



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: November 1, 2016

Agenda Item 7A
Approvals:
City Manager [Signature]
Dept. Head [Signature]
Attorney [Signature]
Finance [Signature]

Department: Community Development Department
Prepared By: Jim Pechous, City Planner

Subject: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA AMENDING TITLE 9 OF THE SAN CLEMENTE MUNICIPAL CODE TO ESTABLISH REASONABLE REGULATIONS OF LIMITED HOME CULTIVATION OF MARIJUANA FOR PERSONAL USE AND APPROVING ZONING AMENDMENT 16-313, AMENDING TITLE 17 OF THE SAN CLEMENTE MUNICIPAL CODE, TO REGULATE THE PERSONAL, MEDICAL, AND COMMERCIAL USE OF MARIJUANA

Fiscal Impact: Approval of this item will not result in net city cost (discretionary general funding).

Summary: On October 4, the Council considered a recreational-marijuana Ordinance for second reading, but the Council expressed concern that under the Public Records Act the City might have to disclose personal identifying information about permit holders if the City establishes a special-use permit for limited home cultivation. Rather than adopt the Ordinance, the Council voted to reconsider it.

To address the concern about disclosing personal information, the Ordinance has been revised to drop the permit requirement and include limited-home-cultivation regulations, similar to what would have been imposed with a permit. A copy of the proposed revised Ordinance is included as Attachment 1 to this report.

No other changes have been made to the Ordinance since the Council last considered it.

Background: The November 2016 ballot includes a measure that, if approved by voters, will make recreational-marijuana uses legal under state law, and the measure is expected to pass. As a preventative measure, the Council directed staff to prepare an Ordinance regulating marijuana uses as far as the new law would permit.

The Planning Commission held a public hearing on the draft Ordinance on September 7, 2016, and voted unanimously to forward the recommendation of approval to the City Council. Planning Commission Resolution PC 16-025 is included as Attachment 2, as is the related staff report as Attachment 3. The Planning Commission considered two options for limited home cultivation, namely, requiring a use permit or allowing it without a permit. In the end, the Commission recommended a use permit.

On Sept 20, 2016, the Council held a public hearing at the first reading of the Ordinance and approved the Ordinance as recommended. The staff report presented at the first reading is included here as Attachment 4. The first-reading report discusses the background of the ballot measure and the details of the proposed Ordinance.

At the second reading, the Council expressed concern about the possibility of having to disclose the names of limited-home-cultivation permit holders under the California Public Records Act and voted to reconsider the Ordinance. Subsequent legal research on this issue revealed no means for the City to protect permit information from disclosure under the PRA.

In light of that conclusion, staff revised the Ordinance to drop the permit requirement and added safety standards in Title 9. Limited home cultivation would be allowed by right, without a permit, but many of the safety standards that would have been conditions of a permit are now expressly imposed through a new section 9.04.025 (discussed below).

The Council may now reconsider the proposed amendments to the zoning code (i.e., the no-permit option considered but not recommended by the Commission), as well as the proposed amendments to Title 9 that establish safety standards for limited home cultivation.

Discussion:

If AUMA passes, the City will not be able to enforce its current ban on all indoor cultivation of marijuana, but rather will only be able to "reasonably regulate" limited home cultivation. The draft Ordinance bans all commercially related and large scale indoor cultivation that are not private residences, but allows for limited home cultivation if it complies with public-safety standards established by new section 9.04.025.

These standards clarify that only a resident may engage in limited home cultivation, visitors may not; that cultivation must be in a dedicated area, not used for sleeping, cooking, or bathing; that the cultivation area and any use of electricity or other utility must be in strict compliance with all applicable safety codes and regulations; that dangerous chemicals may not be used in limited home cultivation; that limited home cultivation may not be apparent from outside the property (to reduce the likelihood of it becoming an attractive target for criminals or a public nuisance); and that it must be enclosed and secured with locks.

Staff recommends that the City Council adopt this Ordinance amending Titles 9 and 17 of the Municipal Code to maintain the City's current ban on personal, medical, and commercial uses of marijuana in all zones, but providing the limited home cultivation exception that AUMA requires with reasonable regulation of it as AUMA allows. If AUMA does not pass, the Ordinance will not take effect, and the City's current MMRSA ordinance will continue in effect.

Recommended

Action: Staff recommends that the Council:

Introduce Ordinance Number _____ for a first reading, **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA AMENDING TITLE 9 OF THE SAN CLEMENTE MUNICIPAL CODE TO ESTABLISH REASONABLE REGULATIONS OF LIMITED HOME CULTIVATION OF MARIJUANA FOR PERSONAL USE AND APPROVING ZONING AMENDMENT 16-313, AMENDING TITLE 17 OF THE SAN CLEMENTE MUNICIPAL CODE, TO REGULATE THE PERSONAL, MEDICAL, AND COMMERCIAL USE OF MARIJUANA.**

Attachments:

- 1) Proposed revised draft of Ordinance for adoption.
- 2) Planning Commission Resolution PC 16-025
- 3) Planning Commission staff report
- 4) First-reading City Council staff report
- 5) Redline comparison of currently proposed and previously considered code changes (Exhibit A to Ordinance)
- 6) Notice of Exemption

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA AMENDING TITLE 9 OF THE SAN CLEMENTE MUNICIPAL CODE TO ESTABLISH REASONABLE REGULATIONS OF LIMITED HOME CULTIVATION OF MARIJUANA FOR PERSONAL USE AND APPROVING ZONING AMENDMENT 16-313, AMENDING TITLE 17 OF THE SAN CLEMENTE MUNICIPAL CODE, TO REGULATE THE PERSONAL, MEDICAL, AND COMMERCIAL USE OF MARIJUANA

WHEREAS, the City of San Clemente, California (the "City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, California Government Code section 65800 et seq. authorizes the adoption and administration of zoning laws, ordinances, rules and regulations by cities as a means of implementing the General Plan; and

WHEREAS, the City passed Ordinance No. 1613 on January 19, 2016; and

WHEREAS, the City desires to continue to ban all marijuana dispensaries, cultivation, and delivery service land uses within City Limits to the extent allowed by California law, and Ordinance No. ___ updates the Municipal Code to effectuate that aim; and

WHEREAS, on June 28, 2016, the Secretary of State certified Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"), for the November 8, 2016 ballot; and

WHEREAS, AUMA will become law if a majority of the electorate votes "Yes" on the proposition; and

WHEREAS, AUMA would allow, among other activities, the use of marijuana for personal and commercial purposes, including the recreational use of marijuana by adults over 21 years of age; and

WHEREAS, to regulate personal use of marijuana AUMA would add Section 11362.1 to the Health and Safety Code, making it "lawful under state and local law" for persons 21 years of age or older to "possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever" up to 28.5 grams of marijuana in the form of concentrated cannabis or not more than eight grams of marijuana in the form of concentrated cannabis contained in marijuana products; and

WHEREAS, AUMA would make it lawful for those individuals to possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants; and

WHEREAS, AUMA would make it lawful for those individuals to smoke or ingest marijuana or marijuana products; and

WHEREAS, should AUMA pass, many of its provisions would take effect on November 9, 2016; and

WHEREAS, to regulate commercial use of marijuana, AUMA would add Division 10 (Marijuana) to the Business & Professions Code, which grants state agencies "the exclusive authority to create, issue, renew, discipline, suspend, or revoke" licenses for businesses including the transportation, storage, distribution, sale, cultivation, manufacturing, and testing of marijuana; and

