



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
23

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for 1:00 PM Closed Session Informational

FROM: Planning Department

FOR THE BOARD MEETING OF: August 2, 2016

SUBJECT: Medical Marijuana Dispensaries and Cultivation Workshop

DEPARTMENTAL RECOMMENDATION: Request the Board of Supervisors, regarding options for regulating or prohibiting medical marijuana cultivation and/or dispensary, collective or cooperative operation in unincorporated Inyo County, consider zoning regulations and other regulations, and provide direction.

SUMMARY DISCUSSION: Inyo County does not have an ordinance regulating medical marijuana dispensary operation or cultivation in unincorporated Inyo County. The purpose of this workshop is to give the Board an opportunity to consider whether and how the County will regulate medical marijuana dispensaries and cultivation, and, if desired, to provide direction to staff regarding the path forward. This discussion seeks to identify mechanisms of land use planning and regulation and other paths forward with regard to the medical use of marijuana within Inyo County.

The County's current practice regarding regulating medical marijuana/cultivation through zoning is that such activity has been prohibited by Inyo County Code Section 18.78.020, which states "Nothing in this title shall establish rules and regulations where in conflict with state or federal law." Through the Zoning Code update process, the Planning Commission and Board affirmed this approach. However, this issue is being brought before your Board of Supervisors again for consideration in response to continued interest in dispensaries and cultivation in Inyo County and the changing State regulatory climate.

Against this backdrop, there will be a ballot measure on this November's election that could expand legalization of marijuana beyond medicinal use to include adult recreational use (non-medical). As your Board considers what, if any changes, it wants to make to the County's regulation of medical marijuana, it may also want to contemplate the effects of passage of the "Regulate and Tax Adult Use of Marijuana" initiative. Accordingly, this report and today's workshop will also introduce considerations relative to local regulation and taxation of non-medical marijuana to avoid making changes, if any, piecemeal in the County's current regulatory framework.

BACKGROUND: On May 12, 2015 the Board took part in a two hour workshop to discuss medical marijuana options for regulating or banning dispensaries and cultivation in Inyo County. Staff opened with an introduction of statutory background and issues to consider (see Attachment A). Staff briefly discussed regulation options for dispensaries and cultivation, and provided examples of regulating means and cultivation regulation. County Deputy Sheriff Obayashi spoke on his experience in Merced County and involvement in an opposition statement towards medical marijuana. His concern for dispensaries was due to the atmosphere of tolerance and entitlement created by the allowance of medical marijuana; the stress on resources to officiate, prosecute, and consult on issues that arise; crime increase due to the cash business; and quality of life deterioration. County staff members raised concerns about regulating pesticides and fertilizers in cultivation because marijuana is not listed as a commodity thus pesticide or fertilizer use is unregulated. The Board also noted that more public input is desired. To generate public input staff was instructed to give plenty of public notice and schedule the next meeting on medical marijuana as a Public Hearing.

Concluding the workshop, the Board directed staff to (1) research what other cities/counties in the area are doing; (2) identify the strengths and weaknesses of the Town of Mammoth Lakes' current ordinance; (3) identify what benefits would arise from permitting medical marijuana; (4) identify potential impacts if medical marijuana were prohibited; (5) identify simple alternatives to maintain status-quo; and lastly (6) what the minimum effective measure could be to provide the County maximum control without becoming too complicated.

STATUTORY BACKGROUND: In 2015 California Governor Jerry Brown signed a package of bills titled the Medical Marijuana Regulation and Safety Act (MMRSA). This package consists of three bills creating enforceable framework for governing every aspect of the medical marijuana business in California. The bills - Assembly Bill 266, Assembly Bill 243, and Senate Bill 643 create a structure to license, tax and regulate the industry as well as the funding mechanisms for the agencies that oversee the operations. The laws are scheduled to go into effect in 2018 with some provisions phased in earlier.

