



REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

915 I Street, Sacramento, CA 95814-2671

STAFF REPORT
April 6, 2010

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

Subject: Ordinance: Medical Cannabis Dispensing Operations

Location/Council District: Citywide

Recommendation: Staff recommends that the Law and Legislation Committee 1) approve the key components of the proposed Permanent Ordinance regulating Medical Cannabis Dispensing Operations and direct staff to finalize an ordinance to bring forward to the full City Council, 2) provide staff direction on a companion ordinance that sets forth the Inaugural Application Process that will sunset after the initial 12 permits are issued or 365 days after the effective date of the ordinance, whichever is earliest and 3) direct staff to bring the companion ordinance forward to the full City Council with the permanent ordinance.

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. 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.

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 seven medical cannabis dispensing operations in Oakland, Sebastopol, and Sacramento. In addition, staff has

conducted two separate outreach meetings with local medical cannabis dispensing operators / stakeholders. One prior to drafting the ordinance and the second one to review the key components of the draft ordinance that staff is recommending to the Law and Legislation Committee. Staff also conducted four Neighbor Services Department Area meetings to present the key components of the proposed ordinance to residents and other interested groups.

Feedback from these Neighborhood Services Department Area meetings and stakeholder meeting is contained in Attachment 5 of this report. This report reflects the direction received and recommends the Law and Legislation Committee approve the proposed ordinance to regulate medical cannabis dispensing operations and forward it for consideration to the full City Council.

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: None

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 do regulate these establishments. Based on the direction received by the Law and Legislation Committee on December 1, 2009, staff is recommending the Committee approve the key components of the proposed Permanent Ordinance. Additionally, staff is requesting direction on the second or companion ordinance that sets forth the Inaugural Application Process that will sunset after the initial 12 permits are issued or 365 days after the effective date of the ordinance, whichever is earliest. Upon the Committee's approval and direction, staff will bring forward the two ordinances to the full City Council with recommendation for approval.

Financial Considerations: None

Emerging Small Business Development (ESBD): None

Respectfully Submitted by: _____



Michelle Heppner
Special Projects Manager

Recommendation Approved:

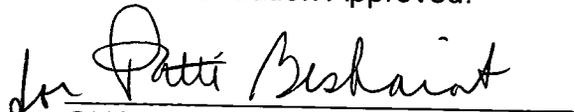

GUS VINA
Interim City Manager

Table of Contents:

Pg 1 Report

Attachments

1	Pg	3	Background
2	Pg	5	Key Components of the Proposed Ordinance
3	Pg	7	Inaugural Application Process Detail
4	Pg	10	Table – Other Cities in California Regulating Medical Cannabis.
5	Pg	11	Map illustrating 500 Feet Proximity to Sensitive Use Areas.
6	Pg	12	Summary of comments from Stakeholders Meeting and the four Neighborhood Services Department Areas Meetings.

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. 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.

Attachment 3 of this report provides the details of a proposed application and three phase selection process to issue the initial 12 permits during what staff will identify as the Inaugural Application Period. This companion ordinance is proposed to be adopted at the same time as the Permanent Ordinance and sunset when the initial 12 permits are issued or 365 days after the effective date of the Inaugural Application Period Ordinance.

Attachment 4 of this report provides a matrix of cities in California regulating medical cannabis. Staff has researched the ordinances of these other cities regulating medical cannabis as well as conducting on-site visits to seven medical cannabis dispensing operations in Oakland, Sebastopol, and Sacramento. Staff identified key components of the proposed ordinance which was drawn on for community and medical cannabis dispensing operators outreach. Staff has conducted two outreach meetings with medical cannabis dispensing operators / stakeholders. One prior to drafting the ordinance and the second one to review the key components of the draft ordinance staff is recommending to the Law and Legislation Committee. Staff also conducted four Neighborhood Services Department Area meetings to present the key components of the proposed ordinance to residents and other interested groups.

During the outreach meetings several concerns were raised by the stakeholders and residents. The majority of the concerns were related to limiting the number of medical cannabis dispensing operations to twelve, restricting the location of these operations to commercial and industrial zones, and sensitive uses being too restrictive. Restricting industrial and commercial zones in combination with proposed sensitive uses may result in relocating dispensing operations to outlying areas where no public transportation is available. A summary of the concerns, suggestions and questions from the Neighborhood Services Department Area meetings and the second stakeholder meeting are contained in Attachment 6 of this report.

