

FILED
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APPROVED AS TO FORM AND LEGALITY

A. Sotelo

OAKLAND CITY COUNCIL
ORDINANCE NO. 18626 C.M.S.

INTRODUCED BY CITY ADMINISTRATOR EDWARD REISKIN

**ORDINANCE CHANGING PERMITTING REQUIREMENTS FOR
CANNABIS BUSINESSES BY:**

- 1) **AMENDING OAKLAND MUNICIPAL CODE SECTIONS 5.80.050 AND 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 FOUR YEARS FROM THE DATE SUCH APPLICANT WAS VERIFIED AS AN EQUITY APPLICANT, REGARDLESS OF THE APPLICANT'S CURRENT INCOME OR RESIDENCY;**
- 2) **EXTENDING THE DUE DATE FOR CANNABIS BUSINESS PERMIT FEES FOR CERTAIN BURGLARIZED BUSINESSES; AND**
- 3) **ADOPTING CEQA EXEMPTION 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. The Medical Marijuana Program Act allows 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). This law 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 S.B. 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. S.B. 94 generally imposes the same requirements on both commercial medicinal and commercial adult-use cannabis activity, with specific exceptions. The governor signed S.B. 94 on June 27, 2017; and

WHEREAS, the City of Oakland 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 of Oakland 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 of Oakland adopted a landmark Equity Permit Program in the spring of 2017 to promote equitable ownership and employment opportunities to decrease disparities in life outcomes for marginalized communities of color and to address the disproportionate impacts of the war on drugs in those communities; and

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

WHEREAS, based on over a year of experience implementing this cannabis permitting process, the City of Oakland now proposes an amendment 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 four years from the date such applicant was verified as an equity applicant, regardless of the applicant’s current income or residency; and

WHEREAS, the above proposed amendment’s purpose is to improve implementation of the equity program; and

WHEREAS, cannabis businesses are “essential businesses” as defined by local and state COVID-19 Health Orders; and

WHEREAS, cannabis businesses face additional obstacles obtaining finances due to lack of access to banking stemming from federal prohibitions on cannabis; and

WHEREAS, cannabis businesses were strategically targeted by burglars taking advantage of the civil unrest that occurred in Oakland in late May and early June 2020; and

WHEREAS, extending the time period for submitting permit fees will allow essential cannabis businesses who suffered financial losses due to the burglaries committed during the civil unrest in late May and early June 2020 to continue to operate during the COVID-19 pandemic while gathering financial resources to pay for their annual City permit fee(s); and

WHEREAS, the City Council further independently finds that this action is exempt from the California Environmental Quality Act (CEQA) pursuant to the following CEQA Guidelines (14 California Code of Regulations): (1) CEQA Guidelines Section 15061(b)(3) (general rule exemption), (2) CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning) and (3) 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 Council of the City of Oakland Does Ordain as Follows:

SECTION 1. Recitals. The City Council finds and determines the foregoing recitals to be true and correct and hereby adopts and incorporates them into this Ordinance.

SECTION 2. Purpose and Intent. It is the purpose and intent of this Ordinance to improve implementation of its cannabis permit process to preserve the public peace, health, safety, and general welfare of the citizens and residents of the City of Oakland.

SECTION 3. Amendments to Oakland Municipal Code Section 5.80.050. Oakland Municipal Code Section 5.80.050 is hereby repealed and reinstated as follows. Additions are shown in underline and deletions are shown as ~~striketrough~~.

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)~~ four (4) years from the last initial day they were verified as an Equity Applicant, regardless of

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 4. Amendments to Oakland Municipal Code Section 5.81.060. Oakland Municipal Code Section 5.80.050 is hereby repealed and reinstated as follows. Additions are shown in underline and deletions are shown as ~~strike through~~.

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 previously met the income or residency requirements under Oakland Municipal Code Section 5.81.020 may receive Equity Assistance program services up to ~~two(2)~~ four (4) years from the ~~last~~-initial 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 5.81.060(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 5. Extension of Due Date for Cannabis Permit Fees for certain burglarized businesses

A cannabis business permittee authorized under Oakland Municipal Code Chapter 5.80 and/or 5.81 whose businesses was burglarized between May 25, 2020 and June 8, 2020, may qualify for a one time permit fee due date extension for one year, with no permit fee due until the end of such one-year extension. Pursuant to this extension, the permit fee shall be due within one year of the original date for which it is due.

To qualify for such relief, a cannabis permittee must submit: (1) a written request to the City Administrator's Office Special Activity Permits Division, and (2) a police report documenting the burglary of such business between the dates of May 25, 2020 and June 8, 2020. Such relief applies to the permit fee only and does not grant the permittee an automatic permit renewal nor relieve the permittee of any relevant requirements for a permit renewal, including but not limited to Fire and/or Building Code compliance and associated fees.

SECTION 6. California Environmental Quality Act. The City Council independently finds and determines that this action is exempt from the California Environmental Quality Act (CEQA) pursuant to the following CEQA Guidelines (14 California Code of Regulations): (1) CEQA Guidelines Section 15061(b)(3) (general rule exemption), (2) CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning); and (3) 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 7. Severability. The provisions of this Ordinance are severable, and if any section, subsection, sentence, clause, phrase, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is for any reason held to be invalid, preempted by state or federal law, or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. It is hereby declared to be the legislative intent of the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

SECTION 8. Ordinance Effective Date. Pursuant to Section 216 of the Charter of the City of Oakland, this Ordinance shall become effective immediately upon final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption by the Council of the City of Oakland.

SECTION 9. General Police Powers. This Ordinance is enacted pursuant to the City of Oakland's general police powers, including but not limited to Sections 106 of the Oakland City Charter and Section 7 of Article XI of the California Constitution.

IN COUNCIL, OAKLAND, CALIFORNIA,

DEC 0 1 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

ATTEST:


ASHA REED

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

Introduction Date

OCT 2 0 2020

Date of Attestation: December

NOTICE AND DIGEST

ORDINANCE CHANGING PERMITTING REQUIREMENTS FOR CANNABIS BUSINESSES BY:

- 1) AMENDING OAKLAND MUNICIPAL CODE SECTIONS 5.80.050 AND 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 FOUR YEARS FROM THE DATE SUCH APPLICANT WAS VERIFIED AS AN EQUITY APPLICANT, REGARDLESS OF THE APPLICANT'S CURRENT INCOME OR RESIDENCY;**
- 2) EXTENDING THE DUE DATE FOR CANNABIS BUSINESS PERMIT FEES FOR CERTAIN BURGLARIZED BUSINESSES; AND**
- 3) ADOPTING CEQA EXEMPTION FINDINGS**

This Ordinance would change the City of Oakland's permitting requirements for cannabis businesses by amending Oakland Municipal Code Sections 5.80.050 and 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 four years from the date such applicant was verified as an equity applicant, regardless of the applicant's current income or residency. It also extends the due date for cannabis business permit fees for certain burglarized businesses and 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.