



# CITY COUNCIL AGENDA REPORT

MEETING DATE: JANUARY 3, 2017

ITEM NUMBER:

**SUBJECT: AN URGENCY ORDINANCE TO ADOPT CODE AMENDMENT CO-XX-XX: AN AMENDMENT TO TITLE 13 OF THE COSTA MESA MUNICIPAL CODE RELATED TO CULTIVATION OF MARIJUANA AND/OR MEDICAL MARIJUANA**

**DATE: DECEMBER 16, 2016**

**FROM: CITY ATTORNEYS OFFICE AND DEVELOPMENT SERVICES DEPARTMENT**

**PRESENTATION BY: JAY TREVINO, DEVELOPMENT SERVICES DEPARTMENT  
TARQUIN PREZIOSI, ASSISTANT CITY ATTORNEY**

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## **SUMMARY**

On November 8, 2016, voters approved two initiatives related to marijuana that effect the City of Costa Mesa: Costa Mesa Measure X and State Proposition 64, the "Control, Regulate and Tax Adult Use of Marijuana Act" ("Prop 64" or "AUMA"). This report focuses on Proposition 64. AUMA allows adults 21 years and over to use, possess, and cultivate limited amounts of marijuana; it will also allow sales and other activities by January 1, 2018. Staff recommends adoption of an urgency ordinance prohibiting all marijuana uses that are or will be authorized by Proposition 64, except as preempted by state law, or as authorized by Measure X.

## **RECOMMENDATION**

Introduce and adopt Urgency Ordinance XX to adopt Code Amendment CO-XX amending Costa Mesa Municipal Code Title 13, Article 20 of Chapter IX, Special Land Use Regulations.

## **BACKGROUND**

AUMA has two primary components: (1) a right to non-medical/recreational marijuana use, possession, and cultivation, and (2) a state licensing and taxing scheme for non-medical/recreational marijuana businesses similar to those licensed by the state under the Medical Marijuana Regulation and Safety Act ("MMRSA"). AUMA also reduces criminal penalties for specified marijuana crimes, including possession and use of marijuana by minors.

## **Non-medical/Recreational Use and Cultivation of Marijuana**

AUMA decriminalizes the possession, processing, transporting, purchasing, obtaining or giving away of not more than 28.5 grams of marijuana or 8 grams of marijuana in the form of concentrated by persons 21 years of age or older.<sup>1</sup> It also permits persons 21 year and older to cultivate up to 6 plants indoors or outdoors on the grounds of a private residence. Health and Safety Code section 11362.2 limits the total number of plants grown at any one single private residence (which is defined to include a house, apartment unit, mobile home, or other similar dwelling) to no more than six (6) plants.

AUMA specifically prohibits cities and counties from completely prohibiting indoor cultivation for non-medical use, but allows cities and counties to completely ban cultivation outdoors upon the grounds of a private residence.<sup>2</sup> AUMA allows cities and counties to enact and enforce reasonable regulations to regulate the indoor cultivation of marijuana for non-medical use.<sup>3</sup> However, the parameters of what type of regulation is allowed by local entities is not set forth in AUMA.

AUMA prohibits smoking or ingesting marijuana or marijuana products in the following places:

- In any public place (unless in inside a business that is authorized by state and local law to allow use of marijuana on its premises);
- In places where smoking tobacco is prohibited;
- Within 1,000 feet of a school, day care center, or youth center while children are present, except in or upon the grounds of a private residence or inside a business that is authorized by state and local law to allow the use of marijuana on its premises; and
- While driving in, operating, or riding in a motor vehicle, boat, vessel, aircraft or other vehicle.<sup>4</sup>

AUMA also allows cities, counties and public employers to maintain a drug and alcohol free workplace and to have policies prohibiting the use of marijuana by employees and prospective employees.<sup>5</sup>

## **Non-Medical Marijuana Businesses**

The second primary component of AUMA is a newly established state licensing and regulation scheme for commercial non-medical marijuana businesses, similar to the categories of businesses permitted under MMRSA.<sup>6</sup> AUMA renames the Bureau of Medical Marijuana Regulation the Bureau of Marijuana Control and charges them with

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1 Health and Safety Code § 11362.1.

