

**Meeting Date:** 8/9/2016

**Report Type:** Staff/Discussion

**Report ID:** 2016-00748

**Title:** Medical Marijuana Cultivation Title 5 Permitting Recommendations

**Location:** Citywide

**Recommendation:** 1) Review recommendations related to the implementation of the Medical Marijuana Regulation and Safety Act applying to marijuana cultivation regarding zoning and permitting under Titles 5 and 17; and 2) pass a Motion forwarding those recommendations to the City Council for approval.

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**Presenter:** Randi L. Knott, Director of Government Affairs, (916) 808-5771, Office of the City Manager; Brad Wasson, Revenue Manager, (916) 808-5844, Department of Finance

**Department:** City Manager / City Attorney's Office, Finance

**Division:** Executive Office

**Dept ID:** 02001011

**Attachments:**

1-Description/Analysis

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**City Attorney Review**

Approved as to Form

Gustavo Martinez

8/4/2016 11:05:06 AM

**Approvals/Acknowledgements**

Department Director or Designee: Fran Halbakken - 8/3/2016 1:33:25 PM

## Description/Analysis

**Issue Detail:** In September 2015 the Governor signed three bills affecting state and local government licensing/permitting of medical marijuana businesses. These laws, collectively referred to as the Medical Marijuana Regulation and Safety Act (MMRSA), are intended to protect local control of the medical marijuana industry and create a framework for additional oversight of industry practices including cultivation, manufacturing, delivery, transport and distribution. At this time, staff is seeking input from the Committee on permitting processes for cultivation businesses in Title 5 (Business Licenses and Regulations). The intent of these recommendations, which include operating standards for medical marijuana cultivation (cultivation), is to ensure the public health and safety while avoiding negative effects on surrounding communities.

**Policy Considerations:** In order to ensure that these proposed policies are vetted by all departments that will be involved in the regulation of medical marijuana businesses, a staff working group from the City Manager's Office, City Attorney's Office, Department of Finance, Police Department, Fire Department, Community Development and Economic Development has met weekly to develop these recommendations. Additionally, the working group has visited cultivation, manufacturing and dispensary sites and has researched the marijuana regulations of cities throughout California as well as cities in other states where medical and/or recreational marijuana is legal. At this time, staff is presenting best practices gleaned from that research and will return with a proposed ordinance codifying the recommendations after receiving input from the Committee. We have also held numerous stakeholder meetings with representatives from the cannabis industry, business improvement districts, neighborhood associations, and Council Members.

The issuance or revocation of a business permit is separate from the issuance of a land use permit and vice versa. All of the recommendations in this report are related to Title 5 business permitting; Title 17 land use recommendations for cultivation are in a separate staff report. In addition to the operation permit and the conditional use permit, a building permit will be required for any improvements or alterations made to the property or structures. Improvements or alterations must comply with Title 24 of the California Code of Regulations.

### **Numerical Cap**

There are several approaches to determining how many cultivation sites will be permitted to locate in the city at each of the state-sanctioned licensing levels. To some extent, the number will be determined by land use and private sector business decisions; beyond that the City may limit the number for the public health, safety, and welfare. One of the options is a hard cap on the number of permits that will be given out each year. However, staff is not recommending this approach at this time.

## **Request for Qualifications**

In lieu of a cap on the number of medical marijuana cultivation permits, staff is recommending a Request for Qualifications (RFQ) process. The process would be modified as appropriate to fit each of the categories as outlined by the State in MMRSA (e.g. 22,000 sq. ft. and less for cultivation; 10,000 sq. ft. and less; 5,000 sq. ft. and less, a special permit for small growers as allowed by statute.

Staff is recommending that the RFQ for a Medical Marijuana Cultivation business permit include the following as *required* elements for which minimum standards will be developed for each:

1. Security: Applicants would be required to submit a written security plan, including, at a minimum, security cameras of all site and facility entrances and access points; all spaces accessible to the public; all secured areas of the facility with restricted access; all interior spaces and rooms where medical marijuana will be handled and processed; shipping and receiving areas; cash storage areas; and other areas necessary to protect the safety of employees and to ensure the product is handled in accordance with state and local laws. Security camera monitoring, both interior and exterior, would be required 24/7 and recordings should be kept for a minimum of 30 days. A plan for ensuring security during a power outage must also be included.
2. Employees: It is anticipated that background checks for the applicants and owners of medical marijuana cultivation facility will consist of a Live Scan fingerprinting and full background check. Each medical marijuana cultivation facility will be responsible for ensuring that all employees who are not required by the City to submit to a background check as part of the licensing process are appropriately background checked prior to commencing work at the facility and the results shall remain on file at the site. The intent is to prohibit the hiring of employees that have been convicted of serious crimes or engaged in misconduct that is substantially related to the qualifications, functions or duties of a cultivation facility operator.
3. Odor Filtration Plan: Applicants shall submit an odor filtration plan providing a description of how external odors will be controlled and eliminated.
4. Cash Handling Plan: Applicants shall submit a description of proposed cash handling procedures.
5. Transportation Plan: Applicants shall submit a plan describing the procedures for safely and securely transporting medical marijuana, products and currency.
6. Community Relations Plan: Applicants shall designate a person responsible for community outreach including interactions with neighboring neighborhoods and business associations. The application should include a written response from each neighborhood and business association that operates in the location where the new business is proposed.
7. Resource Efficiency Plan: Cultivation facilities require the consumption of significant amounts of water and energy. Applicants shall submit a plan to achieve both water and energy efficiency and to minimize resource consumption.

8. City Liability: Applicants shall include a statement indemnifying the City from any claims, damages, injuries or other liabilities associated with the registration and operation of the medical marijuana facility.
9. Floor Plan: Applicants for a cultivation site shall distinguish the dimensions of areas in which plants are proposed to be located in relation to all other working areas.
10. Plan of Operations: A plan describing how the cultivation facility will operate consistent with state law including controls to ensure that medical marijuana is not diverted for non-medical purposes and ensure that medical marijuana is delivered to and by licensed transporters and distributors.

The items listed above (1-10) are required to be submitted to obtain a business permit. The items listed below (11-15) are *optional (not required)* but may better facilitate the Conditional Use Permit (CUP) process and enable future cultivation businesses to have better working relationships with both business and residential neighbors.

11. Employee Working Environment Plan: *Optional*
  - a. Examples are as follows: health insurance, benefits, education, public transit or bicycle subsidy, etc.
12. Compassionate Need Plan: *Optional*
  - a. Examples are as follows: Donation to dispensaries to offset costs for those who cannot afford medical cannabis, veterans programs, etc.
13. Community Benefits Plan: *Optional*
  - a. Examples are as follows:
    - i. Local hire and workforce development
    - ii. Local and small business participation in construction of grow facilities
    - iii. Support for local arts, music and culture
    - iv. Support for local education and youth programs and activities
    - v. Support for local business and community groups
    - vi. Support for development and expansion of broadband wi fi access
14. Support for Small Business (See paragraph 1 of RFQ): *Optional*
  - a. Preference for local residents/businesses to develop small cultivation facilities. These businesses can be independent or as part of a larger growers' facility or cooperative.

**Economic Impacts:** None

**Environmental Considerations:** This action is not a project subject to the California Environmental Quality Act (CEQA) because it involves only general policy and procedure making and does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. (CEQA Guidelines, §§ 15002(d), 15378, 15061(b)(3).)

**Sustainability:** Not Applicable

**Commission/Committee Action:** The Law and Legislation Committee has conducted numerous meetings on the regulation of medical marijuana. In December 2015 the Committee directed the City Manager propose an ordinance regulating land use for medical marijuana cultivation in December 2015. That ordinance was forwarded to the City Council along with a moratorium on cultivation until land use and operating regulations could be detailed. At today's meeting, the updated cultivation ordinance and amendments to Title 17, with comments from the Planning and Design Commission, are on the agenda.

In May 2016, staff received additional input from the Committee and updated the timeline for draft regulations for cultivation, manufacturing and delivery of medical marijuana. This report is the first in a series that will also address delivery, manufacturing, distribution and transport of medical marijuana.

**Rationale for Recommendation:** There are several successful models throughout the state and nation regarding the regulation of medical marijuana. Staff is recommending that the Committee review the suggested outline for the Title 5 permitting of medical marijuana cultivation based upon these best practices. States and cities included in the research include but were not limited to: Nevada, Colorado, Washington, and the California cities of Oakland, Cathedral City, Greenfield, and Desert Hot Springs.

**Financial Considerations:** Medical marijuana Business Operations Tax (BOT) for retail sales in fiscal year 2015/16 was just over \$4,000,000. Assuming a 100% mark up (per cannabis industry), staff estimates an additional \$2,000,000 in BOT for marijuana cultivation sales.

**Local Business Enterprise (LBE):** Not Applicable