



REPORT TO LAW & LEGISLATION COMMITTEE

City of Sacramento

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915 I Street, Sacramento, CA 95814-2671

STAFF REPORT
December 1, 2009

**Honorable Members of the
Law and Legislation Committee**

Subject: Medical Cannabis Ordinance

Location/Council District: Citywide

Recommendation: This report recommends that the Law and Legislation Committee: 1) provide direction to staff on key policy issues related to the development of an ordinance to regulate medical cannabis, and 2) direct staff to report back with an ordinance for consideration by the Committee.

Contact: Gus Vina, Assistant City Manager, (916) 808-7138

Presenters: Gus Vina, Assistant City Manager

Department: City Manager's Office

Division: Government Affairs

Organization No: 0310

Description/Analysis

Issue: City Council directed staff to develop an ordinance to regulate medical cannabis operations. Proliferation of medical cannabis operations is an issue of statewide concern and there has not been a consistent response by other cities in California. On July 14, 2009, the City Council adopted Ordinance No. 2009-033, an emergency measure establishing a 45-day moratorium prohibiting new medical cannabis dispensing operations from opening and prohibiting existing dispensing operations from modifying or expanding their current setup. On August 25, 2009, the City Council approved extending the moratorium for an additional period of ten months and fifteen days. The moratorium will expire on July 13, 2010.

Staff is seeking direction on key policy issues related to the development of an ordinance to regulate medical cannabis.

Policy Considerations: City Council directed staff to develop an ordinance to regulate medical cannabis operations. Presently, the City's zoning code does not recognize or allow medical cannabis operations in the City. In light of the public safety, quality of life for our citizens and state law staff is seeking policy

direction from the Committee on various key items to include in an ordinance to regulate medical cannabis dispensing operations in the City.

Environmental Considerations: None

Rationale for Recommendation: Due to the conflicting responses by other cities in regulating medical cannabis dispensing operations, no clear standard is apparent on which to base key policy decisions required to finalize an ordinance at this time. Staff is seeking direction from the Committee on key policy issues in preparation of bringing a final ordinance forward for the Committee's consideration.

Financial Considerations: None

Emerging Small Business Development (ESBD): None

Respectfully Submitted by:



Michelle Heppner
Special Projects Manager

Recommendation Approved:



RAY KERRIDGE
City Manager

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Attachment 1

BACKGROUND

City Council directed staff to develop an ordinance to regulate medical cannabis operations. On July 14, 2009, the City Council adopted Ordinance No. 2009-033, an emergency measure establishing a 45-day moratorium prohibiting new medical cannabis dispensing operations from opening and prohibiting existing dispensing operations from modifying or expanding their current setup. On August 25, 2009, the City Council approved extending the moratorium for an additional period on ten months and fifteen days. This moratorium will expire on July 13, 2010.

An internal staff team was created from various departments to research and assist in the development of a medical cannabis ordinance. The team consists of staff from the City Manager’s Office, the City Attorney’s Office, Sacramento Police Department, Code Enforcement, Community Development (Planning Division), and Finance (Revenue Division). Select team members conducted tours of various medical cannabis operations to determine best practices. Tour locations included two in Oakland, one in Sebastopol and three in Sacramento. Staff has also researched ordinances of other cities that allow for and regulate medical cannabis operations (See Attachment 3). These ordinances indicate no consistency in local governments approach to regulating these establishments and they vary significantly in relation to the geography and demographics of each city. In addition, some ordinances have very specific limits and are tightly monitored while others lack clear requirements.

In evaluating the information from research and input from stakeholders, staff has identified key policy issues that will be addressed in a draft ordinance. Attachment 2 of this report enumerates these issues along with staff recommendations for consideration by the Committee. Staff is requesting the Committee provide direction on these issues to assist in the drafting of an ordinance.

Following is the anticipated timeline for conducting community information efforts, stakeholders meetings and drafting an ordinance for consideration by the Law and Legislation Committee and the full City Council.

