CITY OF OAKLAND

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Greg Minor
Assistant to the City Administrator

SUBJECT: Amendments to Medical Cannabis Ordinances

DATE: January 23, 2016

City Administrator Approval _____ Date: 1/28/16

RECOMMENDATION

Staff Recommends That The City Council Conduct A Public Hearing And Upon Conclusion Adopt The Following Two Pieces Of Legislation: 1) An Ordinance Amending Oakland Municipal Code Chapter 5.80, Medical Cannabis Dispensary Permits, To Align With California's Medical Marijuana Regulation And Safety Act And Adopting CEQA Exemptions, And 2) An Ordinance Amending Oakland Municipal Code Chapter 5.81, Medical Cannabis Cultivation Facility Permits, To Align With California's Medical Marijuana Regulation And Safety Act And Adopting CEQA Exemptions.

EXECUTIVE SUMMARY

To date, the only aspect of the medical cannabis industry regulated by the City of Oakland is the providing of medical cannabis to qualified patients at retail through licensed dispensaries. This lack of regulation for the rest of the industry, particularly medical cannabis cultivation and manufacturing, has negatively impacted the City in a number of ways, including burglaries, fires, and lost revenue.

However, with California's passage of the Medical Marijuana Regulation and Safety Act (MMRSA), Oakland is poised to overcome historical obstacles to regulating non-dispensary facilities. MMRSA establishes a comprehensive regulatory system for California's medical cannabis industry. In turn, MMRSA allows cities like Oakland to regulate medical cannabis activities without federal intervention as the Department of Justice has stated and federal courts have confirmed that the federal government will not interfere with cannabis activity permitted under robust state regulations.

In reliance on this guidance and direction from the December 2014 Public Safety Committee and City Council Policy Directive number 14 of the Fiscal Year (FY) 2015-2017 Adopted Policy Budget, staff has drafted amendments to OMC Chapters 5.80 and 5.81 to align with MMRSA. These amendments allow the City to finally put public health and safety measures in place for the full spectrum of medical cannabis activities, including cultivation, manufacturing, distributing, testing, and dispensing of medical cannabis. The proposed amendments should reduce electrical fires and burglaries in Oakland, ensure that medical cannabis activities situate in appropriate locations, provide clarity to law enforcement and the medical cannabis industry

alike, and allow for the collection of appropriate revenue from existing and new medical cannabis businesses.

REASON FOR URGENCY

As of this writing, MMRSA contains a provision that requires local jurisdictions to enact regulations for cannabis cultivation or else on March 1, 2016 the state will become the sole licensing authority for cannabis cultivation in that jurisdiction.[1] However, it is expected that this deadline, which has been acknowledged as a mistake by its author, should not impact Oakland for multiple reasons. First, AB 21 (Wood), a state bill specifically aimed at removing this deadline, is currently moving through the state legislature. Second, the City of Oakland already has existing regulations for cannabis cultivation in the form of OMC 5.81; the current proposal to align Oakland's medical cannabis ordinances with MMRSA merely amends existing law. Third, the proposed ordinances will be enacted by March 1, 2016 if they are heard by the Public Safety Committee on February 9th and then approved by the full City Council on February 16th and March 1st. Finally, the Medical Cannabis Cultivation Program under the State Department of Food and Agriculture, the department that MMRSA tasks with regulating cannabis cultivation, has yet to be established.

BACKGROUND / LEGISLATIVE HISTORY

For a thorough review of federal, state and local laws and policies regarding medical cannabis please view the January 12, 2016 Informational Report to the Public Safety Committee regarding new state medical cannabis law and proposals to align the City of Oakland's medical cannabis ordinances with new state law (see ***Attachment 4*** of this Agenda Report).

ANALYSIS AND POLICY ALTERNATIVES

In order to align with new state licensing categories, staff has developed amendments to OMC Chapters 5.81 and 5.80 in consultation with the City's Cannabis Regulatory Commission. The following overview highlights the proposed amendments and related policy issues.

OMC Chapter 5.81 Medical Cannabis Cultivation, Manufacturing and Other Facility Permits

In conjunction with MMRSA's licensing categories, staff proposes to amend both the title and the text of OMC Chapter 5.81 to create local permitting processes for medical cannabis cultivation, distribution, laboratory, manufacturing and transporting facilities. MMRSA requires that all cannabis produced by a cultivation or manufacturing facility be sent to a licensed distributor that then checks for quality assurance and verifies that the cannabis is tested by a licensed laboratory before being offered to a patient at a dispensary. Additionally, MMRSA

[1] "If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the division shall be the sole licensing authority for medical marijuana cultivation applicants in that city, county, or city and county." AB 243 Section 6, Health and Safety Code 11362.777 (c)(4).

requires that only licensed transporters move cannabis between different state licensees. Accordingly, staff recommends creating local licensing categories under OMC Chapter 5.81 that align with MMRSA's cultivation, manufacturing, distribution, and transporting requirements. By aligning with state law, the City will minimize bureaucratic obstacles for medical cannabis businesses seeking to comply with MMRSA's licensing categories and thus encourage unregulated medical cannabis operators in Oakland to come into the light.

Rather than restrict the number of these facilities, the proposed amendments require that these uses situate in appropriate zones within the city and meet applicable performance and operating standards promulgated by the City Administrator. This application of administrative standards parallels the structure of OMC Chapter 5.80, which has successfully allowed staff to update its standards for medical cannabis dispensaries over time. The intent of these performance and operating standards is to minimize the effects of any permitted medical cannabis facility on nearby properties. Consequently, the City Administrator will require security plans, inspections to verify building and fire code compliance, odor mitigation measures, as well as quarterly reports to demonstrate compliance with MMRSA. Further, the City Administrator will impose economic justice requirements, such as local hiring and professional development opportunities, to ensure that residents of Oakland play a role both as employees and operators of these facilities.

In terms of location restrictions, given the sensitivity of residential areas the proposed amendments guide commercial cannabis activities towards commercial and industrial areas of the city. Along those lines, staff proposes situating the most hazardous uses, such as manufacturing using volatile solvents (e.g., butane hash oil extraction) in more restrictive industrial areas whereas more innocuous uses, like manufacturing using nonvolatile solvents (e.g., cookie baking) may locate in less restrictive industrial or commercial areas. See ***Attachment 3*** for maps of proposed facility locations. However, in order to support small scale edible producers, staff suggests allowing small scale producers that meet the restrictions for cottage food operations under California's Homemade Food Act to situate in residential areas. Similarly, staff proposes maintaining the existing permit exemption for small scale and personal cultivation under OMC 5.81.101.

In order to avoid these facilities from becoming targeted for burglary and other crimes, the proposed amendments do not require public hearings for non-dispensary facilities. This approach is consistent with that taken by the City of Denver, Colorado, which only requires those cannabis facilities open to the public, dispensaries, to be subject to a public hearing process. In light of this approach, though, staff recommends reserving 600 foot buffers from sensitive uses, namely schools and youth centers, under proposed OMC 5.81.030(F).

<u>OMC Chapter 5.80 Medical Cannabis Dispensary Permits</u>

In response to new state law and recommendations from the City's Cannabis Regulatory Commission, staff also developed amendments to the City's medical cannabis dispensary ordinance. A number of these amendments are substantive, while others are minor in nature and simply reflect updates in state law.

In terms of substantive amendments, staff's proposal updates the definition of "dispensary," establishes a distinction between brick and mortar and delivery-only dispensaries, allows for

non-smoking onsite consumption, eliminates superfluous location restrictions, and increases the number of dispensaries allowed within the City. The following subsections contain further details on each.

A. Replace definition of "dispensary" with new state definition.

As mentioned above, staff's intent in aligning local and state definitions is to facilitate medical cannabis businesses seeking to work within the state's new regulatory framework. Consequently, City staff adopted MMRSA's definition of a "dispensary." This amendment also cures a concern that the existing definition of "dispensary" is so broad that it overly restricts activities that the City would like to permit, as the current definition includes medical cannabis cultivation and manufacturing in the same category as medical cannabis retail facilities.

B. Establish permitting process for delivery-only dispensaries.

Medical cannabis delivery services unaffiliated with licensed brick and mortar dispensaries have operated in and out of Oakland for several years, largely in a clandestine fashion. Medical cannabis publications and other sources indicate that more than a dozen delivery services already operate in Oakland. Further, that number could rise as smart phone app delivery services continue to develop and satisfy the consumer demand for convenience. Delivery services also serve an important function for elderly and disabled individuals who cannot easily travel to brick and mortar facilities.

While delivery services may not pose the same potential nuisance issues as brick and mortar dispensaries that are open to the public, unregulated deliveries raise public health and safety concerns of their own, particularly regarding the source of their medicine and their method of delivery. Accordingly, staff proposes establishing a permitting process for these "delivery only dispensaries" to ensure they situate in appropriate locations, follow security protocols to minimize robberies upon delivery, and comply with the provisions of MMRSA.

C. Allow non-smoking medical cannabis consumption on dispensary premises.

Advocates have long requested the City of Oakland allow patients to consume cannabis at the site of licensed dispensaries in order to establish safe places of consumption, particularly for patients residing in federally subsidized housing, and to allow for communal experiences. While Oakland has maintained a strict ban on onsite consumption, nearby jurisdictions such as Berkeley and San Francisco have allowed onsite consumption and their regulators report receiving no complaints from this approach. Continuing to prohibit onsite consumption will also have the predictable outcome of encouraging patients to consume in public or other improper places, such as their cars.

As a result, staff proposes allowing certain forms of onsite consumption, namely vaporizing, in order for dispensaries to provide a communal space for consumption while still minimizing the concerns of neighbors and public health officials. Dispensaries interested in allowing onsite consumption will have to meet the City Administrator's performance standards and operating guidelines for onsite consumption, which will be centered on avoiding drugged driving and disturbing neighboring properties.

D. Eliminate dispensary location restrictions other than distance separation requirements from schools and youth centers.

Since neighbors of proposed dispensaries will always have an opportunity to express concerns at public hearings before any dispensary is permitted, most current location restrictions are overly rigid and superfluous. In their place, staff recommends implementing the more flexible restrictions imposed on new alcohol establishments, codified in proposed OMC 5.80.020 (D)(4), as they would allow dispensaries to cluster in certain areas and not in others, depending on the character of the area. At the same time, staff recommends maintaining the existing 600 foot distance separation under OMC 5.80.020(D)(1) between dispensaries and schools and youth centers to preserve buffers between adult-oriented dispensaries and youth.

