



## AGENDA BILL

### Agenda Item No. 6

**Date:** April 18, 2017  
**To:** El Cerrito City Council  
**From:** Sean Moss, Senior Planner  
Paul Keith, Chief of Police  
**Subject:** Presentation and Possible Direction on Marijuana Regulation

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#### **ACTION REQUESTED**

Receive a presentation and provide direction regarding regulation of marijuana in El Cerrito.

#### **BACKGROUND**

Use and cultivation of medicinal marijuana has been legal in California since the passage of Proposition 215, the Compassionate Use Act, in 1996. In 2006, the City Council banned medical marijuana dispensaries. In response to changes in state law, in anticipation of further changes, and to maintain the legal status quo until the full scope of those changes was understood, in 2016, the City Council also banned cultivation and delivery of marijuana. In 2016, the City Council also directed staff to revisit these prohibitions and evaluate and make recommendations regarding whether they should be lifted and/or modified. A community meeting on the topic was also held in September 2016.

Since the City Council provided this direction to staff, California voters passed Proposition 64, the Adult Use of Marijuana Act, permitting the recreational use of marijuana by adults, 21 years of age or older. It also permitted the commercial cultivation, production, and sale of marijuana and related products. As a result of this change in State law, staff is returning to the City Council with an update, seeking clear direction on how to proceed with regard to regulation of marijuana in El Cerrito within the current State regulatory framework.

#### **ANALYSIS**

The attached presentation provides a background of regulation of marijuana in the United States; a summary of the public process related to marijuana regulation in El Cerrito, to date; and poses questions for the City Council for discussion of possible changes to the City's regulation of marijuana. The questions include a preliminary potential framework for regulation of marijuana. If the City Council favors the framework—with or without modifications—staff will prepare an ordinance to implement the City Council's direction, after holding an additional public workshop to obtain feedback about the framework.

**STRATEGIC PLAN CONSIDERATIONS**

Marijuana regulations have the potential to address several goals of the Strategic Plan depending on the direction given by the City Council. Considerations related to the Strategic Plan will be assessed as regulations are developed and when/if an ordinance is brought to the City Council for consideration.

**ENVIRONMENTAL CONSIDERATIONS**

Applicability of the California Environmental Quality Act will be assessed when/if an ordinance is brought to the City Council for consideration.


**FINANCIAL CONSIDERATIONS**

Financial considerations of marijuana regulations will be assessed as they are developed and when/if an ordinance is brought to the City Council for consideration.

**LEGAL CONSIDERATIONS**

The City Attorney has reviewed the presentation. Any future marijuana regulations will be drafted at the direction of the City Council in consultation with the City Attorney.

**Reviewed by:**



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**Scott Hanin**  
**City Manager**

**Attachments:**

1. Presentation


# DISCUSSION AND POSSIBLE DIRECTION ON MARIJUANA REGULATION

EL CERRITO CITY COUNCIL • APRIL 18, 2017

# PRESENTATION OVERVIEW

- Brief History of Cannabis
  - Cannabis Basics
  - Use and Regulation in the United States
- Local Marijuana Regulations
  - California
  - El Cerrito

# CANNABIS BASICS

- Marijuana and hemp are cultivars of the cannabis plant.
  - Three subspecies or 'strains' of cannabis: *sativa*, *indica*, and *ruderalis*.
  - Cannabis contains at least 113 different cannabinoids, including tetrahydrocannabinol (THC) and cannabidiol (CBD).
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# CANNABIS BASICS


- THC is the primary psychoactive component of cannabis.
- CBD is generally non-psychoactive and may have anti-psychotic effects.



# HISTORY OF U.S. MARIJUANA REGULATION


- Hemp was cultivated widely in the United States beginning in the colonial period, through the 19th century.
- In 1619, the Virginia Assembly required all farmers in the colony to grow hemp.

# HISTORY OF U.S. MARIJUANA REGULATION


- During the Mexican Revolution of 1910, Mexican immigration to the United States increased.
  - Marijuana became associated with Mexican immigrants.
  - During the Great Depression, resentment toward Mexican immigrants increased and research at that time linked marijuana to violence and crime.
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# HISTORY OF U.S. MARIJUANA REGULATION

- Federal Bureau of Narcotics (FBN) created in 1930.
  - By 1931, 29 states had banned marijuana.
  - FBN encouraged states to adopt the Uniform State Narcotic Act.
  - In 1937, Congress passed the Marihuana Tax Act.
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# HISTORY OF U.S. MARIJUANA REGULATION

- During World War II, the Department of Agriculture encourage farmers to grow hemp.
  - In the 1950's, Congress created mandatory minimum sentences for drug-related offences.
  - Attitudes toward marijuana changed in the 1960's as its use grew amongst the counter-culture and the white upper-middle class.
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# HISTORY OF U.S. MARIJUANA REGULATION

- In 1969, in *Leary v. United States*, the Supreme Court found the Marihuana Tax Act to be unconstitutional.
- In 1970, Congress repealed most mandatory drug sentences.
- In 1970, Congress passed the Comprehensive Drug Abuse Prevention and Control Act.


