



MEETING OF THE MEDICAL CANNABIS COMMISSION, CULTIVATION SUBCOMMITTEE

Permit Service Center
2120 Milvia Street
Douglas Fir Conference Room (First Floor)

Monday, August 22, 2016
3:30 - 5:00 PM

AGENDA

- I. **Call to Order**
 - A. Roll Call
 - B. Changes to Order of Agenda

- II. **Public Comment**

- III. **Discussion and Action Items**
 - A. Selection Process: review and decide on version to forward to full MCC. Five attachments:
 1. Subcommittee's Proposed Cultivation Permit Procedures forwarded to full MCC 6-2-16
 2. Staff suggestion for selection process (considered by MCC at July 21, 2016 meeting)
 3. City of Richmond ordinance Section 7.102.050 related to selection process
 4. City of Oakland ordinance Chapter 5.81 related to selection process
 5. Abbreviated Oakland ordinance Chapter 5.81 (Pappas)
 - B. Discuss ways to improve Planning Commission's perception of Medical Cannabis, and expansion of cultivation beyond
 - C. Discuss plans to encourage Council vote on cultivation ordinance
 - D. Select dates for future meetings

- IV. **Information Items** *(In compliance with Brown Act regulations, no action may be taken on these items. However, discussion may occur at this meeting if the item is moved to the Discussion section.)*
None.

- V. **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. Please refrain from wearing scented products to this meeting.

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.

TO: Medical Cannabis Commission

FROM: Elizabeth Greene, Secretary

SUBJECT: Staff Recommendation for Cultivation Selection Process

DATE: July 21, 2016

The MCC is developing a new ordinance which would allow cultivation facilities to locate in Berkeley. When a similar ordinance was developed for dispensaries, the Commission developed a selection process to determine how the single dispensary location would be allocated.

The question now is what kind of process should be considered for the cultivation process. Cultivation considerations are different from dispensary considerations in some significant ways:

	Dispensary	Cultivation
Available slots	1	unlimited
Possible businesses	1	Unlimited (area of cultivation is limited to 180,000 sf citywide)
Available locations	Any C district	Manufacturing (M) District only

The cultivation process in theory offers more opportunities for businesses to operate in the City than the dispensary process, because there is no restriction on the number of sites, and the possibility of cultivators sharing sites. Locations, however, could be just as restricted as the dispensary process due to the limitation to a single District (the M District) and the limited opportunities to locate within that district, as determined by MCC research.

The location restriction could change if cultivation opportunities are expanded beyond the M District – the change that could result has not been studied and is therefore uncertain. Additionally, any expansion of the area in which cultivation could occur might not be approved, or might be approved after the cultivation selection process has started. For the purpose of this memo, therefore, staff is assuming that cultivation will only occur in the M District.

Staff has developed a recommended selection process for MCC consideration:

1. Allocate a portion of the 180,000 sf total cultivation area to each of the three different state cultivation categories: Type 1A, Type 1B and Type 1C. Example:
 - a. Type 1A (indoor, up to 5,000 sf): 60,000 sf
 - b. Type 2A (indoor, between 5001 – 10,000 sf): 60,000 sf
 - c. Type 3A (indoor, between 10,001 and 22,000 sf): 60,000 sf

2. Open an application period with a limited time frame. During this time, Business License and Zoning Certificate applications will be submitted for specific types of cultivation and locations.
3. Staff will review the Zoning Certificate applications and approve those which conform to the Zoning Ordinance. Applications will be reviewed in the order received. If the applications received for a specific cultivator size exceed the space allotted for that category, only those received first will be approved.
4. Applicants with approved Zoning Certificates must submit a Building Permit application within __ days of the close of application period.
5. Applicants must commence construction within __ days of submitting a building permit.
6. In cases where an applicant does not meet the deadline for either applying for Building Permit or commencing construction, the square-footage of the site will be added back to the available area for that cultivation category.
7. Staff would re-open an application period every six months for a two year period. After two years, the MCC would evaluate the need for this process.

This process has the following features:

- No application forms would need to be developed for this process.
- Applicants would apply for a business license and zoning certificate like any other business.
- No discretionary review of the applications by the MCC, Zoning Adjustments Board, City Council or any other group is proposed.
- The application period would allow staff to track the applications received and ensure that the 180,000 square foot limit, and the allocation limit for each cultivation category, are not exceeded.
- This period would also allow property owners to interview potential tenants and select the one/s that are most compatible for the site.

