



CITY OF POMONA COUNCIL REPORT

October 16, 2017

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Submitted By: Arnold M. Alvarez-Glasman, City Attorney

Prepared By: Andrew Jared, Assistant City Attorney
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Subject: PUBLIC HEARING -- Introduction and First Reading of an Ordinance Amending the Pomona Zoning Ordinance (CA 8233-2017) and Specific Plan Amendments (SPA 8235-2017) to Explicitly Prohibit Commercial Marijuana/Cannabis¹ Activity Citywide; and Adoption at Second Reading of an Ordinance Implementing a Permitting and Regulatory Scheme for Indoor Personal Marijuana Cultivation and Prohibiting Smoking Marijuana in Designated Areas

OVERVIEW

Recommendation – That the City Council open the Public Hearing and, after taking testimony and comments regarding the proposed code amendments, close the public hearing and take the following actions:

1. Waive the full reading of proposed Pomona Zoning Ordinance Code Amendment 8233-2017 and Specific Plan Amendment 8235-2017 to expressly prohibit commercial marijuana/cannabis activity citywide; and
2. Introduce for first reading the proposed ordinance amending the Pomona Zoning Ordinance (CA 8233-2017) and all specific plans (SPA 8235-2017) to expressly prohibit commercial marijuana/cannabis activity citywide:

¹ The terms marijuana and cannabis are used interchangeably in this and previous reports; based on the definitional changes in SB 94, the term marijuana has been replaced in the proposed ordinances with cannabis throughout.

- a. Approving 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”); and
 - b. Approving 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.
3. After evaluating options relating to indoor marijuana cultivation, and prohibiting smoking of marijuana in public places, that the City Council either:
 - a. Adopt at Second Reading an Ordinance amending the Pomona City Code by adding Article X and Sections 34-091, *et seq.*, to Chapter 34 of the Pomona City Code to establish a permitting method regarding indoor marijuana cultivation, and prohibiting smoking of marijuana in public places;
 - or**
 - b. Introduce for First Reading a revised version of the Ordinance amending the Pomona City Code adding Article X and Sections 34-091, *et seq.*, to Chapter 34 of the Pomona City Code to establish a permitting method regarding indoor marijuana cultivation, and prohibiting smoking of marijuana in public places.
4. That the City Council designate the City Attorney as the representative of the City of Pomona to distribute to the Bureau of Cannabis Control (and other state licensing agencies as required) all ordinances regarding the status of cannabis control in Pomona and disseminate the information on local ordinances to the relevant state licensing entities.

Fiscal Impact – There is no fiscal impact associated with action on the amendment to the land use regulations (Zoning code and specific plan amendment).

If the regulatory permit system is approved by Council, the parameters of a permitting system would be finalized (with final approval by Council) and prior to imposition or collection of any fee, a cost study will be undertaken and a fee resolution brought back for Council approval at a later meeting regarding the justifiable fee to address costs of such permitting method.

Previous Council Action – At the May 22, 2017 Study Session regarding recent changes in California law regarding marijuana and the health and society effects of marijuana (Att. 5), the Council directed staff to bring back ordinances regulating the personal cultivation of marijuana, and prohibiting land uses associated with commercial and industrial marijuana uses.

On July 17, 2017, the City Council considered such ordinances and directed the Planning Commission to consider an ordinance prohibiting land uses associated with commercial and industrial marijuana uses. The City Council introduced and held a First Reading of an ordinance regulating the smoking of and personal cultivation of marijuana citywide. (Att. 2).

The Council also directed staff to convene community meetings over the following 60 days to communicate the proposed ordinances directly to the community and to hear community concerns and ideas regarding the proposed regulations.

On August 2, August 30, and September 6 public meetings were held at the Community Centers at Washington Park, Ganesha Park, and Westmont Park. The Mayor and Councilmembers from each district attended such meetings. At each meeting between 20-40 community members attended. Each meeting included a presentation of the proposed ordinances and period of approximately one hour for questions/comments in an open-mic discussion format.

Public Noticing Requirements – Pursuant to Section .571(D) of the Zoning Ordinance, a notice of public hearing is required to be published in a newspaper of local circulation, at least ten days prior to the date of the public hearing. A notice was published in the Inland Valley Daily Bulletin on Friday, August 11, 2017 for the Planning Commission’s hearing on this item on August 23, 2017. Further, a notice was published in the Inland Valley Daily Bulletin on Friday, September 22, for the City Council’s hearing on this item on October 2, 2017.

