



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** February 20, 2018

**TO:** Carolyn Lehr, City Manager

**FROM:** Sheri Hartz, City Clerk

**SUBJECT:** **Letter To Alameda County District Attorney Requesting Retroactive Application Of Proposition 64, Which Legalized Possession And Recreational Use Of Marijuana For Adults Ages 21 Years Or Older, To Misdemeanor And Felony Convictions Dating Back To 1975**

### RECOMMENDATION

This agenda item was requested by Vice Mayor Medina. Whether to send the letter is at the Council's discretion.

### BACKGROUND

At the City Council's February 6, 2018 meeting, Vice Mayor Medina requested that an item be brought forward to consider whether to send a letter, signed by the Mayor on behalf of the entire Council, requesting that Alameda County District Attorney Nancy E. O'Malley retroactively apply Proposition 64, which legalized possession and recreational use of marijuana for adults aged 21 years or older, to misdemeanor and felony convictions dating back to 1975.

The proposition currently allows for a reduction or dismissal of the conviction if a petition is filed by the convicted individual, however, that places the burden of correcting the record on those who have been harmed by outdated laws. This request would ask that the District Attorney's Office review, recall and resentencing felony marijuana convictions and dismiss and seal misdemeanors which were sentenced prior to the initiative's passage and going back to 1975. This will not require any action to be taken by those who are eligible pursuant to Proposition 64. The draft letter also requests that individuals convicted of cannabis-related crimes be pro-actively and adequately informed of the potential effect of Prop 64 on their sentencing, so that they may advocate effectively for themselves.

### DISCUSSION

In January of this year, the office of San Francisco's District Attorney reported that it would take this step, citing Health and Safety Code Section 11361.8, which creates a presumption that a person applying for a dismissal, resentencing or re-designation to a misdemeanor has satisfied the criteria to do so, unless the party opposing the application proves otherwise by clear and convincing evidence.

Data from the California Department of Justice shows that there were nearly half a million marijuana arrests in California between 2005 and 2016, yet only 4,885 Californians have petitioned state courts to have their cannabis convictions expunged since the initiative's passage. The process is cumbersome for those who have these convictions on their records. Latino and African American communities have been disproportionately subject to arrest and conviction and the review and dismissal of these sentences would be the first step toward addressing that inequity.

Many cities in Alameda County will be experiencing an increase in both tax revenue and community benefit generated by businesses legalized by Proposition 64, and should, in fairness, address the inequities caused by disproportional drug arrests and convictions among certain populations.

**FISCAL IMPACT**

None at this time.

**STAFF COMMUNICATION WITH THE PUBLIC**

None

**PREPARED BY:** Sheri Hartz, City Clerk

**APPROVED AND FORWARDED TO THE  
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



---

Carolyn Lehr, City Manager

**ATTACHMENT**

- Draft Request Letter