

**TO:** City Council

**FROM:** Tom Frutchey, City Manager  
Robert Burton, Police Chief  
Warren Frace, Community Development Director

**SUBJECT:** Rezone 16-001: Repeal and Replace Section 21.33. Zoning Ordinance - Regulation of Personal, Medical and Commercial Use of Marijuana

**DATE:** September 20, 2016

**Needs:** For the City Council to hold a public hearing and consider one of the following options:

- a. A recommendation from Planning Commission to introduce an ordinance for 1<sup>st</sup> reading that would amend the Zoning Ordinance to repeal and replace Chapter 21.33 of the El Paso De Robles Municipal Code to Regulate the Personal, Medical, and Commercial Use of Marijuana, or
- b. A recommendation from staff to introduce a modified ordinance for 1st reading that would amend the Zoning Ordinance to repeal and replace Chapter 21.33 of the El Paso De Robles Municipal Code to Regulate the Personal, Medical, and Commercial Use of Marijuana with the following changes:
  - Require indoor cultivation permit prior to allowing residents to cultivate six plants within their residences.
  - City will charge a fee to obtain permit for indoor cultivation, to be set by City Council resolution.

**Facts:**

1. The City's Municipal Code currently bans medical marijuana dispensaries and cultivation per El Paso De Robles Municipal Code Chapter 21.33; mobile dispensaries for medical marijuana deliveries are permitted. On June 28, 2016, the Secretary of State Certified Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA") for the November 8, 2016 ballot.
2. If AUMA passes, some of its provisions will take effect on November 9, 2016. AUMA would immediately legalize possession, transport, purchase, use, and transfer of recreational marijuana for individuals 21 years of age or older. Under AUMA, adults could possess up to 28.5 grams of marijuana, up to 8 grams of marijuana in the form of concentrated cannabis, which may be present in marijuana products such as edibles, and up to six living marijuana plants, and any marijuana produced by those plants. It would also legalize the cultivation of marijuana, marijuana delivery services, and recreational marijuana retail services.
3. However, AUMA allows for local control of marijuana uses. It would allow local governments to:

- Ban all marijuana-related businesses outright, including marijuana dispensaries, delivery services, and any recreational marijuana retail services.
  - Ban outdoor cultivation of marijuana, unless the California Attorney General determines marijuana is no longer illegal under Federal law (if marijuana is federally legalized, outdoor cultivation could be regulated, but not prohibited).
  - Reasonably regulate indoor cultivation in private residences, but not ban it outright. AUMA would allow individuals to grow up to six marijuana plants in their home, and to possess all of the marijuana those plants provide.
4. The Planning Commission held a public hearing on August 30, 2016 and is recommending the City Council adopt a draft ordinance amending the Zoning Ordinance to repeal and replace Chapter 21.33 of the El Paso De Robles Municipal Code to Regulate the Personal, Medical, and Commercial Use of Marijuana.
  5. On September 6, 2016 the City Council held a public workshop to hear public testimony on use and regulation of both medical and recreation marijuana. At the meeting, Council requested that staff:
    - separate out medical marijuana from the consideration of recreational and commercial uses;
    - return to the Council with a recommended process for addressing potential changes to the City's medical marijuana ordinance; and
    - bring a recreational and commercial ordinance back in time for consideration in concert with the November vote on Proposition 64.
  6. On September 12, 2016, the League of California Cities issued a memorandum (Attachment 1) to City Managers and City Attorneys with the following recommendation:

“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...”<sup>1</sup>

Because of this recommendation, as well as some new reports now available, it is preferable to return as early as possible to the Council on recreation and commercial uses.

---

<sup>1</sup> Page 9, Section IV. September 13, 2016 League of California Cities Memorandum - The Control, Regulate and Tax Adult Use of Marijuana Act

**Analysis and Conclusion:**

**Medical Marijuana.** Staff recommends the creation of a City Manager or Council task force to address the City's current regulations and recommend any desired changes. Key topics need to include, among others:

- Personal cultivation, both indoors and outdoors
- Mobile dispensaries
- Brick and mortar dispensaries
- Regulation—licensing, inspections, and fees

The task force would comprise 7-11 members of the community, representing all perspectives to the extent possible, facilitated by the Police Chief or Lieutenant. Meetings would be in public, conforming to the Brown Act and all appropriate practices, to ensure the full participation of interested members of the public. Reliance would be placed on successful ordinances and practices already in place in other cities, as well as proposals specific to Paso Robles. This effort should not be impacted significantly by either the passage or defeat of Proposition 64.

The overall goal would be to complete the work of the task force in 3-4 months and return to the Council for conceptual approval and further direction. The recommendations would then be incorporated in a draft ordinance that would return to the Planning Commission for a public hearing and recommendation to the City Council. Assuming the resulting proposed changes do not require extensive CEQA review, the entire process could be completed in approximately six months.

**Recreational and Commercial Use.** As indicated by the September 12 memo from the League of California Cities, it is important for the City to retain local control and discretion. The pattern of votes on Proposition 64 by Paso Robles voters might not be reflective of the statewide pattern. Passage and implementation of a placeholder ordinance prior to November 8 will: (1) retain local control; and (2) minimize the risk of a resident or local business making a significant investment prior to the Council deciding what is the best approach for the Paso Robles community. Staff recommends that the City Council adopt an ordinance regulating primarily personal and commercial use of marijuana so that the El Paso De Robles Municipal Code properly regulates these issues prior to the potential passage of AUMA.

If AUMA passes, it would allow for the development of many new marijuana-related businesses, including recreational dispensaries, recreational retail services, recreational delivery, and large-scale cultivation operations. However, AUMA also gives local governments the authority to regulate these uses. While AUMA indicates a local government cannot prevent transportation of marijuana or marijuana products on public roads, AUMA authorizes cities to “reasonably regulate” indoor cultivation of marijuana in private residences, ban outdoor cultivation of marijuana entirely unless it is federally legalized, and prohibit any marijuana-related business entirely.

If AUMA becomes law, recreational use of marijuana will be legalized, as will recreational possession of marijuana and some level of indoor cultivation. The cultivation, transportation, and distribution of marijuana can create problems relating to public health and safety, crime, water, air quality, and energy consumption, if not regulated properly (refer to attachments for additional information). Specifically,

mobile delivery can create issues relating to responsibility and resources to monitor and enforce State law, questions of patient qualification, and risks relating to the high use of large sums of cash for mobile transactions. Cultivation can create air quality, energy, and water quality damage and impair building maintenance and safety. For example, the increased moisture necessary to grow indoors can create excessive mold growth and structural damage. Additionally, the equipment utilized to grow indoors can pose a risk of fire and electrical hazards due to dangerous electrical alterations and use. Further, inadequate ventilation combined with the use of pesticides and fertilizers in an enclosed space can lead to chemical contamination within structures.

Local government's ability to regulate the content of signage is extremely limited due to the constitutional protections of free speech under the First Amendment. While a city can impose reasonable time, place, and manner restrictions on signs, it cannot impose different regulations for signs based on their content. Therefore, the City cannot regulate the message content on existing billboards in town. Proposition 64, if it does pass, includes a provision for the state to adopt regulations regarding advertising to protect consumers against, for example, false claims. Because the State will not be issuing licenses for commercial marijuana uses until 2018, if the proposition passes, advertising for such businesses should not be a near-term concern. However, the City may wish to evaluate its sign regulations in general to determine if they should be amended or modified.

Similarly, the City does not have a smoking ordinance. Research indicates that smoking marijuana has the same cancer risks as does smoking cigarettes, both for the smoker and for those exposed to second-hand smoke. The City may wish to evaluate current state-level smoking regulations and decide if a local ordinance is desired.

