



To: Honorable Mayor Schroder, Mayor, and Councilmembers
From: Jeffrey A. Walter, City Attorney
Subject: Urgency Ordinances Pertaining to Marijuana Cultivation and Proposition 64
Date: October 25, 2016

Recommendation

Conduct a public hearing for urgency ordinances pertaining to Marijuana Cultivation and Proposition 64 and adopt the following:

1. Interim ordinance imposing a moratorium on the outdoor cultivation of nonmedical marijuana and make findings that said adoption is exempt under CEQA.
2. Interim ordinance imposing moratorium on the indoor cultivation of nonmedical marijuana, except under certain circumstances, and make findings that the adoption of said ordinance is exempt under CEQA.
3. Interim ordinance regulating the indoor cultivation of medical marijuana and make findings that said adoption is exempt under CEQA.

Background

On November 8, 2016, the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”) will come before California voters as Proposition 64. If passed, Proposition 64 will legalize the nonmedical use of marijuana by persons 21 years of age and older, and the personal cultivation of up to six marijuana plants. Proposition 64 makes it legal for persons 21 years of age or older to: (1) smoke or ingest marijuana or marijuana products; (2) possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older, without compensation, 28.5 grams of marijuana, or 8 grams of concentrated marijuana; and (3) possess, plant, cultivate, harvest, dry or process up to six living marijuana plants for personal use. Proposition 64 requires that marijuana in excess of 28.5 grams that is produced by plants pursuant to the personal cultivation provisions of Proposition 64 be kept in a locked space on the grounds of a private residence that is not visible from a public place.

Although persons 21 years of age or older may use and possess nonmedical marijuana under Proposition 64, their ability to engage in these activities is not unfettered. Proposition 64 prohibits the smoking of marijuana in certain places. Moreover, individuals cannot possess marijuana on school grounds, and daycare centers, or in youth centers while children are present, or possess an open container of marijuana or marijuana products while driving, operating or riding in any vehicle used for transportation. Proposition 64 further provides that cities may prohibit possession and smoking in buildings owned, leased or occupied by the city,

and that employers, including cities, may maintain a drug and alcohol-free work place by prohibiting the use, consumption, possession, transfer, transportation, sale, display or growth of marijuana in the work place. The League of California Cities has prepared a memorandum further explaining Proposition 64 and it is attached as **Exhibit D**.

Commercial Nonmedical Marijuana Activity

Commercial nonmedical marijuana activity will not be permitted until and unless the Bureau of Marijuana Control adopts a state regulatory system that governs the industry from “seed to sale.” All nonmedical marijuana businesses must have a state license. A state license cannot issue to an applicant whose operations would violate the provisions of any local ordinance or regulation, thus creating a dual-licensing scheme. Proposition 64 does not limit the authority of a local jurisdiction to adopt and enforce local ordinances regulating or completely prohibiting state-licensed marijuana businesses.

Consequently, the City does not need to take action at the present time to adopt regulations or bans pertaining to nonmedical marijuana businesses since those businesses cannot operate until and unless they are licensed by the state, and the state will not issue such licenses until the state adopts regulations pertaining to same and it is not likely that those regulations will be adopted until January 2018.

Personal Cultivation

Indoor Cultivation for Personal Use Cannot be Prohibited by the City; But it Can be Regulated

On the other hand, Proposition 64 provides that local governments can reasonably regulate, *but cannot ban*, personal indoor cultivation of up to 6 living marijuana plants within the person’s private residence. Private residence is defined as “a house, an apartment unit, a mobilehome, or other similar dwelling unit.” This includes cultivation in a greenhouse on the same property as the residence that is 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 6 living marijuana plants indoors beginning November 9, 2016, if Proposition 64 passes – unless the City enacts an ordinance imposing a reasonable regulatory scheme that would preclude persons from cultivating nonmedical marijuana indoors before complying with the City’s regulatory requirements. To reiterate, however, cities cannot adopt or enforce bans on private indoor cultivation of 6 living nonmedical marijuana plants once Proposition 64 passes.

Outdoor Cultivation for Personal Use Can be Banned or Regulated by the City

On the other hand, local governments may regulate or ban all outdoor personal cultivation. Strangely, Proposition 64 includes language that purports to repeal any local ban on personal outdoor cultivation if, in the future, the Attorney General determines that nonmedical use of marijuana is lawful under federal law.

Options Available to the Council

Do Nothing and Wait to See if Proposition 64 Passes

The City could do nothing and wait to see whether Proposition 64 passes. If it does not pass, then under California law, as a theoretical matter, the only type of marijuana that arguably can be permissibly grown, cultivated, sold, dispensed and/or transported is medical marijuana. But we also know that under the recently enacted Medical Marijuana Regulation and Safety Act (“MMRSA”), cities can outright ban any or all of these activities. And, by adopting Section 22.41.065 of the Martinez Municipal Code in 2014, the Council has already prohibited the outdoor cultivation of medical marijuana.

Anticipating that Proposition 64 Passes, it is Recommended that the Council Adopt Urgency Ordinances Banning Outdoor Cultivation of Nonmedical Marijuana and Regulating Indoor Cultivation of Same

In terms of addressing nonmedical marijuana, the attached League materials caution against relying on the permissive nature of the City’s zoning code to prohibit nonmedical marijuana activities, including the personal cultivation of same. The League points out that at a minimum, given that Proposition 64 characterizes nonmedical marijuana as an agricultural product, there may be a strong argument that wherever the City’s zoning code allows crop production, plant growing or horticultural activities, the cultivation of nonmedical marijuana would also be permitted.

And, as mentioned above, if the City does nothing and Proposition 64 passes, those persons who commence cultivating indoor and/or outdoor nonmedical marijuana may arguably obtain rights to continue that activity immune from later-enacted local controls.

If the City Council desires to adopt bans or regulations pertinent to the personal cultivation of nonmedical marijuana, then the amount of time to do so through the normal land use ordinance adoption process will result in such ordinances becoming effective after November 9, 2016. Recall, however, that under Proposition 64, the City is precluded from banning – even temporarily – the indoor cultivation of 6 marijuana plants for nonmedical, personal purposes. Thus, any ordinance pertaining to the indoor cultivation of nonmedical marijuana would have to be regulatory in nature.

On the other hand, since Proposition 64 permits cities to outright ban outdoor cultivation of nonmedical marijuana for personal use, the Council could adopt an interim moratorium precluding such cultivation.

A. It is Recommended that the Council Adopt an Urgency Ordinance Prohibiting Outdoor Cultivation of Nonmedical Marijuana for Personal Use.

Given that the facts presented to the City Council in 2014 motivated the City Council to, in 2014, prohibit the outdoor cultivation of medical marijuana, the same reasons militate in favor of adopting an urgency ordinance banning the outdoor cultivation of nonmedical marijuana for personal use. Hence, attached to this staff report is a proposed urgency

ordinance banning the outdoor cultivation of nonmedical marijuana for personal use. This urgency ordinance would only take effect if Proposition 64 passes, and would only be in effect for 45 days unless the Council extended it for up to a total of 2 years. Such an ordinance, if adopted by the Council, will provide the City time to comprehensively study the impacts of Proposition 64 and the MMRSA, how those two enactments inter-relate and affect the City and how best to treat the outdoor cultivation of nonmedical marijuana in the best interests of the citizens of the City.

B. It is Recommended that the Council Adopt an Urgency Ordinance Regulating Indoor Cultivation of Nonmedical Marijuana for Personal Use.

Given that Proposition 64 guarantees that persons over the age of 21 have the right to cultivate indoors up to six marijuana plants per residence for personal use, it is recommended that the Council adopt reasonable regulations pertaining to same, rather than to allow such uses to be established without adherence to reasonable conditions aimed at safeguarding and promoting the community's health, safety and welfare. This is particularly important in terms of making sure that the power used to grow the marijuana and the structures in which cultivation occurs are code-compliant and that the cultivation activities do not command power in excess of the electrical supply servicing the property in question.

The proposed ordinance makes the indoor cultivation of nonmedical marijuana subject to the following requirements, among others:

1. The structure where the cultivation is occurring shall fully comply with the UBC and applicable sections of Martinez' building and construction codes.
2. Indoor grow lights cannot exceed 1,000 watts per light.
3. Gas products for cultivations are prohibited.
4. Appropriate ventilation and filtration systems must be installed.
5. Cultivation can only occur in conjunction with residential use.
6. No exterior evidence of cultivation shall be visible from a public right of way.
7. Written consent of the property owner must be obtained and maintained at the cultivation site.
8. A portable fire extinguisher must be kept in the same room where cultivation is occurring.

These conditions are aimed at minimizing the adverse effects of indoor marijuana grows. This urgency ordinance would only take effect if Proposition 64 passes, and would only be in effect for 45 days unless the Council extended it for up to a total of 2 years. Such an ordinance, if adopted by the Council, will provide the City time to comprehensively study the impacts of Proposition 64 and the MMRSA, how those two enactments inter-relate and affect the City and how best to treat the indoor cultivation of nonmedical marijuana in the best interests of the citizens of the City.

C. It is Recommended that the Council Adopt an Urgency Ordinance Regulating Indoor Cultivation of Medical Marijuana.

Although the Council has banned the outdoor cultivation of medical marijuana, it has not taken affirmative action as to the indoor cultivation of medical marijuana. Certainly, given that the City's zoning code is permissive, and given that the indoor cultivation of medical marijuana is not listed as a permitted or conditionally permitted use in any zoning district in the City, it would normally be considered a prohibited use. However, clarity as to the City Council's intentions in this regard is a desirable objective. If Proposition 64 passes, what continued value medical marijuana regulations will have is unclear. However, it will take time to sort that out. And if Proposition 64 does not pass, then addressing the indoor cultivation of medical marijuana will become all the more pressing. In either case, time will be needed in order to fairly and deliberately study marijuana cultivation in the City. During that time, it is highly desirable to impose restrictions on the indoor cultivation of medical marijuana or prohibit such cultivation altogether.

The attached urgency ordinance sets out interim, reasonable limitations on the indoor cultivation of medical marijuana, essentially identical with those set forth in the urgency ordinance applicable to the indoor cultivation of nonmedical marijuana. Taken together, however, and if both are adopted by the Council and become effective, the greatest number of marijuana plants that can be cultivated indoors remains 6 per residence, irrespective of how the marijuana may be used.

This urgency ordinance will take effect upon its adoption and irrespective whether Proposition 64 passes, but will only be in effect for 45 days unless the Council extended it for up to a total of 2 years.

Environmental Issues

The adoption of these three urgency ordinances is considered exempt under CEQA, because, inter alia, there is no possibility that their adoption may have a significant negative physical impact on the environment.

Attachments

- Exhibit A: Urgency Ordinance Prohibiting the Outdoor Cultivation of Nonmedical Marijuana (only effective if Proposition 64 passes)
- Exhibit B: Urgency Ordinance Prohibiting the Indoor Cultivation of Nonmedical Marijuana Except Under Certain Circumstances (only effective if Proposition 64 passes)
- Exhibit C: Urgency Ordinance Prohibiting the Indoor Cultivation of Medical Marijuana Except Under Certain Circumstances (effective irrespective of Proposition 64 passing)
- Exhibit D: September 26, 2016, Materials Prepared by the League of California Cities re Proposition 64
- Exhibit E: Articles on the Dangers of Indoor Marijuana Cultivation

APPROVED BY:


Brad Kilger, City Manager

EXHIBIT A

ORDINANCE NO. C.S.

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARTINEZ
ESTABLISHING A TEMPORARY MORATORIUM
ON THE OUTDOOR CULTIVATION OF NONMEDICAL MARIJUANA, TO BECOME
EFFECTIVE UPON THE PASSAGE OF PROPOSITION 64**

WHEREAS, in 1996 the voters of California approved Proposition 215, codified as California Health and Safety Code Section 11362.5 and entitled “The Compassionate Use Act of 1996;” and

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of medical marijuana for specified medical purposes to obtain medical marijuana, and use it under limited, specified circumstances without fear of criminal prosecution under State law; and

WHEREAS, in 2003, the State Legislature enacted SB 420, codified as California Health and Safety Code Section 11362.7 et seq. and entitled the “Medical Marijuana Program Act” (“MMPA”) to clarify the scope of The Compassionate Use Act of 1996; and

WHEREAS, effective January 1, 2016, the Medical Marijuana Regulation and Safety Act (“MMRSA”) became effective under which an extensive state regulatory scheme was established providing for the monitoring, inspecting and licensing of commercial medical marijuana businesses. The MMRSA created a dual-licensing system under which medical marijuana businesses have to obtain both state and local licenses in order to conduct such businesses. However, the MMRSA explicitly acknowledged that cities and counties retain the right to not only regulate such activities, but to ban them entirely. The MMRSA also acknowledged that permissive zoning schemes can implicitly prohibit such activities, including the indoor and outdoor cultivation of medical marijuana when those zoning regulations do not expressly list such activities as permitted or conditionally permitted uses; and

WHEREAS, the City of Martinez’ zoning code expressly prohibits the cultivation of medical marijuana “outdoors or within public view,” and does not expressly list the indoor cultivation of medical or nonmedical marijuana as a permitted or conditionally permitted use; and

WHEREAS, the Control, Regulate and Tax Adult Use of Marijuana Act has qualified for the November 8, 2016 ballot as Proposition 64 (“Proposition 64”). If adopted by the voters, Proposition 64 will legalize the recreational use of marijuana in California for individuals 21 years of age and older; and

WHEREAS, Proposition 64 would authorize the personal cultivation of up to six marijuana plants within a private residence or upon the “grounds” of that private residence for nonmedical purposes; and

EXHIBIT A

WHEREAS, pursuant to Proposition 64, the City can enact reasonable regulations for the cultivation of nonmedical marijuana that occurs inside a residence or accessory structure, and may completely prohibit outdoor nonmedical marijuana cultivation for personal use until such time as the California Attorney General determines that the nonmedical use of marijuana is lawful in California under federal law, at which time any ban on the outdoor cultivation of nonmedical marijuana would be nullified. The California Attorney General has not made a determination that nonmedical use of marijuana is lawful in California under Federal law; and

