

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2017 MAR 17 AM 9:17

APPROVED AS TO FORM

**DRAFT**

CITY ATTORNEY'S OFFICE

# OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

## ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.81, MEDICAL CANNABIS CULTIVATION FACILITY 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); 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 Medical Marijuana 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**, 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**, 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; 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 reported to the Cannabis Regulatory Commission reflect disproportionately higher arrests for cannabis offenses in certain police beats; and

**WHEREAS**, individuals arrested or 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 a Cultivation, Manufacturing, Distribution, Testing, and Transporting Equity Permit Program; and

**WHEREAS**, in May 2016, the City Council adopted amendments to O.M.C. 5.81 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 5.81; 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 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 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 5.81 of the Oakland Municipal Code.**  
Oakland Municipal Code Chapter 5.81 is hereby amended as follows. Additions are shown in double underline 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 disparities in enforcement of drug laws, 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.~~
- B. 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.
- C. 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.
- D. The primary purpose and intent of this chapter is to regulate 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 Cannabis 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 individual or business entity ~~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.
- 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.
- E. "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."
- F. "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 more than forty eight (48) ounces of dried cannabis and/or to plant, grow, harvest, dry, cure, grade or trim cannabis in an area greater than ninety-six (96) two-hundred and fifty square feet of total area within one parcel of land.~~
- H. "Distribute" 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.
- I. "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.
- J. "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 five-ten of the last ten-twenty years or (ii) was arrested after November 5, 1996 and convicted of a cannabis crime committed in Oakland; and
- K. "General Applicant" shall mean an Applicant other than -an Equity Applicant-under this chapter whose ownership/owner has lived in Oakland for three years.
- 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. "Manufacture" as used only in this chapter shall mean to produce, prepare, propagate, or compound 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.

- N. "Medical cannabis collective" as used only in this chapter shall be the same, and as may be amended, as is 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. "Ownership" as used only in this chapter 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.
- Q. "Parcel of land" as used only in this chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.
- R. "Permittees" as used only in this chapter are individuals or businesses that have obtained a permit under this chapter to cultivate, distribute, manufacture, test or transport.
- S. "Primary caregiver" as used only in this chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.
- T. "Qualified patient" as used only in this chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.
- U. "Testing" as used only in this chapter shall mean the conducting of analytical testing of cannabis, cannabis-derived products, hemp, or hemp-derived products.
- V. "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.
- W. "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.
- X. "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.

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.

W. ~~"General Application permit" shall mean all applications issued under OMC Chapter 5.81 with the exception of cultivation, manufacturing, distribution, testing, and transporting equity permits issued under Section 5.81.030.~~

**5.81.030 – Business permit and application required.**

A. Except for hospitals and research facilities that obtain written permission for cannabis cultivation under federal law, it is unlawful to cultivate, distribute, manufacture, test or transport 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.

B. The City Administrator shall issue, as detailed below, special business permits for medical cannabis cultivation, distributing, manufacturing, testing and transporting. All General Applicants shall pay any necessary fees including without limitation application fees, inspection fees and regulatory fees that may be required hereunder.

C. All cultivation, distribution, manufacturing, testing and transporting 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 5.81.120.~~

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

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

F. No proposed use 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) ~~nor situate in an area other than as prescribed below unless the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public.~~ 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.

G. An applicant for a permit under this chapter shall not be disqualified from receiving a permit on the ground that the applicant also operates or intends to operate in an additional cannabis-related field, such as a dispensary.

H. ~~Cultivation, Manufacturing, Distribution, Testing, and Transporting Equity Permit Program Criteria. Applicant must have at least one member who meets all of the following criteria:~~

~~1. Be an Oakland resident who:~~

~~a. Resides for at least two (2) years prior to the date of application in Oakland Police Department Beats 26Y, 30X, 30Y, 31Z, 32Y, and 34X (Oakland Police Department Beat Map is attached and incorporated herein by reference); or those individuals who, within the last ten (10) years, have been previously incarcerated for marijuana-related offense as a result of a conviction arising out of Oakland, California;~~

~~b. Maintains not less than a fifty percent (50%) ownership in the dispensary applicant entity, partnership, limited liability corporation, collective, corporation, worker cooperative or other recognized ownership entity; and~~

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

#### **5.81.040 - Cultivation, distribution, testing and transporting of medical marijuana.**

A. Proposed cultivation, distribution, testing or transporting locations 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, testing or transporting facility permittee.