Attachment 2

The following key components recommended for inclusion in the Proposed Permanent Ordinance regulating medical marijuana dispensaries incorporates the direction received from the Law and Legislation Committee at the December 1, 2009 meeting, feedback from the medical cannabis dispensing operator's stakeholders, and research of best practices from other cities regulating medical cannabis operations.

The key components of the proposed ordinance are outlined below:

Compliance with Existing State Law

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

Number of Dispensaries Allowed

- Allow up to 12 dispensary permits – Reevaluate after 1 year. (Ratio's of CA cities on Attachment 4)

Location

- 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.

Distance from Sensitive Uses (Proximity Map on Attachment 3)

- 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 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.

Conditions

- 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.

Permits

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

Fees

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

Appeals

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

Enforcement

- 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 Sac PD.
- Hours of operation restricted to police response.

Violations

- 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

Staff is proposing to adopt a second or companion ordinance that sets forth the Inaugural Application Process and sunsets after the initial 12 permits are issued. Under this proposal the Permanent Ordinance in Attachment 1 would be adopted at the same time as the Inaugural Application Process set forth here. The justification for the two ordinances is to avoid confusion and for statutory economy that will allow one ordinance to sunset after its conditions are satisfied. However, there is no legal requirement that two ordinances be adopted to accomplish the intent and purpose of the Permanent Ordinance.

Application & Permit Requirements

- Applicant may not be a felon.
- Applicant must be the owner of the subject property or person with a lease signed by the owner providing the tenant consent to operate a dispensary at the location.
- Security Plan. A detailed security plan outlining the proposed security arrangements for ensuring the safety of persons and to protect the premises from theft. The plan shall include installation of security cameras, a centrally-monitored burglar, robbery, and fire alarm system monitored by a licensed operator, and a security assessment of the site conducted by a qualified professional.
- Floor Plan. A scaled floor plan for each level of the entire building showing the interior configuration of the premises, including a statement of the total floor area occupied by the dispensary. The floor plan must include, entrances, exits, restrooms, waiting area, office space, storage, and area for dispensing marijuana to qualified patients or primary caregivers. The floor plan must be professionally prepared by a licensed civil engineer or architect;
- Site Plan. A scaled site plan of the parcel showing the exterior configuration of the premises, including the outline of all structures, driveways, parking and landscape areas, and property boundaries. The floor plan must be professionally prepared by a licensed civil engineer or architect;
- Accessibility Evaluation. A written evaluation of accessibility by the physically disabled to and within the building and identification of any planned accessibility improvements to comply with all state and federal disability access laws, including, but not limited to, the American with Disabilities Act. The evaluation must be professionally prepared by a licensed civil engineer or architect; and
- Neighborhood Context Map. An accurate straight-line drawing depicting the building and the portion thereof to be occupied by the dispensary, all properties and uses, specifically including, but not limited to, any sensitive use within 500 feet of the nearest property line of the property on which the dispensary permit is requested. The map must be professionally prepared by a licensed civil engineer or architect

Staff proposes the following three phase process and requests direction from the Law and Legislation Committee.

Inaugural Application Process

The inaugural application process commences on the effective date of the ordinance and terminates when 12 permits are issued to priority applicants or when all of the priority applicants have completed the inaugural application process.

Only priority applicants shall be allowed to file applications during the inaugural application process. Priority applicants are operators that (1) registered pursuant to ordinance No. 2009-033 with the City Manager's Office on or before August 13, 2009; (2) operated continuously since at least June 16, 2009; and (3) have not been cited by the City or other public entity for a nuisance or public safety violation of state or local law relating to marijuana offenses or the operation of a medical marijuana dispensary.

Phase 1 - Prequalification.

Priority applicants shall file a Pre-Qualification Application with the City Clerk's Office no later than 30 days from the effective date of the ordinance. Priority applicants that fail to properly file a Pre-Qualification Application shall cease all operations of their medical marijuana dispensary within 180 days from the effective date of the ordinance. Specific criteria and fees for pre-qualification are being developed.

If 12 priority applicants or less properly file Pre-Qualification Applications, each of those priority applicants shall be eligible to submit a Dispensary Permit Application. The date and time that priority applicants file their Pre-Qualification Application with the City Clerk's Office, as evidenced by the date and time stamp placed on each application, shall determine the order in which to process the Dispensary Permit Applications. The Dispensary Permit Applications shall be processed in the order of the Pre-Qualification Application that was filed earliest to the latest.

Phase 2 - Lottery.

