

# *Cannabis Regulatory Commission (former Measure Z)* Regular Meeting

Thursday, January 15, 2015, 6:30 p.m.  
Council Chambers, City Hall, One Frank H. Ogawa Plaza

## AGENDA

### *Members:*

Dale Gieringer	District 1	Jacob Sassaman	District 7
Sean Donahoe	District 2	A. Kathryn Parker	At Large
Sierra Martinez	District 3	Vacant	Mayor
James Anthony	District 4	Amanda Reiman	City Auditor
Matt Hummel	District 5	Joe DeVries	City Administrator
Marlon Hendrix	District 6		

Available on-line at: <http://www.oaklandnet.com/measurez>

## AGENDA

- A. Roll Call and Determination of Quorum
- B. Open Forum / Public Comment
- C. Review of the Pending List and Additions to Next Month's Agenda
- D. Approval of the Draft Minutes from the Cannabis Regulatory Commission meeting of 11-20-2014.
- E. Reports for Discussion and Possible Action
  - 1. Discussion and possible action on the City Council Public Safety Committee action of December 16<sup>th</sup> regarding the City's proposed Cannabis Cultivation Ordinance. (*Ordinance, Staff Report, CM Kalb/Kaplan Memo attached*)
    - a. The Public Safety Committee Action/Request
    - b. Potential Conflict of Interest concerns
    - c. Role and Authority of the Commission currently and potential future authority
    - d. Proposed Ordinance discussion
  - 2. A discussion and possible action on the 2014 Annual Report
  - 3. A discussion of "Do's and Don't for Measure Z Clubs (list attached)
  - 4. An update on efforts at Statewide Legalization in 2016 (Reiman)
- F. Announcements
- G. Adjournment

Persons may speak on any item appearing on the agenda; however a Speaker Card must be filled out and given to a representative of the Cannabis Regulatory Commission. Multiple agenda items cannot be listed on one speaker card. If a speaker signs up to speak on multiple items listed on the agenda, the Chairperson may rule that the speaker be given an appropriate allocation of time to address all issues at one time (cumulative) before the agenda items are called. All speakers will be allotted 3 minutes or less – unless the Chairperson allots additional time.

This meeting is wheelchair accessible. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in the meetings of the Cannabis Regulatory Commission, please contact the Office of the City Clerk (510) 238-3612. Notification two full business days prior to the meeting will enable the City of Oakland to make reasonable arrangements to ensure accessibility. In compliance with Oakland's policy for people with chemical sensitivities, please refrain from wearing strongly scented products to events.

For questions or concerns regarding this agenda, or to review any agenda-related materials, please contact the Cannabis Regulatory Commission at (510) 238-3301.

# *Cannabis Regulatory Commission (former Measure Z)*

Pending List and Proposed

Thursday, January 15<sup>th</sup>, 2015 6:30 p.m.

Items for discussion

Pending, no specific date

1. Establishment of guidelines, regulations, and fees for Cannabis Clubs (Measure Z Clubs)
2. Report from the District Attorney- conviction versus arrest statistics for CA Health and Safety Code section 11357- misdemeanor arrests (L. Bonett October, 2012)
3. Tracking of ballot measures and/or passed legislation regarding cannabis reform in states outside of California.
4. A public education campaign regarding the private versus public use of cannabis. (July, 2012)
5. A discussion regarding the definition of "Private" in regard to cannabis offenses in the City of Oakland.
6. A continuation of the discussion of horticultural waste associated with cannabis grows and how recycling it could benefit the City's Recycling Program
7. A discussion on packaging for sales of cannabis and the impact on the environment.

For Tracking Purposes

1. Annual Report to the City Council (finalize in November/December)\* On tonight's agenda

(rev. 1-2014)

# *Cannabis Regulatory Commission*

Regular Meeting

Thursday, November 20<sup>th</sup>, 2014, 6:30 p.m.  
Council Chambers, City Hall, One Frank H. Ogawa Plaza

## Meeting Minutes

### *Members:*

Dale Gieringer	District 1	Jacob Sassaman	District 7
Sean Donahoe	District 2	A. Kathryn Parker	At Large
Sierra Martinez	District 3	Vacant	Mayor
James Anthony	District 4	Amanda Reiman	City Auditor
Matt Hummel	District 5	Joe DeVries	City Administrator
Marlon Hendrix	District 6		

Available on-line at: <http://www.oaklandnet.com/measurez>

### Minutes

#### A. Roll Call and Determination of Quorum

*Members Present: Gieringer, Donahoe, Hummel, Parker, Reiman, Martinez, DeVries*

#### B. Open Forum / Public Comment

*Cas Camacho wished to address the Commission on Item E1 and was directed to wait until that item was discussed.*

#### C. Review of the Pending List and Additions to Next Month's Agenda

*The pending list was discussed and suggestions were made for the January meeting as follows:*

- 1. Staff was directed to reach out again to the District Attorney regarding convictions versus arrests surrounding Cannabis (Item 2 on the pending list)*
- 2. Item 3 (direction of the commission) was moved to the January agenda in light of the growing momentum around legalization in 2016.*
- 3. The Commission decided to discuss the "Do's and Don'ts of Measure Z Clubs in January.*
- 4. The December meeting was cancelled for the holidays.*

#### D. Approval of the Draft Minutes from the Cannabis Regulatory Commission meeting of 10-16-2014.

*The October Minutes were approved unanimously.*

Members may speak on any item appearing on the agenda; however a Speaker Card must be filled out and given to a representative of the Cannabis Regulatory Commission. Multiple agenda items cannot be listed on one speaker card. If a speaker signs up to speak on multiple items listed on the agenda, the Chairperson may rule that the speaker be given an appropriate allocation of time to address all issues at one time (cumulative) before the agenda items are called. All speakers will be allotted 3 minutes or less – unless the Chairperson allots additional time.

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E. Reports for Discussion and Possible Action

1. Follow-up Discussion regarding the October report to the City Council Public Safety Committee on recent enforcement action against "Measure Z" Clubs by the City/OPD.

*The Commission discussed the individual responses from the Council Members who were on the Public Safety Committee and what those responses could mean for the future of adult regulated cannabis in Oakland. It was noted that Mayor-elect Schaaf and CM Kalb appear very supportive of the Commission's positions on Adult Cannabis.*

*Cas Camacho, a public speaker, noted that the Commission and the City need to focus on the economics of the drug war and the potential revenue that the cannabis industry generates. He feels that once the City weighs the revenue possibilities versus the enforcement costs, that change will occur and that history has proven this theory repeatedly as governments/societies change based on the flow of money.*

2. Discussion and possible action the election results and on creating a delegation to discuss issues of importance to the Commission with newly elected office holders.