Time Period	Tasks
January – February	<ul style="list-style-type: none"> • Conduct Community Information meetings (4) • Conduct second Stakeholder meeting • Outreach to District Attorney’s Office/Public Safety
March – April	<ul style="list-style-type: none"> • Draft Ordinance presentation to Law and Legislation Committee • Proposed Ordinance to City Council

Attachment 2

**Medical Cannabis Ordinance
Key Policy Discussion Points**

1. Issue: Should the City's Ordinance be consistent with State Law and the Attorney General's Guidelines?

Recommendation: City's Ordinance must be consistent with State Law and follow the guidelines of the Attorney General. Failure to comply with state law will expose the individual operators to state and federal criminal prosecution.

2. Issue: Should the City establish fees and charges?

Recommendation: The City should establish a fee schedule that provides for full recovery of program costs. Additionally, an application and annual permit fee should be required.

3. Issue: How many collectives or cooperatives should be allowed under the City's ordinance?

Recommendation: Staff recommends using a zoning based approach and analysis to determine how many locations would be appropriate with a focus on locating facilities in commercial and industrial zones. The ordinance should also specifically identify a maximum number of allowed collectives and/or cooperatives.

4. Issue: Should the ordinance include Sensitive Uses and Zoning considerations?

Recommendation: Consistent with other sensitive use ordinances, staff recommends that the cooperatives or collectives not locate within 300 feet of any youth oriented facilities (schools, parks, day care, community centers, etc) or each other. Additionally, the zoning requirements or conditions will be consistent with current retail zoning.

Other zoning considerations include: 1) Using 500 or 1,000 feet from youth oriented facilities, and 2) Restricting any facility from operating within redevelopment areas.

5. Issue: Should the ordinance include conditions of operation?

Recommendations: It is recommended that the ordinance include: Criminal History (no felonies or misdemeanors); established hours of operation between 7am and 9pm; No on-site consumption; and Security requirements (i.e. guards, lighting, alarms, etc.) to be determined by the Chief of Police.

6. Issue: What type of permit should the city require and should the permit be transferrable?

Recommendation: Staff recommends that a business permit be required and that it not be transferable. This is consistent with best practices in many cities as well as other City business permits.

7. Issue: Should the ordinance address the issue of “edibles” as a form of medical cannabis use?

Recommendation: Staff recommends against including this issue in the ordinance since it will be impossible to regulate due to the fact that the County does not have any Federal Drug Agency guidelines for medical cannabis. Patients that are unable to smoke cannabis can still purchase it to create edibles for their personal consumption.

8. Issue: How will the City select cooperatives and collectives?

Recommendation: It is recommended that the city engage in a Request for Proposal process and select the number of collectives/cooperatives consistent with council policy direction. The city of Oakland used this approach with very good results.

9. Issue: Should there be an appeal process for acceptance or denial of a permit?

Recommendation: Staff recommends that the City Manager’s Office or a designee provide the appeal process for applicants.

10. Issue: Should the ordinance establish procedures for terminating or continuing the operations of registered and existing dispensaries in the city?

Recommendation: Staff recommends that a grace period be provided to registered dispensaries to come into compliance with the permanent ordinance. After the compliance period ends the dispensary must close down if it remains out of compliance.

Attachment 3

CITIES IN SACRAMENTO REGION REGULATING MEDICAL CANNABIS

City	Ordinance Date	# of Dispensaries Allowed
Citrus Heights	September 2004	No limit however none have been permitted because zoning code requires them to conform to fed & state laws which are contradictory.
Davis	Medical marijuana dispensaries are prohibited in all zoning districts, including without limitation to all planned development districts	
Folsom	July 2006	Completely bans medical marijuana dispensaries.
Elk Grove	July 2006	No limit (Special business license and a Conditional Use Permit from Planning Commission required. Standard Business License Fee of \$100 for two years)
Galt	July 2009	Ban on medical marijuana dispensaries.
Rancho Cordova	Moratorium adopted in 2005.	Council to reconsider how to deal with medical marijuana dispensaries in January 2010
Roseville	July 2005	Completely bans medical marijuana dispensaries and makes operation of a dispensary a misdemeanor
Woodland	Urgency ordinance placed a temporary moratorium - September 2009	Council to consider an amendment to zoning code banning medical marijuana dispensaries in December 2009

