



CITY OF FORT BRAGG

416 N. FRANKLIN, FORT BRAGG, CA 95437
PHONE 707/961-2823 FAX 707/961-2802

COUNCIL COMMITTEE ITEM SUMMARY REPORT

MEETING DATE: December 9, 2015
TO: Public Safety Committee
FROM: Marie Jones, Community Development
AGENDA ITEM TITLE: **Receive Report Regarding New Legislation Regulating Medical marijuana**

ISSUE:

The California Legislature recently passed three bills that will create a broad state regulatory and licensing system governing the cultivation, testing, and distribution of medical marijuana, as well as physician recommendations for medical marijuana. Known collectively as the Medical Marijuana Regulation and Safety Act (MMRSA), these bills were signed by Governor Brown. The MMRSA includes three interrelated laws, which affect the regulation and licensing of a variety of medical marijuana businesses, products and practices, as follows:

AB 266 establishes a dual licensing structure requiring both a State license and a local license or permit. A new Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs (DCA) will issue state licenses for medical marijuana dispensaries and establish licensing requirements for activities related to dispensaries, such as distribution and transportation of marijuana. This law:

1. Limits vertical integration by requiring third party distribution, transportation and testing;
2. Establishes uniform security requirements at dispensaries as well as for transporters;
3. Requires establishment of uniform State minimum health and safety standards, testing standards, and security requirements at dispensaries and during transport of the product;
4. Makes product-testing mandatory;
5. Specifies a standard for certification of testing labs, and specified minimum testing requirements. Prohibits testing lab operators from being licensees in any other category, and from holding a financial or ownership interest in any other category of licensed business;
6. Establishes a licensing procedure for deliveries. "Delivery" means the commercial transfer (via vehicle, mail or the internet) of medical cannabis or medical cannabis

products from a dispensary, up to an amount determined by the bureau to a primary caregiver or qualified patient;

7. Phases out the existing model of marijuana cooperatives and collectives one year after the DCA announces that State licensing has begun; and
8. Specifies that patients and primary caregivers are exempt from the State licensing requirement, and that their information is confidential under the California Public Records Act.

AB 243 (Wood) establishes a regulatory and licensing structure for medical marijuana cultivation under the Department of Food and Agriculture (DFA). AB 243 also requires:

1. The DFA to work with other state agencies to develop environmental protection standards;
2. The Department of Pesticide Regulation to establish medical marijuana pesticide standards; and
3. The Department of Public Health to create standards for labeling of marijuana edibles.

SB 643 (McGuire) establishes standards for licensing of medical marijuana businesses, regulates physicians, and recognizes local authority to levy taxes and fees. This law:

1. Establishes a track and trace program for all marijuana;
2. Directs the California Medical Board to prioritize investigation of excessive recommendations by physicians;
3. Imposes fines on physicians for having a financial interest in a marijuana business;
4. Defines a physician making a recommendation for cannabis, without a prior examination, as unprofessional conduct;
5. Imposes restrictions on advertising for physician recommendations;
6. Codifies dual licensing (State license and local license or permit), and itemizes disqualifying felonies for State licensure;
7. Places DPR in charge of pesticide regulation and DPH in charge of production and labeling of edibles; and
8. Authorizes counties to tax through a declaratory of existing law.

SUMMARY:

The MMRSA does not address recreational use of marijuana. It adds a licensing structure for businesses that wish to serve those qualified patients and primary caregivers who use medical marijuana for their personal use. The new law creates five State licensing categories:

1. Dispensary
2. Distributor
3. Transport
4. Cultivation
5. Manufacturing

The law limits cross-licensing. Operators may hold one State license in up to two separate license categories. The law prohibits medical marijuana licensees from also holding licenses to sell alcohol.

Primacy of Local Regulations. MMRSA prohibits a person from engaging in commercial cannabis activity without possessing both a State license and a local permit, license or other authorization. Additionally, a State licensee may not commence activity under the authority of a State license until the applicant has complied with all requirements of the applicable local ordinance (Business & Professions Code Section 19320). However, in the absence of a local ordinance, the State will become the only authorized licensor. The State is expected to begin issuing licenses on January 1, 2018.

This legislation protects local control in the following ways:

1. **Dual licensing.** All all marijuana businesses must have both a State license, and a local license or permit, to operate legally in California. Jurisdictions that regulate or ban medical marijuana will be able to retain their regulations or ban. Jurisdictions without regulations will be regulated through the State legislation only. The law expressly protects local licensing practices, zoning ordinances, and local actions taken under the constitutional police power.
2. **Local Revocation.** The revocation of a local license or permit terminates the ability of a marijuana business to operate in that jurisdiction under its State license.
3. **Enforcement.** Local governments may enforce State law in addition to local ordinances, if they request that authority and if it is granted by the relevant State agency. State law provides for civil penalties for unlicensed activity, and applicable criminal penalties under existing law will continue to apply. Thus, if a local jurisdiction seeks to recover civil penalties for a violation of State law, those penalties would accrue to the local jurisdiction.
4. **Fees & Taxes.** Local jurisdictions retain the power to access fees and taxes, as applicable on facilities licensed by the city.

