

**CANNABIS ADMINISTRATIVE PROSECUTOR PROGRAM  
(CAPP)**



**MEMORANDUM OF UNDERSTANDING**

**[Date – Date]**

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*Cannabis Administrative Prosecutor Program*

**MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (MOU) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2024, by and between the City of Oakland\_ (City) and the Office of the Attorney General (OAG), a department of the State of California. The City and the OAG are collectively referred to herein as the “Parties,” and individually as a “Party.” This MOU is made by the Parties with reference to the following Recitals:

I. PURPOSE

The Parties share the common goals to reduce and eliminate illegal commercial cannabis activity within the City and to mitigate the environmental, social, and economic impacts of these illegal activities. These common goals can be served by entering into an agreement that will integrate the resources of the OAG with the powers that the City has to undertake speedy and efficient enforcement actions against illegal land uses that constitute public nuisances.

The purpose of this MOU is to set forth the responsibilities of the Parties, as they relate to the Cannabis Administrative Prosecutor Program (CAPP). Working in conjunction with one another, the Parties will endeavor to effectively enforce the laws of the State of California including the Government Code, Business and Professions Code, Health and Safety Code, and applicable local ordinances related to illegal commercial cannabis activity. Use of the CAPP is intended to ensure well-rounded and coordinated administrative and civil enforcement efforts. The Parties share the same purpose of reducing illegal commercial cannabis activity in their respective areas of responsibility by providing a highly trained and specialized enforcement team.

II. PARTIES

A. OAG - The CAPP will be operated by the Cannabis Control Section of the OAG. The OAG shall establish policies and procedures for the operation of the CAPP, provide direction and oversight to the CAPP, and ensure cooperation by and between the Parties.

B. City’s - The local jurisdiction, in accordance with the provisions of this agreement authorizes the OAG to work on behalf of the City for the purpose of utilizing the City’s administrative enforcement procedures to reduce and eliminate illegal commercial cannabis activities. The City makes a commitment to provide necessary personnel to implement the CAPP during the period that this MOU is in effect.

III. GOALS AND OBJECTIVES

The CAPP will promote and implement coordinated efforts towards taking administrative

enforcement action against illegal commercial cannabis activity. The CAPP will encourage full cooperation between local and state code compliance, enforcement, and prosecutorial agencies to do the following:

A. **Authorize OAG staff to act through and on behalf of the City.** The City in executing this agreement authorizes OAG staff assigned to implement the CAPP to act on behalf of the City for the limited purpose of managing enforcement actions against illegal cannabis operators and prosecuting such cases before the County [or City] administrative hearing officer [or county hearing body].

B. **Duty to Cooperate with OAG and the CAPP.** City understands that it is conducting enforcement activities authorized by a County [or City] Ordinance and that the CAPP is ultimately responsible to oversee any appeals hearing and/or abatement. Therefore, City enforcement staff shall cooperate with the CAPP in its enforcement efforts. Such cooperation includes but is not limited to:

1. Consistent use of any template documents agreed upon by the Parties (e.g., notices of violation, orders to abate, orders to show cause, proposed orders, voluntary settlement agreements, abatement warrants, and documents for recording abatement liens);
2. Making City personnel available to testify at appeals hearings, administrative citation hearings, lien hearings, and/or to obtain inspection/abatement warrants;
3. Providing copies of case records to OAG staff upon request;
4. Preparing and executing necessary documents, such as warrant affidavits, upon request by OAG staff; and
5. Collecting and providing parcel specific information regarding properties upon which suspected illegal commercial cannabis activity is occurring. This includes, but is not limited to, information about the status of building permits, well permits, grading permits, any other required City permits, GIS data, and any other information that would be useful in determining whether activities and conditions on a given parcel constitute violations of local and state law applicable to illegal cannabis activity.

Failure to timely cooperate with OAG staff may result in discontinuation of enforcement proceedings and/or may preclude the OAG from pursuing costs incurred through the use of the County's administrative enforcement procedures.

