MEETING OF THE MEDICAL CANNABIS COMMISSION, CULTIVATION AND AUMA SUBCOMMITTEE

Permit Service Center
2120 Milvia Street
Douglas Fir Conference Room (First Floor)

Wednesday, November 16, 2016
3:00 - 5:00 PM

AGENDA

I. Call to Order
- A. Roll Call
- B. Changes to Order of Agenda

II. Public Comment

III. Discussion and Action Items
- A. Consider City regulations (local ordinances, licensing, zoning, taxes, etc.) that might need to be addressed should AUMA/Prop 64 pass. (These items should be added to Commissioner Rice's memo – see October 27th packet.) Five attachments:
  1. Council referral
  2. Staff memo with questions to consider
  3. Information from the San Francisco Cannabis Legalization Task Force: Regulation/City Agency Framework
  4. Information from the San Francisco Cannabis Legalization Task Force: Public Safety/Social Environment
  5. Information from the San Francisco Cannabis Legalization Task Force: Land Use/Social Justice/Tourism
- B. Discussion regarding 11-16-16 Planning Commission meeting to discuss expansion of cultivation beyond M District and delivery-only dispensaries. One attachment:
  1. 11-16-16 Planning Commission staff report on expansion of cultivation beyond the M District and delivery-only dispensaries.
- C. Select dates for future meetings

IV. Information Items *(In compliance with Brown Act regulations, no action may be taken on these items. However, discussion may occur at this meeting if the item is moved to the Discussion section.)*
None.

V. Adjournment

Berkeley Medical Cannabis Commission website: http://www.cityofberkeley.info/medicalcannabis/)
Medical Cannabis Commission Secretary: Elizabeth Greene, 2120 Milvia Street, 2nd Floor, Berkeley CA 94704. Phone: 510-981-7484 EGreene@cityofberkeley.info

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Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Planning and Development Department located at 2120 Milvia Street, Berkeley CA. Please contact the Commission Secretary for further information.

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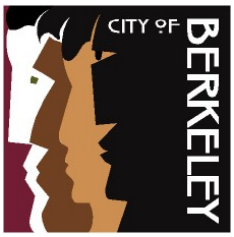

Office of the Mayor

CONSENT CALENDAR
July 19, 2016

To: Honorable Members of the City Council

From: Mayor Tom Bates

Subject: Options for Implementing Recreational Marijuana in Berkeley if it is Legalized in California

RECOMMENDATION
Request that the Medical Cannabis Commission provide recommendations to the Council in early 2017 on implementation, operating standards, selection of dispensaries and local tax options if recreational marijuana is approved by California voters in the November 2016 election. The Commission is asked to consider what lessons can be learned from the experiences with legalized recreational cannabis use in Colorado, Oregon and Washington.

BACKGROUND
There is a strong possibility that voters will approve recreational marijuana use in California in the November 8, 2016 general election. Legalization could have a significant impact in Berkeley, depending in large part on local regulation. It is also expected to generate a large potential for increased tax revenues that could benefit Berkeley.

Given the strong support for legalization and the potential challenges and opportunities it would provide for the City, it is in the City's best interest to be prepared for implementing it.

FINANCIAL IMPLICATIONS
The financial impact could be significant. The City would incur some staff costs for developing and operating a regulatory program, while it could potentially realize a large increase in revenue.

ENVIRONMENTAL SUSTAINABILITY
Legalization is not expected to have a direct environmental impact, though it could result in some indirect impacts.

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TO: **Medical Cannabis Commission**

FROM: **Elizabeth Greene, Secretary**

SUBJECT: **Staff Recommendation for Recommendations regarding Recreational Cannabis**

DATE: **November 17, 2016**

The MCC has been asked to provide recommendations to the Council on implementation, operating standards, selection of dispensaries and local tax options if recreational marijuana is approved by California voters. Legalization could have a significant impact in Berkeley, and could generate a large potential for tax revenues that could benefit the City. The MCC was asked to provide these recommendations to the Council in early 2017.

In order to meet the Council's timeline, Staff is providing questions for the MCC to consider and provide responses. The MCC can add other questions and responses as necessary. Staff will then work with appointed members of the MCC to develop a report for Council.

Staff recommends that the MCC focus their attention on the following broad questions:

1. Should City regulations for recreational cannabis be developed prior to the State regulations?

2. Should recreational cannabis be treated differently from medical cannabis?

3. Should the mission of the MCC be changed to include recreational cannabis, or should a new commission be created to address this issue?

4. Are there impacts that recreational cannabis will have (or will not have) that should be addressed differently from recreational cannabis? If so, what?