WHEREAS, AUMA provides that the above state agencies shall promulgate rules and regulations and shall begin issuing licenses under Division 10 by January 1, 2018; and

WHEREAS, AUMA states that a local jurisdiction shall not prevent transportation of marijuana or marijuana products on public roads by a licensee transporting marijuana or marijuana products in compliance with Division 10; and

WHEREAS, AUMA would authorize cities to "reasonably regulate" without completely prohibiting cultivation of marijuana inside a private residence or inside an "accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure" ("limited home cultivation"); and

WHEREAS, AUMA would authorize cities to completely prohibit outdoor cultivation on the grounds of a private residence, up to and until a "determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law"; and

WHEREAS, AUMA would authorize cities to completely prohibit the establishment or operation of any marijuana business licensed under Division 10 within its jurisdiction, including marijuana dispensaries, marijuana retailers, and marijuana delivery services; and

WHEREAS, absent appropriate local regulation authorized by AUMA, state regulations will control; and

WHEREAS, the "Medical Marijuana Regulation and Safety Act" ("MMRSA"), which took effect January 1, 2016, regulates use of marijuana for medical purposes; and

WHEREAS, the MMRSA contains a provision that provides that the State shall become the sole authority for regulation under certain parts of the Act unless local governments pass their own regulations; and

WHEREAS, in May 2013, the California Supreme Court held in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, 56 Cal. 4th 729 (2013) that cities have the authority to regulate or ban outright medical marijuana land uses; and

WHEREAS, the California Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, under the Federal Controlled Substances Act, the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects on the health and safety of the occupants, including structural damage to the building due to increased moisture and excessive mold growth that can occur and pose a risk of fire and electrocution, as well as chemical contamination within the structure from the use of pesticides and fertilizers; and

WHEREAS, based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur in the City due to the establishment and operation of marijuana cultivation, processing, and distribution uses; and

WHEREAS, the subject Ordinance 16-313 is not subject to the California Environmental Quality Act ("CEQA") under CEQA Guidelines (14 Cal. Code Regs.) sections 15060(c)(2), 15060(c)(3), and 15061(b)(3). The activity is not subject to CEQA because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; the activity is not a project as defined in Section 15378, and the activity is covered by the general rule that CEQA applies only to activities that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment, the activity is not subject to CEQA; and

WHEREAS, this Ordinance would amend Titles 9 and 17 of the San Clemente Municipal Code to clarify the substantive objectives of the Municipal Code regarding the City's regulation of marijuana within its City limits and to preemptively address some proposed changes to California law if AUMA passes on November 8, 2016.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals.

The City Council hereby finds that all of the facts set forth in the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

SECTION 2. Zoning Amendment Findings.

The following findings are made regarding the amendments to the Zoning Ordinance:

- A. The proposed amendments are consistent with the General Plan, since they implement General Plan objectives and policies that promote the establishment and operation of land uses that maintain or enhance quality

of life; that are compatible with surrounding uses; and that protect and maintain public health, safety, and welfare. The proposed amendments prohibit land uses that are contrary to such objectives and policies; and

- B. The proposed amendments will not adversely impact the public health, safety, and welfare, since they prohibit land uses to protect the public health, safety, and welfare from potentially negative impacts of marijuana cultivation, manufacturing, testing laboratories, delivery, and dispensaries. Several California cities have reported negative impacts of such land uses, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests.

SECTION 3. Title 9 (Public Peace, Morals and Welfare) and Title 17 (Zoning) Amendments. San Clemente Municipal Code Titles 9 and 17 are amended as set forth in the attached Exhibit A.

SECTION 4. CEQA.

This Ordinance is not a project within the meaning of CEQA Guidelines sections 15378, 15060(c)(2), and 15060(c)(3) because it has no potential for resulting in physical change in the environment, directly or indirectly, and does not meet CEQA's definition of a project. The Ordinance does not authorize or allow for the permitting of any new development and it would be "purely speculative to assume that the [Ordinance] will require any new buildings to be constructed. . . ." (*Union of Medical Marijuana Patients Inc. v. City of San Diego* (4th Dist., Div. 1, 2016) ___ Cal.App.5th ___, Case No. D068185.) In the alternative, the City Council finds that, under section 15061(b)(3), this Ordinance is exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to activities that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Orange in accordance with CEQA Guidelines.

SECTION 5. Custodian of Records.

The documents and materials that constitute the record of proceedings on which this Ordinance is based are located at the City Clerk's office located at 100 Avenida Presidio, San Clemente, CA 92672-3100. The custodian of these records is the City Clerk.

SECTION 6. Severability.

If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 7. Effective Date.

If AUMA is approved by voters on November 8, 2016, then this Ordinance takes effect on the later of (a) the following day, November 9, 2016, and (b) 30 days after adoption of this Ordinance by the City Council. If AUMA is not approved by the voters, then this Ordinance is void and has no effect.

SECTION 8. Publication.

The City Clerk shall certify as to the adoption of this Ordinance and shall cause it to be published within 15 days of the adoption and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with California Government Code Section 36933.

APPROVED AND ADOPTED this ____ day of _____, 2016

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor of the City of San
Clemente, California

EXHIBIT "A"

Section 1. Section 9.04.025 is hereby added to read as follows:

9.04.025 – Limited home cultivation of marijuana.

- A. State law requires the City to allow limited home cultivation of marijuana for personal use, but it also allows the City to impose reasonable regulations for the public health, safety, and welfare. Section 17.28.035(C)(3) allows the use. This section regulates the manner in which it is done.
- B. The definitions in section 17.28.035(B) and in chapter 17.88 apply to this section, unless otherwise indicated.
- C. Limited home cultivation is allowed under section 17.28.035(C)(3), but only if it complies with each of the following health-and-safety regulations:
 - 1. Resident Only. A person may only engage in limited home cultivation inside his or her primary residence or an accessory structure thereto; non-residents may not engage in limited home cultivation. (See subsections 17.28.035(B)(7) defining "limited home cultivation" and (B)(13) defining "private residence.") For purposes of this section 9.04.025(C)(1), "person" is limited to a natural person; no corporate "person" may engage in limited home cultivation.
 - 2. Only in a Dedicated Cultivation Area. Limited home cultivation is only permitted in a dedicated cultivation area. The cultivation area must be used exclusively for limited home cultivation; it may not be used for sleeping, cooking, eating, bathing, or any other residential activity. If the cultivation area is in the private residence itself, it must be physically separated from the residential areas of the residence, such as in a separate room or closet with a lockable door. The cultivation area may not be used or prepared in a manner to cultivate more than six marijuana plants.
 - 3. Properly Permitted Building and Utilities. The private residence or accessory structure that includes the cultivation area, and all the plumbing, electrical, and other utilities in the residence or structure, must be properly permitted by the City and by any other applicable regulatory agency.
 - 4. Strict Compliance with Building and Safety Requirements. No artificial light, ventilation, heating, or air conditioning may be used in support of limited home cultivation except in compliance with the California Building Code, the San Clemente Municipal Code, and any other permitting requirements that may be imposed.
 - 5. No Controlled Chemicals. The following chemicals may not be used in limited home cultivation; they may not be used or stored for any purpose

