



AGENDA NO: C-3
MEETING DATE: January 24, 2017

Staff Report

TO: Honorable Mayor and City Council **DATE:** January 12, 2017
FROM: Joseph W. Pannone, City Attorney
Ikani Taumoepeau, Deputy City Manager
SUBJECT: Summary of Proposition 64 and Direction from Council for Further Action

RECOMMENDATION

Staff recommends Council review this report and provide direction as to what type of public outreach process the Council desires for discussing potential City actions regarding marijuana cultivation and dispensing in Morro Bay and input whether the City should:

- 1) regulate the personal cultivation of nonmedical marijuana indoors,
- 2) regulate or ban the personal cultivation of nonmedical marijuana outdoors,
- 3) regulate nonmedical marijuana businesses,
- 4) update current land use regulations for nonmedical and medical marijuana operations,
- 5) impose local taxes on marijuana within the parameters of Proposition 218, and
- 6) revise existing restrictions regarding medical marijuana cultivation and store-front and mobile dispensing.

FISCAL IMPACT

The fiscal impact on the City as a result of Proposition 64 is unclear at this time. Some tax revenue may be received from the State taxes imposed by Proposition 64. Additional revenue would be available if the City's voters approved a tax measure if the City allowed cultivation and commercial dispensing of marijuana. Depending on the direction from Council there would be staff and legal costs expended to conduct public outreach and prepare the necessary amendments to the Morro Bay Municipal Code, and to conduct an election regarding taxation of certain activities related to marijuana.

BACKGROUND

One of the City Council's goals for 2017 is to provide for a robust community discussion regarding marijuana use and operations in Morro Bay. That discussion was to occur after the November, 2016, election, which included Proposition 64, a measure legalizing certain recreational uses of marijuana.

Pre-Proposition 64 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 marijuana. (City of Claremont v. Kruse (2009) 177 Cal.App.4th 1153).

In 2004, California Senate Bill (SB) 420 was enacted to clarify the scope of the CUA and to allow

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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 2009, the City Council prohibited medical marijuana dispensaries City-wide by adopting Ordinance No. 547. That regulation remains in effect.

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). MMRSA created a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis.

In January 2016, the City Council adopted Ordinance No. 599 amending Morro Bay Municipal Code (MBMC) Chapter 9.06 to reflect MMRSA and prohibiting the establishment of medical marijuana dispensaries and marijuana cultivation citywide. At that time, the Council also adopted Resolution No. 04-16 reaffirming and confirming the City's Zoning Code, established as Title 17 of the MBMC, is a permissive Zoning Code such that uses not specifically enumerated in the Zoning Code are prohibited. That Resolution affirmed medical marijuana was a prohibited use in all zones throughout Morro Bay, except of course as otherwise may be preempted by the above state laws.

Post-Proposition 64 Recreational Marijuana Regulations

Summary –

At the general election of November 8, 2016, the voters approved Proposition 64, the Adult Use of Marijuana Act (AUMA). The purpose of AUMA is to establish a comprehensive system to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including marijuana products. As of November 9, 2016, California adults, age 21 and older, will be allowed to possess marijuana and grow certain amounts at home for personal nonmedical use.

Expanded Description –

The AMUA (i) legalizes marijuana under state law, for use by adults 21 or older, (ii) designates state agencies to license and regulate marijuana industry, (iii) imposes state excise tax of 15% on retail sales of marijuana, and state cultivation taxes on marijuana of \$9.25 per ounce of flowers and \$2.75 per ounce of leaves; (iv) exempts medical marijuana from some taxation, (v) establishes packaging, labeling, advertising, and marketing standards and restrictions for marijuana products, (vi) prohibits marketing and advertising marijuana directly to minors, (vii) allows local regulation and taxation of marijuana and (viii) authorizes resentencing and destruction of records for prior marijuana convictions.

Licensing authorities are required to begin issuing licenses for commercial nonmedical marijuana activity by January 1, 2018. However, effective November 9, 2016, private individuals 21 years and older, may cultivate up to six living marijuana plants indoors or outdoors, at home, subject to reasonable local regulations.

Local government agencies are authorized to adopt business regulations and land use regulations for nonmedical marijuana activities within their jurisdictional boundaries. It is highly recommended copies of local ordinances regulating nonmedical marijuana be mailed to the Department of Consumer Affairs, the Department of Food and Agriculture, and the Department of Public Health. State licensing authorities may not issue a license to a commercial nonmedical marijuana business if such operation violates a local ordinance.