Allowing the collective to locate within one thousand five hundred feet (1,500') of a public or private high school or within five hundred feet (500') of a park, community center, youth center, public or private child-care center or nursery school, will not grant the collective a special privilege not available to other medical marijuana collectives within the City of Richmond.

- (3) The collective has demonstrated that it considered other locations and selected the location that would have the minimum negative impact on the surrounding community while providing necessary services to its members.
- (d) No more than three (3) medical marijuana collectives shall be located within any square mile within the City limits.
- (e) No more than three (3) medical marijuana collective dispensaries and no more than three (3) medical marijuana product manufacturers shall be permitted or allowed to operate in the City of Richmond. When there are fewer than three (3) permitted collectives or fewer than three (3) permitted medical marijuana product manufacturers operating within the City, the Chief of Police shall publish an invitation for applications on the City's website, stating the period during which applications will be accepted.
- (f) No collective dispensary shall be permitted or allowed to also operate as a medical marijuana product manufacturer. No medical marijuana product manufacturers shall be permitted or allowed to operate as a collective dispensary. No management member of a collective dispensary in the City of Richmond shall be allowed to manage, control, operate, or be employed by, work at or volunteer at, a medical marijuana product manufacturer. No management member, owner, operator, partner, member, employee or person exercising any control of a medical marijuana product manufacturer shall be allowed to be a management member or employee or volunteer of a collective's dispensary located in the City of Richmond. It is the intent of the City Council that a collective dispensary and a medical marijuana product manufacturer be totally separate and unrelated to each other. Any breach of this subsection shall result in the permanent revocation of the permits of both the collective and the medical marijuana product manufacturer violating this provision.

(1-16 N.S., § 1, 1-12-2016)

7.102.050 - Permit application process.

Any medical marijuana collective or medical marijuana product manufacturers desiring a permit required by this chapter shall complete and file an application on a form supplied by the Chief of Police, and shall submit with the completed application payment of a nonrefundable

processing and notification fee, as established by the City Council by resolution. The medical marijuana collective and medical marijuana product manufacturer permit application is established to provide a review process for each proposed medical marijuana collective operation and each medical marijuana product manufacturing operation within the City.

- (a) Filing[—Medical Marijuana Collective]. The medical marijuana collective shall provide the following information:
- (1) The address of the property where the proposed medical marijuana collective will operate.
 - (2) A site plan describing the property with fully dimensioned interior and exterior floor plans including electrical, mechanical, plumbing, and disabled access compliance pursuant to Title 24 of the State of California Code of Regulations and the federally mandated Americans with Disabilities Act. The site plan shall demonstrate that there are separate rooms or partitioned areas within the collective for the receipt of supplies and for the distribution of medical marijuana to qualified patients and/or primary caregivers.
 - (3) Exterior photographs of the entrance(s), exit(s), street frontage(s), parking, front, rear and side(s) of the proposed property.
 - (4) Photographs depicting the entire interior of the proposed property.
 - (5) A security plan including procedures for verifying identification of qualified patients and primary caregivers both before entering the collective and again before receiving medical marijuana; the number, location and hours of security guards; and a theft prevention plan.
 - (6) If the property is being rented or leased or is being purchased under contract, a copy of such lease or contract. If the property is not being rented or leased, written proof that the property owner has been notified that the property will be used as a medical marijuana collective.
 - (7) If the property is being rented or leased, written proof that the property owner, and landlord if applicable, were given notice that the property will be used as a medical marijuana collective, and that the property owner, and landlord if applicable, agree(s) to said operations. If the collective is to be a subtenant, then "landlord" shall mean the primary tenant.
 - (8) The name, address, telephone number, title and function(s) of each management member.
 - (9) For each management member, a fully legible copy of one (1) valid government-issued

form of photo identification, such as a driver's license.

