



Councilmember Sophie Hahn
City of Berkeley, District 5

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 1

Meeting Date: July 11, 2023

Item Number: 35

Item Description: De-Prioritizing the enforcement of laws imposing criminal penalties for Entheogenic/Psychedelic plants and fungi for personal use

Submitted by: Councilmember Sophie Hahn

The City Attorney's Office has reviewed the proposed resolution presented and passed with a qualified positive recommendation at the June 12, 2023 meeting of the Health, Life Enrichment, Equity & Community Committee.

The attached, revised resolution reflects clarifying language suggested by the City Attorney's Office.

RESOLUTION NO. ##,###-N.S.

RESOLUTION DE-PRIORITIZING THE ENFORCEMENT OF LAWS IMPOSING CRIMINAL PENALTIES FOR ENTHEOGENIC/PSYCHEDELIC PLANTS AND FUNGI AND THEIR BIOSYNTHESIZED COMPOUNDS FOR PERSONAL USE

WHEREAS, entheogens, also known as “psychedelic drugs” or “psychedelics,” are a subset of compounds that are considered to exert psychoactive and physiological effects and are reported to induce extra-ordinary, altered states of consciousness involving changes in thought, feeling, and perception; and

WHEREAS, individuals and groups are known to use entheogens in a wide variety of ways including for recreational, medical, therapeutic, spiritual, and religious purposes; and

WHEREAS, entheogenic plants and fungi have a long history of use in some indigenous societies, with this use typically occurring within intentional, structured, time-tested ceremonial containers that include the guidance of trained practitioners, integration practices, and occur within cultural contexts that differ significantly from contemporary American society; and

WHEREAS, in recent years, there has been a resurgence of scientific research into the use of psychedelic-assisted psychotherapies for treating mental health conditions such as depression and substance abuse, with some studies showing promising preliminary evidence⁴⁵ for therapeutic benefits, in controlled clinical settings; and

WHEREAS, while psychedelic therapies have not been approved by the ~~FDA, the federal government, U.S. Food and Drug Administration, through the federal~~ Substance Abuse and Mental Health Services Administration, has stated that it is “exploring the prospect of establishing a Federal Task Force to monitor and address the numerous complex issues associated with emerging substances;” and

WHEREAS, there is a long history of public health authorities implementing harm reduction efforts to mitigate risks associated with use of both legal and illegal drugs, to improve the physical, mental, and social well-being of drug users, and in recent years public health authorities have increasingly focused on harm reduction approaches to drug use, with, for example, the Centers for Disease Control launching a harm reduction campaign to address the fentanyl crisis, and the City of Berkeley Public Health Division maintaining a longstanding partnership with Needle Exchange Emergency Distribution (NEED); and

WHEREAS, given this public health precedent, it would be appropriate for the City of Berkeley Public Health Division to support a harm reduction effort for entheogenic/psychedelic drug use in the Berkeley community; and

WHEREAS, while the possession, production, and transfer of psychedelic substances are illegal at the federal level in the United States, arrests and prosecutions for engaging in psychedelic drug offenses are ~~usually~~ generally grounded in state law, with enforcement occurring at the local level; and

WHEREAS, several local jurisdictions have de-prioritized the enforcement of laws prohibiting psychedelic-drug-related activities such as possession and production of psychedelic drugs for personal use; and

WHEREAS, there are criminal justice concerns associated with investigating, arresting, and incarcerating people for personal use of entheogens/psychedelics, and it is important to balance criminal justice concerns with public health concerns when crafting just and responsible policy; and

WHEREAS, in order to balance these concerns and avoid the development of gray and illicit markets, the City of Berkeley should only de-prioritize the enforcement of laws imposing criminal penalties for the possession of plant or fungus biosynthesized psychedelics for personal use (except Peyote) and laws imposing criminal penalties for the cultivation, processing, and preparation of psychedelic-drug-containing plants and fungi for personal use (except Peyote), while maintaining enforcement of laws prohibiting the possession of psychedelic drugs produced through artificial synthesis and enforcement of laws prohibiting the transfer of all categories of psychedelic drugs; and

