



**MEMORANDUM
OFFICE OF THE
COUNTY EXECUTIVE OFFICER
COUNTY OF PLACER**

To: Honorable Board of Supervisors
From: David Boesch, County Executive Officer
By: Bekki Riggan, Deputy CEO
Date: December 8, 2015
Subject: Medical Marijuana Legislative Update

ACTION REQUESTED

Receive an update on the California Medical Marijuana Regulation and Safety Act (MMRSA); provide staff direction regarding an ordinance authorizing local regulation and recommended modifications of existing ordinances.

BACKGROUND

On May 5, 2015 your Board received a staff presentation on citizen complaints associated with medical marijuana cultivation in Placer County, most notably in the Sheridan area. Your Board heard from constituents expressing concerns over pungent odors emitted during growing season, along with concerns over increased neighborhood traffic and criminal activity. Your Board also heard from constituents voicing concerns over losing their rights to cultivate medical marijuana. In recognition of then pending State legislation, staff was directed to take a "wait and see" approach, and to return to your Board when, and if, state legislation called for further local discussion.

Since May 5th, staff has continued legislative and policy research and convened a Medical Marijuana Policy Committee (MMPC) with representatives from the Board of Supervisors, County Executive Office, Sheriff's Office, District Attorney, Assessor, Treasurer/Tax Collector, Agriculture Commissioner, Community Development Resources Agency (CDRA), Probation, and Health and Human Services (HHS). The committee coordinated a series of presentations by the Sheriff's Office, HHS Public Health Office, Agriculture Commissioner, Air Pollution Control District and the National Organization for the Reform of Marijuana Laws (NORML) on medical marijuana policy issues.

Implementation of Proposition 215, "The Compassionate Use Act of 1996" absent a clear and comprehensive regulatory framework has resulted in numerous concerns across the state, including:

- Authorized supply of medical marijuana outstripping the demand and unknown amounts of marijuana becoming available outside the medical marijuana structure;
- Illegal diversion of medical marijuana into the black market and increased criminal activity;
- Serious harm to the environment, including diversion of scarce water resources, use of toxic chemicals that pollute land and waterways, harm to wildlife, and erosion;
- Hazardous use of electrical power putting residences and other structures at risk of fire, complaints from neighbors adversely affected by strong odors, robberies, and disturbances of the peace.

New Legislation

On October 9, 2015, the Governor signed into law the California Medical Marijuana Regulation and Safety Act (MMRSA), extensive legislation comprised of three bills, SB 643, AB 266, and AB 243. MMRSA is the most comprehensive regulation enacted since the passage of Proposition 215, "The Compassionate Use Act of 1996" and addresses all aspects of medical marijuana including cultivation, processing, transportation, testing, distributing, sale and taxation. MMRSA becomes operative on January 1, 2016, however many of the new state standards will not take effect until January 1, 2018.

AB 266 establishes a new agency, the Bureau of Medical Marijuana Regulation that will work in coordination with the California Department of Food and Agriculture, the Department of Public Health and other state agencies, to oversee the licensing of medical marijuana growers and the retailers of related products. SB 643 tightens regulation on physicians and clinics that capitalized on the lack of regulation by issuing medical marijuana recommendations for patients lacking valid health needs. AB 243 emphasizes environmental issues by giving the nine State regional water quality boards the authority to regulate the discharge of water, chemicals and sediment into the environment.

Summary of Key MMRSA Provisions:

- **Protections for Businesses and Employees** - Compliant business owners, employees, landlords, and others are protected from both criminal law and civil asset forfeiture.
- **Many Types of Licenses** - Seventeen different types of annual business licenses will be available, including indoor and outdoor cultivations of different sizes, plant nurseries, processors, testing labs, and dispensaries." Distributors", a new class of business license, would be responsible for transport between businesses.
- **Collectives and Cooperatives Will Be Phased Out** - These bills do not provide licensing of collectives and cooperatives as they previously existed, but the transition will be gradual. They may continue to operate in compliance with local rules until January 1, 2018 and the collective/cooperative defense would remain in place for 1 year after licenses are issued.
- **Patients Can Still Grow Their Own** - Patients can continue to grow their own medical marijuana (except where banned at the local level). However, grow space is limited to 100 square feet, with prohibitions on giving, selling, or donating medical cannabis to others without being properly licensed. Caregivers can grow for up to five patients, and are limited to 500 square feet.
- **Outdoor Cultivation Space Is Capped** - Licensed outdoor cultivators would be limited to no more than one-acre spaces, while indoor cultivators are limited to no more than one-half acre.
- **Testing and Labeling Required**. Product sold to patients is subject to specific requirements including tamper-resistant packaging, labeling and testing for potency and contaminants.
- **Some Vertical Integration is Allowed** - Some business types may hold licenses in more than one category (some cultivators can own dispensaries), but holding multiple licenses is limited.
- **Criminal Background Checks Required** - Business license applicants may be denied a license if they have a felony record related to the qualifications, functions, or duties of the business, including a conviction for the illegal possession for sale, sale, manufacture, transportation, or cultivation of marijuana.
- **Deliveries Are Allowed** - Unless banned at the local level dispensary license holders can make deliveries to their patients as there are no separate licenses required for delivery services.
- **Medical Marijuana Tracked During the Process** - The framework imposes a "track and trace" system that requires medical marijuana to be tracked from the earliest stages to sale.
- **For-Profit and Non-California Investors and Owners Allowed** - Businesses are allowed to cultivate and distribute marijuana for profit and there are no state residency requirements.
- **New Standards for Cultivators** - The California Department of Pesticide Regulation and Department of Food and Agriculture will develop pesticide use and organic marijuana standards.
- **Local Government Authority is Broad** - MMRSA makes clear that local public entities retain their current right to ban medical marijuana cultivation and related activities within their respective jurisdictions. They are also fully empowered to adopt ordinances that allow but regulate medical marijuana.

