

BUSINESS OF THE COUNCIL OF THE CITY OF HALF MOON BAY

AGENDA REPORT

For meeting of: **March 7, 2017**

TO: Honorable Mayor and City Council

VIA: Magda Gonzalez, City Manager

FROM: Michael Bridges, Management Consultant / Special Advisor to City Manager

TITLE: **ADULT USE OF MARIJUANA ACT AND CITY OPTIONS**

RECOMMENDATION:

Provide direction to staff on whether the City should ban, allow, or regulate any or all of the various personal and commercial recreational marijuana activities, as well as medical marijuana activities. With Council direction, staff will return with recommendations on what would be required to implement the City Council decisions, such as ordinances, zoning changes, permit processes, or other actions that may be required.

FISCAL IMPACT:

There is no financial impact at this time. However, depending on City Council direction, additional staff and resources will likely be required.

STRATEGIC ELEMENT:

This recommendation supports the Healthy Communities and Public Safety, and Fiscal Sustainability elements of the Strategic Plan.

BACKGROUND:

The Adult Use of Marijuana Act (AUMA) of 2016 established a system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including marijuana products, for use by adults 21 years and older, and to tax the commercial growth and retail sale of marijuana. There are three main areas covered by AUMA: personal use, personal growth, and commercial activities (definitions in the AUMA are in Attachment 1). The City has many options on whether to allow, regulate, or prohibit various personal and commercial activities of the AUMA.

Personal Use

AUMA specifies where personal use of marijuana may be allowed or banned, and what a city may or may not do.

- A. A city may not restrict personal use in one's home

- B. Property owners (e.g. landlords and businesses) may ban smoking on/in their property
- C. No smoking is allowed in public places: streets, sidewalks, parks, beaches, trails, stores, City buildings
- D. No smoking is allowed where smoking tobacco is prohibited
- E. No smoking is allowed within 1,000 feet of school, day care center or youth center
- F. No smoking is allowed while driving or riding in a vehicle
- G. A city may prohibit smoking and possession in buildings owned, leased, or occupied by the City
- H. Employers may maintain drug-free workplaces; banning use, possession, being under the influence

Personal Cultivation

Up to six plants may be personally cultivated at one's residence.

- 1. City may reasonably regulate but cannot ban indoor cultivation for personal use (Indoor includes greenhouse or other structure on same property)
- 2. Up to 6 plants are allowed per residence regardless of the number of families or unrelated people in the residence.
- 3. Property owners (e.g. landlords) may ban the indoor and/or outdoor cultivation on their property.

Commercial Activities

There are six categories of commercial activities licensed by AUMA with 19 types of licenses (see Attachment 2 for a description of the licenses) in addition to medical marijuana licenses. AUMA also defines areas of responsibilities for State Government Departments. The State has not yet written regulations to implement AUMA. The State may have regulations adopted by September 2017 and may issue temporary licenses by then (but activities may not start until January 1, 2018). Some commercial licenses will not be effective until January 1, 2018, some large cultivation licenses will not be effective until January 1, 2023.

- A. State Licenses: (19 commercial types plus medical marijuana)
 - i. Cultivation – 13 licenses (based on size and indoor, outdoor, or mixed light)
 - ii. Manufacturing – 2 licenses
 - iii. Testing – 1 license
 - iv. Retail – 1 license
 - v. Distributor – 1 license
 - vi. Microbusiness – 1 license
 - vii. Medical Marijuana: Medical marijuana licenses are currently separate but the State has indicated that they may be combined.
- B. License Provisions
 - i. No licensee may also have a retail alcohol license

- ii. No license will be issued within a 600 foot radius of a school (K-12), day care center, or youth center – a city may increase the radius and make it larger.
 - iii. State standards are minimum standards.
- C. State Department Responsibilities
- i. Bureau of Medical Marijuana Regulation is renamed Bureau of Marijuana Control
 - ii. Department of Consumer Affairs
 - a. Authority to create, issue, renew, discipline, suspend, or revoke licenses
 - iii. Department of Food and Agriculture
 - a. Administers provisions associated with cultivation
 - iv. Department of Public health
 - a. Administers provisions related to manufacturing and testing of marijuana

State Taxes

AUMA establishes taxes on the commercial and medical marijuana activities. The Act also specifies how the tax revenues will be used.