*The Commission agreed to set up meetings with all the newly elected people in City Government including the Council Members from Districts 2 and 4 as well as the Audit and Mayor.*

3. A discussion and possible action on the 2014 Annual Report (see attached draft, Parker)

*The Commission reviewed the draft that Vice Chair Parker prepared. She indicated that she wanted to finalize the draft in January and submit it to the council in March. Member Donahoe suggested that a component be added around the economics of retail cannabis in Oakland including the ancillary businesses that are supported and contribute to the Oakland economy. Member Reiman agreed and went further to suggest the Commission ask the City Auditor to study the fiscal impact of revenue from adult sales.*

*Vice Chair Parker will bring a modified draft to the January Meeting.*

4. An update on efforts at Statewide Legalization in 2016 (Reiman)

*Member Reiman reported that drafting of the statewide ballot measure will begin in January and that there is a close examination of the results in Oregon where the legalization law passed with an even higher margin than Washington or Colorado. The current thinking on the CA draft is to allow cities to opt out of allowing Cannabis Sales only by a vote of its citizens to avoid conservative city councils in some areas from preventing the will of the voters.*

F. Announcements

*The Drug Policy Alliance will be conducting a symposium on the impact of enforcement of cannabis laws on vulnerable communities in Oakland in late January/early February—more information to follow.*

G. Adjournment



FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2014 DEC -4 PH 2: 22

# AGENDA REPORT

**TO:** HENRY L. GARDNER  
INTERIM CITY ADMINISTRATOR

**FROM:** Greg Minor

**SUBJECT:** Amendments to Chapter 5.80  
Of the Oakland Municipal Code

**DATE:** November 24, 2014

City Administrator  
Approval

Date

12-3-14

**COUNCIL DISTRICT:** City-Wide

## RECOMMENDATION

Staff recommends adoption of:

- An ordinance amending Oakland Municipal Code (OMC) 5.80, Medical Cannabis Dispensary Permits, to provide for a secondary special business permit for City of Oakland licensed medical cannabis dispensaries to operate a closed-loop dispensary cultivation facility.
- An ordinance amending Ordinance No. 13238 C.M.S., The Master Fee Schedule, to establish a dispensary cultivation facility permit application fee and annual regulatory fee for City of Oakland licensed medical cannabis dispensaries to operate a closed-loop dispensary cultivation facility.

## EXECUTIVE SUMMARY

The proposed amendments to OMC 5.80 will address the public safety and health concerns arising from unregulated cultivation and processing of cannabis in the City Of Oakland, including electrical fires and burglaries, by establishing a process by which licensed City of Oakland dispensaries may cultivate medical cannabis. In contrast with prior efforts to regulate cannabis cultivation in Oakland, this proposal restricts operation of cultivation facilities to only licensed City of Oakland dispensaries and the amount of cultivation is limited in size to a maximum of 10,000 square feet. These distinctions are consistent with the recommendations of the Office of the Attorney General of California of encouraging a closed-loop system of medical cannabis production and distribution in order to avoid diversion of cannabis to illegitimate markets.

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## OUTCOME

This ordinance would allow the City of Oakland to offer a secondary special business permit to its medical cannabis dispensaries to operate a Dispensary Cultivation Facility (DCF) that meets the public safety and health regulations of the City Administrator's Office. As DCFs become operational, the City of Oakland should experience less of the public safety and health concerns associated with unregulated cannabis cultivation in Oakland.

## BACKGROUND

### *Statewide Cannabis Movement*

On November 6, 1996 California voters enacted Proposition 215, the California Compassionate Use Act. The Compassionate Use Act made it legal for patients and their designated primary caregivers to possess and cultivate cannabis for their personal medical use given the recommendation or approval of a licensed physician. See California Health & Safety Code 11362.5.

California voters then expanded on this concept through SB 420 in 2004. SB 420 allowed patients to form medical collectives or cooperatives, created a voluntary state ID card system operated through county health departments, and established guidelines as to how much patients can possess and cultivate without resulting in an arrest. See California Health & Safety Code Sections 11362.7-11362.83.

### *Medical Cannabis in Oakland*

The City of Oakland has eight permitted medical cannabis dispensaries. Four were authorized in 2004 and then four more were added in 2011 via Ordinance No. 12585. In 2009 Oakland voters passed Measure F, which allowed for taxation of Oakland's medical cannabis dispensaries at elevated rates. In 2010, the City enacted an ordinance authorizing large-scale medical cannabis cultivation, OMC 5.81, however, OMC 5.81 has never been implemented due to the likelihood of federal government intervention. Overall, the City of Oakland's process for administering medical cannabis dispensary permits and monitoring the dispensaries has been considered successful and even a role model for other jurisdictions.

### *Issues Arising from Unregulated Cannabis Cultivation*

While the City of Oakland and the State of California have articulated a method for dispensing medical cannabis, no established structure exists for the production, growth and cultivation of medical cannabis. This lack of regulation combined with Measure Z, the 2004 initiative that made private adult cannabis offenses in Oakland the City's lowest law enforcement priority, have led to a number of public safety, health and economic issues. These issues include

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electrical fires stemming from flawed indoor cannabis cultivation, violent crime such as robberies, burglaries and even homicides, as well as the use of pesticides and fertilizers that run counter to crop's medical purpose.

### ANALYSIS

The attached amendments to OMC 5.80 offer a permitting process that should reduce the detrimental issues stemming from unregulated cannabis cultivation by regulating who can operate cannabis cultivation facilities and under what conditions.

As noted above, the proposed cultivation operating permits are secondary permits in that they will only be available to City of Oakland licensed medical cannabis dispensaries. Staff recommends this restriction for several reasons. First, this limitation ensures the cannabis cultivated will be directed to medical use. Second, the operators of Oakland's licensed dispensaries have already been thoroughly vetted through their dispensary application process and proven to be dependable City partners. Third, this will keep the number of regulated cultivation sites to a manageable number for inspecting and monitoring purposes.

The proposed amendments also regulate under what conditions cannabis cultivation at a dispensary scale may take place. The following list outlines some key restrictions:

- An interested dispensary must submit an application to the Office of the City Administrator that at minimum identifies 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, and criminal background checks.
- A public hearing shall be held for all DCF applications.
- DCFs may only be located in areas where the Oakland Planning Code authorizes "light manufacturing industrial" or their equivalent use.
- DCFs may not exceed 10,000 square feet.<sup>1</sup>

<sup>1</sup> The number of patients that visit Oakland's licensed medical cannabis dispensaries justify 10,000 square feet in area devoted to cultivation. A study performed for the state of Washington's Liquor Control Board found that 1 square foot of indoor *harvested cannabis area* produces on average 40 grams of dried cannabis. Caulkins, Cohen, Zamarrá, BOTEK Analysis, Carnegie Mellon University, TriQ Inc., 2013. Estimating Adequate Licensed Square Footage for Production. Applying this ratio to 8 ounces of dried cannabis per qualified patient, as authorized by Cal. Health and Safety Code Section 11362.77, 10,000 square feet of *harvest area* requires about 1,766 patients. However, the proposed amendments to OMC 5.80 would include areas not included in the BOTEK study in the 10,000 square foot limitation, such as walkways and space for seedlings and not yet harvestable plants, plus the number of current unique patients at Oakland's licensed dispensaries range between 1,400 for brand new facilities to 11,222 for older operators.

