



OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY VICE MAYOR KAPLAN AND COUNCIL MEMBER FIFE

A RESOLUTION IN SUPPORT OF ASSEMBLY BILL 1256 (QUIRK), ANTI-CANNABIS DISCRIMINATION, PROHIBITING EMPLOYERS FROM DISCRIMINATING AGAINST HIRING, OR TERMINATING, A PERSON WHO HAS TESTED POSITIVE FOR HAVING CANNABIS METABOLITES IN THEIR URINE, HAIR, OR BODILY FLUIDS

WHEREAS, as of March 2021, according to the U.S. Bureau of Labor Statistics, there are approximately 88,500 unemployed residents within the cities of Oakland, Berkeley Hayward, and Fremont,¹ who are looking for work, which does not include the number of individuals who have given-up or stopped looking for work, out of frustration or fatigue; and

WHEREAS, the State of California's Employment Development Department, reported the total number of jobs located in the East Bay decreased by 97,800 jobs (8.3%). The leisure and hospitality industry decreased by 40,600 jobs; the arts, entertainment, and recreation industry dropped by 9,100 jobs; local governments lost 12,200 jobs, while the state government lost 1,200 jobs, and the federal government lost 100 jobs; the trade, transportation, and utilities lost approximately 9,400 jobs;² and

WHEREAS, the effects of the COVID-19 pandemic crippled the economy in ways that had not been seen in generations, where business and restaurants closed completely, to never re-open, 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, in 1996, Proposition 215 (Compassionate Use Act) legalized the use of medicinal cannabis in California. However, in 2008, the California Supreme Court ruled that employers

¹ The U.S. Bureau of Labor Statistics. https://www.bls.gov/eag/eag.ca_oakland_md.htm

² The California Employment Development Department, State of California. Labor Market Information Division, April 16, 2021. [https://www.labormarketinfo.edd.ca.gov/file/lfmonth/oak\\$pd.pdf](https://www.labormarketinfo.edd.ca.gov/file/lfmonth/oak$pd.pdf)

were not required to accommodate an employee’s medicinal marijuana use irrespective of Proposition 215; 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.

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

WHEREAS, employers should only be authorized to dismiss or discipline workers from usage of legalized cannabis **when hired**, once the applicant is an **employee** subjugated to workplace policies and conditions of employment; and

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

WHEREAS, if enacted AB 1256 will prohibit employers in the state of California 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. The law will also allow affected individuals to seek civil damages and other appropriate relief from employers; and

WHEREAS, twenty states currently have laws protecting employment rights for medical cannabis users, for example, Nevada and New Jersey, plus several cities such as New York City, Washington, DC, Atlanta, GA, Rochester, NY, and Richmond, VA protect recreational cannabis consumers’ employment rights; and

WHEREAS, California, a global leader in progressive ideology, still has no protections for its workers who can legally consume cannabis; 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 strives 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:

RESOLVED: that the Oakland City Council hereby endorses AB 1256 (Employment Discrimination: Cannabis Screening Test) and urges the California State Legislature and Governor Gavin Newsom to support its enactment into law, and be it:

FURTHER RESOLVED: that the Oakland City Council requests the City Administrator to transmit a copy of this Resolution to our local state legislative representatives and to the lobbyist for the City of Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

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