5. Which of the following recreational cannabis business types be permitted in Berkeley?
    a. Cultivation (small, medium, large)
    b. Nurseries
    c. Manufacturing (using non-volatile solvents and volatile solvents)
    d. Testing
    e. Retailers
    f. Distributor
    g. Microbusiness

6. Should there be a quota on any of the business types?

7. Should existing medical cannabis businesses be allowed to acquire recreational cannabis licenses?

8. Should there distance limits between medical cannabis dispensaries and Retailers?

San Francisco Cannabis State Legalization Task Force

Regulation and City Agency Framework DRAFT Workgroup Recommendations

Licensing

Licensing	**Local Industry Licenses** **Local Policy and Legal/Programmatic/Future Considerations:** San Francisco should develop a local adult use cannabis licensing system that aligns and builds upon the State license types and structure. **Local Policy and Legal/Programmatic/Future Considerations:** The City should consider creation of new license types, in addition to the State-defined license types, to accommodate the diverse businesses within the adult use cannabis industry in San Francisco. Any newly created local license types should be shared with the State and may include the following: • New category: Manufacturing 6B Special baking/cooking license • New category: Consumption lounge • New category: Events (e.g. commercial events and farmers' markets, etc.) **Local Policy and Legal/Programmatic/Future Considerations:** In order to provide a consumption space, San Francisco should consider waiving licensing requirements for smoking tents at special events where there is no cannabis distribution. **Local Policy and Legal/Programmatic:** San Francisco should align with the Planning Department's zoning map for volatile manufacturing, and only issue Type 7 = Manufacturer 2 licenses in these permitted areas. **Local Workforce Licensing** **Local Policy and Legal/Programmatic/Future Collaborations:** San Francisco should consider workforce licensing requirements that create uniform standards across businesses. The City should work with relevant stakeholders to identify appropriate training requirements that achieve a balance

	between creating minimum standards that do not also create a barrier to entering the industry. The City should consider various job training formats (e.g. on-the-job training, apprenticeship certification, continuing education, shadow programs at dispensaries, etc.) and leverage existing programs to develop and implement adult use cannabis workforce education and training. The following entities could be involved in this effort: • Office of Small Business • City College of San Francisco and other community colleges • San Francisco Unified School District • Charter or private schools • Unions • Oaksterdam University • Patient Focused Certification Program – Americans for Safe Access **<u>Non-Profit Licenses</u>** **Local Policy and Legal/Programmatic:** San Francisco should support the non-profit model and make non-profit licenses available for cannabis organizations that provide compassion programs and supportive services for patients. The City may consider reduced permit costs and state and/or local tax exemptions for non-profit licensees.
Deliveries	**Local Policy and Legal/Programmatic/Future Considerations:** San Francisco should consider a local license that would allow for adult use mobile delivery/retail services without the brick and mortar retail requirement. Adult use cannabis retailers that possess a delivery-only license should have a hub, or centralized location, to process orders. In-home cannabis businesses pose potential security risks for residential neighborhoods, so these hubs should be in non-residential or live/work commercial zoning locations.

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	Local Policy and Legal/Programmatic: Delivery drivers will need proof of authority to fill delivery orders. The driver should possess an order manifest that includes patient name, order date, delivery date, business name, items ordered, and order time. However, delivery address should not be included, as inclusion of this information may pose a safety risk to consumers. **Local Policy and Legal/Programmatic:** San Francisco should allow permitted medical cannabis dispensaries that currently operate delivery services to continue to provide deliveries. **Local Policy and Legal/Programmatic:** Delivery drivers should receive training to minimize potential safety risks. Strategies to ensure safety of drivers may include, but not limited to, training to prevent deliveries on or passing through federal property and use of GPS or body cameras for security purposes. NOTE: Task Force did not reach consensus on aforementioned delivery recommendations during the large group discussion introducing these recommendations.
MCDs and Adult Use Market Participation	**Local Policy and Legal/Programmatic:** San Francisco should allow cannabis retailers to participate in both the medical cannabis and adult use cannabis markets. **Local Policy and Legal/Programmatic:** The licensing process for medical cannabis dispensaries should not be more restrictive than that for adult use retail licensees. **Local Policy and Legal/Programmatic:** San Francisco should consider creating a licensing priority for current medical cannabis dispensaries in operation as of September 30, 2015, to apply for adult use cannabis licenses.