On October 2, 2017, the City Council opened the public hearing on this matter in order to continue the matter until October 16, 2017.

EXECUTIVE SUMMARY

There are two proposed code amendments in response to the “Control, Regulate, and Tax Adult Use of Marijuana Act” (“AUMA”; also known as “Prop. 64”):

A. Ban on Commercial Cannabis Land Uses (Att. 1)

Zoning based amendments (all zones in the Pomona Zoning Code) and all specific plans (all areas in all Specific Plans) to regulate commercial cannabis activities within the City of Pomona without giving up control to the State once licenses are granted by the State by expressly prohibiting such

commercial activities at this time. (Att. 1)

PURPOSE: Limit where commercial cannabis activities can locate within Pomona. Without such an amendment citywide, commercial cannabis businesses that obtain a State permit to conduct commercial cannabis activities could locate anywhere in the City of Pomona effective January 2, 2018 and the City would not be able to prohibit or direct where such businesses locate.

B. Personal Cultivation Permit, and Code Prohibiting Use in Public (Att. 2)

An amendment to the Pomona City Code was introduced for First Reading on July 17, 2017. It establishes a regulatory permit (similar to a building permit) for personal marijuana cultivation—as allowed under Prop. 64—to ensure concerns regarding current cultivation ordinance are honored, to ensure health and safety standards and requirements under state and local codes are met, and to create a local prohibition on the use of marijuana in public places.

PURPOSE: To ensure building and safety codes are adhered to, and ensure requirements under AUMA where personal cannabis cultivation can occur are followed. Best practices recommendations from the experiences of cities in Colorado demonstrate that a permit system ensures that residential premises remain residential and prevents houses from becoming commercial cannabis cultivation operations.

On January 1, 2018, the State will issue licenses required under AUMA for commercial cultivation, testing, and distribution of nonmedical marijuana, and the manufacturing of nonmedical marijuana products. However, Prop. 64 as enacted by the voters requires that the State respect any local regulation in place at the time of issuing the license. Conversely, if the State issues a license *and then subsequently* the city creates a local regulation on land use, the state-licensed facility would be grandfathered and such land use regulation would be pre-empted.

As of the date of preparation of this report (October 9) the State had not yet published the regulations regarding issuing of licenses required under AUMA:

“The [State] licensing authorities will use the emergency rulemaking process for the new regulations. The emergency regulations are expected to be published in November. The implementation date for the issuance of commercial cannabis licenses remains the same: January 1, 2018.”

(See <https://cannabis.ca.gov/regulations-legislation/>).

Upon further review of materials published by the State since the City’s introduction of Attachment 2, and after reviewing how other cities have established similar permitting methods, an alternative permitting method is provided to be considered as an “introduced as amended” version. (See Att. 2A).

Ordinances Pertaining to Marijuana Uses, Personal Marijuana Cultivation, and Prohibiting Smoking of Marijuana in Public Places

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A summary and comparison of the two versions is as follows:

Change	Reason	Original (Att. 2)	Revised (Att. 2A)
Throughout, term “marijuana” now “cannabis”	SB 94 uniform terminology	“marijuana”	“cannabis”
Preamble <ul style="list-style-type: none"> Pomona Ord. 4215 Prohibiting Cultivation AUMA passage rate SB 94 Discussion 	<ul style="list-style-type: none"> Not codified Not included Not passed at time of drafting 	<ul style="list-style-type: none"> Ord. 4215 not referenced Not included Not included 	<ul style="list-style-type: none"> Citywide ban on cultivation since 2016 now referenced AUMA passage rates included SB 94 summary included
CEQA Finding	Clarification re Ord. 4215: cultivation ban	Not included	Clarification provided
34-900 Additional definitions	SB 94	Additional definitions to ensure consistency throughout ordinances	Various terms defined: <ul style="list-style-type: none"> Cannabis Cannabis products Commercial cannabis activity Cultivation Delivery Indoor Marijuana (deleted) Manufacture
34-901 “Cultivation” Prohibited	Clarified cultivation is prohibited in 34-901, and smoking prohibited in 34-903	Smoking and use also prohibited in this section	Only Cultivation prohibited by this section
34-902(c) Indoor permit	Clarified application not a public record	PRA disclosure of location of personal cultivation permittees	34-902(c)(3): permits and applications
34-902(e) Indoor permit	Inspection and compliance	Comply only with AUMA and this code	Requires compliance with all law

The office of the City Attorney recommends that Att. 2A be introduced “as amended” as a first reading and brought back for second reading.

