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Ordinance No. 12585 C.M.S.

Approved as to Form Only
Mark P. Wald

INTRODUCED BY COUNCILMEMBERS JEAN QUAN AND IGNACIO DE LA FUENTE

AN ORDINANCE AMENDING TITLE 5 OF THE OAKLAND MUNICIPAL CODE, ENTITLED BUSINESS LICENSES AND REGULATIONS, TO ADD CHAPTER 5.80, PERTAINING TO MEDICAL CANNABIS DISPENSARY PERMITTING AND AMENDING THE MASTER FEE SCHEDULE (ORDINANCE 9336, AS AMENDED) TO ESTABLISH REGULATORY FEES

WHEREAS, on November 5, 1996, the voters of California passed Proposition 215, the Compassionate Use Act of 1996, by a YES vote of 55.7 percent, and the residents of Oakland voted YES for Proposition 215 by an overwhelming 70.3 percent; and

WHEREAS, the California State Legislature passed, and Governor signed into law, SB 420 to clarify the scope of the application of the Compassionate Use Act; and

WHEREAS, SB 420 allows cities and other governing bodies to adopt and enforce laws consistent with SB 420; and

WHEREAS, it is the desire of the City Council to establish a new section in the municipal code pertaining to the permitted distribution of medical cannabis in the City of Oakland consistent with SB 420; and

WHEREAS, it is the continued desire of the City Council that Oakland residents suffering from life threatening or serious illnesses have access to a safe and affordable supply of medical grade marijuana and cannabis products; and

WHEREAS, certain cannabis sales outlets currently operating in the City are not in compliance with the City's Medical Cannabis Distribution Program, provisions of SB 420, the Americans with Disability Act regulations and local health and fire safety regulations and as such are a threat to the health and safety of Oakland residents, qualified patients and qualified caregivers; and

WHEREAS, the City Council desires to establish a permitting process in order to impose regulations that will protect the peace, health, safety and welfare of patients, and the community as a whole; now therefore the Oakland City Council does hereby ordain:

Section I
TITLE 5 OF THE OAKLAND MUNICIPAL CODE, ENTITLED LICENSES AND REGULATIONS, IS HEREBY AMENDED TO ADD CHAPTER 5.80, ENTITLED MEDICAL CANNABIS DISPENSARY PERMITS, AS FOLLOWS:

5.80.010 Definitions

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

A. "Cannabis Dispensary", hereinafter Dispensary, shall be construed to include any association, Medical cannabis association, cooperative, affiliation, or collective of persons where four (4) or more "qualified patients" and/or "primary care givers", in

possession of an identification card, or written recommendation, issued by the County of Alameda, or the state of California, or another agency recognized by the City of Oakland pursuant to California Health and Safety Code Section 11362.7 et seq, to provide education, referral, or network services, and facilitation or assistance in the lawful production, acquisition, and distribution of medical cannabis.

B. "Primary Caregiver" shall have the same definition as California Health and Safety Code section 11362.7 et seq, and as may be amended, and which defines "Primary Caregiver" as a individual, or "medical cannabis collective" designated by a qualified patient or by a person with an identification card, or a written recommendation, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include 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.

C. "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 states a person suffering from a serious medical condition who obtains a written recommendation from a physician licensed to practice medicine in the state of California to use marijuana for personal medical purposes.

D. "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 states 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.

E. "Written Recommendation" shall have the same definition as California Health and Safety Code section 11362.7 et seq, and as may be amended, and which states a "written recommendation" is an 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.

F. "Cannabis", or "Marijuana" shall be the same, and as may be amended, as is defined in OMC 8.46.020.

G. "Medical cannabis collective" means a cooperative affiliation, association or collective of persons comprised of no more than 3 (three) "qualified patients" and/or their "primary caregivers" with valid identification cards or written recommendation, to provide education, referral, or network services and to facilitate/assist in the lawful production, acquisition, and provision of medical marijuana to their qualified patients.

H. "Excessive Profits" means the receipt of consideration of a value substantially higher than the reasonable costs of operating the facility.