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in the cultivation area; and, if they are lawfully stored elsewhere on the grounds of a private residence where limited home cultivation takes place, they must be stored in leak and fireproof containers sufficient to provide storage up to required safety standards. These chemicals include:

- (a) Explosive gases, including, but not limited to: Butane, Propane, Xylene, Styrene, Gasoline, Kerosene, Oxygen (O₂), Carbon dioxide (CO₂) or Hydrogen (H₂); and
 - (b) Dangerous poisons, toxins, or carcinogens, including, but not limited to: Methanol, Iso-propyl Alcohol, Methylene Chloride, Acetone, Benzene, Toluene, or Tri-chloro-ethylene.
6. **Not Visible.** Neither the marijuana plants nor the marijuana that they produce may be visible by normal unaided vision from any public place. The cultivation area itself must not be visible from anywhere outside the residence or structure that contains it. Every window, skylight, ventilation, and other opening must be sufficiently covered or opaque as to obscure visibility of the cultivation area from any adjacent property.
7. **Not Detectible.** The cultivation area must not produce any odor, sound, or other emission that is detectible with normal unaided senses from outside the grounds of the private residence if that odor, sound, or other emission indicates that marijuana cultivation is taking place. Nor may the cultivation area produce any odor, sound, or other emission that constitutes a nuisance under section 8.52.010.
8. **Secured Area.** State law requires the cultivation area to be enclosed and secured with a lock.
- (a) The cultivation area must be accessible only by lockable doors, and any window, skylight, ventilation opening, or other opening must also be lockable.
 - (b) Every opening to the cultivation area must be kept locked at all times when the opening is not in use. The cultivation area may not be left unsecured.
9. **Limited Access.** Access to the cultivation area must be restricted to the residents that are authorized by this section and section 17.28.035 to engage in limited home cultivation at that property.

Section 2. Section 17.28.035 is hereby amended to read in its entirety as follows:

17.28.035 Marijuana Uses.

- A. Purpose and Intent. The purpose of this section is to regulate personal, medical, and commercial marijuana uses. Nothing in this section shall preempt or make inapplicable any provision of state or federal law.
- B. Definitions. For purposes of this section, the following definitions shall apply:
1. "Accessory structure" means an "accessory building," as defined by section 17.88.030 of this Code, that is fully enclosed and secured with a lock.
 2. "Commercial marijuana activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery or sale of marijuana and marijuana products.
 3. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, trimming, or processing of marijuana.
 4. "Delivery" means the commercial transfer of marijuana or marijuana products to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under California law, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.
 5. "Distribution" means the procurement, sale, and transport of marijuana and marijuana products between entities for commercial use purposes.
 6. "Licensee" means the holder of any state issued license related to marijuana activities, including but not limited to licenses issued under Division 10 of the Business & Professions Code.
 7. "Limited home cultivation" means cultivation of up to six living marijuana plants, and possession of the marijuana produced by those plants, within the private residence of the person cultivating them or within an accessory structure to the person's private residence on the same grounds.
 8. "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.

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9. "Marijuana" means all parts of the plant *Cannabis sativa* L., 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 does not include:
 - a. Industrial hemp, as defined in section 11018.5 of the California Health & Safety Code; or
 - b. The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.
10. "Marijuana accessories" means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.
11. "Marijuana products" means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.
12. "Person" includes any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.
13. "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling that is a "residential dwelling unit," as defined by the California Building Code (24 Cal. Code Regs. § 202), that is fully enclosed and secured with a lock, and that is the primary residence of the person in possession.
14. "Sale" includes any transaction whereby, for any consideration, title to marijuana is transferred from one person to another, and includes the delivery of marijuana or marijuana products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of marijuana or marijuana products by a licensee to the licensee from whom such marijuana or marijuana product was purchased.

15. Any term defined in this section also means the very term as defined in the California Business & Professions Code or the California Health & Safety Code, unless otherwise specified.

C. Personal Use.

1. For purposes of this subsection, personal recreational use, possession, purchase, transport, or dissemination of marijuana shall be considered unlawful in all areas of the City to the extent it is unlawful under California law.
2. **Outdoor Cultivation.** A person may not cultivate marijuana outdoors in any zoning district of the City. "Outdoors" means not in a fully enclosed and secure building structure. It includes covered decks, carports, open-air garden courts, and similar situations that are not fully enclosed and secured with a lock. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity.
3. **Indoor Cultivation.** All indoor cultivation is prohibited except for limited home cultivation, as defined in subsection (B)(7). Limited home cultivation is only allowed if each of the requirements of section 9.04.025 is satisfied.

D. Medical Use.

1. Cultivation of medical marijuana pursuant to section 11362.77 of the California Health & Safety Code is subject to the cultivation requirements laid out in subsection (C) of this section.
2. The establishment or operation of any medical marijuana collective, cooperative, dispensary, delivery service, operator, establishment, or provider shall be considered a prohibited use in all zoning districts of the City. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment of any collective, cooperative, dispensary, delivery service, operator, establishment, or provider in any zoning district, and no person shall otherwise establish such businesses or operations in any zoning district.

- E. Commercial Use.** The establishment or operation of any business of commercial marijuana activity is prohibited. No use permit, variance, building permit, or any other entitlement or permit, whether administrative

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or discretionary, shall be approved or issued for the establishment or operation of any such business or operation. Such prohibited businesses or operations may include, but are not limited to:

1. The transportation, delivery, storage, distribution, or sale of marijuana, marijuana products, or marijuana accessories;
2. The cultivation of marijuana;
3. The manufacturing or testing of marijuana, marijuana products, or marijuana accessories; or
4. Any other business licensed by the state or other government entity under Division 10 of the California Business & Professions Code, as it may be amended from time to time.

F. **Penalty for Violation.** No person, whether as principal, agent, employee or otherwise, shall violate, cause the violation of, or otherwise fail to comply with any of the requirements of this section. Every act prohibited or declared unlawful, and every failure to perform an act made mandatory by this section, shall be a misdemeanor or an infraction, at the discretion of the City Attorney or the District Attorney. In addition to the penalties provided in this section, any condition caused or permitted to exist in violation of any of the provisions of this section is declared a public nuisance and may be abated as provided in Chapter 1.16 and under state law.

Section 3. Section 17.32.030, subsection B, is amended to read in its entirety as follows:

B. **Prohibited Uses.** The following uses are prohibited:

1. Uses that are listed in Table 17.32.030 but that are not identified as either permitted — "P" — or conditionally permitted — "MC" or "C"; and
2. Uses that are excluded from Table 17.32.030, unless they are found by the City to be similar to permitted or conditionally-permitted uses.
3. Uses where a blank cell appears in Table 17.32.030.
4. As indicated in Table 17.32.030, the following uses are not permitted in any residential zone:
 - a. Marijuana Manufacturing.
 - b. Marijuana Testing Laboratory.

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- c. Marijuana Delivery.
 - d. Marijuana Dispensary.
5. The cultivation of industrial hemp, as defined in section 11018.5 of the California Health & Safety Code, is not permitted in any residential zone to the fullest extent allowed by state law.

