



# CITY OF SANTA BARBARA

## COUNCIL AGENDA REPORT

**AGENDA DATE:** October 18, 2016

**TO:** Mayor and Councilmembers

**FROM:** Planning Division, Community Development Department

**SUBJECT:** Extension Of Interim Emergency Ordinance Prohibiting Non-Medical Marijuana-Related Businesses

### **RECOMMENDATION:**

That Council adopt an Interim Emergency Ordinance Of The Council Of The City Of Santa Barbara Extending Ordinance No. 5763 to Prohibit Non-Medical Marijuana Businesses For 22 Months And 15 Days Or Until September 5, 2018.

### **DISCUSSION:**

#### Background

On September 6, 2016, in order to retain local control over marijuana-related land uses, the City Council adopted by reading in full, and by unanimous vote, an interim zoning ordinance (Interim Zoning Ordinance) prohibiting non-medical marijuana-related businesses in the City. The Interim Zoning Ordinance was effective on the date of adoption for a maximum period of 45 days, as allowed under California Government Code Section 65858. This initial prohibition expires on October 21, 2016 unless Council adopts an ordinance extending the Interim Zoning Ordinance for up to 22 months and 15 days by four-fifths vote. If the extension is adopted, the Interim Zoning Ordinance will expire on September 5, 2018, unless otherwise repealed by Council on an earlier date. This time extension is necessary to see if the Adult Use of Marijuana Act (AUMA) is approved by the voters on the November 8, 2016 election ballot, and then to determine if and how Council would like to adopt an ordinance to address the zoning impacts and secondary impacts to public health, safety, and welfare arising from the AUMA.

#### Adult Use of Marijuana Act

The AUMA is a statewide ballot measure known as Proposition 64 that will be considered for approval by the people of the State of California on the November 8, 2016 General Election ballot. The AUMA has the political support of Lt. Governor Gavin Newsom and the California Medical Association. Recent polls show approximately 60% support among California voters for legalization, and according to government filings, pro-

Proposition 64 interests have contributed \$11.4 million to passing the measure, while opponents have raised less than \$200,000. The AUMA received a relatively favorable ballot summary from the Attorney General, who stated that it would prohibit marijuana sales to persons under the age of 21, impose a 15% statewide excise tax, and allow some degree of local regulation and taxation of marijuana. Medical marijuana would be exempt from state sales and use taxes.

If approved by the voters, the AUMA would legalize the cultivation, processing, manufacture, distribution, testing, sale, transport, purchase, use, and possession of non-medical marijuana up to certain limits by adults over the age of 21. Subject to state licensing, it allows for commercial marijuana-related businesses, including retail and delivery services. The AUMA permits local governments to generally regulate marijuana-related activities, but it does not allow complete prohibition of indoor cultivation of marijuana for personal use. Under the AUMA, the City may reasonably regulate indoor cultivation of up to six marijuana plants and prohibit, if it so chooses, outdoor cultivation.

The AUMA provides for some local regulation of marijuana-related land uses, such as:

- Banning all marijuana-related commercial activity;
- Banning outdoor cultivation, unless the California Attorney General determines marijuana is no longer illegal under federal law; and
- Reasonably regulating indoor cultivation in private residences, but not banning it outright.

If approved, the AUMA would become effective on November 9, 2016, the day after the election, and personal cultivation and possession would become legal as allowed under the Act. Non-medical marijuana businesses will require licenses issued by the State. The AUMA requires that the State begin issuing non-medical marijuana business licenses by January 1, 2018. The League of California Cities anticipates that the State will not begin issuing such licenses before late 2017.

#### Possible Next Steps for Regulating Non-Medical Marijuana-Related Businesses

Staff have begun meeting to discuss the potential future work program necessary to adopt a permanent Zoning Ordinance regulating non-medical marijuana-related businesses. Staff expects that it could be an approximate 18-month effort from initiation to ordinance adoption given the sensitivity of the land use. Staff envisions that the development of a new ordinance will be similar to the process used to establish the City's Medical Cannabis Dispensaries Ordinance.

