

City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: Lynn Goldberg, Planning and Building Director
DATE: March 21, 2017
SUBJECT: **Potential Regulations on Personal Marijuana Cultivation (MCA 2016-1)**

APPROVED FOR FORWARDING



Michael T. Kirn, Acting City Manager

- 1 **ISSUE:** Consideration of potential regulations on the personal cultivation of marijuana.
- 2 **RECOMMENDATION:** Provide direction to staff on appropriate Municipal Code
3 amendments
- 4 **BACKGROUND:** On November 8, 2016, California voters passed Proposition 64, the
5 Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”), which legalizes and
6 regulates recreational marijuana in California. The City retains the ability to prohibit
7 commercial marijuana businesses and outdoor cultivation. However, the AUMA requires
8 the City to allow each residence to cultivate up to six marijuana plants indoors.
- 9 On November 15, 2016, the City Council directed staff to prepare and process
10 Municipal Code amendments to maintain consistency with state law and impose
11 reasonable regulations on indoor residential cultivation to minimize safety and nuisance
12 impacts. The Council also expressed opposition to allowing medical marijuana
13 dispensaries, commercial marijuana businesses and private outdoor cultivation.
- 14 **Planning Commission recommendation**
- 15 On November 30, 2016, the Planning Commission considered proposed Code
16 amendments that reflected Council’s direction. Several members of the public
17 expressed their support for personal outdoor cultivation, citing safety issues and
18 electricity use associated with indoor cultivation, the ease of raising plants outdoors,
19 and the negligible odor problems that are likely with outdoor cultivation. The
20 Commission recommended approval of the proposed Code amendments to the Council
21 on a 3-1 vote, with modifications allowing each household to cultivate up to two

22 cannabis plants outdoors and banning outdoor cultivation on properties adjacent to
23 schools.

24 Community forums

25 Community forums on December 21, 2016, January 18, 2017 and February 15, 2017
26 focused on potential City regulations related to cannabis. The attendees at the first two
27 forums overwhelmingly supported allowing some form of personal outdoor cultivation.
28 Most of the attendees at the third forum expressed concerns about allowing any type of
29 cultivation due to possible impacts on children. Two letters in support of cultivation and
30 one letter in opposition have also been submitted since the Council's November 15th
31 meeting.

32 Regulations by other jurisdictions

33 There are no widely-accepted standards that could provide guidance on the above
34 issues, primarily because few communities have experience with personal outdoor
35 cultivation, even in states that have allowed individuals to grow plants for several years.

- 36 • Colorado allows personal outdoor cultivation only in a fully-enclosed, locked
37 facility, such as a greenhouse.
- 38 • Washington does not allow personal cultivation of recreational marijuana
- 39 • Oregon allows outdoor cultivation but limits the number of plants to four per
40 household, which must be screened from public view
- 41 • Alaska allows outdoor cultivation but limits the number of mature plants to three
42 per household. The plants must be screened from public view.

43 The City of Healdsburg has allowed the outdoor cultivation of up to three cannabis
44 plants for medicinal purposes for several years. Their code enforcement officer reports
45 odor problems only when the number of plants exceeds this limitation. However,
46 Healdsburg has adopted an urgency ordinance prohibiting recreational outdoor
47 cultivation.

48 The various jurisdictions in Napa County are still in the process of developing and
49 adopting regulations in response to AUMA. American Canyon has adopted an urgency
50 ordinance prohibiting recreational outdoor cultivation as well as deliveries. Napa County
51 staff is recommending a ban on outdoor cultivation and manufacturing of cannabis
52 products to the Board of Supervisors, while allowing deliveries. Yountville and St.
53 Helena are likely to ban outdoor cultivation as well.

54 **DISCUSSION:** Given the public support for personal outdoor cultivation recently
55 expressed at the Planning Commission public hearing and the community forums, the
56 Council may wish to consider allowing it in some form.

57 Issues related to personal outdoor cultivation include whether to:

- 58 • Limit the number of plants that may be cultivated outdoors per household
- 59 • Limit the amount of space on a lot that can be cultivated
- 60 • Restrict outdoor cultivation to properties with a single-family residence

- 61 • Require minimum setbacks of outdoor cultivation from adjoining residences
- 62 • Prohibit cultivation adjacent to (or within a certain distance of) schools, churches,
- 63 etc.
- 64 • Prohibit plants from being visible to the public, including neighboring properties
- 65 • Include the service of, consumption by, or possession of cannabis by a person
- 66 under the age of 21 at a loud or unruly gathering as a violation subject to a civil
- 67 fine

68 It is difficult to objectively judge each of the issues listed above. The Police Department
69 has received three complaints in the last two years regarding outdoor cannabis
70 cultivation, two of which cited an unpleasant odor associated with mature cannabis
71 plants.

72 Proponents of outdoor cultivation do not typically consider these odors to be obnoxious
73 and therefore do not support a limitation on the number of plants or the locations where
74 they may be grown.

75 Since it is unknown how many households will pursue outdoor cultivation, and the
76 number of plants and the species they will grow (some are more pungent and larger
77 than others), it is difficult to estimate the extent of potential odor and enforcement
78 problems.

79 The Council may wish to follow the Planning Commission's recommendation of allowing
80 two outdoor plants per household and re-evaluate the regulation after a year. Allowing
81 the maximum six plants at this point, then reducing the allowable number if that number
82 proves to be a problem in the future, could be difficult.

83 The Council should also consider limiting outdoor cultivation to single-family residences
84 located in single-family residential zoning districts to avoid odor and security problems
85 in multi-family residential projects.

86 Potential medical marijuana dispensaries

87 During the community forums, some support was expressed for allowing the
88 establishment of a medical marijuana dispensary in the city under appropriate
89 circumstances, primarily to serve the needs of local patients who must currently travel to
90 a Sonoma or Lake County dispensary. Dispensaries are currently prohibited throughout
91 Napa County.

92 In January, the Mayor, Councilmember Barnes, and the City Manager, Police Chief,
93 Planning Director and Senior Planner visited Mercy Wellness, a medical marijuana
94 dispensary in Cotati. They toured its facilities and discussed its operations and issues
95 with the dispensary director and the Cotati Police Chief.

96 The dispensary had a constant stream of customers, even during an off-peak hour,
97 which indicates that a generous amount of parking would be needed. A dispensary
98 would also have to be located in an area where proper security could be provided for

99 the transportation of product and cash (since this is the only form of payment currently
100 accepted).

101 If the Council supports the concept of allowing one or more dispensaries in the city, it
102 should direct staff to explore potential regulations that could result in a Municipal Code
103 amendment. Among the considerations would be the suitability/feasibility of a
104 dispensary in the Downtown Commercial Zoning District.

ATTACHMENTS

1. Planning Commission Resolution 2016-20
2. Planning Commission November 30, 2016 Minutes excerpt
3. Letter from Scott Atkinson
4. Letter from Tom Sherman
5. Letter from Erin Smith-Greenberg