Attachment 4

OTHER CITIES IN CALIFORNIA REGULATING MEDICAL CANNABIS

City	Ordinance Date	# of Dispensaries Allowed	How permitted/ authorized?	Fees/Charges
Berkeley	2002	Limited to 3 (pre-existing at time of ordinance)	Zoning Certificates	One-time (\$47)
Malibu	August 2008	Limited to 2 (pre-existing at time of ordinance)	Conditional use permit	\$3,444 + additional agency fees
Oakland	2004	Limited to four	Conditional use permit	\$30,000 each year
San Francisco	November 2005	No limit	Building permit	\$8,459 processing and application fee
San Jose	Ordinance approved in 1997 and rescinded in 2001			
Santa Cruz	2000	No limit	Business license and sales tax	No
Santa Rosa	2005	Limited to 2 plus a cap on number of members	Special permit created	\$3,800 annual renewal

Attachment 5

Include in MMJ Ordinance		Exclude from MMJ Ordinance		Other Suggestions	
Definitions	<ul style="list-style-type: none"> • Definition of Dispensary needs to be clear in the final ordinance. • Add the words "Operating a storefront Dispensary" to the end of the definition. • Distinguish between terminologies. Collectives and dispensaries are not synonymous terms. There is no definition for dispensaries within the law. 	<ul style="list-style-type: none"> • Avoid Bad definitions that excluded patients collectively cultivating. 			
Limiting numbers.	<ul style="list-style-type: none"> • If we don't regulate the number of dispensaries from opening or at least stop the ones from opening that plan to, there'll be one on every corner. • The number of dispensaries should be VERY limited (4 within City limits and maybe 6 more within the County?). 	<ul style="list-style-type: none"> • Do not limit number of dispensaries or number of patients. • Limiting the amount of dispensaries is counter productive to patients. Different facilities provide different services and different products. Also people working there and who you feel more comfortable with. Choice is the ultimate factor. Forces other collectives to step their game up a little bit, be more competitive and provide better services, better medicine and run a better facility. Limiting forces larger organizations who do become nuisances and so create issues, have parking issues and make their neighbor angry because there's constant flow of people coming in and out because you've limited the number of dispensaries but not limited the number of patients. • Limiting dispensary size. 	<ul style="list-style-type: none"> • When determining the number of dispensaries in Sacramento, keep in mind that patients are coming from all over (Redding, LA), not just Sacramento. • Dispensaries are a rapidly growing, sophisticated business. Regulation and assessments should recognize that and be comparable to other major industries in town. 		
Secret Shoppers					<ul style="list-style-type: none"> • Send out secret shoppers to ensure facilities are operating acceptably.
Safety	<ul style="list-style-type: none"> • Require alarm systems and a greeter at the front door. • Require a security plan and a safety plan for the collective that staff and members are aware of. 	<ul style="list-style-type: none"> • Do not restrict hours of operation. 			