If there are more than 12 priority applicants that properly file Pre-Qualification Applications, then the City Manager shall conduct a lottery to determine the order in which those priority applicants shall be eligible to submit a Dispensary Permit Application and the order that those Dispensary Permit Applications will be processed. Specific rules and procedures for the lottery shall be established by the City Manager.

Phase 3 - Application.

The first 12 priority applicants selected in the lottery shall be immediately eligible to submit a Dispensary Permit Application. If any of the first 12 priority applicants selected in the lottery fail to timely file the Dispensary Permit Application, fail to complete the application process or are otherwise denied a dispensary permit, then the priority applicant who was selected next in the lottery shall be eligible to submit a Dispensary Permit Application until all 12 dispensary permits are issued or all priority applicants having participated in the lottery have completed the process. Priority applicants shall have 365 days from the effective date of the ordinance to complete the application process and get a permit. If they fail to timely complete the application or are denied a permit they must cease operations.

Sunset - The Inaugural Application Process will sunset after the initial 12 permits are issued or 365 days after the effective date of the ordinance, whichever is earliest.

Summary of Selection Process

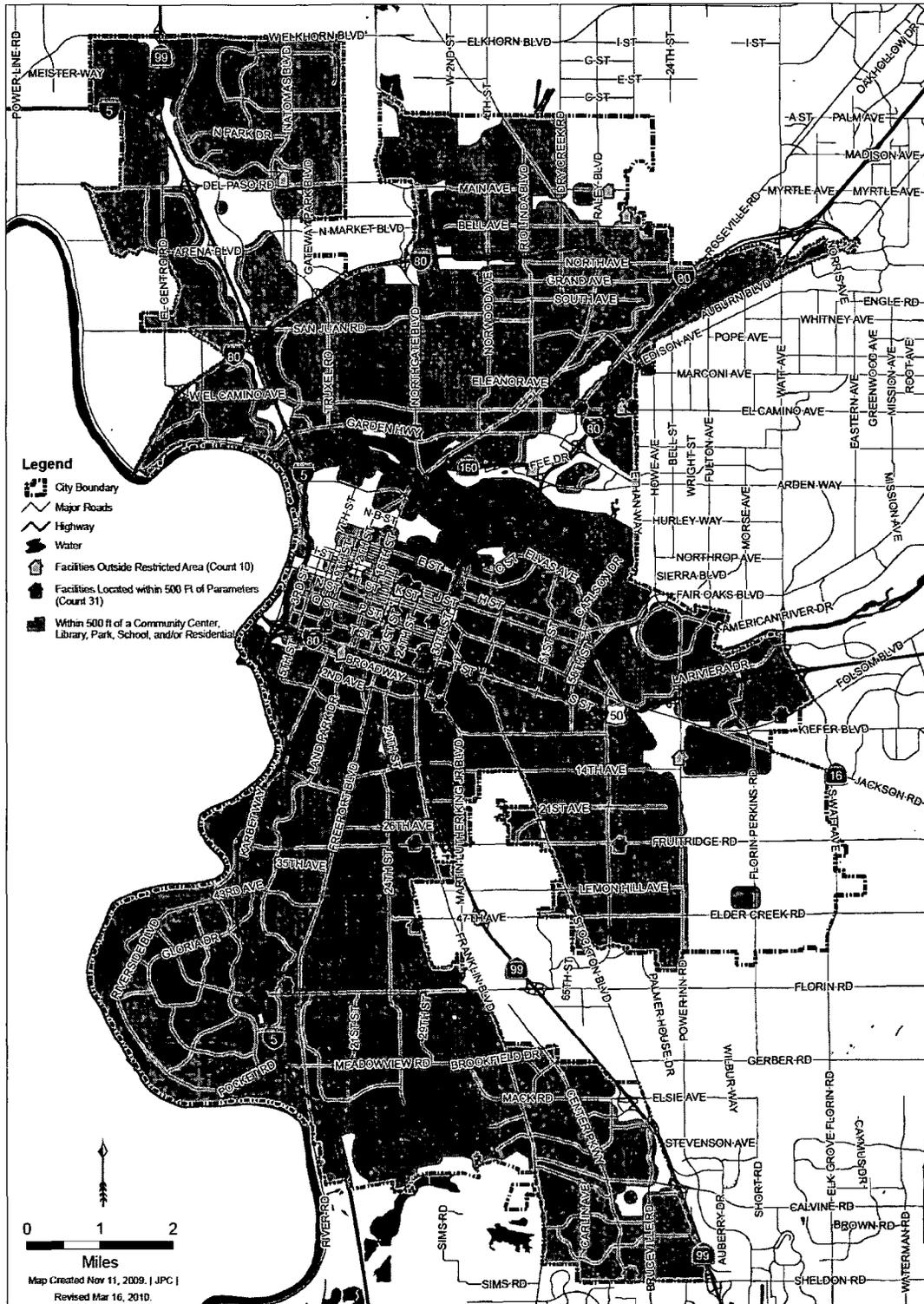
- a. Priority applicants are the existing 39 registered operators.
- b. Only priority applicants may apply during the pre-qualification period.
- c. Non-Priority applicants (those that opened after the moratorium) must close down immediately.
- d. If there are less than 12 priority applicants that apply and/or make it through the pre-qualification stage the CMO will process each application in the order in which the clerk received them.
- e. If there are more than 12 priority applicants that apply and make it through the pre-qualification stage a lottery is held.
- f. After the lottery the winners must then submit a full blown application within 60 days from the date of the lottery. The non winners get to stay open for 365 days from the effective date of the ordinance and stand by in the event a winner drops out.
- g. If any of the winners fail to make it through the full blown applications stage they are rejected and the non selected priority applicants (non winners) of the lottery are invited to submit a full blown application in sequence.
- h. Priority applicants that fail to apply or that file pre-qualifications and are denied must close operations 6 months after the effective date of the ordinance. Priority applicants that win the lottery or that make it to the lottery but lose in the lottery have 365 days to get a permit processed.
- i. The Inaugural Application Period sunsets after the initial 12 permits are issued or 365 days from the effective date of the ordinance, whichever is earliest.
- j. After the Inaugural Application Period closes the Permanent Ordinance and its lottery process will apply to any future applications.

