

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S

AN ORDINANCE DECLARING A MENTAL HEALTH EMERGENCY RESULTING FROM TRAUMA IN OAKLAND'S COMMUNITIES AND AMENDING OAKLAND MUNICIPAL CODE TITLE 8 BY ADDING CHAPTER 8.62, TO EMPOWER OAKLAND RESIDENTS TO RESTORE THEIR DIRECT RELATIONSHIP TO NATURE FOR MENTAL HEALTH PURPOSES THROUGH THE CREATION OF A PILOT PROGRAM FOR OAKLAND RESIDENTS TO PARTICIPATE IN COMMUNITY-BASED PRACTICES IN COMPLIANCE WITH SAFE PRACTICE GUIDELINES AND PRINCIPLES FOR ENTHEOGENIC PLANT AND FUNGI USE, AND ENABLING QUALIFIED FACILITATORS AND PARTICIPANTS TO RECEIVE LEGAL PROTECTIONS FROM THE CITY.

WHEREAS, On June 4, 2019, the Oakland City Council unanimously passed the "Resolution Supporting Entheogenic Plant Practices and Declaring that the Investigation and Arrest of Individuals Involved with the Adult Use of Entheogenic Plants on the Schedule 1 List be Amongst the Lowest Priority for the City of Oakland", effectively decriminalizing the personal use of entheogenic plants and fungi for healing purposes within the City of Oakland.

WHEREAS, more than one year later, there have been no known reports of medical or safety emergencies arising from entheogenic plant and fungi use in Oakland, while the use of these plants and fungi to heal has expanded throughout Oakland as news has spread locally and nationally about the healing power of these materials.

WHEREAS, since June 4, 2019, activists in over one hundred (100) cities in five (5) countries have begun the process to decriminalize entheogenic plants and fungi in their cities, with Santa Cruz having decriminalized entheogenic plants and fungi in January 2020 and at least five (5) other cities nearing passage of resolutions or initiatives.

WHEREAS, it has been shown that it is very difficult for those with very high levels of personal trauma to overcome trauma-induced responses to stressors, causing many people in Oakland's most vulnerable communities who have experienced trauma due to the War on Drugs, the War on Poverty, exploitation of communities of color, systemic racism, and economic marginalization to experience severe depression, suicidal ideations, aggression, anger, and feelings of hopelessness and destitution which inhibit their ability to find paths out of self-destructive thoughts.

WHEREAS, the recent global pandemic and the civil rights abuses of black and brown people in America continue to add to the high stress in historically marginalized communities, and therefore community-based solutions for healing are desperately needed.

WHEREAS, the medical and clinical care systems in America are largely failing to serve the most vulnerable members in our society with their mental health needs due to economic disparities, racial and cultural insensitivity, and rising health care costs.

WHEREAS, numerous studies show that the availability of community support structures in which to heal before, during, and after entheogenic plant and fungi ceremony is a fundamental tool for facilitators and participants to deeply explore the root causes of the trauma and thereby clear way for the healing process to proceed and succeed, especially with those with very high levels of trauma, by creating the sense of safety and compassion throughout the cycle of healing that ultimately results in a permanent healing.

WHEREAS, scientific and clinical studies continue to show excellent results in mental health healing through the safe and responsible use of entheogenic plants and fungi which, compared to most other mental health options including pharmaceutical prescription drugs, are more affordable and equally, or more, effective.

WHEREAS, for-profit corporations are becoming increasingly dominant in the plant based healing and psychedelic medicine spaces, causing increasing concern among the compassionate-care community that there is very limited time to protect citizens' rights to establish their own direct relationship to naturally occurring plant medicines, without corporate intermediaries or obstruction.

WHEREAS, the City of Oakland has long been a leader in social justice causes.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Title 8, Chapter 8.62, shall be called "THE OAKLAND COMMUNITY HEALING INITIATIVE (OCHI) PILOT PROGRAM" and is added to the Oakland Municipal Code as follows:

Section 8.62.010-- Findings and purpose.

The purpose of this Chapter is to recognize and protect the unalienable human right to develop a relationship with nature and to safely and responsibly seek to improve community health and well-being through use of Entheogenic Plants without fear of arrest and prosecution, to recognize the importance of community support structures in supporting those with the highest levels of trauma and vulnerability, and to offer legal protections to Facilitators and Participants registered with the Oakland Community Healing Initiative Pilot Program and in

compliance with the City of Oakland’s Safe Practice Guidelines and Principles created by this Chapter.

Section 8.62.020-- Definitions.

Unless the context otherwise requires, the following definitions shall govern the construction of the Oakland Community Healing Initiative Pilot Program as provided herein.