B. The aforementioned location restrictions shall not apply to existing dispensary cultivation facilities located at a retail location that are compliant with building and fire codes. ~~if the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public.~~

C. The maximum size of any areas of cultivation shall not exceed any limitations or restrictions set forth in State law.

#### **5.81.045 - Manufacturing of medical marijuana.**

A. Proposed locations for manufacturing of medical cannabis products using nonvolatile solvents shall be in areas where "custom manufacturing industrial," or its 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.

**Applicants seeking to engage in the production of infused edible cannabis products and topicals may be located in commercial zones where commercial kitchens are allowed.**

B. Proposed locations for manufacturing of medical cannabis products using volatile solvents shall be in areas where "general manufacturing industrial" or its equivalent use, is permitted by right under the Oakland Planning Code, as may be amended.



#### 5.81.050 - Application for permit.

- A. All General applicants shall pay an application fee as specified in the Master Fee Schedule. There shall be no application fee for Equity Applicants.
- B. All applicants shall submit written information to the City Administrator 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, –, applicant complaint history, criminal background checks, plan for minimizing environmental impacts, 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.
  - 1. Background checks shall only apply to 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.
  - 2. 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.
- C. 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 these 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.

#### 5.81.060 - Equity Permit Program.

- A. Equity Criteria. Applicant ownership/owner must satisfy the following criteria:
  - 1. Is an Oakland resident; and
  - 2. Has ~~Have~~ an annual income at or less than 80% Oakland Average Median Income (AMI) Adjusted for household size; and
  - 4. 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 five ~~ten~~ of the last ~~ten~~ ~~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. 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 5.81.060(C) is established, funded and implemented 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 5.81.060 (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.
  - 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 services under the Equity Assistance Program. Such an Applicant may utilize any services previously provided granted under the Equity Assistance Program, though, such as previously issued loans.

#### **5.81.070 - Operating and performance standards.**

- A. 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 any negative effects and enhance the benefits of permitted facilities on the surrounding community.
- B. The following standards shall be included in the City Administrator's regulations:
  - 1. No cannabis or cannabis odors shall be detectable by sight or smell outside of a permitted facility.
  - 2. Permitted facilities must install security cameras capable of documenting activity inside and outside the facility, as determined by the Oakland Police Department.

3. Permitted facilities must implement a community beautification plan to reduce illegal dumping, littering, graffiti and blight and promote beautification of the adjacent community.

~~Permitted facilities shall maintain a staff that is at least fifty percent (50%) Oakland residents and at least twenty five percent (25%) Oakland residents in census tracts identified by the City Administrator as having high unemployment rates. The City Administrator may promulgate standards for phasing in this requirement for existing facilities.~~

4. Permitted facilities that hire and retain formerly incarcerated Oakland residents may apply for a tax credit or license fee reduction based on criteria established by the City Administrator.
  5. All employees shall be paid a living wage as defined by OMC Chapter 2.28.
  6. Permitted facilities 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.
- C. 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.
- 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 5.81 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.

The City Administrator is authorized to examine a person under oath, for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax, registration or permit fees due under this chapter. In order to ascertain the business tax, registration or permit fees due under this chapter, the City Administrator may compel, by administrative subpoena, the production of relevant books, papers and records and the attendance of all persons as parties or witnesses.

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

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

#### **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 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 strictly 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.