WHEREAS, Article XI, Section 7 of the California Constitution provides that a city may make and enforce within its limits all local police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, in the event Proposition 64 passes, it is more likely than not that the number of individuals who will desire to and will cultivate nonmedical marijuana for personal use will be significant. It is further more likely than not that substantial numbers of persons interested in cultivating nonmedical marijuana will commence doing so immediately after or soon after Proposition 64 passes, unless and until local regulations and/or prohibitions (on outdoor cultivation) are enacted which control such activities; and

WHEREAS, the cultivation of medical and nonmedical marijuana in other cities has resulted in calls for service to their police departments, including calls for robberies and thefts, and the increase in criminal activity, and it is reasonable to assume that should Proposition 64 pass without reasonable controls imposed by the City of Martinez, similar, if not greater, numbers of such incidents pertaining to the cultivation of nonmedical marijuana will occur in the City of Martinez. Furthermore, in the City of Martinez, complaints have already been made by citizens complaining of smelling marijuana being cultivated outdoors and in residential neighborhoods. In the event that Proposition 64 passes without the restrictions imposed by this Ordinance, there is a current and immediate threat to the public health, safety and welfare of substantial numbers of persons cultivating nonmedical marijuana outdoors and creating the complaints and enforcement problems already experienced in the City of Martinez and exposing citizens to robberies, potential violence, vandalism of property and theft of marijuana plants being openly and visibly grown in the yards and grounds of residential properties throughout the City; and

WHEREAS, based upon the experience of the State of Colorado and other states in which nonmedical marijuana has been legalized, it is likely that should Proposition 64 pass it will have significant impacts on law enforcement, the medical resources of the State and the regulatory function of local agencies, including the City of Martinez; and

WHEREAS, the short period between Proposition 64's qualification for the November 8, 2016, ballot and the November 8, 2016, election and Proposition 64's creation of a complex, state-wide licensing system for the commercial production, delivery, marketing, testing and selling of nonmedical marijuana have impeded and prevented the City from adequately studying its impacts and the most appropriate manner in which to comprehensively address the issues implicated by the Proposition and its implementation. The City needs time to further study the Proposition should it pass and whether and to what extent the City's General Plan, zoning code

EXHIBIT A

and other regulations will need to be or should be modified to accommodate and/or address the impacts of Proposition 64 on the City and its citizens. Were the City Council to permit the outdoor cultivation of nonmedical marijuana while it studied the means and methods to address such activities, those persons who were engaged in such outdoor cultivation activities may garner rights to continue such activities as grandfathered uses, unaffected by later-enacted legislation by the City Council. Such an outcome presents an immediate and current threat to the ability of the City Council to properly plan and regulate such activities and will undermine the purpose of any such plan and regulation as to those persons who were able to commence the outdoor cultivation of nonmedical marijuana before such plans and/or regulations are put into place; and

WHEREAS, in order to determine the most appropriate and publicly beneficial manner in which to address the outdoor cultivation of nonmedical marijuana issues implicated by Proposition 64 and the effect of such outdoor cultivation activities should the City determine to permit such uses within the City's corporate boundaries, and in order to protect residents and businesses from the potential harmful effects of some outdoor nonmedical marijuana cultivators, the City needs time to study whether to permanently permit and regulate or prohibit such uses and, if the Council determines to permit such uses, to examine the regulations relating thereto and to permit the public adequate time to review and comment upon the issue in accordance with state law in tandem with the City's consideration of any such regulations or prohibition; and

WHEREAS, it would be destructive of and render ineffective any proposed policies, restrictions, ordinances and regulations if, during the period they are being studied and considered by the City, parties seeking to avoid their operation and effect establish such uses, which said operations and activities will defeat, in whole or in part, the objectives of such policies, restrictions, ordinances and regulations; and

WHEREAS, absent the adoption of this interim urgency ordinance, it is likely that the establishment and operation of outdoor nonmedical marijuana cultivations within the City, without appropriate controls in place to regulate outdoor nonmedical marijuana cultivations and their impacts on the community, will result in harmful effects to the businesses, property owners and residents of the City; and

WHEREAS, because of the facts set forth above, there exists a current and immediate threat that persons shall commence outdoor nonmedical cultivation operations, that such poses a current and immediate threat to the health, safety and welfare of the citizens of the City and having such uses commence operations and operate in the City before the City has had an opportunity to consider, study and/or adopt regulations (or prohibitions) governing the said outdoor cultivations will render such regulations ineffective and destroy the purpose of engaging in such an analysis and process in the first place, thus constituting a current and immediate threat to the health, safety and welfare of the citizens of the City; and

WHEREAS, the City Council desires to adopt an interim moratorium on the outdoor cultivation of nonmedical marijuana throughout the City; and

EXHIBIT A

WHEREAS, the City Council desires that this ordinance shall only take effect if and when Proposition 64 is approved by the voters of California at the election occurring on November 8, 2016; and

WHEREAS, pursuant to Section 15001 of the California Environmental Quality Act (CEQA) Guidelines, this ordinance is exempt from CEQA based on the following findings:

(1) This ordinance is not a project within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately.

(2) This ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the City pursuant to its police power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the consideration, evaluation and possible adoption of contemplated local legislation, regulation and policies.

(3) This ordinance is not subject to CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (1) and (2), above, and pursuant to CEQA Guidelines Section 15061, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment:

NOW THEREFORE, the City Council of the City of Martinez does ordain as follows:

Section 1. Recitals Made Findings. The above recitals are hereby declared to be true and correct and represent the findings of the City Council of the City of Martinez, made in the exercise of its independent judgment. Said findings are incorporated by this reference.

Section 2. Moratorium Imposed.

A. Scope.

In accordance with the authority granted the City of Martinez under Article XI, Section 7 of the California Constitution and California Government Code Section 65858, from and after the effective date of this ordinance, no permit, variance, building permit, approval or any other applicable license or entitlement for use, including, but not limited to any land use entitlement, or the issuance of a business license, shall be approved or issued for the cultivation of nonmedical marijuana outdoors. The cultivation of nonmedical marijuana outdoors is hereby expressly prohibited in all areas and in all zoning districts of the City during the period of time which this ordinance, and any extension thereof, if any, is in effect.

B. Definitions.

EXHIBIT A

1. "Fully enclosed and secure structure" means a space within a building that complies with the applicable building code, and has a complete roof enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors. Walls and roof must be constructed of solid materials that cannot be easily broken through, and must be

constructed with non-transparent material. Plastic sheeting, regardless of gauge, or similar products, are not considered solid materials. A fully enclosed and secure structure must be an accessory structure to a private residence located upon the parcel on which that private residence is situated.

2. "Nonmedical marijuana" means marijuana that is intended to be used for nonmedical purposes pursuant to Health and Safety Code section 11362.1 et seq., as those sections may be amended from time to time.

3. "Nonmedical marijuana cultivation" or the "cultivation of nonmedical marijuana" means the planting, growing, harvesting, drying, curing, grading, trimming or processing of marijuana plants or any part thereof pursuant to Health and Safety Code section 11362.1 et seq., as those sections may be amended from time to time.

4. "Marijuana" means all parts of the plant *cannabis sativa* L, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin.

5. "Outdoors" means any location within the City that is not within a fully enclosed and secure structure or a private residence.

C. Statutory Findings and Purpose.

This ordinance is declared to be an interim ordinance as defined under California Government Code Section 65858. This ordinance is deemed necessary based on the findings of the City Council of the City of Martinez as set forth in the recitals, incorporated by Section 1 of this ordinance.

Section 3. Establishment, Maintenance or Operation of Nonmedical Marijuana Cultivation Outdoors Declared Public Nuisance.

It is unlawful and a public nuisance for any person owning, leasing, occupying, or having possession of any legal parcel or premises within any zoning district in the city to cause or allow such parcel or premises to be used for the outdoor cultivation of nonmedical marijuana.

Violations of this ordinance may be enforced by any applicable laws or ordinances, including but not limited to injunctions, or administrative penalties under the Martinez Municipal Code.

EXHIBIT A

Section 4. Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council of the City of Martinez hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 5. Effective Date and Duration.

This ordinance shall become effective on November 9, 2016, if (a) Proposition 64 is passed by a majority vote of those persons voting on it and (b) adopted by at least four-fifths vote of the City Council, and shall be in effect for 45 days from its adoption unless extended by the City in accordance with California Government Code Section 65858.

Section 6. Posting. The City Clerk shall cause this ordinance to be published and/or posted within fifteen days after its adoption.

APPROVED: _____
Rob Schroder, Mayor

ATTEST: _____
Mercy G. Cabral, Deputy City Clerk

* * * * *

I HEREBY CERTIFY the foregoing ordinance was duly adopted at a Regular Meeting of the City Council of the City of Martinez held on the 2nd day of November, 2016, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

APPROVED AS TO FORM:

Jeffrey A. Walter, City Attorney

EXHIBIT B

ORDINANCE NO. C.S.

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARTINEZ
ESTABLISHING A TEMPORARY MORATORIUM (EXCEPT UNDER CERTAIN CIRCUMSTANCES)
ON THE INDOOR CULTIVATION OF NONMEDICAL MARIJUANA, TO BECOME EFFECTIVE
UPON THE PASSAGE OF PROPOSITION 64**

WHEREAS, in 1996 the voters of California approved Proposition 215, codified as California Health and Safety Code Section 11362.5 and entitled “The Compassionate Use Act of 1996;” and

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of medical marijuana for specified medical purposes to obtain medical marijuana, and use it under limited, specified circumstances without fear of criminal prosecution under State law; and

WHEREAS, in 2003, the State Legislature enacted SB 420, codified as California Health and Safety Code Section 11362.7 et seq. and entitled the “Medical Marijuana Program Act” (“MMPA”) to clarify the scope of The Compassionate Use Act of 1996; and

WHEREAS, effective January 1, 2016, the Medical Marijuana Regulation and Safety Act (“MMRSA”) became effective under which an extensive state regulatory scheme was established providing for the monitoring, inspecting and licensing of commercial medical marijuana businesses. The MMRSA created a dual-licensing system under which medical marijuana businesses have to obtain both state and local licenses in order to conduct such businesses. However, the MMRSA explicitly acknowledged that cities and counties retain the right to not only regulate such activities, but to ban them entirely. The MMRSA also acknowledged that permissive zoning schemes can implicitly prohibit such activities, including the indoor and outdoor cultivation of medical marijuana when those zoning regulations do not expressly list such activities as permitted or conditionally permitted uses; and

WHEREAS, the City of Martinez’ zoning code expressly prohibits the cultivation of medical marijuana “outdoors or within public view,” and does not expressly list the indoor cultivation of medical or nonmedical marijuana as a permitted or conditionally permitted use; and

WHEREAS, the Control, Regulate and Tax Adult Use of Marijuana Act has qualified for the November 8, 2016 ballot as Proposition 64 (“Proposition 64”). If adopted by the voters, Proposition 64 will legalize the recreational use of marijuana in California for individuals 21 years of age and older; and

WHEREAS, Proposition 64 would authorize the personal cultivation of up to six marijuana plants within a private residence or upon the “grounds” of that private residence for nonmedical purposes; and

EXHIBIT B

WHEREAS, pursuant to Proposition 64, the City can enact reasonable regulations for the cultivation of nonmedical marijuana that occurs inside a residence or accessory structure; and

WHEREAS, Article XI, Section 7 of the California Constitution provides that a city may make and enforce within its limits all local police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, in the event Proposition 64 passes, it is more likely than not that the number of individuals who will desire to and will cultivate nonmedical marijuana for personal use will be significant. It is further more likely than not that substantial numbers of persons interested in cultivating nonmedical marijuana will commence doing so immediately after or soon after Proposition 64 passes, unless and until local regulations and/or prohibitions (on outdoor cultivation) are enacted which control such activities; and

WHEREAS, the cultivation of medical and nonmedical marijuana in other cities has resulted in (a) calls for service to their police departments, including calls for robberies and thefts, and (b) the increase in criminal activity, and it is reasonable to assume that should Proposition 64 pass without reasonable controls imposed by the City of Martinez, similar, if not greater, numbers of such incidents pertaining to the indoor cultivation of nonmedical marijuana will occur in the City of Martinez. The City of Martinez' Police Department has received multiple complaints about "grow" houses operated in City neighborhoods. In another incident, the operations of indoor cultivation of marijuana resulted in a fire. Furthermore, in commercially zoned districts in the City, tenants and landlords in multi-tenant commercial structures have complained about the noxious smell of marijuana being cultivated indoors by other tenants in neighboring rental units – without the permission of the landlord. In the event that Proposition 64 passes without the restrictions imposed by this ordinance, there is a current and immediate threat to the public health, safety and welfare of substantial numbers of persons cultivating nonmedical marijuana indoors and creating the complaints, safety problems and enforcement problems already experienced in the City of Martinez and elsewhere and exposing citizens to robberies, potential violence, vandalism of property and theft of marijuana plants; and

WHEREAS, based upon the experience of the State of Colorado and other states in which nonmedical marijuana has been legalized, it is likely that should Proposition 64 pass it will have significant impacts on the City's police department, the medical resources of the State and the regulatory function of local agencies, including the City of Martinez; and

WHEREAS, the short period between Proposition 64's qualification for the November 8, 2016, ballot and the November 8, 2016, election and Proposition 64's creation of a complex, state-wide licensing system for the commercial production, delivery, marketing, testing and selling of nonmedical marijuana have impeded and prevented the City from adequately studying its impacts and the most appropriate manner in which to comprehensively address the issues implicated by the Proposition and its implementation. The City needs time to further study the Proposition should it pass and whether and to what extent the City's General Plan, zoning code and other regulations will need to be or should be modified to accommodate and/or address

EXHIBIT B

the impacts of Proposition 64 on the City and its citizens. Were the City Council to permit the unregulated, indoorcultivation of nonmedical marijuana while it studied the means and methods to address such activities, those persons who were engaged in such indoor cultivation activities may garner rights to continue such activities as grandfathered uses, unaffected by later-enacted legislation by the City Council. Such an outcome presents an immediate and current threat to the ability of the City Council to properly plan and regulate such activities and will undermine the purpose of any such plan and regulation as to those persons who were able to commence the indoor cultivation of nonmedical marijuana before such plans and/or regulations are put into place; and

