



REPORT TO COUNCIL
City of Sacramento
915 I Street, Sacramento, CA 95814-2604
www.CityofSacramento.org

STAFF REPORT
July 27, 2010

**Honorable Mayor and
Members of the City Council**

Title: Ordinance: Medical Cannabis Dispensing Operations

Location/Council District: Citywide

Recommendation: Staff recommends that City Council 1) review and approve the key components of the proposed Ordinance regulating Medical Cannabis Dispensing Operations and 2) direct staff to develop an Ordinance regulating Medical Cannabis Dispensing Operations and return to City Council for consideration.

Contact: Michelle Heppner, Special Projects Manager, 808-1226

Presenters: Michelle Heppner, Special Projects Manager

Department: City Manager's Office

Division: Government Affairs

Organization No: 09200

Description/Analysis

Issue: In June 2009, the 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. Currently, the City has a moratorium prohibiting new medical cannabis dispensing operations from opening and prohibiting existing dispensing operations from modifying or expanding their current setup. The moratorium will expire on July 13, 2011.

On December 1, 2009 staff requested direction from the Law and Legislation Committee on key policy issues related to the development of an ordinance to regulate medical cannabis. Staff has researched ordinances of other cities regulating medical marijuana including visiting a number of medical cannabis dispensing operations in Oakland, Sebastopol, and Sacramento. In addition, staff has conducted several outreach meetings with local medical cannabis dispensing operators / stakeholders.

On April 6, 2010, staff presented to the Law & Legislation Committee ten key components to be included in the proposed ordinance to regulate medical cannabis

dispensing operations. After lengthy discussion, the Law & Legislation Committee approved the majority of the key components but directed staff to further research the following two unresolved key issues:

1. Location requirements – a request was made for staff to consider more flexible location requirements in conjunction with sensitive uses to allow medical cannabis dispensing operations to locate in the central city.
2. Number of dispensaries allowed – a request was made for staff to determine whether the number of medical cannabis dispensing operations (12 were recommended) should remain the same or if the number should change relevant to the above request to consider a special area in the central city to allow medical cannabis dispensing operations to locate.

Based on recommendations by the Law & Legislation Committee on April 6, 2010, staff is seeking further direction on these two unresolved key policy issues. In addition to the proposal presented to the Law & Legislation Committee, staff has developed two alternative options for City Council's discussion and direction. These three options are outlined in Attachment 3.

Policy Considerations: The City Council has determined that it wishes to allow medical cannabis dispensing operations in the City and 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.

Environmental Considerations:

California Environmental Quality Act (CEQA):

Under the California Environmental Quality Act (CEQA) guidelines, continuing administrative activities do not constitute a project and are therefore exempt from review.

Sustainability Considerations: None

Commission/Committee Action: The Law & Legislation Committee heard this item on April 6, 2010 and approved several of the key components of the ordinance and directed staff to further research the location requirements and the number of Medical Cannabis dispensing operations that should be allowed relevant to these location requirements. The Law & Legislation Committee referred this item to the full City Council for discussion.

Rationale for Recommendation: Due to the conflicting responses by other cities in regulating medical cannabis dispensing operations, no clear standard is applied in cities that regulate these establishments. Based on the direction received by the Law and Legislation Committee on December 1, 2009 and April 6, 2010 and further research, staff is recommending the City Council approve the key components contained in Option 3 for the proposed Ordinance.

Financial Considerations: Adoption of an ordinance to regulate medical cannabis dispensing operations will result in cost recovery fees being generated through the issuance of Business Permits and/or Special Permits. The amount is unknown at this time and is dependent on City Council direction.

Emerging Small Business Development (ESBD): None

Respectfully Submitted by: _____



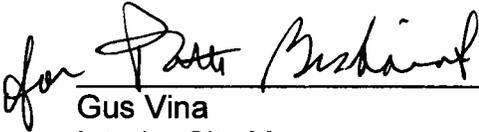
Michelle Heppner
Special Projects Manager

Approved by: _____



Patti Bisharat
Interim Assistant City Manager

Recommendation Approved:



Gus Vina
Interim City Manager

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Attachment 1

BACKGROUND

The City Council has determined that it wishes to allow medical cannabis dispensing operations in the City. Presently, the City's zoning code does not recognize or allow medical cannabis operations in the City.

