MEETING OF THE MEDICAL CANNABIS COMMISSION

City Hall
2180 Milvia Street
Redwood Room (Sixth Floor)

Thursday, June 2, 2016
2:00 PM

AGENDA

I. Call to Order
A. Roll Call and Ex Parte Communication Disclosures
B. Changes to Order of Agenda

II. Public Comment

III. Approval of Minutes
A. May 5, 2016 Draft Action Minutes (Attachment)

IV. Planning Staff Report

V. Chairperson's Report

VI. Subcommittee Report

VII. Discussion and Action Items
A. Possible change to July 7th meeting date.
B. Discuss action taken at May 18, 2016 Planning Commission meeting regarding expansion of cultivation beyond the M District. One attachment:
   1. Draft memo from Commissioner Rice to respond to Planning Commission discussion.
C. Work Program: Discuss and vote on draft work plan. One attachment:
   1. 2016-2017 Draft Work Plan
D. Discuss and possibly vote on selection process for cultivation businesses to forward to Council. One attachment:
   1. Cultivation Subcommittee: Proposed Cultivation Permit Procedures
E. Discuss delivery services: what uses should be included in a definition of a "delivery-only dispensary" and the process for considering changes to the Municipal Code and Zoning Ordinance.
F. Vote on MCC representative for June 15, 2016 Planning Commission meeting (Increasing dispensaries from 4 to 6).

VIII. Information Items (*In compliance with the Brown Act, no action may be taken on these items. However, they may be discussed and placed on a subsequent agenda for action.)*
A. Summary of Oakland's new medical cannabis regulations.
B. New City of Oakland ordinance regarding dispensaries (5.80)
C. New City of Oakland ordinance regarding other medical cannabis businesses (5.81)

IX. Correspondence
A. Bianca Bleshing e-mail regarding subcommittee review of the M District

X. Adjournment

Berkeley Medical Cannabis Commission website: http://www.cityofberkeley.info/medicalcannabis/)
Medical Cannabis Commission Secretary: Elizabeth Greene, 2120 Milvia Street, 2nd Floor, Berkeley CA 94704.
Phone: 510-981-7484 EGreene@cityofberkeley.info

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Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Planning and Development Department located at 2120 Milvia Street, Berkeley CA. Please contact the Commission Secretary for further information.

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date.

Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

MEETING OF THE MEDICAL CANNABIS COMMISSION

City Hall
2180 Milvia Street
Redwood Room (Sixth Floor)

Thursday, May 5, 2016
2:00 PM

DRAFT ACTION MINUTES

I. Call to Order – 2:07

A. Roll Call and Ex Parte Communications Disclosures

Commissioners present: Cooper, Carlisle, Ferguson-Riffe, Lampach (arrived 2:10), Pappas, Rice, Tims.

Ex Parte Communications: None

Absent: Jones.

Staff present: Secretary Elizabeth Greene

B. Changes to Order of Agenda

Chair Pappas suggested moving the general public comment to after the subcommittee report. Chair Pappas also suggested moving Item B to the end of the agenda. Commission voted to approve this change to the agenda 6-0-0-2. (Ayes: Cooper, Carlisle, Ferguson-Riffe, Pappas, Rice, Tims. Noes: None. Abstain: none. Absent: Lampach, Jones.)

III. Approval of April 7, 2016 Action Minutes

Motion/second to approve the minutes (Cooper/Pappas. The motion carried 6-0-0-2. (Ayes: Cooper, Carlisle, Ferguson-Riffe, Pappas, Rice, Tims. Noes: None. Abstain: None. Absent: Lampach, Jones.)

(Lampach arrived at 2:10)

IV. Planning Staff Report

Secretary Greene made the following announcements:

- There are no excused absences.
- With the open seat, the number of appointed members of the MCC is 8. The quorum for action is 5 votes.
- Update on dispensary application process: The Council will meet on Tuesday, May 10th to discuss the fourth dispensary (Item 28). Applicants will be given 3 minutes to speak.
- Six information items, including the letter to the Mayor regarding his appointment to the MCC, articles from the East Bay Express, a flyer regarding an energy public workshop, and information from the Bureau of Medical Marijuana Regulation (BMMR) stakeholder meeting.
- One late item: E-mail from Chair Pappas to Rick Auerbach of WEBAIC.

V. Chairperson's Report

Chair Pappas reviewed local news, including the news that the federal government dropped the lawsuit against Harborside Dispensary, and that Oakland approved eight more dispensaries. He thanked cultivators and dispensary applicants for attending the MCC meetings.

VI. Subcommittee Reports

Chair Pappas gave the report. The subcommittee wants to meet with West Berkeley Artisans and Industrial Companies (WEBAIC) regarding expanding cultivation beyond the M district and perhaps tour west Berkeley. Commissioner Rice suggested that there are three cultivation tracks that could be worked on simultaneously: 1) putting BMC cultivation changes before Council; 2) expanding cultivation beyond the M District; and 3) finalizing a selection process for cultivation businesses.

II. Public Comment

None.

VII. Discussion and Action Items

A. Discuss action taken at March 15th, 2016 Council meeting regarding BMC changes regarding cultivation and vote on possible action (continued from April 7, 2016 meeting).

Public Comment: One public comment, asking whether the BMC ordinance could be revised to expand cultivation beyond the M District. Staff explained that the language limiting cultivation to the M District is in the Zoning Ordinance, so the Planning Commission must make a recommendation to Council before the Council can change it.

Discussion: The MCC still does not know what state regulations are concerning the Council. It might take years for the MMSRA regulations to be finalized. Commissioner Cooper volunteered to draft a letter to the Council asking them to take action on the proposed ordinance. It was also suggested that all MCC commissioners talk to their councilmembers to determine what the concerns are.

Motion/second for Commissioner Cooper to draft a letter to the Council prior to the next MCC meeting. The letter would be reviewed by Commissioners Tims, Pappas and Carlisle (Rice/Tims). The motion carried 7-0-0-1. (Ayes: Cooper, Carlisle, Ferguson-Riffe, Lampach, Pappas, Rice, Tims. Noes: None. Abstain: None. Absent: Jones.)

Commisioner Rice suggested that the MCC send a representative to the Council's Agenda subcommittee to advocate for the ordinance to be placed on a Council agenda. Staff is not sure when the subcommittee meets.

Motion/second for up to two MCC members to an Agenda subcommittee meeting to make the case for ordinance to be placed on Council agenda. At least one of the MCC members should be Commissioners Cooper or Lampach (Rice/Carlisle). The motion carried 7-0-0-1. (Ayes: Cooper, Carlisle, Ferguson-Riffe, Lampach, Pappas, Rice, Tims. Noes: None. Abstain: None. Absent: Jones.)

C. Discuss AB 2516 regarding Cottage Industry cultivation.
Public Comment: One public comment, giving an update of AB 2516's status, and Oakland's action regarding cottage industries. He also explained that 50% - 80% of all medical cannabis is acquired from mom and pop growers, and that this has to be addressed in order to prevent large, non-local growers from taking over the industry.

Discussion followed regarding the growing limits proposed in AB2516 for "specialty cottage" grows. Staff was asked to provide information comparing residential collectives to cottage industries.

D. Vote on MCC representatives for May 10, 2016 Council meeting (Dispensary selection process) and May 18, 2016 Planning Commission meeting (Expansion of cultivation beyond the M District).
Public Comment: None.

Discussion: Chair Pappas volunteered to go to the Council meeting, and Commissioner Rice was recommended to attend the Planning Commission meeting.

Motion/second for Chair Pappas to represent the MCC at the 5-10-16 Council meeting and for Comissioners Rice and Lampach to represent the MCC at the 5-18-16 Planning Commission meeting (Lampach/Cooper). The motion carried 7-0-0-1. (Ayes: Cooper, Carlisle, Ferguson-Riffe, Lampach, Pappas, Rice, Tims. Noes: None. Abstain: None. Absent: Jones.)

B. Work Program: Discuss and vote on draft work plan.
Public Comment: Two public comments, suggesting that the impact of legalization and equity access be included in the work program.

The following issues were discussed:

- Keeping the work program focused on <u>medical</u> cannabis issues;
- Developing ordinance language for nurseries;
- The need for ordinance language for delivery services;
- The need to include "Implementation of state law" as a work program item; and
- The need to include the annotated bibliography on the list.

Staff recommended that the list be limited to those items that can reasonably be expected to be completed, and that only items that will produce a product be included on the list.

Motion/second to continue the Work program to the June meeting (Tims/Ferguson-Riffe). The motion carried 7-0-0-1. (Ayes: Cooper, Carlisle, Ferguson-Riffe, Lampach, Pappas, Rice, Tims. Noes: None. Abstain: None. Absent: Jones.)

X. Adjournment
Motion to adjourn at 4:05.

One late item was distributed at the meeting:

a. Pappas: E-mail to Rick Auerbach of WEBAIC including the MCC rationale for expanding cultivation beyond the M District and possible meeting to discuss the issue.

Commissioners in attendance: 7
Members of the public in attendance: Approximately 12
Public speakers: 4
Length of meeting: 1 hour, 58 minutes

APPROVED: _____
Elizabeth Greene
Medical Cannabis Commission Secretary

DRAFT: Some IDEAS/ THOUGHTS for inclusion in an "Important Facts – Part V" Document

Follow-up to 5/18/16 Planning Commission (PC) decision to investigate adding the MM District only (not the MU-LI) as an additional eligible district for cultivation

Maybe send to PC, or BCC, or City Planning Staff, or present to PC under "topics not on the agenda"

1. The MM District only adds 10 more parcels under 5k SqF, and 22 more parcels in total, per Attachment 4, Item 10 to 5/18/16 PC Agenda

- M: 72 Parcels, with 61 under 5k SqF
- MM: 22 Parcels, with 10 under 5k SqF
- MU-LI: 338 Parcels, with 296 under 5k SqF
- Right now: the MM District has X vacancies; M District has one vacancy, and the landlord will not rent to cannabis businesses

NOTE TO MCC: We need to find a friendly realtor who will track vacancies, willingness to lease to cannabis clients (some landlords are), and who gets new leases in the Manufacturing Districts.

