



City Council Agenda Item

City Council Meeting Date: August 1, 2017

TO: Honorable Mayor and Council Members

FROM: Patrick Wiemiller, City Manager
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SUBJECT: Discussion and Direction Regarding Medical and Recreational Marijuana Uses in Lompoc

Recommendation:

Staff recommends the City Council:

1. Review this staff report and attachments and receive public input on medical and recreational marijuana uses within the City of Lompoc (City) in light of the passage of Proposition 64 on November 8, 2016,
2. Discuss that issue, and
3. Provide direction on the following topics for development/amendment of local laws governing:
 - a. Personal marijuana cultivation (indoor and outdoor);
 - b. Commercial marijuana operations (medical and recreational) which include dispensaries, cultivation sites, testing, manufacturing and delivery; and
 - c. Marijuana taxation and fees; or
4. Provide other direction.

Background:

At your June 20, 2017, regular City Council meeting, the City Council *Ad Hoc* Medical and Recreational Marijuana Subcommittee (Council Members Osborne and Vega) reported on that Subcommittee's efforts since it was created at your December 16, 2016, regular City Council meeting. The Subcommittee's brief written summary of its efforts and recommendations is attached hereto as Attachment 1. As a result of that report, City

Council directed staff to return to the City Council with a staff report providing options to deal with medical and recreational marijuana use as a result of the passage of Proposition 64 at the November 8, 2016, general statewide election.

Prior to commencing that discussion, staff thought it may again be helpful to provide an historical context of marijuana regulations in California.

Prior Medical Marijuana Regulations

In 1996, California voters adopted the Compassionate Use Act (CUA) as a ballot initiative, codified at Health & Safety Code section 11362.5. The CUA provided a limited defense from prosecution for cultivation and possession of medical marijuana. [*City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153.] Since the passage of the CUA in 1996, 29 other states and the District of Columbia have allowed some form of medical marijuana use.

In 2004, California Senate Bill (SB) 420 was enacted to clarify the scope of the CUA and to allow California cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the CUA. Those regulations and rules became known as the Medical Marijuana Program (MMP), which among other things enhanced the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects.

In 2007, the City Council prohibited medical marijuana dispensaries and deliveries City-wide by adopting Ordinance No. 1540(07).

In 2013, the California Supreme Court confirmed a city's ability to prohibit medical marijuana dispensaries within its boundaries. [*City of Riverside, supra*, 56 Cal.4th 729 (affirmed authority of cities to prohibit the operation of medical marijuana dispensaries within their jurisdiction through land use laws); see also, *Maral supra*, 221 Cal.App.4th 975, 978 (state law does "not preempt a city's police power to prohibit the cultivation of all marijuana within that city").]

In September 2015, the state legislature enacted the Medical Marijuana Regulation and Safety Act (MMRSA). The MMRSA created a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis. State licenses for those activities are scheduled to start being issued in January, 2018. A state license is required to lawfully operate any of these commercial medical marijuana businesses. Until 2018 (and for a year after commercial licenses start being issued) medical marijuana dispensaries (unless banned by local laws) may continue to operate as non-profit cooperatives/collectives.

In December 2015, the City adopted Ordinance No. 1621(15) amending Lompoc Municipal Code (LMC) Chapter 9.36 to reflect the MMRSA and, pursuant to the local control the City retained, prohibit uses permitted by the MMRSA. At that time, the City also adopted Resolution No. 6018(15) reaffirming and confirming the City's Zoning Code, enumerated under Title 17 of the LMC, is a permissive Zoning Code such that uses not specifically enumerated in the Zoning Code are prohibited.

Proposition 64 (AUMA)

At the general election of November 8, 2016, the voters approved Proposition 64, the Adult Use of Marijuana Act (AUMA). The purpose of the AUMA is to establish a comprehensive system to legalize, control and regulate the commercial cultivation, processing, manufacture, distribution, testing, and sale of nonmedical (recreational) marijuana, including marijuana products. Also under Proposition 64, as of November 9, 2016, California adults, age 21 and older, statewide, may legally, for personal recreational reasons, possess, smoke, give away (for no compensation) and ingest 28.5 grams of marijuana and to grow up to six marijuana plants at home.

