

**COUNTY OF SACRAMENTO
CALIFORNIA**

PLANNING COMMISSION REPORT

For the Agenda of:
March 27, 2017

To: COUNTY PLANNING COMMISSION
(Final Decision by Board of Supervisors)

From: Department of Community Development

Subject: PLNP2017-00064. Marijuana Ordinance. Request To Amend Chapters 3 And Chapter 7 Of The Zoning Code Related To Commercial Marijuana Activities And Personal Marijuana Cultivation. Applicant: County Of Sacramento; APN: County-Wide, Environmental Document: Exemption.

Supervisory
District(s): All Districts

Contact: Chris Pahule, Principal Planner, 874-4447, pahulec@sacounty.net

Details of Request:

The Control, Regulate and Tax Adult Use of Marijuana Act (AUMA) was approved by California voters on November 8, 2016. The AUMA legalizes the possession, use, and cultivation of non-medical marijuana for those who are 21 years of age or older and authorizes a comprehensive State system to regulate commercial marijuana activity. Importantly, the AUMA does not allow local governments to completely prohibit indoor cultivation for personal use, but does allow local governments to adopt and enforce local ordinances to regulate or prohibit commercial marijuana activities.

The Sacramento County Zoning Code (Zoning Code) utilizes a permissive zoning code system. Any use not enumerated in the code is presumptively prohibited, unless the Planning Director determines otherwise (SZC 3.2.4.). The County has relied upon a permissive zoning code system to prohibit medical marijuana land uses, such as medical marijuana dispensaries. However, under the AUMA, it is unlikely that nonmedical marijuana land uses can be prohibited through permissive zoning because: 1) the AUMA anticipates that a city or county will adopt an ordinance explicitly prohibiting and/or regulating nonmedical marijuana businesses; 2) the AUMA does not contain the same protective language as the Medical Marijuana Regulation and Safety Act (MMRS) with respect to permissive zoning; and 3) the AUMA explicitly designates nonmedical marijuana as an agricultural product and therefore where agricultural uses are permitted, the County may be precluded from arguing that marijuana is prohibited. Therefore, in

order to maintain the County's position related to marijuana activities, the County should adopt express prohibitions.¹

The proposed ordinance amends the Zoning Code to prohibit all commercial marijuana activities, and includes provisions allowing for the cultivation of marijuana plants for personal use consistent with the AUMA, subject to County Code regulations and requirements.

Applicant:

County of Sacramento
Department of Community Development
Planning and Environmental Review Division
827 7th Street, Room 225
Sacramento, CA 95814

Summary of Key Points:

1. The Zoning Code currently utilizes a permissive zoning code system to prohibit marijuana related activities as primary or accessory uses (SZC 3.2.4).
2. Current prohibitions on marijuana cultivation and activities do not adequately preclude the State from issuing licenses to commercial marijuana businesses to operate in the County.
3. The proposed ordinance expressly prohibits commercial marijuana activities in all zoning districts, defines commercial marijuana activities, and allows for personal marijuana cultivation in all zoning districts as an accessory use to a primary residence subject to compliance with reasonable regulations contained within the proposed amendments to the Sacramento County Code.

CPAC Outreach:

This amendment package was sent to the Community Planning Advisory Councils (CPACs) for comment via e-mail in advance of the Planning Commission hearing. Any comments received will be reported during the hearing presentation.

Recommendation:

Staff recommends that the Planning Commission make the following recommendations to the Board of Supervisors:

1. Recognize the exempt status of these amendments pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines (Attachment 1).
2. Recommend approval of the proposed ordinance amending the Sacramento County Zoning Code related to commercial marijuana activities and personal marijuana cultivation.

¹ League of California Cities Memorandum re The Control Regulate & Tax Adult Use of Marijuana Act, September 26, 2016.

