



## Legislation Text

---

**File #:** 15-392, **Version:** 1

---

*Report Prepared by: Kim Espinosa, Planning Manager, and Ken Rozell, Senior Deputy City Attorney*

**SUBJECT:** Public Hearing Regarding Proposed Amendments to the City of Merced's Zoning Ordinance Relating to Medical Marijuana, Medical Marijuana Dispensaries, Delivery of Medical Marijuana and Cultivation of Medical Marijuana

### REPORT IN BRIEF

Consider the adoption of an ordinance relating to medical marijuana that would either allow or ban medical marijuana dispensaries, allow or ban the delivery of medical marijuana under specific circumstances, and either allow the cultivation of small amounts of medical marijuana under specific circumstances or ban the cultivation of all medical marijuana within the City's boundaries.

### RECOMMENDATION

**City Council** - Adopt a motion approving one of the three following options:

A. Adopt a Categorical Exemption and Introduce **Ordinance 2455** (as recommended by the Planning Commission) that would allow medical marijuana dispensaries in specific commercial zones, allow delivery of medical marijuana under specific circumstances and allow limited growth of medical marijuana (12 plants or less per lot) for a qualified patient:

“An Ordinance of the City Council of the City of Merced, California, Adding Chapter 20.84, “Medical Marijuana and Cultivation” and amending Sections 20.20.040 “Conditional Uses,” 20.24.040 “Conditional Uses,” and 20.28.040, “Conditional Uses,” of the Merced Municipal Code regarding the zoning of medical marijuana dispensaries as conditional uses”.

**OR**

B. Adopt a Categorical Exemption and Introduce **Ordinance 2454** (originally presented to the Planning Commission on December 9, 2015) that would prohibit all commercial medical marijuana uses and activities, including delivery, within the City of Merced and prohibit the cultivation of any amount of marijuana for medical use by a qualified patient or primary caregiver in the City of Merced:

“An Ordinance of the City Council of the City of Merced, California, adding Chapter 20.84, “Medical Marijuana and Cultivation” to the Merced Municipal Code prohibiting all commercial medical marijuana uses in the City and prohibiting cultivation for medical use by a qualified patient or primary caregiver”

**OR**

C. Adopt a Categorical Exemption and Introduce **Ordinance 2454** (originally presented to the Planning Commission on December 9, 2015) that (like Option B) would prohibit all commercial medical marijuana uses and activities and prohibit the cultivation of any amount of marijuana for medical use:

“An Ordinance of the City Council of the City of Merced, California, adding Chapter 20.84, “Medical Marijuana and Cultivation” to the Merced Municipal Code prohibiting all commercial medical marijuana uses in the City and prohibiting cultivation for medical use by a qualified patient or primary caregiver;”

**AND**

Direct staff to schedule multiple study sessions after the effective date of the ordinance to consider the City’s options relating to medical marijuana within the City (including dispensaries, delivery and cultivation).

**ALTERNATIVES**

1. Approve one the three options above, subject to modifications as conditioned by Council; or,
2. Deny the request; or,
3. Refer back to staff for reconsideration of specific items (specific items to be addressed in City Council motion); or,
4. Continue to a future City Council meeting (date and time to be specified in City Council motion).

**AUTHORITY**

City of Merced Charter, Section 200

**CITY COUNCIL PRIORITIES**

Not Applicable

**DISCUSSION**

Background-New State Laws

On October 09, 2015, Governor Jerry Brown signed into law three bills (AB 266, AB 243, and AB 643) that together are entitled the Medical Marijuana Regulation & Safety Act (MMRSA). The three bills are designed to establish a comprehensive regulatory structure around the state’s multi-billion dollar medical marijuana industry.

Under the legislation, there will be a dual licensing structure which requires a state and local license or permit in order to cultivate, dispense, or transport medical marijuana. Cities that wish to ban these land use activities are allowed to do so; however, there are critical time constraints.

AB 266 establishes a dual licensing structure requiring state and local licenses or permits to establish medical marijuana businesses. However, if there is no local licensing requirement, the State Department of Food and Agriculture becomes the sole licensing authority. AB 643 established criteria for the licensing of medical marijuana businesses, regulating physicians, and recognizing local authority to levy taxes and fees.

