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2017 MAR 17 AM 9:17

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER _____

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.80, MEDICAL CANNABIS DISPENSARY PERMITS, TO CLARIFY AND STRENGTHEN THE CITY'S EQUITY PERMIT PROGRAM AND PROVIDE ADDITIONAL UPDATES CONSISTENT WITH STATE LAW

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 Cannabis Regulation and Safety Act," previously known as the Medical Marijuana Regulation and Safety Act). These bills also amended provisions of the Medical Cannabis Program Act related to the cultivation of medical marijuana; and

WHEREAS, the Medical Cannabis 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 Cannabis 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 Medical Cannabis Regulation and Safety Act authorizes medical cannabis businesses to vertically integrate their business and hold multiple state licenses if they are located in jurisdictions that adopted a local ordinance, prior to July 1, 2015, allowing or requiring qualified businesses to cultivate, manufacture, and dispense medical cannabis or medical cannabis products; and

WHEREAS, the City of Oakland's medical cannabis regulations have allowed and will continue to allow an individual qualified business to cultivate, manufacture, and dispense medical cannabis or medical cannabis products; and

WHEREAS, the City of Oakland wishes to amend Oakland Municipal Code (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 Cannabis 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, it is the City of Oakland's policy in the permitting of medical cannabis facilities to encourage the hiring of high unemployment groups, including Oakland residents who were formerly incarcerated and residents of disadvantaged neighborhoods within Oakland; and

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

WHEREAS, police arrest data reflect disproportionately higher arrests for cannabis offenses in certain police beats; and

WHEREAS, individuals arrested and previously incarcerated for cannabis related offenses face significant barriers to obtaining employment, financial aid, housing, and other economic opportunities; and

WHEREAS, individuals who have been operating unfettered by regulation and law enforcement have a significant advantage related to real estate acquisition and leasing that could lock members of negatively impacted groups out of being able to start up a cannabis business; and

WHEREAS, the City of Oakland seeks to address inequity in business ownership in the cannabis industry through the incorporation of an Equity Permit Program; and

WHEREAS, in May 2016, the City Council adopted amendments to O.M.C. Chapter 5.80 to further the above-described objectives; and

WHEREAS, subsequent to May 2016 members of the public and City Councilmembers proposed further amendments to O.M.C. Chapter 5.80; and

WHEREAS, at the November 14, 2016 Special City Council Meeting, the City Council directed the City Administrator to perform a race and equity analysis as

described in the November 8, 2016 staff report and return to Council with revised ordinances; and

WHEREAS, on March 7, 2017, the Oakland City Council held a duly noticed public meeting to consider these revised amendments; 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 Cannabis Regulation and Safety Act; and to establish an equity program to promote equitable business ownership and employment opportunities in the cannabis industry in order to decrease disparities in life outcomes for marginalized communities and address the disproportionate impacts of the war on drugs in those communities.

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~~. Modifications made by Council on March 7, 2017 are also shown in **CAPITAL LETTERS**.

Chapter 5.80 - MEDICAL CANNABIS DISPENSARY PERMITS

5.80.010 - Definitions.

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

- A. "Applicant" shall mean any individual or business entity that applies for a permit required by this chapter.

- B. "Cannabis" or "Marijuana" shall have the same definition as Business and Professions Code Section 19300.5(f), as may be amended, which, as of March 2016, defines "cannabis" as all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound. Manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Health and Safety Code Section 11018, "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant which is incapable of germination. "Cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.
- C. "Cannabis dispensary" or "Dispensary" shall mean a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers medical cannabis and medical cannabis products as part of a retail sale.
- D. "City Administrator" means the City Administrator of the City of Oakland or his/her designee.
- E. "Collective" means any association, affiliation, or establishment jointly owned and operated by its members, which ~~that~~ facilitates the collaborative efforts of qualified patients and primary caregivers, as described in State law.
- F. "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.
- G. "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.
- H. "*Equity Applicant*" shall mean an Applicant whose ownership/owner:
1. Is an Oakland resident; and
 2. *Has an annual income at or less than 80 percent of Oakland Average Medium Income (AMI) adjusted for household size; and*

3. *Either (i) has lived in any combination of Oakland police beats 2X, 2Y, 6X, 7X, 19X, 21X, 21Y, 23X, 26Y, 27X, 27Y, 29X, 30X, 30Y, 31Y, 32X, 33X, 34X, 5X, 8X and 35X for at least ten of the last twenty years or (ii) was arrested after November 5, 1996 and convicted of a cannabis crime committed in Oakland, California.*
- I. "General Applicant" shall mean an Applicant other than an Equity Applicant whose ownership/owner has lived in Oakland for three years.
- J. "Medical marijuana" or "Medical cannabis" means marijuana authorized in strict compliance with Health and Safety Code Sections 11362.5, 11362.7 et seq., as such sections may be amended from time to time.
- K. "Ownership" shall mean the individual or individuals who:
- (i) with respect to for-profit entities, including without limitation corporations, partnerships, limited liability companies, has or have an aggregate ownership interest (other than a security interest, lien, or encumbrance) of 50 percent or more in the entity.
 - (ii) with respect to not for-profit entities, including without limitation a non-profit corporation or similar entity, constitutes or constitute a majority of the board of directors.
 - (iii) with respect to collectives, has or have a controlling interest in the collective's governing body.
- L. "Parcel of land" means a single contiguous parcel of real property as identified by the county assessor's parcel number (APN), which is used to identify real property and its boundaries for legal purposes.
- M. "Primary caregiver" shall have the same definition as California Health and Safety Code Section 11362.7, as may be amended, which, as of March 2016, defines "Primary Caregiver" as an individual designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include a licensed health care facility, a residential care facility, a hospice, or a home health agency as allowed by California Health and Safety Code Section 11362.7(d)(1)–(3).
- N. "Qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., as may be amended, which, as of March 2016, means a person who is entitled to the protections of California Health and Safety Code Section 11362.5. For purposes of this ordinance, qualified patient shall include a person with an identification card, as that term is defined by California Health and Safety Code Section 11362.7 et seq.
- O. "Smoking" shall have the same definition as Oakland Municipal Code Chapter 8.30, which as of March 2017 means "inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, weed, or other combustible substance."

