

A. Sotelo
CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL
ORDINANCE NO. 13603 C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE SECTION 5.80.050 AND SECTION 5.81.060 TO ALLOW A CANNABIS BUSINESS PERMIT APPLICANT WHO PREVIOUSLY MET THE INCOME AND OAKLAND RESIDENCY CRITERIA TO QUALIFY AS AN "EQUITY APPLICANT," TO RECEIVE EQUITY ASSISTANCE PROGRAM SERVICES UP TO TWO YEARS FROM THE DATE SUCH APPLICANT WAS VERIFIED AS AN EQUITY APPLICANT, REGARDLESS OF THE APPLICANT'S CURRENT INCOME OR RESIDENCY; AND ADOPTING CEQA EXEMPTION FINDINGS

WHEREAS, the City of Oakland (City) conducted the nation's first race and equity analysis of the cannabis industry and adopted the nation's first Equity Program in the Spring of 2017 with the goal of promoting equitable ownership and employment opportunities in the cannabis industry to address the disproportionate impacts of the war on drugs in marginalized communities of color; and

WHEREAS, the Equity Program is codified in Oakland Municipal Code Chapters 5.80 and 5.81; and

WHEREAS, Oakland Municipal Code Sections 5.80.010 and 5.81.020 define an Equity Applicant as an Applicant whose ownership/owner: (1) Is an Oakland resident, (2) In the last year, had an annual income at or less than eighty (80) percent of Oakland Average Medium Income (AMI) adjusted for household size, and (3) Either (i) has lived in any combination of Oakland police beats 2X, 2Y, 6X, 7X, 19X, 21X, 21Y, 23X, 26Y, 27X, 27Y, 29X, 30X, 30Y, 31Y, 32X, 33X, 34X, 5X, 8X and 35X for at least ten of the last twenty years or (ii) was arrested after November 5, 1996 and convicted of a cannabis crime committed in Oakland; and

WHEREAS, the Equity Program includes an Equity Assistance Program for Equity Applicants that includes free technical and legal assistance as well as no-interest loans and grants; and

WHEREAS, Oakland Municipal Code Sections 5.80.050(E) and 5.81.60(D) require Equity Applicants to continue to satisfy the definition of an Equity Applicant in order to continue to receive access to Equity Assistance Program services; and

WHEREAS, the requirement that Equity Applicants continually satisfy the definition of an Equity Applicant in order to receive access to Equity Assistance Program services has had the effect of limiting the growth of Equity businesses and restricting their ability to compete with other cannabis businesses; and

WHEREAS, Oakland has experienced a rise in the cost of living and housing in recent years, displacing Oakland residents unable to afford these rising costs; and

WHEREAS, the requirement that Equity Applicants continually satisfy the definition of an Equity Applicant in order to receive access to Equity Assistance Program services penalizes Equity Applicants who can no longer afford to reside in Oakland; and

WHEREAS, allowing Equity Applicants continued access to Equity Assistance Program services for two years since the last date the City of Oakland verified they satisfied the definition of an Equity Applicant will support the continued growth of Equity Applicant businesses and avoid penalizing Equity Applicants who cannot afford to reside in Oakland; and

WHEREAS, after two years the City Council and City Administration can review the effectiveness of this two-year eligibility extension for Equity Assistance Program services and make further amendments as needed; and

WHEREAS, the City Council finds and determines that this action is exempt from the requirements of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines, 14 California Code of Regulations, sections 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment), 15061(b)(3) (no significant effect on the environment), section 15378 (no potential for resulting in either a direct physical change to the environment) and 15301 (existing facilities), each as a separate and independent basis and when viewed collectively, provide an overall basis for CEQA clearance; 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 5.80.050 Oakland Municipal Code Section 5.80.050 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):

5.80.050 - Equity Permit Program.

A. Equity Criteria. Applicant ownership/owner must satisfy the following criteria:

1. Be an Oakland resident; and
2. In the last year, have had an annual income at or less than eighty (80) percent Oakland average median income (AMI) adjusted for household size; and
3. Either (i) has lived in any combination of Oakland Police Department Beats 2X, 2Y, 6X, 7X, 19X, 21X, 21Y, 23X, 26Y, 27X, 27Y, 29X, 30X, 30Y, 31Y, 32X, 33X, 34X, 5X, 8X and 35X for at least ten (10) of the last twenty (20) years; or (ii) was arrested after November 5, 1996 and convicted of a cannabis crime committed in Oakland, California.