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Taxation and Revenue

Taxation	**Local Policy and Legal/Programmatic:** Proposition 64 establishes state adult use cannabis taxes. To complement the state's taxation system, San Francisco should consider establishing local cannabis taxes and fees to generate revenue that may be allocated to local cannabis legalization priorities not already funded through state taxes or other funding mechanisms. **Local Policy and Legal/Programmatic/Future Collaborations**: If San Francisco decides to implement local adult use cannabis taxes and fees, the City should consider up to a 1% excise tax or gross receipt tax. **Local Policy and Legal/Programmatic/Future Collaborations**: Given that the cannabis industry currently operates primarily on a cash-only basis, San Francisco's Office of the Treasurer should create a mechanism to collect local adult use cannabis taxes. In addition, the City should explore the use of revenue generated from local taxes to create cannabis banking options.
Revenue Allocation Priorities	**Local Policy and Legal/Programmatic:** San Francisco should allocate potential State and local adult use cannabis taxes and fees towards the City's local regulatory, policy, and programmatic goals with respect to cannabis legalization. Allocation priorities include, but are not limited to: • Workforce development • Entrepreneurial opportunity fund • Education, students, and youth • Community-identified priorities (e.g. community benefit agreements)
Data Collection	**Local Policy and Legal/Programmatic/Future Collaborations/Future Research:** San Francisco should use an evidence-based approached to inform future adult use cannabis policies and legislation.

	The City should engage key stakeholders to identify and collect appropriate data points to assess the impact of cannabis legalization.

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Agency Oversight

Local Regulatory and Regulatory Oversight Structure	**Local Policy and Legal/Programmatic/Future Collaborations:** In developing an appropriate local regulatory and regulatory oversight structure for adult use cannabis, San Francisco should consider the following characteristics to ensure success for the entities responsible for regulation: • Responsive • Timely • Accountable • Strong leadership • Transparent • Promote certainty in process • Multi-agency collaborative model Note: the entities responsible for regulation should not play an advocacy role **Local Policy and Legal/Programmatic/Future Collaborations:** San Francisco should consider new and/or existing regulatory and regulatory oversight structures for adult use cannabis regulation. Options would include the following: • Option 1: Standalone agency with its own staff and commission • Option 2: Standalone agency with its own staff, no commission • Option 3: Part of an existing agency
Local Agency Collaboration	**Local Policy and Legal/Programmatic/Future Collaborations:** San Francisco should anticipate that numerous City agencies will have a role in adult use cannabis regulation. City Agencies that may play a role in adult use cannabis regulation include, but are not limited to: the Department of Public Health, Police Department, Planning Department, Fire Department, Tax Collector's Office, Department of Building Inspection, San Francisco Municipal Transportation Authority. The cannabis regulatory role of each agency should be distinct and not overlap.

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San Francisco Cannabis State Legalization Task Force

Regulation and City Agency Framework DRAFT Workgroup Recommendations

Track and Trace	**Local Policy and Legal/Programmatic:** Proposition 64 establishes a State-level track and trace monitoring system to track cannabis from seed to sale. This State system is sufficient for local cannabis tracking within San Francisco.

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San Francisco Cannabis State Legalization Task Force

Public Safety and Social Environment PRELIMINARY Recommendations

Public Safety

Driving Under the Influence	**Local Policy and Legal/Future Considerations/Future Research Needed:** Local policy guidelines for driving under the influence should be developed that are based on behavior testing until science-based testing exists. **Future Collaborations/Future Considerations:** San Francisco should provide technical assistance to California Highway Patrol (CHP) as they develop DUI protocols and standards. As part of this technical assistance, San Francisco should explore the use of cannabidiol (CBD) as an antidote to manage overconsumption, with the current naloxone program as a potential model. **Programmatic:** San Francisco should develop and implement a City-wide DUI public awareness campaign.
Neighborhood Safety	**Local Policy and Legal:** San Francisco should develop cannabis business operating standards to form part of the business permitting process. These standards would ensure that cannabis businesses are "good neighbors" to the communities in which they are located. **Local Policy and Legal:** Cannabis businesses should be like any other business in San Francisco in appearance and manner: well-lit, clean, appropriate hours of operation, guidelines for security, etc.
San Francisco Police Department (SFPD) Enforcement and Training Priorities	**Local Policy and Legal/Future Collaborations:** Three top considerations for the San Francisco Police Department when it is developing its criminal enforcement and training strategies are: a) Strategies must represent community sensitivities and be developed together with parents or an agent of family representation; b) Strategies should be informed by subject matter experts in all areas of the cannabis industry, and not simply police officers training and/or educating other police officers; c) The SFPD should collaborate with Child Protective Services to establish guidelines for determining the safety of a juvenile in the custody of an impaired adult.