#### **5.81.101 - Personal use 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 thirty-two (32) 250 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 ~~thirty-two (32)~~ 250 square feet inside 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 two hundred sixteen (216) cannabis/marijuana plants within a maximum growing area of ninety-six (96) square feet indoor or sixty (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 (3) 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 conform to 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 residence 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 ~~forty eight (48) ounces of dried cannabis, and/or more than ninety six (96) two-hundred and fifty (250)~~ 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;
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 (6) 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 (6) 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. Any cultivating, distributing, manufacturing, testing, or transporting without a permit under this chapter is expressly prohibited. No use that purports to have cultivated, distributed, manufactured, tested or transported 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 submit a petition to the City Administrator's Office for a determination of good standing prior to 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 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.

**SECTION 4. 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 provide~~ing 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 5. 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 6. 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 7. 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 8. 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: \_\_\_\_\_



## NOTICE AND DIGEST

### **ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.81, MEDICAL CANNABIS CULTIVATION FACILITY 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 5.81 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, (4) allowing production of infused edible cannabis products and topicals in allowable commercial zones/kitchens, and (5) 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 5.81, MEDICAL CANNABIS CULTIVATION FACILITY 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"); 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 Medical Marijuana 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**, 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**, 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; 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 reported to the Cannabis Regulatory Commission reflect disproportionately higher arrests for cannabis offenses in certain police beats; and

**WHEREAS**, individuals arrested or 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 a Cultivation, Manufacturing, Distribution, Testing, and Transporting Equity Permit Program; and

**WHEREAS**, in May 2016, the City Council adopted amendments to O.M.C. 5.81 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 5.81; 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 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 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 5.81 of the Oakland Municipal Code.**  
Oakland Municipal Code Chapter 5.81 is hereby amended as follows.

**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 disparities in enforcement of drug laws, 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 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.
- C. 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.
- D. The primary purpose and intent of this chapter is to regulate 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 Cannabis 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 individual or business entity 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.
- 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.
- E. "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."
- F. "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 in an area greater than two-hundred and fifty square feet of total area within one parcel of land.
- H. "Distribute" 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.
- I. "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.
- J. *"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; and*
- K. "General Applicant" shall mean an Applicant other than an Equity Applicant *whose ownership/owner has lived in Oakland for three years.*
- 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. "Manufacture" as used only in this chapter shall mean to produce, prepare, propagate, or compound 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.
- N. "Medical cannabis collective" as used only in this chapter shall be the same, and as may be amended, as is 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. "Ownership" as used only in this chapter 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.
- Q. "Parcel of land" as used only in this chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.
- R. "Permittees" as used only in this chapter are individuals or businesses that have obtained a permit under this chapter to cultivate, distribute, manufacture, test or transport.
- S. "Primary caregiver" as used only in this chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.
- T. "Qualified patient" as used only in this chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.
- U. "Testing" as used only in this chapter shall mean the conducting of analytical testing of cannabis, cannabis-derived products, hemp, or hemp-derived products.
- V. "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.
- W. "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.
- X. "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.
- 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.



#### **5.81.030 – Business permit and application required.**

- A. Except for hospitals and research facilities that obtain written permission for cannabis cultivation under federal law, it is unlawful to cultivate, distribute, manufacture, test or transport 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.
- B. The City Administrator shall issue, as detailed below, special business permits for medical cannabis cultivation, distributing, manufacturing, testing and transporting. All General Applicants shall pay any necessary fees including without limitation application fees, inspection fees and regulatory fees that may be required hereunder.
- C. All cultivation, distribution, manufacturing, testing and transporting 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.
- D. Cultivation, distribution, manufacturing, testing, and transporting permits shall only be granted to entities operating legally according to State law.
- E. More than one medical cannabis operator may situate on a single parcel of land, however, each operator will be required to obtain a permit for their applicable permit category.
- F. No proposed use 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). 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.
- G. An applicant for a permit under this chapter shall not be disqualified from receiving a permit on the ground that the applicant also operates or intends to operate in an additional cannabis related field, such as a dispensary.

#### **5.81.040 - Cultivation, distribution, testing and transporting of medical marijuana.**

- A. Proposed cultivation, distribution, testing or transporting locations 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, testing or transporting facility permittee.
- B. The aforementioned location restrictions shall not apply to existing dispensary cultivation facilities located at a retail location that are compliant with building and fire codes.