Included as Attachment 3 are answers from the Bureau of Medical Cannabis Regulation regarding Frequently Asked Questions. (Answers to additional FAQ's can be found on the California Cannabis Portal at <https://cannabis.ca.gov/faqs/>).

DISCUSSION

On November 8, 2016, California voters passed Proposition 64, the “Control, Regulate, and Tax Adult Use of Marijuana Act” (“AUMA”) (Att. 7) by the following margins:

Statewide	Los Angeles County	Pomona
Y: 57.1%	Y: 59.5%	Y: 56.85% 21,252
N: 42.9%	N: 40.5%	N: 43.15% 16,134

In the most basic terms, AUMA allows the use of marijuana for nonmedical purposes (hereinafter, also “recreational use”). Effective November 9, 2016,² the voters limited such use to non-public places by persons 21 years of age and over. However, regulations remain and were created regarding such recreational use. For instance, AUMA does not *allow* or *legalize* public consumption/smoking or cannabis, though the penalties for such violations of the law have been reduced.

The voters also approved the personal cultivation of up to six marijuana plants per residence, with certain specified requirements (storage in a locked space, subject to local ordinances, etc.).³

² An initiative statute approved by the voters takes effect the day after the election unless the measure provides otherwise. (Cal Const, Art. II § 10(a)). As to AUMA, only those actions which do not require additional licensure (i.e., *use* of marijuana and *personal* cultivation) have taken effect. Those activities that require a state-issued license (i.e., commercial sales, cultivation, testing, processing, etc.) presently do not have such licenses as the state has not issued such in advance of the January 1, 2018 deadline. Claims by cannabis businesses presently operating “in compliance with AUMA” are therefore incorrect.

³ Prop. 64 created Health and Safety Code § 11362.2 regarding personal-cultivation:

“(a) Personal cultivation of marijuana under paragraph (3) of subdivision (a) Section 11362.1 is subject to the following restrictions:

(1) A person shall plant, cultivate, harvest, dry, or process plants in accordance with local ordinances, if any, adopted in accordance with subdivision (b) of this section.

(2) The living plants and any marijuana produced by the plants in excess of 28.5 grams are kept within the person's private residence, or upon the grounds of that private residence (e.g., in an outdoor garden area), are in a locked space, and are not visible by normal unaided vision from a public place.

(3) Not more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of that private residence, at one time.

(b) (1) A city, county, or city and county may enact and enforce reasonable regulations to reasonably regulate the actions and conduct in paragraph (3) of subdivision (a) of Section 11362.1.

(2) Notwithstanding paragraph (1), no city, county, or city and county may completely prohibit persons engaging in the actions and conduct under paragraph (3) of subdivision (a) of Section 11362.1 [cultivating] inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure.

(3) Notwithstanding paragraph (3) of subdivision (a) of Section 113 62.1, a city, county, or city and county may completely prohibit persons from engaging in actions and conduct under paragraph (3) of subdivision (a) of Section 11362.1 outdoors upon the grounds of a private residence.

(4) Paragraph (3) of this subdivision shall become inoperable upon a determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law, and an act taken by a city, county, or city and county under paragraph (3) shall be deemed repealed upon the date of such determination by

The voters also required that the State develop regulations in order to issue licenses for commercial opportunities related to cannabis by January 1, 2018, under a framework for a state regulatory licensing system governing the commercial cultivation, testing, and distribution of nonmedical marijuana, and the manufacturing of nonmedical marijuana products.

AUMA established an initial set of 12 license “types” with indoor and outdoor subcategories to create 19 categories.⁴ These license types are to be revised and replaced with a permanent license list prior to January 1, 2019:

