



## CITY OF PALO ALTO OFFICE OF THE CITY ATTORNEY

June 13, 2017

The Honorable City Council  
Palo Alto, California

### **Recreational and Medical Marijuana: Review and Discussion of State Law Developments and Input to Staff on Next Steps, Including Possible Ordinance Adopting Local Regulations Regarding Commercial Marijuana Activity, Outdoor Cultivation, and Marijuana Dispensaries. This Action is Exempt Under Section 15061(b)(3) of the California Environmental Quality Act.**

#### **Recommendation**

Staff recommends that the Policy and Services Committee review and discuss state law developments regarding recreational and medical marijuana and provide input to staff on next steps, including potential local regulations.

As a starting point for discussion, staff has prepared a proposed ordinance (Attachment A) consistent with current City policies on marijuana (prohibiting outdoor marijuana cultivation, medical marijuana dispensaries, and commercial marijuana activities except for deliveries). After incorporating Policy & Services' direction into a revised proposed ordinance, staff proposes sending zoning code amendments to the Planning & Transportation Commission for review during the summer, and returning to Council for ordinance adoption in the fall.

#### **Executive Summary**

Proposition 64, also known as the Adult Use of Marijuana Act (AUMA), was passed by voters on November 8, 2016. The AUMA permits commercial marijuana activities, but gives municipalities the option to prohibit some or all of such activities, including: commercial cultivation, retail sales, delivery services, distribution, manufacturing of marijuana-containing products, and testing businesses.<sup>1</sup>

If the City Council wishes to prohibit some or all commercial marijuana activities, it must enact an ordinance that goes into effect before January 1, 2018. On that date, the state is required to begin issuing licenses for commercial marijuana activities under the AUMA, but the state will not issue a license if such activity is banned by the City.

Presently, the City has two ordinances that regulate marijuana. The first bans medical marijuana dispensaries and was enacted in 1997 in response to the voter-approved legalization

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<sup>1</sup> The AUMA also permits personal use activities, such as smoking of marijuana by adults 21 years or older and indoor growing of up to six marijuana plants for personal use. This ordinance does not address the personal use activities, but the City Council has the ability to adopt reasonable regulations consistent with the AUMA.

of medical marijuana. The second bans the outdoor cultivation of marijuana and was enacted in 2016 and in anticipation of the passage of Proposition 64, but this ordinance will sunset in November 2017.

If adopted, the proposed ordinance (Attachment A) would extend the outdoor cultivation prohibition indefinitely. The proposed ordinance would also assert the City's right to prohibit most commercial marijuana activities permitted under the AUMA, including commercial cultivation facilities, manufacturing facilities, retailers, and warehouses. The only permitted commercial activity under this ordinance would be the delivery of marijuana. The proposed ordinance would also curtail similar commercial activities for medical marijuana permitted under the Medical Marijuana Regulation and Safety Act, which is analogous to the AUMA but for medical marijuana. These measures will give the City more time to consider which, if any, commercial activities should be permitted in the City, and whether to adopt more permissive regulations.

The proposed ordinance would also update the existing prohibition of medical marijuana dispensaries with a codified subsection.

The state legislature is currently working on a "clean-up" bill to Proposition 64, but despite its name, the bill could make significant changes to both recreational and medical marijuana laws. State agencies have also just released draft regulations. Due to the unsettled nature of state marijuana laws, the City may want to revisit this issue in response to state actions.

### **Background**

Marijuana has been decriminalized in phases in California.<sup>2</sup> Medical marijuana was first legalized by the voters in 1996 upon the passage of Proposition 215.

In response, the City passed an ordinance in 1997 prohibiting medical marijuana dispensaries. While dispensaries were not allowed under the City's zoning code under the principles of permissive zoning provisions, the City passed the ordinance to make the prohibition clear.<sup>3</sup>

In 2015, the Governor approved AB 266, known as the Medical Marijuana Regulation and Safety Act. The Act creates a new licensing system for medical marijuana-related businesses and imposes regulations on medical marijuana.<sup>4</sup>

In November 2016, California voters passed Proposition 64, also known as the Adult Use of Marijuana Act (AUMA), which legalized marijuana under state law for recreational (non-medical) and commercial uses. The following is a summary of some of the major provisions:

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<sup>2</sup> Marijuana remains a Schedule I drug under the federal Controlled Substances Act.