2. 180k SqF is 3% of the Manufacturing Districts Inventory (180,000/5,117,653) per Attach 18

3. In land Area, 4.1 acres (180k SqF) **is 0.7% of all four Manufacturing Districts, and**

- 4.4 % of M
- 2% of M + MM
- 1% of M+ MM + MU-LI

Berkeley 12,162 acres, 180k=4.1 acres, M=94 acres, MM=79 acres, MU-LI=300 acres, MUR-120 acres

4. Some cannabis leases will not take new space/not all vacancies will be leased for cananbis

- It is likely underground cannabis cultivators in the Manufacturing Districts will seek Berkeley cultivation licenses, once they are available. These cultivators will not be leasing new space and, therefore, "taking space" from another business category.
- In addition, some landlords will remain reluctant to rent to cannabis businesses even if CA legalizes recreational cannabis. Growing cannabis will still be illegal at the federal level. The same federal penalties will apply to landlords.

5. Emeryville decision not to cultivate due to lack of space does not compare to Berkeley

- Berkeley 15.34 times the size of Emeryville
- Emeryville is 793 acres.
- Berkeley is 12,162 acres

6. Taxes stay in Berkeley if a local cultivator sells to a buyer outside Berkeley (??)

7. It will take the state a long time to sort out cannabis policies after the November 2016 election. The 2015 Blue Ribbon Panel on Marijuana Policy indicated follow-up decisions might need to go back to the voters in subsequent elections.

Examples of past time frames:

- 21 years after CA legalized medical cannabis in 1996, state developed regulations will be effective 2017.
- 10 years after Berkeley voters passed Msr T in 2006, the first visible action to voters was the recent 2016 BCC awarding of a fourth dispensary.

8. Other ideas

drafted by Karen

TO: **Medical Cannabis Commission**

FROM: **Elizabeth Greene, Secretary**

SUBJECT: **Draft 2016-2017 Work Program**

DATE: **June 2, 2016**

In accordance with Chapter V.A of the City of Berkeley Commissioners' Manual, the Commission voted __-__ at the _____, 2016 meeting to adopt the following work plan:

1. **Cultivation regulations**
   a. Develop a selection process, as needed, for cultivation businesses.
   b. Advocate for passage of BMC Chapter 12.25 and related changes to the medical cannabis ordinances in the BMC
   c. Advocate for expanding the areas where cultivation is permitted.

   Products:
   - Draft a selection process for Council consideration (if deemed necessary)
   - Develop information for Planning Commission and Council as necessary.

   Timing: Short term (selection process and BMC Chapter 12.25) (May 2016 – July 2016) and On-going (June 2016 – June 2017)

2. **Delivery services**
   a. Research how delivery services are regulated in other cities
   b. Discuss options with City Attorney
   c. Develop ordinance to forward to Council

   Product:
   - Draft recommendations to staff for incorporation into an ordinance (12.27)
   - Forward proposed ordinance to Council for consideration

   Timing: Moderate (July 2016 – January 2017)

3. **Cottage cultivation industry**
   a. Research how the State will regulate these businesses
   b. Discuss options with City Attorney and staff
   c. If necessary, draft ordinance to forward to Council

   Product:
   - Draft recommendations to staff for incorporation into an ordinance (12.25)
   - Forward ordinance to Council for consideration

   Timing: Long range (October 2016 – January 2017)

4. **Equity access**
   a. Research how whether other jurisdictions have address this issue
   b. Discuss options with City Attorney and staff
   c. Determine the best way to address this issue in Berkeley

Product:

- Possible ordinance amendment to forward to Council for consideration (12.23)

Timing: Moderate to Long range (June 2016 – July 2017)

5. **Annotated bibliography of medical cannabis research and/or impacts of cultivation**
   a. To inform the Council and the public about the medical benefits of medical cannabis and the expected consequences of medical cannabis cultivation in industrial areas of Berkeley.

   Product:

   - Written bibliography for submission to Council

   Timing: Long range (November 2016 - February 2017)

6. **Consider ways to support patients in Federal housing**
   a. Research how whether other states have raised this issue with the Federal government
   b. Determine the best way to communicate about this issue with the federal government

   Product:

   - Letter to federal representative?

   Timing: Long range (May 2017 – July 2017)

Considered, but not included:

- Consider impact of legalization of recreational cannabis on medical cannabis.

MEDICAL CANNABIS COMMISSION, CULTIVATION SUBCOMMITTEE.

PROPOSED CULTIVATION PERMIT PROCEDURES

1.) A letter from the city council stating that cannabis cultivation with a city business license is approved in the “M” zone and the bearer of this letter can enter into a legal contract with the landlord without fear of reprisal by city officials or city law enforcement.
2.) All applicants will apply for a preliminary building inspection permit for cultivation of cannabis based on standard cultivation criteria.
   A. Plans for Buildout of proposed cultivation site.
   B. Plans will include proposed provisions for safety and security of crops and personnel.
3.) Upon notification of the applicants involvement (in the permit acquisition process) to the landlord and his/her approval of renting/leasing the site additional plans will be submitted by the applicant for approval by B&I. If approved an AUP will be issued.
4.) After the initial set capacity (40-60%) then smaller cultivators will be given priority. The MCC will make recommendations to the council on the upper limits of the small cultivators square footage allowances.

Oakland's New Medical Cannabis Regulations

By Robert Selna

05/19/2016

On May 17, 2016, the Oakland City Council approved new detailed regulations intended to mainstream medical cannabis retail and commercial operations and pave the way for the City to accept cannabis business permit applications within the next few months. Oakland's comprehensive new rules cover storefront and delivery-only dispensaries, and cultivation, manufacturing, distribution, testing and transportation facilities.

The legislation enables Oakland to maintain some local control over its medical marijuana laws, which mirror state regulations approved in January 2016, but that are not scheduled to kick in until 2018. The Oakland regulations also respond to increasing demand from start-up business owners eager to capture expected large profits as the medical cannabis industry continues to be legitimized.

Oakland's updated medical cannabis laws build on existing local ordinances that were never fully implemented due to questions about federal law enforcement. Marijuana remains illegal under federal law, but the U.S. Department of Justice has pledged deference to states with robust regulatory systems that comply with new federal guidelines.

The City Council is expected to give final approval to the new Oakland regulations within the next few weeks. Substantive legislative changes added at the first Council reading delayed approval. The changes related to 50% local hire, with an emphasis on high-unemployment neighborhoods, and "equity" provisions, which include the following: Half of all cannabis permits are reserved for Oakland residents who have lived for at least two years in an East Oakland police beat with a high number of marijuana arrests in 2013, or for individuals who were incarcerated in Oakland for marijuana-related crimes within the last decade.

The local hire and equity requirements have caused concern among existing and prospective medical cannabis business owners who believe the rules may discriminate against residents in other parts of the City and may create difficulties in structuring viable businesses.

Once the legislation is finalized, the City expects to complete administrative regulations to clarify issues raised by the legislation and to start accepting applications within 90 days. Below are the highlights.

Dispensary Regulations

- **Allow for storefront and delivery-only dispensaries**
- **No more than 8 new permits issued per year for storefronts; delivery-only are unlimited**
- **Generally, dispensaries are prohibited within 600 feet of a K-12 school**
- **Must be located in commercial or industrial zone, or equivalent**
- **Proximity to other dispensaries is discretionary**
- **Public hearing required for storefronts; no public hearing for delivery-only**
- **Non-smoking, on-site consumption allowed at storefronts with an additional permit**
- **Local hire and "equity" rules apply to ownership and employment practices**
- **Proposed Fees: $3,644 for application; $2,813 for on-site consumption; $500 renewal**

Cultivation, Manufacturing, Distribution, Transportation and Testing Facility Regulations

- **Unlimited number of permits issued each year**
- **Permits must be renewed annually**
- **Facilities not open to the public**
- **Generally, facilities are prohibited within 600 feet of a K-12 school**
- **Facilities must implement a "track-and-trace" program that records the movement of medical cannabis in their custody**
- **More than one use and/or operator may situate on a single parcel, but each use and/or operator must obtain a permit for each use category**
- **Local hire and "equity" rules apply to ownership and employment practices**
- **Zoning: Cultivation, Distribution, Transportation and Testing Facilities**
  - **Allowed only in areas where the Oakland Planning Code permits by right "light manufacturing industrial," "research and development," or their equivalent use**
- **Zoning: Manufacturing**

- **Nonvolatile solvents: Locations limited to areas where "custom manufacturing industrial," or its equivalent use, is permitted by right**
- **Volatile solvents: Locations limited to areas where "general manufacturing industrial," or its equivalent use is permitted by right**

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2016 MAY -5 PM 4:45

REVISED AT COUNCIL 5/3/16

APPROVED AS TO FORM

CITY ATTORNEY'S OFFICE

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, 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 that were formerly incarcerated; and

WHEREAS, 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, public housing, and other economic opportunities; and

WHEREAS, the City of Oakland seeks to provide equity in ownership in the cannabis industry through the incorporation of a Dispensary Equity Permit Program; and

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

WHEREAS, after duly noticed public meetings on February 9, 2016, and April 26, 2016, the Public Safety Committee voted to recommend the proposal to the City Council with the inclusion of an equity component that requires 50% of all new cannabis permits be issued to applicants who reside in police beats negatively and disproportionately impacted by enforcement of cannabis laws; and

WHEREAS, the City Council held a duly noticed public hearing on May 3, 2016, to consider the proposed amendments and all interested parties were provided an ample opportunity to participate in said hearing and express their views; and

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

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

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

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

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

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

Chapter 5.80 - MEDICAL CANNABIS DISPENSARY PERMITS

5.80.010 – Definitions.

