



Kate Harrison  
Councilmember District 4

## SUPPLEMENTAL AGENDA MATERIAL

**Meeting Date:** July 11, 2017

**Item Number:** 35

**Item Description:** Medical Cannabis Cultivation Ordinance Revisions

**Submitted by:** Councilmember Harrison

Revised our third possible recommendation to staff for consideration by the Council.  
The recommendation reads as follows:

A third option that the Council may consider is to direct staff to prioritize local growers and cooperatives in the permitting process or set aside some of the allotted square footage specifically for use by local small growers and cooperatives. This could be achieved by maintaining the limit of 6 cultivation locations [between 15,000 and 22,000 ft<sup>2</sup> in size](#) for all forms of cultivators [\(using between 90,000 and 132,000 of the available 180,000 ft<sup>2</sup>\)](#) while allocating the remaining 48,000 ft<sup>2</sup> to local cultivators and cooperatives, without a specific location limit. [During the permitting process, each operator will be limited to one site to avoid anti-competitive practices and prevent a monopoly. After one year of operation, staff will evaluate the positive and negative impacts of the cultivation site on the surrounding businesses and neighbors.](#)



Office of the City Manager

## ACTION CALENDAR

June 27, 2017

*(Continued from June 13, 2017)*

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Timothy Burroughs, Interim Director, Planning & Development  
 Subject: Medical Cannabis Cultivation Ordinance Revisions

### RECOMMENDATION

Consider the responses provided by the Planning Commission and Medical Cannabis Commission (MCC) to Council's referral regarding the desired maximum number of Medical Cannabis Cultivation locations (Zoning Ordinance/BMC Section 23E.72.040.A) and give direction to staff regarding any recommended changes to the Zoning Ordinance.

### FISCAL IMPACTS OF RECOMMENDATION

Establishing a quota for cultivation locations could reduce expected City revenue.

#### Revenue

The MCC calculated that if 180,000 square feet is cultivated, the City taxes generated could be between \$650,000 and \$1,300,000 annually. Restrictions on the number of cultivation locations could limit both how many cultivation facilities locate in Berkeley and how much floor area is available for cultivation. A quota could restrict the City taxes that are generated from this use.

### CURRENT SITUATION AND ITS EFFECTS

At its January 31, 2017 meeting, the City Council approved BMC Chapter 12.25, which established regulations for medical cannabis cultivation facilities. As part of the discussion, the Council asked the Planning Commission to reconsider a quota on the number of cultivation locations, and placed a hold on the effective date of the ordinance until the Zoning Ordinance includes a limit of six cultivation locations.

#### Background

The Zoning Ordinance language related to medical cannabis cultivation was established by the passage of Measure T in November 2010. Measure T called for a limit of six cultivation locations, each with a maximum size limit of 30,000 square feet. The limit applied specifically to "locations"; different licensees may locate at one location as long as the total area used for cultivation does not exceed 30,000 square feet. The measure allowed for future implementation and amendment by Council.

In 2015, the Governor approved the Medical Cannabis Regulation and Safety Act (MCRSA), which was designed to create a comprehensive state licensing system for medical cannabis businesses. MCRSA regulations limited the size of an indoor cultivation location to 22,000 square feet. To address this change, the MCC and Planning Commission recommended that the Council modify the city's cultivation regulations to conform to the state's new regulations. Among the recommendations was a proposal to remove the six location quota, and replace it with an 180,000 square-foot limit for total cultivation area. The intent was to continue to allow the same maximum amount of cultivation area that would have been permitted with six 30,000 square-foot locations, accommodate the smaller cultivation locations under State law, and retain the implied maximum potential cultivation area from Measure T. The City Council approved these Zoning Ordinance changes on consent at its February 23, 2016 meeting. See Attachment 1 for the current Zoning Ordinance language.

The City Council adopted further amendments to the BMC related to medical cannabis uses at its January 31, 2017 meeting. One of the amendments was a new chapter, 12.25, that established regulations for medical cannabis cultivation facilities. The Council approved the BMC chapter, but expressed interest in modifying the Zoning Ordinance to re-establish a numeric limit (quota) for cultivation sites. The Council referred the quota issue to the Planning Commission.

