

**DRAFT**

City Attorney

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OFFICE OF THE CITY CLERK  
OAKLAND**OAKLAND CITY COUNCIL**

2010 JUL -9 PM 3:46

Resolution No. \_\_\_\_\_ C.M.S.

**Resolution Amending Resolution Nos. 78331 and 79647, C.M.S. which Established the City's Law Enforcement Policy Regarding Medical Cannabis and Private Adult Cannabis Offenses to Clarify the City's Law Enforcement Policy and Guidelines Regarding Medical Cannabis Activities by Patients, Primary Care Givers and Cooperatives and Collectives Consisting of Patients and their Primary Caregivers in Residential Settings and Non-Residential Settings Such as Commercial and Industrial Facilities**

**WHEREAS**, on March 12, 1996, the Oakland City Council passed Resolution No. 72516 C.M.S. supporting the activities of the Oakland Cannabis Buyer's Club and declaring that the investigation and arrest of individuals involved with the medical use and distribution, processing, cultivation and purchasing of marijuana shall be a low priority for the City of Oakland; and

**WHEREAS**, on November 5, 1996, the voters of California passed Proposition 215, the Compassionate Use Act of 1996, by a YES vote of 55.7 percent, and the residents of Oakland voted YES for Proposition 215 by an overwhelming 70.3 percent; and

**WHEREAS**, Proposition 215 provides an affirmative defense to prosecution for the crimes of possession and cultivation of marijuana for qualified patients and their primary caregivers, as such terms are defined under Proposition 215, who possess or cultivate marijuana for personal medical purposes of such patients upon the written or oral recommendation of a physician; and

**WHEREAS**, Proposition 215 does not grant immunity from arrest for the crimes of possession and cultivation of marijuana and law enforcement officers may arrest a person for either of these crimes even if the person has a physician's recommendation or approval so long as the authorities have probable cause to believe that possession or cultivation has occurred; and

**WHEREAS**, Proposition 215 did not establish any guidelines or protocols for local jurisdictions in this regard; and

**WHEREAS**, the City of Oakland developed law enforcement priority policy for the purpose of establishing the law enforcement priorities and guidelines when they encounter individuals who possess, cultivate or engage in other activities involving marijuana; and

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**WHEREAS**, lacking guidelines and protocols from the State, the Oakland City Council adopted Ordinance No. 12076 C.M.S. on July 28, 1998, establishing a City of Oakland Medical Marijuana Distribution Program (Oakland Municipal Code Chapter 8.46); and

**WHEREAS**, in 2003 the California State Legislature passed, and Governor signed into law, Senate Bill ("SB") 420 to clarify the scope of the application of the Compassionate Use Act (Proposition 215), establish protocols and promote uniform and consistent application among all local jurisdictions in the State to enhance access to medical cannabis by qualified patients and primary caregivers; and

**WHEREAS**, SB 420 allows cities and other governing bodies to adopt and enforce laws and regulations consistent with state law; and the City Council, by establishing and clarifying such laws and regulations, continues to pursue the goal of providing Oakland residents who suffer from life threatening or serious illnesses, access to a safe and affordable supply of medical grade marijuana and cannabis products; and

**WHEREAS**, in 2004, the City of Oakland adopted Oakland Municipal Code Chapter 5.80, the Medical Cannabis Dispensary Permits ordinance, which defined Cannabis Dispensaries and required such dispensaries to obtain business permits; and

**WHEREAS**, in 2004, the Oakland City Council also passed Resolution No. 78331 declaring a low police priority relating to medical marijuana consistent with Oakland Municipal Code Chapter 5.80 and SB 420 and rescinding Resolution No. 72516; and

**WHEREAS**, in 2005 the Oakland City Council passed Resolution No. 79647 which amended Resolution 78331, adding in accordance with Measure Z, a 2004 voter initiative, entitled "Oakland Cannabis Regulation and Revenue Ordinance" that private adult cannabis offenses shall be the City's lowest law enforcement priority; and

**WHEREAS**, the Council has determined that it is necessary to clarify the circumstances in which the City's low police priority policy applies to possession, use, manufacture, cultivation, processing, sale and other activities involving medicinal cannabis; and

**WHEREAS**, such clarification will assure that the Oakland Police Department, patients and their primary caregivers landlords and tenants and property owners and all Oakland residents and visitors have clear law enforcement policy and guidelines regarding medical cannabis activities that are in compliance with Proposition 215, the City's Medical Cannabis Program set forth in Oakland Municipal Code Chapter 5.80, provisions of SB 420, applicable

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case law, the Americans with Disability Act regulations, the California Fair Employment and Housing Act's requirements, and local health and fire safety regulations and that such activities are not a threat to the health and safety of Oakland residents, qualified patients and primary caregivers; and