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

~~Q. "General Application permit" shall mean all applications issued under OMC Chapter 5.80 with the exception of dispensary equity permits issued under Section 5.80.040.~~

5.80.020 - Business permit ~~required~~ and application for permit required.

- A. Except for hospitals, research facilities, or an entity authorized pursuant to Section 8.46.030, it is unlawful for any owner, operator, or association to own, conduct, operate ~~or maintain, or to participate therein, or to cause or to allow to be conducted, operated, or maintained,~~ any dispensary, delivery or delivery only dispensary in or into the City unless there exists a valid business permit in compliance with the provisions of Chapter 5.02 and a permit issued under this chapter. However, entities authorized under OMC Chapter 8.46 must abide by the same requirements imposed herein on dispensaries.
- B. This chapter, and the requirement to obtain a business permit, does not apply to the individual possession or cultivation of medical marijuana for personal use, nor does this chapter and such requirement apply to the usage, distribution, cultivation or processing of medical marijuana by qualified patients or primary caregivers when such group is of three (3) or less fewer individuals, and distributing, cultivating or processing the marijuana from a residential unit or a single ~~non-residential~~ parcel of land. Such associations of three (3) or less ~~qualified patients or primary caregivers~~ shall not be required to obtain a permit under Chapter 5.80, but must comply with applicable State law.
- C. The City Administrator shall issue no more than eight new valid permits for the operation of dispensaries in the City per calendar year, with a minimum of half of the dispensary permits issued each calendar year issued to Equity Applicants. Delivery only dispensaries shall not be subject to these ~~this~~ limits. Dispensary permits shall be issued through a request for proposal (RFP) process that is done in collaboration with the department of race and equity.
- D. In addition to the requirements specified in Section 5.02.020 for business permits, the permit application for a dispensary permit shall set forth the following information:
1. Unless the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public evidence that the proposed location of such dispensary is not within six hundred (600) feet of a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive (but not including any private school in which education is primarily conducted in private homes), another dispensary or youth center, unless the school or youth center moved into the area after the dispensary was issued a permit under this chapter. The distance between facilities shall be measured via path of travel from the closest door of one facility to the closest door of the other facility. The proposed dispensary or delivery only dispensary must be

located in a commercial or industrial zone, or its equivalent as may be amended, of the City.

2. A plan of operations that will describe how the dispensary or delivery only dispensary will operate consistent with State law and the provisions of this chapter, including but not limited to:
 - a. Controls to ensure medical marijuana will be dispensed only to qualified patients and primary caregivers, and
 - b. Controls to acquire, possess, transport and distribute marijuana to and from State-licensed medical cannabis entities.
3. A security plan, as a separate document, outlining the proposed security arrangements to deter and prevent unauthorized entrance into areas containing medical cannabis or medical cannabis products and theft of medical cannabis or medical cannabis products at the dispensary, in accordance with minimum security measures required by State law. The security plan shall be reviewed by the Police Department and the Office of the City Administrator and shall be exempt from disclosure as a public record pursuant to Government Code Section 6255(a).
4. A community beautification plan to reduce illegal dumping, littering, graffiti and blight and promote beautification of the adjacent community.

Confirmation of the following criteria:

- ~~a. That the dispensary or delivery only dispensary will not contribute to undue proliferation of such uses in an area where additional ones would be undesirable, with consideration to be given to the area's function and character, problems of crime and loitering, and traffic problems and capacity;~~
- ~~b. That the dispensary or delivery only dispensary will not adversely affect adjacent or nearby churches, temples, or synagogues; public, parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds;~~
- ~~c. That the dispensary or delivery only dispensary will not interfere with the movement of people along an important pedestrian street;~~
- ~~d. That the dispensary or delivery only dispensary will be of an architectural and visual quality and character which harmonizes with, or where appropriate enhances, the surrounding area;~~
- ~~e. That the design will avoid unduly large or obtrusive signs, bleak unlandscaped parking areas, and an overall garish impression;~~
- ~~f. That adequate litter receptacles will be provided where appropriate;~~

- ~~g. That where the dispensary or delivery-only dispensary is in close proximity to residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep;~~
 - ~~h. That no cannabis or cannabis odors shall be detectable by sight or smell outside of a permitted facility.~~
5. If the applicant is an Equity Applicant, information documenting such status, as described in Section 5.80.045 and any applicable administrative guidelines.
6. 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.
- a. Background checks shall only apply to Dispensary and Delivery-Only Dispensary Applicants and they shall be limited to determining whether an Applicant has been convicted or plead nolo contendere or guilty to a violent offense or crime of fraud or deceit as defined by the City Administrator's administrative guidelines.
 - b. Applicants with recent relevant convictions may still petition the City Administrator for reconsideration if they can demonstrate evidence of rehabilitation, such as participation in rehabilitative services and payment of restitution.
7. An applicant for a dispensary permit shall not be disqualified from receiving a permit under this Chapter on the ground that the applicant also operates or intends to operate in a cannabis-related field by providing additional, non-dispensary activities (such as cultivation).
- E. Applications for dispensaries shall be subject to a public hearing and ~~must provide with~~ public notice of the hearing in accordance with Section 5.02.050. Applications for delivery only dispensaries shall not be subject to a hearing requirement. The City Administrator shall be the investigating official referred to in Section 5.02.030 to whom the application shall be referred. ~~In recommending the granting or denying of such permit and in granting or denying the same, the City Administrator shall give particular consideration to the capacity, capitalization, and complaint history of the applicant and any other factors that in the City Administrator's discretion he/she deems necessary to the peace, order and welfare of the public. Fifty percent (50%) of all permits issued under OMC Chapter 5.80 shall be issued to an Oakland resident who meets the Dispensary Equity Permit Program requirements set forth in Section 5.80.045. At no time shall the number of new general application permits exceed the number of dispensary equity permits issued by the City Administrator. The eight (8) existing dispensary operators are exempt from the fifty percent (50%) requirement. All General 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. There shall be no application fee for Equity Applicants.

