



Office of the City Manager

ACTION CALENDAR
June 11, 2013

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 Berkeley Municipal Code (BMC) Section 12.26.030;
2. Adopt first reading of an Ordinance adding BMC Chapter 12.27, including the staff recommendations (Alternative B);
3. Adopt a Resolution establishing a ranking process for the selection of additional medical cannabis dispensaries in Berkeley; 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 three-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; and
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.

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 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 will likely be additional costs for review of financial records, either in staff time or for outside assistance.

Staff plans to address these 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 and 2013, and projects the following income for 2014:

FY 2012	FY 2013	FY 2014 (projected)
\$746,009	\$479,255	\$720,000

These amounts reflect the taxes paid both by the dispensaries and by their providers. The difference between the amount received in 2013 and projected for 2014 relates to the closure of the largest of the three dispensaries, Berkeley Patients Group (BPG), for approximately six months during 2012. BPG has relocated and is in full operation, so staff anticipates that a full year of taxes will be generated for the Fiscal Year 2014.

The size of Berkeley’s three dispensaries varies greatly, with the largest dispensary generating over 15 times the taxes of the smallest. Because of this, staff can only estimate that the fourth dispensary would generate revenue for the City somewhere between the smallest and the largest dispensary, which in this case would be between \$51,356 and \$860,317 annually to be deposited into the General Fund.

SUMMARY

The Staff recommendation is to modify the Medical Cannabis Commission’s recommended ordinance and selection/allocation process on four points listed in the

ordinance as Alternative B (attached to the companion report from the Commission) as described below.

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. 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. Those points on which staff had a different recommendation from the Commission are listed below. The staff recommended language is included as a second option (Alternative B), in the ordinance attached to the companion report from the Commission.

- 12.27.050.E – Operating Standards, Security. The Commission recommends that guards should be allowed as an alternative to bars on windows and doors as a means to protect dispensaries after business hours. Staff believes that physical security measures, such as bars and gates over windows and doors, provide a better and safer deterrent after business hours than security guards.
- 12.27.050.G – Operating Standards, Consumption of Medical Cannabis, Tobacco and Alcohol, and 12.27.050.I – Termination of Membership. The Commission recommends that consumption of medical cannabis, through means other than smoking, should be permitted at dispensaries. Staff views the consumption of medical cannabis at a commercial venue as a potential public safety issue – the City should not permit consumption of intoxicants at a location from which customers will be driving. In response to the Commission's concern that residents in public housing may need a place to medicate, medication through the use of edibles and (non-intoxicating) topical preparations would not violate smoking laws. While this would still be illegal under federal law, the risk of detection would be less.
- 12.27.070.B – Product Safety and Quality, Compliance with State Food Safety Requirements. The Commission recommends that commercial facilities used for making edible medical cannabis products may also be used to prepare non-cannabis-related products. Staff views this as a public health issue; that allowing one facility to be used for both cannabis and non-cannabis products could result in contamination of the non-cannabis products.
- 12.27.120 – Limitations on Collective Operations. The Commission recommends that consumption by all members of a collective should be permitted inside the collective. Staff believes that for a collective to truly be "incidental to residential use", consumption other than by residents should be prohibited.

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.

RATIONALE FOR RECOMMENDATION

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

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.