In addition, the State, commencing January 1, 2018, is scheduled to issue permits for the commercial dispensing, delivering, manufacturing, testing, and cultivation of recreational marijuana. Due to the local control provisions of Proposition 64, the City can prohibit all of these operations within the jurisdictional boundaries of the City, except that cultivation of up to six plants for personal use within a private residence cannot be prohibited. However, the City can “reasonably” regulate the personal indoor cultivation of up to six marijuana plants at a personal residence.

Per Proposition 64 and LMC sections 9.36.030, .040 and .050 smoking of marijuana is prohibited in:

- any public place,
- any enclosed place, publicly- or privately-owned, which is open to the general public, with certain exceptions,
- any place of employment,
- anywhere the owner of private property prohibits tobacco smoking,
- any City recreational area, unless a sign designates a smoking area,
- any location within 1,000 feet from a school,
- a moving vehicle.

SB 94 Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)

Effective June 27, 2017, the MAUCRSA became law to attempt to harmonize California’s medical and recreational marijuana laws through a new regulatory scheme. SB 94 is meant to deal with inconsistencies between MMRSA (medical marijuana) and AUMA (recreational marijuana). It impacts local control in certain ways, as explained below, and imposes new/different state regulations than had existed before. That bill, in the form as enacted and signed into law, was supported by the League of California Cities and California Police Chief’s Association.

A brief summary of the provisions of SB 94 is below (see also Attachment 2):

- Perhaps most important changes for local government are:

- LOCAL LICENSE / STATE LICENSE – Under Business & Professions Code section 26200 cities retain authority to ban (or regulate) all commercial marijuana businesses. However, MMRSA required all license applicants show proof of compliance with local laws as a condition to receiving their state licenses (unlike AUMA). That has changed with the MAUCRSA, as applicants may (but are not required to) show prior compliance with local laws prior to state licensure.
 - State law still requires a state license will not be issued if in violation of local law.
 - However, the burden is on the local jurisdiction to provide the state with its ordinances and regulations related to commercial marijuana and to designate a contact person who will contact the state if local ordinances or regulations change, and on the state licensing agency to check with the local jurisdiction to see whether an applicant is in violation of local law.
 - If the local jurisdiction does not respond within 60 days saying the applicant is violating local law, then the licensing agency will presume the applicant is in compliance (Business & Professions Code § 26055).
 - This change creates even more of an urgency for local governments to adopt some local laws before January 1, 2018, when state licenses begin to be issued.
- LICENSE TYPES HARMONIZED – Types of licenses for medical and recreational marijuana will now be the same types. Before there were some variations.
 - Now there are a total of 20 types of licenses available for either medical or recreational marijuana, within categories of cultivation, manufacture, testing, retail, distribution (and microbusiness).
 - Licenses will be designated as either “M” (medical) or “A” (adult-use), except for testing laboratories which will be able to test both medical and adult-use cannabis products.
 - The requirements for “M” and “A” licenses are the same unless otherwise specified (Business & Professions Code section 26050).

- If a local government allows commercial marijuana businesses, then the following changes are important:

- DELIVERY ONLY DISPENSARIES – New definition of dispensaries expressly recognizes they can be “delivery only” with no retail store on site [Business & Professions Code subsection 26070(a)(1)].

- CANNABIS EXPOS AND COUNTY FAIRS – Temporary permits will be available to one-off events or farmers’ markets, where samples can be made available [Business & Professions Code subsection 26200(e)].
- TESTING LICENSE – These licenses are now good for both medical and recreational (before they were separate) [Business & Professions Code subsection 26050(b)].
- “MIXED USE DISPENSARIES” – Dispensaries can sell both medical and recreational marijuana, but will need a separate license for each category of business.

- Significant changes also include:

- BUREAU OF CANNABIS CONTROL – Main governing agency for all commercial marijuana operations renamed, and now known as BCC [Business & Professions Code subsection 26001(e)].
- NO OPEN CONTAINERS – There is a new infraction for drivers who have an open container of marijuana in a vehicle [Business & Professions Code subsection 11362.3(a)(4)].
- VERTICAL INTEGRATION – MMRSA previously barred vertical integration and limited most business owners to just one or a few license types. Now same owner can have multiple licenses, with only prohibition being testing license holders cannot have other types of licenses.

