

City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: Lynn Goldberg, Planning and Building Director
DATE: August 1, 2017
SUBJECT: Potential Initiation of Municipal Code Amendments to Allow Medical Marijuana Dispensary (MCA 2017-1)

APPROVED FOR FORWARDING



Dylan Feik, City Manager

1 **ISSUE:** Consideration of whether to allow one or more medical marijuana dispensaries
 2 in Calistoga

3 **RECOMMENDATION:** Provide direction to staff on various issues related to allowing
 4 one or more medical marijuana dispensaries

5 **BACKGROUND:** The City Council amended the Municipal Code in 2011 to prohibit
 6 medical marijuana dispensaries in all zoning districts (with exceptions for certain health
 7 care facilities). The staff report for the draft amendment cited the following concerns
 8 associated with dispensaries:

9 • *Public Safety staff is concerned with the secondary effects and adverse impacts*
 10 *related to medical marijuana. Marijuana dispensaries have been linked to a*
 11 *variety of crimes that range in severity from loitering and disturbing the peace, to*
 12 *robbery and homicide. If crime occurs as a direct result of MMD's, the cost to the*
 13 *city in terms of hours spent on investigation and enforcement by public safety*
 14 *staff could be significant.*

15 *Several secondary effects are associated with the distribution and use of*
 16 *marijuana. These include criminal acts, driving under the influence, white collar*
 17 *crimes, and negative impacts on our youth.*

18 • *Marijuana growers and dispensary operators have no oversight [by the FDA] and*
 19 *cannot validate the safety of their product.*

- 20 • *MMD's have been reported to generate high levels of "storefront" activity. This*
21 *includes people congregating at the entrance, loitering, waiting in parked cars,*
22 *and high vehicle turnover.*
- 23 • *Marijuana has a distinctive smell: as a plant, a bud and while smoked. It is staff's*
24 *understanding that MMD's often install ventilation systems to remove odors from*
25 *the premises. Even with such systems, odors can still be pervasive.*
- 26 • *Traffic and parking impacts are dependent on the number of members of the*
27 *MMD facility. However, determining the frequency of member visits to the MMD*
28 *(e.g., daily, weekly or monthly) would likely be difficult. If the MMD has a high*
29 *turnover rate where clients spend little time on site and pick up what they need*
30 *and leave, then parking impacts may be less of a concern (but may have greater*
31 *traffic and circulation impacts depending on whether the members use the MMD*
32 *during peak periods).*

33 The staff report also recognized that banning local dispensaries would not respond to
34 the "compassionate care" concerns of the State Compassionate Use Act, and would
35 preclude Calistoga patients from obtaining medical marijuana in their own city.

36 On May 16, 2017, the Council adopted Ordinance 730, which is primarily focused on the
37 personal cultivation of cannabis plants. During the community forums and public
38 hearings that were held prior to the ordinance's adoption, several members of the public
39 expressed support for the establishment of one or more medical marijuana dispensaries
40 within the community. The Council indicated that it was willing to re-consider this topic.

41 **DISCUSSION**

42 **Proposed state regulations for dispensaries**

43 It appears that some of the concerns regarding dispensaries that were identified in the
44 2011 staff report have been addressed by the 2015 Medical Cannabis Regulation and
45 Safety Act. Furthermore, the State recently released proposed regulations for the
46 licensing of commercial cannabis businesses, including dispensaries (see Attachment 2
47 for relevant excerpts). The Bureau intends to have the regulations in effect no later than
48 January 1, 2018.

49 The proposed regulations, in part, would require that dispensaries:

- 50 • Receive their goods from licensed distributors and have the medical cannabis
51 goods delivered by licensed transporters.
- 52 • Sell only goods that have undergone required testing procedures.
- 53 • Provide goods only to individuals who are legally allowed to purchase them.
- 54 • Place goods in an exit package after sale.
- 55 • Be open for sales only between the hours of 6:00 a.m. to 9:00 p.m. in order to
56 reduce the risk of robbery and other crimes.
- 57 • Limit the amount and placement of displayed goods in order to reduce the risk of
58 theft.

- 59 • Conduct inventory reconciliation every week and keep detailed records of all
60 activities.
- 61 • Report significant losses in inventory and crimes to law enforcement and the
62 Bureau.

63 Additionally, the proposed regulations would:

- 64 • Set security requirements regarding who may access the dispensary premises.
- 65 • Limit the amount of cannabis that can be sold to a patient on a daily basis.
- 66 • Prohibit samples from being provided free of charge.
- 67 • Impose rules on who can perform deliveries, the time during which deliveries
68 can be made, and how deliveries are to be performed to reduce the risk of
69 crime.

70 The proposed regulations also require an applicant for a dispensary to provide
71 extensive information about all owners and partners, a premises diagram, proof of
72 approval by the property owner and the local jurisdiction, proof of bond, and proof of
73 fingerprint submission to the Department of Justice.

74 Furthermore, state law prohibits dispensaries from locating within 600 feet of schools.

75 Issues and options

76 The primary question to be answered by the City Council at this point is:

77 *Does the City Council support, in concept, allowing a medical marijuana*
78 *dispensary in Calistoga?*

79 If the answer to this question is “Yes,” then a follow-up question is:

80 *What are the goals of allowing a dispensary?*

81 Identifying the goals of allowing a dispensary will help form the regulations associated
82 with its establishment and operation.

83 For example, if the primary goal is to provide a service to local patients (or their
84 caregiver) so they can avoid having to travel to Sonoma County or Vallejo to obtain
85 medical marijuana, limiting the number of patients that could be served by the
86 dispensary to this population would affect the amount of traffic generated and the
87 number of parking spaces required. This, in turn, would factor into identifying potential
88 dispensary sites. If there are no limits placed on the population served or the number of
89 patients, business activities could be much more intense because the dispensary would
90 serve a much larger area, including northern Napa Valley and parts of Lake County.