Definitions. The following definitions apply to this section:

- 1. “City” means the City of Oakland, California.**
- 2. “Commercial” means the activities of cultivating, processing, manufacturing, distributing, delivering, transporting, buying and selling on large scales. (City attorney to refine definition based on existing cannabis definition of “commercial”).**
- 3. “Community-Based Organization” means an organization with a long-standing strong reputation of providing services to vulnerable populations in the City including, but not limited to, providing services focused on restorative justice, social justice, violence prevention, supporting the formerly incarcerated, unhoused, victims of violence or domestic violence, and similar community-based needs.**
- 4. “Entheogenic Plant” or “Plants” means plants and natural sources (as defined herein), such as spores, mycelium, mushrooms, cacti, iboga containing plants and/or extracted combinations of plants similar to Ayahuasca; and limited to those containing the following types of compounds: indoleamines, tryptamines, phenethylamines.**
- 5. “Entheogenic Plant Practices” includes the propagation, planting, cultivation, harvesting, drying, processing, possession, furnishing, use, and administration of Entheogenic Plants by a Facilitator, or the use of Entheogenic Plants by a Participant under the supervision of a Facilitator pursuant to the OCHI. Entheogenic Plant Practices are designed to enable the discovery and development of best practices and optimum conditions for users of Entheogenic Plants to gain access to the knowledge, insights, and spiritual growth these Plants can provide.**
- 6. “Facilitators” means an adult twenty-one (21) years of age or older who satisfies the requirements of Section 8.62.030 and engages in or facilitates the engagement in Entheogenic Plant Practices by Participants pursuant to the OCHI and the City’s Safe Practice Guidelines and Principles.**

- 7. “OCHI” means the Oakland Community Healing Initiative Pilot Program.**
- 8. “Participants” means an individual who, after providing informed consent and satisfying the requirements of Section 8.62.030, engages in Entheogenic Plant Practices under the guidance and supervision of a Facilitator pursuant to the OCHI and the City’s Safe Practice Guidelines and Principles.**
- 9. “Safe Practice Guidelines and Principles for Facilitators and Participants” means a document outlining the important lessons and requirements for ensuring safe plant practice.**

Section 8.62.030 – Creation of the OCHI; eligibility and registration requirements.

- A. Through adoption of this Ordinance, the City hereby establishes the Oakland Community Healing Initiative Pilot Program (OCHI) to enable the creation of a community-serving regulatory framework for engaging in Entheogenic Plant Practices that is specific to the City’s unique needs and that enables and promotes self-sufficiency in Oakland’s most vulnerable communities.**
- B. Within one (1) year of the date of adoption of this Ordinance, City Council shall convene a task force of leaders of the participating Community-Based Organizations to evaluate and design community-serving micro-economic models for engaging in Entheogenic Plant Practices that create opportunities for self-sufficiency in Oakland’s most vulnerable communities and are specific to the City’s unique needs.**
- C. Two (2) years after the date of adoption of this Ordinance, City Council shall evaluate the results of OCHI and report its findings.**
- D. Minimum eligibility requirements for OCHI participation:**
 - 1. Individuals interested in becoming a Facilitator must be:**
 - i. twenty-one (21) years of age or older;**
 - ii. reside in the City;**
 - iii. be recommended for participation in OCHI by at least one (1) of the participating Community-Based Organizations**
 - iv. have at least five (5) years of facilitation experience; and**
 - v. agree to participate in a public health research program associated with OCHI.**

- 2. Individuals interested in becoming a Participant must:**
 - i. reside in the City; and**
 - ii. be recommended for participation in OCHI by at least one (1) of the participating Community-Based Organizations;**

E. Registration requirements:

- 1. To qualify as an OCHI-registered Facilitator for purposes of Section 8.62.040, an individual must:**
 - i. satisfy the eligibility requirements of Section 8.62.030(D)(1), above;**
 - ii. complete the OCHI registration process and pay any associated fees;**
 - iii. be able to demonstrate a minimum of five (5) years of facilitation experience;**
 - iv. successfully complete an eight (8)-hour training course on the City's Safe Practice Guidelines and Principles for Facilitators;**
 - v. sign and agree to comply with the City's Safe Practice Guidelines and Principles; and**
 - vi. pay a \$250.00 annual registration fee.**
- 2. To qualify as an OCHI-registered Participant for purposes of Section 8.62.040, an individual must:**
 - i. satisfy the eligibility requirements of Section 8.62.030(D)(2), above;**
 - ii. complete the OCHI registration process and pay any associated fees so long as the fee, in and of itself, is not cost-prohibitive;**
 - iii. successfully complete a four (4)-hour training course on the City's Safe Practice Guidelines and Principles; and**
 - iv. sign and agree to comply with the City's Safe Practice Guidelines and Principles.**

F. Leaders of participating Community-Based Organizations will meet regularly to review and offer changes and improvements to OCHI and the Safe Practice Guidelines and Principles.