Local Considerations

While MMRSA explicitly recognizes the role of the county in regulating medical marijuana, the state requires the licensee to first obtain a local license, permit or other entitlement from the county allowing cultivation to occur. Legislation currently identifies a March 1, 2016 deadline to have in place a local ordinance that asserts the County's regulatory authority to regulate medical marijuana; otherwise the State would assume regulatory control. AB 243 provides:

“if a city, county or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016 the [state] shall be the sole licensing authority for medical marijuana cultivation applicants.”

Although legislative advocates inform us that the State intends to modify the March 1st requirement, it has been advised that we move forward in recognition of this deadline to avoid any possible threat to asserting local control. Therefore, staff is seeking direction on local ordinance development for medical marijuana cultivation and related activities in Placer County and authority to bring forth an initial ordinance to establish local authority.

Placer County Regulation

Under the rule of permissive zoning if a particular land use is not expressly permitted in county code, it is impermissible. Thus by not identifying a land use zone that specifically allows for the cultivating, manufacturing or dispensing of medical marijuana, Placer County prohibits these activities. The county's current ban on medical marijuana remains in effect. If your Board desires to retain this ban, your Board needs to authorize the enactment of an ordinance specifically banning the cultivation of medical marijuana in Placer County.

The Medical Marijuana Policy Committee (MMPC) unanimously recommends the development of a local regulatory framework in Placer County to promote health and safety of all constituents with regards to medical marijuana cultivation and related activities. Policy research suggests that development and enforcement of comprehensive regulation promotes the public interest by balancing the needs of medical patients and their caregivers for access to medical marijuana, the needs of neighbors and communities to be protected from public safety and nuisance impacts, and the need to limit harmful environmental impacts that are sometimes associated with marijuana cultivation.

If your Board directs development of a comprehensive, local regulatory framework, recommended goals of the regulatory framework are as follows:

- Reduce illegal marijuana grows, associated violence and the use of firearms;
- Move current supply and demand from an uncontrolled to a regulated market thus reducing revenue to criminal enterprises gangs, and cartels;
- Mitigate negative impacts to the environment and to air and water quality;
- Enhance patient protections through oversight, monitoring, testing and product labeling;
- Establish an array of civil enforcement tools designed to bring responsible growers into compliance without first resorting to criminal enforcement;
- Establish a mechanism to capture and invest tax revenue in programs that off-set the costs regulation enforcement and/or improve public health and educational programs around marijuana use.

Any regulatory ordinance adopted by your Board would operate in conjunction with the provisions outlined in the MMRSA. Should your Board choose to adopt a comprehensive local regulatory framework for medical marijuana, further direction is requested on the following topics:

1. Cultivation
 - a. Commercial (over 100 square feet)
 - Outdoor cultivation, with or without restrictions;
 - Indoor cultivation, with or without restrictions (size, density, and type of structure)
 - b. Personal (under 100 square feet)
 - Outdoor cultivation, with or without restrictions;
 - Indoor cultivation, with or without restrictions (size, density, and type of structure)
2. Manufacturing
 - a. Allowing businesses to produce and sell edibles, concentrates and other products
3. Dispensaries and or Mobile Delivery Services (MDS)
 - a. Number, location, density and fees
 - b. Consideration of a pilot program or license auction
 - c. Tying MDS to "brick and mortar" dispensaries
4. Distribution and Transport
 - a. Allowing businesses to transport product from point of production to point of sale
5. Taxation
 - a. Requires voter approval (majority plus one)
 - b. Revenue tied to general government purposes or specific purposes
 - c. Requires 125 day completion before election

Direction Requested

Pursuant to discussion by your Board on the California Medical Marijuana Regulation and Safety Act (MMRSA) staff is seeking direction regarding an ordinance authorizing local regulation and recommended modifications of existing ordinances. Should your Board choose to adopt a comprehensive local regulatory framework for medical marijuana cultivation and related activities, staff recommend the following actions:

- Develop an initial ordinance preserving local authority to regulate the cultivation of medical marijuana by administering a conditional permit program pursuant to AB 243.
- Develop a comprehensive local regulatory framework which includes the cultivation, processing, transportation, testing, distribution, sale and taxation of medical marijuana.
- Authorize staff to conduct a public outreach process either through 3 regional town hall presentations, or at Municipal Advisory Councils, upon request.
- Designate the Agricultural Commissioner, with assistance from Community Development Resources Agency (CDRA), County Executive Office and County Counsel, to assume the lead in ordinance development; in overseeing the licensing and regulating associated with the ordinance and to identify resources necessary to enforce local regulation.

Fiscal Impact

Should your Board direct staff to develop a comprehensive regulatory framework, building adequate capacity to ensure industry compliance will be essential. Staff anticipates that the department(s) associated with the enforcement of regulation would need resource augmentation commensurate with the level of regulation developed. County Executive staff would return with estimates of additional resources required as part of future Board discussions.