



Legislation Details (With Text)

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On agenda: 10/28/2003 **Final action:** 11/6/2014

Title: Subject: Low Law Enforcement Policy towards Medical Cannabis
From: Office of the City Manager
Recommendation: Approve Recommendations regarding conditions to fall under the City's Low Law Enforcement Policy towards Medical Cannabis and to select one medical cannabis provider association to administer the City's Medical Cannabis Distribution Program

Sponsors: Office Of The City Administrator

Indexes:

Code sections:

Attachments: 1. Item 6 10-28-03.pdf, 2. 26 11-4-03.pdf

Date	Ver.	Action By	Action	Result
12/4/2003	3	*Rules & Legislation Committee	Rescheduled	
11/20/2003	3	*Rules & Legislation Committee	Rescheduled	
11/4/2003	2	Meeting of the Oakland City Council	Rescheduled	
10/28/2003	1	*Public Safety Committee	Forwarded with No Recommendation	
9/23/2003	1	*Public Safety Committee	Continued	Pass
9/11/2003	1	*Rules & Legislation Committee	Scheduled	

Subject: Low Law Enforcement Policy towards Medical Cannabis
From: Office of the City Manager
Recommendation: Approve Recommendations regarding conditions to fall under the City's Low Law Enforcement Policy towards Medical Cannabis and to select one medical cannabis provider association to administer the City's Medical Cannabis Distribution Program
RE- A REPORT FROM THE CITY MANAGER REGARDING CONDITIONS TO FALL UNDER THE CITY'S LOW LAW

ENFORCEMENT POLICY TOWARDS MEDICAL CANNABIS AND RECOMMENDATION TO SELECT ONE MEDICAL CANNABIS PROVIDER ASSOCIATION TO ADMINISTER THE CITY'S MEDICAL CANNABIS DISTRIBUTION PROGRAM

SUMMARY

In November 1996, the voters of the State of California passed Proposition 215, the Compassionate Use Act of 1996, to "ensure that seriously ill Californians have the fight

to obtain and use cannabis (marijuana) for medical purposes. The City Council found that medical cannabis helped alleviate pain and discomfort in people suffering from a variety of illness including AIDS, cancer, glaucoma, and multiple sclerosis when no other

medications have been effective. In March 1996, the Council passed Resolution No. 72516 C.M. S. endorsing H.R. 2618 which allowed physicians to prescribe medical

cannabis for medical purposes, insured the production of cannabis to meet the need for medical use, supported the Oakland Cannabis Buyer's Club, and declared that the investigation and arrest of individuals involved with the medical use of cannabis shall be a low priority for the City of Oakland. In June 1997, the Council passed Resolution No. 73555 C.M. S. declaring that the investigation and arrest of individuals involved in the cultivation, manufacture, and/or transportation of medical cannabis products shall be a low priority for the City of Oakland.

In July 2000, the Oakland Police Department created a memorandum detailing the City's low law enforcement policy regarding medical cannabis. On July 28, 1998, the Council passed Chapter 8.46 of the Oakland Municipal Code pertaining to medical cannabis. This chapter was passed to recognize and protect the fights of qualified patients, their primary caregivers, physicians, and medical cannabis provider associations, and to ensure access to safe and affordable medical cannabis pursuant to the Compassionate Use Act of 1996. In support of this purpose, the City of Oakland further recognized that a medical cannabis provider association (as defined therein) might provide educational information concerning access to safe, affordable, and lawful medical cannabis, and also distribute

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safe and affordable medical cannabis. Pursuant to Chapter 8.46 of the Oakland Municipal Code, the City of Oakland formally designated the Oakland Cannabis Buyers' Cooperative to administer the City's Medical Cannabis Distribution Program in August 1998. Conditions were attached to the City's designation pertaining to indemnification, insurance, audit, standard of performance, inspection, payment of income taxes, business tax certificate, non-discrimination policy, independent contractor, notice to the City regarding any changes in procedures or cooperative members, assignment, and the right to revoke the designation based on the City's sole judgment and discretion.

Subsequently, the Oakland Cannabis Buyers' Cooperative ceased its administration of the City's Medical Cannabis Distribution Program pursuant to legal action initiated by federal authorities. During the last three years, several new organizations or entities have been distributing medical cannabis in the City of Oakland. None of these organizations have obtained a designation from the City to administer the City's Medical Cannabis Distribution Program.

