

APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER REBECCA KAPLAN

ORDINANCE: (1) AMENDING OAKLAND MUNICIPAL CODE SECTION 5.80.025 (ONSITE CONSUMPTION PERMIT) BY: (A) AUTHORIZING THE CITY ADMINISTRATOR TO ISSUE AN ONSITE CONSUMPTION PERMIT TO A PERMITTED DISPENSARY REGARDLESS OF HOW LONG THE DISPENSARY HAS BEEN OPERATING; AND (B) REMOVING THE PUBLIC HEARING REQUIREMENT FOR AN ONSITE CONSUMPTION PERMIT; AND (2) MAKING CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS

WHEREAS, the City of Oakland (the City) is a pioneer in the emerging developing cannabis industry, championing the legalization, responsible, and equitable regulation of both recreational and medical cannabis; and

WHEREAS, as a pioneer of the cannabis industry, the City should embrace the new strategies created by and enjoyed in municipalities that have built upon the early successes of the City's legalized cannabis industry; and

WHEREAS, Oakland Municipal Code (O.M.C.) Section 5.80.025, among other things requires that for a cannabis dispensary to qualify for a permit to have onsite cannabis consumption, it must be an existing permitted dispensary in "good standing" based on its operating history and business practices; and

WHEREAS, other cities that have authorized cannabis consumption permits for existing dispensaries, regardless of their good standing, and be it medical or recreational, on the premises of such dispensaries; and

WHEREAS, other cities have benefited from an increase in tax revenue related to or directly from permitted onsite cannabis consumption; and

WHEREAS, amending O.M.C. Section 5.80.025 will improve the cannabis industry within the City by removing the requirement that an applicant seeking an onsite consumption permit for cannabis must be an "existing dispensar[y] in good standing," which at a point in history, served a productive purpose, but has become a hurdle to a burgeoning industry; and

WHEREAS, amending O.M.C. Section 5.80.025 will help the City replicate the success enjoyed by municipalities that have removed any mention of “good standing” in their cannabis regulations, such as an increase in employment, tax revenue, and a better-regulated cannabis market; and

WHEREAS, local, state, and federal regulations have begun to relax or abolish certain cannabis laws. For example, on Tuesday, April 30th, 2024, Attorney General Merrick Garland, submitted a proposal that would move cannabis out of the federal government’s most restrictive classification under the Controlled Substances Act; and

WHEREAS, as states and the federal government begin to adopt more relaxed and better regulation of the cannabis industry, the City should embrace the easement of cannabis regulations; and

WHEREAS, the current regulation, drafted in an era with little to no precedent on the legal consumption of cannabis, successfully established a regulated cannabis industry in the City. To build upon the momentum derived from a pioneering vision of the cannabis industry, the City should amend O.M.C. Section 5.80.025, and

WHEREAS, in addition to the “good standing” requirement, O.M.C. Section 5.80.025 requires dispensary applicants to be subject to an additional public hearing separate from their approval for a dispensary permit; and

WHEREAS, the City seeks to reduce duplication of efforts, and to enable timely operation of local businesses to generate jobs and revenues, by having a dispensary with onsite consumption be subject to one public hearing rather than two public hearings, as is currently required; and

WHEREAS, the City, as a pioneer in the legalization of medical and recreational cannabis consumption, would benefit from authorizing on-site consumption within the premises of dispensaries; and

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

SECTION 1. The City Council hereby adopts the recitals of this Ordinance to be true and correct and such recitals are hereby incorporated by reference as though fully set forth in the text of this Ordinance.

SECTION 2. Amendment of Section 5.80.025 (Onsite Consumption Permit) of the Oakland Municipal Code.

Oakland Municipal Code Section 5.80.025 is repealed and reenacted as set forth below. Chapter and section numbers and titles are indicated in **bold type**. Additions are indicated in underscoring and deletions are indicated in ~~strikethrough~~. Portions of the regulations not cited or not shown in underscoring or strikethrough type are not changed.

5.80.025 Onsite Consumption Permit.

A. A dispensary must obtain a secondary onsite consumption permit in order for cannabis to be consumed on the premises of the dispensary.

B. An onsite consumption permit may be issued at the discretion of the City Administrator to ~~existing dispensaries in good standing~~ a permitted dispensary following a public hearing conducted according to the requirements of Chapter 5.02 and based on an ~~evaluative point system that takes into~~ the operating history and business practices of the applicant, and/or any other factors that are deemed necessary to promote the peace, order and welfare of the public. An application for an onsite consumption permit may be denied for failure to meet requirements of the City Building Code, City Fire Code, City Planning Code, this chapter, and/or any violation of State or local law relevant to the operation of dispensaries.

C. The City Administrator shall establish conditions of approval for each onsite consumption permit, including but not limited to a parking plan, ventilation plan, anti-drugged driving plan, and set hours of operation. Set hours of operation may only be adjusted by submitting a written request to and obtaining approval from the City Administrator's Office.

D. The permit shall be subject to suspension or revocation in accordance with Section 5.80.070, and the owner/operator shall be liable for excessive police costs related to enforcement.

E. The application fee and annual fee for the onsite consumption permit shall be specified in the City's Master Fee Schedule.

F. All onsite consumption 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 cannabis 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 5.80.070.

SECTION 3. California Environmental Quality Act Findings.

The City Council independently finds and determines that this action does not constitute a “project” within the meaning of CEQA based on: (1) CEQA Guidelines, 14 California Code of Regulations, Section 15060(c)(2) because there is no potential that the legislation will result in a direct or reasonably foreseeable indirect physical change in the environment and (2) CEQA Guidelines, 14 California Code of Regulations, Section 15378 because it has no potential for resulting in either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment. Even if this action does comprise a project for CEQA analysis, the following CEQA Guidelines, 14 California Code of Regulations, exemptions apply to this action: (1) CEQA Guidelines Section 15061(b)(3) (general rule exemption), and (2) CEQA

Guidelines section 15301 (existing facilities exemption), each of which provides a separate and independent basis for CEQA clearance and when viewed together provide an overall basis for CEQA clearance. The City's Environmental Review Officer or designee shall file a Notice of Exemption with the appropriate state agencies.

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 there of 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, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____
ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

NOTICE AND DIGEST

ORDINANCE: (1) AMENDING OAKLAND MUNICIPAL CODE SECTION 5.80.025 (ONSITE CONSUMPTION PERMIT) BY: (A) AUTHORIZING THE CITY ADMINISTRATOR TO ISSUE AN ONSITE CONSUMPTION PERMIT TO A PERMITTED DISPENSARY REGARDLESS OF HOW LONG THE DISPENSARY HAS BEEN OPERATING; AND (B) REMOVING THE PUBLIC HEARING REQUIREMENT FOR AN ONSITE CONSUMPTION PERMIT; AND (2) MAKING CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS

Existing law requires that a cannabis dispensary business must be subject to a public hearing prior to receiving a City permit to operate. Also, existing law requires that if a cannabis dispensary applies for a permit to have onsite cannabis consumption, it must be in “good standing” and be subject to an additional public hearing requirement. This ordinance would remove the good standing and separate public hearing requirement for a cannabis business applying for an onsite cannabis consumption permit. It also makes California Environmental Quality Act exemption findings.