B. Review of Criteria.

1. Proof of Income shall be supported with federal tax returns and at least one (1) of the following documents: two (2) months of pay stubs, current Profit and Loss Statement, Balance Sheet, or proof of current eligibility for General Assistance, Food Stamps, Medical/CALWORKS, or Supplemental Security Income or Social Security Disability (SSI/SSDI)
2. Residency must be for a total of ten (10) years in any combination of the designated Oakland police beats as set forth in Section 5.80.010 H.3. A minimum of two (2) of the documents listed below, evidencing ten (10) years of residency, shall be considered acceptable proof of residency. All residency documents must list the applicant's first and last name, and the Oakland residence address in the police beats set forth in Section 5.80.010 H.3:
 - California driver's record; or
 - California identification card record; or
 - Property tax billing and payments; or
 - Verified copies of state or federal income tax returns where an Oakland address within the police beats is listed as a primary address; or
 - School records; or
 - Medical Records; or
 - Banking records; or
 - Oakland Housing Authority records; or
 - Utility, cable or internet company billing and payment covering any month in each of the ten (10) years.

3. Proof of Conviction should be demonstrated through federal or state court records indicating the disposition of the criminal matter.

- C. Assistance. Equity Applicants will be eligible for participation in the Equity Assistance program, which will include industry specific technical assistance, business ownership technical assistance, no interest business start-up loans, grants, and waivers from City permitting fees. Equity Applicants who previously met the income or residency requirements under Oakland Municipal Code Section 5.80.010 may receive Equity Assistance program services up to two (2) years from the last day they were verified as an Equity Applicant, regardless of their current income or residency.

- D. Initial Permitting Phase.
 1. The period of time before the Equity Assistance Program referred to in OMC 5.80.050(C), is established, funded and implemented shall be referred to as the Initial Permitting Phase.

 2. At any point during the Initial Permitting Phase, a minimum of fifty (50) percent of all permits collectively issued under OMC Chapters 5.80 and 5.81 shall be issued to Equity Applicants. This excludes the permits issued to the initial eight (8) dispensaries.

 3. In the Initial Permitting Phase, a General Applicant will receive the next available General Applicant permit if it serves as an Equity Incubator by providing free real estate or rent to an Equity Applicant who obtains a cannabis permit. In order to receive this permitting priority, the General Applicant must also comply with the following conditions:
 - a. The free real estate or rent shall be for a minimum of three (3) years.
 - b. The Equity Applicant shall have access to a minimum of one thousand (1,000) square feet to conduct its business operations.
 - c. The General Applicant must provide any City required security measures, including camera systems, safes, and alarm systems for the space utilized by the Equity Applicant.
 - d. The General Applicant is otherwise compliant with all other requirements of OMC Chapter 5.80 or 5.81.

 4. If a General Applicant obtains a cannabis permit utilizing the Equity Incubator priority provisions of OMC 5.80.050 D.3. and the Equity Applicant ceases its business operations, the General Applicant must:

- a. Notify the City Administrator within thirty (30) days of the Equity Applicant ceasing its business operations; and
 - b. Re-apply for a cannabis permit subject to the permitting restrictions of this Chapter, including OMC 5.80.050 D.2.
5. Failure to notify the City Administrator, submit a new application and obtain a new cannabis permit as required under OMC 5.80.050 D. is grounds for revocation and a violation of this Chapter.

~~E. Renewal.~~

- ~~1. In order to continue to receive new Equity Assistance Program services, an Equity Applicant must provide proof that it continues to satisfy the Equity Criteria at the time of its annual permit renewal.~~
- ~~2. An Equity Applicant who no longer satisfies the Equity Criteria but is compliant with all other requirements of OMC Chapter 5.80 or 5.81 will be entitled to renew the permit but will no longer be entitled to receive new Equity Assistance Program services. Such an Applicant may utilize any services previously granted under the Equity Assistance Program, though, such as previously issued loans.~~

SECTION 3. Amendment of Oakland Municipal Code Section 5.81.060. Oakland Municipal Code Section 5.80.060 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):

5.81.060 - Equity Permit Program.

- A. Equity Criteria. Applicant ownership/owner must satisfy the following criteria:
1. Is an Oakland resident; and
 2. In the last year, had an annual income at or less than eighty (80) percent Oakland Average Median Income (AMI) Adjusted for household size; and
 3. Either (i) has lived in any combination of Oakland Police Department Beats 2X, 2Y, 6X, 7X, 19X, 21X, 21Y, 23X, 26Y, 27X, 27Y, 29X, 30X, 30Y, 31Y, 32X, 33X, 34X, 5X, 8X and 35X for at least ten of the last twenty years or (ii) was arrested after November 5, 1996 and convicted of a cannabis crime committed in Oakland, California.
- B. Review of Criteria.
1. Proof of Income shall be supported with federal tax returns and at least one (1) of the following documents: two (2) months of pay stubs, current Profit and Loss Statement, Balance Sheet, or proof of current eligibility for General Assistance, Food Stamps, Medical/CALWORKs, or Supplemental Security Income or Social Security Disability (SSI/SSDI)

