



Office of the Mayor

CONSENT CALENDAR
February 19, 2019

To: Members of the City Council

From: Mayor Jesse Arreguín

Subject: Short-Term Referral: Develop Ordinance permitting Cannabis Events and designate Cesar Chavez Park as an Approved Venue

RECOMMENDATION

Short-Term Referral to the City Manager to develop ordinance amendments permitting cannabis events in the City of Berkeley and designating Cesar Chavez Park as an approved location for cannabis events, provided such events are organized and licensed as required by the State of California. The ordinance shall: 1) reference Resolution No. 68,326-N.S., declaring that Berkeley is a sanctuary for adult use cannabis, 2) specify procedures for such events that replicate similar alcohol related event protocols.

BACKGROUND

The residents of Berkeley have long supported reform cannabis laws. In 1979, voters passed the Berkeley Marijuana Initiative, which recognized the negative impact of prosecuting marijuana users, called for city government to support all efforts towards the reform of marijuana laws, and directed the Berkeley Police Department to give the lowest priority to the enforcement of marijuana laws.

For over twenty years the City of Berkeley has also permitted medical cannabis dispensaries, authorized under state Proposition 215 and local law, to safely deliver medicine to patients. Allowing these services has had an overwhelmingly positive impact on our community, creating new options in patient care. In recognition of this and to further its support, the City Council adopted Resolution No. 63,966-N.S. in 2008, declaring the City of Berkeley a sanctuary for medical cannabis patients and providers, and opposing attempts by the U.S. Drug Enforcement Administration (DEA) to close medical marijuana dispensaries.

Most recently, in 2016, 83% of Berkeley voters and 57% of Californians voted in favor of Proposition 64, a statewide ballot initiative to legalize adult recreational cannabis for persons over 21 years old. In June 2017, Governor Brown signed SB94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). This bill is the foundation of the state's regulatory and enforcement framework for the burgeoning legal cannabis industry. Draft regulations were published in December of 2017, and final regulations are currently under review.

In anticipation of state regulations on adult use cannabis, and at City Council direction, staff have been developing ordinance modifications to allow Berkeley businesses to operate in accordance with state law, and a selection process for retailers and large cultivators. Draft documents were reviewed by the Cannabis Commission, Planning Commission and Community Health Commission in early 2018, and two Council Work Sessions have been held to present the proposed new regulatory framework. Once again, in support of safe access to cannabis and decriminalization, the City Council passed Resolution No. 68,326-N.S. on February 13, 2018, declaring that Berkeley will be a sanctuary for adult-use cannabis customers, businesses, providers, and landlords, specifying procedures regarding staff interaction with the Drug Enforcement Administration related to the enforcement of federal drug laws.

AB 2020 was passed by the California Legislature in 2018, which expanded locations where cannabis related events can occur beyond county fairgrounds. Such events can only be held by someone with a cannabis event organizer permit from the State of California. The event organizer must also acquire a temporary event permit from the State for each event, in addition to any local permits.

The City of Berkeley has been contacted by vendors that hold the required State of California cannabis event organizer permit requesting a venue for a cannabis and music event. These same vendors have held successful events, partnering with local jurisdictions all over the world, most recently in the cities of Sacramento and Santa Rosa.

During the October 2018 Work Session, Council requested that staff prioritize the adoption of adult use licenses for new cannabis businesses and also requested updates and a timeline on other cannabis matters. Consideration of special events specifically involving cannabis products - such as music festivals, judging events, and conventions - was included in that work plan (See Attachment 1). Upon the approval of developing an ordinance to designate Cesar Chavez Park as an approved venue for cannabis events, this task can be removed from the Planning Department's cannabis ordinance workplan that is due to return to the City Council in mid-2019.

Amending our Municipal Code to permit cannabis events, as authorized by state law, will provide a safe and regulated location for these types of events and provide significant economic benefits to the City of Berkeley. The City currently allows alcohol related events in City Parks. We are proposing that any ordinance undergo review by the appropriate City Departments: Planning, City Attorney, Environmental Health, Police, to ensure adequate safety protocols.

FINANCIAL IMPLICATIONS

According to reports of similar events held by state licensed operators, permitting such events at Cesar Chavez Park could contribute approximately \$200 per customer per day to the city's economy, adding up to \$10-12 million dollars.

ENVIRONMENTAL SUSTAINABILITY

Complies with City of Berkeley sustainability goals

CONTACT PERSON

Mayor Jesse Arreguín (510) 981-7100

ATTACHMENT:

1. Letter from City Manager dated November 9, 2018
2. Resolution No. 68,326-N.S.



Office of the City Manager

November 9, 2018

To: Honorable Mayor and Members of the City Council

From: *DWR* Dee Williams-Ridley, City Manager

Subject: Cannabis: Next steps following October 9, 2018 work session

On October 9, 2018, the Council held a work session related to draft cannabis ordinances. The Council requested that staff prioritize adoption of adult use licenses for new cannabis businesses and create a path to approve conversion of existing nurseries into cannabis retail nurseries. This memo provides the status of the two prioritized items and the next steps for cannabis ordinances.

