



City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A MEMORADUM OF UNDERSTANDING WITH THE CALIFORNIA ATTORNEY GENERAL'S OFFICE TO PARTICIPATE IN THE CALIFORNIA ADMINISTRATIVE PROSECUTOR PROGRAM TO ADDRESS ILLEGAL COMMERCIAL CANNABIS ACTIVITY

WHEREAS, in 1996 California voters approved Proposition 215 (codified at Health and Safety Code section 11362.5 and title the "Compassionate Use Act of 1996"), which provided 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 allowed 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 lacked the benefit of a monitored supply chain for medical cannabis, quality control, testing or labeling requirements; 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 Marijuana Regulation and Safety Act"); and

WHEREAS, the Medical Marijuana Regulation and Safety Act established a long overdue comprehensive regulatory framework for medical cannabis in California (including production, transportation and sale of medical cannabis), requires establishment of uniform state minimum health and safety standards, testing standards, mandatory product testing, and security requirements at dispensaries and during transport of the product, and provides criminal immunity for licensees; 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, 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, in November 2017 the Oakland City Council adopted Ordinance No. 13464 C.M.S. to reconcile regulation of medical and adult-use commercial cannabis activity to preserve the public peace, health, safety, and welfare of the residents of Oakland; and

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, despite local and state efforts to establish a regulated cannabis marketplace, unregulated cannabis activities continue; and

WHEREAS, unpermitted cannabis activities have caused and continue to cause ongoing adverse impacts that can be harmful to the health, safety and welfare of Oakland residents and constitute a public nuisance, including without limitation damage to indoor cannabis cultivation facilities with improper and dangerous electrical alterations and use, burglaries and robberies, as well as undermining of the regulated cannabis marketplace; and

WHEREAS, many of these community impacts have fallen disproportionately on residential neighborhoods. These impacts have also created an increase in City response costs, including code enforcement, building, fire, and police staff time and expenses; and

WHEREAS, unpermitted cannabis activities put permitted cannabis businesses at a disadvantage as unpermitted cannabis operators do not comply with land use regulations, building and fire codes, track and trace or tax requirements; and

WHEREAS, in 2023 the Office of the Attorney General (OAG) of the State of California established the Cannabis Administrative Prosecutor Program (CAPP) to provide California cities and counties who partner with the OAG with legal support to address illegal cannabis activity through administrative enforcement and nuisance abatement; and

WHEREAS, the goals of the CAPP are to increase levels of cannabis enforcement, shift the costs of enforcement onto those who profit by illegal activity, institute cost-effective and sustainable enforcement programs, and support the legal cannabis industry; and

WHEREAS, CAPP will provide vital support to local governments by increasing the scope of illicit cannabis enforcement, providing resources and education to build enforcement programs,

and providing cost-effective evidence collection that could lead to large-scale, statewide prosecution of those involved in illegal cannabis activity; and

WHEREAS, through its Cannabis Control Section, the OAG will provide technical assistance including support with the development of procedures for expedited administrative enforcement to the City, and as appropriate and in coordination with the City Attorney, put on administrative hearing cases before administrative hearing officers or other applicable hearing bodies regarding unpermitted or otherwise illegal commercial cannabis activity; and

WHEREAS, if necessary, the OAG will perform administrative work required to provide support and technical assistance for notices, assist in facilitating administrative procedures, and may assist with logistical issues, contract code compliance officers, and abatement contractor; and

WHEREAS, participation in the CAPP is at no cost to the City and will provide much needed resources to reduce unpermitted cannabis activity in the City; and

WHEREAS, in order to formally partner with the OAG in the CAPP, the City Administrator seeks to enter into a Memorandum of Understanding (MOU); now, therefore, be it

RESOLVED: That the City Administrator is authorized to enter into an MOU with the Office of the Attorney General (OAG), a department of the State of California, to participate in the Cannabis Administrative Prosecutor Program (CAPP); and be it

FURTHER RESOLVED: That the City Administrator is authorized to complete all required negotiations, certifications, assurances, and documentation required to execute, modify, extend and/or amend the MOU without returning to the City Council; and be it

FURTHER RESOLVED: That the MOU authorized by this resolution shall be approved by the Office of the City Attorney as to form and legality before execution, and a copy of the fully executed agreement shall be placed on file with the Office of the City Clerk; and be it

FURTHER RESOLVED: That the City Administrator is authorized to take any other action necessary consistent with this Resolution and its basic purposes.

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

3359411/AS

