



**CITY OF POMONA
COUNCIL REPORT**

June 4, 2018

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Submitted: Arnold M. Alvarez-Glasman, City Attorney

By: Norma Copado, Deputy City Attorney

Subject: PRESENTATION AND DISCUSSION ON PROPOSITION 64, THE MEDICINAL AND ADULT-USE CANNABIS REGULATION AND SAFETY ACT, ADDITIONAL STATE LAWS AND EMERGENCY STATE REGULATIONS; AND REQUEST TO OBTAIN DIRECTION FROM CITY COUNCIL

ACTION REQUESTED

Receive information from staff on the passage of Proposition 64, the Medicinal & Adult-Use Cannabis Regulation and Safety Act (hereinafter, "MAUCRSA"), additional passage of state bills, as well as the adoption of Emergency Regulations regarding the legalization of commercial medicinal and adult-use cannabis in California.

City Attorney's office and staff are seeking direction from City Council on key questions and policy directives on the regulation of cannabis-related commercial activities, both medicinal and adult-use.

REPORT IN BRIEF

On November 8, 2016, California voters passed Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"). Effective November 9, 2016¹, AUMA legalized the nonmedical use (herein after, "adult-use") of cannabis by persons 21 years of age and over, and the personal cultivation of up to six marijuana plants per residence. Generally, AUMA created a state regulatory licensing system, which became effective January 1, 2018, governing the commercial cultivation, testing, distribution, and the manufacturing of adult-use cannabis products. Senate Bill 94 became law on June 27, 2017, which merged California's licensing scheme relative to medical

¹ An initiative statute approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise. (Cal Const, Art. II § 10(a)).

Submitted to City Council: _____
Approved: _____
Continued to: _____
Denied: _____

Agenda Item # _____
Resolution No(s): _____
Ordinance No. _____

cannabis activities and businesses, with the licensing scheme enacted by the AUMA. What was formerly known as the AUMA has now been renamed to the “Medicinal and Adult-Use Cannabis Regulation and Safety Act” (hereinafter, “MAUCRSA”).

This report, and in more detail, the more comprehensive information that will be presented on June 4, 2018, specifies what state law regulates, and the authority pursuant to state law for the City of Pomona’s (“City”) to regulate medicinal and adult-use commercial cannabis activities within its jurisdiction. The report provides a summary of what the Pomona City Code and Pomona Zoning Ordinance currently regulates concerning cannabis, including the most recent legislative action the City Council undertook to explicitly prohibit commercial medicinal and adult-use business activities. This report further provides information on what other jurisdictions are regulating, and seeks a directive from City Council should it opt to direct staff to present a draft ordinance to the Planning Commission and/or City Council first.

DISCUSSION

A. Summary and History of State Cannabis Related Laws, and Pomona’s Legislative Actions

- In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code Section 11362.5 and entitled “The Compassionate Use Act of 1996” or “CUA”).
- The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that “nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.”
- In 2004 the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code section 11362.7 *et seq.* and referred to as to the “Medical Marijuana Program” or “MMP”) to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified state criminal statutes.
- On April 3, 2006, City Council adopted interim Urgency Ordinance No. 4058 to establish a forty-five (45) day citywide moratorium on the establishment and operation of medical marijuana dispensaries.
- On May 15, 2006 the City Council adopted Interim Ordinance 4060 to extend the moratorium for an additional ten (10) months and fifteen (15) days.
- On March 5, 2007 the City Council adopted Interim Ordinance No. 4080 to extend the moratorium for an additional year.

- On November 14, 2007, the City’s Planning Commission voted to adopt Planning Commission Resolution 07-086 recommending City Council approval of Code Amendment (06-001) and Specific Plan Amendments (SPA 07-004, SPA 07-005, SPA 07-006, SPA 07-007, and SPA 07-008) to prohibit the establishment and operation of medical marijuana dispensaries citywide.

- On December 17, 2007, City Council considered Code Amendment (06-001) and Specific Plan Amendments (SPA 07-004, SPA 07-005, SPA 07-006, SPA 07-007, and SPA 07-008) and voted to approve the introduction for the first reading of Ordinance No. 4096 to prohibit the establishment and operation of medical marijuana dispensaries citywide.