<sup>3</sup> See Ordinance 5399, Section 1 for more analysis of the zoning issues and presumptions regarding medical marijuana.

<sup>4</sup> Health and Safety Code (H&S) §19300 *et seq.*

*Recreational possession, use, and personal growing permitted, subject to local regulations.*

The AUMA legalized adult (21 years or older) smoking and consumption of recreational marijuana.<sup>5</sup> Adults are allowed to grow up to six plants indoors per residence and possess 28.5 grams of marijuana in public.<sup>6</sup> Marijuana grown at home cannot be sold, but can be gifted.<sup>7</sup> Smoking is not allowed in any place that already bans tobacco smoking or near schools, and can only be carried in a closed container in a vehicle (driving while smoking is illegal).<sup>8</sup> The City can enact reasonable regulations that do not conflict with state law.<sup>9</sup> This report and the attached ordinance do not address personal use regulations and these can be addressed in the future.

*Commercial activities permitted, subject to local prohibitions.*

Proposition 64 legalized several types of commercial marijuana activities, but require a state-issued license. The AUMA envisions at least three types of state-issued licenses: a license to cultivate commercially, a license to retail or distribute (which also allows delivery), and a license to test or manufacture.

Cities have the option to prohibit one or more types of these state-licensed commercial activities.<sup>10</sup> The City Council may adopt an ordinance that identifies which activities are prohibited within the City. If the City prohibits any commercial marijuana activity, the state shall not grant a license for such activity within the City.

Conversely, cities that wish to allow all state-licensed commercial activity do not have to pass an ordinance affirming their intent; it is already state law. For commercial activities that are allowed, cities can create their own regulations, such as business license requirements and zoning and land use requirements, among others.

Neighboring cities, including San Jose, have already developed regulations as to medical marijuana which would likely be extended to all commercial marijuana activities. These regulations are largely time, place, and manner regulations that set minimum standards for safety and security, as well as create a permit system for delivery vehicles and drivers. The San Jose City Council has delegated regulation authority to its City Manager. (Note, however, that the state's forthcoming marijuana regulations may preempt City regulations.)

### *Taxes on Marijuana Sales*

Taxation of marijuana depends on whether it is for recreational or medical use under the AUMA. Both recreational and medical marijuana is subject to a new State Marijuana Excise Tax, which is 15% of the gross receipts of retail sales.<sup>11</sup> Recreational marijuana is also subject to

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<sup>5</sup> H&S §11362.1.

<sup>6</sup> H&S §11362.2

<sup>7</sup> H&S §11362.1(a)(2).

<sup>8</sup> H&S §11362.3.

<sup>9</sup> H&S §11362.2(b).

<sup>10</sup> Business and Professions Code (BPC) §26200.

<sup>11</sup> Rev. & Tax. §34011(a).

traditional state and local sales taxes. The AUMA also created a new State Cultivation Tax, which is imposed at the rate of \$9.25 per ounce for flowers and \$2.75 per ounce for leaves.<sup>12</sup> Marijuana cultivated for personal use is exempt from the State Cultivation Tax.<sup>13</sup>

## **Discussion**

The AUMA allows several types of commercial marijuana activities: commercial cultivation, dispensaries, retail sales, delivery services, distribution, manufacturing of marijuana-containing products, and testing businesses. The AUMA requires a state-issued license before a person can conduct these activities. The Medical Marijuana Regulation and Safety Act allows similar commercial activities and also requires a state-issued license to operate. The AUMA requires the issuance of licenses to start no later than January 1, 2018.

### *Should the City Extend or Modify the Outdoor Cultivation Prohibition?*

Last November, Council adopted a temporary ban on outdoor marijuana cultivation that will automatically sunset in November 2017. To avoid confusion and to ensure that no state licenses for commercial cultivation are issued before the City can re-address this issue, the Committee may want to recommend that Council extend the ban on outdoor marijuana cultivation by removing the sunset provision. Council can revisit the issue and adopt more permissive rules at any time.

