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OFFICE OF THE CITY CLERK
OAKLAND

2014 DEC -4 PM 2: 22

AGENDA REPORT

TO: HENRY L. GARDNER
INTERIM CITY ADMINISTRATOR

FROM: Greg Minor

SUBJECT: Amendments to Chapter 5.80
Of the Oakland Municipal Code

DATE: November 24, 2014⁸

City Administrator
Approval

Date

12-3-14

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends adoption of:

- An ordinance amending Oakland Municipal Code (OMC) 5.80, Medical Cannabis Dispensary Permits, to provide for a secondary special business permit for City of Oakland licensed medical cannabis dispensaries to operate a closed-loop dispensary cultivation facility.
- An ordinance amending Ordinance No. 13238 C.M.S., The Master Fee Schedule, to establish a dispensary cultivation facility permit application fee and annual regulatory fee for City of Oakland licensed medical cannabis dispensaries to operate a closed-loop dispensary cultivation facility.

EXECUTIVE SUMMARY

The proposed amendments to OMC 5.80 will address the public safety and health concerns arising from unregulated cultivation and processing of cannabis in the City Of Oakland, including electrical fires and burglaries, by establishing a process by which licensed City of Oakland dispensaries may cultivate medical cannabis. In contrast with prior efforts to regulate cannabis cultivation in Oakland, this proposal restricts operation of cultivation facilities to only licensed City of Oakland dispensaries and the amount of cultivation is limited in size to a maximum of 10,000 square feet. These distinctions are consistent with the recommendations of the Office of the Attorney General of California of encouraging a closed-loop system of medical cannabis production and distribution in order to avoid diversion of cannabis to illegitimate markets.

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Public Safety Committee
December 16, 2014

OUTCOME

This ordinance would allow the City of Oakland to offer a secondary special business permit to its medical cannabis dispensaries to operate a Dispensary Cultivation Facility (DCF) that meets the public safety and health regulations of the City Administrator's Office. As DCFs become operational, the City of Oakland should experience less of the public safety and health concerns associated with unregulated cannabis cultivation in Oakland.

BACKGROUND

Statewide Cannabis Movement

On November 6, 1996 California voters enacted Proposition 215, the California Compassionate Use Act. The Compassionate Use Act made it legal for patients and their designated primary caregivers to possess and cultivate cannabis for their personal medical use given the recommendation or approval of a licensed physician. See California Health & Safety Code 11362.5.

California voters then expanded on this concept through SB 420 in 2004. SB 420 allowed patients to form medical collectives or cooperatives, created a voluntary state ID card system operated through county health departments, and established guidelines as to how much patients can possess and cultivate without resulting in an arrest. See California Health & Safety Code Sections 11362.7-11362.83.

Medical Cannabis in Oakland

The City of Oakland has eight permitted medical cannabis dispensaries. Four were authorized in 2004 and then four more were added in 2011 via Ordinance No. 12585. In 2009 Oakland voters passed Measure F, which allowed for taxation of Oakland's medical cannabis dispensaries at elevated rates. In 2010, the City enacted an ordinance authorizing large-scale medical cannabis cultivation, OMC 5.81, however, OMC 5.81 has never been implemented due to the likelihood of federal government intervention. Overall, the City of Oakland's process for administering medical cannabis dispensary permits and monitoring the dispensaries has been considered successful and even a role model for other jurisdictions.

Issues Arising from Unregulated Cannabis Cultivation

While the City of Oakland and the State of California have articulated a method for dispensing medical cannabis, no established structure exists for the production, growth and cultivation of medical cannabis. This lack of regulation combined with Measure Z, the 2004 initiative that made private adult cannabis offenses in Oakland the City's lowest law enforcement priority, have led to a number of public safety, health and economic issues. These issues include

electrical fires stemming from flawed indoor cannabis cultivation, violent crime such as robberies, burglaries and even homicides, as well as the use of pesticides and fertilizers that run counter to crop's medical purpose.

