



**AGENDA
RIO DELL CITY COUNCIL
RIO DELL PLANNING COMMISSION
JOINT MEETING/ STUDY SESSION
TUESDAY, MARCH 28, 2017 - 5:30 P.M.
CITY COUNCIL CHAMBERS
675 WILDWOOD AVENUE, RIO DELL**

WELCOME . . . By your presence in the City Council Chambers, you are participating in the process of representative government. Copies of this agenda, staff reports and other material available to the City Council are available at the City Clerk's office in City Hall, 675 Wildwood Avenue. Your City Government welcomes your interest and hopes you will attend and participate in City meetings often.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Office of the City Clerk at (707) 764-3532. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility.

THE TYPE OF COUNCIL BUSINESS IS IDENTIFIED IMMEDIATELY AFTER EACH TITLE IN BOLD LETTERS.

A. CALL TO ORDER

B. ROLL CALL

C. PLEDGE OF ALLEGIANCE

D. CEREMONIAL

1. 2017/0328.01 - Swearing in of Bryan Richter as Planning Commission Alternate

E. PUBLIC PRESENTATIONS

This time is for persons who wish to address the Council on any matter not on this agenda and over which the Council has jurisdiction. As such, a dialogue with the Council or staff is not intended. Items requiring Council action not listed on this agenda may be placed on the next regular agenda for consideration if the Council directs, unless a finding is made by at least 2/3rds of the Councilmembers present that the item came up after the agenda was posted and is of an urgency nature requiring immediate action. Please limit comments to a maximum of 3 minutes.

F. STUDY SESSION MATTERS

- 1) 2017/0328.02 - Overview of the Ralph M. Brown Act
- 2) 2017/0328.03 - Review and Discussion of Proposition 64 Adult Use Marijuana Act (AUMA)

G. OTHER COUNCIL/PLANNING COMMISSION BUSINESS

H. ADJOURNMENT




In compliance with the American with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact the Office of the City Clerk at (707) 764-3532. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to the meeting.

675 Wildwood Avenue
Rio Dell, CA 95562
(707) 764-3532



For Meeting of: March 28, 2017

To: City Council & Planning Commission
From: Kevin Caldwell, Community Development Director
Through: Kyle Knopp, City Manager 
Date: March 24, 2017
Subject: Overview of the Adult Use of Marijuana Act (AUMA), Proposition 64 and Discussion of the City's Personal Medical Marijuana Regulations, Section 17.30.190 of the Rio Dell Municipal Code (RDMC).

Recommendation:

1. Receive staff's presentation regarding the existing Design Review regulations and permit process; and
2. Open the public hearing, receive public input and deliberate; and
3. Direct staff to amend the Personal Medical Marijuana Regulations to be consistent with the Adult Use of Marijuana Act (AUMA).

Discussion

Staff presented an overview of Proposition 64, the Adult Use of Marijuana Act (AUMA) to the City Council at their meeting of March 7th. The Council suggested a Study Session with the Planning Commission to review AUMA in regards to personal cultivation and the City's current personal medical cultivation regulations.

Adult Use of Marijuana Act (AUMA), Proposition 64: Proposition 64, the Adult Use of Marijuana Act (AUMA) was approved and became effective November 9, 2016. AUMA legalizes the use of recreational marijuana and creates a State regulatory and licensing system for commercial cultivation, testing, manufacturing and distribution of nonmedical marijuana. The State expects to begin issuing commercial licenses January 1st 2018.

The League of California Cities published a Frequently Asked Questions (FAQ's) regarding the Adult Use of Marijuana Act (AUMA), Proposition 64. Although not a complete summary it does address a number of key points within AUMA. The League's document is included as Attachment 1. Below is a summary of some of the key points:

