

DRAFT 3/21/17 kmr

Important Points: Part VI of a Medical Cannabis Commission (MCC) Series
**180,000 Aggregate SqF Maximum Should Remain the Sole
And Extremely Effective Control Factor for Cultivation of Medical Cannabis.
A Limit on the Number of Locations is Hurtful
to Nurturing Diverse Small-Business Cultivators
and the Potential to Increase City Revenue.**

Prepared by the MCC for the **Month/Day**/2017 Berkeley City Council (BCC) Meeting
(Sources for the data and facts below are provided on the sheets following.)

KEY FACT: 85% of the parcels in the M + MM + MU-LI Districts are less than 5,000 SqF.

IMPACT: A low numerical limit on the number of locations for cultivation will result in far fewer aggregate square feet (SqF) cultivated than the allowable 180,000 SqF, as approved in 2010 by sixty-four percent of voters through Measure T. For example, a limit of six locations, with each location averaging 5,000 SqF, would result in 30,000 SqF of medical cannabis cultivated – only 17% of the maximum allowed for cultivation.

RESULTANT PROBLEM #1: There would be reduced opportunities for the City to nurture a diverse group of small-business cultivators. Berkeley's stock of parcels less than 5,000 SqF is ideal for entry-level businesspersons- a fact brought to the attention of the MCC by many folks, including African Americans and Latinos disproportionately hurt by the War on Drugs. Berkeley has the rare opportunity to take positive action to help ameliorate this hurt.

RESULTANT PROBLEM #2: The potential for the City to achieve \$1,000,000 in new annual tax revenue will be compromised, perhaps reduced to as little as \$165,000 – 17% of tax revenue potential.

- \$5,500 in taxes annually for every 1,000 SqF cultivated.
- \$1,000,000 median estimate (low \$658k to high \$1.3k) in annual taxes if all allowed 180k SqF are cultivated.
- Only \$165,000 in annual taxes if cultivation is limited to six sites, and the average of each site is 5k SqF.
- Lost potential tax revenue to the City would be \$835,000 if six cultivation sites total only 30,000 SqF

PRIMARY SOLUTION: Retain the aggregate maximum of 180,000 SqF of cultivation in the city (a SqF limit that does not exist in communities often erroneously compared to Berkeley). As with every other use category in West Berkeley (over 35 categories), do not restrict the number of locations for cultivation. To label this solution “unlimited locations” carries a negative connotation that is not applied to the other 35+ use categories. Singling out this category does not recognize the emerging field of cannabis.

- Medical cannabis has gone mainstream and is allowed in 90% of the States.
- Cannabis-based medicines have gained worldwide, national, and regional certifications.
- The DEA's “2015 National Drug Threat Assessment Summary” ranked marijuana at the bottom of its threat list.
- State surveys in Colorado and Washington have determined that there have been no significant changes in the number of teenagers who try marijuana.
- At the Berkeley Safe Neighborhoods Committee (BSNC) meeting on 7/20/15, City officials stated that City resources are often overwhelmed largely because of the problem of underage and young adult binge drinking, not because of the consumption of marijuana or illegal drugs.

- Cities are directing local cannabis taxes to address problems that range from homelessness to potholes.

LESS IDEAL SOLUTION: Divide the 180,000 SqF maximum allowed for cultivation by 5,000, since 85% of parcels are less than 5,000 SqF. This calculation allows for 36 locations. There is little logic to derive any other number, *unless the BCC wants to reduce the maximum SqF allowed (or that is realistically possible) for cultivation, with the resultant consequences explained in this document.*

- A limit of 6 locations would be severely regressive- a 27% reduction in maximum allowable SqF to cultivate, down to 132k SqF from 180k SqF. (See “Primary Background” below for the math.)
- A limit of 9 locations retains 180k SqF for cultivation (9 x 22k SqF allowed per location by recent State law), but would maintain the harmful consequences of Measure T – which, because 85% of the inventory in three Manufacturing Districts is less than 5,000 SqF, enshrines inequities that limit support for a diverse group of small-business cultivators and deprives the City of potential tax revenue.

PRIMARY BACKGROUND: Recent State law makes 22,000 SqF the maximum size for a cultivation location. Measure T allowed for cultivation at six locations, each with a maximum of 30,000 SqF, for a total of 180,000 SqF of cultivation. To be in compliance with a new State law, however, Berkeley had to lower its maximum to 22,000 SqF, which would result in an aggregate of only 132,000 SqF of cultivation in Berkeley, if the six-location restriction remained. The MCC meanwhile was researching the size of parcels in the Manufacturing Districts, and learned that the vast majority of stock is in the 3,000 SqF to 5,000 SqF range.

ADDITIONAL BACKGROUND: Only 3.5% of the four Manufacturing Districts’ inventory would be used if all allowable 180,000 SqF were cultivated.