California is unlike other states. California can go to school, however, on the experiences of other states that passed measures similar to Proposition 64. The primary examples are Colorado, Washington, and Oregon. Experts in each of those states have issued comprehensive reports detailing the full range of positive and negative impacts of the measures. Two of the most useful reports follow:

The Legalization of Marijuana in Colorado: the Impact; Volume 4, September 2016

<https://drive.google.com/file/d/0Bxs3xMLjUamANHhRRkluWkRobXM/view>

Washington State Marijuana Impact Report: March 2016

<https://drive.google.com/file/d/0Bxs3xMLjUamANHhRRkluWkRobXM/view>

Given the significant impacts reported in these other states, it is prudent for the City to take a measured approach to the legalization of marijuana in California. Much additional information will become available as other cities also consider their options. This additional information will inform the public

**Summary of Proposed Marijuana Regulation Ordinance  
as recommended by Planning Commission**

<b>Use Type</b>	<b>Personal Recreational Use</b>	<b>Medical Use</b>	<b>Commercial Use</b>
Consumption	Yes, if Proposition 64 passes	Yes (existing law allows)	No
Dispensaries	No	No	No
Delivery Service	No	Yes business license required	No
Cultivation Indoors	If Proposition 64 passes, 6 plants allowed	If Proposition 64, passes, 6 plants allowed	No
Cultivation Outdoors	No	No	No
Manufacturing	N/A	N/A	No
Storage	N/A	N/A	No
Advertising on-site	N/A	N/A	No
Advertising off-site	N/A	N/A	If Prop 64 passes, state regs; but no licenses issued until 1/1/18

**1) Regulation of Personal Marijuana Uses**

As indicated above, passage of AUMA would legalize recreational use of marijuana. However, the ordinance staff recommends includes a provision banning personal recreational use of marijuana to the extent such use is illegal under California law. If AUMA fails, the proposed ordinance would continue to ban all personal recreational use of marijuana in the City. If AUMA passes, the ordinance would allow personal recreational use as the measure provides.

The City is also allowed to ban outdoor cultivation of marijuana entirely. Alternatively, some cities are allowing outdoor cultivation with regulations such as:

- Outdoor, residential cultivation so long as plants are enclosed
- Property owner must approve of cultivation on the property; and

- Limiting the number of plants

If AUMA passes, the City cannot ban indoor cultivation of marijuana in private residences outright, but it may “reasonably regulate” such cultivation. The Ordinance staff recommends bans all indoor cultivation entirely to the extent allowed by California law, and bans indoor cultivation in all structures that are not private residences entirely. It allows indoor cultivation in private residences or accessory structures to private residences. Draft Ordinance A imposes no regulation on that form of cultivation for personal use. Draft Ordinance B would regulate indoor cultivation by requiring a permit. Alternatively, the City could propose other regulations, such as:

- Indoor cultivation for commercial use with a business license
- Indoor cultivation with an alternative set of public welfare regulations imposed, but no permit required

## 2) Regulation of Medical Marijuana Uses

The Medical Marijuana Regulation and Safety Act (“MMRSA”) is left largely intact by AUMA, and so the potential for medical marijuana uses, including qualified patient or primary caregiver cultivation, still exists. The recommended ordinance would impose the same regulations on medical marijuana cultivation as on recreational cultivation and would ban all collectives, cooperatives, dispensaries, operators, establishments, and providers. The proposed ordinance would continue to allow medical marijuana delivery services. Alternatively, the City could:

- Adopt less restrictive regulations for those who have a verified medical need to cultivate marijuana indoors or outdoors
- Allow dispensaries but limit the number allowed in the jurisdiction
- Allow dispensaries but impose separation requirements from parks, schools, churches, and other dispensaries
- Limit dispensaries to a specified zoning designation
- Impose security requirements including limiting the hours of operation of any dispensaries and prohibiting loitering.

## 3) Regulation of Commercial Marijuana Uses

If AUMA becomes law, it will likely lead to the creation of a variety of new commercial marijuana ventures, including recreational retail services. The Ordinance staff recommends bans most commercial marijuana activity, including commercial cultivation, commercial manufacturing, commercial testing, and any commercial dispensaries or recreational retailers. The proposed ordinance would allow recreational marijuana delivery services. Alternatively, the City could allow some or all of these uses, with whatever regulations the City sees fit. Some other options include:

- Allowing commercial cultivation with a local tax imposed on growth
- Allowing some retailers with zoning limitations on location or number
- Allowing delivery to originate or terminate in the City
- Banning commercial delivery services

**Findings for Zoning Code Amendment:** Prior to taking an action to recommend approval of a Zoning Code amendment, the City Council must make the following findings:

1. The proposed Zoning/Development Code amendment conforms with the goals, objectives and policies of the General Plan; and
2. The proposed Zoning Code amendment is necessary to implement the General Plan and to provide for public safety, convenience and/or general welfare; and
3. The proposed Zoning Code amendment conforms with the intent of the Zoning/Development Code and is consistent with all other related provisions thereof; and
4. The proposed Zoning Code amendment is reasonable and beneficial at this time.

The Zoning Code amendment conforms to the goals, objectives and policies of the General Plan, which provides for orderly, functional patterns of land uses, sensitive to the natural environment and meeting the long-term social and economic needs of the community. Paso Robles is exercising its police power granted under California Government Code Section 65800 et. seq. in regulating personal, medical, and commercial marijuana activities in the City.

The proposed Zoning Code amendment is necessary to implement the General Plan and to provide for public safety, convenience and/or general welfare. This amendment is proposed and enacted to protect and preserve the public health, safety, welfare and convenience, and to enhance the quality of life of the citizens of the City. California cities that have permitted cultivation and marijuana dispensaries have experienced negative affects to the public health, safety and welfare of its citizens.

Cities that have permitted marijuana dispensaries have experienced an overabundance and overconcentration of such uses, burglaries and takeover robberies, robberies of customers, an increase in crime in the vicinity of the dispensaries, illegal re-selling of marijuana obtained from dispensaries, physicians issuing apparently fraudulent recommendations for the use of marijuana, dispensary staff selling marijuana to customers with obviously counterfeit patient identification cards, street dealers attempting to sell marijuana to dispensary customers, dispensary customers using marijuana and then driving under the influence of marijuana, the selling of illegal drugs other than marijuana in the dispensaries, and the selling of marijuana and marijuana products to minors.

The proposed Zoning Code amendment conforms with the intent of the Zoning Code, specifically that zones are created and land uses established to protect the physical, social and economic stability of residential, commercial, recreational and other land uses within the City to assure orderly and beneficial development; to protect existing resident and property owners from the adverse effects of incompatible uses; to reduce hazards to the public resulting from inappropriate land uses; and to establish El Paso De Robles as a safe community with a high quality of life for residents. The proposed Zoning Code amendment is consistent with provisions contained in the Zoning Code, specifically the land use regulation is being enacted to protect residential properties and dwellings from incompatible uses, light, glare, odors, visual blight and other objectionable conditions; and to protect adjacent properties from

incompatible uses, light, glare, odors, visual blight, and other objectionable conditions resulting from uses having a higher intensity.

The Zoning Code amendment is reasonable and beneficial at this time. The City desires to regulate marijuana land uses within the city limits. Although the City has adopted regulations, it is recommended that the language in the Zoning Code be updated to clearly meet the City's desire to retain local control over these land uses in the event AUMA passes in November.

**Policy**

**Reference:** Paso Robles General Plan, Municipal Code Chapter 21.33

**Fiscal**

**Impact:** None

**Environmental Review:**

This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The City Council further finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of San Luis Obispo in accordance with CEQA Guidelines.