Personal Use

- ❖ Legalizes the nonmedical use of marijuana by persons 21 years of age and older. 11362.1 H&SC.
- ❖ Allows persons to possess, process, transport, purchase obtain or giveaway up to 28.5 grams of marijuana and up to 8 grams of concentrated marijuana. 11362.1 H&SC.
- ❖ No smoking in a public place (except where authorized locally). 11362.3 H&SC.
- ❖ No smoking where smoking tobacco is prohibited. 11362.3 H&SC.
- ❖ No smoking within 1000 feet of a school, day care center or youth center when children are present (except in one's home or yard when not visible from a public place). 11362.3 H&SC.
- ❖ Cannot possess an open container or open package of marijuana or marijuana products while driving, operating or riding in the passenger seat of a motor vehicle, boat, vessel, aircraft or other vehicle used for transportation. 11362.3 H&SC.
- ❖ Cannot smoke or ingest marijuana or marijuana products while driving, operating or riding in the passenger seat of a motor vehicle, boat, vessel, aircraft or other vehicle used for transportation. 11362.3 H&SC.
- ❖ Cities may prohibit smoking and possession on property owned, in buildings owned, leased or occupied by the city. 11362.45 H&SC
- ❖ A landlord may prohibit or restrict personal possession, smoking and cultivation. 11362.45 H&SC
- ❖ Employers may maintain drug-free workplaces.

Personal Cultivation

- ❖ Allows persons to cultivate six (6) marijuana plants.
- ❖ Local governments may "reasonably regulate" but not prohibit "indoor" cultivation. Indoor cultivation includes a greenhouse or other detached accessory.

- ❖ Local governments may ban outdoor cultivation, but those that do will not be eligible for grants.
- ❖ Plants grown outdoors may not be visible by normal unaided visions from a public place.
- ❖ Marijuana in excess of 28.5 grams must be kept in a locked space within the person's private residence.
- ❖ Local governments can require a permit process with an appropriate fee to ensure compliance with the various building codes, including the fire code. In addition a permit process could require periodic inspections upon appropriate notice.

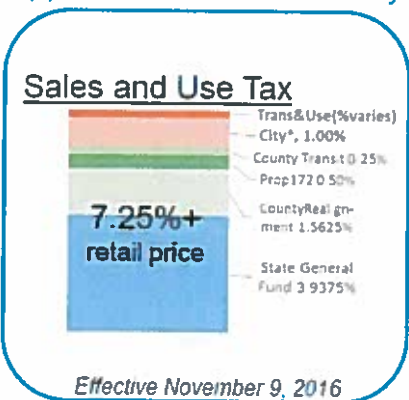
Commercial Marijuana Activities

- ❖ Allows local government to prohibit (ban) or regulate and license commercial nonmedical marijuana.
- ❖ The State expects to begin issuing commercial licenses January 1st 2018.
- ❖ The State cannot issue a license if it would violate the provisions of any local ordinance or regulation.
- ❖ The City either needs to ban commercial marijuana activities or adopt regulations allowing them before January 1st, 2018.

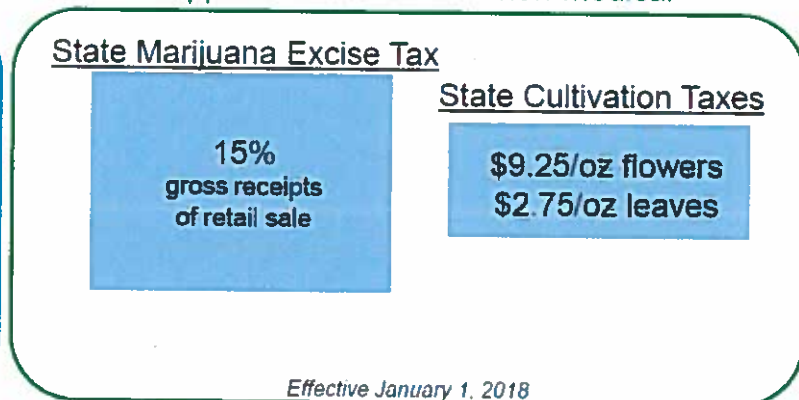
Excise and Sales Taxes

- ❖ Proposition 64 adds a State excise tax of 15% at the retail end. It also adds a State excise tax on cultivation of \$9.25 an ounce for flowers and \$2.75 an ounce for leaf. Both of these taxes become effective January 1st, 2018.