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Public Consumption

Meaning of the Word "public"	**Local Policy and Legal:** San Francisco should allow and create policy pathways for smoking cannabis in public places that become privatized. These pathways should follow rules set by the San Francisco Department of Public Health for tobacco use. **Local Policy and Legal:** The smoking of cannabis should be allowed anywhere that tobacco smoking is allowed. Indoor venues must provide Heating Ventilation and Air-Conditioning (HVAC) systems if smoking is allowed indoors. **Future Collaborations:** The San Francisco City Attorney should provide further legal guidance regarding consumption in public-private spaces, i.e. where, when and how it could be done in the City.
On-site Consumption per AUMA	**Local Policy and Legal:** San Francisco should allow on-site consumption at cannabis retail locations. **Local Policy and Legal:** San Francisco's on-site consumption requirements should not be stricter than those outlined in the AUMA.
Overconsumption and Encouraging Safe and Responsible use Across the City	**Local Policy and Legal/Future Collaborations:** The City and the San Francisco Department of Public Health should collaborate with the cannabis industry and the community to develop a health promotion strategy for preventing overconsumption and youth access.

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Youth Access and Exposure

Education	**Programmatic/Future Collaborations:** The San Francisco Unified School District (SFUSD) should be involved in developing age-appropriate cannabis education for San Francisco Schools. **Programmatic/Future Collaborations:** The SFUSD has an existing educational model focusing on wellness centers and health-based classroom education that should be used as the foundational framework for age-appropriate cannabis education. This framework should be analyzed (via data review) to identify gaps and revitalize the curriculum to effectively educate schoolchildren about cannabis use. **Programmatic/Future Collaborations:** AUMA funding for student-focused cannabis education programs should also capture children outside of the SFUSD system. **Programmatic/Future Collaborations:** AUMA funding for student-focused cannabis education programs should be distributed in a collaborative way across a variety of organizations, especially those that are already engaged in these issues. To ensure this, San Francisco should develop funding criteria for making grants. **Programmatic:** The State should vest decisions regarding student education implementation and funding criteria solely in the counties.
Preventing Sales to Minors	**Future Research Needed:** San Francisco should conduct research regarding access for minors in the illicit market after the passage of Prop 215 and in other states that have legalized cannabis for adult use in order to better understand how minors may access cannabis after adult use is legalized in California.
Advertising	**Future Considerations:** The regulation of other industries, such as alcohol and tobacco industries, should serve as a model for monitoring the effect of advertising on minors. **Local Policy and Legal/Future Research Needed:** The San Francisco City Attorney should conduct research regarding the free speech limits to regulating cannabis advertising at the local level.

San Francisco Cannabis State Legalization Task Force

Public Safety and Social Environment PRELIMINARY Recommendations

	Future Research Needed: San Francisco should conduct research to learn more about the strategies other adult use legalization states have used to regulate advertising to protect youth. **Future Considerations:** San Francisco's advertising regulating bodies must do continuous forecasting to appropriately guard against "too much cannabis advertising" and be agile in adapting to rapidly emerging social trends that could increase exposure to youth.
Criminal Diversion and Decriminalization Options for Youth	**Local Policy and Legal:** It is unlikely that, even with the most robust cannabis education programs for youth, there will be a zero percent usage rate among minors in San Francisco - they may continue to consume and/or sell in schools and other places. In light of that, San Francisco schools should take a reality-based disciplinary approach and rely on harm reduction principles to manage such situations. For example, for minors who commit cannabis-related offenses while at school, suspension and expulsion should not be the default tools used by schools to discipline students. **Local Policy and Legal/Programmatic/Future Collaborations:** San Francisco Unified School District should identify and collaborate with key stakeholders to explore alternatives to expulsion for youth facing disciplinary action for cannabis.
Youth Protection	**Local Policy and Legal/Programmatic/Future Collaborations:** San Francisco should develop policies to protect youth, e.g. develop clear packaging requirements to prevent accidental cannabis consumption by youth.