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

~~A. "Attorney General Guidelines" shall mean the California Attorney General Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use, issued by the Attorney General's Office in August 2008, as amended from time to time, which sets regulations intended to ensure the security and non-diversion of marijuana grown for medical use by qualified patients or primary caregivers.~~

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

B~~C~~. "Cannabis dispensary" or "Dispensary" shall mean ~~a collective or cooperative that distributes, dispenses, stores, exchanges, processes, delivers, makes available, transmits and/or gives away marijuana in the City for medicinal purposes to four or more qualified patients and/or primary caregivers pursuant to California Health and Safety Code Sections 11362.5, 11362.7 et seq.~~ a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers medical cannabis and medical cannabis products as part of a retail sale.

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

D~~E~~. "Collective" means any association, affiliation, or establishment jointly owned and operated by its members that facilitates the collaborative efforts of qualified patients and primary caregivers, as described in ~~the Attorney General Guidelines~~State law.

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

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

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

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

I~~H~~. "Primary caregiver" shall have the same definition as California Health and Safety Code Section 11362.7, ~~and~~ as may be amended, ~~and~~ 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).~~any of the following:~~

~~1. In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the California Health and Safety Code; a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the California Health and Safety Code; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2 of the California Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2 of the California Health and Safety Code; a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2 of the California Health and Safety Code; the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.~~

~~2. An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.~~

~~3. An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.~~

J~~I~~. "Qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., ~~and~~ as may be amended, ~~and~~ which, as of March 2016, means a person who is entitled to the protections of California Health & Safety Code Section 11362.5. For purposes of this ordinance, qualified patient shall include a person with an identification card, as that term is defined by California Health and Safety Code Section 11362.7 et seq.

~~J. "Serious medical condition" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., and as may be amended, and which means all of the following medical conditions:~~

~~1. Acquired immune deficiency syndrome (AIDS);~~
~~2. Anorexia;~~
~~3. Arthritis;~~
~~4. Cachexia;~~
~~5. Cancer;~~
~~6. Chronic pain;~~
~~7. Glaucoma;~~
~~8. Migraine;~~

~~9. Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis;~~

~~10. Seizures, including, but not limited to, seizures associated with epilepsy;~~

~~11. Severe nausea;~~

~~12. Any other chronic or persistent medical symptom that either:~~

~~a. Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).~~

~~b. If not alleviated, may cause serious harm to the patient's safety or physical or mental health.~~

~~K. "Written documentation" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., and as may be amended, and which defines "written documentation" as accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of California Health and Safety Code Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.~~

K. "Smoking" shall have the same definition as Oakland Municipal Code Section 8.30, which as of March 2016 means "inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, weed, or other combustible substance."

L. "Youth Center" means a community or recreation facility that primarily serves persons 18 years or younger.

M. "General Application permit" shall mean all applications issued under OMC 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.

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 ~~c~~Chapter. However, entities authorized under OMC Section 8.46 must abide by the same requirements imposed herein on dispensaries.

B. This Chapter, and the requirement to obtain a business permit, does not apply to the individual possession or cultivation of medical marijuana for personal use, nor does this ~~c~~Chapter apply to the usage, distribution, cultivation or processing of medical marijuana by qualified patients or primary caregivers when such group is of three or less individuals, and distributing, cultivating or processing the marijuana from a residential unit or a single non-residential parcel of land. Associations of three or less qualified patients or primary caregivers shall not be required to obtain a permit under Chapter 5.80, but must comply with applicable State law ~~and the Attorney General Guidelines~~.

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

D. In addition to the requirements specified in Section 5.02.020 for business permits, the permit application for a dispensary shall set forth the following information:

1. Unless the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public~~,~~evidence that the proposed location of such dispensary is not within 600 feet of a public or private school 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)~~, public library~~, or youth center~~ (serving youth age 18 and under), parks and recreation facilities, residential zone or another dispensary~~. 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 complete description of the type, nature and extent of the enterprise to be conducted, with evidence satisfactory to the City Administrator that the enterprise is either a collective or cooperative, as described in the Attorney General Guidelines.~~

2~~3~~. A plan of operations that will describe how the dispensary or delivery only dispensary will operate consistent with ~~the intent of~~ State law~~,~~ and the provisions of this Chapter~~ and the Attorney General Guidelines~~, including but not limited to:

a. Controls ~~to verify membership in collectives and cooperatives~~ to ensure medical marijuana will be dispensed only to qualified patients and primary caregivers, and

b. Controls to acquire, possess, transport and distribute marijuana to and from state licensed medical cannabis entities~~members, and plans to ensure marijuana is acquired as part of a closed-circuit of marijuana cultivation and consumption~~.

3~~4~~. A security plan, as a separate document, outlining the proposed security arrangements to deter and prevent unauthorized entrance into areas containing medical cannabis or medical cannabis products and theft of medical cannabis or medical cannabis products at the dispensary, in accordance with minimum security measures required by State law~~for ensuring the safety of persons and to protect the premises from theft~~. The security plan shall be reviewed by the Police Department and the Office of the City Administrator and shall be exempt from disclosure as a public record pursuant to Government Code Section 6255(a).

4. Confirmation of the following criteria:

a. That the 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. Such other information deemed necessary to conduct any investigation or background check of the applicant, and for the City Administrator to determine compliance with this Chapter, the City's Municipal Code and Zoning Code.

E. Applications for dispensaries shall be subject to a hearing and must provide p~~P~~ublic notice of the hearing in accordance with ~~on the application shall be given as provided in~~ 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. ~~Priority shall be given to dispensary applicants owned and operated by Oakland residents, in particular applicants owned and operated by Oakland residents in census tracts identified by the City Administrator as having high unemployment rates.~~ Fifty percent (50% of all permits issued under OMC 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 50% requirement. All applicants shall pay an application fee, a permit fee, and all inspection fees that may be required as part of the application process, as specified in the City's Master Fee Schedule.

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

G. 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 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 may set further standards for operation of dispensaries and delivery only dispensaries. The dispensary shall meet all the operating criteria for the dispensing of medical marijuana required pursuant to State law ~~California Health and Safety Code Section 11362.7 et seq.~~, the City Administrator's administrative regulations, and this Chapter.

5.80.040 – Performance and operating standards.

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

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

C. Dispensaries must maintain a staff comprised of at least 50% Oakland residents and 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.

D. Dispensaries and delivery only dispensaries 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.

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 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. Fifty percent (50%) of all dispensary applications issued under OMC 5.80 shall be issued to an Oakland resident who meets the Dispensary Equity Permit Program requirements set forth in Section 5.80.045 below.

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. Criteria. Applicant must have at least one member who meets all of the following criteria:

1. Be an Oakland resident who,

2. Resides for at least two years prior to the date of application in Oakland Police Department Beats 26Y, 30X, 30Y, 31Z, 32Y, and 34X; or those individuals who, within the last ten years, have been previously incarcerated for a marijuana-related offense as a result of a conviction arising out of Oakland, California;
3. Maintains not less than a 50% ownership in the Dispensary applicant entity, partnership, limited liability corporation, collective, corporation, worker cooperative or other recognized ownership entity; and
4. Prior marijuana or cannabis conviction shall not be a bar to equity ownership.

5.80.050 – Regulatory fees; seller's permit.

A. In addition to the dispensary application fee, the dispensary shall pay an annual regulatory fee at the same as applying for the business tax certificate or renewal thereof. The dispensary shall post a copy of the business tax certificate issued pursuant to Chapter 5.04, together with a copy of the dispensary permit and onsite consumption permit (if applicable) issued pursuant to this ~~c~~Chapter and Section 5.02.020,in a conspicuous place in the premises approved as a dispensary at all times.

B. The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a seller's permit from the State Board of Equalization.

C. The fees referenced herein shall be set by the Master Fee Schedule~~Council resolution~~, as modified from time to time.

5.80.060 – ~~Profit~~ Sales.

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

Retail sales of medical marijuana that violate California law or this ~~c~~Chapter are expressly prohibited.

5.80.070 – Revocation, suspension and appeals.

Notwithstanding Chapter 5.02, any decision by the City Administrator, except for the suspensions or revocations of permits, shall be final and conclusive, and there shall be no right of appeal to the City Council or any other appellate body.

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

Administrator's decision. The decision of the ~~City Administrator~~independent hearing officer shall be final and conclusive.

5.80.080 – Prohibited operations; nonconforming uses.

A. All dispensaries in violation of California Health and Safety Code Section 11326.7, et seq., ~~and~~ 11362.5, and this ~~c~~Chapter are expressly prohibited. It is unlawful for any dispensary in the City, or any agent, employee or representative of such dispensary, to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct on the premises of the dispensary or during the delivery of medical cannabis.

B. Except for uses established pursuant to Chapter 8.46, no use which purports to have distributed marijuana prior to the enactment of this ~~c~~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 ~~c~~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 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~~A~~. Permittees must provide t~~T~~he City Administrator ~~shall be provided~~ 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 ~~c~~Chapter to verify tax compliance under Chapter 5.80 and/or gross receipts tax requirements.

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

D~~C~~. The City Administrator is authorized to examine a person under oath, for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax, registration or permit fees due under this ~~c~~Chapter. In order to ascertain the business tax, registration or permit fees due under this ~~c~~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~~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.