- Applicants must pay an application fee, a permit fee and any inspection fees required.

Furthermore, the proposed ordinance requires the Office of the City Administrator to establish administrative regulations and operating standards for DCFs. These operating standards will ensure the protection of public health and safety by requiring a security plan, security personnel, restricted access, camera surveillance, criminal background checks for employees, and inspection by building services and the fire department. Operating standards will further include fire prevention measures such as fire key access boxes, emergency electrical shutoffs, and emergency dampers. Likewise, operating standards will seek to minimize any impacts on surrounding land uses by requiring a contact for community complaints and implementation of odor-elimination techniques.

Finally, this permitting process will assist City regulators and law enforcement by providing clarity about what cultivation sites are permitted and exactly where they are located. While home cultivation of less than 96 square feet of cannabis (the City of Oakland's maximum amount for non-dispensary three person collectives) will not be eliminated, only the holders of these secondary permits will be permitted to grow beyond this amount and the City will know exactly where these legitimate cultivation operations.

### **COORDINATION**

The Office of the City Attorney, the Budget Office, the Revenue Management Bureau, Building Services, as well as the City of Oakland's licensed medical cannabis dispensaries were consulted in the preparation of this report.

### **COST SUMMARY/IMPLICATIONS**

The proposed secondary permit process will require staff time in three key phases: regulatory drafting, the application process, and ongoing monitoring.

The drafting of regulations and performance standards applicable to DCFs will be done within the City Administrator's Office in collaboration with other involved departments, such as the Finance Department, Building Services, and the Fire Department.

The City Administrator's Office will also assume most of the responsibility for the application process, which will entail reviewing and processing applications, holding public hearings, conducting a site inspection, and issuing findings and determination. Specifically, each DCF Application is estimated to require three hours of an Administrative Assistant, 16 hours of an Assistant to the City Administrator, plus public hearing notification and publication fees for a total cost of approximately \$2,910.

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Once a DCF becomes operational, staff will need to monitor, inspect, and audit the DCF. This will require time on the part of the City Administrator's Office, the Finance Department, and the Fire Department. More specifically, annual permitting costs for each DCF is estimated to require eight hours of an Administrative Assistant, 16 hours of an Assistant to the City Administrator, 16 hours of a Tax Auditor II and 12 hours of a Fire Inspector for a total of approximately \$4,895. Separately, applicants will need to obtain any necessary fire and building approvals for any alterations they propose to a building in order to operate as a DCF.

Accordingly, staff proposes a cost recovering application fee of \$2,910 and an annual regulatory fee of \$4,895, which will be deposited in the General Purpose Fund (1010), City Administrator Org (02111), Special Permits Account (42411), Cannabis Cooperative Project (A252610).

### **SUSTAINABLE OPPORTUNITIES**

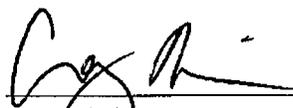
***Economic:*** The proposed amendments should positively affect the local economy by generating new employment opportunities for Oakland residents.

***Environmental:*** The proposed amendments and forthcoming operating standards advocate for cultivation of medical cannabis in an environmentally sound manner.

***Social Equity:*** These amendments will both provide employment opportunities and promote safe access to medical cannabis.

For questions regarding this report, please contact Greg Minor, Assistant to the City Administrator, at (510) 238-6370.

Respectfully submitted,

  
\_\_\_\_\_  
Greg Minor  
Assistant to the City Administrator

Reviewed by:

Arturo Sanchez, Interim Assistant City Administrator

Encl:

Draft Ordinance Amending Oakland Municipal Code 5.80

Draft Ordinance Amending Master Fee Schedule

1. Notice and Digest
2. Exhibit A

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Public Safety Committee  
December 16, 2014

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2014 DEC -4 PM 2:23

# OAKLAND CITY COUNCIL

APPROVED AS TO FORM

  
CITY ATTORNEY'S OFFICE  
*for Kristin Jan*

**ORDINANCE No. \_\_\_\_\_ C.M.S.**

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**ORDINANCE AMENDING OAKLAND MUNICIPAL CODE 5.80,  
MEDICAL CANNABIS DISPENSARY PERMITS, TO PROVIDE FOR  
SECONDARY SPECIAL BUSINESS PERMIT FOR CITY OF OAKLAND  
LICENSED MEDICAL CANNABIS DISPENSARIES TO OPERATE  
CLOSED-LOOP DISPENSARY CULTIVATION FACILITY**

**WHEREAS**, the City, based on medical and public safety needs, regulates medical marijuana dispensaries to provide safe medical marijuana product and inventory in a "closed loop system", which is a system that allows qualified patients and primary caregivers to cultivate and consume medical marijuana only within a member collective or cooperative, as such terms are discussed in guidelines established by the State's Attorney General; and

**WHEREAS**, the City hereby finds that unregulated cultivating and processing of medical cannabis in the City has caused and is causing ongoing impacts to the community including without limitation, damage to buildings containing indoor medical cannabis cultivation facilities, including improper and dangerous electrical alterations and use, inadequate ventilation leading to mold and mildew, increased frequency of home-invasion robberies and similar crimes; and

**WHEREAS**, many of these community impacts have fallen disproportionately on residential neighborhoods; and

**WHEREAS**, these impacts have also created an increase in City response costs, including code enforcement, building, fire, and police staff time and expenses; and

**WHEREAS**, the voters of the State have provided an exemption to prosecution for the cultivation and possession of cannabis for medical purposes under the Compassionate Use Act (CUA); and

**WHEREAS**, the CUA does not address land use or building code impacts or issues arising from the resulting increase in cannabis cultivation within the City; and

**WHEREAS**, the sales of medical marijuana are subject to taxation by both the City and the State and the California State Board of Equalization (BOE) also requires that businesses engaging in such retail transactions hold a seller's permit; and

**WHEREAS**, the purpose and intent of this modification to Chapter 5.80 is to regulate the cultivation and processing of medical cannabis by medical cannabis dispensary operators permitted under Chapter 5.80 in a manner that protects the public health, safety and welfare of the community and promotes the guidelines established by California's Attorney General;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

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

**SECTION 2.** Oakland Municipal Code Chapter 5.80, Medical Cannabis Dispensary Permits, which establishes the medical cannabis dispensary permitting process, is hereby amended as provided herein. Additions are indicated by underscoring and deletions are indicated by ~~strike through type~~; portions of Chapter not cited or not shown in underscoring or strike-through type are not changed:

5.80.010 - Definitions.

