

Amash: City

CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER REBECCA KAPLAN

ORDINANCE: (1) AMENDING OAKLAND MUNICIPAL CODE CHAPTERS 5.80 AND 8.30 BY: (A) ESTABLISHING THREE DIFFERENT TYPES OF PERMITS FOR CANNABIS CONSUMPTION LOUNGES; AND (B) EXEMPTING CANNABIS CONSUMPTION LOUNGES FROM THE CITY'S EXISTING SMOKING RESTRICTIONS; AND (2) MAKING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

WHEREAS, the City of Oakland (City) has developed and adopted rules authorizing the consumption of cannabis at permitted dispensaries to bolster the City's growing cannabis industry; and

WHEREAS, the consumer landscape of cannabis is constantly evolving and innovating as the stigmas of cannabis consumption dissipate in the wake of a legalized market; and

WHEREAS, many states and municipalities are now recognizing the onsite consumption of cannabis as a profitable and sensible addition to the regulated cannabis market; and

WHEREAS, the City has established clear rules for the regulation of on-site cannabis consumption, and this has stimulated the growth of various cannabis businesses. As a result, this has expanded the tax based and contributed to increased tax revenues generated by commercial cannabis activity; and

WHEREAS, existing law authorizes a cannabis business in Oakland to operate a dispensary and to obtain a separate permit in order for cannabis to be consumed on the premises of the dispensary. This ordinance would establish three different permit types for cannabis onsite consumption—one for the consumption of edible or drinks, one for vaporization, and one for smoking or combustion; and

WHEREAS, the three different types of permitting each broaden current onsite-consumption regulation related to mercantile while additional proposed administrative requirements, in concert, maximize the effectiveness of the regulated cannabis industry in Oakland; and

WHEREAS, the adoption of these amendments will expand the cannabis consumer and retail territory in Oakland and expand the regulatory oversight of the City Administrator;
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.

1. General Requirements

- 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 a permitted dispensary based on 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. No Permittee shall allow the on-site Consumption of Cannabis or Cannabis Products in a manner inconsistent with any permit condition imposed by the City Administrator's office or is inconsistent with any rules, regulations, or guidelines.
- E. No Permittee shall authorize the on-site Consumption of Cannabis or Cannabis Products outside of the business' operating hours, as such hours may be established by law or regulation or required as a condition of the permit.
- F. Permittees shall post one or more notices of sufficient size, lettering, and prominence to

advise customers that the Consumption of Cannabis Products on the sidewalk or in other areas adjacent to the Premises is prohibited.

G. Access to the area where the Consumption of Cannabis Products is allowed shall be restricted to persons twenty-one (21) years of age and older, or persons eighteen (18) years of age and older if the Permittee is authorized to Sell Medicinal Cannabis Products.

H. Cannabis Consumption shall not be visible from any public place or any nonage-restricted area on the Premises.

I. The sale and Consumption of alcohol or tobacco products are not allowed on the Premises.

J. A Permittee shall comply with all laws governing Commercial Cannabis Activity.

~~D-K.~~ 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-L.~~ The application fee and annual fee for the onsite consumption permit shall be specified in the City's Master Fee Schedule.

~~F-M.~~ All onsite consumption permits shall be special business permits and shall be issued for a term of one (1) 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.

2. Specific Types of Onsite Consumption Permits and Requirements

A. Cannabis Consumption – Prepackaged Cannabis Products – No Preparation. A Permittee in possession of this permit type may allow the on-site Consumption of Pre-Packaged Cannabis Products but may not engage in the Preparation of Cannabis Products.

B. Cannabis Consumption – Limited Preparation of Cannabis Products. A Permittee in possession of this permit type may allow the on-site Consumption of Pre-Packaged Cannabis Products, and may also Prepare and allow the Consumption of Cannabis Products.

C. Cannabis Smoking. A Permittee in possession of this permit type may allow the on-site Smoking of Cannabis, and may also allow the Consumption of Pre-packaged Cannabis Products, and/or the Consumption of prepared Cannabis Products, subject to approval by the City Administrator.

Cannabis Smoking Permits are subject to the following additional requirements:

1. The Designated Smoking room must have a separate heating, ventilation, and air-conditioning (HVAC) system such that none of the air in the Designated Smoking Room will be recirculated into other parts of the Cannabis Business' Premises.
2. The air from a Designated Smoking Room must be directly exhausted to the outdoors by a filtration system that, at a minimum, eliminates all odor and smoke.
3. Smoke from the Designated Smoking Room must not drift to other portions of the Premises.
4. The Designated Smoking Room must be completely separated from the remainder of the Premises by solid partitions or glazing without openings other than doors, and all doors leading to the Designated Smoking Room must be self-closing. All doors to the Designated Smoking Room must be installed with a gasket to provide a seal where the door meets the stop.
5. A Permittee with a Cannabis Smoking permit may not require employees to enter the Designated Smoking Room as a condition of their employment.