On June 16, 2009 City Council directed staff to develop an ordinance to regulate medical cannabis dispensing 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 medical cannabis 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. On June 1, 2010, the City Council approved a final extension for an additional period of one year, the maximum time allowable under state law. The moratorium will expire on July 13, 2011.

On December 1, 2009, staff requested direction from the Law and Legislation Committee on key policy issues related to the development of an ordinance to regulate medical cannabis dispensing operations. Staff has researched ordinances of other cities regulating medical marijuana including visiting a number of medical cannabis dispensing operations in Oakland, Sebastopol, and Sacramento. In addition, staff has conducted several outreach meetings with local medical cannabis dispensing operators / stakeholders.

On April 6, 2010, staff presented to the Law & Legislation Committee ten key components (Attachment 2) to be included in the proposed ordinance to regulate medical cannabis dispensing operations. After lengthy discussion the Law & Legislation Committee approved the majority of the key components but directed staff to further research the following two unresolved key issues:

1. Location requirements – a request was made for staff to consider more flexible location requirements in conjunction with sensitive uses to allow medical cannabis dispensing operations to locate in the central city.
2. Number of dispensaries allowed – a request was made for staff to determine whether the number of medical cannabis dispensing operations (12 were recommended) should remain the same or if the number should change relevant to the request to considering more flexible central city location requirements.

Based on recommendations by the Law & Legislation Committee on April 6, 2010, staff is seeking further direction on these two unresolved key policy issues. In addition to the proposal presented to the Law & Legislation Committee, staff has developed two alternative options for City Council's discussion and direction. These three options are outlined in Attachment 3 and a summary of each is provided below.

Option 1 – Heard by the Law & Legislation Committee on April 6, 2010

This option includes the ten key components outlined in Attachment 2 of this report. Location criteria would require medical cannabis dispensing operations to be located in commercial and industrial zones only (C2, C3, C4, M1, M1S, M2, M2S, OB, & SC) with a

distance of 500 feet from sensitive use areas such as youth oriented facilities, churches, substance abuse centers, and other medical cannabis dispensing operations.

Under this option, the number of City Business Permits to operate medical cannabis dispensing operations will be limited to twelve (12). City Business permits will be renewed annually and may be revoked for non-compliance of the ordinance.

Advantages	Disadvantages
<ul style="list-style-type: none"> • Controlled number of facilities • Business permit only - less expensive 	<ul style="list-style-type: none"> • Public transit - inconvenient locations for patients to travel to • 27 businesses will be closed down • More activity around less facilities

Option 2 – Central City Special Permit

This option would incorporate most of the key components in Option 1; however, medical cannabis dispensing operations will be allowed to locate in specific zones (C2, C3, C4, M1, M1S, M2, M2S, OB, & SC) in the central city under a Title 17, Chapter 212 Special Permit to determine if the proposed use will have an impact on bordering properties or sensitive use areas. In addition, all medical cannabis dispensing operations will be required to obtain a City Business Permit. City Business Permits are renewed annually and may be revoked for non-compliance of the ordinance.

Under this option, the number of City Business Permits for medical cannabis dispensing operations in the central city area is undefined, but in the rest of the city, the number is limited to nine (9).

Advantages	Disadvantages
<ul style="list-style-type: none"> • More opportunity to stay in business • More conveniently located for patients 	<ul style="list-style-type: none"> • Permit applications not treated equally • Businesses may move in to central city • High concentration in one area • Business and Special permits – more costly

Option 3 – Citywide Special Permit

Option 3 provides a Citywide Special Permit approach. Medical cannabis dispensing operations that meet the location and sensitive use criteria may locate by right in specific zones (C2, C3, C4, M1, M1S, M2, M2S, OB, & SC); otherwise, a Title 17, Chapter 212 Special Permit is required in order to determine if the proposed use will have an impact on bordering properties or sensitive use areas. In addition, all medical cannabis dispensing operations will be required to obtain a City Business Permit. City Business Permits are renewed annually and may be revoked for non-compliance of the ordinance.

Under this option, the number of City Business Permits for medical cannabis dispensing

operations is undefined.

