

STAFF REPORT

DATE: November 1, 2016

TO: City Council

FROM: Mike Webb, Assistant City Manager
Ashley Feeney, Assistant Director Community Development & Sustainability
Darren Pytel, Police Chief
Harriet Steiner, City Attorney

SUBJECT: Marijuana Considerations – Urgency Ordinances establishing an Interim Moratorium on Commercial Marijuana Uses and Outdoor Marijuana Cultivation, and a Prohibition of Smoking of Marijuana in Public Places

Recommendation

Approve the attached Urgency Ordinances which are as follows:

- 1) An Urgency Interim Ordinance establishing a 45-day city-wide moratorium on the establishment, creation or expansion of any and all commercial marijuana uses and outdoor cultivation. The Ordinance would be effective immediately upon approval through December 15, 2016, unless extended by further City Council action.
- 2) An Urgency Ordinance which expressly prohibits the smoking of marijuana in all public places and publically accessible places.

The purpose of the Interim Ordinance establishing the temporary moratorium is to address medical and adult use marijuana business and uses that may not be clearly prohibited or regulated within the City and thereafter, to allow the City time to conduct research, engage in community outreach, consult with neighboring jurisdictions, obtain the election results for Proposition 64, and develop a comprehensive set of regulations to bring back to City Council for consideration at a future meeting. The City has been advised by the League of California Cities that jurisdictions should not rely on permissive zoning but rather develop specific regulations associated with marijuana businesses that are acceptable to the community. The moratorium is necessary at this time to ensure a marijuana business does not establish operations in a location that could present conflicts with surrounding uses. State law requires that the initial moratorium can only be in effect for 45-days but City Council has the option to extend the moratorium prior to expiration for up to an additional 180 days. Staff will likely recommend the Council extend the moratorium at a future meeting as the development of comprehensive marijuana business regulations is anticipated to require more time than the 45-days allowed under the initial Interim Ordinance.

Staff believes the proposed moratorium is critical to ensure the retention of local land use and regulatory authority over the establishment of marijuana related business and uses. The proposed moratorium should not be seen as an indicator that staff is taking a position in

opposition to any particular business establishment or use at this time. Ultimately, the City Council will determine what regulations it may wish to establish, after the opportunity for appropriate research, community engagement, and policy analysis and development has occurred. The development of regulations associated with medical marijuana (and potentially adult use marijuana) deals with a multitude of policy considerations and touch virtually every aspect of City responsibility (health, safety, business licensing, land use, enforcement, monitoring, etc...), which require careful consideration, deliberation, and community outreach. The purpose of the moratorium is to ensure that the appropriate opportunity is afforded to undertake this research and engagement and to make sound policy recommendations and decisions. The passage of an urgency ordinance requires at least four (4) affirmative votes of the City Council.

Fiscal Impact

Costs of processing this moratorium and the urgency ordinance related to smoking have been absorbed by the existing budgets for Community Development, Police, and the City Manager's Office. Anticipated costs of additional research and enforcement options will be presented to the City Council prior to expiration of the moratorium period.

Council Goal (s)

Goal 7 – Safe and Healthy Community

- Create and maintain a physical and social environment that promotes safety and well-being.

Background and Analysis

The California legislature adopted legislation, identified as the Medical Marijuana Regulation and Safety Act (“MMRSA”), to comprehensively regulate medical marijuana. The MMRSA became effective January 1, 2016 and, among other things, required the City to have land use regulations in effect by March 1, 2016 that regulate or prohibit medical marijuana cultivation and medical marijuana businesses. If cities failed to adopt their own ordinance by March 1, 2016, the State rules became effective by default with the State becoming the sole licensing authority for medical marijuana business applicants in those cities. The MMRSA allowed for cities that put local regulations in place to modify said regulations thereafter to meet the needs and desires of a particular City. Cities that did not adopt local regulations prior to the March 1, 2016 deadline would have been pre-empted from adopting local regulations in the future. As a result of these requirements, the City Council adopted Ordinance No. 2467 on January 19, 2016 prohibiting commercial cultivation and personal outdoor cultivation of medical marijuana in all City zoning districts, while allowing certain limited personal indoor medical marijuana cultivation. The Legislature, thereafter, amended MMRSA to permit local regulation adopted after March 1, 2016. The City currently prohibits medical marijuana dispensaries as defined in the Davis Municipal Code Section 40.26.275. Adoption of the proposed moratorium would also prohibit adult use marijuana dispensaries.