ANALYSIS

The attached amendments to OMC 5.80 offer a permitting process that should reduce the detrimental issues stemming from unregulated cannabis cultivation by regulating who can operate cannabis cultivation facilities and under what conditions.

As noted above, the proposed cultivation operating permits are secondary permits in that they will only be available to City of Oakland licensed medical cannabis dispensaries. Staff recommends this restriction for several reasons. First, this limitation ensures the cannabis cultivated will be directed to medical use. Second, the operators of Oakland's licensed dispensaries have already been thoroughly vetted through their dispensary application process and proven to be dependable City partners. Third, this will keep the number of regulated cultivation sites to a manageable number for inspecting and monitoring purposes.

The proposed amendments also regulate under what conditions cannabis cultivation at a dispensary scale may take place. The following list outlines some key restrictions:

- An interested dispensary must submit an application to the Office of the City Administrator that at minimum identifies plans for security, waste disposal, pest management, product testing, worker safety and compensation, non-diversion of product, facility location, capitalization, business plans, applicant complaint history, and criminal background checks.
- A public hearing shall be held for all DCF applications.
- DCFs may only be located in areas where the Oakland Planning Code authorizes "light manufacturing industrial" or their equivalent use.
- DCFs may not exceed 10,000 square feet.¹

¹ The number of patients that visit Oakland's licensed medical cannabis dispensaries justify 10,000 square feet in area devoted to cultivation. A study performed for the state of Washington's Liquor Control Board found that 1 square foot of indoor *harvested cannabis area* produces on average 40 grams of dried cannabis. Caulkins, Cohen, Zamarra, BOTEK Analysis, Carnegie Mellon University, TriQ Inc., 2013. Estimating Adequate Licensed Square Footage for Production. Applying this ratio to 8 ounces of dried cannabis per qualified patient, as authorized by Cal. Health and Safety Code Section 11362.77, 10,000 square feet of *harvest area* requires about 1,766 patients. However, the proposed amendments to OMC 5.80 would include areas not included in the BOTEK study in the 10,000 square foot limitation, such as walkways and space for seedlings and not yet harvestable plants, plus the number of current unique patients at Oakland's licensed dispensaries range between 1,400 for brand new facilities to 11,222 for older operators.

- Applicants must pay an application fee, a permit fee and any inspection fees required.

Furthermore, the proposed ordinance requires the Office of the City Administrator to establish administrative regulations and operating standards for DCFs. These operating standards will ensure the protection of public health and safety by requiring a security plan, security personnel, restricted access, camera surveillance, criminal background checks for employees, and inspection by building services and the fire department. Operating standards will further include fire prevention measures such as fire key access boxes, emergency electrical shutoffs, and emergency dampers. Likewise, operating standards will seek to minimize any impacts on surrounding land uses by requiring a contact for community complaints and implementation of odor-elimination techniques.

Finally, this permitting process will assist City regulators and law enforcement by providing clarity about what cultivation sites are permitted and exactly where they are located. While home cultivation of less than 96 square feet of cannabis (the City of Oakland's maximum amount for non-dispensary three person collectives) will not be eliminated, only the holders of these secondary permits will be permitted to grow beyond this amount and the City will know exactly where these legitimate cultivation operations.

COORDINATION

The Office of the City Attorney, the Budget Office, the Revenue Management Bureau, Building Services, as well as the City of Oakland's licensed medical cannabis dispensaries were consulted in the preparation of this report.

COST SUMMARY/IMPLICATIONS

The proposed secondary permit process will require staff time in three key phases: regulatory drafting, the application process, and ongoing monitoring.

The drafting of regulations and performance standards applicable to DCFs will be done within the City Administrator's Office in collaboration with other involved departments, such as the Finance Department, Building Services, and the Fire Department.

The City Administrator's Office will also assume most of the responsibility for the application process, which will entail reviewing and processing applications, holding public hearings, conducting a site inspection, and issuing findings and determination. Specifically, each DCF Application is estimated to require three hours of an Administrative Assistant, 16 hours of an Assistant to the City Administrator, plus public hearing notification and publication fees for a total cost of approximately \$2,910.

