

Cannabis Regulatory Commission

Thursday, July 16th, 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>

MEETING 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 6-18-15.~~
 - E. Reports for Discussion and Possible Action
 - 1. Discussion and Action on the City's Draft Modified Dispensary Ordinance and Cultivation/Manufacturing Ordinance. (Attached)
 - 2. An update on AB 266 (link below)
 - 3. An update on efforts at Statewide Legalization in 2016 (Reiman)
- Link to the most current version of AB266:
- http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB266
- 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 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.

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

Chapter 5.80 - MEDICAL CANNABIS DISPENSARY PERMITS

Sections:

FOOTNOTE(S):

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Editor's note—Ord. No. 13086, § 1, adopted July 26, 2011, amended chapter 5.80 in its entirety to read as herein set out. Formerly, chapter 5.80 pertained to similar subject matter and derived from Ord. No. 13049, § 3, adopted December 7, 2010.

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 medical marijuana in the City for medicinal purposes to four or more at retail directly to individual qualified patients and/or primary caregivers pursuant to California Health and Safety Code Sections 11362.5, 11362.7 et seq. This definition includes the providing of any of the above-listed functions through technological platforms, such as smart phone apps.
- 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. "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.
- 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. "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 a licensed health care facility, a residential care facility, a hospice, or a home health

agency as allowed by California Health and Safety Code Section 11362.7(d)(1-3). any of the following:

- ~~1. In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the California Health and Safety Code; a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the California Health and Safety Code; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2 of the California Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2 of the California Health and Safety Code; a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2 of the California Health and Safety Code; the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.~~
 - ~~2. An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.~~
 - ~~3. An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.~~
- I. "Qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., and as may be amended, and which means a person who is entitled to the protections of California Health & Safety Code Section 11362.5. For purposes of this ordinance, qualified patient shall include a person with an identification card, as that term is defined by California Health and Safety Code Section 11362.7 et seq.
- J. ~~"Serious medical condition" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., and as may be amended, and which means all of the following medical conditions:~~
- ~~1. Acquired immune deficiency syndrome (AIDS);~~
 - ~~2. Anorexia;~~
 - ~~3. Arthritis;~~
 - ~~4. Cachexia;~~
 - ~~5. Cancer;~~
 - ~~6. Chronic pain;~~
 - ~~7. Glaucoma;~~
 - ~~8. Migraine;~~
 - ~~9. Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis;~~
 - ~~10. Seizures, including, but not limited to, seizures associated with epilepsy;~~
 - ~~11. Severe nausea;~~
 - ~~12. Any other chronic or persistent medical symptom that either:~~

- ~~a. Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).~~
- ~~b. If not alleviated, may cause serious harm to the patient's safety or physical or mental health.~~

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

(Ord. No. 13086, § 1, 7-26-2011)

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. Dispensary permits are not transferable.
- 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. 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.
- F. At the time of submission of dispensary permit application, the applicant shall pay a dispensary permit application fee. The fee amount shall be set by City Council resolution.

(Ord. No. 13086, § 1, 7-26-2011)

5.80.030 - Regulations.

The City Administrator shall establish administrative regulations for the permitting of dispensaries 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.

(Ord. No. 13086, § 1, 7-26-2011)

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

(Ord. No. 13086, § 1, 7-26-2011)

5.80.050 - Regulatory fees; seller's permit.

- A. In addition to the dispensary application fee, the dispensary shall pay an annual regulatory fee at the same as applying for the business tax certificate or renewal thereof. The dispensary shall post a copy of the business tax certificate issued pursuant to Chapter 5.04, together with a copy of the

dispensary permit 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.

(Ord. No. 13086, § 1, 7-26-2011)

5.80.060 – Profit Sales.

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

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

(Ord. No. 13086, § 1, 7-26-2011)

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.

(Ord. No. 13086, § 1, 7-26-2011)

5.80.080 - Prohibited operations; nonconforming uses.

- A. All dispensaries in violation of California Health and Safety Code Section 11326.7 et seq. and 11362.5 and this 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.
- C. Any violations of this Chapter may be subject to administrative citation, pursuant to Chapters 1.08 and 1.12, and other applicable legal, injunctive or equitable remedies.

(Ord. No. 13086, § 1, 7-26-2011)

5.80.090 - Liability.

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

(Ord. No. 13086, § 1, 7-26-2011)

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

- A. The City Administrator shall be provided access to any and all financial information regarding the dispensary 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.