The City's Ordinance No. 2467 related to medical marijuana cultivation provides that the City Council will review the current City regulations for medical marijuana no later than December 2016. Staff has been researching the various medical marijuana businesses that are allowed under the State licensing scheme established in the MMRSA in an effort to bring forward

potential modifications to the existing regulations should the City wish to expressly permit certain commercial marijuana businesses after conducting community outreach and dialogue on the topic and coordinating with nearby jurisdictions before implementing regulations on what commercial marijuana uses may be permissible or desired and which may not be. In addition to cultivation and dispensaries, the City may wish to review manufacturing, research and development of products, bakeries and other similar businesses (see below) and mobile delivery services. The development of regulations associated with medical marijuana (and potentially adult use marijuana) deals with a multitude of policy considerations (health, safety, land use, enforcement, monitoring, etc...), which require careful consideration, deliberation, and community outreach. In addition to staff research of the MMRSA, Californians will vote on Proposition 64, the Adult Use of Marijuana Act (“AUMA”) on November 8, 2016. Under the AUMA, adult marijuana use would be legal for persons over the age of 21 years with allowances for personal cultivation and the establishment of commercial marijuana businesses. The regulatory scheme for the commercial marijuana businesses envisioned in the AUMA follow the model established within MMRSA.

Should the AUMA be approved by the voters on November 8th, any amendments to the existing Ordinance or new regulations would be required to address both medical marijuana and marijuana (adult use). Based upon staff research on businesses allowed under the MMRSA and the uncertainty associated with the passage of the AUMA, staff believes the attached Interim Urgency Ordinance placing a temporary moratorium on the establishment or expansion of commercial marijuana businesses and outdoor cultivation is the right course of action. A temporary moratorium would allow time for staff to conduct community outreach, engage with neighboring jurisdictions on the matter and prepare a comprehensive regulatory approach for Council consideration. The League of California Cities (“League”) anticipates that the State will not be issuing licenses before January 1, 2018, allowing time for staff to address these important local regulatory efforts.

The City has been receiving inquiries for the establishment of medical marijuana businesses and while the City does have regulation associated with medical marijuana uses in place, staff recommends adopting the attached ordinance to further clarify allowed uses and to be proactive in anticipation of the potential passage of the AUMA which would go into effect on November 9, 2016. The League has advised against relying on the use of permissive zoning related to marijuana businesses envisioned under the AUMA. It is important to reiterate that the adoption of an ordinance at this time does detract in any way from the City Council’s authority to make future amendments.

MMRSA Business License Categories

Staff will be making recommendations for local regulations associated with the various businesses envisioned under the MMRSA at a future meeting. The regulatory scheme established in the MMRSA envisions the following business categories for state licensing:

Cultivation Licenses – Commercial cultivation licenses vary depending on size of grow, and the types of light that are used.

Manufacturing Licenses – *There are two types of manufacturing license types. One manufacturing license uses volatile solvents, while the other license does not. The state will limit the number of licenses that use volatile solvents in the manufacturing process.*

Testing License – *Laboratories that test medical marijuana and medical marijuana products.*

Dispensary Licenses – *Businesses that engage in the retail sale of medical marijuana and medical marijuana products. The dispensary licenses also allows for deliveries in addition to a brick and mortar storefront.*

Distributor License – *Dedicated solely to the storage and distribution of products from the cultivators and/or manufacturers to dispensaries.*

Transporter License - *Transporters of medical marijuana and medical marijuana products between licenses.*

AUMA Considerations

The business license types envisioned under the AUMA mirror those established in the MMRSA and will be encompassed in the future staff recommendations on local regulations. There are some items to note relative to personal consumption and cultivation allowances that would be allowed should Proposition 64 be approved by voters on November 8, 2016. They are as follows:

Personal Consumption and Cultivation

- Legalizes the nonmedical use of marijuana by persons over 21 years of age.
- Persons over 21 years of age are allowed to possess, transport, purchase, obtain or give away up to 28.5grams of non-concentrated or 8 grams of concentrated marijuana.
- No smoking of marijuana is allowed in public places (except where authorized locally). The proposed urgency ordinance related to smoking clarifies this.
- No smoking of marijuana is allowed where smoking tobacco is prohibited.
- Persons over 21 years of age are allowed to cultivate up to six (6) marijuana plants within a private residence, inclusive of within a greenhouse or other structure on the same parcel of the property that is not visible from a public space. A residence includes single-family homes, multi-family apartment units and mobile homes.
- Local governments may reasonably regulate but not prohibit personal indoor cultivation.
- Local governments may regulate or prohibit personal outdoor cultivation.