Once a DCF becomes operational, staff will need to monitor, inspect, and audit the DCF. This will require time on the part of the City Administrator's Office, the Finance Department, and the Fire Department. More specifically, annual permitting costs for each DCF is estimated to require eight hours of an Administrative Assistant, 16 hours of an Assistant to the City Administrator, 16 hours of a Tax Auditor II and 12 hours of a Fire Inspector for a total of approximately \$4,895. Separately, applicants will need to obtain any necessary fire and building approvals for any alterations they propose to a building in order to operate as a DCF.

Accordingly, staff proposes a cost recovering application fee of \$2,910 and an annual regulatory fee of \$4,895, which will be deposited in the General Purpose Fund (1010), City Administrator Org (02111), Special Permits Account (42411), Cannabis Cooperative Project (A252610).

SUSTAINABLE OPPORTUNITIES

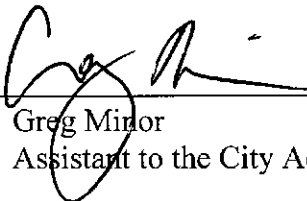
Economic: The proposed amendments should positively affect the local economy by generating new employment opportunities for Oakland residents.

Environmental: The proposed amendments and forthcoming operating standards advocate for cultivation of medical cannabis in an environmentally sound manner.

Social Equity: These amendments will both provide employment opportunities and promote safe access to medical cannabis.

For questions regarding this report, please contact Greg Minor, Assistant to the City Administrator, at (510) 238-6370.

Respectfully submitted,



Greg Minor
Assistant to the City Administrator

Reviewed by:

Arturo Sanchez, Interim Assistant City Administrator

Encl:

Draft Ordinance Amending Oakland Municipal Code 5.80

Draft Ordinance Amending Master Fee Schedule

1. Notice and Digest
2. Exhibit A

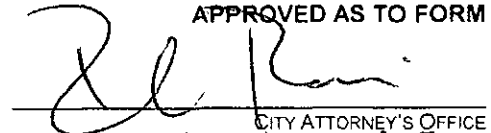
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Public Safety Committee
December 16, 2014

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OAKLAND

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OAKLAND CITY COUNCIL

APPROVED AS TO FORM


CITY ATTORNEY'S OFFICE
for Kim Jan

ORDINANCE No. _____ C.M.S.

**ORDINANCE AMENDING OAKLAND MUNICIPAL CODE 5.80,
MEDICAL CANNABIS DISPENSARY PERMITS, TO PROVIDE FOR
SECONDARY SPECIAL BUSINESS PERMIT FOR CITY OF OAKLAND
LICENSED MEDICAL CANNABIS DISPENSARIES TO OPERATE
CLOSED-LOOP DISPENSARY CULTIVATION FACILITY**

WHEREAS, the City, based on medical and public safety needs, regulates medical marijuana dispensaries to provide safe medical marijuana product and inventory in a "closed loop system", which is a system that allows qualified patients and primary caregivers to cultivate and consume medical marijuana only within a member collective or cooperative, as such terms are discussed in guidelines established by the State's Attorney General; and

WHEREAS, the City hereby finds that unregulated cultivating and processing of medical cannabis in the City has caused and is causing ongoing impacts to the community 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; and

WHEREAS, these impacts have also created an increase in City response costs, including code enforcement, building, fire, and police staff time and expenses; and

WHEREAS, the voters of the State have provided an exemption to prosecution for the cultivation and possession of cannabis for medical purposes under the Compassionate Use Act (CUA); and

WHEREAS, the CUA does not address land use or building code impacts or issues arising from the resulting increase in cannabis cultivation within the City; and

WHEREAS, the sales of medical marijuana are subject to taxation by both the City and the State and the California State Board of Equalization (BOE) also requires that businesses engaging in such retail transactions hold a seller's permit; and

WHEREAS, the purpose and intent of this modification to Chapter 5.80 is to regulate the cultivation and processing of medical cannabis by medical cannabis dispensary operators permitted under Chapter 5.80 in a manner that protects the public health, safety and welfare of the community and promotes the guidelines established by California's Attorney General;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. 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. Oakland Municipal Code Chapter 5.80, Medical Cannabis Dispensary Permits, which establishes the medical cannabis dispensary permitting process, is hereby amended as provided herein. Additions are indicated by underscoring and deletions are indicated by ~~strike-through type~~; portions of Chapter not cited or not shown in underscoring or strike-through type are not changed:

5.80.010 - Definitions.