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

- A. "Attorney General Guidelines" shall mean the California Attorney General Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use, issued by the Attorney General's Office in August 2008, as amended from time to time, which sets regulations intended to ensure the security and non-diversion of marijuana grown for medical use by qualified patients or primary caregivers.
- B. "Cannabis" or "Marijuana" shall have the same definition as Health and Safety Code § 11018, as amended from time to time, which defines "~~cannabis~~" "marijuana" as all parts of the plant Cannabis Sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant are incapable of germination.
- C. "Cannabis dispensary" or "Dispensary" shall mean a collective or cooperative that distributes, dispenses, stores, exchanges, processes, delivers, makes available, transmits and/or gives away marijuana in the City for medicinal purposes to four or more qualified patients and/or primary caregivers pursuant to California Health and Safety Code Sections 11362.5, 11362.7 et seq.
- D. "City Administrator" means the City Administrator of the City of Oakland or his/her designee.
- E. "Collective" means any association, affiliation, or establishment jointly owned and operated by its members that facilitates the collaborative efforts of qualified patients and primary caregivers, as described in the Attorney General Guidelines.
- 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. "Dispensary Cultivation Facility" or "DCF" shall mean any facility owned, operated, and used by a lawfully licensed and permitted Dispensary for cultivating, warehousing, storing, processing and/or manufacturing more than 9 pounds 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 for the express and sole purpose of selling at a lawfully permitted Dispensary.
- H. "Medical marijuana" means marijuana authorized in strict compliance with Health & Safety Code §§ 11362.5, 11362.7 et seq., as such sections may be amended from time to time.
- I. "One Parcel of land" as used only in this Chapter shall means one any single piece of real property as identified by the county assessor's parcel number (APN) that is ~~one contiguous parcel of real property, which is~~ used to identify real property, its boundaries, and all the rights contained therein.
- J. "Permittees" as used only in this Chapter are Dispensary permit holders and DCF permit holders that are tied to a Dispensary that have obtained a permit under this Chapter.
- K. "Primary caregiver" shall have the same definition as California Health and Safety Code Section 11362.7, and as may be amended, and which defines "Primary Caregiver" as an individual designated by a qualified patient or by a person with an identification card who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include 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.
- L. "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 means a

person who is entitled to the protections of California Health & Safety Code Section 11362.5. For purposes of this ordinance, qualified patient shall include a person with an identification card, as that term is defined by California Health and Safety Code Section 11362.7 et seq.

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

1. Acquired immune deficiency syndrome (AIDS);
2. Anorexia;
3. Arthritis;
4. Cachexia;
5. Cancer;
6. Chronic pain;
7. Glaucoma;
8. Migraine;
9. Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis;
10. Seizures, including, but not limited to, seizures associated with epilepsy;
11. Severe nausea;
12. Any other chronic or persistent medical symptom that either:
  - a. Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).
  - b. If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

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

5.80.020 - Business permit required and application for permit.

- A. Except for hospitals, research facilities, or an entity authorized pursuant to Section 8.46.030, it is unlawful for any owner, operator, or association to own, conduct, operate or maintain, or to participate therein, or to cause or to allow to be conducted, operated, or maintained, any dispensary in the City unless there exists a valid business permit in compliance with the provisions of Chapter 5.02 and a permit issued under this chapter.
- B. This Chapter, and the requirement to obtain a business permit, does not apply to the individual possession or cultivation of medical marijuana for personal use, nor does this chapter apply to the usage, distribution, cultivation or processing of medical marijuana by qualified patients or primary caregivers when such group is of three or less individuals, and distributing, cultivating or processing the marijuana from a

residential unit or a single non-residential parcel of land. Associations of three or less qualified patients or primary caregivers shall not be required to obtain a permit under Chapter 5.80, but must comply with applicable State law and the Attorney General Guidelines

- C. The City Administrator shall issue no more than eight valid permits for the operation of dispensaries in the City.
- D. In addition to the requirements specified in Section 5.02.020 for business permits, the permit application for a dispensary shall set forth the following information:
1. Unless the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public, evidence that the proposed location of such dispensary is not within 600 feet of a public or private school, public library, youth center (serving youth age 18 and under), parks and recreation facilities, residential zone or another dispensary. The proposed dispensary must be located in a commercial or industrial zone, or its equivalent as may be amended, of the City.
  2. A complete description of the type, nature and extent of the enterprise to be conducted, with evidence satisfactory to the City Administrator that the enterprise is either a collective or cooperative, as described in the Attorney General Guidelines.
  3. A plan of operations that will describe how the dispensary will operate consistent with the intent of State law, the provisions of this Chapter and the Attorney General Guidelines, including but not limited to.
    - a. Controls to verify membership in collectives and cooperatives to ensure medical marijuana will be dispensed only to qualified patients and primary caregivers, and
    - b. Controls to acquire, possess, transport and distribute marijuana to and from members, and plans to ensure marijuana is acquired as part of a closed-circuit of marijuana cultivation and consumption.
  4. A security plan, as a separate document, outlining the proposed security arrangements for ensuring the safety of persons and to protect the premises from theft. The security plan shall be reviewed by the Police Department and the Office of the City Administrator and shall be exempt from disclosure as a public record pursuant to Government Code Section 6255(a).
  5. Such other information deemed necessary to conduct any investigation or background check of the applicant, and for the City Administrator to determine compliance with this Chapter, the City's Municipal Code and Zoning Code.
- E. The City Administrator may issue, as detailed below, a secondary special business permit to a Dispensary Permittee for operating a Dispensary Cultivation Facility that will cultivate and process medical cannabis to be sold at the Dispensary Permittee's retail location. In recommending the granting or denying of such permit in his/her sole and absolute discretion, the City Administrator shall give particular consideration to the capacity, capitalization, complaint history of the Permittee, 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 for a DCF permit shall pay any necessary fees including without limitation application fees, inspection fees and regulatory fees that may be required hereunder.