AUMA Effective Date – *If approved, the effective date would be November 9, 2016.*

Smoking Ordinance Considerations

As discussed in the AUMA Considerations section above, the AUMA provides that smoking marijuana is prohibited in public places and where tobacco smoking is not allowed. The AUMA does not however define “public place”. Staff reviewed Chapter 34, Smoking Control of the Davis Municipal Code and recommend that Council adopt the proposed Urgency Ordinance to both clarify and affirm the City’s existing smoking regulations to ensure that they adequately and

appropriately reflect the potential use of marijuana within the City. This Urgency Ordinance expressly prohibits marijuana smoking in all public and publically accessible places with the intention of providing a smoke free environment in places where the public, and particularly children, may be exposed to unwanted and potentially harmful second-hand smoke.

Environmental Determination

The City has determined that the proposed project is categorically exempt from further environmental review pursuant to the following sections of the CEQA Guidelines: The proposed Ordinance will have no significant effect on the environment and qualifies as being Categorical Exempt from the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activities will not result in a direct or reasonably foreseeable indirect physical change in the environment), 15060(c)(3) (the activities are not "projects" as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because they have no potential for resulting in physical change to the environment, directly or indirectly and 15061(b)(3) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it can be seen with certainty that it will not have a significant effect or physical change to the environment.

Public Noticing

A Public Hearing Notice for the City Council hearing was published in The Davis Enterprise.

Next Steps

The Urgency Interim Zoning Ordinance is written to address both medical and nonmedical marijuana businesses and personal outdoor cultivation. Staff needs time to research and consider potential regulations or prohibitions associated with the various types of marijuana businesses contemplated under the MMRSA and the AUMA. While a specific schedule and steps for research and community engagement is pending development, staff intends to bring these issues and proposed amendments to Council in the coming months. At that time, taxation allowances under the MMRSA and the AUMA will be elaborated on and specific recommendations associated with regulations on the various business types will be provided.

Attachments

1. Proposed Urgency Interim Zoning Ordinance Establishing a Moratorium
2. Proposed Urgency Ordinance Prohibiting Marijuana Smoking in Public and Publically Accessible Spaces
3. League of California Cities Presentation on the Adult Use of Marijuana Act

ORDINANCE NO. _____

**AN URGENCY INTERIM ZONING ORDINANCE ESTABLISHING A MORATORIUM
IN ALL ZONING DISTRICTS ON THE ESTABLISHMENT, CREATION OR
EXPANSION OF ANY AND ALL COMMERCIAL MARIJUANA USES AND ALL
OUTDOOR MARIJUANA CULTIVATION, EFFECTIVE IMMEDIATELY FROM AND
INCLUDING NOVEMBER 1, 2016 THROUGH AND INCLUDING DECEMBER 15,
2016, UNLESS EXTENDED BY FURTHER ACTION OF THE CITY COUNCIL**

WHEREAS, medical marijuana dispensaries, defined by the Davis Municipal Code to mean any facility or location where medical marijuana is made available and/or distributed by a primary caregiver, qualified patient, or person with an identification card authorized by State law, are currently prohibited in all zoning districts in the City; and

WHEREAS, the City Council adopted Ordinance No. 2467 on January 19, 2016 in order to, among other things, expressly prohibit in all zoning districts in the City commercial cultivation and personal outdoor cultivation of medical marijuana, while allowing certain limited personal indoor cultivation; and

WHEREAS, pursuant to Ordinance No. 2467, Council determined to review the City's medical marijuana regulations no later than December 2016 in order to engage community dialogue and ensure the City's Municipal Code protects the health and safety of its residents while appropriately regulating medical marijuana; and

WHEREAS, the City Council intended for the prohibition of outdoor and commercial cultivation of medical marijuana in the City, combined with the current prohibition of medical marijuana dispensaries, to encompass all potential commercial-scale marijuana uses until such time as the City adequately considered zoning proposals for commercial marijuana uses and adopted appropriate ordinances and regulations, as necessary; and