E. Increase the number of permitted dispensaries.

The January 12th Informational Report discussed at length the pros and cons to maintaining versus increasing the existing number of dispensaries, as well as removing any numeric limitation altogether. Ultimately, staff recommends substituting the cap on the total number of dispensaries with a limitation of eight new brick and mortar dispensaries each year in conjunction with additional administrative restrictions in the dispensary application process (see proposed OMC 5.80.020(C) and OMC 5.80(D)(4)). Including these policy considerations up front should directly address the concerns regarding an uncapped number of dispensaries, while an annual growth limitation will provide staff and policymakers with time to ensure that this new approach maintains the City's successful track record of permitting well run dispensaries. As delivery only dispensaries are not open to the public and pose less of a concern to neighboring properties, staff recommends not limiting the number of these facilities.

For comparative purposes the below chart outlines the number of permitted dispensaries and populations of Oakland and other cities:

CITY	POPULATION	PERMITTED DISPENSARIES	DISPENSARY TO POPULATION RATIO
Oakland, CA	413,775	8	1: 51,722
San Francisco, CA	852,468	28[2]	1: 30,445
Berkeley, CA	118,853	4	1: 29,713
San Jose, CA	1,015,785	16	1: 63,487
Sacramento, CA	479,686	30	1: 15,990
Los Angeles, CA	3,928,864	100[3]	1: 39,289
Denver, CO	663,862	204[4]	1: 3,254
Seattle, WA	668,342	198[5]	1: 3,375

[2] In addition to 28 existing dispensaries, San Francisco reportedly has 18 dispensary applications pending approval.
[3] While Los Angeles has 100 dispensaries in compliance with their regulations, Los Angeles reports receiving business taxes from 447 dispensaries operating in the city.
[4] 61 of Denver's 204 dispensaries offer only medical cannabis; the remaining 143 offer both medical and recreational cannabis.
[5] Seattle, WA has approved 228 dispensaries, but has only issued 198 dispensary permits as of this time.

F. Non-substantive amendments.

Non-substantive amendments to OMC Chapter 5.80 include eliminating outdated references, unused definitions and unnecessary language. Specifically, staff recommends removing references to the 2008 California Attorney General Guidelines, condensing the definition of "primary caregiver" and deleting the definition of "serious medical condition" as these terms are sufficiently covered by other references to state law.

FISCAL IMPACT

While difficult to predict, the proposed amendments could have considerable positive fiscal impacts.

As a result of Oakland voters' passage of Measure F in 2009, codified in OMC Section 5.04.480, medical cannabis businesses in Oakland are taxed at elevated rates compared to other businesses. Creating a permitting process for previously unpermitted commercial medical cannabis activities should result in new revenue for the City from these new businesses paying taxes at elevated rates. Delivery only dispensaries similarly offer an opportunity for new revenue, though depending on the location of the business and individual transactions, the City may not receive all sales tax revenue. While staff cannot specify exactly how many new medical cannabis businesses will take advantage of this new permitting process, staff estimates issuing approximately 60 permits in 2016 based on inquiries from interested businesses, attendance at public meetings and industry trends. For some perspective, the City's eight licensed medical cannabis dispensaries contributed over $4 million in taxes in 2015.

The proposed amendments will require staff time to cover both the application process and ongoing monitoring. Staff time will include the City Administrator's Office reviewing and processing applications, conducting site inspections, and issuing findings and a determination, as well as inspections and reviews by Police, Fire and Planning and Building Departments. Thus, staff will be proposing annual regulatory and initial application fees in the near future to ensure full cost recovery and compliance with Proposition 26, likely as part of a forthcoming package of amendments to the Master Fee Schedule.

Establishing a permitting process for industrial medical cannabis activities may also have fiscal impacts on industrial businesses in the City as medical cannabis businesses will likely lead to an increase in industrial rents based on anecdotal information gathered from Oakland thus far and the experience of jurisdictions like Denver, Colorado that authorized cannabis production and manufacturing. Staff is working with Economic Development staff on proposals to mitigate any deleterious impacts in this regard, including incentivizing medical cannabis business towards underutilized industrial spaces and allocating a portion of medical cannabis revenue for Façade and Tenant Improvement programs in industrial areas.

PUBLIC OUTREACH / INTEREST

The proposed amendments are the product of extensive public outreach that included three public presentations to the City's Cannabis Regulatory Commission over the course of 2015 and an informational report to the Public Safety Committee on January 12, 2016.

Staff proposes to implement essentially all of the recommendations from the Cannabis Regulatory Commission with the exception of increasing the personal and small collective cultivation exemptions to the maximum possible under MMRSA. Staff recommends maintaining the City's existing personal and small scale cultivation exemptions, which allow 32 and 96 square feet of cultivation area, respectively, rather than expand to 100 and 500 respective square feet of exempt cultivation permitted under MMRSA as these larger amounts of cultivation resemble commercial activity that ought to be located in appropriate non-residential areas. Under MMRSA, the City may establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity, but not less than the state standard. Maintaining the 96 square foot threshold will also help to discourage diversion to inappropriate markets. This recommendation is consistent with jurisdictions like Denver, Colorado, which only exempts cultivation of 36 total plants from its cultivation regulations.

COORDINATION

Several City departments were consulted in the preparation of this report, including the Planning and Building Department, the Fire Department, the Police Department, the Revenue Management Bureau, the Office of the City Attorney, the Controller's Bureau, and the Budget Office. Likewise, staff consulted with outside agencies as well, including the City and County of San Francisco, the City of Berkeley, the City of Richmond, Alameda County, and the Port of Oakland.

SUSTAINABLE OPPORTUNITIES

Economic: The proposed amendments should positively affect the local economy by generating new employment opportunities for Oakland residents and generating revenue to support City services.

Environmental: The proposed amendments and forthcoming performance and operating standards will promote the cultivation, manufacturing and distribution of medical cannabis in an environmentally sound manner.

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

CEQA

The adoption of amendments to existing citywide medical cannabis regulations is exempt from CEQA review pursuant to CEQA Guidelines sections 15061(b)(3) (general rule), 15183 (projects consistent with a community plan, general plan, or zoning), 15301 (existing facilities), 15308 (actions by regulatory agencies for protection of the environment), and 15309 (inspections). Each of these exemptions provides a separate and independent basis for CEQA exemption and when viewed collectively provide an overall basis for CEQA exemption.

Staff believes that the modifications to the existing regulations will enable the City to legalize existing unregulated medical cannabis businesses that are currently operating within the City. The City Administrator will develop operating and performance standards that will apply to these businesses, which will require inspections and review and approval by the City's Fire Department and Building Department before issuance of a permit. The purpose of the amendments is to license and regulate largely unregulated medical cannabis businesses in the interest of public health, safety and general welfare, and staff believes they will result in increased safety and protective measures, fewer safety hazards and more code enforcement.

These regulations will also apply to new small scale operations and other medical cannabis businesses, including cultivation and manufacturing, which will not be open to the public or generate large amounts of traffic. The purpose of the amendments is to align with MMRSA, which sets minimum statewide standards for pesticides in marijuana cultivation, maximum tolerances for pesticides and other foreign object residue, production and labeling of all edible cannabis products, requires establishment of uniform health and safety standards, testing standards, and security requirements at dispensaries and during transport of the product, and specifies minimum testing requirements. The new state regulatory scheme also specifically directs expanded enforcement efforts to reduce adverse impacts of marijuana cultivation, including environmental impacts such as illegal discharge into waterways and poisoning of marine life and habitats. These new minimum standards promote the public's health, safety and/or general welfare.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council conduct a public hearing and adopt the proposed ordinances.

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

Respectfully submitted,

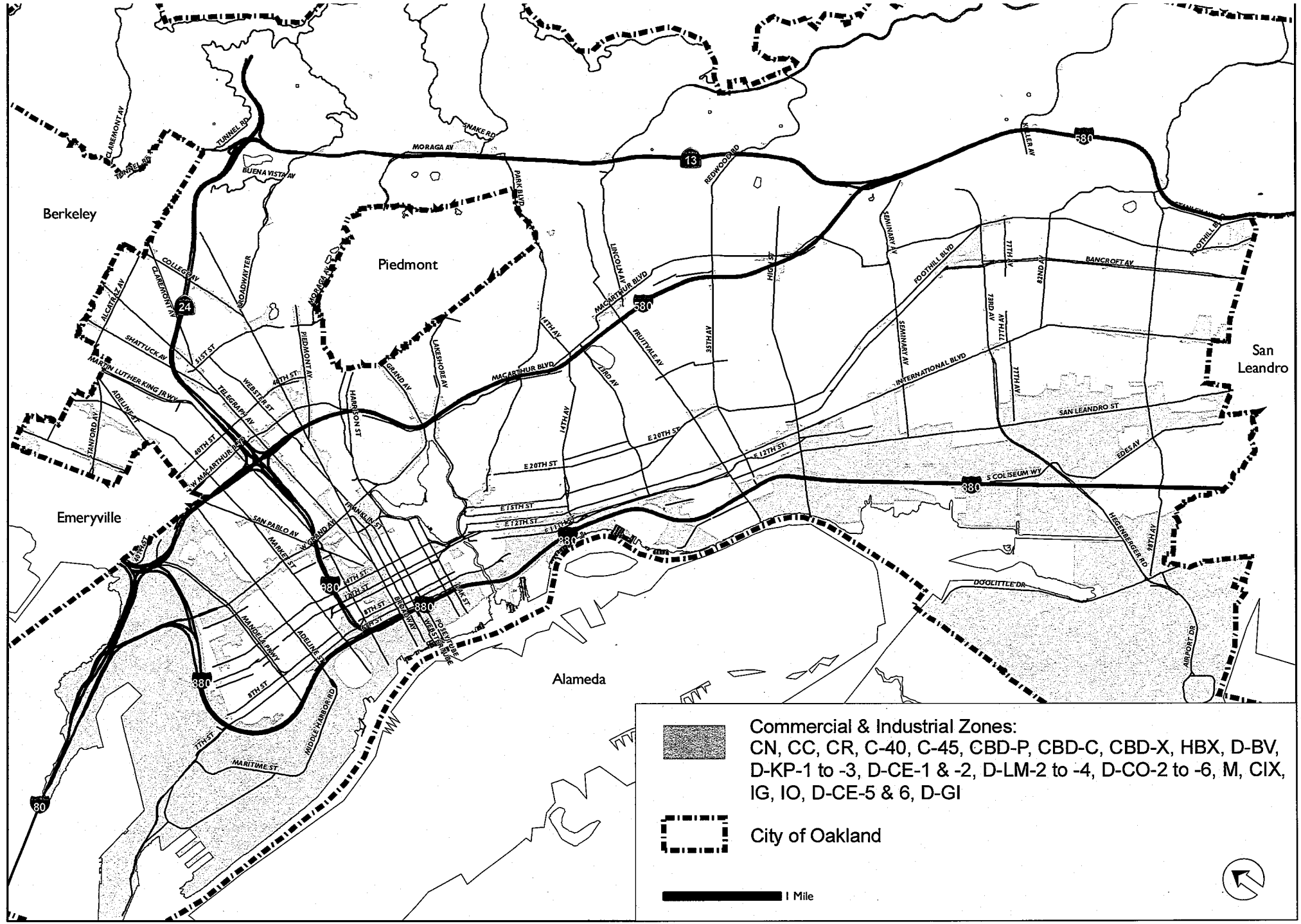
GREG MINOR
Assistant to the City Administrator

Reviewed by:
Christine Daniel, Assistant City Administrator
Joe DeVries, Assistant to the City Administrator

Attachments (4):
1. Ordinance amending OMC 5.80, Medical Cannabis Dispensary Permits.