Adult use licenses for new cannabis businesses: On September 13, 2018, the Council approved changes that allow cannabis distributors and small cultivators to operate in Berkeley. These changes included new and revised definitions as considered by the Cannabis, Planning and Community Health Commissions. The new definitions removed references to 'medical cannabis' and replaced it with 'cannabis' in order to conform to State regulations. In effect, this change allowed all cannabis businesses, existing and new, to choose to operate as a medicinal business, an adult use business, or both. Therefore, as of October 31, 2018, when the distributors and small cultivator ordinances came into effect, all new and existing cannabis businesses that are currently allowed in Berkeley can apply for adult use business licenses.

Retail nurseries: Staff has developed draft ordinance language which would allow up to two of the eight existing nurseries in Berkeley to convert to a cannabis nursery with retail sales. This type of business would be called a Retail Nursery Microbusiness (RNM). This language will be considered by the Cannabis, Planning, and Community Health Commissions in late 2018 and will be folded into other cannabis ordinance language going to Council in early 2019 (see below).

Next steps for completing Berkeley's cannabis ordinances: Staff will bring forward draft cannabis ordinance language to Council in two separate meetings in 2019.

The first meeting is proposed for January 2019 and will focus on issues for which staff has already received direction from Council and previous commission review. The draft language presented by staff will also restructure the cannabis ordinance for clarity, removing obsolete language and applying general regulations to all cannabis businesses. The changes will include:

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Re: Cannabis next steps following October 9, 2018 work session

- Relocating and consolidating text within the ordinance for clarity and ease of use;
- Advertising and signage regulations for cannabis businesses;
- Language for Retail Nursery Microbusinesses;
- Recommendations for quotas for retail cannabis businesses; and
- Revised retail buffers requirements (include a 600' buffer around six youth centers and increase the buffer around middle and high schools from 600' to 1,000').

Additional issues requiring further commission consideration and/or staff analysis will be presented for Council consideration in spring 2019. These include:

- Regulations for delivery-only businesses;
- Options for integrating equity considerations into cannabis business selection processes;
- Consideration of cannabis lounges;
- Consideration of special events specifically involving cannabis products, such as music festivals, judging events, and conventions;
- Consideration of buffers for non-retail cannabis businesses;
- Consideration of expansion of cultivation use outside the Manufacturing (M) District;
- Further consideration of Community Health Commission recommendations designed to address public health concerns related to cannabis.

Per Council direction, staff looks forward to moving expeditiously to provide clear rules and regulations for cannabis businesses that also address community questions and concerns. Please contact Timothy Burroughs, Director of the Department of Planning & Development, if you have any questions.

cc: Paul Buddenhagen, Interim Deputy City Manager
Timothy Burroughs, Planning and Development Director
Kelly Wallace, Interim Health Housing and Community Services Director
Mark Numainville, City Clerk
Matthai Chakko, Assistant to the City Manager
Ann-Marie Hogan, City Auditor

RESOLUTION NO. 68,326-N.S.

DECLARING THE CITY OF BERKELEY AS A SANCTUARY FOR RECREATIONAL CANNABIS AND OPPOSING ATTEMPTS BY THE U.S. DRUG ENFORCEMENT ADMINISTRATION TO CLOSE CANNABIS BUSINESSES

WHEREAS, since the adoption of the Berkeley Marijuana Initiative by voters in 1979, Berkeley has recognized the harmful impacts of prosecuting marijuana users, instructs the city government to support all efforts towards the reform of marijuana laws, and directs the Berkeley Police Department to give the lowest priority to the enforcement of marijuana laws; and

WHEREAS, the federal government continues to classify all forms of cannabis as Schedule I under the federal Controlled Substances Act, and therefore does not recognize medical or recreational marijuana; and

WHEREAS, Resolution No. 63,966-N.S. adopted in 2008, declares the City of Berkeley as a sanctuary for medicinal cannabis and opposes attempts by the U.S. Drug Enforcement Administration to Close Medical Marijuana Dispensaries; and

WHEREAS, legalizing marijuana is an important social justice issue; and

WHEREAS, millions of peaceful Americans have been fined, arrested, imprisoned, or otherwise needlessly criminalized and stigmatized, potentially for life, because of their use of marijuana; and

WHEREAS, over \$1 trillion dollars has been spent enforcing drug laws, including those pertaining to marijuana, since the War on Drugs was initiated by President Richard Nixon in the 1970s; and

WHEREAS, because of aggressive enforcement of drug laws, including marijuana laws, the United States has become a nation of mass incarceration – imprisoning 2 million American citizens which represents the highest imprisonment rate of any nation on Earth, representing 25% the world's prisoners; and

