

**Discussion Paper**  
**KEY ISSUES AND POLICY OPTIONS**

**PROPOSITION 64: ADULT USE OF MARIJUANA ACT**

**BACKGROUND**

Twenty-five states and the District of Columbia have legalized cannabis in some form. Five of those jurisdictions have legalized adult use of cannabis, including Colorado and Washington, Alaska, Oregon and the District of Columbia. This year, another five states will consider legalization of adult use: Arizona, Nevada, Maine, Massachusetts and California.

On November 8, 2016, California voters will consider whether to legalize nonmedical use of cannabis via Proposition 64, the Adult Use of Marijuana Act (AUMA). AUMA would allow local jurisdictions to decide whether to allow nonmedical cannabis uses, except for personal use and cultivation, which must be permitted indoors with reasonable regulations. The proposed Ordinance only pertains to medical cannabis, consistent with current state law under MCRSA. If AUMA passes, staff will seek direction from the Board on whether additional land use changes should be undertaken to address nonmedical cannabis.

Provisions regarding adult use, possession and personal cultivation would go into effect immediately whereas licenses for commercial retail cannabis businesses would not be available from the State until January 1, 2018, consistent with the Medical Cannabis Regulation and Safety Act (MCRSA).

**BALLOT MEASURE SUMMARY**

Adult Use:

- Age: 21+.
- Possession: Up to 1 ounce cannabis, 8 grams cannabis concentrate.
- Personal cultivation: Up to 6 plants. Local governments may ban outdoor and regulate indoor cultivation.
- No public use, no impaired driving, and employers may ban nonmedical use by employees.

Medical Cannabis:

- Largely mirrors and strengthens MCRSA.
- Reduces the cost of ID cards and exempts patients with ID cards from the state sales tax when purchasing cannabis.

Regulatory Provisions:

- Delays the issuance of large cultivation license types until January 1, 2023.
- Prohibits the sale of cannabis by businesses that sell alcohol or tobacco.
- On-site consumption is subject to local approval.
- Existing business will get priority for state licenses.
- Requires the Bureau to establish appellations of origin by county.

- Strict labeling, packaging and testing requirements.

**Local Control:**

- Local government maintains authority to regulate and require dual licensure.
- Authority to establish local taxes on medical and nonmedical cannabis.

**Taxation and Revenue:**

- 15% excise tax on retail sales, both medical and nonmedical. Though current sales and use tax would not apply to the sale of medical cannabis.
- Cultivation tax: \$9.25 per ounce for flowers and \$2.75 per ounce for leaves.
- Anticipated revenue is over \$1 billion annually.
- Tax revenues to fund youth education and treatment (60%), state and local law enforcement (20%), and environmental protection (20%). The tax revenues do not include any funding for drug treatment facilities for adults or general prevention programs.

**Criminal Penalties:**

- Possession of higher than the limits will become a misdemeanor.
- Those convicted of crimes that will no longer be crimes will be eligible to petition for penalty reduction or expungement.

**KEY ISSUES**

The key issues to consider if AUMA passes include 1) how to regulate personal cultivation and 2) should the proposed Ordinance include retail cannabis.

**ANALYSIS AND OPTIONS**

**1. Personal Cultivation.**

Under AUMA, adults 21 years and older would be allowed to cultivate up to 6 plants at their home for nonmedical, per private residence. AUMA would also require the plants to be out of public view, locked, and secure from children. AUMA restricts local governments from banning cultivation within a private residence, including single and multi-family homes, apartments and mobile homes. Local governments would be allowed to ban outdoor cultivation.

The proposed Ordinance includes a recommendation for medical cultivation only, allowing 6 plants total per property, 3 of which can be outdoors. The recommendation also restricts cultivation within multi-family residential zoning districts including "R2," Medium Density Residential and "R3," High Density Residential. Other restrictions include that there be no cultivation within any dwelling. If AUMA passes, it would create a situation where medical cannabis has stricter regulations than nonmedical cannabis.

The policy question is, should the proposed Ordinance include the same regulations for personal cultivation of medical and nonmedical cannabis, in anticipation of AUMA passing? Below are a range of policy options for consideration.

**Policy Options:**

- A. Revise the Draft Ordinance consistent with AUMA:** Regulate personal cultivation of medical and nonmedical cannabis the same and consistent with AUMA: 6 plants total, no more than 3 plants outdoors. The proposed Ordinance would be amended to allow both medical and nonmedical cannabis matching the AUMA limitations. This would include allowing cultivation in the R2 and R3 zones and not restricting cultivation to an accessory structure. On-site residence, landlord approval and other standards would still be required.
  