- A. Taxes applied to both Medical and Non-Medical Marijuana
- i. Excise Tax – 15% gross receipts of retail sales
 - ii. Cultivation Taxes - \$9.25/oz. flowers; \$2.75/oz. leaves
 - iii. Uses of State Excise Taxes
 - a. 60% of revenues go to youth programs, substance abuse education, prevention and treatment
 - b. 20% of revenues go to environmental cleanup, remediation
 - c. 20% of revenues go to reducing DUI, reduce negative health impacts of marijuana legalization
 - iv. If a city bans commercial activities, they may be excluded from receiving some or all of the State Excise tax revenues.
- B. License Fees
- i. Each licensing authority (State Department) shall establish fees to cover application, licensing, and enforcing AUMA.
- C. Taxes Applied to Only Non-Medical Marijuana
- i. Sales and use tax in Half Moon Bay – 8.75% (City share is 1%)

Local Options for Commercial Activities

AUMA authorizes a city to allow, regulate, or prohibit commercial marijuana businesses within the city (see Attachment 3 for examples of permit provisions). Cities may also tax commercial activities and charge related fees.

- A. City may separately allow, regulate, or prohibit medical marijuana businesses within the city. Regulating activities established by AUMA may take different forms,

depending on how the activity is to be regulated, e.g. permitting process or zoning regulations.

- B. Any ordinance(s) should specifically state any prohibitions, permitting, or allowing.
- C. The City may establish additional standards, regulations regarding: health and safety; environmental protection; testing; security; food safety; and worker protections. The State standards may be considered minimum standards.
- D. City Taxes and Fees
 - i. Taxes require voter approval:
 - a. Specific uses of revenues – needs to pass by 2/3rd + 1
 - b. Non-specified uses of revenues – needs to pass by 50% + 1
 - ii. Permit fees may be approved by City Council; may not exceed cost of service.

DISCUSSION:

Regardless of whether the City Council decides to allow, regulate, tax, or ban any or all of the AUMA established activities, the City Council is required to take some appropriate actions. There are several associated issues for cities and counties in California. Some of these issues will be handled by State regulatory agencies, such as California Regional Water Quality Control Board.

- Environmental issues
 - Water use and run-off -.
 - Herbicides, pesticides – their use, storage, and empty containers.
 - Solid waste
 - Odor of plants
- Marijuana facility issues:
 - Electrical capacity/wiring
 - Security – protecting product and cash
 - Security – protecting youth from access
 - Location and number of facilities
 - Appearance of facilities
 - Compliance with building and zoning codes
- Law enforcement and crimes
 - Security of facilities
 - Diversion of law enforcement from other crimes
 - Operations are all in cash since banks cannot process marijuana transactions
 - Enforcement of 1,000 foot smoking rule could be difficult
- What other cities have done
 - Levied taxes on cultivation and sales
 - Created business taxes
 - Adopted zoning changes
 - Created permit fees

- Created permitting regulations and processes
- Instituted temporary bans until new regulations are developed
- Totally banned all commercial activities
- Experiences of other cities
 - Increase in driving under the influence
 - Increase in marijuana related traffic deaths
 - Increase in illegal marijuana activities – cultivation and sales
 - Increase in marijuana related calls to poison center
 - Increase in marijuana related emergency room visits
 - Increase in overall crime rates in Colorado
 - Abundance of commercial operations
- Other issues
 - Current Federal administration has stated they will enforce federal marijuana laws.
 - Ability of agencies to monitor and enforce their regulations in Half Moon Bay
 - Department of Consumer Affairs
 - Department of Food and Agriculture
 - Department of Public Health
 - California Regional Water Quality Control Board
 - San Mateo County
 - Actions by the County and nearby cities may affect commercial operations in half Moon Bay, e.g. a ban by others may increase demand for Half Moon Bay retailers or vice versa.