#### IV. MANAGEMENT AND SUPERVISION OF THE CAPP

##### A. Management

The management and supervision of the CAPP operations and resources subject

to the control of the OAG will be the responsibility of the Senior Assistant Attorney General (SAAG) and a Supervising Deputy Attorney General (SDAG) of the Cannabis Control Section of the OAG. In addition to operational responsibility, the SAAG, SDAG, or a designee, will act as liaisons between the OAG and the City, and other federal, state, and local agencies, and prosecutors. Although not intended as an exclusive list of duties, the SAAG and SDAG shall be responsible for the following in connection with CAPP:

1. Supervise and direct all OAG personnel assigned to implement the CAPP.
2. Coordinate requests for assistance from the County/City for the CAPP.

B. CAPP Prosecutors

1. Deputy Attorneys General (DAGs) will be assigned as prosecutors to the CAPP and will be supervised by the SAAG and SDAG. The City may not direct, supervise, or manage, the work of the DAG.
2. DAGs shall have the following authority, in accordance with the expectations, policies, and procedures of the OAG, in prosecuting administrative enforcement actions against illegal commercial cannabis operations:
  - a. The discretion to determine which illegal commercial cannabis operations shall be the subject of an administrative citation;
  - b. The discretion to decide whether the case will be initiated through the notice of violation and citation process, through an order to show cause proceeding, summary abatement proceedings, or other procedures to the extent such alternatives are authorized under applicable local law;
  - c. The discretion to negotiate voluntary settlement agreements, reduce fines, and enter into stipulations on behalf of the City for entry of administrative orders to be submitted to the City administrative hearing officer [or hearing body];
  - d. The discretion to voluntarily dismiss a case, where in the opinion of the assigned DAG, there is a lack of evidence or no reasonable cause to continue with the case;
  - e. The discretion to request, on behalf of the County [or City], that unpaid costs of enforcement be specially assessed against a parcel that is the subject of an enforcement action in accordance with Government Code Section 25845 [38773.1 and 38773.5 if a city] and applicable local law;
3. OAG DAGs assigned to implement the CAPP will comply with OAG protocols for parallel proceedings and ensure that administrative enforcement actions undertaken through the CAPP do not interrupt criminal investigations and

do not interfere with investigations or planned criminal enforcement actions. OAG staff will refrain from initiating enforcement actions against any particular parcel, owner, and/or occupant, at the request of local law enforcement.

C. City Regulatory Enforcement Staff

1. Notwithstanding the Duty to Cooperate set forth in section III.B., above, City employees assigned to implement the CAPP will not be subject to the direction, supervision, or management of the OAG.

2. Designated City departments and staff will work with OAG staff assigned to implement the CAPP to determine what code violations exist at illegal commercial cannabis sites, what actions are required for complete abatement of the identified code violations, and what other matters must be addressed to bring cited sites into compliance with local and state laws that are administered by City departments.

3. Where City staff incurs costs associated with the abatement of code violations which exist at illegal commercial cannabis sites, City staff will log and tally those costs for the purpose of cost recovery in accordance with section XIII, below.

D. Local City Police Department (PD)]

1. The OAG and City staff working under the CAPP on proposed administrative enforcement actions will inquire with the PD to ensure that administrative enforcement actions do not interfere with existing criminal investigations or planned criminal enforcement actions. Where informed of possible interference with criminal enforcement activity, OAG and City staff will not initiate enforcement actions against any particular parcel, owner, and/or occupant.

2. Where the PD incurs costs, including administrative costs in causing the abatement of unlawful cannabis activity pursuant to a nuisance abatement order, the PD may be entitled to recovery of such costs. PD staff shall log and tally those costs for the purpose of cost recovery in accordance with section XIII, below.

V. OVERVIEW OF ENFORCEMENT PROCESS AND ROLES OF THE PARTIES

Nothing in this agreement shall limit the authority of the City to engage in enforcement actions to ensure compliance with local laws through any means available under state and local law. However, enforcement actions undertaken through the CAPP on behalf of the City utilizing OAG staff and resources will generally occur as follows:

A. Investigation. A property upon which illegal commercial cannabis activity is occurring is identified and evidence of illegal activity is obtained.

B. The CAPP assigned DAG in cooperation with City staff, the Police Department, and any participating state agency partners, will determine whether the parcel, owner, and/or occupant should be the subject of administrative action in accordance with this MOU.

C. Preparation of Forms. Following the determination that an administrative case should be initiated, the forms agreed upon by the parties shall be completed by assigned City staff and prepared for service.