Item: _____
Public Safety Committee
February 9, 2016

2. Ordinance amending OMC 5.81, Medical Cannabis Cultivation, Manufacturing and Other Facility Permits.
3. Maps of Proposed Locations for Medical Cannabis Facilities.
4. Informational Report dated January 12, 2016 (without attachments).

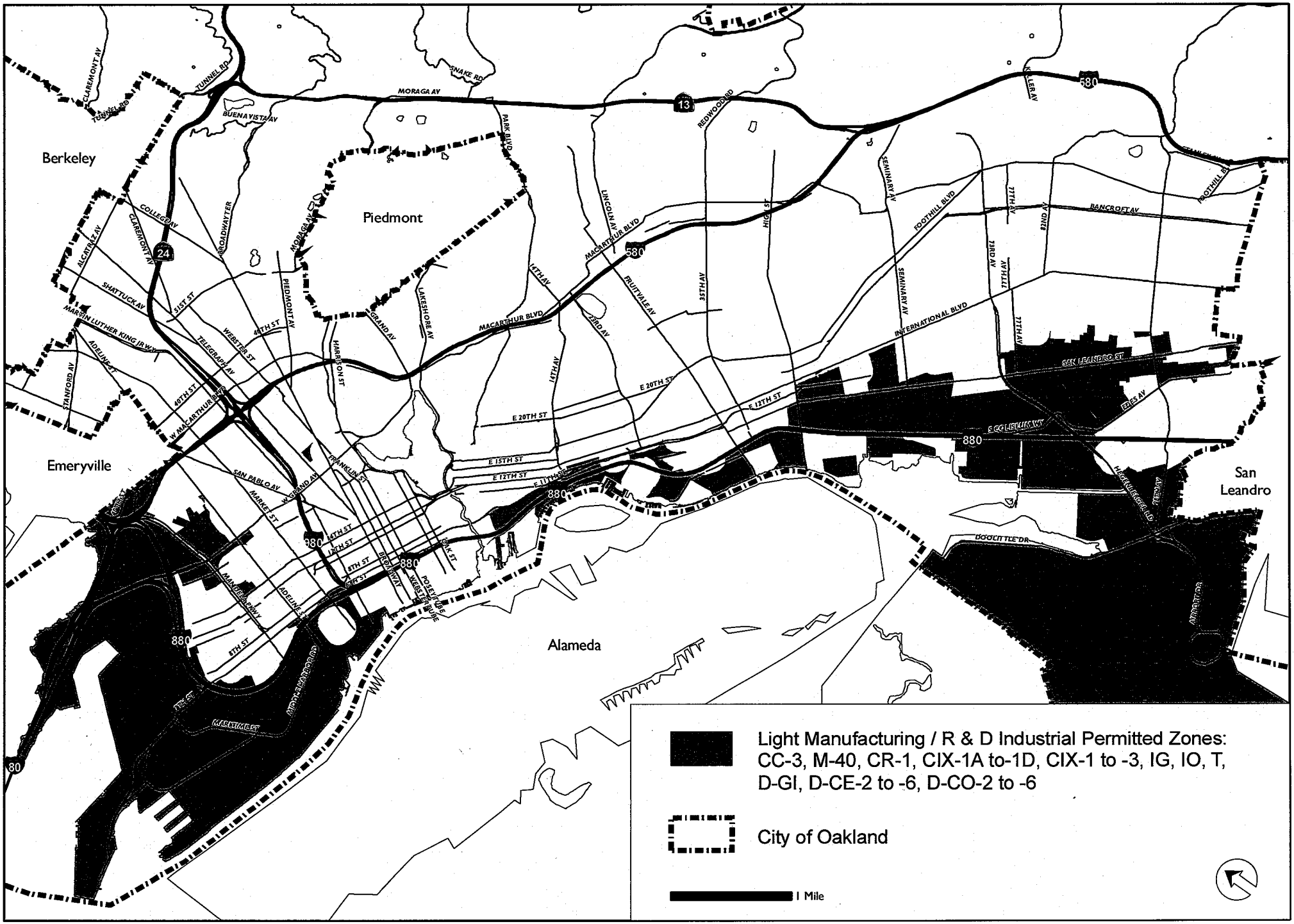


CITY OF OAKLAND

Proposed Locations for Dispensaries & Delivery-Only Dispensaries

Planning and Building Department
January 21, 2016

Attachment 3



Light Manufacturing / R & D Industrial Permitted Zones:
CC-3, M-40, CR-1, CIX-1A to-1D, CIX-1 to -3, IG, IO, T,
D-GI, D-CE-2 to -6, D-CO-2 to -6

