



**SPECIAL MEETING OF THE
CANYON LAKE CITY COUNCIL
Wednesday, October 26, 2016
Open Session – 11:00 A.M.**

**City Council Chambers
31516 Railroad Canyon Road
Canyon Lake, CA 92587**

OPEN SESSION – 11:00 A.M.

1. **Call Open Session to Order**
2. **Flag Salute**
3. **Roll Call:** Council Members Ehrenkranz, Warren, Zaitz, Mayor Pro Tem Haggerty, Mayor Brown
4. **Approval of City Council Agenda**
5. **Public Comments** – Any person wishing to address the City Council on any matter on this agenda, is asked to complete a “Speaker Request Form” available on the back counter. The completed form is to be submitted to the City Clerk prior to an individual being heard by the City Council. The City Council has adopted a time limitation of three (3) minutes per person. If you are commenting on the agenda item, your comments will be heard at the time that particular item is scheduled on the agenda.
6. **Consent Calendar:**

All items listed on the Consent Calendar are considered to be routine matters, status reports or documents covering previous City Council action. The items listed on the Consent Calendar may be enacted in one motion. With the concurrence of the City Council, a Council Member may request that an item be removed for further discussion. Staff recommends approval of all items.

 - 6.1 **Waiver of Reading in Full of all Ordinances by Title Only**
7. **Business Items**
 - 7.1 **Adoption of an Interim Ordinance of the City Council of the City of Canyon Lake Pertaining to Non-Medical Marijuana Cultivation.**
8. **City Manager Comments**
9. **Announcements**

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The next regular City Council meeting is scheduled for **November 2, 2016 at 5:30 p.m. for Closed Session and 6:30 p.m. for Open Session.**

10. Adjournment

VISION STATEMENT

The vision of the City of Canyon Lake is to be a City that provides a quality of life that makes Canyon Lake the premier place to live in Southern California.

ATTENTION RESIDENTS:

Supporting documents, including staff reports, are available for review at City Hall in the City Clerk's Office or on the City's website at www.cityofcanyonlake.org once the agenda has been publicly posted. Any written materials relating to an item on this agenda submitted to the City Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office during normal business hours. In addition, such writings or documents will be made available for public review at the respective public meeting. It is the intention of the City of Canyon Lake to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or participant at this meeting, you will need special assistance beyond what is normally provided, the City of Canyon Lake will attempt to accommodate you in every reasonable manner. Please contact Ariel M. Hall, City Clerk, at least 48 hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible. Please advise us at that time if you will need accommodations to attend or participate in meetings on a regular basis.

October 26, 2016 Special City Council Meeting

STATE OF CALIFORNIA }
COUNTY OF RIVERSIDE } SS. AFFIDAVIT OF POSTING
CITY OF CANYON LAKE }

I, **Stephanie N. Hunter**, being duly sworn, depose and say that I am the duly appointed and qualified Office Specialist of the City of Canyon Lake and that on **October 19, 2016** before the hour of **5:00 p.m.**, I caused the above notice to be posted as required by **Resolution 2015-36** of the City Council of the City of Canyon Lake.

Stephanie N. Hunter
Office Specialist

**City of Canyon Lake
City Council
Staff Report**

TO: Honorable Mayor and Members of the City Council

FROM: Aaron Palmer, City Manager

BY: Elizabeth Martyn, City Attorney

DATE: October 26, 2016

SUBJECT: Discussion and potential adoption of Interim Urgency Ordinance regulating personal cultivation of marijuana and banning outdoor personal cultivation

Recommendation

It is recommended that the City Council receive information, discuss the possible impact of Proposition 64 on the November General Election Ballot, and decide whether or not to adopt Interim Urgency Ordinance No. 168 to regulate personal cultivation of marijuana and banning outdoor personal cultivation.

Background

In light of Proposition 64, also known as the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA) on the November 8, 2016 General Election ballot, the City Council should discuss and decide what measures should be taken to protect the public health, safety, and welfare in the event the proposition passes.

The City Attorney has put together a few options for the City Council to consider.

1. Do Nothing – The risk with doing nothing prior to the Proposition potentially passing is that you may want to regulate indoor cultivation and ban outdoor cultivation in the future. If a zoning ordinance is not adopted prior to the passage of Proposition 64, there is a potential for legal no conforming uses that you would not be able to regulate because they established themselves prior to a future ordinance being adopted and in effect.
2. Regulate personal indoor cultivation (I.e. Number of plants, height, location in home, residency requirement, smoke alarms, odor control, etc.) – Even if the City Council doesn't regulate indoor cultivation, the City maintains public nuisance abatement powers. This will be hard to regulate; effectively it would be something that Code Enforcement responds to if there are complaints, or that the Police Department adds to another citation they are already issuing. The general idea is to

keep the plants out of sight; there is an option for a completely enclosed greenhouse as part of a residence, which seems to be a source of possible issues. Additionally, personal cultivation is only by an “authorized grower”. The Council DOES NOT have an option to completely ban personal indoor cultivation.

3. Ban personal outdoor cultivation – While the City Council cannot ban indoor cultivation, there is an option to completely ban outdoor cultivation.
4. Regulate personal outdoor cultivation – The City Council may choose to allow outdoor cultivation with regulations if the Council does not wish to implement and outright ban.

Should the City Council consider the attached draft interim urgency ordinance, the Council should be advised that the approach should work to control cultivation of marijuana in the City because the language is based on the language of the proposition and the League of California Cities’ advice; however, it is likely that there will be confusion and litigation statewide should the proposition pass. Additionally, the attached draft interim urgency ordinance deals only with regulating personal indoor and banning personal outdoor cultivation, and does not change the medical marijuana ordinance that is already in place in the City.

Budget (or Fiscal) Impact

Unknown at this time. There will be costs associated with an increase in Code Enforcement to deal with this issue.

Attachments

1. PowerPoint Presentation by City Attorney **Pg. 5**
2. Memo and materials from the League of California Cities **Pg. 11**
3. Ordinance No. 165 **Pg. 37**
4. Draft Interim Urgency Ordinance No. 168 **Pg. 47**

California Proposition 64 Adult Use of Marijuana Act

CITY COUNCIL SPECIAL MEETING

Tuesday, October 26, 2016



History/Background

- City Ordinance No. 168, prohibits the cultivation, manufacturing and delivery of medical marijuana and all associated business and operational activities in the City of Canyon Lake.
- A new initiative is on the November 8, 2016 ballot, **Proposition 64**, which would legalize nonmedical use of marijuana by persons 21 years of age and over, and the personal cultivation of up to six mature marijuana plants. The Act is known as the “Control, Regulate, and Tax Adult Use of Marijuana Act” (referred to as “AUMA” throughout the presentation).

Overview of 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 or marijuana, or 8 grams of concentrated marijuana;
 3. Possess, plant, cultivate, harvest, dry or process up to six living marijuana plants for personal use.

Overview of the AUMA

- **The AUMA prohibits the smoking of marijuana...:**
 1. In any public place, except where a local jurisdiction has authorized its use on the premises of a retailer or microbusiness ;
 2. Where smoking tobacco is prohibited;
 3. Within 1,000 feet of a school, day care center, or youth center while children are present; and
 4. While driving, or riding in the passenger seat of any, vehicle used for transportation.
- Cities may also 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.

Personal Cultivation Pursuant to AUMA

- Pursuant to AUMA, local governments can reasonably regulate, **but cannot ban, personal indoor cultivation of up to six mature marijuana plants** within the person's private residence.
 - A private residence is defined as: a house, an apartment unit, a mobile home, or other similar dwelling unit.
 - "Private residence" includes a greenhouse on the same property as the residence that is not physically a part of the home, as long as it is fully enclosed, secure, and not visible from a public space.

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." AUMA divides state licensing and enforcement responsibilities amongst three agencies as follows:
 - 1) Department of Consumer Affairs- will issue licenses for the transportation, storage, distribution, and sale of marijuana;
 - 2) Department of Food and Ag- will issue marijuana cultivation licenses;
 - 3) Department of Public Health- will issue licenses for marijuana manufacturers and testing laboratories.
- Pursuant to the law, each state licensing authority must begin issuing licenses by **January 1, 2018**. It appears the first licenses could be issued in January, 2017.

Local Control

- Under the AUMA, all nonmedical marijuana businesses must have a state license. A **state license cannot be issued to an applicant whose operations would violate the provisions of any local ordinance or regulation.**
- The AUMA does not limit the authority of a local jurisdiction to adopt and enforce local ordinances regulating or completely prohibiting state-licensed marijuana businesses.
- Municipalities may establish standards, requirements, and regulations regarding health and safety, environmental protection, testing, security, food safety, and worker protections that exceed state standards.

Local Enforcement

- Similar to the Medical Marijuana Regulation and Safety Act (MMRSA), state licensing authorities will enforce state statutes and regulations.
- Local authorities will be responsible for enforcing local ordinances and regulations.
- For state-licensed facilities operating within a city, a city may have the authority to enforce state law and regulations if delegated the power to do so by the Bureau of Marijuana Control or a licensing authority.

Taxation

- The AUMA imposes new state taxes on nonmedical marijuana in the following manner (effective January 1, 2018):
 - 1) AUMA imposes a 15% excise tax of gross retail sales;
 - 2) This tax will be in addition to existing state and local sales tax
 - 3) Prohibits imposition of state and local sales taxes on medical marijuana;
 - 4) Exempts marijuana cultivated for personal use from taxation.
- 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%.

Council Considerations

- Local governments can 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.
- Nothing in the AUMA requires a city to enact an ordinance or regulation by a certain date; however, if a City does not adopt an ordinance expressly banning or regulating nonmedical marijuana businesses before the state begins issuing licenses, a state-licensed nonmedical marijuana business will be able to operate within the City's jurisdiction without local permission or permitting. **Any ban should include an explicit zoning ban.**

What Actions Need to be Taken?

Actions to be considered on November 2, 2016

- 1) Should personal **indoor** cultivation of nonmedical marijuana be regulated?
- 2) Should personal **outdoor** cultivation of nonmedical marijuana be banned or regulated?

What Actions Need to be Taken?