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

F. All dispensary permits shall be special business permits and shall be issued for a term of one year. No property interest, vested right, or entitlement to receive a future license to operate a medical marijuana business shall ever inure to the benefit of such permit holder ~~as such permits are revocable at any time with our~~ without cause by the City Administrator subject to Section 5.80.070.

5.80.025 - Onsite consumption permit.

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

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

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

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

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

F. All onsite consumption permits shall be special business permits and shall be issued for a term of one year. No property interest, vested right, or entitlement to receive a future license to operate a medical marijuana business shall ever inure to the benefit of such permit holder as such permits are revocable at any time with our without cause by the City Administrator subject to Section 5.80.070.

5.80.030 - Regulations.

The City Administrator shall establish administrative regulations for the permitting of dispensaries, ~~and delivery only dispensaries, and onsite consumption,~~ and may set further standards for such operations and activities through administrative guidance and formal regulations. ~~of dispensaries and delivery only dispensaries.~~ The In order to maintain a dispensary or delivery only dispensary permit in good standing, shall each dispensary and delivery only dispensary must meet all the operating criteria for the dispensing of medical marijuana required pursuant to State law, the City Administrator's administrative regulations, and this Chapter.

5.80.040 - Performance and operating standards.

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

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

- A. No cannabis shall be smoked; inside the premises of the dispensary.
- B. The dispensary shall not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages.
- C. Dispensaries must maintain a staff comprised of at least fifty percent (50%) Oakland residents and twenty-five percent (25%) Oakland residents in census tracts identified by the City Administrator as having high unemployment rates or low household incomes. The City Administrator's guidelines and regulations may promulgate provide details of these requirements, including standards for phasing in this requirement for existing facilities.
- D. Dispensaries and delivery only dispensaries that hire and retain formerly incarcerated current Oakland residents may apply for a tax credit or license fee reduction based on criteria established by the City Administrator.
- E. All dispensary employees and delivery only dispensary employees shall be paid a living wage as defined by OMC Chapter 2.28.
- F. Dispensaries and delivery only dispensaries must implement a track and trace program as prescribed by state law that records the movement of medical cannabis and medical cannabis products in their custody and make these records available to the City Administrator upon request.
- G. No cannabis odors shall be detectable outside of the permitted facility.

H. ~~At no time shall the number of new general application permits exceed the number of dispensary equity permits issued by the City Administrator.~~

5.80.045 – Dispensary Equity Permit Program.

A. Equity Criteria. Applicant ownership/owner must satisfy ~~have at least one member who meets all of the following criteria:~~

1. Be an Oakland resident; and
2. Have ~~who~~ Have an annual income at or less than 80% Oakland Average Median Income (AMI) Adjusted for household size; and either has;
4. Either (i) a. Have ~~has~~ lived Resides for at least two (2) years prior to the date of application in any combination of Oakland Police Department Beats 2X, 2Y, 6X, 7X, 19X, 21X, 21Y, 23X, 26Y, 27X, 27Y, 29X, 30X, 30Y, 31Y, 31Z, 32Y, 32X, 33X, and 34X, 5X, 8X and 35X for at least five ~~ten~~ of the last ten ~~twenty~~ years; or (ii) b. ~~was~~ were arrested after November 5, 1996 and convicted those individuals who, within the last ten (10) years, have been previously incarcerated for of a cannabis crime marijuana-related offense as a result of a conviction arising out of committed in Oakland, California.

B. Review of Criteria.

1. Proof of Income shall be supported with federal tax returns and at least one of the following documents: two months of pay stubs, current Profit and Loss Statement, or Balance Sheet.
2. A minimum of the two of the following documents shall be required in order to demonstrate proof of Oakland Residency: California Driver's Record or Identification Card, property tax bills, copies of tax returns, utility bills, vehicle registration.
2. The list below provides the documents acceptable as proof of Oakland residency. A minimum of two (2) acceptable documents are required. All residency documents must list the applicant's first and last name, and the Oakland residence address must match the residence address listed on the cannabis application:
 - California driver's record indicating ten consecutive years at an Oakland address;
 - California identification card record indicating ten consecutive years at an Oakland address;
 - ten consecutive years of property tax billing and payments;
 - ten consecutive years of verified copies of state or federal income tax returns where an Oakland address is listed as the primary address;
 - utility company billing and payment covering any month in each of the ten consecutive years prior to the application submission.

3. Proof of Incarceration should be demonstrated through Department of Corrections or Federal Bureau of Prisons documentation.

C. Assistance. Equity Applicants will be eligible for participation in the Equity Assistance program, which will include industry specific technical assistance, business ownership technical assistance, no interest business start-up loans, and waivers from City permitting fees.

D. Initial Permitting Phase.

1. The period of time before the Equity Assistance Program referred to in OMC 5.80.045(C), is established, funded and implement shall be referred to as the Initial Permitting Phase

2. At any point during the Initial Permitting Phase, a minimum of fifty (50) percent of all permits collectively issued under OMC Chapters 5.80 and 5.81 shall be issued to Equity Applicants.

3. In the Initial Permitting Phase, a General Applicant will receive the next available General Applicant permit if it serves as an Equity Incubator by providing free real estate or rent to an Equity Applicant who obtains a medical cannabis permit. In order to receive this permitting priority, the General Applicant must also comply with the following conditions:

a. The free real estate or rent shall be for a minimum of three years.

b. The Equity Applicant shall have access to a minimum of 1,000 square feet to conduct its business operations.

c. The General Applicant must provide any City required security measures, including camera systems, safes, and alarm systems for the space utilized by the Equity Applicant.

d. The General Applicant is otherwise compliant with all other requirements of OMC Chapter 5.80 or 5.81.