Other Jurisdictions Mentioned in the Ad Hoc Committee’s Report

Also included with this report and the other attachments are provisions from Santa Rosa and Shasta Lake’s municipal codes and a draft Los Angeles ordinance (Attachments 3, 4 and 5, respectively).

Discussion:

This report does not discuss the public policy issue of whether marijuana uses should or should not be allowed in Lompoc and should not be seen as an implied or expressed statement by its authors about that public policy issue. Its sole purpose is to comply with the City Council’s request for a report discussing the possible legal paths available to deal with those uses, as may be deemed appropriate by the City Council. Staff is prepared to implement the specific direction City Council provides regarding those and other legal options that may be forthcoming regarding this subject.

In order to assist the City Council with that discussion, a flow chart is attached (Attachment 2) showing the decisions confronting the City Council. In addition, below is a “decision tree” for the City Council to utilize in giving staff specific directions as to how the City Council wants to deal with medical and recreational marijuana in the City. By

2018, the State will begin issuing licenses for both medical and nonmedical (recreational) marijuana commercial business operations. Staff recommends, by 2018, the City specifically address whether some or all of the multiple state authorized marijuana businesses (e.g., cultivation, transportation, manufacturing, testing, retail sales) be expressly permitted or prohibited. Some may argue a failure of the City to address the specific license types, which will be available from the State starting in 2018, may allow some of those commercial activities within the City.

1) *Indoor cultivation for personal use (cannot prohibit up to six plants per residence); (NOTE: A city can “reasonably” regulate indoor cultivation):*

- regulations
 - lighting requirements
 - water use limitations
 - odor control
 - electrical/mechanical/building permits
 - use permit
 - inspections at commencement
 - annual inspections
 - security requirements
 - access by those under 21
 - fees for processing
 - require landlord approval

2) *Outdoor cultivation for personal use – ban or regulate:*

- regulations
 - number
 - location
 - odor control
 - water use limitations
 - nighttime illumination
 - electrical/mechanical/building permits
 - use license
 - security requirements
 - access by those under 21
 - inspections at commencement
 - annual inspections
 - fees for processing
 - require landlord approval

3) Personal marijuana use:

- regulations
 - where smoking not allowed, in addition to State restrictions
 - unenclosed areas in public parks and other City-owned property
 - common areas in multi-family dwellings
 - odor control
 - locations on private property where smoke may cross property lines
 - require landlord approval

4) Commercial marijuana operations (medical):

- dispensaries – ban or regulate
 - regulations
 - how many (lottery/first come/rating criteria)
 - how large
 - where
 - lighting use
 - water use limitations
 - electrical/mechanical/building permits
 - business tax certificate
 - use license
 - odor control
 - inspections at commencement
 - annual inspections
 - security requirements
 - fees for processing
 - require landlord approval
- cultivation – ban or regulate
 - regulations
 - indoor
 - outdoor
 - how many (lottery/first come/rating criteria)
 - how large
 - where
 - lighting use
 - water use limitations
 - electrical/mechanical/building permits
 - business tax certificate
 - use license
 - odor control
 - inspections at commencement
 - annual inspections
 - security requirements
 - access by those under 21
 - fees for processing
 - require landlord approval

4) Commercial marijuana operations (medical) (continued):

- testing – ban or regulate
 - regulations
 - how many (lottery/first come/rating criteria)
 - how large
 - where
 - lighting use
 - water use limitations
 - electrical/mechanical/building permits
 - business tax certificate
 - use license
 - odor control
 - inspections at commencement
 - annual inspections
 - security requirements
 - access by those under 21
 - fees for processing
 - require landlord approval
- manufacturing - ban or regulate
 - regulations
 - how many (lottery/first come)
 - how large
 - where
 - lighting use
 - water use limitations
 - electrical/mechanical/building permits
 - business tax certificate
 - use license
 - odor control
 - inspections at commencement
 - annual inspections
 - security requirements
 - access by those under 21
 - fees for processing
 - require landlord approval
- delivery – ban or regulate
 - regulations
 - from outside the City
 - from inside the City
 - business tax certificate
 - use permit
 - odor control
 - security requirements
 - access by those under 21
 - fees for processing

