



MEMORANDUM

DATE: November 13, 2017

TO: Planning Commission

FROM: Kevin Jackson, Planning Director

SUBJECT: Consideration of Revisions to City Code Division
17.48 Marijuana Facilities

AGENDA ITEM NUMBER 3

RECOMMENDATION:

1. Receive a presentation from staff, open the public portion of the hearing, provide all members of the public with an opportunity to be heard, and discuss the proposed City Code amendments; and
2. Recommend approval to the City Council of the attached ordinance (Attachment A pages 5-10) pertaining to private cannabis cultivation and commercial cannabis facilities.

The Commission may or may not recommend adoption of Code amendments as proposed in Exhibit A. Alternatively, the Commission may recommend adoption of Code amendments with modifications identified at the hearing and specified in the motion for recommendation.

BACKGROUND:

Current Regulations

In January 2016, the Piedmont City Council adopted code amendments (See Division 17.48, Attachment B, pages 11-12) that prohibit all medical marijuana dispensaries, marijuana cultivation facilities, and commercial cannabis activities.

State of California Regulation of Cannabis

On November 8, 2016, the California voters approved Proposition 64, entitled the "Control, Regulate and Tax Adult Use of Marijuana Act" (the "AUMA"), which legalizes and regulates the adult use of non-medical marijuana (recreational marijuana) in California. In June 2017, the Governor signed Senate Bill 94, known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). This legislation consolidated state laws regarding medical marijuana and adult-use marijuana and introduced more uniform terminology, replacing "marijuana" with "cannabis" and "nonmedical" to "adult-use."

Business and Professions Code section 26200, which is part of MAUCRSA, expressly recognizes the ability of cities to completely prohibit all adult use cannabis businesses or

to regulate such businesses. However, under MAUCRSA, individuals may possess and use specified amounts of cannabis and may cultivate up to six cannabis plants per private residence. Under Health and Safety Code section 11362.2(b), cities may prohibit private outdoor cannabis cultivation, but may not prohibit completely private indoor cultivation of six cannabis plants or less. Cities, however, may reasonably regulate private indoor cultivation of six cannabis plants or less.

PROPOSED REVISIONS TO CITY CODE:

It is in the City's best interest to maintain local control over all cannabis land uses to the fullest extent allowed by law. Although, the City Code currently prohibits all cannabis businesses, it will better serve the public and minimize the potential for confusion regarding the City's policies by providing updated Code provisions regarding the scope of prohibited conduct and of permissible private cultivation that are consistent with State law. Findings H through Q in the proposed ordinance (Attachment A pages 5-10) list a number of findings that cannabis related activities allowed under MAUCRSA would cause adverse impacts on the public health, safety, and welfare in Piedmont.

Staff from the City's Planning, Police and Administration Departments, with the advice of the City Attorney's Office, has developed recommended revisions to City Code Division 17.48, Marijuana facilities, so that the Code is consistent with State law. This division of the Code is proposed to be replaced in its entirety to the effect that all commercial cannabis facilities will be prohibited in all zones in the City and cannabis cultivation in private residences is allowed with reasonable restrictions. In addition, the revised Code allows with some restrictions the delivery of cannabis and cannabis products to individuals within the City, provided that such deliveries are in strict compliance with State Cannabis Laws.

Because the current regulations in Division 17.48 are being replaced in their entirety, a red line or tracked changes version of the regulations would not be easily comprehensible. Thus, the current and proposed regulations are included in this report as separate attachments: The current regulations are provided in Attachment B, pages 11-12; and the proposed regulations are provided in Attachment A, pages 5-10.

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

The proposed ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, sections: 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment); 15060(c)(3) (the activity is not a project as defined in Section 15378); and 15061(b)(3), because the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Furthermore, this action is not subject to CEQA pursuant to Business and Professions Code section 26055 (h). The proposed ordinance maintains the status quo. Because there is no possibility that this ordinance

may have a significant adverse effect on the environment, the adoption of this ordinance is exempt from CEQA.

CITY CHARTER:

The modifications to the City Code are in conformance with the City Charter, including section 9.02. No zones have been reduced or enlarged, and no zones have been reclassified. City Charter provisions are expressly referred to in Division 17.02C in Chapter 17.

REVIEW BY CITY ATTORNEY:

The proposed modifications to the City Code, the ordinance and the CEQA determinations have been reviewed and approved by the City Attorney.