# HISTORY OF U.S. MARIJUANA REGULATION

- In 1972, the Shafer Commission was created by Congress and appointed by President Nixon.
  - Through the 1970's, 11 states decriminalized marijuana and most others reduced penalties.
  - In 1973, the Drug Enforcement Agency (DEA) was created.
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# HISTORY OF U.S. MARIJUANA REGULATION

- In the late 1970's, some parents' groups began to lobby for stricter drug regulations.
  - In 1986, Congress passed the Anti-Drug Abuse Act.
  - As crime declined through the 1990's, attitudes toward marijuana again began to change.
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# HISTORY OF U.S. MARIJUANA REGULATION

- In 1996, California voters passed the Compassionate Use Act (Proposition 215).
  - From 1996-2010 fourteen states legalized medicinal use of marijuana.
  - In 2012, Colorado and Washington legalized recreational use of marijuana by adults.
  - In 2016, California voters passed the Adult Use of Marijuana Act (Proposition 64).
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# HISTORY OF U.S. MARIJUANA REGULATION


- At the present:
  - 8 states have legalized recreational use of marijuana
  - 24 states have legalized medicinal use of marijuana
  - 12 states have legalized medicinal use of non-psychoactive cannabis substances, such as CBD oil

# HISTORY OF U.S. MARIJUANA REGULATION


- In 2013, the Justice Department issued the “Cole memo.”
  - In 2014, Congress adopted the Rohrabacher-Farr amendment.
  - Current administration has signaled greater enforcement on recreational marijuana.
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# EL CERRITO PROCESS

- State Compassionate Use Act passed in 1996.
  - In 2006, the City Council adopted a ban on medical marijuana dispensaries in El Cerrito. (Chapter 6.80, ECMC)
  - In January 2016, the City Council amended the ban on dispensaries to also include medical marijuana cultivation and delivery to maintain the status quo while state law was in flux.
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# EL CERRITO PROCESS

- In May 2016, the City Council discussed a proposal by a dispensary group to operate a dispensary in El Cerrito.
  - In June 2016, the City Council provided direction to staff to begin a process to review the existing ban on medical marijuana dispensaries and evaluate new regulations for marijuana businesses.
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## EL CERRITO PROCESS

- In September 2016 the City held a community meeting to provide information to the community and to hear feedback regarding regulation of marijuana businesses.
  - In November 2016, California voters passed Proposition 64 (Adult Use of Marijuana Act).
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# COMMUNITY MEETING SUMMARY

- Meeting was well-attended.
  - Diversity of viewpoints represented.
  - Participants discussed and gave comments about a variety of topics:
    - Existing ban
    - Deliveries
    - Standards for marijuana retail
    - Sensitive land uses and buffers
    - Appropriate locations for marijuana retail
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# PROPOSITION 64 (AUMA)

- Personal Use and Cultivation
  - Same limits on marijuana smoking as tobacco smoking
  - No marijuana smoking while driving or riding in a vehicle
  - No marijuana smoking within 1,000 feet of a school, daycare center or youth center
  - Indoor cultivation of 6 plants per residence permitted

# PROPOSITION 64 (AUMA)

- Commercial Sales, Production, and Cultivation
  - Subject to local land use authority/police power
  - Requires State permit
- Taxation
  - 15% State tax on all marijuana sales
  - By weight State tax on cultivation
  - Cities can impose local taxes by ballot
  - Standard sales tax on recreational marijuana

# QUESTIONS FOR CITY COUNCIL

- Does the Council wish to modify or end the ban on marijuana businesses?


# OVERVIEW OF STAFF RECOMMENDATIONS

- Preliminary Framework/Assumptions
- Council Questions/Discussion
- Next Steps





# PRELIMINARY FRAMEWORK FOR EL CERRITO

- Marijuana Retail
    - Maximum of two retail establishments
    - Limit businesses to San Pablo Avenue Specific Plan Area
    - Local operating permit required
    - Allow deliveries with cashless transactions
    - Buffers from sensitive land uses
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# PRELIMINARY FRAMEWORK FOR EL CERRITO


- Personal Cultivation
  - Permit indoor cultivation under AUMA without City permit.
  - Continue to prohibit outdoor cultivation.

# PRELIMINARY FRAMEWORK FOR EL CERRITO


- Commercial Cultivation and Manufacturing
  - Permitted only as accessory use to a permitted retail use.
  - Small scale only (maximum square footage)
- Medical Laboratory/Testing
  - Allowed similarly to other light industrial uses



# QUESTIONS FOR CITY COUNCIL

- Should marijuana retail be allowed in El Cerrito?
    - Is the presented model generally acceptable?
  - Is the model for personal cultivation generally acceptable?
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# QUESTIONS FOR CITY COUNCIL

- Should commercial marijuana cultivation be allowed as an accessory use?
  - Should laboratory/testing uses be allowed similarly to other light industrial uses?
  - Is the City Council interested in implementing a local tax outside of standard sales tax?  
(Would require a ballot measure.)
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# QUESTIONS FOR CITY COUNCIL

- Other considerations regarding regulation of marijuana?

## NEXT STEPS

- Hold second community meeting to hear input regarding proposed framework.
  - With feedback from Council and the public, staff will create draft ordinance.
  - Study session with City Council on draft ordinance.
  - City Council adoption of ordinance before the end of the calendar year.
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# **DISCUSSION/QUESTIONS**