- F. The City Administrator shall be authorized to issue one DCF permit to each of the eight lawfully permitted dispensaries, at their request, and upon completion of an appropriate application and public hearing process as set forth in this chapter.
- G. All DCF permits shall be special activity permits and shall be issued for the exact same term of the related Dispensary permit, subject to annual review one year from the date of issuance. DCF permits may only be granted to entities operating legally according to State law. All DCF permits are revocable at any time with or without cause by the City Administrator. No vested right shall ever inure to the benefit of such permit holder.
- H. Public notice of the hearing on the application shall be given as provided in Section 5.02.050. The City Administrator shall be the investigating official referred to in Section 5.02.030 to whom the application shall be referred. In recommending the granting or denying of such permit and in granting or denying the same, the City Administrator shall give particular consideration to the capacity, capitalization, and complaint history of the applicant and any other factors that in the City Administrator's discretion he/she deems necessary to the peace, order and welfare of the public. All applicants shall pay an application fee, a permit fee, and all inspection fees that may be required as part of the application process.
- I. At the time of submission of dispensary submitting a Dispensary and/or DCF permit application, the applicant shall pay a dispensary permit application fee. The fee amount shall be set by City Council resolution in the City of Oakland Master Fee Schedule.

#### 5.80.025 Cultivating Medical Marijuana

A. Any use or activity that involves possessing, cultivating, processing and/or manufacturing more than 9 pounds of dried cannabis or 96 square feet of cultivation area shall constitute cultivation of medical cannabis and shall be subject to administrative citation, pursuant to Chapters 1.08, 1.12 and/or 1.16, and other applicable legal, injunctive or equitable remedies, unless a permit as prescribed in this Chapter has been granted. 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 DCF 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 DCF 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.

Unless the City Administrator in his/her discretion determines that the location of a DCF will not impact the peace, order and welfare of the public, the proposed location of a DCF shall not be within 600 feet of a public or private school, public library, youth center (serving youth age 18 and under), parks and recreation facilities, or residential zone.

C. A DCF shall not exceed 10,000 square feet in cultivation area.

1. A DCF may be located at the same location as the Dispensary's retail location or a portion of the DCF may be located onsite and a portion offsite from the retail location for a maximum of two locations, provided a proposed DCF meets all applicable requirements, including zoning and distance requirements. Should a Dispensary seek to cultivate both on and offsite, the total area devoted to cultivating

medical marijuana at the two locations shall not exceed 10,000 square feet.

2 After operating a DCF for a one year period, a Permittee may apply to the City Administrator to exceed the above-referenced 10,000 square foot limitation upon demonstrating that:

i. Current production is insufficient to adequately serve the medical need of the dispensary; and

ii. The applicant has the capacity to preserve public health and safety if cultivation is expanded.

In determining whether to grant such an expansion, the City Administrator, in his/her absolute discretion, shall consider among other factors, the Permittee's complaint history and regulatory compliance, proposed security measures, the average number of unique patients visiting the Dispensary, the amount of cannabis produced in its current DCF in relation to patient demand, as well as applicable state law and Attorney General Guidelines.

D. Proposed Dispensary Cultivation Facilities 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, nondiversion of product, production and sales volume, facility location, capitalization, business plans, applicant complaint history, criminal background checks, and any additional information deemed necessary by the City Administrator.

#### 5.80.030 - Regulations.

The City Administrator shall establish administrative regulations for the permitting of Dispensaries and Dispensary Cultivation Facilities and may set further standards for operation of dispensaries. The dispensary shall meet all the operating criteria for the dispensing of medical marijuana required pursuant to California Health and Safety Code Section 11362.7 et seq., the City Administrator's administrative regulations, and this Chapter.

#### 5.80.040 - Performance standards.

The City Administrator shall develop and implement performance standards consistent with those set forth in Ordinance No. 12585 in the Office of the City Administrator Guidelines and shall modify such Guidelines from time to time as required by applicable law and consistent with public health, welfare and safety.

The following performance standards shall be included in the City Administrative regulations:

- A. No cannabis shall be smoked, ingested or otherwise consumed on the premises of the Dispensary or Dispensary Cultivation Facility.
- B. The Dispensary or Dispensary Cultivation Facility 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.

#### 5.80.050 - Regulatory fees; seller's permit.

- A. In addition to the Dispensary and/or Dispensary Cultivation Facility application fee, the Dispensary and/or Dispensary Cultivation Facility shall pay an

annual regulatory fee at the same as applying for the business tax certificate or renewal thereof. The Dispensary and/or Dispensary Cultivation Facility shall post a copy of the business tax certificate issued pursuant to Chapter 5.04, together with a copy of the Dispensary and/or Dispensary Cultivation Facility permit issued pursuant to this chapter and Section 5.02.020, in a conspicuous place in the premises approved as a dispensary at all times.

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

C. The fees referenced herein shall be set by Council resolution, as modified from time to time.

#### 5.80.060 - Profit.

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

Retail sales of medical marijuana that violate California law or this chapter are expressly prohibited

#### 5.80.070 - Revocation, suspension and appeals.

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

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

#### 5.80.080 - Prohibited operations; nonconforming uses.

A. All Dispensaries and/or Dispensary Cultivation Facilities in violation of California Health and Safety Code Section 11326.7 et seq. and 11362.5 and this chapter are expressly prohibited. It is unlawful for any dispensary in the City, or any agent, employee or representative of such dispensary, to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct on the premises of the dispensary.

B. Except for uses established pursuant to 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, this 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 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 shall 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 any permit under this Chapter, and will in all things strictly comply with the conditions under which such permits are granted, if any.

5.80.100 - Examination of books, records, witnesses—Penalty.

A. The City Administrator shall be provided access to any and all financial and product information regarding the Dispensary and/or Dispensary Cultivation Facility 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.

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

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

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

**Section 3. Applicability**

A. Construction and Severability.

Should any article, section, subsection, sentence, clause, or phrase of this ordinance or exhibit, if any, be held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions which shall remain in full force and effect.

B. Authority

This ordinance is enacted by the Council of the City of Oakland pursuant to the police powers accorded to the City by and through section 106 of the Charter of the City of Oakland and Article XI of the Constitution of the State of California.

C. Effective Date

As provided in section 216 of the Charter of the City Of Oakland, this ordinance shall be effective immediately upon final adoption if approved by six affirmative votes of the Council of the City of Oakland or upon the seventh day after final adoption if approved by five affirmative votes.

In Council, Oakland, California, \_\_\_\_\_, 2014

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PASSED BY THE FOLLOWING VOTE:

AYES-

NOES-

ABSENT-

ABSTENTION-

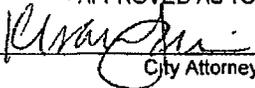
ATTEST: \_\_\_\_\_

**Latonda Simmons**  
**CITY CLERK AND CLERK OF THE COUNCIL**  
**OF THE CITY OF OAKLAND, CALIFORNIA**

Date of Attestation: \_\_\_\_\_

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

APPROVED AS TO FORM

  
City Attorney's Office

2014 DEC -4 PM 3:23

## OAKLAND CITY COUNCIL

ORDINANCE No. \_\_\_\_\_ C.M.S.

