



Legislation Text

File #: 16-161, **Version:** 1

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SUBJECT: Medical Marijuana Study Session

REPORT IN BRIEF

Provides a brief overview of medical marijuana issues at the state and local level, answers questions raised by the City Council relating to medical marijuana, and outlines potential amendments for the City Council to consider regarding existing bans on 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. 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,
- B. Schedule another study session on this matter regarding medical marijuana in general or specifically relating to dispensaries, deliveries and/or cultivation; or,
- C. Take no further action regarding medical marijuana at this time.

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 established a comprehensive regulatory structure around the state's multi-billion dollar medical marijuana industry.

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 originally 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.

Merced has 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. 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 public testimony 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 prohibits 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 March 1, 2016, the City held a special meeting to discuss medical marijuana. At that meeting, the City Council took public testimony and considered issues relating to medical marijuana dispensaries, delivery of medical marijuana from licensed dispensaries and if medical marijuana would be allowed to be cultivated within the City by primary caregivers or qualified patients.

At that meeting, the City Council asked that staff provide answers to specific questions at the next meeting regarding medical marijuana, as well as to provide a copy of the 2008 California Attorney General Guidelines relating to medical marijuana. Finally, the City Council asked that staff prepare a draft medical marijuana ordinance for consideration by the City Council.

Discussion

1. Draft Ordinance Regarding Medical Marijuana Dispensaries, Deliveries and Cultivation

Pursuant to the City Council's direction at the March 1, 2016 special meeting, staff has prepared a draft medical marijuana ordinance that addresses three specific areas - medical marijuana dispensaries, delivery and cultivation. (See Attachment 1.) Before, however, the ordinance can be finalized and scheduled for a public hearing before the Planning Commission, the City Council will first need to provide specific direction on the following questions:

A. Dispensaries

1. Does the City Council wish to allow medical marijuana dispensaries within the City of Merced?
2. If so, in which zone(s) would dispensaries be allowed? (Maps depicting the commercial zones within the City are included as Attachment 2.)
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 or square footage of cultivation 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.
- ii. A specific number of plants within a single private residence or upon the grounds of that residence.
- iii. A specified square footage for indoor and/or outdoor growing of medical marijuana.

2. 2008 Attorney General “Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use”

As requested at the March 1, 2016 meeting, the 2008 Attorney General “Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use” (the “Guidelines”) are attached as Attachment 3. The Guidelines generally provide a good overview of existing medical marijuana regulations, although the Guidelines do not include the provisions of MMRSA (the Medical Marijuana Regulation & Safety Act) that went into effect on January 1, 2016.

Several areas of the Guidelines, however, are incorrect based upon court cases that were decided after the 2008 Guidelines were released. In *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal. 4th 729, 762, the California Supreme Court held that cities had the right to regulate or ban medical marijuana dispensaries. In *Kirby v. County of Fresno* (2015) 242 Cal.App.4th 940, 965, an appellate court held that public entities retained their land use authority as it relates to cultivation of medical marijuana and are not required to allow cultivation within their corporate boundaries.

3. Summary of Regulations of Selected Jurisdictions Relating to Personal and Commercial Growth of Medical Marijuana

At its March 1, 2016 meeting, members of the City Council asked for additional information regarding small and large cities and counties and whether they allow personal and/or commercial growth of medical marijuana. Attachment 4 provides an overview of regulations for a variety of cities and counties in California.

4. Summary of Problems That Other Cities Are Having With Dispensaries

At the March 1, 2016 meeting, members of the City Council asked for a summary of problems that other cities are having with medical marijuana dispensaries.

San Francisco:

- 28 dispensaries currently.
- Current rules restrict pot businesses to only a small portion of the City, known as the “green zone”, which results in clustering.
- Current restrictions on dispensaries include locating only on ground floor of building.
- The Green Cross, a medical cannabis dispensary and delivery service. Most delivery services

are unregulated. San Francisco is one of few cities to give official approval for them.