Assuming Proposition 64 is approved by the voters, the following should be considered:

1. Revision of municipal code to expressly permit or prohibit the establishment of nonmedical marijuana businesses;
 - *If marijuana establishments are permitted within the City, should the City enact local taxes on retail sales of marijuana?*
2. Revision of municipal code to expressly permit or prohibit the commercial cultivation of nonmedical marijuana in the City;
 - *If commercial cultivation is permitted within the City, should the City impose a cultivation tax on harvested marijuana?*



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MEMORANDUM¹

To: League of California Cities' City Managers Department
League of California Cities' City Attorneys Department
From: League Staff
Date: September 22, 2016
Re: The Control, Regulate and Tax Adult Use of Marijuana Act

On November 8, 2016, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA" or "Act") will come before California voters as Proposition 64. If passed, the AUMA will legalize 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 key differences. This memorandum will provide an overview of the AUMA, highlight the ways in which the AUMA differs from the MMRSA, and identify the issues that cities will need to take action on if the AUMA passes.

I. Overview of the AUMA

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.² 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.³

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

¹ **DISCLAIMER:** These materials are not offered as or intended to be legal advice. Readers should seek the advice of an attorney when confronted with legal issues. Attorneys should perform an independent evaluation of the issues raised in these materials.

² Health & Saf. Code § 11362.2(a).

³ Health & Saf. Code § 11362.2(a)(2).

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 center while children are present; and (3) while driving, or riding in the passenger seat of, any vehicle used for transportation.⁴ 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.⁵ 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.⁶

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.⁷ The Act defines private residence as "a house, an apartment unit, a mobile home, or other similar dwelling unit."⁸ This includes cultivation in a greenhouse on the same property as the residence that is not physically part of the home, as long as it is fully enclosed, secure, and not visible from a public space.⁹

The AUMA completely protects the ability of local governments to regulate, and to ban, personal outdoor cultivation operations.¹⁰ 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.¹¹

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.¹²

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,

⁴ Health & Saf. Code § 11362.3(7)-(8).

⁵ Health & Saf. Code §§ 11362.3(3), 11362.3(4).

⁶ Health & Saf. Code § 11362.45 (f)-(g).

⁷ Health & Saf. Code §§ 11362.1(a)(3), 11362.2.

⁸ Health & Saf. Code § 11362.2(5).

⁹ Health & Saf. Code § 11362.2(a)(2).

¹⁰ Health & Saf. Code § 11362.2(b)(3).

¹¹ Health & Saf. Code § 11362.2(b)(4).

¹² Bus. & Prof. Code § 26010.

storage, distribution, and sale of marijuana;¹³ (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;¹⁴ and (3) the Department of Public Health, which will issue licenses for marijuana manufacturers and testing laboratories.¹⁵ 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, 2018.¹⁶

A state marijuana license will be valid for one year.¹⁷ A separate state license is required for each commercial marijuana business location.¹⁸ 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.¹⁹

1. Local Control

All nonmedical marijuana businesses must have a state license.²⁰ A state license cannot issue to an applicant whose operations would violate the provisions of any local ordinance or regulation.²¹ However a state applicant need not provide documentation that the applicant has a local license or permit.

The AUMA does not limit the authority of a local jurisdiction to adopt and enforce local ordinances regulating or completely prohibiting state-licensed marijuana businesses.²² Local jurisdictions may establish “standards, requirements, and regulations regarding health and safety, environmental protection, testing, security, food safety, and worker protections that exceed state standards.”²³

2. Local Enforcement

Like the MMRSA, the AUMA establishes a dual enforcement scheme for commercial marijuana activities that violate either state or local laws. The state licensing authorities will enforce state statutes and regulations. State authorities can suspend or revoke state licenses,²⁴ pursue civil penalties against violating businesses in an amount equal to three times the applicable licensing fee per violation,²⁵ or may prosecute violators criminally.²⁶ Local authorities will be responsible

¹³ Bus. & Prof. Code § 26012(a)(1).

¹⁴ Bus. & Prof. Code § 26012(a)(2).

¹⁵ Bus. & Prof. Code § 26012(3).

¹⁶ Bus. & Prof. Code §§ 26012(c), 26013 (a).

¹⁷ Bus. & Prof. Code § 26050(c).

¹⁸ Bus. & Prof. Code § 26055(c).

¹⁹ Bus. & Prof. Code § 26053.

²⁰ Bus. & Prof. Code § 26038.)

²¹ Bus. & Prof. Code § 26055(e).

²² Bus. & Prof. Code § 26200(a). But see, Bus. & Prof. Code §§ 19340(f), 26080(b), 26090(c) [prohibiting cities from preventing the use of public roads to lawfully transport or deliver nonmedical marijuana].

²³ Bus. & Prof. Code § 26201.

²⁴ Bus. & Prof. Code § 2603.

²⁵ Bus. & Prof. Code § 26038(a)

²⁶ Bus. & Prof. Code § 26038(c).

for enforcing local ordinances and regulations.²⁷ For state-licensed facilities operating within a city, a city may have authority to enforce state law and regulations “if delegated the power to do so by the [B]ureau [of Marijuana Control] or a licensing authority.”²⁸

II. Key Differences Between the AUMA and MMRSA

A. Licensing

The MMRSA established dual licensing of medical marijuana businesses, requiring both local approval and a state license in order for a business to operate legally.²⁹ Specifically, the MMRSA requires applicants to provide the relevant state licensing entity with documentation proving their compliance with local ordinances and regulations.³⁰

The AUMA does not require an applicant to provide evidence of local permission prior to being issued a state license.³¹ Instead, the AUMA prohibits state licensing entities from approving licenses for activities that would violate local ordinances.³² Thus, state licensing officials bear the onus of evaluating local regulatory compliance.

Under this system, the AUMA allows a nonmedical marijuana business licensed by the state to operate within city limits unless the city’s municipal code prohibits the use. Cities that wish to regulate or prohibit nonmedical marijuana businesses will need to do so before the State begins issuing licenses, either by enacting a nonmedical marijuana ordinance/regulation or by amending an existing medical marijuana ordinance/regulation to include nonmedical marijuana within its scope.

B. License Revocation

Under the MMRSA, revocation of a local license or permit unilaterally terminates the ability of the medical marijuana business to operate in the jurisdiction issuing the permit, until such time as the local permitting entity reinstates it.³³

Under the AUMA, if a local jurisdiction revokes a local license, permit, or authorization for a licensee to engage in commercial marijuana activity within the local jurisdiction, the Bureau of Marijuana Control must initiate proceedings to determine whether the state license issued should be suspended or revoked within ten days of being notified by the local jurisdiction of the local revocation.³⁴ Note, however, that, even if the state license is not suspended or revoked immediately, the business cannot operate within the local jurisdiction once local revocation occurs.

²⁷ Bus. & Prof. Code § 26200 (b).

²⁸ Bus. & Prof. Code § 23202(a).

²⁹ Bus. & Prof. Code § 19320(b).

³⁰ Bus. & Prof. Code § 19322(a).

³¹ Bus. & Prof. Code § 26056.

³² Bus. & Prof. Code § 26055(e).

³³ Bus. & Prof. Code § 19320(d).

³⁴ Bus. & Prof. Code § 26200(c).

C. Personal, Indoor Cultivation

Under the MMRSA, local governments possess the power to regulate and completely ban personal, indoor cultivation.³⁵ Under the AUMA local governments can “reasonably regulate” indoor cultivation of up to six marijuana plants for personal use, but cannot ban it.³⁶

D. Personal Outdoor Cultivation

Under the MMRSA local governments can prohibit all outdoor cultivation. Under the AUMA local governments can prohibit all 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.³⁷ Upon such determination, the AUMA purports to repeal all local bans on outdoor cultivation.³⁸

E. Amendment

Any portion of the MMRSA can be amended at any time, if there is sufficient political support within the Legislature for making substantive changes to the regulatory structure. Under some circumstances, an amendment to the MMRSA by the Legislature might arguably violate The Compassionate Use Act of 1996 (adopted by the voters as Proposition 215), which decriminalized the personal use of medical marijuana.³⁹

Under the AUMA, the Legislature may amend Sections 5 (relating to the use of medical marijuana for medical purposes) and 6 (relating to state licensing) and the provisions relating to penalties by majority vote. The Legislature may amend any other provision of the Act by a 2/3 vote. Any amendment must further the purposes and intent of the AUMA. The purpose and intent of the Act include allowing local governments to ban nonmedical marijuana businesses.

F. 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.⁴⁰
 - This tax will be in addition to existing state and local sales tax.⁴¹ 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%;

³⁵ Health & Saf. Code § 11362.777(g); *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, 984; *Kirby v. County of Fresno* (2015) 242 Cal.App.4th 940, 969-970.

³⁶ Bus. & Prof. Code § 11362.2(b)(1).

³⁷ Bus. & Prof. Code § 11362.2(b)(4).

³⁸ Bus. & Prof. Code § 11362.2(b)(4).

³⁹ Health & Saf. Code § 11362.5.

⁴⁰ Rev. & Tax Code § 34011(a).

- Effective January 1, 2018, the AUMA imposes a separate cultivation tax on all harvested marijuana as follows:⁴²
 - \$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.⁴³
- The AUMA exempts marijuana cultivated for personal use from taxation.⁴⁴

The AUMA does not pre-empt local taxation.⁴⁵ 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

G. Deliveries

Under the MMRSA, medical marijuana deliveries can only be made from a state-licensed dispensary in a city, county, or city and county that does not explicitly prohibit it by local ordinance.⁴⁶ A delivery person must carry a copy of the dispensary's state-issued license, a government ID, and a copy of the delivery request.⁴⁷ The patient or caregiver requesting the delivery must also maintain a copy of the delivery request.⁴⁸ Dispensaries and delivery people who comply with MMRSA are immune from prosecution for marijuana transportation.⁴⁹

⁴¹ Rev. & Tax Code § 34011(d).

⁴² Rev. & Tax Code § 34012.

⁴³ Rev. & Tax Code § 34011(g).

⁴⁴ Rev. & Tax Code § 34012(j).

⁴⁵ Rev. & Tax Code § 34021.

⁴⁶ Bus. & Prof. Code § 19340(a).