4. If a General Applicant obtains a medical cannabis permit utilizing the Equity Incubator priority provisions of OMC 5.80.045 (D)(3) and the Equity Applicant ceases its business operations, the General Applicant must:

a. Notify the City Administrator within thirty (30) days of the Equity Applicant ceasing its business operations; and

b. Re-apply for a medical cannabis permit subject to the permitting restrictions of this Chapter, including OMC 5.80.045 (D)(2).

5. Failure to notify the City Administrator, submit a new application and obtain a new medical cannabis permit as required under OMC 5.80.045 (D) is grounds for revocation and a violation of this chapter.

E. Renewal.

1. In order to continue to receive new Equity Assistance Program services, an Equity Applicant must provide proof that it continues to satisfy the Equity Criteria at the time of its annual permit renewal.
2. An Equity Applicant who no longer satisfies the Equity Criteria but is compliant with all other requirements of OMC Chapter 5.80 or 5.81 will be entitled to renew the permit but will no longer be entitled to receive new Equity Assistance Program services. Such an Applicant may utilize any services previously granted under the Equity Assistance Program, though, such as previously issued loans.

~~2. Prior marijuana or cannabis conviction shall not be a bar to equity ownership.~~

5.80.050 - Regulatory fees; seller's permit.

- A. Unless exempted under OMC 5.80.045, in addition to the dispensary application fee, the dispensary shall pay an annual regulatory fee at the same time as applying for the business tax certificate or renewal thereof. The dispensary shall post a copy of the business tax certificate issued pursuant to Chapter 5.04, together with a copy of the dispensary permit and onsite consumption permit (if applicable) issued pursuant to this chapter and Section 5.02.020, in a conspicuous place in the premises approved as a dispensary at all times.
- ~~B. The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a seller's permit from the State Board of Equalization.~~
- B. The fees referenced herein shall be set by the Master Fee Schedule, as modified from time to time.

5.80.060 - Sales.

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

5.80.070 - Revocation, suspension and appeals.

Notwithstanding Chapter 5.02, any decision by The City Administrator's decision to issue or deny a permit, shall be subject to an appeal by the Applicant pursuant to Section 5.02.100, except that the appeal authorized in Section 5.02.100 shall be to an independent hearing officer and not the City Council. The request for an appeal must be made in writing within fourteen (14) days of the City Administrator's decision. The decision of the independent hearing officer 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 of permits the City shall follow the procedures set forth in Section 5.02.080, except that the City Administrator shall provide fourteen (14) days' notice of the hearing on the proposed action to suspend or revoke the permit. The appeal authorized in Section 5.02.100 shall be to an independent hearing officer, and such request for appeal must be made in writing within fourteen (14) days of the City Administrator's decision. The decision of the independent hearing officer shall be final and conclusive.

5.80.080 - Prohibited operations; nonconforming uses.

- A. All dispensaries Operation of a dispensary or delivery only dispensary in violation of California Health and Safety Code Section 11326.7, et seq., 11362.5, and this chapter are expressly prohibited. It is unlawful for any dispensary or delivery only dispensary in the City, or any agent, employee or representative of such dispensary or delivery only 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, including administrative regulations authorized by this chapter, may be subject to administrative citation, pursuant to Chapters 1.08 and 1.12, and other applicable legal, injunctive or equitable remedies.

5.80.090 - Liability and indemnification.

- A. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this chapter shall not become a personal liability of any public officer or employee of the City.
- B. To the maximum extent permitted by law, the permittees under this chapter shall defend (with counsel acceptable to the City), indemnify and hold harmless the City of Oakland, the Oakland City Council, and its respective officials, officers, employees, representatives, agents and volunteers (hereafter collectively called City) from any liability, damages, actions, claims, demands, litigation, loss (direct or indirect), causes of action, proceedings or judgment (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "action") against the City to attack, set aside, void or annul annual, any medical cannabis-related approvals and actions and comply with the conditions under which such permit is granted, if any. The City may elect, in its sole discretion, to participate in the defense of said action and the permittee shall reimburse the City for its reasonable legal costs and attorneys' fees.

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

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

- A. Permittees must provide the City Administrator with access to any licensed dispensary during normal business hours to verify compliance with this chapter.
- B. Permittees must provide the City Administrator with access to any and all financial information regarding the dispensary at any time, as needed to conduct an audit of the permittees under this chapter to verify tax compliance under Chapter 5.80 and/or gross receipts tax requirements.
- C. The City Administrator is authorized to examine the books, papers, tax returns and records of any permittee for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax due.
- D. The City Administrator is authorized to examine a person under oath, for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax, registration or permit fees due under this chapter. In order to ascertain the business tax, registration or permit fees due under this chapter, the City Administrator may compel, by administrative subpoena, the production of relevant books, papers and records and the attendance of all persons as parties or witnesses.
- E. Every permittee is directed and required to furnish to the City Administrator, the means, facilities and opportunity for making such financial examinations and investigations.
- F. Any permittee refusal to comply with this section shall be deemed a violation of this chapter, and administrative subpoenas shall be enforced pursuant to applicable law.

SECTION 5. Reporting. City staff shall report back to City Council in July 2017 ~~no later than one year from the date of adoption of this legislation, to~~ providing information about the implementation, review of effectiveness of the included standards, including equity standards, issues that have arisen, if any, and whether any changes are recommended.

SECTION 6. California Environmental Quality Act. The City Council independently finds and determines that this action is exempt from CEQA pursuant to CEQA Guidelines sections 15061(b)(3) (general rule), 15183 (projects consistent

with a community plan, general plan, or zoning), 15301 (existing facilities), 15308 (actions by regulatory agencies for protection of the environment) and 15309 (inspections), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance. The Environmental Review Officer or designee shall file a Notice of Exemption with the appropriate agencies.