WHEREAS, in order to determine the most appropriate and publicly beneficial manner in which to address the indoor cultivation of nonmedical marijuana issues implicated by Proposition 64 and the effect of such indoor cultivation activities should the City determine to regulate such uses within the City's corporate boundaries, and in order to protect residents and businesses from the potential harmful effects of some indoor nonmedical marijuana cultivators, the City needs time to study whether to permanently regulatesuch uses and, if so, the City needs time to examine the regulations relating thereto and to permit the public adequate time to review and comment upon the issue in accordance with state law in tandem with the City's consideration of any such regulations; and

WHEREAS, it would be destructive of and render ineffective any proposed policies, restrictions, ordinances and regulations if, during the period they are being studied and considered by the City, parties seeking to avoid their operation and effect establish such uses, which said operations and activities will defeat, in whole or in part, the objectives of such policies, restrictions, ordinances and regulations; and

WHEREAS, absent the adoption of this interim urgency ordinance, it is likely that the establishment and operation of indoor nonmedical marijuana cultivations within the City, without appropriate controls in place to regulate same and their impacts on the community, will result in harmful effects to the businesses, property owners and residents of the City; and

WHEREAS, because of the facts set forth above, there exists a current and immediate threat that persons shall commence indoor nonmedical cultivation operations, that such poses a current and immediate threat to the health, safety and welfare of the citizens of the City and having such uses commence operations and operate in the City before the City has had an opportunity to consider, study and/or adopt regulations governing the said indoor cultivations will render such regulations ineffective and destroy the purpose of engaging in such an analysis and process in the first place, thus constituting a current and immediate threat to the health, safety and welfare of the citizens of the City; and

WHEREAS, subject to the provisions of this ordinance, the City Council desires to adopt an interim moratorium on the indoor cultivation of nonmedical marijuana throughout the City; and

WHEREAS, the City Council desires that this ordinance shall only take effect if and when Proposition 64 is approved by the voters of California at the election occurring on November 8, 2016; and

EXHIBIT B

WHEREAS, pursuant to Section 15001 of the California Environmental Quality Act (CEQA) Guidelines, this ordinance is exempt from CEQA based on the following findings:

(1) This ordinance is not a project within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately.

(2) This ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the City pursuant to its police power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the consideration, evaluation and possible adoption of contemplated local legislation, regulation and policies.

(3) This ordinance is not subject to CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (1) and (2), above, and pursuant to CEQA Guidelines Section 15061, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment:

NOW, THEREFORE, the City Council of the City of Martinez does ordain as follows:

Section 1. Recitals Made Findings. The above recitals are hereby declared to be true and correct and represent the findings of the City Council of the City of Martinez, made in the exercise of its independent judgment. Said findings are incorporated by this reference.

Section 2. Urgency Moratorium Imposed.

A. Cultivation not in compliance with this ordinance. It is declared to be unlawful and a public nuisance for any person owning, leasing, occupying or having charge or possession of any parcel or premises within any zoning district in the city to cultivate nonmedical marijuana except as provided for in this ordinance. No person other than an individual 21 years of age or older may engage in the cultivation of nonmedical marijuana.

B. Indoor cultivation. Indoor cultivation of nonmedical marijuana is prohibited in all zoning districts of the city, except when such cultivation occurs on a parcel with an approved private residence. All indoor cultivation of nonmedical marijuana must be in compliance with this ordinance.

C. Indoor cultivation in private residence. The indoor cultivation of nonmedical marijuana on a parcel with an approved private residence shall only be conducted within a fully enclosed and secure structure or within a residence. Such cultivation shall be in conformance with the following minimum standards:

1. The primary use of the property shall be for a residence. Nonmedical marijuana cultivation is prohibited as a home occupation.

EXHIBIT B

2. All areas used for cultivation of nonmedical marijuana shall comply with Title 15 (Buildings and Construction) of the Martinez Municipal Code, as well as applicable law.
3. Indoor grow lights shall not exceed 1,000 watts per light, and shall comply with the California Building, Electrical and Fire Codes as adopted by the city.
4. The use of gas products (CO₂, butane, propane, natural gas, etc.) or generators for cultivation of nonmedical marijuana is prohibited.
5. Any fully enclosed and secure structure or residence used for the cultivation of nonmedical marijuana must have a ventilation and filtration system installed that shall prevent marijuana plant odors from exiting the interior of the structure and that shall comply with Title 15 (Buildings and Construction) of the Martinez Municipal Code.
6. A fully enclosed and secure structure used for the cultivation of nonmedical marijuana shall be located in the rear yard area of the parcel, and must maintain a minimum ten-foot setback from any property line. The yard where the fully enclosed and secure structure is maintained must be enclosed by a solid fence at least six feet in height. This provision shall not apply to cultivation occurring in a garage.
7. Adequate mechanical locking or electronic security systems must be installed as part of the fully enclosed and secure structure or the residence prior to the commencement of cultivation.
8. Nonmedicalmarijuana cultivation shall be limited to six marijuana plants per private residence, regardless of whether the marijuana is cultivated inside the residence or in a fully enclosed and secure structure. The limit of six plants per private residence shall apply regardless of how many individuals reside at the private residence.
9. The residential structure shall remain at all times a residence, with legal and functioning cooking, sleeping and sanitation facilities with proper ingress and egress. These rooms shall not be used for nonmedicalmarijuana cultivation where such cultivation will prevent their primary use for cooking of meals, sleeping and bathing.
10. Cultivation of nonmedicalmarijuana shall only take place on impervious surfaces.
11. From a public right-of-way, there shall be no exterior evidence of nonmedicalmarijuana cultivation occurring on the parcel.
12. Nonmedicalmarijuana cultivation area, whether in a fully enclosed and secure structure or inside a residence, shall not be accessible to persons under 21 years of age.
13. Written consent of the property owner to cultivate nonmedicalmarijuana within the residence or in a fully enclosed and secure structure shall be obtained and shall be kept on the premises, and available for inspection by the chief of police or his/her designee.

EXHIBIT B

14. A portable fire extinguisher, that complies with the regulations and standards adopted by the state fire marshal and applicable law, shall be kept in the fully enclosed and secure structure used for cultivation of nonmedicalmarijuana. If cultivation occurs in a residence, the portable fire extinguisher shall be kept in the same room as where the cultivation occurs.

D. Definitions.

1. "Fully enclosed and secure structure" means a space within a building that complies with the applicable building code, and has a complete roof enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors. Walls and roof must be constructed of solid materials that cannot be easily broken through, and must be constructed with non-transparent material. Plastic sheeting, regardless of gauge, or similar products, are not considered solid materials. A fully enclosed and secure structure must be an accessory structure to a private residence located upon the parcel on which that private residence is situated.

2. "Indoors" means inside a fully enclosed and secure structure or within a private residence.

3. "Nonmedical marijuana" means marijuana that is intended to be used for nonmedical purposes pursuant to Health and Safety Code section 11362.1 et seq., as those sections may be amended from time to time.

4. "Nonmedical marijuana cultivation" or the "cultivation of nonmedical marijuana" means the planting, growing, harvesting, drying, curing, grading, trimming or processing of marijuana plants or any part thereof pursuant to Health and Safety Code section 11362.1 et seq., as those sections may be amended from time to time.

6. "Marijuana" means all parts of the plant cannabis sativa L, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin.

7. "Outdoors" means any location within the City that is not within a fully enclosed and secure structure or a private residence.

8. "Private residence" or "residence" means a house, an apartment unit, a mobile home or other similar dwelling.

9. "Solid fence" means a fence constructed of substantial material, such as wood or metal, that prevents viewing the contents from one side to the other side of the fence.

EXHIBIT B

D. Statutory Findings and Purpose.

This ordinance is declared to be an interim ordinance as defined under California Government Code Section 65858. This ordinance is deemed necessary based on the findings of the City Council of the City of Martinez as set forth in the recitals, incorporated by Section 1 of this ordinance.

Section 3. Except as Provided in this Ordinance, Establishment, Maintenance or Operation of Nonmedical Marijuana Cultivation Indoors Declared Public Nuisance.

It is unlawful and a public nuisance for any person owning, leasing, occupying, or having possession of any parcel or premises within any zoning district in the city to cause or allow such parcel or premises to be used for the indoor cultivation of nonmedical marijuana except as provided in this ordinance. Violations of this ordinance may be enforced by any applicable laws or ordinances, including but not limited to injunctions, or administrative penalties under the Martinez Municipal Code.

Section 4. Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council of the City of Martinez hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 5. Effective Date and Duration.

This ordinance shall become effective on November 9, 2016, if (a) Proposition 64 is passed by a majority vote of those persons voting on it and (b) adopted by at least four-fifths vote of the City Council, and shall be in effect for 45 days from its adoption unless extended by the City in accordance with California Government Code Section 65858.

Section 6. Posting. The City Clerk shall cause this ordinance to be published and/or posted within fifteen days after its adoption.

APPROVED: _____
Rob Schroder, Mayor

ATTEST: _____
Mercy G. Cabral, Deputy City Clerk

* * * * *

EXHIBIT B

I HEREBY CERTIFY the foregoing ordinance was duly adopted at a Regular Meeting of the City Council of the City of Martinez held on the 2nd day of November, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

APPROVED AS TO FORM:

Jeffrey A. Walter, City Attorney

EXHIBIT C

ORDINANCE C.S.

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARTINEZ
ESTABLISHING A TEMPORARY MORATORIUM (EXCEPT UNDER SPECIFIED CIRCUMSTANCES)
ON THE INDOOR CULTIVATION OF MARIJUANA FOR MEDICAL USE
BY A QUALIFIED PATIENT OR CAREGIVER**

WHEREAS, in 1996 the voters of California approved Proposition 215, codified as California Health and Safety Code Section 11362.5 and entitled “The Compassionate Use Act of 1996” (“CUA”); and

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of medical marijuana for specified medical purposes to obtain medical marijuana, and use it under limited, specified circumstances without fear of criminal prosecution under State law; and

WHEREAS, in 2003, the State Legislature enacted SB 420, codified as California Health and Safety Code Section 11362.7 *et seq.* and entitled the “Medical Marijuana Program Act” (“MMPA”) to clarify the scope of The Compassionate Use Act of 1996 and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes; and

WHEREAS, the Federal Controlled Substances Act (“CSA”) provides that the manufacture, cultivation, distribution and dispensing of marijuana is illegal for any purpose, and further provides for criminal penalties for marijuana use; and

WHEREAS, the Medical Marijuana Regulation and Safety Act (hereafter “MMRSA”) became effective on January 1, 2016s, which set up a State dual-licensing scheme for commercial medical cannabis activities while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license, and allows the City to completely prohibit commercial medical marijuana activities; and

WHEREAS, the City Council finds that unregulated, commercial medical marijuana activities, as well as the indoor cultivation for personal medical use as allowed by the CUA and MMPA can adversely affect the health, safety, and well-being of City residents; and

WHEREAS, the limited immunity from specified state marijuana laws provided by the CUA and MMPA does not confer a land use right or the right to create or maintain a public nuisance; and

WHEREAS, the MMRSA contains language that requires the city to prohibit or regulate medical marijuana cultivation either expressly or otherwise under the principles of permissive zoning, or, under limited circumstances, the State will become the sole licensing authority of such activities; and

WHEREAS, the City therefore should adopt an express indoor cultivation ordinance to ensure the State is not the sole regulator of indoor cultivation activities provided pursuant to the terms of the MMRSA; and

EXHIBIT C

WHEREAS, the Control, Regulate and Tax Adult Use of Marijuana Act has qualified for the November 8, 2016 ballot as Proposition 64 (“Proposition 64”). If adopted by the voters, Proposition 64 will legalize the recreational use of marijuana in California for individuals 21 years of age and older; and

WHEREAS, Proposition 64 would authorize the personal cultivation of up to six marijuana plants within a private residence or upon the “grounds” of that private residence for personal use for medical and/or nonmedical purposes; and

WHEREAS, the City Council prohibited the outdoor cultivation of marijuana for medical use in any zoning district within the City limits through its adoption of Ordinance No. 1380 on May 7, 2014; and

WHEREAS, the City Council finds that it has expressly prohibited the outdoor cultivation of marijuana for medical purposes anywhere within the City and at any time, such that since the enactment of Ordinance No. 1380 and continuing through the present date the outdoor cultivation of medical marijuana as that term is defined by Ordinance No. 1380 has been and continues to be strictly prohibited within the City limits; and

WHEREAS, the City has a permissive zoning scheme which makes any use of property prohibited except as it is expressly permitted or expressly conditionally permitted within Title 22 (Zoning) of the Martinez Municipal Code; and

WHEREAS, the City Council believes that cultivation of medical marijuana is and has been prohibited under the City’s permissive zoning regulations, and it desires to adopt this ordinance to expressly make clear that such use has been prohibited through the date of the adoption of this ordinance; however, on and after the adoption of this ordinance, the indoor cultivation of medical marijuana shall temporarily continue to be prohibited except under certain circumstances and conditions as specified in this ordinance; and

WHEREAS, California Government Code Section 65858(a), provides that the City Council may, to protect public safety, health or welfare, adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body is considering or studying or intends to study within a reasonable time; that adoption of such urgency measures requires a four-fifths vote of the legislative body; and that such measures shall be of no effect after 45 days from the date of adoption, but may be extended a maximum of two times and have a maximum total duration of 2 years; and

WHEREAS, California Government Code Section 65858, subdivision (c), provides that legislative bodies may not adopt or extend such interim ordinances unless they contain findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional entitlements would result in that threat to the public health, safety or welfare; and

EXHIBIT C

WHEREAS, given the above facts, including the provisions in the MMRSA that would deny the City authority to establish a licensing or permitting scheme that would enable the City to regulate and/or prohibit the indoor cultivation of marijuana for medical if the City does not enact an ordinance regulating or prohibiting such activities before the State adopts regulations and begins issuing licenses pertinent to indoor cultivation of medical marijuana; and