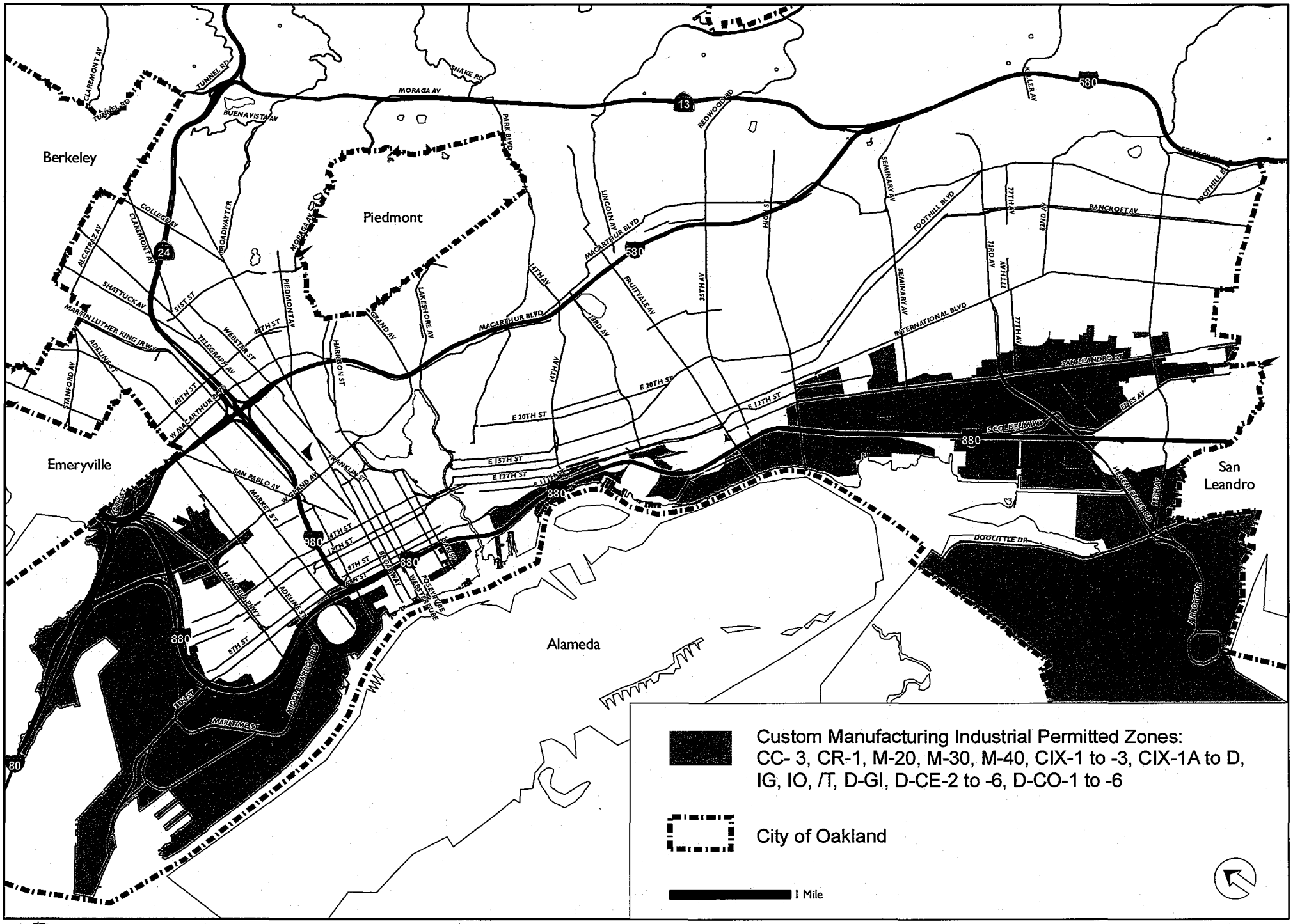
City of Oakland

1 Mile

CITY OF OAKLAND

Planning and Building Department
January 21, 2016

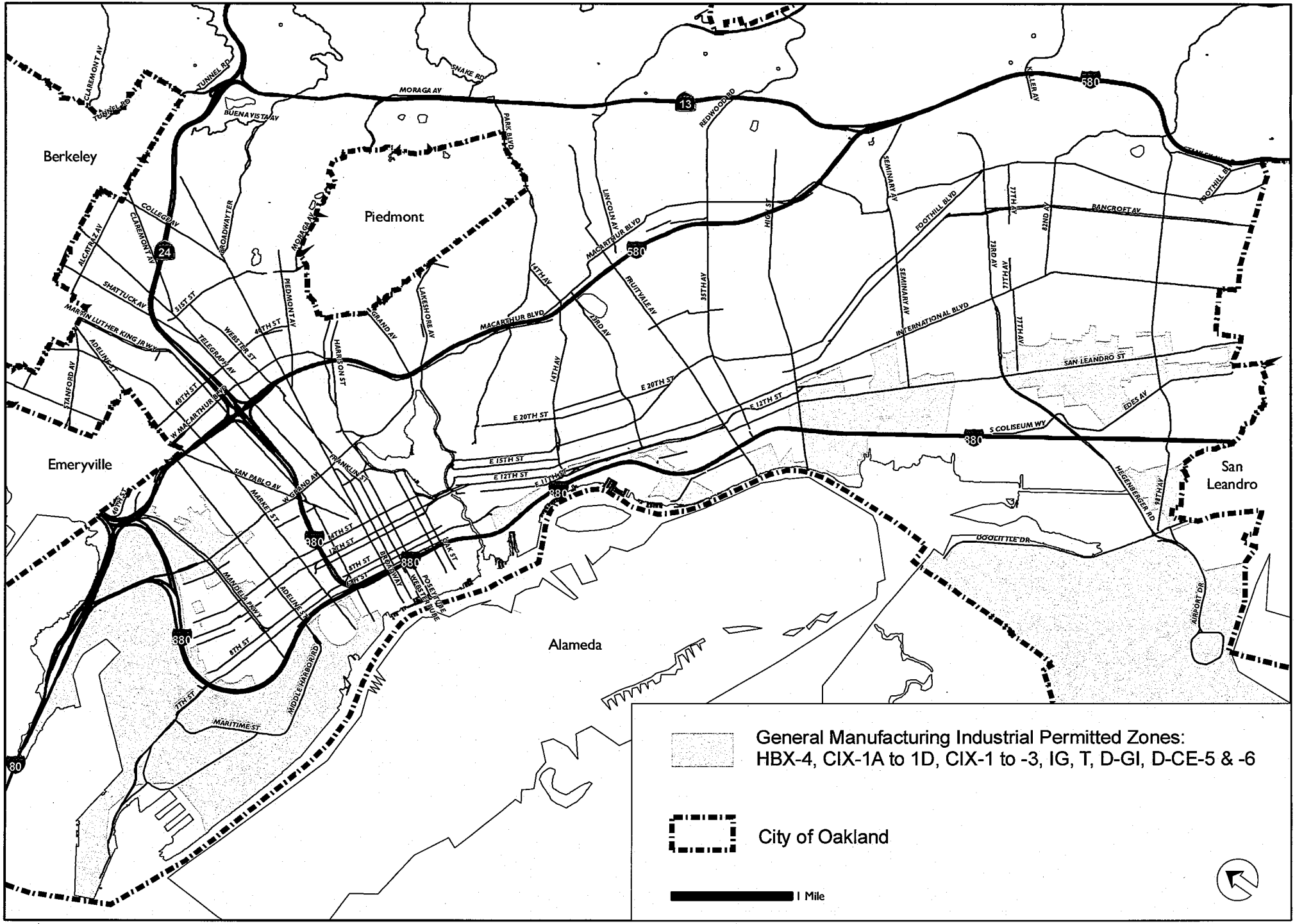
Proposed Locations for Cultivation, Distribution, Laboratory or Transporting Facilities



CITY OF OAKLAND

Proposed Locations for Non-Volatile Manufacturing

Planning and Building Department
January 21, 2016



CITY OF OAKLAND

Proposed Locations for Volatile Manufacturing

Planning and Building Department
January 21, 2016

Attachment 4

CITY OF OAKLAND

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Greg Minor
Assistant to the City Administrator

SUBJECT: Update on State Medical Cannabis Law and Local Proposals

DATE: December 21, 2015

City Administrator Approval _____ Date: 12/30/15

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff Recommends That The Public Safety Committee Receive This Informational Report And Provide Feedback Regarding The New State Medical Cannabis Law And Proposals To Align The City Of Oakland's Medical Cannabis Ordinances With New State Law.

EXECUTIVE SUMMARY

This informational report provides an update on new state and federal regulations which allow Oakland to address longstanding medical cannabis issues. These changes allowed staff to craft proposed amendments which will be presented in a forthcoming legislative proposal to the City Council for adoption.

The State of California established, through the passage of the Medical Marijuana Regulation and Safety Act (MMRSA), a comprehensive regulatory system for California's medical cannabis industry, replacing roughly 20 years of legal ambiguity with a dual state and local licensing system for all commercial medical cannabis activity from "seed to sale." This legislative development is extremely significant to Oakland. The lack of regulation of non-dispensary medical cannabis facilities has negatively impacted the City in a number of ways, including burglaries, fires, and lost revenue.

At the December 2014 Public Safety Committee and in the City Council Policy Directive number 14 of the Fiscal Year (FY) 2015-2017 Adopted Policy Budget, the City Council asked staff to work with the City's Cannabis Regulatory Commission on addressing this lack of local regulation through amendments to the City's medical cannabis ordinances. The proposed amendments align Oakland's ordinances with the MMRSA and allow the City to finally put public health and safety measures in place for the full spectrum of medical cannabis activities, including cultivation, manufacturing, distributing, testing, and dispensing of medical cannabis. Altogether, these updates should reduce electrical fires and burglaries, ensure that medical cannabis activities situate in appropriate locations, provide clarity to law enforcement and the medical cannabis industry, and allow for appropriate revenue collection from existing and new medical

cannabis businesses. The proposed amendments, which will come as proposed legislation in an upcoming City Council meeting, will present changes which reflect the state and federal law changes and address these concerns.

BACKGROUND/LEGISLATIVE HISTORY

Federal Government Guidance

Cannabis remains a Schedule I controlled substance under federal law; however, 35 states have enacted laws allowing medical cannabis to some extent and several jurisdictions have legalized recreational or adult non-medical cannabis use.[1] These state laws legalizing cannabis are valid, yet the federal government may also prohibit cannabis activities under its own laws.

Consequently, the Obama administration has outlined an enforcement compromise, and in 2013, the Department of Justice (DOJ) issued formal guidance from Deputy Attorney General James M. Cole that the DOJ will not prioritize federal marijuana prohibition enforcement in states with robust regulatory systems that comply with eight "guidelines" intended to address federal concerns, with the following goals:

1. Prevent the distribution of marijuana to minors;
2. Prevent revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
3. Prevent the diversion of marijuana from states where it is legal under state law in some form to other states;
4. Prevent state-authorized marijuana activity from being used as a cover or pretext for trafficking of other illegal drugs or other illegal activity;
5. Prevent violence and the use of firearms in marijuana cultivation and distribution;
6. Prevent drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
7. Prevent marijuana growing on public lands due to the public safety and environmental dangers posed by marijuana production on public lands; and
8. Prevent marijuana possession or use on federal property.[2]

In the FY 2015-2016 Federal budget, Congress went a step further with the Fahr-Rohrbacher amendment, which prohibits the use of federal funds to prevent states from implementing their

[1] Blue Ribbon Commission on Marijuana Policy, Progress Report, March 2015, p.3, available at: https://www.safeandsmartpolicy.org/wp-content/uploads/2015/03/Blue-Ribbon-Commission-report-March-20-2015-FINAL.pdf.
[2] Cole, James M., Guidance Regarding Marijuana Enforcement, U. S. Department of Justice, August 29, 2013 ("Cole Memorandum").

own state laws that authorize the use, distribution, possession, or cultivation of medical marijuana.[3] This restriction would have to be specifically renewed in the next federal budget.

Although the DOJ initially scoffed at the Fahr-Rohrbacher amendment limiting its authority, in U.S. v. Marin Alliance for Medical Marijuana, the United States District Court for the Northern District of California held otherwise. The court forbade the DOJ from continuing to enforce an injunction against one of California's oldest permitted medical cannabis operators in light of Congress' new spending restrictions. Judge Breyer found that the DOJ's interpretation of the Fahr-Rohrbacher amendment "defies language and logic" and that the plain language and intent of Fahr-Rohrbacher shields state-licensed medical cannabis facilities from federal prosecutions.

While this area of the law and policy remains in flux, the steps taken in California and the City of Oakland occur within this national context.

Medical Cannabis in California

Medical cannabis has been legal in California longer than anywhere else in the country. However, until the recent MMRSA passage, California's system of medical cannabis was one of the least structured regulatory frameworks in the United States.[4]

In 1996, California voters legalized medical cannabis through Proposition 215, the Compassionate Use Act. The Compassionate Use Act provided criminal immunity for patients and their designated primary caregivers to possess and cultivate cannabis for their personal medical use if a licensed physician has recommended cannabis for medical use (see California Health & Safety Code, § 11362.5).

California legislators then expanded on this concept with the adoption of Senate Bill (SB) 420 in 2003. SB 420 created a voluntary state identification card system operated through county health departments, allowed patients to form medical collectives or cooperatives, , and established guidelines as to how much marijuana patients can possess and cultivate without resulting in an arrest (see California Health & Safety Code, § 11362.7 et seq).

Nonetheless, neither the Compassionate Use Act nor SB 420 provided an effective statewide system for regulating and controlling medical cannabis, leaving cities and counties on their own to create a patchwork of different rules. This lack of uniform regulation created uncertainty about the legality of medical cannabis activities and endangered the safety of end users, who

[3] Section 538 of the Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. 113-235, 128 Stat. 2130 (2014) ("2015 Appropriations Act").
[4] Blue Ribbon Commission on Marijuana Policy, Progress Report, March 2015, p.5, available at: https://www.safeandsmartpolicy.org/wp-content/uploads/2015/03/Blue-Ribbon-Commission-report-March-20-2015-FINAL.pdf.

have not had the benefit of a monitored supply chain for medical cannabis, quality control, testing or labeling requirements.[5]

On October 9, 2015, Governor Brown and the state legislature filled this longstanding legislative void by enacting a comprehensive regulatory framework for the cultivation, production, transportation and sale of medical cannabis in California through MMRSA. MMRSA consists of SB 643 (McGuire), Assembly Bill (AB) 266 (Bonta, Cooley, Jones-Sawyer, Lackey, Wood) and AB 243 (Wood). It is codified in the California Business and Professions Code sections 19300 – 19360. MMRSA requires all applicants engaging in commercial cannabis activity to obtain both a state and a local license to operate legally in California. State licenses will consist of the classification types listed below.

State License Types:

Type 1 = Cultivation; Specialty outdoor; Small.
Type 1A = Cultivation; Specialty indoor; Small.
Type 1B = Cultivation; Specialty mixed-light; Small.
Type 2 = Cultivation; Outdoor; Small.
Type 2A = Cultivation; Indoor; Small.
Type 2B = Cultivation; Mixed-light; Small.
Type 3 = Cultivation; Outdoor; Medium.
Type 3A = Cultivation; Indoor; Medium.
Type 3B = Cultivation; Mixed-light; Medium.[6]
Type 4 = Cultivation; Nursery.
Type 6 = Manufacturer 1.
Type 7 = Manufacturer 2.
Type 8 = Testing.
Type 10 = Dispensary; General.
Type 10A = Dispensary; No more than three retail sites.
Type 11 = Distribution.
Type 12 = Transporter.