WHEREAS, Proposition 64, also known as the "Adult Use Marijuana Act" ("AUMA"), is currently pending on the Statewide ballot to be considered by California voters at the November 8, 2016 election, which if passed would take effect on November 9 and, among other things, authorize personal non-medical use of marijuana and create a Statewide licensing scheme for commercial, non-medical marijuana businesses; and

WHEREAS, pursuant to the Medical Cannabis Regulation and Safety Act, as amended, the Bureau of Medical Cannabis Regulation, California Department of Food and Agriculture, and California Department of Public Health are currently developing regulations ("State Regulations") for State licensing of medical marijuana businesses, including commercial cultivation, manufacturing, testing, dispensary, and distribution businesses; and

WHEREAS, the State Regulations are required by State law to consider and mitigate a variety of identified environmental impacts and secondary effects related to commercial marijuana activity, including water diversion, electricity usage, agricultural discharges, land conversion, use of nonvolatile and volatile solvents in production, and adequate security measures to protect against diversion, theft, loss or other criminal activity related to commercial storage and distribution of medical marijuana; and

WHEREAS, such State Regulations are not estimated to be fully developed and adopted until late 2017, with State licenses estimated to begin issuing on or around January 1, 2018, notwithstanding potential impacts or delays caused by passage of AUMA; and

WHEREAS, there may be marijuana related uses that the City may wish to expressly permit, and the City does not that want to undermine efforts that may have a positive impact on the community; and

WHEREAS, City Staff is therefore currently considering, studying and analyzing various medical and non-medical marijuana uses in light of the new and proposed State law and State Regulations referenced above, including proposed amendments to the City's existing zoning regulations to prohibit, permit, or conditionally permit certain commercial marijuana businesses; and

WHEREAS, City Staff desires further community dialogue and coordination with nearby jurisdictions before implementing regulations on what marijuana uses may be permissible versus those that may not; and

WHEREAS, the City has received inquiries from the public related to the establishment of commercial cultivation, manufacturing, and dispensary-related marijuana businesses in the City, including an inquiry of whether commercial marijuana manufacturing is currently a permitted use in the industrial districts; and

WHEREAS, the unintended and unregulated establishment of new commercial marijuana uses at this time, not already expressly permitted by the City's Zoning Code, poses a variety of potential known and unknown adverse impacts, such as offensive odors, gases, and other discharges related to commercial scale processing of marijuana products, unsafe or disapproved use of volatile and nonvolatile solvents intended to be regulated by the State Regulations, excess or dangerous waste, water, and electricity usage, and theft or other crime related to the storage and commercial distribution of commercial-scale quantities of marijuana; and

WHEREAS, the potential immediate enactment of AUMA by California voters further complicates potential development and application of zoning regulations related to personal cultivation and commercial non-medical marijuana businesses, including cultivation, manufacturing, retail, distribution, and microbusiness businesses; and

WHEREAS, in light of the potential known and unknown adverse impacts of commercial marijuana uses, currently unregulated by State or local law, potentially rapid change of State law and ongoing development of State Regulations, and City Staff's ongoing study of zoning proposals related to marijuana uses, the City Council finds that the current establishment, creation, or expansion of commercial marijuana uses, excepting those uses already established and permitted by the City's Zoning Code, would create a current and immediate threat to the health, safety, and welfare of the City, its residents and businesses; and

WHEREAS, the City Council further finds that the establishment or creation of such commercial marijuana uses without appropriate regulation, or the allowance of outdoor personal cultivation of non-medical marijuana, might conflict with or be inconsistent with surrounding

uses and intended zoning requirements, and if allowed to proceed under current zoning, new marijuana uses not already permitted in the City could conflict with, and defeat the purpose of, the proposal to study and adopt new regulations, consistent with State law, regarding marijuana uses; and

WHEREAS, City Council therefore desires to temporarily prohibit all marijuana uses which are not already permitted by the City's Zoning Code to provide adequate time to continue studying zoning proposals related to medical and non-medical marijuana uses and adopt regulations as necessary; and

WHEREAS, this urgency ordinance is adopted pursuant to the requirements of Government Code section 65858.

NOW, THEREFORE, the City Council of the City of Davis does hereby ordain as follows:

Section 1. Findings, Declaration of Urgency.

