



AGENDA REPORT

TO: Steven Falk
Interim City Administrator

FROM: Sofia Navarro
Interim Director,
Department of Economic
and Workforce
Development

SUBJECT: Prohibiting Cannabis Cultivation
Approvals on Parcels with Work/Live
or Residential Uses

DATE: May 17, 2023

City Administrator Approval

Date: May 30, 2023

RECOMMENDATION

Staff Recommends That The City Council Adopt An Ordinance:

(1) Amending Section 5.81.150 Of The Oakland Municipal Code To Prohibit The Approval And/Or Permitting Of Commercial Cannabis Cultivation At Locations: (A) Where “Work/Live” Type Uses, As Defined In Chapter 5.81 Of The Oakland Municipal Code, Existed As Of June 1, 2023 Or (B) Where Residential Uses Existed As Of June 1, 2023; And (2) Making California Environmental Quality Act Findings.

EXECUTIVE SUMMARY

The City of Oakland (City) has experienced a significant rise in rent in industrial zones since the City established the areas of the City where cannabis businesses are allowed (informally referred to as “the Green Zone”) in 2016 and began processing cannabis permit applications for the full supply chain in 2017. While industrial zones in the City generally do not allow residential uses, they do allow Work/Live spaces that enable residents to run small businesses and micro-enterprises, typically in creative, artistic, and maker sectors compatible with industrial land uses while also living in the space. The ability to reside in the premises allows for an economically feasible business model for these small businesses. A preliminary analysis of building permit data shows that there are approximately 25 buildings permitted for Work/Live uses in the City’s Green Zone.

In 2018, the City adopted [Ordinance No. 13478 C.M.S.](#), which amended the City’s cannabis ordinances, Oakland Municipal Code (OMC) Chapters 5.80 and 5.81, to protect Work/Live uses and their residents by prohibiting the issuance of any approvals for cannabis businesses in the specific spaces occupied by Work/Live or residential uses. While these amendments directly preserved Work/Live spaces from being replaced by permitted cannabis uses, the 2018 amendments did not eliminate indirect displacement arising from land use, environmental, and other conflicts between cannabis cultivation operations and Work/Live uses occurring on the same parcel.

Consequently, staff proposes an additional amendment to the City's cannabis ordinances to prohibit the issuance of any approvals for cannabis cultivation on any parcel containing Work/Live or residential uses. This change will fulfill the intent of the City's 2018 cannabis ordinance amendments of balancing the City's support of the cannabis industry with protections for Work/Live spaces and thus support a diverse industrial sector in Oakland.

BACKGROUND / LEGISLATIVE HISTORY

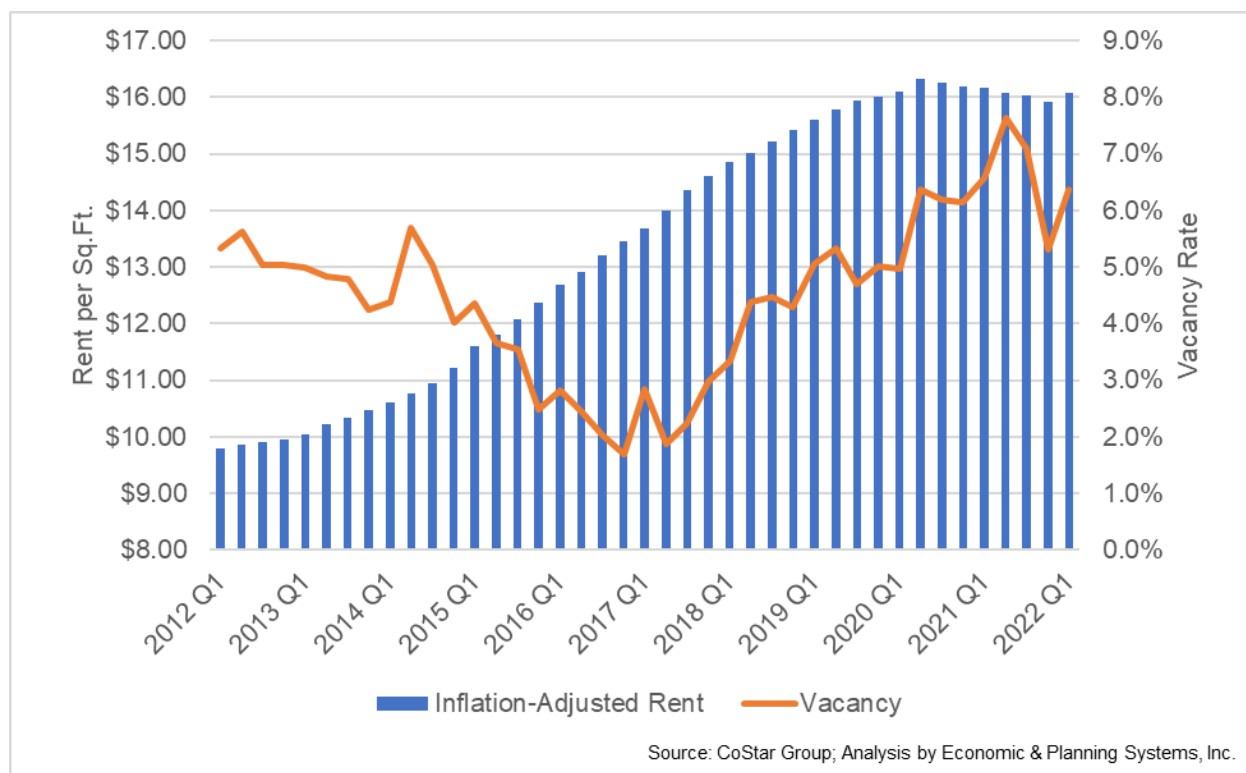
The City has been a leader in regulating medical cannabis dispensaries and most recently centering cannabis regulations around equity. In 2004, the City enacted OMC Chapter 5.80, which created a permitting process for medical cannabis dispensaries, which limited the location of dispensaries to Commercial and Industrial Zones.