Advantages	Disadvantages
<ul style="list-style-type: none"> • Opportunity to stay in business • More conveniently located for patients • Uniform standards and requirements for all applicants • Uniform costs for all applicants 	<ul style="list-style-type: none"> • Business and Special permits – more costly

Outreach

Staff conducted outreach meetings and provided stakeholders and central city business owners an opportunity to respond to the three options contained in Attachment 3. A summary of the feedback from these outreach meetings is contained in Attachment 4 of this report.

Anticipated Timeline

July – City Council – Direction

September – City Council – Adoption of Medical Cannabis Ordinance

October – Ordinance Effective / Application Processing

Attachment 2

Key Components Heard by Law & Legislation Committee – April 6, 2010

In developing an ordinance to regulate medical cannabis dispensing operations, staff identified several key components to be considered. These key components incorporate the direction received from the Law and Legislation (L&L) Committee at the December 1, 2009 and the April 6, 2010 meetings, feedback from the medical cannabis dispensing operator's stakeholders, and research of best practices from other cities regulating medical cannabis operations.

The following key components were considered by the L&L Committee for inclusion in an ordinance to regulate medical marijuana dispensaries:

1. Compliance with Existing State Law (Approved by L&L)

- Compassionate Use Act of 1996 (Proposition 215)
- Medical Marijuana Program Act of 2003 (SB 420), and
- Guidelines issued by the Attorney General in 2008.

2. Number of Dispensaries Allowed (Unresolved by L&L)

- Allow up to 12 dispensary permits – Reevaluate after 1 year.

3. Location (Approved by L&L)

- Allow in Commercial and Industrial Zones Only (No Residential Zones).
- Require a 300 feet buffer from Residential Zones.
- Must comply with same requirements as a "Retail" establishment for minimum building standards, parking, ADA, etc.

4. Distance from Sensitive Uses (Unresolved by L&L)

- Require 500 feet from Youth oriented facilities (parks, schools, day care), churches, substance abuse centers and other Dispensaries. (Distance Map on Attachment 5)
- Possible waiver of location requirements if the City Manager determines that a physical barrier, buffer, or similar condition exists which achieves the same purpose and intent as the distance separation requirements i.e. a highway.

5. Conditions (Approved by L&L)

- Dispensary size not to exceed 8,000 square feet maximum.
- Require on-site security during business hours.
- Require Fire, Burglary, and Robbery Alarm System.
- Lighting requirements.
- Signage requirements - not to exceed six square feet in area or 10 percent of the window area, whichever is less.
- Require a door locking system.
- Require security cameras - retain recording for no less than 30 days.

- Business hours - 7 AM – 9 PM.
- Criminal history – All staff, owners and volunteers not convicted of a felony.
- No minors as employees.
- No on-site consumption and require restrooms to be locked at all times.
- No on-site alcohol consumption or sales – facility may not maintain an ABC license.
- Other than providing medical marijuana no sales or services of any kind allowed at the dispensary.
- Require posting sign on all marijuana products that states patrons/members of the dispensary assume the risk of injury or harm if they consume any marijuana product. Similar to the disclaimer on cigarette packs. Example: Neither the City, County or any other public agency has tested or inspected any marijuana product distributed at this location.

6. Permits (Approved by L&L)

- Annual Renewal.
- Non-Transferable unless approved by the City Manager.
- Lottery Process whenever the dispensary permits in the City fall below 12.

7. Fees (Approved by L&L)

- Fee schedule to provide for full recovery of program costs.
- Application Fee, Permit Fee, Pre-inspection fee, & Renewal Fee.

8. Appeals (Approved by L&L)

- City Manager's decision is final with no appeal to council.

9. Enforcement (Approved by L&L)

- On-going Inspection & Monitoring by Code Enforcement (Revoke permit for non compliance).
- Code Enforcement will be the primary enforcement i.e. nuisance complaints, however criminal incidents will be dealt with through the Sacramento Police Department.
- Hours of operation restricted to police response.

10. Violations (Approved by L&L)

- Misdemeanor, civil and administrative penalties for any person that violates the ordinance.
- Civil penalties of not less than two hundred fifty dollars (\$250.00) or more than twenty-five thousand dollars (\$25,000.00) for each day the violation continues.