New State legislation pertinent to the issue will potentially have great effects on the County. On November 8, 2016 the "Regulate and Tax Adult Use of Marijuana" initiative will be on the State ballot for public vote. If passed, the measure would legalize recreational marijuana and hemp sale under state law, enact a sales tax of 15 percent and a cultivation tax of \$9.25 per ounce for flowers and \$2.75 per ounce for leaves, with exceptions for qualifying medical marijuana sales and cultivation. Under the Act, individuals could possess up to one ounce of dried marijuana and grow up to six plants. The Act does not contain a dual licensing requirement; business can apply for a state license without proof of compliance with local regulation. However the Act does contain an express provision preserving local control and authority to prohibit businesses needing a license. Personal cultivation outdoors may also be banned while indoor grows could be reasonably regulated.

Inyo County may regulate medical marijuana dispensaries, collectives, cooperatives, grow sites or mobile dispensaries through zoning and land use regulations. Regulation may range from minor restrictions to a total ban. If dispensaries are permitted by the County, the dispensary operators (and participants) would be responsible for complying with state *in addition* to the County regulations. If desired, County regulations for medical marijuana may incorporate non-medical marijuana business by establishing an inclusive definition of marijuana businesses or, specifying allowance of each use type with parameters unique to the medical/recreational.

FINDINGS: Below are the staff findings to the topics requested by the Board.

1. Research alternatives by other city/counties;
 - A. Los Angeles Co.: The County has banned medical marijuana dispensaries.
 - City of Lancaster: The City has prohibited medical marijuana cultivation and dispensaries.
 - B. Mono Co.: The County does not have an ordinance.
 - The Town of Mammoth Lakes allows for two cooperative dispensaries to exist, the dispensaries may cultivate on the premises provided an affidavit is acquired. The Town allows for medical patient outdoor cultivation with given setbacks, security, screening, and distance from schools. Indoor cultivation by a patient is permitted with an allowed electrical load limit and the grow cannot be a home occupation.
 - C. Kern Co.: Dispensaries and cultivation are not permitted
 - City of Ridgecrest: Medical marijuana cultivation and dispensaries are prohibited
 - California City: Medical marijuana dispensaries are prohibited. The City is currently discussing cultivation allowance.

- City of Tehachapi: The City has a moratorium on any medical marijuana businesses until after the State ballot vote in November 2016.
- D. San Bernardino Co.: Medical cultivation is allowed by patients indoors only. Dispensaries are expressly prohibited.
- E. City of Bishop: The Bishop City Council will be hearing a second reading of a marijuana ordinance on July 25th, 2016. The ordinance would approve marijuana businesses and sets limitations and standards on the use, businesses, and cultivation of medical marijuana. Planning staff will report on the outcome of that discussion during the Board workshop.
- F. The State of Nevada: Medical marijuana cultivation and dispensaries are legal. The number of dispensaries per county is based on the county's population.
 - Nye Co., NV: allows for one dispensary by special use permit but multiple cultivation centers are allowed in commercial and industrial zones. The single dispensary permit has been issued; a total of 10 applicants were received and each was scored using a system the County created. 17 permits have been issued for cultivation centers of varying size, indoor only. Two cultivation centers are operating now while 15 are waiting on the outcome of Nevada's ballot for recreational marijuana. As a condition of the special use permit applicants must present to the County Water Board and Sheriff's Department for permission. A water impact plan, site development plan, and security and transportation plan must be accepted before special use permit is granted.

2. Research the Town of Mammoth Lake's current ordinance and operation;

An interview was conducted with the Town of Mammoth Lake's (TOML) Police Chief and Community and Economic Development Manager in order to learn more about the ordinance. The TOML allows for up to two medical marijuana cooperatives within the Commercial zone, not on the ground floor along Primary and Secondary Active Frontages; cultivation is permitted on the cooperative's premises and in Industrial Zones with a Use Permit; and indoor and outdoor residential cultivation is allowed for patients. To obtain the permits applications are reviewed by the Police Department and Community and Economic Development Department before review and approval by the Planning Commission.