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Section 4. Table 17.32.030 "Residential Zone Uses" is amended to change all entries that refer to "Cannabis" to replace the term "Cannabis" with "Marijuana." The amended entries read as follows:

Use	RVL	RL	RML	RM	RH
1. Agricultural					
Marijuana Cultivation					
5. Unclassified Uses					
Marijuana Delivery					
Marijuana Dispensary					
Marijuana Manufacturer					
Marijuana Testing Laboratory					

Section 5. Section 17.36.020, subsection B, is amended to read in its entirety as follows:

- B. Prohibited Uses. The following uses are prohibited:
1. Uses that are listed in Table 17.36.020 but that are not identified as either permitted — "P" — or conditionally-permitted — "MC" or "C"; and
 2. Uses that are excluded from Table 17.36.020, unless they are found by the City to be similar to permitted or conditionally-permitted uses.
 3. Uses where a blank cell appears in Table 17.36.020.
 4. As indicated in Table 17.36.020, the following uses are not permitted in any commercial zone:
 - a. Marijuana Cultivation.
 - b. Marijuana Manufacturing.
 - c. Marijuana Testing Laboratory.
 - d. Marijuana Delivery.
 - e. Marijuana Dispensary.
 5. The cultivation of industrial hemp, as defined in section 11018.5 of the California Health & Safety Code, is not permitted in any commercial zone to the fullest extent allowed by state law.

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Section 6. Table 17.36.020 "Commercial Zone Uses" is amended to change the entries under the heading "1. Commercial" that refer to "Cannabis" to replace the term "Cannabis" with "Marijuana." The amended entries read as follows:

Use	Zones										
	NC 1.1	NC 1.2	NC 1.3	NC 2	NC 3	CC 1	CC 2	CC 3	CC 4	RMF 1	NOTE
1. Commercial											
Marijuana Cultivation											
Marijuana Delivery											
Marijuana Dispensary											
Marijuana Manufacturer											
Marijuana Testing Laboratory											

Section 7. Section 17.40.030, subsection B, is amended to read in its entirety as follows:

B. Prohibited Uses. The following uses are prohibited:

1. Uses that are listed in Table 17.40.030 but that are not identified as either permitted — "P" — or conditionally-permitted — "MC," "C," or "O"; and
2. Uses that are excluded from Table 17.40.030, unless they are found by the City to be similar to permitted or conditionally-permitted uses.
3. Uses where a blank cell appears in Table 17.40.030.
4. As indicated in Table 17.40.030, the following uses are not permitted in any mixed-use zone:
 - a. Marijuana Manufacturing.
 - b. Marijuana Testing Laboratory.
 - c. Marijuana Delivery.
 - d. Marijuana Dispensary.
5. The cultivation of industrial hemp, as defined in section 11018.5 of the California Health & Safety Code, is not permitted in any mixed-use zone to the fullest extent allowed by state law.

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Section 8. Table 17.40.030 "Mixed-Use Zone Uses" is amended to change the entries under the heading "1. Commercial Uses" that refer to "Cannabis" to replace the term "Cannabis" with "Marijuana." The amended entries read as follows:

USE	ZONES							NOTE
	MU 1	MU 2	MU 3.0	MU 3.1	MU 3.2	MU 3.3	MU 5	
1. Commercial Uses								
Marijuana Delivery								
Marijuana Dispensary								
Marijuana Manufacturer								
Marijuana Testing Laboratory								

Section 9. Section 17.44.020, subsection B, is amended to read in its entirety as follows:

- B. Prohibited Uses. The following uses are prohibited:
1. Uses that are listed in Table 17.40.030 but that are not identified as either permitted — "P" — or conditionally-permitted — "MC," "C," or "O"; and
 2. Uses that are excluded from Table 17.40.030, unless they are found by the City to be similar to permitted or conditionally-permitted uses.
 3. Uses where a blank cell appears in Table 17.40.030.
 4. The following uses are not permitted in any mixed-use zone:
 - a. Marijuana Cultivation.
 - b. Marijuana Manufacturing.
 - c. Marijuana Testing Laboratory.
 - d. Marijuana Delivery.
 - e. Marijuana Dispensary.
 5. The cultivation of industrial hemp, as defined in section 11018.5 of the California Health & Safety Code, is not permitted in any open-space zone to the fullest extent allowed by state law.

**Title 9 (Public Peace, Morals, and Welfare) and
Title 17 (Zoning) Amendments**

EXHIBIT A

Section 10. Table 17.44.020 "Open-Space Zone Uses" is amended to change the entries that refer to "Cannabis" to replace the term "Cannabis" with "Marijuana." The amended entries read as follows

Use	OS/ 1	OS/ S1	OS 2 / OS 3	OS / S2	OSC
1. Agricultural Uses					
Marijuana Cultivation					
2. Commercial Uses					
Marijuana Delivery					
Marijuana Dispensaries					
Marijuana Manufacturer					
Marijuana Testing Laboratory					

Section 11. The following sentence is added to the end of section 17.52.040(H) of the San Clemente Municipal Code: "Any use that is not expressly permitted or prohibited in a specific plan is subject to the City's general zoning ordinance. This includes, among other things, the citywide prohibition on all cultivation of industrial hemp, as defined in section 11018.5 of the California Health & Safety Code, and all Marijuana Dispensary, Marijuana Manufacturer, Marijuana Delivery, and Marijuana Testing Laboratory uses."

Section 12. The following definitions are added to section 17.88.030 of the San Clemente Municipal Code:

"Commercial marijuana activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery, or sale of marijuana and marijuana products.

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

"Delivery" means the commercial transfer of marijuana or marijuana products to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under California law, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

"Distribution" means the procurement, sale, and transport of marijuana and marijuana products between entities for commercial use purposes.

"Licensee" means the holder of any state issued license related to marijuana activities, including but not limited to licenses issued under Division 10 of the Business & Professions Code.

“Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.

“Marijuana” means all parts of the plant *Cannabis sativa* L., 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 does not include:

- a. Industrial hemp, as defined in section 11018.5 of the California Health & Safety Code; or
- b. The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

“Marijuana accessories” means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.

“Marijuana products” means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.

“Marijuana Testing Laboratory” means a facility, entity, or site that offers or performs tests of marijuana or marijuana products.

“Person” includes any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

“Private residence” means a house, an apartment unit, a mobile home, or other similar dwelling.

“Sale” includes any transaction whereby, for any consideration, title to marijuana is transferred from one person to another, and includes the delivery of marijuana or marijuana products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of marijuana or marijuana products by a licensee to the licensee from whom such marijuana or marijuana product was purchased.

ATTACHMENT 2

RESOLUTION PC 16-025

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE ZONING AMENDMENT 16-313, AMENDING TITLE 17 OF THE SAN CLEMENTE MUNICIPAL CODE TO REGULATE THE PERSONAL, MEDICAL, AND COMMERCIAL USE OF MARIJUANA

WHEREAS, the City of San Clemente, California (the "City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, California Government Code section 65800 et seq. authorizes the adoption and administration of zoning laws, ordinances, rules and regulations by cities as a means of implementing the General Plan; and

WHEREAS, the City passed Ordinance No. 1613 on January 19, 2016; and

WHEREAS, the City desires to continue to ban all marijuana dispensaries, cultivation, and delivery service land uses within City limits to the extent allowed by California law, and Ordinance No. ____ updates the Municipal Code to effectuate that aim; and

WHEREAS, on June 28, 2016, the Secretary of State certified Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"), for the November 8, 2016 ballot; and

WHEREAS, AUMA will become law if a majority of the electorate votes "Yes" on the proposition; and

WHEREAS, AUMA would regulate, among other items, the use of marijuana for personal and commercial purposes, including the recreational use of marijuana by adults over 21 years of age; and

