

AUMA—
Adult Use of
Marijuana Act
(Proposition 64)

Introduction

Adult Use of Marijuana Act—“AUMA” Proposition 64 (passed by the California Voters November 8, 2016)

- governs nonmedical (recreational) marijuana use and related activities

Medical Marijuana Regulation and Safety Act—“MMRSA” (AB266, SB243 and SB643) (adopted by the Legislature and effective in January 2016)

- governs medical marijuana use and related activities

Introduction (cont.)

Federal Law—Controlled Substances Act, Title 21

- Prohibits the possession or use of marijuana, medical or nonmedical
- U.S. Supreme Court (2005) ruled that federal agencies may continue to prosecute individuals who possess or use marijuana, even if its legal under a state's law
- Currently, U.S. Department of Justice (DOJ) generally chooses not to prosecute most marijuana users and businesses that follow state laws (consistent with federal priorities including preventing use by minors and interstate transport)
 - Under the new federal administration — this could change

Previous Action Taken by Council

AUMA

- On October 12, 2016, the Council adopted Resolution 2016-92, officially opposing Proposition 64 (as noted, now referred to as AUMA)

MMRSA

- On December 16, 2015, the Council adopted Ordinance No. 2015-19, re-affirming and confirming that the cultivation of marijuana and any related uses (including dispensaries) is prohibited pursuant to the permissive zoning code enacted in the Encinitas Municipal Code.
 - As a result, the state is prohibited from issuing licenses for medical marijuana cultivation and any related uses in the City.
 - Permissive zoning essentially means that if the zoning code doesn't expressly permit a particular land use, then that land use is expressly prohibited.

Actions the Council Did Not Take

Regarding deliveries under MMRSA, cities may not rely on permissive zoning: therefore, if a city does not expressly prohibit the delivery of medical marijuana, delivery may be authorized under a state dispensary license (discussed later)

- On December 16th , 2015, the Council considered a draft ordinance expressly prohibiting mobile dispensing (among other things) and delivery of medical marijuana—Council did not adopt the draft ordinance.
 - Instead, the Council directed a Council Subcommittee to study mobile dispensing and point to point delivery of medical marijuana and return with recommendations at a later date.
 - The subcommittee has convened, and it is anticipated that it will return to Council with recommendations in the near future.

Agenda—Preface

- Summary of the AUMA
- Key Differences/Similarities: AUMA VS. MMRSA
- AUMA Overview
 - Personal Use
 - Personal Cultivation
 - State Licensing of Commercial Operations
 - Local Regulation of Commercial Operations
 - Taxation of Nonmedical Marijuana
 - Allocation of State Tax Revenues
- Local Policy Issues—Questions for Action

Summary—AUMA

- Legalizes the nonmedical use of marijuana by persons 21 years of age and over and the personal cultivation of up to six marijuana plants
- Creates state regulatory and licensing system for the commercial cultivation, testing, and distribution of nonmedical marijuana, and the manufacturing of nonmedical marijuana products.
- Allows local governments to prohibit or regulate and license commercial nonmedical marijuana businesses
- Imposes taxes on marijuana
- Changes penalties for marijuana related crimes

Key Differences/Similarities: AUMA and MMRSA

For purposes of local regulation, there are four key differences between the AUMA and MMRSA.

- 1) **Focus:** AUMA regulates nonmedical (recreational) marijuana while MMRSA regulates medical marijuana.
- 2) **Taxation:** MMRSA authorizes counties to impose excise taxes. AUMA exempts medical marijuana from state and local sales tax. AUMA imposes state taxes on the purchase and cultivation of non-medical marijuana. AUMA does not preempt local taxation of nonmedical marijuana.
- 3) **Local Regulations:** Under AUMA and MMRSA , local governments may permit and regulate, or prohibit commercial marijuana businesses within their jurisdictions.
- 4) **Personal Cultivation:** Under MMRSA, cities' may prohibit all personal cultivation. Under AUMA, cities can reasonably regulate but cannot prohibit private indoor cultivation; however, cities may regulate or prohibit private outdoor cultivation.