- SF law tasks the city's Dept. of Public Health with regulating the medical marijuana industry (most cities give function to law enforcement or zoning agencies).
- No cap on licenses.

San Diego:

- Unregulated until 2014 ordinance.
- Ordinance allowing 4 dispensaries to open in each of San Diego's 9 city districts for a total of 36 dispensaries.
- Must be more than 1,000 ft. from any public park, church, school, facility oriented toward children, or any previously permitted dispensary.
- Dispensaries compete for city approval and experience difficulty in locating place to operate.
 - This issue has created a boom in less regulated delivery services (San Diego zoning ordinance does not address delivery at all).
 - More than 100 delivery services in San Diego.
 - MMRSA will now require delivery services to list a physical place of business and local authorities can audit records and inventory.
- Illegal storefronts with no regard for the law continue to operate.
 - City Attorney's office closed more than 260 storefronts from 2010-2014.

Los Angeles:

- Unregulated until 2013 with passage of Prop. D.
- Prop. D banned medical dispensaries except those operating legally prior to 2007 and already registered with the city.
- Per LA City Attorney, 134 dispensaries eligible to operate legally.
- UCLA survey found:
 - 3 out of 4 dispensaries in the city are illegal.
 - Highest concentrations of dispensaries in neighborhoods with lower-than-average household incomes compared to LA at large.
 - In 2007, there were 2 dispensaries in Wilmington and the neighborhoods of South LA, SE LA, San Pedro, Harbor Gateway. In 2015, nearly 40 operating dispensaries in those communities alone.

- No dispensaries in Pacific Palisades and Beverly Crest, two of the three wealthiest neighborhoods in LA.
- As of 2014, six of the 10 highest earning neighborhoods in LA had no dispensaries.
- Police indicate that dispensaries cause harm to community surrounding them:
 - Increased crime robberies.
 - Lack of citywide enforcement leads to more crime

Fresno County:

- Personal grows banned February 2014
 - Declaring it a public nuisance, which turned it into a local zoning issue
 - Fine is \$1,000 per plant
 - Attorneys for growers fined by the county claim due process violations by issuing fines without giving growers time to pull plants themselves and states the growers could lose their homes or property because of exorbitant fines.
- Dispensaries banned.
- Despite drought conditions, per Sheriff Department data, county saw large increase in marijuana grows and in addition a large increase in violence such as robberies and murders associated with marijuana grows.
- Fresno Sheriff Margaret Mims states many patients believe they can grow up to 99 plants. This number comes from a list of federal drug trafficking penalties which requires federal government to sentence growers it catches cultivating 100 or more plants.

5. General Information regarding THC and CBD

Members of the City Council also requested general information regarding THC and CBD - two constituents normally found in marijuana.

According to Wikipedia, tetrahydrocannabinol (THC) is the principal psychoactive constituent (or cannabinoid) of cannabis-i.e., a component of marijuana that can result in alterations in perception, mood, or consciousness or the “high” often associated with marijuana. (See <https://en.wikipedia.org/wiki/Tetrahydrocannabinol>.) First isolated in 1964 by Israeli scientists at the Weizmann Institute of Science, it can be an amber or gold colored glassy solid when cold, which becomes viscous and sticky if warmed.

A pharmaceutical formulation of THC (i.e., a synthetic version of THC) is available by prescription in the U.S. under the brand name Marinol and is used to combat nausea and vomiting caused by cancer chemotherapy. This drug is also used is also used to treat loss of appetite and weight loss in

patients with HIV infection. (See <http://www.webmd.com/drugs/2/drug-9308/marinol-oral/details>.)

Cannabidiol (CBD) is one of at least 113 active cannabinoids identified in marijuana. (See <https://en.wikipedia.org/wiki/Cannabidiol>.) CBD is considered to have a wide scope of potential medical applications. CBD is the predominant cannabinoid in hemp-cannabis grown for fiber or growing in the wild.