- (10) For each management member, a summary criminal history ("LiveScan") prepared by the Richmond Police Department not more than two weeks prior to the date of application and demonstrating that there are no pending charges nor convictions for crimes of moral turpitude (such as theft, fraud, or assault) within the previous ten years, and that the subject is not currently on parole or probation for the sale or distribution of a controlled substance.
- (11) Written confirmation as to whether the medical marijuana collective, or a collective with one or more management members in common with the applicant, previously operated in this or any other county, city or state under a similar license/permit, and whether the collective applicant ever had such a license/permit revoked or suspended and the reason(s) therefor.
- (12) Either (a) if the collective is incorporated, a certified copy of the collective's Secretary of State articles of incorporation, certificate(s) of amendment, statement(s) of information and a copy of the collective's bylaws demonstrating that the collective is organized as a nonprofit entity; or (b) if the collective is unincorporated, a copy of the collective's notarized creating document demonstrating that the collective is organized as a nonprofit entity. A creating document may include articles of association, bylaws, constitution, or other documents that set forth how the collective will operate.
- (13) A seller's permit from the California Board of Equalization.
- (14) The name and address of the applicant's current Agent for Service of Process.
- (15) A copy of the medical marijuana collective operating conditions, containing a statement dated and signed by each management member, under penalty of perjury, that they read, understand and shall ensure compliance with all operating conditions.
- (16) A copy of the prohibited activity checklist, available from the Richmond Police Department, containing a statement dated and signed by each management member, under penalty of perjury, that they read, understand and shall ensure that neither the collective nor its members and management members shall engage in the aforementioned prohibited activity.
- (17) A statement dated and signed by each management member, under penalty of perjury, that the management member has personal knowledge of the information contained in the application, that the information contained therein is true and correct, and that the application has been completed under the supervision of the management member(s).
- (18)

A statement of whether edible medical marijuana will be prepared at the proposed property and, if so, a certificate from the Contra Costa County Department of Health Services demonstrating compliance with the Food Services Facilities Inspection Program.

- (19) Evidence of a computerized or telephonic system for communicating with all other permitted collectives within the City of Richmond in order to ensure that a qualified patient, directly or through his or her primary caregiver(s), does not purchase, obtain, or otherwise receive a total of more than one ounce of medical marijuana per day.
 - (20) Whether it is anticipated that cultivation may occur onsite and, if so, documentation and evidence showing such cultivation operation will be in full conformity and compliance with this chapter, the Richmond Municipal Code, and State law.
- (b) Filing[—Medical Marijuana Product Manufacturer]. The medical marijuana product manufacturer shall provide the following information:
- (1) The address of the property where the proposed medical marijuana product manufacturer will operate.
 - (2) A site plan describing the property with fully dimensioned interior and exterior floor plans including electrical, mechanical, plumbing installations and any further information required by the Police Chief and Planning Director to approve the plans and for issuance of the required conditional use permit.
 - (3) A seller's permit from the California Board of Equalization.
 - (4) A valid City business license.
 - (5) The name and address of the applicant's current Agent for Service of Process.
 - (6) If the property is being rented or leased, written proof that the property owner, and landlord if applicable, were given notice that the property will be used for medical marijuana edible product manufacturing, and that the property owner, and landlord if applicable, agree(s) to said operations. If the manufacturer is to be a subtenant, then "landlord" shall mean the primary tenant.
- (c) After the closing of the application period, the Chief of Police will evaluate all applications for completeness. The Chief of Police shall ensure that applications are complete as follows:
- (1) Within twenty (20) business days of the close of the application period, except where circumstances beyond the control of the City justifiably delay such response, the Chief of Police shall determine whether the applications are complete. If it is determined an application is incomplete, the applicant shall be notified in writing that the application is not complete and the reasons therefor, including any additional information necessary to render the application complete.

- (2) The applicant shall have thirty (30) calendar days from the date of a notice of incomplete application to complete the application. Failure to do so within the thirty (30) day period shall render the application null and void. The determination that an application is null and void is not an appealable decision.
 - (3) Within ten (10) business days following the receipt of an amended application or supplemental information, except where circumstances beyond the control of the City justifiably delay such response, the Chief of Police shall again determine whether the application is complete and shall inform the applicant whether additional materials are required to complete the application. Evaluation and notification shall occur as provided above up to three times until such time as the application is found to be complete or in the alternative null and void. If, after three opportunities to complete an application, the applicant fails to provide all necessary information, the application shall be null and void. The determination that an application is null and void is not an appealable decision.
 - (4) All notices required by this chapter shall be deemed issued upon the date they are either deposited in the United States Postal Service mail or the date upon which personal service of such notice is provided.
- (d) All complete applications for a collective dispensary permit will be circulated to the Planning and Building Services, Fire and Code Enforcement Departments with a rating matrix and directions for evaluating and scoring applications based on criteria to be adopted by separate resolution of the Council. All complete applications for a collective dispensary permit will be circulated to the Planning and Building Services, Regulatory Unit and Fire Department for the necessary inspections and approvals.
- (e) Except where circumstances justify delay, not later than sixty (60) days from the date the completed permit applications are circulated for staff review, all complete applications will be considered at a noticed public hearing. If the Council does not choose to have the hearing(s) conducted by the Council then the Chief of Police shall cause the public hearing(s) on an application for a collective permit to be conducted before a panel consisting of the Chief of Police and representatives of the Planning and Building Services and Fire Departments. In reviewing and scoring collective permit applications, the rating body or City Council, shall consider those criteria to be adopted by separate resolution of the Council.
- (f) The Chief of Police shall cause the applicants and the owners of property located within seven hundred fifty feet (750') of every proposed collective location to be sent notice of the date, time, and place of the hearing(s) at least ten (10) business days in advance of the opening of such hearing(s). The Planning and Building Services Director shall cause the applicants and