However, in order to retain local authority, a city must legislate regulations regarding cultivation, dispensing, manufacturing and transport of medical marijuana as follows:

Cultivation. Under the MMRSA, cities must enact regulations for medical marijuana cultivation prior to March 1, 2016, otherwise the State will be the sole licensing authority. Fort Bragg's has medical marijuana cultivation regulations in the Municipal Code (see Attachment 1). The City's ordinance allows cultivation with a Minor Use Permit under specific conditions. Under the MMRSA, a person who cultivates marijuana for his or her personal medical use is not required to get a cultivation license from the State, if the area used for cultivation does not exceed 100 square feet (SF). The City's ordinance limits cultivation to 100 SF.

Policy Questions: The City Attorney will need to advise as to whether it is necessary to incorporate the City's medical marijuana cultivation regulations into the Land Use & Development Code (i.e., zoning ordinance). If the City Council is interested in modifying the City's medical marijuana cultivation regulations, it should do so prior to March 1, 2016.

Delivery. Under the MMRSA, delivery will be permitted with a State license unless a city adopts an express prohibition on delivery (AB 266). The State will establish a Statewide limit on the amount that local delivery services will be authorized to carry, based on security considerations, cash value, and other factors. The threshold amount will be authorized only for delivery to patients, primary caregivers, and testing labs. Larger amounts will not be considered "delivery"

but rather “transport” triggering heightened security requirements while the product is being moved. Counties can charge a transaction tax for delivery. Cities can charge a licensing fee.

If Fort Bragg wants to prevent deliveries within its jurisdiction, it must adopt an ordinance expressly prohibiting them by the end of 2017. State delivery licenses are expected to be issued starting January 1, 2018.

Policy Questions: The City Council should determine whether the City should have a local ordinance prohibiting deliveries. If the City chooses to allow deliveries, it may establish regulations for delivery services and charge a licensing fee.

Dispensary. The new law requires a local permit and a State license before a dispensary can begin operations within a specific jurisdiction. Cities will retain the discretion to regulate and/or deny permits or licenses to marijuana dispensaries. The City of Fort Bragg currently regulates dispensaries through its Municipal Code (see Attachment 2),

Policy Questions: The City Attorney will need to advise as to whether it is necessary to incorporate the City’s medical marijuana dispensary regulations into the Land Use & Development Code (i.e., zoning ordinance). The City Council should also determine whether it is interested in modifying the City’s medical marijuana dispensary regulations to make them more or less restrictive, or to prohibit dispensaries altogether. In order to serve local caregivers and patients, the City could continue to allow dispensaries and prohibit delivery services or vice-versa.

Manufacture & Testing. Under the MMRSA, a State license is required from DPH to “manufacture” edibles or to test medical marijuana in any of its forms. The City currently allows light manufacturing in both the Heavy and Light zoning districts without a Use Permit. The manufacture of “edible” medical marijuana could be considered “food and beverage manufacturing” under Light Manufacturing or it could be separately regulated. Likewise medical marijuana testing could be considered “Laboratory – Medical, Analytical, Research and Development” under Light Manufacturing or it could be separately regulated. The MMRSA is silent on a local jurisdiction’s ability to regulate the manufacture or testing of medical marijuana through zoning limitations.

Policy Questions: Consider how and if the City should regulate the location and operations of medical marijuana manufacturing and testing facilities. Regulations could include: requiring a Use Permit for the manufacture of edibles and testing of medical marijuana and specific regulations regarding smell, security, etc. that are relevant to such businesses.

The new legislation also directs DPH to develop standards for the production and labeling of all edible medical cannabis products (Business & Professions Code Section 19332(c)). The DPH standards are “minimum standards.” A city may adopt additional stricter standards, requirements and regulations regarding “edibles” (Business & Professions Code section 19316(a)).

Expedited Permitting. The State licensing authority is required to prioritize the license for any facility or entity that can demonstrate that it was in operation and in good standing with a local

jurisdiction by January 1, 2016. This provision is intended as an incentive for business operators to be in compliance with local ordinances, to ease any difficulties local governments may have in launching their local regulatory structures, and to help expedite the initial phase of issuing State licenses. Some businesses have been seeking approval for medical marijuana operations within Fort Bragg's city limits in order to gain the prioritization. It is unlikely that these potential businesses will become operational by January 1, 2016.

Policy Questions: Should the City establish a new medical marijuana licensing structure for any or all of the various business types (AB 226, Section 1932(b)). The rough timeline for State licensing to begin is January 2018.

RECOMMENDATION:

Provide direction to staff regarding considerations as this item is brought forward to the full Council for policy direction.

ATTACHMENTS:

- 1) FBMC Section 9.3 Medical Marijuana Cultivation
- 2) FBMC Section 9.3 Medical Marijuana Dispensaries