MCC recommendation to Planning Commission: On March 2, 2017, the MCC recommended to the Planning Commission that the current Zoning ordinance language be retained, thereby not re-establishing a quota on the number of cultivation locations. (7-0-0-1; Ayes: Lampach, Pappas, Rice, Cable, Brewster, Ferguson-Riffe, Carlisle. Noes: None. Abstain: None. Absent: Cooper.)

Planning Commission Action: The Planning Commission considered cultivation location quotas of six or more at its March 15, 2017 meeting. The Commission voted to not recommend any specific quota number for cultivation locations to the Council. The Commission requested that the Council base any number it may adopt on additional research and the desire to encourage small "clean and green" businesses. (8-0-0-0; Ayes: Chapple, Poschman, Beach, Pinto, Fong, Marinot, Schildt, Kapla. Noes: None. Abstain: None. Absent: None.)

In response, staff recommends that the Council consider one of two options:

- A. Maintain the existing Zoning Ordinance language (180,000 square-foot cultivation limit and no quota on the number of cultivation locations); or
- B. Add a quota of no less than nine cultivation locations to allow for the possibility of 180,000 square feet of cultivation in Berkeley.

A third option that the Council may consider is to direct staff to prioritize local growers and cooperatives in the permitting process or set aside some of the allotted square footage specifically for use by local small growers and cooperatives. This could be achieved by maintaining the limit of 6 cultivation locations between 15,000 and 22,000 ft<sup>2</sup> in size for all forms of cultivators (using between 90,000 and 132,000 of the available 180,000 ft<sup>2</sup>) while allocating the remaining space, between 90,000 and 48,000 ft<sup>2</sup>, to local cultivators and cooperatives, without a specific location limit. During the permitting process, each operator will be limited to one site to avoid anti-competitive practices and prevent a monopoly. After one year of operation, staff will evaluate the positive and negative impacts of the cultivation site on the surrounding businesses and neighbors.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

Deciding if a quota of cultivation locations is needed, and if so, what that quota should be (other than the 180,000 square-foot limit) would allow the Council to permit cultivation businesses to locate in Berkeley. This would fulfill the voter direction given with the passage of Measure T.

ALTERNATIVE ACTIONS CONSIDERED

The Council could maintain the current Zoning Ordinance language (23E.72.040.A) related to cultivation locations (no quota), or adopt a quota of six locations or more.

CONTACT PERSON

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Alex Amoroso, Secretary, Planning Commission, (510) 981-7520

Elizabeth Greene, Secretary, Medical Cannabis Commission, (510) 981-7484

Attachments:

1. Zoning Ordinance Section 23E.72.040.A
2. 3-15-17 Planning Commission report
3. 3-15-17 Planning Commission minutes (partial)
4. 3-2-17 MCC minutes (partial)

**Section 23E.72.040 Medical Cannabis Cultivation**

- A. Notwithstanding anything to the contrary in this Chapter, cultivation of medical cannabis as defined in Chapter 12.26, Chapter 12.27 and the State's Medical Marijuana Regulation and Safety Act shall be permitted as a matter of right with a Zoning Certificate in the M District, subject to the following limitations:
1. Such locations shall be limited to licensed medical cannabis organizations.
  2. Medical cannabis may not be dispensed, and client, patient or member services are prohibited, at such locations.
  3. No single location used for cultivation and associated uses by a licensee may exceed 22,000 square feet, except that separate spaces used by different licensees may be aggregated on the same location.
  4. The total area used for medical cannabis cultivation shall not exceed 180,000 square feet.



Planning and Development Department  
Land Use Planning Division

## STAFF REPORT

DATE: March 15, 2017

TO: Members of the Planning Commission

FROM: Elizabeth Greene, Senior Planner

SUBJECT: Public Hearing on Zoning Ordinance (ZO) Amendments to Section 23E.72.040 to Re-establish a Quota on Medical Cannabis Cultivation Locations

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### RECOMMENDATION

Hold a Public Hearing and take public comment. Consider a numeric limit (“quota”) on the number of cultivation locations and make a recommendation to Council.

See Attachment 1 for the proposed language options.