WHEREAS, the cultivation of medical and nonmedical marijuana in other cities has resulted in (a) calls for service to their police departments, including calls for robberies and thefts, and (b) the increase in criminal activity, and it is reasonable to assume that should Proposition 64 pass without reasonable controls imposed by the City of Martinez, similar, if not greater, numbers of such incidents pertaining to the indoor cultivation of nonmedical marijuana will occur in the City of Martinez. The City of Martinez' Police Department has received multiple complaints about "grow" houses operated in City neighborhoods. In another incident, the operations of indoor cultivation of marijuana resulted in a fire. Furthermore, in commercially zoned districts in the City, tenants and landlords in multi-tenant commercial structures have complained about the noxious smell of marijuana being cultivated indoors by other tenants in neighboring rental units – without the permission of the landlord. In the event that Proposition 64 passes without the restrictions imposed by this ordinance, there is a current and immediate threat to the public health, safety and welfare of substantial numbers of persons cultivating nonmedical marijuana indoors and creating the complaints, safety problems and enforcement problems already experienced in the City of Martinez and elsewhere and exposing citizens to robberies, potential violence, vandalism of property and theft of marijuana plants; and

WHEREAS, the City Council finds that allowing the use of property within the City for the indoor cultivation of marijuana for medical purposes without the City having any authority to establish conditions, regulations, restrictions, limitations or prohibitions upon such activities presents a current and immediate threat to the public health, safety, or welfare, including but not limited to the harmful effects associated with such activities, such as: the spread of malodorous smells; indoor electrical fire hazards; inadequate ventilation; health hazards from mold and water damage; criminal activity such as robberies, burglaries, and trespassing, which have been experienced by other communities and/or are significant risks resulting from such activities; and increased nuisance conditions in neighborhoods, among others; and

WHEREAS, the City is considering how best to address the issues presented by the indoor cultivation of medical marijuana within the City, including the consideration of a regulatory permit or other process or a prohibition on some or all of such activities, in order to limit the potential impacts of indoor cultivation activities and preserve the public health, safety and welfare of the City and its residents and businesses; and

WHEREAS, in the event that the City does not timely adopt an ordinance regulating or prohibiting indoor cultivation of medical marijuana, the City will largely be deprived of its regulatory authority as to indoor medical marijuana cultivation land uses and the only regulatory, licensing or permitting authority that will exist will belong to the state; and

EXHIBIT C

WHEREAS, in the event Proposition 64 is passed on November 8, 2016, it remains unclear how it will affect the MMRSA and the state and the City need time to determine how these enactments inter-relate and impact local control over the cultivation of marijuana. There is presently insufficient time for the City and its citizens to fully consider all of the policy, safety and land use issues that are raised when considering whether to, and how to, authorize indoor cultivation of marijuana for medicinal or nonmedical purposes in the City; and

WHEREAS, it would be destructive of and, to some degree, render ineffective any proposed policies, restrictions, ordinances and regulations if, during the period they are being studied and considered, parties seeking to avoid their operation and effect establish and operate such uses, which said operations and activities will defeat, in whole or in part, the objectives of such policies, restrictions, ordinances and regulations; and

WHEREAS, absent the adoption of this interim urgency ordinance, it is likely that the establishment and operation of indoor cultivation activities within the City, without appropriate controls in place to regulate these activities and their impacts on the community, will result in harmful effects to the businesses, property owners and residents of the City; and

WHEREAS, because of the facts set forth above, there exists a current and immediate threat that additional indoor cultivation activities may be located, or will be sought to be located, within the City. These activities pose a current and immediate threat to the health, safety and welfare of the citizens of the City because having such uses locate, commence operations and operate in the City before the City has had an opportunity to consider, study and/or adopt regulations governing the location and operations of indoor cultivation activities will render such regulations ineffective and destroy the purpose of engaging in such an analysis and process in the first place; and

WHEREAS, pursuant to Section 15001 of the California Environmental Quality Act (CEQA) Guidelines, this ordinance is exempt from CEQA based on the following findings:

(1) This ordinance is not a project within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately.

(2) This ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the City pursuant to its police power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the consideration, evaluation and possible adoption of contemplated local legislation, regulation and policies.

(3) This ordinance is not subject to CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (1) and (2), above, and pursuant to CEQA Guidelines Section 15061, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment:

EXHIBIT C

NOW, THEREFORE, The City Council of the City of Martinez does ordain as follows:

SECTION 1. Recitals Made Findings. The above recitals are hereby declared to be true and correct and represent the findings of the City Council of the City of Martinez, made in the exercise of its independent judgment. Said findings are incorporated by this reference.

SECTION 2. Moratorium Imposed.

A. Cultivation not in compliance with this ordinance. It is declared to be unlawful and a public nuisance for any person owning, leasing, occupying or having charge or possession of any parcel or premises within any zoning district in the city to cultivate medical marijuana except as provided for in this ordinance. No person other than an individual 21 years of age or older may engage in the cultivation of medical marijuana. No person other than a qualified patient, person with an identification card or primary caregiver may engage in the cultivation of medical marijuana, and such cultivation shall only be for the personal, non-commercial use of the qualified patient or person with an identification card. No qualified patient, person with an identification card or primary caregiver may receive remuneration for cultivating medical marijuana.

B. Indoor cultivation. Indoor cultivation of medical marijuana is prohibited in all zoning districts of the city, except when such cultivation occurs on a parcel with an approved private residence. All indoor cultivation of medical marijuana must be in compliance with this ordinance.

C. Indoor cultivation in private residence. The indoor cultivation of medical marijuana on a parcel with an approved private residence shall only be conducted within a fully enclosed and secure structure or within a residence. Such cultivation shall be in conformance with the following minimum standards:

1. The primary use of the property shall be for a residence. Medical marijuana cultivation is prohibited as a home occupation.

2. All areas used for cultivation of medical marijuana shall comply with Title 15 (Buildings and Construction) of the Martinez Municipal Code, as well as applicable law.

3. Indoor grow lights shall not exceed 1,000 watts per light, and shall comply with the California Building, Electrical and Fire Codes as adopted by the city.

4. The use of gas products (CO2, butane, propane, natural gas, etc.) or generators for cultivation of medical marijuana is prohibited.

5. Any fully enclosed and secure structure or residence used for the cultivation of medical marijuana must have a ventilation and filtration system installed that shall prevent marijuana plant odors from exiting the interior of the structure and shall comply with Title 15 (Buildings and Construction) of the Martinez Municipal Code.

EXHIBIT C

6. A fully enclosed and secure structure used for the cultivation of medical marijuana shall be located in the rear yard area of the parcel, and must maintain a minimum ten-foot setback from any property line. The yard where the fully enclosed and secure structure is maintained must be enclosed by a solid fence at least six feet in height. This provision shall not apply to cultivation occurring in a garage.

7. Adequate mechanical locking or electronic security systems must be installed as part of the fully enclosed and secure structure or the residence prior to the commencement of cultivation.

8. Marijuana cultivation shall be limited to six marijuana plants per private residence, regardless of whether the marijuana is cultivated inside the residence or in a fully enclosed and secure structure. The limit of six plants per private residence shall apply (a) regardless of how many individuals reside at the private residence (b) regardless of how many residents are qualified patients, persons with an identification card or primary caregivers; and (c), in the event of Proposition 64's passage, regardless whether some or all of the marijuana plants are being cultivated for nonmedical purposes.

9. The residential structure shall remain at all times a residence, with legal and functioning cooking, sleeping and sanitation facilities with proper ingress and egress. These rooms shall not be used for medical marijuana cultivation where such cultivation will prevent their primary use for cooking of meals, sleeping and bathing.

10. Cultivation of medical marijuana shall only take place on impervious surfaces.

11. From a public right-of-way, there shall be no exterior evidence of medical marijuana cultivation occurring on the parcel.

12. The medical marijuana cultivation area(s), whether in a fully enclosed and secure structure or inside a residence, shall not be accessible to persons under 21 years of age.

13. Written consent of the property owner to cultivate medical marijuana within the residence or in a fully enclosed and secure structure shall be obtained and shall be kept on the premises, and available for inspection by the chief of police or his/her designee.

14. A portable fire extinguisher, that complies with the regulations and standards adopted by the state fire marshal and applicable law, shall be kept in the fully enclosed and secure structure used for cultivation of medical marijuana. If cultivation occurs in a residence, the portable fire extinguisher shall be kept in the same room as where the cultivation occurs.

15. The qualified patient, person with an identification card or primary caregiver shall reside in the residence on the parcel upon which marijuana is being cultivated and such residence must be the qualified patient's, person with an identification card's or primary caregiver's primary place of residence.

EXHIBIT C

D. Definitions.

1. "Caregiver" or "primary caregiver" shall have the meaning as set forth in Health & Safety Code Section 11362.7 as the same may be amended from time to time.
2. "Fully enclosed and secure structure" means a space within a building that complies with the applicable building code, and has a complete roof enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors. Walls and roof must be constructed of solid materials that cannot be easily broken through, and must be constructed with non-transparent material. Plastic sheeting, regardless of gauge, or similar products, are not considered solid materials. A fully enclosed and secure structure must be an accessory structure to a private residence located upon the parcel on which that private residence is situated.
3. "Indoors" means inside a fully enclosed and secure structure or within a private residence.
4. "Medical marijuana" means marijuana that is intended to be used for medical purposes pursuant to Health and Safety Code section 11362.5.
5. "Medical marijuana cultivation" or the "cultivation of medical marijuana" means the planting, growing, harvesting, drying, curing, grading, trimming or processing of marijuana plants or any part thereof for medicinal use pursuant to Health and Safety Code section 11362.5.
6. "Marijuana" means all parts of the plant *cannabis sativa* L, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin.
7. "Private residence" or "residence" means a house, an apartment unit, a mobile home or other similar dwelling.
8. "Qualified patient" and "person with an identification card" shall have the same meaning as set forth in Health & Safety Code Section 11362.7 as the same may be amended from time to time.
9. "Solid fence" means a fence constructed of substantial material, such as wood or metal that prevents viewing the contents from one side to the other side of the fence.

EXHIBIT C

E. Statutory Findings and Purpose

This ordinance is declared to be an interim ordinance as defined under California Government Code Section 65858. This ordinance is deemed necessary based on the findings of the City Council of the City of Martinez as set forth in the recitals, incorporated by Section 1 of this Ordinance.

SECTION 3. Violations.

Any indoor cultivation of marijuana committed, maintained, permitted, or existing in violation of this ordinance is hereby declared a public nuisance and each person or responsible party is subject to abatement proceedings under Chapter 1.13 of the Martinez Municipal Code or as otherwise authorized under state law. The failure to abate a public nuisance committed, maintained, or existing in violation of any of the provisions of this ordinance shall constitute a criminal offense and be punishable in accordance with the penalties prescribed for a misdemeanor under Section 1.12.010 of the Martinez Municipal Code. In addition, any violation of this ordinance shall be subject to the administrative citation proceedings set forth by Chapter 1.15 of the Martinez Municipal Code.

SECTION 4. Severability. If any provision of this ordinance or the application hereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council of the City of Martinez hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 5. Effective Date and Duration. This ordinance shall become effective immediately if passed and adopted by at least four-fifths vote of the City Council and shall be in effect 45 days from its adoption unless extended by the City in accordance with California Government Code Section 65858.

SECTION 6. Posting. The City Clerk shall cause this ordinance to be published and/or posted within fifteen days after its adoption.

APPROVED:

Rob Schroder, Mayor

ATTEST: _____
Mercy G. Cabral, Deputy City Clerk

* * * * *

EXHIBIT C

I HEREBY CERTIFY the foregoing ordinance was duly adopted at a Regular Meeting of the City Council of the City of Martinez held on the 2nd day of November, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

APPROVED AS TO FORM:

Jeffrey A. Walter, City Attorney



1400 K Street, Suite 400 • Sacramento, California 95814
Phone: 916.658.8200 Fax: 916.658.8240
www.cacities.org

MEMORANDUM¹

To: League of California Cities' City Managers Department
League of California Cities' City Attorneys Department
From: League Staff
Date: September 26, 2016
Re: The Control, Regulate and Tax Adult Use of Marijuana Act

On November 8, 2016, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA" or "Act") will come before California voters as Proposition 64. If passed, the AUMA will legalize the nonmedical use of marijuana by persons 21 years of age and over, and the personal cultivation of up to six marijuana plants. In addition, the AUMA will create a state regulatory and licensing system governing the commercial cultivation, testing, and distribution of nonmedical marijuana, and the manufacturing of nonmedical marijuana products. The regulatory system governing these commercial marijuana activities largely mirrors the Medical Marijuana Regulation and Safety Act ("MMRSA"), but there are key differences. This memorandum will provide an overview of the AUMA, highlight the ways in which the AUMA differs from the MMRSA, and identify the issues that cities will need to take action on if the AUMA passes.

I. Overview of the AUMA

A. Personal Nonmedical Marijuana Use

The AUMA makes it legal for persons 21 years of age or older to: (1) smoke or ingest marijuana or marijuana products; (2) possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older, without any compensation, 28.5 grams of marijuana, or 8 grams of concentrated marijuana, including as contained in marijuana products; and (3) possess, plant, cultivate, harvest, dry or process up to six living marijuana plants for personal use.² The AUMA requires that marijuana in excess of 28.5 grams that is produced by plants kept pursuant to the personal cultivation provision of the Act be kept in a locked space on the grounds of a private residence that is not visible from a public place.³

Although persons 21 years of age or older may use and possess nonmedical marijuana under the Act, their ability to engage in these activities is not unfettered. The AUMA prohibits the smoking

¹ **DISCLAIMER:** These materials are not offered as or intended to be legal advice. Readers should seek the advice of an attorney when confronted with legal issues. Attorneys should perform an independent evaluation of the issues raised in these materials.

² Health & Saf. Code § 11362.2(a).