If the City does not regulate non-medical marijuana activity the State will have the sole authority to determine where, how, and how many commercial marijuana activities occur within the City. A new ordinance will need to address the cultivation, distribution, manufacture, retail sales, and transportation of non-medical marijuana. Additionally, existing medical marijuana dispensaries, if not prohibited by a local ordinance, may apply for a State license to sell non-medical marijuana from existing storefront locations. The

City currently has two approved medical marijuana dispensaries and if an ordinance either prohibiting or regulating retail sales of non-medical marijuana is not adopted, these dispensaries could become licensed to sell non-medical marijuana and operate solely under regulation by the State.

At a minimum, if non-medical marijuana businesses and cultivation is allowed, the issues that need to be addressed in a new ordinance include:

- Locations where non-medical marijuana land uses would be allowed (e.g., cultivation, manufacture, sales)
- Operational standards for various aspects of the businesses
- the process for permitting the businesses and opportunities for appeal
- Potential regulatory fees
- Level of enforcement effort and policing

The work program for developing an ordinance would include, at a minimum:

- Extensive public outreach and/or workshops
- Draft ordinance development
- Environmental review
- Planning Commission review
- Council Ordinance Committee review
- Council Finance Committee review
- City Council review and adoption

#### City Administrator's Written Report to Council

Government Code section 65858 requires that a written report describing the measures taken to alleviate the condition which led to the initial adoption of the Interim Zoning Ordinance be issued ten days prior to the expiration of the Interim Zoning Ordinance on October 21, 2016. In furtherance of this requirement, on October 3, 2016 the City Administrator issued a memorandum to the City Council, consistent with section 65858, describing the actions that staff from the City Attorney's Office, Community Development Department, Finance Department, and Police Department have taken, and intend to take to address the passage of the AUMA. The memorandum is Attachment 1 to the Council Agenda Report.

#### **BUDGET/FINANCIAL INFORMATION:**

The extensive public outreach and research necessary to draft an ordinance of this nature will require significant staff resources from various City departments. This work effort was not anticipated in the FY 2017 budget, and was not included in previous workload priority discussions with the City Council. Once a project scope is refined, staff will return to City Council with a staffing recommendation that may include an appropriation request and/or a service reduction in other areas, such as Planner Consultations and Pre-Application Review.

**ATTACHMENT:** Memorandum from Paul Casey, City Administrator

**PREPARED BY:** Tony Boughman, Assistant Planner

**SUBMITTED BY:** George Buell, Community Development Director

**APPROVED BY:** City Administrator's Office



City of Santa Barbara  
Community Development Department  
**Memorandum**

**DATE:** October 3, 2016

**TO:** Mayor and Council

**FROM:** Paul Casey, City Administrator 

**SUBJECT:** Interim Prohibition of Non-Medical Marijuana Businesses

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**Background**

This memorandum is in response to Council action on September 6, 2016 adopting an Interim Emergency Zoning Ordinance Of The Council Of The City Of Santa Barbara Prohibiting Non-medical Marijuana Businesses (Interim Ordinance). This is consistent with California Government Code Section 65858, and Santa Barbara City Charter Section 511. Pursuant to Section 2.F of the Interim Ordinance, the City Administrator shall prepare a written report to City Council describing the measures taken to alleviate conditions which led to the adoption of the Interim Zoning Ordinance.

**Conditions which led to the adoption of this Ordinance**

The California Adult Use of Marijuana Act (AUMA, see attached FAQ) qualified for the November 2016 General Election ballot as Proposition 64. If successful, it would legalize non-medical marijuana-related businesses statewide which could have adverse implications for the City of Santa Barbara in the form of security, circulation and parking, and neighborhood compatibility.