- C. The maximum size of any areas of cultivation shall not exceed any limitations or restrictions set forth in State law.

**5.81.045 - Manufacturing of medical marijuana.**

- A. Proposed locations for manufacturing of medical cannabis products using nonvolatile solvents shall be in areas where "custom manufacturing industrial," or its 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.

*Applicants seeking to engage in the production of infused edible cannabis products and topicals may be located in commercial zones where commercial kitchens are allowed.*

- B. Proposed locations for manufacturing of medical cannabis products using volatile solvents shall be in areas where "general manufacturing industrial" or its equivalent use, is permitted by right under the Oakland Planning Code, as may be amended.

**5.81.050 - Application for permit.**

- A. All General applicants shall pay an application fee as specified in the Master Fee Schedule. There shall be no application fee for Equity Applicants.
- B. All applicants shall submit written information to the City Administrator 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, applicant complaint history, criminal background checks, plan for minimizing environmental impacts, 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.
1. Background checks shall only apply to Applicants and they shall be limited to determining whether an Applicant has been convicted or plead nolo contender or guilty to a violent offense or crime of fraud or deceit as defined by the City Administrator's administrative guidelines.
  2. 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.
- C. 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 these 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.

**5.81.060 - Equity Permit Program.**

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

1. Is an Oakland resident; and
2. Has 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 5.81.060(C) is established, funded and implemented 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 5.81.060 (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.
  - 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 services under the Equity Assistance Program. Such an Applicant may utilize any services previously

provided granted under the Equity Assistance Program, though, such as previously issued loans.

**5.81.070 - Operating and performance standards.**

- A. 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 any negative effects and enhance the benefits of permitted facilities on the surrounding community.
- B. The following standards shall be included in the City Administrator's regulations:
  - 1. No cannabis or cannabis odors shall be detectable by sight or smell outside of a permitted facility.
  - 2. Permitted facilities must install security cameras capable of documenting activity inside and outside the facility, as determined by the Oakland Police Department.
  - 3. Permitted facilities must implement a community beautification plan to reduce illegal dumping, littering, graffiti and blight and promote beautification of the adjacent community.
  - 4. Permitted facilities that hire and retain formerly incarcerated Oakland residents may apply for a tax credit or license fee reduction based on criteria established by the City Administrator.
  - 5. All employees shall be paid a living wage as defined by OMC Chapter 2.28.
  - 6. Permitted facilities 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.
- C. 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.
- 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 5.81 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.

The City Administrator is authorized to examine a person under oath, for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax, registration or permit fees due under this chapter. In order to ascertain the business tax, registration or permit fees due under this chapter, the City Administrator may compel, by administrative subpoena, the production of relevant books, papers and records and the attendance of all persons as parties or witnesses.

- D. Every permittee is directed and required to furnish to the City Administrator, the means, facilities and opportunity for making such financial examinations and investigations.
- E. Any permittee refusal to comply with this Section shall be deemed a violation of this chapter, and administrative subpoenas shall be enforced pursuant to applicable law.

#### **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 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 strictly 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.

#### **5.81.101 - Personal use and individual limits for non-licensed medical cannabis cultivation.**

A collective or cooperative of qualified patients or primary caregivers, may cultivate medical cannabis covering an area of no more than 250 square feet inside a residential unit or if in a nonresidential building 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 (3) 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 conform to 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 residence 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 two-hundred and fifty (250) 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;
  - 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 (6) 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 (6) 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.

#### **5.81.110 - Prohibited operations.**

- A. Any cultivating, manufacturing, testing, or transporting without a permit under this chapter is expressly prohibited. No use that purports to have cultivated, distributed, manufactured, tested or transported 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.
- 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 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.

**SECTION 4. 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 5. 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 6. 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 7. 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 8. 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: \_\_\_\_\_

2097651

## NOTICE AND DIGEST

### **ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.81, MEDICAL CANNABIS CULTIVATION FACILITY 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 5.81 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, (4) allowing production of infused edible cannabis products and topicals in allowable commercial zones/kitchens, and (5) making other changes consistent with state law.