5.80.020 Permit required.

Except for Hospitals, research facilities, or an entity authorized pursuant to OMC section 8.46.030 and Primary Caregivers, as defined in section 5.80.010 B (1), it is unlawful for any owner, operator, or association to own, conduct, operate or maintain, or to participate therein, or to cause or to permit to be conducted, operated, or maintained, any Dispensary with four (4) or more "qualified patients" and caregivers with valid ID pursuant to California Health and Safety Code Section 11362.7 et seq., in the City of Oakland unless there exists a valid permit therefore, granted and existing in compliance with the provisions of Chapter 5.02. The City Manager and/or his/her designee shall issue no more than four (4) valid permits for the operation of Dispensary's in the City of Oakland. The application for such permit shall set forth, in addition to the requirements specified in Section 5.02.020, the fact that the proposed location of such Dispensary is not within One thousand (1000) feet, unless the City Manager or his/her designee in their discretion determines that the location will not impact the peace and order and welfare of

the public, of a public or private school or a public library or youth center (serving youth 18 and under), or parks and recreation facilities or residential zone or another Dispensary. The proposed location must be located in a Commercial or Industrial zone, or their equivalent as may be amended, of the City. 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 Manager. In recommending the granting or denying of such permit and in granting or denying the same, the City Manager, shall give particular consideration to the capacity, capitalization, complaint history of the applicant and any other factors that in their discretion she/he deems necessary to the peace and order and welfare of the public. All Applicants shall pay an application fee and all inspections fees that may be required therewith.

5.80.030 Regulations

The Dispensary shall meet all the operating criteria for the dispensing of medical marijuana as is required pursuant to California Health and Safety Code Section 11362.7 et seq. and by the Oakland City Manager or his/her designee's administrative regulations for the permitting and operation of medical marijuana Dispensaries including security concerns. It is unlawful for any person or association operating a Dispensary under the provisions of this Chapter Section or any Dispensary whatsoever, in the City, or any agent, employee or representative of such person to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct, or otherwise, or to permit such Dispensary to remain open, or patrons to remain upon the premises, between the hours of 8 p.m. and 7 a.m. the next ensuing day.

5.80.040 Performance Standards

Dispensaries, once permitted, shall meet the following operating standards for the duration of the use:

A. Dispensaries may possess no more than 8 ounces of dried marijuana per qualified patient or caregiver, and maintain no more than 6 mature and 12 immature marijuana plants per qualified patient.

i. If a qualified patient or primary caregiver has a doctor's recommendation that this 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.

ii. Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section

B. The City Manager shall set forth in her/his administrative regulations the method and manner in which background checks of employees for Dispensaries will be conducted, and which shall set forth standards for disqualification of an employee based on their criminal history.

C. No cannabis shall be smoked, ingested or otherwise consumed on the premises.

D. 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.

E. Dispensary shall maintain records of all patients and or patient caregivers using only the Identification Card number issued by the county, or its agent, pursuant to California Health and Safety Code Section 11362.7 et seq., as a protection of the confidentiality of the cardholders, or a copy of the written recommendation.

F. Dispensary shall allow the City Manager or his/her designee to have access to the entities' books, records, accounts, and any and all data relevant to its permitted activities for the purpose of conducting an audit or examination. Books, records, accounts, and any and all relevant data will be produced no later than 24 hour after City Manager or his/her designees request.

G. The Dispensary shall provide litter removal services twice each day of operation on and in front of the premises and, if necessary, on public sidewalks within hundred (100) feet of the premises.

H. The Dispensary shall provide adequate security on the premises, including lighting and alarms, to insure the safety of persons and to protect the premises from theft.

I. Signage for the establishment shall be limited to one wall sign not to exceed ten (10) square feet in area, and one identifying sign not to exceed two square feet in area; such signs shall not be directly illuminated.

J. The Dispensary shall provide City Manager or his/her designee, the chief of police and all neighbors located within fifty feet of the establishment with the name, phone number and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the establishment. The Dispensary shall make every good faith effort to encourage neighbors to call this person to try to solve operating problems, if any, before any calls or complaints are made to the police department or other City officials.

K. The Dispensary shall meet any specific, additional operating procedures and measures as may be imposed as conditions of approval by the City Manager or his/her designee in order to insure that the operation of the Dispensary is consistent with protection of the health, safety and welfare of the community, Qualified Patients and Caregivers, and will not adversely affect surrounding uses.

5.80.050 Regulatory Fees

Every person conducting, managing or maintaining the business of a Dispensary in the City shall, in addition to the application fees, pay a regulatory fee annually in advance, and shall keep a copy of the Business Tax Certificate issued by the Business Tax Office, together with a copy of the Dispensary permit issued pursuant to the provisions of Section 5.12.020, together with a copy of this chapter, including the regulations set forth in Section 5.80.030, posted in a conspicuous place in the premises maintained as such Dispensary at all times during which such Dispensary is being operated.

