



## Legislation Text

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**File #:** 16-060, **Version:** 1

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*Report Prepared by: Kenneth Rozell, Senior Deputy City Attorney*

**SUBJECT:** Medical Marijuana Study Session

### REPORT IN BRIEF

Provides a brief overview of medical marijuana issues at the state and local level and outlines potential areas for the City Council to consider regarding medical marijuana dispensaries, deliveries and cultivation.

### RECOMMENDATION

Staff recommends that the City Council take public testimony regarding the medical marijuana issue as it relates to dispensaries, deliveries and cultivation within the City of Merced and either:

- A. Schedule another study session on this matter regarding medical marijuana in general or specifically relating to dispensaries, deliveries and/or cultivation; or,
- B. Provide direction to staff regarding specific modifications to the City's existing bans on dispensaries, deliveries and/or cultivation of medical marijuana within the City; or,
- C. Take no further action regarding this matter.

### AUTHORITY

City of Merced Charter, Section 200

### CITY COUNCIL PRIORITIES

Not Applicable

### DISCUSSION

#### Background

On October 9, 2015, Governor Jerry Brown signed into law three bills (AB 266, AB 243, and SB 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. (The bills are attached as Attachments 1, 2 and 3.)

The legislation creates a dual licensing structure that 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, if there is no local licensing requirement, the State Department of Food and Agriculture becomes the sole licensing authority. AB 243 included a provision stating that cities that did not regulate or prohibit cultivation before March 1, 2016 would lose the authority to regulate or ban cultivation within their city limits (former Business and Professions Code Section 11362.777, subd. (c) (4)).

In response to this original language in AB 243, the League of California Cities recommended cities immediately adopt an ordinance to ban or regulate the cultivation of medical marijuana to avoid losing local control of land use regulations. Because of the considerable lead time required for these ordinances to go into effect before March 1, 2016, cities had very limited time in which to consider this issue prior to the March 1, 2016 deadline. (This is because of the need to notice the public hearings, consideration of the ordinance by the Planning Commission and City Council, a first and second reading of the ordinance by the City Council, and 30 days after the second reading/ adoption of the ordinance for the ordinance to go into effect.)

According to news reports, more than 160 California cities adopted bans on all medical marijuana uses, with only a few cities adopting regulations allowing medical marijuana cultivation.

In Merced, the City had historically 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 upon the City’s existing policies, City staff presented an ordinance for consideration by the Planning Commission that would have prohibited all commercial medical marijuana uses and activities, including delivery, in all zones and all specific plan areas in the City of Merced; and prohibited 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.

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.

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.

At its meeting on January 4, 2016, the City Council first held a study session on medical marijuana issues and then subsequently held a public hearing regarding medical marijuana. After taking testimony from 40 individuals and extensive deliberations, the City Council voted 7 to 0 to introduce Ordinance No. 2454, which prohibits all commercial medical marijuana uses in the City and prohibit cultivation of marijuana for medical use by a qualified patient or primary caregiver.

However, as part of the motion introducing Ordinance No. 2454, the City Council directed 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).

On January 19, 2016, the City Council adopted Ordinance No. 2454, which become effective 30 days later on February 18, 2016.

On January 28, 2016, the Assembly approved AB 21, urgency legislation to remove the March 1, 2016 deadline for cities and counties to pass marijuana cultivation ordinances or face state pre-emption. On February 3, 2016, Governor Brown signed AB 21 into law. Because the law was an urgency measure, it became effective immediately. The new legislation does not have an impact on the City because the City Council already adopted Ordinance 2454 that prohibits the cultivation of marijuana and all commercial medical marijuana uses, including marijuana dispensaries and delivery of medical marijuana.

### Discussion

There are multiple issues for the City Council to consider as it relates to medical marijuana:

#### A. Dispensaries

1. Does the City Council wish to allow medical marijuana dispensaries within the City of Merced?
2. If so, in which zones would dispensaries be allowed? (Attachment 4 provides an overview of the existing commercial zones within the City.)
3. If dispensaries are allowed, does the City Council wish to place a limit on the number of dispensaries within the City?

#### B. Delivery

1. Does the City Council wish to allow deliveries of medical marijuana within the City of Merced?

#### C. Cultivation

1. Does the City Council wish to allow the cultivation of medical marijuana within the City by a primary caregiver or qualified patient?

2. If so, will the cultivation be allowed indoors, outdoors or both?

3. If cultivation is allowed, how many plants will be allowed per lot or per dwelling unit?

Options include, but are not limited to:

i. A specific number of plants per legal lot or parcel (such as the 12 plants allowed per parcel by the County of Merced). (See Attachment 5.)

ii. A specific number of plants within a single private residence or upon the grounds of that residence (such as the six living plants proposed by the marijuana initiative, the “Control, Regulate and Tax Adult Use of Marijuana Act”). (See numbered page 6 of Attachment 6; proposed Health and Safety Code Section 11362.2, subd. (a)(3).)

iii. Limiting cultivation to a specified square footage for indoor growing of medical marijuana (such as the 50 square foot indoor limitation by the City of Capitola in Santa Cruz County and the City of Etna in Siskiyou County). (See Attachments 7 and 8.)

iv. Limiting cultivation to a specified square footage for indoor or outdoor growing of medical marijuana (such as the City of Livermore’s 100 square foot limitation for a qualified patient and up to 500 square feet for a primary caregiver, based upon the language in Business and Professions Code Section 11362.777, subd. (g)). (See Attachments 9 and 10.)

Staff recommends that the City Council take public testimony regarding the medical marijuana issue as it relates to dispensaries, deliveries and cultivation within the City of Merced and either:

1. Schedule another study session on this matter regarding medical marijuana in general or specifically relating to dispensaries, deliveries and/or cultivation; or,

2. Provide direction to staff regarding specific modifications to the City’s existing bans on dispensaries, deliveries and/or cultivation of medical marijuana within the City; or,

3. Take no further action regarding this matter.

## **IMPACT ON CITY RESOURCES**

No appropriation of funds is needed at this time.

## **ATTACHMENTS**

1. AB 266
2. AB 243
3. AB 643
4. Memorandum providing overview of Merced’s commercial zones, including maps depicting location of zones.
5. County of Merced marijuana regulations.
6. Marijuana Initiative (Control, Regulate and Tax Adult Use of Marijuana Act)
7. City of Capitola marijuana regulations

8. City of Etna Marijuana Ordinance
9. Livermore Marijuana Cultivation Ordinance
10. Health and Safety Code Section 11362.777.