PUBLIC PARTICIPATION:

During the meetings at which the Planning Commission and City Council consider the changes and documents discussed in this report, the public will have the opportunity to address the Commission and Council directly. In addition, members of the public may submit written comments to the Commission and Council in advance of their respective meetings. In an effort to reach out to as many Piedmonters as possible, staff has assembled a list of residents who wish to receive direct email notices and staff reports regarding revisions to City Code Chapter 17. Anyone who wishes to be added to the list may contact the planning office by calling 510-420-3039 or by emailing Planning Director Kevin Jackson at kjackson@ci.piedmont.ca.us. In addition, notice of this agenda item was placed in local news outlets. This report and information on the proposed changes to land use regulations related to cannabis has been posted on the City's website at: <http://www.ci.piedmont.ca.us/planning-commission-to-consider-updates-to-cannabis-land-use-regulations-in-city-code/>.

COMMISSION ACTION:

The Commission may take action to make a recommendation to the City Council for the adoption of the proposed revisions to Division 17.48 Marijuana Facilities. Alternatively, the Commission may continue the consideration of the proposed revisions to a future hearing.

CONCLUSION AND NEXT STEPS:

Staff recommends that the Planning Commission make a recommendation to the City Council for the adoption of the proposed revisions to City Code Division 17.48 Marijuana Facilities. Intended to help protect the public health, safety, and welfare in Piedmont, the revisions will bring the City Code into compliance with the state cannabis laws, including the Medicinal and Adult-Use Cannabis Regulation and Safety Act, and

will minimize any potential confusion related to the City's land use regulations related to cannabis.

Once the Planning Commission has made a recommendation to the City Council, staff will schedule the consideration of that recommendation at a future City Council meeting. The first and second readings of the proposed ordinance are expected to occur at the regularly scheduled meeting of the City Council on December 4 and 18, 2017, respectively. The City Council is the decision-making body for the adoption of code revisions.

ATTACHMENTS:

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| Attachment A | Pages 5-10 | Proposed ordinance pertaining to the regulation of cannabis cultivation, cannabis facilities and cannabis deliveries |
| Attachment B | Pages 11-12 | Current Code Division 17.48 Marijuana facilities |

DRAFT ORDINANCE

AN ORDINANCE AMENDING DIVISION 17.48 OF THE PIEDMONT CITY CODE
PERTAINING TO PRIVATE CANNABIS CULTIVATION AND COMMERCIAL
CANNABIS FACILITIES IN RESPONSE TO CHANGES IN STATE LAW

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

SECTION 1 FINDINGS

A. As set forth in City Code sections 17.48.030, the City of Piedmont prohibits all medical marijuana dispensaries, marijuana cultivation facilities, and commercial cannabis activities.

B. On November 8, 2016, the voters of the State of California approved Proposition 64, entitled the “Control, Regulate and Tax Adult Use of Marijuana Act” (the “AUMA”), which legalizes and regulates the adult use of non-medical marijuana (commonly referred to as “recreational marijuana”) in California.

C. Proposition 64 requires adult-use cannabis businesses, including cultivators, manufacturers, distributors, retailers, and testing laboratories, to obtain a state license in order to operate lawfully. The state will not issue licenses if the proposed adult-use business violates a local ordinance. The state anticipates that it will begin issuing licenses for recreational marijuana businesses on or about January 1, 2018.

D. On June 27, 2017, the Governor signed Senate Bill 94, which repealed the 2015 Medical Cannabis Regulation and Safety Act (“MCRSA”) and included certain provisions from MCRSA regarding medical marijuana in the AUMA. Senate Bill 94 renamed the AUMA as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”).

In addition to consolidating state laws regarding medical marijuana and adult-use marijuana, Senate Bill 94 introduced more uniform terminology. Senate Bill 94 revised references in existing law to “marijuana” or “medical marijuana” to instead refer to “cannabis” or “medicinal cannabis”, and revised references to “nonmedical” to “adult-use.”

Business and Professions Code section 26200, which is part of MAUCRSA, expressly recognizes the ability of cities to completely prohibit all adult use cannabis businesses or to regulate such businesses.

E. Under MAUCRSA, individuals may possess and use specified amounts of cannabis and may cultivate up to six cannabis plants per private residence. Under Health and Safety Code section 11362.2(b), cities may prohibit private outdoor cannabis cultivation, but may not prohibit completely private indoor cultivation of six cannabis plants or less. Cities, however, may reasonably regulate private indoor cultivation of six cannabis plants or less.