	<ul style="list-style-type: none"> • Require a safe for money and product. • Security should be through a security company because they are already trained. • Hours of operation are important but shouldn't align with school hours. • Hours of operation: 8 AM to 10 PM? • Require 24-hour on site security. Possibly off-duty law enforcement. Recent robberies at two dispensaries located in Land Park highlight the need. • Require adequate security, surveillance systems with at least a 7 day recording capacity, alarm system, security guard that holds a valid California Guard Card. • Medical marijuana dispensaries do not pose a public health threat in the way that places that serve alcohol do. People do not go to a dispensary to leave under the influence, most people who go to a bar leave under the influence of alcohol and pose a far greater threat to public safety than someone who comes to a dispensary to alleviate symptoms of their illness. Most medical marijuana patients wait until the get home to medicate. 		
<p>Signage</p>	<ul style="list-style-type: none"> • Signage – Marijuana leave should not be allowed on signage. • Dispensaries should be clearly identified by signage, so it doesn't look like it's running out of some person's house. 		
<p>Sensitive Use Areas</p>	<ul style="list-style-type: none"> • Require they be at least 500 ft from an elementary, middle and high school and other such dispensaries. • Provide consideration for more dense areas like downtown. • Judged distances on sensitive use on a case by case basis. • Consider neighborhoods that are more mixed use or more dense when taking a zoning approach. Consider a rather being "reasonably buffered" from sensitive uses. • Zone a MMJ like you would a drug store. • Address clustering, proximity from each other. Given their (for better or worse) unseemly business, clustering of dispensaries creates the appearance of a faltering business area. 	<ul style="list-style-type: none"> • There should not be any sensitive areas in ordinance; MMJ's are no different from a RiteAid. • Limitations are unnecessary; most patients walk out with a brown bag with their medicine. • Don't put a limitation on distances from churches because you would ban churches from helping patients. 	

	<ul style="list-style-type: none"> • Prohibit clustering within 10 blocks of each other. • Employ boundary concerns and distances to avoid over saturation in the market. 		
<p>Alignment with State Law, Attorney General Guidelines, and other laws</p>	<ul style="list-style-type: none"> • Be consistent with Attorney General's guidelines. • Require sellers permit. • MMJ's must pay local and state taxes. • Require verification – Patient, doctor, and county card checks to ensure no redistributing occurs. (already addressed under AG guidelines which means calling the physician to verify the paperwork and verifying the physician under the State Board of Health) • The Attorney General Guidelines were written in August 2008. Some of the guidelines include: <ol style="list-style-type: none"> Operating as a collective or cooperative. Organized as a non-profit. Hold a business license and sellers permit. Are up to date with sales tax. Have a membership application and verification process. Only acquire medicine from qualified members and do not distribute medicine to non-members. 1,000 feet from schools, residential, and parks. Adequate security to ensure that neighbors and patients are safe. 	<ul style="list-style-type: none"> • Beware of over regulating. • Regulation should be in line with pharmacies, liquor stores and other retail locations where licenses and/or guidelines are in place. 	
<p>Community</p>	<ul style="list-style-type: none"> • Require a good neighbor policy. 		<ul style="list-style-type: none"> • Being a part of the community and everything that is involved. (Good neighbor) • Safe community, helping collectives become involved with a security culture, good neighbor policies, codes of conduct etc.
<p>Location / Relocation</p>	<ul style="list-style-type: none"> • Consider time for relocation. (6-8 months is not uncommon period of time to relocate) • City should issue letter to landlords of those who have to move to protect established business. • Allow the option to relocate within the City of Sacramento should it become necessary to move (i.e., lease expires, damage to structures, etc.) as long as a new location as per 	<ul style="list-style-type: none"> • Relocation provides an unnecessary loophole for collectives that did not follow the AG Guidelines from the beginning. • Avoid excluding a good collective due to location. 	