- On February 4, 2008, City Council passed and adopted Ordinance No. 4096 to prohibit the establishment and operation of medical marijuana dispensaries citywide.

- Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to “[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances.

- In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land” Further, in *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Court of Appeal held that “there is no right – and certainly no constitutional right – to cultivate medical marijuana” The Court in *Maral* affirmed the ability of a local government entity to prohibit the cultivation of marijuana under its land use authority.

- On October 9, 2015 Governor Jerry Brown signed three bills into law (AB 266, AB 243, and SB 643), collectively currently known as the Medical Cannabis Regulation and Safety Act (“MCRSA”, formerly “MMRSA”). MCRSA establishes a state-licensing scheme for commercial medical marijuana uses, while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a state license. MCRSA allows the City to completely prohibit commercial medical marijuana activities.

- Business and Professions Code section 19340(a) provides that deliveries of marijuana can only be made in a city that does not explicitly prohibit it by local ordinance.

- On February 22, 2016 City Council adopted Ordinance No. 4217, amending Chapter 34 of the Pomona City Code to add Article IX relating to the prohibition of marijuana deliveries citywide.

- On November 8, 2016, California voters approved Proposition 64, titled the “Adult Use of Marijuana Act” (the “AUMA”), which became effective immediately, and enacted a state statutory scheme legalizing, controlling, and regulating the cultivation, processing, manufacturing, distribution, testing, and sale of nonmedical (i.e., recreational) marijuana, including marijuana products, for use by adults twenty-one (21) years of age and older. The AUMA sets an implementation date for commercial operations of January 1, 2018.

- The AUMA added, among other provisions, subdivision (a)(3) to Section 11362.1 of the Health and Safety Code (which all subsequent statutory references being to such Code) making it legal under state and local law for persons twenty-one (21) years and older to possess, plant, cultivate, harvest, dry, or process not more than six (6) living marijuana plants, and possess the marijuana produced by the plants, upon the grounds of a private residence, provided such personal cultivation activities comply with various requirements set forth in Section 11362.2.

- Notwithstanding the foregoing, in subdivision (b) of Section 11362.2 the AUMA allows cities to completely prohibit persons from engaging in outdoor Personal Cultivation Activities, and while cities may not completely prohibit indoor Personal Cultivation Activities, cities may enact and enforce reasonable regulations on indoor Personal Cultivation Activities.

- Pursuant to Business & Professions Code section 26200(a), the AUMA allows cities to ban all or part of the uses allowed under its provisions:

Nothing in this division shall 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 second hand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction. *(Emphasis added).*

- Senate Bill 94 became law on June 27, 2017, which merged California’s licensing scheme relative to medical cannabis activities and businesses, with the licensing scheme enacted by the AUMA. What was formerly known as the AUMA was renamed to the “Medicinal and Adult-Use Cannabis Regulation and Safety Act.”

- AB 133 became law on September 18, 2017 which, amongst other changes, removed the requirement that different commercial license types of cannabis businesses (e.g., cultivators, manufacturers, retailers, etc.) maintain “separate and distinct” premises. By removing that requirement, a single physical location can now hold multiple state licenses, subject to applicable local ordinances.

- On November 6, 2017, City Council passed Ordinance 4241, to explicitly prohibit commercial cannabis activity citywide, and Ordinance 4242, which establishes a permitting scheme for the indoor personal cultivation of cannabis for adult-use, and generally establishes smoking of cannabis prohibitions in public places.

- In late November 2017, the three state licensing authorities charged with licensing and regulating commercial cannabis activity in California commenced releasing Emergency Regulations, outlining the standards and licensing procedures for both medicinal and adult-use commercial cannabis.

- Federal Controlled Substance Act, 21 U.S.C § 801 et seq., continues to classify marijuana as a Schedule 1 drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. Currently, the Federal Controlled Substances Act contains no exemption for medical purposes.