**Options:** After consideration of the staff report, the Planning Commission recommendation, and public testimony, the City Council may consider the following options:

- a. Approve Zoning Code amendment by taking the following actions:
  - 1. Concur with the City Manager’s recommendation to create a City Manager task force to address the City’s current regulations regarding medical marijuana use and return to the Council with recommended changes to the City’s current ordinance and regulations, with the intention of completing the entire process within six months.
  - 2a. Approve Draft Resolution A finding the Zoning Ordinance amendments are exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15061(b)(3) of the CEQA Guidelines in that there is no possibility that the text amendments would have a potential significant effect on the environment and directs the appropriate City official to file a Notice of Exemption with the County of San Luis Obispo; and



3. Introduce for first reading by title only draft Ordinance A amending Chapter 21.33 of the El Paso de Robles Municipal Code to regulate the personal, medical and commercial use of marijuana as recommended by Planning Commission; or
  4. Introduce for first reading by title only draft Ordinance B amending Chapter 21.33 of the El Paso de Robles Municipal Code to regulate the personal, medical and commercial use of marijuana as recommended by staff, based on information received after the public hearing held by the Planning Commission.
- b. Recommend additional/alternative amendments to the Ordinance.
  - c. Refer the item back to staff for additional analysis.
  - d. Recommend the City Council take no action on the proposed Ordinance.

**Attachments:**

1. League of California Cities September 12, 2016 memorandum
2. League of California Cities FAQ
3. Proposed Marijuana Regulation Ordinance Summary Table
4. Adult Use of Marijuana Act (AUMA) Provisions Directly Affecting City Authority
5. Draft resolution A – California Environmental Quality Act (“CEQA”) exemption pursuant to Section 15061(b)(3)
6. Draft ordinance A – Planning Commission recommendation amending Chapter 21.33 of the El Paso de Robles Municipal Code to regulate the personal, medical and commercial use of marijuana
7. Draft ordinance B – staff recommendation amending Chapter 21.33 of the El Paso de Robles Municipal Code to regulate the personal, medical and commercial use of marijuana



1400 K Street, Suite 400 • Sacramento, California 95814  
Phone: 916.658.8200 Fax: 916.658.8240  
www.cacities.org

## MEMORANDUM

To: League of California Cities' City Managers Department  
League of California Cities' City Attorneys Department  
From: League Staff  
Date: September 12, 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.<sup>1</sup> 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.<sup>2</sup>

Although persons 21 years of age or older may use and possess nonmedical marijuana under the Act, their ability to engage in these activities is not unfettered. The AUMA prohibits the smoking of marijuana: (1) in any public place, except where a local jurisdiction has authorized use on the premises of a retailer or microbusiness in accordance with Business and Professions Code

---

<sup>1</sup> Health & Saf. Code § 11362.2(a).

<sup>2</sup> Health & Saf. Code § 11362.2(a)(2).

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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

### **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.<sup>6</sup> The Act defines private residence as “a house, an apartment unit, a mobile home, or other similar dwelling unit.”<sup>7</sup> 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.<sup>8</sup>

The AUMA completely protects the ability of local governments to regulate, and to ban, personal outdoor cultivation operations.<sup>9</sup> 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.<sup>10</sup>

### **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.<sup>11</sup>

The AUMA divides state licensing and enforcement responsibilities among three agencies: (1) the Department of Consumer Affairs, which will issue licenses for marijuana the transportation, storage, distribution, and sale of marijuana;<sup>12</sup> (2) the Department of Food and Agriculture will issue marijuana cultivation licenses, which will administer the provisions of the AUMA related

---

<sup>3</sup> Health & Saf. Code § 11362.3(7)-(8).

<sup>4</sup> Health & Saf. Code §§ 11362.3(3), 11362.3(4).

<sup>5</sup> Health & Saf. Code § 11362.45 (f)-(g).

<sup>6</sup> Health & Saf. Code §§ 11362.1(a)(3), 11362.2.

<sup>7</sup> Health & Saf. Code § 11362.2(5).

<sup>8</sup> Health & Saf. Code § 11362.2(a)(2).

<sup>9</sup> Health & Saf. Code § 11362.2(b)(3).

<sup>10</sup> Health & Saf. Code § 11362.2(b)(4).

<sup>11</sup> Bus. & Prof. Code § 26010.

<sup>12</sup> Bus. & Prof. Code § 26012(a)(1).

to the cultivation of marijuana;<sup>13</sup> and (3) the Department of Public Health, which will issue licenses for marijuana manufacturers and testing laboratories.<sup>14</sup> 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.<sup>15</sup>

A state marijuana license will be valid for one year.<sup>16</sup> A separate state license is required for each commercial marijuana business location.<sup>17</sup> 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.<sup>18</sup>

## 1. Local Control

All nonmedical marijuana businesses must have a state license.<sup>19</sup> A state license cannot issue to an applicant whose operations would violate the provisions of any local ordinance or regulation.<sup>20</sup> 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.<sup>21</sup> 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.”<sup>22</sup>

## 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,<sup>23</sup> pursue civil penalties against violating businesses in an amount equal to three times the applicable licensing fee per violation,<sup>24</sup> or may prosecute violators criminally.<sup>25</sup> Local authorities will be responsible for enforcing local ordinances and regulations.<sup>26</sup> For state-licensed facilities operating within a

---

<sup>13</sup> Bus. & Prof. Code § 26012(a)(2).

<sup>14</sup> Bus. & Prof. Code § 26012(3).

<sup>15</sup> Bus. & Prof. Code §§ 26012(c), 26013 (a).

<sup>16</sup> Bus. & Prof. Code § 26050(c).

<sup>17</sup> Bus. & Prof. Code § 26055(c).

<sup>18</sup> Bus. & Prof. Code § 26053.

<sup>19</sup> Bus. & Prof. Code § 26038.)

<sup>20</sup> Bus. & Prof. Code § 26055(e).

<sup>21</sup> 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].

<sup>22</sup> Bus. & Prof. Code § 26201.

<sup>23</sup> Bus. & Prof. Code § 2603.

<sup>24</sup> Bus. & Prof. Code § 26038(a)

<sup>25</sup> Bus. & Prof. Code § 26038(c).

<sup>26</sup> Bus. & Prof. Code § 26200 (b).

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.”<sup>27</sup>

## **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.<sup>28</sup> Specifically, the MMRSA requires applicants to provide the relevant state licensing entity with documentation proving their compliance with local ordinances and regulations.<sup>29</sup>

The AUMA does not require an applicant to provide evidence of local permission prior to being issued a state license.<sup>30</sup> Instead, the AUMA prohibits state licensing entities from approving licenses for activities that would violate local ordinances.<sup>31</sup> 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.<sup>32</sup>

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.<sup>33</sup> 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.

---

<sup>27</sup> Bus. & Prof. Code § 23202(a).

<sup>28</sup> Bus. & Prof. Code § 19320(b).

<sup>29</sup> Bus. & Prof. Code § 19322(a).

<sup>30</sup> Bus. & Prof. Code § 26056.

<sup>31</sup> Bus. & Prof. Code § 26055(e).

<sup>32</sup> Bus. & Prof. Code § 19320(d).

<sup>33</sup> 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.<sup>34</sup> Under the AUMA local governments can “reasonably regulate” indoor cultivation of up to six marijuana plants for personal use, but cannot ban it.<sup>35</sup>

### 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.<sup>36</sup> Upon such determination, the AUMA purports to repeal all local bans on outdoor cultivation.<sup>37</sup>

### 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.<sup>38</sup>

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.<sup>39</sup>
  - This tax will be in addition to existing state and local sales tax.<sup>40</sup> 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%;

---

<sup>34</sup> 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.