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**AN ORDINANCE AMENDING THE MASTER FEE SCHEDULE (ORDINANCE NUMBER 13238 C.M.S., AS AMENDED) TO ESTABLISH A DISPENSARY CULTIVATION FACILITY PERMIT APPLICATION FEE AND AN ANNUAL REGULATORY FEE FOR PERMITTED MEDICAL CANNABIS DISPENSARIES TO OPERATE CLOSED-LOOP DISPENSARY CULTIVATION FACILITY**

**WHEREAS**, the City of Oakland has determined a need to regulate the cultivation and processing of medical cannabis in the City Of Oakland; and

**WHEREAS**, the City of Oakland has articulated a regulatory framework to fill this need in the form of an application and permitting process for closed-loop Dispensary Cultivation Facilities (DCFs) operated by City of Oakland licensed Medical Cannabis Dispensaries; and

**WHEREAS**, it is the City Council's intention to ensure that the city has the capacity and resources to permit, regulate and monitor DCFs; and

**WHEREAS**, the fee modifications and additions proposed herein have been justified and are identified in a report to the Council, entitled "An Ordinance Amending Ordinance No. 13238, The Master Fee Schedule, To Establish A Dispensary Cultivation Facility Permit Application Fee and Annual Regulatory Fee for City of Oakland Licensed Medical Cannabis Dispensaries to Operate Closed-Loop Dispensary Cultivation Facility;" and

**WHEREAS**, the City Administrator Office determines that staff time is needed to administer and regulate permitted DCFs, including time from an Assistant to the City Administrator, Tax Auditor, Fire Inspectors and related administrative support and such resources total \$4,895 per DCF on an annual basis, therefore the City intends to charge an annual permit fee of \$4,895 per DCF to cover the costs of this program; and

**WHEREAS**, the City Council finds and determines that establishing a medical cannabis DCF permit application fee of \$2,910 and an annual regulatory fee of \$4,985 for permitted DCFs are necessary to reimburse the City for the costs of performing the various municipal and regulatory functions associated with Chapter 5.80; now therefore

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** The Master Fee Schedule as set forth in Ordinance Number 13238 C.M.S., as amended is hereby amended to modify and establish a Dispensary Cultivation Facility (DCF) permit application fee of \$2,910 and an annual regulatory fee of \$4,895 per DCF for City Of Oakland permitted medical cannabis dispensaries to operate a dispensary cultivation facility.

**SECTION 2.** All revenues generated through the adoption of these fees will continue to be deposited in General Purpose Fund (1010), City Administrator Org (02111), Special Permits Account (42411), Cannabis Cooperative Project (A252610)

**SECTION 3.** This ordinance shall be effective immediately upon final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption by the Council of the City of Oakland.

**SECTION 4.** The Master Fee Schedule is hereby amended to read as shown on Exhibit A; additions are indicated by underscoring and deletions are indicated by ~~strike-through type~~; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed:

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In Council, Oakland, California, \_\_\_\_\_, 2014

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PASSED BY THE FOLLOWING VOTE:

AYES-

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

**Latonda Simmons**  
**CITY CLERK AND CLERK OF THE COUNCIL**  
**OF THE CITY OF OAKLAND, CALIFORNIA**



**City of Oakland  
Master Fee Schedule  
Effective July 19, 2011**

**CITY ADMINISTRATOR**

FEE DESCRIPTION		FEE	UNIT
<b>SPECIAL ACTIVITIES</b>			
<b>F. MEDICAL CANNABIS DISPENSARY PERMITS</b>			
1	Application Fee	5,000.00	Application
2	Dispensary with four (4) or more qualified patients or caregivers	60,000.00	Non-refundable annual regulatory fee
a	Late Fee for failure to submit documents and or reports by due date		NEW
b	Late Fee for payments received 10 days after due date		NEW
3	<u>Dispensary Cultivation Facility Application Fee - for permitted Dispensaries only</u>	<u>2,910.00</u>	<u>Application</u>
4	<u>Dispensary Cultivation Facility</u>	<u>4,895.00</u>	<u>Non-refundable annual</u>

**NOTICE AND DIGEST**

**AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE (OMC) CHAPTER 5.80 "MEDICAL CANNABIS DISPENSARY PERMITS" TO PROVIDE FOR A SECONDARY SPECIAL BUSINESS PERMIT FOR CITY OF OAKLAND LICENSED MEDICAL CANNABIS DISPENSARIES TO OPERATE A CLOSED-LOOP DISPENSARY CULTIVATION FACILITY**

**AN ORDINANCE AMENDING ORDINANCE NO. 13238 C.M.S., THE MASTER FEE SCHEDULE, TO ESTABLISH A DISPENSARY CULTIVATION FACILITY PERMIT APPLICATION FEE AND ANNUAL REGULATORY FEE FOR CITY OF OAKLAND LICENSED MEDICAL CANNABIS DISPENSARIES TO OPERATE A CLOSED-LOOP DISPENSARY CULTIVATION FACILITY**

These ordinances would amend OMC 5.80 to allow City Of Oakland licensed medical cannabis dispensaries to operate a closed-loop dispensary cultivation facility upon completion of an appropriate application and public hearing process and collect administrative fees to support this program.

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2014 DEC -4 PM 2:23

# MEMORANDUM

Dec. 16, 2014

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To: Members of the Public Safety Committee  
From: Councilmembers Kalb and Kaplan

RE: Proposed Amendments to Item 6 on the Oakland City Council Public Safety Committee Agenda on December 16, 2014 dealing with Medical Cannabis Dispensary Permits and Cultivation Facilities legislation.

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1. Remove restriction in Section 5.80.020 (D)(1) that dispensaries cannot be near each other:  
Section 5.80.020(D)(1) of the O.M.C. is amended as follows: Unless the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public, evidence that the proposed location of such dispensary is not within 600 feet of a public or private school, public library, youth center (serving youth age 18 and under), parks and recreation facilities, residential zone ~~or another dispensary~~. The proposed dispensary must be located in a commercial or industrial zone, or its equivalent as may be amended, of the City.
2. Modification of limitation to who can hold a cultivation facility business permit to allow not only medical cannabis dispensary permit owners, but to also allow other qualified Oakland residents who demonstrate that they have a contract with one or more Oakland medical cannabis dispensaries to sell their product to that dispensary:  
Proposed O.M.C. Section 5.80.020(F) is amended as follows: The City Administrator shall be authorized to issue one DCF permit to each of the eight lawfully permitted dispensaries, at their request, and upon completion of an appropriate application and public hearing process as set forth in this chapter. The City Administrator, at his/her discretion, may issue a Cultivation Facility permit to a qualified member or members of a City of Oakland licensed dispensary collective seeking to operate such facility if the proposed facility has completed an appropriate application and demonstrated that it has established a contractual relationship with one or more licensed medical cannabis dispensaries in the City of Oakland to sell their product.
3. Add environmental criteria (such as offsetting their carbon footprint) to the permitting process when considering approval of cultivation facility business permits:  
Proposed O.M.C. Section 5.80.020(E) is amended as follows: ...In Recommending the granting of denying of such permit in his/her sole and absolute discretion, the City Administrator shall give particular consideration to the capacity, capitalization, complaint history of the Permittee, and other factors that in her/his discretion she/he deems necessary to the peace and order and welfare of the public, including whether the applicant can demonstrate that they will make every reasonable effort to minimize their carbon footprint, environmental impact and natural resource needs of the proposed Cultivation Facility. All applicants....