2. Residency must be for a total of ten (10) years in any combination of the designated Oakland police beats as set forth in Section 5.81.020 J.3. A minimum of two (2) of the documents listed below, evidencing ten (10) years of residency, shall be considered acceptable proof of residency. All residency documents must list the applicant's first and last name, and the Oakland residence address in the police beats set forth in Section 5.81.020 J.3.:
 - California driver's record; or
 - California identification card record; or
 - Property tax billing and payments; or
 - Verified copies of state or federal income tax returns where an Oakland address within the police beats is listed as a primary address; or
 - School records; or
 - Medical Records; or
 - Banking records; or
 - Oakland Housing Authority records; or
 - Utility, cable or internet company billing and payment covering any month in each of the ten (10) years.
 3. Proof of Conviction should be demonstrated through federal or state court records indicating the disposition of the criminal matter.
- C. Assistance. Equity Applicants will be eligible for participation in the Equity Assistance Program, which will include industry specific technical assistance, business ownership technical assistance, no interest business start-up loans, grants, and waivers from City permitting fees. Equity Applicants who no longer satisfy the income or Oakland residency restrictions outlined in the definition of an Equity Applicant in OMC 5.80.010 may still receive Equity Assistance program services up to two years from the last date they were verified as an Equity Applicant.
- D. Initial Permitting Phase.
1. The period of time before the Equity Assistance Program referred to in OMC 5.81.060(C) is established, funded and implemented shall be referred to as the Initial Permitting Phase.
 2. At any point during the Initial Permitting Phase, a minimum of fifty (50) percent of all permits collectively issued under OMC Chapters 5.80 and 5.81 shall be issued to Equity Applicants. This excludes the permits issued to the initial eight (8) dispensaries.
 3. In the Initial Permitting Phase, a General Applicant will receive the next available

General Applicant permit if it serves as an Equity Incubator by providing free real estate or rent to an Equity Applicant who obtains a cannabis permit. In order to receive this permitting priority, the General Applicant must also comply with the following conditions:

- a. The free real estate or rent shall be for a minimum of three years.
 - b. The Equity Applicant shall have access to a minimum of 1,000 square feet to conduct its business operations.
 - c. The General Applicant must provide any City required security measures, including camera systems, safes, and alarm systems for the space utilized by the Equity Applicant.
 - d. The General Applicant is otherwise compliant with all other requirements of OMC Chapter 5.80 or 5.81.
4. If a General Applicant obtains a cannabis permit utilizing the Equity Incubator priority provisions of OMC 5.81.060 (D) (3) and the Equity Applicant ceases its business operations, the General Applicant must:
- a. Notify the City Administrator within thirty (30) days of the Equity Applicant ceasing its business operations.
 - b. Re-apply for a cannabis permit subject to the permitting restrictions of this Chapter, including OMC 5.80.050 (D) (2).
5. Failure to notify the City Administrator, submit a new application and obtain a new cannabis permit as required under OMC 5.80.050 (D) is grounds for revocation and a violation of this chapter.

~~E. — Renewal:~~

- ~~1. — In order to continue to receive new Equity Assistance Program services, an Equity Applicant must provide proof that it continues to satisfy the Equity Criteria at the time of its annual permit renewal.~~
- ~~2. — An Equity Applicant who no longer satisfies the Equity Criteria but is compliant with all other requirements of OMC Chapter 5.80 or 5.81 will be entitled to renew the permit but will no longer be entitled to receive new services under the Equity Assistance Program. Such an Applicant may utilize any services previously provided granted under the Equity Assistance Program, though, such as previously issued loans.~~

SECTION 4. 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 5. 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 6. 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,

JUN 30 2020

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID,
TAYLOR, THAO AND PRESIDENT KAPLAN - 8

NOES - 0
ABSENT - 0
ABSTENTION - 0

Introduction Date

JUN 16 2020

ATTEST: 

ASHA REED

Acting City Clerk and Clerk of the Council of the
City of Oakland, California

Date of Attestation: 

NOTICE AND DIGEST

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE SECTION 5.80.050 AND SECTION 5.81.060 TO ALLOW A CANNABIS BUSINESS PERMIT APPLICANT WHO PREVIOUSLY MET THE INCOME AND OAKLAND RESIDENCY CRITERIA TO QUALIFY AS AN “EQUITY APPLICANT,” TO RECEIVE EQUITY ASSISTANCE PROGRAM SERVICES UP TO TWO YEARS FROM THE DATE SUCH APPLICANT WAS VERIFIED AS AN EQUITY APPLICANT, REGARDLESS OF THE APPLICANT’S CURRENT INCOME OR RESIDENCY; AND ADOPTING CEQA EXEMPTION FINDINGS

This Ordinance would amend Oakland Municipal Code Section 5.80.050 and Section 5.81.060, to allow a cannabis business permit applicant who previously met the income and Oakland residency criteria to qualify as an “equity applicant,” to receive equity assistance program services up to two years from the date such applicant was verified as an equity applicant, regardless of the applicant’s current income or residency. It also adopts California Environmental Quality Act exemption findings. Upon final adoption on second reading this ordinance will become effective immediately if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.