The City Council of the City of Davis hereby finds and declares that there is a need to enact an urgency interim ordinance establishing a moratorium on the establishment or creation of all marijuana uses in all zoning districts in the City, subject to the findings and conditions contained in this Ordinance. The City Council hereby incorporates the findings set forth in the recitals stated above. The City makes this declaration of urgency based, in part, on recent inquiries regarding the allowance of medical marijuana manufacturing businesses in the City, as well as general inquiries regarding the passage of AUMA and the establishment of similar commercial marijuana businesses. Specifically, the City Council makes the following findings:

- (a) If commercial marijuana uses are allowed to proceed without appropriate review of location and operational criteria and standards, including the safe and appropriate use of volatile and nonvolatile solvents for processing and refining marijuana products and security measures adequate to protect against theft and crime of commercial-scale quantities of marijuana, such businesses could have deleterious effects on surrounding neighborhoods and businesses that present a clear and immediate danger to the public health, safety and welfare.
- (b) If AUMA is approved by the voters on November 8, 2016 and personal outdoor marijuana cultivation of non-medical marijuana is allowed to proceed, it would conflict with, and defeat the purpose and intent of, current zoning requirements that prohibit personal outdoor cultivation of medical marijuana in all zoning districts due to nuisance, crime, and aesthetic factors. Allowance of any non-medical, commercial marijuana uses would likewise directly conflict with, and defeat the purpose and intent of, the current prohibition on commercial cultivation and marijuana dispensaries in the City until such time as the City has considered such uses and adopted appropriate ordinances and regulations.
- (c) The City Council finds that if establishment or development of medical or non-medical marijuana uses, beyond those already established and permitted by the City's Code, were

allowed to proceed while the City is studying zoning ordinances and regulations for such uses, it would defeat the purpose of studying and considering zoning proposals to regulate and/or prohibit certain medical and non-medical marijuana uses.

- (d) Failure to enact this moratorium may result in significant irreversible changes to neighborhood and community character, and may ultimately conflict with new and pending State law and State Regulations and City ordinances and regulations.
- (e) Based on the foregoing, the City Council does hereby declare this urgency ordinance is necessary to protect the public health, safety, and welfare while the City is considering revisions to existing zoning regulations related to marijuana uses.

Section 2. Moratorium.

Except as provided in Section 3 and Section 4 of this Ordinance, the City Council hereby declares a moratorium on any and all commercial marijuana uses and outdoor marijuana cultivation within all zoning districts in the City. The City shall not approve or issue land use approvals or permits, including but not limited to zoning amendments, conditional use permits, variances, tentative subdivision or parcel maps, site plan approvals, design review approvals, and building permits or other applicable entitlements for the establishment or creation of commercial marijuana businesses, or modification of existing business for commercial marijuana uses, during this moratorium.

Section 3. Exemptions.

This moratorium shall not apply to those marijuana uses already expressly permitted or conditionally permitted in the City. Specifically, this moratorium does not apply to indoor personal cultivation of medical marijuana permitted and regulated by Davis Municipal Code section 40.26.276. In the event AUMA is approved and adopted by the voters on November 8, 2016, this moratorium shall not apply to indoor personal cultivation of non-medical marijuana as authorized by State law, provided that such indoor personal cultivation shall still be subject to the physical and operational requirements set forth in Davis Municipal Code section 40.26.276(d) to the extent such requirements do not conflict with State law. This moratorium also does not apply to existing and established laboratories for testing, which are permitted or conditionally permitted in districts zoned for research and light industrial uses, including Commercial-Service (C-S), Industrial Research (I-R), Industrial (I), and similar planned development districts, provided that such testing facilities otherwise comply with the Davis Municipal Code and do not establish, create, or expand to commercial marijuana uses covered by this moratorium.

Section 4. Hardship Exception.

Any person may apply for an exception from the provisions of this Ordinance on the grounds of economic hardship. Such application shall state the nature of the hardship and the reasons why an exception to this Ordinance is warranted. The application shall explain the relationship of the proposed marijuana business or use to the character of its surroundings, the impact the proposed business or use may have on surrounding properties, and how any such impacts will be mitigated. The application shall state why applying for and obtaining a

conditional use permit or other land use approval or permit as set forth above, and/or why the delay in pursuing the use until the City completes its evaluation of current zoning regulations and proposals and makes amendments, revisions or modifications to the Zoning Ordinance as the Council deems appropriate, would constitute a taking in contravention of the law. The application shall also explain whether there are alternatives to the proposed use which have been investigated and the applicant's opinion of such alternatives. Such explanation shall, if appropriate, be accompanied by technical information to support the explanation. The application for a hardship exemption shall be heard by the City Council pursuant to the procedures established in Chapter 40 for the hearing of appeals under the terms set forth in Section 40.35, including but not limited to the public notice and hearing requirements set forth in Section 40.35.