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

SECTION 4. Reporting. City staff shall report back to City Council no later than one year from the date of adoption of this legislation, 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 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~~5~~. Severability. The provisions of this Ordinance are severable, and if any section, subsection, sentence, clause, phrase, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is for any reason

held to be invalid, preempted by state or federal law, or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. It is hereby declared to be the legislative intent of the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

SECTION 76. 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~~7~~. General Police Powers. This Ordinance is enacted pursuant to the City of Oakland's general police powers, including but not limited to Sections 106 of the Oakland City Charter and Section 7 of Article XI of the California Constitution.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

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

Date of Attestation: _____

NOTICE AND DIGEST

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

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

REVISED AT COUNCIL 5/3/16

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2016 MAY -5 PM 4:45

APPROVED AS TO FORM

CITY ATTORNEY'S OFFICE

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, 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 that were formerly incarcerated; and

WHEREAS, 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, public housing, and other economic opportunities; and

WHEREAS, the City of Oakland seeks to provide equity in ownership in the cannabis industry through the incorporation of a Dispensary Equity Permit Program; and

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

WHEREAS, after duly noticed public meetings on February 9, 2016, and April 26, 2016, the Public Safety Committee voted to recommend the proposal to the City Council with the inclusion of an equity component that requires 50% of all new cannabis permits be issued to applicants who reside in police beats negatively and disproportionately impacted by enforcement of cannabis laws; and

WHEREAS, the City Council held a duly noticed public hearing on May 3, 2016, to consider the proposed amendments and all interested parties were provided an ample opportunity to participate in said hearing and express their views; and

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

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

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

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

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

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

Chapter 5.80 - MEDICAL CANNABIS DISPENSARY PERMITS

5.80.010 – Definitions.

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

~~A. "Attorney General Guidelines" shall mean the California Attorney General Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use, issued by the Attorney General's Office in August 2008, as amended from time to time, which sets regulations intended to ensure the security and non-diversion of marijuana grown for medical use by qualified patients or primary caregivers.~~

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

B~~C~~. "Cannabis dispensary" or "Dispensary" shall mean ~~a collective or cooperative that distributes, dispenses, stores, exchanges, processes, delivers, makes available, transmits and/or gives away marijuana in the City for medicinal purposes to four or more qualified patients and/or primary caregivers pursuant to California Health and Safety Code Sections 11362.5, 11362.7 et seq.~~ a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers medical cannabis and medical cannabis products as part of a retail sale.

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

D~~E~~. "Collective" means any association, affiliation, or establishment jointly owned and operated by its members that facilitates the collaborative efforts of qualified patients and primary caregivers, as described in ~~the Attorney General Guidelines~~State law.

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

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

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

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

I~~H~~. "Primary caregiver" shall have the same definition as California Health and Safety Code Section 11362.7, ~~and~~ as may be amended, ~~and~~ 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).~~any of the following:~~

~~1. In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the California Health and Safety Code; a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the California Health and Safety Code; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2 of the California Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2 of the California Health and Safety Code; a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2 of the California Health and Safety Code; the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.~~

~~2. An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.~~

~~3. An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.~~

J~~I~~. "Qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., ~~and~~ as may be amended, ~~and~~ which, as of March 2016, means a person who is entitled to the protections of California Health & Safety Code Section 11362.5. For purposes of this ordinance, qualified patient shall include a person with an identification card, as that term is defined by California Health and Safety Code Section 11362.7 et seq.

~~J. "Serious medical condition" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., and as may be amended, and which means all of the following medical conditions:~~

~~1. Acquired immune deficiency syndrome (AIDS);~~
~~2. Anorexia;~~
~~3. Arthritis;~~
~~4. Cachexia;~~
~~5. Cancer;~~
~~6. Chronic pain;~~
~~7. Glaucoma;~~
~~8. Migraine;~~

~~9. Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis;~~

~~10. Seizures, including, but not limited to, seizures associated with epilepsy;~~

~~11. Severe nausea;~~

~~12. Any other chronic or persistent medical symptom that either:~~

~~a. Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).~~

~~b. If not alleviated, may cause serious harm to the patient's safety or physical or mental health.~~

~~K. "Written documentation" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., and as may be amended, and which defines "written documentation" as accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of California Health and Safety Code Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.~~

K. "Smoking" shall have the same definition as Oakland Municipal Code Section 8.30, which as of March 2016 means "inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, weed, or other combustible substance."

L. "Youth Center" means a community or recreation facility that primarily serves persons 18 years or younger.

M. "General Application permit" shall mean all applications issued under OMC 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.

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 ~~c~~Chapter. However, entities authorized under OMC Section 8.46 must abide by the same requirements imposed herein on dispensaries.

B. This Chapter, and the requirement to obtain a business permit, does not apply to the individual possession or cultivation of medical marijuana for personal use, nor does this ~~c~~Chapter apply to the usage, distribution, cultivation or processing of medical marijuana by qualified patients or primary caregivers when such group is of three or less individuals, and distributing, cultivating or processing the marijuana from a residential unit or a single non-residential parcel of land. Associations of three or less qualified patients or primary caregivers shall not be required to obtain a permit under Chapter 5.80, but must comply with applicable State law ~~and the Attorney General Guidelines~~.

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

D. In addition to the requirements specified in Section 5.02.020 for business permits, the permit application for a dispensary shall set forth the following information:

1. Unless the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public~~,~~evidence that the proposed location of such dispensary is not within 600 feet of a public or private school 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)~~, public library~~, or youth center ~~(serving youth age 18 and under), parks and recreation facilities, residential zone or another dispensary~~. 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 complete description of the type, nature and extent of the enterprise to be conducted, with evidence satisfactory to the City Administrator that the enterprise is either a collective or cooperative, as described in the Attorney General Guidelines.~~

2~~3~~. A plan of operations that will describe how the dispensary or delivery only dispensary will operate consistent with ~~the intent of~~ State law~~,~~ and the provisions of this Chapter ~~and the Attorney General Guidelines~~, including but not limited to:

a. Controls ~~to verify membership in collectives and cooperatives~~ to ensure medical marijuana will be dispensed only to qualified patients and primary caregivers, and

b. Controls to acquire, possess, transport and distribute marijuana to and from state licensed medical cannabis entities~~members, and plans to ensure marijuana is acquired as part of a closed-circuit of marijuana cultivation and consumption~~.

3~~4~~. A security plan, as a separate document, outlining the proposed security arrangements to deter and prevent unauthorized entrance into areas containing medical cannabis or medical cannabis products and theft of medical cannabis or medical cannabis products at the dispensary, in accordance with minimum security measures required by State law~~for ensuring the safety of persons and to protect the premises from theft~~. The security plan shall be reviewed by the Police Department and the Office of the City Administrator and shall be exempt from disclosure as a public record pursuant to Government Code Section 6255(a).

4. Confirmation of the following criteria:

a. That the 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. Such other information deemed necessary to conduct any investigation or background check of the applicant, and for the City Administrator to determine compliance with this Chapter, the City's Municipal Code and Zoning Code.

E. Applications for dispensaries shall be subject to a hearing and must provide p~~P~~ublic notice of the hearing in accordance with ~~on the application shall be given as provided in~~ 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 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 50% requirement. All applicants shall pay an application fee, a permit fee, and all inspection fees that may be required as part of the application process, as specified in the City's Master Fee Schedule.

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

G. 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 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 may set further standards for operation of dispensaries and delivery only dispensaries. The dispensary shall meet all the operating criteria for the dispensing of medical marijuana required pursuant to State law ~~California Health and Safety Code Section 11362.7 et seq.~~, the City Administrator's administrative regulations, and this Chapter.

5.80.040 – Performance and operating standards.

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

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

C. Dispensaries must maintain a staff comprised of at least 50% Oakland residents and 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.

D. Dispensaries and delivery only dispensaries 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.

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 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. Fifty percent (50%) of all dispensary applications issued under OMC 5.80 shall be issued to an Oakland resident who meets the Dispensary Equity Permit Program requirements set forth in Section 5.80.045 below.

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. Criteria. Applicant must have at least one member who meets all of the following criteria:

1. Be an Oakland resident who,
2. Resides for at least two years prior to the date of application in Oakland Police Department Beats 26Y, 30X, 30Y, 31Z, 32Y, and 34X; or those individuals who,

within the last ten years, have been previously incarcerated for a marijuana-related offense as a result of a conviction arising out of Oakland, California;

3. Maintains not less than a 50% ownership in the Dispensary applicant entity, partnership, limited liability corporation, collective, corporation, worker cooperative or other recognized ownership entity; and
4. Prior marijuana or cannabis conviction shall not be a bar to equity ownership.

5.80.050 – Regulatory fees; seller's permit.

A. In addition to the dispensary application fee, the dispensary shall pay an annual regulatory fee at the same as applying for the business tax certificate or renewal thereof. The dispensary shall post a copy of the business tax certificate issued pursuant to Chapter 5.04, together with a copy of the dispensary permit and onsite consumption permit (if applicable) issued pursuant to this ~~c~~Chapter and Section 5.02.020,in a conspicuous place in the premises approved as a dispensary at all times.

B. The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a seller's permit from the State Board of Equalization.

C. The fees referenced herein shall be set by the Master Fee Schedule~~Council resolution~~, as modified from time to time.

5.80.060 – ~~Profit~~ Sales.

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

Retail sales of medical marijuana that violate California law or this ~~c~~Chapter are expressly prohibited.

5.80.070 – Revocation, suspension and appeals.

Notwithstanding Chapter 5.02, any decision by the City Administrator, except for the suspensions or revocations of permits, shall be final and conclusive, and there shall be no right of appeal to the City Council or any other appellate body.