### BACKGROUND

The current medical cannabis cultivation regulations were adopted by the City Council on February 23, 2016 in response to passage of California’s Medical Cannabis Regulation and Safety Act (MCRSA). Among other changes, the Council, following the recommendation of the Planning Commission and Medical Cannabis Commission, removed the quota of six cultivation locations. The quota was replaced with a 180,000 square-foot cap on the total area within the M District that could be used for cultivation.

At its January 31, 2017 meeting, the Council approved regulations for cultivation facilities, with the caveat that the regulations would not become effective until the Zoning Ordinance is modified to include a limit of six cultivation locations. The Council forwarded a request to the Planning Commission to consider a numeric limitation (quota) of six locations, with the locations to be approved on a first-come, first-served basis (see Attachment 2). The cultivation regulations appear in the Berkeley Municipal Code, which is not the purview of the Planning Commission. However the maximum number of locations is part of the Zoning Ordinance and is within the Commission’s purview. The focus of this public hearing is the number of cultivation locations.

### DISCUSSION

On December 16, 2015, the Planning Commission considered the quota on cultivation locations and recommended removing the numeric limit. Staff recommended increasing the number of locations from the original limit of six for two primary reasons:

- A. To ensure that the area of cultivation would not be limited by the reduced maximum size of cultivation locations (22,000 square feet) enacted by State law. A quota of six cultivation locations at the maximum size would result in a maximum total cultivation area of 132,000 square feet. This would be less than the 180,000 square feet currently allowed by the ZO.
- B. To encourage small businesses (under 5,000 square feet in area). These businesses would have their own licensing category under State law and may be better suited for Berkeley given lease rates and energy costs associated with indoor growing operations. Any location under the maximum size could represent a loss of cultivation potential if a quota is in place.

A limit on the number of medical cannabis cultivation locations is not necessarily a limit on the number of medical cannabis cultivation businesses. Per ZO Section 23E.70.040.A.3, no single location used for cultivation by a licensee may exceed 22,000 square feet, and multiple licenses may be aggregated at the same location.

For a more detailed discussion of the quota consideration, see the December 16, 2015 staff report (Attachment 3). Additional analysis is included in the November 18, 2015 staff report <..\..\Boards and Commissions\PC\Staff Reports - Packets\2015 Staff Reports\11-18-15\Item 9 - Cannabis Cultivation Outside M District\2015-11-18 Item 09 Staff Report MC Cultivation.pdf>

#### *MCC Recommendation*

At its March 2, 2017 meeting, the MCC recommended maintaining the current Zoning ordinance language. This language specifies a cap of 180,000 square feet on the total amount of area used for cultivation in the M District, without any limit on the number of cultivation locations. The MCC has recommended these policies over the past year for the following reasons:

1. To conform with the intent of Measure T. This measure, which passed in 2010, would have allowed 180,000 square feet of cultivation based on a quota of six locations with a maximum area of 30,000 square feet each. When the state law reduced the maximum size of a location to 22,000 square feet, the MCC promoted the concept of a 180,000 cap on the area for cultivation, and removing the limit of the number of locations. If a quota of six is established, the maximum amount of area for cultivation, if all six locations operate at the maximum size permitted, would be 132,000 square feet.
2. To allow for small businesses. While small businesses could co-locate on one site, this could add to the complexity of finding a location. Maintaining the current zoning language would allow for small cultivation locations to establish in the M District without reducing the overall area allowed for cultivation.

See Attachment 4 for the draft minutes from the MCC meeting.

The Environmental Review and General Plan and West Berkeley Plan Review sections are included in this report for review, and have not changed since earlier discussion of this subject. The number of cultivation sites is not considered a land use change under CEQA, or the General Plan. It is a numerical limitation on an allowed use.



### *Environmental Review*

CEQA is used to evaluate physical impacts from changes in use and activity, such as increased development or traffic. Adding a quota for the number of cultivation locations would not significantly change the existing regulations in the M District. Therefore, this action can be considered exempt from CEQA, per Section 15061.b.3, which states: "...CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA".

### *General Plan and West Berkeley Plan Review*

Staff has determined that no changes are necessary to the General Plan or the West Berkeley Plan as a result of this draft zoning amendment.

