

BUSINESS OF THE COUNCIL OF THE CITY OF HALF MOON BAY

AGENDA REPORT

For meeting of: **November 15, 2016**

TO: Honorable Mayor and City Council

VIA: Magda Gonzalez, City Manager

FROM: Reed Gallogly, Deputy City Attorney

TITLE: **DISCUSSION OF ADULT USE OF MARIJUANA ACT, EXISTING, AND POTENTIAL NEW CITY REGULATIONS REGARDING MARIJUANA**

RECOMMENDATION:

Provide staff direction regarding any potential new City regulations regarding marijuana.

FISCAL IMPACT:

No fiscal impact associated with this action. Depending on future Council action and/or direction, anticipated fiscal impacts can be properly evaluated.

BACKGROUND:

In 1996, California voters adopted the Compassionate Use Act (“CUA”) as a ballot initiative. The CUA provided a limited defense from prosecution for cultivation and possession of marijuana. In 2003, the Legislature adopted the Medical Marijuana Program Act (“MMP”). The MMP provided qualified persons, primary caregivers, and holders of valid identification cards a defense to certain enumerated marijuana-related state crimes. And, in 2015, the Legislature introduced three bills comprising the Medical Marijuana Regulation and Safety Act (MMRSA). These bills were designed to impose additional regulatory mechanisms related to medical marijuana.

Then, on November 8, 2016, California voters approved Proposition 64 – the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”). The AUMA legalized the nonmedical use of marijuana by persons 21 years of age and over, and the personal cultivation of up to six marijuana plants. In addition, the AUMA will create a state regulatory and licensing system governing the commercial cultivation, testing, and distribution of nonmedical marijuana, and the manufacturing of nonmedical marijuana products. The regulatory system governing these commercial marijuana activities largely mirrors the Medical Marijuana Regulation and Safety Act (“MMRSA”), but there are differences.

DISCUSSION:

I. OVERVIEW OF THE AUMA¹

A. Personal Nonmedical Marijuana Use

The AUMA makes it legal for persons 21 years of age or older to: (1) smoke or ingest marijuana or marijuana products; (2) possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older, without any compensation, 28.5 grams of marijuana, or 8 grams of concentrated marijuana, including as contained in marijuana products; and (3) possess, plant, cultivate, harvest, dry or process up to six living marijuana plants for personal use. The AUMA requires that marijuana in excess of 28.5 grams that is produced by plants kept pursuant to the personal cultivation provision of the Act be kept in a locked space on the grounds of a private residence that is not visible from a public place.

Although persons 21 years of age or older may use and possess nonmedical marijuana under the Act, their ability to engage in these activities is not unfettered. The AUMA prohibits the smoking of marijuana:

- (1) in any public place, except where a local jurisdiction has authorized use on the premises of a retailer or microbusiness in accordance with Business and Professions Code section 26200;
- (2) where smoking tobacco is prohibited;
- (3) within 1,000 feet of a school, day care center, or youth centers while children are present; and
- (4) while driving, or riding in the passenger seat of, any vehicle used for transportation.

Moreover, individuals cannot possess marijuana on school grounds, in day care centers, or in youth centers while children are present, or possess an open container of marijuana or marijuana products while driving, operating, or riding in any vehicle used for transportation. The AUMA further provides that cities may prohibit possession and smoking in buildings owned, leased, or occupied by the city, and that employers, including cities, may maintain a drug and alcohol free workplace by prohibiting the use, consumption, possession, transfer, transportation, sale, display or growth of marijuana in the workplace.

1. Personal Cultivation

The AUMA provides that local governments can reasonably regulate, but cannot ban, personal indoor cultivation of up to six living marijuana plants within the person's private residence. The Act defines private residence as "a house, an apartment unit, a mobile home, or other similar dwelling unit." This includes cultivation in a greenhouse on the same property as the residence

¹ League of California Cities' City Attorneys Department, Memorandum re AUMA, September 26, 2016

that is not physically part of the home, as long as it is fully enclosed, secure, and not visible from a public space.

However, the AUMA completely protects the ability of local governments to regulate, and to ban, personal outdoor cultivation operations. However, it purports to repeal any ordinance that bans outdoor cultivation upon the California Attorney General's determination that nonmedical use of marijuana is lawful under federal law.

B. Commercial Nonmedical Marijuana Activity

Under the AUMA, California will have a comprehensive state regulatory system for nonmedical marijuana that governs the industry from "seed to sale." The Bureau of Marijuana Control, currently the Bureau of Medical Cannabis Regulation, which is within the Department of Consumer Affairs, will have primary responsibility for administering and enforcing the AUMA. The AUMA divides state licensing and enforcement responsibilities among three agencies: (1) the Department of Consumer Affairs, which will issue licenses for marijuana the transportation, storage, distribution, and sale of marijuana; (2) the Department of Food and Agriculture will issue marijuana cultivation licenses, which will administer the provisions of the AUMA related to the cultivation of marijuana; and (3) the Department of Public Health, which will issue licenses for marijuana manufacturers and testing laboratories. Each of these state licensing authorities is responsible for creating regulations governing their respective areas of responsibility, and must begin issuing licenses by January 1, 2018.