Personal Use

- AGE: 21 years of age or older to engage in marijuana activities.
- POSSESSION: Possess, process, transport, purchase, obtain, or give away 28.5 grams of non-concentrated and nonmedical marijuana, or 8 grams of concentrated marijuana products
- USE: Smoke or ingest marijuana or marijuana products
- CULTIVATION: Possess, plant, cultivate, harvest, dry or process up to 6 plants per residence for personal use

Restrictions on Personal Use

- No smoking in a public place (except where authorized locally).
- No smoking where smoking tobacco is prohibited.
- No smoking within 1,000 feet of a school, day care center or youth center.
- No smoking while driving or riding in a vehicle.
- Cities may prohibit smoking and possession in buildings owned, leased, or occupied by the city.
- Employers, including cities, may maintain drug-free workplaces.

Personal Cultivation

- Cities may “reasonably regulate” but not prohibit personal indoor cultivation of up to 6 marijuana plants within a private residence.
- Includes cultivation within a greenhouse or other structure on the same parcel of property that is not visible from a public space.
- Cities may regulate or prohibit personal outdoor cultivation.

State Licensing Commercial Operations

State licensing and enforcement will be under direction of the (newly formed) Bureau of Marijuana Control divided among:

- **Department of Consumer Affairs:** transportation, storage, distribution, and sale
- **Department of Food and Agriculture:** cultivation
- **Department of Public Health:** manufacturers and testing laboratories

State licensing to begin no later than January 1, 2018.

State Licensing Commercial Operations (cont.)

- All nonmedical marijuana businesses must have a state license
- A state license cannot be issued to an applicant whose operations would violate the provisions of any city ordinances or regulations
- If a city's ordinances are silent on nonmedical marijuana, the state can issue a license for a business in that city without its input
- State licenses will be valid for one year
- Separate state license required for each business location (may have multiple licenses— except for testing license)

Local Regulation/Prohibition Commercial Operations

- Cities may adopt and enforce ordinances regulating or completely prohibiting state-licensed marijuana businesses (but may not prohibit use of public roads for deliveries in another jurisdiction).
- State standards are minimums. Cities may establish additional standards, requirements and regulations regarding health and safety, environmental protection, testing, security, food safety and worker protections.

Local Regulation/Prohibition Commercial Operations (cont.)

- AUMA does not require a city to enact a regulatory scheme or prohibition by certain date
- If a city's prohibition or regulations are in place before a business applies for state license, the state license will either not be issued or be subject to local regulations
- Permissive zoning code—not applicable

Taxation of Nonmedical Marijuana

- 15% state excise tax of gross retail sales receipts
- \$9.25 per ounce on marijuana flowers (state cultivation tax)
- \$2.75 per ounce on marijuana leaves (state cultivation tax)
- Marijuana cultivated for personal use is exempt from cultivation tax
- Medical marijuana is exempt from state and local sales tax
- AUMA does not prevent cities from imposing local taxes (except sales tax on medical marijuana)
- New State Account—California Marijuana Tax Fund (includes fines imposed on businesses and individuals in violation of AUMA)

Allocation of State Tax Revenues

- After paying State Departments back for regulatory costs not covered by license fees and specified amounts for grants and research related to the impacts of AUMA—tax revenues will be distributed as follows:
- 60% for youth programs, substance abuse education, prevention and treatment
- 20% for environmental cleanup and remediation
- 20% for state and local programs that reduce DUI and grant programs designed to reduce negative health impacts resulting from marijuana legalization

Local Policy Issues—Questions for Action

- 1) Should personal indoor cultivation be regulated?
- 2) Should personal outdoor cultivation be regulated or prohibited?
- 3) Should nonmedical marijuana businesses be regulated or prohibited and, if so (in either instance), all or some categories?
- 4) If nonmedical marijuana businesses should be regulated, should they be regulated by the City and state, or by state only?
- 5) If nonmedical marijuana businesses should be regulated, should land use regulations be enacted to determine appropriate locations (zoning)?
- 6) If nonmedical marijuana businesses should be regulated, should such businesses be subject to additional local (City) taxation, and if so, which businesses?

Direction to staff (including MMRSA)

Council Direction to Subcommittee

- Work with the City Attorney and Staff and return to Council with additional information and recommendations regarding:
 1. Allowing limited cultivation
 2. Delivery component
 3. A scientific survey