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

5.80.080 – Prohibited operations; nonconforming uses.

A. All dispensaries in violation of California Health and Safety Code Section 11326.7, et seq., ~~and~~ 11362.5, and this ~~c~~Chapter are expressly prohibited. It is unlawful for any dispensary in the City, or any agent, employee or representative of such dispensary, to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct on the premises of the dispensary or during the delivery of medical cannabis.

B. Except for uses established pursuant to Chapter 8.46, no use which purports to have distributed marijuana prior to the enactment of this ~~c~~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 ~~c~~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 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~~A~~. Permittees must provide t~~T~~he City Administrator ~~shall be provided~~ 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 ~~c~~Chapter to verify tax compliance under Chapter 5.80 and/or gross receipts tax requirements.

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

D~~C~~. The City Administrator is authorized to examine a person under oath, for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax, registration or permit fees due under this ~~c~~Chapter. In order to ascertain the business tax, registration or permit fees due under this ~~c~~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~~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.

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

SECTION 4. Reporting. City staff shall report back to City Council no later than one year from the date of adoption of this legislation, 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 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, GUILLEN, KALB, KAPLAN, REID AND PRESIDENT GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

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

Date of Attestation: _____

NOTICE AND DIGEST

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

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

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2016 MAY -5 PM 4:45

REVISED AT COUNCIL 5/3/16

APPROVED AS TO FORM

CITY ATTORNEY'S OFFICE

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL

ORDINANCE NO. _____C.M.S.

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

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

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

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

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

WHEREAS, in 2011, Assembly Bill 2650 was enacted (codified at Health and Safety Code section 11362.768). This law affirms that cities can adopt ordinances that

restrict the location and establishment of medical marijuana collectives, cooperatives, and dispensaries; and

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

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

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

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

WHEREAS, 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 that were formerly incarcerated; and

WHEREAS, 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, public housing, and other economic opportunities; and

WHEREAS, the City of Oakland seeks to provide equity in ownership in the cannabis industry through the incorporation of a Cultivation, Manufacturing, Distribution, Testing, and Transporting Permit Program; and

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

WHEREAS, after a duly noticed public meetings on February 9, 2016, and April 26, 2016, the Public Safety Committee voted to recommend the proposal to the City Council with the inclusion of an equity component that requires 50% of all new cannabis permits be issued to applicants who reside in police beats negatively and disproportionately impacted by enforcement of cannabis laws; and

WHEREAS, the City Council held a duly noticed public hearing on May 3, 2016, to consider the proposed amendments and all interested parties were provided an ample opportunity to participate in said hearing and express their views; and

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

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

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

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

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

SECTION 3. Amendment of Chapter 5.81 of the Oakland Municipal Code. Oakland Municipal Code Chapter 5.81 is hereby amended as follows (additions are shown in 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 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.

C~~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.

D~~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.

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

5.81.020 – Definitions.

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

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

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

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

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

E~~D~~. "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~~E~~. "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 48 ounces of dried cannabis and/or to plant, grow, harvest, dry, cure, grade or trim cannabis in an area greater than 96 square feet of total area within one parcel of land.

~~F. "Cultivation Area" as used only in this Chapter hereinafter shall mean the actual area in use for the entire cultivation process of cannabis plants (including seedling production, vegetation, and maturation), as well as reasonable walking space, such that, for example, two trays used for maturation, each measuring ten square feet and stacked vertically on top of each other shall be counted as 20 square feet of cultivation area.~~

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

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. "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.

K. "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.

L~~H~~. "Medical c~~C~~annabis c~~C~~ollective" as used only in this Chapter shall be the same, and as may be amended, as is~~f~~ defined in Section 5.80.010.

M. "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.

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

O~~J~~. "Permittees" as used only in this Chapter are individuals or businesses ~~cultivation and manufacturing facilities~~ that have obtained a permit under this Chapter to cultivate, distribute, manufacture, test or transport.

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

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

R. "Testing" as used only in this Chapter shall mean the conducting of analytical testing of cannabis, cannabis-derived products, hemp, or hemp-derived products.

S. "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.

T. "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.

U. "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.

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

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

W. "General Application permit" shall mean all applications issued under OMC 5.81 with the exception of Cultivation, Manufacturing, Distribution, Testing, and Transporting Equity Permits issued under section 5.81.030.

5.81.030 – Permit required.

A. Except for hospitals and research facilities that obtain written permission for cannabis cultivation under federal law, it is unlawful to ~~establish any~~ cultivate~~ion~~, distribute, ~~and~~ manufacture~~ing~~, test or transport ~~facility~~ without a valid business permit issued pursuant to the provisions of this Chapter. Possession of other types of State or City permits or licenses does not exempt an applicant from the requirement of obtaining a permit under this Chapter. ~~It is unlawful for any entity organized on a for-profit basis, except for hospitals and research facilities, to engage in any medical cannabis cultivation whatsoever.~~

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

limitation application fees, inspection fees and regulatory fees that may be required hereunder.

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

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

D~~E~~. Cultivation, distribution, ~~and~~ manufacturing, testing, and transporting~~facility~~ 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.

G. Fifty percent (50%) of all permits issued under OMC 5.81 shall be issued to an Oakland resident who meets the Equity Permit Program requirements set forth in Section 5.81.030(H) below. At no time shall the number of General Application permits issued under 5.81 in total exceed the number of Equity Permits under 5.81 in total issued by the City Administrator.

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,
2. Resides for at least two 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 years, have been previously incarcerated for marijuana-related offense as a result of a conviction arising out of Oakland, California;
3. Maintains not less than a 50% ownership in the Dispensary applicant entity, partnership, limited liability corporation, collective, corporation, worker cooperative or other recognized ownership entity; and

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

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

~~A. Any use of activity that involves possessing, cultivating, processing and/or manufacturing and/or more than 96 square feet of cultivation area shall constitute industrial cultivation of medical cannabis and shall only be allowed upon the granting of a permit as prescribed in this Chapter. Possession of other types of State or City permits or licenses does not exempt an applicant from the requirement of obtaining a permit under this Chapter.~~

A~~B~~. ~~The p~~Proposed ~~location of a~~ cultivation, distribution, testing or transporting ~~and manufacturing facility~~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 ~~and manufacturing~~ facility permittee. ~~Public notice shall be given as provided in Section 5.02.050, and the investigating official referred to in Section 5.02.030 to whom the application shall be referred, shall be the City Administrator.~~

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

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.

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

B. All applicants shall submit written information to the City Administrator ~~including,but not limited to,~~that shall include, as applicable, plans for security, odor mitigation, waste disposal, pest management, product testing, worker safety and compensation, local hiring, non diversion of product, facility location, capitalization, business plans, applicant complaint history, criminal background checks, 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.

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

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

5.81.070 – Operating and performance standards.

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 shall maintain a staff that is at least 50% Oakland residents and at least 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 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.

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

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

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

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

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

5.81.100 – Liability and indemnification.

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

B. To the maximum extent permitted by law, t~~T~~he permittees under this Chapter ~~hereby agree to save,~~ shall defend (with counsel acceptable to the City), indemnify and ~~keep~~hold harmless the City of Oakland, the Oakland City Council, and its respective officials, officers, employees, representatives, agents and volunteers (hereafter collectively called "City") from any ~~all~~ liability, damages, actions, claims, demands,

litigation, loss (direct or indirect), causes of action, ~~or~~ proceedings~~,~~ or judgment (including legal costs, ~~those for~~ attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annual, any medical cannabis-related approvals and actions ~~in consequence of the granting of this permit~~, and ~~will in all things~~ strictly comply with the conditions under which ~~this~~ 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 - ~~Residential~~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 32 square feet on one parcel of land, unless they form a cooperative or collective.

A collective or cooperative of qualified patients or primary caregivers, may cultivate medical cannabis covering an area of no more than 32 square feet in a residential unit or if in a nonresidential building on one parcel of land per each member of the cooperative or collective, up to a maximum of 216 cannabis/marijuana plants within a maximum growing area of 96 square feet indoor or 60 outdoor cannabis/marijuana plants on one parcel of land.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.81.110 – Prohibited operations.

A. ~~All~~Any cultivating~~on~~, distributing, ~~processing, and~~ manufacturing, testing, or transporting ~~facilities that do not have~~without a permit under this Chapter ~~are~~is expressly prohibited. No use that purports to have cultivated, distributed, manufactured, tested or transported~~ or processed~~ marijuana shall be deemed to have been a legally established use under the provisions of the Oakland Planning Code, the Oakland Municipal Code, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim a vested right, legal nonconforming or other similar status. However, for the limited purpose of state licensing priority, operators may 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 aAppeals.

Notwithstanding Section 5.02.100, any decision, except for suspension and or revocation, pursuant to this Chapter by the City Administrator or his/her designee shall be final and conclusive, with no appeal to the City Council or any other appellate body. For suspensions and/or revocations the City shall follow the procedures set forth in Section 5.02.080 only the City Administrator ~~an independent hearing officer~~ shall make an initial determination with an appeal to an independent hearing officer ~~the City Administrator~~ in writing within 14 days of the City Administrator's ~~Administrative Hearing Officer's~~ decision ~~in accordance with procedures in set forth in Section 5.02.100~~. The decision of the independent hearing officer shall be final and conclusive.

SECTION 4. Reporting. City staff shall report back to City Council no later than one year from the date of adoption of this legislation, 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 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~~5~~. Severability. The provisions of this Ordinance are severable, and if any section, subsection, sentence, clause, phrase, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is for any reason held to be invalid, preempted by state or federal law, or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. It is hereby declared to be the legislative intent of the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

SECTION 7~~6~~. Ordinance Effective Date. Pursuant to Section 216 of the Charter of the City of Oakland, this Ordinance shall become effective immediately upon final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption by the Council of the City of Oakland.