Noncommercial personal cultivation

Agencies may not adopt or enforce bans on private indoor cultivation of up to six living nonmedical marijuana plants, but may impose prerequisites to doing so in the form of a reasonable regulatory scheme. "Indoors" includes greenhouses located 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. Local governments may regulate or ban all outdoor personal cultivation, so long as nonmedical use of marijuana is unlawful under federal law.

Possession, transportation, purchase or giving away of nonmedical marijuana

Agencies may not prohibit possession, processing, transportation, purchasing or giving away by a person 21 years of age or older, to another person 21 years of age or older, without any compensation, of up to 28.5 grams of marijuana in non-concentrated form and not more than eight grams of marijuana in a concentrated form, including marijuana products.

Commercial nonmedical Marijuana Businesses

As mentioned earlier, the State licensing authorities may not issue a license to a commercial nonmedical marijuana business if such operation violates a local ordinance. Therefore, local agencies that wish to ban or regulate marijuana businesses within their jurisdiction must update or adopt an ordinance to that effect prior to the date the state begins issuing licenses, which is anticipated to begin in late 2017. Absent a local ordinance, a licensed nonmedical marijuana business may operate in the jurisdiction without local permission or permitting.

Permissive zoning code not sufficient

Proposition 64 does not contain the same protective language as the Medical Marijuana Regulation and Safety Act (MMRSA) with respect to permissive zoning. For example, Proposition 64 designates nonmedical marijuana as an agricultural product, therefore, if a city's permissive zoning code authorizes agricultural uses, the city may be precluded from arguing that marijuana is prohibited. Therefore, cities that wish to regulate or ban nonmedical marijuana activities should adopt express prohibitions, even if they operate under a permissive zoning code. Absent a local ordinance, a licensed nonmedical marijuana business may operate in the jurisdiction without local permission or permitting.

Deliveries from outside the jurisdiction

Local agencies may ban or regulate deliveries within their territories, but may not prevent the use of public roads by a licensed delivery company from passing through its jurisdiction to deliver marijuana outside their boundaries.

Taxation

Proposition 64 does not pre-empt local taxation. However, medical marijuana and marijuana cultivated for personal use are exempt from state and local taxes. All new taxes on marijuana must comply with Proposition 218. Local governmental agencies may be eligible to receive a portion of taxes and licenses fees collected by the state, to fund local programs that reduce DUI and negative health impacts related to marijuana legalization.

Current City Regulations re Medical Marijuana

Purpose

The purpose of this MBMC Chapter 9.06 is to prohibit the establishment of marijuana and medical marijuana dispensaries and the cultivation and processing of marijuana and medical marijuana, as defined herein, within the City of Morro Bay. Also, nothing prohibited by federal or state law could be deemed approved by Chapter 9.06.

Dispensaries

Dispensaries of medical marijuana, with certain exceptions, are prohibited. NOTE: Chapter 9.06 only focuses on medical marijuana, because, at that time, recreational marijuana was illegal under state law.

Cultivation

Cultivation of marijuana, with exceptions for medical marijuana cultivated by individuals for personal use or legally valid caregivers and collectives for qualified patients, are prohibited.

DISCUSSION

Based on the foregoing, staff is seeking direction from the Council on what steps, if any, staff should take regarding use, cultivation and dispensing of medical and recreational within Morro Bay.

First, staff is seeking direction from the Council as to what methods and the extent of public outreach and participation this subject should involve, prior to being brought back to the Council for discussion and action.

Second, staff would appreciate input from the Council, on which of the below topics should be part of that public discussion and returned for possible action by the Council:

- 1) personal cultivation of nonmedical marijuana indoors,
- 2) personal cultivation of nonmedical marijuana outdoors,
- 3) nonmedical marijuana businesses,
- 4) current land use regulations for nonmedical and medical marijuana operations,
- 5) local taxes on marijuana within the parameters of Proposition 218, and
- 6) existing restrictions regarding medical marijuana cultivation and store-front and mobile dispensing.

Third, staff would appreciate the Council's input regarding the timing of the foregoing, understanding, at this time: (i) indoor and outdoor cultivation, by persons at least the age of 21, of up to 6 plants of recreational marijuana is allowed by Proposition 64 and (ii) dispensaries of recreational marijuana are allowed by Proposition 64, if they receive a State issued license, which may occur later this year or early next year.

CONCLUSION

Staff recommends Council review the foregoing and provide further direction to staff as it deems appropriate.