Community Forum

On February 15, 2017 a community meeting was held to gather public input on the Adult Use of Marijuana Act as it may apply to Half Moon Bay. Generally, there was support for all commercial operations:

- Allow commercial activities and do not over-regulate
- Important for full range of activities to be locally available (cultivation, manufacturing, testing, distribution, retail).
- Retail operations need to be classy
- Look at what other cities have done
- Emphasize organic and responsible growing; composting; provide education
- Emphasize use of renewable energy
- Priorities for existing local facilities and local hiring
- Do something quickly to be ahead of State licensing and other cities.

City Options

As stated above, regardless of whether the City Council decides to allow, regulate, tax, or ban any or all of the AUMA established activities, the City Council is required to take some appropriate actions. The City may do any of the following:

Personal Use and Cultivation

- Increase the areas where smoking is prohibited, e.g. increase the radius around schools from 1,000 feet to 1,200 feet; or add churches to the 1,000 foot radius rule.
- Ban, allow, or regulate outdoor cultivation
- Allow or regulate indoor cultivation

Commercial Activities

The City may ban, allow, or regulate any or all of the following activities:

- Indoor cultivation
- Outdoor cultivation
- Manufacturing
- Retail facilities and sales
- Testing facilities
- Distribution
- Delivery
- Microbusinesses
- Medical marijuana (may be dealt with separately)

Taxes and Fees

- Levy taxes on commercial activities with voter approval
- Create permit or application fees

DIRECTION REQUESTED

Staff requests direction from the City Council on whether the City should ban, allow or regulate any or all of the various personal and commercial marijuana activities as well as medical marijuana activities. With Council direction, staff will return with recommendations on what would be required to implement the City Council decisions, such as ordinances, zoning changes, permit processes, staffing, additional resources, or other actions that may be required.

ATTACHMENTS:

1. Adult Use of Marijuana Act Definitions
2. Types of Licenses
3. Examples of City Permit Provisions

Attachment 1: Adult Use of Marijuana Act Definitions

The following are definitions in the Adult use of marijuana Act, which may be revised or expanded when the State publishes regulations.

- “Commercial Marijuana Activity” includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery, or sale of marijuana and marijuana products.
- “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.
- “Delivery” means the commercial transfer of marijuana or marijuana products to a customer. “Delivery” also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under this division, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.
- “Distribution” means the procurement, sale, and transport of marijuana and marijuana products between entities licensed pursuant to this division.
- “Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.
- “Nursery” means a licensee that produces only clones, immature plants, seeds, and other agriculture products used specifically for the planting, propagation, and cultivation of marijuana.
- “Testing Service” means a laboratory, facility, or entity in the state, that offers or performs tests of marijuana or marijuana products, including the equipment provided by such laboratory, facility, or entity.

Attachment 2: Types of Licenses

1. Types of State Licensing – beginning Jan 1, 2018
 - a. Type 1 – Cultivation; Specialty outdoor; Small
 - i. No artificial light 5,000 sq ft or less or up to 50 plants
 - b. Type 1A - Cultivation; Specialty indoor; Small
 - i. Exclusively artificial light of 5,000 sq ft or less
 - c. Type 1B – Cultivation; Specialty mixed light; Small
 - i. Combination of natural and supplemental artificial light of 5,000 sq ft or less
 - d. Type 2 – Cultivation; Outdoor; Small
 - i. No artificial light between 5,001 and 10,000 sq ft
 - e. Type 2A – Cultivation; Indoor; Small
 - i. Exclusive artificial light between 5,001 and 10,000 sq ft
 - f. Type 2B – Cultivation; Mixed-light; Small
 - i. Combination of natural and artificial light between 5,001 and 10,000 sq ft
 - g. Type 3 – Cultivation; Outdoor; Medium
 - i. No artificial light between 10,001 and 22,000 sq ft
 - h. Type 3A – Cultivation; indoor; Medium
 - i. Exclusive artificial light between 10,001 and 22,000 sq ft
 - i. Type 3B – Cultivation; Mixed-light; Medium
 - i. Combination of natural and artificial light between 10,001 and 22,000 sq ft
 - j. Type 4 – Cultivation; Nursery
 - i. Cultivation solely as a nursery. Type 4 may transport live plants.
 - k. Type 6 – Manufacturer 1
 - l. Type 7 – Manufacturer 2
 - m. Type 8 – Testing
 - i. Not allowed for Type 5, 5A, and 5B
 - n. Type 10 – Retailer
 - o. Type 11 – Distributer
 - i. Not allowed for Type 5, 5A, and 5B
 - p. Type 12 – Microbusiness
 - i. Cultivation on area less than 10,000 sq ft
 - ii. Not allowed for Type 5, 5A, and 5B
2. State Licensing of cultivation – beginning Jan 1, 2023
 - a. Type 5 – Cultivation; Outdoor; Large
 - i. Outdoor cultivation using no artificial light greater than one acre
 - ii. May also apply for Type 6, 7, or 10 after Jan 1, 2023
 - iii. May not hold Type 8, 11, or 12 license
 - b. Type 5A – Cultivation; Indoor; Large