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San Francisco Cannabis State Legalization Task Force

Land Use, Social Justice, and Tourism PRELIMINARY Workgroup Recommendations

Land Use

Non-Retail Uses	**Local Policy and Legal:** San Francisco should allow non-retail adult use cannabis uses (i.e. cultivation, manufacturing, distribution) and utilize the existing Planning Code framework to establish land use controls for those uses. **Local Policy and Legal:** Consistent with current regulations for non-retail medical cannabis uses, non-retail adult use cannabis uses should be exempt from distance requirements for sensitive uses (e.g. schools, youth centers, etc.)
Retail Uses	**Local Policy and Legal/Future Collaborations:** San Francisco should develop meaningful qualitative findings for the Planning Commission and/or other commission(s) to use when reviewing adult use retail locations. **Local Policy and Legal/Future Collaborations:** San Francisco should consider reducing the distance new cannabis retailers can operate in proximity to sensitive uses to one that is less than the State-required 600 feet. San Francisco should also consider measuring this distance with a "path of travel" approach rather than a straight line, parcel to parcel measurement. **Local Policy and Legal/Future Collaborations:** San Francisco should develop reasonable quantitative standards to regulate the location of, and permitting process for, adult use retail locations in San Francisco. These standards should include, but are not limited to: a) Strategies to facilitate meetings between the applicant and neighboring community prior to the Planning Commission hearing and/or application process to address neighborhood concerns b) Strategies to prevent clustering (as discussed below) c) Considerations for proximity to sensitive uses (as discussed below) **Local Policy and Legal/Future Collaborations:** San Francisco should further define and/or refine definitions of “sensitive uses” and consider narrowing the definition to expand the “green zone” (or

	potential locations in which new cannabis retailers could operate) where appropriate. **Local Policy and Legal**: San Francisco should consider varying approval processes (e.g. neighborhood notice only; notice plus mandatory Discretionary Review hearing; notice plus Conditional Use Authorization; etc.) for different zoning districts, with more rigorous review processes in Neighborhood Commercial Districts or other locations which present potential land use conflicts and less rigorous processes in other districts, such Downtown or industrial districts. **Local Policy and Legal/Future Collaborations:** San Francisco should develop policies to prevent clustering of adult use cannabis retailers. Strategies may include: a) Use of "buffer zones" around other adult use retail locations. The distance of these buffer zones should balance both community concerns and business interests with the aim of preventing too high a concentration of retail locations in a given district while also encouraging healthy competition. b) Stricter clustering provisions in Neighborhood Commercial Districts to balance neighborhood concerns, and less strict clustering requirements in other districts, such as Downtown or Industrial districts. **Local Policy and Legal**: San Francisco should include adult use cannabis retail businesses in existing Formula Retail rules.[1] **Local Policy and Legal**: San Francisco should allow retail locations above the ground floor, such as spaces located at basement level, second floor or higher. **Local Policy and Legal/Future Collaborations/Future Considerations**: San Francisco should develop a mechanism for businesses shut down by the federal government or whose leases were bought out to be re-permitted.

[1] Formula retail rules state that if an establishment has eleven or more retail locations worldwide, it is subject to a more stringent review and authorization process.

	Local Policy and Legal/Future Considerations: San Francisco should align regulations for adult use cannabis retail signage on store fronts with regulations for other retail businesses.
MCD vs. Adult Use Retail Zoning Approval Processes	**Local Policy and Legal/Future Collaborations:** Adult use cannabis retailers, as distinct from medical use cannabis retailers, should not be subject to the heightened ADA requirements that currently apply to MCDs. **Local Policy and Legal/Future Collaborations:** San Francisco should craft a reasonable process for current medical cannabis dispensaries to transition into the adult use market. A "transition" would include a medical dispensary adding adult use products or a medical dispensary switching to an adult use business model. Such "grandfathered" medical cannabis businesses should be exempt from new, more restrictive land use provisions that may be applicable to adult use retail businesses.

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Social Justice/Workforce Development

Successful Workforce	**Local Policy and Legal/Programmatic/Future Collaborations:** The City should collaborate with San Francisco City College, San Francisco Unified School District, and other workforce development organizations and key stakeholders, to develop new or build upon existing training and apprenticeship programs as workforce pathways for individuals to participate in all aspects of the cannabis industry (i.e. cultivation, laboratory testing, manufacturing, retail, etc.). These programs should increase opportunities for individuals to enter the cannabis industry, but also be part of a broader workforce strategy to increase job opportunities in other sectors, such as IT, human resources, and finance. **Local Policy and Legal:** San Francisco should ensure that those with a criminal justice history are not automatically barred from job opportunities within the cannabis industry, and that license holders are incentivized to hire people with a criminal justice history to the extent possible. **Local Policy and Legal/Programmatic/Future Collaborations:** San Francisco should create incentives (rather than mandates) for cannabis businesses to hire local residents and individuals from communities affected by mass incarceration. The City should also create hiring preference policies for residents who have moved out of the City due to the high cost of living. **Local Policy and Legal/Programmatic/Future Collaborations:** San Francisco should lower financial barriers to enter the cannabis industry by collaborating with workforce development organizations to provide high quality, free or low-cost cannabis workforce trainings, which should include both online and in-person modalities. **Programmatic/Future Collaborations:** The cannabis industry is a dynamic field, and as such, San Francisco should collaborate with workforce development organizations to provide continuing education to maintain a well-trained, competent workforce and assure patient/consumer safety as new technologies and products emerge.