The interviewees explained that staff will be re-writing the ordinance after the State ballot initiative in November 2016 regardless of the ballot's outcome. Interviewees explained that the current ordinance is difficult to enforce and may be a little outdated. Deciding which two applicants were awarded the dispensary permits was too subjective and would have been a difficult process if more had applied for the permits. The interviewees would rather have had a lottery, similar to how California Alcoholic Beverage Control operates. When the ordinance passed in 2010 there were only three applicants; the two applicants awarded the permits have continually renewed the permit, through the Police Department, thus preventing any others from establishing a dispensary. The two operating dispensaries have had no conflicts with the Town in following the ordinance and the interviewees expressed the importance of a good relationship and communication with the business owners.

The TOML does not currently tax the dispensaries any differently than another business but may decide to in the future. The interviewees also noted that crime had neither increased nor decreased since the ordinance was passed, and a total of three criminal incidents have occurred at the dispensaries since 2010.

Lastly, it should be noted that the ordinance was brought to the Town as a result of a public ballot measure. Medical marijuana had been discussed by the Town Council but finding no resolution the issue was put to public vote. The voters approved medical marijuana cooperatives and specified that they could be located within the Commercial General or Industrial zoning designations provided that they obtained a use permit from Planning and were at least 500 feet apart. More specific regulations for cooperative were adopted by

the Town Council, establishing requirements for the permit, operational standards, and membership standards.

An interview was also conducted with the owner of Mammoth Lakes Wellness (MLW), one of the two dispensaries in the TOML. The owner felt that the Town is a model of success in regulating medical marijuana. He expressed that the communication between the Town, police, and his business was very helpful. With regards to the business, MLW has seen continued consistency with little rise or decline. Contrary to what some believe, the business “does not rack in cash”. The owner expressed that it is hard work and he pays for expenses just as any other business does. The owner believes his clientele are more medicinal users that prefer the medical recommendation of marijuana to alleviate regular illnesses rather than using prescription drugs. Overall he believes more people are becoming comfortable with medical marijuana and are using it to treat a variety of illnesses. During seasonally busy times MLW is utilized by Town visitors whom are not comfortable traveling with marijuana and the dispensary has regular clients from throughout Mono and Inyo Counties that travel to the store because it is the only place to obtain the medicine. In preventing youth use, MLW requires patrons to be 21 years of age or older, a stricter requirement than the State’s allowance of 18 years of age to acquire the medical recommendation. The owner also does outreach to educate the general public on the medicinal use of marijuana. Regarding crime, MLW has had two instances throughout its six year existence. Both instances were unsuccessful robberies conducted by local youth. In both instances the perpetrators had conducted other crimes prior to attempting a MLW robbery. The owner’s surveillance system provided evidence to identify the perpetrators in both cases and convict them of the crimes against MLW and other crimes committed during the event. The owner believes his surveillance system is of assistance to neighboring businesses too.

3. Potential benefits that may arise by allowing and regulating marijuana business activities;
 - Increase in taxable revenue from sales of marijuana at dispensaries, cultivation sales and property tax.
 - Increase in jobs; both limited term jobs would exist during the start-up phases (construction) and long term jobs would be created for daily operations of cultivation and at dispensaries.
 - Properties where marijuana business would take place may increase in value.
 - Provide residents with an alternative medicine.
 - Patient migration to the County may occur by patients seeking marijuana.
 - Marijuana tourism occurs in areas that legalize medical marijuana use.
 - Provides a regulated and safe means of producing and distributing marijuana.
4. Potential negative impacts resulting from allowing and regulating marijuana business activities:
 - Increased source of marijuana may lead to abuse by minors or others.
 - Potential increase in crime (robbery).
 - Potential crackdown may occur by Federal law enforcement.
 - Businesses adjacent to marijuana facilities may be negatively impacted by smell/users of business/etc.
 - Environmental resource issues may arise from water-use and/or cultivation fertilizers/pesticides.
 - Potential nuisance issues from the smell.