D. Service of Notice. Assigned City staff shall cause notices of violation, citations, or orders to show cause to be posted and served in accordance with applicable law.

E. Voluntary Compliance. The property owner will be provided with an opportunity to voluntarily abate and enter into a stipulated administrative order resolving the case.

F. Default or Hearing. Where a notice of violation and citation has been served and the property owner is non-compliant and does not request a hearing, a default order containing a provision for an abatement warrant will be requested. In the event that the property owner seeks an appeal or the administrative action is initiated through an order to show cause, then the assigned OAG DAG and staff will present the case before the administrative hearing officer [or body] and will seek imposition of fines and an order to abate.

G. Abatement Warrant. Immediately following the hearing and service of the order, either OAG staff or county staff assigned to implement the CAPP will seek an abatement warrant, and ensure that all applicable state and local laws are followed prior to causing the recordation of an abatement lien.

H. Cost Recovery. Costs of enforcement will be documented and tallied and, if the costs of enforcement are not voluntarily paid, the assigned OAG DAG will record the costs against the parcel as a property tax lien in accordance with applicable provisions of the Government Code.

## VI. ANNUAL REPORT

One year following commencement of the CAPP, and on a yearly basis thereafter, OAG staff in coordination with City staff, will produce a report to the Oakland Cannabis Regulatory Commission providing statistical information and summarizing enforcement actions undertaken on behalf of the City through the CAPP.

## VII. FACILITIES, EQUIPMENT AND PROPERTY

Each party shall be responsible for providing its own employees and staff with any and all property, equipment, furniture, and furnishings of whatever kind or description, necessary for carrying out its responsibilities.

VIII. ADMINISTRATIVE FINES AND COST RECOVERY FUND

A. Administrative fines assessed against unlicensed commercial cannabis operators as a consequence of CAPP actions shall be deposited into a fund maintained by the City entitled the Cost Recovery Fund.

B. Monies retained in the Cost Recovery Fund shall be used in accordance with section XIII.C., below, to only reimburse the Parties for unrecoverable enforcement costs, if any.

C. The Cost Recovery Fund shall be maintained until termination of this MOU or until the last abatement lien recorded as a consequence of a CAPP action is released, whichever is later. Thereafter, any sums remaining in the Cost Recovery Fund may be used in any manner the City deems appropriate.

X. TERM OF AGREEMENT

A. The term of this agreement is for the period beginning [XXXX] through June 30, [202X]. Every term thereafter will be a one year term or until the MOU is terminated by one of the Parties.

B. The term of this MOU may be amended by request of one Party with the agreement of the other Party.

C. The County/City may withdraw from the MOU at any time by providing the OAG written notice to the SAAG, containing the effective date of withdrawal. The OAG may withdraw from the MOU at any time by providing the County/City written notice to [the County/City contact], containing the effective date of the withdrawal.

D. Budget Contingency Clause: It is mutually agreed that if the Budget Act of the current fiscal year and/or any subsequent fiscal years covered under this MOU does not appropriate sufficient funds for the CAPP, this MOU shall be of no further force and effect. In this event, the OAG shall have no liability to pay any funds or provide any services whatsoever to the County [or City] or to furnish any other consideration under this MOU and County [or City] shall not be obligated to perform any provisions of this MOU.

XI. COMPENSATION OF PERSONNEL

The Parties shall remain responsible for establishing the salaries and benefits including, but not limited to, overtime and Worker's Compensation Insurance, and for compensating their assigned personnel.

The CAPP is not an independent entity nor an employer. Any employee of the City or contractor working for the City who performs tasks for, or in support of, the CAPP shall be compensated in accordance with the terms of their employment with or in accordance with the terms of their employment or contract with the City. Any employee of the OAG



or contractor working for the OAG who performs tasks for, or in support of, the CAPP, shall be compensated in accordance with the terms of their employment or contract with the OAG.

## XII. INSTRUCTIONS FOR REIMBURSEMENT

A. City staff and PD shall be responsible for logging and documenting all costs incurred in causing the abatement of unlawful commercial cannabis activities, including, but not limited to, administrative costs. Responsible City staff shall complete a memorandum of costs verifying the investigation and prosecution costs incurred for each case to be used to support an administrative order finding. The memorandum of costs shall identify the assessor parcel number associated with each case, the identity and hourly rate of officers and staff that worked on each case, and description of the tasks undertaken to achieve the abatement of the nuisance.