- | | |
|--|---|
| (1) Type I = Cultivation; Specialty outdoor; Small. | (11) Type 5 = Cultivation; Outdoor; Large. |
| (2) Type IA = Cultivation; Specialty indoor; Small. | (12) Type 5A = Cultivation; Indoor; Large. |
| (3) Type IB = Cultivation; Specialty mixed-light; Small. | (13) Type 5B = Cultivation; Mixed-light; Large. |
| (4) Type 2 = Cultivation; Outdoor; Small. | (14) Type 6 = Manufacturer 1. |
| (5) Type 2A = Cultivation; Indoor; Small. | (15) Type 7 = Manufacturer 2. |
| (6) Type 2B = Cultivation; Mixed-light; Small. | (16) Type 8 = Testing. |
| (7) Type 3 = Cultivation; Outdoor; Medium. | (17) Type 10 = Retailer. |
| (8) Type 3A = Cultivation; Indoor; Medium. | (18) Type 11 = Distributor. |
| (9) Type 3B = Cultivation; Mixed-light; Medium. | (19) Type 12 = Microbusiness. |
| (10) Type 4 = Cultivation; Nursery. | |

On June 27, the state Legislature passed and the Governor signed into law, SB 94, the “Medicinal and Adult-Use Cannabis Regulation and Safety Act”, which created a single coordinated regulatory system for both medicinal and adult-use cannabis. SB 94 retained provisions granting local jurisdictions control over whether commercial cannabis activity is allowed. This coordinated approach by the State to address medical and non-medical cannabis regulation is described in “the California Cannabis Portal” (<https://cannabis.ca.gov/>) as follows:

“Earlier this spring, the Department of Food and Agriculture’s CalCannabis Cultivation Licensing program, the Department of Consumer Affairs’ Bureau of Cannabis Control, and the Department of Public Health’s Manufactured Cannabis Safety Branch released draft regulations for the Medical Cannabis Regulation and Safety Act of 2015. These licensing authorities held several public hearings to accept oral and written comments regarding the draft regulations. The licensing authorities had planned to move forward with a separate draft regulatory package for implementation of Proposition 64: The Adult Use of Cannabis Act of 2016.

“However, in late June, the Legislature passed and the Governor signed into law the [Medicinal and Adult-Use Cannabis Regulation and Safety Act \(MAUCRSA\)](#), which creates one regulatory system for both medicinal and adult-use cannabis. As a result, the

the California Attorney General.

(5) For purposes of this section, "private residence" means a house, an apartment unit, a mobile home, or other similar dwelling."

⁴ Health and Safety Code § 26050

licensing authorities will withdraw the proposed medical cannabis regulations noticed for public comment on April 28, 2017. The withdrawal is scheduled to happen on October 6.

“The three cannabis licensing authorities are in the process of drafting emergency regulations based on the new law for the commercial medicinal and adult-use cannabis industries. During this process, the licensing authorities will consider the robust and valuable public comments received regarding the draft medicinal cannabis regulations.

...

“The three cannabis licensing authorities will develop emergency regulations based on the new law and will incorporate the robust and valuable public comment received on the proposed medical cannabis regulations.”

(See <https://cannabis.ca.gov/regulations-legislation/>). Under SB 94, the City is required to provide the Bureau of Cannabis Control a copy of any ordinance related to commercial cannabis activity. SB 94 also clarified issues relating to industrial hemp.

A. Local Authority to Regulate Recreational Marijuana Under AUMA and SB 94

Under AUMA, the voters of California granted cities certain regulatory and prohibition authority, and also prohibited (or pre-empted) certain other aspects of cannabis regulation. In regard to the ordinances being proposed, and the ordinances the City has already approved, AUMA specifically allows such local regulation. However, because of the January 1, 2018, date for the state to begin issuing licenses, such licenses issued prior to local control measures would not be effective against those licensees.

During the City Council Study Session on May 22, 2017, the implications on Pomona’s local authority to regulate recreational commercial and personal marijuana activities under AUMA were discussed. Several speakers made presentations regarding the health effects of marijuana on youth, the social effects in general of recent legalization in other states, including crime and marijuana-related traffic incidents. Several speakers made presentations regarding potential economic opportunities associated with AUMA.

1. Cannabis Prohibition, Regulation and Taxation: ALLOWED UNDER AUMA AND SB 94

Under Prop. 64, voters approved that AUMA

“...shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within

the local jurisdiction.”⁵

“This division shall not be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local license, permit, or other authorization requirements.”⁶

Under AUMA, cities can adopt ordinances regulating non-medical/recreational marijuana business activities, or to completely prohibit them.⁷ For example, under the state’s regulatory system, the state will issue marijuana businesses licenses. However, under AUMA, the state may not issue licenses to an applicant whose operations would violate the provisions of any local ordinance or regulation.⁸ Such requirements to comply with local regulations were reaffirmed under SB 94. As a result, a city’s regulatory method may consider zoning and land use implications establishing where non-medical/recreational cannabis business activities may be prohibited, allowed, permitted, and/or conditionally permitted.