B. Regulating Medicinal and Commercial Cannabis Activities Pursuant to State Law

1. State License Types:

There are different state license types, and with the exception for laboratory testing, each license issued will have an “M” for medicinal or an “A” for an adult-use license. The different license types include:

- Cultivation
- Manufacturer
- Distributor
- Testing laboratory
- Retailer, and
- Microbusiness

2. State Licensing Authorities:

There are three state licensing authorities charged with licensing and regulating commercial cannabis activity in California. These include the Bureau of Cannabis Control (“BCC”), California Department of Food and Agriculture (“CDFA”), and the California Department of Public Health (“CDPH”).

- CDFA is designated as the state agency responsible for issuing licenses to commercial cannabis *cultivators* in California. Cultivation licenses have three main categories: cultivators, nurseries and processors.

- CDPH is responsible for regulating the *manufacturing* component of the industry. CDPH released Emergency Regulation outlining the standards and licensing procedures for both medicinal and adult-use commercial cannabis manufacturing and products. There are four (4) manufacturing license types.

- BCC is responsible for regulating all other commercial cannabis businesses.

All cannabis businesses must have a state license in order to lawfully operate. State licenses cannot be issued to an applicant whose operations would violate provisions of any local ordinance or regulations. State licenses are valid for one year.

3. *Emergency Regulations:*

The emergency regulations issued by the state are extensive, comprehensive and technical depending on the type of cannabis operation. Notwithstanding, below are some standards worth highlighting:

- Local compliance verification is required before the state issues a license.
- Cannabis operations must be at least 600 feet from sensitive sites, such as schools, youth centers and day care centers. Local ordinances can be more restrictive.
- Owners of a commercial cannabis business must submit fingerprints, information regarding any criminal convictions, and disclose whether they have a financial interest in any other commercial cannabis business licensed under MAUCRSA.
- Security measures are required at licensed premises, including employee badges, designated limited-access areas, and security personnel; 24-hour video surveillance for areas containing cannabis and cannabis products, as well as all entryways and exits; retailers must also have video surveillance in point-of-sale areas and security personnel; and alarm systems.
- Applicant for a license with more than 20 employees must either: attest that they have entered into a labor peace agreement and that they will abide by the terms of the agreement, and provide a copy of the agreement to BCC; or, provide a notarized statement indicating the applicant will enter into and abide by the terms of the labor peace agreement.
- As noted above, there are additional and separate requirements by license type, which the operators are required to adhere, and the state to enforce.
- Cultivation applicants will be required to demonstrate California Environmental Quality Act (CEQA) compliance. This may be achieved by a local jurisdiction completing a site-specific analysis or the applicant providing a CEQA documents to be certified by the lead agency.

- There are specific waste management laws concerning cannabis waste.

4. *State Tax*

- Excise tax is fifteen (15) % of the average market price of any retain sale by a cannabis retailer.
- The excise tax is in additions to the sales and use tax imposed by state and local governments.
- The law also imposes a cultivation tax of \$9.25/dry-weight ounce (flowers) and \$2.75/dry-weight ounce (leaves) on the privilege of cultivating cannabis.
- Local agencies that ban cultivation or retail sales of cannabis are not eligible

for grants from taxes generated.

C. What are other Cities Doing: Sample Summary of City Ordinance:

Please see the attached summary chart for six (6) different municipalities, with applicable ordinances, including from Cudahy, Culver City, El Monte, Long Beach, Montebello, and West Hollywood, to provide the City a fair sampling of how other cities are regulating cannabis businesses within their jurisdiction.

We will review the categories and types of operations allowed; what land use and operational approvals, permits and/or licenses are required; what each cities' application, review and approval procedures are; what zones the businesses are allowed to operate in, and required buffer distances from sensitive uses; and what tax or fee structure each permitting scheme has. Reviewing these general umbrella provisions in ordinances will provide the City with a fair sampling of the different approaches each City has.

