



# CITY OF WHEATLAND

## CITY COUNCIL MEETING STAFF REPORT

December 12, 2017

**SUBJECT:** Urgency Interim Ordinance Adopting a Temporary Moratorium on Commercial Marijuana Land Uses and Outdoor Marijuana Cultivation

**PREPARED BY:** Jennifer Buckman, City Attorney  
Greg Greeson, City Manager

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### **Recommendation**

Staff recommends that the City Council adopt an urgency interim ordinance adopting a temporary moratorium on all commercial marijuana land uses and all outdoor marijuana cultivation in the City, while the staff, Planning Commission, and City Council consider changes to the zoning code to address the Adult Use of Marijuana Act.

### **Background**

Consistent with state law, since 2013, the City of Wheatland has prohibited all outdoor medical marijuana cultivation, as well as all medical marijuana dispensaries, in all zoning districts in the City. (Wheatland Municipal Code, Chapter 18.61 [prohibiting outdoor medical marijuana cultivation]; Wheatland Municipal Code § 18.09.090 [prohibiting medical marijuana dispensaries]; see *City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) 56 Cal.4th 729 [cities may prohibit medical marijuana dispensaries]; *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975 [cities may prohibit medical marijuana cultivation].) The City authorized indoor cultivation of medical marijuana, subject to certain permitting requirements. (Wheatland Municipal Code, Chapter 18.61 and 15.05.100 Appendix "C," Section C105.)

On November 8, 2016, California voters approved Proposition 64, which is the initiative known as the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA"). Subject to local and state restrictions and regulations, AUMA generally legalizes (under California law) the nonmedical, recreational use of marijuana by persons 21 years of age and over. (Health & Saf. Code § 11362.1.) However, AUMA prohibits smoking or ingesting marijuana: (1) in any public place except locally authorized marijuana distribution shops; (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 (4) while driving or riding in any vehicle. (Health & Saf. Code §§ 11362.3, 11362.4.) Federal law continues to prohibit the cultivation and possession of marijuana.

To reconcile AUMA with the previously existing law related to medical marijuana, in late June 2017, the Legislature passed and the Governor signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). MAUCRSA creates one regulatory system for both medicinal and recreational use marijuana.

These laws establish a comprehensive dual state and local regulatory and licensing scheme governing commercial nonmedical marijuana activities. Under this dual licensing framework, cities may adopt local ordinances regulating or completely prohibiting nonmedical marijuana businesses and commercial activities, including marijuana deliveries. (Bus. & Prof. Code § 26200(b).) Without both a state and local permit, commercial marijuana businesses cannot operate within a city.

Also, under these laws, cities may continue to prohibit all outdoor personal cultivation of nonmedical marijuana. (See Health & Saf. Code, section 11362.2(b)(3).) However, AUMA authorizes indoor cultivation of marijuana for personal use. For each single private residence, AUMA allows indoor personal cultivation of up to six marijuana plants, and the possession of the marijuana produced by the plants, subject to reasonable regulations adopted by local jurisdictions such as the City. (Health & Saf. Code §§ 11362.1(a)(3), 11362.2(b)(2).)

On November 16, 2017, California's three state cannabis licensing authorities publicly noticed proposed emergency regulations to establish the regulatory system for both medical and recreational marijuana use. Due to the limited number of City Council and Planning Commission meetings in November and December, it is not possible for the Planning Commission and the City Council to consider these regulations and determine the City's course of action before the AUMA permitting scheme takes effect on January 1, 2018.

## **Analysis**

The new state laws and regulations authorize additional commercial marijuana activities, subject to the land use agency with jurisdiction permitting them. Under the new laws and state regulations, a city could choose to authorize commercial marijuana land uses such as manufacturing, processing, distribution, storing, laboratory testing, grading, marketing, packaging, labeling, delivery, transportation or distribution, and sales of nonmedical marijuana for consumption by adults 21 years of age or older. City staff needs additional time to evaluate the newly proposed state regulations and develop an appropriate recommendation regarding the regulation of commercial marijuana activities within the City.

The new state laws also allow a person to cultivate up to six marijuana plants indoors for personal, nonmedical (recreational) use, but the laws also allow the City to impose reasonable regulations on indoor personal cultivation. City staff needs additional time to evaluate the newly proposed state regulations and develop an appropriate recommendation regarding indoor personal cultivation of marijuana.