91 Examples of other issues that would need to be resolved include the following (see
92 summary in Attachment 1):

- 93 • Utilize the standard use permit process or create a new dispensary permit
94 that requires annual renewal?

- 95 • Because only one dispensary might be allowed and there will be many
96 interested applicants, how will the multiple applications be handled? For
97 example, will there be a scoring system or a lottery?
- 98 • Allow additional activities, such as a cannabis lounge?
- 99 • Require separation from schools that is a greater distance than the state
100 minimum (i.e., 600 feet)? (See Attachment 3). Require separation from other
101 “sensitive uses” (e.g., residential neighborhoods, parks, religious facilities)?
- 102 • Require the payment of an annual fee to the City to defray monitoring and
103 enforcement costs?

104 Potential regulations

105 If the Council supports, in concept, the establishment of a medical marijuana
106 dispensary, staff recommends deferring to the State’s application, licensing and
107 operational requirements to the greatest extent possible. By the time these regulations
108 are adopted, they will have been thoroughly vetted by all parties involved in commercial
109 cannabis operations. Furthermore, a potential applicant will not have to prepare a City
110 application that differs substantially from the one that is also submitted to the State.

111 Alternatives

112 The sale of recreational cannabis will become legal on January 1, 2018. If the Council
113 wishes to focus only on meeting the medical needs of patients, the City need not allow
114 this type of sale. However, if the Council supports recreational sales, staff recommends
115 including regulations to encompass this type of sale in addition to – or instead of –
116 medical dispensaries.

117 **FISCAL IMPACTS:** Proposition 64 set a 15 percent statewide excise tax on marijuana
118 purchases and authorized local taxes, as well. If the City were to allow a dispensary, it
119 could generate revenue from the imposition of a tax on gross receipts. The enactment
120 of such a tax would require local voter approval (by a simple majority) and the proceeds
121 could be used for any legitimate governmental purpose. Other local jurisdictions have
122 recently enacted such a tax. Cloverdale and Sonoma County voters recently approved a
123 tax rate of up to 10 percent; Santa Rosa voters approved a maximum 8 percent tax.

ATTACHMENTS

1. Summary of Cannabis Sales Issues & Options
2. Relevant excerpts from Bureau of Medical Cannabis Regulation Proposed
Dispensary Regulations
3. Marijuana Dispensary Exclusion Areas Map (i.e., 600-foot separation from schools)

Summary of Cannabis Sales Issues & Options

Issues	Options
Allow at least one medical marijuana dispensary?	Yes / No
Limit number of dispensaries?	If yes, allow how many?
Application process for dispensary?	<ul style="list-style-type: none"> • Scoring system (e.g., based on proposed site, business plan, qualifications and experience of principals, neighborhood compatibility plan, operations and security plan, local enterprise)? • First-come/first-served? • Window for applications followed by lottery?
Limit number of patients?	If yes, how many?
Limit patient residency?	If yes, limit to: <ul style="list-style-type: none"> • 94515 zip code? • Napa County?
Allow additional activities?	If yes, allow activities such as: <ul style="list-style-type: none"> • Consumption of cannabis on premises • Classes (e.g., education, cultivation)
Allow in which zoning districts?	<ul style="list-style-type: none"> • Downtown Commercial Zoning District or Downtown Commercial – outside of core • Community Commercial Zoning District • Industrial Zoning District
Require separation from sensitive uses?	<ul style="list-style-type: none"> • Increase separation from schools beyond state minimum of 600 feet? • Require separation from “sensitive uses” such as parks, youth facilities, religious facilities, residential zones? • Require separation from other dispensaries if more than 1 allowed?
Require how much parking?	Require parking study based on number of patients and employees
Annual permit review or renewal?	Options: <ul style="list-style-type: none"> • Use permit with potential revocation for non-compliance with conditions of approval • Use permit with annual review • New type of permit that requires annual renewal
Tax gross receipts?	Requires majority popular vote
Require annual payment to City?	Cover permit monitoring and call response costs
Allow recreational sales in 2018?	Yes / No

California Bureau of Medical Cannabis Regulation

Relevant Proposed Dispensary and Delivery Regulations

Dispensaries

The proposed regulations would require that dispensaries:

- Receive their medical cannabis goods from licensed distributors
- Have the medical cannabis goods delivered by licensed transporters
- Use the track and trace system to monitor activity
- Provide medical cannabis goods only to individuals who are legally allowed to purchase them by requiring that all medical cannabis patients provide the dispensary with identification, a physician's recommendation, and, in the case of primary caregivers, documentation of the authorization for them to act as a primary caregiver.
- Sell only medical cannabis goods that have undergone required testing procedures.
- Store medical cannabis goods in a manner to prevent spoilage or degradation
- Place medical cannabis goods in an exit package after sale.
- Conduct sales only between the hours of 6:00 a.m. to 9:00 p.m. in order to reduce the increased risk of robbery and other crimes.
- Limit the amount and placement of medical cannabis goods used for display in order to reduce the risk of theft.
- Conduct inventory reconciliation every week and keep detailed records of all activities.
- Report significant losses in inventory and crimes to law enforcement and the bureau
- Prohibit samples from being provided free of charge.

The proposed regulations would prohibit a dispensary from:

- Packaging medical cannabis goods on-site.
- Reselling any medical cannabis goods that have been returned by a medical cannabis patient or primary caregiver

The proposed regulations would:

- Set security requirements regarding who may access the dispensary premises

Deliveries

The proposed regulations would set requirements for delivery to medical cannabis patients and impose rules on:

- Who can perform deliveries
- The time during which deliveries can be made
- How deliveries are to be performed to reduce the risk of crime