



CITY OF POMONA

PLANNING COMMISSION REPORT

DATE: September 13, 2017

TO: Chairperson and Members of the Planning Commission

FROM: Development Services Department - Planning Division

SUBJECT: CODE AMENDMENT (CODE 8233-2017) and SPECIFIC PLAN AMENDMENT (SPA 8235-2017) TO EXPLICITLY PROHIBIT COMMERCIAL MARIJUANA ACTIVITY CITYWIDE

A City-initiated request to amend Section .062 ("Definitions"), Section .222 ("Open Space District"), Section 229.6 ("R-1-20,000 Single-family Residential District"), Section .232 ("R-1-10,000 Single-family Residential District"), Section .242 ("R-1-7,500 Single-family Residential District"), Section .252 ("R-1-7,200 Single-family Residential District"), Section .262 ("R-1-6,000 Single-family Residential District"), Section .272 ("R-1-E Single-family Residential Overlay District"), Section .322 ("A-P Administrative and Professional Office District"), Section .342 ("C-1 Neighborhood Stores and Services Commercial District"), Section .352 ("Neighborhood Shopping Center Commercial District"), Section .362 ("C-3 General Commercial District"), Section .367 ("C-C Community Shopping Center Commercial District"), Section .372 ("C-4 Highway Commercial District"), Section .392 ("C-IND Commercial and Industrial District"), Section .398 ("M Special Industrial District"), Section .412 ("M-1 Light Industrial District"), Section .422 ("M-2 General Industrial District"), Section .437.5 ("F" Fairgrounds District), Section .452 ("Civic" Supplemental Use District), Section .482.5 ("R-HMD Residential-Manufactured Housing Development District"), and to amend the Phillips Ranch Specific Plan, Mountain Meadows Specific Plan, Downtown Pomona Specific Plan, Mission-71 Business Park Specific Plan, Kellogg Plaza Specific Plan, Pomona Corridors Specific Plan, and the Pomona Valley Hospital Medical Center (PVHMA) Specific Plan to explicitly prohibit commercial marijuana activity citywide.

STAFF RECOMMENDATION

The Planning Division recommends that the Planning Commission adopt the attached Resolution recommending to the City Council the following:

1. Approval of Code Amendment (CA 8233-2017) to amend Section .062 ("Definitions"), Section .222 ("Open Space District"), Section 229.6 ("R-1-20,000 Single-family

Residential District), Section .232 (“R-1-10,000 Single-family Residential District”), Section .242 (“R-1-7,500 Single-family Residential District”), Section .252 (“R-1-7,200 Single-family Residential District”), Section .262 (“R-1-6,000 Single-family Residential District”), Section .272 (“R-1-E Single-family Residential Overlay District”), Section .322 (“A-P Administrative and Professional Office District”), Section .342 (“C-1 Neighborhood Stores and Services Commercial District”), Section .352 (“Neighborhood Shopping Center Commercial District”), Section .362 (“C-3 General Commercial District”), Section .367 (“C-C Community Shopping Center Commercial District”), Section .372 (“C-4 Highway Commercial District”), Section .392 (“C-IND Commercial and Industrial District”), Section .398 (“M Special Industrial District”), Section .412 (“M-1 Light Industrial District”), Section .422 (“M-2 General Industrial District”), Section .437.5 (“F” Fairgrounds District), Section .452 (“Civic” Supplemental Use District), Section .482.5 (“R-HMD Residential-Manufactured Housing Development District”).

2. Approval of Specific Plan Amendment (SPA 8235-2017) to amend the Phillips Ranch Specific Plan, Mountain Meadows Specific Plan, Downtown Pomona Specific Plan, Mission-71 Business Park Specific Plan, Kellogg Plaza Specific Plan, Pomona Corridors Specific Plan, and the Pomona Valley Hospital Medical Center (PVHMA) Specific Plan to explicitly prohibit commercial marijuana activity in the aforementioned Specific Plan areas, in order to explicitly prohibit commercial marijuana activities Citywide.

PROJECT/APPLICANT INFORMATION

Project Location:	Citywide
APN Information:	Not applicable
Project Applicant:	City of Pomona, Development Services Department, Planning Division
Property Owner:	Not applicable
City Council Districts:	Citywide

BACKGROUND

On November 8, 2016, California voters passed Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”). Effective November 9, 2016, AUMA legalizes the nonmedical use (hereinafter, also “recreational use”) of marijuana by persons 21 years of age and over, and the personal cultivation of up to six marijuana plants per residence. Generally, AUMA creates a state regulatory licensing system, which becomes effective January 1, 2018, governing the commercial cultivation, testing, and distribution of nonmedical marijuana, and the manufacturing of nonmedical marijuana products.

Since 2008, Pomona has prohibited medical marijuana dispensaries. Since that time, more than

30 dispensaries have been shut down in Pomona. Presently, the City is in the early stages of filing suit against another at the time of this report and will continue to take legal action as necessary to shut down dispensaries as they open.

With the passing of Proposition 64 and the forthcoming recreational use of marijuana becoming legal, many cities are being approached by marijuana businesses of all types and are being requested to permit uses throughout cities. The proposed uses include sales outlet, growing facilities, testing laboratories, and processing facilities. The commercial uses advocate for their businesses by way of promising large amounts of tax revenue that cities could be participating in.

Because the state has yet to complete its regulating licensing system for recreational marijuana and because cities have not yet been able to research what the true negative and positive impacts of allowing commercial marijuana uses, staff has recommended to the City Council that steps be taken to ban all marijuana facilities, including medical and recreational. In the future, should the City desire to allow marijuana businesses, the ban could be strategically lifted. However, should the City not ban the uses initially and some were allowed to legally open, if the City were to experience negative effects from the uses, it would be very difficult to impossible to shutter those businesses that had legally established.