- B. Do Not Revise the Draft Ordinance until Phase II:** This option would not change the staff recommendation in recognition of AUMA. Personal cultivation of nonmedical cannabis could be revisited during Phase II if AUMA passes. Until such time there would be less restrictions for those growing nonmedical cannabis.
  
- C. Revise to Allow Greater Medical Personal Cultivation:** This option would provide different limits for medical and nonmedical cultivation. The Commission could choose greater limits for personal cultivation of medical cannabis, for example allowing 100 square feet of cultivation area per parcel or household and maintaining a limit of 6 plants total, 3 of which could be outdoors for nonmedical cultivation. A higher limit for medical cannabis is consistent with the policy of ensuring safe and affordable access to medicinal cannabis.

**Staff Recommendation: Option A** – If AUMA passes, staff recommends that the Draft Ordinance be revised to be consistent with AUMA allowing 6 plants per residence with no more than 3 outdoors and allowing personal cultivation in all zones with a residential use.

## **2. Allowing Nonmedical Commercial Cannabis Cultivation and Uses.**

AUMA would allow local governments to permit or ban nonmedical cannabis. If a local jurisdiction is silent as to nonmedical cannabis uses, an operator would still be eligible for a State license once they become available. The proposed Ordinance would only regulate medical cannabis cultivation and uses. In anticipation of AUMA passing, the policy question is whether the Ordinance should be revised to apply to both medical and nonmedical cannabis?

AUMA mirrors MCSRA's framework and regulatory authority in many respects. Both MCRSA and AUMA provide for local control, allowing governments to license, zone, ban and tax cannabis businesses. AUMA proposes to create a two-tiered licensing system in which there are licenses for medical cannabis businesses as defined by MCRSA and a nearly identical set of licenses for retail cannabis businesses. There is speculation that license types for certain operators could be merged or at least concurrently apply so that a licensed cultivator, for example, may grow both medical and nonmedical cannabis. Just as with MCRSA, state licensing is supposed to begin January 1, 2018.

Unlike MCRSA, AUMA would provide for a large cultivation license, allowing 1 acre and larger for outdoor, and indoor and mixed-light larger than the 22,001 square feet limits currently envisioned in state law. This initiative also creates a microbusiness license for

cultivators growing less than 10,000 square feet which would also allow the operator act as a distributor, manufacturer and retailer.

In anticipation of AUMA passing, the Ordinance could be changed to apply to both medical and nonmedical cannabis. This would essentially legalize all aspects of the cannabis pathway, from seed to sale, and allow a greater audience of people to purchase and consume cannabis.

Allowing both medical and nonmedical could pose a great risk to public health and safety. In other states that have legalized cannabis, there have been significant increases in hospitalizations and a greater risk of children ingesting edibles. Colorado has seen an eight fold increase in hospitalizations of children less than 9 years old since legalization of retail use. After legalization, Colorado and Washington both saw increases in the number of drivers involved in fatal motor vehicle accidents who tested positive for cannabis, though it is still undefined what level of cannabis use constitutes impaired driving. Research also indicates that when retail cannabis is legalized, students are more likely to think there is no risk of harm associated with cannabis consumption, which, mixed with greater access leads to more use among youth.

The following policy options should be considered related to the regulation of nonmedical cannabis.

**Policy Options:**

- A. Allow Only Medical.** This option would provide no change to the proposed Ordinance for commercial nonmedical at this time but the issue may be revisited in Phase II. If AUMA were to pass, individuals would still be able to cultivate, possess and consume cannabis for personal use, but commercial establishments for nonmedical cannabis uses would not be allowed.
- B. Allow Both Medical and Nonmedical.** This option would apply the same regulations to medical and nonmedical cannabis uses. The County could simply remove the medical-related terms from the ordinance and apply the same regulations to medical and nonmedical cannabis businesses equally.
- C. Allow Some Nonmedical Cannabis Uses.** This option would allow some cannabis uses such as nurseries, cultivation, distribution, testing labs and manufacturing to process both medical and nonmedical cannabis. Regulations allowing retail sales of cannabis products could be deferred to Phase II. This would allow many parts of the industry to begin developing operations, although the finished product would need to be transported to other jurisdictions that allow retailers to sell nonmedical cannabis.

**Staff Recommendation: Option A – Allow Only Medical.** Due to the health and safety issues with allowing nonmedical cannabis and the unknown result of AUMA, staff recommends that the proposed Ordinance only apply to medical at this time (other than personal use). Phase II could include analyzing policy options for permitting nonmedical cannabis businesses if AUMA passes.