**Measures taken to alleviate the Conditions**

Since the adoption of the Interim Ordinance on September 6, 2016, staff from the City Attorney's Office, Community Development Department, Finance Department, and Police Department met to discuss future work programs that will need to be completed in order to adopt a permanent Zoning Ordinance amendment regulating non-medical marijuana-related businesses. The City Attorney's Office participated in a seminar by the Bureau of Medical Cannabis Regulation.

The work programs will involve a scoping meeting with City Council, public outreach and workshops, and review by Planning Commission, Finance Committee, Ordinance Committee, and City Council. The preparation of presentation materials, maps, draft ordinances, reports, and a web site will require dedication of staff time and resources in various City departments.

Community Development staff are currently preparing a project budget and schedule, and assessing workload in order to advise in greater detail what the preparation of a Zoning Ordinance amendment would entail.

**Next Steps**

If Proposition 64 is successful, Planning Division staff would conduct a scoping hearing with the City Council in January 2017 to define the parameters of a necessary Zoning Ordinance amendment to implement AUMA. Staff estimates that from project initiation to Ordinance adoption, the work effort would require approximately 18 months in order to elicit community input to ensure that a broad range of public input is heard and to allow for public hearings by the Planning Commission, Ordinance Committee, Finance Committee, and City Council.

**Attachment:**

League of California Cities Frequently Asked Questions regarding AUMA

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

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<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?

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<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.



**COMMUNITY DEVELOPMENT DEPARTMENT  
INTERIM EMERGENCY ZONING  
ORDINANCE EXTENSION PROHIBITING  
NON-MEDICAL MARIJUANA BUSINESSES**

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City Council – October 18, 2016

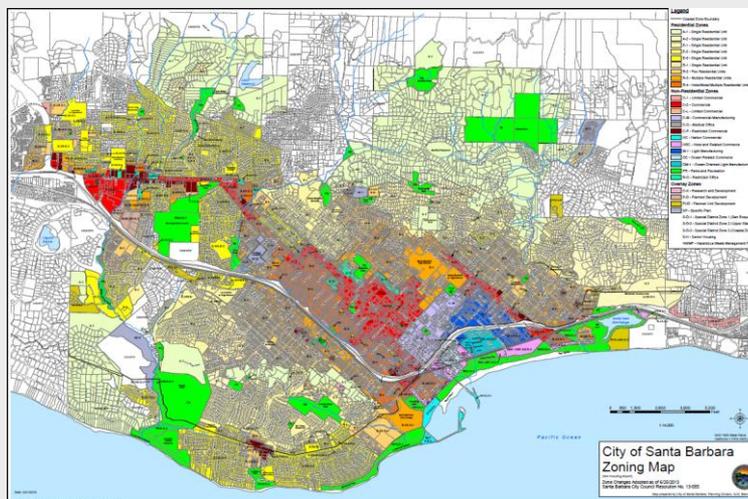
## Prop 64 – Adult Use of Marijuana Act (AUMA)

- Would legalize non-medical marijuana related businesses statewide
  - Support: 60%, \$17 million
  - Oppose: 35%, \$2 million