Section 5. Definitions.

As used herein, “marijuana” means all or any parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Marijuana” also means the separated resin, whether crude or purified, obtained from marijuana, and marijuana as defined by Section 11018 of the Health and Safety Code. For purposes of this Ordinance, “marijuana” includes both medical and non-medical marijuana and medical and non-medical marijuana products.

As used herein, “commercial marijuana uses” means and includes any and all commercial marijuana activity, including but not limited to cultivation, manufacturing, production, preparation, refining, compounding, processing, blending, extracting, infusing, storing, labeling, packaging or repackaging, transporting, distributing, delivering, or selling wholesale or retail sales of marijuana or marijuana products, and any business, person or entity that conducts or engages in these commercial marijuana uses.

“Outdoor marijuana cultivation” shall mean outdoor cultivation, planting, growing, harvesting, drying, curing, grading, or trimming of non-medical marijuana, if such cultivation becomes legal by the passage of AUMA.

Section 6. Existing Prohibitions Not Affected.

All marijuana uses already prohibited by the City’s Code shall remain prohibited and shall not be affected or modified by this Ordinance, including the current prohibition of medical marijuana dispensaries set forth in Davis Municipal Code section 40.26.275 and outdoor and commercial cultivation prohibited by Davis Municipal Code section 40.26.276.

Section 7. CEQA Finding.

The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption of this Ordinance, and establishment of a moratorium on the establishment or creation of commercial marijuana uses or outdoor cultivation of marijuana, will have a significant effect on the environment because the Ordinance will maintain current levels of

development. It is therefore exempt from any California Environmental Quality Act (CEQA) review pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

Section 7. Effective Date.

This Interim Ordinance shall become effective immediately and shall remain in force and effect from and including November 1, 2016 through and including December 15, 2016, unless extended prior to its expiration by further action of Council.

**PASSED AND ADOPTED THIS ____ TH DAY OF _____ 2016, BY
THE FOLLOWING VOTE:**

AYES:

NOES:

ROBB DAVIS
Mayor

ATTEST:

ZOE MIRABILE
City Clerk

ORDINANCE NO. ____

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAVIS TO
ADD SECTION 34.02.025 TO THE DAVIS MUNICIPAL CODE TO EXPRESSLY
PROHIBIT SMOKING MARIJUANA IN ALL PUBLIC PLACES AND PUBLICLY
ACCESSIBLE PLACES**

WHEREAS, the City of Davis prohibits smoking in certain specifically enumerated public places, such as enclosed areas available to the general public in retail stores, banks, and offices, reception and waiting areas, public transit, restaurants, and certain outdoor areas like public gardens, public parks and greenbelts, and the “E Street Plaza”; and

WHEREAS, “smoking” is broadly defined in the municipal code to include inhaling, exhaling, burning, or carrying any lighted cigarette, cigar, pipe, hookah, weed, plant, or other combustible substance in any manner or in any form, including e-cigarettes used to create a vapor; and

WHEREAS, the City requires employers to provide a smoke-free workplace for all employees, which includes maintaining a written smoking policy and using signage as appropriate; and

WHEREAS, the purpose of the City’s smoking restrictions is to protect the public health and welfare by regulating smoking in public places and places of employment and to strike a reasonable balance between the desires of persons who smoke and the need of nonsmokers to breathe smoke-free air; and

WHEREAS, Proposition 64, also commonly known as the Adult Use of Marijuana Act (“AUMA”), is currently pending on the Statewide ballot for voter consideration at the November 8, 2016 election, which if approved by the voters will authorize persons 21 years of age or older to possess, smoke and ingest marijuana and marijuana products without a medical prescription or medical need; and

WHEREAS, if AUMA is approved by the voters, it will become effective the following day on November 9, 2016; and

WHEREAS, AUMA states that it shall not be construed to permit smoking or ingesting marijuana in any public place or in places where smoking tobacco is prohibited, but does not define “public place”; and

WHEREAS, the City Council therefore desires to pass this urgency ordinance to expressly define, clarify and prohibit the smoking of marijuana or marijuana products in any public place or publicly accessible place, in addition to all those places already specifically enumerated by the Davis Municipal Code; and

WHEREAS, this urgency ordinance is necessary for the immediate preservation of the public health and safety in order to ensure that the City’s existing smoking restrictions adequately protect the public from unwanted and potentially harmful second-hand smoke; and

WHEREAS, an urgency ordinance necessary for the immediate preservation of public health is authorized by Government Code section 36937.