(Ord. No. 13086, § 1, 7-26-2011)

Chapter 5.81 – ~~MEDICAL CANNABIS CULTIVATION FACILITY PERMITS~~ CULTIVATION, MANUFACTURING AND OTHER MEDICAL CANNABIS FACILITY PERMITS

Sections:

5.81.010 - Findings and purpose.

- A. The City Council, based on evidence presented to it in the proceedings leading to the adoption of this Chapter hereby finds that the lack of regulation of medical cannabis facilities other than medical cannabis dispensaries, including unregulated cultivation, manufacturing and processing of medical cannabis in the City has caused and is causing ongoing impacts to the community. These impacts include damage to buildings containing indoor medical cannabis cultivation facilities, including improper and dangerous electrical alterations and use, inadequate ventilation leading to mold and mildew, increased frequency of home-invasion robberies and similar crimes, and that many of these impacts have fallen disproportionately on residential neighborhoods. These impacts have also created an increase in response costs, including code enforcement, building, fire, and police staff time and expenses.
- B. The City Council further finds that the creation of a permitting process implementing public health and safety standards for medical cannabis facilities other than dispensaries will not only improve public health and safety but provide a measure of certainty for legitimate businesses and thus encourage them to situate in Oakland.
- C. The City acknowledges that the voters of the State have provided an exemption to prosecution for the cultivation, possession of cannabis for medical purposes under the Compassionate Use Act (CUA), but that the CUA does not address land use or building code impacts or issues arising from the resulting increase in cannabis cultivation within the City.
- D. The City acknowledges that sales of medical marijuana are subject to taxation by both the City and the State and that the California State Board of Equalization (BOE) is also requiring that businesses engaging in such retail transactions hold a seller's permit.
- E. The primary purpose and intent of this Chapter is to regulate ~~the cultivation and processing of~~ medical cannabis facilities in a manner that protects the public health, safety and welfare of the community.

(Ord. No. 13033, § 3, 7-27-2010)

5.81.020 - Definitions.

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

- A. "Applicant" as used only in this Chapter shall be any industrial cannabis cultivation, processing, manufacturing facility that applies for a permit required under this Chapter.
- B. "Batch" as used only in this Chapter shall be defined by the City Administrator to mean a discrete quantity of dried cannabis produced and sold together.
- C. "Cannabis" or "Marijuana" as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010 ~~8-46.020~~.
- D. "Cannabis Dispensary" as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010 and is also referred to herein as "dispensary."

- E. "City Administrator" as used only in this Chapter shall mean the City Administrator for the City of Oakland and his or her designee.
- F. "Cultivate" as used only in this Chapter shall mean to grow, harvest, dry, or cure cannabis.
- ~~F G.~~ "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 H.~~ "Industrial Cannabis Cultivation, Processing, Manufacturing Facility" hereinafter ~~"cultivation and manufacturing facility"~~ shall mean any facility used for cultivating, ~~warehousing, storing, processing and/or manufacturing~~ more than 48 ounces of dried cannabis, and/or cultivating ~~or storing~~ medical cannabis in an area greater than 96 square feet of total area within one parcel of land. Any establishment engaged in, permitted to be engaged in or carrying on any medical cannabis cultivation, ~~processing, or manufacturing or other activity mentioned in this Chapter~~ shall be deemed a an industrial cannabis cultivation and manufacturing facility as described in Section 5.81.040.
- I. "Edible Medical Marijuana" shall mean medical marijuana that is intended to be consumed orally, including but not limited to, food, drinks or pills.
- J. "Laboratory Facility" as used only in this Chapter shall mean any facility where a person, group of persons, non-profit entity, or business entity conducts analytical testing of cannabis, cannabis-derived products, hemp, or hemp-derived products.
- K. "Manufacture" as used only in this Chapter shall mean to compound, blend, grind, extract or otherwise make or prepare cannabis-derived product.
- L. "Manufacturing Facility" shall mean any facility where manufacturing occurs.
- M. "Medical Cannabis Collective" as used only in this Chapter shall be the same, and as may be amended, as if defined in Section 5.80.010.
- N. "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.
- O. "Package" as used only in this Chapter shall mean to place cannabis or cannabis-derived product into containers for distribution to wholesale or retail medical cannabis facilities such as dispensaries.
- P. "Packaging Facility" as used only in this Chapter shall mean any facility where packaging occurs.
- P. "Permittees" as used only in this Chapter are cultivation and manufacturing facilities that have obtained a permit under this Chapter.
- Q. "Primary Caregiver" as used only in this Chapter shall be the same, and as may be amended, as if defined in Section 5.80.010.
- R. "Qualified Patient" as used only in this Chapter shall be the same, and as may be amended, as if defined in Section 5.80.010.
- ~~S.~~ ~~"Written Recommendation" as used only in this Chapter shall be the same, and as may be amended, as if defined in Section 5.80.010.~~

(Ord. No. 13033, § 3, 7-27-2010)

5.81.030 - Permit required.