⁴⁷ Bus. & Prof. Code §§ 19340(b)(2), 19340(d).

⁴⁸ Bus. & Prof. Code § 19340(e).

⁴⁹ Bus. & Prof. Code § 19317(f).

Under the AUMA, deliveries can be made by a state-licensed retailer, microbusiness, or nonprofit unless they are prohibited by local ordinance.⁵⁰ Although the AUMA does require a customer requesting delivery to maintain a copy of the delivery request, there is no express requirement that delivery people carry or maintain any records.⁵¹ Moreover, unlike the MMRSA, the AUMA does not require that deliveries come *from* a dispensary. Instead, it states that “Deliveries, as defined in this division, may only be made *by* a licensed retailer or microbusiness, or a licensed nonprofit under Section 26070.5.”⁵² Thus, there is at least some question regarding whether deliveries may be made from non-retail locations by retail employees.

Under both the MMRSA and the AUMA, local jurisdictions can ban or regulate deliveries within their borders.⁵³ However, local jurisdictions cannot prevent a delivery service from using public roads to simply pass through its jurisdiction from a licensed dispensary to a delivery location outside of its boundaries.⁵⁴

III. Local Regulatory Options⁵⁵

The AUMA preserves the authority of a city to adopt business regulations and land use regulations for nonmedical marijuana activities.⁵⁶

A. Personal Marijuana Cultivation

Under the AUMA local governments can 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” personal, indoor cultivation. Nothing in the AUMA requires a city to enact an ordinance or regulation by a certain date. However, assuming that the AUMA passes, if a city does not have a ban or regulatory scheme governing personal, outdoor cultivation or a regulatory scheme governing personal, indoor cultivation in place before November 9, 2016, a person may legally engage in personal cultivation of up to six marijuana plants at his or her private residence.

⁵⁰ Bus. & Prof. Code §26090(a).

⁵¹ Bus. & Prof. Code §26090(b).

⁵² Bus. & Prof. Code § 26090(a).

⁵³ Bus. & Prof. Code §§ 19340(a), 19316(a), 26200.

⁵⁴ Bus. & Prof. Code §§ 19340(f), 26080(b), 26090(c).

⁵⁵ For a thorough discussion of the various marijuana regulatory options that a city may consider, see McEwen, *Medical Marijuana-Revisited After New State Laws* (Spring 2016) <<http://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2016/Spring-2016/5-2016-Spring-Medical-Marijuana-%E2%80%93-Revisited-After>>. In addition, sample ordinances may be found on the League’s website, at: <http://www.cacities.org/Policy-Advocacy/Hot-Issues/Medical-Marijuana>. **But note:** the regulatory schemes discussed in the McEwen paper and posted on the League’s website pertain to medical marijuana businesses under the MMRSA and may need to be modified to comply with the requirements of the AUMA.

⁵⁶ Health & Saf. Code § 11362.2; Bus. & Prof. Code §§ 26201, 26200(a).

B. Nonmedical Marijuana Businesses

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.

Again, the AUMA does not require a city to enact a regulatory scheme or ban by a certain date. However, assuming that the AUMA passes in November, if a city wishes to regulate or ban marijuana businesses before marijuana businesses may legally operate within the city, the regulations or ban will need to take effect before the state begins issuing nonmedical marijuana business licenses. The League anticipates that cities have until January 1, 2018 to enact bans or regulations relating to nonmedical marijuana businesses, because: (1) nonmedical marijuana businesses cannot operate in any city without a state license;⁵⁷ (2) the state licensing agencies in charge of implementing the AUMA have stated that they anticipate that they will not begin issuing licenses under the MMRSA until January 2018, and it is unlikely that said agencies will be able to begin issuing licenses under the AUMA before they begin issuing licenses under the MMRSA; and (3) the AUMA does not require state agencies to issue licenses until January 1, 2018.⁵⁸ It is not the League's position that state licensing agencies cannot issue licenses before January 1, 2018, just that it is unlikely that they will do so.

C. Caution Against Use of Permissive Zoning

Under a permissive zoning code, any use not enumerated in the code is presumptively prohibited, unless an authorized city official finds that the proposed use is substantially the same in character and intensity as those land uses listed in the code.⁵⁹ Although the MMRSA upheld a city's authority to rely on permissive zoning to prohibit medical marijuana land uses, it is unlikely that cities will succeed in arguing that nonmedical marijuana land uses are prohibited by permissive zoning under the AUMA. This is so because: (1) the statutory language in the AUMA regarding local control seems to anticipate that a city will adopt an ordinance explicitly prohibiting and/or regulating nonmedical marijuana businesses (rather than relying on the silence of its Code to argue for a prohibited use);⁶⁰ (2) the AUMA does not contain the same protective language as the

⁵⁷ Bus. & Prof. Code § 26038.

⁵⁸ Bus. & Prof. Code § 26012 (c).

⁵⁹ See *City of Corona v. Naulls* (2008) 166 Cal.App.4th 418, 433-436. See also *County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861, 871 [holding that "medical marijuana dispensaries and pharmacies are not 'similarly situated' for public health and safety purposes"]; *City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1091 [holding that a medical marijuana dispensary was not substantially similar to the listed commercial use classifications for personal services, retail sales, pharmacies and medical supplies]; *County of Tulare v. Nunes* (2013) 215 Cal.App.4th 1188, 1205 [holding that a medical marijuana collective did not qualify as an "agricultural" land use because "marijuana is a controlled substance and is not treated as a mere crop or horticultural product under the law"].

⁶⁰ Bus. & Prof. Code § 26200 ["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).

MMRSA with respect to permissive zoning;⁶¹ and (3) the AUMA explicitly designates nonmedical marijuana as an agricultural product—thus if a city’s permissive zoning code authorizes agricultural uses, the city may be precluded from arguing that marijuana is prohibited.⁶² Therefore, cities that wish to ban all or some nonmedical marijuana activities should adopt express prohibitions, even if they operate under a permissive zoning code.

IV. What actions need to be taken?

At this time city officials should: (1) review the city’s municipal code; (2) consider whether they wish to regulate the personal cultivation of nonmedical marijuana indoors; (3) consider whether they wish to regulate or ban the personal cultivation of nonmedical marijuana outdoors; (3) consider whether they wish to enact business regulations of nonmedical marijuana businesses; (4) consider whether they wish to enact land use regulations of nonmedical marijuana businesses; and (5) consider whether they wish to enact local taxes on marijuana. Cities should prioritize considering or enacting ordinances regulating personal nonmedical marijuana cultivation, because it will be legal under state law on November 9, 2016 if the AUMA passes, whereas nonmedical marijuana businesses will not be able to operate lawfully until the state licensing system becomes operational (likely in late 2017). New taxes on marijuana require compliance with Proposition 218.

⁶¹ Compare Health & Saf. Code § 11362.777(b)(3) [a “person or entity shall not submit an application for a state license . . . if the proposed cultivation of marijuana will violate the provisions of any local ordinance or regulation, or if medical marijuana is prohibited by the city, county, or city and county in which the cultivation is proposed to occur, either expressly or otherwise under principles of permissive zoning”] with Bus. & Prof Code § 26205(e) [“Licensing authorities shall not approve an application for a state license under this division if approval of the state license will violate the provisions of any local ordinance or regulation adopted in accordance with Section 26200.”].

⁶² Bus. & Prof. Code § 26067(a).

September 12, 2016



Frequently Asked Questions (FAQs)

Adult Use of Marijuana Act¹

Proposition 64

Question#1: If passed, when will the AUMA take effect?

Answer: The AUMA will take effect November 9, 2016, the day after the election. But note, the AUMA requires a state license to engage in commercial nonmedical marijuana activity. Licensing authorities are required to begin issuing licenses by January 1, 2018 and the League anticipates that the issuance of licenses will not occur much in advance of January 1, 2018. Thus, the AUMA provisions legalizing commercial nonmedical marijuana activity will not become operational until the state begins issuing licenses (likely in late-2017). The AUMA provisions legalizing personal use and cultivation of nonmedical marijuana take effect November 9, 2016.

Question #2: Assuming the AUMA passes, can private individuals cultivate nonmedical marijuana at home beginning November 9, 2016?

Answer: Yes, within a residence by a person 21 years and older for personal use. The AUMA provides that local governments can reasonably regulate, but cannot prohibit personal indoor cultivation of up to six marijuana plants. This includes cultivation in a greenhouse that is on the property of the residence but not physically part of the home, as long as it is fully enclosed, secure, and not visible from a public space. Because this activity is not subject to state licensing requirements, private individuals may cultivate up to six living marijuana plants indoors beginning November 9, 2016—unless a city enacts an ordinance imposing a reasonable regulatory scheme that would preclude them from doing so before complying with the city's regulatory requirements. Cities cannot adopt or enforce bans on private indoor cultivation of six living nonmedical marijuana plants on or after November 9, 2016.

Local governments may regulate or ban all outdoor personal cultivation. However, the AUMA includes language purporting to repeal any ordinance that bans personal outdoor

¹ Please consult your City Attorney before taking action to implement the AUMA. The answers to these FAQs may be different in your city based upon your municipal code, regulations, and policies. The answers do not constitute legal advice from the League of California Cities®.

cultivation upon the California Attorney General's determination that nonmedical use of marijuana is lawful under federal law.

Question #3: What does the AUMA say about possession, transporting, purchasing or giving away of non-medical marijuana?

Answer: A person 21 years of age or older may possess, process, transport, purchase or give away to persons 21 years of age or older not more than 28.5 grams of marijuana in the non-concentrated form and not more than 8 grams of marijuana in a concentrated form including marijuana products. If the AUMA passes, these activities will be lawful under state law and cannot be prohibited under local law.

Question #4: Do cities that ban or regulate medical marijuana businesses need to update their ordinances to include nonmedical marijuana?

Answer: Yes. The AUMA prohibits state licensing authorities from issuing a license to a commercial nonmedical marijuana business if operation of the business violates a local ordinance of the jurisdiction in which the business will operate. This means that a city wishing to adopt business or land use regulations prohibiting or regulating commercial nonmedical marijuana businesses must adopt an ordinance prior to the date the state begins issuing licenses, which the League anticipates will be in late 2017.²

Question #5: Can cities be confident that a permissive zoning code, by itself, provides sufficient protection against nonmedical marijuana businesses setting up shop without local approval?