D. Summary of current ballot initiative pending signature certification.

On May 15, 2018, Alejandra Villegas and Jacqueline Dilley submitted a petition titled the "Pomona Regulate Cannabis Act of 2018". The following summarizes the petition:

- Proposes to add two land use districts for commercial cannabis activities: the Industrial Cannabis Overlay (IC Overlay) and the "Safe Access Cannabis Overlay" (SAC Overlay)
- IC Overlay: cannabis manufacturing, cultivation, testing laboratories, and distribution in three M-2 industrial-zoned areas in Pomona.
- SAC Overlay: storefront retail, microbusinesses, and distribution on 100 specified parcels in downtown Pomona, bounded roughly by Monterey Ave., Third St., Locust Ave., and Parcels St.
- 6,256 valid signatures required to qualify for the November 2018 election; 8,000+ signatures submitted to City Clerk for reviewed and verification; Clerk has until June 27, 2018 to complete her review
- The number of retail business permits would be limited to 1 per 25,000 residents; could be expanded by the Council after two years; Would allow 6 retain establishments based on current population
- Certain operational requirements specified.
- A state license is required.
- Repeals the current prohibition on cannabis deliveries.
- Establishes and imposes an assessment of \$5.00 per square foot of commercial space (interior premises) on cannabis business.
- Businesses allowed "by right" if operational standards demonstrated; CUP required for manufacturing processes using volatile solvents.

The Ballot Title and Summary is provided as Attachment 1, and includes, as Attachment 1 A, the text of the ordinance should the ballot measure be passed by the voters. A map of the parcels designated for inclusion in the SAC Overlay is provided as Attachment 2.

E. Where do we go from Here: City of Pomona's Options and Considerations:

1. Allow Commercial Cannabis Activity:

The City may instead choose to allow some or all commercial cannabis uses and activities, by implementing an ordinance with a permitting and regulatory scheme. The City would need to adopt corresponding land use and business regulations, and impose corresponding fees. The City may also impose taxes on adult-use businesses to cover costs incurred with licensing, regulation, tax collection, enforcement, auditing, etc. Any tax imposed would require voter approval.

If the City decides to permit and regulate any of the uses or activities currently prohibited in the City's zoning laws, Council would need to direct the City Attorney's office, with the support of City staff, to initiate code amendments. Code amendments would need to be reviewed by the Planning Commission first, and ultimately need the approval and adoption by the City Council

2. Continue to Prohibit All Commercial Cannabis Activities:

If the City opts to continue to ban all commercial cannabis activity citywide, then Ordinance 4241 will remain in place, with nothing further to do.

3. Revenue options and alternatives:

If the City chooses to allow some or all commercial cannabis activities or uses, below are options or alternatives in terms of generating revenue from such operations:

- Impose a business license tax, which must be approved by the voters of Pomona.
- Impose a special tax or use fee, specifically focused on cannabis operations. Requires voter approval.
- Special permit fees, such as CUP fees or other enforcement or oversight fees. Voter approval not required, depending on the nature of the fee.
- Development or license fees negotiated with the operators or license holders. Voter approval not required.
- Other alternative revenue sources.

F. Federal Preemption and Enforcement

Cannabis remains an illegal Schedule 1 drug. In January 2018, Attorney General Jeff Sessions issued a federal memorandum concerning the enforcement of cannabis, rescinding any previous guidance issued by former administrations on the regulation of cannabis. The memorandum explicitly directs all United States Attorneys to use previously established prosecutorial principles to "disrupt criminal organizations, tackle the growing drug crisis, and thwart violent crime." Federal prosecutors, in essence, are given the discretion to actively enforce, but to also simultaneously take into consideration the Department of Justice's limited resources, the seriousness of the crime and the deterrent effect that they could impose, when deciding whether charges are appropriate.

CONCLUSION

The City Attorney is prepared to provide additional information on any topic raised herein, and is prepared to receive any directive issued by City Council, including preparing a draft ordinance to include any provision, terms and standards discussed herein and/or on June 4, 2018.

Attachments:

1. Ballot Title and Summary - "Pomona Regulate Cannabis Act of 2018"
 - A. Text of Ordinance for Initiative
2. Map of Designated Parcels in SAC Overlay
3. Summary of Sample Cannabis Ordinance
4. Ordinances for Sample Cities
 - A. Cudahay
 - B. Culver City
 - C. El Monte
 - D. Long Beach
 - E. Montebello
 - F. West Hollywood