

Chapter 5.81 - MEDICAL CANNABIS CULTIVATION, MANUFACTURING AND OTHER FACILITY PERMITS^[8]

Sections:

Footnotes:

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Editor's note—Ord. No. 13371, § 3, adopted May 17, 2016, amended Chapter 5.81 in its entirety to read as herein set out. Formerly, Chapter 5.81 pertained to medical cannabis cultivation facility permits, and derived from Ord. No. 13033, § 3, adopted July 27, 2010.

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 non-dispensary medical cannabis facilities, including the cultivation of medical cannabis, in a manner that protects the public health, safety and welfare of the community, as authorized by the Medical Marijuana Regulation and Safety Act.

(Ord. No. 13371, § 3, 5-17-2016)

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.
- D. "Cannabis concentrate" as used only in this chapter shall mean manufactured cannabis that has undergone a process to concentrate the cannabinoid active ingredient, thereby increasing the product's potency.
- E. "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."
- F. "City Administrator" as used only in this chapter shall mean the City Administrator for the City of Oakland and his or her designee.
- G. "Cultivate" as used only in this chapter shall mean to plant, grow, harvest, dry, cure, grade or trim more than forty-eight (48) ounces of dried cannabis and/or to plant, grow, harvest, dry, cure, grade or trim cannabis in an area greater than ninety-six (96) square feet of total area within one parcel of land.
- H. "Distribute" as used only in this chapter shall mean the procurement, sale, and transport of medical cannabis and medical cannabis products between State licensed medical cannabis entities.
- I. "Edible cannabis product" as used only in this chapter shall mean manufactured cannabis that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum.
- J. "Manufactured cannabis" as used only in this chapter shall mean raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product.
- K. "Manufacture" as used only in this chapter shall mean to produce, prepare, propagate, or compound manufactured medical cannabis or medical cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.
- L. "Medical cannabis collective" as used only in this chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.
- M. "Medical marijuana" or "Medical cannabis" as used only in this chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.
- N. "Parcel of land" as used only in this chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.
- O. "Permittees" as used only in this chapter are individuals or businesses that have obtained a permit under this chapter to cultivate, distribute, manufacture, test or transport.
- P. "Primary caregiver" as used only in this chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.
- Q. "Qualified patient" as used only in this chapter shall be the same, and as may be amended, as is defined in Section 5.80.010.
- R. "Testing" as used only in this chapter shall mean the conducting of analytical testing of cannabis, cannabis-derived products, hemp, or hemp-derived products.
- S. "Topical cannabis" as used only in this chapter shall mean a product intended for external use such as with cannabis-enriched lotions, balms and salves.
- T. "Transport" as used only in this chapter means the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted

business location of another licensee, for the purposes of conducting commercial cannabis activity, as defined by State law.

- U. "Transporter" as used only in this chapter means a person licensed to transport medical cannabis or medical cannabis products between State licensed medical cannabis facilities.
- V. "Volatile solvents" as used only in this chapter shall mean those solvents used in the cannabis manufacturing process determined to be volatile by the California Department of Public Health or Oakland Fire Department.
- W. "General Application permit" shall mean all applications issued under OMC Chapter 5.81 with the exception of cultivation, manufacturing, distribution, testing, and transporting equity permits issued under Section 5.81.030.

(Ord. No. 13371, § 3, 5-17-2016)

