



CITY ATTORNEY'S OFFICE

# OAKLAND CITY COUNCIL

**ORDINANCE NO. \_\_\_\_\_ C.M.S.**

**INTRODUCED BY COUNCILMEMBERS REBECCA KAPLAN AND CARROLL FIFE**

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**ORDINANCE: (1) AMENDING OAKLAND MUNICIPAL CODE CHAPTERS 5.80 AND 8.30, RESPECTIVELY BY: (A) ESTABLISHING STANDARDS FOR THE APPROVAL OF ONSITE CONSUMPTION PERMITS FOR CANNABIS SMOKING; AND (B) EXEMPTING SUCH ONSITE CONSUMPTION PERMITS FROM THE CITY'S INDOOR 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 (Onsite Consumption Permit). This ordinance would establish standards for the City to approve Onsite Consumption Permits where smoking or combustion of cannabis would be allowed; 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Oakland Municipal Code Section 5.80.025 is repealed and reenacted as set forth below.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.**

- 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. The application must specify whether or not consumption will include the Combustion/Smoking of cannabis and whether such use will occur at an indoor or outdoor location.
- 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.

Additionally, approval of an Onsite Consumption Permit that allows for Combustion/Smoking at an indoor location is subject to the to the following requirements and shall be evaluated in consultation with the Fire Marshal and the Building Official:

1. A 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 an Onsite Consumption permit may not require employees to enter the Designated Smoking Room as a condition of their employment.
- 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 (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.

### **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 striketrough 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 - BROWN, FIFE, HOUSTON, KAPLAN, RAMACHANDRAN, UNGER, AND  
PRESIDENT PRO TEMPORE GALLO

NOES –

ABSENT – COUNCIL PRESIDENT JENKINS (serving as Mayor pursuant to Charter Section 303)

ABSTENTION –

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

Date of Attestation: \_\_\_\_\_

3409214/AS



## NOTICE AND DIGEST

**ORDINANCE: (1) AMENDING OAKLAND MUNICIPAL CODE CHAPTERS 5.80 AND 8.30, RESPECTIVELY BY: (A) ESTABLISHING STANDARDS FOR THE APPROVAL OF ONSITE CONSUMPTION PERMITS FOR CANNABIS SMOKING; AND (B) EXEMPTING SUCH ONSITE CONSUMPTION PERMITS FROM THE CITY'S INDOOR 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, referred to as an Onsite Consumption Permit, in order for cannabis to be consumed on the premises of the dispensary. This ordinance would establish standards for the City of Oakland to approve Onsite Consumption Permits where the smoking or combustion of cannabis is allowed. This legislation also would amend the City of Oakland's Smoking Ordinance to exempt permitted onsite consumption lounges where the smoking of cannabis is allowed from various "no smoking" rules.