Government Code Section 65858 allows cities to impose a temporary moratorium as an urgency measure for any land use that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City Council and/or Planning Commission is considering or studying. To provide the City sufficient time to consider what regulations it wishes to impose on personal cultivation and on commercial marijuana land uses, staff recommends that the City Council impose a temporary moratorium prohibiting all outdoor marijuana cultivation within the City.

Under state law, the proposed moratorium would be in effect for 45 days. (Gov. Code § 65858.) Following a noticed public hearing, the City Council may extend the moratorium for an additional 10 months and 15 days, and could subsequently extend it for another year, though staff does not anticipate that it will be necessary to maintain the moratorium for this length of time. Staff anticipates bringing the Planning Commission and the City Council a proposed permanent ordinance for consideration in January.

The passage of the moratorium requires a four-fifths vote of the City Council.

### **Environmental Review**

This ordinance is intended to preserve the status quo pending further review of the matter by the City Council, and it will not cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. The City Council therefore concludes that enactment of this ordinance does not constitute the approval of a project under the California Environmental Quality Act ("CEQA"), and, even if it did qualify as a project, it would be exempt from CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2), 15060(c)(3); 15061(b)(3); 15064(d)(3); 15378(a).)

### **Fiscal Impact**

The ordinance would be enforced pursuant to routine police and code enforcement efforts, which is included within the City's budget. The ordinance, therefore, is not expected to have a significant negative fiscal impact on the City.

### **Attachment:**

1. Urgency Interim Ordinance

ORDINANCE NO. \_\_\_\_\_

**AN URGENCY ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF WHEATLAND  
ADOPTING A TEMPORARY MORATORIUM ON ALL COMMERCIAL  
MARIJUANA LAND USES AND ALL OUTDOOR MARIJUANA CULTIVATION  
IN THE CITY OF WHEATLAND**

The City Council of the City of Wheatland does ordain as follows:

**SECTION 1. Purpose and Authority.** The purpose of this urgency ordinance is to protect the health, safety, and welfare of the residents of the City of Wheatland by placing a temporary moratorium on all commercial marijuana land uses in the City and prohibit all outdoor cultivation of marijuana in the City while the City evaluates and adopts appropriate land uses and reasonable regulations following the passage of Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"); the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"); and the regulations adopted by the three state cannabis licensing authorities. This ordinance is adopted pursuant to California Constitution article 11, section 7, AUMA, MAUCRSA, Government Code 65858, and other applicable law.

This urgency ordinance is not intended to interfere with a patient's access to or use of medical marijuana, as provided for in California Health and Safety Code Section 11362.5 and under Wheatland Municipal Code Section 18.61, and nothing in this ordinance is intended to impair any existing City ordinance concerning medical marijuana within the City. Rather, this ordinance is intended to supplement existing law. Any restrictions provided in this ordinance, and remedies flowing from it, are cumulative to other restrictions and remedies provided under existing local, state, or federal law.

**SECTION 2. Findings.** The City Council of the City of Wheatland makes the following findings in support of the immediate adoption and application of this urgency interim ordinance:

A. In 1996, California voters approved Proposition 215, the Compassionate Use Act of 1996 (codified as Health and Safety Code section 11362.5) (the "CUA"), to enable persons who are seriously ill and who have the approval of a physician to access marijuana for medical purposes and use it without fear of criminal prosecution under limited, specified circumstances.

B. In 2003, the Legislature enacted the Medical Marijuana Program Act (the "MMP") to clarify the scope of the CUA, promote the CUA's consistent application throughout the state and expressly allow cities and other local governing bodies to adopt and enforce local rules and regulations consistent with the MMP.

C. The CUA and the MMP primarily address aspects of criminal law that pertain to the possession, cultivation or distribution of marijuana by providing qualifying patients and primary caregivers who cultivate marijuana for medical purposes with a limited defense to certain specified state criminal statutes. The CUA, the MMP and the State Attorney General's *2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, which

were issued pursuant to the MMP (the “2008 Guidelines”), do not provide for the comprehensive regulation of medical marijuana cultivation or of the premises used for such cultivation.

D. Pursuant to its police powers, the City is authorized to adopt regulations to protect public health, safety, and welfare. In 2012, the City Council adopted an Ordinance relating to the cultivation of medical marijuana within the City.

E. The state laws related to cannabis have continued to evolve since 2012.

F. In 2015, the Legislature passed, and the Governor signed into law, three bills (Assembly Bills 243 and 266, and Senate Bill 643), which collectively created a licensing and regulatory framework for medical cannabis through the Medical Cannabis Regulation and Safety Act.

