



Agenda Date: 08/11/2015

Agenda Item: 3.10

## STAFF REPORT

**Date:** August 3, 2015  
**To:** Mayor and Members of City Council  
**From:** William R. Galstan, Special Counsel *William R. Galstan*  
**Cc:** Bryan H. Montgomery, City Manager; Derek P. Cole, City Attorney;  
Chris Thorsen, Chief of Police  
**Subject:** Update on marijuana cultivation ordinance

### FOR CONSIDERATION AT THE CITY COUNCIL MEETING ON AUGUST 11, 2015

#### Summary and Recommendation

Receive and file this report. If Council desires staff to re-draft the marijuana cultivation ordinance, please provide direction for us to do so.

#### Fiscal Impact

None.

#### Background and Analysis

At the July 14, 2015 meeting, Council considered an ordinance drafted by this office in response to recent inquiries as to whether Oakley has any regulation dealing with the cultivation of marijuana. After a lively discussion, Council took no action.

Subsequently, Mayor Hardcastle has requested this office to redraft the ordinance with the intent that amendments might motivate sufficient votes for the ordinance to succeed.

Staff has obtained a copy of AB 266, currently pending in the Legislature. This 42-page bill would enact the Medical Cannabis Regulation and Control Act and would create within the Governor's Office the Office of Medical Cannabis Regulation. It would also establish the Division of Medical Cannabis Cultivation within the Food and Agriculture Department, for the licensure and regulation of medical marijuana cultivators. The bill provides for the enforcement of the provisions of the Act and of local ordinances by the State and by local governments, and would require the office to develop an enforcement framework that clarifies the roles of the State and local governments.



Staff believes that it would be prudent, rather than redrafting the ordinance at this time, to see how AB 266 progresses in the Legislature. If successful, this law could create some uniform regulations, and it would be unnecessary for Oakley to have its own ordinance.

If we were assigned to proceed with an ordinance amendment at this time, substantial factual research would have to be performed by us to arrive at provisions that might make the ordinance more palatable to a majority of Council members. For example, questions arise as to how many plants is it reasonable for a medical marijuana user to have? How far would plants have to be located from side yards to prevent odor issues for neighbors? What security devices should be required to prevent third-person access to outdoor growing areas? What electrical regulations should be drafted for indoor grows?

In the overall context of things, it should be remembered that marijuana cultivation for sale (i.e. large cultivations) is prohibited by state law, thus no ordinance is necessary to prevent a large marijuana "farm".

We are also aware that the legalization of marijuana use may soon appear on a statewide ballot, and such an initiative, if successful, could well implicate local ordinances.

### **Conclusion**

Staff believes that monitoring AB 266 would be prudent at this time, rather than drafting further amendments to the proposed cultivation ordinance. Absent any specific direction from a majority of Council, that will be our plan.

### **Attachments**

None.