SECTION 7. Severability. The provisions of this Ordinance are severable, and if any section, subsection, sentence, clause, phrase, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is for any reason held to be invalid, preempted by state or federal law, or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. It is hereby declared to be the legislative intent of the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

SECTION 8. Ordinance Effective Date. Pursuant to Section 216 of the Charter of the City of Oakland, this Ordinance shall become effective immediately upon final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption by the Council of the City of Oakland.

SECTION 9. General Police Powers. This Ordinance is enacted pursuant to the City of Oakland's general police powers, including but not limited to Sections 106 of the Oakland City Charter and Section 7 of Article XI of the California Constitution.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation: _____

2082690v4

NOTICE AND DIGEST

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.80, MEDICAL CANNABIS DISPENSARY PERMITS, TO CLARIFY AND STRENGTHEN THE CITY'S EQUITY PERMIT PROGRAM AND PROVIDE ADDITIONAL UPDATES CONSISTENT WITH STATE LAW

This ordinance amends Oakland Municipal Code Chapter 5.80 by (1) redefining the City's Equity Permit Program, (2) modifying the qualifications for an equity applicant, (3) adding new residency and equity incubator requirements for general applicants, and (4) making other changes consistent with state law.

DRAFT
CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER _____

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.80, MEDICAL CANNABIS DISPENSARY PERMITS, TO CLARIFY AND STRENGTHEN THE CITY'S EQUITY PERMIT PROGRAM AND PROVIDE ADDITIONAL UPDATES CONSISTENT WITH STATE LAW

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 Cannabis Regulation and Safety Act," previously known as the Medical Marijuana Regulation and Safety Act). These bills also amended provisions of the Medical Cannabis Program Act related to the cultivation of medical marijuana; and

WHEREAS, the Medical Cannabis 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 Cannabis 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 Medical Cannabis Regulation and Safety Act authorizes medical cannabis businesses to vertically integrate their business and hold multiple state licenses if they are located in jurisdictions that adopted a local ordinance, prior to July 1, 2015, allowing or requiring qualified businesses to cultivate, manufacture, and dispense medical cannabis or medical cannabis products; and

WHEREAS, the City of Oakland's medical cannabis regulations have allowed and will continue to allow an individual qualified business to cultivate, manufacture, and dispense medical cannabis or medical cannabis products; and

WHEREAS, the City of Oakland wishes to amend Oakland Municipal Code (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 Cannabis 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, it is the City of Oakland's policy in the permitting of medical cannabis facilities to encourage the hiring of high unemployment groups, including Oakland residents who were formerly incarcerated and residents of disadvantaged neighborhoods within Oakland; and

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

WHEREAS, police arrest data reflect disproportionately higher arrests for cannabis offenses in certain police beats; and

WHEREAS, individuals arrested and previously incarcerated for cannabis related offenses face significant barriers to obtaining employment, financial aid, housing, and other economic opportunities; and

WHEREAS, individuals who have been operating unfettered by regulation and law enforcement have a significant advantage related to real estate acquisition and leasing that could lock members of negatively impacted groups out of being able to start up a cannabis business; and

WHEREAS, the City of Oakland seeks to address inequity in business ownership in the cannabis industry through the incorporation of an Equity Permit Program; and

WHEREAS, in May 2016, the City Council adopted amendments to O.M.C. Chapter 5.80 to further the above-described objectives; and

WHEREAS, subsequent to May 2016 members of the public and City Councilmembers proposed further amendments to O.M.C. Chapter 5.80; and

WHEREAS, at the November 14, 2016 Special City Council Meeting, the City Council directed the City Administrator to perform a race and equity analysis as

described in the November 8, 2016 staff report and return to Council with revised ordinances; and

WHEREAS, on March 7, 2017, the Oakland City Council held a duly noticed public meeting to consider these revised amendments; 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 Cannabis Regulation and Safety Act; and to establish an equity program to promote equitable business ownership and employment opportunities in the cannabis industry in order to decrease disparities in life outcomes for marginalized communities and address the disproportionate impacts of the war on drugs in those communities.

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~~. Modifications made by Council on March 7, 2017 are also shown in **CAPITAL LETTERS**.

Chapter 5.80 - MEDICAL CANNABIS DISPENSARY PERMITS

5.80.010 - Definitions.

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

- A. *"Applicant" shall mean any individual or business entity that applies for a permit required by this chapter.*

- B. "Cannabis" or "Marijuana" shall have the same definition as Business and Professions Code Section 19300.5(f), as may be amended, which, as of March 2016, defines "cannabis" as all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound. Manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Health and Safety Code Section 11018, "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant which is incapable of germination. "Cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.
- C. "*Cannabis* dispensary" or "Dispensary" shall mean a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers medical cannabis and medical cannabis products as part of a retail sale.
- D. "City Administrator" means the City Administrator of the City of Oakland or his/her designee.
- E. "Collective" means any association, affiliation, or establishment jointly owned and operated by its members, **which** facilitates the collaborative efforts of qualified patients and primary caregivers, as described in State law.
- F. "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.
- G. "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.
- H. "Equity Applicant" shall mean an Applicant whose ownership/owner:
- a. Is an Oakland resident; and
 - b. Has an annual income at or less than 80 percent of Oakland Average Medium Income (AMI) adjusted for household size; and