Proposed O.M.C. Section 5.80.025(C)(2), relating to permits for facilities larger than 10,000 square feet, is amended as follows: Add paragraph iii to read:

(over)

iii. The applicant has submitted and agreed to implement an operations plan to minimize electricity usage and offset their carbon footprint.

4. Reducing the timeframe (from one year to two months) by which a facility cultivation business permit holder may apply for a permit that allows for a larger than 10,000 square foot cultivation facility:

Proposed O.M.C. Section 5.80.025(C)(2) is amended as follows: After operating a DCF for ~~a one-year~~ 60-day period, a Permittee may apply to the City Administrator to exceed the above-referenced 10,000 square foot limitation upon demonstrating that....

5. Require the City Administration to return to the Council's Public Safety Committee within six months a proposed ordinance to permit onsite non-smoking medical cannabis consumption at licensed medical cannabis dispensaries:

New Section 3 is added as follows: Within one hundred eighty (180) days of the effective date of this Ordinance, the City Administrator or his/her designee shall prepare and present to the City Council's Public Safety Committee a proposal to permit non-smoking onsite consumption of medical cannabis at City of Oakland licensed medical cannabis dispensaries.

6. Require the City Administration to return to the Council's Public Safety Committee within six months with an analysis and recommendations regarding increasing the number of medical cannabis dispensary permits allowed in the City of Oakland:

Add a Section 4 is added as follows: Within one hundred eighty (180) days of the effective date of this Ordinance, the City Administrator or his/her designee shall prepare and present to the City Council's Public Safety Committee a staff report that analyzes and offers recommendations regarding increasing the number of medical cannabis dispensary permits allowed in the City of Oakland.

[The Section on **Applicability** shall be re-numbered as Section 5 accordingly.]

## MEDICAL CANNABIS CULTIVATION FACILITIES

### Definitions.

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

- A. "Cannabis" or "Marijuana" shall have the same definition as California Health and Safety Code section 11018, as amended from time to time.
- B. "City Administrator" means the City Administrator of the City of Oakland or his or her designee.
- C. "Cultivation Area" means the actual area in use for the entire cultivation process of cannabis plants (including seedling production, vegetation, and maturation), 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.
- D. "Tier Two Garden" means a facility used for cultivating medical cannabis in a cultivation area between 2,501 and 6,000 square feet within one parcel of land.
- E. "Medical cannabis" means cannabis in compliance with Health and Safety Code sections 11362.5 or 11362.7 *et seq.*, as amended from time to time.
- F. "Tier One Garden" means a facility used for cultivating medical cannabis in a cultivation area between 1,501 and 2,500 square feet within one parcel of land.
- G. "Parcel of Land" means one piece of real property as identified by the county assessor's parcel number (APN) that is one contiguous parcel of real property, which is used to identify real property, its boundaries, and all the rights contained therein.
- H. "Personal Garden" means any facility or residence used for cultivating medical cannabis in a cultivation area of up to 150 square feet within one parcel of land.
- I. "Primary caregiver" shall have the same definition as in California Health and Safety Code section 11362.7, as amended from time to time.
- J. "Qualified patient" means a patient who is entitled to the protections of California Health and Safety Code section 11362.5.
- K. "Cottage Garden" means a facility used for cultivating medical cannabis in a cultivation area between 151 and 1,500 square feet within one parcel of land.

L. "Third Party Inspector" means an individual, or affiliated group of individuals, certified by the City Administrator to conduct inspections of gardens, as provided in this chapter.

### **Operating Standards.**

Cottage, Tier One, and Tier Two gardens shall operate in compliance with operating standards including: not emitting odors, having all electrical work performed by licensed electricians, complying with all applicable building and fire codes, ensuring that all construction work requiring city permits is performed pursuant to acquiring such permits, implementing adequate security measures, being located on appropriately zoned parcels, and paying applicable taxes and fees. Operating standards for Personal Gardens in residential areas are specified in Section "Operating Standards for Personal Gardens"

### **Location Requirements.**

Tier Two Gardens may be located only in industrial or agricultural areas. Tier One Gardens may be located only in commercial, industrial, or agricultural areas. Cottage Gardens may be located only in mixed-use residential, commercial, industrial, or agricultural areas. Personal Gardens may be located in all areas.

### **Inspections.**

A. The operator of every Cottage, Tier One, and Tier Two Garden shall obtain and pay for an annual inspection by a Third Party Inspector, to verify the garden complies with all operating standards and other requirements of this chapter, including ensuring that all taxes have been paid.

B. A Third Party Inspector is authorized to examine the books, papers, tax returns, and records of any Cottage, Tier One, and Tier Two Garden for the purpose of ensuring compliance with operating standards and other requirements of this chapter, including confirming that all taxes have been paid.

C. The operator of every Cottage, Tier One, and Tier Two Garden shall furnish to a Third Party Inspector the means, facilities, and opportunity for making such examinations and investigations as are necessary to ensure compliance with operating standards and other requirements of this chapter, including confirming that all taxes have been paid.

D. If a Third Party Inspector concludes a garden fails to comply with one or more of the operating standards or other requirements of this chapter, including the payment of all taxes and fees, the Inspector shall notify the garden's operator in writing, and the

operator will have 60 days to comply with the relevant operating standards or requirements or pay the tax due. The Third Party Inspector who found any lack of compliance shall conduct another inspection within 60 days, and if the garden again fails to comply, the Inspector shall notify the City Administrator, who shall be authorized to take action to ensure compliance or cessation of operations at the garden.

E. The operator of every Cottage, Tier One, and Tier Two Garden shall permit the City Administrator, his or her designee, or other appropriate subordinate, including police, fire, or zoning inspectors, to enter the property only during normal business hours for the purpose of examining the location to confirm compliance with this chapter.