Based on the feedback at the May 22 Study Session, 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.
 - On August 15, 2017, the City of El Monte approved an ordinance to prohibit sales of cannabis, but allow businesses that cultivate, manufacture, test or distribute medical marijuana in specific areas of the city.
- Claremont: Immediately prior to Prop 64 being enacted, the City of Claremont prohibited the establishment and operation of any commercial marijuana activity, regardless of it being medical or nonmedical. Claremont prohibits marijuana for personal use and outdoor and indoor cultivation by prohibiting the same “to the extent it is unlawful under California and Federal Law.” Staff at the City of Claremont confirmed that the City recently arrested and is criminally prosecuting a resident for outdoor cultivation activities.

As for the position of the Pomona Police Department, Chief Capraro and the Pomona Police Department believe the continued local regulation is the best approach at this time.

When medical marijuana dispensaries were a new occurrence in Pomona, councilmembers at that time and the Chief received numerous calls and complaints from residents near unlawful medical marijuana dispensaries regarding the impacts of such uses in the surrounding neighborhoods. The

⁵ Business and Professions Code § 26200 (a).

⁶ Business and Professions Code § 26200 (b).

⁷ Id.

⁸ Business and Professions Code § 26055 (e).

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. The Police Department also notes that crime nearby these facilities also increases whenever one is established; likewise, universally when a dispensary is 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.

2. *Exposure to Smoke and Possession of Non-Medical/Recreational Marijuana:* REGULATION ALLOWED UNDER AUMA

The City may prohibit smoking, and possession of, non-medical/recreational marijuana, in specified locations, including in buildings owned, leased, or occupied by the City, and public places. The definition of public place would include the grounds of a residential use accessible to the public (courtyards, places visible from off-premises). State law prohibits smoking of marijuana in a private place *that is detectable by others* on the grounds of a school, day care center or youth center while children are present. AUMA also directly regulates activities near such facilities by making it an infraction (\$250 fine) for such conduct within 1,000 feet of a school, day care center or youth center while children are present, and making it a misdemeanor to possess cannabis products on a school or day care center when children are present is a misdemeanor.⁹

In approving AUMA, the voters of California also affirmed existing state law regarding an employer's ability to maintain drug-free workplaces regardless of whether use of marijuana is medical or recreational.¹⁰

The proposed city code amendment would bolster the City's ability to enforce these provisions by protecting persons in public places from the social and health effects of smoking and use of marijuana.

B. Existing Ordinances Concerning Marijuana in Pomona

1. *Medical Marijuana Dispensaries (2008)*

Since 2008, the operation and establishment of medical marijuana dispensaries citywide is not allowed under an express prohibition of the Pomona Zoning Ordinance and each specific plan area.¹¹

Since that time, over 30 dispensaries have been shut down in Pomona. Presently, the City is engaged

⁹ Cal. Health and Safety Code§ 11362.3 (a)(3) & 11362.4.

¹⁰ Cal. Health and Safety Code§ 11362.45 (h)

¹¹ Pomona Ordinance No. 4096, passed on February 4, 2008.

in two legal actions against dispensaries currently operating in violation of the Pomona Zoning Ordinance and AUMA. The proposed ordinances do not address Medical Marijuana Dispensary regulation, and instead have been discussed, drafted, and noticed with the current prohibition still in place.

At the October 2, 2017 Council Meeting, there was direction provided by the Council for the Office of the City Attorney to return by January 2018 with analysis of amendments to the Zoning Ordinance regarding allowing, conditionally permitting, or maintaining a prohibition on medical marijuana dispensaries in the City. At this time, such analysis cannot be fully performed as the emergency rulemaking procedure by the state for the commercial cannabis has not been completed.

2. *Medical Marijuana Deliveries (2016)*

Since March 2016, deliveries of medical marijuana have been prohibited citywide.¹² This code section was enacted in response to similar statewide regulation to allow deliveries unless such a local control was enacted in April 2016. There is no identified effect of enforceability of this ordinance in light of AUMA, nor has the ordinance been challenged since it was adopted.