- A. Except for hospitals and research facilities that obtain written permission for cannabis cultivation under federal law, it is unlawful to establish any cultivation, laboratory, and manufacturing, or packaging facility without a valid business permit issued pursuant to the provisions of this Chapter. Possession of other types of State or City permits or licenses does not exempt an applicant from the requirement of obtaining a permit under this Chapter. It is unlawful for any entity organized on a for-profit basis, except for hospitals and research facilities, to engage in any medical cannabis cultivation whatsoever.
- B. The City Administrator shall issue, as detailed below, special business permits for the operation of industrial cannabis cultivation, processing, laboratory, and manufacturing and packaging facilities facility. In recommending the granting or denying of such permit and in granting or denying the same, the City Administrator shall give particular consideration to the capacity, capitalization, complaint history of the proposed cultivation and manufacturing facility as detailed in Section 5.81.040, and any other factors that in her/his discretion she/he deems necessary to the peace and order and welfare of the public. All applicants shall pay any necessary fees including without limitation application fees, inspection fees and regulatory fees that may be required hereunder.
- C. The City Administrator shall issue in the first year of this cultivation and manufacturing facility program no more than four permits. Two years after the first permit has been issued, the City Administrator shall return to the City Council to report on the development of this program, and determine how additional permits to meet the needs of medical cannabis dispensaries and other lawful cannabis providers shall be administered, if any.
- C. All cultivation, laboratory, and manufacturing and packaging facility permits shall be special business permits and shall be issued for a term of two years one year, subject to annual review one year from the date of prior issuance. No vested right shall ever inure to the benefit of such permit holder as such permits are revocable at any time with our without cause by the City Administrator subject to Section 5.81.120.
- D. Cultivation and manufacturing facility permits shall only be granted to entities operating legally according to State law.

(Ord. No. 13033, § 3, 7-27-2010)

5.81.040 - Industrial Cultivation and packaging of medical marijuana.

- A. ~~Any use of activity that involves possessing, cultivating, processing and/or manufacturing and/or more than 96 square feet of cultivation area shall constitute industrial cultivation of medical cannabis and shall only be allowed upon the granting of a permit as prescribed in this Chapter. Possession of other types of State or City permits or licenses does not exempt an applicant from the requirement of obtaining a permit under this Chapter.~~
- A. The proposed location of a cultivation or packaging 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. This zoning restriction shall not apply to pre-existing dispensary cultivation facilities located at their retail location if the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public. Public notice shall be given as provided in Section 5.02.050, and the investigating official referred to in Section 5.02.030 to whom the application shall be referred, shall be the City Administrator.
- B. [size limitation that mirrors state law/AB 266 to be inserted]

(Ord. No. 13033, § 3, 7-27-2010)

5.81.045 – Manufacturing of medical marijuana and laboratory facilities

- A. The proposed location of a manufacturing facility that exclusively manufactures edible medical marijuana products shall be in areas where "custom manufacturing industrial," or their equivalent use, is permitted under the Oakland Planning Code, as may be amended; the proposed location of a manufacturing facility that manufactures more than edible medical marijuana products shall be in areas where "general manufacturing industrial" or their equivalent use, is permitted under the Oakland Planning Code, as may be amended.
- B. These zoning restrictions shall not apply to pre-existing dispensary manufacturing facilities located at their retail location if the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public.
- C. The proposed location of a laboratory facility shall be in areas where "research and development industrial" or their equivalent use, is permitted under the Oakland Planning Code, as may be amended.
- D. No vested or other right shall inure to the benefit of any manufacturing or laboratory facility permittee.

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 that shall include as applicable~~ 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, compliance with City building and fire codes and any additional information deemed necessary by the City Administrator. The City Administrator may design application forms specific to each permitted category and require inspections of proposed facilities.
- C. ~~All applicants shall be ranked by a point or similar system established by the City Administrator based on information submitted by each applicant and any additional information that may be submitted to or discovered by the City Administrator. The City Administrator shall establish criteria for minimizing the carbon footprint, environmental impact and resource needs of permitted facilities. Applicants that demonstrate they can satisfy this environmental criteria will be given preference in the processing of their application.~~
- D. All applicants shall demonstrate compliance with State law, during the course of the permit application procedure described under this Section, prior to issuing any permit, and upon the issuance of a permit, thereafter.

(Ord. No. 13033, § 3, 7-27-2010)

5.81.070 - Operating standards.