### **Third Party Inspectors.**

A. Every Cottage, Tier One, and Tier Two Garden shall, at its expense, select a qualified Third Party Inspector from a list that shall be established and maintained by the City Administrator and who shall be certified to conduct inspections required by this chapter. Nothing herein shall limit the ability of city employees to entering a garden to conduct inspections or compliance checks authorized by this chapter. The City Administrator shall determine the criteria for establishing the list of Third Party Inspectors and may request any information the City Administrator reasonably deems related to verification of the qualifications of any Third Party Inspector or applicant to be a Third Party Inspector. The Third Party Inspector shall submit a detailed written report to the City Administrator regarding each of the items inspected and whether or not each of those items could be verified, and including recommendations for improvements to the garden. A copy of such written report shall be provided to the garden, and shall be displayed at the site of the garden. If the Third Party Inspector is unable to verify each of the items set forth below, the garden will not be in compliance with the requirements of this chapter.

B. The Third Party Inspector, as authorized by the City Administrator, shall inspect all of the following in order to verify:

1. The identity of all the individual(s) operating the garden and the nature of their involvement with the garden.
2. That exterior signage makes no reference to the garden.
3. The location(s) at the site of the garden where medical cannabis is to be cultivated, processed, or stored.
4. That the cultivation area does not exceed that allowable for the garden's category.

5. The source of power, the number and wattage of lights and other electrical devices, and any indicia of substandard electrical conditions.
6. The size of the electrical service or system, the total demand to be placed on the system by all proposed uses at the site, and that no power is being obtained illegally.
7. That from a public right-of-way or a publicly traveled private road, there is no exterior evidence of medical cannabis cultivation occurring at the property.
8. That occupants of neighboring parcels will not be subject to objectionable odors.
9. That the garden does not adversely affect the health or safety of persons at the property or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, and is not hazardous because of the use or storage of materials, processes, products, or wastes.
10. That security measures at the site are sufficient to ensure the safety of individuals at the location and protect the premises from theft.
11. That all locations where medical cannabis is cultivated, processed, or stored are secured sufficiently to prevent unauthorized entry.
12. That all fuel and waste products are used, stored, and contained in a safe manner.
13. That no water used at the site is being obtained illegally.
14. That measures have been taken to prevent contaminated runoff or discharge into any creek, lake, estuary, bay, or sewer.
15. That a copy of the previous inspection report, if any, is displayed.
16. That the operator of the garden has obtained a valid business license from the city.
17. That the operator of the garden has obtained a valid Seller's Permit from the Board of Equalization if it plans to sell or has sold directly to qualified patients or primary caregivers.

18. That the operator of the garden is a collective or cooperative or is otherwise in compliance with state law, and that the number of patients it serves or expects to serve is consistent with the amount of cannabis produced or expected to be produced at the garden.

19. That the operator of the garden has done all of the following or has procedures and systems in place sufficient to ensure that it does all of the following:

a. Comply with all local, state, and federal requirements relating to the payment of taxes, including but not limited to business taxes, sales taxes, franchise taxes, state and federal income taxes, payroll taxes, unemployment insurance, and workers' compensation.

b. Maintain records of the amount of medical cannabis produced.

c. Track and record all distribution of medical cannabis.

d. Prevent the diversion of medical cannabis to persons who are not qualified patients or primary caregivers.

20. That the garden is located on an appropriately zoned parcel.

21. That all electrical work at the garden was performed by a licensed electrician.

22. That the garden complies with all applicable building and fire codes.

23. That all construction work and improvements at the site of the garden requiring permits were performed pursuant to acquiring such permits.

### **Operating Standards for Personal Gardens.**

Cultivation of medical cannabis in Personal Gardens located in residential areas shall be in conformance with the following standards:

A. The residential facility shall remain at all times a residence with legal and functioning cooking, sleeping, and sanitation facilities. Medical cannabis cultivation shall remain at all times secondary to the residential use of the property.

B. Cultivation of medical cannabis in residential areas shall occur only in a secure location at a residence occupied by a qualified patient or primary caregiver.

C. No individual residential facility housing the cultivation of medical cannabis shall

contain more than 150 square feet of cultivation area.

D. If required by the building or fire code, the wall(s) adjacent to the indoor cultivation area shall be constructed with Type X fire resistant drywall.

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

F. The cultivation area shall not adversely affect the health or safety of persons at 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.

G. 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.

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

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

### **Prohibited Operations.**

All cultivation facilities larger than 150 square feet of cultivation area that are not inspected by a Third Party Inspector and found to be in compliance with the requirements of this chapter are expressly prohibited.

### **Liability.**

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

## Do's and Don'ts for Measure Z clubs in Oakland

Even though Measure Z made marijuana activities by adults the lowest police priority, it did not make the non medical sales of marijuana legal. Many entities (Measure Z clubs) opened after the passage of Measure Z in attempt to push the boundaries of what marijuana activity would be allowed in the city of Oakland. Since the passage of Measure Z, the Oakland Police have, for the most part, honored the will of the voters and have been very hands off concerning MOST marijuana activity in the city. However, the city does seem to have drawn a line in the sand around which activities will rise to the level of police intervention. If police become aware of your location, the activities going on there, or that you are providing to minors, they will obligated to check it out rather than turn a blind eye. The goal of this document is to provide guidelines for those providing marijuana in a non medical environment that might help prevent police intervention. It should be noted that all sales of non-medical marijuana are illegal in California and these guidelines are not intended to permit or advise the non-medical sale of marijuana, but rather to inform those who might engage in this practice about which aspects of Measure Z clubs seem to garner police attention.

### DO

1. Keep a low profile: No signs, advertising, etc. Think speakeasy during alcohol prohibition.
2. Try to locate in an area zoned for mixed uses: The police seem to be more tolerant of these activities happening in places zoned for residential than in bustling commercial thoroughfares.
3. ID your customers: Even though what you are doing is in a gray area, police might send underage decoys to try and purchase, or parent complaints of minors purchasing could draw the cops to your location.
4. Be professional: If you hire people, be aware that they represent you. Treat this as a business and take it seriously.
5. Be nice to your neighbors: If you don't want to tell them what you are doing, fine. But still be a good neighbor. Address any complaints they have in a friendly and civil way and go out of your way to keep your property clean and the noise down.

### DON'T

1. Advertise: If the police become aware of you via advertising, they might feel an obligation to investigate.
2. Keep firearms on the premises: It is understandable that there are concerns over robberies, but if police arrive and find firearms, it's a whole new issue above and beyond the marijuana including more severe penalties.
3. Allow people to use on site or hang out by your location: While it might seem a public service to allow people to use on site (and it is), the odor and traffic can draw police to your location. It is best to have people leave right after obtaining the marijuana and ask them not to loiter outside.
4. Get too big: While this might seem like an opportunity to grow a business, it is better to keep it small and under control. Once marijuana is legal, then it is time to think about expansion.
5. Locate in vulnerable areas: If it can be helped, avoid locating near parks, schools or other areas where police might patrol for drug selling.