WHEREAS, the enforcement of marijuana and other drug laws has had a disproportionate impact on communities of color– evidenced by the fact comparable usage by whites and Blacks, a Black person is four times as likely to be arrested for marijuana possession than a white person; and

WHEREAS, an April 2, 2014, Pew Research Center poll found that 75% of Americans believe the use and sale of marijuana will eventually be legal in the United States nationwide; and

WHEREAS, in November 2016, 57% of California voters and 83% of Berkeley voters voted in favor of Prop 64 to legalize adult recreational cannabis for persons over 21 years old; and

WHEREAS, Prop 64 includes an important provision for anyone who has been or currently is imprisoned, on probation, or on parole to apply for resentencing or redesignation – a small but important step in reducing the unjust and unequal impact of decades of harmful and costly marijuana laws and prosecution; and

WHEREAS, in 2011, when national and statewide momentum for cannabis legalization was growing, the Department of Justice issued guidance for federal prosecutors widely known as the “Cole Memo” that outlined both the Department’s enforcement priorities and that state and local law enforcement and regulation should “remain the primary means of addressing marijuana-related activity” when there is a strong and effective regulatory and enforcement system in place; and

WHEREAS, for 20 years, the City of Berkeley has permitted medical cannabis dispensaries, authorized under state Proposition 215 and local law, to safely delivered medicine to patients. These established businesses have not had a negative impact on the surrounding community or resulted in any increase in crime; and

WHEREAS, the City of Berkeley staff and local cannabis businesses have been working diligently since the passage of Proposition 64 to build upon the City’s robust regulatory and enforcement system for medicinal cannabis in preparation for statewide legal adult-use cannabis, a system that is designed to explicitly address the concerns in the Cole memo; and

WHEREAS, in June 2017 Governor Brown signed SB94 the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), wherein the State of California formally recognized adult-use cannabis cultivators, testing laboratories, distributors and retailers (dispensaries), as legally taxable entities; and

WHEREAS, as a result of Prop 64 and MAUCRSA the State of California could potentially generate \$1 Billion annually in tax revenue and \$100 million in savings; and

WHEREAS, the City of Berkeley will also generate significant tax revenue locally, with estimates of up to \$3 million dollars annually; and

WHEREAS, in January 2018, U.S. Attorney General Jeff Sessions presented a Memorandum on Marijuana Enforcement which rescinded previous guidelines, including those established by the Cole Memo, increasing confusion about the legal risk of cannabis-related activity in the State of California; and

WHEREAS, because marijuana is currently legal in some form in 28 states and the District of Columbia, this action represents an attack on cities where legal, safe, and highly

regulated recreational sale and use occurs, and the majority of states where the voters have made their voices heard; and

WHEREAS, prior activities of the Drug Enforcement Administration to shut down medical marijuana dispensaries and collectives by targeting their landlords and seizing their landlord's properties will have serious consequences if they are repeated and targeted at either the medical or adult-use cannabis industry; and

WHEREAS, increased federal enforcement may force established medical and adult-use cannabis-related businesses to close or move underground, impeding the development of a newly regulated market, and threatening public safety; and

WHEREAS, the economic impact to cities and the statewide economy would be significant with hundreds of existing workers statewide will lose well-paying jobs with benefits and the state and City of Berkeley will lose significant amounts of tax revenue; and

WHEREAS, it is fundamental that the City of Berkeley take a strong stance against threats by the Trump Administration to interfere with the right of the State of California to tax and regulate cannabis, and protect our patients and local economy.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley is declared to be a sanctuary for recreational cannabis customers, providers, and landlords.

BE IT FURTHER RESOLVED that no department, agency, commission, officer or employee of the City of Berkeley shall use any City funds or resources to assist in the enforcement of Federal drug laws related to cannabis landlords, property owners, cultivators, distributors, retailers, laboratory testers, or customers who are operating within California state law and local ordinances.

BE IT FURTHER RESOLVED that the City of Berkeley does not support cooperation with the Drug Enforcement Administration in its efforts to undermine state and local marijuana laws, and further calls upon the Berkeley Police Department, the District Attorney for the County of Alameda, the Alameda County Sheriff's Department, and the Attorney General of the State of California to uphold the laws of the State, and specifically to not assist in the harassment, arrest or prosecution of cannabis landlords, owners, cultivators, distributors, retailers, laboratory testers, or customers who are licensed and attempting to comply with MAUCRSA and local laws and regulations.

BE IT FURTHER RESOLVED that the City Attorney shall transmit copies of this Resolution to the California Attorney General, the Governor of California, and to Senators Dianne Feinstein and Kamala Harris and U.S. Representative Barbara Lee.

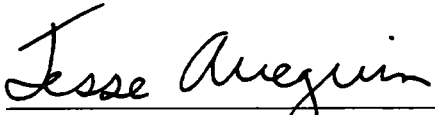
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The foregoing Resolution was adopted by the Berkeley City Council on February 13, 2018 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numainville, City Clerk