A state marijuana license will be valid for one year. A separate state license is required for each commercial marijuana business location. With the exception of testing facilities, any person or entity licensed under the AUMA may apply for and be issued more than one type of state license.

1. Local Control

All nonmedical marijuana businesses must have a state license, and a state license cannot be issued to an applicant whose operations would violate the provisions of any local ordinance or regulation. In Half Moon Bay, Municipal Code Chapter 9.09 "Marijuana Facilities," provides the following:

9.09.010 Marijuana dispensaries, collectives, cooperatives, distributors and production facilities prohibited. It is unlawful for any person to establish or operate any marijuana dispensary, collective, cooperative, distribution facility or production facility within the city.

As such, *all medical and nonmedical* marijuana businesses, operations, and production/distribution facilities are completely banned in the City of Half Moon Bay. However, the AUMA does not limit the authority of a local jurisdiction like the City of Half Moon

Bay to subsequently adopt and enforce local ordinances which permissively regulate (or, as is the case now, completely prohibit) medical and nonmedical marijuana businesses and facilities. Local jurisdictions may further establish standards, requirements, and regulations regarding health and safety, environmental protection, testing, security, food safety, and worker protections that **exceed** state standards.

C. Taxation

The AUMA imposes new state taxes on medical and nonmedical marijuana in the following manner:

- Effective January 1, 2018, the AUMA imposes an excise tax at the rate of 15% of gross retail sales receipts.
 - This tax will be in addition to existing state and local sales tax. Given that state and local sales taxes can range from 7-10%, the combined excise tax + sales tax at the retail level could approach 25%;
- Effective January 1, 2018, the AUMA imposes a separate cultivation tax on all harvested marijuana as follows:
 - \$9.25 per dry-weight ounce on all marijuana flowers;
 - \$2.75 per dry-weight ounce on all marijuana leaves;
- The AUMA prohibits imposition of state and local sales taxes on medical marijuana.
- The AUMA exempts marijuana cultivated for personal use from taxation.

The AUMA does not pre-empt local taxation. However, the AUMA's estimated cumulative tax rate of nearly 35% on the purchase of nonmedical marijuana has potentially troubling implications for local governments. A high state tax rate by itself may depress sales and stimulate the black market. Any local taxation of marijuana should be governed by an awareness that a high retail sales tax rate, imposed on an industry that, until recently, has not been regulated at all, might stimulate black market activity and compromise the anticipated yield of revenue. In order to avoid such a result, cities might consider imposing an excise tax on discrete commercial nonmedical marijuana activities rather than on retail sales. New taxes on marijuana require compliance with Proposition 218.

1. Allocation of State Tax Revenues

After repaying certain state agencies for marijuana regulatory costs not covered by license fees, and making certain grants to universities for research and development and the Governor's Office of Business and Economic Development, the AUMA distributes the remaining tax revenue as follows:

- 60% for youth programs, substance abuse education, prevention and treatment;
- 20% for environmental cleanup and remediation; and

- 20% for state and local programs that reduce DUI and grant programs designed to reduce negative health impacts resulting from marijuana legalization.

D. Deliveries

Under both the MMRSA and the AUMA, local jurisdictions can ban or regulate deliveries within their borders. As noted at the Council meeting last December where the MMRSA was discussed, Half Moon Bay's existing ordinance does not prohibit delivery services from *servicing* residents within City limits (though they still may not operate the business within the City).

E. Regulatory Options

From the commercial side, the AUMA recognizes a range of businesses, including dispensaries, cultivators, manufacturers, distributors, transporters, and testing laboratories. Cities may expressly ban, adopt business regulations, or adopt land use regulations pertaining to any or all of these businesses. Currently, the City of Half Moon Bay's existing ordinance prohibits the operation of all such businesses,² including medical businesses operating under the MMRSA and, now, possible nonmedical businesses.

Regarding personal use, under the AUMA, local governments can also regulate or ban all personal, outdoor cultivation (until such time as the Attorney General determines that the use of nonmedical marijuana is lawful in the State of California under federal law). In addition, local governments can "reasonably regulate," but cannot ban, personal, indoor cultivation.

II. RECENT ACTIONS BY LOCAL AGENCIES

Within San Mateo County and the greater Bay Area, cities have already taken a wide variety of approaches with regards to medical marijuana under the MMRSA – some actively encourage business activity and heavily tax it, while others prohibit it entirely, and still others have a limited regulatory scheme somewhere in between. Most recently, and in response the AUMA legalizing personal cultivation of up to 6 plants, yet permitting cities to ban outdoor grows and reasonably regulate the indoor grows, several regional cities have adopted complete bans on personal outdoor cultivation. Those include:

- San Bruno [ban outdoor growing entirely]
- Palo Alto [ban outdoor growing entirely]
- Campbell [ban outdoor growing entirely]
- Antioch [ban outdoor growing entirely]
- Sonoma [ban outdoor growing entirely]
- Martinez [ban outdoor growing entirely]

² With the exception of testing facilities.

