

CITY OF WILDOMAR CITY COUNCIL AGENDA

5:30 P.M. – CLOSED SESSION

6:30 P.M. – SPECIAL MEETING

MARCH 29, 2017
Council Chambers
23873 Clinton Keith Road



Timothy Walker, Mayor, District 3
Ben J. Benoit, Mayor Pro Tem, District 1
Bridgette Moore, Council Member, District 4
Dustin Nigg, Council Member, District 2
Marsha Swanson, Council Member, District 5

Gary Nordquist
City Manager

Thomas D. Jex
City Attorney

PLEASE TURN ALL DEVICES TO VIBRATE/MUTE/OFF FOR THE DURATION OF THE MEETING. YOUR COOPERATION IS APPRECIATED.

CALL TO ORDER – SPECIAL SESSION - 6:30 P.M.

ROLL CALL

PUBLIC COMMENTS

CLOSED SESSION

1. The City Council will meet in closed session pursuant to the provisions of Government Code Section 54956.8 to confer with legal counsel and conference with real property negotiators as follows:

Property: APN 370-400-042-8; 32578 Corydon Street, Wildomar, CA
Agency negotiators: Gary Nordquist
Negotiating parties: Riverside County Tax Assessor
Under negotiation: Instruction regarding price and terms of payment.

Property: APN 366-120-025; 0 Lemon Street, Wildomar, CA
Agency negotiators: Gary Nordquist
Negotiating parties: John Clinton Riskus
Under negotiation: Instruction regarding price and terms of payment.

Property: APN 368-030-038; 2 Palomar Road, Wildomar, CA
Agency negotiators: Gary Nordquist
Negotiating parties: Howard A. Shields and Rebecca Shields
Under negotiation: Instruction regarding price and terms of payment.

RECONVENE INTO OPEN SESSION

ANNOUNCEMENTS

ADJOURN CLOSED SESSION

CALL TO ORDER – SPECIAL SESSION - 6:30 P.M.

ROLL CALL

FLAG SALUTE

PUBLIC COMMENTS

GENERAL BUSINESS

1.1 **Possible Amendments to City’s Marijuana Regulations Following Proposition 64**

RECOMMENDATION: Staff recommends that the City Council discuss and provide direction to staff on possible amendments to the City’s marijuana regulations following the adoption of Proposition 64.

ADJOURN THE CITY COUNCIL

If requested, the agenda and backup materials will be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans With Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

Any person that requires a disability-related modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting, may request such modification, accommodation, aid or service by contacting the City Clerk either in person or by phone at 951/677-7751, no later than 10:00 a.m. on the day preceding the scheduled meeting.

I, Debbie A. Lee, Wildomar City Clerk, do certify that on March 23, 2017, by 5:00 p.m., a true and correct copy of this agenda was posted at the three designated posting locations:

Wildomar City Hall, 23873 Clinton Keith Road;
U.S. Post Office, 21392 Palomar Street;
Wildomar Library, 34303 Mission Trail Blvd.



Debbie A. Lee, CMC, City Clerk

CITY OF WILDOMAR – CITY COUNCIL
Agenda Item #1.1
GENERAL BUSINESS
Meeting Date: March 29, 2017

TO: Mayor and City Council Members

FROM: Thomas D. Jex, City Attorney

SUBJECT: Possible Amendments to City's Marijuana Regulations Following Proposition 64

STAFF REPORT

RECOMMENDATION:

Staff recommends that the City Council discuss and provide direction to staff on possible amendments to the City's marijuana regulations following the adoption of Proposition 64.

BACKGROUND:

On October 9, 2015, Governor Brown signed Assembly Bills 243 and 266 and Senate Bill 643. Taken together, the three bills create the Medical Cannabis Regulation and Safety Act ("MCRSA")¹, a comprehensive state regulatory and licensing system governing the cultivation, testing, and distribution of medical marijuana, as well as physician recommendations for medical marijuana. MCRSA is intended to govern all commercial cannabis activities, which are defined as "cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product." Under MCRSA, all medical marijuana businesses, or commercial cannabis activities, must have both a state license and local permit, license, or other authorization in order to operate lawfully within California. (Bus. & Prof. Code § 19320(a).)