5.80.060 Compensation

Dispensary shall receive only compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card, or written recommendation, to enable that person to use marijuana pursuant to California Health and Safety Code Section 11362.7 et seq, or for payment for out-of-pocket expenses incurred in providing those services, or both.

Retail sales of medical cannabis for Excessive Profits are explicitly prohibited.

5.80.070 Appeals
Notwithstanding section 5.02.100, any decision, except for suspension and or revocation, pursuant to this chapter by the City Manager 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 Manager, in accordance with procedures in set forth in section 5.02.100. The decision of the City Manager shall be final and conclusive.

5.80.080 Prohibited Operations

All Owners, Operators, collaborative, associations, and collectives operating in violation of California Health and Safety Code Section 11326.7 et seq and 11366.5, and this Chapter are expressly prohibited. Except for uses established pursuant to OMC Chapter 8.46, no use which purports to have distributed marijuana prior to the enactment of this Chapter shall be deemed to have been a legally established use under the provisions of the Oakland Planning Code, the Oakland Municipal Code, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim legal nonconforming status.

5.80.090 Liability

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

Section II
Severability

This Chapter shall be enforced to the full extent of the authority of the City. If any section, subsection, paragraph, sentence or word of this chapter is deemed to be invalid or beyond the authority of the City, either on its face or as applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences, or words of this chapter, and the applications thereof; and to that end the sections, subsections, paragraphs, sentences and words of this chapter shall be deemed severable.

Section III
Effective Date
This ordinance shall take effect immediately if it is passed with six or more affirmative votes; otherwise it will take effect seven days after final passage pursuant to Section 216 of the Charter of the City of Oakland.

Section IV
Master Fee Schedule

The Master Fee Schedule shall be amended to incorporate the following non-refundable regulatory fees.

> A. Dispensary with four (4) to five hundred (500) qualified patients or Caregivers: shall pay a nonrefundable annual regulatory fee for the actual cost for administering and implementation of OMC Chapter 5.80, up to an amount not to exceed five thousand dollars ($5000.00).

B. Dispensary with five hundred and one (501) to one thousand (1000) "qualified patients" or "Caregivers": shall pay a nonrefundable annual regulatory fee for the actual cost for administering and implementation of OMC Chapter 5.80, up to an amount not to exceed ten thousand dollars ($10,000.00).

C. Dispensary with one thousand and one (1001) to one thousand five hundred (1500) "qualified patients" or "Caregivers": shall pay a nonrefundable annual regulatory fee for the actual cost for administering and implementation of OMC Chapter 5.80, up to an amount not to exceed fifteen thousand dollars ($15,000.00).

D. Dispensary with one thousand five hundred and one (1501) or greater "qualified patients" or "Caregivers": shall pay a nonrefundable annual regulatory fee for the actual cost for administering and implementation of OMC Chapter 5.80, up to an amount not to exceed twenty thousand dollars ($20,000.00).

In Council, Oakland, California, FEB 17 2004, 2004.

PASSED BY THE FOLLOWING VOTE:

AYES- ~~BROOKS~~, BRUNNER, CHANG, DE LA FUENTE, NADEL, QUAN, AND WAN.

NOES-

ABSENT-

ABSTENTION-

Attest: Deborah Holland
for CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

Introduction Date: FEB 3 2004

NOTICE AND DIGEST

AN ORDINANCE AMENDING TITLE 5 OF THE OAKLAND MUNICIPAL CODE, ENTITLED BUSINESS LICENSES AND REGULATIONS, TO ADD CHAPTER 5.80 PERTAINING TO MEDICAL CANNABIS DISPENSARY PERMITTING AND AMENDING THE MASTER FEE SCHEDULE (ORDINANCE 9336, AS AMENDED), TO ESTABLISH REGULATORY FEES

This Ordinance amends the City of Oakland Municipal Code by adding a chapter to the Business Licenses and Regulations section for the purpose of establishing a business permit to operate certain medical cannabis dispensaries. The ordinance authorizes the City Manager to issue no more than 4 (four) permits and imposes regulatory fees ranging from $5,000 to $20,000 per year on each dispensary depending on its size. Permitted dispensaries must meet all operating criteria required by state law and local law and the City Manager