<sup>35</sup> Bus. & Prof. Code § 11362.2(b)(1).

<sup>36</sup> Bus. & Prof. Code § 11362.2(b)(4).

<sup>37</sup> Bus. & Prof. Code § 11362.2(b)(4).

<sup>38</sup> Health & Saf. Code § 11362.5.

<sup>39</sup> Rev. & Tax Code § 34011(a).

<sup>40</sup> Rev. & Tax Code § 34011(d).

- Effective January 1, 2018, the AUMA imposes a separate cultivation tax on all harvested marijuana as follows:<sup>41</sup>
  - \$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.<sup>42</sup>
- The AUMA exempts marijuana cultivated for personal use from taxation.<sup>43</sup>

The AUMA does not pre-empt local taxation.<sup>44</sup> 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.<sup>45</sup> A delivery person must carry a copy of the dispensary's state-issued license, a government ID, and a copy of the delivery request.<sup>46</sup> The patient or caregiver requesting the delivery must also maintain a copy of the delivery request.<sup>47</sup> Dispensaries and delivery people who comply with MMRSA are immune from prosecution for marijuana transportation.<sup>48</sup>

---

<sup>41</sup> Rev. & Tax Code § 34012.

<sup>42</sup> Rev. & Tax Code § 34011(g).

<sup>43</sup> Rev. & Tax Code § 34012(j).

<sup>44</sup> Rev. & Tax Code § 34021.

<sup>45</sup> Bus. & Prof. Code § 19340(a).

<sup>46</sup> Bus. & Prof. Code §§ 19340(b)(2), 19340(d).

<sup>47</sup> Bus. & Prof. Code § 19340(e).

<sup>48</sup> 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.<sup>49</sup> 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.<sup>50</sup> 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.”<sup>51</sup> 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.<sup>52</sup> 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.<sup>53</sup>

### III. Local Regulatory Options<sup>54</sup>

The AUMA preserves the authority of a city to adopt business regulations and land use regulations for nonmedical marijuana activities.<sup>55</sup>

#### A. Personal Marijuana Cultivation

Under the AUMA local governments can regulate or prohibit 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 a regulatory scheme or ban by a certain date. However, assuming that the AUMA passes, if a city does not have a ban or regulatory scheme governing personal cultivation in place before November 9, 2016, a person may legally engage in personal cultivation of up to six marijuana plants within the person’s private residence.

---

<sup>49</sup> Bus. & Prof. Code §26090(a).

<sup>50</sup> Bus. & Prof. Code §26090(b).

<sup>51</sup> Bus. & Prof. Code § 26090(a).

<sup>52</sup> Bus. & Prof. Code §§ 19340(a), 19316(a), 26200.

<sup>53</sup> Bus. & Prof. Code §§ 19340(f), 26080(b), 26090(c).

<sup>54</sup> 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.

<sup>55</sup> 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;<sup>56</sup> (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.<sup>57</sup> 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.<sup>58</sup> 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);<sup>59</sup> (2) the AUMA does not contain the same protective language as the

---

<sup>56</sup> Bus. & Prof. Code § 26038.

<sup>57</sup> Bus. & Prof. Code § 26012 (c).

<sup>58</sup> 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"].

<sup>59</sup> 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;<sup>60</sup> 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.<sup>61</sup> 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.

---

<sup>60</sup> 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.”].

<sup>61</sup> Bus. & Prof. Code § 26067(a).

September 12, 2016



## Frequently Asked Questions (FAQs)

### Adult Use of Marijuana Act<sup>1</sup>

#### 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

---

<sup>1</sup> 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.<sup>2</sup>

**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?

---

<sup>2</sup> 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.

## Attachment 3 – Proposed Marijuana Regulation Ordinance Summary Table

Use Type	Personal Recreational Use	Medical Use	Commercial Use
Consumption	Yes, if Proposition 64 passes	Yes (existing law allows)	No
Dispensaries	No	No	No
Delivery Service	No	Yes business license required	No
Cultivation Indoors	If Proposition 64 passes, 6 plants allowed	If Proposition 64, passes, 6 plants allowed	No
Cultivation Outdoors	No	No	No
Manufacturing	N/A	N/A	No
Storage	N/A	N/A	No
Advertising on-site	N/A	N/A	No
Advertising off-site	N/A	N/A	If Prop 64 passes, state regs; but no licenses issued until 1/1/18

# Attachment 4

## ADULT USE OF MARIJUANA ACT (AUMA) PROVISIONS DIRECTLY AFFECTING CITY AUTHORITY

PERSONAL USE	NON-MEDICAL and MEDICAL
Possession of no more than 28.5 grams of marijuana or 8 grams of marijuana products	Cities cannot prohibit or regulate <sup>1</sup>
Cultivation of 6 plants	Cities can prohibit OUTDOOR cultivation; Cannot prohibit INDOOR cultivation but can reasonably regulate <sup>2</sup>
No Smoking	Where smoking tobacco prohibited; within 1,000 feet of school, day care center, or youth center; driving automobile or boat; possess on school grounds, day care center, youth center <sup>3</sup>
City Facilities	May prohibit possession and smoking in building owned, leased, or occupied by city <sup>4</sup>
City as Employer	May maintain a drug and alcohol free workplace and not required to permit or accommodate the use, consumption, possession, transfer, transportation, sale, display, or growth of marijuana in the workplace <sup>5</sup>

BUSINESS (COMMERCIAL CANNABIS) REGULATIONS <sup>6</sup>	NON-MEDICAL	MEDICAL
Local Land Use Regulation	May prohibit or regulate variety of land uses <sup>7</sup>	May prohibit or regulate variety of land uses (see fn. 6)
Local Bans/Regulation/Licensing	May prohibit or regulate activities licensed by state (see fn. 6)	May prohibit or regulate activities licensed by state (see fn. 6) <sup>8</sup> Person can't submit application for state license unless has received license, permit, or authorization from local government <sup>9</sup>
Local Regulation of Delivery	May prohibit or regulate but can't prohibit use of city streets <sup>10</sup>	Must explicitly prohibit <sup>11</sup>
Local Environmental; Health; Safety; Testing; Security	Cities may adopt stricter standards than state minimum standards <sup>12</sup>	

TAXATION <sup>13</sup>	NON-MEDICAL	MEDICAL
State /Local Sales Tax	YES	NO <sup>14</sup>
Other Local Taxes <sup>15</sup>	YES	YES
State excise tax (15%) on purchasers; shared with public safety agencies.	YES	YES

State cultivation tax (\$9.25 per dry-weight ounce of flowers; \$2.75 per dry-weight ounce of leaves); shared with public safety agencies.	YES	YES
--	-----	-----

---

<sup>1</sup> H&S 11362.1(a)

<sup>2</sup> H&S 11362.2(b). AUMA requires marijuana produced by plants in excess of 28.5 grams to be kept within private residence in a locked space that is not visible from a public place.

<sup>3</sup> H&S 11362.3. Smoking of marijuana is prohibited in all of these locations.

<sup>4</sup> H&S 11362.45(g)

<sup>5</sup> H&S 11362.45(f)

<sup>6</sup> The AUMA establishes a licensing scheme for nonmedical marijuana businesses (B&P 26000 and following). Existing law (B&P §19320 and following) establish a licensing scheme for medical marijuana businesses. Businesses covered are delivery, transportation, manufacture, cultivation, retailer, distributor and testing service.