5. Alternatives to maintain status-quo:

During the 2015 Board Workshop there was brief discussion of using a moratorium to prevent any medical marijuana operations for the time being. Under California Government Code section 65858, a city or a county may adopt an interim ordinance such as this to temporarily prohibit certain land uses, including particular types of businesses, in the community, commonly referred to as a “moratorium ordinance.” California law requires

that a moratorium ordinance contain findings stating why the ordinance is needed to address a current and immediate threat to public health, safety, or welfare. It takes immediate effect to prevent a “land rush” of applications to establish new uses before standards can be put in place. The delay in permits would allow the county to subject all new uses to the new standards.

The Board may also choose to keep the current response to medical marijuana as is; “Nothing in this title shall establish rules and regulations where in conflict with state or federal law.”

6. What the minimum effective measure could be to provide the County maximum control without becoming too complicated?

Establish a new “MJ” overlay zone specifically defining where medical marijuana businesses are permitted, with size and general organizational requirements (operational hours, security, screening, etc.). The County may set a limit on the number of each business types allowed in the overlay zone.

ALTERNATIVES: The County’s current zoning law prohibits medical marijuana dispensaries and cultivation under the principles of permissive zoning, as well as under Inyo County Code Section 18.78.020 (“[n]othing in this title shall establish rules and regulations where in conflict with state or federal law”). Mobile deliveries of marijuana, which is arguably not a land use issue, may currently be prohibited based on the fact that a business license would be required for that activity, but the license could be denied based on the conflict with federal law. If the County desired to have an unambiguous ban on mobile deliveries it would be beneficial to create an express ban in the County code pursuant to the County’s general police powers.

On the other hand, the County could instead promulgate regulations to conditionally permit medical marijuana dispensaries, cultivation, and/or deliveries through the Zoning Ordinance and/or other means. Should the County move in this direction, taxes and fees could also be established (although voter approval is required for taxes – which is discussed further below).

Staff has researched regulating medical marijuana and is proposing several possible actions. The land use actions can be taken directly by the Board or can be put to the public for approval during an election. The proposed actions are as follows:

1. Complete ban prohibiting marijuana business activity: Total bans on dispensaries, cooperatives and collectives have been upheld by the courts in numerous court cases to date. If the County decides to enforce a total ban, medical marijuana patients have access to medical marijuana through dispensaries and deliveries in Mammoth Lakes (2 dispensaries present). The Board may also adopt an express ban on mobile deliveries in order to clarify any uncertainty in the existing law.
2. Seek voter approval for general direction or specific new land use regulations. The Board may, but is not required to, seek voter approval for new land use regulations. The Board may also seek a simple advisory vote from the public asking what general direction the County should take on this issue. For example, Sierra County recently posed the following question to its voters: “[s]hould the County of Sierra adopt an ordinance which would allow commercial marijuana activities within the County, including but not limited to cultivation, processing, distribution, warehousing and transportation of marijuana?”

A matrix of considerations for a ballot initiative is addressed in Attachment A for both medical and recreational marijuana use. Please note that there are different time schedules and costs for the ballot depending on which election the measure is included. For matters put to a vote on the upcoming general election, the local ballot measure must be submitted at least 88 days before the general election date. So

any ballot measure for the November 8, 2016 general election will need to be filed no later than August 12, 2016, which is obviously a very short timeframe. The anticipated cost for this, not including staff time, will be approximately \$500 - \$1000. The Board could also call for a special election at some other future date. A special election may cost between \$20-30,000.

