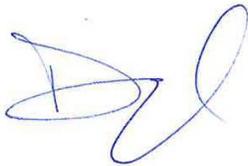


City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: Lynn Goldberg, Planning and Building Director
DATE: November 15, 2016
SUBJECT: **Initiation of Municipal Code Amendments Related to New State Marijuana Regulations**

APPROVED FOR FORWARDING



Dylan Feik, City Manager

1 **ISSUE:** Revisions to CMC Chapters 8.30 and 17.48, Marijuana Activities Regulations,
2 to reflect the passage of Proposition 64, the Control Regulate, and Tax Adult Use of
3 Marijuana Act.

4 **RECOMMENDATION:** Direct staff to prepare and process the amendments to
5 Chapters 8.30 and 17.48 outlined below

6 **BACKGROUND:** In 2011, the City Council amended the Calistoga Municipal Code to
7 prohibit medical marijuana dispensaries in all zoning districts (with exceptions for certain
8 health care facilities).

9 In response to the passage of “The Medical Marijuana Regulation and Safety Act” in
10 October 2015, the City Council adopted Ordinance No. 721, which prohibited any form
11 of marijuana cultivation within the city limits.

12 On November 8, 2016, California voters passed Proposition 64, the Control, Regulate,
13 and Tax Adult Use of Marijuana Act (“AUMA”), which legalizes and regulates
14 recreational marijuana in California. (It does not affect the medical marijuana regulations
15 that were adopted in 2015.)

16 The City retains the ability to completely prohibit commercial marijuana businesses and
17 private outdoor cultivation if it so chooses¹. However, the AUMA imposes certain
18 restrictions on local police power with regard to private cultivation in residences of six
19 marijuana plants or less.

20 **DISCUSSION**

21 Mandated amendments

22 At a minimum, the following amendments to CMC Chapters 8.30 and 17.48 are needed
23 in order to maintain consistency with state law.

24 • **The definition of “marijuana” needs to be broadened** to delete the exception
25 for various parts of the marijuana plant and marijuana plant derivatives.

26 • **The prohibition of any form of marijuana cultivation needs to be revised**
27 because it is now lawful for individuals 21 years and older to plant, cultivate,
28 harvest, dry or process up to six living marijuana plants for personal, non-medical
29 use. The City must allow such private cultivation within a residence or within a
30 fully-enclosed and secured residential accessory structure subject to reasonable
31 local regulations. This provision of the AUMA went into effect immediately.

32 However, the AUMA provides that any living plants and marijuana produced by
33 the plants in excess of one ounce must be in a locked space and not visible by
34 normal unaided vision from a public place. Furthermore, in order to avoid a
35 situation in which there are multiple marijuana users within a residence and
36 establish a large grow operation, the AUMA provides that no more than six living
37 plants may be planted, cultivated, harvested, dried, or processed within a *single*
38 *residence* or upon the grounds of that residence at one time.

39 Potential additional amendments

40 Aside from the requirements for allowing the mandated activities described above,
41 under the AUMA, the City can “enact and enforce reasonable regulations that
42 reasonably regulate” personal cultivation of six or fewer marijuana plants.

43 • Cultivation within garages Growing plants in garages should be prohibited
44 unless it can be demonstrated that the property otherwise complies with the
45 Zoning Code’s minimum parking standards.

46 • Extraction methods In terms of allowable extraction methods, staff recommends
47 prohibiting the use of compressed, flammable gas, such as butane, as a solvent
48 in the extraction of tetrahydrocannabinol (THC) or other cannabinoids due to
49 safety concerns.

¹ Until such time as the Attorney General determines that the use of nonmedical marijuana is lawful in the State of California under federal law, at which time the City will only be able to reasonably regulate private outdoor cultivation of six plants or less.

- 50 • Use of supplemental carbon dioxide Staff also recommends prohibiting the use
51 of supplemental carbon dioxide to increase plant yields. Marijuana growers
52 sometimes use pressurized tanks or carbon dioxide generators that utilize
53 propane or natural gas. At high levels, carbon dioxide inhibits blood's ability to
54 transport oxygen to vital body organs, and improper use has the potential for
55 significant health impacts. Additionally, there is a danger of compressed carbon
56 dioxide cylinders exploding during a fire and there are safety hazards associated
57 with propane cylinders used to power carbon dioxide generators.
- 58 • Use of ozone generators Likewise, the use of ozone generators in the cultivation
59 of marijuana should be prohibited. Ozone generators can produce indoor ozone
60 levels that are several times the state outdoor health standard. Such high
61 concentrations are not typically used in grow operations; however, mechanical
62 malfunctions or user error can occur and cause a sudden and rapid increase in
63 ozone levels to unhealthy levels.
- 64 • Exterior impacts Odors and light pollution that are associated with cultivation and
65 are discernible beyond a property's or residence's boundaries should be
66 prohibited.

