
ADMINISTRATIVE REPORT

Date: October 3, 2016

Agenda Item No.: _____

Council Action Date: October 10, 2016

To: Honorable Mayor and City Council

**From: Gregory G. Diaz, City Attorney
Ken Corney, Police Chief**

**Subject: Receive a Report on Proposition 64, “The Adult Use of
Marijuana Act”**

RECOMMENDATIONS

It is recommended that the City Council:

- a. Receive the report from City staff on Proposition 64, “The Adult Use of Marijuana Act”; and,
- b. Provide direction to staff for any follow-up or additional action the City Council desires.

COUNCIL PRIORITIES

This process supports the City Council’s goal of:

- Enhancing Public Trust

PREVIOUS COUNCIL ACTION

- September 19, 2016, City Council motion to direct staff to bring back a report on Proposition 64 to a future City Council meeting.

DISCUSSION

At the City Council's meeting of September 19, 2016, the City Councilmember Tracy requested that the City Council ask the City staff, including the Police Chief and the City Attorney, to bring back information pertaining to Proposition 64 known as the "Adult Use of Marijuana Act" (the "AUMA"). The City Council directed staff to bring this item back and this is the purpose of this Administrative Report.

The Administrative Report including the following Exhibits:

- Exhibit "A" – The full text of Proposition 64 from the Secretary of State's Website
- Exhibit "B" – League of California Cities Memorandum entitled "The Control, Regulate and Tax Adult Use of Marijuana Act"
- Exhibit "C" – League of California Cities Frequently Asked Questions on the Adult Use of Marijuana Act
- Exhibit "D" – PowerPoint presentation to be provided at the City Council meeting by the Police Chief and City Attorney
- Exhibit "E" -- Resolution of Opposition from the Ventura Unified School District's Board of Education

While the AUMA attempts to take a comprehensive approach to the commercialization of marijuana, this Administrative Report will focus primarily on the provisions impacting local government. To this extent, the key provisions are as follows:

- Authorizes personal use of marijuana by persons age 21 or older¹ to:
 - Smoke or ingest marijuana or its products

¹ Marijuana is still a controlled substance pursuant to Federal law and it remains a potential Federal offense for anyone to commit various acts that are authorized by the AUMA. While the current position of the federal government and some court decisions is not to interfere with actions taken in states where marijuana is legalized, this position could change with a change in executive administration in Washington, D.C. Staff takes no position on the likelihood or non-likelihood of this happening upon a change in executive administration.

- Possess, process, transport, purchase, obtain, or give away to persons over age 21 28.5 grams of marijuana or 8 grams of concentrated marijuana
 - Possess, plant, cultivate, harvest, dry, or process up to six living marijuana plants for personal use
- Personal cultivation is authorized under the AUMA for up to six plants within a private residence
 - Inside of a private residence could include a greenhouse
 - Local government cannot ban the indoor cultivation of marijuana which consists of six or less plants
- Local government can allow, regulate, or completely ban the outdoor cultivation of marijuana
 - The AUMA purports to allow the State Attorney General to invalidate locally adopted outdoor cultivation bans if he/she determines that marijuana is lawful under federal law
 - There is no express right of judicial review of this decision and it is an unprecedented grant of power to a state official to invalidate enactments of local government
- Creates at least three separate state regulatory agencies overseeing the commercialization of marijuana:
 - Bureau of Marijuana Control within the Department of Consumer Affairs
 - Responsible for issuing licenses for the transportation, storage, distribution, and sale of marijuana
 - Department of Food and Agriculture to issue and oversee licenses to cultivate marijuana
 - Department of Public Health will issue licenses for marijuana manufacturing and testing
 - State licenses are valid for one year and each location must have a separate license—a person can have more than one state license
- Local government is authorized to have a licensing scheme and a state license cannot be issued if a local license is not obtained or a local government prohibits the sale, distribution, or cultivation of marijuana in its jurisdiction
- Local government may also prohibit the sale, delivery, or outdoor cultivation of marijuana in its jurisdiction

- Under the AUMA if a local government revokes or suspends a local license to a marijuana operator, the appropriate state agency must begin a review process to determine if the state license should also be suspended or revoked
 - If a local license is required by the local jurisdiction, an operator cannot operate in that jurisdiction even with their state license because the AUMA requires having a valid local license as a condition of a state license
- The Legislature can amend the AUMA by a majority vote for Sections 5 (marijuana use for medical purposes), Section 6 (state licensing), and penalties for violations
- The Legislature can amend any other section of the AUMA by a 2/3rds vote
- AUMA authorizes an excise tax on marijuana non-medical sales at 15% of gross retail sales
 - First call on funding is for state administration
 - Second is primarily for social services
 - Third is for grants that local government could potentially be eligible for under the AUMA
 - If the local government bans the sale or cultivation of marijuana or both, it becomes ineligible for the grants or related state funding
 - This is true even though a neighboring jurisdiction's allowing the sale or cultivation or both of marijuana brings costs and expenses to that local government
- AUMA authorizes local jurisdictions to enact taxes over marijuana (excepting that medical marijuana cannot be locally taxed)
 - Any local tax is subject to Proposition 218's requirement to get approval from the voters
- If the City Council wants to ban all or some commercial marijuana uses, it will need to take affirmative action to do so
 - May want to start with a moratorium
- If the City Council wants to allow all or some commercial marijuana uses with local regulation, it will need to enact a local program to do so

The City Attorney's presentation will focus primarily on the local control provisions of the AUMA and how strong or weak the provisions are. The Police Chief will focus primarily on the experience in Colorado in legalizing marijuana use and its commercialization. The intent of the presentation is to allow the City Council to make informed decisions regarding the Proposition and what, if any, stance the City wants to take on it and should the Proposition pass, how to implement it.

Fiscal Impacts:

There are no fiscal impacts directly from the presentation. In the event the City Council decides to take a position on the Proposition, there will be minor costs associated with preparing a Resolution. In the event the Proposition passes, it is too early to determine the fiscal impact on the City.

ALTERNATIVES

The City Council has the following alternatives:

1. Receive and file the report.
2. Direct staff to prepare a Resolution in support or opposition to the Proposition.
3. Direct staff to begin the process of preparing to implement the Proposition if adopted.

Prepared by:

Gregory G. Diaz
City Attorney

Kenneth Corney
Police Chief

Reviewed as to fiscal impacts

Gilbert Garcia
Finance & Technology Director

FORWARDED TO THE CITY COUNCIL

City Manager's Office

Attachments:

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