


**CORRECTED
COPY AS OF
DEC 15 1998**

DATE

INTRODUCED BY COUNCILMEMBER _____

PASSED & EFFECTIVE 7/28/98

APPROVED AS TO FORM


CITY ATTORNEY

ORDINANCE NO. 12077 C.M.S.

**AN ORDINANCE OF THE CITY OF OAKLAND ADDING
CHAPTER 8.46 TO THE OAKLAND MUNICIPAL CODE
PERTAINING TO MEDICAL CANNABIS**

The City Council of the City of Oakland does ordain as follows:

Article 1. Chapter 8.46 is hereby added to the Oakland Municipal Code to read as follows:

MEDICAL CANNABIS

Section 1. Findings and Purposes

A. On November 5, 1996, the voters of the State of California adopted by initiative the Compassionate Use Act of 1996, codified at Health and Safety Code Section 11362.5, pertaining to medical use of marijuana. As stated therein, the purposes of the Compassionate Use Act of 1996 are in part to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief" and to "ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction." The City of Oakland supports the use of medical cannabis in accordance with the Compassionate Use Act of 1996. The purposes of the compassionate Use Act of 1996 are herewith also made purposes of this Chapter.

B. Long before the passage of the Compassionate Use Act of 1996, the City of Oakland was on record as being in support of medical cannabis and in support of Oakland medical cannabis providers, as exemplified by unanimously passed Oakland City Council Resolutions numbered 72379 C.M.S. and 72516 C.M.S.

C. The purpose of this Chapter is to recognize and protect the rights of qualified patients, their 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 recognizes that a medical cannabis provider association, as defined herein, may

provide educational information concerning access to safe, affordable, and lawful medical cannabis, and may also distribute safe and affordable medical cannabis in a consistent, reliable, and legal fashion.

D. An additional purpose of this Chapter is to provide immunity to medical cannabis provider associations pursuant to Section 885(d) of Title 21 of the United States Code, which provides that no liability shall be imposed under the federal Controlled Substance Act upon any duly authorized officer of a political subdivision of a state lawfully engaged in the enforcement of any municipal ordinance relating to controlled substances.

Section 2. Definitions

The following words and phrases, whenever used in this Chapter, shall be construed as herein defined.

A. 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.

B. 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.

C. Cannabis: "Cannabis" means marijuana and all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant that are incapable of germination.

D. 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 purposes of which are to provide education, referral, or network services, and to facilitate or assist in the lawful production, acquisition, and distribution of medical cannabis. An entity may function as a medical cannabis provider association only if designated as such by the City of Oakland pursuant to Section 3 of this Chapter.

E. Officer: "Officer" means designee and shall not have the meaning of that term as used in Section 400 of the Oakland City Charter.

Section 3. Medical Cannabis Distribution Program

The City of Oakland hereby establishes a Medical Cannabis Distribution Program. Such program shall be administered by medical cannabis provider

associations. The City Manager shall designate one or more entities as a medical cannabis provider association. Any designated medical cannabis provider association shall enforce the provisions of this Chapter, including enforcing its purpose of insuring that seriously ill Californians have the right to obtain and use marijuana for medical purposes. For the purposes of this Chapter only, a medical cannabis provider association, and its agents, employees and directors while acting within the scope of their duties on behalf of the association, shall be deemed officers of the City of Oakland.

Section 4. No Liability

To the fullest extent permitted by law, the City of Oakland shall assume no liability whatsoever, and expressly does not waive sovereign immunity, with respect to the Medical Cannabis Distribution Program established herein, or for the activities of any medical cannabis provider association. Each medical cannabis provider association designated by the City shall (1) indemnify the City of Oakland; (2) carry insurance in the amounts and of the types that are acceptable to the City's Risk Manager; and (3) name the City as an additional insured.

Section 5. Qualified Patients, Primary Caregivers, and Medical Cannabis Provider Associations

In order to ensure that qualified patients and primary caregivers are not subject to criminal prosecution or sanction, and to ensure that only qualified patients and primary caregivers have access to medical cannabis, the City of Oakland, or medical cannabis provider associations on behalf of the City of Oakland, may issue valid identification cards to qualified patients and primary caregivers upon receipt of a physician's recommendation or approval for medical cannabis.