Answer: No. It is unlikely that cities will succeed in arguing that nonmedical marijuana land uses are prohibited by permissive zoning codes under the AUMA, because the AUMA does not contain the same protective language as the MMRSA with respect to permissive zoning. Therefore, cities that wish to ban all or some nonmedical marijuana activities should adopt express prohibitions, even if they operate under a permissive zoning code.

Question #6: Are cities at risk of losing the opportunity to impose bans on personal outdoor cultivation if they don't act until after the November election?

Answer: No. A city may adopt an ordinance banning or regulating personal outdoor cultivation at any time. However, if a city does not adopt a ban or regulatory scheme before November 9, 2016, individuals will be able to cultivate marijuana outdoors for personal use until such time as the city enacts a ban or regulatory scheme. Because the logistics of enforcing a ban after an individual's outdoor cultivation operations have begun, the best practice may be to adopt an ordinance before November 9, 2016.

Question #7: Are cities at risk of losing the opportunity to impose bans on nonmedical marijuana businesses, if they don't act until after the November election?

² Please see Question #8 regarding the use of public roads for transportation and delivery.

Answer: No. However, if a city does not adopt an ordinance expressly banning or regulating nonmedical marijuana businesses before the state begins issuing state licenses nonmedical businesses, a state-licensed nonmedical marijuana business will be able to operate within its jurisdiction without local permission or permitting. This is due to a provision in the AUMA that provides that state licenses cannot be issued where the activity would violate a local ordinance. If a jurisdiction has no ordinance regulating nonmedical marijuana businesses, then the local regulatory scheme is silent on that type of activity, and the state can unilaterally issue a license under terms fully compliant with the AUMA. Cities may adopt an ordinance expressly banning or regulating such operations after the state begins to issue licenses, but it will be difficult to terminate the state licensee's operations until the state license is up for renewal. Therefore, the best practice is to adopt an ordinance before the state begins issuing state licenses.

Question #8: Can cities ban deliveries under the AUMA?

Answer: Yes. Cities can ban deliveries within their territorial limits. However, cities cannot prevent the use of public roads for the delivery of marijuana. For example, if a licensed delivery company located in City A must travel on public roads through City B to make an authorized delivery in City C, City B cannot prohibit the licensed delivery company from travelling on public roads in City B to get to City C. In addition, cities may not prevent the use of public roads within its jurisdiction to transport nonmedical marijuana.

Question #9: What is the best way for cities to notify the state licensing agencies of their local ordinances that regulate and/or prohibit commercial non-medical marijuana activities within their jurisdictions?

Answer: Unless the state licensing agencies indicate otherwise, cities should mail copies of their local ordinances that regulate or prohibit commercial nonmedical marijuana activities within their jurisdictions to the Department of Consumer Affairs, the Department of Food and Agriculture, and the Department of Public Health. Cities should regularly check each Department's website to ensure that this practice complies with any regulations the Departments may pass regarding notice of local ordinances. In addition, Cities should ensure that any updates or amendments to local ordinances that regulate or prohibit commercial nonmedical marijuana activities are promptly submitted to each Department.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF FOLSOM
AMENDING CHAPTER 17.114 OF THE FOLSOM MUNICIPAL CODE
PERTAINING TO MARIJUANA CULTIVATION**

The City Council of the City of Folsom hereby does ordain as follows:

SECTION 1 PURPOSE

In light of Proposition 64 (also known as the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”)) on the November 8, 2016 statewide general election, the purpose of this Ordinance is to amend Chapter 17.114 of the Folsom Municipal Code in order to regulate personal indoor cultivation of marijuana in the City of Folsom, but only in the event said Proposition passes at said general election.

SECTION 2 AMENDMENT TO CODE

Chapter 17.114, “Marijuana Cultivation,” of the Folsom Municipal Code is hereby amended in its entirety to read as follows:

Chapter 17.114

MARIJUANA CULTIVATION

- 17.114.010 Purpose and intent.**
- 17.114.020 Definitions.**
- 17.114.030 Outdoor Cultivation.**
- 17.114.040 Cultivation of marijuana; regulations for residential zones.**
- 17.114.050 Indoor cultivation restricted to authorized growers.**
- 17.114.060 Public nuisance prohibited.**
- 17.114.070 Penalties not exclusive; violation a crime.**
- 17.114.080 Sunset clause.**

- 17.114.010 Purpose and intent.**

The City Council finds as follows:

A. Purpose. The purpose and intent of this Chapter is to regulate the cultivation of marijuana in a manner that protects the health, safety and welfare of the community consistent with Proposition 64, also known as the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”). This Chapter is not intended to interfere with a patient’s right to medical marijuana, as provided for in California Health & Safety Code Section 11362.5, nor does it criminalize medical marijuana possession or cultivation by specifically defined classifications of persons, pursuant to state law. This Chapter is not

intended to give any person unfettered legal authority to grow marijuana; it is intended simply to impose zoning restrictions on the personal indoor cultivation of marijuana permitted under AUMA when it is authorized by California state law for medical or other lawful purposes under the state law.

B. Applicability. As authorized by AB 243 (Section 11362.777 of the Health and Safety Code), marijuana cultivation as defined in Section 17.114.020, whether indoor or outdoor, remains prohibited in all zones and districts of the City of Folsom until and unless AUMA is passed at the November 8, 2016 statewide general election. Upon the passage of AUMA at said election, the cultivation of marijuana in the City shall be controlled and regulated by the provisions of this Chapter of the Zoning Code.

C. Non-conflicting enactment. No part of this Chapter shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. §§ 800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation.

17.114.020 Definitions.

As used herein the following definitions shall apply:

A. "Authorized Grower" means a person 21 years and older who is authorized by, and in compliance with, federal or state law to cultivate marijuana indoors for personal or medical use.

B. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, trimming, or otherwise processing of marijuana plants or any part thereof.

C. "Fully enclosed and secure structure" means a fully-enclosed space within a building that complies with the California Building Code ("CBSC"), as adopted in the City of Folsom, or if exempt from the permit requirements of the CBSC, that has a complete roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, is accessible only through one or more lockable doors, and is not visible from a public right-of-way. Walls and roofs must be constructed of solid materials that cannot be easily broken through such as two inch by four inch nominal or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement. If indoor grow lights or air filtration systems are used, they must comply with the California building, electrical, and fire codes as adopted in the City of Folsom.

D. "Immature marijuana plant" means a marijuana plant, whether male or female, that has not yet flowered and which does not yet have buds that are readily observed by unaided visual examination.

E. "Indoors" means within a fully enclosed and secure structure as that structure is defined above in subsection C.

F. "Mature marijuana plant" means a marijuana plant, whether male or female, that has flowered and which has buds that are readily observed by unaided visual examination.

G. "Outdoor" means any location within the City of Folsom that is not within a fully enclosed and secure structure.

H. "Parcel" means property assigned a separate parcel number by the Sacramento County assessor.

I. "Private residence" means a house, apartment unit, mobile home, or other similar dwelling unit.

17.114.030 Outdoor cultivation.

It is hereby declared to be unlawful, a public nuisance, and a violation of this Chapter for any person owning, leasing, occupying, or having charge or possession of any parcel within any zoning district in the City to cause or allow such premises to be used for the outdoor cultivation of marijuana plants.

17.114.040 Cultivation of marijuana for personal use; regulations for residential zones.

A. When authorized by state law, an authorized grower shall be allowed to cultivate marijuana only in a private residence in a residential zone, only indoors, and only for personal use, subject to the following regulations:

1. The marijuana cultivation area shall be located indoors within a residential structure and shall not exceed fifty square feet and not exceed ten feet in height, nor shall it come within twelve (12) inches of the ceiling or any cultivation lighting. Cultivation in a greenhouse on the property of the residence but not physically part of the home is permitted, as long as it is fully enclosed, secure, not visible from a public right-of-way and meeting all requirements in this Chapter.

2. Marijuana cultivation lighting shall not exceed one thousand two hundred watts in total for the total cultivation area within the residence.

3. The use of gas products such as but not limited to CO₂, butane, methane, or any other flammable or non-flammable gas for marijuana cultivation or processing is prohibited.

4. There shall be no exterior visibility or evidence of marijuana cultivation outside the private residence from the public right-of-way, including but not limited to

any marijuana plants, equipment used in the growing and cultivation operation, and any light emanating from cultivation lighting.

5. The authorized grower shall reside full-time in the residence where the marijuana cultivation occurs.

6. The authorized grower shall not participate in marijuana cultivation in any other location within the City.

7. The residence shall include fully functional and usable kitchen, bathroom, and bedroom areas for their intended use by the resident authorized grower, and the premises shall not be used primarily or exclusively for marijuana cultivation.

8. The marijuana cultivation area shall be in compliance with the current adopted edition of the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or equivalent), as amended from time to time.

9. The building official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers.

10. The marijuana cultivation area shall not result in a nuisance or adversely affect the health, welfare, or safety of the resident or nearby residents by creating dust, glare, heat, noise, noxious gasses, odors, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.

11. No more than 6 marijuana plants, mature or immature, are permitted for indoor personal cultivation under this Chapter.

12. Marijuana in excess of 28.5 grams produced by plants kept for indoor personal cultivation under this Chapter must be kept in a locked space on the grounds of the private residence not visible from the public right-of-way.

B. Outdoor cultivation of marijuana and cultivation of marijuana for non-personal uses are expressly prohibited in all zones and districts of the City of Folsom.

17.114.050 Indoor cultivation of marijuana restricted to authorized growers.

A. It is hereby declared to be unlawful, a public nuisance and a violation of this Chapter for any person owning, leasing, occupying, or having charge or possession of any parcel within the City to cause or allow such parcel to be used for the cultivation of marijuana, unless the person is authorized by state law to grow marijuana for a specifically authorized purpose within a private residence in a residential zone, and such authorized grower is complying with all requirements of this Chapter.