SECTION 3. Amendment of Section 5.80.045 (Performance and Operating Standards) of the Oakland Municipal Code.

Oakland Municipal Code Section 5.80.045 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.

5.80.045 Performance and Operating Standards

The City Administrator shall develop and implement performance and operating standards consistent with those set forth in Ordinance No. 12585 in the Office of the City Administrator Guidelines and shall modify such Guidelines from time to time as required by applicable law and consistent with public health, welfare and safety. Noncompliance of such operating standards shall constitute a breach of the permit issued hereunder and may render such permit suspended or revoked based upon the City Administrator's determination.

The following performance standards shall be included in the City Administrative regulations:

- A. No cannabis shall be smoked inside the premises of the dispensary except for the areas designated in an Onsite Consumption permit in good standing pursuant to Oakland Municipal Code Section 5.80.025.
- B. The dispensary shall not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages.

- C. Dispensaries must maintain a staff comprised of at least fifty (50) percent Oakland residents and twenty-five (25) percent Oakland residents in census tracts identified by the City Administrator as having high unemployment rates or low household incomes. The City Administrator's guidelines and regulations may provide details of these requirements, including for phasing in this requirement for existing facilities.
- D. Dispensaries and delivery only dispensaries that hire and retain formerly incarcerated current Oakland residents may apply for a tax credit or license fee reduction based on criteria established by the City Administrator.
- E. All dispensary employees and delivery only dispensary employees shall be paid a living wage as defined by O.M.C. Chapter 2.28.
- F. Dispensaries and delivery only dispensaries must implement a track and trace program as prescribed by state law that records the movement of cannabis and cannabis products in their custody and make these records available to the City Administrator upon request.
- G. No cannabis odors shall be detectable outside of the permitted facility.
- H. Delivery-Only dispensaries are not open to the public.

SECTION 4. Amendment of Section 8.30.080 (Smoking Optional Areas) of the Oakland Municipal Code.

Oakland Municipal Code Section 8.30.080 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 ~~striketrough~~. Portions of the regulations not cited or not shown in underscoring or strikethrough type are not changed.

8.30.080 Smoking optional areas.

Notwithstanding any other provision of this Chapter, to the contrary, the following areas shall not be subject to the smoking restrictions of this Chapter:

- A. Enclosed areas of private, detached, single family residences, except those used as licensed child care, adult care, or health care facilities;
- B. Unenclosed areas of private, detached, single family residences, except, during their hours of operation, those used as licensed child care, adult care, or health care facilities;
- C. Retail tobacco stores;
- D. The area designated in a Cannabis Consumption Permit issued pursuant to Oakland Municipal Code Section 5.80.025;
- E. By performers during theatrical productions, if smoking is an integral part of the story.

SECTION 5. California Environmental Quality Act Findings. The City Council

independently finds and determines that this action does not constitute a “project” within the meaning of the California Environmental Quality Act (“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 it is found that this action constitutes a project for CEQA purposes, the following CEQA 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 is hereby authorized to file a Notice of Exemption with the Alameda County Clerk and appropriate State agencies.

SECTION 6. 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 7. 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: _____

3384410/AS

NOTICE AND DIGEST

ORDINANCE: (1) AMENDING OAKLAND MUNICIPAL CODE CHAPTERS 5.80 AND 8.30 BY: (A) ESTABLISHING THREE DIFFERENT TYPES OF PERMITS FOR CANNABIS CONSUMPTION LOUNGES; AND (B) EXEMPTING CANNABIS CONSUMPTION LOUNGES FROM THE CITY'S EXISTING SMOKING RESTRICTIONS; AND (2) MAKING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

Existing law authorizes a cannabis business in Oakland to operate a dispensary and to obtain a separate permit in order for cannabis to be consumed on the premises of the dispensary. This ordinance would establish three different permit types for cannabis onsite consumption—one for the consumption of edible or drinks, one for vaporization, and one for smoking or combustion. It would also impose additional air purification requirements for a business seeking a permit for onsite consumption for customers to smoke cannabis. This legislation also would amend the City of Oakland's Smoking Ordinance to exempt permitted onsite consumption lounges from various "no smoking" rules.