F. It is imperative that the City maintain local control over all cannabis land uses to the fullest extent allowed by law. The City anticipates that MAUCRSA may encourage the establishment of various cannabis businesses within the City. The City Code currently prohibits all cannabis businesses. However, in light of subsequent changes in state law, it may be necessary to provide further clear guidelines regarding the scope of prohibited conduct and minimize the potential for confusion regarding the City's policies.

G. Express City Code regulations are also necessary to provide clear guidance regarding the scope of permissible private cultivation. The City anticipates that many individuals will begin to cultivate cannabis at their private residences following the enactment of MAUCRSA.

H. Cannabis establishments and activities often present health, welfare, and public safety issues for cities. Several California cities and counties have experienced serious adverse impacts associated with and resulting from cannabis dispensaries and cultivation sites. According to these communities and according to news stories widely reported, cannabis land uses have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, and illegal sales and use of cannabis in the areas immediately surrounding such cannabis activities. There have also been large numbers of complaints of odors related to cannabis cultivation and storage. Cannabis cultivation sites are often associated with illegal construction, unsafe electrical wiring, excessive water use, and fire hazards. Indoor cannabis cultivation is also associated with increased energy consumption, which would be in conflict with the City's Climate Action Plan.

I. A California Police Chiefs Association compilation of police reports, news stories, and statistical research regarding crimes involving medicinal cannabis businesses and their secondary impacts on the community is contained in a 2009 white paper report, an excerpt of which was Exhibit C to the Agenda Report presented to the City Council on January 4, 2016 when the City Council voted to introduce Ordinance 720 N.S. Adding Section 17.41 to the Municipal Code to Prohibit the Cultivation and Dispensing of Marijuana and is on file with the City Clerk. The report details numerous violent crimes that occurred throughout the state in and around medicinal cannabis establishments.

J. The Santa Clara County District Attorney's Office issued a May 2014 memorandum entitled "Issues Surrounding Marijuana in Santa Clara County," which outlined many of the negative secondary effects resulting from cannabis cultivation; a copy of this memorandum was Exhibit D to the Agenda Report presented to the City Council on January 4, 2016. According the memorandum, cannabis cultivation sites were often associated with illegal construction, haphazard electrical wiring, electricity theft, fires, mold and fungus problems, diversion of public water, pollution of waterways, firearm violations, crimes, and organized crime and street gang involvement.

K. Manufacturing of cannabis products can involve the use of chemicals and solvents and, as a result, carries a significant risk of explosion due to the distillation process utilized to extract tetrahydrocannabinol. Major burn treatment centers at two hospitals in Northern California reported in 2015 that nearly 10 percent of severe burn cases were attributed to butane hash oil explosions, which was more than burn cases from car accidents and house fires combined.

- L. News stories regarding adverse impacts of cannabis businesses, including dispensaries and cultivation sites, were Exhibit F to the Agenda Report presented to the City Council on January 4, 2016. As detailed in these stories, cannabis establishments and cultivation sites are frequent targets of violent crimes, including robberies and assaults, in part because banking institutions will not accept credit card payments for illegal drugs under federal law, forcing such businesses to be cash-only.
- M. Cannabis processing has led to explosions across the country because the processing of cannabis-related products, such as cannabis oils, often involves the use of butane gas flames.
- N. In 2015, there reportedly were at least five cannabis-related wildfires linked to cannabis growing operations.
- O. In 2016, a New York firefighter died in an explosion at a residential cannabis cultivation site.
- P. On August 22, 2017, the San Luis Obispo Tribune newspaper reported on a fire caused by the misuse of electrical circuits, adapters and cords to support an indoor cannabis grow that destroyed a Morro Bay garage and damages two homes.
- Q. It is reasonable to conclude that private cultivation under MAUCRSA would cause similar adverse impacts on the public health, safety, and welfare in Piedmont.
- R. In order to protect the public health, safety, and welfare, the City Council desires to amend the Piedmont City Code to address, in express terms, adult-use cannabis businesses, cannabis deliveries, and private cannabis cultivation.
- S. Since January 4, 2016, City staff has undertaken an investigation of these matters including consideration of what additional provisions should be included in a permanent ordinance regarding non-medicinal cannabis with regard to cannabis businesses (including cultivation, manufacturing, distribution, testing, and retail sales), outdoor cultivation, and indoor cultivation. The State of California is currently reviewing MAUCRSA for the purpose of drafting regulations relating to cannabis and regulations are still being drafted by the State.