Modifying the zoning language to add a quota for the number of cultivation locations would be compatible with the following General Plan goals and actions:

Land Use Policy LU-34: Protect industrial uses in West Berkeley

Economic Development Policy ED-3: Promote policies, programs, and services that support a diverse local economy providing a range of goods and services that support existing local businesses, and that encourage new, independent business ventures.

The M District is within the West Berkeley Plan area. These zoning language changes would be compatible with the following West Berkeley Plan policies and actions:

Land Use Goal 1: Over the economically active area of West Berkeley, provide for a continued economic and land use mix, incorporating manufacturing, other industrial, retail and office/laboratory uses, to benefit Berkeley residents and businesses economically, benefit the City government fiscally, and promotes the varied and interest(ing) character of the area.

Land Use Goal 4: Assure that new development in any sector is of a scale and design that is appropriate to its surroundings, while respecting the genuine economic and physical needs of the development.

### CONCLUSION

Staff recommends that the Planning Commission hold a Public Hearing, take public comment and forward a recommendation to Council to either maintain the existing language regarding medical cannabis cultivation locations (currently not limited) or to set a quota of six cultivation locations or more.

### Attachments:

1. Proposed ordinance language
2. January 31, 2017 City Council annotated agenda
3. December 16, 2015 Planning Commission staff report
4. Draft Minutes from March 2, 2017 MCC meeting (partial)
5. Public Hearing Notice

**DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING  
March 15, 2017  
(Partial)**

**10. Action: Public Hearing: Medical Cannabis Cultivation Sites  
Maximum Number**

Staff introduced the Public Hearing on Zoning Ordinance amendments to re-establish a quota on medical cannabis cultivation locations. Staff requested that the Planning Commission make a recommendation to forward to Council to either maintain the existing language regarding medical cannabis cultivation locations (currently not limited) or to set a quota of six cultivation locations or more. The Planning Commission expressed concern about the cost of land or rent increases after the cultivation ordinance comes into effect. The Planning Commission agreed that a maximum limit of 6 cultivation locations is too small, and that more research should be done to come up with a better number for cultivation locations.

Motion/Second/Carried (RK/KC) to close the Public Hearing. Ayes: Chapple, Poschman, Beach, Pinto, Fong, Martinot, Schildt, William Kapla. Noes: None. Abstain: None. Absent: None. (8-0-0-0)

Motion/Second/Failed (SM/RK) The Planning Commission recommends a maximum limit of 25 cultivation locations. Ayes: Fong, Martinot. Noes: Chapple, Poschman, Beach, Pinto, Schildt, William Kapla. Abstain: None. Absent: None. (2-6-0-0)

Motion/Second/Carried (GP/PP) The Planning Commission does not recommend any number to the Council for cultivation locations and requests the Council consider number of locations based on additional research and the desire to encourage small "clean and green" businesses. Ayes: Chapple, Poschman, Beach, Pinto, Fong, Martinot, Schildt, William Kapla. Noes: None. Abstain: None. Absent: None. (8-0-0-0)

Public Comment: 17 speakers

**DRAFT MINUTES OF THE REGULAR MEDICAL CANNABIS COMMISSION  
MEETING  
March 2, 2017  
(Partial)**

**B. Recommendation for Planning Commission regarding number of cultivation facilities.**

Staff presented the attachments for this item, 23E.72.040 language and Staff Report from December 16, 2015 Planning Commission meeting.

Public Comment: One public comment praised Commissioner's Item VIII.B information on cultivation facts and asked if cultivation could be considered a manufacturing use.

The Commission agreed that there should be no numeric limit of cultivation facilities. The Commission requested staff to research whether the number 6 recommended facilities of cultivation or cultivation licenses. Commissioner Rice noted that the removal of numeric limit of cultivation sites was passed as a Consent Item at City Council on February 23, 2016. The Commission also noted that the existing Manufacturing uses are already protected in the M Districts. The MCC agreed to send a revised version of Item VIII.B to the March 15<sup>th</sup> Planning Commission meeting.

Motion/second to recommend no changes to the current cultivation ordinance and application process that was recommended to City Council. (Lampach/Rice). The motion carried 7-0-0-1. (Ayes: Lampach, Pappas, Rice, Cable, Brewster, Ferguson-Riffe, Carlisle. Noes: None. Abstain: None. Absent: Cooper.