B. No person shall grow marijuana upon any parcel until and unless they first secure a permit from the building department and pay such fee as may be required and set forth by resolution of the City Council.

17.114.060 Public nuisance prohibited.

It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel within the City to create a public nuisance in the course of cultivating marijuana plants or any part thereof in any location, indoor or outdoor. A public nuisance may be deemed to exist, if such activity produces:

A. Odors which are disturbing to people of reasonable sensitivity residing or present on adjacent or nearby property or areas open to the public.

B. Repeated responses to the parcel by law enforcement personnel.

C. A repeated disruption to the free passage of persons or vehicles in the neighborhood, excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public.

D. Any other impacts on the neighborhood which are disruptive of normal activity in the area including, but not limited to, grow lighting visible outside the dwelling, excessive vehicular traffic or parking occurring at or near the dwelling, and excessive noise emanating from the dwelling.

E. Outdoor growing and cultivation of marijuana.

17.114.070 Penalties not exclusive; violation constitutes a crime.

The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any other criminal, civil, or administrative remedy or penalty authorized by, or set forth in, the Folsom Municipal Code. None of the penalties or remedies authorized by, or set forth in, the Folsom Municipal Code shall prevent the City from using any other penalty or remedy under state statute which may be available to enforce this section or to abate a public nuisance. Violation of this Chapter shall constitute a crime punishable as a misdemeanor or infraction in the discretion of the City Attorney.

17.114.080 Sunset clause.

A. Sections 17.114.030, 17.114.040, 17.114.050, and 17.114.060 of this Chapter shall automatically sunset and have no force of effect in the event AUMA fails to pass at the November 8, 2016 statewide general election.

B. In the event AUMA fails to pass at the November 8, 2016 statewide general election, marijuana cultivation as defined in Section 17.114.020, whether indoors or outdoor, shall be prohibited in all zones and districts of the City of Folsom, as authorized by AB 243 (Section 11362.777 of the Health and Safety Code).

SECTION 3 SCOPE

Except as set forth in this ordinance, all other provisions of the Folsom Municipal Code shall remain in full force and effect.

SECTION 4 SEVERABILITY

If any section, subsection, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 5 EFFECTIVE DATE

This Ordinance shall become effective thirty (30) days from and after its passage and adoption, provided it is published in full or in summary within twenty (20) days after its adoption in a newspaper of general circulation in the City.

This Ordinance was introduced and the title thereof read at the regular meeting of the City Council on _____, 2016, and the second reading occurred at the regular meeting of the City Council on _____, 2016.

On a motion by Council Member _____, seconded by Council Member _____, the foregoing Ordinance was passed and adopted by the City Council of the City of Folsom, State of California, this ____ day of _____, 2016 by the following vote, to wit:

AYES: Council Member(s)

NOES: Council Member(s)

ABSENT: Council Member(s)

ABSTAIN: Council Member(s)

Stephen E. Miklos, MAYOR

ATTEST:

Christa Saunders, CITY CLERK

ORDINANCE NO. ____

**AN ORDINANCE OF THE CITY OF FOLSOM
ADDING CHAPTER 17.113 TO THE FOLSOM MUNICIPAL CODE
PERTAINING TO COMMERCIAL NON-MEDICAL MARIJUANA USE**

The City Council of the City of Folsom hereby does ordain as follows:

SECTION 1 PURPOSE

The purpose of this Ordinance is to add Chapter 17.113 to the Folsom Municipal Code in order to prohibit commercial non-medical marijuana uses in all zones and districts of the City of Folsom.

SECTION 2 ADDITION TO CODE

Chapter 17.113, "Commercial Non-Medical Marijuana Use" is hereby added to the Folsom Municipal Code as follows:

Chapter 17.113

COMMERCIAL NON-MEDICAL MARIJUANA USE

Sections:

- 17.113.010 Purpose and intent.**
- 17.113.020 Definitions.**
- 17.113.030 Prohibition.**

17.113.010 Purpose and intent.

The City Council finds and declares that the purpose and intent of this Chapter is to prohibit all commercial non-medical marijuana land uses in the City's Zoning Code in order to protect the health, safety and welfare of the community. This Chapter is not intended to interfere with a patient's right to medical marijuana, as provided for in California Health & Safety Code Section 11362, nor does it criminalize medical marijuana possession or cultivation by specifically defined classifications of persons, pursuant to state law. This Chapter is to expressly prohibit the use of property in all zones and districts of the City of Folsom for purpose of engaging in commercial non-medical marijuana activities such as, for example, the sale, use, storage, transport, distribution, delivery, testing, grading, marketing, processing, manufacturing or packaging of non-medical marijuana and related products containing marijuana. This Chapter is intended simply to impose zoning restrictions on the use real property in the City for commercial non-medical marijuana purposes.

17.113.020 Definitions.

A. "Commercial non-medical marijuana uses" means any commercial or business enterprise, whether for-profit or non-profit, engaged in, for example, the sale, use, storage, transport, distribution, delivery, testing, grading, marketing, processing, manufacturing or packaging of non-medical marijuana and related products containing marijuana.

B. "Marijuana" shall have the meaning as provided in California Health and Safety Code Section 11018.

C. "Medical marijuana" means marijuana for medical purposes upon the recommendation of a physician under the Compassionate Use Act of 1996.

17.113.030 Prohibition.

Commercial non-medical marijuana uses as defined in Section 17.113.020(A) is prohibited in all zones and districts of the City of Folsom.

SECTION 3 SCOPE

Except as set forth in this ordinance, all other provisions of the Folsom Municipal Code shall remain in full force and effect.

SECTION 4 SEVERABILITY

If any section, subsection, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 5 EFFECTIVE DATE

This Ordinance shall become effective thirty (30) days from and after its passage and adoption, provided it is published in full or in summary within twenty (20) days after its adoption in a newspaper of general circulation in the City.

This Ordinance was introduced and the title thereof read at the regular meeting of the City Council on _____, 2016, and the second reading occurred at the regular meeting of the City Council on _____, 2016.

On a motion by Council Member _____, seconded by Council Member _____, the foregoing Ordinance was passed and adopted by the City Council of the City of Folsom, State of California, this _____ day of _____, 2016 by the following vote, to wit:

AYES: Council Member(s)

NOES: Council Member(s)

ABSENT: Council Member(s)

ABSTAIN: Council Member(s)

Stephen E. Miklos, MAYOR

ATTEST:

Christa Saunders, CITY CLERK

ORDINANCE NO. 165

AN ORDINANCE OF THE CITY OF CANYON LAKE, CALIFORNIA, AMENDING CANYON LAKE MUNICIPAL CODE BY UPDATING AND CONFIRMING CHAPTER 9.03 CONTINUING THE PROHIBITION OF MEDICAL CANNABIS DISPENSARIES, INCLUDING MOBILE DISPENSARIES, AND EXPLICITLY PROHIBITING ANY CULTIVATION WITHIN THE CITY

Section 1. Findings. In enacting this Ordinance, the City Council finds and takes legislative notice as follows:

- (a) In 1970, Congress enacted the Controlled Substances Act ("CSA") (21 U.S.C. Section 801 et seq.) that, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana for any purpose in the United States and further provides criminal penalties for marijuana use.
- (b) Marijuana is listed as a Schedule I drug under the CSA. As a Schedule I drug, the CSA provides that the manufacture, cultivation, distribution, and dispensing of marijuana is illegal for any purpose, and establishes criminal penalties for marijuana use.
- (c) On November 5, 1996, the voters of the State of California approved Proposition 215, codified as Health and Safety Code Section 11362.5 et seq. and entitled "The Compassionate Use Act of 1996" ("CUA"). The express intent of Proposition 215 was to enable persons who are in need of medical marijuana for specified medical purposes to obtain and use it under limited, specified circumstances.
- (d) The California Legislature adopted Senate Bill 420, effective January 1, 2004, adding Article 2.5, "Medical Marijuana Program," to Division 10 of the California Health and Safety Code §11362.7 et seq. ("Medical Marijuana Program Act" or "MMPA"). The MMPA created a state-approved medical marijuana identification card program and provided certain additional immunities from state marijuana laws.
- (e) On August 25, 2008, then California Attorney General Edmund G. Brown issued "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use" ("Guidelines"). These Guidelines were intended to clarify the state's laws governing medical marijuana and provide clear guidance for patients and law enforcement to ensure that medical marijuana is not diverted to illicit markets. However, as reflected by the acknowledgement of the current Attorney General, Kamala Harris, these guidelines have proven to be inadequate and require revision to prevent continued abuses.
- (f) In April 2009, the California Police Chiefs Association issued a "White Paper" which explains that throughout California, many violent crimes have been committed that can be traced back to the proliferation of marijuana dispensaries, including armed robberies and murders. Increased noise and pedestrian traffic,

including nonresidents in pursuit of marijuana and out of area criminals in search of prey, are commonly encountered just outside marijuana dispensaries. The City Council hereby finds the report contains persuasive anecdotal and documentary evidence that both storefront and mobile medical marijuana dispensaries pose a threat to public health, safety and welfare, and therefore this report, which is part of the record before the City in this matter, is hereby incorporated into the City Council's findings in this ordinance.

(g) Other California cities that have permitted the establishment of medical marijuana dispensaries have experienced an increase in crime, such as burglary, robbery, and assaults; the distribution of tainted marijuana; the sale of illegal drugs in the areas immediately surrounding such medical marijuana dispensaries, collectives and cooperatives; the unavoidable exposure of school-age children and other sensitive residents to medical marijuana; fraud in issuing, obtaining, or using medical marijuana recommendations; and the diversion of marijuana for non-medical and recreational uses.

(h) Concerns about non-medical marijuana use in connection with medical marijuana distribution operations have been recognized by federal and state courts. One example is *People v. Leal*, 210 Cal.App.4th 829 (2012):

"Not surprisingly, it seems that the enhanced protection from arrest has proven irresistible to those illegally trafficking marijuana, for if there is even rough accuracy in the anecdotal estimate by the arresting detective in this case – that nearly 90 percent of those arrested for marijuana sales possess either a CUA recommendation or a card – then there is obviously widespread abuse of the CUA and the MMP identification card scheme by illicit sellers of marijuana. Ninety percent far exceeds the proportion of legitimate medical marijuana users one would expect to find in the populace at large. For this and other reasons, it is impossible for us not to recognize that many citizens, judges undoubtedly among them, believe the CUA has become a charade enabling the use of marijuana much more commonly for recreational than for genuine medical uses."