<sup>7</sup> B&P 26200

<sup>8</sup> **EXCEPTION:** Cities must explicitly prohibit delivery (B&P 19340(b)(1))

<sup>9</sup> B&P 19322

<sup>10</sup> **EXCEPTION:** Cities may not prohibit use of public streets for delivery (H&S 26090(c))

<sup>11</sup> B&P 19340(b)(1)

<sup>12</sup> B&P 19316; 26201

<sup>13</sup> The AUMA imposes an excise tax on the purchase of marijuana and a cultivation tax on the cultivation of marijuana.

<sup>14</sup> R&T 34011(d)

<sup>15</sup> R&T 34021



# Attachment 5

## DRAFT RESOLUTION A

### RESOLUTION NO. 16-XXX

A RESOLUTION THE CITY COUNCIL OF EL PASO DE ROBLES, CALIFORNIA, APPROVING A NOTICE OF EXEMPTION FOR AN ORDINANCE AMENDING CHAPTER 21.33 OF THE EL PASO DE ROBLES MUNICIPAL CODE TO REGULATE THE PERSONAL, MEDICAL, AND COMMERCIAL USE OF MARIJUANA

WHEREAS, the City of El Paso De Robles, California (the "City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, California Government Code section 65800 et seq. authorizes the adoption and administration of zoning laws, ordinances, rules and regulations by cities as a means of implementing the General Plan; and

WHEREAS, the City passed Ordinance No. 1023 on January 19, 2016; and

WHEREAS, the City desires to continue to ban all marijuana dispensaries and cultivation land uses within City limits to the extent allowed by California law, and Ordinance No. [INSERT NUMBER] updates the Municipal Code to effectuate that aim; and

WHEREAS, on June 28, 2016, the Secretary of State certified Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"), for the November 8, 2016 ball

WHEREAS, AUMA will become law if a majority of the electorate votes "Yes" on the proposition; and

WHEREAS, AUMA would regulate, among other items, the use of marijuana for personal and commercial purposes, including the recreational use of marijuana by adults over 21 years of age; and

WHEREAS, to regulate personal use of marijuana AUMA would add Section 11362.1 to the Health and Safety Code, making it "lawful under state and local law" for persons 21 years of age or older to "possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever" up to 28.5 grams of marijuana in the form of concentrated cannabis or not more than eight grams of marijuana in the form of concentrated cannabis contained in marijuana products; and

WHEREAS, AUMA would make it lawful for those individuals to possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants; and

WHEREAS, AUMA would make it lawful for those individuals to smoke or ingest marijuana or marijuana products; and

WHEREAS, should AUMA pass, many of its provisions would take effect on November 9, 2016; and

WHEREAS, to regulate commercial use of marijuana, AUMA would add Division 10 (Marijuana) to the Business & Professions Code, which grants state agencies "the exclusive authority to create, issue, renew, discipline, suspend, or revoke" licenses for businesses including the transportation, storage, distribution, sale, cultivation, manufacturing, and testing of marijuana; and

WHEREAS, AUMA provides that the above state agencies shall promulgate rules and regulations and shall begin issuing licenses under Division 10 by January 1, 2018; and

WHEREAS, AUMA states that a local jurisdiction shall not prevent transportation of marijuana or marijuana products on public roads by a licensee transporting marijuana or marijuana products in compliance with Division 10; and

WHEREAS, AUMA would authorize cities to “reasonably regulate” without completely prohibiting cultivation of marijuana inside a private residence or inside an “accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure”; and

WHEREAS, AUMA would authorize cities to completely prohibit outdoor cultivation on the grounds of a private residence, up to and until a “determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law”; and

WHEREAS, AUMA would authorize cities to completely prohibit the establishment or operation of any marijuana business licensed under Division 10 within its jurisdiction, including marijuana dispensaries, marijuana retailers, and marijuana delivery services; and

WHEREAS, absent appropriate local regulation authorized by AUMA, state regulations will control; and

WHEREAS, the “Medical Marijuana Regulation and Safety Act” (“MMRSA”), which took effect January 1, 2016, regulates use of marijuana for medical purposes; and

WHEREAS, the MMRSA contains a provision that provides that the State shall become the sole authority for regulation under certain parts of the Act unless local governments pass their own regulations; and

WHEREAS, in May 2013, the California Supreme Court held in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, 56 Cal. 4th 729 (2013) that cities have the authority to regulate or ban outright medical marijuana land uses; and

WHEREAS, the California Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, under the Federal Controlled Substances Act, the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects on the health and safety of the occupants, including structural damage to the building due to increased moisture and excessive mold growth that can occur and pose a risk of fire and electrocution, as well as chemical contamination within the structure from the use of pesticides and fertilizers; and

WHEREAS, based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of marijuana cultivation, processing, and distribution uses; and

WHEREAS, the subject Ordinance is not subject to the California Environmental Quality Act (“CEQA”) under CEQA Guidelines (14 Cal. Code Regs.) sections 15060(c)(2), 15060(c)(3), and 15061(b)(3). The activity is not subject to CEQA because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; the activity is not a project as defined in Section 15378, and the activity is covered by the general rule that CEQA applies only to activities that have the potential for causing a significant effect on the environment. Where it can be seen

with certainty that there is no possibility that the activity may have a significant effect on the environment, the activity is not subject to CEQA; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred, and

WHEREAS, the Planning Commission held a public hearing on August 30, 2016 to consider a recommendation to the City Council regarding the proposed Zoning Ordinance amendment.

WHEREAS, the City council held a public hearing on September 20, 2016 to consider a notice of exemption regarding the proposed Zoning Ordinance amendment.

NOW, THEREFORE, the City Council of El Paso De Robles hereby resolves as follows:

Section 1: Incorporation of Recitals.

The City Council hereby specifically finds that all of the facts set forth in the Recitals are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

Section 2: Zoning Amendment Findings.

The following findings are made regarding the proposed amendments to the Zoning Ordinance:

- A. The proposed amendments are consistent with the General Plan, since they implement General Plan objectives and policies that promote the establishment and operation of land uses that maintain or enhance quality of life; that are compatible with surrounding uses; and that protect and maintain public health, safety, and welfare. The proposed amendments prohibit land uses that are contrary to such objectives and policies; and
- B. The proposed amendments will not adversely impact the public health, safety, and welfare, since they prohibit land uses to protect the public health, safety, and welfare from potentially negative impacts of marijuana cultivation, manufacturing, testing, and dispensaries to the extent allowed under California law. Several California cities have reported negative impacts of such land uses, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests.

Section 3: CEQA.

The proposed ordinance is not a project within the meaning of section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change in the environment, directly or indirectly. The City Council further finds, under section 15061(b)(3), that the proposed ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to activities that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 20<sup>th</sup> day of September, 2016 by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

---

Steven W. Martin, Mayor

ATTEST:

---

Kristen L. Buxkemper, Deputy City Clerk

Exhibit A – Notice of Exemption

Exhibit A

NOTICE OF EXEMPTION

TO: County Clerk Recorder  
County of San Luis Obispo  
1055 Monterey Street  
San Luis Obispo, CA

FROM: Planning Division  
1000 Spring Street  
Paso Robles, CA 93446

Project Title:

Resolution [INSERT NUMBER], recommending an Ordinance amending Chapter 21.33 of the Municipal Code to regulate the establishment of marijuana dispensaries, cultivation of marijuana and delivery of marijuana in all zones of the City.

Project Location - Specific: City-wide

Description of Project:

This project is adoption of an Ordinance amending Chapter 21.33 of the Municipal Code to regulate the establishment of marijuana dispensaries, cultivation of marijuana and delivery of marijuana in all zones of the City.