- i. Indoor cultivation using exclusively artificial light greater than 22,000 sq ft.
 - ii. May also apply for Type 6, 7, or 10 after Jan 1, 2023
 - iii. May not hold Type 8, 11, or 12 license
 - c. Type 5B – Cultivation; Mixed-light; Large
 - i. Cultivation using combination of natural and supplemental artificial lighting greater than 22,000 sq ft
 - ii. May also apply for Type 6, 7, or 10 after Jan 1, 2023
 - iii. May not hold Type 8, 11, or 12 license
- 3. Licensing Limitations
 - a. A licensee shall not also be licensed as a retailer of alcohol beverages or tobacco products.
 - b. No licenses shall be issued for facilities within 600 foot radius of any school (K-12), day care center, or youth center.
 - c. License applicants must have continuous residency in the State from January 1, 2015 or longer. Any person controlling an entity applying for a license must meet the residency requirement.

Attachment 3: Examples of City Permit Provisions

Cities that have created permit application and approval processes have included as a minimum some of the following (depending on the type of operation, e.g. cultivation, retail, manufacturing etc.):

Personal Cultivation Permits

1. Application fee
2. Inspection concerning:
 - a. Electrical use to assure wiring/load appropriate for the residence
 - b. Fire Department inspection
 - c. Building inspection to assure proper ventilation to avoid mold/mildew
 - d. Annual inspections to assure no more than 6 plants

Commercial Permits

1. Application Fee
2. Submit written information to City:
 - a. Floor plans with entrances, exits and secure areas shown.
 - b. Plans for security, including name of security firm, video security system (type and coverage areas), length of time to save recordings, City access to recordings, etc.
 - c. Odor mitigation
 - d. Waste disposal – solid plant waste, herbicide/pesticide containers, etc.
 - e. Water use and run-off
 - f. Pest management
 - g. Product testing, worker safety and compensation
 - h. Local hiring
 - i. Non-diversion of product (e.g. to youth)
 - j. Facility location
 - k. Capitalization
 - l. Business plans
 - m. Applicant complaint history
 - n. Criminal background checks
 - o. Compliance with City building and fire codes
 - p. Façade design and signage
 - q. Interior design
 - r. Retail sales containers must be child-resistant
 - s. Cash management and security
 - t. Any additional information required by City
3. City Manager to establish criteria for:
 - a. Minimizing the carbon footprint

- b. Environmental impact
 - c. Resource needs of the facility
 - d. Applicants demonstrating that they can satisfy environmental criteria will be given preference
4. Operating and performance standards
- a. Cultivation and manufacturing facilities shall not be open to the public
 - b. City to establish operating and performance standards to minimize the effects on nearby properties
5. Examination of books, records, witnesses – information is confidential
- a. City provided access during normal business hours
 - b. City provided access to all financial information at any time as needed to conduct an audit
 - c. City authorized to examine books, papers, tax returns and records of permittee
 - d. City authorized to examine a person under oath
 - e. Permittee required to furnish City means and access to these things
6. Liability and indemnification
- a. Actions taken by public officer or employee shall not become a personal liability of any public officer or employee of the City
 - b. Permittees shall indemnify and hold harmless City etc.
 - c. Permittee to execute a letter of agreement