



Office of the City Manager

**29b**

ACTION CALENDAR

June 3, 2014

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Eric Angstadt, Director, Planning & Development

Subject: Medical Cannabis Ordinance Revisions and Dispensary Selection Process

RECOMMENDATION

1. Adopt first reading of an Ordinance amending the Berkeley Municipal Code (BMC) Sections 12.26.030 and 12.26.150 with changes added after the September 17 Council hearing;
2. Adopt first reading of an Ordinance amending the BMC by creating a new Chapter 12.27, including changes added in response to Council concerns and the staff recommendations (Alternative B);
3. Adopt a Resolution establishing a ranking process for the selection of additional medical cannabis dispensaries in Berkeley, including changes added in response to Council concerns; and
4. Refer to the Planning Commission an amendment to BMC Section 23E.16.070 to increase the number of dispensaries permitted from four to six.

FISCAL IMPACTS OF RECOMMENDATION

The new regulations and selection process will have fiscal impacts related to the staff time necessary to process and rank the applications, as well as the revenue impacts of having an additional medical cannabis business paying taxes to the City.

Costs

The costs related to the implementation of the new regulations and the selection process are four-fold and are planned to be addressed through a cost-recovery program:

1. The one-time cost of staff time involved in the review and ranking of applications submitted for the fourth dispensary slot;
2. The one-time cost of staff time involved in the review of the fourth dispensary prior to its opening;
3. The on-going costs of staff time involved in the annual review of the established dispensaries based on the new requirements mandated by the ordinance; and

4. The on-going costs of staff time involved in kitchen inspections and labeling and testing review.

The departments primarily involved in these reviews will be Planning and Development, Police, Finance, and Health, Housing and Community Services with input from the City Manager’s Office, the City Attorney’s Office and the Office of Economic Development. Initial estimates of staff time for the first three items are 50 hours for staff review of applications, 10 hours to review the new dispensary, and 15 hours annually per dispensary to monitor dispensary compliance with the regulations. There would likely be additional costs for review of financial records, either in staff time or for outside assistance.

The new requirements for product safety, quality assurance and labeling would require city staff to inspect kitchens producing Edibles and possibly follow-up on questions related to packaging, labeling and testing. It has not been determined how much staff time would be required for these inspections and reviews, as the number of kitchens in Berkeley that would produce Edibles is not known.

Staff plans to address all costs through a cost-recovery program. Based on anticipated staff hours, staff will develop an application fee that will cover the cost to the City and a filing fee for review of a new business. Similarly, a fee for the annual review of medical cannabis dispensaries will be developed and charged to the dispensaries. In this way, the cost of staff time will be borne by the applicants and the established medical cannabis businesses. These fees will be established at a later time through Council resolution once the proposed ordinance and ranking criteria and process are finalized by Council action.

Revenue

Since 2012, medical cannabis businesses have paid taxes equaling \$25 per \$1,000 of gross receipts. The City currently has three medical cannabis dispensaries which pay taxes to the City. According to the Finance Department, the City has collected the following amounts for 2012 through 2014:

FY 2012	FY 2013	FY 2014
\$746,009	\$479,255	\$638,938

These amounts reflect the taxes paid both by the dispensaries and by their providers. The difference between the amount received in 2012 and that received in 2013 and 2014 is likely related to the closure of the largest of the three dispensaries, Berkeley Patients Group (BPG), for approximately six months during 2012, and the federal case against BPG initiated in 2013.

The size of Berkeley's three dispensaries varies greatly, with the largest dispensary generating between 6 and 15 times the taxes of the smallest. Because of this, staff can only estimate that the fourth dispensary would generate revenue somewhere between the smallest and the largest dispensary, which in 2014 would be between \$75,000 and \$425,000 annually.

### SUMMARY

The Staff recommendation is to modify the Medical Cannabis Commission's recommended ordinance and selection/allocation process on five points listed in the ordinance as Alternative B.

### CURRENT SITUATION AND ITS EFFECTS

City staff from the City Attorney's Office, and the Planning, Police and Health, Housing and Community Service Departments worked with the Commission on the development of the ordinance and the ranking process.

At the September 17, 2013 meeting, the City Council considered new regulations for medical cannabis dispensaries and collectives. At that time, the Commission and staff agreed on all of the definition changes in Section 12.26.030, all points in the ranking/allocation process, and the majority of the ordinance recommendations.

The four original points on which staff had a different recommendation from the Commission are detailed in the September 17, 2013 staff report (Attachment 6 of the MCC report). These issues are dispensary security, consumption of medical cannabis at dispensaries, use of commercial kitchens, and consumption of medical cannabis at collectives.

Staff agreed with the MCC on all points related to the Council concerns except the following:

- 12.27.120.D – Limitations on Collective operations. The Commission recommends that collectives should be allowed have Member visits between 8:00 a.m. and 10:00 p.m. Staff believes that the hours of Member visits should end at 8:00 p.m.

All five points are highlighted in the revised Chapter 12.27 (Attachment 2 of the MCC report). The staff recommended language is included as a second option (Alternative B), in the ordinance.

In terms of the recommendation for additional dispensaries, staff has no objection to the recommendation for additional dispensaries beyond the four currently permitted in the zoning ordinance.

### ENVIRONMENTAL SUSTAINABILITY

The proposed Chapter 12.27 and revisions to Chapter 12.26 will not add additional green building requirements to dispensaries or collectives. The proposed ranking and

allocation process will award bonus points to potential businesses that include green business practices relating to energy and climate, water conservation, and materials and waste management.

RATIONALE FOR RECOMMENDATION

The adoption of these ordinance amendments and the selection process would allow the Council to select a fourth dispensary, fulfilling voter direction given with the passage of Measure T in 2010.

ALTERNATIVE ACTIONS CONSIDERED

Alternative recommendations are described in the Medical Cannabis Commission's report.

CONTACT PERSON

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Attachments:

Please refer to the companion report from the Medical Cannabis Commission for the attachments to this report.