



Office of the Mayor

CONSENT CALENDAR  
February 13, 2018

To: Members of the City Council

From: Mayor Jesse Arreguin, Councilmember Ben Bartlett and  
Councilmember Cheryl Davila

Subject: Declaring Berkeley a Sanctuary for Adult-Use Cannabis Customers,  
Providers, and Landlords

RECOMMENDATION

Adopt a Resolution 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.

BACKGROUND

The residents of Berkeley have a long commitment to reforming marijuana laws. In 1979, voters passed the Berkeley Marijuana Initiative, which recognized negative impact of prosecuting marijuana users, called for the 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.

In 2008, the City Council adopted Resolution No. 63,966-N.S., 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.

The federal government continues to classify marijuana as a Schedule I drug under the Controlled Substances Act, and therefore does not recognize medical or recreational marijuana. However, in 2011, as national and statewide momentum for cannabis legalization was growing, the Department of Justice issued guidance for federal prosecutors in what became known as the “Cole Memo”, named after the authoring attorney. The memo delivered some legal clarity as to the federal government’s priorities, which were primarily to prevent cartel activity and sales to minors. Additionally, it stated that marijuana enforcement and regulation should be left to state and local law enforcement.

In January 2018, U.S. Attorney General Jeff Sessions disseminated a memorandum titled “Marijuana Enforcement” rescinding these guidelines. Without guidelines as to how the federal government will or will not engage with cannabis related businesses, there is increased confusion about the legal risk of entering the newly regulated market in the state of California. Marijuana is currently legal in some form in 28 states and the District of Columbia. Therefore, this action by the Department of Justice represents an attack on cities where legal, safe sale and use occurs, and the majority of states where voters have made their voices heard loud and clear.

Increased federal enforcement of marijuana will have serious social and economic consequences. Uncertainty about potential enforcement and or enforcement itself may force established medical and adult-use cannabis-related businesses to close or move underground, which could impede the development of the newly regulated market and threaten public safety. Economically, with California expected to generate \$1 Billion in tax revenue and Berkeley estimated to generate \$3 million dollars annually, the impacts of enforcement could be massive. The cannabis economy is also generating hundreds, if not thousands, of well-paying jobs with benefits that would be threatened by increased federal enforcement.

Legalizing marijuana is widely considered an important social justice issue. Millions of peaceful Americans have been fined, arrested, imprisoned, or otherwise needlessly criminalized and stigmatized, sometimes for life, because of their use of marijuana. This “War on Drugs”, initiated by President Richard Nixon in the 1970s, has cost over \$1 trillion dollars and turned the United States into a nation of mass incarceration — imprisoning 2 million American citizens, which represents the highest incarceration rate of any nation on Earth and 25% of the world’s prisoners. Worse, the enforcement of marijuana and other drug laws has had a disproportionate impact on people of color. Despite white and black people using marijuana at equal rates, a black person is nearly four times as likely to be arrested for marijuana possession.

For twenty years the City of Berkeley has permitted medical cannabis dispensaries, authorized under state Proposition 215 and local law, to safely deliver medicine to patients. This activity has not had a negative impact on the surrounding community or resulted in any increases in crime. Additionally, the City of Berkeley staff and local cannabis businesses have been working hard to improve on the already robust regulations in place for medicinal cannabis, in preparation for the introduction of adult-use cannabis. In June 2017, Governor Brown signed SB94 the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). This bill is the foundation for the state’s regulatory and enforcement framework for the burgeoning legal cannabis industry.

This item reiterates Berkeley’s strong position in favor of marijuana reform and legalization, preventing any of the city government’s resources or staff to assist in the federal enforcement of drug laws related to cannabis.

FINANCIAL IMPLICATIONS

None. Federal enforcement could have serious negative impacts in local tax revenues.

ENVIRONMENTAL SUSTAINABILITY

A regulated cannabis industry means cannabis cultivation will require stricter controls on energy use, chemical and pesticide application, and water consumption, all of which contribute to a healthier and more sustainable environmental impact than an underground cannabis economy that will persist despite federal enforcement.

CONTACT PERSONS

Mayor Jesse Arreguin	(510) 981-7100
Ben Bartlett, Councilmember, District 3	(510) 981-7130

Attachment:

1. Resolution

RESOLUTION NO. ##,###- 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.

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.