**WHEREAS**, the City of Oakland has an overriding and abiding interest in maintaining and improving the quality of urban life and the character of the City's neighborhoods and of planning and regulating the use of property within the City, including the use of property by patients, their primary care givers, and cooperatives and collectives, and associations for the possession, use, manufacture, cultivation, processing and sale and distribution of medicinal cannabis; and

**WHEREAS**, without stable, well-planned neighborhoods, sections of the City can deteriorate, with potentially tragic consequences to social, environmental and economic values; and

**WHEREAS**, there is a growing concern about how to ensure that qualified patients and licensed dispensaries can gain access to medical cannabis that is safe and nontoxic; and

**WHEREAS**, in the absence of regulations and policies medical cannabis cultivation and manufacturing activities and facilities could present a significant health and safety risk to neighboring residences and businesses and the entire Oakland community; and

**WHEREAS**, the City's policies and guidelines and regulations will protect the health and welfare of all Oakland residents and patients, primary caregivers, cooperatives, by clearly delineating the circumstances in which, including how and where, medical cannabis cultivation by individual patients, their primary caregivers, and cooperatives, and collectives consisting of a total of three qualified patients and primary caregivers is covered by the City's law enforcement priority policy and guidelines; and

**WHEREAS**, for all of the reasons stated above, the City wishes to clarify its policies and guidelines for the protection and health and safety of Oakland residents, and to afford the Oakland Police Department clear guidelines for the purposes of law enforcement and investigation policy priorities; now, therefore be it

**RESOLVED:** that to facilitate the City's implementation and enforcement of the City Council's law enforcement policy and guidelines, this Resolution establishes circumstances that are covered by the City's low and lowest law enforcement policy regarding medical cannabis; and be it

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**FURTHER RESOLVED:** that the City Council hereby reaffirms that it shall be the policy of the City of Oakland that the detention, investigation and arrest and other law enforcement activities of the following are a low priority for the City of Oakland:

- (1) qualified individual patients who possess, purchase, cultivate and/or cultivate and/or use no more than the amounts of medical cannabis specified in City policy and guidelines;
- (2) primary caregivers of qualified patients who purchase, possess, cultivate and/or provide to such qualified patients no more than the amounts of medical cannabis specified in City policy and guidelines;
- (3) medical cannabis collectives that meet the requirements of Senate Bill 420; and Oakland Municipal Code Chapter 5.80 and are comprised of no more than three qualified patients and primary caregivers;
- (4) a dispensary as defined in Oakland Municipal Code Chapter 5.80, entitled, "An Ordinance Amending Title V of the Oakland Municipal Code Entitled Business Licenses and Regulations to Include Chapter 5.80 Pertaining to Cannabis dispensary Permitting", that hold a current, valid permit issued by the City and is operating in compliance with such permit and other entities authorized by Oakland Municipal code Chapter 5.80 such as hospitals and research facilities; and
- (5) entities authorized pursuant to Oakland Municipal Code Chapter 8.46.030;
- (6) any other cannabis-related activities authorized under Oakland Municipal Code Title 5; and be it

**FURTHER RESOLVED,** that in light of the California Supreme Court's ruling in *People v. Kelly*, 47 Cal.4<sup>th</sup> 1008 (2010), and Proposition 215, qualified patients and their primary caregivers may exceed the amounts specified in these guidelines and policies if their doctor determines that the patient reasonably needs greater amounts and the qualified patient or primary caregiver provides documentation confirming the physician's recommendation; and be it

**FURTHER RESOLVED,** that the Council reaffirms its declaration in Resolution No. 79647, C.M.S. that notwithstanding any other provision of this resolution, in accordance with Measure Z, a voter initiative entitled "Oakland Cannabis Regulation and revenue Ordinance", which the Oakland electorate passed on November 2, 2004 and which initiative became effective on December 7, 2004, private adult cannabis (marijuana) offenses are the City's lowest law enforcement priority; and be it

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**FURTHER RESOLVED**, that the Council reaffirms its declaration in Resolution No. 79647, C.M.S. that private adult cannabis offenses do not include the use, sale, distribution, preparation and/or cultivation in settings that are not private, including but not limited to markets, stores, cabarets, establishments selling alcoholic beverages, cafes and restaurants, retail outlets, stores and other commercial establishments; nor do private adult cannabis offenses include use, sale, distribution, preparation and/or cultivation on city owned or leased property whether or not the property is rented, or leased by private parties for a private purpose such a party, meeting or other activity; and be it

**FURTHER RESOLVED**, that for purposes of this Resolution which amends 79647 C.M.S., the following definitions shall apply:

"Cannabis/Marijuana Plants" means any plant whether mature or immature, clone, or seeding of the cannabis plant. For the purposes of determining quantities each individual plant, clone, or seedling will be deemed to constitute one (1) plant regardless of whether the plant is in its flowering or harvesting phase or immature.