Name of Public Agency Approving Project:

Planning Division, City of El Paso De Robles

Exempt Status: (check one) (State type and section number)

XX Statutory Exemption. Sections: 15060(c)(2), 15060(c)(3) and 15061(b)(3)

Reasons why project is exempt:

The activity is not subject to CEQA because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; the activity is not a project as defined in Section 15378, and the activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment, the activity is not subject to CEQA.

Lead Agency or Contact Person:

Warren Frace Community Development Director

Area Code/Telephone/Extension

805-237-3970

Date:

Signature: \_\_\_\_\_

# Attachment 6

## Draft Ordinance A

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES, CALIFORNIA AMENDING CHAPTER 21.33 OF THE EL PASO DE ROBLES MUNICIPAL CODE TO REGULATE THE PERSONAL, MEDICAL, AND COMMERCIAL USE OF MARIJUANA

WHEREAS, the City of El Paso De Robles, California (the "City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, California Government Code section 65800 et seq. authorizes the adoption and administration of zoning laws, ordinances, rules and regulations by cities as a means of implementing the General Plan; and

WHEREAS, the City passed Ordinance No. 1023 on January 19, 2016; and

WHEREAS, the City desires to continue to ban all marijuana dispensaries and cultivation land uses within City Limits to the extent allowed by California law. This Ordinance updates the Municipal Code to effectuate that aim; and

WHEREAS, on June 28, 2016, the Secretary of State certified Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"), for the November 8, 2016 ballot; and

WHEREAS, the AUMA would become law if a majority of the electorate votes "Yes" on the proposition; and

WHEREAS, the AUMA would regulate, among other items, the use of marijuana for personal and commercial purposes, including the recreational use of marijuana by adults over 21 years of age; and

WHEREAS, to regulate personal use of marijuana the AUMA would add Section 11362.1 to the Health and Safety Code, which makes it "lawful under state and local law" for persons 21 years of age or older to "possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever" up to 28.5 grams of marijuana in the form of concentrated cannabis or not more than eight grams of marijuana in the form of concentrated cannabis contained in marijuana products; and

WHEREAS, the AUMA would make it lawful for those individuals to "possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants; and

WHEREAS, the AUMA would make it lawful for those individuals to smoke or ingest marijuana or marijuana products; and

WHEREAS, should the AUMA pass, many of its provisions would take effect on November 9, 2016; and

WHEREAS, to regulate commercial use of marijuana, the AUMA would add Division 10 (Marijuana) to the Business & Professions Code, which grants state agencies "the exclusive authority to create, issue, renew, discipline, suspend, or revoke" licenses for businesses including the transportation, storage, distribution, sale, cultivation, manufacturing, and testing of marijuana; and

WHEREAS, the AUMA provides that the above state agencies shall promulgate rules and regulations and shall begin issuing licenses under Division 10 by January 1, 2018; and

WHEREAS, the AUMA states that a local jurisdiction shall not prevent transportation of marijuana or marijuana products on public roads by a licensee transporting marijuana or marijuana products in compliance with Division 10; and

WHEREAS, the AUMA would authorize cities to “reasonably regulate” without completely prohibiting cultivation of marijuana inside a private residence or inside an “accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure”; and

WHEREAS, the AUMA would authorize cities to completely prohibit outdoor cultivation on the grounds of a private residence, up to and until a “determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law”; and

WHEREAS, the AUMA would authorize cities to completely prohibit the establishment or operation of any marijuana business licensed under Division 10 within its jurisdiction, including marijuana dispensaries, marijuana retailers, and marijuana delivery services; and

WHEREAS, absent appropriate local regulation authorized by the AUMA, state regulations will control; and

WHEREAS, the “Medical Marijuana Regulation and Safety Act” (“MMRSA”), which took effect January 1, 2016, regulates use of marijuana for medical purposes; and

WHEREAS, the MMRSA contains a provision which provides that the State shall become the sole authority for regulation under certain parts of the Act unless local governments pass their own regulations; and

WHEREAS, in May 2013, the California Supreme Court held in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, 56 Cal. 4th 729 (2013) that cities have the authority to regulate or ban outright medical marijuana land uses; and

WHEREAS, the California Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, under the Federal Controlled Substances Act, the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the health and safety of the occupants; including structural damage to the building due to increased moisture and excessive mold growth which can occur and can pose a risk of fire and electrocution; additionally, the use of pesticides and fertilizers can lead to chemical contamination within the structure; and

WHEREAS, based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of marijuana cultivation, processing, and distribution uses; and

WHEREAS, the subject Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2), 15060(c)(3) and 15061(b)(3). The activity is not subject to CEQA because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; the activity is not a project as defined in Section 15378, and the activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment, the activity is not subject to CEQA; and

WHEREAS, this Ordinance would amend Chapter 21.33 to clarify the substantive objectives of the Municipal Code regarding the City’s regulation of marijuana within its City limits and to preemptively address some proposed changes to California law in the event AUMA passes on November 8, 2016.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES ORDAIN AS FOLLOWS:

SECTION 1: The City Council of the City of El Paso De Robles hereby finds and determines that all of the above Recitals are true and correct and incorporates such Recitals into this Ordinance as if fully set forth herein.

SECTION 2. The City Council of the City of El Paso De Robles hereby amends Chapter 21.33 to read in its entirety as follows:

Chapter 21.33 - MARIJUANA REGULATIONS

21.33.010 Purpose.

The purpose of this Chapter is to regulate personal, medical, and commercial marijuana uses. Nothing in this Chapter shall preempt or make inapplicable any provision of state or federal law.

21.33.020 Definitions.

For purposes of this Chapter, the following definitions shall apply:

A. "Commercial marijuana activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, or sale of marijuana and marijuana products.

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

C. "Delivery" means the commercial transfer of marijuana or marijuana products to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under California law, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

D. "Distribution" means the procurement, sale, and transport of marijuana and marijuana products between entities for commercial use purposes.

E. "Licensee" means the holder of any state issued license related to marijuana activities, including but not limited to licenses issued under Division 10 of the Business & Professions Code.

F. "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.

G. "Marijuana" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include:

1. Industrial hemp, as defined in Section 11018.5 of the California Health & Safety Code; or
2. The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.



H. "Marijuana accessories" means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.

I. "Marijuana products" means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.

J. "Person" includes any individual, firm, co-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 the plural as well as the singular.

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

L. "Sale" includes any transaction whereby, for any consideration, title to marijuana is transferred from one person to another, and includes the delivery of marijuana or marijuana products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of marijuana or marijuana products by a licensee to the licensee from whom such marijuana or marijuana product was purchased.

M. Any term defined in this Section also means the very term as defined in the California Business & Professions Code or the California Health & Safety Code, unless otherwise specified.

#### 21.33.030 Personal Recreational Use.

A. For purposes of this subsection, personal recreational use, possession, purchase, transport, or dissemination of marijuana shall be considered unlawful in all areas of the City to the extent it is unlawful under California law.

B. Outdoor Cultivation. A person may not plant, cultivate, harvest, dry, or process marijuana plants outdoors in any zoning district of the City. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity.

C. Indoor Cultivation.

1. A person may not plant, cultivate, harvest, dry, or process marijuana plants inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence, or inside any other enclosed structure within any zoning district of the City. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity.

2. To the extent a complete prohibition on indoor cultivation is not permitted under California law, a person may not plant, cultivate, harvest, dry, or process marijuana plants inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence, unless the person is issued an indoor cultivation permit by the Community Development Department. A person may not plant, cultivate, harvest, dry, or process marijuana plants inside any enclosed structure within any zoning district of the City which is not either a private residence or an accessory structure to a private residence located upon the grounds of a private residence.