G. On November 8, 2016, the people of the State of California passed Proposition 64, the "Control, Regulate and Tax the Adult Use of Marijuana Act," which legalized non-medical use and cultivation of marijuana by persons 21 years of age and over and created a state and local regulatory and licensing system governing commercial cultivation, testing, manufacturing and distribution of non-medical marijuana and marijuana products. AUMA allows local governments to reasonably regulate the cultivation of marijuana for personal use through zoning and other local laws, and it allows local governments to ban outdoor cultivation. Under AUMA, local governments maintain the ability to adopt business and land use regulations and/or prohibitions for commercial marijuana activities.

H. On April 28, 2017, California’s three state cannabis licensing authorities, the Department of Food and Agriculture’s CalCannabis Cultivation Licensing program, the Department of Consumer Affairs’ Bureau of Cannabis Control, and the Department of Public Health’s Manufactured Cannabis Safety Branch, released draft regulations to implement the Medical Cannabis Regulation and Safety Act of 2015. These licensing authorities had planned to move forward with a separate draft regulatory package for implementation of the Adult Use of Marijuana Act, but this process posed a risk of creating conflicting laws and regulations.

I. In late June 2017, the Legislature passed and the Governor signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which creates one regulatory system for both medicinal and adult-use cannabis. As a result, the state cannabis licensing authorities withdrew the medical cannabis regulations they had proposed in April 2017 and began working on new regulations to implement MAUCRSA.

J. On November 16, 2017, California’s three state cannabis licensing authorities publicly noticed proposed emergency regulations for commercial medicinal and adult-use cannabis.

K. The unregulated cultivation of marijuana can adversely affect the health, safety and well-being of the City, its residents and the environment. Such cultivation, without certain safeguards, increases the risk of criminal activity, degradation of the natural environment,

electrical fire hazards and malodorous smells, particularly if substantial amounts of marijuana are concentrated in one place.

L. The cultivation of marijuana at locations or premises within the vicinity of schools creates unique risks that the marijuana plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with the cultivation or distribution of marijuana at such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation of marijuana at such locations or premises is especially hazardous to public safety and welfare, and to the protection of juveniles and the person or persons cultivating the marijuana plants.

M. As marijuana plants begin to flower, they produce an extremely strong odor that is offensive to many people and detectable well beyond property boundaries upon which they are grown.

N. The strong, distinctive odor of marijuana plants may create an attractive nuisance, alerting individuals to the location of the plants and thereby creating the risk of potential crimes such as burglary, robbery, armed robbery, assault, attempted murder and murder. The cultivation of marijuana outdoors increases the risk of such activity and, when it occurs in or near residential zones, intrudes upon residential uses.

O. As recognized by the 2008 Guidelines, the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding residences or businesses may be negatively impacted by nuisance activity such as loitering or crime.

P. Indoor cultivation of substantial amounts of marijuana requires excessive use of electricity for high-wattage grow lighting systems used in marijuana cultivation, which often creates an unreasonable risk of fire and increases the chances of a fire, thereby presenting a clear and present danger to occupants.

Q. The limited right to cultivate marijuana conferred under state law does not authorize any person to create or maintain a public nuisance or otherwise exempt these persons from local land use regulations.

R. The Federal Controlled Substances Act (21 U.S.C. § 801 et seq.) classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, has no currently accepted medical use in treatment in the United States and has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, transport, or possess with intent to manufacture, distribute or dispense marijuana. The Federal Controlled Substances Act does not exempt the cultivation, manufacture, distribution, dispensation, transportation or possession of marijuana as may be authorized under a state law.

S. The City Council desires to establish reasonable regulations governing the cultivation of marijuana within the City and commercial processing, manufacturing, distribution and sale of

marijuana in a manner that complies with state law and balances the City's interest in preserving the health, safety, and welfare of its residents. Due to the late adoption of MAUCRSA, the three state cannabis licensing agencies did not release their proposed regulations until November 16, 2017. Consequently, there is an urgent need for City staff, the Planning Commission and the City Council to evaluate the various issues implicated by the regulations (when they are finalized and adopted) and their implications on the current legal framework. Because the City Council has a limited meeting schedule during November and December due to the holidays, it will not be possible for the City Council to consider all the new information received from the state cannabis licensing agencies, and to consider its regulatory options, until after January 1, 2018.

T. Government Code Section 65858 allows cities to impose a temporary moratorium as an urgency measure for any land use that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City Council or its Planning Commission is considering or evaluating. For the reasons set forth in subparagraphs A through S, above, and for the immediate preservation of the public peace, health and safety of the community, it is necessary to adopt this ordinance as an urgency measure and to establish a temporary moratorium on all outdoor cultivation of marijuana and all commercial marijuana land uses. This moratorium will provide City staff, the Planning Commission, and the City Council with a reasonable and sufficient period of time to consider and craft a comprehensive ordinance lawfully regulating commercial and personal marijuana activity within the City.