NOW, THEREFORE, the City Council of the City of Davis does ordain as follows:

SECTION 1. Urgency Findings. The City Council hereby incorporates by reference and adopts the recitals of this Urgency Ordinance. The City Council further finds that this Urgency Ordinance is necessary to promote the immediate preservation of the public peace, health and safety by preventing the smoking of marijuana in public places, including places available to and used by the public, to protect the needs of non-smokers and children to breathe smoke-free and drug-free air. The City Council further finds that this Urgency Ordinance is necessary in light of the possible, immediate effectiveness of the Adult Use of Marijuana Act, which would authorize recreational smoking of marijuana, but which does not clearly define those public places where such smoking is prohibited. As such, the City Council has determined that this Urgency Ordinance is necessary to both clarify and affirm the City's existing smoking regulations to ensure that they adequately and appropriately reflect the potential use of marijuana within the City.

SECTION 2. Authority. The City Council enacts this Urgency Ordinance under the authority granted to cities by Article XI, Section 7 of the California Constitution and Government Code sections 36934 and 36937.

SECTION 3. Amendment. Section 34.02.025 is hereby added to the Davis Municipal Code to read in full as follows:

34.02.025. Smoking marijuana and marijuana products.

(a) In addition to all those places where smoking is prohibited as set forth in this Article 34.02, smoking marijuana or marijuana products is expressly prohibited in all of the following places:

- (1) All enclosed areas to which the public is invited or permitted;
- (2) In or upon all property owned, leased, or occupied by the City, expressly including any public park, street, sidewalk, bike path, greenbelt, alley, highway, off-street public parking lot or structure; and
- (3) Any private parking lot , if such parking lot is posted with a sign prohibiting smoking or posted with a sign prohibiting marijuana smoking.

(b) The prohibitions set forth in this section apply regardless of whether a person is simply passing through or on the way to another destination, such as walking or riding on a street or sidewalk, so long as the person smoking marijuana or marijuana products is in or upon any of the places where smoking is prohibited by this Article.

(c) This section shall be construed broadly, to the extent authorized by law, to effectuate the purpose of providing a smoke and drug-free environment in places where the public, and particularly children, may be exposed to unwanted and potentially

harmful second-hand smoke. The restrictions set forth in the section are in addition to, and not exclusive of, any other restrictions set forth in any other State or local law or regulation.

(d) For purposes of this section “marijuana” and “marijuana products” shall mean and include all “cannabis” and “cannabis products”, whether used for medical or non-medical purposes, as authorized by applicable state law.

SECTION 4. Severability. If any section, subsection, sentence, clause or phrase of this Urgency Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

SECTION 5. Effective Date. This Urgency Ordinance was adopted by the necessary four-fifths vote of the members of the City Council pursuant to Government Code sections 36934 and 36937 and shall take effect immediately upon its adoption.

INTRODUCED, PASSED AND ADOPTED by the City Council of the City of Davis on this _____ day of November 2016, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Robb Davis
Mayor of the City of Davis

ATTEST:

Zoe S. Mirabile, CMC
City Clerk

Adult Use of Marijuana Act
Proposition 64
November 8, 2016 Statewide Ballot

Thursday, October 20, 2016
10:00 a.m. – 11:30 a.m.



Webinar Presenters

Bismarck Obando

*Director of Public Affairs, League of California Cities
(Moderating)*

Betsy Strauss

Special Counsel, League of California Cities

Steve McEwen

Partner, Burke, Williams & Sorensen, LLP

Tim Cromartie

Legislative Representative, League of California Cities

How to Ask a Question

- All phone lines have been muted
- For Questions - Use the Q&A window to the right side of your screen
- Please enter your **Name, Title and City** when you ask a question

Agenda

- **Summary of the AUMA**
- **Key Differences: AUMA vs. MMRSA**
- **Personal Use**
- **Personal Cultivation**
- **State Licensing of Commercial Operations**
- **Local Regulation of Commercial Operations**
- **Taxation of Nonmedical Marijuana**
- **Allocation of State Tax Revenues**
- **Local Policy Issues**

Summary

- 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

Key Differences: AUMA and the MMRSA

For purposes of local regulation, there are four key differences between the Adult Use of Marijuana Act and the Medical Marijuana Regulation and Safety Act.