San Francisco Cannabis State Legalization Task Force

Land Use, Social Justice, and Tourism PRELIMINARY Workgroup Recommendations

	Programmatic/Future Collaborations: San Francisco should create job opportunities and mechanisms to educate, train, and hire the formerly incarcerated, transitional age youth (age 18-21), and young adults (age 21-26). The City's current process for hiring the formerly incarcerated could serve as a model. **Programmatic/Future Collaborations:** San Francisco should work with key stakeholders to develop mechanisms to publicize job opportunities and draw diverse candidates to the cannabis workforce, such as job fairs, public education campaigns, or other pipelines. **Local Policy and Legal/Programmatic/Future Collaborations:** San Francisco should ensure that existing workforce policies and protections of wage and benefit rights are extended to the cannabis industry workforce, such as connecting worker rights protections to the permitting process. **Programmatic/Future Collaborations:** Post-legalization, there will be a need for lab technicians with the capacity for testing cannabis products, and San Francisco should invest in this capability.
Entrepreneurship Opportunities	**Local Policy and Legal/Programmatic:** San Francisco should engage workforce development organizations, community-based organizations, community members, and other key stakeholders to develop strategies to reduce economic barriers for people of color and the formerly incarcerated to enter the cannabis industry as entrepreneurs. Strategies could include: a) Streamlined permitting process to help operators reduce initial start-up costs (e.g. subsidized rent while undergoing permitting process) b) Creation of grants or other funding opportunities to assist people of color and the formerly incarcerated in achieving business ownership c) Equity licensing d) Subsidized permitting and licensing fees e) Use of existing small business support structures and programs as models, such as the Mission Economic Development Agency (MEDA), Minority-owned Business Enterprise (MBE), Women-owned Business Enterprise (WBE) programs.

	Local Policy and Legal/Programmatic/Future Research Needed/Future Considerations: Due to federal cannabis prohibition, cannabis business owners cannot easily access banking services, and therefore, must operate on a largely cash-only basis. Thus, business ownership is limited to entrepreneurs with access to capital. San Francisco should therefore advocate for a change in federal prohibition policy and explore opportunities to use City funding and/or local credit unions to provide banking services, such as small business loans, to cannabis businesses.
AUMA Community Reinvestment Grants	**Local Policy and Legal/Programmatic/Future Collaborations:** San Francisco should apply for AUMA Community Reinvestment Grants and collaborate with key stakeholders to allocate funding to programs that benefit the communities targeted by the AUMA grant funding. Program priority areas could include: • the educational system • childcare subsidies • services for the formerly incarcerated and other communities affected by cannabis prohibition • housing • job creation • behavioral health services • criminal record expungement **Local Policy and Legal/Programmatic/Future Collaborations:** San Francisco should explore opportunities for cannabis businesses to invest in community benefit agreements that allocate resources to community services.
Social Justice	**Local Policy and Legal/Programmatic/Future Collaborations**: San Francisco should include cultural competency trainings as part of the cannabis workforce development strategy. **Local Policy and Legal/Programmatic/Future Collaborations:** San Francisco should develop pathways, such as an amnesty program, to encourage existing businesses to transition from the illicit to

	legal market. **Programmatic/Future Collaborations:** The City and San Francisco Police Department should collaborate with community policing and diversion programs to educate businesses on the transition from the illicit to legal market. **Local Policy and Legal:** The San Francisco District Attorney and Public Defenders Offices should work to streamline the record expungement process for individuals with eligible previous convictions as outlined in the AUMA.