³ Health & Saf. Code § 11362.2(a)(2).

of marijuana: (1) in any public place, except where a local jurisdiction has authorized use on the premises of a retailer or microbusiness in accordance with Business and Professions Code section 26200; (2) where smoking tobacco is prohibited; (3) within 1,000 feet of a school, day care center, or youth center while children are present; and (3) while driving, or riding in the passenger seat of, any vehicle used for transportation.⁴ Moreover, individuals cannot possess marijuana on school grounds, in day care centers, or in youth centers while children are present, or possess an open container of marijuana or marijuana products while driving, operating, or riding in any vehicle used for transportation.⁵ The AUMA further provides that cities may prohibit possession and smoking in buildings owned, leased, or occupied by the city, and that employers, including cities, may maintain a drug and alcohol free workplace by prohibiting the use, consumption, possession, transfer, transportation, sale, display or growth of marijuana in the workplace.⁶

1. Personal Cultivation

The AUMA provides that local governments can reasonably regulate, but cannot ban, personal indoor cultivation of up to six living marijuana plants within the person's private residence.⁷ The Act defines private residence as "a house, an apartment unit, a mobile home, or other similar dwelling unit."⁸ This includes cultivation in a greenhouse on the same property as the residence that is not physically part of the home, as long as it is fully enclosed, secure, and not visible from a public space.⁹

The AUMA completely protects the ability of local governments to regulate, and to ban, personal outdoor cultivation operations.¹⁰ However, it purports to repeal any ordinance that bans outdoor cultivation upon the California Attorney General's determination that nonmedical use of marijuana is lawful under federal law.¹¹

B. Commercial Nonmedical Marijuana Activity

Under the AUMA, California will have a comprehensive state regulatory system for nonmedical marijuana that governs the industry from "seed to sale." The Bureau of Marijuana Control, currently the Bureau of Medical Cannabis Regulation, which is within the Department of Consumer Affairs, will have primary responsibility for administering and enforcing the AUMA.¹²

The AUMA divides state licensing and enforcement responsibilities among three agencies: (1) the Department of Consumer Affairs, which will issue licenses for marijuana the transportation,

⁴ Health & Saf. Code §§ 11362.3; 11362.4.

⁵ Health & Saf. Code §§ 11362.3(3), 11362.3(4).

⁶ Health & Saf. Code § 11362.45 (f)-(g).

⁷ Health & Saf. Code §§ 11362.1(a)(3), 11362.2.

⁸ Health & Saf. Code § 11362.2(5).

⁹ Health & Saf. Code § 11362.2(a)(2).

¹⁰ Health & Saf. Code § 11362.2(b)(3).

¹¹ Health & Saf. Code § 11362.2(b)(4).

¹² Bus. & Prof. Code § 26010.

storage, distribution, and sale of marijuana;¹³ (2) the Department of Food and Agriculture will issue marijuana cultivation licenses, which will administer the provisions of the AUMA related to the cultivation of marijuana;¹⁴ and (3) the Department of Public Health, which will issue licenses for marijuana manufacturers and testing laboratories.¹⁵ Each of these state licensing authorities is responsible for creating regulations governing their respective areas of responsibility, and must begin issuing licenses by January 1, 2018.¹⁶

A state marijuana license will be valid for one year.¹⁷ A separate state license is required for each commercial marijuana business location.¹⁸ With the exception of testing facilities, any person or entity licensed under the AUMA may apply for and be issued more than one type of state license.¹⁹

1. Local Control

All nonmedical marijuana businesses must have a state license.²⁰ A state license cannot issue to an applicant whose operations would violate the provisions of any local ordinance or regulation.²¹ However a state applicant need not provide documentation that the applicant has a local license or permit.

The AUMA does not limit the authority of a local jurisdiction to adopt and enforce local ordinances regulating or completely prohibiting state-licensed marijuana businesses.²² Local jurisdictions may establish “standards, requirements, and regulations regarding health and safety, environmental protection, testing, security, food safety, and worker protections that exceed state standards.”²³

2. Local Enforcement

Like the MMRSA, the AUMA establishes a dual enforcement scheme for commercial marijuana activities that violate either state or local laws. The state licensing authorities will enforce state statutes and regulations. State authorities can suspend or revoke state licenses,²⁴ pursue civil penalties against violating businesses in an amount equal to three times the applicable licensing fee per violation,²⁵ or may prosecute violators criminally.²⁶ Local authorities will be responsible

¹³ Bus. & Prof. Code § 26012(a)(1).

¹⁴ Bus. & Prof. Code § 26012(a)(2).

¹⁵ Bus. & Prof. Code § 26012(3).

¹⁶ Bus. & Prof. Code §§ 26012(c), 26013 (a).

¹⁷ Bus. & Prof. Code § 26050(c).

¹⁸ Bus. & Prof. Code § 26055(c).

¹⁹ Bus. & Prof. Code § 26053.

²⁰ Bus. & Prof. Code § 26038.)

²¹ Bus. & Prof. Code § 26055(e).

²² Bus. & Prof. Code § 26200(a). But see, Bus. & Prof. Code §§ 19340(f), 26080(b), 26090(c) [prohibiting cities from preventing the use of public roads to lawfully transport or deliver nonmedical marijuana].

²³ Bus. & Prof. Code § 26201.

²⁴ Bus. & Prof. Code § 2603.

²⁵ Bus. & Prof. Code § 26038(a)

²⁶ Bus. & Prof. Code § 26038(c).

for enforcing local ordinances and regulations.²⁷ For state-licensed facilities operating within a city, a city may have authority to enforce state law and regulations “if delegated the power to do so by the [B]ureau [of Marijuana Control] or a licensing authority.”²⁸

II. Key Differences Between the AUMA and MMRSA

A. Licensing

The MMRSA established dual licensing of medical marijuana businesses, requiring both local approval and a state license in order for a business to operate legally.²⁹ Specifically, the MMRSA requires applicants to provide the relevant state licensing entity with documentation proving their compliance with local ordinances and regulations.³⁰

The AUMA does not require an applicant to provide evidence of local permission prior to being issued a state license.³¹ Instead, the AUMA prohibits state licensing entities from approving licenses for activities that would violate local ordinances.³² Thus, state licensing officials bear the onus of evaluating local regulatory compliance.

Under this system, the AUMA allows a nonmedical marijuana business licensed by the state to operate within city limits unless the city’s municipal code prohibits the use. Cities that wish to regulate or prohibit nonmedical marijuana businesses will need to do so before the State begins issuing licenses, either by enacting a nonmedical marijuana ordinance/regulation or by amending an existing medical marijuana ordinance/regulation to include nonmedical marijuana within its scope.

B. License Revocation

Under the MMRSA, revocation of a local license or permit unilaterally terminates the ability of the medical marijuana business to operate in the jurisdiction issuing the permit, until such time as the local permitting entity reinstates it.³³

Under the AUMA, if a local jurisdiction revokes a local license, permit, or authorization for a licensee to engage in commercial marijuana activity within the local jurisdiction, the Bureau of Marijuana Control must initiate proceedings to determine whether the state license issued should be suspended or revoked within ten days of being notified by the local jurisdiction of the local revocation.³⁴ Note, however, that, even if the state license is not suspended or revoked immediately, the business cannot operate within the local jurisdiction once local revocation occurs.

²⁷ Bus. & Prof. Code § 26200 (b).

²⁸ Bus. & Prof. Code § 23202(a).

²⁹ Bus. & Prof. Code § 19320(b).

³⁰ Bus. & Prof. Code § 19322(a).

³¹ Bus. & Prof. Code § 26056.

³² Bus. & Prof. Code § 26055(e).

³³ Bus. & Prof. Code § 19320(d).

³⁴ Bus. & Prof. Code § 26200(c).

C. Personal, Indoor Cultivation

Under the MMRSA, local governments possess the power to regulate and completely ban personal, indoor cultivation.³⁵ Under the AUMA local governments can “reasonably regulate” indoor cultivation of up to six marijuana plants for personal use, but cannot ban it.³⁶

D. Personal Outdoor Cultivation

Under the MMRSA local governments can prohibit all outdoor cultivation. Under the AUMA local governments can prohibit all outdoor cultivation, until such time as the Attorney General determines that the use of nonmedical marijuana is lawful in the State of California under federal law.³⁷ Upon such determination, the AUMA purports to repeal all local bans on outdoor cultivation.³⁸

E. Amendment

Any portion of the MMRSA can be amended at any time, if there is sufficient political support within the Legislature for making substantive changes to the regulatory structure. Under some circumstances, an amendment to the MMRSA by the Legislature might arguably violate The Compassionate Use Act of 1996 (adopted by the voters as Proposition 215), which decriminalized the personal use of medical marijuana.³⁹

Under the AUMA, the Legislature may amend Sections 5 (relating to the use of medical marijuana for medical purposes) and 6 (relating to state licensing) and the provisions relating to penalties by majority vote. The Legislature may amend any other provision of the Act by a 2/3 vote. Any amendment must further the purposes and intent of the AUMA. The purpose and intent of the Act include allowing local governments to ban nonmedical marijuana businesses.

F. Taxation

The AUMA imposes new state taxes on medical and nonmedical marijuana in the following manner:

- Effective January 1, 2018, the AUMA imposes an excise tax at the rate of 15% of gross retail sales receipts.⁴⁰
 - This tax will be in addition to existing state and local sales tax.⁴¹ Given that state and local sales taxes can range from 7-10%, the combined excise tax + sales tax at the retail level could approach 25%;

³⁵ Health & Saf. Code § 11362.777(g); *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, 984; *Kirby v. County of Fresno* (2015) 242 Cal.App.4th 940, 969-970.

³⁶ Bus. & Prof. Code § 11362.2(b)(1).

³⁷ Bus. & Prof. Code § 11362.2(b)(4).

³⁸ Bus. & Prof. Code § 11362.2(b)(4).

³⁹ Health & Saf. Code § 11362.5.

⁴⁰ Rev. & Tax Code § 34011(a).

- Effective January 1, 2018, the AUMA imposes a separate cultivation tax on all harvested marijuana as follows:⁴²
 - \$9.25 per dry-weight ounce on all marijuana flowers;
 - \$2.75 per dry-weight ounce on all marijuana leaves;
- The AUMA prohibits imposition of state and local sales taxes on medical marijuana.⁴³
- The AUMA exempts marijuana cultivated for personal use from taxation.⁴⁴

The AUMA does not pre-empt local taxation.⁴⁵ However, the AUMA's estimated cumulative tax rate of nearly 35% on the purchase of nonmedical marijuana has potentially troubling implications for local governments. A high state tax rate by itself may depress sales and stimulate the black market. Any local taxation of marijuana should be governed by an awareness that a high retail sales tax rate, imposed on an industry that, until recently, has not been regulated at all, might stimulate black market activity and compromise the anticipated yield of revenue. In order to avoid such a result, cities might consider imposing an excise tax on discrete commercial nonmedical marijuana activities rather than on retail sales. New taxes on marijuana require compliance with Proposition 218.

1. Allocation of State Tax Revenues

After repaying certain state agencies for marijuana regulatory costs not covered by license fees, and making certain grants to universities for research and development and the Governor's Office of Business and Economic Development, the AUMA distributes the remaining tax revenue as follows:

- 60% for youth programs, substance abuse education, prevention and treatment;
- 20% for environmental cleanup and remediation; and
- 20% for state and local programs that reduce DUI and grant programs designed to reduce negative health impacts resulting from marijuana legalization

G. Deliveries

Under the MMRSA, medical marijuana deliveries can only be made from a state-licensed dispensary in a city, county, or city and county that does not explicitly prohibit it by local ordinance.⁴⁶ A delivery person must carry a copy of the dispensary's state-issued license, a government ID, and a copy of the delivery request.⁴⁷ The patient or caregiver requesting the delivery must also maintain a copy of the delivery request.⁴⁸ Dispensaries and delivery people who comply with MMRSA are immune from prosecution for marijuana transportation.⁴⁹

⁴¹ Rev. & Tax Code § 34011(d).

⁴² Rev. & Tax Code § 34012.

⁴³ Rev. & Tax Code § 34011(g).

⁴⁴ Rev. & Tax Code § 34012(j).

⁴⁵ Rev. & Tax Code § 34021.

⁴⁶ Bus. & Prof. Code § 19340(a).

⁴⁷ Bus. & Prof. Code §§ 19340(b)(2), 19340(d).

⁴⁸ Bus. & Prof. Code § 19340(e).

⁴⁹ Bus. & Prof. Code § 19317(f).

Under the AUMA, deliveries can be made by a state-licensed retailer, microbusiness, or nonprofit unless they are prohibited by local ordinance.⁵⁰ Although the AUMA does require a customer requesting delivery to maintain a copy of the delivery request, there is no express requirement that delivery people carry or maintain any records.⁵¹ Moreover, unlike the MMRSA, the AUMA does not require that deliveries come *from* a dispensary. Instead, it states that “Deliveries, as defined in this division, may only be made *by* a licensed retailer or microbusiness, or a licensed nonprofit under Section 26070.5.”⁵² Thus, there is at least some question regarding whether deliveries may be made from non-retail locations by retail employees.

Under both the MMRSA and the AUMA, local jurisdictions can ban or regulate deliveries within their borders.⁵³ However, local jurisdictions 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.⁵⁴

III. Local Regulatory Options⁵⁵

The AUMA preserves the authority of a city to adopt business regulations and land use regulations for nonmedical marijuana activities.⁵⁶

A. Personal Marijuana Cultivation

Under the AUMA local governments can regulate or ban all personal, outdoor cultivation, until such time as the Attorney General determines that the use of nonmedical marijuana is lawful in the State of California under federal law. In addition, local governments can “reasonably regulate,” **but cannot ban**, personal, indoor cultivation. Nothing in the AUMA requires a city to enact an ordinance or regulation by a certain date. However, assuming that the AUMA passes, if a city does not have a ban or regulatory scheme governing personal, outdoor cultivation or a regulatory scheme governing personal, indoor cultivation in place before November 9, 2016, a person may legally engage in personal cultivation of up to six marijuana plants at his or her private residence.

⁵⁰ Bus. & Prof. Code §26090(a).

⁵¹ Bus. & Prof. Code §26090(b).

⁵² Bus. & Prof. Code § 26090(a).

⁵³ Bus. & Prof. Code §§ 19340(a), 19316(a), 26200.

⁵⁴ Bus. & Prof. Code §§ 19340(f), 26080(b), 26090(c).