BACKGROUND

In 2011, the Board of Supervisors (Board) adopted an Interim Urgency Ordinance regulating the cultivation and dispensing of medical marijuana, which was prompted by community concerns related to the proliferation of illegal and unpermitted medical marijuana dispensaries and the lack of regulations of medical marijuana cultivation. The urgency ordinance proposed: 1) dispensaries be permitted subject to strict regulation and oversight; 2) prohibited the outdoor cultivation of medical marijuana as it was determined to be a public nuisance; and 3) allowed indoor cultivation of medical marijuana only in the primary residence of a qualified patient or a caregiver or, in the alternative, within a legal accessory structure located on a legal parcel on which the qualified patient or caregiver maintains his primary residence. Ultimately, the Board decided against consideration of an ordinance to allow a permanent regulatory framework for medical marijuana dispensaries. Dispensaries or collectives were ordered to cease operating and were brought into compliance through actions including building, zoning violations and litigation.

In 2014, the Board adopted ordinances adding Chapters 6.88 and 6.89 to the Sacramento County Code to prohibit all outdoor marijuana cultivation and limit indoor marijuana cultivation to no more than nine plants subject to compliance with SCC 6.89.050. In adopting the above ordinances, the Board made extensive findings, including that the cultivation of marijuana increases the risk of criminal activity, degradation of the natural environment, nuisance impacts to neighboring properties because of the strong, malodorous odors, and instances of home-invasion robberies and similar crimes.

On July 22, 2015, the Board adopted the Sacramento County Development Code, which included the Zoning Code. In adopting the Zoning Code, the County has relied upon the County's permissive zoning code system to prohibit commercial and outdoor marijuana related activities (i.e., cultivators, manufacturers, and dispensaries) as they were not expressly permitted as a primary or accessory use.

With the passage of the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA) on November 8, 2016, County Codes require updating to conform to State law. As noted above, the AUMA legalizes the possession, use, and cultivation of non-medical marijuana for those who are 21 years of age or older and authorizes a comprehensive State system to regulate commercial marijuana activity. For the purposes of AUMA, commercial marijuana activity includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, delivery or sale of marijuana and marijuana products.

The provisions of the AUMA related to possession, use, and cultivation of non-medical marijuana became effective on November 9, 2016. The AUMA allows for the cultivation of up to six marijuana plants in or upon the grounds of a private residence. Local governments may not completely prohibit limited indoor cultivation for personal use. However, it is possible to enact and enforce reasonable cultivation regulations inside a private residence or inside a secure accessory structure located on the grounds of a primary residence. The AUMA does not define or provide examples of "reasonable regulations". Local governments may also enact and enforce an ordinance that prohibits outdoor cultivation on the grounds of a primary residence.

PLNP2017-00064. Marijuana Ordinance. Request To Amend Chapters 3 And Chapter 7 Of The Zoning Code Related To Commercial Marijuana Activities And Personal Marijuana Cultivation.

The provisions of the AUMA related to commercial marijuana activity grant State agencies the authority to create, issue, renew, discipline, suspend or revoke licenses for non-medical marijuana businesses. A business will not be required to obtain a local permit or authorization before being issued a State license. State agencies are to begin issuing licenses by January 1, 2018.

Local governments may adopt and enforce local ordinances, including zoning and land use requirements, to regulate marijuana businesses or to completely prohibit the establishments within their jurisdiction. No State license will be approved for a business that violates local ordinances.

Based on information provided by State agencies, regulations are currently being drafted to implement the complex system of State licenses for commercial marijuana businesses. The regulations are expected to be available in draft form by the end of summer 2017.

ANALYSIS

As the AUMA requires the State to begin issuing licenses for commercial marijuana businesses by January 1, 2018, there are a myriad of issues to be considered before determining if the County should permit commercial marijuana activities. Adding to the complexity of the issues is the uncertainty of marijuana enforcement at the federal level, and the fact that marijuana remains illegal under federal law and a Schedule 1 controlled substance.

Therefore, staff recommends a proposed ordinance that is consistent with prior Board direction and policy over the past six years related to marijuana cultivation and commercial uses, and brings the County's Zoning Code into compliance with the AUMA.