Attachment 3

Summarized Options for a Medical Cannabis Ordinance

	Option 1	Option 2	Option 3
	Heard by the L&L Committee on April 6, 2010	Central City Special Permit	Citywide Special Permit
<u>2. Number of Dispensaries Allowed</u>	<ul style="list-style-type: none"> • 12 (Re-evaluate after 1 year) 	<ul style="list-style-type: none"> • No defined cap in central city boundaries but limited to 9 in the rest of city. 	<ul style="list-style-type: none"> • No defined cap citywide, special permit criteria and market to drive saturation.
<u>4. Location Requirements / Sensitive Uses</u>	<ul style="list-style-type: none"> • Allowed citywide in Commercial and Industrial Zones Only (C2, C3, C4, M1, M1S, M2, M2S, OB, SC). No Residential Zones • Require a 300 feet buffer from Residential Zones • Must comply with same requirements as a "Retail" establishment for minimum building standards, parking, ADA, etc • Require 500 feet from Youth oriented facilities (parks, schools, day care etc), churches, substance abuse centers and other Dispensaries • Possible waiver of location requirements if the City Manager determines that a physical barrier, buffer, or similar condition exists which achieves the same purpose and intent as the distance separation requirements i.e. a highway 	<ul style="list-style-type: none"> • Allowed citywide in Commercial and Industrial Zones Only (C2, C3, C4, M1, M1S, M2, M2S, OB, SC). No Residential Zones • Require Special Permit to locate within central city area • Require 500 feet from youth oriented facilities (parks, schools, day care etc), churches, and substance abuse centers. • Require 1,000 feet from other dispensaries. 	<ul style="list-style-type: none"> • Allowed citywide in Commercial and Industrial Zones Only (C2, C3, C4, M1, M1S, M2, M2S, OB, SC). No Residential Zones • Require Special Permit citywide (unless all other criteria met) • Require 500 feet from youth oriented facilities (parks, schools, day care etc), churches, and substance abuse centers. • Require 1,000 feet from other dispensaries.
<u>Permit</u>	<ul style="list-style-type: none"> • Business Permit 	<ul style="list-style-type: none"> • Business Permit PLUS • Special Permit within designated central city area 	<ul style="list-style-type: none"> • Business Permit and • Special Permit (Unless ordinance requirements are met)
<u>Fees</u>	<ul style="list-style-type: none"> • One-time Application Fee • Annual Renewal Fee 	<ul style="list-style-type: none"> • One-time Application Fee • Annual Renewal Fee • One-time Special Permit Fee 	<ul style="list-style-type: none"> • One-time Application Fee • Annual Renewal Fee • One-time Special Permit Fee

SUMMARY OF CONCERNS FROM COMMUNITY AND STAKEHOLDER OUTREACH MEETINGS.

Option 1

- Limiting the number - Capping the number of medical cannabis dispensing operations to 12. Concerns from patients included the access to specific types of cannabis that is unique to each medical cannabis dispensing operation. Accessibility concerns if there were too few dispensaries as well as increased parking and nuisance issues due to crowding. Fewer dispensaries more subject to theft due to increased inventory requirements to serve more patients. Suggestion to grandfather existing operational dispensaries and reevaluate after a year.
- Location – concerns that limiting medical cannabis dispensing operation to commercial and industrial zones would force them into outlying areas further restricting patient accessibility due to lack of public transit. Concerns also related to increased vulnerability to crime in outlying areas.
- Sensitive Use Concerns – Patients and medical cannabis dispensing operators both had concerns regarding sensitive uses and felt they were too restrictive give that some nightclubs and bars are allowed to operate in close proximity to sensitive uses. Sensitive uses should not include churches as they are supporters of medical cannabis.
- Appeals should not be restricted to the City Manager; a full appeals process needs to be available.

Option 2

- Clustering – Concerns regarding the clustering in the central city area. Central City becoming a dumping ground for social issues.
- Fairness – All applications should be treated the same giving everyone an opportunity to operate.
- Cost of special permit – Concerns related to the cost of a special permit in addition to the annual business permit costs and the proposed BOT on cannabis.

Option 3

- Support - Overwhelming support for option 3 due to fairness and ability to provide all medical cannabis dispensing operations an opportunity to apply and remain in business.
- Cost of special permit – Concerns related to the cost of a special permit in addition to the annual business permit costs and the proposed BOT on cannabis.