MMRSA breaks up the current "vertical integration" model of a closed loop of patient members from seed to sale and in its place mandates a detailed supply chain between licensed entities. Specifically, MMRSA requires licensed cultivators and manufacturers to send all their medical cannabis and medical cannabis products to licensed distributors who will verify quality assurance and that the cannabis is tested by a licensed laboratory before it is finally sold to the public at licensed dispensaries. Transporters are those licensed to transport medical cannabis and medical cannabis products between licensees. Throughout this process, MMRSA requires

[5] California Assembly Committee on Business and Professions Bill Analysis, AB 266, April 27, 2015, p. 14.
[6] MMRSA caps indoor cultivation using exclusively artificial lighting at 22,000 square feet of total canopy size per premises and outdoor cultivation using no artificial lighting at one acre of total canopy per premises. Consequently, cultivation sites in Oakland may not exceed these thresholds.

that medical cannabis and medical cannabis products be tracked via unique identifiers, similar to tracking methods currently utilized in the states of Colorado and Washington.

The Department of Food and Agriculture will oversee state licenses for cultivators, the Department of Public Health will oversee manufacturers and testing laboratories, and the newly created Bureau of Medical Marijuana Regulation in the State Department of Consumer Affairs will oversee distributors, dispensaries and transporters. While these agencies will establish baseline statewide standards, MMRSA maintains California's existing framework of local control by establishing a dual licensing structure mandating that all state license applicants obtain local approval as a pre-requisite to obtaining a state license.

Medical Cannabis in Oakland

The City of Oakland has been a leader in regulating medical cannabis dispensaries. In 1998 the City authorized the Oakland Cannabis Buyer's Cooperative (OCBC) as the administrator of the City's Medical Cannabis Distribution Program under the Oakland Municipal Code (OMC) Chapter 8.46. After the United States Supreme Court upheld a federal injunction against OCBC, the City enacted OMC Chapter 5.80, authorizing four medical cannabis dispensaries in 2004 before adding four more in 2011 via Ordinance No. 12585 C.M.S.

While the City of Oakland's process for administering medical cannabis dispensary permits and monitoring dispensaries has been considered successful, Oakland has fallen behind other jurisdictions, namely those outside of California, by not regulating other medical cannabis activities. Unregulated non-dispensary activities have resulted in electrical fires (stemming from flawed indoor cannabis cultivation), violent crime (such as robberies, burglaries and even homicides), and the use of pesticides and fertilizers that run counter to the crop's medical purpose.

This lack of local regulation is not due to a lack of effort on the City's part, but rather federal intervention, absence of clear state law, and different local interests as seen in the City's pre-MMRSA attempts at regulating cultivation in 2010, 2011 and 2014. In 2010, the City enacted OMC Chapter 5.81 to allow four industrial cultivation facilities unaffiliated with Oakland dispensaries; U.S. Attorney Melinda Haag responded by threatening to prosecute if the law was implemented, thus the legality of the proposal was brought into question. Additional proposals in 2011 and 2014, tailored to then existing state law, attempted to limit licenses to Oakland dispensaries but those also failed to move forward.

ANALYSIS AND POLICY ALTERNATIVES

In response to the aforementioned issues and legislative developments, as well as the direction of the December 2014 City Council Public Safety Committee and City Council Policy Directive number 14 of the FY 2015-2017 Adopted Policy Budget, staff developed amendments to the existing citywide medical cannabis regulations, OMC Chapters 5.80 and 5.81, in consultation with the City's Cannabis Regulatory Commission. Staff will present legislation for those amendments at a future City Council meeting upon direction from the City Council through this

informational report. The following overview outlines the proposed amendments and related policy issues which the future legislation will address.

OMC Chapter 5.81 Medical Cannabis Cultivation, Manufacturing and Other Facility Permits

In conjunction with MMRSA's licensing categories, staff proposes to amend both the title and the text of OMC Chapter 5.81 to create local permitting processes for medical cannabis cultivation, distribution, laboratory, manufacturing and transporting facilities. Under MMRSA, medical cannabis operators must obtain local approval before applying for a state license. By aligning with state law, the City will minimize bureaucratic obstacles for medical cannabis businesses seeking to comply with MMRSA's licensing categories. This will encourage unregulated medical cannabis operators in Oakland to come into the light.

Rather than restrict the number of these facilities, the proposed amendments require that these uses situate in appropriate zones within the city, namely industrial areas, and meet applicable performance and operating standards promulgated by the City Administrator. This application of administrative standards parallels the structure of OMC Chapter 5.80, which has successfully allowed staff to update its standards for medical cannabis dispensaries over time. The intent of these performance operating standards is to minimize the effects of any permitted medical cannabis facility on nearby properties. Consequently, the City Administrator will require security plans, inspections to verify building and fire code compliance, odor mitigation measures, as well as quarterly reports to demonstrate compliance with MMRSA. Further, the City Administrator will impose economic justice requirements, such as local hiring and professional development opportunities, to ensure that Oakland residents play a role both as facility operators and employees.

Overall, establishing these public health and safety requirements for additional medical cannabis activities will only improve the City's ability to monitor and address federal government concerns, as articulated in the Cole Memorandum.

OMC Chapter 5.80 Medical Cannabis Dispensary Permits

In response to new state law and recommendations from the City's Cannabis Regulatory Commission, staff also developed amendments to the City's medical cannabis dispensary ordinance. A number of these amendments are substantive, while others are more minor in nature.

In terms of substantive amendments, staff's proposal updates the definition of "dispensary," establishes a distinction between brick and mortar and delivery-only dispensaries, allows for non-smoking onsite consumption, eliminates superfluous location restrictions and increases the number of dispensaries allowed within the City.

A. Replace definition of "dispensary" with new state definition

As mentioned above, staff's intent in aligning local and state definitions is to facilitate medical cannabis businesses seeking to work within the state's new regulatory framework. Consequently, City staff adopted MMRSA's definition of a "dispensary." This amendment also cures a concern that the existing definition of "dispensary" is so broad that it unintentionally prohibits activities that the City would like to permit, such as cultivation and manufacturing.

B. Establish permitting process for delivery-only dispensaries

Medical cannabis delivery services unaffiliated with licensed brick and mortar dispensaries have operated in and out of Oakland for several years, largely in a clandestine fashion. Medical cannabis publications and other sources indicate that more than a dozen delivery services already operate in Oakland. Further, that number could rise as smart phone app delivery services continue to develop and satisfy the consumer demand for convenience. Delivery services also serve an important function for elderly and handicapped individuals who cannot easily travel to brick and mortar facilities.

While delivery services may not pose the same nuisance issues as brick and mortar dispensaries open to the public, unregulated deliveries raise public health and safety concerns of their own, particularly regarding the source of their medicine and their method of delivery. Accordingly, staff proposes establishing a permitting process for these "delivery only dispensaries" to ensure they situate in appropriate locations, comply with the provisions of MMRSA and follow security protocols to minimize robberies upon delivery..

C. Allow non-smoking consumption of medical cannabis on the premises of a dispensary

Advocates have long requested that the City of Oakland allow patients to consume cannabis at the site of licensed dispensaries in order to establish safe places of consumption, particularly for patients residing in federally subsidized housing, and allow for communal experiences. While Oakland has maintained a strict ban of onsite consumption, nearby jurisdictions such as Berkeley and San Francisco have allowed onsite consumption and their regulators report receiving no complaints from this approach. Continuing to prohibit onsite consumption will also have the predictable outcome of encouraging patients to consume in public or other inappropriate places, such as their cars.

As a result, staff proposes allowing certain forms of onsite consumption, namely vaporizing, in order for dispensaries to provide a communal consumption space while still minimizing the concerns of neighbors and public health officials. Dispensaries interested in allowing onsite consumption will have to meet the City Administrator's performance standards and operating guidelines for onsite consumption, which will be centered on avoiding drugged driving and disturbing neighboring properties.

D. Eliminate dispensary location restrictions other than distance separation requirements from schools and youth centers

Since neighbors of proposed dispensaries will always have an opportunity to express themselves at public hearings before any dispensary is permitted, most current location

restrictions are superfluous. Additionally, allowing dispensaries to locate near each other will allow dispensaries to situate closer to downtown transit facilities, which should mitigate any issues created by patients consuming at dispensaries. Additionally, the close proximity of multiple dispensaries might help with public safety concerns.

E. Increase the number of permitted dispensaries

There are pros and cons to maintaining and increasing the existing number of dispensaries and removing any numeric limitation on dispensaries altogether.

The City's current structure of limiting the total number of dispensaries and requiring applicants to undergo a scrutinized Request for Proposals (RFP) process has resulted in well run dispensaries that produce virtually no complaints. This is likely due in part to the high value of holding one of the City's limited number of permits, which encourages operators to police themselves and ensure their businesses remain in compliance with the City Administrator's operating standards. In contrast, adding too many dispensaries runs the risk of both creating a monoculture of cannabis retail in certain areas and oversaturating a more limited economic market than that of non-dispensary medical cannabis operators who serve the entire Bay Area or state. This could lead to dispensaries cutting corners and falling out of compliance with required operating standards, which in turn would burden staff resources with revocation proceedings and additional compliance inspections. Also, reducing the number of dispensaries via revocation would likely be more difficult than adding dispensaries in the future, given the controversial nature of the industry and analogous examples like liquor stores that persist despite countless community complaints. Finally, staff has not received any complaints from patients claiming they cannot access medical cannabis in Oakland with only eight permitted dispensaries.

That said there are several factors in support of increasing the current number of eight dispensary permits. First, there appears to be a continued increase in patient demand as revealed by a steady increase in business and sales tax from the City's eight licensed dispensaries with 2015 tax revenue projected to increase 28 percent over the year prior. Second, allowing onsite consumption offers a new economic opportunity for dispensaries and likely will further increase consumer demand. Third, more dispensaries may result in more employment opportunities in the City. Lastly, increasing the number of competing businesses generally benefits consumers by lowering prices and providing more options.

One possible compromise in this regard would be to substitute the cap on the total number of dispensaries with a limitation on the number of new dispensaries each year in conjunction with additional administrative restrictions. For example, the following findings required for new alcohol establishments could be added to the existing dispensary application process:

a. That the proposal will not contribute to undue proliferation of such uses in an area where additional ones would be undesirable, with consideration to be given to the area's function and character, problems of crime and loitering, and traffic problems and capacity;

b. That the proposal will not adversely affect adjacent or nearby churches, temples, or synagogues; public, parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds;

c. That the proposal will not interfere with the movement of people along an important pedestrian street;

d. That the proposed development will be of an architectural and visual quality and character which harmonizes with, or where appropriate enhances, the surrounding area;

e. That the design will avoid unduly large or obtrusive signs, bleak un-landscaped parking areas, and an overall garish impression;

f. That adequate litter receptacles will be provided where appropriate; and

g. That where the proposed use is in close proximity to residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep between the hours of 10:00 p.m. and 7:00 a.m.