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

- A. "Attorney General Guidelines" shall mean the California Attorney General Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use, issued by the Attorney General's Office in August 2008, as amended from time to time, which sets regulations intended to ensure the security and non-diversion of marijuana grown for medical use by qualified patients or primary caregivers.
- B. "Cannabis" or "Marijuana" shall have the same definition as Health and Safety Code § 11018, as amended from time to time, which defines "~~cannabis~~" "marijuana" as all parts of the plant Cannabis Sativa L., 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 seeds 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 the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant are incapable of germination.
- C. "Cannabis dispensary" or "Dispensary" shall mean a collective or cooperative that distributes, dispenses, stores, exchanges, processes, delivers, makes available, transmits and/or gives away marijuana in the City for medicinal purposes to four or more qualified patients and/or primary caregivers pursuant to California Health and Safety Code Sections 11362.5, 11362.7 et seq.
- D. "City Administrator" means the City Administrator of the City of Oakland or his/her designee.
- E. "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 the Attorney General Guidelines.
- 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. "Dispensary Cultivation Facility" or "DCF" shall mean any facility owned, operated, and used by a lawfully licensed and permitted Dispensary for cultivating, warehousing, storing, processing and/or manufacturing more than 9 pounds 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 for the express and sole purpose of selling at a lawfully permitted Dispensary.

H. "Medical marijuana" means marijuana authorized in strict compliance with Health & Safety Code §§ 11362.5, 11362.7 et seq., as such sections may be amended from time to time.

I. "One Parcel of land" as used only in this Chapter shall mean one any single 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.

J. "Permittees" as used only in this Chapter are Dispensary permit holders and DCF permit holders that are tied to a Dispensary that have obtained a permit under this Chapter.

K. "Primary caregiver" shall have the same definition as California Health and Safety Code Section 11362.7, and as may be amended, and which 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 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.

L. "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 means a

person who is entitled to the protections of California Health & 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.

M. "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 means all of the following medical conditions:

1. Acquired immune deficiency syndrome (AIDS);
2. Anorexia;
3. Arthritis;
4. Cachexia;
5. Cancer;
6. Chronic pain;
7. Glaucoma;
8. Migraine;
9. Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis;
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.

N. "Written documentation" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., and as may be amended, and which defines "written documentation" as 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.

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 in 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.
- 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 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 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 and the Attorney General Guidelines

- C. The City Administrator shall issue no more than eight valid permits for the operation of dispensaries in the City.
- 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 600 feet of a public or private school, public library, youth center (serving youth age 18 and under), parks and recreation facilities, residential zone or another dispensary. The proposed dispensary must be located in a commercial or industrial zone, or its equivalent as may be amended, of the City.
 2. A complete description of the type, nature and extent of the enterprise to be conducted, with evidence satisfactory to the City Administrator that the enterprise is either a collective or cooperative, as described in the Attorney General Guidelines.
 3. A plan of operations that will describe how the dispensary will operate consistent with the intent of State law, the provisions of this Chapter and the Attorney General Guidelines, including but not limited to.
 - a. Controls to verify membership in collectives and cooperatives 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 members, and plans to ensure marijuana is acquired as part of a closed-circuit of marijuana cultivation and consumption.
 4. A security plan, as a separate document, outlining the proposed security arrangements for ensuring the safety of persons and to protect the premises from theft. 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).
 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.
- E. The City Administrator may issue, as detailed below, a secondary special business permit to a Dispensary Permittee for operating a Dispensary Cultivation Facility that will cultivate and process medical cannabis to be sold at the Dispensary Permittee's retail location. In recommending the granting or denying of such permit in his/her sole and absolute discretion, the City Administrator shall give particular consideration to the capacity, capitalization, complaint history of the Permittee, 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 for a DCF permit shall pay any necessary fees including without limitation application fees, inspection fees and regulatory fees that may be required hereunder.