SECTION 2 ENVIRONMENTAL FINDINGS

The City Council exercises its independent judgment and finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, sections: 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment); 15060(c)(3) (the activity is not a project as defined in Section 15378); and 15061(b)(3), because the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Furthermore, this action is not subject to CEQA pursuant to Business and Professions Code section 26055 (h). The proposed ordinance maintains the status quo. Because there is no possibility that this ordinance may have a significant adverse effect on the environment, the adoption of this ordinance is exempt from CEQA.

SECTION 3 MARIJUANA FACILITIES

Division 17.48 of the Piedmont City Code is hereby amended in its entirety to read as follows:

“17.48.010 Purpose and intent.

The purpose and intent of this chapter is to prohibit any commercial cannabis facility and to regulate cannabis cultivation within the city limits. It is recognized that it is a federal violation under the Controlled Substances Act to possess or distribute cannabis even if for medical purposes. Additionally, there is evidence of an increased incidence of crime-related secondary impacts in locations associated with a cannabis facility, which is contrary to policies that are intended to promote and maintain the public's health, safety, and welfare.

17.48.20 Definitions.

In this Division:

Cannabis or *marijuana* has the meaning set forth in Business and Professions Code section 26001(f) and includes all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. *Cannabis* or *marijuana* also means the separated resin, whether crude or purified, obtained from cannabis. *Cannabis* or *marijuana* does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. *Cannabis* or *marijuana* does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code.

Commercial cannabis activity has the meaning set forth in Business and Professions Code section 26001(k), and includes the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product related to qualifying patients and primary caregivers.

Commercial cannabis facility means any building, facility, use, establishment, property, or location where any person or entity establishes, commences, engages in, conducts, or carries on, or permits another person or entity to establish, commence, engage in, conduct, or carry on, any commercial cannabis activity that requires a state license or nonprofit license under Business and Professions Code sections 26000 and following, including but not limited to cannabis cultivation, cannabis distribution, cannabis transportation, cannabis storage, manufacturing of cannabis products, cannabis processing, the sale of any cannabis or cannabis products, and the operation of a cannabis microbusiness. *Commercial cannabis facility* shall also include any building, facility, use, establishment, property, or location where cannabis and/or cannabis products are sold or distributed in exchange for compensation in any form for medicinal purposes under Health and Safety Code sections 11362.5 and 11362.7 and following.

Cultivation has the meaning set forth in Business and Professions Code section 26001(l) and includes any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

State Cannabis Laws shall mean and include California Health and Safety Code Sections 11362.1 through 11362.45; California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996); California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act); California Health and Safety Code Sections 26000 through 26211 (Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”)); California Health and Safety Code Sections 26220 through 26231.2; the California Attorney General’s Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued in August, 2008, as such guidelines may be revised from time to time by action of the Attorney General; California Labor Code Section 147.5; California Revenue and Taxation Code Sections 31020 and 34010 through 34021.5; California Fish and Game Code Section 12029; California Water Code Section 13276; all state regulations adopted pursuant to MAUCRSA; and all other applicable laws of the state of California.

17.48.030 Prohibitions on commercial cannabis facilities.

Commercial cannabis facilities are prohibited in all zones in the City. No person or entity may establish or operate a commercial cannabis facility within city limits. A property owner may not allow its property to be used by any person or entity as a commercial cannabis facility.

17.48.040 Cannabis cultivation.

- A. All cannabis cultivation within city limits is prohibited except that a person may cultivate no more than six living cannabis plants inside a private residence, or inside an accessory structure to a private residence located upon the grounds of that private residence. Such cultivation shall only occur inside residences and accessory structures that are fully enclosed and secured against unauthorized entry.
- B. If a private residence is not occupied or inhabited by the owner of the private residence, then no persons living in the residence may cultivate cannabis without written consent signed by the owner expressly allowing cannabis cultivation to occur at the private residence.
- C. Persons cultivating cannabis under this section shall comply with all applicable Building Code requirements set forth in the Piedmont City Code.
- D. There shall be no use of gas products (CO₂, butane, propane, natural gas, etc.) on the property for purposes of cannabis cultivation.
- E. All private cultivation under this section shall comply with Health and Safety Code section 11362.2(a)(3).

17.48.050 Cannabis deliveries

A. State-licensed commercial cannabis facilities located outside the City may personally deliver cannabis and cannabis products to individuals within the City, provided that such deliveries are in strict compliance with State Cannabis Laws and have complied with Municipal Code Chapter 10 regarding business licenses.

B. Vehicles used in the delivery process must be unmarked without any designation or logo that identifies the vehicle as a cannabis delivery vehicle.