With the passage of statewide medical cannabis regulations in the fall of 2015 via the Medical Cannabis Regulation and Safety Act (MCRSA), the City updated its own regulations, specifically OMC 5.81, to reflect the entire supply chain. In determining where to situate each cannabis activity, the City elected to limit the location of each cannabis use to where the equivalent non-cannabis use is permitted by right under the Planning Code. For example, cannabis non-volatile (edible) manufacturers are limited under OMC Chapter 5.81 to areas where "Custom Manufacturing Industrial"¹ activity is permitted by right under the Planning Code. Staff recommended this policy to best integrate cannabis activities within the City's existing land use framework.

As noted in [Economic & Planning Systems, Inc.'s 2022 Baseline Analysis for Oakland General Plan](#), anecdotal information suggests that growth in the cannabis sector has affected market dynamics in Oakland's industrial sector. A combination of factors, including Oakland's central location, specialized business and labor expertise, and a relatively favorable regulatory environment, has helped the City to develop an emerging cannabis cultivation, distribution and manufacturing cluster, a trend that in some cases has priced out more traditional manufacturing, maker, warehouse and distribution uses. **Figure 1** reflects this trend, revealing a considerable increase in inflation-adjusted rents of Oakland industrial properties since cannabis legalization in 2016.

¹ Custom Manufacturing Industrial Activities includes "the small-scale production of artisan and/or custom products. This activity typically includes the production of finished parts or products by hand, involving the use of hand tools and small-scale equipment within enclosed buildings... This classification includes, but is not limited to, the production of: A. Beverages (including alcoholic) and food (excluding the production of highly pungent, odor-causing items, such as vinegar and yeast) with ten thousand (10,000) square feet or less of floor area." OMC 17.10.550.

Figure One: Real Annual Industrial Rents and Vacancy in Oakland’s Industrial Lands (2012-2022)



Work/Live spaces are among those industrial uses impacted by the increased rents outlined above. Work/Live locations provide space for Oakland’s small business, arts, and maker communities, while also providing an affordable housing option that makes these enterprises feasible. The Oakland Planning Code expressly allows several types of Work/Live units throughout its industrially zoned areas, including in the CIX, IG, IO, HBX and D-CE zoning districts, areas that in some cases might not otherwise allow housing. These units play an important role in supporting Oakland’s art and maker communities as they often provide space for uses that would not be compatible with more traditional commercial and residential uses and help ensure a more diverse economy. A preliminary analysis by staff shows that there are at least 25 buildings containing permitted Work/Live uses in the City’s Green Zone.²

In 2018, the City took steps to address the competing demands for space between the cannabis industry and Work/Live uses by removing the prospect of City approvals for cannabis businesses in the specific spaces used for Work/Live or residential. While this helped protect the Work/Live and residential occupants from direct displacement by cannabis uses, conflicts

² A reference map of areas where cannabis uses are allowed is available here: <https://oakgis.maps.arcgis.com/apps/webappviewer/index.html?id=a3d41f22295f47de91378f8da0c3eb46>

have emerged over the past few years at properties that contain cannabis cultivators and Work/Live uses on the same parcel. These conflicts have included cannabis cultivators powering their operation with multiple industrial-size diesel generators in defiance of the Bay Area Air Quality Management District (BAAQMD) and the Oakland Fire Department, as well as owners of properties with cannabis uses attempting to indirectly displace or outright evict Work/Live tenants.