67 Staff does not recommend amendments that require the following:

- 68 • Cultivation permit The AUMA is silent on whether the City may require a permit
69 to cultivate marijuana within a residence in order to ensure that the City's health
70 and safety codes, as well as any of the requirements described above, are
71 complied with. Requiring such a permit would necessitate the payment of fee to
72 cover staff processing costs and an inspection of the premises by Building or Fire
73 Department staff. Furthermore, it would likely be necessary to require an annual
74 renewal process to ensure continued compliance. Staff believes that the City's
75 code enforcement program can adequately deal with complaints about potential
76 violations and therefore does not recommend requiring a cultivation permit.
- 77 • Electrical limitations Six plants can typically be grown with lighting and
78 ventilation systems of a size and scale that are generally compatible with a
79 typical dwelling unit's existing electrical systems without requiring upgrades. The
80 imposition of limitations on grow lamp wattage maximum is therefore not
81 recommended due to the many different types of lamps, varying wattage
82 requirements and evolving technologies.

83 **ALTERNATIVES:** The City Council has previously expressed its opposition to allowing
84 the operation of medical dispensaries, outdoor cultivation and commercial cannabis
85 activities. The Council could consider allowing any or all of these in light of the AUMA's
86 passage.

87 **CONSISTENCY WITH COUNCIL GOALS AND OBJECTIVES:** Banning the use of
88 dangerous cultivation and extraction methods would be in conformance with Goal 5 of

89 the City Council's goals and objectives for Fiscal Year 2016-17, which calls for making
90 Calistoga safe.

91 **FISCAL IMPACTS:** If the City were to allow commercial cannabis activities, such as
92 retail sales from a storefront, it could generate revenue from the imposition of a sales
93 tax at a rate that could be higher than that collected from non-cannabis sales. The City
94 may also tax deliveries. The adoption of such taxes would require local voter approval
95 (by a simple majority).

96 During the public comments portion of a recent City Council meeting, a member of the
97 public raised a concern that by not allowing personal outdoor cultivation, or the retail
98 sale of marijuana or marijuana products, the city would forego grant money that could
99 be used to improve its infrastructure.

100 The AUMA clearly specifies how revenues received from the State's taxation of
101 cannabis sales are to be disbursed. The order in which these revenues are to
102 distributed to variance agencies for performing duties imposed by the Control, Regulate
103 and Tax Adult Use of Marijuana Act are as follows:

- 104 1. Reasonable costs incurred by the State Board of Equalization
- 105 2. Reasonable costs incurred by the Bureau of Marijuana Control, the Department
106 of Consumer Affairs, the Department of Food and Agriculture, and the
107 Department of Public Health
- 108 3. Reasonable costs incurred by the Department of Fish and Wildlife, the State
109 Water Resources Control Board, and the Department of Pesticide Regulation
- 110 4. Reasonable costs incurred by the Controller
- 111 5. Reasonable costs incurred by the State Auditor
- 112 6. Reasonable costs incurred by the Legislative Analyst's Office
- 113 7. Sufficient funds to reimburse the Division of Labor Standards Enforcement and
114 Occupational Safety and Health within the Department of Industrial Relations
115 and the Employment Development Department

116 The Controller shall then make the following disbursements as funds are available:

- 117 8. \$10,000,000 to a public university or universities in California annually
- 118 9. \$3,000,000 annually to the Department of the California Highway Patrol
- 119 10. \$10,000,000 beginning fiscal year 2018-2019 and increasing \$10,000,000 each
120 fiscal year thereafter until fiscal year 2022-2023, at which time the
121 disbursement shall be \$50,000,000 each year thereafter, to the Governor's
122 Office of Business and Economic Development
- 123 11. \$2,000,000 annually to the UC San Diego Center for Medicinal Cannabis
124 Research

125 The Controller shall, after disbursing funds as described above, disburse funds into sub-
126 trust accounts, as follows:

- 127 a) 60% into the Youth Education, Prevention, Early Intervention and
128 Treatment Account
- 129 b) 20% into the Environmental Restoration and Protection Account
- 130 c) 20% into the State and Local Government Law Enforcement Account and
131 disbursed to the Department of the California Highway Patrol and The
132 Board of State and Community Corrections for making grants to local
133 governments to assist with law enforcement, fire protection, or other local
134 programs addressing public health and safety associated with the
135 implementation of AUMA. The Board shall not make any grants to local
136 governments which have banned the cultivation, including personal
137 outdoor cultivation, or retail sale of marijuana or marijuana products
138 *(emphasis added).*

139 Therefore, it is correct that the City would not be eligible to receive grants to assist with
140 law enforcement, fire protection, or other local programs addressing public health and
141 safety associated with the implementation of the AUMA.

142 However, grant funding could not be used for any other purposes, such as road
143 maintenance. Furthermore, it is highly unlikely that such funding would ever become
144 available, given the large disbursements that have higher priority.