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 cultivate, distribute, manufacture, test or transport 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.
- B. The City Administrator shall issue, as detailed below, special business permits for medical cannabis cultivation, distributing, manufacturing, testing and transporting. All applicants shall pay any necessary fees including without limitation application fees, inspection fees and regulatory fees that may be required hereunder.
- C. All cultivation, distribution, manufacturing, testing and transporting permits shall be special business permits and shall be issued for a term of one year. No property interest, vested right, or entitlement to receive a future license to operate a medical marijuana business shall ever inure to the benefit of such permit holder as such permits are revocable at any time with or without cause by the City Administrator subject to Section 5.81.120.
- D. Cultivation, distribution, manufacturing, testing, and transporting permits shall only be granted to entities operating legally according to State law.
- E. More than one medical cannabis operator may situate on a single parcel of land, however, each operator will be required to obtain a permit for their applicable permit category.
- F. No proposed use under this Chapter shall be located within a 600-foot radius of any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive (but not including any private school in which education is primarily conducted in private homes) nor situate in an area other than as prescribed below unless the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public.
- G. Fifty percent (50%) of all permits issued under OMC Chapter 5.81 shall be issued to an Oakland resident who meets the Equity Permit Program requirements set forth in Subsection 5.81.030(H) below. At no time shall the number of general application permits issued under Chapter 5.81 in total exceed the number of equity permits under Chapter 5.81 in total issued by the City Administrator.
- H. Cultivation, Manufacturing, Distribution, Testing, and Transporting Equity Permit Program Criteria. Applicant must have at least one member who meets all of the following criteria:
 - 1. Be an Oakland resident who:
 - a. Resides for at least two (2) years prior to the date of application in Oakland Police Department Beats 26Y, 30X, 30Y, 31Z, 32Y, and 34X (Oakland Police Department Beat Map is attached and incorporated herein by reference); or those individuals who, within the

last ten (10) years, have been previously incarcerated for marijuana-related offense as a result of a conviction arising out of Oakland, California;

- b. Maintains not less than a fifty percent (50%) ownership in the dispensary applicant entity, partnership, limited liability corporation, collective, corporation, worker cooperative or other recognized ownership entity; and

2. Prior marijuana or cannabis conviction shall not be a bar to equity ownership.

(Ord. No. 13371, § 3, 5-17-2016)

5.81.040 - Cultivation, distribution, testing and transporting of medical marijuana.

- A. Proposed cultivation, distribution, testing or transporting locations shall be in areas where "light manufacturing industrial," "research and development," or their equivalent use, is permitted by right 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, distribution, testing or transporting facility permittee.
- B. The aforementioned location restrictions shall not apply to existing dispensary cultivation facilities located at a 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 maximum size of any areas of cultivation shall not exceed any limitations or restrictions set forth in State law.

(Ord. No. 13371, § 3, 5-17-2016)

5.81.045 - Manufacturing of medical marijuana.

- A. Proposed locations for manufacturing of medical cannabis products using nonvolatile solvents shall be in areas where "custom manufacturing industrial," or its equivalent use, is permitted by right under the Oakland Planning Code, as may be amended, or in residential zones if the manufacturing is compliant with the restrictions imposed on cottage food operators under the California Homemade Food Act, Chapter 6.1 (commencing with Section 51035) of Part 1 of Division 1 of Title 5 of the Government Code.
- B. Proposed locations for manufacturing of medical cannabis products using volatile solvents shall be in areas where "general manufacturing industrial" or its equivalent use, is permitted by right under the Oakland Planning Code, as may be amended.

(Ord. No. 13371, § 3, 5-17-2016)

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 that shall include, as applicable, plans for security, odor mitigation, waste disposal, pest management, product testing, worker safety and compensation, local hiring, non-diversion of product, facility location, capitalization, business plans, applicant complaint history, criminal background checks, plan for minimizing environmental impacts, 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 before issuing a permit under this chapter.
- C. 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, such as cultivators seeking to operate greenhouse facilities, 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. 13371, § 3, 5-17-2016)

5.81.070 - Operating and performance standards.