- c. *Either (i) has lived in any combination of Oakland police beats 2X, 2Y, 6X, 7X, 19X, 21X, 21Y, 23X, 26Y, 27X, 27Y, 29X, 30X, 30Y, 31Y, 32X, 33X, 34X, 5X, 8X and 35X for at least ten of the last twenty years or (ii) was arrested after November 5, 1996 and convicted of a cannabis crime committed in Oakland, California.*
- I. *"General Applicant" shall mean an Applicant other than an Equity Applicant whose ownership/owner has lived in Oakland for three years.*
- J. *"Medical marijuana" or "Medical cannabis" means marijuana authorized in strict compliance with Health and Safety Code Sections 11362.5, 11362.7 et seq., as such sections may be amended from time to time.*
-
- K. *"Ownership" shall mean the individual or individuals who:*
- (i) with respect to for-profit entities, including without limitation corporations, partnerships, limited liability companies, has or have an aggregate ownership interest (other than a security interest, lien, or encumbrance) of 50 percent or more in the entity.*
 - (ii) with respect to not for-profit entities, including without limitation a non-profit corporation or similar entity, constitutes or constitute a majority of the board of directors.*
 - (iii) with respect to collectives, has or have a controlling interest in the collective's governing body.*
- L. *"Parcel of land" means a single contiguous parcel of real property as identified by the county assessor's parcel number (APN), which is used to identify real property and its boundaries for legal purposes.*
- M. *"Primary caregiver" shall have the same definition as California Health and Safety Code Section 11362.7, as may be amended, which, as of March 2016, defines "Primary Caregiver" as an individual designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include a licensed health care facility, a residential care facility, a hospice, or a home health agency as allowed by California Health and Safety Code Section 11362.7(d)(1)—(3).*
- N. *"Qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., as may be amended, which, as of March 2016, means a person who is entitled to the protections of California Health and Safety Code Section 11362.5. For purposes of this ordinance, qualified patient shall include a person with an identification card, as that term is defined by California Health and Safety Code Section 11362.7 et seq.*
- O. *"Smoking" shall have the same definition as Oakland Municipal Code Chapter 8.30, which as of March 2017 means "inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, weed, or other combustible substance."*

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

5.80.020 - Business permit and application required.

- 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, maintain, participate therein, or to cause or allow to be conducted, operated, or maintained, any dispensary, delivery or delivery only dispensary in or into the City unless there exists a valid business permit in compliance with the provisions of Chapter 5.02 and a permit issued under this chapter. However, entities authorized under OMC Chapter 8.46 must abide by the same requirements imposed herein on dispensaries.
- B. This chapter, and the requirement to obtain a business permit, do not apply to the individual possession or cultivation of medical marijuana for personal use, nor does this chapter and such requirement apply to the usage, distribution, cultivation or processing of medical marijuana by qualified patients or primary caregivers when such group is of three (3) or fewer individuals, and distributing, cultivating or processing the marijuana from a residential unit or a parcel of land. Such associations 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 calendar year, with a minimum of half of the dispensary permits issued each calendar year issued to Equity Applicants. Delivery only dispensaries shall not be subject to these limits. Dispensary permits shall be issued through *an equity permit process done in collaboration with the department of race and equity*.
- D. In addition to the requirements specified in Section 5.02.020 for business permits, the application for a dispensary permit shall set forth the following information:
1. Unless the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public evidence that the proposed location of such dispensary is not within six hundred (600) feet of a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive (but not including any private school in which education is primarily conducted in private homes), another dispensary or youth center, unless the school or youth center moved into the area after the dispensary was issued a permit under this chapter. The distance between facilities shall be measured via path of travel from the closest door of one facility to the closest door of the other facility. The proposed dispensary or delivery only dispensary must be located in a commercial or industrial zone, or its equivalent as may be amended, of the City.

2. A plan of operations that will describe how the dispensary or delivery only dispensary will operate consistent with State law and the provisions of this chapter, including but not limited to:
 - a. Controls to ensure medical marijuana will be dispensed only to qualified patients and primary caregivers, and
 - b. Controls to acquire, possess, transport and distribute marijuana to and from State licensed medical cannabis entities.
 3. A security plan, as a separate document, outlining the proposed security arrangements ~~to deter and prevent unauthorized entrance into areas containing medical cannabis or medical cannabis products and theft of medical cannabis or medical cannabis products at the dispensary,~~ in accordance with minimum security measures required by State law. The security plan shall be reviewed by the Police Department and the Office of the City Administrator and shall be exempt from disclosure as a public record pursuant to Government Code Section 6255(a).
 4. A community beautification plan to reduce illegal dumping, littering, graffiti and blight and promote beautification of the adjacent community.
 5. If the applicant is an Equity Applicant, information documenting such status, as described in Section 5.80.045 and any applicable administrative guidelines.
 6. 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.
 - a. Background checks shall only apply to Dispensary and Delivery-Only Dispensary and they shall be limited to determining whether an Applicant has been convicted or plead nolo contendere or guilty to a violent offense or crime of fraud or deceit as defined by the City Administrator's administrative guidelines.
 - b. Applicants with recent relevant convictions may still petition the City Administrator for reconsideration if they can demonstrate evidence of rehabilitation, such as participation in rehabilitative services and payment of restitution.
 7. An applicant for a dispensary permit shall not be disqualified from receiving a permit under this Chapter on the ground that the applicant also operates or intends to operate in a cannabis-related field by providing additional, non-dispensary activities (such as cultivation).
- E. Applications for dispensaries shall be subject to a public hearing with public notice of the hearing in accordance with Section 5.02.050. Applications for delivery only dispensaries shall not be subject to a hearing requirement. The City

Administrator shall be the investigating official referred to in Section 5.02.030 to whom the application shall be referred. All General 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. There shall be no application fee for Equity Applicants.

- F. All dispensary permits shall be special business permits and shall be issued for a term of one year. No property interest, vested right, or entitlement to receive a future license to operate a medical marijuana business shall ever inure to the benefit of such permit holder.

5.80.025 - Onsite consumption permit.