# Impact to the City

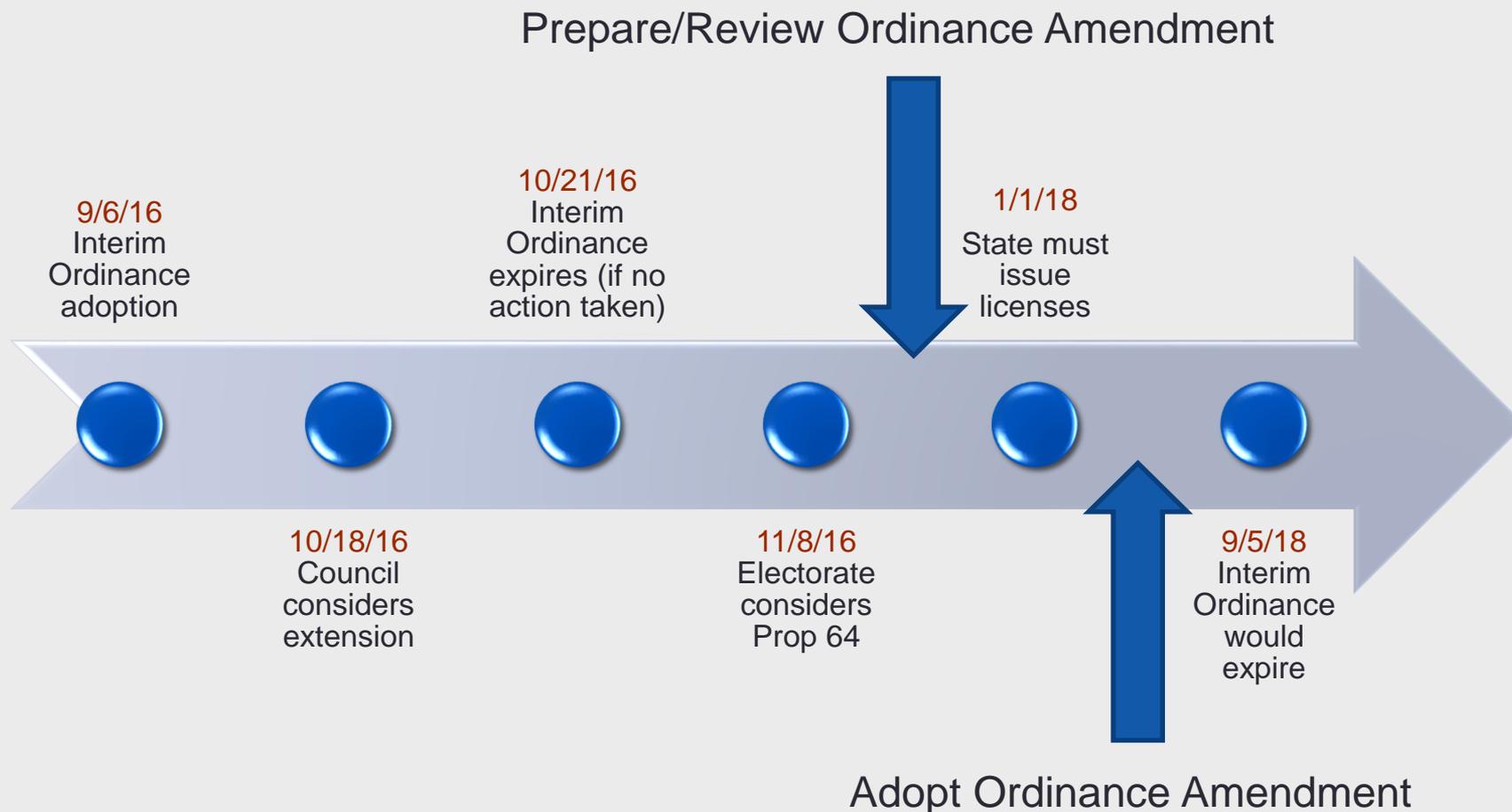
- If approved by the voters, non-medical marijuana related business would be legal in any zone that allows retail or similar non-marijuana related commercial land uses.



## Interim Prohibition Ordinance

- The interim ordinance currently prohibits non-medical marijuana related businesses in any zone until October 21, 2016.
- Council has the authority to extend the interim ordinance by 22 months and 15 days (i.e. September 5, 2018).

# Interim Ordinance Deadlines



## Possible Next Steps

- At Council's direction, staff would initiate an 18-month public process to prepare a zoning ordinance to include:
  - Locations
  - Operational standards
  - Regulatory fees
  - Enforcement

## Budget/Financial Information

- Extensive outreach and research would be necessary to develop a new ordinance.
  - Not anticipated in FY 2017 Budget
- Staff will return to Council to request budget appropriation for project costs and/or recommendations of service reductions.

## Recommendation

- That the Council of the City of Santa Barbara adopt, by four-fifths vote, a 22 month and 15 day extension of the Interim Zoning Ordinance of Prohibiting Non-Medical Marijuana Businesses.