

INTRODUCED BY VICE MAYOR REBECCA KAPLAN,
COUNCIL PRESIDENT NIKKI BAS, COUNCIL PRESIDENT
PRO TEMPORE SHENG THAO, AND COUNCILMEMBER
DAN KALB

DRAFT

CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE PROHIBITING THE CITY OF OAKLAND FROM TESTING PROSPECTIVE AND CURRENT CITY EMPLOYEES FOR OFF-THE-JOB CANNABIS USAGE AS A CONDITION OF EMPLOYMENT OR CONTINUED EMPLOYMENT, OR AS A BASIS FOR DISCIPLINE, EXCEPT IN CERTAIN CIRCUMSTANCES OR EXCEPT AS REQUIRED BY FEDERAL OR STATE LAW.

WHEREAS, as of July 2021, according to the U.S. Bureau of Labor Statistics, there are approximately 88,600 unemployed residents within the cities of Oakland, Berkeley, Hayward, and Fremont¹; and

WHEREAS, the effects of the COVID-19 pandemic have forced businesses to close completely, to never reopen, which has caused the exponential increase of food insecurity and housing insecurity due to job or income loss; and

WHEREAS, the most effective way to combat food insecurity, housing insecurity, and poverty is to assist as many people as possible with job opportunities by removing *unnecessary barriers to employment*; and

WHEREAS, marijuana is still classified as a Schedule I under the Controlled Substance Act and the use of marijuana remains illegal under federal law; and

WHEREAS, the Drug-Free Workplace Act requires federal contractors and federal grant recipients to maintain drug-free workplaces, which requires organizations to have a formal drug-free workplace policy statement and meet all the requirements of the Drug-Free Workplace Act throughout the life of the contract; and

WHEREAS, Administrative Instruction (AI) 577, entitled "City of Oakland Policy Regarding Alcohol and Drug Use" was adopted in 1996 and outlines Oakland's policy on drug and alcohol use in the workplace; and

¹ https://www.bls.gov/eag/eag.ca_oakland_md.htm#eag_ca_oakland_md.f.p

WHEREAS, AI 577 allows the City of Oakland to drug test an employee if there is “reasonable suspicion” of impairment; and

WHEREAS, in 2016, California voters passed Proposition 64 (Adult Use of Marijuana Act), which legalized the adult use of cannabis. With both medicinal and adult-use cannabis legal under California law, there are still no protections for workers who test positive for “non-psychoactive” cannabis metabolites; and

WHEREAS, urine testing is the standard for most drug-testing programs currently, this testing method, along with hair follicle testing methods used by some private companies, is not able to detect the presence of Tetrahydrocannabinol (THC), which is the compound in cannabis that may induce psychoactive effects. Instead, these tests screen for the presence of a non-psychoactive cannabis metabolite, which can remain present in an individual’s bodily fluids for weeks after cannabis use. This is because the chemical compounds in cannabis are different from other substances. After the THC has been metabolized, it is stored in the brain and fat cells as a non-psychoactive cannabis metabolite. While the presence of THC may indicate an individual is impaired, the presence of metabolite only shows that an individual has consumed cannabis in the last few weeks; and

WHEREAS, while there is consensus that no one should ever show up impaired to a worksite, when most tests are conducted for cannabis, the results only show the presence of the non-psychoactive cannabis metabolite. Testing positive for this non-psychoactive cannabis metabolite does not indicate that the employee is impaired and has no correlation to workplace safety or productivity; and

WHEREAS, other jurisdictions, such as the City of Atlanta and Washington, DC, have policies that protect city workers from employment discrimination for using marijuana off the job; and

WHEREAS, Oakland, a national leader in progressive ideology, still has no protections for its workers who can legally consume cannabis; and

WHEREAS, Oakland residents, applicants, and City employees should not be punished for usage of legalized cannabis; and

WHEREAS, the City of Oakland should not dismiss or discipline workers for usage of legalized cannabis when they are off the clock and not impaired at work; and

WHEREAS, preventing applicants from being hired for usage of legalized medications and legalized recreational substances places barriers of entry that are discriminatory and negatively impact applicants from underserved and disadvantaged neighborhoods in the City of Oakland and its surrounding communities; and

WHEREAS, if enacted this ordinance will prohibit the City of Oakland from discriminating against a person in hiring, termination, or any term or condition of employment on account of the fact that a drug screening test has found that person to have non-psychoactive

cannabis metabolites in their urine, hair, or bodily fluids and, if currently employed, that employee is not impaired at work; and

WHEREAS, the City of Oakland strives to maintain, improve, and preserve Oakland’s infrastructure and environment for residents, businesses, visitors, and future generations of every neighborhood in our diverse city; and

WHEREAS, the City of Oakland thrives to be a leader in the nation, ensuring equity, race and social justice is the foundation for every policy and program serving the residents of Oakland and beyond; now, therefore, be it:

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

SECTION 1. That the City Council hereby adopts the addition of Chapter 2.47 to the Oakland Municipal Code to prohibit the City of Oakland from testing prospective and current City employees for off-the-job cannabis usage, also known as the presence of marijuana metabolites, as a condition of employment or continued employment.

SECTION 2. Title 2 of the Oakland Municipal Code is amended to add Chapter 2.47, *Cannabis Testing*, which shall read as follows:

Chapter 2.47 – CANNABIS TESTING

Section 2.47.010 – Definitions.

The following words whenever used in this chapter shall be construed as defined in this section:

“Cannabis” shall have the same definition as is stated in California Health & Safety Code section 11018.

“Union” shall mean an employee organization which the City has formally recognized and acknowledged as an employee organization that represents an appropriate unit of City employees.

Section 2.47.020 –Testing Prohibition.

Except as otherwise stated in this Chapter 2.47, the City of Oakland shall not require a prospective or current City employee to submit to testing for the presence of cannabis in his or her body as a condition of employment or continued employment with the City, or as a basis for discipline.

Section 2.47.030 – Exceptions to Testing Prohibition.

Section 2.47.020 shall not apply to drug testing administered pursuant to:

- A. Any federal or state statute, regulation, or order that requires Cannabis testing of prospective or current employees, including but not limited to regulations promulgated by the federal Department of Transportation and standards established by the California Commission on Peace Officer Standards and Training;
- B. A reasonable suspicion, based on objective facts and logical inferences drawn from those facts, that a City employee is impaired in the workplace.

SECTION 4. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

SECTION 5. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND
PRESIDENT FORTUNATO BAS

NOES –
ABSENT –
ABSTENTION –

ATTEST: _____

ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

AN ORDINANCE PROHIBITING THE CITY OF OAKLAND FROM TESTING PROSPECTIVE AND CURRENT CITY EMPLOYEES FOR OFF-THE-JOB CANNABIS USAGE AS A CONDITION OF EMPLOYMENT OR CONTINUED EMPLOYMENT, EXCEPT IN CERTAIN CIRCUMSTANCES OR EXCEPT AS REQUIRED BY FEDERAL OR STATE LAW.

This ordinance adds Chapter 2.47 to the Oakland Municipal Code in order to prohibit the City from testing prospective and current employees for off-the-job cannabis use.