), or parks and recreation facilities or residential zone or another Dispensary. The proposed location must be located in a commercial or manufacturing zone, or their equivalent as may be amended, of the City. Public notice shall be given as provided in Section 5.02.050, and the investigating official referred to in Section 5.02.030 to whom the application shall be referred, shall be the City Manager. In recommending the granting or denying of such permit and in granting or denying the same, the City Manager, shall give particular consideration to the peace and order and moral welfare of the public.

5.80.030 Regulations

The Dispensary shall meet all the operating criteria for the dispensing of medical marijuana as is required pursuant to California Health and Safety Code Section 11362.7 et seq. and by the Oakland City Manager or his/her designee's administrative guidelines for the operation of medical marijuana dispensaries; and all the operating criteria for the dispensing of medical marijuana as may be required of the Oakland City Manager or their designee, including security concerns. It is unlawful for any person or association operating a dispensary under the provisions of Section 5.12.020, or any dispensary whatsoever, in the city, or any agent, employee or representative of such person to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct, or otherwise, or to permit such Dispensary to remain open, or patrons to remain upon the premises, between the hours of 8 p.m. and 7 a.m. the next ensuing day.

5.80.040 Performance Standards

Dispensaries, once permitted, shall meet the following operating standards for the duration of the use:

- A. Dispensaries may possess no more than 8 ounces of dried marijuana per qualified patient or caregiver. In addition, a qualified patient or primary caregiver may also maintain no more than 6 mature or 12 immature marijuana plants per qualified patient.
 - i. If a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs.
 - ii. Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section
- B. Dispensary shall conduct background investigations of all employees, except those that are medical cannabis patients, to ensure that no persons with criminal convictions are hired as employees.
- C. No cannabis shall be smoked, ingested or otherwise consumed on the premises.
- D. 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.

E. Dispensary shall maintain records of all patients and or patient caregivers using only the Identification Card number issued by the county, or its agent, pursuant to California Health and Safety Code Section 11362.7 et seq., as a protection of the confidentiality of the cardholders, or a copy of the written recommendation.

F. Dispensary shall allow the City Manager or his/her designee to have access to the entities' books, records, accounts, and any and all data relevant to its financial activities for the purpose of conducting an audit or examination. Books, records, accounts, and any and all relevant data will be produced no later than 24 hour after City Manager or his/her designees request.

G. The Dispensary shall provide litter removal services twice each day of operation on and in front of the premises and, if necessary, on public sidewalks within hundred (100) feet of the premises.

H. The Dispensary shall provide adequate security on the premises, including lighting and alarms, to insure the safety of persons and to protect the premises from theft.

I. Signage for the establishment shall be limited to one wall sign not to exceed ten (10) square feet in area, and one identifying sign not to exceed two square feet in area; such signs shall not be directly illuminated.

J. The Dispensary shall provide City Manager or his/her designee, the chief of police and all neighbors located within fifty feet of the establishment with the name, phone number and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the establishment. The dispensary shall make every good faith effort to encourage neighbors to call this person to try to solve operating problems, if any, before any calls or complaints are made to the police department or the zoning administrator.

K. The dispensary shall meet any specific additional operating procedures and measures as may be imposed as conditions of approval by the City Manager or his/her designee at the time of issuance of the special use permit in order to insure that the operation of the dispensary will not adversely affect surrounding uses.

5.80.050 Regulatory Fees

Every person conducting, managing or maintaining the business of a dispensary in the city shall pay a regulatory fee annually in advance, and shall keep a copy of the permit issued by the Business Tax Office, together with a copy of the Dispensary permit issued pursuant to the provisions of Section 5.12.020, together with a copy of this chapter, including the regulations set forth in Section 5.80.030, posted in a conspicuous place in the premises maintained as such dispensary at all times during which such Dispensary is being operated.

The following regulatory fees shall be effective until the master fee schedule has been amended to incorporate these new fees.

A. Dispensary with four (4) to five hundred (500) qualified patients or Caregivers: five thousand dollars (\$5000.00) nonrefundable annual regulatory fee.

B. Dispensary with five hundred and one (501) to one thousand (1000) "qualified patients" or "Caregivers": ten thousand dollars (\$10,000.00) nonrefundable annual regulatory fee.

C. Dispensary with one thousand and one (1001) to one thousand five hundred (1500) "qualified patients" or "Caregivers": fifteen thousand dollars (\$15,000.00) nonrefundable annual regulatory fee.

D. Dispensary with one thousand five hundred and one (1501) or greater "qualified patients" or "Caregivers": twenty thousand dollars (\$20,000.00) nonrefundable annual regulatory fee.

5.80.060 Compensation

Dispensary shall receive only compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card, or written recommendation, to enable that person to use marijuana pursuant to California Health and Safety Code Section 11362.7 et seq, or for payment for out-of-pocket expenses incurred in providing those services, or both.

Retail sales of medical cannabis for Excessive Profits are explicitly prohibited.

5.80.070 Prohibited Operations

All Owners, Operators, collaborative, associations, and collectives operating in violation of California Health and Safety Code Section 11326.7 et seq and 11366.5, and OMC section 5.80 are expressly prohibited. 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 Zoning Ordinance and such use shall not be entitled to claim legal nonconforming status.

5.80.080 Liability

To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of OMC section 5.80 shall not become a personal liability of any public officer or employee of the city of Oakland.

Section II Severability

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

Section III Effective Date

This ordinance shall become effective June 1, 2004.

In Council, Oakland, California, _____, 2004.

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, DE LA FUENTE, NADEL, QUAN, AND
 WAN.

NOES-

ABSENT-

ABSTENTION-

Attest: _____

 _CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

Ordinance No. _____ C.M.S.

INTRODUCED BY COUNCILMEMBERS JEAN QUAN AND IGNACIO DE LA FUENTE

AN ORDINANCE AMENDING SECTION 8.46.030 OF THE OAKLAND MUNICIPAL CODE ENTITLED MEDICAL CANNABIS DISTRIBUTION PROGRAM TO DESIGNATE NOT MORE THAN ONE (1) ENTITY AS A MEDICAL CANNABIS PROVIDER

WHEREAS, the City Council has designated the Oakland Medical Cannabis Buyers' Club a medical cannabis provider association under the City's Medical Cannabis Distribution Program pursuant to Ordinance No. 12077 C.M.S.; and

WHEREAS, it is the City Council's desire to limit the number of designated medical cannabis provider associations to one entity under the Medical Cannabis Distribution Program; now therefore be it

RESOLVED THAT THE CITY COUNCIL DOES ORDAIN THAT SECTION 8.46.030 OF THE OAKLAND MUNICIPAL CODE IS HEREBY AMENDED AS FOLLOWS:

8.46.030 Medical cannabis distribution program.

The city of Oakland establishes a Medical Cannabis Distribution Program. Such program shall be administered by medical cannabis provider associations. The City Manager shall designate not more than one ~~or more entities~~ as a medical cannabis provider association. Any designated medical cannabis provider association shall enforce the provisions of this chapter, including enforcing its purpose of insuring that seriously ill Californians have the right to obtain and use marijuana for medical purposes. For the purposes of this chapter only, a medical cannabis provider association, and its agents, employees and directors while acting within the scope of their duties on behalf of the association, shall be deemed officers of the city of Oakland. (Ord. 12077 § 1 (3), 1998)

H/16
City Council
2/3/04

In Council, Oakland, California, _____, 2004.

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, DE LA FUENTE, NADEL, QUAN, AND
 WAN.

NOES-

ABSENT-

ABSTENTION-

Attest: _____

 _CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

#16
City Council
2/3/04