WHEREAS, to regulate personal use of marijuana AUMA would add Section 11362.1 to the Health and Safety Code, making it "lawful under state and local law" for persons 21 years of age or older to "possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever" up to 28.5 grams of marijuana in the form of concentrated cannabis or not more than eight grams of marijuana in the form of concentrated cannabis contained in marijuana products; and

WHEREAS, AUMA would make it lawful for those individuals to possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants; and

WHEREAS, AUMA would make it lawful for those individuals to smoke or ingest marijuana or marijuana products; and

WHEREAS, should AUMA pass, many of its provisions would take effect on November 9, 2016; and

WHEREAS, to regulate commercial use of marijuana, AUMA would add Division 10 (Marijuana) to the Business & Professions Code, which grants state agencies "the exclusive authority to create, issue, renew, discipline, suspend, or revoke" licenses for businesses including the transportation, storage, distribution, sale, cultivation, manufacturing, and testing of marijuana; and

WHEREAS, AUMA provides that the above state agencies shall promulgate rules and regulations and shall begin issuing licenses under Division 10 by January 1, 2018; and

WHEREAS, AUMA states that a local jurisdiction shall not prevent transportation of marijuana or marijuana products on public roads by a licensee transporting marijuana or marijuana products in compliance with Division 10; and

WHEREAS, AUMA would authorize cities to "reasonably regulate" without completely prohibiting cultivation of marijuana inside a private residence or inside an "accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure"; and

WHEREAS, AUMA would authorize cities to completely prohibit outdoor cultivation on the grounds of a private residence, up to and until a "determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law"; and

WHEREAS, AUMA would authorize cities to completely prohibit the establishment or operation of any marijuana business licensed under Division 10 within its jurisdiction, including marijuana dispensaries, marijuana retailers, and marijuana delivery services; and

WHEREAS, absent appropriate local regulation authorized by AUMA, state regulations will control; and

WHEREAS, the "Medical Marijuana Regulation and Safety Act" ("MMRSA"), which took effect January 1, 2016, regulates use of marijuana for medical purposes; and

WHEREAS, the MMRSA contains a provision that provides that the State shall become the sole authority for regulation under certain parts of the Act unless local governments pass their own regulations; and

WHEREAS, in May 2013, the California Supreme Court held in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, 56 Cal. 4th 729 (2013) that cities have the authority to regulate or ban outright medical marijuana land uses; and

WHEREAS, the California Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, under the Federal Controlled Substances Act, the use,

possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects on the health and safety of the occupants, including structural damage to the building due to increased moisture and excessive mold growth that can occur and pose a risk of fire and electrocution, as well as chemical contamination within the structure from the use of pesticides and fertilizers; and

WHEREAS, based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of marijuana cultivation, processing, and distribution uses; and

WHEREAS, the subject Ordinance is not subject to the California Environmental Quality Act ("CEQA") under CEQA Guidelines (14 Cal. Code Regs.) sections 15060(c)(2), 15060(c)(3), and 15061(b)(3). The activity is not subject to CEQA because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; the activity is not a project as defined in Section 15378, and the activity is covered by the general rule that CEQA applies only to activities that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment, the activity is not subject to CEQA; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, the Planning Commission of the City of San Clemente hereby resolves as follows:

Section 1: Incorporation of Recitals.

The Planning Commission hereby specifically finds that all of the facts set forth in the Recitals are true and correct and are hereby incorporated and adopted as findings of the Planning Commission as if fully set forth herein.

Section 2: Zoning Amendment Findings.

The following findings are made regarding the proposed amendments to the Zoning Ordinance:

- A. The proposed amendments are consistent with the General Plan, since they implement General Plan objectives and policies that promote the establishment and operation of land uses that maintain or enhance quality of life; that are compatible with surrounding uses; and that protect and

maintain public health, safety, and welfare. The proposed amendments prohibit land uses that are contrary to such objectives and policies; and

- B. The proposed amendments will not adversely impact the public health, safety, and welfare, since they prohibit land uses to protect the public health, safety, and welfare from potentially negative impacts of marijuana cultivation, manufacturing, testing, delivery, and dispensaries to the extent allowed under California law. Several California cities have reported negative impacts of such land uses, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests.

Section 3: Based on the entire record before the Planning Commission, all written and oral evidence presented to the Planning Commission, and the findings made and evidence discussed in the staff report and this Resolution, the Planning Commission hereby recommends that the City Council adopt an ordinance entitled: "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING ZONING AMENDMENT 16-313, AMENDING TITLE 17 OF THE SAN CLEMENTE MUNICIPAL CODE TO REGULATE THE PERSONAL, MEDICAL, AND COMMERCIAL USE OF MARIJUANA," which is attached as Attachment 2 to the accompanying staff report and which is incorporated here by reference.

Section 4: CEQA.

The proposed ordinance is not a project within the meaning of section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change in the environment, directly or indirectly. The Planning Commission further finds, under section 15061(b)(3), that the proposed ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to activities that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Section 5: The Secretary of the Planning Commission shall certify to the adoption of this Resolution.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of San Clemente on this 7th day of September, 2016.

Donald Brown

Planning Commission Chair

TO WIT:

I HEREBY CERTIFY that the foregoing resolution was duly adopted at a regular meeting of the Planning Commission of the City of San Clemente on September 7, 2016, and carried by the following roll call vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
ABSENT: COMMISSIONERS:

James Pechous
Secretary of the Planning Commission



STAFF REPORT SAN CLEMENTE PLANNING COMMISSION

Date: September 7, 2016

PLANNER: Jim Pechous, City Planner 

SUBJECT: ZONING AMENDMENT 16-313, AMENDMENTS TO TITLE 17 OF THE SAN CLEMENTE MUNICIPAL CODE TO REGULATE THE PERSONAL, MEDICAL, AND COMMERCIAL USE OF MARIJUANA

INTRODUCTION

On January 19, 2016, the City adopted an ordinance to ban marijuana dispensaries, cultivation, and delivery services, as permitted by the Medical Marijuana Regulation and Safety Act of 2015 ("MMRSA"). On June 28, 2016, the Secretary of State certified Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA") for the November 8, 2016 ballot.

AUMA would immediately legalize possession, transport, purchase, use, and transfer of recreational marijuana for individuals 21 years of age or older. Under AUMA, adults could possess up to 28.5 grams (1 ounce) of marijuana, up to 8 grams of marijuana in the form of concentrated cannabis, which may be present in marijuana products such as edibles, and up to six living marijuana plants, and any marijuana produced by those plants. AUMA would also legalize the cultivation of marijuana, marijuana delivery services, and recreational marijuana retail services. Some of AUMA's provisions would take effect on November 9, 2016 if it passes.

Like MMRSA, AUMA allows for local control of marijuana uses with one exception. While MMRSA allows cities to ban all indoor cultivation, AUMA would require that cities allow limited private residential indoor cultivation and storage.

The Planning Commission is now asked to consider recommending an ordinance that amends the City's zoning ordinance, contingent upon AUMA's passage, to rescind the ban on all private residential cultivation to recognize the new State preemption allowing individuals to have six living marijuana plants and any marijuana produced by those plants in their homes. The Ordinance can either allow that limited home cultivation without restrictions or prescribe a City permitting system to regulate it.