AB 243 includes a provision stating that cities that do not have an ordinance regulating or prohibiting cultivation by March 1, 2016, will lose the authority to regulate or ban cultivation within their city limits.

#### Background-City of Merced

Historically, the City of Merced has banned all medical marijuana uses within the City (including medical marijuana dispensaries) based upon the language of Merced Municipal Code Section 20.06.050(E) that provides:

“No use that is prohibited, unlawful, violates or is inconsistent with federal or state law, or any provision in this code, shall be allowed or permitted in any district under this title.”

Based on this code provision, the City has not allowed any medical marijuana businesses to legally be established in Merced because they would violate federal law. However, under the terms of AB 243, by March 1, 2016, the City must specifically regulate or prohibit medical marijuana cultivation in order to retain the right to do so in the future. If no action is taken by that deadline, then the City will lose the right to ban or regulate such uses in the future.

There is not a specific deadline to ban delivery of medical marijuana; however, delivery of medical marijuana could commence within the City at any time after the state licensing is in effect if the City does not have a specific ban on delivery.

In response to the legislation and based upon recommendations from the League of California Cities, City staff prepared an amendment to the Zoning Ordinance to add Chapter 20.84, “Medical Marijuana and Cultivation” (Attachment 1). As originally drafted, the proposed ordinance would prohibit all commercial medical marijuana uses and activities, including delivery, in all zones and all specific plan areas in the City of Merced; and prohibit the cultivation of any amount of marijuana for medical use by a qualified patient in all zones and specific plan areas in the City of Merced.

#### Planning Commission Action

The Planning Commission considered the proposed ordinance at a public hearing held on December 9, 2015. Seventeen people spoke at the public hearing, all of whom opposed the proposed ban on medical marijuana dispensaries, delivery and cultivation for use by a qualified patient. See Attachments 3, 4, and 5 for the Planning Commission Resolution, excerpts from the draft Planning Commission minutes, and the Planning Commission Staff Report (including the Categorical Exemption at Attachment B).

After extensive deliberations, the Planning Commission recommended by a 6-0-1 vote (6 ayes, 0 noes, 1 absent) that the City Council adopt the ordinance after the following changes had been made to it:

- a) Allow medical marijuana dispensaries in some commercial zones (those zones to be determined by staff); and,
- b) Allow delivery of medical marijuana if it begins within one of those allowed commercial zones; and,
- c) Consistent with the regulations of the County, allow the growth of up to 12 medical marijuana plants for personal use per lot.

City staff prepared a new ordinance consistent with the direction of the Planning Commission. That ordinance is included as Attachment 2.

### City Council Options

After the public hearing on the matter, the City Council can elect to adopt the Planning Commission's recommended ordinance (Option A, Attachment 2) or the original ordinance presented to the Planning Commission (Option B, Attachment 1). Alternatively, the City Council can direct that one of the ordinances be modified to either allow or prohibit medical marijuana dispensaries, delivery and/or cultivation within the City limits.

Option C would be to introduce the ordinance that prohibits all medical marijuana uses in the City (Attachment 1), which would maintain the status quo, but to direct staff to schedule additional study sessions in the coming months to consider other options and to get additional public input.

Because of the need for any new regulations to go into effect by March 1, 2016, staff recommends that the City Council select one of the options and introduce one of the ordinances at tonight's meeting. If, however, the City Council wishes to make changes to one of the ordinances that will require substantial redrafting, the City Council can introduce the revised ordinance at its January 19, 2016, meeting. As long as the City Council holds a special meeting on or before January 29, 2016, and has the second reading and adopts the ordinance on that date, then the City will meet the March 1, 2016, deadline.

### **IMPACT ON CITY RESOURCES**

No appropriation of funds is needed.

### **ATTACHMENTS**

1. Ordinance 2454 adding Chapter 20.84 (original ordinance presented to Planning Commission; total ban on medical marijuana dispensaries, delivery and cultivation).
2. Ordinance 2455 adding Chapter 20.84 and amending Sections 20.20.040, 20.24.040 and 20.28.040 (Planning Commission recommendation allowing dispensaries in certain commercial zones, medical marijuana delivery and growth of up to 12 marijuana plants per lot for a qualified patient )
3. Planning Commission Resolution #3059
4. Excerpts from Draft Planning Commission Minutes of December 9, 2015
5. Planning Commission Staff Report #15-23