3. The Community Development Department will issue application and processing guidelines for the indoor cultivation permit. No indoor cultivation permit shall be issued prior to the release of these guidelines, and no permit shall be granted which has not complied fully with the application and processing requirements. The City Council may institute a fee for the indoor cultivation permit by resolution.

21.33.040 Medical Use.

A. Cultivation of medical marijuana pursuant to Section 11362.77 of the California Health & Safety Code is subject to the cultivation requirements laid out in Section 21.33.030 of this Chapter.

B. The establishment or operation of any medical marijuana collective, cooperative, dispensary, operator, establishment, or provider shall be considered a prohibited use in all zoning districts of the City. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment of any collective, cooperative, dispensary, operator, establishment, or provider in any zoning district, and no person shall otherwise establish such businesses or operations in any zoning district.

C. Exception. The establishment or operation of a medical marijuana delivery service is permitted in the City, provided a use permit, variance, building permit, business license and all other entitlements or permits have been approved pursuant to this Code.

21.33.050 Commercial Use.

A. The establishment or operation of any business of commercial marijuana activity is prohibited. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment or operation of any such business or operation. Such prohibited businesses or operations may include, but are not limited to:

1. The transportation, storage, distribution, or sale of marijuana, marijuana products, or marijuana accessories;

2. The cultivation of marijuana;

3. The manufacturing or testing of marijuana, marijuana products, or marijuana accessories; or

4. Any other business licensed by the state or other government entity under Division 10 of the California Business & Professions Code, as it may be amended from time to time.

21.33.060 Penalty for Violations.

No person, whether as principal, agent, employee or otherwise, shall violate, cause the violation of, or otherwise fail to comply with any of the requirements of this section. Every act prohibited or declared unlawful, and every failure to perform an act made mandatory by this section, shall be a misdemeanor or an infraction, at the discretion of the City Attorney or the District Attorney. In addition to the penalties provided in this section, any condition caused or permitted to exist in violation of any of the provisions of this section is declared a public nuisance and may be abated as provided Chapters 1.02 and 1.03 of this Municipal Code and/or under state law.

SECTION 3: CEQA. This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The City Council further finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of San Luis Obispo in accordance with CEQA Guidelines.

SECTION 4: Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is 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, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 5. Custodian of Records. The documents and materials that constitute the record of proceedings on which this Ordinance is based are located at the City Clerk's office located at 1000 Spring Street, Paso Robles, CA 93446. The custodian of these records is the City Clerk.

SECTION 6. Restatement of Existing Law. Neither the adoption of this ordinance nor the repeal of any other ordinance of this City shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license or penalty or the penal provisions applicable to any violation thereof. The provisions of this ordinance, insofar as they are substantially the same as ordinance provisions previously adopted by the City relating to the same subject matter or relating to the enumeration of permitted uses under the City's zoning code, shall be construed as restatements and continuations, and not as new enactments.

SECTION 7. This Ordinance shall take effect thirty (30) days after its final passage and adoption. A summary of this Ordinance shall be published and a certified copy of the full text of this proposed Ordinance shall be posted in the office of the City Clerk at least five (5) days prior to the City Council meeting at which this proposed Ordinance is to be adopted. Within fifteen (15) days after adoption of this Ordinance, the City Clerk is instructed to publish a summary of this Ordinance with the names of those City Council members voting for and against this Ordinance and the City Clerk shall post in the office of the City Clerk a certified copy of the full text of the adopted Ordinance along with the names of those City Council members voting for and against this Ordinance or amendment at least until the day of such publication.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

---

Steven W. Martin, Mayor

ATTEST:

---

Kristen L. Buxkemper, Deputy City Clerk

CERTIFICATION

I, Kristen L. Buxkemper, hereby certify that the foregoing Ordinance was passed and adopted by the City Council of the City of El Paso De Robles at a regular meeting on the \_\_\_\_ day of \_\_\_\_\_, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

---

Kristen L. Buxkemper  
Deputy City Clerk

# Attachment 7

## Draft Ordinance B

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES, CALIFORNIA AMENDING CHAPTER 21.33 OF THE EL PASO DE ROBLES MUNICIPAL CODE TO REGULATE THE PERSONAL, MEDICAL, AND COMMERCIAL USE OF MARIJUANA

WHEREAS, the City of El Paso De Robles, California (the "City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, California Government Code section 65800 et seq. authorizes the adoption and administration of zoning laws, ordinances, rules and regulations by cities as a means of implementing the General Plan; and

WHEREAS, the City passed Ordinance No. 1023 on January 19, 2016; and

WHEREAS, the City desires to continue to ban all marijuana dispensaries and cultivation land uses within City Limits to the extent allowed by California law. This Ordinance updates the Municipal Code to effectuate that aim; and

WHEREAS, on June 28, 2016, the Secretary of State certified Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"), for the November 8, 2016 ballot; and

WHEREAS, the AUMA would become law if a majority of the electorate votes "Yes" on the proposition; and

WHEREAS, the AUMA would regulate, among other items, the use of marijuana for personal and commercial purposes, including the recreational use of marijuana by adults over 21 years of age; and

WHEREAS, to regulate personal use of marijuana the AUMA would add Section 11362.1 to the Health and Safety Code, which makes it "lawful under state and local law" for persons 21 years of age or older to "possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever" up to 28.5 grams of marijuana in the form of concentrated cannabis or not more than eight grams of marijuana in the form of concentrated cannabis contained in marijuana products; and

WHEREAS, the AUMA would make it lawful for those individuals to "possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants; and

WHEREAS, the AUMA would make it lawful for those individuals to smoke or ingest marijuana or marijuana products; and

WHEREAS, should the AUMA pass, many of its provisions would take effect on November 9, 2016; and

WHEREAS, to regulate commercial use of marijuana, the AUMA would add Division 10 (Marijuana) to the Business & Professions Code, which grants state agencies "the exclusive authority to create, issue, renew, discipline, suspend, or revoke" licenses for businesses including the transportation, storage, distribution, sale, cultivation, manufacturing, and testing of marijuana; and

WHEREAS, the AUMA provides that the above state agencies shall promulgate rules and regulations and shall begin issuing licenses under Division 10 by January 1, 2018; and

WHEREAS, the AUMA states that a local jurisdiction shall not prevent transportation of marijuana or marijuana products on public roads by a licensee transporting marijuana or marijuana products in compliance with Division 10; and

WHEREAS, the AUMA would authorize cities to “reasonably regulate” without completely prohibiting cultivation of marijuana inside a private residence or inside an “accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure”; and

WHEREAS, the AUMA would authorize cities to completely prohibit outdoor cultivation on the grounds of a private residence, up to and until a “determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law”; and

WHEREAS, the AUMA would authorize cities to completely prohibit the establishment or operation of any marijuana business licensed under Division 10 within its jurisdiction, including marijuana dispensaries, marijuana retailers, and marijuana delivery services; and

WHEREAS, absent appropriate local regulation authorized by the AUMA, state regulations will control; and

WHEREAS, the “Medical Marijuana Regulation and Safety Act” (“MMRSA”), which took effect January 1, 2016, regulates use of marijuana for medical purposes; and

WHEREAS, the MMRSA contains a provision which provides that the State shall become the sole authority for regulation under certain parts of the Act unless local governments pass their own regulations; and

WHEREAS, in May 2013, the California Supreme Court held in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, 56 Cal. 4th 729 (2013) that cities have the authority to regulate or ban outright medical marijuana land uses; and

WHEREAS, the California Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, under the Federal Controlled Substances Act, the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the health and safety of the occupants; including structural damage to the building due to increased moisture and excessive mold growth which can occur and can pose a risk of fire and electrocution; additionally, the use of pesticides and fertilizers can lead to chemical contamination within the structure; and

WHEREAS, based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of marijuana cultivation, processing, and distribution uses; and

WHEREAS, the subject Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2), 15060(c)(3) and 15061(b)(3). The activity is not subject to CEQA because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; the activity is not a project as defined in Section 15378, and the activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment, the activity is not subject to CEQA; and

WHEREAS, this Ordinance would amend Chapter 21.33 to clarify the substantive objectives of the Municipal Code regarding the City’s regulation of marijuana within its City limits and to preemptively address some proposed changes to California law in the event AUMA passes on November 8, 2016.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES ORDAIN AS FOLLOWS:

SECTION 1: The City Council of the City of El Paso De Robles hereby finds and determines that all of the above Recitals are true and correct and incorporates such Recitals into this Ordinance as if fully set forth herein.