⁵⁵ For a thorough discussion of the various marijuana regulatory options that a city may consider, see McEwen, *Medical Marijuana-Revisited After New State Laws* (Spring 2016) <<http://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2016/Spring-2016/5-2016-Spring-Medical-Marijuana-%E2%80%93-Revisited-After>>. In addition, sample ordinances may be found on the League’s website, at: <http://www.cacities.org/Policy-Advocacy/Hot-Issues/Medical-Marijuana>. **But note:** the regulatory schemes discussed in the McEwen paper and posted on the League’s website pertain to medical marijuana businesses under the MMRSA and may need to be modified to comply with the requirements of the AUMA.

⁵⁶ Health & Saf. Code § 11362.2; Bus. & Prof. Code §§ 26201, 26200(a).

B. Nonmedical Marijuana Businesses

The AUMA recognizes a range of businesses, including dispensaries, cultivators, manufacturers, distributors, transporters, and testing laboratories. Cities may expressly ban, adopt business regulations, or adopt land use regulations pertaining to any or all of these businesses.

Again, the AUMA does not require a city to enact a regulatory scheme or ban by a certain date. However, assuming that the AUMA passes in November, if a city wishes to regulate or ban marijuana businesses before marijuana businesses may legally operate within the city, the regulations or ban will need to take effect before the state begins issuing nonmedical marijuana business licenses. The League anticipates that cities have until January 1, 2018 to enact bans or regulations relating to nonmedical marijuana businesses, because: (1) nonmedical marijuana businesses cannot operate in any city without a state license;⁵⁷ (2) the state licensing agencies in charge of implementing the AUMA have stated that they anticipate that they will not begin issuing licenses under the MMRSA until January 2018, and it is unlikely that said agencies will be able to begin issuing licenses under the AUMA before they begin issuing licenses under the MMRSA; and (3) the AUMA does not require state agencies to issue licenses until January 1, 2018.⁵⁸ It is not the League's position that state licensing agencies cannot issue licenses before January 1, 2018, just that it is unlikely that they will do so.

C. Caution Against Use of Permissive Zoning

Under a permissive zoning code, any use not enumerated in the code is presumptively prohibited, unless an authorized city official finds that the proposed use is substantially the same in character and intensity as those land uses listed in the code.⁵⁹ Although the MMRSA upheld a city's authority to rely on permissive zoning to prohibit medical marijuana land uses, it is unlikely that cities will succeed in arguing that nonmedical marijuana land uses are prohibited by permissive zoning under the AUMA. This is so because: (1) the statutory language in the AUMA regarding local control seems to anticipate that a city will adopt an ordinance explicitly prohibiting and/or regulating nonmedical marijuana businesses (rather than relying on the silence of its Code to argue for a prohibited use);⁶⁰ (2) the AUMA does not contain the same protective language as the

⁵⁷ Bus. & Prof. Code § 26038.

⁵⁸ Bus. & Prof. Code § 26012 (c).

⁵⁹ See *City of Corona v. Naulls* (2008) 166 Cal.App.4th 418, 433-436. See also *County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861, 871 [holding that "medical marijuana dispensaries and pharmacies are not 'similarly situated' for public health and safety purposes"]; *City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1091 [holding that a medical marijuana dispensary was not substantially similar to the listed commercial use classifications for personal services, retail sales, pharmacies and medical supplies]; *County of Tulare v. Nunes* (2013) 215 Cal.App.4th 1188, 1205 [holding that a medical marijuana collective did not qualify as an "agricultural" land use because "marijuana is a controlled substance and is not treated as a mere crop or horticultural product under the law"].

⁶⁰ Bus. & Prof. Code § 26200 ["Nothing in this division shall be interpreted to supersede or limit the authority of a local jurisdiction to *adopt* and *enforce* local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related

MMRSA with respect to permissive zoning,⁶¹ and (3) the AUMA explicitly designates nonmedical marijuana as an agricultural product—thus if a city’s permissive zoning code authorizes agricultural uses, the city may be precluded from arguing that marijuana is prohibited.⁶² 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.

IV. What actions need to be taken?

At this time city officials should: (1) review the city’s municipal code; (2) consider whether they wish to regulate the personal cultivation of nonmedical marijuana indoors; (3) consider whether they wish to regulate or ban the personal cultivation of nonmedical marijuana outdoors; (4) consider whether they wish to enact business regulations of nonmedical marijuana businesses; (5) consider whether they wish to enact land use regulations of nonmedical marijuana businesses; (6) consider whether they wish to enact local taxes on marijuana; and (7) comply with Proposition 218 if they decide to enact local taxes on marijuana.

Cities should prioritize considering or enacting ordinances regulating personal nonmedical marijuana cultivation, because it will be legal under state law on November 9, 2016 if the AUMA passes, whereas nonmedical marijuana businesses will not be able to operate lawfully until the state licensing system becomes operational (likely in late 2017). **Although cultivation for personal use will be legal as of November 9, 2016 if the AUMA is approved by voters, local governments will not lose any regulatory authority if they do not have an ordinance in place addressing personal cultivation before the election. Locals will retain the ability to regulate personal cultivation and to enact related ordinances at any time after the election. The only change the AUMA will make in this area is to prohibit local bans of indoor cultivation for personal use. No ordinance enacted prior to the election can prevent this change in the law.**

to reducing exposure to second hand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction.”] (emphasis added).

⁶¹ Compare Health & Saf. Code § 11362.777(b)(3) [a “person or entity shall not submit an application for a state license . . . if the proposed cultivation of marijuana will violate the provisions of any local ordinance or regulation, or if medical marijuana is prohibited by the city, county, or city and county in which the cultivation is proposed to occur, either expressly or otherwise under principles of permissive zoning”] with Bus. & Prof Code § 26205(e) [“Licensing authorities shall not approve an application for a state license under this division if approval of the state license will violate the provisions of any local ordinance or regulation adopted in accordance with Section 26200.”].

⁶² Bus. & Prof. Code § 26067(a).

Drug Enforcement Administration compares Colorado grow houses to meth houses of 90s

Pot advocacy groups call report 'scare tactic'

Jaclyn Allen

10:27 PM, Aug 4, 2016

[colorado](#) | [marijuana](#) | [pot](#) | [drug enforcement administration](#) | [dea](#)



KMGH

SHOW CAPTION

DENVER -- The Drug Enforcement Administration (DEA) is comparing Colorado grow houses in residential neighborhoods to meth houses of the 90s.

The [Washington Post](#) first reported on the DEA's comparison, which came in an unclassified [June intelligence report](#).

The report states that there are hundreds of homes hidden in residential neighborhoods, and that since 2014 "there has been a noticeable increase in organized networks of sophisticated residential grows in Colorado that are orchestrated and operated by drug trafficking organizations."

Todd Reeves, Commander of the North Metro Task Force, has seen the problem first-hand.

"These grow houses are extremely dangerous," said Reeves, whose task force had uncovered more than 100 illegal grow houses in residential neighborhoods already this year. "The reality is, as a task force, we're dealing with this if not weekly, bi-weekly. And it's just a matter of time before we start to see more deaths and things related to these types of activities."

Reeves said he has seen grow homes covered in mold, dangerous chemicals being used to fertilize plants, and hash oil explosions that could have been deadly.

Reeves pointed to a Thornton home that was condemned last week, after a marijuana grow house caught fire.

"They had been stealing power and the system overheated and caught fire," said Reeves. "It was only because of the quick response of the fire department that they were able to stop it from spreading to other houses."

Some neighborhoods are fighting back.

In Parker, when R.J. O'Connor caught wind of a major grow home in his subdivision, he took action as president of the HOA board.

"You could come within a block, block-and-a-half, of the house and the odor was so bad that it was almost nauseating. It was really really strong," said O'Connor, who teamed up with the town code enforcement to levy fines against the owner based on the HOA covenants.

Eventually, the homeowner kicked out the tenants and got rid of the grow house, O'Connor said.

"I think the State of Colorado and our politicians have done a big disservice to the people of this state," said O'Connor. "I don't know if this genie can be put back in the bottle."

Often, Reeves said, law enforcement's hands are tied because of loopholes in the law.

The DEA report predicts more problems with drug trafficking in the future, stating "the proliferation of large residential grows is taxing local police and fire departments,

consuming power and water resources, and potentially affecting home values in communities throughout the state."

The Marijuana Advocacy Group NORML criticized the DEA's report, releasing this statement:

"The DEA's 'Flat Earth' position toward marijuana lacks credibility and is out of step with public and scientific consensus. At a time when more and more Americans are seeking evidence-based alternatives to marijuana criminalization, the DEA continues to rely on sensational and ineffective scare-tactics that contribute nothing productive to this ongoing, important nationwide narrative."

"Further, it may be argued that unregulated grow operations will become less prevalent under marijuana regulation, since cultivators of larger grows will be able to engage in legally regulated, commercial endeavors and because consumers will be able to legally purchase products at retail facilities. Sure, a small minority of beer connoisseurs choose to brew their own beer at home, but no commercial outlets do, and most consumers choose to simply purchase the product at retail. Just as few people make or drink moonshine in a legally regulated alcohol market, the same principle applies to marijuana. The DEA's position of keeping cannabis illicit and unregulated only perpetuates the problem they say they are trying to prevent."

News > Crime & Courts

Antioch: Indoor marijuana grow found during fire evacuation; two arrested

By **GEORGE KELLY** | gkelly@bayareanewsgroup.com

PUBLISHED: June 27, 2016 at 3:10 pm | UPDATED: August 11, 2016 at 10:40 pm

ANTIOCH — Two men were taken to County Jail over the weekend after officers evacuating a neighborhood endangered by a rapidly spreading fire found an apparent marijuana growing operation, police said.

At 4:47 p.m. Saturday, Contra Costa Fire District firefighters and Antioch police responded to a report of a large house fire in the 900 block of Burwood Way, police said.

As the fire had already damaged several homes, officers began evacuating residents and then found two men, Qiao Cen and Qiaohui Cen, in one house.

Shortly after, officers realized the men were running an indoor hydroponics marijuana grow operation at the house, and arrested them on several drug charges.

Antioch police sent in its special operation unit, which took over the investigation and found more than 700 marijuana plants and 17 pounds of manicured buds.

Police determined the grow had nothing to do with the fire. Anyone with information should call Antioch police Det. Joseph Magana at 925-779-6943.

A call to jail officials Monday evening determined the pair left custody Sunday.

Contact George Kelly at 408-859-5180 or follow him at [Twitter.com/allaboutgeorge](https://twitter.com/allaboutgeorge).

SPONSORED CONTENT

This Woman Had an Alien Encounter and Lived to Tell the Tale

By (not name)

How would you like to hug an alien?

Tags: Crime

George Kelly George Kelly is a breaking news reporter for the Bay Area News Group. Previously he worked as an online coordinator and, before that, a copy editor and page designer for Bay Area-based newspapers and magazines. Off work, he enjoys playing in bands, busking and karaoke. His first newspaper job was as a Washington Post paperboy.

Follow George Kelly @allaboutgeorge

SUBSCRIBE TODAY!

ALL ACCESS DIGITAL OFFER FOR JUST 99 CENTS!

News > Crime & Courts

San Jose: Marijuana grow houses have hidden dangers for residents, police, firefighters

By **ROBERT SALONGA** | rsalonga@bayareanewsgroup.com and **MARK EMMONS**
PUBLISHED: May 7, 2014 at 11:58 am | UPDATED: August 12, 2016 at 9:38 am

SAN JOSE — The one-story house in the city's quiet Coyote Creek neighborhood wasn't particularly noteworthy.

But inside, police found marijuana plants.

And a dead body.

Police have not said how the marijuana growing operation in the Epling Lane house might be connected to the 26-year-old man who was shot to death there on March 17. But the homicide and two recent electrical fires in San Jose homes highlight the dangers that hidden city pot gardens can bring into unsuspecting communities.

Illegal residential marijuana farms are hardly a new phenomenon in the Bay Area, but the numbers appear to be increasing at a time when law enforcement resources are dwindling and police are focused on more pressing priorities — tracking violent crime, gang activity and keeping a patrol presence on the streets.

"I'm comfortable saying that there are over 100 of these houses, and the majority are in the city of San Jose," said Sgt. John Spagnola, who heads the two-man Marijuana Eradication Team for the Santa Clara County Sheriff's Office, the only South Bay agency with deputies devoted solely to eradicating marijuana. "We have tips right now that we just haven't had time to deal with yet. We could constantly be busting them."

Just how much the problem has grown is difficult to quantify, law enforcement officials said. Spagnola could only say they are receiving more investigative leads than they have in the past three years. Meanwhile, San Jose police no longer have a centralized method of tracking the number of these so-called grow houses after the Narcotics Covert Investigations unit became a casualty of department short-staffing two years ago.

What is clear is that when these houses go up in smoke, as they often do, the result is a nightmare for firefighters responding to blazes caused by marijuana growers' shoddy handiwork in bypassing electrical meters to stay off the radar of PG&E. Often, the houses also have chemicals and mold inside.

"It's basically a hazmat scene because it's a nursery with all these pesticides," said Capt. Cleo Doss of the San Jose Fire Department. "But a bigger issue is the electricity. It's an invisible killer. So if you make a wrong move, it can become very dangerous quickly."

That, along with such other hazards as barred windows, prevents firefighters from aggressively battling a grow-house blaze. They're left to focus on keeping the fire from spreading to other homes while they wait for PG&E to cut the power.

"We wear protective clothing and breathing apparatus," added Vic Massenkoff, an investigator with the Contra Costa County Fire Protection District. "But we have nothing to protect us from electrocution. We might as well be walking into a fire naked."

Indoor pot operations often are in otherwise safe, quiet residential neighborhoods. From the outside, they look like regular houses, hiding in plain sight until they catch fire, which happened twice within four days in San Jose in March.

"They want to blend into the neighborhood," said Special Agent Casey Rettig, of the Drug Enforcement Agency's San Francisco District. "They don't want to stand out."

Growers usually rent homes, paying the owner in cash. They gut the interior and convert it into a sophisticated greenhouse with high-intensity lights and air-filtration systems. And the operations, Spagnola said, can produce several climate-controlled crops a year, netting growers more than \$1 million annually.