Adding these policy considerations to the application process should address the concerns regarding an uncapped number of dispensaries, while an annual growth limitation would provide staff and policymakers with time to ensure that this new approach maintains the City's successful track regard of permitting well run dispensaries.

Staff also proposes a number of non-substantive amendments to OMC Chapter 5.80, including eliminating outdated references, unused definitions and unnecessary language. These and the other amendments discussed will be included in the forthcoming legislative proposal to the City Council for adoption.

FISCAL IMPACT

While difficult to predict, the proposed amendments could have considerable fiscal impacts.

As a result of Oakland voters' passage of Measure F in 2009, codified in OMC Chapter 5.04.480, medical cannabis businesses in Oakland are taxed at elevated rates compared to other businesses. Creating a permitting process for previously unpermitted commercial medical cannabis activities, such as cultivation, distribution and manufacturing, should result in new revenue for the City from these new businesses paying taxes at elevated rates. Delivery only dispensaries similarly offer an opportunity for new revenue, though depending on the business location and the individual transaction locations, the City may not receive all sales tax revenue. While staff cannot specify exactly how many new medical cannabis businesses will take advantage of this new permitting process, staff estimates issuing approximately 60 permits in 2016 based on inquiries from interested businesses, attendance at public meetings and industry trends. To put in perspective, the City's eight licensed medical cannabis dispensaries contributed over four million dollars in taxes in 2015.

The proposed amendments will require staff time to cover both the application process and ongoing monitoring. Staff time will include the City Administrator's Office reviewing and processing applications, conducting site inspections, and issuing findings and a determination, as well as inspections and reviews by police, fire and building departments. Thus, staff proposes to update the annual regulatory fee and initial application fee in conjunction with proposed ordinance amendments to ensure full cost recovery and compliance with Proposition 26.

Establishing a permitting process for industrial medical cannabis activities may also have fiscal impacts on industrial businesses in the City as medical cannabis businesses will likely lead to an increase in industrial rents based on anecdotal information gathered from Oakland thus far and the experience of jurisdictions like Denver, Colorado that authorized cannabis production and manufacturing. Staff is working with Economic and Workforce Development staff on proposals to mitigate any deleterious impacts in this regard.

PUBLIC OUTREACH

The proposed amendments are the product of extensive public outreach that included three public presentations to the City's Cannabis Regulatory Commission over the course of 2015. Specifically, staff met with the Commission in February, July and October 2015, at which point staff offered proposed amendments to the City's medical cannabis ordinances and received feedback from commissioners and the public alike.

Staff proposes to implement essentially all of the recommendations from the Cannabis Regulatory Commission with the exception of increasing the personal and small collective cultivation exemptions to the maximum possible under MMRSA. Staff recommends maintaining the City's existing personal and small scale cultivation exemptions, which allow 32 and 96 square feet of cultivation area, respectively, rather than expand to 100 and 500 square feet of exempt cultivation permitted under MMRSA as more than 96 square feet of cultivation resembles commercial activity that ought to be located in appropriate non-residential areas. Under MMRSA, the City may establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity, but not less than the state standard. Maintaining the 96 square foot threshold will also help to discourage diversion to inappropriate markets. This recommendation is consistent with jurisdictions like Denver, Colorado, which only exempts cultivation of 36 total plants from its cultivation regulations.

COORDINATION

Several City departments were consulted in the preparation of this report, including Building Services, Planning Bureau, the Fire Department, the Police Department, the Revenue Management Bureau, the Office of the City Attorney, and the Controller's Bureau. Likewise, staff consulted with outside agencies as well, including the City and County of San Francisco, the City of Berkeley, the City of Richmond, Alameda County and the Port of Oakland

SUSTAINABLE OPPORTUNITIES

Economic: The proposed amendments that will come in the future proposed legislation should positively affect the local economy by generating new employment opportunities for Oakland residents and generating revenue to support City services.

Environmental: The proposed amendments and forthcoming performance and operating standards that will come in the future proposed legislation will promote the cultivation, manufacturing and distribution of medical cannabis in an environmentally sound manner.

Social Equity: The amendments that will come in the future proposed legislation will both provide employment opportunities as well as safe access to medical cannabis.

CEQA

The adoption of amendments to existing citywide medical cannabis regulations is exempt from CEQA review pursuant to CEQA Guidelines sections 15061(b)(3) (general rule), 15183 (projects consistent with a community plan, general plan, or zoning), 15301 (existing facilities), 15307 (actions by regulatory agencies for protection of natural resources), 15308 (actions by regulatory agencies for protection of the environment), and 15309 (inspections). Each of these exemptions provides a separate and independent basis for CEQA exemption and when viewed collectively provide an overall basis for CEQA exemption.

Staff believes that the modifications to the existing regulations will enable the City to legalize existing unregulated medical cannabis businesses that are currently operating within the City. The City Administrator will develop operating and performance standards that will apply to these businesses, which will require inspections and review and approval by the City's Fire Department and Building Department before issuance of a permit. The purpose of the amendments is to license and regulate largely unregulated medical cannabis businesses in the interest of public health, safety and general welfare, and staff believes they will result in increased safety and protective measures, fewer safety hazards and more code enforcement.

These regulations will also apply to new small scale operations and other medical cannabis businesses, including cultivation and manufacturing, which will not be open to the public or generate large amounts of traffic. The purpose of the amendments is to align with MMRSA, which sets minimum statewide standards for pesticides in marijuana cultivation, maximum tolerances for pesticides and other foreign object residue, production and labeling of all edible cannabis products, requires establishment of uniform health and safety standards, testing standards, and security requirements at dispensaries and during transport of the product, and specifies minimum testing requirements. The new state regulatory scheme also specifically directs expanded enforcement efforts to reduce adverse impacts of marijuana cultivation, including environmental impacts such as illegal discharge into waterways and poisoning of marine life and habitats. These new minimum standards promote the public's health, safety and/or general welfare.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council receive this informational report and provide feedback regarding new state medical cannabis law and proposals to align the City of Oakland's medical cannabis ordinances with new state law.

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

Respectfully submitted,

on behalf of:

Greg Minor
Assistant to the City Administrator

Reviewed by:
Joe Devries, Assistant to the City Administrator
Christine Daniel, Assistant City Administrator

Attachments:

A. California Assembly Bill 266 (Bonta, Cooley, Jones-Sawyer, Lackey, Wood)
B. California Assembly Bill 243 (Wood)
C. California Senate Bill 643 (McGuire)
D. City Council Policy Directive for Fiscal Year 2015-2017 Budget

APPROVED AS TO FORM

CITY ATTORNEY'S OFFICE

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL

ORDINANCE NO. _____C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.80, MEDICAL CANNABIS DISPENSARY PERMITS, TO ALIGN WITH CALIFORNIA'S MEDICAL MARIJUANA REGULATION AND SAFETY ACT AND ADOPTING CEQA EXEMPTION FINDINGS

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

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

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

WHEREAS, in 2004, the Oakland City Council adopted Ordinance No. 12585 C.M.S. to establish citywide medical cannabis dispensary regulations (codified at Oakland Municipal Code ("OMC") Chapter 5.80), consistent with the Medical Marijuana Program Act, to protect the peace, health, safety and welfare of patients and the community as a whole; and

WHEREAS, the City of Oakland's medical cannabis dispensary regulations were subsequently amended in 2010 through Ordinance No. 13049 C.M.S., and in 2011 through Ordinance No. 13086 C.M.S.; and

WHEREAS, the purpose of citywide regulation of medical cannabis dispensaries is to regulate the sale and distribution of cannabis in the interest of patients who qualify to obtain, possess and use cannabis for medical purposes under state law, and to provide safe medical cannabis product and inventory; and

WHEREAS, in 2011, Assembly Bill 2650 was enacted (codified at Health and Safety Code section 11362.768). This law affirms that cities can adopt ordinances that restrict the location and establishment of medical marijuana collectives, cooperatives, and dispensaries; and

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

WHEREAS, in 2015, Assembly Bills 243 and 266 and Senate Bill 643 were enacted (codified at Business and Professions Code section 19300 *et seq.* and titled the "Medical Marijuana Regulation and Safety Act"). These bills also amended provisions of the Medical Marijuana Program Act related to the cultivation of medical marijuana; and

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

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

WHEREAS, the City of Oakland wishes to amend OMC Chapter 5.80 to continue and expand citywide regulation of medical cannabis activities in a manner that protects the public health, safety and general welfare of the community, and in the interest of patients who qualify to obtain, possess and use marijuana for medical purposes, consistent with the Compassionate Use Act of 1996, the Medical Marijuana Program Act, and the Medical Marijuana Regulation and Safety Act; and

WHEREAS, the City of Oakland has a compelling interest in protecting the public health, safety, and welfare of its citizens, residents, visitors and businesses by

developing and implementing strict performance and operating standards for dispensaries; and

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

WHEREAS, after a duly noticed public meeting on February 9, 2016, the Public Safety Committee voted to recommend the proposal to the City Council; and

WHEREAS, the City Council held a duly noticed public hearing on February 16, 2016, to consider the proposed amendments and all interested parties were provided an ample opportunity to participate in said hearing and express their views; and

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

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

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

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

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

SECTION 3. Amendment of Chapter 5.80 of the Oakland Municipal Code. Oakland Municipal Code Chapter 5.80 is hereby amended to read as follows (additions are shown in double underline and deletions are shown as ~~strikethrough~~:

Chapter 5.80 - MEDICAL CANNABIS DISPENSARY PERMITS

5.80.010 – Definitions.

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

~~A. "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.~~

A~~B~~. "Cannabis" or "Marijuana" shall have the same definition as Business and Professions Code section 19300.5(f), as may be amended, which defines "cannabis" as all parts of the plant Cannabis sativa Linnaeus., Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Health and Safety Code § 11018~~, as amended from time to time, which defines "cannabis" 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~~"Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed~~s~~ of the plant which is ~~are~~ incapable of germination. "Cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

B~~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.~~ a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers medical cannabis and medical cannabis products as part of a retail sale.

C~~D~~. "City Administrator" means the City Administrator of the City of Oakland or his/her designee.

D~~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~~State law.

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

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

GF. "Medical marijuana" or "Medical cannabis" 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.

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

IH. "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 a licensed health care facility, a residential care facility, a hospice, or a home health agency as allowed by California Health and Safety Code Section 11362.7(d)(1)-(3).~~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.~~

JI. "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.

~~J. "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.~~

~~K. "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 or delivery 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. However, entities authorized under OMC Section 8.46 must abide by the same requirements imposed herein on dispensaries.