- A. Facilities permitted under this chapter shall not be open to the public. The City Administrator shall establish operating and performance standards for permittees. The intent of these operating and performance standards is to minimize any negative effects and enhance the benefits of permitted facilities on the surrounding community.
- B. The following standards shall be included in the City Administrator's regulations:
 - 1. No cannabis or cannabis odors shall be detectable by sight or smell outside of a permitted facility.
 - 2. Permitted facilities must install security cameras capable of documenting activity inside and outside the facility, as determined by the Oakland Police Department.
 - 3. Permitted facilities shall maintain a staff that is at least fifty percent (50%) Oakland residents and at least twenty-five percent (25%) Oakland residents in census tracts identified by the City Administrator as having high unemployment rates. The City Administrator may promulgate standards for phasing in this requirement for existing facilities.
 - 4. Permitted facilities that hire and retain formerly incarcerated Oakland residents may apply for a tax credit or license fee reduction based on criteria established by the City Administrator.
 - 5. All employees shall be paid a living wage as defined by OMC Chapter 2.28.
 - 6. Permitted facilities must implement a track and trace program that records the movement of medical cannabis and medical cannabis products in their custody and make these records available to the City Administrator upon request.
- C. 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. 13371, § 3, 5-17-2016)

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

- A. The City Administrator shall be provided access to any licensed medical cannabis cultivation, manufacturing, and other facility during normal business hours to verify compliance with this chapter.
- B. 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 5.81 and/or gross receipts tax requirements.
- C. 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.

- 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. 13371, § 3, 5-17-2016)

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. To the maximum extent permitted by law, the permittees under this chapter shall defend (with counsel acceptable to the City), indemnify and hold harmless the City of Oakland, the Oakland City Council, and its respective officials, officers, employees, representatives, agents and volunteers (hereafter collectively called "City") from any liability, damages, actions, claims, demands, litigation, loss (direct or indirect), causes of action, proceedings, or judgment (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "action") against the City to attack, set aside, void or annul, any medical cannabis-related approvals and actions and strictly comply with the conditions under which such permit is granted, if any. The City may elect, in its sole discretion, to participate in the defense of said action and the permittee shall reimburse the City for its reasonable legal costs and attorneys' fees.
- C. Within ten (10) calendar days of the service of the pleadings upon the City of any action as specified in Subsection B. above, the permittee shall execute a letter of agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the letter of agreement shall survive termination, extinguishment or invalidation of the medical cannabis-related approval. Failure to timely execute the letter of agreement does not relieve the applicant of any of the obligations contained in this section or any other requirements or performance or operating standards that may be imposed by the City.

(Ord. No. 13371, § 3, 5-17-2016)

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

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

A collective or cooperative of qualified patients or primary caregivers, may cultivate medical cannabis covering an area of no more than thirty-two (32) square feet in a residential unit or if in a nonresidential building on one parcel of land per each member of the cooperative or collective, up to a maximum of two hundred sixteen (216) cannabis/marijuana plants within a maximum growing area of ninety-six (96) square feet indoor or sixty (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 (3) 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 forty-eight (48) ounces of dried cannabis, and/or more than ninety-six (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;
 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 (6) 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 (6) 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. 13371, § 3, 5-17-2016)

5.81.110 - Prohibited operations.

- A. Any cultivating, distributing, manufacturing, testing, or transporting without a permit under this chapter is expressly prohibited. No use that purports to have cultivated, distributed, manufactured, tested or transported 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. However, for the limited purpose of State licensing priority, operators may

submit a petition to the City Administrator's Office for a determination of good standing prior to January 1, 2016.

- B. 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, No enforcement of this provision shall take place, though, until after the City Administrator has published information on how to apply for cultivation, distribution, laboratory, manufacturing and transporting permits and no enforcement shall take place against a permit applicant while their application is pending.

(Ord. No. 13371, § 3, 5-17-2016)

5.81.120 - Revocation, suspension and 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 the City shall follow the procedures set forth in Section 5.02.080 only the City Administrator shall make an initial determination with an appeal to an independent hearing officer in writing within fourteen (14) days of the City Administrator's decision The decision of the independent hearing officer shall be final and conclusive.

(Ord. No. 13371, § 3, 5-17-2016)