

INTRODUCED BY COUNCILMEMBER REID AND KAPLAN

Ordinance 13033 C.M.S.

AN ORDINANCE AMENDING TITLE 5 OF THE OAKLAND MUNICIPAL CODE, ENTITLED BUSINESS LICENSES AND REGULATIONS, TO ADD CHAPTER 5.81, PERTAINING TO MEDICAL CANNABIS CULTIVATION FACILITY PERMITTING AND AMENDING THE MASTER FEE SCHEDULE (ORDINANCE NO. 9336, AS AMENDED) TO ESTABLISH REGULATORY FEES REGARDING THIS ACTIVITY

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 of 1996; and

WHEREAS, SB 420 allows cities and other governing bodies to adopt and enforce laws 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, no licensing and regulation system for medical cannabis cultivation presently exists in the City of Oakland; and

WHEREAS, extensive medical cannabis cultivation currently occurs in Oakland with no regulation, posing potential public harms including fires, crime, and health risks and inducing increased City response costs to address these impacts; and

WHEREAS, the establishment and expansion of permitted medical cannabis cultivation processing, and manufacturing on an industrial scale in Oakland can displace unregulated cultivation in Oakland that threatens public health, safety and welfare of Oakland residents; and

WHEREAS, strict operating and performance standards shall help ensure that permitted cannabis cultivation facilities do not threaten the health and safety of qualified patients or Oakland residents; and

WHEREAS, medical cannabis cultivated in Oakland should only be transferred to dispensaries that have been duly permitted as legitimate dispensaries by their locality and are members of the same collective as the cultivation facility, to prevent diversion and comply with state law; and

WHEREAS, the City Council desires to establish a medical cannabis cultivation permitting process in order to impose regulations that shall 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 1. It is the intent of the City Council in enacting this ordinance, to encourage responsible businesses in the development of Oakland's cultural and entertainment sectors, while providing for the safety of Oakland residents and enabling the Oakland Police Department to be effective in preventing violence and maintaining the peace.

SECTION 2. The City Council finds and determines the forgoing recitals to be true and correct and hereby makes them a part of this ordinance.

SECTION 3. The City Council finds and determines that the adoption of this Ordinance is exempt from CEQA under Sections 15061(b) (3) (common sense exemption) and 153332 (in-fill exemption) of the State CEQA Guidelines and authorizes the filing of a Notice of Exemption with the Alameda County Clerk.

5.81.010 Findings and Purpose

- A.** The City Council of the City of Oakland, based on evidence presented to it in the proceedings leading to the adoption of this ordinance hereby finds that the cultivation and processing of medical cannabis in the City of Oakland 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 of Oakland acknowledges that the voters of the State of California 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 of Oakland acknowledges that sales of medical marijuana are subject to taxation by both the City and the State of California 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.

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 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.
- E. "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 10 square feet and stacked vertically on top of each other shall be counted as 20 square feet of cultivation area.
- F. "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 forty-eight (48) ounces of dried cannabis, and/or cultivating or storing medical cannabis in an area greater than ninety six (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.
- G. "Medical cannabis collective" as used only in this Chapter shall be the same, and as may be amended, as if defined in OMC 5.80.010.
- H. "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.

- I. "Permittees" as used only in this Chapter are cultivation and manufacturing facilities that have obtained a permit under this Chapter.
- J. "Primary caregiver" as used only in this Chapter shall be the same, and as may be amended, as if defined in OMC 5.80.010
- K. "Qualified patient" as used only in this Chapter shall be the same, and as may be amended, as if defined in OMC 5.80.010
- L. "Written recommendation" as used only in this Chapter shall be the same, and as may be amended, as if defined in OMC 5.80.010

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 (4) 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 5.81.120.
- E. Cultivation and manufacturing facility permits shall be granted to entities operating legally according to state law.

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 ninety six (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.

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.

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.

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 Permittees 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 & 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 of Oakland.

B. The Permittees under this Chapter hereby agree to save, defend, indemnify and keep harmless the City of Oakland 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.

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 thirty two (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 thirty two (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 ninety six (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 of Oakland 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 forty eight ounces of dried cannabis, and/or more than ninety six square feet of cultivation area;

(4) If required by 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.

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.

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.

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; provided, however, permits shall not be issued under this Chapter until January 1, 2011.

Section IV Master Fee Schedule

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

- A. Every Applicant shall pay, upon submitting an application under this Chapter, a nonrefundable application fee of five thousand dollars (\$5,000).
- B. An Applicant to receive a cultivation and manufacturing facility shall pay a nonrefundable regulatory fee of two hundred and eleven thousand dollars (\$211,000) per annum.

In Council, Oakland, California, JUL 27 2010, 2010,

Passed By The Following Vote:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, QUAN, REID, and
 PRESIDENT BRUNNER

NOTES-

ABSENT-

ABSTENTION- NADEL, BRUNNER

Attest: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California