U. This urgency ordinance is necessary to promote the immediate preservation of the peace, health, and safety of the public against the potential detrimental impacts of outdoor marijuana cultivation, and of commercial marijuana cultivation, processing, manufacturing, distribution (including deliveries) and sale uses. The City has a significant interest in preserving the health, safety, and welfare of its residents by enacting reasonable regulations on outdoor marijuana cultivation, and in protecting the public against businesses and commercial enterprises that traditionally have been an attraction for criminal and other activities that threaten public safety.

V. On December 12, 2017, at its duly noticed public meeting, the City Council received input and testimony from the public concerning this proposed ordinance and considered its adoption.

**SECTION 3.** As used in this ordinance, the following definitions will apply:

"Commercial marijuana land uses" means the cultivation, manufacture, processing, distribution, storing, laboratory testing, grading, marketing, packaging, labeling, delivery, transportation, commercial use, or sale of marijuana and marijuana products, whether or not through a for-profit or non-profit enterprise, and whether or not conducted with a license issued in accordance with Division 10 of the Business and Professions Code (Business and Professions Code section 26000, et seq.).

"Cultivate" or "cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, trimming or processing of marijuana plants or any part thereof, whether occurring indoors or outdoors.

"Fully enclosed structure" means a building or structure with a solid and complete roof, foundation, slab or equivalent base to which a floor is secured by bolts or similar attachments, and walls. The structure must be securable against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials such as 3/8" or thicker plywood, glass or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement

"Indoors" means within a dwelling or a fully enclosed structure.

"Marijuana" shall have the same meaning as provided in California Health and Safety Code Section 11018.

"Marijuana products" shall have the same meaning as provided in California Health and Safety Code Section 11018.1.

"Outdoor" or "Outdoors" means any location within the city that is not "indoors" within a dwelling or fully enclosed structure as defined herein.

**SECTION 4. Declaration of Urgency.** Based on the findings set forth in Section 2, above, this ordinance is declared to be an urgency interim ordinance that shall be effective immediately after it is adopted by the City Council.

**SECTION 5. Moratorium Established.** The City of Wheatland hereby establishes an interim moratorium on all outdoor marijuana cultivation and all commercial marijuana land uses in all zoning districts and lands within the City. During the term of this moratorium, no person shall cultivate marijuana outdoors; no person shall engage in any commercial marijuana land uses; and no person shall issue or approve any permit, license, or other entitlement for any outdoor cultivation of marijuana or commercial marijuana land uses.

**SECTION 6. Term of Ordinance.** This ordinance shall be in effect from the date of adoption for a period of forty-five (45) days, unless the City Council approves an extension pursuant to Government Code Section 65858(a) or other applicable law.

**SECTION 7. Exemption from CEQA.** This ordinance is intended to preserve the status quo pending further review of the matter by the City Council, and it will not cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. The City Council therefore concludes that enactment of this ordinance does not constitute the approval of a project under the California Environmental Quality Act ("CEQA"), and, even if it did qualify as a project, it would be exempt from CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c)(2), 15060(c)(3); 15061(b)(3); 15064(d)(3); 15378(a).)



**SECTION 8. Severability.** If any section or provision of this ordinance, or the application of such section or provision to any person, firm, organization, corporation or circumstance is held by a court of competent jurisdiction to be invalid, the remainder of this ordinance, including the application of such part or provision to other persons, firms, organizations, corporations or circumstances, shall not be affected and shall continue in full force and effect.

**SECTION 9. Effective Date.** This urgency interim ordinance shall take effect immediately after its adoption by the City Council.

**SECTION 10. Posting.** Within 15 days after the City Council adopts this urgency ordinance, the City Clerk shall post a copy of it in at least three public places in the City.

**PASSED AND ADOPTED** by the City Council of the City of Wheatland on the 12th day of December 2017, by no less than a 4/5 vote, as follows:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

\_\_\_\_\_  
Rick West, Mayor

Attest:

\_\_\_\_\_  
Lisa J. Thomason, City Clerk

I hereby certify that the foregoing is a true and correct copy of City of Wheatland Ordinance No. \_\_\_\_\_, which ordinance was duly introduced, adopted and posted pursuant to law.

\_\_\_\_\_  
Lisa J. Thomason, City Clerk