Currently, the County's regulations specifically address medical marijuana cultivation and uses and do not explicitly preclude the State from issuing licenses for commercial marijuana activities within the unincorporated areas of the County. Sacramento County Code Chapter 6.88 prohibits outdoor marijuana cultivation whereas Chapter 6.89 authorizes indoor marijuana cultivation of up to nine plants for personal medical purposes. Also, as previously mentioned, the Zoning Code relies upon permissive zoning to prohibit marijuana related activities as primary or accessory uses (SZC 3.2.4).

Therefore, in order to prevent the establishment and operation of commercial marijuana activities, ordinance amendments are required before the State begins issuing licenses. Further, the County Code must be amended to allow marijuana cultivation in accessory structures for personal use because the current County prohibitions conflict with AUMA.

The proposed ordinance before the Planning Commission addresses amendments to the Zoning Code to complement previous actions of the Board related to marijuana activities, and brings the County into compliance with the AUMA. This proposed ordinance will be presented along with County Code amendments for consideration by the Board of Supervisors. Highlights of the ordinances include:

PLNP2017-00064. Marijuana Ordinance. Request To Amend Chapters 3 And Chapter 7 Of The Zoning Code Related To Commercial Marijuana Activities And Personal Marijuana Cultivation.

Zoning Code

- Amends Section 3.2.4. to prohibit commercial marijuana activities in all zoning districts.
- Amends Section 7.3. to define Commercial Marijuana Activities as all commercial activities including, but not limited to the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, delivery or sale of marijuana or marijuana products.
- Amends Table 3.2 and adds Section 3.9.3.BB. to allow for personal marijuana cultivation in all zoning districts as an accessory use to a primary residence subject to compliance with the definitions and restrictions contained in the proposed amendments to Chapter 6.88, Title 6, of the Sacramento County Code.

County Code

- Amends Chapter 6.87, Title 6, of the Sacramento County Code pertaining to the prohibition of public consumption of marijuana to include recreational use.
- Combines Chapters 6.88 and 6.89, Title 6, of the Sacramento County Code under amended Chapter 6.88, “Marijuana Cultivation.”
- Limits personal cultivation to nine (9) plants contained within a fully enclosed and secure structure, inaccessible to minors, and includes reasonable regulations and requirements to ensure the protection and safety of children and neighbors.

Environmental Review

Staff has determined the proposed ordinance is categorically exempt from CEQA review pursuant to 14 California Code of Regulations § 15061(b)(3).

Attachments

ORD - Zoning Code Amendment Related to Commercial Marijuana Activities and Personal Marijuana Cultivation (Strikethrough)

ORD - Zoning Code Amendment Related to Commercial Marijuana Activities and Personal Marijuana Cultivation (Clean)

ATT 1 - Notice of Exemption

ORDINANCE NO. SZC 2017-_____

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE
COUNTY OF SACRAMENTO TO AMEND THE ZONING CODE
OF SACRAMENTO COUNTY PERTAINING TO THE REGULATION OF
MARIJUANA**

The Board of Supervisors of the County of Sacramento, State of California, do ordain as follows:

SECTION 1: The Zoning Code of Sacramento County, Ordinance No. 2015-0005 is amended to revise various provisions as described in Exhibit A.

SECTION 2: This ordinance shall take effect and be in full force on and after 30 days from the date of its passage hereof, and, before expiration of 15 days from the date of its passage, it shall be published once with the names of the members of the Board of Supervisors voting for and against the same, said publication to be made in a newspaper of general circulation published within the County of Sacramento, State of California.

On a motion by Supervisor _____, seconded by Supervisor _____, the foregoing ordinance was passed and adopted by the Board of Supervisors of the County of Sacramento, State of California, at a regular meeting thereof this 26th day of April 2017, by the following vote, to wit:

AYES: Supervisors,

NOES: Supervisors,

ABSENT: Supervisors,

ABSTAIN: Supervisors,

RECUSAL: Supervisors,
(PER POLITICAL REFORM ACT (§ 18702.5.))