Local Authority, and Limits, to Regulate Recreational Marijuana Per AUMA

Under AUMA, the City has certain regulatory and prohibition authority and there are certain aspects that cannot be regulated. The City can adopt ordinances regulating non-medical/recreational marijuana business activities, or to completely prohibit them.¹ For example, under the state's regulatory system, the state will issue marijuana businesses licenses. However, under AUMA, state licenses cannot be issued to an applicant whose operations would violate the provisions of any local ordinance or regulation.²

As a result, the City's regulatory scheme may consider zoning and land use implications establishing where non-medical/recreational marijuana business activities may be prohibited, allowed, permitted, and/or conditionally permitted.

Based on the feedback at a City Council Study Session in May, the office of the City Attorney researched what the cities of Claremont and El Monte are currently doing to address changes in the law since Prop 64.

- El Monte: In July 2016, the city enacted a moratorium prohibiting commercial cannabis activities; bans on medical marijuana distribution and cultivation similar to the City of Pomona were already in place, but were amended to reinforce such bans in August 2016. The moratorium on all was also extended 22 months to July 2018. Such moratorium bans outdoor personal non-medical cannabis cultivation, and established a permitting scheme, associated regulations, and a permit fee.

¹ Business and Professions Code § 26200 (a).

² Business and Professions Code § 26055 (e).

- Claremont: The city of Claremont prohibits the establishment and operation of any commercial marijuana activity, regardless of it being medical or nonmedical. The city also regulates marijuana for personal use and outdoor and indoor cultivation by prohibiting the same “to the extent it is unlawful under California and Federal Law.” These regulations have been in place since October 2016, immediately prior to Prop 64 being enacted.

As for the position of the Pomona Police Department, Chief Capraro and the Pomona Police Department believes continued local regulation is the best approach to address this issue at this time. When medical marijuana dispensaries were a new occurrence in Pomona, the Chief –as well as councilmembers at that time—received numerous calls and complaints from residents near unlawful medical marijuana dispensaries. The Police Department’s observations as to the negative impacts associated with medical marijuana dispensaries were supported by neighbors sending photos of refuse, paraphernalia and contraceptives near dispensaries. Crime nearby these facilities also increased whenever one would be established. Universally, when a dispensary was closed by the City the complaints of crime and associated negative effects were replaced with the residents nearby unlawful dispensaries expressing their thanks for addressing the negative effects on their neighborhoods. Based on successes in enforcing zoning codes on the books at the time, adopting new prohibitions, and addressing the issue as the case law changed, the Pomona Police Department and the Office of the City Attorney have closed over thirty marijuana facilities since 2007.

PROPOSED ORDINANCES

The attached resolution would add definitions to the Pomona Zoning Ordinance to define the various commercial and recreational marijuana uses. The proposed ordinances would also place bans on all commercial marijuana businesses in all zoning districts and specific plan areas in the City. The ordinances closely mirror the previously-enacted legislation that placed bans on medical marijuana dispensaries throughout the City. The ordinances would not make changes to the personal medical or recreational use of marijuana in the City.

CONCLUSION

At this point in time, the City of Pomona has not lost its local regulatory authority to enact regulations concerning nonmedical/recreational marijuana, despite the use of nonmedical/recreational marijuana by adults 21 or older now being legal in California. The City may continue to enact ordinances and policies, consistent with state law, to further the City’s interest in protecting and furthering public safety, health and economic considerations, while balancing a person’s right to use nonmedical/recreational marijuana, under AUMA.

RECOMMENDATION


The Planning Division recommends that the Planning Commission adopt the attached Resolution recommending to the City Council the following:

1. Approval of Code Amendment (CA 8233-2017) to amend Section .062 (“Definitions”), Section .222 (“Open Space District”), Section 229.6 (“R-1-20,000 Single-family Residential District”), Section .232 (“R-1-10,000 Single-family Residential District”), Section .242 (“R-1-7,500 Single-family Residential District”), Section .252 (“R-1-7,200 Single-family Residential District”), Section .262 (“R-1-6,000 Single-family Residential District”), Section .272 (“R-1-E Single-family Residential Overlay District”), Section .322 (“A-P Administrative and Professional Office District”), Section .342 (“C-1 Neighborhood Stores and Services Commercial District”), Section .352 (“Neighborhood Shopping Center Commercial District”), Section .362 (“C-3 General Commercial District”), Section .367 (“C-C Community Shopping Center Commercial District”), Section .372 (“C-4 Highway Commercial District”), Section .392 (“C-IND Commercial and Industrial District”), Section .398 (“M Special Industrial District”), Section .412 (“M-1 Light Industrial District”), Section .422 (“M-2 General Industrial District”), Section .437.5 (“F” Fairgrounds District), Section .452 (“Civic” Supplemental Use District), Section .482.5 (“R-HMD Residential-Manufactured Housing Development
2. Approval of Specific Plan Amendment (SPA 8235-2017) to amend the Phillips Ranch Specific Plan, Mountain Meadows Specific Plan, Downtown Pomona Specific Plan, Mission-71 Business Park Specific Plan, Kellogg Plaza Specific Plan, Pomona Corridors Specific Plan, and the Pomona Valley Hospital Medical Center (PVHMA) Specific Plan to explicitly prohibit commercial marijuana activity in the aforementioned Specific Plan areas, in order to explicitly prohibit commercial marijuana activities Citywide.

Respectfully Submitted:

Prepared By:

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Development Services Director



Catherine Lin, AICP
Senior Planner

PC ATTACHMENTS:

1. Proposed Code Amendments

2. Proposed Specific Plan Amendments
3. Draft Planning Commission Resolution approving Code Amendment 8233-2017 and Specific Plan Amendment 8235-201