



CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

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

WHEREAS, in 1996, California voters approved Proposition 215 (codified at Health and Safety Code section 11362.5 and titled the “Compassionate Use Act of 1996”), which provides criminal immunity for patients and primary caregivers for the cultivation and possession of cannabis if a doctor has recommended the cannabis for medical purposes; and

WHEREAS, in 2004, Senate Bill 420 was enacted (codified at Health and Safety Code section 11362.7 et seq. and titled the “Medical Marijuana Program Act”) to clarify the scope of the Compassionate Use Act of 1996 and allow cities and other governing bodies to adopt and enforce laws consistent with its provisions; and

WHEREAS, neither the Compassionate Use Act of 1996 nor the Medical Marijuana Program Act provided an effective statewide regulatory system for the medical cannabis industry, and this lack of uniform regulation created uncertainty about the legality of medical cannabis activities and endangered the safety of end users, who have not had the benefit of a monitored supply chain for medical cannabis, quality control, testing or labeling requirements; and

WHEREAS, in 2011, Assembly Bill 2650 was enacted (codified at Health and Safety Code section 11362.768) and affirms that cities can adopt ordinances that restrict the location and establishment of medical marijuana collectives, cooperatives, and dispensaries; and

WHEREAS, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court concluded that nothing in the Compassionate Use Act or the Medical Marijuana Program Act precludes a local jurisdiction from regulating or prohibiting facilities that distribute medical marijuana; and

WHEREAS, in 2015, Assembly Bills 243 and 266 and Senate Bill 643 were enacted (codified at Business and Professions Code section 19300 et seq. and titled the “Medical Cannabis Regulation and Safety Act”). These bills also, amended provisions of the Medical Marijuana Program Act related to the cultivation of medical marijuana; and

WHEREAS, the Medical Cannabis Regulation and Safety Act (MCRSA) preserved local control in a number of ways: (1) by requiring medical cannabis businesses to obtain both a state license and a local license or permit to operate legally in California, (2) by terminating the ability of a medical cannabis business to operate if its local license or permit is terminated, (3) by authorizing local governments to enforce state law in addition to local ordinances, if they request that authority and it is granted by the relevant state agency, (4) by providing for civil penalties for unlicensed activities, and continuing to apply applicable criminal penalties under existing law, and (5) by expressly protecting local licensing practices, zoning ordinances, and local actions taken under the constitutional police power; and

WHEREAS, the voters of California approved Proposition 64 on November 8, 2016, legalizing the use of cannabis for persons aged 21 or older under state law and establishing certain sales and cultivation taxes; and

WHEREAS, in 2017 the State legislature passed, and the governor signed Senate Bill 94, or the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), the reconciliation legislation merging the regulation of medical and adult-use cannabis at the State level as much as possible. Senate Bill 94 generally imposes the same requirements on both commercial medicinal and commercial adult-use cannabis activity, with specific exceptions; and

WHEREAS, the City of Oakland (City) has been a leader in regulating medical cannabis and adult use cannabis businesses to protect the public health, safety and general welfare of the community, as well as the interest of patients who qualify to obtain, possess and use cannabis for medical purposes; and

WHEREAS, in parallel with developments in state law, the City amended its cannabis ordinances, Oakland Municipal Code (OMC) Chapters 5.80 and 5.81 in May 2016 to create a permitting process for the entire supply chain of cannabis businesses; and

WHEREAS, the City began receiving permit application for the entire supply chain of cannabis businesses in May 2017; and

WHEREAS, 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; and

WHEREAS, in 2018 the City amended the City’s cannabis ordinances, 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; and

WHEREAS, 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; and

WHEREAS, anecdotal information suggests that growth in the cannabis sector has affected market dynamics in Oakland’s industrial sector, including a considerable increase in inflation-adjusted rents of Oakland industrial properties since cannabis legalization in 2016; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, unless the City acts, the City may lose culturally significant Work/Live small businesses due to cannabis cultivators who may themselves run out of business in the near term; and

WHEREAS, at the February 9, 2023 the Cannabis Regulatory Commission meeting the Cannabis Regulatory Commission unanimously approved the recommendations of the Oakland Cannery Collective to prohibit cannabis cultivation permits on the same parcel as live-work uses; and

WHEREAS, 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;” and

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

SECTION 1. Recitals. The City Council of the City of Oakland hereby determines that the preceding recitals are true and correct and an integral part of the Council’s decision to enact this legislation, and hereby adopts and incorporates them into this ordinance.

SECTION 2. Amendment of Oakland Municipal Code Section 5.81.150

Oakland Municipal Code Section 5.80.030 is repealed and reenacted as set forth below (chapter and section numbers and titles are indicated in **bold type**; additions are indicated by underscoring and deletions are indicated by strike-through type; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed):

5.81.150 Restrictions on Approvals for Properties Used for Work/Live or Residential Purposes.

A. General Limitations for Work/Live or Residential Uses

No permit or local authorization shall be issued under OMC Chapters 5.80 or 5.81 to a cannabis applicant at premises where either:

1. Work/Live use existed as of March 6, 2018; or
2. Residential use existed as of March 6, 2018.

In both the foregoing, this applies irrespective of any subsequent reconfiguration of the premises.

B. Limitations on Cultivation for Work/Live or Residential Uses

In addition to the restrictions described in section (A), the City of Oakland shall not issue any permits or approvals for cannabis cultivation on the same parcel of land where either:

1. Work/Live use existed as of June 1, 2023; or
2. Residential use existed as of June 1, 2023.

In both the foregoing, this applies irrespective of any subsequent reconfiguration of the premises.

~~A permit or local authorization may be issued under OMC Chapters 5.80 or 5.81 to a cannabis applicant utilizing different premises within a parcel of land that also contains Work/Live or residential uses, so long as the cannabis applicant mitigates potential impacts, if possible, as directed by the City Administrator, Fire Marshall, and/or Building Official, including any mitigations required by the Fire Marshall and/or Building Official, and so long as volatile manufacturing may only take place in a separate building with approval of the Fire Marshall and Building Official and under such mitigations as they or the City Administrator may require.~~

- C. The City Administrator may develop further guidelines and operating standards to implement this section.

SECTION 3. California Environmental Quality Act. 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 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, 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

Date of Attestation: _____

NOTICE AND DIGEST

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Existing law prohibits commercial cannabis activity, including retail, manufacturing, and cultivation, at certain premises designated for “Work/Live” and/or residential uses as of March 6, 2018. This ordinance expands the prohibition so as not to allow commercial cannabis cultivation on any portion of a parcel of land where “Work/Live” and/or residential type uses existed as of June 1, 2023.