Chair of the Board of Supervisors
of Sacramento County, California

(S E A L)

ATTEST: _____
Clerk, Board of Supervisors

EXHIBIT A

TABLE 3.2: ALLOWED ACCESSORY USES ¹ [AMENDED 02-24-2017]																	
KEY		CZ = Conditional Use Permit by the Zoning Administrator A = Permitted Accessory Use				Grey Boxes = Refer to Applicable Use Standards in Sections Identified				Use Standard							
Zoning Districts	Agricultural	Agriculture/Residential	Residential				Recreation	Mixed Use	Commercial	Industrial	Use Standard						
Use, Service, or Facility	AG-160, AG-80, AG-40, AG-20	UR	IR	AR-10, AR-5	RD-1, RD-2, RD-3, RD-4	RD-5, RD-7, RD-10, RD-15	RD-20, RD-25, RD-30, RD-40	RR	O	C-O	NMC CMC NMZ	BP	LC ²	GC ³	MP	M-1	M-2
	EE, Marijuana, Personal Cultivation	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

¹ All accessory uses are subject to the general accessory use standards in Section 3.9.1, in addition to the specific standards cited in this table.
² Includes former SC zoning district; interim standards for SC zoning districts should refer to Title IV of the Sacramento County Zoning Code.
³ Includes former AC and TC zoning districts; interim standards for AC and TC zoning districts should refer to Title IV of the Sacramento County Zoning Code.

3.2. TABLES OF ALLOWED USES

3.2.1. Table Organization [AMENDED 04-07-2016]

In Tables 3.1, 3.2, and 3.3, land uses and activities are classified into general use categories, use subcategories, and specific use types based on common functional, product, or physical characteristics such as the type and amount of activity, the type of customers or residents, how goods or services are sold or delivered, and site conditions. This classification provides a systematic basis for assigning present and future land uses into appropriate zoning districts.

3.2.4. Uses Not Provided for in the Tables [AMENDED 02-24-2017]

3.2.4.A. If a use is not listed in Table 3.1, 3.2, or 3.3, included in a use definition, or shown as a permitted or conditionally permitted use in any zoning district, the use is prohibited, unless the Planning Director determines that either:

1. The use is substantially similar in characteristics, intensity, and compatibility to a use or uses within the zoning district, applicable to the property; or
2. The use would be appropriate in the zoning district, applicable to the property as a permitted or conditional use.

3.2.4.B. In those cases where the Planning Director makes a determination that the use meets either Sections 3.2.1 or 3.2.2, the use shall conform to all the regulations, conditions of approval, and use standards applicable to the similar described use(s). If the use would be appropriate in the zoning district as a conditional use, a Conditional Use Permit shall be heard by the designated hearing body for the similar use.

3.2.4.C. Commercial marijuana activities as defined in Section 7.3 of this Code are prohibited in all Zoning Districts.

3.9.3. Use-Specific Standards for Accessory Uses

The specific standards of this Section shall apply in addition to the general standards of Section 3.9.2. In the event of conflict, the more restrictive standard in the opinion of the Planning Director shall apply.

3.9.3.BB. Marijuana, Personal Cultivation

Marijuana cultivation for personal use is subject to the definitions and restrictions contained in Chapter 6.88, Title 6, of the Sacramento County Code.

7.3. CODE TERMS AND USE DEFINITIONS

This Section defines the terms used in this Code and the uses contained in Chapter 3, Use Regulations.

Marijuana, Commercial Activities

Includes all commercial activities as set forth in Business and Professions Code sections 19300.5 and 26001, including, but not limited to the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, delivery or sale of marijuana or marijuana products.

Marijuana, Personal Cultivation

The cultivation of marijuana for personal use is subject to the definitions and restrictions contained in Chapter 6.88, Title 6, of the Sacramento County Code.

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On a motion by Supervisor _____, seconded by Supervisor _____, the foregoing ordinance was passed and adopted by the Board of Supervisors of the County of Sacramento, State of California, at a regular meeting thereof this 11th day of April 2017, by the following vote, to wit:

AYES: Supervisors,

NOES: Supervisors,

ABSENT: Supervisors,

ABSTAIN: Supervisors,

RECUSAL: Supervisors,
(PER POLITICAL REFORM ACT (§ 18702.5.))