On November 8, 2016, California voters approved Proposition 64, known as the "Control, Regulate and Tax Adult Use of Marijuana Act" (the "AUMA") which allows individuals to possess, use, and cultivate recreational marijuana in certain amounts. An individual may possess up to 28.5 grams of non-concentrated marijuana or 8 grams of marijuana in a concentrated form (e.g., marijuana edibles). In addition, an individual may cultivate up to six marijuana plants at his or her private residence provided that no more than six plants are being cultivated on the property at one time. The AUMA also establishes a regulatory system for commercial businesses that is very similar to the medical marijuana regulatory system under MCRSA. Under the AUMA, recreational

¹ Senate Bill 837, signed by Governor Brown on June 27, 2016, changed the name of the Medical Marijuana Regulation and Safety Act to the Medical Cannabis Regulation and Safety Act.

marijuana cultivators, manufacturers, distributors, retailers, and testing laboratories may operate lawfully if they obtain a state license and comply with local ordinances.

The AUMA does not limit local police power authority over commercial marijuana business and land uses. Cities may prohibit such businesses completely if they so choose. With regard to private cultivation, however, there is one important limitation on local police power. Cities may ban private outdoor marijuana cultivation, but they may not completely ban private indoor cultivation of six marijuana plants or less. The AUMA provides that private indoor cultivation of six marijuana plants or less is lawful under both state and local law and is only subject to “reasonable” local regulations.

Wildomar Municipal Code section 17.12.040 currently prohibits all medical marijuana dispensaries in the City, but the Municipal Code does not address recreational marijuana business in express terms. On December 14, 2016 and on January 11, 2017, the City Council adopted and extended an interim urgency ordinance establishing a moratorium pertaining to private marijuana cultivation and non-medical facilities pursuant to Government Code section 65858. The interim urgency ordinance is effective until December 12, 2017 and may be extended for one additional year. It contains the following temporary restrictions:

1. All commercial non-medical marijuana businesses that require a license under Proposition 64 will be prohibited while the interim urgency ordinance is in effect. This temporary prohibition will apply to recreational marijuana cultivation, manufacturing, distribution, testing, and retail sales.

2. All private marijuana cultivation will be prohibited except that an individual may cultivate no more than six living marijuana plants inside his or her private residence, or inside an accessory structure to his or her private residence located upon the grounds of that private residence that is fully enclosed and secured against unauthorized entry, provided that the owner of the property provides written consent expressly allowing the marijuana cultivation to occur, the person conducting the marijuana cultivation complies with all applicable Building Code requirements set forth in Chapter 16 of this code, there is no use of gas products (CO₂, butane, propane, natural gas, etc.) on the property for purposes of marijuana cultivation, and the marijuana cultivation complies with Health and Safety Code section 11362.2(a)(3). Health and Safety Code section 11362.2(a)(3) provides that no more than six marijuana plants may be cultivated at or upon the grounds of a private residence at one time.

3. Non-medical marijuana business, including nonprofit businesses, are prohibited from delivering marijuana to people in the City.

DISCUSSION:

Business and Professions Code section 26200 provides that cities may “completely prohibit the establishment or operation of one or more types of businesses licensed under” the AUMA. Therefore, as under MCRSA, cities have a wide range of regulatory

options under the AUMA to deal with recreational marijuana land uses. These options include an express ban on all or some of the businesses permitted under the AUMA or a regulatory scheme for commercial marijuana businesses. In determining the scope of these express regulations, the City Council should consider three key policy issues.

Issue #1 – Commercial Marijuana Activities

The first task for the City Council is to determine how it wants to address commercial marijuana businesses. With regard to such businesses, the City Council has the following options:

- The City could continue its existing prohibition against medical marijuana dispensaries and extend it to cover medical marijuana testing laboratories, commercial cultivation sites and the recreational marijuana businesses recognized under the AUMA such as marijuana manufacturers, distributors, transporters and testing laboratories. Under this option, the City would prohibit all commercial marijuana businesses throughout the City.
- The City could allow all or some of the marijuana businesses recognized under MCRSA and/or the AUMA. If the City Council decides to allow marijuana businesses (marijuana manufacturers, distributors, transporters and testing laboratories) under a regulatory scheme, it should consider the following additional questions:

What type of restrictions should apply to marijuana land uses?