(i) A May 27, 2013 study published in the Journal of the American Medical Association Pediatrics showed that, as marijuana appears in an increasing number of homes, so too does evidence of accidental ingestion of marijuana and marijuana-infused food by young children. According to the study, more children appear to access marijuana-laced brownies, cookies and beverages sold through marijuana dispensaries, leading to increased emergency room visits. These children often suffer anxiety attacks when they start to feel unexpected symptoms of being under the influence: hallucinations, dizziness, altered perception, and impaired thinking. In addition, the study found that ingestion of highly potent marijuana by young children can suppress respiration and even induce coma.

(j) Successful enforcement actions involving storefront dispensaries have coincided

with an increase in mobile marijuana dispensaries. In parts of the state, shuttered marijuana dispensaries have converted their operations to mobile delivery services. An attorney in the region is also advising his marijuana dispensary clients to change their business model to distribution from a mobile source to avoid bans on storefront enterprises.

(k) Mobile medical marijuana dispensaries have been associated with criminal activity. Delivery drivers, for example, have been targets of armed robbers who seek cash and drugs. As a result, many of the drivers for medical marijuana dispensaries reportedly carry weapons or have armed guards as protection. Examples of such criminal activity reported in the media include the following, each of which the City Council finds contain persuasive, documented evidence that mobile medical marijuana dispensaries and deliveries pose a threat to public health, safety and welfare.

1. A West Covina deliveryman was reportedly robbed after making a delivery. The deliveryman told police that he was approached by two subjects in ninja costumes who chased him with batons and took the marijuana and money he was carrying.
2. A Temecula deliveryman was reportedly robbed of cash outside of a restaurant, which led to a vehicular chase that continued until the robbers' vehicle eventually crashed on a freeway on-ramp.
3. Marijuana deliverymen in Imperial Beach were reportedly robbed after being stopped by assailants (one with a semiautomatic handgun) after making a stop.
4. A deliveryman was reportedly robbed of three ounces of marijuana while making a delivery outside a restaurant in Riverside, and he told police that the suspect may have had a gun.
5. A deliverywoman in La Mesa was reportedly shot in the face with a pellet gun by assailants who subsequently carjacked her vehicle.
6. A marijuana delivery from a Los Angeles mobile marijuana dispensary turned deadly in Orange County when four individuals reportedly ambushed the dispensary driver and his armed security guard and tried to rob them. One of the suspects approached the delivery vehicle and confronted the driver and a struggle ensued. A second suspect armed with a handgun, approached the security guard, who fired as the suspect hitting him multiple times.
7. A deliveryman was reportedly robbed of \$20,000 worth of marijuana (approximately 9 pounds) and a cellular phone in Fullerton, and suffered a head injury during the crime.

(1) The California Constitution grants cities the power to make and enforce all ordinances and regulations with respect to municipal affairs. Article XI, Section 7 of the California Constitution provides a city may make and enforce within its limits all police, sanitary, and other ordinances and regulations not in conflict

with general laws.

- (m) In the matter of *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, 56 Cal.4th 729 (2013), the California Supreme Court affirmed "the authority of California cities and counties, under their traditional land use and police powers, to allow, restrict, limit, or entirely exclude facilities that distribute medical marijuana, and to enforce such policies by nuisance actions."
- (n) Effective January 1, 2016, the California legislature has adopted a system of statewide regulation for sale and cultivation of medicinal marijuana to try to address the lack of consistent regulatory oversight and the adverse secondary effects experienced by cities and counties, (AB 243, AB 266 and SB 643), which legislation specifically provides that a city may continue its prohibition on the sale, delivery and cultivation of medical marijuana (subject to certain exceptions). For prohibition or local regulation of cultivation, such requirements must be in place on or before March 1, 2016.
- (o) Having reviewed the new laws, the City Council continues to believe that there is a high likelihood that medical marijuana dispensaries (including but not limited to mobile delivery services) and cultivation will immediately increase in the City without the adoption of this ordinance. The City does not wish to cede to the state its authority to prohibit commercial cultivation of medical marijuana and, for all these reasons, finds that this ordinance is necessary to preserve the public peace, health and/or safety.
- (p) Nothing herein is intended to prevent the legal use of medical cannabis, as defined below, by patients or caregivers pursuant to the Compassionate Care Act, as that may be amended from time to time.
- (q) The City Council held a duly noticed public hearing on this Ordinance on December 2, 2015, at which time it considered all evidence presented, both written and oral.
- (r) Authority. This ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including but not limited to Article XI, Section 7 of the California Constitution, the Compassionate Use Act, the Medical Marijuana Program, and The Medical Marijuana Regulation and Safety Act.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF CANYON LAKE DOES HEREBY ORDAIN AS FOLLOWS:

Section 2.

Chapter 9.03 of the Canyon Lake Municipal Code is repealed in its entirety and readopted to read as follows:

Chapter 9.03 - Prohibition of Commercial Cannabis Activity, Dispensaries, Mobile Dispensaries and Cultivation of Any Kind

Section

9.03.010 Definitions

9.03.020 Prohibition of Commercial Cannabis Activity

9.03.030 Nuisance Declared

9.03.040 Violations

9.03.010 Definitions

For the purpose of this Chapter, the terms below shall be defined as follows or as set out in the applicable provisions of the Health & Safety Code or the Business & Professions Code:

- (a) "Cannabis" means all 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. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

The definition of "cannabis" includes "Cannabis concentrate" which means manufactured cannabis that has undergone a process to concentrate the cannabinoid active ingredient, thereby increasing the product's potency. An edible medical cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

The definition of "cannabis" further includes "cannabis concentrate" "cannabinoid" or "phytocannabinoid" which means a chemical compound that is unique to and derived from cannabis. "Manufactured cannabis" means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product.

- (b) "Caregiver" or "primary caregiver" has the same meaning as that term is defined in Section 11362.7 of the Health and Safety Code.
- (c) "Commercial cannabis activity" shall have the same meaning as that set forth in Business & Professions Code § 19300.5(k) as the same may be amended from time to time, and includes any and all cultivation, possession, transfer, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product.

- (d) “Cooperative” “Cooperative” shall mean two or more persons collectively or cooperatively cultivating, using, transporting, possessing, administering, delivering or making available medical marijuana, with or without compensation.
- (e) “Cultivation” shall have the same meaning as set forth in Business & Professions Code § 19300.5(l) as the same may be amended from time to time, and includes but is not limited to harvesting, drying, curing, grading, or trimming of cannabis. Cultivation includes cultivation allowed pursuant to Health & Safety Code Section 11362.7 by or for a caregiver or patient.
- (f) “Delivery” shall have the same meaning as set out in Business & Professions Code Section 19300.5(m) and includes but is not limited to the commercial transfer of medical cannabis or medical cannabis products from a dispensary and includes the use by a dispensary of any technology platform owned and controlled by the dispensary that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.
- (g) “Dispensary” shall have the same meaning as set forth in Business & Professions Code Section 19300.5(n) and means any facility or location, club, cooperative, where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, provides, or transports medical cannabis and medical cannabis products as part of a retail sale, whether or not associated with a fixed location within the City. “Dispensing” shall have the same meaning as set forth in Business & Professions Code § 19300.5(o) as the same may be amended from time to time.
- (h) “Distribution” shall have the same meaning as set forth in Business & Professions Code Section 19300.5(p) and includes but is not limited to the procurement, sale, transfer or transport of medical cannabis and medical cannabis products. “Distributor” shall have the same meaning as set forth in Business & Professions Code § 19300.5(q) as the same may be amended from time to time.
- (i) “Manufacture” shall have the same meaning as set out in Business & Professions Code Section 19300.5(y) and means the production, preparation, propagation, or compounding of medical cannabis or medical cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a location that packages or repackages medical cannabis or medical cannabis products or labels or re-labels its container.
- (j) “Medical cannabis,” “medical cannabis product,” or “cannabis product” shall have the same meanings as set forth in Business & Professions Code § 19300.5(ag) as the same may be amended from time to time and means a product containing cannabis, including, but not limited to, edibles, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code. For the purposes of this chapter, “medical cannabis” does not include “industrial hemp” as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the

Health and Safety Code or topical cannabis intended only for external use, which is not a drug as defined by Health and Safety Code Section 109925.

- (k) "Patient" means a person with an identification card as identified in Health & Safety Code Section 11362.5 or a qualified patient defined in Health & Safety Code Section 11362.7.
- (l) "Person" means an individual, volunteer, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number (am)
- (m) "Transport" shall have the same meaning as set out in Business & Professions Code Section 19300.5(am) and means the transfer of medical cannabis or medical cannabis products from one business location to another location for the purposes of conducting commercial cannabis activity

9.03.020 Prohibition of Commercial Cannabis Activity

Commercial cannabis activity" expressly is prohibited in any zone or specific plan area of the City of Canyon Lake. It is the intent of this prohibition to include the delivery of cannabis within the City from a fixed location, from a Mobile Dispensary, the prohibition on cultivation, and any effort to locate, operate, own, lease, supply, allow to be operated, or aid, abet, or assist in the operation of a commercial cannabis activity.

- (a) Commercial cannabis activities of all types are expressly prohibited in the City. No person shall establish, operate, conduct or allow a commercial cannabis activity anywhere within the City. No person shall locate, operate, own, lease, supply, allow to be operated, or aid, abet, or assist in the location, operation, ownership, lease or supply of a commercial cannabis activity.
- (b) To the extent not already covered by subsection (a) above, all deliveries of medical cannabis are expressly prohibited within the City. No person shall conduct any deliveries that either originate or terminate within the City.
- (c) Cultivation of cannabis for non-commercial purposes, including cultivation by a qualified patient or a primary caregiver, is expressly prohibited in the City, including but not limited to the Bureau of Land Management area, the Canyon Lake Property Owners' Association common areas, and any public property. No person, including a qualified patient or primary caregiver, shall cultivate any amount of cannabis in the City, even for medical purposes.
- (d) This section is meant to prohibit all activities for which a State license is required., The City shall not issue any permit, license or other entitlement for commercial cannabis activities any activity for which a State license is required.