Staff has created conditions similar to those originally imposed on the Oakland Cannabis Buyers' Cooperative that a medical cannabis provider association must meet in order to fall under the City's low law enforcement policy pertaining to medical cannabis (Exhibit A). Staff recommends that one medical cannabis provider association be selected to administer the City's Medical Cannabis Distribution Program. The City Manager will select the medical provider association within 30 days of Council's approval of this recommendation.

FISCAL IMPACT

As the medical cannabis provider association must be a cooperative or non-profit entity, it is not anticipated that the City will receive any revenues from the administration of the City's Medical Cannabis Distribution Program. The medical cannabis provider association will be required to maintain a business tax certificate.

BACKGROUND

Reflected in the above Summary is the legislative history of action taken by the State of California and City of Oakland to ensure that qualified patients and their primary caregivers have access to safe and affordable medical cannabis. Currently, there are in excess of eight (8) organizations in the City of Oakland distributing medical cannabis. These organizations are operating their medical cannabis distribution program for profit and without any administrative oversight by the City. Chapter 8.46 of the Oakland Municipal Code establishes a Medical Cannabis Distribution Program that shall be administered by the medical cannabis provider association designated by the City Manager.

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Distribution Program. Further several conditions were attached to this designation to ensure that the medical provider association carried out its duties consistent with Chapter 8.46 and other applicable chapters of the Oakland Municipal Code and the Oakland Planning Code. The Oakland Cannabis Buyers' Cooperative ceased its administration of the City's Medical Cannabis Distribution Program three years ago due to legal action initiated by federal authorities.

To ensure that the requirements of Chapter 8.46 are met, it is necessary that the City have administrative oversight of the cooperative administering its Medical Cannabis Distribution Program. The selection of one medical cannabis provider association would facilitate oversight and compliance, and meet the demand of qualified medical cannabis patients and their primary caregivers.

SUSTAINABLE OPPORTUNITIES

It is anticipated that a mild economic boost will occur as the selected medical cannabis provider association will hire several persons to assist in the administration of the City's Medical Cannabis Distribution Program. The selection of a medical cannabis provider association to administer the City's Medical Cannabis Distribution Program will make sure that qualified patients and their primary caregivers have access to safe and affordable medical cannabis.

DISABILITY AND SENIOR CITIZEN ACCESS

The selected medical cannabis provider association to administer the City's Medical Cannabis Distribution Program must comply with the Americans with Disability Act (ADA). This is one of the conditions reflected in Exhibit A.

RECOMMENDATION AND RATIONALE

RECOMMENDATION: Staff recommends that one medical cannabis provider association be selected to administer the City's Medical Cannabis Distribution Program established in Chapter 8.46 of the Oakland Municipal Code.

RATIONALE: After the passage of the Compassionate Use Act of 1996, the City passed Chapter 8.46 of the Oakland Municipal Code pertaining to medical cannabis. Section 8.46.030 established a Medical Cannabis Distribution Program that shall be administered by the medical cannabis provider association designated by the City Manager. Pursuant to the authority given in Chapter 8.46, the City Manager designated the Oakland Cannabis Buyers' Cooperative to administer the City's Medical Cannabis Distribution Program. The Oakland Cannabis Buyers' Cooperative administered the City's Medical Cannabis Distribution Program for several years until federal action ceased their operation. During the last three years, there has been a proliferation of medical cannabis provider associations in the City of Oakland that are unregulated. It

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Staff does not see the need for more than one medical cannabis provider association to meet the demand of qualified patients and their primary caregivers for medical cannabis. Additionally, the City does not have the personnel to conduct administrative oversight over more than one medical cannabis provider association.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council accept this report and the recommendation to select one medical cannabis provider association to administer the City's Medical Cannabis Distribution Program.

Respectfully submitted,

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LARJY

Prep
Administrative
City Manager's Office

Exhibit A: Medical Cannabis Provider Association Conditions to Fall Under the
City's Low Law Enforcement Policy for Medical Cannabis

APPROVED AND FORWARDED TO THE
PUBLIC SAFETY COMMITTEE:

OFFICE OF THE CITY MANAGER

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ATTACHMENT

MEDICAL CANNABIS PROVIDER ASSOCIATION CONDITIONS
TO FALL UNDER THE CITY'S LOW LAW ENFORCEMENT POLICY

DEFINITIONS

A. Medical Cannabis Provider Association: Medical cannabis provider association means a cooperative, affiliation, association, or collective of persons who are qualified patients or primary caregivers, the main purpose of which is to provide education, referral, or network services, and to facilitate or assist in the lawful production, acquisition, and distribution of medical cannabis.