Chair of the Board of Supervisors
of Sacramento County, California

(S E A L)

ATTEST: _____
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EE, Marijuana, Personal Cultivation	A	A	A	A	A	A	A	A	A	A	3.9.3.BB

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3.2.4.A. If a use is not listed in Table 3.1, 3.2, or 3.3, included in a use definition, or shown as a permitted or conditionally permitted use in any zoning district, the use is prohibited, unless the Planning Director determines that either:

1. The use is substantially similar in characteristics, intensity, and compatibility to a use or uses within the zoning district, applicable to the property; or
2. The use would be appropriate in the zoning district, applicable to the property as a permitted or conditional use.

3.2.4.B. In those cases where the Planning Director makes a determination that the use meets either Sections 3.2.1 or 3.2.2, the use shall conform to all the regulations, conditions of approval, and use standards applicable to the similar described use(s). If the use would be appropriate in the zoning district as a conditional use, a Conditional Use Permit shall be heard by the designated hearing body for the similar use.

3.2.4.C. Commercial marijuana activities as defined in Section 7.3 of this Code are prohibited in all Zoning Districts.

3.9.3. Use-Specific Standards for Accessory Uses

The specific standards of this Section shall apply in addition to the general standards of Section 3.9.2. In the event of conflict, the more restrictive standard in the opinion of the Planning Director shall apply.

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Marijuana cultivation for personal use is subject to the definitions and restrictions contained in Chapter 6.88, Title 6, of the Sacramento County Code.

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Marijuana, Personal Cultivation

The cultivation of marijuana for personal use is subject to the definitions and restrictions contained in Chapter 6.88, Title 6, of the Sacramento County Code.



RECORDING REQUESTED
WHEN RECORDED MAIL TO:

County of Sacramento
Department of Community Development
Planning and Environmental Review Division
827 Seventh Street, Room 225
Sacramento, CA 95814

CONTACT PERSON: Catherine Hack
TELEPHONE: (916) 874-6141

SPACE ABOVE RESERVED FOR RECORDER'S USE

NOTICE OF EXEMPTION

Project Title:

SACRAMENTO COUNTY AND ZONING CODE AMENDMENTS RELATED TO THE REGULATION OF MARIJUANA ACTIVITIES

Control Number:

PLNP2017-00064

Project Location:

Countywide

APN:

Various

Description of Project:

The project includes amendments to the Sacramento County Code and Zoning Code related to personal marijuana cultivation and commercial marijuana activities. The amendments update the allowed accessory uses at private residences to allow for personal marijuana cultivation consistent with State Law and amends Chapter 6.88 of the Sacramento County Code related to indoor marijuana cultivation. The project also amends the Zoning Code to explicitly prohibit commercial marijuana activities in unincorporated Sacramento County.

Name of public agency approving project:

Sacramento County

Name of person or agency carrying out project:

Planning and Environmental Review
827 7th Street, Room 225
Sacramento, CA 95814
ATTN: Chris Pahule (916) 874-4447

Exempt Status:

GENERAL RULE EXEMPTION – Section 15061(b)(3)

Reasons why project is exempt:

The proposed project does not allow for new uses and consists of administrative amendments to the Zoning Code to provide consistency with state law and to clarify that commercial marijuana activities continue to be prohibited in unincorporated Sacramento County. It can be seen with certainty that the proposed administrative amendments will have no possibility for causing a significant effect on the environment; therefore, the project is exempt from the provisions of CEQA.

Catherine Hack
ENVIRONMENTAL COORDINATOR OF
SACRAMENTO COUNTY, STATE OF CALIFORNIA

Copy To:

County of Sacramento
County Clerk
600 Eighth Street, Room 101
Sacramento, CA 95814

OPR:

State Clearinghouse
1400 Tenth Street
Sacramento, CA 95814