Applies to non-medical only



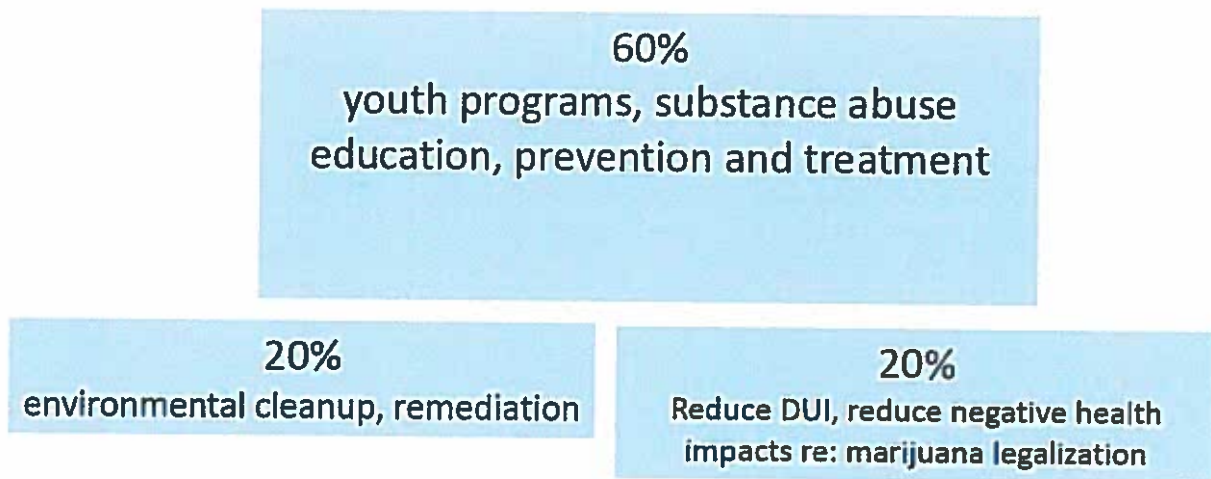
Applies to medical and non-medical



- ❖ The revenue generated from the excise taxes will be allocated as follows. Please note that the 20% of the taxes allocated to reduce DUI's, reduce negative health impacts regarding legalization will be available to local governments in the form of grants. **However, the jurisdictions that ban outdoor cultivation and/or retail sales are not eligible for the grant funds.**

Allocation* of State Excise Taxes on Marijuana under Proposition 64

*may be altered by majority vote of the Legislature after 2027



- ❖ Marijuana cultivated for personal use is exempt from the cultivation tax.
- ❖ Medical marijuana is exempt from State and local sales taxes.

Personal Medical Marijuana Regulations, Section 17.30.190 of the Rio Dell Municipal

Code: On February 14th 2013, the City's Medical Marijuana Regulations, Section 17.30.190 of the Rio Dell Municipal Code became effective. The regulations were adopted in response to complaints regarding the neighborhood impacts of the cultivation of marijuana.

The intent of the Medical Marijuana Regulations is to balance the needs of patients and their caregivers and to minimize impacts that can accompany the residential cultivation and processing of medical marijuana for an individual patient's use. Widespread indoor cultivation of marijuana in the County and Cities has led to a decrease in needed rental housing stock, as rental homes are converted solely to structures to grow marijuana. As rental homes are converted to these grow structures, the character of the neighborhood around the grow structure deteriorates. Below is a summary of the regulations:

- ❖ Outdoor cultivation is not allowed.
- ❖ Indoor medical marijuana cultivation in a residence or detached accessory building shall not exceed fifty (50) square feet or exceed ten (10) feet in height per residence on a parcel, **regardless of the number of qualified patients or primary caregivers residing at the residence or participating directly or indirectly in the cultivation.**
- ❖ A greenhouse may be considered a Detached Accessory Building if it is a fully enclosed, secure and lockable structure that has a roof supported by connecting walls extending continuously to a perimeter foundation or equivalent base to which the connecting walls are securely attached.
- ❖ The medical marijuana cultivation and processing area in the residence or detached accessory building shall be indoors, as defined herein, posted with a legible copy of the individual patient's medical marijuana recommendation, secured against unauthorized entry, and maintained for the exclusive use of the qualified patient.
- ❖ Grow lights for medical marijuana cultivation for personal use in a residence or a detached accessory building shall not exceed 1200 watts total.
- ❖ All electrical equipment used in the indoor cultivation of medical marijuana in a residence or a detached accessory building shall be plugged directly into a wall outlet or otherwise hardwired. The use of extension cords to supply power to electrical equipment used in the residential cultivation of medical marijuana is prohibited.
- ❖ The use of gas products (CO₂, butane, etc.) for indoor medical marijuana cultivation or processing in a residence or a detached accessory building is prohibited.
- ❖ No toxic or flammable fumigant shall be used for indoor cultivation of medical marijuana in a residence or a detached accessory building unless the requirements of Section 1703 of the California Fire Code have been met.
- ❖ No odor of medical marijuana shall be detectable from the property boundaries by a person of ordinary senses. To achieve this, the medical marijuana cultivation area shall be, at a minimum, mechanically ventilated with a carbon filter or other superior method to prevent the odor of marijuana from escaping the indoor cultivation area and negatively impacting neighbors and the surrounding community. Ventilation systems shall be installed in a manner that facilitates decommissioning and a return of the cultivation area to non-cultivation residential uses.
- ❖ From a public right of way, neighboring properties, or neighboring housing units, there shall be no visual or auditory evidence of medical marijuana cultivation at the residence or detached accessory building that is detectable by a person of ordinary senses.
- ❖ Medical marijuana cultivation, processing, or transfers in a residence or detached accessory building are prohibited as a Home Occupation.

- ❖ No sale, trading, or dispensing of medical marijuana is allowed on a parcel where residential cultivation of medical marijuana occurs.
- ❖ The qualified patient shall not cultivate medical marijuana for his or her personal use in more than one residence or detached accessory building within the City jurisdiction.
- ❖ The residence where medical marijuana is grown indoors for personal use shall maintain a kitchen and bathroom(s) for their intended use, and the kitchen, bathroom(s), and bedroom(s) shall not be used primarily for medical marijuana cultivation.
- ❖ No effluent, including but not limited to waste products, chemical fertilizers or pesticides shall be discharged into drains, septic systems, community sewer systems, water systems or other drainage systems including those that lead to rivers and streams as a result of the cultivation of medical marijuana.
- ❖ The residential cultivation of medical marijuana shall not adversely affect the health or safety of residents, neighbors, or nearby businesses by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes associated with the cultivation of medical marijuana.
- ❖ The indoor residential cultivation of medical marijuana must comply with all applicable state and county laws, including fire and building codes.
- ❖ A waterproof membrane or other waterproof barrier shall be installed in the cultivation area or beneath individual plants to protect the floor of the indoor cultivation area from water damage.

Chapter 5.35 of the Rio Dell Municipal Code (RDMC), dispensaries are prohibited in the City. In addition, the recently adopted Commercial Medical Cannabis regulations are consistent with Chapter 5.35 of the RDMC in that dispensaries are not an allowed cannabis activity.

Attachments

Attachment 1: The League of California Cities "Frequently Asked Questions (FAQ's) regarding the Adult Use of Marijuana Act (AUMA), Proposition 64".

January 9, 2017



Frequently Asked Questions (FAQs)

Adult Use of Marijuana Act¹

Proposition 64

Question#1: When does the AUMA take effect?

Answer: The AUMA took effect November 9, 2016, the day after the election. But note, the AUMA requires a state license to engage in commercial nonmedical marijuana activity. Licensing authorities are required to begin issuing licenses by January 1, 2018 and the League anticipates that the issuance of licenses will not occur much in advance of January 1, 2018. Thus, the AUMA provisions legalizing commercial nonmedical marijuana activity will not become operational until the state begins issuing licenses (likely in late-2017). The AUMA provisions legalizing personal use and cultivation of nonmedical marijuana took effect November 9, 2016.

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

Answer: Yes, within a private residence by a person 21 years and older for personal use. The AUMA provides that local governments can reasonably regulate, but cannot ban the personal indoor cultivation of up to six nonmedical marijuana plants per private residence. This includes cultivation in a greenhouse that is on the property of the residence but not physically part of the home, as long as it is fully enclosed, secure, and not visible from a public space. Because this activity is not subject to state licensing requirements, individuals may engage in personal indoor cultivation beginning November 9, 2016, unless a city enacts an ordinance imposing a reasonable regulatory scheme that would preclude them from doing so before complying with the city's regulatory requirements.