C. Cannabis and cannabis product deliveries within the City may not occur between 9:00 p.m. and 7:00 a.m.

17.48.060 Penalties.

Violation of any provision of this chapter is subject to penalties as set forth in City Code Chapter 1, Article II.

17.48.070 Civil injunction.

Any violation of this chapter is declared to be a public nuisance per se and contrary to the public interest and will, at the discretion of the City, be subject to a cause of action for injunctive relief.”

SECTION 4 SEVERABILITY

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5 CODIFICATION

The City Clerk is directed to codify this ordinance in a manner which best reflects the legislative intent of the City Council in enacting it.

SECTION 6 POSTING AND EFFECTIVE DATE

This Ordinance shall be posted at City Hall after its second reading by the City Council for at least thirty (30) days and shall become effective thirty (30) days after such second reading.

[END OF ORDINANCE]

DIVISION 17.48 MARIJUANA FACILITIES

Sections

17.48.010	Purpose
17.48.020	Definitions
17.48.030	Prohibitions
17.48.040	Enforcement

17.48.010 Purpose.

The purpose of this section is to prohibit marijuana cultivation facilities, marijuana dispensaries, and commercial cannabis activities within the city. It is a violation of federal law under the Controlled Substances Act to possess or distribute marijuana even if for medical purposes. Also, there is evidence of an increased incidence of crime-related secondary impacts in locations associated with marijuana establishments, which is contrary to policies that are intended to promote and maintain the public's health, safety, and welfare.

17.48.020 Definitions.

In this division:

Commercial cannabis activity has the meaning set forth in Business and Professions Code section 19300.5(k).

Cultivation means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

Establish or operate a marijuana cultivation facility, marijuana dispensary, or commercial cannabis activity means and includes any of the following:

1. opening or beginning operation of a marijuana cultivation facility, marijuana dispensary, or commercial cannabis activity;
2. conversion of an existing business, facility, use, establishment, or location to a marijuana cultivation facility, marijuana dispensary, or commercial cannabis activity;
3. addition of a marijuana cultivation facility, marijuana dispensary, or commercial cannabis activity to any other existing business, facility, use, establishment or location.

Marijuana means all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It includes marijuana infused in foodstuff, and concentrated cannabis and the separated resin, whether crude or petrified, obtained from marijuana. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except resin extracted from them), fiber, oil, or cake, or the sterilized seeds of the plant that are incapable of germination.

Marijuana cultivation facility means a business, facility, use, establishment, property, or location where the cultivation of marijuana occurs.

Marijuana dispensary means a business, facility, use, establishment, property, or location, whether fixed or mobile, where marijuana is sold, made available, delivered and/or distributed by or to two or more people. A *marijuana dispensary* does not include the following uses, as long as the location of the uses are otherwise regulated by this code or applicable law: a clinic licensed under Health and Safety Code Division 2, Chapter 1; a health care facility licensed under Health and Safety Code Division 2, Chapter 2; a residential care facility for persons with chronic life-threatening illness licensed under Health and Safety Code Division 2, Chapter 3.01; a residential care facility for the elderly licensed under Health and Safety Code Division 2, Chapter 3.2; a residential hospice, or a home health agency licensed under Health and Safety Code, Division 2, Chapter 8; as long as the use complies strictly with applicable law including, but not limited to, Health and Safety Code section 11362.5 and following.

17.48.030 Prohibitions.

- A. Marijuana dispensaries are prohibited in all zones in the city and may not be established or operated anywhere in the city.
- B. Marijuana cultivation facilities are prohibited in all zones in the city and may not be established or operated anywhere in the city.
- C. Commercial cannabis activities are prohibited in all zones in the city and may not be established or operated anywhere in the city.
- D. No person may own, establish, open, operate, conduct, or manage a marijuana dispensary, marijuana cultivation facility, or commercial cannabis activity in the city, or be the lessor of property where a marijuana dispensary, marijuana cultivation facility, or commercial cannabis activity is located. No person may participate as an employee, contractor, agent, volunteer, or in any manner or capacity in a marijuana dispensary, marijuana cultivation facility, or commercial cannabis activity in the city.
- E. Nothing in this division will be deemed to permit or authorize a use or activity that is otherwise prohibited by state or federal law.

17.48.040 Enforcement.

The city may enforce this section in any manner permitted by law. The violation of this section shall be and is hereby declared to be a public nuisance and contrary to the public interest and shall, at the discretion of the city, create a cause of action for injunctive relief.