the owners of property located within seven hundred fifty feet (750') of every proposed manufacturer's location to be sent notice of the date, time, and place of the hearing(s) at least ten (10) business days in advance of the opening of such hearing(s).

- (g) The Chief of Police or City Council shall open the public hearing(s) at the date, time, and place specified in the notice, but may continue the hearing(s), and may change the place of any or all hearing(s), as necessary to accommodate all interested parties.
- (h) The Chief of Police or City Council shall issue a written report of the decision on all collective or manufacturer permit applications not later than fifteen (15) business days after the hearing or series of hearings is closed. The report shall be in writing and shall include findings of fact, a summary of the relevant evidence, a statement of the issues, and a decision regarding whether each applicant is eligible to receive a permit. The report will also include any conditions to be imposed on a permit in addition to the conditions established in Section 7.102.060 and the facts supporting imposition of those conditions. The Planning and Building Services Director shall provide a supplemental written report regarding the conditions imposed by the conditional use permit for manufacturer permit applications. A copy of the reports shall be mailed or delivered to every applicant, and to any person who has requested notice of the decision and has paid the required fees for copying and mailing.

(1-16 N.S., § 1, 1-12-2016)

7.102.060 - Permit approval and operating conditions.

Any permit issued, or modified to allow relocation, pursuant to this chapter shall include, and each permittee shall continually comply with, all of the following conditions of operation, provided that additional conditions may be imposed as necessary to preserve the public health, safety, and welfare:

- (a) The property satisfies all locational and zoning criteria.
- (b) Exterior building and parking area lighting at the property are in compliance with all applicable provisions of this Code, as determined by the Planning Division.
- (c) Windows and roof hatches at the property shall be secured so as to prevent unauthorized entry; equipped with latches that may be released quickly from the inside to allow exit in the event of emergency; and comply with all applicable Building and Fire Code provisions.
- (d)

The property provides a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the property is not detected outside the property, anywhere on adjacent property or public rights-of-way, or within any other unit located within the same building as the medical marijuana collective.

- (e) The property is monitored at all times by closed-circuit television for security purposes. The camera and recording system must be of adequate quality, color rendition and resolution to allow the ready identification of an individual on or adjacent to the property. The recordings shall be maintained at the property for a period of not less than thirty (30) days.
- (f) The property has a centrally-monitored fire and burglar alarm system.
- (g) A sign is posted in a conspicuous location inside the property advising:
 - (1) The diversion of marijuana for non-medical purposes is a violation of State law.
 - (2) The use of marijuana may impair a person's ability to drive a motor vehicle or operate heavy machinery.
 - (3) Loitering at the location of a medical marijuana collective for an illegal purpose is prohibited by California Penal Code Section 647(h).
 - (4) This medical marijuana collective is permitted in accordance with the laws of the City of Richmond and the State of California, including the MMRSA.
- (h) Each collective distributing edible medical marijuana or other manufactured infused products for the sole consumption by qualified patient members and qualified patient management members of the collective shall ensure that the products are manufactured, packaged and labeled in compliance with all applicable State and local laws. No collective shall manufacture or process edible medical marijuana products. No collective shall obtain or distribute edible medical marijuana products or other manufactured marijuana infused edible products from any manufacturer located within the City of Richmond unless such manufacturer has a valid medical marijuana product manufacture's permit issued pursuant to this chapter.
- (i) The medical marijuana collective meets all applicable State and local laws to ensure that the operations of the collective are consistent with the protection of the health, safety and welfare of the community, qualified patients and their primary caregivers, and will not adversely affect surrounding uses.
- (j) No collective shall operate for profit. Cash and in-kind contributions, reimbursements, and reasonable compensation provided by management members and members towards the collective's actual expenses of the growth, cultivation, and provision of

medical marijuana shall be allowed provided that they are in strict compliance with State law. All such cash and in-kind amounts and items shall be fully documented. The site of cultivation for all in-kind contributions shall be noted and addresses shall be made available to Fire and Building Inspectors upon request.