### *Should the City Restate the Existing Prohibition on Medical Marijuana Dispensaries?*

The City passed an uncodified urgency ordinance in 1997 to prohibit medical marijuana dispensaries. To avoid confusion and to ensure that no state licenses for medical marijuana dispensaries are issued, the Committee may want to recommend that Council re-adopt and codify a prohibition on medical marijuana dispensaries.

### *Should the City Prohibit Most Commercial Activities Except Deliveries?*

Under principles of permissive zoning, commercial marijuana activities for both medical and recreational use are presumptively prohibited in Palo Alto because they are not listed as permitted activities in the City's zoning code. But the AUMA seems to anticipate that cities will adopt ordinances prohibiting the activities they wish to restrict within their boundaries. To avoid confusion and preserve local control, the Committee may want to recommend that Council add an express prohibition of all outdoor marijuana cultivation and all commercial marijuana activities except for deliveries to people within Palo Alto. Council can revisit these issues and adopt more permissive rules at any time.

## **Timeline**

Staff is seeking input and a recommendation from the Policy and Services Committee before scheduling the proposed ordinance, with modifications recommended by the Committee, for a hearing and recommendation by the Planning and Transportation Commission this summer.

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<sup>12</sup> Rev. & Tax. §34012(a).

<sup>13</sup> Rev. & Tax. §34012(j).

The goal is to bring an ordinance with recommendations from the Committee and the PTC to the full Council in September.

The City Council must pass an ordinance that goes into effect by January 1, 2018 if it wishes to prohibit some or all commercial marijuana activities. Otherwise, the state can issue licenses for commercial marijuana activities that occur within the City.

In addition, for any commercial activity that is allowed, staff recommends that the City examine and develop regulations by January 1, 2018 in anticipation of licenses being issued and the commencement of commercial activity. The City should be cognizant of the development of state-level marijuana regulations before promulgating its own.

Lastly, should the City wish to regulate personal uses of marijuana, including smoking and personal indoor cultivation, staff recommends that regulations or laws be developed after the state issues any relevant regulations, which is anticipated this summer. Staff recommends that the City Council address commercial uses first to ensure that the City's ability to regulate in these areas is established before the state can issue licenses permitting commercial activity.

#### **Resource Impact**

Staff does not anticipate a resource impact associated with this ordinance. As with similar zoning regulations, enforcement would be done on a complaint basis. Any future efforts to develop additional regulations for commercial marijuana businesses or personal cultivation would require staff time and could result in zoning or licensing provisions requiring additional staff resources. Future regulations may require additional law enforcement or code enforcement resources.

#### **Environmental Review**

This proposed ordinance is not a "project" within the meaning of section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

#### **ATTACHMENTS:**

- Attachment A - Ordinance Repealing Chapter 9.17 and Amending Chapters 18.04 and 18.42 (PDF)
- Attachment B - League of Cities AUMA FAQ (PDF)

Department Head: Molly Stump, City Attorney



NOT YET APPROVED

Ordinance No. \_\_\_\_\_

Ordinance of the Council of the City of Palo Alto Repealing Chapter 9.17 (Personal Cultivation of Marijuana) of Title 9 (Public Peace, Morals and Safety) of the Palo Alto Municipal Code; Repealing Ordinance No. 4422; and Amending Chapters 18.04 (Definitions) and 18.42 (Standards for Special Uses) of Title 18 (Zoning) to Prohibit Outdoor Cultivation of Marijuana, Prohibit Medical Marijuana Dispensaries, and Prohibit Commercial Marijuana Activities, Except for Deliveries.