Section 6. Physician-Patient Confidentiality

Certification processes conducted pursuant to this Chapter shall preserve to the maximum extent possible all legal protections and privileges, consistent with reasonably verifying the qualifications and status of qualified patients and primary caregivers. Disclosure of any patient information to assert facts in support of a qualified status shall not be deemed a waiver of confidentiality of that information under any provision of law.

Section 7. Transportation of Medical Cannabis

All activities entailing the transportation of medical cannabis, in accordance with this Chapter, shall be lawful when conducted by qualified patients, primary caregivers, or medical cannabis provider associations where the quantity transported and the method, timing, and distance of the transportation are reasonably related to the medical needs of qualified patients.

Section 8. Miscellaneous Applications

Possession and use of the following items shall be lawful when used in accordance with the Compassionate Use Act of 1996 or this Chapter:

A. Pipes, papers, water pipes, vaporizers, and other related paraphernalia;

B. Cannabis products, such as baked goods, tinctures, concentrated cannabis, infusions, oils, salves, and any other cannabis derivatives.

Section 9. Violations and Penalties

A violation of any provision of this Chapter shall be a misdemeanor.

Article 2. Severability

If any provision of this Chapter, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this Chapter that can be given effect without the invalid provision or application; and to this end, the provisions or applications of this Chapter are severable.

Introduced = 7-21-98

IN COUNCIL, OAKLAND, CALIFORNIA, **JUL 28 1998**, 1998

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, DE LA FUENTE, MILEY, NADEL, REID,
RUSSO, SPEES, AND PRESIDENT HARRIS - 9

NOES- *None*

ABSENT- *None*

ABSTENTION- *None*

211491v1

ATTEST

Cecilia Floyd
CEDA FLOYD

City Clerk and Clerk of the Council
of the City of Oakland, California

Section 8. Miscellaneous Applications

Possession and use of the following items shall be lawful when used in accordance with the Compassionate Use Act of 1996 or this Chapter:

- A. Pipes, papers, water pipes, vaporizers, and other related paraphernalia;
- B. Cannabis products, such as baked goods, tinctures, concentrated cannabis, infusions, oils, salves, and any other cannabis derivatives.

Section 9. Violations and Penalties

A violation of any provision of this Chapter shall be a misdemeanor.

Article 2. Severability

If any provision of this Chapter, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this Chapter that can be given effect without the invalid provision or application; and to this end, the provisions or applications of this Chapter are severable.

I hereby certify that the foregoing is a full, true and correct copy of an Ordinance passed by the City Council of the City of Oakland on JUL 28 1998.

CEDA FLOYD
City Clerk and Clerk of the Council

Per *Ornella Middleton* Deputy

W FILED
OFFICE OF THE CITY CLERK
OAKLAND

93 JUL 30 11:51

INTRODUCED BY COUNCILMEMBER _____

APPROVED AS TO FORM

CITY ATTORNEY

ORDINANCE NO. 12077 C.M.S.

AN ORDINANCE OF THE CITY OF OAKLAND ADDING CHAPTER 8.42 TO THE OAKLAND MUNICIPAL CODE PERTAINING TO MEDICAL CANNABIS

The City Council of the City of Oakland does ordain as follows:

Article 1. Chapter 8.42 is hereby added to the Oakland Municipal Code to read as follows:

MEDICAL CANNABIS

Section 1. Findings and Purposes

A. On November 5, 1996, the voters of the State of California adopted by initiative the Compassionate Use Act of 1996, codified at Health and Safety Code Section 11362.5, pertaining to medical use of marijuana. As stated therein, the purposes of the Compassionate Use Act of 1996 are in part to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief" and to "ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction." The City of Oakland supports the use of medical cannabis in accordance with the Compassionate Use Act of 1996. The purposes of the compassionate Use Act of 1996 are herewith also made purposes of this Chapter.

B. Long before the passage of the Compassionate Use Act of 1996, the City of Oakland was on record as being in support of medical cannabis and in support of Oakland medical cannabis providers, as exemplified by unanimously passed Oakland City Council Resolutions numbered 72379 C.M.S. and 72516 C.M.S.

C. The purpose of this Chapter is to recognize and protect the rights of qualified patients, their 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 recognizes that a medical cannabis provider association, as defined herein, may

provide educational information concerning access to safe, affordable, and lawful medical cannabis, and may also distribute safe and affordable medical cannabis in a consistent, reliable, and legal fashion.