- (k) Prior to distributing any crop, batch or bundle of medical marijuana that it cultivates or acquires for distribution or any edible medical marijuana or other manufactured infused products, a collective shall submit samples of that crop, batch or bundle to an independent laboratory to be tested using standard analytical methodology for the presence of mold, pesticides, and other additives or adulterants that could be harmful if ingested or applied topically. The medical marijuana or manufactured infused product shall not be distributed or consumed before laboratory results demonstrate that it is safe for consumption.
- (l) Prior to hiring any prospective employee or management member, the Richmond Police Department shall prepare a summary criminal history ("LiveScan") demonstrating that there are no pending charges nor convictions for crimes of moral turpitude (such as theft, fraud, or assault) within the previous ten years, and that the subject is not currently on parole or probation for the sale or distribution of a controlled substance.
- (m) All marijuana businesses shall maintain all State licenses required under the MMRSA. Any new marijuana business issued a permit must, within 10 days of obtaining a medical marijuana permit, apply for the State license and must notify the Police Department of the date of the license application. All marijuana businesses must notify the Police Department when the State license is approved and issued. Upon verbal or written notification that the State has denied a license application, the marijuana business must notify the Police Department of that determination within 3 business days of the date of rejection.
- (n) All currently permitted marijuana businesses must immediately apply for the State licenses within 10 days of the MMRSA's effective date. Any medical marijuana dispensary, manufacturer or any other permitted medical marijuana operation or permitted marijuana business that fails to obtain or qualify for the required State license, or is refused such license, shall immediately cease all operations in the City. The MMRSA establishes a dual licensing structure requiring both a State license and a local permit; therefore any marijuana business that does not meet both State licensing and local permit requirements is not permitted to operate within the City limits.

(1-16 N.S., § 1, 1-12-2016)

7.102.070 - Permit non-transferable.

A medical marijuana collective permit or medical marijuana product manufacturer permit issued pursuant to this chapter shall become null and void upon the cessation of the collective or manufacturer, or upon a major management change to such an extent that the original applicant is no longer a management member, or fifty (50) percent or more of the board of directors has been replaced, and/or the unauthorized relocation of the collective or manufacturer to a different property.

- (a) The following shall be deemed an unauthorized change in location if undertaken without approval of a permit modification in accordance with Section 7.102.075:
 - (1) Any relocation or expansion that includes a separate piece of property or parcel of land from the initially permitted property or property that requires a separate lease, or separate utilities from the initially permitted property.
 - (2) Any expansion of the initially permitted property which represents a greater than fifty percent (50%) increase in the square footage of occupancy or in the square footage that is open to the public.
- (b) The lawful conduct of activity regulated by this chapter by a permittee shall be limited to those activities expressly indicated on the medical marijuana collective permit or medical marijuana product manufacturer permit and in the application materials.
- (c) The holder of a medical marijuana collective or medical marijuana product manufacturer permit, or any marijuana business permit shall not allow others to use or rent the permitted property, and the holder of the permit shall not allow the holder of the permit to be replaced by anyone who was not named as a management member in the original permit application. For medical marijuana collectives only, an exception shall be made for persons who are not collective members or management members and who possess a valid City issued business license which authorizes the "place to place" sale of materials (other than seed stock) for the collective cultivation of medical marijuana by members and/or management members of the collective.

(1-16 N.S., § 1, 1-12-2016)

7.102.075 - Modification of permit conditions.

- (a)

City of Oakland Municipal Code

Chapter 5.81 - MEDICAL CANNABIS CULTIVATION FACILITY PERMITS

Sections:

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 cultivation 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 acknowledges that the voters of the State have provided an exemption to prosecution for the cultivation, possession of cannabis for medical purposes under the Compassionate Use Act (CUA), but that the CUA does not address land use or building code impacts or issues arising from the resulting increase in cannabis cultivation within the City.
- C. The City acknowledges that sales of medical marijuana are subject to taxation by both the City and the State and that the California State Board of Equalization (BOE) is also requiring that businesses engaging in such retail transactions hold a seller's permit.
- D. The purpose and intent of this Chapter is to regulate the cultivation and processing of medical cannabis in a manner that protects the public health, safety and welfare of the community.