BACKGROUND

If AUMA becomes law, recreational use of marijuana will be legalized under California law, as will recreational possession and private indoor cultivation of marijuana. The San Clemente Municipal Code currently bans medical marijuana dispensaries, delivery services, and cultivation. If AUMA passes, it will still allow local governments to continue to (1) ban all

marijuana-related businesses outright, including marijuana dispensaries, delivery services, and any recreational marijuana retail services, (2) ban outdoor cultivation of marijuana, unless the California Attorney General determines that marijuana is no longer illegal under federal law (if marijuana is federally legalized, outdoor cultivation could be regulated, but not prohibited), and (3) reasonably regulate limited indoor cultivation in private residences. However, unlike MMRSA, AUMA does not allow cities to ban individual indoor cultivation outright. Instead, AUMA allows individuals to grow up to six marijuana plants in their home, and to possess all the marijuana those plants provide (hereinafter, "limited home cultivation"). Under AUMA, cities may regulate, but not ban limited home cultivation.

In adopting the City's existing marijuana regulations, the City Council found that the cultivation, transportation, and distribution of marijuana can create problems relating to public health and safety, crime, water and air quality, and energy consumption. Marijuana uses can create nuisance activity such as loitering and criminal activity in business and residential districts. Specifically, mobile delivery can create issues relating to responsibility and resources to monitor and enforce state law, questions of patient qualification, and risks relating to the high use of large sums of cash for mobile transactions. Indoor cultivation in particular can create air quality, energy, and water damage problems and impair building maintenance and safety. For example, the increased moisture necessary to grow indoors can create excessive mold growth and structural damage. Additionally, the equipment utilized to grow indoors can pose a risk of fire and electrical hazards due to dangerous electrical alterations and use. Further, inadequate ventilation combined with the use of pesticides and fertilizers in an enclosed space can lead to chemical contamination within structures.

Staff recommends that the Planning Commission recommend to the City Council that it adopt an Ordinance amending Title 17 of the Municipal Code to leave in place the City's current ban on personal, medical, and commercial uses of marijuana in all zones, except to the limited extent that AUMA limits the City's oversight of indoor cultivation of marijuana in private residences, as described above.

The proposed Ordinance is included as Attachment 2 to this report.

DISCUSSION

If AUMA passes, the City will not be able to prohibit *all* indoor cultivation of marijuana, as the current ordinance does, because the new state law will make limited home cultivation lawful (lawful, but not beyond the reach of local regulations, if there are any). The City won't have authority to ban it — but AUMA expressly allows the City to "reasonably regulate" limited home cultivation.

The draft Ordinance entirely bans indoor cultivation as far as AUMA allows, namely, in all structures that are *not* private residences, and the Ordinance allows for limited home cultivation, as it must under AUMA. But there remains a choice to be made. The City may impose its own regulations above and beyond what AUMA will impose or it may choose to not regulate indoor home cultivation at all and rely solely on the limits built in to AUMA. The draft Ordinance includes text for both options. The Commission and Council may select either Option 1, requiring a new indoor cultivation permit (which will give the City the ability

to impose its own reasonable health and safety standards, established by staff) or Option 2, allowing indoor home cultivation free of local regulation or restriction.

Staff recommends Option 1 to ensure that the City preserves its ability to reasonably regulate as AUMA allows.

REQUIRED FINDINGS

Before the proposed ordinance may be adopted, the following findings must be made:

- a. The proposed amendments is consistent with the General Plan; and,
- b. The proposed amendment will not adversely affect the public health, safety and welfare.

The proposed amendments are consistent with the General Plan, since they implement General Plan objectives and policies that promote the establishment and operation of land uses that maintain or enhance quality of life; that are compatible with surrounding uses; and that protect and maintain public health, safety, and welfare. The proposed amendments prohibit land uses that are contrary to such objectives and policies. The City is exercising its police power granted under California Government Code Section 65800 et. seq. in regulating personal, medical, and commercial marijuana activities in the City.

The proposed amendments will not adversely impact the public health, safety, and welfare, since they prohibit land uses to protect the public health, safety, and welfare from potentially negative impacts of marijuana cultivation, manufacturing, testing laboratories, delivery, and dispensaries. California cities that have permitted cultivation, marijuana dispensaries and delivery services have experienced negative effects to the public health, safety and welfare of its citizens, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests.

Cities that have permitted marijuana dispensaries and delivery services in the medical context have also experienced an overabundance and overconcentration of such uses, burglaries and takeover robberies, robberies of customers, an increase in crime in the vicinity of the dispensaries, illegal re-selling of marijuana obtained from dispensaries, physicians issuing apparently fraudulent recommendations for the use of marijuana, dispensary staff selling marijuana to customers with obviously counterfeit patient identification cards, street dealers attempting to sell marijuana to dispensary customers, dispensary customers using marijuana and then driving under the influence of marijuana, the selling of illegal drugs other than marijuana in the dispensaries, and the selling of marijuana and marijuana products to minors.

The attached draft resolution and City Council ordinance include appropriate findings. If AUMA does not pass, the Ordinance would not be effective, and the City's current MMRSA ordinance would continue in effect.

ENVIRONMENTAL REVIEW/COMPLIANCE (CEQA):

Staff has reviewed the project for conformance with the California Environmental Quality Act (CEQA) and determined that the activity is not subject to CEQA under CEQA Guidelines (14 Cal. Code Regs.) sections 15060(c)(2), 15060(c)(3), and 15061(b)(3). The activity is not subject to CEQA because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; the activity is not a project as defined in section 15378, and the activity is covered by the general rule that CEQA applies only to activities that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment, the activity is not subject to CEQA. A Notice of Exemption is attached to this staff report as Attachment 3.

ALTERNATIVES; IMPLICATIONS OF ALTERNATIVES

The Planning Commission may provide staff with alternative direction for the regulation of recreational marijuana. If this occurs, it is unlikely that an ordinance will be in place before November 8, 2016 — which will allow for the possibility of marijuana cultivation being grandfathered in the City.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission:

1. Determine the project is Categorically Exempt from the requirements of the California Environmental Quality Act pursuant to CEQA Guidelines section 15378 as the activity is not subject to CEQA because it will not result in a direct or reasonably foreseeable indirect physical change in the environment.
2. Adopt Resolution PC 16-025, and forward a recommendation to the City Council that it adopt an ordinance amending Title 17 to further clarify its desire to prohibit marijuana uses to the extent allowed under California law and direct Staff to set the matter for a public hearing for adoption.

Attachments:

1. Resolution PC 16-025
2. City Council Ordinance Draft, including,
 - a. Exhibit A: Amendments to Title 17
3. Notice of Exemption



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: September 20, 2016

Approvals:

City Manager 

Dept. Head 

Attorney 

Finance 

Department: Community Development Department
Prepared By: James Pechous, City Planner

Subject: ZONING AMENDMENT 16-313, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA APPROVING ZONING AMENDMENT 16-313, AMENDING TITLE 17 OF THE SAN CLEMENTE MUNICIPAL CODE, TO REGULATE THE PERSONAL, MEDICAL, AND COMMERCIAL USE OF MARIJUANA

Fiscal Impact: Approval of this item will not result in net city cost (discretionary general funding).

Summary: On January 19, 2016, the City adopted an ordinance to ban marijuana dispensaries, cultivation, and delivery services, as authorized by the Medical Marijuana Regulation and Safety Act of 2015 ("MMRSA"). On June 28, 2016, the Secretary of State certified Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA") for the November 8, 2016 ballot.