California, Rettig said, is “quite the hotbed” for cultivation because of the potency of the marijuana grown here. In 2013, about 54 percent of indoor marijuana plants seized in the United States came from California, according to DEA figures.

“This has been building over the last couple of years,” said Massenkoff, whose agency in February adopted new rules for fighting grow-house fires after dealing with 25 such blazes over the past three years. “There’s a real demand for California indoor bud everywhere, including on the East Coast.”

In the South Bay, grow houses are often run by gangs affiliated with Vietnamese coffee houses, Spagnola said.

San Jose police are tight-lipped about the fatal shooting of Tony Thanh Nhan Nguyen at the Eppling Lane house, which also served as a school bus stop. There have been no arrests. Sources said pot was being grown on the premises.

Darryl Ospring, a Coyote Creek Neighborhood Association board member, said there were two grow houses in the community previously. The first was discovered when a fire destroyed an indoor pot farm about three years ago. A year later, the association reported another suspicious house that turned out to be a grow operation.

But the homicide, Ospring said, has sent shivers through the neighborhood.

“The murder has thrown us for loop,” said Ospring, 61, who has lived there for 34 years. “It’s shocking because we have worked so hard to make this neighborhood safe.”

In the past, San Jose’s dedicated narcotics unit investigated grow houses. But now, any San Jose police investigations on the houses falls upon the already overtaxed patrol force — when available.

“You need search warrants, an entry team, a perimeter team,” said Sgt. Heather Randol, a police spokeswoman. “It’s scarcely done. We know the importance of stopping grow houses, because they bring crime and blight, and the theft of power affects everybody. We need to find the resources to do that.”

Spagnola’s team with the Sheriff’s Office typically investigates the kind of cases that resulted in the January arrest of three people and the seizure of more than \$700,000 in pot — including 307 plants — at two homes. One house, not far from an elementary school, was guarded by a pit bull. The second was a 2,800-square-foot, million-dollar-plus home located near a golf course.

But now the unit is gearing up for the outdoor growing season, and that complicates investigations of indoor grow houses.

Ospring said her neighbors believe more needs to be done to combat the problem.

“We don’t want this on the back burner,” she said. “It shouldn’t be swept under the rug.”

Contact Mark Emmons 408-920-5745 or follow him at [Twitter.com/Markedwinemmons](https://twitter.com/Markedwinemmons) or Mark Gomez at 408-920-5869 or follow him at [Twitter.com/markngomez](https://twitter.com/markngomez).

2013 DOMESTIC CANNABIS ERADICATION/SUPPRESSION

National statistics

- 4,395,240 total indoor and outdoor cultivated plants
- 361,727 indoor plants
- 4,033,513 outdoor plants

California statistics

- 2,903,887 total indoor and outdoor cultivated plants
- 196,096 indoor plants
- 2,707,791 outdoor plants

Source: Drug Enforcement Agency

TELLTALE SIGNS OF AN INDOOR MARIJUANA GROW OPERATION

- Windows are always dark with blinds drawn shut.
- Additional water lines and/or electrical cords running into the residence.
- Excessive security such as guard dogs, cameras, fencing and “keep out” signs.
- People seen entering with unrecognizable equipment as well as building materials and agricultural items such as plastic sheeting, piping, fertilizer bags, potting soil and pots.
- Unusual traffic, such as tenants coming and going at odd hours.
- Little or no garbage is brought to the curb each week.

News



Discovery Bay: Fire at suspected marijuana grow house



Bay Area News Group (file photo)

Fire crews responded to a blaze at a suspected marijuana growhouse Wednesday morning.

By **RICK HURD** | rhurd@bayareanewsgroup.com

PUBLISHED: September 21, 2016 at 9:28 am | UPDATED: September 21, 2016 at 11:38 am

DISCOVERY BAY — Fire crews controlled a fire Wednesday at a suspected marijuana grow house, officials said.

The fire at the two-story home in the 2400 block of Aberdeen Lane started just after 7:25 a.m., Fire Chief Hugh Henderson of the East Contra Costa Fire Protection District said. Firefighters saw smoke and flames coming from the second floor and the front of the house when they arrived, he said.

The wiring in the home suggested that it was a grow house, he said. The Contra Costa Sheriff's Office was investigating.

The fire did not injure anyone. Investigators have not deemed an official cause, and there were no monetary estimates on damages immediately.

Check back for updates.

Contact Rick Hurd at 925-945-4789 and follow him at [Twitter.com/3rdERH](https://twitter.com/3rdERH)

Tags: [Fires](#)



Rick Hurd Rick Hurd has covered breaking news, crime and public safety since 2011 after spending 16 years covering sports, including the A's and Sharks. He has worked with the Bay Area News Group since 1995.

[Follow Rick Hurd @3rdERH](#)

SUBSCRIBE TODAY!

ALL ACCESS DIGITAL OFFER FOR JUST 99 CENTS!

Fire District Officials Announce New Training for Fighting Fires at Marijuana Grow Houses

Contra Costa fire officials are also encouraging residents to report homes showing signs of marijuana growing operation.

By Autumn Johnson (Patch National Staff) - February 21, 2014 7:25 pm ET

Like 0

Share



By Bay City News Service—

As the Contra Costa County Fire Protection District responds to a growing number of fires at marijuana grow houses, the district is turning to new strategies to keep firefighters and community members safe from the unique dangers posed by these fires.

Firefighters risk their lives on a regular basis, Contra Costa

Fire Protection District investigator Vic Massenkoff said, but a

blaze at a large-scale pot growing operation was one of the

5

District officials this week announced new training procedures for fighting fires at major residential marijuana grows.

Firefighters are being educated on how to spot the signs of a grow operation and to fight blazes at grow houses defensively, or outside of the home, rather than heading inside, where the risks to firefighters are often too great.

The fire district is also instructing firefighters to wait until PG&E personnel have turned off power at the house before going inside.

"There's no material possession that's worth the life of our firefighters," Contra Costa fire Capt. Robert Marshall said.

The emphasis during these firefights is also on preventing the blaze from spreading to neighboring homes, fire officials said.

Over the past few years, the fire district has battled about 35 fires at large pot grow operations, fire officials said. Large-scale grows are popping up in communities throughout the Bay Area and statewide, in addition to the nine cities and unincorporated areas of Contra Costa County covered by the fire district.

"It's an epidemic as far as how many homes are being converted to full marijuana growing operations," Massenkoff

said.

5

National Laboratory scientist Evan Mills found that some 8 percent of California's energy is consumed by indoor growing operations.

PG&E can usually spot customers housing a large marijuana grow when the electricity meter shows commercial-level electricity usage, used to power the grow lights, ventilation and humidity systems used to cultivate marijuana, Massenkoff said.

To avoid detection, large-scale growers typically re-wire a home's electrical system so that it bypasses the utility meter, fire officials said. But the rigged electrical systems often fail, sparking fires that can travel quickly through a home's walls and a phenomenon known as arcing, in which electricity travels back and forth between electrical wires and metal surfaces. This makes firefighters responding to a fire at a grow house much more vulnerable to electrocution.

Other hazards usually found at major pot growing operations include barred windows and doors and extra walls built to mask the operation, Massenkoff said.

On Jan. 24, Contra Costa fire crews found many of the typical red flags while fighting a two-alarm blaze at a home on Tampico Drive in Pittsburg that housed a major marijuana growing operation, the investigator said. The house was

completely destroyed, and firefighters had to battle the blaze

from outside of the home's roof collapse. All the

5

That fire "was the straw that broke the camel's back," the fire investigator said.

While no fire personnel were injured in the blaze, he said, "the hazards to firefighters became very evident in this fire...we realized it was time to provide new direction to firefighters on how to deal with fires at these types of properties."

Massenkoff said large-scale marijuana grows are usually uncovered when a fire breaks out, but sometimes law enforcement agencies find out about them from suspicious neighbors.

Contra Costa fire officials are encouraging more residents to come forward when they spot the signs of a growing operation in their neighborhood. Fire officials say red flags include barred windows in neighborhoods where no other homes' windows have bars and windows that are shaded at all hours of the day.

Residents should also be wary of new residents who are never seen moving personal items into their home and have frequent visitors coming and going, district officials said. Massenkoff said fire officials are also hoping more criminals are prosecuted when a fire breaks out due to a large-scale marijuana growing operation.

Several suspects linked to grow house fires in Contra Costa

County in recent years have been plagued with multiple

5

marijuana growers whose grow houses burn down are able to use their massive profits to quickly purchase or rent a new grow house, Massenkoff said.

Yearly profits from an average grow house in Contra Costa County total at least \$1.5 million, he said.

Copyright © 2014 by Bay City News, Inc. -- Republication, Rebroadcast or any other Reuse without the express written consent of Bay City News, Inc. is prohibited.

Antioch Police Uncover Illegal Marijuana Cultivation

By ECT - Mike Burkholder - Apr 14, 2016

39



On April 14 at 9:35 am, Antioch police responded to the 5400 block of Cherokee Way in Antioch after receiving reports of suspicious activity at a home.

According to Antioch Police Sergeant Jimmy Wisecarver, Police Officers responded to the house to investigate the suspicious activity and found that this house had been converted into an indoor marijuana cultivation. The marijuana grow operation was determined to be illegal in nature.

The Antioch Police Department Special Operations Detectives were called out to the location. The detectives served a search warrant on the house.

Sgt. Wisecarver stated the detectives found a sophisticated marijuana cultivation operation to include over 200 mature marijuana plants. Evidence was collected from the location; however, there were no arrests made at this time.



Marijuana grow houses becoming a problem in South Lake Tahoe

Submitted by paula on Sat, 09/27/2014 - 12:59am



Example of illegal set up of marijuana grow house. ABC7 News in Los Angeles.

By Paula Peterson

There are an estimated 500 unpermitted, illegal marijuana grow houses on the South Shore according to local law enforcement. In the city limits, South Lake Tahoe Police Chief Brian Uhler estimates there are 300 houses where marijuana is growing illegally with another 200 in the El Dorado County portion of the South Shore according to SLEDNET's Matt Underhill. (SLEDNET stands for South Lake El Dorado Narcotics Enforcement Team, a joint drug enforcement task force)

Uhler and Underhill made a presentation to the South Lake Tahoe City Council recently, bringing the problem of illegal grow houses to light.

No Area is Immune from Indoor Marijuana Grow Operations



In 2011, the City Council adopted an ordinance regulating the growing of marijuana in the City limits in response to the State's passage of the Compassionate Care Act. They felt an ordinance was needed due to the large number of complaints concerning the smell associated with growing, the safety risks involved for the community, and the potential for crime in and around houses

with marijuana growing operations inside. They said they wanted to balance the needs of patients and their caregivers with the morals and general welfare of the community.

In the city limits there are only 9 permitted marijuana grow operations in homes. Residential cultivation is only legal if the area where it is grown covers no more than 10% of a home's square feet with a maximum of 200 square feet. The residential grow must also have a permit so it can be deemed safe with the correct wiring, filtration and security systems in place.

According to the ordinance, "a qualified patient or primary caregiver shall only be allowed to cultivate marijuana for their personal use and for the use of qualified patients." Cultivation in a home is only allowed legally if the grower has a Residential Cultivation Permit. The permit verifies that the grower is a qualified patient or caregiver and requires an annual inspection by a building official and Fire Marshall. Owners of the homes must also give written permission if the person requesting the permit rents or leases the home.

The County ordinance allows for up to 200 square feet of indoor cultivation and outdoor cultivation up to 600 square feet depending on the zoning of the land. They also have safety and environmental requirements, permission of homeowner and the growers must have the home as their primary residence.

So far in 2014 there have been 13 documented cases of illegal grows in the City and 20 in the County. Law enforcement says they know the problem is much larger and are asking for the public's help so they can address all of the illegal grow houses. The City has a form for people to anonymously report suspected illegal grows on their website: <http://www.cityofslt.us/forms.aspx?FID=79> or call 530-541-6800. The County uses their anonymous tip link for reports http://www.edcgov.us/Government/Sheriff/WebForms/Anonymous_Crime_Tip.aspx. In either case, it will be determined if the home is growing legally, and if not they will investigate.

Underhill told South Tahoe Now that SLEDNET gets 6 to 12 complaints a week about marijuana grows in local neighborhoods. They investigate all of them but can only corroborate about a third of them.

Earlier this month, homes located on Gold Dust Trail, Jicarilla Drive and Pyramid Circle were all found to have marijuana grow operations. The grows on Jicarilla and Pyramid were determined to be operating within the provisions of the law but the power was shut off to both homes due to the electrical set up being out of code.

Liberty Utilities told South Tahoe Now that they couldn't comment on how many grow houses they are called out to since they are public utilities.

Environmental and Safety Concerns

Not only does an indoor marijuana grow cause damage to the home, it also creates environmental and safety issues. Grow houses typically have such overloaded electrical circuits that fire is a major concern. Chief Gareth Harris of Lake Valley Fire Department, who is also the Fire Marshall, goes out on all illegal grow busts in the area. He said that one house had flames coming out of the weather head (the weatherproof service drop point where overheard wires come to a home).

Overloaded circuitry goes beyond the intended purpose and becomes a fire hazard. Ventilation of the houses are altered in order to release the excess heat. The plants thrive on Carbon Dioxide (CO2) and don't like oxygen rich environments so grow houses adjust to accommodate. Three to four times the normal amount of CO2 is present when growing. Gas water heaters are vented into the growing room(s) instead of outside to keep more CO2 present.

In order to have healthy plants, home growing operations use pesticides such as Pyrethrin and Rotenone, fungicides that are sulfur based, ammonia and nitrate based fertilizers, insecticides and Silica based root stimulators. All of this ends up in the water system.

Many Northern California areas known for large marijuana growing operations, such as Humboldt County, are now expressing concern about the environmental nightmare they are facing due to growing. Not only are all of the chemicals involved being dumped into the environment, outdoor grows there are wiping out the watershed, clear cutting old growth forests, diverting water meant for parks, adding pollutants to the water system and killing off salmon (the 5 gallons of water a day a plant needs multiplied by millions of plants are drying up rivers such as the tributaries of the Eel River).

In California's Contra Costa County there were 35 marijuana grow house fires in two years.