- A. A dispensary must obtain a secondary onsite consumption permit in order for cannabis to be consumed on the premises of the dispensary.
- B. An onsite consumption permit may be issued at the discretion of the City Administrator to existing dispensaries in good standing following a public hearing conducted according to the requirements of Chapter 5.02 and based on an evaluative point system that takes into consideration the operating history and business practices of the applicant, and any other factors that are deemed necessary to promote the peace, order and welfare of the public. An application for an onsite consumption permit may be denied for failure to meet requirements of the City Building Code, City Fire Code, City Planning Code, this chapter, and/or any violation of State or local law relevant to the operation of dispensaries.
- C. The City Administrator shall establish conditions of approval for each onsite consumption permit, including but not limited to a parking plan, ventilation plan, anti-drugged driving plan, and set hours of operation. Set hours of operation may only be adjusted by submitting a written request to and obtaining approval from the City Administrator's Office.
- D. The permit shall be subject to suspension or revocation in accordance with Section 5.80.070, and the owner/operator shall be liable for excessive police costs related to enforcement.
- E. The application fee and annual fee for the onsite consumption permit shall be specified in the City's Master Fee Schedule.
- F. All onsite consumption permits shall be special business permits and shall be issued for a term of one year. No property interest, vested right, or entitlement to receive a future license to operate a medical marijuana business shall ever inure to the benefit of such permit holder as such permits are revocable at any time with or without cause by the City Administrator subject to Section 5.80.070.

5.80.030 - Regulations.

The City Administrator shall establish administrative regulations for the permitting of dispensaries, delivery only dispensaries, and onsite consumption, and may set

further standards for such operations and activities through administrative guidance and formal regulations. In order to maintain a dispensary or delivery only dispensary permit in good standing, each dispensary and delivery only dispensary must meet all the operating criteria for the dispensing of medical marijuana required pursuant to State law, the City Administrator's administrative regulations, and this Chapter.

5.80.040 - Performance and operating standards.

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

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

- A. No cannabis shall be smoked, inside the premises of the dispensary.
- B. The dispensary shall not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages.
- C. Dispensaries must maintain a staff comprised of at least fifty percent (50%) Oakland residents and twenty-five percent (25%) Oakland residents in census tracts identified by the City Administrator as having high unemployment rates or low household incomes. The City Administrator's guidelines and regulations may provide details of these requirements, including for phasing in this requirement for existing facilities.
- D. Dispensaries and delivery only dispensaries that hire and retain formerly incarcerated current Oakland residents may apply for a tax credit or license fee reduction based on criteria established by the City Administrator.
- E. All dispensary employees and delivery only dispensary employees shall be paid a living wage as defined by OMC Chapter 2.28.
- F. Dispensaries and delivery only dispensaries must implement a track and trace program as prescribed by state law that records the movement of medical cannabis and medical cannabis products in their custody and make these records available to the City Administrator upon request.
- G. No cannabis odors shall be detectable outside of the permitted facility.

5.80.045 – Equity Permit Program.

- A. Equity Criteria. *Applicant ownership/owner must satisfy the following criteria:*

1. *Be an Oakland resident; and*
2. *Have an annual income at or less than 80% Oakland average median income (AMI) adjusted for household size; and*
3. *Either (i) has lived in any combination of Oakland Police Department Beats 2X, 2Y, 6X, 7X, 19X, 21X, 21Y, 23X, 26Y, 27X, 27Y, 29X, 30X, 30Y, 31Y, 32X, 33X, 34X, 5X, 8X and 35X for at least ten of the last twenty years or (ii) was arrested after November 5, 1996 and convicted of a cannabis crime committed in Oakland, California.*

B. Review of Criteria.

1. Proof of Income shall be supported with federal tax returns and at least one of the following documents: two months of pay stubs, current Profit and Loss Statement, or Balance Sheet.
2. *The list below provides the documents acceptable as proof of Oakland residency. A minimum of two (2) acceptable documents are required. All residency documents must list the applicant's first and last name, and the Oakland residence address must match the residence address listed on the cannabis application:*
 - *California driver's record indicating ten consecutive years at an Oakland address;*
 - *California identification card record indicating ten consecutive years at an Oakland address;*
 - *ten consecutive years of property tax billing and payments;*
 - *ten consecutive years of verified copies of state or federal income tax returns where an Oakland address is listed as the primary address;*
 - *utility company billing and payment covering any month in each of the ten consecutive years prior to the application submission.*
3. Proof of Incarceration should be demonstrated through Department of Corrections or Federal Bureau of Prisons documentation.

C. Assistance. Equity Applicants will be eligible for participation in the Equity Assistance program, which will include industry specific technical assistance, business ownership technical assistance, no interest business start-up loans, and waivers from City permitting fees.

D. Initial Permitting Phase.

1. The period of time before the Equity Assistance Program referred to in OMC 5.80.045(C), is established, funded and implement shall be referred to as the Initial Permitting Phase
2. At any point during the Initial Permitting Phase, a minimum of fifty (50) percent of all permits collectively issued under OMC Chapters 5.80 and 5.81 shall be issued to Equity Applicants.

3. In the Initial Permitting Phase, a General Applicant will receive the next available General Applicant permit if it serves as an Equity Incubator by providing free real estate or rent to an Equity Applicant who obtains a medical cannabis permit. In order to receive this permitting priority, the General Applicant must also comply with the following conditions:
 - a. The free real estate or rent shall be for a minimum of three years.
 - b. The Equity Applicant shall have access to a minimum of 1,000 square feet to conduct its business operations.
 - c. The General Applicant must provide any City required security measures, including camera systems, safes, and alarm systems for the space utilized by the Equity Applicant.
 - d. The General Applicant is otherwise compliant with all other requirements of OMC Chapter 5.80 or 5.81.
4. If a General Applicant obtains a medical cannabis permit utilizing the Equity Incubator priority provisions of OMC 5.80.045 (D)(3) and the Equity Applicant ceases its business operations, the General Applicant must:
 - a. Notify the City Administrator within thirty (30) days of the Equity Applicant ceasing its business operations; and
 - b. Re-apply for a medical cannabis permit subject to the permitting restrictions of this Chapter, including OMC 5.80.045 (D)(2).
5. Failure to notify the City Administrator, submit a new application and obtain a new medical cannabis permit as required under OMC 5.80.045 (D) is grounds for revocation and a violation of this chapter.