B. This Chapter, and the requirement to obtain a business permit, does not apply to the individual possession or cultivation of medical marijuana for personal use, nor does this chapter apply to the usage, distribution, cultivation or processing of medical marijuana by qualified patients or primary caregivers when such group is of three 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.

C. The City Administrator shall issue no more than eight new valid permits for the operation of dispensaries in the City per year. Delivery only dispensaries shall not be subject to this limit.

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. No proposed facilities under this Chapter shall be located within a 600 foot radius of any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive (but not including any private school in which education is primarily conducted in private homes), or youth center (serving youth age 18 and under). ~~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, or 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.~~

2~~3~~. A plan of operations that will describe how the dispensary will operate consistent with ~~the intent of~~ State law~~,~~ and 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 state licensed medical cannabis entities~~members, and plans to ensure marijuana is acquired as part of a closed-circuit of marijuana cultivation and consumption~~.

3~~4~~. A security plan, as a separate document, outlining the proposed security arrangements to deter and prevent unauthorized entrance into areas containing medical cannabis or medical cannabis products and theft of medical cannabis or medical cannabis products at the dispensary, in accordance with minimum security measures required by State law~~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).

4. Confirmation of the following criteria:

a. That the proposal will not contribute to undue proliferation of such uses in an area where additional ones would be undesirable, with consideration to be given to the area's function and character, problems of crime and loitering, and traffic problems and capacity;

b. That the proposal will not adversely affect adjacent or nearby churches, temples, or synagogues; public, parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds;

c. That the proposal will not interfere with the movement of people along an important pedestrian street;

d. That the proposed development will be of an architectural and visual quality and character which harmonizes with, or where appropriate enhances, the surrounding area;

e. That the design will avoid unduly large or obtrusive signs, bleak unlandscaped parking areas, and an overall garish impression;

f. That adequate litter receptacles will be provided where appropriate;

g. That where the proposed use is in close proximity to residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep between the hours of 10:00 p.m. and 7:00 a.m.

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. Public notice of the hearing on the application shall be given as provided in Section 5.02.050. However, delivery only dispensaries shall not be subject to this public hearing requirement. The City Administrator shall be the investigating official referred to in Section 5.02.030 to whom the application shall be referred. In recommending the granting or denying of such permit and in granting or denying the same, the City Administrator shall give particular consideration to the capacity, capitalization, and complaint history of the applicant and any other factors that in the City Administrator's discretion he/she deems necessary to the peace, order and welfare of the public. All applicants shall pay an application fee, a permit fee, and all inspection fees that may be required as part of the application process, as specified in the City's Master Fee Schedule.

F. At the time of submission of dispensary permit application, the applicant shall pay a dispensary permit application fee. The fee amount shall be set ~~by City Council resolution~~in the City's Master Fee Schedule.

5.80.030 – Regulations.

The City Administrator shall establish administrative regulations for the permitting of dispensaries 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 State law ~~California Health and Safety Code Section 11362.7 et seq.~~, the City Administrator's administrative regulations, and this Chapter.

5.80.040 – Performance and operating standards.

The City Administrator shall develop and implement performance and operating standards consistent with those set forth in Ordinance No. 12585 in the Office of the City Administrator Guidelines and shall modify such Guidelines from time to time as required by applicable law and consistent with public health, welfare and safety.

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

A. No cannabis shall be smoked~~, ingested or otherwise consumed on~~ inside the premises of the dispensary.

B. The dispensary shall not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages.

5.80.050 – Regulatory fees; seller's permit.

A. In addition to the dispensary application fee, the dispensary shall pay an annual regulatory fee at the same as applying for the business tax certificate or renewal thereof. The dispensary shall post a copy of the business tax certificate issued pursuant to Chapter 5.04, together with a copy of the dispensary permit 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~~ Sales.

~~The dispensary 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 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 or during the delivery of medical cannabis.

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

C. Any violations of this Chapter may be subject to administrative citation, pursuant to Chapters 1.08 and 1.12, and other applicable legal, injunctive or equitable remedies.

5.80.090 – Liability.

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.

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

A. The City Administrator shall be provided access to any licensed dispensary during normal business hours to verify compliance with this chapter.

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

CB. 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.

DC. 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.

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

FE. 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 4. California Environmental Quality Act. The City Council independently finds and determines that this action is exempt from CEQA pursuant to CEQA Guidelines sections 15061(b)(3) (general rule), 15183 (projects consistent with a community plan, general plan, or zoning), 15301 (existing facilities), 15308 (actions by regulatory agencies for protection of the environment) and 15309 (inspections), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance. The Environmental Review Officer or designee shall file a Notice of Exemption with the appropriate agencies.

SECTION 5. Severability. The provisions of this Ordinance are severable, and if any section, subsection, sentence, clause, phrase, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is for any reason held to be invalid, preempted by state or federal law, or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. It is hereby declared to be the legislative intent of the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

SECTION 6. Ordinance Effective Date. Pursuant to Section 216 of the Charter of the City of Oakland, this Ordinance shall become effective immediately upon final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption by the Council of the City of Oakland.

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

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.80, MEDICAL CANNABIS DISPENSARY PERMITS, TO ALIGN WITH CALIFORNIA'S MEDICAL MARIJUANA REGULATION AND SAFETY ACT AND ADOPTING CEQA EXEMPTION FINDINGS

This ordinance amends the City of Oakland's existing citywide medical cannabis regulations to align with new state law, the Medical Marijuana Regulation and Safety Act, by revising the permitting process for medical cannabis dispensaries.

INTRODUCED BY COUNCILMEMBER _____

APPROVED AS TO FORM

CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____C.M.S.

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

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

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

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

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

WHEREAS, in 2011, Assembly Bill 2650 was enacted (codified at Health and Safety Code section 11362.768). This law affirms that cities can adopt ordinances that restrict the location and establishment of medical marijuana collectives, cooperatives, and dispensaries; and

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

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

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

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

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

WHEREAS, these activities have caused and continue to cause ongoing adverse impacts that can be harmful to the health, safety and welfare of Oakland residents and constitute a public nuisance, including without limitation damage to buildings containing indoor medical cannabis cultivation facilities, including improper and dangerous electrical alterations and use, inadequate ventilation leading to mold and mildew, increased frequency of home-invasion robberies, and similar crimes; and

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

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

WHEREAS, the City of Oakland wishes to amend OMC Chapter 5.81 to continue and expand citywide regulation of medical cannabis activities in a manner that protects the public health, safety and general welfare of the community, and in the interest of

patients who qualify to obtain, possess and use marijuana for medical purposes, consistent with the Compassionate Use Act of 1996, the Medical Marijuana Program Act, and the Medical Marijuana Regulation and Safety Act; and

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

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

WHEREAS, after a duly noticed public meeting on February 9, 2016, the Public Safety Committee voted to recommend the proposal to the City Council; and

WHEREAS, the City Council held a duly noticed public hearing on February 16, 2016 to consider the proposed amendments and all interested parties were provided an ample opportunity to participate in said hearing and express their views; and

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

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

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

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

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

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

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

5.81.010 – Findings and purpose.

A. The City Council, based on evidence presented to it in the proceedings leading to the adoption of this Chapter hereby finds that the lack of regulation of medical cannabis facilities other than medical cannabis dispensaries, including unregulated cultivation, manufacturing and processing of medical cannabis in the City has caused and is causing ongoing impacts to the community. These impacts include damage to buildings containing indoor medical cannabis cultivation facilities, including improper and dangerous electrical alterations and use, inadequate ventilation leading to mold and mildew, increased frequency of home-invasion robberies and similar crimes, and that many of these impacts have fallen disproportionately on residential neighborhoods. These impacts have also created an increase in response costs, including code enforcement, building, fire, and police staff time and expenses.

B. The City Council further finds that the creation of a permitting process implementing public health and safety standards for medical cannabis facilities other than dispensaries will not only improve public health and safety but provide a measure of certainty for legitimate businesses and thus encourage them to situate in Oakland.

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

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

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

5.81.020 – Definitions.

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

A. "Applicant" as used only in this Chapter shall be any industrial cannabis cultivation, processing, manufacturing facility that applies for a permit required under this Chapter.

B. "Batch" as used only in this Chapter shall be defined by the City Administrator to mean a discrete quantity of dried cannabis produced and sold together.

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

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

ED. "Cannabis Dispensary" as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010 and is also referred to herein as "dispensary."

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

G. "Cultivate" as used only in this Chapter shall mean to plant, grow, harvest, dry, cure, grade or trim cannabis.

~~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.~~

HG. "~~Industrial Cannabis~~ Cultivation~~, Processing, Manufacturing~~ Facility" ~~hereinafter "cultivation and manufacturing facility"~~ shall mean any facility used for cultivating~~, warehousing, storing, processing and/or manufacturing~~ more than 48 ounces of dried cannabis, and/or cultivating ~~or storing~~ medical cannabis in an area greater than 96 square feet of total area within one parcel of land. ~~Any establishment engaged in, permitted to be engaged in or carrying on any medical cannabis cultivation, processing, or manufacturing or other activity mentioned in this Chapter shall be deemed~~ a ~~an industrial cannabis cultivation and manufacturing facility as described in Section 5.81.040.~~

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

J. "Distribution facility" as used only in this Chapter shall mean any physical location used for distribution of medical cannabis or medical cannabis products.

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

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

M. "Manufacturing facility" as used only in this Chapter shall mean a location that produces, prepares, propagates, or compounds manufactured medical cannabis or medical cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

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

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

P~~I~~. "~~One~~ Parcel of l~~L~~and" as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010~~mean any single piece of real property as identified by the County Assessor's parcel number (APN) that is used to identify real property, its boundaries, and all the rights contained therein~~.

Q~~J~~. "Permittees" as used only in this Chapter are cultivation ~~and~~, distribution, laboratory, manufacturing, and transporting facilities that have obtained a permit under this Chapter.

R~~K~~. "Primary c~~C~~aregiver" as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.

S~~L~~. "Qualified p~~P~~atient" as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.

T. "Testing laboratory" or "Laboratory" as used only in this Chapter shall mean any facility where a person, group of persons, non-profit entity, or business entity conducts analytical testing of cannabis, cannabis-derived products, hemp, or hemp-derived products.

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

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

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

X. "Transporting Facility" as used only in this Chapter means a physical location where a Transporter conducts business while not in transport, or the permanent location of equipment used by a Transporter to transport medical cannabis or medical cannabis products.

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

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

5.81.030 – Permit required.