SECTION 8~~7~~. General Police Powers. This Ordinance is enacted pursuant to the City of Oakland's general police powers, including but not limited to Sections 106 of the Oakland City Charter and Section 7 of Article XI of the California Constitution.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

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

Date of Attestation: _____

NOTICE AND DIGEST

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

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

REVISED AT COUNCIL 5/3/16

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2016 MAY -5 PM 4:45

APPROVED AS TO FORM

CITY ATTORNEY'S OFFICE

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL

ORDINANCE NO. _____C.M.S.

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

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

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

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

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

WHEREAS, in 2011, Assembly Bill 2650 was enacted (codified at Health and Safety Code section 11362.768). This law affirms that cities can adopt ordinances that

restrict the location and establishment of medical marijuana collectives, cooperatives, and dispensaries; and

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

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

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

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

WHEREAS, 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 that were formerly incarcerated; and

WHEREAS, 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, public housing, and other economic opportunities; and

WHEREAS, the City of Oakland seeks to provide equity in ownership in the cannabis industry through the incorporation of a Cultivation, Manufacturing, Distribution, Testing, and Transporting Permit Program; and

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

WHEREAS, after a duly noticed public meetings on February 9, 2016, and April 26, 2016, the Public Safety Committee voted to recommend the proposal to the City Council with the inclusion of an equity component that requires 50% of all new cannabis permits be issued to applicants who reside in police beats negatively and disproportionately impacted by enforcement of cannabis laws; and

WHEREAS, the City Council held a duly noticed public hearing on May 3, 2016, to consider the proposed amendments and all interested parties were provided an ample opportunity to participate in said hearing and express their views; and

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

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

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

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

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

SECTION 3. Amendment of Chapter 5.81 of the Oakland Municipal Code. Oakland Municipal Code Chapter 5.81 is hereby amended as follows (additions are shown in 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 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.

C~~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.

D~~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.

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

5.81.020 – Definitions.

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

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

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

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

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

E~~D~~. "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~~E~~. "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 48 ounces of dried cannabis and/or to plant, grow, harvest, dry, cure, grade or trim cannabis in an area greater than 96 square feet of total area within one parcel of land.

~~F. "Cultivation Area" as used only in this Chapter hereinafter shall mean the actual area in use for the entire cultivation process of cannabis plants (including seedling production, vegetation, and maturation), as well as reasonable walking space, such that, for example, two trays used for maturation, each measuring ten square feet and stacked vertically on top of each other shall be counted as 20 square feet of cultivation area.~~

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

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. "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.

K. "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.

L~~H~~. "Medical c~~C~~annabis c~~C~~ollective" as used only in this Chapter shall be the same, and as may be amended, as is~~f~~ defined in Section 5.80.010.

M. "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.

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

O~~J~~. "Permittees" as used only in this Chapter are individuals or businesses ~~cultivation and manufacturing facilities~~ that have obtained a permit under this Chapter to cultivate, distribute, manufacture, test or transport.

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

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

R. "Testing" as used only in this Chapter shall mean the conducting of analytical testing of cannabis, cannabis-derived products, hemp, or hemp-derived products.

S. "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.

T. "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.

U. "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.

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

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

W. "General Application permit" shall mean all applications issued under OMC 5.81 with the exception of Cultivation, Manufacturing, Distribution, Testing, and Transporting Equity Permits issued under section 5.81.030.

5.81.030 – Permit required.

A. Except for hospitals and research facilities that obtain written permission for cannabis cultivation under federal law, it is unlawful to ~~establish any~~ cultivate~~ion~~, distribute, ~~and~~ manufacture~~ing~~, test or transport ~~facility~~ without a valid business permit issued pursuant to the provisions of this Chapter. Possession of other types of State or City permits or licenses does not exempt an applicant from the requirement of obtaining a permit under this Chapter. ~~It is unlawful for any entity organized on a for-profit basis, except for hospitals and research facilities, to engage in any medical cannabis cultivation whatsoever.~~

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

limitation application fees, inspection fees and regulatory fees that may be required hereunder.

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

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

D~~E~~. Cultivation, distribution, ~~and~~ manufacturing, testing, and transporting~~facility~~ 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.

G. Fifty percent (50%) of all permits issued under OMC 5.81 shall be issued to an Oakland resident who meets the Equity Permit Program requirements set forth in Section 5.81.030(H) below. At no time shall the number of General Application permits issued under 5.81 in total exceed the number of Equity Permits under 5.81 in total issued by the City Administrator.

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,
2. Resides for at least two 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 years, have been previously incarcerated for marijuana-related offense as a result of a conviction arising out of Oakland, California;
3. Maintains not less than a 50% ownership in the Dispensary applicant entity, partnership, limited liability corporation, collective, corporation, worker cooperative or other recognized ownership entity; and

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

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

~~A. Any use of activity that involves possessing, cultivating, processing and/or manufacturing and/or more than 96 square feet of cultivation area shall constitute industrial cultivation of medical cannabis and shall only be allowed upon the granting of a permit as prescribed in this Chapter. Possession of other types of State or City permits or licenses does not exempt an applicant from the requirement of obtaining a permit under this Chapter.~~

A~~B~~. ~~The p~~Proposed ~~location of a~~ cultivation, distribution, testing or transporting ~~and manufacturing facility~~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 ~~and manufacturing~~ facility permittee. ~~Public notice shall be given as provided in Section 5.02.050, and the investigating official referred to in Section 5.02.030 to whom the application shall be referred, shall be the City Administrator.~~

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

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.

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

B. All applicants shall submit written information to the City Administrator ~~including,but not limited to,~~that shall include, as applicable, plans for security, odor mitigation, waste disposal, pest management, product testing, worker safety and compensation, local hiring, non diversion of product, facility location, capitalization, business plans, applicant complaint history, criminal background checks, 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.

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

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

5.81.070 – Operating and performance standards.

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 shall maintain a staff that is at least 50% Oakland residents and at least 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 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.

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

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

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

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

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

5.81.100 – Liability and indemnification.

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

B. To the maximum extent permitted by law, t~~T~~he permittees under this Chapter ~~hereby agree to save,~~ shall defend (with counsel acceptable to the City), indemnify and ~~keep~~hold harmless the City of Oakland, the Oakland City Council, and its respective officials, officers, employees, representatives, agents and volunteers (hereafter collectively called "City") from any ~~all~~ liability, damages, actions, claims, demands,

litigation, loss (direct or indirect), causes of action, ~~or~~ proceedings~~,~~ or judgment (including legal costs, ~~those for~~ attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annual, any medical cannabis-related approvals and actions ~~in consequence of the granting of this permit~~, and ~~will in all things~~ strictly comply with the conditions under which ~~this~~ 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 - ~~Residential~~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 32 square feet on one parcel of land, unless they form a cooperative or collective.

A collective or cooperative of qualified patients or primary caregivers, may cultivate medical cannabis covering an area of no more than 32 square feet in a residential unit or if in a nonresidential building on one parcel of land per each member of the cooperative or collective, up to a maximum of 216 cannabis/marijuana plants within a maximum growing area of 96 square feet indoor or 60 outdoor cannabis/marijuana plants on one parcel of land.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.81.110 – Prohibited operations.

A. ~~All~~Any cultivating~~on~~, distributing, ~~processing, and~~ manufacturing, testing, or transporting ~~facilities that do not have~~without a permit under this Chapter ~~are~~is expressly prohibited. No use that purports to have cultivated, distributed, manufactured, tested or transported~~ or processed~~ marijuana shall be deemed to have been a legally established use under the provisions of the Oakland Planning Code, the Oakland Municipal Code, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim a vested right, legal nonconforming or other similar status. However, for the limited purpose of state licensing priority, operators may 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 a~~A~~ppeals.

Notwithstanding Section 5.02.100, any decision, except for suspension and or revocation, pursuant to this Chapter by the City Administrator or his/her designee shall be final and conclusive, with no appeal to the City Council or any other appellate body. For suspensions and/or revocations the City shall follow the procedures set forth in Section 5.02.080 only the City Administrator ~~an independent hearing officer~~ shall make an initial determination with an appeal to an independent hearing officer ~~the City Administrator~~ in writing within 14 days of the City Administrator's ~~Administrative Hearing Officer's~~ decision ~~in accordance with procedures in set forth in Section 5.02.100~~. The decision of the independent hearing officer shall be final and conclusive.

SECTION 4. Reporting. City staff shall report back to City Council no later than one year from the date of adoption of this legislation, 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 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, GUILLEN, KALB, KAPLAN, REID AND PRESIDENT GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

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

Date of Attestation: _____

NOTICE AND DIGEST

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

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

Greene, Elizabeth

From: BIANCA BLESCHING <biancawsg@hushmail.com>
Sent: Saturday, May 14, 2016 7:15 PM
To: Charles Pappas
Cc: Karen M. RICE; Michael Cooper; David Lampach; Keith Carlisle; Bianca Blesching; Greene, Elizabeth
Subject: Re: Planning Commission May 18- M zone visit/expansion

Hello,

It was a pleasure touring the M district with the Subcommittee and Rick from WEBAIC. Rick was very generous in sharing details regarding the individual buildings.

Concerning availability of space in the M district, we discovered there is only one property for lease. It is about 23,000 square feet, at Gilman and Fifth street. I contacted the commercial broker about one month ago; he seemed very open minded, unlike other brokers, who quickly cut off the conversation when cannabis is introduced. After a follow-up call from my broker he shared that the owner is not currently willing to lease to cannabis businesses.

If the zoning could be extended into the MULI to the surrounding area of the M district, it would allow for more flexibility. It would be interesting to walk the MULI district and see what would be available there?