Attachment 4

OTHER CITIES IN CALIFORNIA REGULATING MEDICAL CANNABIS

City Population (2008 Census Data)	Ordinance Date	# of Dispensaries Allowed Ratio of Dispensaries to Population	How permitted/ authorized?	Fees/Charges
Berkeley Population: 101,371	2002	Limited to 3 (pre- existing at time of ordinance) Ratio – 1:33,790	Zoning Certificates	One-time (\$47)
Los Angeles Population: 3,833,995	2010	70 (Grand father clause) Ratio – 1:54,771		\$1,200 annual
Malibu Population: 13,009	August 2008	Limited to 2 (pre- existing at time of ordinance) Ratio – 1:6,504	Conditional use permit	\$3,444 + additional agency fees
Oakland Population: 404,155	2004	Limited to four Ratio – 1:101,038 If increased to 14 Ratio – 1:28,868	Conditional use permit	\$30,000 each year
Sacramento Population: 463,794	ETA May 2010	Propose limit to 12 Ratio – 1:38,649	Business permit	TBD pending ordinance adoption
San Francisco Population: City & County – 808,976	November 2005	No limit Ratio - N/A	Building permit	\$8,459 processing and application fee
San Jose Population: 948,279	Ordinance approved in 1997 and rescinded in 2001	Ratio - N/A		
Santa Cruz Population: 56,124	2000	No limit Ratio - N/A	Business license and sales tax	No
Santa Rosa Population: 155,796	2005	Limited to 2 plus a cap on number of members Ratio – 1:77,898	Special permit created	\$3,800 annual renewal

PROXIMITY MAP (500 FEET FROM SENSITIVE USE AREAS)



Proximity to Residential, Community Centers, Parks, & Schools



*Location is a spatial reference based on proximity to public schools, community centers, parks, and residential base zoning.
 **Base Zone is the core version of the complete zoning designation without application of Overlay Zones or Special Classifications such as Corridors, Planned Unit Development, Review, Special Planning District, etc. that may be associated with the Zone.

SUMMARY OF CONCERNS FROM COMMUNITY AND STAKEHOLDER OUTREACH MEETINGS.

1. Capping the number of medical cannabis dispensing operations to 12. Concerns from patients included the access to specific types of marijuana that is unique to each dispensary. 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.
2. Location – concerns that limiting dispensaries 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.
3. Sensitive use Concerns – Patients and dispensary 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.
4. Selection process – a lottery system is unfair and does not allow the City to distinguish the best operators from the worst.
5. Hours of operation – suggestion to regulate the same as any other pharmacy.
6. Extend the moratorium and create a task force to include stakeholders, patients and the community.
7. Appeals should not be restricted to the City Manager, an full appeal process needs to be available.