3. *Exposure to Marijuana Smoke*

A significant restriction under AUMA is that smoking marijuana for personal use is banned where smoking tobacco is prohibited.¹³ Pomona currently restricts places where tobacco smoking is prohibited, which includes public places, such as public parks.¹⁴ Under AUMA, marijuana may not be smoked in places where tobacco cannot be smoked. This is largely to address the issue related to prohibition of smoking in restaurants and business establishments which are regulated as a worker safety issue under the California Labor Code. AUMA also allows private property owners to exclude marijuana consumption and cultivation on their property (i.e., in a rental unit).¹⁵

While said smoking restrictions may be inferred to be applicable to marijuana smoking, the City Attorney recommends that the City adopt an explicit provision making restrictions on smoking of marijuana, as is included in the proposed City Code amendment (Att. 2).

4. *Cultivation of Medical Marijuana (2016)*

Since January 2016, the City of Pomona has expressly restricted the cultivation of medical marijuana in Pomona.¹⁶ Since Prop. 64, however, the Pomona City Code is no longer allowed to restrict the cultivation of up to six (6) plants inside a residence for personal use. (Health and Safety Code § 11362.2(b)(2)). The City Council found that cannabis cultivation resulted in public nuisances including the odor, risk to safety of residents, risk to safety of neighboring residents, risk of degradation of the natural environment, and risk of electrical fires if cultivation were allowed.

¹² Pomona Ordinance No. 4217, passed on February 22, 2016.

¹³ Business and Professions Code § 26201.

¹⁴ Pomona City Code, section 38-73.

¹⁵ Cal. Health and Safety Code § 11362.45 (h)

¹⁶ Pomona Ordinance No. 4215, passed on January 11, 2016. (Att. 8)

Because of the change in the law via AUMA, the City can no longer enforce the prohibition on personal cultivation, though AUMA *does* allow a restriction of where such activity can be done on the premises (*i.e.*, indoors only).

Therefore, in order to maintain the City Council's stated intent behind the reasons for Ordinance 4215, it is recommended that the City adopt a regulatory permit system to require residents wanting to cultivate cannabis at their residence are complying with all city and state codes related to such activity. Such regulation is a regulatory permit which would not be revenue generating other than to cover the costs of enforcement. Such ordinance is included as Attachment 1.

C. Local Authority Limitations to Regulate Recreational Marijuana

What the City Cannot Prohibit and/or Regulate Under AUMA?

The City cannot (a) prohibit the non-medical/recreational use of marijuana by persons 21 years of age and over inside their own residence; (b) prohibit the personal cultivation of up to six (6) marijuana plants per residence; nor, (c) tax marijuana cultivated for personal use.

D. Regulatory Permit and Fee for Cultivation Compliance

Though the City is prohibited from banning indoor personal cultivation, the City may regulate such activity. Certain issues to address are security of the plants, odor impacts on neighboring properties, and access to children. On July 17, 2017, such ordinance was introduced and first reading held based on the state regulation methods being discussed at that time. The Council approved such ordinance for first reading 7-0 and directed staff to hold public meetings over the following 60 days to allow the public to review, understand, and comment on such ordinance.

Based on the comments made at public meetings, review of permitting methods from other cities, and the clarifications based on SB 94, staff has revised the introduced ordinance for consideration. (See Att. 2A). If the revised version is preferred, then it would be introduced "as amended" this evening instead of adopting the previous version on second reading. This would require that the Att. 2A version of the ordinance come back for second reading at a future meeting and would become effective 30 days thereafter.

Such ordinance is based on the ability of the City to create a regulatory method of ensuring compliance with local codes -- and state building and fire codes—associated with personal use cultivation. Such a method is included in both versions of the proposed ordinance.

A personal cultivator permit --and application fee to offset the costs of enforcement of such program-- is recommended here to ensure compliance with the City Code and other codes and regulations. However, the City can only recover costs directly related to enforcement of such compliance

program as a regulatory permit fee. While the amount of such fee is not proposed here, it would be brought back for council approval to be enacted by resolution. As a fee, rather than a tax, the amount of the fee would be limited to only those reasonable costs associated with implementing the permit system and issuing the permit. **Such fee CANNOT be revenue-generating in nature. Cities in California cannot use such a fee for general fund purposes. Such fee would be limited to the cost associated with the activities undertaken under such regulatory method addressed in the permit.** At this time, the amount of such fee cannot be established as the parameters of regulation, positions performing review functions, and amount of time required for such tasks has not been determined.