Furthermore, trends in states that have legalized cannabis as well as initial cannabis licensing data in California suggest that there is an oversupply of cannabis flower in the initial years of cannabis legalization and that many cannabis cultivators will cease operation as the industry consolidates over time.³ In addition, staff observations suggest that cannabis cultivation creates the fewest number of jobs per square foot of any segment of the cannabis supply chain. Accordingly, unless the City takes action, the City may lose culturally significant Work/Live small businesses due to cannabis cultivators that employ a relatively small number of workers and may themselves run out of business in the near term.

ANALYSIS AND POLICY ALTERNATIVES

Approval of the requested action advances the Citywide priority of **housing, economic, and cultural security** by preserving affordable housing and business ownership Work/Live residents.

Prohibiting Approvals for Cannabis Cultivation at Properties Used for Work/Live or Residential

Staff recommends resolving the conflicts between cannabis cultivators and Work/Live uses, as well as avoiding the loss of much needed, existing affordable space for small businesses and housing for Oakland residents, by removing the prospect of City approvals for a cannabis cultivator on any parcel of land that includes Work/Live or residential uses. This proposed amendment will encourage cannabis cultivators to pursue properties that do not contain residential or Work/Live uses. This proposal also closes the “loophole” of the 2018 cannabis ordinance amendments by avoiding the constructive eviction of Work/Live uses from cannabis cultivators on the same property interfering with Work/Live tenants’ ability to reside in their spaces free of the negative impacts of cannabis cultivation.

Furthermore, given cannabis cultivation’s low job generation compared to other cannabis uses, staff’s recommendation will minimize any economic impact on the cannabis industry while preserving the small individual businesses contained in Work/Live units.

Alternative Approaches

Alternative approaches to mitigate the conflicts between cannabis cultivators and Work/Live and residential uses tend to be imprecise. For example, the City could limit or cap the number of

³ See [Can Legal Weed Win? The Blunt Realities of Cannabis Economics](#) by Robin Goldstein and Daniel Sumner (2022) and “California is Losing Legal Pot Farms by the Hundreds” by Lester Black (April 7, 2023) available at: <https://www.sfgate.com/cannabis/article/california-legal-cannabis-farms-in-freefall-17882804.php>.

cannabis cultivation facilities, but this would not necessarily avoid conflicts between cannabis cultivators seeking to use existing Work/Live or residential spaces in the Green Zone. Furthermore, the City could prohibit all cannabis uses on properties with Work/Live or residential uses, however, non-cultivation uses have not produced the same level of conflict with Work/Live uses, and thus this approach would prohibit compatible industrial uses.

Accordingly, staff recommends the proposed ordinance amendments as the most direct method for balancing the competing interests of supporting the cannabis industry while protecting existing affordable Work/Live and small business spaces.

FISCAL IMPACT

Prohibiting cannabis cultivators from locating in certain areas reduces the amount of new cannabis tax revenue the City will receive. However, this proposal only limits cannabis cultivators from situating at approximately 25 properties.

In the absence of this proposal, cannabis cultivators' ability to outbid non-cannabis businesses could result in the displacement of non-cannabis uses and the over-saturation of cannabis businesses, leading to a less diverse and sustainable economy in the long-term. Consequently, placing restrictions on approvals for cannabis cultivators, particularly in spaces occupied by Work/Live, should help encourage a more diverse economy that includes space for small businesses in the artistic, maker and creative sectors, which may be more beneficial to the City over the long-term.

PUBLIC OUTREACH / INTEREST

Input from the Oakland Cannery Collective, a group of work/live tenants, informed the proposed ordinance amendment. The Collective presented its recommendations to the City's Cannabis Regulatory Commission on February 9, 2023. At that meeting, the Cannabis Commission unanimously approved the recommendations.

Furthermore, this proposal is consistent with the recommendation that the City's Cultural Affairs Commission approved unanimously at its meeting on May 23, 2022, as part of the General Plan update, to "adopt policies in the general plan to protect cultural workers and workspaces at risk of displacement or affected by cannabis manufacturing, cultivation and other cannabis businesses."

COORDINATION

The Special Activity Permits Division in the Economic and Workforce Development Department (EWDD) consulted with the EWDD's Cultural Affairs, Real Estate and Business Development Divisions, the Budget Bureau, and the Office of the City Attorney in preparation of this report.

SUSTAINABLE OPPORTUNITIES

Economic: Balancing cannabis industry growth and Work/Live spaces will promote a diverse industrial sector, which will improve the City's economic resiliency across shifting economic cycles.

Environmental: Encouraging local employment and business ownership can reduce commutes and related greenhouse gas emissions.

Race and Equity: Preserving existing Work/Live and residential spaces encourages small, local businesses and much needed affordable housing.

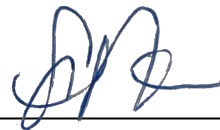
ACTION REQUESTED OF THE CITY COUNCIL

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For questions regarding this report, please contact Greg Minor, Deputy Director, Economic and Workforce Development Department, at (510) 238-6370.

Respectfully submitted,



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