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City Attorney's Office

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OAKLAND

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OAKLAND CITY COUNCIL

RESOLUTION NO. 88286 C.M.S.

RESOLUTION RENEWING THE CITY COUNCIL'S DECLARATION OF A LOCAL PUBLIC HEALTH EMERGENCY WITH RESPECT TO SAFE, AFFORDABLE ACCESS TO MEDICAL CANNABIS IN THE CITY OF OAKLAND

WHEREAS, under federal law, the Controlled Substance Act ("CSA") regulates the cultivation, possession, and distribution of cannabis regardless of whether it is possessed for legitimate medical purposes; 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 79.3 percent; and

WHEREAS, marijuana has been shown to help alleviate pain and discomfort in people suffering from a variety of illnesses including AIDS, cancer, glaucoma, and multiple sclerosis when no other medications have been effective; and

WHEREAS, the City Council of the City of Oakland finds that many of Oakland's residents are suffering from life-threatening or serious illnesses whose painful symptoms are alleviated by the ingestion of cannabis; and

WHEREAS, there is a need to ensure that patients have access to a safe and affordable supply of medical grade marijuana and cannabis products; and

WHEREAS, in 1996 the Oakland City Council passed Resolution No. 72516 C.M.S. supporting distribution of medical cannabis and declaring it to be the policy of the City of Oakland that the investigation and arrest of certain individuals involved with the medical use of marijuana should be a low priority for the City of Oakland; and

WHEREAS, in 1998 the Oakland City Council passed Ordinance No. 12077, to establish a City of Oakland marijuana distribution program and designated the Oakland Cannabis Buyers' Cooperative as the City's agent to administer the program, in furtherance of the City's goal of ensuring a safe and affordable supply of medical grade marijuana and cannabis products for seriously ill Oakland residents whose physicians have recommended or approved medical cannabis use in the treatment of their illnesses; and

WHEREAS, in January 1998, the United States of America filed an action asking the federal district court to enjoin the Oakland Cannabis Buyers' Cooperative and five other entities from providing medical cannabis to seriously ill persons who are authorized by Proposition 215 to use medical cannabis to alleviate their pain and suffering; and

WHEREAS, on May 19, 1998 the federal district court issued a preliminary injunction ordering the Oakland Cannabis Buyers' Cooperative to cease engaging in the manufacture and distribution of marijuana, on the ground that such activities likely violate federal drug laws; and

WHEREAS, on October 13, 1998 the federal district court authorized the U.S. Marshal to enforce the aforesaid preliminary injunction by entering the cooperative's premises located at 1755 Broadway in Oakland, evicting any and all tenants and padlocking the doors to such premises; and

WHEREAS, on October 19, 1998, the Oakland Cannabis Buyers' Cooperative voluntarily ceased its operations at 1755 Broadway; and

WHEREAS, the Oakland Cannabis Buyers' Cooperative provided medical cannabis to two thousand two hundred (2,200) seriously ill persons, approximately two-thirds of whom are living with AIDS, leaving those patients with no safe and affordable access to medical cannabis and closure of the cooperative impaired public safety by encouraging a market for street narcotic peddlers to prey upon Oakland's ill residents by selling them marijuana that may be contaminated and will be of unknown content and potency; and

WHEREAS, on October 27, 1998, the City Council passed Resolution No. 74618 C.M.S. declaring a local public health emergency with respect to safe, affordable access to medical cannabis in the City of Oakland; and

WHEREAS, a dispensary that the City authorized pursuant to Oakland Municipal Code Chapter 5.80 to distribute medical cannabis to persons who qualify for such medicine under California Proposition 215, received a letter dated December 7, 2007 alerting the dispensary that the Drug Enforcement Administration ("DEA") has determined that the owner or operator of the dispensary is violating federal law and is subject to criminal prosecution, imprisonment, fines and forfeiture of assets; and

WHEREAS, on December 7, 2007, Representative John Conyers, Chair of the U.S. House Judiciary Committee, questioned efforts to undermine California state law and expressed deep concern about recent reports that the DEA is threatening private landlords if they don't evict organizations legally dispensing medical marijuana to suffering patients; and

WHEREAS, in 2009 as a result of the passage of Measure F, codified in OMC Section 5.04.480, Oakland became the first US city to tax Medical Use sales; and

