

City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: Lynn Goldberg, Planning and Building Director
DATE: April 18, 2017
SUBJECT: **Municipal Code Amendments Related to New State Marijuana Regulations (MCA 2016-1)**

APPROVED FOR FORWARDING



Dylan Feik, City Manager

1 **ISSUE:** Consideration of Municipal Code Amendment to reflect the passage of
 2 Proposition 64, the Control Regulate, and Tax Adult Use of Marijuana Act.

3 **RECOMMENDATION:** Following a public hearing, introduce the ordinance and waive
 4 its first reading

5 **BACKGROUND:** On November 8, 2016, California voters passed Proposition 64, the
 6 Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"), which legalizes and
 7 regulates recreational marijuana in California. The City retains the ability to prohibit
 8 commercial marijuana businesses and outdoor cultivation. However, the AUMA requires
 9 the City to allow up to six marijuana/cannabis plants to be cultivated indoors at a
 10 residence.

11 On November 15, 2016, the City Council directed staff to prepare and process
 12 Municipal Code amendments to maintain consistency with state law and impose
 13 reasonable regulations on indoor residential cultivation to minimize safety and nuisance
 14 impacts. The Council also expressed opposition to allowing medical marijuana
 15 dispensaries, commercial marijuana businesses and private outdoor cultivation.

16 On November 30, 2016, the Planning Commission considered proposed Code
 17 amendments that reflected Council's direction. Several members of the public
 18 expressed their support for personal outdoor cultivation, citing safety issues and
 19 electricity use associated with indoor cultivation, the ease of raising plants outdoors,
 20 and the negligible odor problems that are likely with outdoor cultivation. The

21 Commission recommended approval of the proposed Code amendments to the Council
22 on a 3-1 vote, with modifications allowing each household to cultivate up to two
23 cannabis plants outdoors and banning outdoor cultivation on properties adjacent to
24 schools.

25 Community forums on December 21, 2016, January 18, 2017 and February 15, 2017
26 focused on potential City regulations related to cannabis. The attendees at the first two
27 forums overwhelmingly supported allowing some form of personal outdoor cultivation.
28 Most of the attendees at the third forum expressed concerns about allowing any type of
29 cultivation due to possible impacts on children.

30 On March 21, 2017, after reviewing the Planning Commission's recommendation, the
31 views expressed by the public at the three community forums, and additional public
32 comments, a majority of the Council expressed support for allowing up to two marijuana
33 plants per residential property to be cultivated outdoors. The Council also directed that
34 the City's social host accountability ordinance be amended to include the provision of
35 marijuana to minors in addition to alcohol.

36 **DISCUSSION**

37 Mandated amendments

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

- 40 • The definition of "marijuana" needs to be broadened to delete the exception for
41 various parts of the marijuana plant and marijuana plant derivatives.
- 42 • The prohibition of any form of marijuana cultivation needs to be revised because
43 it is now lawful for individuals 21 years and older to plant, cultivate, harvest, dry
44 or process up to six living marijuana plants for personal, non-medical use. The
45 City must allow such private cultivation within a residence or within a fully-
46 enclosed and secured residential accessory structure subject to reasonable local
47 regulations. This provision of the AUMA went into effect immediately.

48 However, the AUMA provides that any living plants and marijuana produced by
49 the plants in excess of one ounce must be in a locked space and not visible by
50 normal unaided vision from a public place. Furthermore, no more than six living
51 plants may be planted, cultivated, harvested, dried, or processed within a *single*
52 *residence* or upon the grounds of that residence at one time.

53 Recommended additional amendments

54 Aside from the requirements for allowing the mandated activities described above,
55 under the AUMA, the City can enact and enforce reasonable regulations on the
56 cultivation of six or fewer marijuana plants for personal use.

- 57 • Constrain outdoor cultivation In addition to limiting the number of plants that can
58 be cultivated outdoors to two per residential property, staff recommends certain
59 limitations in order to minimize potential negative impacts. These include limiting

- 60 cultivation to zoning districts that allow single-family residences, prohibiting
61 cultivation within 300 feet of youth-oriented and religious facilities, requiring
62 enclosure by a solid fence of at least six feet in height, and prohibiting visibility
63 from a public right-of-way or neighboring property at the ground level.
- 64 • Prohibit cultivation within garages Growing plants in garages should be
65 prohibited unless it can be demonstrated that the property otherwise complies
66 with the Zoning Code's minimum parking standards.
 - 67 • Prohibit certain extraction methods Staff recommends prohibiting the use of
68 compressed, flammable gas, such as butane, as a solvent in the extraction of
69 tetrahydrocannabinol (THC) or other cannabinoids due to safety concerns.
 - 70 • Prohibit use of supplemental carbon dioxide Staff also recommends prohibiting
71 the use of supplemental carbon dioxide to increase plant yields. Marijuana
72 growers sometimes use pressurized tanks or carbon dioxide generators that
73 utilize propane or natural gas. At high levels, carbon dioxide inhibits blood's
74 ability to transport oxygen to vital body organs, and improper use has the
75 potential for significant health impacts. Additionally, there is a danger of
76 compressed carbon dioxide cylinders exploding during a fire and there are safety
77 hazards associated with propane cylinders used to power carbon dioxide
78 generators.
 - 79 • Prohibit use of ozone generators Likewise, the use of ozone generators in the
80 cultivation of marijuana should be prohibited. Ozone generators can produce
81 indoor ozone levels that are several times the state outdoor health standard.
82 Such high concentrations are not typically used in grow operations; however,
83 mechanical malfunctions or user error can occur and cause a sudden and rapid
84 increase in ozone levels to unhealthy levels.
 - 85 • Prohibit nuisance impacts Odors, vibration and light that are associated with
86 cultivation and are discernible beyond a property's or residence's boundaries
87 should be declared a public nuisance.

88 Staff does not recommend amendments that require the following:

- 89 • Cultivation permit The AUMA is silent on whether the City may require a permit
90 to cultivate marijuana at a residence in order to ensure that the City's health and
91 safety codes, as well as any of the requirements described above, are complied
92 with. Requiring such a permit would necessitate the payment of fee to cover staff
93 processing costs and an inspection of the premises by Building or Fire
94 Department staff. Furthermore, it would likely be necessary to require an annual
95 renewal process to ensure continued compliance. Staff believes that few
96 residents would comply with such a requirement and that the necessary
97 inspections would be burdensome upon staff.
- 98 • Electrical limitations Six plants can typically be grown with lighting and
99 ventilation systems of a size and scale that are generally compatible with a

100 typical dwelling unit's existing electrical systems without requiring upgrades. The
101 imposition of limitations on grow lamp wattage maximum is therefore not
102 recommended due to the many different types of lamps, varying wattage
103 requirements and evolving technologies.

104 **CONSISTENCY WITH COUNCIL GOALS AND OBJECTIVES:** Banning the use of
105 dangerous cultivation and extraction methods, and requiring the screening of plants
106 from off-site view would be in conformance with Goal 5 of the City Council's goals and
107 objectives for Fiscal Year 2016-17, which calls for making Calistoga safe.

108 **FISCAL IMPACTS:** Allowing outdoor cultivation for personal use will likely result in
109 increased calls for code enforcement. However, it is not anticipated that additional staff
110 will be needed to handle these calls.

ATTACHMENTS

1. Draft ordinance
2. Existing CMC Chapters 8.30, 9.16 and 17.48
3. Correspondence Received