(Ord. No. 13033, § 3, 7-27-2010)

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 8.46.020.
- 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."
- E. "City Administrator" as used only in this Chapter shall mean the City Administrator for the City of Oakland and his or her designee.
- 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 an industrial cannabis cultivation and manufacturing facility as described in Section 5.81.040.
- H. "Medical Cannabis Collective" as used only in this Chapter shall be the same, and as may be amended, as if defined in Section 5.80.010.
- I. "One Parcel of Land" as used only in this Chapter shall 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.
- J. "Permittees" as used only in this Chapter are cultivation and manufacturing facilities that have obtained a permit under this Chapter.
- K. "Primary Caregiver" as used only in this Chapter shall be the same, and as may be amended, as if defined in Section 5.80.010.
- L. "Qualified Patient" as used only in this Chapter shall be the same, and as may be amended, as if defined in Section 5.80.010.
- 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.

(Ord. No. 13033, § 3, 7-27-2010)

5.81.030 - Permit required.

- A. Except for hospitals and research facilities that obtain written permission for cannabis cultivation under federal law, it is unlawful to establish any cultivation and manufacturing facility without a valid business permit issued pursuant to the provisions of this Chapter. It is unlawful for any entity organized on a for-profit basis, except for hospitals and research facilities, to engage in any medical cannabis cultivation whatsoever.
- B. The City Administrator shall issue, as detailed below, special business permits for the operation of industrial cannabis cultivation processing and manufacturing 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.
- D. All cultivation and manufacturing facility permits shall be special business permits and shall be issued for a term of two years, subject to annual review one year from the date of prior issuance. No vested right shall ever inure to the benefit of such permit holder as such permits are revocable at any time with or without cause by the City Administrator subject to Section 5.81.120.

- E. Cultivation and manufacturing facility permits shall be granted to entities operating legally according to State law.

(Ord. No. 13033, § 3, 7-27-2010)

5.81.040 - Industrial cultivation of medical marijuana.

- A. Any use or 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.
- B. The proposed location of a cultivation and manufacturing facility shall be in areas where "light manufacturing industrial," or their equivalent use, is permitted 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 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.

(Ord. No. 13033, § 3, 7-27-2010)

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, plans for security, waste disposal, pest management, product testing, worker safety and compensation, non diversion of product, facility location, capitalization, business plans, applicant complaint history, criminal background checks, and any additional information deemed necessary by the City Administrator.
- 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.
- 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.

(Ord. No. 13033, § 3, 7-27-2010)

5.81.070 - Operating standards.

The City Administrator shall establish operating standards for permittees. 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.

(Ord. No. 13033, § 3, 7-27-2010)

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

- A. 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 and/or gross receipts tax requirements.
- 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.

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. 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. 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.

(Ord. No. 13033, § 3, 7-27-2010)

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. The permittees under this Chapter hereby agree to save, defend, indemnify and keep harmless the City and its officials, officers, employees, representatives, agents and volunteers from all actions, claims, demands, litigation, or proceedings, including those for attorneys' fees, against the City in consequence of the granting of this permit, and will in all things strictly comply with the conditions under which this permit is granted, if any.

(Ord. No. 13033, § 3, 7-27-2010)