B- Qualified Patient: Qualified patient means a person who obtains a written or oral

recommendation or approval from a physician to use cannabis for personal medical purposes.

C. Primary Caregiver: Primary caregiver means the person or persons designated by a qualified patient who have consistently assumed responsibility for the housing, health, or safety of that qualified patient.

CONDITIONS

A. Insurance: Medical cannabis provider association shall procure and keep in force for the duration of its existence, at medical cannabis provider association's own cost and expense, liability insurance in amount of \$2,000,000.00.

B. Indemnification: The Medical Cannabis Provider Association agrees to save, indemnify, defend and hold harmless, the City, its Council Members, directors, officers, agents, and employees from any and all claims, losses and expenses (including reasonable attorney fees) or liability on account of damage of property or injury to or death of persons accruing or resulting to Medical Cannabis Provider Association, Medical Cannabis Provider Association's directors, agents, employees, contractors, material persons, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the Medical Cannabis Provider Association activities; and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged in the connection with the Medical Cannabis Provider Association's activities.

C. Audit: Medical Cannabis Provider Association shall permit the City and its authorized representatives to have access to Medical Cannabis Provider Association's books, records, accounts, and any and all data relevant to its medical cannabis activities, for the purpose of making an audit or examination. Any audit or examination shall be deemed privileged and confidential in accordance with Section 6 of Chapter 8.46 of the Oakland Municipal Code. All

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such audits shall be carried out by appropriate personnel (e.g. physicians, nurses, accountants, bookkeepers and auditors) for the sole purpose of determining the Medical Provider Association's compliance with the conditions to fall under the City's Low Priority Policy.

D. Reports. Information: Medical Cannabis Provider Association shall provide all reports and information reasonably requested by the City and shall immediately advise the City Manager of any complaints communicated to Medical Cannabis Provider Association, its directors, agents and/or employees and of any contacts by law enforcement personnel or agencies.

E. Access to Premises, Invento[y. Supplies, Et .: Medical Cannabis Provider Association shall provide the City Manager, or a member of his/her staff, or a designated person, access to the premises of its operation for the purpose of inspections, quality control investigations and monitoring with or without notice

during normal hours of operation.

F. Payment of Income Taxes: Medical Cannabis Provider Association shall be responsible for paying, when due, all income taxes, including estimated taxes, incurred as a result of its medical cannabis activities. Medical Cannabis Provider Association agrees to indemnify the City for all claims, costs, losses, fees, penalties, interest or damages suffered by the City resulting from its failure to comply with this condition.

G. Non-discrimination: Medical Cannabis Provider Association shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state or local laws. Medical Cannabis Provider Association shall not discriminate against any employee, applicant, patient, primary caregiver, contractor, supplier, or other person supplying goods or services because of gender, sexual orientation, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex, or disability.

H. Business Tax Certificate: Medical Cannabis Provider Association shall obtain and maintain a valid City business tax certificate.

I. Facility Approval : Medical Cannabis Provider Association shall obtain approval for its facility from the City's Building Inspector, Electrical Inspector, Plumbing inspector, Fire Marshal, Zoning Division, and Alameda County's Health Department.

J. Compliance with Americans with Disability Act : Medical Cannabis Provider Association's facility shall comply with all provisions of the Americans with Disability Act.

K. Independent Contractor: It is expressly understood that the Medical Cannabis Provider Association in administering its cannabis activities is not an employee of the City and is an independent contractor. Medical Cannabis Provider Association has and shall retain the right to exercise full control and supervision over the employment, direction, compensation, and discharge of all persons assisting Medical Cannabis Provider Association in the administering of its cannabis activities and shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding

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and all other regulations governing such matters, and shall be solely responsible for its own acts and those of its subordinates and employees.

L. Background Investigation of Employees: Medical Cannabis Provider Association shall conduct background investigations of employees to ensure that no persons with criminal convictions are hired as employees.