CBD-rich strains were generally not available to cannabis users in California and other areas. (See <https://www.projectcbd.org>.) Generations of breeding marijuana for maximum THC and a strong “high” had reduced the CBD to trace amounts in most cannabis strains in Northern California. To meet the demands of medical cannabis patients, growers are currently developing more CBD-rich strains.

For data collection purposes, “CBD-rich” was initially defined as 4% or more by dry weight. More balanced strains with roughly equal amounts of CBD and THC were discovered, and then a handful of CBD-dominant strains (20:1 CBD:THC ratios or higher) were discovered, fostering a cottage industry of CBD-rich concentrates, oil extracts, and other CBD-rich products.

According to the FDA, examples of drugs in clinical testing using CBD and THC include Sativex for cancer pain and Epidiolex for childhood seizures. (See <http://www.fda.gov/downloads/aboutfda/centersoffices/officeofmedicalproductsandtobacco/cder/ucm438966.pdf>.)

6. Availability of Labs to Test Medical Marijuana and How These Labs Are Regulated and Certified

Under the Medical Marijuana Regulation & Safety Act (MMRSA), testing of cannabis will be mandated prior to delivery to dispensaries or other businesses (Business and Professions Code Sections 19341 to 19347). MMRSA requires medical cannabis to be lab tested for regulatory purposes on or before July 1, 2017 and sets standards for certification of testing laboratories to perform random sample testing of all medical marijuana.

For example, under the standard outlined in Business and Professions Code Section 19343:

“A licensed testing laboratory shall not handle, test, or analyze medical cannabis or medical cannabis products unless the licensed testing laboratory meets all of the following:

- a) Is registered by the State Department of Public Health.
- b) Is independent from all other persons and entities involved in the medical cannabis industry.
- c) Follows the methodologies, ranges, and parameters that are contained in the scope of the accreditation for testing medical cannabis or medical cannabis products. The testing lab shall also comply with any other requirements specified by the State Department of Public Health.
- d) Notifies the State Department of Public Health within one business day after the receipt of notice of any kind that its accreditation has been denied, suspended, or revoked.
- e) Has established standard operating procedures that provide for adequate chain of custody

controls for samples transferred to the licensed testing laboratory for testing.”

There are existing marijuana/cannabis testing labs throughout California, including SC Labs in Santa Cruz, Steep Hill Labs in Oakland, Sequoia Analytical Labs in Sacramento, and Cannalysis Labs in Costa Mesa. Until MMRSA, there were no regulations or certification requirements in California and medical marijuana could be sold without any testing or standardized testing protocols and techniques. However, in the multibillion-dollar medical marijuana market, there has been awareness and recognition that testing can help legitimize the drug, protect patients, promote sales and improve breeding programs.

7. Outline of Public Health Department Process For Obtaining A Medical Marijuana Identification Card

A medical marijuana identification card can be obtained through the County Public Health Department (not through a physician’s office or an evaluation center). The medical marijuana identification card is voluntary to patients and all that is required under SB 420 is a physician’s letter recommending the use of medical marijuana. (See <https://www.cdph.ca.gov/programs/MMP/Pages/MMPFAQ.aspx>.) Merced County’s website provides additional information regarding the process for obtaining a medical marijuana identification card. (See <http://www.co.merced.ca.us/index.aspx?NID=629>.)