B. OAG staff assigned to the CAPP shall use the OAG's case management system for logging time incurred in each case, and shall ensure that all costs associated with the time entries are included in requests for final administrative orders. Work undertaken by DAGs will be billed at a rate of \$220 per hour; work undertaken by OAG Legal Analysts or Paralegals shall be billed at a rate of \$205 per hour; work undertaken by OAG Special Agents shall be billed at a rate of \$150 per hour. DAGs assigned to CAPP shall prepare declarations of costs to support an administrative order.

C. Any and all records pertaining to the enforcement costs incurred through the CAPP shall be maintained at a location designated by the Parties, and readily available to the Parties. In addition, all records and reports generated by either Party in connection with the CAPP shall be maintained for a period of at least four (4) years following termination of this MOU and shall continue to be available to the parties.

## XIII. COST RECOVERY

A. Each Party is responsible for funding its own activities in implementing and carrying out the CAPP and each Party shall be entitled to recover enforcement and prosecution costs incurred in undertaking enforcement actions through the CAPP in accordance with State and local law governing nuisance abatement.

B. In no event shall either party to this MOU have the authority to unilaterally reduce or eliminate the obligation a property owner has under an administrative order to pay enforcement costs incurred by either the City or the OAG.

C. In circumstances where the costs of abatement exceed the actual value of a subject property and funds recoverable through a tax lien sale are insufficient to cover all enforcement and prosecution costs of the CAPP operation, or in other circumstances where costs cannot be recovered through abatement liens, then the Cost Recovery Fund shall be used to reimburse the Parties for their proportionate share of expended enforcement costs.

D. In the event that costs of enforcement cannot be recovered from violators or paid from the Cost Recovery Fund, each Party shall bear their own unrecoverable costs. In no event shall either party be responsible for reimbursing the other for unrecovered costs.

#### XIV. LIABILITY, INDEMNIFICATION AND RESPONSIBILITY

A. For the purpose of indemnification, each Party shall be responsible for the acts, errors or omissions of its assigned officers, agents or employees, and shall incur any liabilities arising out of the services and activities of those officers, agents or employees while participating in the CAPP. Personnel assigned to implement the CAPP shall be deemed to be continuing under the employment of their respective agencies, and, as to peace officers, shall continue to have the same powers, duties, privileges, responsibilities and immunities as are conferred upon them as peace officers in their own jurisdictions.

B. No Party shall be responsible for the acts, errors, or omissions of the other Party's officers, agents or employees, nor incur any liabilities arising out of the services and activities of the other Party's officers, agents or employees.

C. In the event of a claim (Underlying Claim) by a third party against one or both Parties based on the CAPP activities, the Parties agree to defer any claims against each other and their respective officers, agents or employees until the Underlying Claim is settled or otherwise determined, unless the statutory time restrictions are about to expire. Thereafter, any claims between the Parties shall be resolved in accordance with law.

#### XV. PRESS POLICY

The Press Policy of the CAPP shall follow the OAG's Department Operations Manual.

A Party that wants to include media on the scene of an ongoing enforcement operation shall obtain approval from the other Party prior to inviting media.

#### XVI. SIGNATURES

The undersigned represents that the undersigned has the authority to execute this agreement on behalf of the Party that they represent. The Parties, evidenced by the signatures of their authorized representatives hereto, agree that this MOU shall be effective upon approval of both Parties, and shall remain in full force and effect until either Party withdraws from the CAPP as provided herein. It is further acknowledged by both Parties that certain portions of this agreement may require amendments during the term of the MOU. Such amendments will become effective when signed by the Parties' authorized representatives.

If any provision of this MOU is held invalid or unconstitutional, such decision shall have no effect on the validity of the remaining provisions of the MOU and such remaining provisions shall continue to remain in full force and effect.

**AGREED HERETO BY THE PARTIES BASED ON THE SIGNATURES OF THEIR AUTHORIZED REPRESENTATIVES THAT APPEAR BELOW:**

**OAG/CALIFORNIA DEPARTMENT OF JUSTICE, CANNABIS ADMINISTRATIVE PROSECUTOR PROGRAM**

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Date

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Date

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**CITY JURISDICTION**

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Date

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