M. Operating Hour : Medical Cannabis Provider Association shall comply with the following operating hours: Monday-Saturday, 7:00 a.m. to 8:00 p.m.

N. Qualified Patient : Medical Cannabis Provider Associations must verify all qualified patients by confirming with the medical doctors their recommendation of persons to use cannabis for personal medical purposes, and issuing an identification card to each qualified patient.

O. Prim4a Caregivers: Medical Cannabis Provider Association shall verify the status of primary caregivers with the qualified patient, and have the caregiver complete a caregiver certificate form (provided by the Medical Cannabis Provider

Association). In order for the caregiver to gain access to the Medical Cannabis Provider Association's facility, the qualified patient must place a phone call to the Medical Cannabis Provider Association verifying that he/she is sending his/her caregiver. The qualified patient also must send a written note stating the specific nature of his/her needs, how much medical cannabis is needed, and provide his/her member identification. The caregiver must have valid identification such as a California identification card or driver's license. Upon verification of primary caregivers, the Medical Cannabis Provider Association may issue valid identification cards.

P. Security : Medical Cannabis Provider Association shall have at least one (1) state licensed security personnel on site during operating hours. The Medical Cannabis Provider Association shall make sure that adequate security is available during operating hours to monitor and control qualified patients, primary caregivers, and any other persons present at the facility.

Q. Loitering and Littering : Medical Cannabis Provider Association shall take action, if necessary, to ensure that no persons loiter and litter about the facility. Signs shall be posted in a clear, sufficient, and conspicuous manner informing persons to not loiter and litter outside of the facility.

R. Noise Nuisance: Medical Cannabis Provider Association shall inform all qualified patients, primary caregivers, and other persons appearing at the facility not to make loud and excessive noises that disturb the peace and quiet of the general public or neighboring tenants or businesses. Medical Cannabis Provider Association shall take immediate action to abate any noise nuisances created by qualified patients or primary caregivers or other persons appearing at the facility.

S. Quality Assurance Program: Medical Cannabis Provider Association shall inspect cannabis flowers brought into its facility for molds and abnormal growth/smells, and ask questions regarding the methods and chemicals used during cultivation to ensure that only good quality cannabis is provided to its patients.

Further Medical Cannabis Provider Association shall inspect every facility from which it gets cannabis. The following things should be looked for during the inspection: 1) What type of insecticide is being used for pest control measures, 2)

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Other chemicals being used for growing plants, and 3) How clean is the facility, and are there any fire, health or safety hazards.

T. Visitation Limit : Qualified patients or primary caregivers may visit the Medical Cannabis Provider Association's facility once per day.

U. Who Can Make Medical Cannabis Purchases: Qualified patients or primary caregivers are prohibited from making purchases for persons who are not members of the Medical Cannabis Provider Association.

V. Medical Cannabis Pick-Ups by Primary Caregivers: Qualified patient members who wish to have their Primary Caregiver pick up medical cannabis for them must make arrangements in advance and comply with condition number L above.

W. Under the Influence of Illicit Drugs or Alcohol: Qualified Patients and Primary Caregivers are prohibited from being under the influence of illicit drugs or alcohol inside of the Medical Cannabis Provider Association's facility. Qualified Patients and Primary Caregivers found to be under the influence of illicit drugs or alcohol will not be served and asked to leave the facility.

X. Limit of Medical Cannabis Purchased: The procurement of cannabis is limited to 114 ounce (7 grams) per day, unless the member lives outside of the Bay Area and makes more than one visit to the Medical Cannabis Provider Association per week.

Y. Smokefree Facility: Qualified Patients shall not smoke inside of the Medical Cannabis Provider Association's facility. Medical Cannabis Provider Association shall post signs in a clear, sufficient, and conspicuous manner inside of the facility stating, "No Smoking Allowed."

Z. Loitering by Friends Outside: Members should discourage friends from waiting for them immediately outside of the front door of the Medical Cannabis Provider Association's facility to help in the abatement of loitering.

The above conditions may be revised by the City Manager at his/her discretion. Medical Cannabis Provider Associations that are not in compliance with the above conditions do not fall under the City's Low Priority Policy, and should cease its operations immediately. Enforcement action will be taken against Medical Cannabis Provider Associations not in compliance with the above conditions pertaining to the City's Low Priority Policy.

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