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1: The Council of the City of Palo Alto finds and declares as follows:

- A. On June 9, 1997, the Palo Alto City Council adopted uncodified urgency Ordinance No. 4422 declaring the establishment and operation of medical marijuana dispensaries to be prohibited use under the City's zoning ordinance.
- B. On October 24, 2016, the Palo Alto City Council adopted Ordinance No. 5399, prohibiting the outdoor cultivation of marijuana. That ordinance had a sunset date of one year from the date the ordinance took effect.
- C. On November 8, 2016, California voters passed Proposition 64, known as the Adult Use of Marijuana Act (AUMA), which legalized the use, sale, and consumption of recreational marijuana by persons 21 years of age and older.
- D. The AUMA also permits commercial marijuana activities subject to state licensure, but preserves local governments' authority to regulate and ban some or all commercial marijuana activities. (*See, e.g.*, Business and Professions Code section 26200).
- E. Outdoor marijuana cultivation; medical marijuana dispensaries, and commercial marijuana activities are not listed in the City's zoning code as permitted or conditionally-permitted land uses, making them prohibited under the principles of permissive zoning provisions. (*City of Corona v. Naulls* (2008) 166 Cal.App.4th 418). Nevertheless, the state may not expressly recognize the application of permissive zoning principles as to marijuana-related uses.
- F. In order to protect the public health, safety, and welfare, the City Council desires to replace the existing temporary ban on outdoor cultivation at Chapter 9.17 and the uncodified prohibition of medical marijuana dispensaries in Ordinance No. 4422 with new Code section 18.42.150 to prohibit, in express terms: (1) the outdoor cultivation of marijuana; (2) medical marijuana dispensaries; and (3) commercial marijuana activities, with the exception of deliveries.

SECTION 2. Chapter 9.17 of Title 9 of the Palo Alto Municipal Code is hereby repealed.

NOT YET APPROVED

SECTION 3. Ordinance No. 4422 of the City of Palo Alto is hereby repealed.

SECTION 4. Chapter 18.04 of Title 18 of the Palo Alto Municipal Code is hereby amended to add new subsection 18.04.030(a)(94.5) to read as follows:

**(94.5)** “Marijuana” means all parts of the plant Cannabis sativa L., Cannabis indica, Cannabis ruderalis, and hybrid strains derived thereof, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin.

**(A)** “Commercial marijuana activity” means any activity related to cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery or sale of marijuana or products containing marijuana. “Commercial marijuana activity” does not include personal recreational uses allowed by Health and Safety Code sections 11362.1 and 11362.2 or personal medical uses allowed by sections 11362.765 and 11362.77, as amended from time to time.

**(B)** “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana for any purpose.

**(C)** “Medical marijuana dispensary” is a facility where marijuana is made available for medical purposes in accordance with Health and Safety Code section 11362.5 et seq. or any other provision of state law that authorizes the use of marijuana for medical purposes.

SECTION 5. Chapter 18.42 of Title 18 of the Palo Alto Municipal Code is hereby amended to add new section 18.42.150 to read as follows:

**18.42.150 Marijuana Cultivation and Commercial Activities**

**(a) Prohibition of open cultivation.**

Open marijuana cultivation is not permitted. Personal cultivation permitted under Health and Safety Code section 11362.2, as amended from time to time, must occur within a locked structure not visible by normal unaided vision from any public place.

**(b) Prohibition of commercial activities.**

Commercial marijuana activity is not permitted.

**(c) Exception for qualified delivery services.**

Notwithstanding the prohibition in section 18.42.150(b), delivery of marijuana is permitted pursuant to laws of the State of California. This section does not permit any temporary, persistent, or fixed physical presence used for commercial marijuana activities (including but not limited to medical marijuana dispensaries, collectives, cooperatives, or any other retail outlets) besides delivery vehicles in the active state of making a delivery.

**(d) Prohibition of medical marijuana dispensaries.**

Medical marijuana dispensaries are not permitted.

**(e) Regulations.**

The City Manager is authorized to approve regulations consistent with this section.

**(f) Enforcement.**

The City may enforce this section and its regulations in any manner permitted by law and is entitled to recover all costs, including attorneys fees, related to enforcement. The violation of this section is hereby declared to be a public nuisance and shall, at the discretion of the city, create a cause of action for injunctive relief.