WHEREAS “plant or fungus-biosynthesized psychedelic drugs” for purposes of this resolution means drugs that were produced by plants or fungi through biosynthesis, rather than produced ~~in a laboratory~~ through artificial synthesis, and “psychedelic-containing plants and fungi” refers to plants and fungi, living or not, that contain psychedelic drugs that the plants or fungi have themselves produced through biosynthesis; and

WHEREAS, “personal use of plant or fungus biosynthesized psychedelic drugs” for purposes of this resolution means an individual self-ingesting or self-administering plant or fungus biosynthesized psychedelic drugs; and

WHEREAS, “possession of plant or fungus biosynthesized psychedelic drugs for personal use” for purposes of this resolution means an individual possessing plant or fungus biosynthesized psychedelic drugs for the purpose of being ingested or self-administered by that same individual, and not by any other person or people; and

WHEREAS, “cultivation, processing, and preparation of psychedelic-containing plants and fungi for personal use” for purposes of this resolution means an individual cultivating, processing, and preparing any of these plants and fungi for the purpose of the resulting material being self-ingested or self-administered by that same individual, and not by any other person or people; and

WHEREAS, an individual can produce their own personal use plant or fungus-biosynthesized entheogenic/psychedelic drugs through home cultivation without engaging with illicit markets or sources; and

WHEREAS, the City Council wishes to enable Berkeley Public Health Division staff to engage with reputable experts developing harm reduction strategies that can be disseminated within Berkeley; and

WHEREAS, the City of Berkeley should de-emphasize expending City resources to assist in the enforcement of laws imposing criminal penalties for the possession of plant or fungus biosynthesized psychedelic drugs for personal use, and for the cultivation, processing, and preparation of psychedelic-containing plants and fungi for personal use;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it shall be the policy of the City of Berkeley to de-emphasize the use of City funds and resources to assist in

the enforcement of laws imposing criminal penalties for the possession of plant- or fungus-biosynthesized psychedelic drugs for personal use and for the cultivation, processing, and preparation of psychedelic-drug-containing plants and fungi for personal use. This de-prioritization policy does not apply to the mescaline-containing cactus Peyote (*Lophophora williamsii*), or to mescaline that was biosynthesized by the Peyote cactus, due to sustainability and poaching concerns raised by the National Council of Native American Churches and the Indigenous Peyote Conservation Initiative, who have released a statement requesting that decriminalization policies not include this species.

BE IT FURTHER RESOLVED that this resolution does not authorize or enable any of the following activities: giving away, sharing, distributing, transferring, dispensing, or administering of plant or fungus biosynthesized or other psychedelic drugs to another individual, organization, or group of individuals.

BE IT FURTHER RESOLVED that the City of Berkeley declares its support for a transparent, comprehensive public conversation about the potential to open access to psychedelic drugs in ways that might be safe, beneficial, ethical, and equitable, and urges the California State Legislature to take part in this conversation and consider passing legislation that addresses the relevant issues.

BE IT FURTHER RESOLVED that the City Council hereby enables the Public Health Division to make themselves available to academic and other reputable institutions to discuss opportunities for resources ~~addressing use of psychedelics~~ to be made available to the Berkeley community that address the use of psychedelics.

BE IT FURTHER RESOLVED that any organization or individual who may collaborate with the City to provide resources addressing use of psychedelics shall not, through their work with the City, facilitate access to psychedelic drugs or psychedelic administration sessions.

BE IT FURTHER RESOLVED that the City Council hereby enables the Public Health Division to make themselves available to academic and other reputable institutions to potentially assist in a strategy for collecting and analyzing public health data on psychedelic use in Berkeley.

BE IT FURTHER RESOLVED that the City of Berkeley encourages other public health departments and authorities, including at state and federal levels, to explore implementing psychedelic harm reduction and public health data collection efforts.

BE IT FURTHER RESOLVED that this resolution does not rely upon nor accept as fact assertions made in materials submitted with the original item or in the Community Health Commission Referral Response.