WHEREAS, in 2012 the States of Colorado and Washington became the first states to legalize adult recreational use of cannabis; and

WHEREAS, in July 2012, the federal government moved to seize Harborside Health Center's two retail properties in Oakland; and

WHEREAS, in 2013 a memorandum from Deputy Attorney General James Cole formally guided prosecutors not to base prosecutions on the size of medical cannabis operations alone; and

WHEREAS, in February 2014 the U.S. Treasury Department and DOJ indicated that banks that offer financial services to cannabis based businesses in legalized states would not be punished if both the banks and its clients follow the basic business tenets set forth in the Cole Memo, as well as specific reporting requirements and due diligence expectations; and

WHEREAS, although the DOJ indicated banks insured by the FDIC will not be punished for working with cannabis businesses few banks are working with cannabis businesses in absence of an official change in federal law; and

WHEREAS, in the FYI 2015-2016 Federal budget, Congress issued the Fahr-Rohrbacher amendment which prohibits the use of federal funds to prevent states from implementing their own state laws that authorize the use, distribution, possession, or cultivation of medical marijuana; and

WHEREAS, California's 2015 enactment of the Medical Marijuana Regulation and Safety Act ("MMRSA") establishes a comprehensive regulatory system for California's medical cannabis industry; 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, 23 states and the District of Columbia allow qualifying patients to use medical cannabis; and

WHEREAS, the federal government still categorizes marijuana as a Schedule 1 controlled substance, which means the federal government considers marijuana as dangerous a heroin with no medical use and high potency for abuse; and

WHEREAS, the Schedule 1 classification is at odds with medical use laws throughout the country, including local laws in Oakland and California; and

WHEREAS, the threat of criminal prosecution, imprisonment, fines and forfeiture of assets is threatening the supply of medical cannabis to persons who are in need of medical cannabis to ameliorate their pain and suffering from a variety of injuries and illnesses and has the potential to and may already be exacerbating the local public health emergency that exists with respect to access to an affordable and safe supply of medical cannabis; now, therefore, be it

RESOLVED: That the City Council of the City of Oakland finds that a continuing public health emergency exists with respect to access to an affordable and safe supply of medical cannabis, and pursuant to Government Code section 8630 does so declare; and be it

FURTHER RESOLVED: That the City Council finds that the thousands of seriously ill persons who obtain medical cannabis from the medical cannabis dispensaries authorized by the Council pursuant to OMC Chapter 5.80, would endure great pain and suffering and in some cases may die as a result of the closure of Oakland's authorized medical cannabis dispensaries; and be it

FURTHER RESOLVED: That the City Council of the City of Oakland urges the federal government to desist from any and all actions that pose obstacles to access to cannabis for Oakland residents whose physicians have determined that their health will benefit from the use of marijuana and recommended or approved medical cannabis use for such residents; and be it

FURTHER RESOLVED: That the City Council finds that the public health emergency with respect to access to an affordable and safe supply of medical cannabis continues and is exacerbated by the DEA's December 2007 threats of peril to owners and operators of medical cannabis dispensaries and the federal government's efforts, since 2012, to seize Harborside Health Center's retail properties on which it operates as an authorized medical cannabis dispensary; and be it

FURTHER RESOLVED: That the City calls upon the federal authorities to desist from threats of criminal prosecution, imprisonment, fines and forfeiture of assets so that the local emergency will not be heightened; and be it

FURTHER RESOLVED: That copies of this resolution shall be forwarded to Senators Harris and Feinstein, Congresswoman Lee, and the President of the United States urging federal policy-makers to dismiss the current lawsuits threatening to seize Harborside Health Center's properties on which it operates as an authorized medical cannabis dispensary; and be it

FURTHER RESOLVED: That the City Council urges Congressional Representative Bob Goodlatte, Chair of the U.S. House Judiciary Committee, to hold hearings at the earliest opportunity to investigate and seriously consider the rescheduling of marijuana from a Schedule 1 controlled substance and allow states to implement their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana. A copy of this resolution shall be forwarded to him with this paragraph highlighted.

IN COUNCIL, OAKLAND, CALIFORNIA, SEP 15 2020

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, ~~GIBSON MCELHANEY~~, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN - 7

NOES - 0

ABSENT - 1 McElhaney

ABSTENTION - 0

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California

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