	<p>guidelines.</p> <ul style="list-style-type: none"> • The ordinance should limit the locations to those more-easily patrolled by police. • Safe medicine, ensuring the medicine is safe through documenting quality assurance reports and tracking the medicine through the collective. • Require testing of medical cannabis. 		
<p>Health and safety of MMJ</p>	<ul style="list-style-type: none"> • Safe medicine, ensuring the medicine is safe through documenting quality assurance reports and tracking the medicine through the collective. • Require testing of medical cannabis. 		<ul style="list-style-type: none"> • Find a way to instruct the County Health Department to work with us and find a way we can test the plant material going into the edibles so we certify them instead of falling into a loop hole. • Based on media reports, there is a problem with doctors providing bogus prescriptions. Additionally, screening at the dispensaries is suspect. Regulation should not ignore this side of the equation.
<p>Business Practices</p>	<ul style="list-style-type: none"> • Require responsible accounting, to make sure that business is operated in a responsible manner. • Checks and balance in how employees handle their money and product. • Employees should have background checks. • Mobile / delivery should be addressed in ordinance. It is important if these people are going to sick patients' homes? 1) Verify criminal record. 2) Insurance. 3) Place and name of responsible party. • Background checks on operators and employers only – not volunteers – too costly. • Allow delivery to patients. • Only primary caregiver and patient shall be permitted in the designated dispensary area with dispensing personnel. All other authorized visitors who do not possess a valid California Doctor's Recommendation shall remain in the designated waiting area in the front entrance/lobby area to discourage what could be comprehended as loitering. 	<ul style="list-style-type: none"> • City shouldn't require background checks and try to discriminate against felons. Prop 215 was designed to be as inclusive as possible (that's why it says "or any other serious illness") and to start discriminating sets a bad tone and goes against the specific intent the voters had. SB 420 even goes so far as to make sure that parolees, probationers etc are specifically protected and allowed the exact same benefits from medical marijuana as anybody else. • Cost for background checks spills over into patient costs for medicine. 	
<p>Taxes and fees</p>	<ul style="list-style-type: none"> • Establish a licensing fee for existing and new dispensaries. Proceeds will go to local law enforcement and nearby streetscape improvements. Drug use has a clear tie to criminal activity and appearance of local communities. Licensing fee should be set at a rate high enough to provide substantial contributions to both. 	<ul style="list-style-type: none"> • No sin tax or special use tax. Don't believe in any special taxes and hope to be treated like any other business. Medicine isn't taxed and shouldn't be taxed. It's just going to hurt the patients. • No taxes, they spill over as costs to patients. 	
<p>Law Enforcement</p>	<ul style="list-style-type: none"> • The ordinance should limit the locations to those more-easily patrolled by police. 	<ul style="list-style-type: none"> • Do not affect groups of patients who are collectively cultivating. 	<ul style="list-style-type: none"> • Provide training for police so they don't harass patients and vendors who provide medicine for MMJ's.
<p>Inspections</p>	<ul style="list-style-type: none"> • Allow one day's notice with immediate access to financial 	<ul style="list-style-type: none"> • Regulation, inspection and enforcement really 	

	records etc. Define with the exclusion to patient's medical records without the proper warrants so the HIPAA is not violated.	should not be done by law enforcement; they've got a lot better things to do with their time. In reality, we're talking about health issue. San Francisco uses a health inspector from their health dept to do health inspections of the facilities and it has worked out very well for San Francisco. City may want to look into something like that in the future. Unless there is a criminal issue and law enforcement would be needed, otherwise the regulatory practice regulatory practice through the health dept would be a better option.	
General	<ul style="list-style-type: none"> • Best practices to include in the final ordinance: please work closely with Americans for Safe Access, Don Duncan (323) 326-6347. No need to re-invent the wheel. They have excellent guidelines and sample ordinances. • Require the City to process applications within a specific timeline. Preferably 30 days but no more than 90 days. 	<ul style="list-style-type: none"> • Don't create regulations on a case-by-case basis, because it creates bias and loopholes. 	<ul style="list-style-type: none"> • Avoid being influenced by people who represent themselves as activists/lobbyists, but who actually have a private interest in the industry.
Application Process			
Categorizing MMJ's			<ul style="list-style-type: none"> • Concerned about flat out discriminatory business practices. City must consider where this issue stands in relation to other kinds of businesses and other kinds of medical facilities in addition to other unrelated types of businesses. Doesn't want to be lumped into a category that has nothing to do with medicine.