Best,
Bianca Blesching

On May 12, 2016, at 10:59 PM, Charles Pappas <nberkhills@sbcglobal.net> wrote:

Dear Karen and Michael,

The subcommittee did indeed visit the M zone Sunday. Since I missed almost half or more of the tour, I thought to offer now my info/ input for your Planning Commission presentation. Also, hopefully the cc'd above who attended will offer you further, perhaps more specific facts and observations.

My impression was there seemed to be several more spaces appropriate for cultivation than the original cultivation subcommittee had determined. Specifically, the Wood Bank seems available; Rick from WEBAIC said he would get in touch with the owner. I will call Rick tomorrow. Also, a sand and gravel biz might have space available.

Besides the above, there could be adjacent spaces to the M zone which could work. I suggested that to Rick; He called it patchwork (?) zoning, to which the Planning Commission usually found unfavorable. Another idea to make expansion more acceptable to WEBAIC could be a system to ensure and maintain the present number of "artisan spaces".

Finally any reading this please offer Karen and Michael additional insights, info, facts. I know Karen particularly would like to know the current vacancy rate, which she found extremely low when investigating the M zone. And, as Beth reminded me today, commissioners should be "selling" cultivation ordinance/ application process to our respective council persons, and perhaps M zone expansion as a caveat...It does indeed seem the council is more now than ever open to our ideas.

I will report more depending on my conversation with Rick.

Best, Charley

To: Honorable Mayor and Members of the City Council

From: Medical Cannabis Commission

Submitted By: Charles Pappas, Chair, Medical Cannabis Commission

Subject: Status of Revisions to the Medical Cannabis Ordinances, Originally Considered by Council on March 15, 2016

Date: June 2, 2016

The Medical Cannabis Commission is asking the Council to consider and adopt the Commission's proposed revisions to the current medical cannabis ordinances and the proposed ordinance allowing for the cultivation of cannabis in the City. Staff has also recommended passage of the ordinances.

The proposed cultivation ordinance and revisions to existing cannabis ordinances were first on the Council's calendar on February 23, 2016. Since time did not permit for the Council to consider adoption, the items were continued on the Council's calendar to March 15, 2016. At that hearing, at the request of Councilmember Moore, the two agenda items (Items 19a and 19b) were taken off calendar and sent to the Agenda Committee. We understand now that Councilmember Moore is prepared to allow the cannabis action items to be returned to the Council's agenda for consideration.

The Medical Cannabis Commission has spent more than two years in developing the cultivation ordinance that is now before the Council. In 2010, the citizens of Berkeley approved Measure T, which authorized cultivation facilities in Berkeley. It is time to comply with the will of the voters and adopt the proposed ordinances.

The proposed cultivation ordinance makes sense for a number of reasons. Cultivation in Berkeley will generate about $1 million in additional tax revenues for the City. The ordinance will create jobs, hopefully for many Berkeley residents. It will also give the City control over the quality of cannabis to be sold by Berkeley dispensaries to Berkeley residents until the State's testing regulations become effective.

The Council is now considering increasing the number of dispensaries in Berkeley. Cultivation in the City will allow our current and future dispensaries to meet the needs of our citizens.

We will have a Medical Cannabis Commissioner present at the Council meeting when our proposed revisions and new cultivation ordinance are being considered for adoption should any Councilmembers have questions.

We thank you for your consideration of our proposed ordinance recommendations.

Important Facts – Part IV
Medical Cannabis Is Going Mainstream: Berkeley Should Ready Itself By Allowing Cultivation Beyond the M District

Prepared by the Medical Cannabis Commission (MCC) for the 5/18/16 Planning Commission (PC) Meeting

"The opening of the marijuana industry here [California] to corporate dollars has caused a mad scramble, with out-of-state investors, cannabis retailers and financially struggling municipalities all racing to grab a piece of what is effectively a new industry in California, large-scale marijuana farming." Ian Lovett, "Marijuana Profit is New California Gold Rush," *New York Times*, 4/12/16.

"The framework is moving from the war on drugs to tricky issues of regulation, taxation and who is going to control this major new industry." Robert MacCoun, law professor and drug policy expert at Stanford University quoted by Jill Tucker and Peter Fimrite, "Pot industry, Oakland score as feds back off," *San Francisco Chronicle*, 5/4/16.

"I think this could be very important in setting the table [...] so that we will be well-poised to take advantage of medical marijuana as an industry." Mayor Martinez of Emeryville quoted by David Downs, "Emeryville and San Leandro to Legalize Medical Marijuana," *East Bay Express*, 4/5/16.

1. 82% of States Allow Some Access to Medical Cannabis Products (Source: National Conference of State Legislators website, "Medical Marijuana Laws", 4/18/16.)

- 24 states, the District of Columbia and Guam allow comprehensive medical cannabis programs.
- 17 states allow "low THC, high cannabidiol (CBD)" products for medical reasons.

2. Cannabis-Based Medicines Gain World-wide, National, & Regional Certifications

- Sativex to treat spasticity from multiple sclerosis approved in 28 countries, though not USA.
- FDA granted Orphan Drug Designation for cannabidiol to treat Tuberous Sclerosis Complex.
- Successful clinical trial at New York University for Epidiolex to reduce epileptic seizures.
- Two market drugs, dronabinol & nabilone, are synthetic chemicals similar or identical to delta-9 THC.
- Kosher approval to New York company and in final stages for Illinois company.

Sources: Global Newswire, "GW Pharmaceutical Receives Orphan Drug Designation from FDA for Cannabidiol for Treatment of Tuberous Sclerosis Complex," *NYT*, 5/7/16; Andrew Pollack, "Marijuana-Based Drug Found to Reduce Epileptic Seizures," *NYT* 3/14/16; Rachel Abrams, "The Rabbis Are Here to Inspect the (Legal) Weed," *NYT*, 5/6/16.

3. Surrounding Areas are Expanding Cannabis Operations – MMRSA inspired

- e.g., Alameda County, Emeryville, Oakland, Richmond, San Francisco, San Leandro, Santa Rosa.

4. African Americans & Latinos Disproportionately Hurt by the War on Drugs: Need Sufficient Space Opportunities to Establish Cultivation Businesses

- A Black person is 3.73 times more likely to be arrested for marijuana possession than a white person.
- Blacks and whites use marijuana at similar rates.
- 1% (estimate based on 150 interviews by Buzzfeed) of cannabis club owners nationwide are black.
- Start-up costs for businesses are high & standard small business loans are not an option.
- Many warehouses in Berkeley are 3k to 5k sf, ideal for entry level business persons.

Sources: 2013 ACLU study "The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests;" Amanda Chicago Lewis, "How Black People Are Being Shut Out of America's Weed Boom," Buzzfeed, 3/20/16; Nastia Voynovskaya, "Locked Out Of Legal Weed," *East Bay Express*, 4/5/16.

5. "Pot not major threat, cops say," as reported in the *SF Chronicle*, 11/6/15.

- DEA's "2015 National Drug Threat Assessment Summary" ranked marijuana at the bottom of its threat list, named by only 6% of over 1,000 responding law enforcement agencies.

Additional Information

6. Miniscule Vacancy Rate in the M District Nearly Precludes Cultivation

- Cultivation is solely, and uniquely, limited to the M District.
- All other 35 Permitted Uses in the M District are allowed in some other districts (analysis previously provided.)
- Cultivation will be almost impossible within the City, unless more space is allocated.

7. 180k city-wide aggregate sf limit (4.13 acres) on cultivation in land area equals

- 4.4% of the M District: 180,000 sf/4,094,640 sf.
- 0.7% of all four Manufacturing districts: 180,000 sf/25,831,080 sf.[1]
- 0.03% of the City of Berkeley: 180,000 sf/529,773,160 sf (12,162 acres) in all of Berkeley.
- Neighborhood Impact: Cultivators establish discreet sites so the nature of business is not obvious.

8. $1M Annual Sales Tax IF all 180k sf is farmed ($5,500/1k sf of Cultivation)

- $1.7 to $2M probable annual taxes to Berkeley when including dispensaries; 2nd only to combined taxes from all Berkeley restaurants (tax analyses previously provided).
- Data to compare Berkeley cannabis taxes per sf with other business types is not available.
- Medical cannabis sales in California hit $2.7B in 2015. (Ian Lovett, "Marijuana Profit is New California Gold Rush," *New York Times*, 4/12/16.)

9. ~120 FT Jobs in Berkeley Cultivation Operations – 1 FTE/1500 sf of cultivation

(RAND Working Paper "Estimated Cost of Production for Legalized Cannabis, 7/20/10)

- The RAND conclusion is supported by Berkeley industry experts.
- The members of the Confederated Tribes of Warm Springs in Oregon estimate one job for every 450 square feet of cultivation. (AP, "Oregon Tribes Approve Plan to Grow and Sell Pot," *New York Times*, 12/20/15)

10. Denver and Colorado Springs[2] are different from Berkeley

- Denver and Colorado Springs do NOT have an aggregate sf limit on cultivation within their cities.
- In Colorado Springs (which allows medical only) 1.5% of industrial market is used for cultivation (500k sf/34.1M sf), and the number of licenses and locations have declined since 2010 (from 186 to 103 (+13 pending), and 303 to 141 (+26 pending), respectively).
- Denver allows both medical & recreational & there is little industrial space outside the Denver area.
- Colorado doesn't border a state with legalized recreational marijuana.

11. Recreational Cannabis Statewide Referendum, November 2016

- Separate from current state regulatory action on medical cannabis, legal in California since 1996.
- 54% support legalization, June 2015 Public Policy Institute of California Poll; 3% increase from 2014, 6% increase from 2010; age 55+ at 52%, from 42% in 2010; age 18 to 34 at 61%.
- "Legalization of marijuana would not be an event that happens in one election", Blue Ribbon Panel on Marijuana Policy, released 7/22/15.