Section 8.62.040 – City legal defense; compliance requirements.

- A. Facilitators and Participants shall receive legal defense by the City Attorney’s office upon arrest or commencement of prosecution by any other government agency that arises from, or directly relates to, his or her participation in the OCHI, subject to confirmation by the City that the Facilitator or Participant, as applicable;**
- 1. is registered with OCHI and that such registration is valid and in good standing;**
 - 2. has acted in compliance with the applicable Safe Practice Guidelines and Principles;**
 - 3. has not engaged in for-profit cultivation, manufacturing, sales, distribution, or delivery of Entheogenic Plants for commercial purposes.**
- B. The requirement to provide legal defense shall not encompass an act or occurrence by a Facilitator or Participant which is outside the scope of, or out of compliance with, the City’s Entheogen Safe Practice Guidelines and Principles. Intentional misconduct during participation in OCHI, such as assault, battery, infliction of distress, and any act which constitutes a crime under City law or is inconsistent with the City’s Safe Practice Guidelines and Principles shall not be considered within the scope of the City’s requirement to provide legal defense to Facilitators and Participants.**

Section 8.62.050 – Entheogenic Plant Practices by community-based Facilitators and Participants.

Notwithstanding any other provision of law, the City intends that so long as such activities comply with this Chapter and the Safe Practice Guidelines and Principles approved by the City:

- A. Facilitators shall not be subject to arrest, prosecution, criminal sanctions, or civil consequences by the City based solely on their engagement in or facilitation of Entheogenic Plant practices by Participants pursuant to the OCHI.**
- B. Participants shall not be subject to arrest, prosecution, criminal sanctions, or civil consequences by the City based solely on their engagement in Entheogenic Plant Practices under the supervision and guidance of a Facilitator pursuant to the City OCHI.**
- C. The possession, use, or display of equipment, devices, or other paraphernalia, as that term is defined under California Health and Safety Code section 11364.5, as amended from time to time, by Facilitators or by Participants under the supervision of a Facilitator, operating pursuant to**

the City OCHI is expressly permitted and shall not be considered a criminal or civil offense under City law.

- D.** The City shall not disclose the identification or contact information of any OCHI-registered Facilitator or Participant. Registration processes conducted by the City 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 Facilitators and Participants.
- E.** Disclosure of any Facilitator or Participant information to assert facts in support of a registered status shall not be deemed a waiver of confidentiality of that information.
- F.** City employees shall not provide federal law enforcement assistance to the United States Drug Enforcement Administration (DEA) in investigating any Facilitator or Participant that arises out of or relates to his or her participation in OCHI or in determining the registered-status of a Facilitator or Participant in OCHI, except to respond to a public safety emergency related to a DEA action or where assistance is required by Federal or State statute, regulation or court decision.

Section 8.62.060 – Research.

- A.** The City shall encourage research on the safety, therapeutic potential, and healing powers of Entheogenic Plants so long as the research is done in collaboration with, or led by, leadership from within Community-Based Organizations.
- B.** In connection with the research, and in furtherance of the enforcement of the OCHI, the City may register Facilitators, Participants, or other individuals participating in or working in collaboration with the OCHI for the purpose of conducting research, demonstrations, or special projects which bear directly on the safety, therapeutic potential, and healing powers of Entheogenic Plants.

Section 8.62.070 - Chapter supersedes existing City law and regulations.

The provisions of this Chapter shall supersede any conflicting City law or regulations.

Section 8.62.080 – Severability.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause, or phrase thereof

irrespective of the fact that one or more other sections, subsections, clauses, or phrases may be declared invalid or unconstitutional.

Section 8.62.090 – Effective date.

This Ordinance shall become effective immediately on final adoption if it receives six (6) or more affirmative votes; otherwise, this Ordinance shall become effective upon the seventh day after final adoption.

Section 8.62.100 – Exclusions

Nothing in this Ordinance shall be deemed to allow for the sale, distribution, cultivation, manufacturing, delivery, or administration of Entheogenic Plants for for-profit purposes, and which does not benefit and promote the purpose of this Pilot Program in creating a community-serving regulatory framework for engaging in Entheogenic Plant Practices that enables and promotes self-sufficiency in Oakland’s most vulnerable communities.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES –

NOES –

ABSENT –

ABSTENTION –