2 Health & Safety Code § 11362.2(b)(2) and (3).

3 Health & Safety Code § 11362.2(b)(1).

4 Health & Safety Code § 11362.3.

5 Health & Safety Code § 11362.45.

6 Business & Professions Code § 26000 et seq.

issuing licenses to marijuana-related retail, manufacturing, distribution, transport, dispensary and delivery businesses catering to recreational users in addition to licensing medical marijuana businesses.<sup>7</sup> The Department of Food and Agriculture is tasked with issuing licenses to non-medical marijuana cultivation businesses. AUMA requires all state licensing authorities to issue licenses by January 1, 2018.<sup>8</sup>

AUMA permits local jurisdictions to adopt and enforce local ordinances to regulate recreational marijuana businesses, including local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to second hand smoke. AUMA also expressly authorizes cities and counties to completely prohibit the establishment or operation of businesses within their jurisdictions.<sup>9</sup>

AUMA imposes a 15% state tax on the retail sales of non-medical marijuana. Funds from the tax will be used in part to fund research on the health effects of marijuana. AUMA does not prohibit local taxes of non-medical marijuana.<sup>10</sup>

### **Costa Mesa Municipal Code**

The Costa Mesa Municipal Code (“CMMC”) currently prohibits medical and recreational marijuana cultivation, both indoors or outdoors, in all areas in the City.<sup>11</sup> The CMMC prohibits the operation of medical marijuana dispensaries.<sup>12</sup> With the adoption of Measure X, the City established a specific area within which medical marijuana distributors, manufacturers, processors, research and development laboratories, testing laboratories and transporters may be located. The area within which these businesses may be located include the Manufacturing Park (MP) and Planned Development Industrial (PDI) zones located north of South Coast Drive and west of Harbor Boulevard, excluding any portion of the South Coast Collection. While marijuana possession, use and limited cultivation is now allowed under state law, staff recommends that the City temporarily prohibit indoor cultivation under the CMMC except as allowed by state law, and all outdoor cultivation, pending further analysis of regulatory options and approaches. Further, while certain marijuana related businesses are allowed under Measure X, staff believes that it is in the City’s best interest to prohibit all other marijuana related businesses pending further analysis of regulatory options, approaches and tax implications.

### **ANALYSIS**

The proposed amendment to the Zoning Code is intended to preserve the status quo and prohibit all marijuana related uses within the City to the extent allowable under state law. The proposed amendment also resolves any potential conflict between the new provisions of the Health and Safety Code and the CMMC regarding cultivation. The

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7 Business & Professions Code § 26010.

8 Business & Professions Code § 26012(c).

9 Business & Professions Code § 26200.

10 Proposed Revenue & Taxation Code § 34021 and 34021.5.

11 CMMC 13.200.87.

12 CMMC 13-30 table 31 (a).

proposed amendment does not conflict with the provisions of Measure X. Government Code §65858 provides that urgency ordinances be adopted for a period of 45 days. An urgency ordinance can later be extended should the City Council determine an extension is warranted. Staff will begin the study of marijuana cultivation and marijuana related businesses right away and will report to the City Council at the February 7, 2016 meeting as to whether an extension of the urgency ordinance may be necessary.

### **PUBLIC NOTICE**

Publication of the public hearing notice once in the Orange Coast Daily Pilot at least ten (10) days prior to the date of hearing as required by law. At the time of publication of this report, no public comments have been received. Any correspondence will be forwarded to the City Council under separate cover.

### **ENVIRONMENTAL DETERMINATION**

The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061(b)(3) (general rule) of the CEQA Guidelines, in that it can be seen with certainty that there is no possibility that the proposed amendment to the Zoning Code will have a significant effect on the environment.

### **ALTERNATIVES CONSIDERED:**

The City Council could forego adoption of the urgency ordinance, and direct staff to study the issues and return with appropriate recommendations. This alternative would allow marijuana cultivation and marijuana businesses to proceed pending the future adoption of any regulations as determined by the City Council.

### **FISCAL REVIEW:**

The adoption of this urgency ordinance will not have any fiscal impact on the City's budget.

### **LEGAL REVIEW**

The draft ordinance has been reviewed by the City Attorney's Office and approved as to form.

### **CONCLUSION:**

If the City Council adopts this urgency ordinance only limited marijuana cultivation, as allowed under state law, and marijuana related businesses allowed under Measure X,

will be permitted. These temporary restrictions will provide time for the City to study these issues and for the City Council to enact long-term policies and regulations.

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Attachments: [1. Urgency Ordinance](#)