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[1] West Berkeley Plan: M=94 acres, MM=79 acres, MU-LI = "roughly 300 acres", MUR="some 120 acres". 43,560 sf = 1 acre

[2] Sources: Robbie Whelan and Paul Page, "Marijuana Producers Gobble Up Warehouse Space in Denver Area", 8/25/15, *Wall Street Journal*; Rich Laden, "Medical marijuana businesses gobble up Colorado Springs industrial space", *The Gazette*, 4/13/15; MCC interviews with quoted sources.

Important Facts – Part III
The Case for Removing the Restriction on the Number of Cultivation Sites While Keeping the 180,000 Aggregate Square Feet (SF) Maximum

Prepared by the Medical Cannabis Commission (MCC) for the 12/16/15 Planning Commission (PC) Meeting

Excerpt from MCC 11/18/14 transmittal to Berkeley City Council (BCC) that was referred to the Planning Commission (provided in 11/18/15 PC meeting materials)

> "Producing high quality medical grade cannabis in an indoor environment requires a combination of scientific knowledge, technical expertise and a craftsman-like approach. As cannabis cultivation finally becomes a legal and licensed industry, new rules and regulations should ensure that cultivators adhere to Best Practices, while allowing for experimentation and innovation in this exciting and emerging field. Berkeley should craft rules that encourage and empower small local growers to elevate indoor cannabis cultivation to new levels of quality, sustainability and professionalism." [Aspiring Berkeley-Licensed Cultivator]

Reasons for removing the restriction on the number of cultivation sites:

1. Removal allows for diversity of cultivators while maximizing tax revenue

- $1,000,000 in taxes annually if all allowed 180k sf are cultivated.
- $165,000 in taxes annually if six 5k sf sites are cultivated. (Many warehouses ≤5,000 sf.)
- $835,000 lost taxes annually because all six allowed locations have been used
- Base calculation: $5,500 in taxes annually for every 1,000 sf cultivated.

2. 180,000 aggregate SF limit should be the factor that controls total cultivation and the impact on neighborhoods, not an arbitrary number of sites. 180,000 SF equals:

- 4.4% of the M District: 180,000 sf/4,094,640 sf
- 0.7% of all four Manufacturing districts: 180,000 sf/25,831,080 sf[1]
- 0.03% of the City of Berkeley: 180,000 sf/529,773,160 sf in all of Berkeley
- Neighborhood Impact: Cultivators establish discreet sites so the nature of the business is not obvious.

3. Denver and Colorado Springs[2] are different from Berkeley.

- Denver and Colorado Springs do NOT have an aggregate SF limit on cultivation within their cities.
- In Colorado Springs (which allows medical only) 1.5% of industrial market is used for cultivation (500k sf/34.1M sf), and the number of licenses and locations have declined since 2010 (from 186 to 103 (+13 pending), and 303 to 141 (+26 pending), respectively)
- Denver allows both medical & recreational, little industrial space outside the area
- Colorado doesn't border a state with legalized recreational marijuana.

4. Cultivation is the only use in West Berkeley with restriction on number of locations.

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[1] West Berkeley Plan: M=94 acres, MM=79 acres, MU-LI = "roughly 300 acres", MUR="some 120 acres". 43,560 sf = 1 acre

[2] Sources: "Marijuana Producers Gobble Up Warehouse Space in Denver Area", 8/25/15, Wall Street Journal; "Medical marijuana businesses gobble up Colorado Springs industrial space", The Gazette, 4/13/15; MCC interviews with quoted sources.

Important Facts - Part II
Medical Cannabis Cultivation in a New Environment

Prepared by the Medical Cannabis Commission for the **11/18/15** Planning Commission Meeting

THE PROBLEMS

- **Cultivation of medical cannabis in Berkeley is not possible, unless more space is allocated.**
- **The City loses potential jobs & $5,500 in annual sales tax for every 1,000 sq. ft. that is not cultivated.**

THE SOLUTIONS

✓ **Expand the allowable area for cultivation beyond the M District**
(e.g., MM, MULI, block-by-block Overlay Multiple Zoning designation. One realtor gave very specific examples of landlords open to leasing for cannabis cultivation in areas outside the M District.)

✓ **Remove the 6-location limit, while building compliance with new state law**
(Refer to 4.c below for the reasoning.)

THE REASONING

1. The California Medical Marijuana Regulation & Safety Act, 10/09/15:

a. Cultivation licensees will have to declare themselves "agricultural employers" (SB 643, 19322)
b. Dept. of Food & Agriculture (DFA) will license cultivation sites (AB243)
c. 5,000 square-foot maximum for many cultivation license types (AB 266 (19300.7 & SB 643 (19331(g)), with 22,000 square-foot maximum for many other license types (AB 266 (19300.7 & SB 643 (19331(g))

2. Berkeley Medical Cannabis Rules Affect 0.000339 of Total City Land.

a. 30,000 maximum square feet at a single location, 6 locations maximum (23E.72.040), which equals 180,000 square feet in the City, which equals 4.13 acres, which equals 0.000339 of total City land area

3. City Rules Uniquely Limit Cultivation of Medical Cannabis to the M District.

a. The District has an essential 0% vacancy rate (documentation previously submitted to the Planning Commission).
b. All other 35 Permitted Uses in the M District are allowed in some other districts (documentation previously submitted).
c. The Light Manufacturing category, which includes indoor farming (e.g., broccoli, orchids), is allowed in all four manufacturing districts and West Berkeley Commercial, except farming of the cannabis plant.

4. ~120+ FT Jobs* & $1,000,000 in Annual City Sales Tax Would Be Generated by Medical Cannabis Cultivators.

a. IF 180,000 square feet is cultivated (arithmetic previously submitted), BECAUSE
b. Farmers of cannabis would have additional location options beyond the M District, and
c. Elimination of the 6-location limit would mean that the licensing of small cannabis cultivators/farmers would not preclude the possibility of utilizing all allowable 180,000 square feet for cultivation.
(Many warehouses in Berkeley are in the 3,000 to 5,000 square foot range.)

*Job estimate based on RAND Working Paper "Estimated Cost of Production for Legalized Cannabis", Caulkins, 7/2010; corroborated as a conservative number by respected members of the cannabis community.

Important Facts
Expansion of Medical Cannabis Cultivation Beyond the Manufacturing (M) District

Prepared by the Medical Cannabis Commission (MCC) for the 9/2/15 Planning Commission (PC) Meeting
Agenda Item on Setting Work Plan Priority for this Referral from the Berkeley City Council (BCC)

1. Current City of Berkeley Rules
- 180,000 square feet of cultivation (4 acres, <1% of total city land)
- Six locations, maximum 30,000 square feet per location
- Cultivation is limited to the M District

2. Problem: An essential 0% Vacancy Rate in the M District Precludes Cultivation
- Cultivation is uniquely limited to the M District
- All other 35 Permitted Uses in the M District are allowed in some other districts (Orange Attach A)
- Cultivation of medical cannabis will not be possible within the City, unless more space is allocated

3. Medical Cannabis Businesses Poised to be Second Highest Contributor of Annual City Sales Tax
- Local jobs will come with local cultivation operations, as with statewide industry growth
- Cultivation operations = $1M conservative estimate in annual tax revenue IF all allowable 180,000 square feet can be cultivated; lose $5,500 for every 1,000 square feet that is not cultivated. (Green Attach B)
- Dispensaries = ~$720k tax revenue from 3 current dispensaries, possible increase with 4th dispensary
- Medical Cannabis Businesses = projected $1.7M to $2M in annual sales tax revenue (Blue Attach C)

4. Cultivation is Currently in an Unregulated, and Potentially Unsafe, Environment in Berkeley
- City's charge to the MCC: "To ensure that medical cannabis provision in Berkeley is conducted in a safe and orderly manner to protect the welfare of Qualified Patients and the community."
- Regulation improves safety of product, patients, and workers

5. Medical Cannabis - Cultivation Regulation/Ordinance/Legislation
- Legal in California since 1996, with passage of Prop 215 – Compassionate Use Act
- City of Berkeley Measure T, passed by voters in 2010
- City of Berkeley Cultivation Ordinance 12.28, from MCC to BCC by November 2015
- California Assembly/Senate Bills, major action expected by October 2015

6. Recreational Cannabis - Possible Statewide Referendum, November 2016
- Entirely, and importantly, separate from state action on medical cannabis legislation
- 54% support legalization, June 2015 Public Policy Institute of California Poll; 3% increase from 2014, 6% increase from 2010; age 55+ at 52%, from 42% in 2010; age 18 to 34 at 61%
- "Legalization of marijuana would not be an event that happens in one election", Blue Ribbon Panel on Marijuana Policy, released 7/22/15

7. Dollars and Jobs in California
- Medical cannabis $980M industry in California (2014 report from ArcView Group, research and investment firm in San Francisco)
- California comprises half the legal market (Troy Dayton, chief executive officer of Arc View Group)
- 100,000 current jobs in California in this field (International Business Times, "Marijuana Legalization 2015: Californians' Support for Adult's Recreational Use Of Pot Reaches Record High" by Philip Ross, June 9, 2015)
- Investment money for research, development, production is poised for the right time and right place
  Daily Finance/Business Insider, "Startups Are Poised to Cash In On Legalized Marijuana", by Matt Rosoff, 4/40/15); U.S. News & World Report, "15 Sectors to Watch in 2015", Lou Carlozo, 12/29/14 , reports marijuana the first sector to watch for significant investment opportunities)