SECTION 2. The City Council of the City of El Paso De Robles hereby amends Chapter 21.33 to read in its entirety as follows:

Chapter 21.33 - MARIJUANA REGULATIONS

21.33.010 Purpose.

The purpose of this Chapter is to regulate personal, medical, and commercial marijuana uses. Nothing in this Chapter shall preempt or make inapplicable any provision of state or federal law.

21.33.020 Definitions.

For purposes of this Chapter, the following definitions shall apply:

A. "Commercial marijuana activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, or sale of marijuana and marijuana products.

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

C. "Delivery" means the commercial transfer of marijuana or marijuana products to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under California law, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

D. "Distribution" means the procurement, sale, and transport of marijuana and marijuana products between entities for commercial use purposes.

E. "Licensee" means the holder of any state issued license related to marijuana activities, including but not limited to licenses issued under Division 10 of the Business & Professions Code.

F. "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.

G. "Marijuana" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include:

1. Industrial hemp, as defined in Section 11018.5 of the California Health & Safety Code; or
2. The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

H. "Marijuana accessories" means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.

I. "Marijuana products" means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.

J. "Person" includes any individual, firm, co-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 the plural as well as the singular.

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

L. "Sale" includes any transaction whereby, for any consideration, title to marijuana is transferred from one person to another, and includes the delivery of marijuana or marijuana products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of marijuana or marijuana products by a licensee to the licensee from whom such marijuana or marijuana product was purchased.

M. Any term defined in this Section also means the very term as defined in the California Business & Professions Code or the California Health & Safety Code, unless otherwise specified.

#### 21.33.030 Personal Recreational Use.

A. For purposes of this subsection, personal recreational use, possession, purchase, transport, or dissemination of marijuana shall be considered unlawful in all areas of the City to the extent it is unlawful under California law.

B. Outdoor Cultivation. A person may not plant, cultivate, harvest, dry, or process marijuana plants outdoors in any zoning district of the City. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity.

C. Indoor Cultivation.

1. A person may not plant, cultivate, harvest, dry, or process marijuana plants inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence, or inside any other enclosed structure within any zoning district of the City. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity.

2. To the extent a complete prohibition on indoor cultivation is not permitted under California law, a person may not plant, cultivate, harvest, dry, or process marijuana plants inside a private residence. A person may not plant, cultivate, harvest, dry, or process marijuana plants inside an accessory structure to a private residence located upon the grounds of a private residence, unless the person is issued an indoor cultivation permit by the Community Development Department. A person may not plant, cultivate, harvest, dry, or process marijuana plants inside any enclosed structure within any zoning district of the City



which is not either a private residence or an accessory structure to a private residence located upon the grounds of a private residence.

3. The Community Development Department will issue application and processing guidelines for the indoor cultivation permit. No indoor cultivation permit shall be issued prior to the release of these guidelines, and no permit shall be granted which has not complied fully with the application and processing requirements. The City Council may institute a fee for the indoor cultivation permit by resolution.

21.33.040 Medical Use.

A. Cultivation of medical marijuana pursuant to Section 11362.77 of the California Health & Safety Code is subject to the cultivation requirements laid out in Section 21.33.030 of this Chapter.

B. The establishment or operation of any medical marijuana collective, cooperative, dispensary, operator, establishment, or provider shall be considered a prohibited use in all zoning districts of the City. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment of any collective, cooperative, dispensary, operator, establishment, or provider in any zoning district, and no person shall otherwise establish such businesses or operations in any zoning district.

C. Exception. The establishment or operation of a medical marijuana delivery service is permitted in the City, provided a use permit, variance, building permit, business license and all other entitlements or permits have been approved pursuant to this Code.

21.33.050 Commercial Use.

A. The establishment or operation of any business of commercial marijuana activity is prohibited. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment or operation of any such business or operation. Such prohibited businesses or operations may include, but are not limited to:

1. The transportation, storage, distribution, or sale of marijuana, marijuana products, or marijuana accessories;
2. The cultivation of marijuana;
3. The manufacturing or testing of marijuana, marijuana products, or marijuana accessories; or
4. Any other business licensed by the state or other government entity under Division 10 of the California Business & Professions Code, as it may be amended from time to time.

21.33.060 Penalty for Violations.

No person, whether as principal, agent, employee or otherwise, shall violate, cause the violation of, or otherwise fail to comply with any of the requirements of this section. Every act prohibited or declared unlawful, and every failure to perform an act made mandatory by this section, shall be a misdemeanor or an infraction, at the discretion of the City Attorney or the District Attorney. In addition to the penalties provided in this section, any condition caused or permitted to exist in violation of any of the provisions of this section is declared a public nuisance and may be abated as provided Chapters 1.02 and 1.03 of this Municipal Code and/or under state law.

SECTION 3: CEQA. This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The City Council further finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of San Luis Obispo in accordance with CEQA Guidelines.

SECTION 4: Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is 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, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 5. Custodian of Records. The documents and materials that constitute the record of proceedings on which this Ordinance is based are located at the City Clerk's office located at 1000 Spring Street, Paso Robles, CA 93446. The custodian of these records is the City Clerk.

SECTION 6. Restatement of Existing Law. Neither the adoption of this ordinance nor the repeal of any other ordinance of this City shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license or penalty or the penal provisions applicable to any violation thereof. The provisions of this ordinance, insofar as they are substantially the same as ordinance provisions previously adopted by the City relating to the same subject matter or relating to the enumeration of permitted uses under the City's zoning code, shall be construed as restatements and continuations, and not as new enactments.

SECTION 7. This Ordinance shall take effect thirty (30) days after its final passage and adoption. A summary of this Ordinance shall be published and a certified copy of the full text of this proposed Ordinance shall be posted in the office of the City Clerk at least five (5) days prior to the City Council meeting at which this proposed Ordinance is to be adopted. Within fifteen (15) days after adoption of this Ordinance, the City Clerk is instructed to publish a summary of this Ordinance with the names of those City Council members voting for and against this Ordinance and the City Clerk shall post in the office of the City Clerk a certified copy of the full text of the adopted Ordinance along with the names of those City Council members voting for and against this Ordinance or amendment at least until the day of such publication.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

---

Steven W. Martin, Mayor

ATTEST:

---

Kristen L. Buxkemper, Deputy City Clerk

CERTIFICATION

I, Kristen L. Buxkemper, hereby certify that the foregoing Ordinance was passed and adopted by the City Council of the City of El Paso De Robles at a regular meeting on the \_\_\_\_ day of \_\_\_\_\_, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

---

Kristen L. Buxkemper  
Deputy City Clerk