9.03.030 Nuisance Declared

A violation of any portion of this Chapter is hereby declared a public nuisance and

shall be subject to abatement pursuant to all available remedies, including but not limited to administrative citations.

9.03.040 Violations

A violation of this Chapter shall be punishable under Section 1.01.200 and may be enforced by any applicable law. In addition to any other enforcement permitted by this Chapter 18.66, the City Attorney may bring a civil action for injunctive relief and civil penalties pursuant to this Code against any person or entity that violates this Chapter. In any civil action brought pursuant to this Chapter, a court of competent jurisdiction may award reasonable attorneys fees and costs to the prevailing party.

Section 3. To the extent the provisions of the Canyon Lake Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code as they read immediately prior to the adoption of this Ordinance, then those provisions shall be construed as continuations of the earlier provisions and not as new enactments.

Section 4. This ordinance shall take effective 30 days from the date of its adoption.

PASSED, APPROVED AND ADOPTED this 6th day of January, 2016.



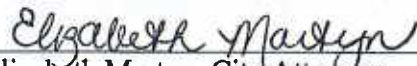
Tim Brown, Mayor

Attest:

Approved as to form:



Ariel M. Hall, CMC, City Clerk



Elizabeth Martyn, City Attorney

State of California)
County of Riverside)ss
City of Canyon Lake)

I, Ariel M. Hall, City Clerk of the City of Canyon Lake, California do hereby certify that the foregoing Ordinance No. 165 was introduced at a regular meeting of the City Council held on the 2nd day of December, 2015 and was duly adopted by the City Council of the City of Canyon Lake, California, at a regular meeting held on the 6th day of January, 2016, by the following vote:

AYES: Council Members Ehrenkranz, Warren, Zaitz, Mayor Pro Tem Haggerty, Mayor Brown

NOES: None

ABSENT: None

ABSTAIN: None


Ariel M. Hall, CMC, City Clerk

ORDINANCE NO. 168

AN INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CANYON LAKE REGULATING PERSONAL CULTIVATION OF MARIJUANA AND BANNING OUTDOOR PERSONAL CULTIVATION AND DECLARING THE URGENCY THEREOF

The City Council of the City of Canyon Lake hereby does ordain as follows:

SECTION 1. FINDINGS

In light of Proposition 64 (also known as the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA")) on the November 8, 2016 statewide general election, the purpose of this Ordinance is to adopt an interim urgency land use ordinance under the authority set out in Govt. Code Section 65858a in order to regulate personal indoor cultivation of marijuana and ban outdoor cultivation, but only in the event said Proposition passes at said general election and subject to its provisions.

The City Council finds that this interim urgency ordinance is necessary for the protection of public health safety and welfare and that there is a current and immediate threat to the public health, safety, or welfare that will arise from the approval of Proposition 64, the Adult Use of Marijuana Act without appropriate regulation from the personal cultivation of marijuana plants and a ban on outdoor cultivation. This interim urgency ordinance is not related to the development of multifamily housing.

This ordinance is not related to the regulation or prohibition of medical marijuana cultivation or sale.

The City Council finds that significant health, safety and welfare issues as associated with marijuana use, sale and cultivation, some of which has been derived from experience with medical marijuana, is as follows:

(a) In 1970, Congress enacted the Controlled Substances Act ("CSA") (21 U.S.C. Section 801 et seq.) that, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana for any purpose in the United States and further provides criminal penalties for marijuana use.

(b) Marijuana still is listed as a federal Schedule 1 drug under the CSA. As a Schedule 1 drug, the CSA provides that the manufacture, cultivation, distribution, and dispensing of marijuana is illegal for any purpose, and establishes criminal penalties for marijuana use.

(c) On November 5, 1996, the voters of the State of California approved Proposition 215, codified as Health and Safety Code Section 11362.5 et seq. and entitled "The Compassionate Use Act of 1996" ("CUA"). The express intent of Proposition 215

was to enable persons who are in need of medical marijuana for specified medical purposes to obtain and use it under limited, specified circumstances.

(d) The California Legislature adopted Senate Bill 420, effective January 1, 2004, adding Article 2.5, "Medical Marijuana Program," to Division 10 of the California Health and Safety Code §11362.7 et seq. ("Medical Marijuana Program Act" or "MMPA"). The MMPA created a state-approved medical marijuana identification card program and provided certain additional immunities from state marijuana laws.

(e) On August 25, 2008, then California Attorney General Edmund G. Brown issued "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use" ("Guidelines"). These Guidelines were intended to clarify the state's laws governing medical marijuana and provide clear guidance for patients and law enforcement to ensure that medical marijuana is not diverted to illicit markets. However, as reflected by the acknowledgement of the current Attorney General, Kamala Harris, these guidelines have proven to be inadequate and require revision to prevent continued abuses.

(f) In April 2009, the California Police Chiefs' Association issued a "White Paper" which explains that throughout California, many violent crimes have been committed that can be traced back to the proliferation of marijuana dispensaries, including armed robberies and murders. Increased noise and pedestrian traffic, including nonresidents in pursuit of marijuana and out of area criminals in search of prey, are commonly encountered just outside marijuana dispensaries. The City Council hereby finds the report contains persuasive anecdotal and documentary evidence that both storefront and mobile medical marijuana dispensaries pose a threat to public health, safety and welfare, and therefore this report, which is part of the record before the City in this matter, is hereby incorporated into the City Council's findings in this ordinance.

(g) Other California cities that have permitted the establishment of medical marijuana dispensaries have experienced an increase in crime, such as burglary, robbery, and assaults; the distribution of tainted marijuana; the sale of illegal drugs in the areas immediately surrounding such medical marijuana dispensaries, collectives and cooperatives; the unavoidable exposure of school-age children and other sensitive residents to medical marijuana; fraud in issuing, obtaining, or using medical marijuana recommendations; and the diversion of marijuana for non-medical and recreational uses.

(h) Concerns about non-medical marijuana use in connection with medical marijuana distribution operations have been recognized by federal and state courts. One example is *People v. Leal*, 210 Cal.App.4th 829 (2012):

"Not surprisingly, it seems that the enhanced protection from arrest has proven irresistible to those illegally trafficking marijuana, for if there is even rough accuracy in the anecdotal estimate by the arresting detective in this case -that nearly 90 percent of those arrested for marijuana sales possess either a CUA recommendation or a card -then there is obviously widespread abuse of the

CUA and the MMP identification card scheme by illicit sellers of marijuana. Ninety percent far exceeds the proportion of legitimate medical marijuana users one would expect to find in the populace at large. For this and other reasons, it is impossible for us not to recognize that many citizens, judges undoubtedly among them, believe the CUA has become a charade enabling the use of marijuana much more commonly for recreational than for genuine medical uses."

(i) A May 27, 2013 study published in the Journal of the American Medical Association Pediatrics showed that, as marijuana appears in an increasing number of homes, so too does evidence of accidental ingestion of marijuana and marijuana-infused food by young children. According to the study, more children appear to access marijuana-laced brownies, cookies and beverages sold through marijuana dispensaries, leading to increased emergency room visits. These children often suffer anxiety attacks when they start to feel unexpected symptoms of being under the influence: hallucinations, dizziness, altered perception, and impaired thinking. In addition, the study found that ingestion of highly potent marijuana by young children can suppress respiration and even induce coma.

(j) Successful enforcement actions involving storefront dispensaries have coincided with an increase in mobile marijuana dispensaries. In parts of the state, shuttered marijuana dispensaries have converted their operations to mobile delivery services. An attorney in the region is also advising his marijuana dispensary clients to change their business model to distribution from a mobile source to avoid bans on storefront enterprises.

(k) Mobile medical marijuana dispensaries have been associated with criminal activity. Delivery drivers, for example, have been targets of armed robbers who seek cash and drugs. As a result, many of the drivers for medical marijuana dispensaries reportedly carry weapons or have armed guards as protection. Examples of such criminal activity reported in the media include the following, each of which the City Council finds contain persuasive, documented evidence that mobile medical marijuana dispensaries and deliveries pose a threat to public health, safety and welfare.

1. A West Covina deliveryman was reportedly robbed after making a delivery. The deliveryman told police that he was approached by two subjects in ninja costumes who chased him with batons and took the marijuana and money he was carrying.
2. A Temecula deliveryman was reportedly robbed of cash outside of a restaurant, which led to a vehicular chase that continued until the robbers' vehicle eventually crashed on a freeway on-ramp.
3. Marijuana deliverymen in Imperial Beach were reportedly robbed after being stopped by assailants (one with a semiautomatic handgun) after making a stop.

4. A deliveryman was reportedly robbed of three ounces of marijuana while making a delivery outside a restaurant in Riverside, and he told police that the suspect may have had a gun.

5. A deliverywoman in La Mesa was reportedly shot in the face with a pellet gun by assailants who subsequently carjacked her ~~vehicle~~.

6. A marijuana delivery from a Los Angeles mobile marijuana dispensary turned deadly in Orange County when four individuals reportedly ambushed the dispensary driver and his armed security guard and tried to rob them. One of the suspects approached the delivery vehicle and confronted the driver and a struggle ensued. A second suspect armed with a handgun, approached the security guard, who fired as the suspect hitting him multiple times.

7. A deliveryman was reportedly robbed of \$20,000 worth of marijuana (approximately 9 pounds) and a cellular phone in Fullerton, and suffered a head injury during the crime.

(l) Since the approval of recreational marijuana use, COLORADO has had a 500% increase in citations for driving intoxicated or smoking in public places.

(m) The provisions of Proposed Proposition 64 on the November 2016 ballot reserves cities' ability to regulate personal marijuana cultivation of more than six mature plants, outdoor cultivation as well as cultivation and sale.

(n) Having reviewed the new laws, the City Council continues to believe that there is a high likelihood that personal marijuana cultivation above that allowed by law poses a significant risk of harm, including fires resulting from indoor growth in homes, odors, building code and related violations.