3. The Board could amend the zoning code to allow marijuana-related activities as a "Use" within desired zones such as Commercial (dispensaries) and/or Industrial and/or Open Space and/or Agriculture and/or Residential (cultivation/manufacturing).
4. The Board could create a Conditional/Special Use Permit to permit marijuana-related land use activity on case-by-case instances. The Use Permit may include required findings to impose restrictions and desired outcomes. In applying for the Permit, the County may require the production of plans to identify operational standards and/or site standards and/or design requirements and/or security plans and/or environmental plans.
5. Not expressly allow cultivation/dispensaries/collectives/cooperatives but allow for a restrictive special permit to do so, i.e. Marijuana Permit. All marijuana business would have to apply for and receive the permit in order to do business. In doing so, the Board and staff would be able to consider each use with respect to their departmental goals.
6. The Board could create an Overlay Zone to conditionally permit medical marijuana elements in specific areas. With this option the County may identify desirable areas for the cultivation/dispensaries/manufacturing of medical marijuana regardless of zone classification. A Conditional Use Permit may still be required along with design standards in order to create greater control.

TAXATION: Under the State law, sales tax applies to retail sales of marijuana, including medical marijuana, to the same extent as any other retail sale of tangible personal property. Local taxation for medical marijuana businesses may be treated such as any other business is taxed and no new protocols would need to be established. The status quo taxation is the Sale and Use tax, set at 8% within the County.

Local taxes could also be established to generate revenue. Such taxes could take the form of a sales tax, an excise tax (e.g. DTT or TOT), a parcel tax (e.g. utility taxes), or a business license tax (via Revenue and Taxation Code section 7284 and Business and Professions Code section 16100). As it pertains to medical marijuana, SB 643, which is one of the three bills that comprise the Medical Marijuana Regulation and Safety Act (MMRSA), allows counties to tax certain activities related to the cultivation and sale of medical marijuana. Namely, these activities include a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing medical cannabis or medical cannabis products. This tax may apply countywide or only to the unincorporated areas.

Please be reminded that, any local taxes require voter approval, and the approval required depends on the type of tax to be imposed. For example, a general tax, where the revenue goes into the general fund, requires a simple majority voter approval. Whereas a special tax, where the revenue is earmarked for a specific purpose, requires a 2/3 voter approval. There are additional nuances to what types of taxes may apply countywide v. only in the unincorporated areas. If the Board is inclined to seek voter approval for a local tax, given the short time frame for getting a measure on the ballot for November 8th, it will be wise to prioritize.

PROPERTY TAX

For property, a valuation would be applied to the business by the Assessor, which could fluctuate with the market. The Auditor would then use that value to apply a tax rate for the parcel and the Tax Collector would be responsible for collecting that tax. This taxation scheme is outside of the Board's ability to control.

BUSINESS LICENSE

With guidance from the Tax Collector the Board may establish a business license program in order to track marijuana related businesses. However to do so may be a lengthy process because the Department does not have any software, fee schedule, ordinance, or program for doing so.

AGRICULTURAL COMMISSIONER/DIRECTOR OF WEIGHTS & MEASURES: California Department of Food and Agriculture (CDFA) is working on a cultivation licensing framework. They expect to be able to issue licenses by 2018. CDFA is working on a statewide CEQA document that will cover their licensing program, and will cover counties that follow their framework. If the county put together its own licensing structure for cultivation, CEQA compliance is required.

When CDFA has licensing available, it will require cultivators to present their local license before the state license can be issued. CDFA staff has stated that if there is no local license available, the state will not issue a license. The Agricultural Commissioner/Director of Weights and Measures would be responsible for developing a permit structure and setting fees in establishing the local license.


Pesticide use is generally regulated and most pesticides are illegal to use on marijuana. Currently, cultivators that intend to use pesticides must obtain an operator ID number from the County Agricultural Commissioner.

NEXT STEP:

1. The Board may direct staff to continue research on one or more of the above Alternatives.
2. The Board may direct staff to taken only those actions necessary to maintain the status quo of marijuana land use and business activity being unlawful.
3. The Board may direct staff to draft a regulatory framework for permitting dispensaries and/or cultivation and/or manufacturing of medical marijuana within County boundaries.
4. The Board may direct staff to draft a moratorium for consideration if the State ballot initiative in November for recreational marijuana use passes. A moratorium will provide the County additional time to consider if and how to regulate the local industry.
5. The Board may direct staff to prepare an array of ballot measures to possibly submit to the voters, ranging from complete ban of marijuana business and cultivation to allowance of medical and non-medical marijuana sales, processed and cultivated adhering to State limitations. Timing will be an issue with this step given the details required in any such statutory scheme(s) and the fact that the initiative would need to be agreed upon at the next Board meeting, August 9th, in order to meet the August 12th deadline to file.
6. The Board may direct staff to prepare language for an advisory ballot measure to be placed on the November election ballot. The initiative would need to be agreed upon at the next Board meeting, August 9th, in order to meet the August 12th deadline.
7. The Board may direct staff to draft a tax measure for voter approval.

OTHER AGENCY INVOLVEMENT: Administrator; Agriculture/Weights and Measures; Assessor; Auditor; Building and Safety; County Counsel; Environmental Health; Health and Human Services; Public Health; Sheriff Department; Treasurer/Tax Collector; Water Department

FINANCING: There are minimal costs associated with conducting this workshop; however General Funds could be used for future development and consideration of a Medical Marijuana ordinance.

APPROVALS	
COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by county counsel prior to submission to the board clerk.) Approved:  Date <u>07/28/16</u>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.) Approved: _____ Date _____
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received)



Date: 7/28/16

Enclosed:
Attachment A: Ballot Measure Matrix for Medical Marijuana and Recreational Marijuana

ATTACHMENT A

Ballot Measure Matrix

MEDICAL Marijuana	Land Use	Taxation	Initiative	Potential Required licenses and fees
Cultivation	Special use permit? Limit to zones M-1, M-2, OS, R, CB	Tax per ounce (dry/wet?) Tax per plant Tax per square footage of growing area	Allow -Yes/No Where How much cultivation (limit number of plants, allowable wattage, or growing area limit)? Allow on site sales? Allow on site laboratory? Limit number of centers?	Require a license? Require additional fees? One-time fee or an annual, or month, renew fee?
	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no
Sales	Special use permit? Limit to zones C, CB, M-1, M-2	General tax on all products (Sales and Use tax)? Itemize taxation per product?	Allow - Yes/No Limit location? Where? How many dispensaries to allow.	Require a license? Require additional fees?
	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no
Warehouse	Special use permit? Limit to zones M-1, M-2, C, OS	-	Allow - Yes/No Where? Allow sales, testing, and cultivation at site?	Require a license? Require additional fees?
	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no
Delivery Service	Special use permit? Limit to zones C, CB, M-1, M-2	Tax? Base tax on Sales and Use?	Allow – Yes/No Come in from other Counties/State?	Require a license? Require additional fees?
	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no

RECREATIONAL Marijuana	Land Use	Taxation	Initiative	Potential Required licenses and fees
Cultivation	Special use permit? Limit to zones M-1, M-2, OS, R, CB	Tax per ounce (dry/wet?) Tax per plant Tax per square footage of growing area	Allow -Yes/No Where How much cultivation (limit number of plants, allowable wattage, or growing area limit)? Allow on site sales? Allow on site laboratory? Limit number of centers?	Require a license? Require additional fees? One-time fee or an annual, or month, renew fee?
	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no
Sales	Special Use permit? Limit to zone C, CB, M-1, M-2	General tax on all products (Sales and Use tax)? Itemize taxation per product?	Allow - Yes/No Limit location? Where? How many dispensaries to allow. Separate recreational store from medical?	Require a license? Require additional fees?
	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no

ATTACHMENT A

RECREATIONAL Marijuana	Land Use	Taxation	Initiative	Potential Required licenses and fees
Warehouse	Special Use permit? Limit to zones M-1, M-2, C, OS	-	Allow - Yes/No Where? Allow sales, testing, and cultivation at site?	Require a license? Require additional fees?
	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no
Delivery Service	Special use permit? Limit to zones C, CB, M-1, M-2	Tax? Base tax on Sales and Use?	Allow – Yes/No Come in from other Counties/State?	Require a license? Require additional fees?
	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no	Tax? Yes/no