- Similarly, only 0.7% of the Manufacturing Districts’ land area and 0.03% of total city land area would be used for cultivation of medical cannabis.
- Some Manufacturing District Inventory (including warehouses) is protected solely for manufacturing businesses and, therefore, could not be used for cultivation.
- Some cannabis leases will not take new space because some current underground cultivators in Berkeley will seek licenses.
- Not all vacancies will be leased for cannabis because of reluctant landlords.
- Oft-cited communities in which cannabis cultivators “gobble up” space and drive up rents (e.g., Colorado Springs, Denver, Oakland) **DO NOT HAVE AN AGGREGATE SQUARE FOOT MAXIMUM.**
- It is highly improbable, therefore, that rents on 3.5% of inventory in the Manufacturing Districts would drive up rents for the other 96.5% of the inventory.

RECENT ACTION: On 2/23/16, the BCC approved by Consent to 1) comply with new State law of 22,000 maximum SqF per location; 2) establish an 180,000 SqF aggregate maximum for cultivation of medical cannabis; and 3) remove the restriction on the number of locations. Because of their approval by Consent, the BCC was deprived of hearing in-person the sound logic and convincing reasons to support this decision. It is very possible that not being exposed to these arguments contributed to the Council’s recent vote to consider imposing a six-location restriction.

IMPORTANT TO REMEMBER: Cultivation of medical cannabis cannot overwhelm the Manufacturing Districts. Berkeley has a somewhat unique, and elegant in its simplicity, control factor of an aggregate SqF maximum on cultivation. This control factor does not exist in other communities often cited as overwhelmed by cannabis operations with subsequent increases in rents.

Sources/Supporting Material to Important Points VI

1. 85% of Parcels in the M + MM + MU-LI Districts are Under 5,000 SqF (367 SqF/432 SqF)

- M: 72 Parcels, with 61 under 5k SqF
- MM: 22 Parcels, with 10 under 5k SqF
- MU-LI: 338 Parcels, with 296 under 5k SqF

Source: 5/18/16 PC Meeting Agenda, attachment 4, Item 10

2. Calculation for annual tax revenue from medical cannabis cultivation is on the following page.

3. The City Planning Department is the source for the fact that no use category in West Berkeley is restricted to a number of locations.

4. 90% of States Allow Some Access to Medical Cannabis Products

- 28 states, the District of Columbia, Guam, and Puerto Rico allow comprehensive medical cannabis programs.
- 17 states allow “low THC, high cannabidiol (CBD)” products for medical reasons.
- 93% of respondents to Quinnipiac poll released 2/23/17 support use of marijuana for medical purposes
- In addition, 8 states, and the District of Columbia, allow legal adult recreational use of cannabis

Sources: National Conference of State Legislators website, 2/20/17; David Downs & Dominic Fracassa, “Marijuana: Trump aid hints at federal crackdown on pot use,” *San Francisco Chronicle*, 2/24/17

5. Cannabis-Based Medicines Gain World-wide, National, & Regional Certifications

- Sativex to treat spasticity from multiple sclerosis approved in 28 countries, though not USA.
- FDA granted Orphan Drug Designation for cannabidiol to treat Tuberous Sclerosis Complex.
- Successful clinical trial at New York University for Epidiolex to reduce epileptic seizures.
- Two market drugs, dronabinol & nabilone, are synthetic chemicals similar or identical to delta-9 THC.
- Kosher approval to New York company and in final stages for Illinois company.

Sources: Global Newswire, “GW Pharmaceutical Receives Orphan Drug Designation from FDA for Cannabidiol for Treatment of Tuberous Sclerosis Complex,” *NYT*, 5/7/16; Andrew Pollack, “Marijuana-Based Drug Found to Reduce Epileptic Seizures,” *NYT* 3/14/16; Rachel Abrams, “The Rabbis Are Here to Inspect the (Legal) Weed,” *NYT*, 5/6/16.

6. “Pot not major threat, cops say,” as reported in the *SF Chronicle*, 11/6/15

- DEA’s “2015 National Drug Threat Assessment Summary” ranked marijuana at the bottom of its threat list, named by only 6% of over 1,000 responding law enforcement agencies.
- In both Colorado and Washington, according to state surveys, there have been no significant changes in the number of teenagers who try marijuana. Source: Christopher Ingraham, “Here’s how legal pot changed Colorado and Washington”, *The Washington Post*, 10/13/16
- The Berkeley Safe Neighborhoods Committee (BSNC) on 7/20/15 discussed the problem of underage and young adult binge drinking and the subsequent overwhelming of the City’s capacity to respond. City officials stated unequivocally that the problem is alcohol, not marijuana or other obvious drugs (observed by a Medical Cannabis Commissioner attending the meeting as a private citizen).

7. Colorado is Different from Berkeley; CO cities use Cannabis Taxes to Aid the Homeless

- Denver and Colorado Springs do NOT have an aggregate SqF limit on cultivation (neither do Oakland, Richmond, San Francisco), do not border a state with legalized recreational cannabis, and there is little industrial space outside these cities to provide other options to cannabis cultivators
- In 2016, Colorado collected more than \$150M in taxes from cannabis, \$50M earmarked for school construction projects. Cities are directing local cannabis taxes to address problems that range from potholes to homelessness.