5) Commercial marijuana operations (recreational):

- dispensaries – ban or regulate
 - regulations
 - how many (lottery/first come/rating criteria)
 - how large
 - where
 - lighting use
 - electrical/mechanical/building permits
 - business tax certificate
 - use license
 - odor control
 - inspections at commencement
 - annual inspections
 - security requirements
 - access by those under 21
 - fees for processing
 - require landlord approval
- cultivation – ban or regulate
 - regulations
 - indoor
 - outdoor
 - how many (lottery/first come/rating criteria)
 - how large
 - where
 - lighting use
 - water use limitations
 - electrical/mechanical/building permits
 - business tax certificate
 - use license
 - odor control
 - inspections at commencement
 - annual inspections
 - security requirements
 - access by those under 21
 - fees for processing
 - require landlord approval

5) Commercial marijuana operations (recreational) (continued):

- testing – ban or regulate
 - regulations
 - how many (lottery/first come/rating criteria)
 - how large
 - where
 - lighting use
 - water use limitations
 - electrical/mechanical/building permits
 - business tax certificate
 - use license
 - odor control
 - inspections at commencement
 - annual inspections
 - security requirements
 - access by those under 21
 - fees for processing
 - require landlord approval
- manufacturing - ban or regulate
 - regulations
 - how many (lottery/first come/rating criteria)
 - how large
 - where
 - lighting use
 - water use limitations
 - electrical/mechanical/building permits
 - business tax certificate
 - use license
 - odor control
 - inspections at commencement
 - annual inspections
 - security requirements
 - access by those under 21
 - fees for processing
 - require landlord approval
- delivery – ban or regulate
 - regulations
 - from outside the City
 - from inside the City
 - business tax certificate
 - use license
 - odor control
 - security requirements
 - access by those under 21
 - fees for processing
 - require landlord approval

6) Taxation on Commercial Operations:

- Retail sales
- Cultivation (agricultural)
- Manufacturing of edibles, etc.
- Delivery services
- Testing

Except for applicable existing business tax receipts, any other taxes for the uses listed in number 6 must be approved by the voters. If new categories for business tax purposes are created for any of the commercial marijuana operations, then those must also be approved by the voters.

Two common types of local marijuana taxes are to impose a percentage tax (*e.g.*, 5-15%) on the gross receipts of marijuana businesses, and also to impose a flat rate (*e.g.*, \$10-25) per square foot of cultivation.

Some cities are exploring the use of development agreements with commercial marijuana operators. The City may enter into development agreements with certain marijuana business operations with annual City revenues [Government Code subsection 65865(a)].

Development agreements are a mechanism to impose additional financial, service and regulatory conditions on large scale land use conducted by property owners.

The City has received various comments from members of the public, which are attached for review and consideration (Attachment 6).

Fiscal Impact:

Staff time will be expended to review and approve permit applications. However, these impacts may be mitigated through the imposition of a permit processing fee to be established at a later date. Proposition 26, passed by voters in 2010, regulating fees provides for the recovery of costs of services such as the processing and issuance of permit applications. The fees and charges would need to be established in accordance with Proposition 26 and be equal or less than the cost of providing the applicable service. If fees and charges are imposed to review and approve permit applications in the amount less than the cost of providing the applicable service, then the cost not recovered through fees and charges would be subsidized by the City's General Fund. If such a subsidy were to be established, then fewer resources would be available from existing revenues for other activities such as Public Safety, Parks, and Streets.

It is uncertain what taxes will be generated by commercial marijuana operations. It is also unclear what additional public safety services will be needed to monitor those operations. Other than the direct cost of processing applications for services included in fees and charges in accordance with Proposition 26, general public safety services cannot be recovered from fees and charges imposed to recovery cost of permit applications. Taxes, if imposed on commercial operations, would be available to pay for additional costs related to the impacts of marijuana commercial operations.

Below is some information from other cities that have approved and estimated the taxes to be generated in their communities from taxing marijuana commercial operations:

Palm Springs – tax rate 10% gross receipts (up to 15% tax approved) for six permitted dispensaries; population 46,000; Estimated Annual Revenue: \$1.14 Million.

