

September 12, 2016



Frequently Asked Questions (FAQs)

Adult Use of Marijuana Act¹

Proposition 64

Question#1: If passed, when will the AUMA take effect?

Answer: The AUMA will take effect November 9, 2016, the day after the election. But note, the AUMA requires a state license to engage in commercial nonmedical marijuana activity. Licensing authorities are required to begin issuing licenses by January 1, 2018 and the League anticipates that the issuance of licenses will not occur much in advance of January 1, 2018. Thus, the AUMA provisions legalizing commercial nonmedical marijuana activity will not become operational until the state begins issuing licenses (likely in late-2017). The AUMA provisions legalizing personal use and cultivation of nonmedical marijuana take effect November 9, 2016.

Question #2: Assuming the AUMA passes, can private individuals cultivate nonmedical marijuana at home beginning November 9, 2016?

Answer: Yes, within a residence by a person 21 years and older for personal use. The AUMA provides that local governments can reasonably regulate, but cannot prohibit personal indoor cultivation of up to six marijuana plants. This includes cultivation in a greenhouse that is on the property of the residence but not physically part of the home, as long as it is fully enclosed, secure, and not visible from a public space. Because this activity is not subject to state licensing requirements, private individuals may cultivate up to six living marijuana plants indoors beginning November 9, 2016—unless a city enacts an ordinance imposing a reasonable regulatory scheme that would preclude them from doing so before complying with the city’s regulatory requirements. Cities cannot adopt or enforce bans on private indoor cultivation of six living nonmedical marijuana plants on or after November 9, 2016.

Local governments may regulate or ban all outdoor personal cultivation. However, the AUMA includes language purporting to repeal any ordinance that bans personal outdoor

¹ Please consult your City Attorney before taking action to implement the AUMA. The answers to these FAQs may be different in your city based upon your municipal code, regulations, and policies. The answers do not constitute legal advice from the League of California Cities®.

cultivation upon the California Attorney General's determination that nonmedical use of marijuana is lawful under federal law.

Question #3: What does the AUMA say about possession, transporting, purchasing or giving away of non-medical marijuana?

Answer: A person 21 years of age or older may possess, process, transport, purchase or give away to persons 21 years of age or older not more than 28.5 grams of marijuana in the non-concentrated form and not more than 8 grams of marijuana in a concentrated form including marijuana products. If the AUMA passes, these activities will be lawful under state law and cannot be prohibited under local law.

Question #4: Do cities that ban or regulate medical marijuana businesses need to update their ordinances to include nonmedical marijuana?

Answer: Yes. The AUMA prohibits state licensing authorities from issuing a license to a commercial nonmedical marijuana business if operation of the business violates a local ordinance of the jurisdiction in which the business will operate. This means that a city wishing to adopt business or land use regulations prohibiting or regulating commercial nonmedical marijuana businesses must adopt an ordinance prior to the date the state begins issuing licenses, which the League anticipates will be in late 2017.²

Question #5: Can cities be confident that a permissive zoning code, by itself, provides sufficient protection against nonmedical marijuana businesses setting up shop without local approval?

Answer: No. It is unlikely that cities will succeed in arguing that nonmedical marijuana land uses are prohibited by permissive zoning codes under the AUMA, because the AUMA does not contain the same protective language as the MMRSA with respect to permissive zoning. Therefore, cities that wish to ban all or some nonmedical marijuana activities should adopt express prohibitions, even if they operate under a permissive zoning code.

Question #6: Are cities at risk of losing the opportunity to impose bans on personal outdoor cultivation if they don't act until after the November election?

Answer: No. A city may adopt an ordinance banning or regulating personal outdoor cultivation at any time. However, if a city does not adopt a ban or regulatory scheme before November 9, 2016, individuals will be able to cultivate marijuana outdoors for personal use until such time as the city enacts a ban or regulatory scheme. Because the logistics of enforcing a ban after an individual's outdoor cultivation operations have begun, the best practice may be to adopt an ordinance before November 9, 2016.

Question #7: Are cities at risk of losing the opportunity to impose bans on nonmedical marijuana businesses, if they don't act until after the November election?

² Please see Question #8 regarding the use of public roads for transportation and delivery.

Answer: No. However, if a city does not adopt an ordinance expressly banning or regulating nonmedical marijuana businesses before the state begins issuing state licenses nonmedical businesses, a state-licensed nonmedical marijuana business will be able to operate within its jurisdiction without local permission or permitting. This is due to a provision in the AUMA that provides that state licenses cannot be issued where the activity would violate a local ordinance. If a jurisdiction has no ordinance regulating nonmedical marijuana businesses, then the local regulatory scheme is silent on that type of activity, and the state can unilaterally issue a license under terms fully compliant with the AUMA. Cities may adopt an ordinance expressly banning or regulating such operations after the state begins to issue licenses, but it will be difficult to terminate the state licensee's operations until the state license is up for renewal. Therefore, the best practice is to adopt an ordinance before the state begins issuing state licenses.

Question #8: Can cities ban deliveries under the AUMA?

Answer: Yes. Cities can ban deliveries within their territorial limits. However, cities cannot prevent the use of public roads for the delivery of marijuana. For example, if a licensed delivery company located in City A must travel on public roads through City B to make an authorized delivery in City C, City B cannot prohibit the licensed delivery company from travelling on public roads in City B to get to City C. In addition, cities may not prevent the use of public roads within its jurisdiction to transport nonmedical marijuana.

Question #9: What is the best way for cities to notify the state licensing agencies of their local ordinances that regulate and/or prohibit commercial non-medical marijuana activities within their jurisdictions?

Answer: Unless the state licensing agencies indicate otherwise, cities should mail copies of their local ordinances that regulate or prohibit commercial nonmedical marijuana activities within their jurisdictions to the Department of Consumer Affairs, the Department of Food and Agriculture, and the Department of Public Health. Cities should regularly check each Department's website to ensure that this practice complies with any regulations the Departments may pass regarding notice of local ordinances. In addition, Cities should ensure that any updates or amendments to local ordinances that regulate or prohibit commercial nonmedical marijuana activities are promptly submitted to each Department.