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Tourism/Hospitality

San Francisco Cannabis Culture	**Local Policy and Legal/Programmatic/Future Collaborations:** San Francisco should collaborate with stakeholders to develop policies that achieve an appropriate balance between discretion and visibility of adult use cannabis culture. Along these lines, the City should create pathways that allow tourists to access adult use cannabis products and legal consumption spaces while preventing undesired exposure for those who prefer limited interaction with the cannabis industry. Strategies could include the following: • Allow cannabis consumption indoors to prevent unintended exposure • Limit visibility of consumption in adult use retail storefront locations to prevent exposure from the street • Collaborate with tourism/hospitality stakeholders to provide tourists with educational materials and information about safe access and consumption of adult use cannabis **Local Policy and Legal/Programmatic/Future Collaborations:** San Francisco should collaborate with key stakeholders within the hospitality and tourism industry to develop pathways for lodging establishments to become "cannabis-friendly," thereby providing a legal consumption space for tourists without access to a private residence. **Future Collaborations/Future Considerations:** There is a notable desire within the culinary community to incorporate adult use cannabis in dining options/opportunities, including the use of cannabis as a meal ingredient and the establishment of food/cannabis pairing options. San Francisco should collaborate with key stakeholders, such as culinary and hospitality organizations, to develop strategies for increasing these opportunities for restaurants and other food establishments. Strategies could include: • Developing, proposing and pursuing a state legislative approach that would create an exemption for these types of culinary experiences • Development of a patron notification process for any food establishment offering these

	opportunities • Development of mechanisms to determine the appropriate distribution of cannabis-friendly dining venues throughout the City
Tourist and Resident Experiences	**Local Policy and Legal/Programmatic/Future Collaborations:** San Francisco should collaborate with key stakeholders, such as the Department of Public Health and tourism/hospitality organizations, to develop educational materials for tourists and residents that: • promote safe cannabis consumption • provide information on different product types and their physiological effects, and • outline strategies to identify and manage overconsumption. The educational materials should be made available in various languages and formats (e.g. websites, brochures, signage, mobile applications, etc.), and distributed where adult use cannabis is allowed to be consumed and/or purchased, such as cannabis retail locations. **Local Policy and Legal/Programmatic/Future Collaborations:** San Francisco, in collaboration with key City Agencies and stakeholders, should develop educational materials and trainings for cannabis retail licensees, their employees, and cannabis business license applicants on serving cannabis and cannabis products safely, responsibly, and legally. The Licensee Education on Alcohol and Drugs (LEAD) Program could serve as a model for this.

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Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: November 16, 2016

TO: Members of the Planning Commission

FROM: Elizabeth Greene, Senior Planner

SUBJECT: 1. Medical Cannabis Regulations: Consider Delivery-Only Dispensaries Regulation and
2. Expansion of Medical Cannabis Cultivation Outside the Manufacturing (M) District

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RECOMMENDATION

Staff recommends that the Planning Commission:

- Consider staff recommendations for Delivery-only Dispensaries and give direction;
- Consider staff recommendations for expanding Medical Cannabis Cultivation beyond the Manufacturing (M) District and give direction.

BACKGROUND

Over the past year, the Planning Commission has considered several Zoning Ordinance changes related to medical cannabis:

1. An increase in the number of medical cannabis Dispensaries;
2. Delivery-only Dispensary regulations; and
3. Expansion of medical cannabis Cultivation beyond the M District.

In a June 15, 2016 response to the Council referral for increasing the number of Dispensaries, (Item 1 above), the Commission voted to forward a recommendation to the Council. That recommendation was to increase the number of retail dispensaries (storefronts) from four to six.

The other two items, (Items 2 and 3 above), have been considered at several Planning Commission meetings, but no action has been taken:

- **Delivery-only Dispensaries:** Delivery-only Dispensaries (as opposed to retail dispensaries) are a new business category authorized in recent changes to State law (Medical Cannabis Regulation and Safety Act (MCRSA)). The City of Berkeley currently allows Retail Dispensaries to delivery medical cannabis directly to patients. However it does not have any regulations that control City-based medical cannabis delivery-only services. Amendments to both the Zoning Ordinance and the Berkeley Municipal Code (BMC) are required in order to allow Delivery-only

Dispensaries. The Planning Commission would consider Zoning Ordinance amendments such as Zoning District location requirements and development standards. The Medical Cannabis Commission is developing recommendations for the City Council related to the BMC changes. The Planning Commission considered Delivery-only Dispensaries at the June 15, 2016 and October 19, 2016 meetings.

On October 19, 2016, the Planning Commission considered the existing MCRSA language related to Delivery-only Dispensaries, the existing BMC language related to retail dispensaries and the proposed BMC language for delivery-only dispensaries. That report also contained information provided by the MCC and staff regarding the activities that could be expected from a Delivery-only Dispensary:

- Minor odors;
- Secure facility;
- Facility will be used to repackage bulk product that is delivered to the site;
- Would provide anything that could be provided at a standard dispensary (leaves, pre-rolls, tinctures, edibles, etc.); and
- No growing or refining of products on site, only subdividing and packaging of products.
- Delivery vehicles of various sizes and types could arrive and depart throughout the hours of operation (8:00 AM to 11:00 PM).