Locational restrictions may include the designation of certain zoning districts as permissible locations and separation requirements to avoid clustering of marijuana land uses. Some cities have limited the number of marijuana establishment permits that they are willing to issue. Operating requirements can be extensive and include the following: the use of licensed security guards, designated hours of operation, prohibition against on-site marijuana consumption, installation of adequate odor control devices and ventilation systems, and limitations on access to minors.

What type of permit or permits will be required?

Some cities have imposed conditional use permit requirements for marijuana land uses, while others have required annual renewable regulatory permits.

How will the City process marijuana land use applications?

A city could take a number of approaches for processing applications: (1) first come, first serve; (2) lottery; and/or (3) scoring system. Under a

lottery system, pre-qualified applicants are selected through a random lottery to apply for the required marijuana land use permit. Under a scoring system model, applicants would receive a score based on a review of their applications and, in some instances, an interview. Those applicants who receive the highest scores would then be recommended for approval to the decision making authority. If this selection method is used, it may be preferable to use a neutral outside consultant to review the applications, conduct interviews, and make recommendations.

What type of local taxes should the City impose?

If approved by voters, the City could impose a local marijuana excise tax based on a percentage of gross receipts for retail businesses or the square footage of a cultivation or manufacturing site. In addition, the City could enact a marijuana business regulatory fee to pay for the cost of processing applications, issuing licenses, and performing the necessary inspections.

Issue # 2 – Personal Cultivation

The City Council will need to determine the extent to which it wants to prohibit or allow private marijuana cultivation, keeping in mind that private indoor cultivations of six marijuana plants or less is allowed. The City could address private marijuana cultivation as follows:

“No person or entity may cultivate marijuana at any location in the City, except that a person may cultivate no more than six living marijuana plants inside his or her private residence, or inside an accessory structure to his or her private residence located upon the grounds of that private residence that is fully enclosed and secured against unauthorized entry, provided that the owner of the property provides written consent expressly allowing the marijuana cultivation to occur, the person conducting the marijuana cultivation complies with all applicable Building Code requirements set forth in Title 17 of the Municipal Code, there is no use of gas products (CO₂, butane, propane, natural gas, etc.) on the property for purposes of marijuana cultivation, and the marijuana cultivation complies with Health and Safety Code section 11362.2(a)(3).”

Some cities that have addressed private indoor marijuana cultivation have imposed local permit and safety inspection requirements. So long as such requirements do not effectively ban private indoor cultivation, courts would likely consider them to be reasonable regulations and therefore permissible under the AUMA. The issue is whether City staff members have the time and resources to implement a private marijuana cultivation permit and inspection program. Many cities have decided based on local circumstances that the burden and expense of local permit and inspection requirements for private indoor cultivation outweigh the potential benefits of the added regulations.

Alternatively, the City Council could allow private indoor and/or outdoor marijuana cultivation for either medical or recreational purposes, or both. The City Council could impose various conditions on private cultivations, including security requirements, odor restrictions and control requirements, setback requirements, and restrictions against marijuana plants that are visible from neighboring properties or public rights-of-way.

Issue #3 – Marijuana Deliveries

Finally, the City Council may consider adding express provisions regarding marijuana deliveries. Under both MCRSA and the AUMA, a city retains the police power authority to prohibit marijuana deliveries that begin or end within the city's boundaries. A city, however, cannot prevent a delivery service from using public roads to simply pass through its jurisdiction from a licensed dispensary to a delivery location outside of its boundaries. If the City Council wishes to prohibit marijuana deliveries, it may consider the following language:

“No person and/or entity may deliver or transport marijuana from any fixed or mobile location, either inside or outside the City, to any person in the City.”

If the City Council wants to allow limited deliveries to qualified patients, it could add the following exception to the delivery ban:

“ . . . except that a person may deliver or transport medical marijuana to a qualified patient or person with an identification card, as those terms are defined in Health and Safety Code section 11362.7, for whom he or she is the primary caregiver within the meaning of Health and Safety Code sections 11362.5 and 11362.7(d).”

The City Council could also allow marijuana deliveries, which under state law can only be made by licensed dispensaries or retailers. The state is working on implementing regulations, which may further explain how medical and recreational marijuana deliveries will occur. It will be up to the Department of Consumer Affairs to determine how much marijuana can be transported during the delivery process. Any health and safety regulations developed by the state for marijuana deliveries will represent the minimum state-wide standards.

Submitted by:
Thomas D. Jex
City Attorney

Approved by:
Gary Nordquist
City Manager