Typical Grow Operation in South Lake Tahoe

According to Chief Uhler, a typical indoor marijuana cultivation in South Lake Tahoe produces 24,000 grams of marijuana a year. If the grower uses four joints a day this leaves an excess of 51 pounds which he says goes beyond the scope how much is needed if a legal "caregiver" by law.

How to Tell a Grow House is in your Neighborhood

- The smell of marijuana growing is a big giveaway to most, but it only smells during a part of the grow cycle.
- When a grow house is being set up there will be sheet rock and lumber brought in yet no visible signs of building.
- Curtains or blinds always shut and never opened.
- Bars on windows and/or doors.
- Garbage not left out.
- Residents not doing the typical things like working in the yard or staying outside for any amount of time.
- Supplies such as dirt, water barrels and planting chemicals brought to the house without any visible signs of landscaping outside.
- Improvised vents coming out of a house.
- No snow building up on a roof due to excess heat inside or excessive steam coming out of vents.
- Exterior stains – signs of sweating, condensation, staining or wet spots on the siding or foundation.
- Unusual lighting and/or lights on all night.

- Visible water and/or electrical cords.
- Humming sounds from air conditioners, fans, generators.
- Booby traps and surveillance cameras.
- Unusual traffic patterns of people going to and from house.
- Power surges.

Indoor Grows Cause Tens of Thousands of Dollars of Damage

In many cases, homeowners have no clue their renters have an illegal marijuana grow going on in their home. With the large number of homeowners that don't live in the area, the first time they hear about a problem is when the Sheriff's Department or Police Department call them.

According to Marc Malcuit of Belfor Property Restoration in South Lake Tahoe, a grow house can cause a lot of damage to a home. The typical clean-up costs run between \$25,000 and \$80,000. Insurance companies used to cover these issues as vandalism but many carriers will no longer cover the home owner if a marijuana grow and/or mold caused the damage.

From Mark: The growers rip up all of the carpet and damage the walls and ceilings to install racks and lights, hang the product to dry, or install reflective materials. If the operation is a little more advanced, they will tie into the main electrical panel and run a temporary panel to the rooms they are growing in. The operations need a lot of power. Some of the lower tech ones will simply scab in and run dangerous power to the operation. They will also install ducting to ventilate the system to the outside. In one house where there was no ducting installed, the house built up with so much water vapor pressure that moisture began to condensate inside the walls and ceiling. The black colored condensation was dripping out of all of the light fixtures and light switches. This particular house was pretty nice on the inside to begin with and was totally trashed when they were done.

The county will often red tag these buildings as uninhabitable until a Certified Industrial Hygienist has cleared it. The reason for this is that even though it is a grow house, the County feels that it is also a potential drug lab for the manufacture of hash or amphetamines. Both of these processes require chemicals to produce them, and in fact, the grow houses use quite a few just to fertilize the crop. All in all it ends up being a potentially very toxic situation which needs to be carefully cleaned.

The odor is very pervasive and gets into the wood and impregnates the drywall, much like smoke. The remediation of this is very similar, requiring cleaning, sealing and painting of all surfaces if the odor is bad enough.

The Hygienist will usually come in as a consultant initially and write a protocol for cleaning based on the conditions of the home. The home must then be cleaned to the standards that the hygienist sets, and they will then come and do a bunch of swab samples to confirm the lack of any chemical contaminants.

ARCHIVED [To Contents](#) [To Previous Page](#) [To Next Page](#) [To Publications Page](#) [To Home Page](#)



National Drug Intelligence Center
Northern California High Intensity Drug Trafficking Area Drug Market Analysis
 June 2007

Production

Cannabis cultivation and marijuana production operations are extensive and increasing in magnitude throughout the Northern California HIDTA region. As a result, the area is becoming one of the most significant cannabis cultivation areas in the nation. More than 3.8 million cannabis plants were eradicated in California in 2006 from outdoor and indoor grow sites.⁴ This is a 27 percent increase from the 3,021,240 plants seized in 2005. According to Domestic Cannabis Eradication/Suppression Program (DCE/SP) data, the number of plants seized at both outdoor and indoor grow sites in the HIDTA region has significantly increased over the past 4 years. (See [Table 1.](#)) The number of outdoor plants seized increased from 49,174 in 2003 to 717,740 in 2006. The number of indoor plants seized increased from 3,364 in 2003 to 64,142 in 2006. Illegal cannabis cultivation generates millions of dollars in criminal revenue. As such, in 2006 the Northern California HIDTA surpassed all prior years in asset seizures from illegal grows.

Table 1. Number of Cannabis Plants Seized and Percentage of Change in Northern California HIDTA, 2003-2006

County	Outdoor Plants					Indoor Plants				
	2003	2004	2005	2006	% Change from 2003-2006	2003	2004	2005	2006	% Change from 2003-2006
Alameda	0	0	0	0	NA	0	0	0	29,428	NA
Contra Costa	0	0	0	0	NA	0	0	0	0	NA
Lake	8,233	81,991	136,781	346,336	4,017	0	1,502	7,581	79	NA
Marin	0	0	0	22,740	NA	0	0	0	0	NA
Monterey	6,100	11,077	23,498	49,893	718	26	521	157	1,451	5,481
San Francisco	0	0	0	0	NA	0	0	0	12,745	NA
San Mateo	1,641	3,196	167	5,850	256	1,572	941	479	9,278	490
Santa Clara	5,162	6,026	82,106	125,690	2,335	0	0	0	383	NA
Santa Cruz	7,836	1,627	11,449	42,836	447	469	525	3,521	1,038	121

Sonoma	20,202	19,884	107,631	124,395	516	1,297	2,195	11,049	9,740	651
Total	49,174	123,801	361,632	717,740	1,360	3,364	5,684	22,787	64,142	1,807

Source: Domestic Cannabis Eradication/Suppression Program.
NA-not applicable

Outdoor cannabis cultivation is increasing significantly in the HIDTA region. Large outdoor cannabis grow sites are generally cultivated in counties that encompass extensive remote locations, public lands, and rural areas such as Lake, Sonoma, and Santa Clara Counties. These counties rank among the top 10 counties in the state for cannabis cultivation. Mexican DTOs control most large outdoor cannabis grow sites in the region. They typically employ illegal aliens to tend crop sites, provide protection from intruders (including law enforcement), and harvest the cannabis as payment for their entry into the United States. Recent law enforcement reporting indicates that some Mexican groups are also cultivating cannabis plants that have higher THC levels by applying growing methods that are typically used for indoor operations. These DTOs use select seeds from Mexico, prepare the seedlings in greenhouses, plant the seedlings outdoors before late April, separate male from female plants prior to pollination, and use high-nitrogen fertilizer. Cloned starter plants, sophisticated irrigation systems, and pesticides are also used.⁵

The environmental damage caused by outdoor cannabis cultivation, particularly on public lands, is a serious concern for law enforcement and other public agencies. Grow-site operators often contaminate and alter watersheds, divert natural water courses, clear native vegetation, and poach protected wildlife; they discard garbage, nonbiodegradable materials, and human waste as well as create wildfire hazards. According to the National Forest System and CAMP, law enforcement officers are encountering increasing numbers of dumpsites of highly toxic insecticides, chemical repellants, and other poisons. These toxic chemicals enter and contaminate ground water, pollute watersheds, kill fish and other wildlife, and eventually enter residential water supplies. The National Park Service estimates that for every acre of forest planted with cannabis, 10 acres are damaged. The cost to repair and restore an outdoor cultivation site is approximately \$11,000 per acre.

Operation Emerald Web

In February 2007 law enforcement authorities arrested eight Santa Rosa residents who were the focus of an Organized Crime Drug Enforcement Task Force (OCDETF) investigation entitled Operation Emerald Web. These individuals were involved in methamphetamine and marijuana production and distribution in the North Bay area. During the course of this investigation, law enforcement authorities seized more than \$600,000, 35 pounds of methamphetamine, 4 pounds of pseudoephedrine, 3 pounds of cocaine, more than 5,000 pounds of processed marijuana, nearly 20,000 live cannabis plants; and 50 firearms, including 5 assault rifles. DEA

estimated the street value of the seized drugs to be over \$5 million.

Source: Federal Bureau of Investigation San Francisco press release dated February 15, 2007.

Indoor cannabis cultivators typically establish grow sites in multiple residences, often using hydroponics technology, sophisticated lighting, and irrigation systems. Indoor growers prefer the controlled environment because they can avoid intensified outdoor eradication efforts while, at the same time, achieving higher profits through a year-round cultivation season by turning out a new crop of higher-potency marijuana every 90 days. More sophisticated operations bypass electric meters to eliminate high energy-use readings, large electric bills, and possible law enforcement scrutiny. Caucasian criminal groups and independent dealers are the primary producers of indoor, high-grade marijuana within the HIDTA region. However, Asian DTOs and criminal groups that had previously operated smaller indoor grow sites are now involved with large-scale cannabis cultivation operations that typically produce high-grade marijuana. For example, law enforcement officers arrested members of a San Francisco-based Asian DTO in August 2006 and seized more than 10,000 cannabis plants from 14 locations in Elk Grove, California. The grow site at each residence was configured in the same manner with artificial lighting and irrigation systems operated by timers. Additionally, the electricity to each residence was rewired to bypass the electric meter, a situation that created a fire hazard.

Indoor grow sites often pose considerable safety and health concerns for law enforcement officers, first responders, and unwitting citizens. Buildings used for indoor grow sites are 40 times more likely to catch fire than a building not used as a grow site because of the highly flammable chemicals, fertilizers, high-intensity lighting, electrical equipment, and reconfigured electrical systems often present in such structures. For instance, in December 2006 a \$1 million house used as an indoor grow site in Contra Costa County caught fire and was completely destroyed. High levels of carbon dioxide⁶ and carbon monoxide may also be present at indoor grow sites as a result of damaged exhaust systems. Additionally, grow sites are often booby-trapped to ward off thieves and law enforcement officers. Moreover, as a result of the prolonged high humidity at indoor grow sites, the buildings that contain them can be completely ruined from the growth of toxic molds.

Cannabis cultivators sometimes use Proposition 215 as a pretext for conducting illegal indoor grow operations on a commercial basis manufacturing high-grade marijuana for further distribution through cannabis clubs. For instance, in October 2006 federal authorities arrested 15 individuals in the San Francisco area for operating illegal indoor cannabis grow operation under the guise of producing medicinal marijuana. Authorities seized nearly 13,000 cannabis plants, computers, a luxury convertible, and a total of \$125,000. Law enforcement officials report that marijuana-laced edibles are even commercially manufactured. In December 2006 federal authorities arrested the owner and manager of a local medical marijuana patient cooperative in Hayward, California, for operating an illegal indoor cannabis grow operation. Authorities seized two inert grenades in addition to hundreds of cannabis plants, food items including cookies, brownies, and popcorn, and several high-value, luxury automobiles and motorcycles. (See [Figure 4](#).)

Figure 4. Samples of marijuana-laced popcorn seized by federal authorities.



Drug Enforcement Administration

Methamphetamine production in the Northern California HIDTA region is decreasing, largely as a result of successful law enforcement operations and regulatory efforts to control precursor chemicals. According to the National Clandestine Laboratory Seizure System (NCLSS), 26 methamphetamine laboratories were seized in the HIDTA region in 2006, a decrease from 36 laboratories seized in 2005, and 57 laboratories in 2004.

Most methamphetamine laboratories in the Northern California HIDTA region are small scale and intended to produce limited quantities for personal use or limited distribution--on average 4 to 7 grams per production cycle or "cook." Law enforcement authorities report that a few major laboratories and superlabs still operate within the HIDTA region. Some Mexican DTOs and criminal groups based in the Northern California HIDTA region also operate large-scale methamphetamine laboratories in the Central Valley HIDTA region, which is adjacent to the Northern California HIDTA. The methamphetamine produced at these laboratories is intended for distribution in California as well as throughout the United States.

End Notes

4. Data were received from the Drug Enforcement Administration (DEA) Domestic Cannabis Eradication/Suppression Program (DCE/SP); U.S. Department of the Interior; and U.S. Department of Agriculture Forest Service. DCE/SP statistics include state eradication efforts by CAMP.
 5. Cloned starter plants enable cannabis cultivators to select higher-quality plants and avoid male-female pollination, thereby raising potential THC (delta-9-tetrahydrocannabinol) content.
 6. Indoor cannabis growers commonly use carbon dioxide generators to produce carbon dioxide to "feed" the plants and increase the grow rates. This poses a health risk to law enforcement personnel responding to the site or neighboring residences in an urban environment, since the oxygen levels are greatly reduced.
-

Pot Grow Fires Too Dangerous For Contra Costa County Firefighters

February 20, 2014 5:46 AM

Filed Under: [Contra Costa](#), [Contra Costa County](#), [Contra Costa County Fire Department](#), [Crime](#), [Danger](#), [Electrical](#), [Fire](#), [Firefighters](#), [Fires](#), [Grow](#), [House](#), [Houses](#), [Marijuana](#), [Pittsburg](#), [Pot](#), [Pot House](#)

Firefighters discovered a marijuana grow operation during a firefight in Pittsburg. (CBS)
Firefighters discovered a marijuana grow operation during a firefight in Pittsburg. (CBS)

PITTSBURG (CBS SF) — Firefighters in Contra Costa County say illegal pot growing operations will be going up in smoke if the homes they are contained in catch fire.

Fire officials say the homes catching fire are not being used to grow medicinal marijuana, but are larger, illegal operations.

“These are not the kind of operation where somebody is using it for their own purposes for medicinal purposes but these are rather larger, if you will commercial farming operations,” said Captain Robert Marshall, of the Contra Costa County Fire Department.

ADVERTISING



2

35 marijuana grow houses have caught fire in the past two years in Contra Costa County, often due to improper electrical wiring used to power lights used for growing.

The wiring makes it dangerous for firefighters to go inside, so now those fires will be fought from outside, with an eye toward protecting the neighborhood.

“We’re telling them that if they get into a residential grow operation to take a much more defensive stance which means that the fires will burn longer they’ll burn hotter, until we can get PG&E there to actually secure the power,” Marshall said.