The City Administrator shall establish operating standards for permittees. The intent of these operating standards is to minimize the effects of permitted facilities on nearby properties. Noncompliance of such operating standards shall constitute a breach of the permit issued hereunder and may render such permit suspended or revoked based upon the City Administrator's determination.

(Ord. No. 13033, § 3, 7-27-2010)

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

- A. The City Administrator shall be provided access to any and all financial information at any time, as needed to conduct an audit of the permittees under this Chapter to verify tax compliance under Chapter ~~5-80~~ 5.81 and/or gross receipts tax requirements.
- B. The City Administrator is authorized to examine the books, papers, tax returns and records of any permittee for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax due.

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

- C. Every permittee is directed and required to furnish to the City Administrator, the means, facilities and opportunity for making such financial examinations and investigations.
- D. Any permittee refusal to comply with this Section shall be deemed a violation of this Chapter, and administrative subpoenas shall be enforced pursuant to applicable law.

(Ord. No. 13033, § 3, 7-27-2010)

5.81.100 - Liability and indemnification.

- A. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Chapter shall not become a personal liability of any public officer or employee of the City.
- B. The permittees under this Chapter hereby agree to save, defend, indemnify and keep harmless the City and its officials, officers, employees, representatives, agents and volunteers from all actions, claims, demands, litigation, or proceedings, including those for attorneys' fees, against the City in consequence of the granting of this permit, and will in all things strictly comply with the conditions under which this permit is granted, if any.

(Ord. No. 13033, § 3, 7-27-2010)

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

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

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

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

- A. Cultivation, processing, possession, and/or manufacturing of medical marijuana in any residential areas shall be limited to qualified patients, primary caregivers, and medical cannabis collectives or cooperatives comprised of no more than three qualified patients and/or their primary caregivers. Every member of the medical cannabis collective or cooperative shall possess an identification card issued by the County of Alameda, or the State of California, or another agency recognized by the City pursuant to California Health and Safety Code Section 11362.7 et seq.
- B. Cultivation, processing, possessing, and/or manufacturing of medical cannabis in residential areas shall be in conformance with the following standards:
1. The residential facility shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities. Medical cannabis cultivation, processing, possession, and/or manufacturing shall remain at all times secondary to the residential use of the property;
 2. Cultivation possession, processing and/or manufacturing of medical cannabis in residential areas shall occur only in a secured residences occupied by the qualified patient or primary caregiver;
 3. No individual residential facility or other facility housing the cultivation, processing and/or manufacturing of medical cannabis shall contain more than 48 ounces of dried cannabis, and/or more than 96 square feet of cultivation area;
 4. If required by the building or fire code, the wall(s) adjacent to the indoor cultivation area shall be constructed with 5/8" Type X fire resistant drywall;
 5. The cultivation area shall be in compliance with the current adopted edition of the California Building Code § 1203.4 natural ventilation or § 402.3 mechanical ventilation (or its equivalent(s));
 6. The cultivation area shall not adversely affect the health or safety of the residence or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;
 7. All high amperage electrical equipment (exceeding six amps) used in the cultivation of medical cannabis, (e.g., lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired; the use of extension cords to supply power to high amperage electrical equipment (exceeding six amps) used in the cultivation of medical cannabis is prohibited;
 8. Any electrical rewiring or remodeling shall first require an electrical permit from the City;
 9. The use of butane gas products for personal use medical cannabis cultivation is prohibited; and
 10. From a public right-of-way, there shall be no exterior evidence of medical cannabis cultivation occurring at the property.
- C. If a qualified patient or primary caregiver who is cultivating, possessing, processing and/or manufacturing medical cannabis for personal use at the residence has a doctor's recommendation that the above allowable quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs, as specified by such doctor.

(Ord. No. 13033, § 3, 7-27-2010)

5.81.110 - Prohibited operations.

All cultivation, processing, and manufacturing facilities that do not have a permit under this Chapter are expressly prohibited. No use that purports to have cultivated or processed marijuana shall be deemed to have been a legally established use under the provisions of the Oakland Planning Code, the Oakland Municipal Code, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim a vested right, legal nonconforming or other similar status. Any violations of this Chapter may be subject to administrative citation, pursuant to Chapters 1.08 and 1.12, and other applicable legal, injunctive or equitable remedies. However, no enforcement shall take place until 90 days after the City Administrator has published on its website application forms for cultivation and manufacturing permits.

(Ord. No. 13033, § 3, 7-27-2010)

5.81.120 - Appeals.

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

(Ord. No. 13033, § 3, 7-27-2010)

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