



## Legislation Text

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File #: 13-545, Version: 2

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Staff Report for Ordinance Adding Chapter 4-33 to Title 4 of the San Leandro Municipal Code Pertaining to Medical Cannabis

### SUMMARY AND RECOMMENDATIONS

Staff requests that the City Council approve for first reading (pass-to-print) the attached medical marijuana dispensary ordinance.

### BACKGROUND

Since the expiration of the moratorium on the issuance of land use entitlements related to uses involving medical marijuana dispensaries expired on October 1, 2012, the City Council has reviewed, taken public comment, held several meetings and provided comments upon a draft ordinance that would allow the operation of and impose regulations upon two medical marijuana dispensaries in the City.

At the City Council's direction, staff presents for first reading an ordinance regulating medical marijuana dispensaries' establishment and operations. Two public presentations on the necessary amendments to the City's Zoning Code -- one before the Board of Zoning Adjustments for review and comment, and one before the Planning Commission for review and recommendation to City Council - - will be scheduled. Those two presentations will include a review of the adopted ordinance, and staff recommended amendments to the Zoning Code to bring the Zoning Code in compliance with the ordinance.

### Analysis

The City had a moratorium on the issuance of land use entitlements, building permits, and business licenses for new medical marijuana dispensary related operations in the City. The moratorium was passed, and subsequently extended pursuant to City Council findings that included, amongst others, uncertainty regarding the legality of dispensaries as legitimate means of complying with State and Federal law under the Compassionate Use Act, the Medical Marijuana Program Act, and various jurisdictions' efforts to ban, regulate, and raise revenue from such operations.

On July 16, 2012, pursuant to an appellate court decision that prohibited local jurisdictions from banning medical marijuana dispensary operations (***County of Los Angeles v. Alternative Medicinal Cannabis Collective*** (July 2, 2012) 207 Cal.App.4th 601 (2d Distr., Div. 1)), the City Council decided that it would allow the moratorium to expire. The City Council also directed the City Council Rules and Communications Committee to develop an ordinance and amendments to the Zoning Code to allow a limited number of dispensaries to operate in the City.

The ordinance itself is modeled after the City of Oakland's 2011 amendments to its medical marijuana dispensary ordinance. The proposed ordinance also borrows from the City and County of

San Francisco Department of Public Health's regulations related to edible cannabis product handling, labeling, and distribution. The ordinance is in strict compliance with the California Attorney General's August 2008 *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*. Staff also believes that the ordinance complies with the common law related to the establishment and operation of medical marijuana dispensaries.

The ordinance's main provisions are as follows:

- ❖ 2 valid permits are allowed;
- ❖ The City Manager may impose separate conditions of approval, including allowing later hours of operation;
- ❖ A public hearing on the approval of a conditional use permit must be held by the Board of Zoning Adjustments for any dispensary permit that is approved by the City Council;
- ❖ Operating, security, recordkeeping, facilities, and signage regulations are set in the ordinance;
- ❖ Dispensaries may only be located in the City's industrial and commercial zoning districts, and cannot be within 1,000 feet of a school, library, youth center, park and recreation facility, and another dispensary, and cannot be within 500 feet of a residential zone;
- ❖ On-site distribution of edible cannabis products will be allowed and regulated to prevent the transmission of foodborne illnesses; and
- ❖ Payment of a non-refundable permit application fee, an annual permit renewal fee, and annual business license fee will be required. Staff is analyzing what amounts those fees should be, and will provide recommendations for City Council approval at a subsequent meeting.

The City Council should note that staff is recommending a change that is new in this version of the proposed ordinance related to the effective date of the ordinance, which will affect the timing of its implementation. The City Council, through numerous comments at City Council Rules & Communications Committee and full City Council meetings, exhibited a clear legislative intent that medical marijuana dispensary operations should be a revenue source to the City. The City Council was advised on multiple occasions that a ballot measure that approves a tax on the percentage of gross receipts from the operations of such dispensaries, approved by City voters, would need to occur in order for the City to realize significant revenue from the operations of such dispensaries within City boundaries. As such, staff recommends that Section III of the ordinance (Effective Date) provide that the ordinance will take effect upon approval of a tax measure by the City electorate. Staff recommends that the City Council place such a measure on the November 2014 ballot. No dispensary, in effect, may open in the City until after November 2014. Given the implementation schedule below, staff believes that it is realistic to assume that either one or both permitted dispensaries will not be ready to open until after November 2014 anyway.

Staff proposes the following implementation schedule:

1. Approval of the first reading (pass-to-print) of the ordinance. (November 4, 2013)
2. The ordinance will be placed on a subsequent meeting's agenda for second reading and adoption. (November 18, 2013)
3. Staff will present the approved ordinance and proposed amendments to the Zoning Code to the Board of Zoning Adjustments for review and comment. Staff will present the same to the Planning Commission for its review and recommendation to the City Council as to the approval of the Zoning Code amendments. (February / March 2014)
4. Staff will engage a consultant to assist the City with the drafting, preparation, and

administration of a Request for Proposal (RFP) process to determine which medical marijuana dispensary operators should be recommended for award of a permit. (February - August 2014)

5. Staff will prepare materials for a ballot measure to approve a percentage of gross receipts tax (or other similar legally permissible calculation method) for placement on the November 2014 general election ballot. (By June 2014)

### **Previous Actions**

- October 4, 2010: The City Council passed An Interim Urgency Ordinance Prohibiting Consideration and Approval of Use Permits, Variances, Building Permits, Start of New Construction, or Other Entitlements for Any Establishment or Operation of Medical Marijuana Dispensaries, Marijuana Cultivation Facilities, or Other Land Uses that Could Be Proposed Should Prop 19 Be Approved by Voters for a Forty-Five Day Period.
- November 15, 2010: The City Council extended the Interim Urgency Ordinance to October 1, 2012.
- May 16, 2011: The City Council heard and did not pass an ordinance that would prohibit the establishment of medical marijuana dispensaries in the City. The moratorium continued in effect.
- June 18, 2012: The City Council directed staff to prepare an ordinance prohibiting the establishment and operation of medical marijuana dispensaries with a sunset date.
- July 2, 2012: The City Council took no action on an ordinance prohibiting the establishment and operation of medical marijuana dispensaries with a sunset date.
- July 16, 2012: The City Council directed the City Council Rules and Communications Committee to work with staff on an ordinance that would permit the establishment and operation of medical marijuana dispensaries within the City.
- November 7, 2012: The City Council Rules and Communications Committee approved the proposed ordinance, and forwarded it to City Council for review and comment.
- December 3, 2012: Action item (Prior to the Action item, the City Council accepted the 11/07/2012 Rules and Communications Committee highlights and its recommendation to consider the proposed medical marijuana ordinance.). There was a consensus amongst the City Councilmembers to hold a City Council work session in February 2013 to receive public input on the draft medical marijuana dispensary ordinance.
- February 12, 2013: Special meeting: "Staff Presentations including Background Information and Next Steps for Development of Proposed Medical Marijuana Dispensaries Ordinance."
- May 20, 2013: "City Attorney Report on City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. Regarding California Supreme Court's Decision on Medical Marijuana Dispensaries."
- September 16, 2013: City Council directed staff to prepare for first reading (pass-to-print) an ordinance regulating the establishment and operation of two (2) medical marijuana dispensaries.

### **ATTACHMENTS**

None

**PREPARED BY:** Richard D. Pio Roda, City Attorney