AUMA would immediately legalize possession, transport, purchase, use, and transfer of recreational marijuana for individuals 21 years of age or older. Under AUMA, adults could possess up to 28.5 grams (1 ounce) of marijuana, up to 8 grams of marijuana in the form of concentrated cannabis, which may be present in marijuana products such as edibles, and up to six living marijuana plants, and any marijuana produced by those plants. AUMA would also legalize the cultivation of marijuana, marijuana delivery services, and recreational marijuana retail services. Some of AUMA's provisions would take effect on November 9, 2016 if it passes.

Like MMRSA, AUMA allows for local control of marijuana uses with one exception. While MMRSA allows cities to ban all indoor cultivation, AUMA would require that cities allow limited private residential indoor cultivation and storage. This ordinance amends the City's zoning ordinance, contingent upon AUMA's passage, to rescind the ban on all private residential cultivation to recognize the new State preemption allowing individuals to have up to six living marijuana plants and any marijuana produced by those plants in their homes. The Ordinance can either allow that limited home cultivation without restrictions or prescribe a City permitting system to regulate it.

Background: If AUMA becomes law, recreational use of marijuana will be legalized under California law, as will recreational possession and private indoor cultivation of marijuana. The San Clemente Municipal Code currently bans medical marijuana dispensaries, delivery services, and cultivation. If AUMA passes, it will still allow local governments to continue to (1) ban all marijuana-related businesses outright, including marijuana

dispensaries, delivery services, and any recreational marijuana retail services, (2) ban outdoor cultivation of marijuana, unless the California Attorney General determines that marijuana is no longer illegal under federal law (if marijuana is federally legalized, outdoor cultivation could be regulated, but not prohibited), and (3) reasonably regulate limited indoor cultivation in private residences. However, unlike MMRSA, AUMA does not allow cities to ban individual indoor cultivation outright. Instead, AUMA allows individuals to grow up to six marijuana plants in their home, and to possess all the marijuana those plants provide (hereinafter, "limited home cultivation"). Under AUMA, cities may regulate, but not ban limited home cultivation.

In adopting the City's existing marijuana regulations, the City Council found that the cultivation, transportation, and distribution of marijuana can create problems relating to public health and safety, crime, water and air quality, and energy consumption. Marijuana uses can create nuisance activity such as loitering and criminal activity in business and residential districts. Specifically, mobile delivery can create issues relating to responsibility and resources to monitor and enforce state law, questions of patient qualification, and risks relating to the high use of large sums of cash for mobile transactions. Indoor cultivation in particular can create air quality, energy, and water damage problems and impair building maintenance and safety. For example, the increased moisture necessary to grow indoors can create excessive mold growth and structural damage. Additionally, the equipment utilized to grow indoors can pose a risk of fire and electrical hazards due to dangerous electrical alterations and use. Further, inadequate ventilation combined with the use of pesticides and fertilizers in an enclosed space can lead to chemical contamination within structures.

Staff recommends that the City Council adopt this Ordinance amending Title 17 of the Municipal Code to leave in place the City's current ban on personal, medical, and commercial uses of marijuana in all zones, but providing the limited home cultivation exception AUMA requires. If AUMA does not pass, the Ordinance would not be effective, and the City's current MMRSA ordinance would continue in effect.

Discussion: If AUMA passes, the City will not be able to prohibit *all* indoor cultivation of marijuana, as the current ordinance does, because the new state law will make limited home cultivation lawful (lawful, but not beyond the reach of local regulations, if there are any). The City won't have authority to ban it — but AUMA expressly allows the City to "reasonably regulate" limited home cultivation.

The draft Ordinance entirely bans indoor cultivation as far as AUMA allows, namely, in all structures that are *not* private residences, and the Ordinance allows for limited home cultivation, as it must under AUMA. But there remains a choice to be made. The City may impose its own regulations beyond what AUMA will impose or it may choose to not regulate indoor home cultivation and rely solely on the limits built in to AUMA. The draft Ordinance includes text for both options. The Council may select either Option 1, requiring a new indoor cultivation permit (which will give the City the ability to impose its own reasonable health and safety standards, established by staff) or Option 2, allowing indoor home cultivation free of local regulation or restriction.

Staff recommends Option 1 to ensure that the City preserves its ability to reasonably regulate as AUMA allows.

9-20-16 / 7A-2

11-1-16 / 7A - 32

The Planning Commission held a public hearing on the draft Ordinance on September 7, 2016 and voted to forward the recommendation of approval to the City Council. See Attachment 3, the Planning Commission minutes from the September 7 meeting.

Recommended

Action: Staff recommends that the Council:

- 1) Approve Option 1 on page 3 of Exhibit A, that includes provisions for an Indoor Cultivation Permit; and
- 2) Introduce the proposed Ordinance for a first reading.

Subject to the City Council's determination, a second reading of the proposed Ordinance would take place on October 4, 2016, and the amendments to the City Municipal Code adopted in conjunction with that action would become effective 30 days thereafter.

Attachments:

- 1) Ordinance No. 16-_____
- 2) Planning Commission Resolution PC 16-025
- 3) Minutes from the September 7, 2016 Planning Commission
- 4) Notice of Exemption

EXHIBIT A
EXHIBIT A

Title 9 (Public Peace, Morals, and Welfare) and
Title 17 (Zoning) Amendments

Section 1. Section 9.04.025 is hereby added to read as follows:

9.04.025 – Limited home cultivation of marijuana.

- A. State law requires the City to allow limited home cultivation of marijuana for personal use, but it also allows the City to impose reasonable regulations for the public health, safety, and welfare. Section 17.28.035(C)(3) allows the use. This section regulates the manner in which it is done.
- B. The definitions in section 17.28.035(B) and in chapter 17.88 apply to this section, unless otherwise indicated.
- C. Limited home cultivation is allowed under section 17.28.035(C)(3), but only if it complies with each of the following health-and-safety regulations:
 - 1. Resident Only. A person may only engage in limited home cultivation inside his or her primary residence or an accessory structure thereto; non-residents may not engage in limited home cultivation. (See subsections 17.28.035(B)(7) defining "limited home cultivation" and (B)(13) defining "private residence.") For purposes of this section 9.04.025(C)(1), "person" is limited to a natural person; no corporate "person" may engage in limited home cultivation.
 - 2. Only in a Dedicated Cultivation Area. Limited home cultivation is only permitted in a dedicated cultivation area. The cultivation area must be used exclusively for limited home cultivation; it may not be used for sleeping, cooking, eating, bathing, or any other residential activity. If the cultivation area is in the private residence itself, it must be physically separated from the residential areas of the residence, such as in a separate room or closet with a lockable door. The cultivation area may not be used or prepared in a manner to cultivate more than six marijuana plants.
 - 3. Properly Permitted Building and Utilities. The private residence or accessory structure that includes the cultivation area, and all the plumbing, electrical, and other utilities in the residence or structure, must be properly permitted by the City and by any other applicable regulatory agency.
 - 4. Strict Compliance with Building and Safety Requirements. No artificial light, ventilation, heating, or air conditioning may be used in support of limited home cultivation except in compliance with the California Building Code, the San Clemente Municipal Code, and any other permitting requirements that may be imposed.