"Dried Cannabis/Marijuana" means only the dried mature processed flowers (or "buds") of the female cannabis plant and their derivatives, including but not limited to Hashish and other byproducts. "Family" means one or more persons related by blood, marriage, domestic partnership, or adoption who are living together in a single residential unit and maintain a common household. Family also means all unrelated persons who live together in a single Resident Unit and maintain a common household.

"Non-Residential" means all parcels that are not classified as residential units and shall include but not be limited to, industrial, commercial and institutional improvements, whether or not they are currently developed; and be it

"Residential Unit" means a building or portion of a building that is designed for or occupied exclusively by one Family. Examples of such dwelling units, are an apartment, single family residence, condominium, or live/work space, that is designed for or occupied by one Family.

and be it,

**FURTHER RESOLVED:** That the City Council finds that needs of Oakland residents are met by providing clear and definitive guidelines for the cultivation, production, manufacturing, and growing of medical cannabis by a qualified patient, primary care giver, and/or small 3 person cooperative, collective, or association; and be it

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**FURTHER RESOLVED:** these guidelines will assure that the Oakland Police Department, the Oakland police officer in the field, the Office of the City Attorney, and the Nuisance Abatement Division of the City Administrator's Office will have clarity regarding the circumstances in which activities involving cannabis are covered by the City's law enforcement priority policy; and be it

**FURTHER RESOLVED,** that the low law enforcement priority policy guidelines apply to individual qualified, patients and their primary care givers who cultivate, grow, produce, manufacture possess three (3) pounds of Dried Cannabis/Marijuana AND EITHER 72 indoor Cannabis/Marijuana Plants in a maximum growing area of thirty-two square feet (32) OR twenty (20) outdoor Cannabis/Marijuana Plants and; and be it

**FURTHER RESOLVED,** that the low law enforcement priority policy guidelines apply to a cooperative, collective, or association consisting of no more than three qualified patients and primary care givers who cultivate, grow, produce, manufacture no more than the total amount that three individual patients could possess under this policy, which is nine (9) pounds Dried Cannabis/Marijuana AND EITHER 216 Cannabis/Marijuana Plants within a maximum growing area of ninety-six (96) square feet OR sixty (60) outdoor Cannabis/Marijuana Plants; and be it

**FURTHER RESOLVED,** that for purposes of the City's low law enforcement priority policy regarding medical cannabis, the guidelines set forth in this Resolution apply to each Residential Unit and to each Non-Residential parcel of land, building or structure, so that only one cooperative/collective, (which in accordance with this Resolution and Resolution Nos. 78831 and 79647 can be composed of no more than 3 qualified patients and their primary caregivers), may occupy a Non-Residential parcel, building or structure and no more than one such cooperative/collective may occupy a Residential Unit; and be it

**FURTHER RESOLVED,** patients who have a licensed physician's recommendation that for a quantity of medicinal cannabis that exceeds the guidelines set forth in this Resolution, may possess up to the amount of marijuana that their physician recommends; and be it

**FURTHER RESOLVED,** that any cooperative, collective, or association that wishes to cultivate, possess, distribute medical cannabis for more than three (3) patients or their primary care givers, must obtain a valid dispensary permit from the City that is issued pursuant to Oakland Municipal Code Chapter 5.80 Dispensary Permit and any other permits required by the City; and be it

**FURTHER RESOLVED,** that no activities related to medical cannabis other than those identified in this Resolution and Resolution Nos. 78331 and 79647 shall be a low priority for the City of Oakland and be it

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**FURTHER RESOLVED**, that no activities related to private adult cannabis offenses as the term "private" is defined in this Resolution shall be the City's lowest law enforcement priority; and be it

**FURTHER RESOLVED**, that no marijuana/cannabis use or activity shall be deemed to have been legally established under the provisions of the Oakland Planning Code or otherwise; nor shall such activity or use be deemed a legal nonconforming use, or conferred any vested or other proprietary/property right.

**FURTHER RESOLVED**, this Resolution is enacted pursuant to the City of Oakland's general police powers, Section 106 of the Charter of the City of Oakland, the California Constitution and other applicable law; and be it

**FURTHER RESOLVED**, that the City Administrator hereby is directed to assure compliance with this policy and may issue administrative instructions, training bulletins or other guidance to City employees and officials regarding this policy.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_  
20\_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and  
PRESIDENT BRUNNER

AYES-

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

LaTonda Simmons

City Clerk and Clerk of the Council

Of the City of Oakland, California