E. Additional Policy Consideration: Potential Pre-Emption for Existing Facilities

The City may continue to prohibit and ban any type of commercial marijuana activities, including medical marijuana dispensaries, non-medical/recreational marijuana retailers, and/or commercial cultivators, delivery, distributors, and/or transporting of, manufacturing, and testing in laboratories of marijuana. If the City opts to ban all commercial marijuana activity, the Office of the City Attorney recommends that amendments to the Pomona Zoning Ordinance by adopting an ordinance to make an explicit prohibition as to each zoning district and specific plan. (Att. 2). Otherwise, if the Pomona City Code and/or Pomona Zoning Ordinance are silent on nonmedical/recreational marijuana, the state can issue a license for a business in the City once the state licensing scheme goes into effect January 1, 2018. **A significant policy issue here relates to the effective date of state regulation on January 1, 2018. Allowing the state to be the only licensing entity after January 1, 2018 will result in an unknown number of recreational/non-medical commercial sales operations to open “legally” in Pomona.** Once open, the City would have a difficult time imposing local regulations on existing operations.

On the other hand, enacting regulations prior to January 1, 2018 at the local level preserves the status quo and allows more educated and refined regulations in the future as the effects of recreational/non-medical marijuana are felt in California. As indicated in the presentations on May 22, the data and impacts of legalization of marijuana in 2015 are just now being identified, and state and local agencies have found themselves in a reactive mode to address those effects.

F. Local regulation of Industrial Hemp

During the October 2, 2017, City Council meeting, a speaker was concerned about the regulation of industrial hemp. Section 9 of Prop. 64 addressed amendments to the state law regarding “industrial hemp”. The definition of industrial hemp provided in earlier draft versions of the ordinances has been updated to be compliant with SB 94. The clarifications have been addressed in the definition of “cannabis” in section .062 of the ordinance.

G. Designation of Point of Contact with State Bureau of Cannabis Control

On September 16, 2017, the Governor signed into law AB 133, which among other things now

requires that all cities send the Bureau of Cannabis Control (BCC) a copy of any ordinance or regulation related to commercial cannabis activity and the name and contact information for the person who will serve as the contact for state licensing authorities regarding commercial cannabis activity within the jurisdiction. If a local jurisdiction does not provide a contact person, the bureau shall assume that the clerk of the legislative body of the local jurisdiction is the contact person.

It is recommended that the City Council designate the City Attorney as the contact person for state licensing authorities. The BCC is then responsible for disseminating the information provided by the City to all other bureaus within the State. If no designee is assigned, the state will assume the City Clerk is responsible for providing such information and for providing any explanations relating to City policy.

CONCLUSION

Cities in California were not stripped of their rights to control land uses or local regulation of cannabis because of the vote by the electorate on Proposition 64. Rather, in enacting AUMA the voters of California expressly allowed the exact local regulatory authority presented here, both in terms of controlling the location of commercial activity and regulating where personal cultivation may occur. 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.

Attachment 1 is the express prohibition proposed by the Planning Commission for adoption by the City Council with numbering revised to reflect current adopted ordinances and updates on the definition of cannabis required by SB 94.

The proposed ordinance previously introduced for first reading on July 17(Att. 2) is to address the issues of smoking marijuana in public places, and establishing a method to ensure compliance with state and local regulations. A revised version of that ordinance has been provided as Attachment 2A to address the changes in the law presented by SB 94. It is recommended that the 2A version of the ordinance be introduced for first reading, as amended.

It is recommended that the City Council designate the City Attorney as the person to service as the contact for state licensing authorities.

Attachments:

1. Proposed Ordinance re Regulation of Marijuana Land Uses
2. Proposed Ordinance Pertaining to Personal Marijuana Cultivation and Prohibiting Smoking of Marijuana in Public Places (Introduced 1st Reading 7/17/17)

2A. [REVISED] Ordinance Pertaining to Personal Marijuana Cultivation and Prohibiting Smoking of Marijuana in Public Places

3. Frequently Asked Questions, Bureau Medical Cannabis Regulation
4. Planning Commission Staff Report re Regulation of Marijuana Land Uses – September 13, 2017
5. Study Session Staff Report – May 22, 2017
6. Community Meeting PowerPoint presentation
7. Adult Use of Marijuana Act (text of Proposition 64)
8. Pomona Ord. 4215: Prohibiting Cultivation of Marijuana Citywide (January 11, 2016)