- F. The City Administrator shall be authorized to issue one DCF permit to each of the eight lawfully permitted dispensaries, at their request, and upon completion of an appropriate application and public hearing process as set forth in this chapter.
- G. All DCF permits shall be special activity permits and shall be issued for the exact same term of the related Dispensary permit, subject to annual review one year from the date of issuance. DCF permits may only be granted to entities operating legally according to State law. All DCF permits are revocable at any time with or without cause by the City Administrator. No vested right shall ever inure to the benefit of such permit holder.
- H. Public notice of the hearing on the application shall be given as provided in Section 5.02.050. 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. All applicants shall pay an application fee, a permit fee, and all inspection fees that may be required as part of the application process.
- I. At the time of submission of dispensary submitting a Dispensary and/or DCF permit application, the applicant shall pay a dispensary permit application fee. The fee amount shall be set by City Council resolution in the City of Oakland Master Fee Schedule.

5.80.025 Cultivating Medical Marijuana

A. Any use or activity that involves possessing, cultivating, processing and/or manufacturing more than 9 pounds of dried cannabis or 96 square feet of cultivation area shall constitute cultivation of medical cannabis and shall be subject to administrative citation, pursuant to Chapters 1.08, 1.12 and/or 1.16, and other applicable legal, injunctive or equitable remedies, unless a permit as prescribed in this Chapter has been granted. Possession of other types of State or City permits or licenses does not exempt an applicant from the requirement of obtaining a permit under this Chapter.

B. The proposed location of a DCF shall be in areas where "light manufacturing industrial" or their equivalent use is permitted under the Oakland Planning Code, as may be amended, provided, however, that no vested or other right shall inure to the benefit of any DCF 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.

Unless the City Administrator in his/her discretion determines that the location of a DCF will not impact the peace, order and welfare of the public, the proposed location of a DCF shall not be within 600 feet of a public or private school, public library, youth center (serving youth age 18 and under), parks and recreation facilities, or residential zone.

C. A DCF shall not exceed 10,000 square feet in cultivation area.

1. A DCF may be located at the same location as the Dispensary's retail location or a portion of the DCF may be located onsite and a portion offsite from the retail location for a maximum of two locations, provided a proposed DCF meets all applicable requirements, including zoning and distance requirements. Should a Dispensary seek to cultivate both on and offsite, the total area devoted to cultivating

medical marijuana at the two locations shall not exceed 10,000 square feet.

2 After operating a DCF for a one year period, a Permittee may apply to the City Administrator to exceed the above-referenced '10,000 square foot limitation upon demonstrating that:

i. Current production is insufficient to adequately serve the medical need of the dispensary; and

ii. The applicant has the capacity to preserve public health and safety if cultivation is expanded.

In determining whether to grant such an expansion, the City Administrator, in his/her absolute discretion, shall consider among other factors, the Permittee's complaint history and regulatory compliance, proposed security measures, the average number of unique patients visiting the Dispensary, the amount of cannabis produced in its current DCF in relation to patient demand, as well as applicable state law and Attorney General Guidelines.

D. Proposed Dispensary Cultivation Facilities shall submit written information to the City Administrator including, but not limited to, plans for security, waste disposal, pest management, product testing, worker safety and compensation, nondiversion of product, production and sales volume, facility location, capitalization, business plans, applicant complaint history, criminal background checks, and any additional information deemed necessary by the City Administrator.

5.80.030 - Regulations.

The City Administrator shall establish administrative regulations for the permitting of Dispensaries and Dispensary Cultivation Facilities and may set further standards for operation of dispensaries. The dispensary shall meet all the operating criteria for the dispensing of medical marijuana required pursuant to California Health and Safety Code Section 11362.7 et seq., the City Administrator's administrative regulations, and this Chapter.

5.80.040 - Performance standards.

The City Administrator shall develop and implement performance 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.