D. An additional purpose of this Chapter is to provide immunity to medical cannabis provider associations pursuant to Section 885(d) of Title 21 of the United States Code, which provides that no liability shall be imposed under the federal Controlled Substance Act upon any duly authorized officer of a political subdivision of a state lawfully engaged in the enforcement of any municipal ordinance relating to controlled substances.

Section 2. Definitions

The following words and phrases, whenever used in this Chapter, shall be construed as herein defined.

A. 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.

B. 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.

C. Cannabis: "Cannabis" means marijuana and all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant that are incapable of germination.

D. 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 purposes of which are to provide education, referral, or network services, and to facilitate or assist in the lawful production, acquisition, and distribution of medical cannabis. An entity may function as a medical cannabis provider association only if designated as such by the City of Oakland pursuant to Section 3 of this Chapter.

E. Officer: "Officer" means designee and shall not have the meaning of that term as used in Section 400 of the Oakland City Charter.

Section 3. Medical Cannabis Distribution Program

The City of Oakland hereby establishes a Medical Cannabis Distribution Program. Such program shall be administered by medical cannabis provider

associations. The City Manager shall designate one or more entities as a medical cannabis provider association. Any designated medical cannabis provider association shall enforce the provisions of this Chapter, including enforcing its purpose of insuring that seriously ill Californians have the right to obtain and use marijuana for medical purposes. For the purposes of this Chapter only, a medical cannabis provider association, and its agents, employees and directors while acting within the scope of their duties on behalf of the association, shall be deemed officers of the City of Oakland.

Section 4. No Liability

To the fullest extent permitted by law, the City of Oakland shall assume no liability whatsoever, and expressly does not waive sovereign immunity, with respect to the Medical Cannabis Distribution Program established herein, or for the activities of any medical cannabis provider association. Each medical cannabis provider association designated by the City shall (1) indemnify the City of Oakland; (2) carry insurance in the amounts and of the types that are acceptable to the City's Risk Manager; and (3) name the City as an additional insured.

Section 5. Qualified Patients, Primary Caregivers, and Medical Cannabis Provider Associations

In order to ensure that qualified patients and primary caregivers are not subject to criminal prosecution or sanction, and to ensure that only qualified patients and primary caregivers have access to medical cannabis, the City of Oakland, or medical cannabis provider associations on behalf of the City of Oakland, may issue valid identification cards to qualified patients and primary caregivers upon receipt of a physician's recommendation or approval for medical cannabis.

Section 6. Physician-Patient Confidentiality

Certification processes conducted pursuant to this Chapter shall preserve to the maximum extent possible all legal protections and privileges, consistent with reasonably verifying the qualifications and status of qualified patients and primary caregivers. Disclosure of any patient information to assert facts in support of a qualified status shall not be deemed a waiver of confidentiality of that information under any provision of law.

Section 7. Transportation of Medical Cannabis

All activities entailing the transportation of medical cannabis, in accordance with this Chapter, shall be lawful when conducted by qualified patients, primary caregivers, or medical cannabis provider associations where the quantity transported and the method, timing, and distance of the transportation are reasonably related to the medical needs of qualified patients.

Section 8. Miscellaneous Applications

Possession and use of the following items shall be lawful when used in accordance with the Compassionate Use Act of 1996 or this Chapter:

- A. Pipes, papers, water pipes, vaporizers, and other related paraphernalia;
- B. Cannabis products, such as baked goods, tinctures, concentrated cannabis, infusions, oils, salves, and any other cannabis derivatives.

Section 9. Violations and Penalties

A violation of any provision of this Chapter shall be a misdemeanor.

Article 2. Severability

If any provision of this Chapter, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this Chapter that can be given effect without the invalid provision or application; and to this end, the provisions or applications of this Chapter are severable.

Introduced 7-21-98

IN COUNCIL, OAKLAND, CALIFORNIA, **JUL 28 1998**, 19__

PASSED BY THE FOLLOWING VOTE:

AYES-BRUNNER, CHANG, DE LA FUENTE, MILEY, NADEL, REID, RUSSO, SPEES AND PRESIDENT HARRIS- 9

NOES- *None*

ABSENT- *None*

ABSTENTION- *None*

EXCUSED- *None*

ATTEST:

Ceda Floyd

CEDA FLOYD
CITY CLERK AND CLERK OF THE COUNCIL
OF THE CITY OF OAKLAND, CALIFORNIA