A. Except for hospitals and research facilities that obtain written permission for cannabis cultivation under federal law, it is unlawful to establish any cultivation, distribution, laboratory, ~~and~~ manufacturing or transporting facility without a valid

business permit issued pursuant to the provisions of this Chapter. Possession of other types of State or City permits or licenses does not exempt an applicant from the requirement of obtaining a permit under this Chapter. ~~It is unlawful for any entity organized on a for-profit basis, except for hospitals and research facilities, to engage in any medical cannabis cultivation whatsoever.~~

B. The City Administrator shall issue, as detailed below, special business permits for the operation of ~~industrial~~ cannabis cultivation ~~processing~~, distribution, laboratory, ~~and~~ manufacturing and transporting facilities. ~~In recommending the granting or denying of such permit and in granting or denying the same, the City Administrator shall give particular consideration to the capacity, capitalization, complaint history of the proposed cultivation and manufacturing facility as detailed in Section 5.81.040, and any other factors that in her/his discretion she/he deems necessary to the peace and order and welfare of the public.~~ All applicants shall pay any necessary fees including without limitation application fees, inspection fees and regulatory fees that may be required hereunder.

~~C. The City Administrator shall issue in the first year of this cultivation and manufacturing facility program no more than four permits. Two years after the first permit has been issued, the City Administrator shall return to the City Council to report on the development of this program, and determine how additional permits to meet the needs of medical cannabis dispensaries and other lawful cannabis providers shall be administered, if any.~~

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

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

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

F. No proposed facilities under this Chapter shall be located within a 600 foot radius of any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive (but not including any private school in which education is primarily conducted in private homes), or youth center (serving youth age 18 and under).

5.81.040 – ~~Industrial c~~Cultivation, distribution, testing and transporting of medical marijuana.

~~A. Any use of activity that involves possessing, cultivating, processing and/or manufacturing and/or more than 96 square feet of cultivation area shall constitute industrial cultivation of medical cannabis and shall only be allowed upon the granting of~~

~~a permit as prescribed in this Chapter. Possession of other types of State or City permits or licenses does not exempt an applicant from the requirement of obtaining a permit under this Chapter.~~

A~~B~~. The proposed location of a cultivation, distribution, laboratory or transporting ~~and manufacturing~~ facility shall be in areas where "light manufacturing industrial," "research and development," or their equivalent use, is permitted by-right under the Oakland Planning Code, as may be amended; provided, however, that no vested or other right shall inure to the benefit of any cultivation, distribution, laboratory or transporting ~~and manufacturing~~ facility permittee. This restriction shall not apply to existing dispensary cultivation facilities located at a retail location if the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public. ~~Public notice shall be given as provided in Section 5.02.050, and the investigating official referred to in Section 5.02.030 to whom the application shall be referred, shall be the City Administrator.~~

B. The maximum size of any areas of cultivation shall not exceed any restrictions outlined in State law.

5.81.045 – Manufacturing of medical marijuana.

A. The proposed location of a manufacturing facility that produces medical cannabis products using nonvolatile solvents shall be in areas where "custom manufacturing industrial," or their equivalent use, is permitted by-right under the Oakland Planning Code, as may be amended, or in residential zones if the manufacturing is compliant with the restrictions imposed on cottage food operators under the California Homemade Food Act, Chapter 6.1 (commencing with Section 51035) of Part 1 of Division 1 of Title 5 of the Government Code.

B. The proposed location of a manufacturing facility that produces medical cannabis products using volatile solvents shall be in areas where "general manufacturing industrial" or their equivalent use, is permitted by-right under the Oakland Planning Code, as may be amended.

C. No vested or other right shall inure to the benefit of any manufacturing facility permittee.

5.81.050 – Application for permit.

A. All applicants shall pay an application fee as specified in the Master Fee Schedule.

B. All applicants shall submit written information to the City Administrator ~~including, but not limited to,~~that shall include, as applicable, plans for security, odor mitigation, waste disposal, pest management, product testing, worker safety and compensation, local hiring, non diversion of product, facility location, capitalization, business plans, applicant complaint history, criminal background checks, compliance with City building and fire codes, and any additional information deemed necessary by the City Administrator. The City Administrator may design application forms specific to each

permitted category and require inspections of proposed facilities before issuing a permit under this Chapter.

C. ~~All applicants shall be ranked by a point or similar system established by the City Administrator based on information submitted by each applicant and any additional information that may be submitted to or discovered by the City Administrator.~~The City Administrator shall establish criteria for minimizing the carbon footprint, environmental impact and resource needs of permitted facilities. Applicants that demonstrate they can satisfy this environmental criteria, such as cultivators seeking to operate greenhouse facilities, will be given preference in the processing of their application.

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

5.81.070 – Operating and performance standards.

Facilities permitted under this chapter shall not be open to the public. The City Administrator shall establish operating and performance standards for permittees. The intent of these operating and performance standards is to minimize the effects of permitted facilities on nearby properties. Noncompliance of such operating standards shall constitute a breach of the permit issued hereunder and may render such permit suspended or revoked based upon the City Administrator's determination.

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

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

~~A~~B. The City Administrator shall be provided access to any and all financial information at any time, as needed to conduct an audit of the permittees under this Chapter to verify tax compliance under Chapter ~~5.80~~ 5.81 and/or gross receipts tax requirements.

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

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.

~~C~~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.

~~D~~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.

5.81.100 – Liability and indemnification.

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

B. To the maximum extent permitted by law, the permittees under this Chapter ~~hereby agree to save,~~ shall defend (with counsel acceptable to the City), indemnify and ~~keep~~hold harmless the City of Oakland, the Oakland City Council, and its respective officials, officers, employees, representatives, agents and volunteers (hereafter collectively called City) from any ~~all~~ liability, damages, actions, claims, demands, litigation, loss (direct or indirect), causes of action, ~~or~~ proceedings~~,~~ or judgment (including legal costs, ~~those for~~ attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annual, any medical cannabis-related approvals and actions ~~against the City in consequence of the granting of this permit~~, and ~~will in all things~~ strictly comply with the conditions under which this permit is granted, if any. The City may elect, in its sole discretion, to participate in the defense of said Action and the permittee shall reimburse the City for its reasonable legal costs and attorneys' fees.

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

5.81.101 - Residential and individual limits for non-licensed medical cannabis cultivation.

Notwithstanding State law regarding medical cannabis cultivation, no qualified patient or primary caregiver may cultivate medical cannabis in an area of more than 32 square feet on one parcel of land, unless they form a cooperative or collective.

A collective or cooperative of qualified patients or primary caregivers, may cultivate medical cannabis covering an area of no more than 32 square feet in a residential unit or if in a nonresidential building on one parcel of land per each member of the cooperative or collective, up to a maximum of 216 cannabis/marijuana plants within a

maximum growing area of 96 square feet indoor or 60 outdoor cannabis/marijuana plants on one parcel of land.

In the absence of a permit under this Chapter, such cultivation shall be subject to the following operating standards:

A. Cultivation, processing, possession, and/or manufacturing of medical marijuana in any residential areas shall be limited to qualified patients, primary caregivers, and medical cannabis collectives or cooperatives comprised of no more than three qualified patients and/or their primary caregivers. Every member of the medical cannabis collective or cooperative shall possess an identification card issued by the County of Alameda, or the State of California, or another agency recognized by the City pursuant to California Health and Safety Code Section 11362.7 et seq.

B. Cultivation, processing, possessing, and/or manufacturing of medical cannabis in residential areas shall be in conformance with the following standards:

1. The residential facility shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities. Medical cannabis cultivation, processing, possession, and/or manufacturing shall remain at all times secondary to the residential use of the property;

2. Cultivation possession, processing and/or manufacturing of medical cannabis in residential areas shall occur only in a secured residences occupied by the qualified patient or primary caregiver;

3. No individual residential facility or other facility housing the cultivation, processing and/or manufacturing of medical cannabis shall contain more than 48 ounces of dried cannabis, and/or more than 96 square feet of cultivation area;

4. If required by the building or fire code, the wall(s) adjacent to the indoor cultivation area shall be constructed with 5/8" Type X fire resistant drywall;

5. The cultivation area shall be in compliance with the current adopted edition of the California Building Code ~~§ 1203.4 natural ventilation or § 402.3 mechanical ventilation (or its equivalent(s))~~;

6. The cultivation area shall not adversely affect the health or safety of the residence or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;

7. All high amperage electrical equipment (exceeding six amps) used in the cultivation of medical cannabis, (e.g., lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired; the use of extension cords to supply power to high amperage electrical equipment (exceeding six amps) used in the cultivation of medical cannabis is prohibited;

8. Any electrical rewiring or remodeling shall first require an electrical permit from the City;

9. The use of butane gas products for personal use medical cannabis cultivation is prohibited; and

10. From a public right-of-way, there shall be no exterior evidence of medical cannabis cultivation occurring at the property.

C. If a qualified patient or primary caregiver who is cultivating, possessing, processing and/or manufacturing medical cannabis for personal use at the residence has a doctor's recommendation that the above allowable quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs, as specified by such doctor.

5.81.110 – Prohibited operations.

A. All cultivation, distribution, laboratory, ~~processing, and~~ manufacturing and transporting facilities that do not have a permit under this Chapter are expressly prohibited. No use that purports to have cultivated, distributed, tested, manufactured, transported or processed marijuana shall be deemed to have been a legally established use under the provisions of the Oakland Planning Code, the Oakland Municipal Code, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim a vested right, legal nonconforming or other similar status. However, for the limited purpose of state licensing priority, operators may petition the City for a determination of good standing pre-January 1, 2016.

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

5.81.120 – Revocation, suspension and aAppeals.

Notwithstanding Section 5.02.100, any decision, except for suspension and or revocation, pursuant to this Chapter by the City Administrator or his/her designee shall be final and conclusive, with no appeal to the City Council or any other appellate body. For suspensions and/or revocations an independent hearing officer shall make an initial determination with an appeal to the City Administrator in writing within 14 days of the Administrative Hearing Officer's decision, in accordance with procedures in set forth in Section 5.02.100. The decision of the City Administrator shall be final and conclusive.

SECTION 4. California Environmental Quality Act. The City Council independently finds and determines that this action is exempt from CEQA pursuant to CEQA Guidelines sections 15061(b)(3) (general rule), 15183 (projects consistent with a community plan, general plan, or zoning), 15301 (existing facilities), 15308 (actions by regulatory agencies for protection of the environment) and 15309 (inspections), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance. The Environmental

Review Officer or designee shall file a Notice of Exemption with the appropriate agencies.

SECTION 5. Severability. The provisions of this Ordinance are severable, and if any section, subsection, sentence, clause, phrase, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is for any reason held to be invalid, preempted by state or federal law, or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. It is hereby declared to be the legislative intent of the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

SECTION 6. Ordinance Effective Date. Pursuant to Section 216 of the Charter of the City of Oakland, this Ordinance shall become effective immediately upon final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption by the Council of the City of Oakland.

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

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

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

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