

# CITY OF OAKLAND



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#LoveLife

NIKKI FORTUNATO BAS DAN KALB REBECCA KAPLAN SHENG THAO  
Council President Councilmember District 1 Vice Mayor President Pro Temp

**Date:** November 9, 2021  
**To:** Members of City Council and Members of the Public  
**From:** Vice Mayor Rebecca Kaplan, Council President Nikki Bas, Council Member Sheng Thao, and Council Member Dan Kalb  
**Re:** An Ordinance Prohibiting The City Of Oakland From Testing Of 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.

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Dear Colleagues on the City Council and Members of the Public,

On November 5, 1996, California voters passed Proposition 215, which exempted patients and caregivers who possess or cultivate marijuana for medical treatment recommended by a physician from criminal laws which otherwise prohibit possession or cultivation of marijuana. Oakland quickly became a model city in terms of medical cannabis. In 2004, Oakland became the first city in the U.S. to create a system to regulate and tax cannabis businesses<sup>1</sup>. Oakland was the first City to pass laws to tax cannabis, and issue city permits for facilities, with regulations, and equity requirements. Such local strategies have been widely replicated by other cities and states.

On November 9, 2016, Californians passed Proposition 64, the Adult Use of Marijuana Act, which legalizes personal use and cultivation of marijuana for adults 21 years of age or older; reduces criminal penalties for specified marijuana-related offenses; and authorizes resentencing or dismissal and sealing of prior, eligible marijuana-related convictions. The proposition includes provisions on regulation, licensing, and taxation of legalized use<sup>2</sup>.

Oakland, for many years, has provided for the permitting and licensing of cannabis facilities for adult use. Given the City of Oakland's legacy as an innovator in the cannabis space, it is unfortunate that other cities are more progressive when it comes to the issue of testing current and prospective employees for off-the-job cannabis use. We are facing a crisis in employee recruitment and retention - with extensive vacancies undermining public services. For every city job that is not filled, there are real world impacts, from trash that is not cleaned to sewer systems not being maintained to permits not being processed. The vacancies of city employees are causing significant harm to our public. To exclude, discipline, or eliminate employees based on conduct that is not job-related, and which we have legalized, is not only unjust to the worker directly impacted -- it also harms the public and reduces our ability to provide desperately needed public services. Furthermore, it is unjust, and goes against the spirit of our cannabis legalization policies to penalize or exclude employees for cannabis use -- as long as they are not impaired or using at

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<sup>1</sup> <https://bppj.berkeley.edu/2020/04/08/spring-2020-journal-engineering-equity-in-oaklands-cannabis-market/>

<sup>2</sup> <https://www.courts.ca.gov/prop64.htm>

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work. In addition, cannabis prohibition has been extensively documented to involve dramatic racial disparities, with penalties falling overwhelmingly on African Americans disproportionately affected.

This proposal is not aimed at policies that state that employees should not be impaired at work. Rather, we do not want people to be punished or excluded from jobs based on off-the-job conduct that has no relationship to job performance, and which our City has authorized.

Nonetheless, cannabis metabolites, the substance for which employees are tested, can show in a test for weeks after use, and are not an accurate indication of impairment. New York City and Philadelphia have ordinances that protect all employees, with the exception of federal employees from cannabis testing. Washington, DC and Atlanta have mayoral orders that protect city employees from employer discrimination for off-the-job use of marijuana.

This proposed ordinance would help make clear that it is not Oakland's policy goal to test or discipline employees or prospective employees for non-job-related cannabis use, including that we would seek to avoid testing employees for cannabis metabolites. However, due to the existence of current Federal provisions which require such testing for specified positions, this ordinance would allow such testing to still take place, in those situations and for those job classifications for which a superseding government entity requires it.

In addition, we would urge that our Federal officials also review their policies and practices in light of wide spread cannabis legalization -- and the harms, disparities, and human suffering caused by Federal cannabis prohibition and related legislation -- as the Federal government too should eliminate requirements for testing and penalties for non-job-related cannabis consumption. And, in the meantime, we should currently not exceed that which the Federal government requires in this area. Oakland, which has recognized the harm and injustice of the war on marijuana, should avoid, whenever we can, perpetuating it.

Respectfully submitted,

A handwritten signature in purple ink, appearing to read "Rebecca Kaplan", enclosed in a thin black rectangular border.

Vice Mayor Rebecca Kaplan  
Oakland City Councilmember At Large