Local governments may regulate or ban all personal outdoor cultivation. However, the AUMA includes language purporting to repeal any ordinance that bans personal outdoor

¹ Please consult your City Attorney before taking action to implement the AUMA. The answers to these FAQs may be different in your city based upon your municipal code, regulations, and policies. The answers do not constitute legal advice from the League of California Cities®.

cultivation upon the California Attorney General's determination that nonmedical use of marijuana is lawful under federal law.

Question #3: Is there a limitation on the number of marijuana plants that can be cultivated within a single residence?

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

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

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

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

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

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

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

Question #7: What does the AUMA say about possession, transporting, purchasing or giving away of non-medical marijuana?

Answer: A person 21 years of age or older may possess, process, transport, purchase or give away to persons 21 years of age or older not more than 28.5 grams of marijuana in the non-concentrated form and not more than 8 grams of marijuana in a concentrated

form including marijuana products. If the AUMA passes, these activities will be lawful under state law and cannot be prohibited under local law.

Question #8: Do cities that ban or regulate medical marijuana businesses need to update their ordinances to include nonmedical marijuana?

Answer: Yes. The AUMA prohibits state licensing authorities from issuing a license to a commercial nonmedical marijuana business if operation of the business violates a local ordinance of the jurisdiction in which the business will operate. This means that a city wishing to adopt business or land use regulations prohibiting or regulating commercial nonmedical marijuana businesses must adopt an ordinance prior to the date the state begins issuing licenses, which the League anticipates will be in late 2017.²

Question #9: Can cities be confident that a permissive zoning code, by itself, provides sufficient protection against nonmedical marijuana businesses setting up shop without local approval?

Answer: No. It is unlikely that cities will succeed in arguing that nonmedical marijuana land uses are prohibited by permissive zoning codes under the AUMA, because the AUMA does not contain the same protective language as the MMRSA with respect to permissive zoning. Therefore, cities that wish to ban all or some nonmedical marijuana activities should adopt express prohibitions, even if they operate under a permissive zoning code.

Question #10: Are cities at risk of losing the opportunity to impose bans on personal outdoor cultivation if they don't act until after the November election?

Answer: No. A city may adopt an ordinance banning or regulating personal outdoor cultivation at any time.

Question #11: Are cities at risk of losing the opportunity to impose bans on nonmedical marijuana businesses, if they don't act until after the November election?

Answer: No. However, if a city does not adopt an ordinance expressly banning or regulating nonmedical marijuana businesses before the state begins issuing state licenses nonmedical businesses, a state-licensed nonmedical marijuana business will be able to operate within its jurisdiction without local permission or permitting. This is due to a provision in the AUMA that provides that state licenses cannot be issued where the activity would violate a local ordinance. If a jurisdiction has no ordinance regulating nonmedical marijuana businesses, then the local regulatory scheme is silent on that type of activity, and the state can unilaterally issue a license under terms fully compliant with the AUMA. Cities may adopt an ordinance expressly banning or regulating such operations after the state begins to issue licenses, but it will be difficult to terminate the state licensee's operations until the state license is up for renewal. Therefore, the best practice is to adopt an ordinance before the state begins issuing state licenses.

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

Question #12: Can cities ban deliveries under the AUMA?

Answer: Yes. Cities can ban deliveries within their territorial limits. However, cities cannot prevent the use of public roads for the delivery of marijuana. For example, if a licensed delivery company located in City A must travel on public roads through City B to make an authorized delivery in City C, City B cannot prohibit the licensed delivery company from travelling on public roads in City B to get to City C. In addition, cities may not prevent the use of public roads within its jurisdiction to transport nonmedical marijuana.

Question #13: What is the best way for cities to notify the state licensing agencies of their local ordinances that regulate and/or prohibit commercial non-medical marijuana activities within their jurisdictions?

Answer: Unless the state licensing agencies indicate otherwise, cities should mail copies of their local ordinances that regulate or prohibit commercial nonmedical marijuana activities within their jurisdictions to the Department of Consumer Affairs, the Department of Food and Agriculture, and the Department of Public Health. Cities should regularly check each Department's website to ensure that this practice complies with any regulations the Departments may pass regarding notice of local ordinances. In addition, Cities should ensure that any updates or amendments to local ordinances that regulate or prohibit commercial nonmedical marijuana activities are promptly submitted to each Department.

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

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