SECTION 5. Severability. If any provision, clause, sentence or paragraph of this ordinance, or the application to any person or circumstances, shall be held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this ordinance are hereby declared to be severable.

SECTION 6. CEQA. The City Council finds and determines that this Ordinance is not a “project” within the meaning of section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

SECTION 7. Effective Date. This ordinance shall be effective on the thirty-first date after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

NOT YET APPROVED

APPROVED AS TO FORM:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Principal City Attorney

January 9, 2017



## Frequently Asked Questions (FAQs)

### Adult Use of Marijuana Act<sup>1</sup>

#### Proposition 64

**Question #1:** When does the AUMA take effect?

**Answer:** The AUMA took 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 took effect November 9, 2016.

**Question #2:** Can private individuals cultivate nonmedical marijuana at home beginning November 9, 2016?

**Answer:** Yes, within a private residence by a person 21 years and older for personal use. The AUMA provides that local governments can reasonably regulate, but cannot ban the personal indoor cultivation of up to six nonmedical marijuana plants per private residence. 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, individuals may engage in personal indoor cultivation 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.

Local governments may regulate or ban all personal outdoor 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:** Is there a limitation on the number of marijuana plants that can be cultivated within a single residence?

**Answer:** Yes. Not more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of that private residence, at one time. A "residence" is defined as a house, an apartment unit, a mobile home, or other similar dwelling. No matter how many persons over 21 years of age are living in a "residence," only 6 living plants may be cultivated at one time. (Health & Safety § 11362.2(b)(3).)

**Question #4:** Can a landlord ban the cultivation/smoking of marijuana on his or her property?

**Answer:** Yes. An individual or private entity may prohibit or restrict personal possession, smoking, and cultivation of marijuana on the individual's or entity's privately owned property. A state or local government agency also may prohibit or restrict such activities on property owned, leased, or occupied by the state or local government. (Health & Safety §§ 11362.45(g) and (h).)

**Question # 5:** Can a city ban personal indoor cultivation in all leased or multi-unit residences within the city?

**Answer:** No. A city cannot prohibit personal indoor cultivation of marijuana in all leased or multi-unit residences within the city. However, because cities may reasonably regulate personal indoor cultivation, a city might be able to condition permit approval for personal indoor cultivation in a leased residence on the applicant receiving permission from his or her landlord.

**Question # 6:** Does a city's ban on commercial cultivation, personal outdoor cultivation, or retail sales of marijuana or marijuana products make it ineligible for state grant monies for law enforcement, fire protection, or other local programs addressing public health and safety associated with the implementation of Prop 64?

**Answer:** Yes. If a city bans commercial cultivation, or personal outdoor cultivation, or retail sales of marijuana or marijuana products, it is ineligible to receive state grant monies funded through the new state excise taxes that take effect on January 1, 2018. (Revenue and Taxation Code § 34019(e)(3)(D).)

**Question #7:** 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 #8:** 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 #9:** 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 #10:** 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.

**Question #11:** 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?

**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.

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<sup>2</sup> Please see Question #8 regarding the use of public roads for transportation and delivery.

**Question #12:** 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 #13:** 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.

**Question #14:** What are the rules regarding taxation under the AUMA? Is it true that marijuana can no longer be subject to sales tax?

**Answer:** Under the AUMA, there is a 15% state excise tax on **recreational** marijuana, but **medical** marijuana is exempt from state and local sales tax altogether. The rationale is that marijuana consumed for truly medical purposes is no different from conventional pharmaceuticals, which are also exempt from federal, state, and local sales tax. However, other forms of excise tax may be levied on all marijuana, whether medical or recreational. For example, a cultivation tax, a manufacturing tax, or the most common, a business license tax may still be levied at the local level on any commercial marijuana activity. But note, because the AUMA levies a state excise tax of 15% on recreational marijuana, all local governments have reason to be concerned about the cumulative tax rate when local tax levies are added to that. For that reason, locals are encouraged to look at existing local taxes and to assess what marijuana-related revenue streams may be derived from those sources before levying additional taxes that are specific to marijuana.