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

A. No cannabis shall be smoked, ingested or otherwise consumed on the premises of the Dispensary or Dispensary Cultivation Facility.

B. The Dispensary or Dispensary Cultivation Facility 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.

5.80.050 - Regulatory fees; seller's permit.

A. In addition to the Dispensary and/or Dispensary Cultivation Facility application fee, the Dispensary and/or Dispensary Cultivation Facility shall pay an

annual regulatory fee at the same as applying for the business tax certificate or renewal thereof. The Dispensary and/or Dispensary Cultivation Facility shall post a copy of the business tax certificate issued pursuant to Chapter 5.04, together with a copy of the Dispensary and/or Dispensary Cultivation Facility permit 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 Council resolution, as modified from time to time.

5.80.060 - Profit.

The Dispensary and/or Dispensary Cultivation Facility shall not profit from the sale or distribution of marijuana. Any monetary reimbursement that members provide to the dispensary should only be an amount necessary to cover overhead costs and operating expenses.

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 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 suspensions or revocations the City shall follow the procedures set forth in Section 5.02.080, except an independent hearing officer shall make the initial determination as to whether to suspend or revoke the permit. The appeal authorized in Section 5.02.100 shall be to the City Administrator, and such request for appeal must be made in writing within 14 days of the hearing officer's decision. The decision of the City Administrator shall be final and conclusive.

5.80.080 - Prohibited operations; nonconforming uses.

A. All Dispensaries and/or Dispensary Cultivation Facilities in violation of California Health and Safety Code Section 11326.7 et seq. and 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.

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.

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. The Permittees under this Chapter shall save, defend, indemnify and keep harmless the City and its officials, officers, employees, representatives, agents and volunteers from all actions, claims, demands, litigation, or proceedings, including those for attorneys' fees, against the City in consequence of the granting of any permit under this Chapter, and will in all things strictly comply with the conditions under which such permits are granted, if any.

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

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

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

C. 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.

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

E. 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.

Section 3. Applicability

A. Construction and Severability.

Should any article, section, subsection, sentence, clause, or phrase of this ordinance or exhibit, if any, be held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions which shall remain in full force and effect.

B. Authority

This ordinance is enacted by the Council of the City of Oakland pursuant to the police powers accorded to the City by and through section 106 of the Charter of the City of Oakland and Article XI of the Constitution of the State of California.

C. Effective Date

As provided in section 216 of the Charter of the City Of Oakland, this ordinance shall be effective immediately upon final adoption if approved by six affirmative votes of the Council of the City of Oakland or upon the seventh day after final adoption if approved by five affirmative votes.

In Council, Oakland, California,

, 2014

PASSED BY THE FOLLOWING VOTE:

AYES-

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

Latonda Simmons
CITY CLERK AND CLERK OF THE COUNCIL
OF THE CITY OF OAKLAND, CALIFORNIA

Date of Attestation: _____

FILED
OFFICE OF THE CITY CLERK
OAKLAND

APPROVED AS TO FORM


City Attorney's Office

2014 DEC -4 PM 3:23

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AMENDING THE MASTER FEE SCHEDULE (ORDINANCE NUMBER 13238 C.M.S., AS AMENDED) TO ESTABLISH A DISPENSARY CULTIVATION FACILITY PERMIT APPLICATION FEE AND AN ANNUAL REGULATORY FEE FOR PERMITTED MEDICAL CANNABIS DISPENSARIES TO OPERATE CLOSED-LOOP DISPENSARY CULTIVATION FACILITY

WHEREAS, the City of Oakland has determined a need to regulate the cultivation and processing of medical cannabis in the City Of Oakland; and

WHEREAS, the City of Oakland has articulated a regulatory framework to fill this need in the form of an application and permitting process for closed-loop Dispensary Cultivation Facilities (DCF) operated by City of Oakland licensed Medical Cannabis Dispensaries; and

WHEREAS, it is the City Council's intention to ensure that the city has the capacity and resources to permit, regulate and monitor DCFs; and