The Commission asked staff to consider the regulations for and experiences with Delivery-only Dispensaries in other jurisdictions, such as Washington State and Colorado.

- **Expansion of Cultivation:** The City Zoning Ordinance Section 23E.72.040 limits medical cannabis Cultivation to the M District, and caps the amount of area that can be used for Cultivation citywide to 180,000 square feet. On November 14, 2014, the City Council sent a referral to the Planning Commission (Attachment 1) to consider allowing medical cannabis Cultivation in districts outside of the M District. The Planning Commission considered expansion of this use to other districts at the November 18, 2015 and May 18, 2016 meetings.

At its May 18, 2016 meeting, the Planning Commission expressed some interest in expanding Cultivation beyond the M District. They considered factors such as vacancy rates and lot sizes in the manufacturing districts, other medical cannabis businesses that are allowed to locate in Berkeley's manufacturing districts, and the experience of other jurisdictions. The Commission asked staff for additional information regarding the jobs and wages that could be expected with cultivation businesses, and how approval of recreational cannabis businesses could impact medical cannabis uses.

DISCUSSION

Delivery-only Dispensaries

Delivery-only Dispensaries are a relatively new use, so very little data is available about job creation and economic development benefits. Staff has researched how these

businesses are regulated and found only two jurisdictions in which they are permitted: Oakland and San Francisco (see Attachment 2). These jurisdictions generally treat Delivery-only Dispensaries in the same way as retail dispensaries. Staff was not able to find information on the actual operation of these businesses in terms of complaints, economic impacts or neighborhood impacts.

Staff recommends that Delivery-only Dispensaries generally follow the same regulations as retail dispensaries with the following exceptions/additions:

1. They can only locate in manufacturing districts (M, MM and MU-LI), but not in the MU-R;
2. On-site sales of medical cannabis will be prohibited;
3. They will be subject to the same parking and loading requirements as Wholesale Trade Establishments:
    a. Parking: 1 space/1,000 sf of floor area under 10,000 sf, 1 space/1,500 sf of floor area over 10,000 sf; and
    b. Loading: 1 space/ first 10,000 sf of new manufacturing gross floor area, 1 space/every additional 25,000 sf of gross floor area.

The Commission may also wish to comment on the numeric limit of Delivery-only Dispensaries. The current recommendation from staff is a maximum of 10 Delivery-only Dispensaries in the City. The numeric limitation for Delivery only Dispensaries is proposed in the BMC, but similar numeric limitations are typically found in the ZO.

Expansion of Medical Cannabis Cultivation

It is unclear how much demand there will be for cultivation uses in Berkeley. Land costs are high and it is expected that cultivation will occur indoors, which is very energy intensive and expensive. The MCC has recommended expansion of medical cannabis Cultivation outside of the M District due to the limited size of the M District and the apparent lack of available spaces available on the market for cultivation. The MCC is also concerned about the lack of available sites for Cultivation, either due to a low vacancy rate or the lack of property owners willing to rent to a medical cannabis business. In addition, the City Council has not yet approved cultivation regulations; this decision is expected to happen in January.

The combination of uncertainty with the medical cannabis regulatory framework, Federal actions against land owners and low overall vacancy rates could affect availability of sites for cultivation throughout the M districts. Staff recommends postponing a decision on expanding medical cannabis cultivation into districts outside of the M District for one year after Council approval of medical cannabis cultivation regulations. This will allow staff to determine the actual demand for cultivation businesses locating in the city. It will also be after the legalization of recreational cannabis in California, which could change the reluctance of property owners to rent to cultivation businesses, and therefore free up more sites within the M district.

<u>CONCLUSION</u>

Staff recommends that the Planning Commission give direction regarding the following.
Delivery-only Dispensaries:

- They can only locate in manufacturing districts (M, MM and MU-LI), but not in the MU-R

- on-site sales of medical cannabis will be prohibited
- They will be subject to the same parking and loading requirements as Wholesale Trade Establishments.
- Numeric limitations on Delivery only Dispensaries

Expansion of Medical Cannabis Cultivation

- Postpone a decision on allowing cultivation of medical cannabis outside of the M District for 1 year, until further data is available.

NEXT STEPS

Staff will take Commission input and set a Public Hearing to consider Zoning Ordinance amendments to address Delivery only Dispensaries.

Attachments:

1. November 14, 2014 Council Referral
2. Matrix of Delivery-only Dispensary Regulations in Other Jurisdictions