Individuals wishing to obtain such a card need to complete the Medical Marijuana Program Application form and submit to County Health Department along with the following:

- A. Government-issued photo ID
 - 1. If under 18/no photo ID, may provide certified copy of birth certificate
 - 2. If a primary caregiver is designated on application, primary caregiver must present photo ID at same time. Primary caregiver can use certified copy of birth certificate only if under 18 and serving as primary caregiver for their own child
- B. Proof of county residency
- C. Proof of legal status
- D. Proof of Physician Recommendation: Written documentation from doctor recommending use of MJ is appropriate for one or more of the following serious medical conditions:
 - 1. AIDS
 - 2. Anorexia
 - 3. Arthritis
 - 4. Cachexia
 - 5. Cancer
 - 6. Chronic pain
 - 7. Glaucoma
 - 8. Migraine
 - 9. Persistent muscle spasms including that associated with multiple sclerosis
 - 10. Seizures, including those associated with epilepsy
 - 11. Severe nausea
 - 12. Any other chronic or persistent medical symptom that either substantially limits the ability of the person to conduct one or more major life activities as defined by the ADA of 1990 or, if not alleviated, such chronic or persistent medical symptoms may cause serious harm to your safety, or your physical or mental health

- E. Administering agency is required to verify applicant's medical documentation with the medical provider.
- F. Pay required application fees (\$112.50/Medi-Cal Beneficiary or \$225.00/Non Medi-Cal), which are nonrefundable.
- G. If incomplete application and/or fail to provide all required information, application will be denied and may be restricted from reapplying for 6 months

8. Actual Number of Medical Marijuana Users in Merced

According to a State database, the total number of medical marijuana identification cards issued in Merced County from fiscal year 06/07 through October 2015 is 231; the total number of medical marijuana identification cards issued statewide through November 2015 is 84,111. There is no data available on actual users in Merced or Merced County given that obtaining a medical marijuana identification card is voluntary. (See <https://www.cdph.ca.gov/programs/MMP/Pages/MMPFAQ.aspx>.)

9. Percentage of Chemotherapy Patients That Do Not Respond to Regular Anti-Nausea Drugs

One of the members of the City Council asked about the percentage of chemotherapy patients that do not respond to regular anti-nausea drugs. According to the American Cancer Society, about 7 or 8 out of every 10 people treated for cancer have bouts of nausea and vomiting. (See <http://www.cancer.org/acs/groups/cid/documents/webcontent/003200-pdf.pdf>; Attachment 5.)

According to the American Cancer Society, no one drug can prevent or control chemo-related nausea and vomiting 100% of the time. This is because chemo drugs act on the body in different ways and each person responds to chemotherapy and the anti-nausea/vomiting drugs differently. To choose the best treatment plan, the doctor:

- A. Considers how likely the chemo is to cause nausea and vomiting if no anti-nausea/vomiting treatment is given.
- B. Selects anti-nausea/vomiting medicines based on how much the chemo drugs are known to affect the vomiting center in the brain.
- C. Looks at past nausea and vomiting.
- D. Reviews how well any anti-nausea medicines have worked before.
- E. Looks at the side effects of the anti-nausea/vomiting medicines.
- F. Uses the lowest effective dose of the anti-nausea/vomiting medicine before chemo or radiation therapy is given.
- G. Uses medicines to try to prevent (not just control) the nausea and vomiting
- H. Carefully watches response to the anti-nausea treatment.
- I. Makes drug changes as needed to keep you from having nausea and vomiting.

Anti-nausea/vomiting medicines are administered based upon which chemo therapy is being received for the cancer. A patient may have to try a few different medicines to find the ones that work best for him/her, if at all. There may be other factors besides the chemo adding to the nausea and vomiting. Many of these drugs are very expensive and require pre-approval from health insurance before they will be covered.

10. Conclusion

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. 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,
2. Schedule another study session on this matter regarding medical marijuana in general or specifically relating to dispensaries, deliveries and/or cultivation; or,
3. Take no further action regarding medical marijuana at this time.

IMPACT ON CITY RESOURCES

No appropriation of funds is needed at this time.

ATTACHMENTS

1. Draft Medical Marijuana Ordinance
2. Commercial Zoning Maps
3. 2008 Attorney General "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use"
4. Status of Selected Cities and Counties Regarding Personal and Commercial Medical Marijuana Cultivation
5. American Cancer Society Publication on Nausea and Vomiting