WHEREAS, the fee modifications and additions proposed herein have been justified and are identified in a report to the Council, entitled "An Ordinance Amending Ordinance No. 13238, The Master Fee Schedule, To Establish A Dispensary Cultivation Facility Permit Application Fee and Annual Regulatory Fee for City of Oakland Licensed Medical Cannabis Dispensaries to Operate Closed-Loop Dispensary Cultivation Facility." and

WHEREAS, the City Administrator Office determines that staff time is needed to administer and regulate permitted DCFs, including time from an Assistant to the City Administrator, Tax Auditor, Fire Inspectors and related administrative support and such resources total \$4,895 per DCF on an annual basis, therefore the City intends to charge an annual permit fee of \$4,895 per DCF to cover the costs of this program; and

WHEREAS, the City Council finds and determines that establishing a medical cannabis DCF permit application fee of \$2,910 and an annual regulatory fee of \$4,985 for permitted DCFs are necessary to reimburse the City for the costs of performing the various municipal and regulatory functions associated with Chapter 5.80; now therefore

NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The Master Fee Schedule as set forth in Ordinance Number 13238 C.M.S., as amended is hereby amended to modify and establish a Dispensary Cultivation Facility (DCF) permit application fee of \$2,910 and an annual regulatory fee of \$4,895 per DCF for City Of Oakland permitted medical cannabis dispensaries to operate a dispensary cultivation facility.

SECTION 2. All revenues generated through the adoption of these fees will continue to be deposited in General Purpose Fund (1010), City Administrator Org (02111), Special Permits Account (42411), Cannabis Cooperative Project (A252610)

SECTION 3. This ordinance shall be 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 4. The Master Fee Schedule is hereby amended to read as shown on Exhibit A; additions are indicated by underscoring and deletions are indicated by ~~strike-through type~~; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed:

In Council, Oakland, California, _____, 2014

PASSED BY THE FOLLOWING VOTE:

AYES-

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

**Latonda Simmons
CITY CLERK AND CLERK OF THE COUNCIL
OF THE CITY OF OAKLAND, CALIFORNIA**



City of Oakland
Master Fee Schedule
Effective July 19, 2011

CITY ADMINISTRATOR

FEE DESCRIPTION

FEE UNIT

SPECIAL ACTIVITIES

F. MEDICAL CANNABIS DISPENSARY PERMITS

1	Application Fee	5,000 00	Application
2	Dispensary with four (4) or more qualified patients or caregivers	60,000 00	Non-refundable annual regulatory fee
	a	Late Fee for failure to submit documents and or reports by due date	NEW
	b	Late Fee for payments received 10 days after due date	NEW
3	<u>Dispensary Cultivation Facility Application Fee - for permitted Dispensaries only</u>	<u>2,910 00</u>	<u>Application</u>
4	<u>Dispensary Cultivation Facility</u>	<u>4,895 00</u>	<u>Non-refundable annual</u>

NOTICE AND DIGEST

AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE (OMC) CHAPTER 5.80 "MEDICAL CANNABIS DISPENSARY PERMITS" TO PROVIDE FOR A SECONDARY SPECIAL BUSINESS PERMIT FOR CITY OF OAKLAND LICENSED MEDICAL CANNABIS DISPENSARIES TO OPERATE A CLOSED-LOOP DISPENSARY CULTIVATION FACILITY

AN ORDINANCE AMENDING ORDINANCE NO. 13238 C.M.S., THE MASTER FEE SCHEDULE, TO ESTABLISH A DISPENSARY CULTIVATION FACILITY PERMIT APPLICATION FEE AND ANNUAL REGULATORY FEE FOR CITY OF OAKLAND LICENSED MEDICAL CANNABIS DISPENSARIES TO OPERATE A CLOSED-LOOP DISPENSARY CULTIVATION FACILITY

These ordinances would amend OMC 5.80 to allow City Of Oakland licensed medical cannabis dispensaries to operate a closed-loop dispensary cultivation facility upon completion of an appropriate application and public hearing process and collect administrative fees to support this program.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2014 DEC -4 PM 2:23