E. Renewal.

1. In order to continue to receive new Equity Assistance Program services, an Equity Applicant must provide proof that it continues to satisfy the Equity Criteria at the time of its annual permit renewal.
2. An Equity Applicant who no longer satisfies the Equity Criteria but is compliant with all other requirements of OMC Chapter 5.80 or 5.81 will be entitled to renew the permit but will no longer be entitled to receive new Equity Assistance Program services. Such an Applicant may utilize any services previously granted under the Equity Assistance Program, though, such as previously issued loans.

5.80.050 - Regulatory fees; seller's permit.

- A. Unless exempted under OMC 5.80.045, in addition to the dispensary application fee, the dispensary shall pay an annual regulatory fee. The dispensary shall post a copy of the dispensary permit and onsite consumption permit (if applicable)

issued pursuant to this chapter in a conspicuous place in the premises approved as a dispensary at all times.

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

5.80.060 - Sales.

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

5.80.070 - Revocation, suspension and appeals.

The City Administrator's decision to issue or deny a permit shall be subject to an appeal by the Applicant pursuant to Section 5.02.100, except that the appeal authorized in Section 5.02.100 shall be to an independent hearing officer and not the City Council. The request for an appeal must be made in writing within fourteen (14) days of the City Administrator's decision. The decision of the independent hearing officer shall be final and conclusive.

For suspensions or revocations of permits the City shall follow the procedures set forth in Section 5.02.080, except that the City Administrator shall provide fourteen (14) days' notice of the hearing on the proposed action to suspend or revoke the permit. The appeal authorized in Section 5.02.100 shall be to an independent hearing officer, and such request for appeal must be made in writing within fourteen (14) days of the City Administrator's decision. The decision of the independent hearing officer shall be final and conclusive.

5.80.080 - Prohibited operations; nonconforming uses.

- A. Operation of a dispensary or delivery only dispensary in violation of California Health and Safety Code Section 11326.7, et seq., 11362.5, and this chapter are expressly prohibited. It is unlawful for any dispensary or delivery only dispensary in the City, or any agent, employee or representative of such dispensary or delivery only 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, including administrative regulations authorized by this chapter, may be subject to administrative citation, pursuant to Chapters 1.08 and 1.12, and other applicable legal, injunctive or equitable remedies.

5.80.090 - Liability and indemnification.

- A. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this chapter shall not become a personal liability of any public officer or employee of the City.
- B. To the maximum extent permitted by law, the permittees under this chapter shall defend (with counsel acceptable to the City), indemnify and hold harmless the City of Oakland, the Oakland City Council, and its respective officials, officers, employees, representatives, agents and volunteers (hereafter collectively called City) from any liability, damages, actions, claims, demands, litigation, loss (direct or indirect), causes of action, proceedings or judgment (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "action") against the City to attack, set aside, void or annul, any medical cannabis-related approvals and actions and comply with the conditions under which such permit is granted, if any. The City may elect, in its sole discretion, to participate in the defense of said action and the permittee shall reimburse the City for its reasonable legal costs and attorneys' fees.
- C. Within ten (10) calendar days of the service of the pleadings upon the City of any action as specified in Subsection B. above, the permittee shall execute a letter of agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the letter of agreement shall survive termination, extinguishment or invalidation of the medical cannabis-related approval. Failure to timely execute the letter of agreement does not relieve the applicant of any of the obligations contained in this section or any other requirements or performance or operating standards that may be imposed by the City.

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

- A. Permittees must provide the City Administrator with access to any licensed dispensary during normal business hours to verify compliance with this chapter.
- B. Permittees must provide the City Administrator with access to any and all financial information regarding the dispensary at any time, as needed to conduct an audit of the permittees under this chapter to verify tax compliance under Chapter 5.80 and/or gross receipts tax requirements.
- C. The City Administrator is authorized to examine the books, papers, tax returns and records of any permittee for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax due.
- D. The City Administrator is authorized to examine a person under oath, for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax, registration or permit fees due under this chapter. In order to ascertain the business tax, registration or permit fees due under this chapter, the City Administrator may compel, by administrative

subpoena, the production of relevant books, papers and records and the attendance of all persons as parties or witnesses.

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

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

SECTION 5. Reporting. City staff shall report back to City Council *in July 2017* to provide information about the implementation, review of effectiveness of the included standards, including equity standards, issues that have arisen, if any, and whether any changes are recommended.

SECTION 6. California Environmental Quality Act. The City Council independently finds and determines that this action is exempt from CEQA pursuant to CEQA Guidelines sections 15061(b)(3) (general rule), 15183 (projects consistent with a community plan, general plan, or zoning), 15301 (existing facilities), 15308 (actions by regulatory agencies for protection of the environment) and 15309 (inspections), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance. The Environmental Review Officer or designee shall file a Notice of Exemption with the appropriate agencies.

SECTION 7. Severability. The provisions of this Ordinance are severable, and if any section, subsection, sentence, clause, phrase, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is for any reason held to be invalid, preempted by state or federal law, or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. It is hereby declared to be the legislative intent of the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

SECTION 8. Ordinance Effective Date. Pursuant to Section 216 of the Charter of the City of Oakland, this Ordinance shall become effective immediately upon final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption by the Council of the City of Oakland.

SECTION 9. General Police Powers. This Ordinance is enacted pursuant to the City of Oakland's general police powers, including but not limited to Sections 106 of the Oakland City Charter and Section 7 of Article XI of the California Constitution.

2097649

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

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 CLARIFY AND STRENGTHEN THE CITY'S EQUITY PERMIT PROGRAM AND PROVIDE ADDITIONAL UPDATES CONSISTENT WITH STATE LAW

This ordinance amends Oakland Municipal Code Chapter 5.80 by (1) redefining the City's Equity Permit Program, (2) modifying the qualifications for an equity applicant, (3) adding new residency and equity incubator requirements for general applicants, and (4) making other changes consistent with state law.