Desert Hot Springs (population 28,000) – tax rate 10% gross receipts with three dispensaries approved; Estimated Annual Revenue: \$200,000.

Santa Ana (population 335,000) – tax rate up to 10% gross receipts, starts at 5%; 20 allowed dispensaries; Estimated Annual Revenue:\$1.5 Million.

San Jose (population 1,000,000) – tax rate 10% gross receipts on 16 permitted dispensaries; Estimated Annual Revenue: \$4.5 Million.

City of Grover Beach (population 13,000) – voters approved marijuana taxes. 5% tax on gross receipts of medical marijuana businesses. 10% tax on gross receipts of recreational marijuana businesses. \$25 per square foot of canopy on the first 5,000 square feet and \$10 per square foot thereafter on marijuana cultivation; Estimated Annual Revenue: \$1-2 Million annually.

King City (population 14,000) – projected future marijuana tax revenues \$1-2 Million annually.

City of Gonzales (population 8,400) – proposed marijuana taxes projected to reach \$1.6 Million.

On a per capita basis, the above estimated tax revenue ranges from a low of \$4.50 per person per year in Santa Ana and San Jose, \$150 per person in Grover Beach and King City, to a high of \$190 per person per year in Gonzales. Due to the significant variance in estimated revenues, the above numbers will obviously need to be adjusted due to the City's population size and other local factors, were a marijuana tax proposal added to the City's next general election in November 2018. If a marijuana gross receipts tax proposal is provided by the City Council, included in the general election in November 2018, and passed by the voters, then the tax would likely generate revenues beginning in April 2019. Based on the average revenue estimates from the cities above and their average populations, an estimated \$400,000 to \$500,000 of tax revenue annually may be generated for City services. For the Biennial Budget Fiscal Years (FY) 2017-2019, additional revenues may be between \$100,000 and \$125,000 through June 30, 2019.

Proposition 64 also imposes a new statewide excise tax of 15% on purchasers of marijuana as well as a statewide cultivation tax. There will be limited local return revenues available to certain cities "to assist with law enforcement, fire protection, or other local programs addressing public health and safety associated with the implementation of the Control, Regulate and Tax Adult Use of Marijuana Act." [Revenue & Taxation Code subsection 34019(f)(3)(c)]. However, there will be no "grants to local governments which

have banned the cultivation, including personal cultivation... or retail sale of marijuana or marijuana products..." [Revenue & Taxation Code subsection 34019(f)(3)(c)].

The State Legislative Analyst's Office estimates State and local revenues from marijuana taxes will annually be anywhere from a few million dollars to \$1 Billion. The grants available to cities constitute about 6.5% of the State tax revenue remaining after substantial sums are disbursed to fixed costs (anywhere from near \$75 Million to over \$150 Million in fixed costs) and one time implementation costs. If half of California's cities are eligible for grants constituting about 7% of approximately \$200-\$400 Million in State revenue annually (a reasonable estimate after fixed allocations are made), then the average city share would be within a rough range from \$60,000 to \$125,000 annually. Those amounts, of course, could increase if greater revenues are generated. Implementation of the possible distributions to eligible cities would likely occur in the budget year after the State determines their costs related to the taxes collected. It is unknown when the State will fully implement the components but it is beginning implementation during FY 2017-2018. Full distribution to cities eligible for distributions will likely not occur until FY 2019-2020 although partial distributions may occur during FY 2018-2019.

Conclusion:

Staff looks forward to a productive, courteous and robust discussion of this matter. Once specific direction is provided, staff will return to the City Council, as soon as possible, with an ordinance amending the LMC to implement that direction.

Respectfully submitted,

Patrick Wiemiller, City Manager

Joseph W. Pannone, City Attorney

- Attachment:
- 1) [Ad Hoc Committee Report](#)
 - 2) [Proposition 64 Flow Chart](#)
 - 3) [Santa Rosa Code Provisions](#)
 - 4) [Shasta Lake Code Provisions](#)
 - 5) [Draft Los Angeles Code Provisions](#)
 - 6) [Communication from the Public](#)