- San Jose [ban *commercial* marijuana business, reiterate existing ban on outdoor growing]
- Berkeley [ban *commercial* marijuana business]

III. SUMMARY OF REGULATIONS IN HALF MOON BAY

Based on the City of Half Moon Bay's existing marijuana ordinance, the MMRSA, and now the AUMA, the following is a succinct summary of the current regulatory framework in Half Moon Bay.

1. Medical marijuana businesses and operations (dispensaries, cooperatives, collectives, distribution, production, cultivation) are **prohibited in the City**.
2. Nonmedical/Commercial marijuana businesses and operations (dispensaries, cooperatives, collectives, distribution, production, cultivation) are **prohibited in the City**.
3. Delivery businesses are **prohibited from operating** in the City, but may deliver from outside the City to residents of the City.
4. Personal nonmedical/recreational marijuana use is now legal per the AUMA; however, it is illegal to use it:
 - a. **in any public place**, except where a local jurisdiction has authorized use on the premises of a retailer or microbusiness in accordance with Business and Professions Code section 26200;
 - b. anywhere that smoking tobacco is also prohibited (i.e. restaurants, bars, places of work);
 - c. within 1,000 feet of a school, day care center, or youth center while children are present (i.e. Ted Adcock); and
 - d. while driving, or riding in the passenger seat of, any vehicle used for transportation.
5. Personal cultivation of up to 6 plants is permitted, either indoor or outdoor.

Discussion of City of Half Moon Bay Marijuana Regulations



City of Half Moon Bay City Council
November 15, 2016

Prior State Marijuana Legislation

- **1996 - Compassionate Use Act**
 - Provided a defense to prosecution for limited cultivation and possession of marijuana.
- **2003 – Medical Marijuana Program Act**
 - Provided qualified patients and caregivers a defense to certain crimes.
- **2013 – Medical Marijuana Regulation and Safety Act**



Proposition 64: Adult Use of Marijuana Act

- Passed by voters on November 8, 2016:
 - Statewide: 56.14% in favor, 43.86% against
 - San Mateo County: 62.97% in favor, 37.03% against
 - City of Half Moon Bay: ~69% in favor, ~31% against



Summary of AUMA Provisions

- Legalizes the nonmedical use of marijuana by persons 21 years of age and over and the personal cultivation of six marijuana plants
- Creates state regulatory and licensing system for the commercial cultivation, testing, and distribution of nonmedical marijuana, and the manufacturing of nonmedical marijuana products.
- Allows local governments to prohibit or regulate and license commercial nonmedical marijuana.
- Takes effect November 9, 2016



Personal Use

- AGE: 21 years of age or older
- POSSESSION: Possess, process, transport, purchase, obtain, or give away 28.5 grams of non-concentrated non-medical marijuana, or 8 grams of concentrated marijuana products
- USE: Smoke or ingest marijuana or marijuana products
- CULTIVATION: Possess, plant, cultivate, harvest, dry or process up to 6 plants per residence for personal use



Restrictions on Personal Use

- No smoking in a public place (except where authorized locally)
- No smoking where smoking tobacco is prohibited
- No smoking within 1,000 feet of a school, day care center or youth center
- No smoking while driving or riding in a vehicle
- Cities may prohibit smoking and possession in buildings owned, leased, or occupied by the city
- Employers may maintain drug-free workplaces



Commercial Marijuana Activity

ALL COMMERCIAL ACTIVITY IS CURRENTLY PROHIBITED IN
HALF MOON BAY

HALF MOON BAY MUNICIPAL CODE SECTION 9.09.010

- State licensing and enforcement under direction of the Bureau of Marijuana Control is divided among:
 - **Department of Consumer Affairs:** transportation, storage, distribution, and sale
 - **Department of Food and Agriculture:** cultivation
 - **Department of Public Health:** manufacturers and testing laboratories.
- Regulations will be adopted. Licensing to begin no later than January 1, 2018
- Cities and counties may adopt and enforce ordinances regulating or completely prohibiting state-licensed marijuana businesses (but may not prohibit use of public roads for deliveries in another jurisdiction).
- State standards are minimums. Cities and counties may establish additional standards, requirements and regulations regarding health and safety, environmental protection, testing, security, food safety, and worker protections.

Status of Law in Half Moon Bay

1. Medical and Commercial Businesses and Operations are PROHIBITED.
2. Personal Use and Cultivation, per AUMA limitations, is now legal.

QUESTIONS