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

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

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

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

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

- B. Cultivation, processing, possessing, and/or manufacturing of medical cannabis in residential areas shall be in conformance with the following standards:
1. The residential facility shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities. Medical cannabis cultivation, processing, possession, and/or manufacturing shall remain at all times secondary to the residential use of the property;
 2. Cultivation possession, processing and/or manufacturing of medical cannabis in residential areas shall occur only in a secured residences occupied by the qualified patient or primary caregiver;
 3. No individual residential facility or other facility housing the cultivation, processing and/or manufacturing of medical cannabis shall contain more than 48 ounces of dried cannabis, and/or more than 96 square feet of cultivation area;
 4. If required by the building or fire code, the wall(s) adjacent to the indoor cultivation area shall be constructed with 5/8" Type X fire resistant drywall;
 5. The cultivation area shall be in compliance with the current adopted edition of the California Building Code § 1203.4 natural ventilation or § 402.3 mechanical ventilation (or its equivalent(s));
 6. The cultivation area shall not adversely affect the health or safety of the residence or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;
 7. All high amperage electrical equipment (exceeding six amps) used in the cultivation of medical cannabis, (e.g., lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired; the use of extension cords to supply power to high amperage electrical equipment (exceeding six amps) used in the cultivation of medical cannabis is prohibited;
 8. Any electrical rewiring or remodeling shall first require an electrical permit from the City;
 9. The use of butane gas products for personal use medical cannabis cultivation is prohibited; and
 10. From a public right-of-way, there shall be no exterior evidence of medical cannabis cultivation occurring at the property.
- C. If a qualified patient or primary caregiver who is cultivating, possessing, processing and/or manufacturing medical cannabis for personal use at the residence has a doctor's recommendation that the above allowable quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs, as specified by such doctor.

(Ord. No. 13033, § 3, 7-27-2010)

5.81.110 - Prohibited operations.

All cultivation, processing, and manufacturing facilities that do not have a permit under this Chapter are expressly prohibited. No use that purports to have cultivated 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.

(Ord. No. 13033, § 3, 7-27-2010)

5.81.120 - Appeals.

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

(Ord. No. 13033, § 3, 7-27-2010)

Oakland Cultivation Regulations Summary

Permit required.

A. Except for hospitals and research facilities that obtain written permission for cannabis cultivation under federal law, it is unlawful to establish any **cultivation and manufacturing facility** without a **valid business permit** issued pursuant to the provisions of 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.

B. The **City Administrator** shall issue, as detailed below, **special business permits** for the operation of **industrial cannabis cultivation processing and manufacturing 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, 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** .

D. All **cultivation and manufacturing facility permits** shall be **special business permits** and shall be issued for a term of **two years**, subject to **annual review** one year from the date of prior issuance. No vested right 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.

E. **Cultivation and manufacturing facility permits operating legally according to State law.- - Industrial cultivation of medical marijuana.**

A. Any use or 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 applicant from the requirement of obtaining a permit.

-The proposed **location** of a cultivation and manufacturing facility shall be in areas where "**light manufacturing industrial**," or their equivalent use, is permitted 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 and manufacturing facility permittee. Public notice shall be given as provided investigating official referred to in to whom the application shall be referred, shall be the City Administrator. **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, **plans for security, waste disposal, pest management, product testing, worker safety and compensation, non diversion of product, facility location, capitalization, business plans, applicant complaint history, criminal background checks**, additional information necessary City Administrator.

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.

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, & upon issuance permit.

Operating standards.

The City Administrator shall establish operating standards for permittees. 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. Examination of books, records, witnesses—Information confidential—Penalty.

A. 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 verify tax compliance under and/or gross receipts tax.

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**.

C. 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. 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.

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. The permittees under this Chapter hereby agree to save, defend, indemnify and keep harmless the City and its officials, officers, employees, representatives, agents and volunteers from all actions, claims, demands, litigation, or proceedings, including those for attorneys' fees, against the City in consequence of the granting of this permit, and will in all things strictly comply with the conditions under which this permit is granted, if any.

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

Notwithstanding State law regarding medical cannabis cultivation, **no qualified patient or primary caregiver may cultivate medical cannabis in an area of more than 32 square feet on one parcel of land, unless they form a cooperative or collective. A collective or cooperative of qualified patients or primary caregivers, may cultivate medical cannabis covering an area of no more than 32 square feet in a residential unit or if in a nonresidential building on one parcel of land per each member of the cooperative or collective, up to a maximum of 216 cannabis/marijuana plants within a maximum growing area of 96 square feet indoor or 60 outdoor cannabis/marijuana plants on one parcel of land.** In the absence of a permit under this Chapter, such cultivation shall be subject to the following operating standards: A. **Cultivation, processing, possession, and/or manufacturing of medical marijuana in any residential areas shall be limited to qualified patients, primary caregivers, and medical cannabis collectives or cooperatives comprised of no more than three qualified patients and/or their primary caregivers.** Every member of the medical cannabis collective or cooperative shall possess an identification card issued by the County of Alameda, or the State of California, or another agency recognized by the City.

Oakland Cultivation Regs Page 3

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, other impacts, hazardous because 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. 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. ...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, Dr. specified.