Sources: Tom Huddleston, Jr., “Colorado Topped \$1B in Legal Marijuana Sales 2016”; *Fortune*, 12/13/16; Carlos Illescas, “Marijuana sales tax revenue huge boon for Colorado cities”, *Denver Post*, 10/2/16

8. Only 3.5% of the Four Manufacturing Districts’ Inventory Would be Used if all Allowable 180,000 SqF are Cultivated (180,000 /5,117,653 SqF of inventory; PC 5/18/16 Meeting Agenda, attachment 18)

9. 0.7% of Land Area for the Manufacturing Districts Would Be Used if 180,000 SqF are Cultivated

- 4.4 % of M; • 2% of M + MM; • 1% of M+ MM + MU-LI • .7% of M+MM+MU-LI+MUR
- Berkeley 12,162 acres, 180k=4.1 acres, M=94 acres, MM=79 acres, MU-LI=300 acres, MUR=120 acres.

Sources: Berkeley Historical Society, West Berkeley Plan

Estimated Berkeley Business Taxes from Medical Cannabis Cultivation per Measure S

City of Berkeley Business Tax Calculations per BMC 9.04.136 (Based on gross receipts)

Note- Total cannabis cultivation square footage will almost certainly combine flowering, clone production and also possibly topical and edible production facilities. Two separate calculations of estimated gross receipts are provided: one set for flower production and one set for clone production)

| | |
|--------------------------------------|---------|
| Proposed Cultivation square footage: | 180,000 |
| Less 1/3 office, processing etc | -60000 |
| Total sq ft under cultivation | 120,000 |

A. FLOWER CYCLE CALCULATIONS

Assumptions -

- 1) Four 13-week cycles per year (3 week veg + 10 weeks flower)
- 2) Two 1000 watt HID lights per standard 4x8 flood tray yields an average of 2 lbs finished product (1 lb\ light)
- 3) Each 4x8 tray requires a 6x10 area for plant maintenance (60 sq ft)

| | |
|--|---------|
| Total square footage | 120,000 |
| divided by area for one tray | 60 |
| # 4x8 trays in total cultivation square foot | 2000 |
| # lbs per tray | 2 |
| Total lbs finished cannabis flowers\cycle | 4000 |
| # cycles per year | 4 |
| # lbs per year | 16,000 |

| <u>Gross Revenue Calculation:</u> | Price per lb | Gross Revenue | Business Taxes @ \$25/1000 |
|-----------------------------------|--------------|---------------|-----------------------------------|
| Low Range | \$1,500 | \$24,000,000 | \$600,000 |
| High Range | \$3,300 | \$52,800,000 | \$1,320,000 |
| Average | \$2,400 | \$38,400,000 | \$960,000 |

Estimated Berkeley Business Taxes from Medical Cannabis Cultivation per Measure S

B. CLONE PRODUCTION CALCULATIONS :

| | |
|---|-----------|
| Total cultivation square footage (2/3 total) | 120,000 |
| Square footage devoted to clones - 20% | |
| Square footage devoted to immature moms (30%) | |
| Total square footage for moms (50%) | 60,000 |
| # 4x8 flood trays possible (60 sq ft each) | 1000 |
| # mature moms per tray | 8 |
| Total # moms | 8000 |
| # cuttings per mom per week | 20 |
| Total # cuttings per week | 160,000 |
| Total number cuttings per year | 8,320,000 |
| Viable clones @ 80% success rate | 6,656,000 |

| <u>Clones Gross Revenue Calculation:</u> | Price per stem | Gross Revenue | Business Taxes @ \$25/1000 |
|--|-------------------|------------------|---|
| Low Range | \$5.00 | \$33,280,000 | \$832,000 |
| High Range | \$8.00 | \$53,248,000 | \$1,331,200 |
| Average | \$6.50 | \$43,264,000 | \$1,081,600 |

C. BUSINESS TAX CALCULATION BASED ON A COMBINATION OF 75% FLOWERING AND 25% CLONE PRODUCTION FOR TOTAL CULTIVATION SQUARE FOOTAGE

| | Flowers Total | Clones Total | 75/25 Ratio (Flowers + Clones) |
|--|---------------|--------------|-----------------------------------|
| Low Estimate | \$600,000 | \$832,000 | \$658,000 |
| High Estimate | \$1,320,000 | \$1,331,200 | \$1,322,800 |
| Average Combined Business Taxes | | | \$990,400 |

D. SUMMARY

We estimate that the City of Berkeley will collect between \$650,000 and \$1,300,000 in revenue from Medical Cannabis cultivation (average of about \$1,000,000) if the total allowable cultivation space under Measure S is available and utilized.

Each 1000 square feet of cultivation space that is not utilized will cost the City approximately \$5500 in potential lost revenue. (\$990,400 avg annual business taxes ÷ 180,000 total cultivation sq ft x 1000 sq ft)