(o) Absent this ordinance, personal cultivation both indoors and outdoors will be regulated only by state law, and may increase in the City without the adoption of this ordinance. The City does not wish to cede to the state its authority to regulate indoor personal marijuana cultivation or to prohibit personal outdoor cultivation, and, for all these reasons, finds that this ordinance is necessary to preserve the public peace, health and/or safety.

(p) Nothing herein is intended to prevent the legal use of medical cannabis, by patients or caregivers pursuant to the Compassionate Care Act, as that may be amended from time to time and Canyon Lake Municipal Code Chapter 9.03.

(q) The Council further has determined that this interim urgency ordinance is necessary to determine the results of the November 8, 2016 general election and to review and study implementations of the provisions of Proposition 64 if it passes at that election.

(r) Therefore, this interim urgency ordinance is adopted pursuant to the

authority granted by the California Constitution and State law, including but not limited to Article XI, Section 7 of the California Constitution and Govt. Code Section 65858.

(s) The adoption of this ordinance is exempt from CEQA as it does not have any significant impact on the environment as it simply continues existing provisions of the City Code as to restrict on marijuana cultivation.

SECTION 2 - INDOOR MARIJUANA CULTIVATION

A. Purpose and Intent.

The City Council finds as follows:

1. Purpose. The purpose and intent of this ordinance is to regulate the cultivation of marijuana in a manner that protects the health, safety and welfare of the community consistent with Proposition 64, also known as the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"). This Chapter is not intended to interfere with a patient's right to medical marijuana, as provided for in California Health & Safety Code Section 11362.5, nor does it criminalize medical marijuana possession or cultivation by specifically defined classifications of persons, pursuant to state law. This Chapter is not intended to give any person unfettered legal authority to grow marijuana; it is intended simply to impose zoning restrictions on the personal indoor cultivation of marijuana permitted under AUMA when it is authorized by California state law for medical or other lawful purposes under the state law.

2. Applicability. As set out in Canyon Lake Municipal Code Chapter 9.03, and authorized by AB 243 (Section 11362.777 of the Health and Safety Code), marijuana cultivation as defined in Section 17.114.02, remains prohibited in all zones and districts of the City of Canyon Lake until and unless AUMA is passed at the November 8, 2016 statewide general election. Upon the passage of AUMA at said election, the cultivation of non-medical marijuana in the City shall be controlled and regulated by the provisions of this Ordinance which is an uncodified portion of the Zoning Code.

3. Non-conflicting enactment. No part of this Chapter shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. §§ 800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation.

B. Definitions.

As used herein the following definitions shall apply:

1. "Authorized Grower" means a person 21 years and older who is authorized by, and in compliance with, federal or state law to cultivate marijuana indoors for personal or medical use.

2. "City" means the City of Canyon Lake.
3. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, trimming, or otherwise processing of marijuana plants or any part thereof.
4. "Fully enclosed and secure structure" means a fully-enclosed space within a building that complies with the California Building Code ("CBSC"), as adopted in the City, or if exempt from the permit requirements of the CBSC, that has a complete roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, is accessible only through one or more lockable doors, and is not visible from a public right-of-way. Walls and roofs must be constructed of solid materials that cannot be easily broken through such as two inch by four inch nominal or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement. If indoor grow lights or air filtration systems are used, they must comply with the California building, electrical, and fire codes as adopted in the City of Canyon Lake.
5. "Immature marijuana plant" means a marijuana plant, whether male or female, that has not yet flowered and which does not yet have buds that are readily observed by unaided visual examination.
6. "Indoors" means within a fully enclosed and secure structure as that structure is defined above.
7. "Mature marijuana plant" means a marijuana plant, whether male or female, that has flowered and which has buds that are readily observed by unaided visual examination.
8. "Outdoors" means any location within the City that is not within a fully enclosed and secure structure.
9. "Parcel" means property assigned a separate parcel number by the Riverside County assessor.
10. "Private residence" means a house, apartment unit, mobile home, or other similar dwelling unit.

C. Outdoor Cultivation.

It is hereby declared to be unlawful, a public nuisance, and a violation of this Ordinance for any person owning, leasing, occupying, or having charge or possession of any parcel within any zoning district in the City to cause or allow such premises to be used for the outdoor cultivation of marijuana plants.

D. Cultivation of Marijuana Only for Personal Use; Regulations for Residential Zones.

1. When authorized by state law, an authorized grower shall be allowed to cultivate marijuana only in a private residence in a residential zone, only indoors, and only for personal use, subject to the following regulations:

A. The marijuana cultivation area shall be located indoors. The total area cultivated shall not exceed fifty square feet and not exceed ten feet in height, nor shall it come within twelve (12) inches of the ceiling or any cultivation lighting. Cultivation in a greenhouse on the property of the residence but not physically part of the home is permitted, as long as it is fully enclosed, secure, and not visible from a public right-of-way and meeting all requirements in this Chapter.

B. Marijuana cultivation lighting shall not exceed one thousand two hundred watts in total for the total cultivation area within the residence.

C. The use of gas products such as but not limited to CO₂, butane, methane, or any other flammable or non-flammable gas for marijuana cultivation or processing is prohibited.

D. There shall be no exterior visibility or evidence of marijuana cultivation outside the private residence from the public right-of-way, including but not limited to any marijuana plants, equipment used in the growing and cultivation operation, and any light emanating from cultivation lighting.

E. The authorized grower shall reside full-time in the residence where the marijuana cultivation occurs.

F. The authorized grower shall not participate in marijuana cultivation in any other location within the City.

G. The residence shall include fully functional and usable kitchen, bathroom, and bedroom areas actually utilized for their intended use by the resident authorized grower, and the premises shall not be used primarily or exclusively for marijuana cultivation.

H. The marijuana cultivation area shall be in compliance with the current adopted edition of the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or equivalent), as amended from time to time.

I. The building official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers.

J. The marijuana cultivation area shall not result in a nuisance or adversely affect the health, welfare, or safety of the resident or nearby residents by creating dust, glare, heat, noise, noxious gasses, odors, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or

wastes.

K. No more than 6 living marijuana plants, mature or immature, are permitted for indoor personal cultivation under this Chapter.

L. Marijuana in excess of 28.5 grams produced by plants kept for indoor personal cultivation under this Chapter must be kept in a locked space on the grounds of the private residence not visible from the public right-of-way.

M. Outdoor cultivation of marijuana and cultivation of marijuana for non-personal uses are expressly prohibited in all zones and districts of the City.

E. Indoor Cultivation of Marijuana Restricted to Authorized Growers.

1. It is hereby declared to be unlawful, a public nuisance and a violation of this Chapter for any person owning, leasing, occupying, or having charge or possession of any parcel within the City to cause or allow such parcel to be used for the cultivation of marijuana, unless the person is authorized by state law to grow marijuana for a specifically authorized purpose within a private residence in a residential zone, and such authorized grower is complying with all requirements of this Ordinance.

2. No person shall grow marijuana upon any parcel until and unless he or she first secures a permit from the building department and pay such fee as may be required and set forth by resolution of the City Council.

F. Public Nuisance Prohibited.

It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel within the City to create a public nuisance in the course of cultivating marijuana plants or any part thereof in any location, indoor or outdoor. A public nuisance may be deemed to exist, if such activity produces:

1. Odors which are disturbing to people of reasonable sensitivity residing or present on adjacent or nearby property or areas open to the public.

2. Repeated responses to the parcel by law enforcement or fire personnel.

3. A repeated disruption to the free passage of persons or vehicles in the neighborhood, excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public.

4. Any other impacts on the neighborhood which are disruptive of normal activity in the area including, but not limited to, grow lighting visible outside the dwelling, excessive vehicular traffic or parking occurring at or near the dwelling, and excessive noise emanating from the dwelling.

5. Outdoor growing and cultivation of marijuana.

G. Penalties Not Exclusive; Violation Constitutes a Crime.

The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any other criminal, civil, or administrative remedy or penalty authorized by, or set forth in, the Canyon Lake Municipal Code. None of the penalties or remedies authorized by, or set forth in, the Canyon Lake Municipal Code shall prevent the City from using any other penalty or remedy under state statute which may be available to enforce this section or to abate a public nuisance. Violation of this Chapter shall constitute a crime punishable as a misdemeanor or infraction in the discretion of the City Attorney.

H. Sunset Clause.

1. The provisions of this Ordinance shall automatically sunset and have no force of effect in the event AUMA fails to pass at the November 8, 2016 statewide general election.

2. In the event AUMA fails to pass at the November 8, 2016 statewide general election, marijuana cultivation whether indoors or outdoors, shall be prohibited in all zones and districts of the City of City as authorized by AB 243 (Section 11362.777 of the Health and Safety Code and Canyon Lake Municipal Code Chapter 9.03).

I. Prohibition on Possession and Smoking of Marijuana in City Buildings

The possession, smoking or other use of marijuana is prohibited in buildings owned, leased or occupied by the City. As an employer, the City maintains a drug and alcohol free workplace by prohibiting the use, consumption, possession, transfer, transportation, sale, display and growth of marijuana in the workplace.

SECTION 3 - SCOPE

Except as set forth in this ordinance, all other provisions of the Canyon Lake Municipal Code shall remain in full force and effect.

SECTION 4 - SEVERABILITY

If any section, subsection, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 5 - EFFECTIVE DATE

This Ordinance shall become effective immediately upon adoption and shall terminate and be of no force and effect 45 days after that date, unless otherwise extended by action of the City Council pursuant to Govt. Code Section 65858.

PASSED, APPROVED AND ADOPTED this 26th day of October, 2016:

Timothy Brown, MAYOR

Attest:

Approve as to form:

Ariel M. Hall, CITY CLERK

Elizabeth Martyn, City Attorney

State of California)
County of Riverside) ss
City of Canyon Lake)

I, Ariel M. Hall, City Clerk of the City of Canyon Lake, do hereby certify that the foregoing Interim Ordinance No. 168 was introduced at a special meeting of the City Council held on the 26th day of October, 2016 and was duly adopted by the City Council of the City of Canyon Lake at a special meeting thereof held on the 26th day of October, 2016, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Ariel M. Hall, City Clerk