- 1) **Focus:** The MMRSA regulates medical marijuana, while the AUMA regulates nonmedical marijuana.
- 2) **Taxation:** The MMRSA authorizes counties to impose excise taxes. The AUMA exempts medical marijuana from state and local sales tax. The AUMA imposes state taxes on the purchase and cultivation of non-medical marijuana. Local taxation of nonmedical marijuana is not pre-empted by the AUMA.
- 3) **Local Regulations:** Under the MMRSA and the AUMA, local governments may allow, regulate, or prohibit commercial marijuana businesses within their jurisdictions. This policy choice should be reflected in an ordinance that contains express language regarding marijuana land uses and business regulations.
- 4) **Personal Cultivation:** The MMRSA does not alter local governments' existing authority to prohibit all personal cultivation. Under the AUMA, locals can reasonably regulate but cannot ban indoor private indoor cultivation. Note: Local ability to regulate or prohibit commercial indoor cultivation remains intact even under the AUMA.

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 8.5 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

Personal Cultivation

- Local governments may “reasonably regulate” but not prohibit personal indoor cultivation of up to 6 marijuana plants within a private residence.
- Includes cultivation within a greenhouse or other structure on the same parcel of property that is not visible from a public space.
- Local governments may regulate or prohibit personal outdoor cultivation.

Questions about Personal Use

- What are “reasonable regulations” on personal cultivation of 6 plants within a personal residence?
- Examples:
 - A local requirement for a residential cultivation permit, with an appropriate fee;
 - Requiring as a condition of the permit, that the permit holder agree to periodic inspections (upon appropriate notice), to ensure that cultivation is not:
 - In excess of the six-plant limit
 - Drawing more electrical power from the grid that the structure/house is designed to withstand, thereby causing a fire hazard
 - Presenting a health hazard such as mold accumulation
 - Using more water than is reasonably required to cultivate six plants
 - Express local regulations requiring cultivation to comply with the Fire Code, Building Code and reasonable limitations on the use of water

State Licensing Commercial Operations

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

State Licensing

Commercial Operations

- All nonmedical marijuana businesses must have a state license
- State license cannot be issued to an applicant whose operations would violate the provisions of any local ordinance or regulations
- Review ordinances, and update if necessary: If local ordinances are silent on nonmedical marijuana, the state can issue a license for a business in your city without local input
- State license will be valid for one year.
- Separate state license required for each business location.

Local regulation/prohibition

Commercial Operations

- 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.

Local regulation/prohibition

Commercial Operations

- Proposition 64 does not require a city to enact regulatory scheme or prohibition by certain date
- League anticipates that State will not begin issuing licenses before January 1, 2018.
- If city prohibition or regulations in place before business applies for state license, state license either will not issue or be subject to local regulations.
- Caution against relying on use of permissive zoning code.

Local regulation/prohibition

Commercial Operations

- Proposition 64 does not require a city to enact regulatory scheme or prohibition by certain date
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Taxation of Nonmedical Marijuana

- 15% State excise tax of gross retail sales receipts.
- \$9.25/dry-weight ounce on marijuana flowers State cultivation tax
- \$2.75/dry-weight ounce on marijuana leaves State cultivation tax
- Marijuana cultivated for personal use is exempt from cultivation tax
- Medical marijuana is exempt from State/local sales tax
- Proposition 64 does not prevent cities and counties from imposing local taxes [except sales tax on medical marijuana]

Allocation of State Tax Revenues

- 60% for youth programs, substance abuse education, prevention and treatment
- 20% for environmental cleanup and remediation
- 20% for state and local programs that reduce DUI and grant programs designed to reduce negative health impacts regulating from marijuana legalization

Local policy issues

Does your city want to:

- regulate the indoor cultivation of nonmedical marijuana for personal use? [legal beginning 11/9/16]
- regulate or ban the outdoor cultivation of nonmedical marijuana for personal use? [legal beginning 11/9/16]
- enact business regulations of nonmedical marijuana businesses?
- enact land use regulations that apply to nonmedical marijuana businesses?
- impose local taxes on nonmedical marijuana?