5. No Controlled Chemicals. The following chemicals may not be used in limited home cultivation; they may not be used or stored for any purpose in the cultivation area; and, if they are lawfully stored elsewhere on the grounds of a private residence where limited home cultivation takes place, they must be stored in leak and fireproof containers sufficient to provide storage up to required safety standards. These chemicals include:
 - (a) Explosive gases, including, but not limited to: Butane, Propane, Xylene, Styrene, Gasoline, Kerosene, Oxygen (O2), Carbon dioxide (CO2) or Hydrogen (H2); and
 - (b) Dangerous poisons, toxins, or carcinogens, including, but not limited to: Methanol, Iso-propyl Alcohol, Methylene Chloride, Acetone, Benzene, Toluene, or Tri-chloro-ethylene.
6. Not Visible. Neither the marijuana plants nor the marijuana that they produce may be visible by normal unaided vision from any public place. The cultivation area itself must not be visible from anywhere outside the residence or structure that contains it. Every window, skylight, ventilation, and other opening must be sufficiently covered or opaque as to obscure visibility of the cultivation area from any adjacent property.
7. Not Detectible. The cultivation area must not produce any odor, sound, or other emission that is detectible with normal unaided senses from outside the grounds of the private residence if that odor, sound, or other emission indicates that marijuana cultivation is taking place. Nor may the cultivation area produce any odor, sound, or other emission that constitutes a nuisance under section 8.52.010.
8. Secured Area. State law requires the cultivation area to be enclosed and secured with a lock.
 - (a) The cultivation area must be accessible only by lockable doors, and any window, skylight, ventilation opening, or other opening must also be lockable.
 - (b) Every opening to the cultivation area must be kept locked at all times when the opening is not in use. The cultivation area may not be left unsecured.
9. Limited Access. Access to the cultivation area must be restricted to the residents that are authorized by this section and section 17.28.035 to engage in limited home cultivation at that property.

Title 9 (Public Peace, Morals, and Welfare) and
Title 17 (Zoning) Amendments

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Section 42. Section 17.28.035 is hereby amended to read in its entirety as follows:

17.28.035 Marijuana Uses.

- A. Purpose and Intent. The purpose of this section is to regulate personal, medical, and commercial marijuana uses. Nothing in this section shall preempt or make inapplicable any provision of state or federal law.
- B. Definitions. For purposes of this section, the following definitions shall apply:
 - 1. "Accessory structure" means an "accessory building," as defined by section 17.88.030 of this Code, that is fully enclosed and secured with a lock.
 - 2. "Commercial marijuana activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery or sale of marijuana and marijuana products.
 - 3. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, trimming, or processing of marijuana.
 - 4. "Delivery" means the commercial transfer of marijuana or marijuana products to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under California law, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.
 - 5. "Distribution" means the procurement, sale, and transport of marijuana and marijuana products between entities for commercial use purposes.
 - 6. "Licensee" means the holder of any state issued license related to marijuana activities, including but not limited to licenses issued under Division 10 of the Business & Professions Code.
 - 7. "Limited home cultivation" means cultivation of up to six living marijuana plants, and possession of the marijuana produced by those plants, within the private residence of the person cultivating

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them or within an accessory structure to the person's private residence on the same grounds.

8. "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.
9. "Marijuana" means all parts of the plant *Cannabis sativa* L., 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 does not include:
 - a. Industrial hemp, as defined in section 11018.5 of the California Health & Safety Code; or
 - b. The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.
10. "Marijuana accessories" means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.
11. "Marijuana products" means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.
12. "Person" includes any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.
13. "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling that is a "residential dwelling unit," as defined by the California Building Code (24 Cal. Code Regs. § 202), that is fully enclosed and secured with a lock, and that is the primary residence of the person in possession.

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14. "Sale" includes any transaction whereby, for any consideration, title to marijuana is transferred from one person to another, and includes the delivery of marijuana or marijuana products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of marijuana or marijuana products by a licensee to the licensee from whom such marijuana or marijuana product was purchased.
15. Any term defined in this section also means the very term as defined in the California Business & Professions Code or the California Health & Safety Code, unless otherwise specified.

C. Personal Use.

1. For purposes of this subsection, personal recreational use, possession, purchase, transport, or dissemination of marijuana shall be considered unlawful in all areas of the City to the extent it is unlawful under California law.
2. Outdoor Cultivation. A person may not cultivate marijuana outdoors in any zoning district of the City. "Outdoors" means not in a fully enclosed and secure building structure. It includes covered decks, carports, open-air garden courts, and similar situations that are not fully enclosed and secured with a lock. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity.
3. Indoor Cultivation. All indoor cultivation is prohibited except for limited home cultivation, as defined in subsection (B)(7). Limited home cultivation is only allowed if each of the following requirements of section 9.04.025 is satisfied:
 - a. ~~Not Visible. Neither the marijuana plants nor the marijuana that they produce may be visible by normal unaided vision from any public place.~~
 - b. ~~Secure Permit. The person must first be issued an indoor cultivation permit by the Planning Division. To obtain the permit, he or she must affirm under penalty of perjury on the permit application form that the person will comply with all applicable standards and agree to indemnify and defend the City against any claim resulting from or related to the person's cultivation activities. The Planning Division will~~

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~~Issue application and processing guidelines for the indoor cultivation permit; no indoor cultivation permit shall be issued prior to the release of these guidelines; and no permit shall be issued if the applicant has not complied fully with the application and processing requirements.~~

- D. Medical Use.
1. Cultivation of medical marijuana pursuant to section 11362.77 of the California Health & Safety Code is subject to the cultivation requirements laid out in subsection (C) of this section.
 2. The establishment or operation of any medical marijuana collective, cooperative, dispensary, delivery service, operator, establishment, or provider shall be considered a prohibited use in all zoning districts of the City. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment of any collective, cooperative, dispensary, delivery service, operator, establishment, or provider in any zoning district, and no person shall otherwise establish such businesses or operations in any zoning district.
- E. Commercial Use. The establishment or operation of any business of commercial marijuana activity is prohibited. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment or operation of any such business or operation. Such prohibited businesses or operations may include, but are not limited to:
1. The transportation, delivery, storage, distribution, or sale of marijuana, marijuana products, or marijuana accessories;
 2. The cultivation of marijuana;
 3. The manufacturing or testing of marijuana, marijuana products, or marijuana accessories; or
 4. Any other business licensed by the state or other government entity under Division 10 of the California Business & Professions Code, as it may be amended from time to time.
- F. Penalty for Violation. No person, whether as principal, agent, employee or otherwise, shall violate, cause the violation of, or otherwise fail to comply with any of the requirements of this section. Every act prohibited or declared unlawful, and every failure to perform an act made

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mandatory by this section, shall be a misdemeanor or an infraction, at the discretion of the City Attorney or the District Attorney. In addition to the penalties provided in this section, any condition caused or permitted to exist in violation of any of the provisions of this section is declared a public nuisance and may be abated as provided in Chapter 1.16 and under state law.

Section 23. Section 17.32.030, subsection B, is amended to read in its entirety as follows:

- B. Prohibited Uses. The following uses are prohibited:
1. Uses that are listed in Table 17.32.030 but that are not identified as either permitted — "P" — or conditionally permitted — "MC" or "C"; and
 2. Uses that are excluded from Table 17.32.030, unless they are found by the City to be similar to permitted or conditionally-permitted uses.
 3. Uses where a blank cell appears in Table 17.32.030.
 4. As indicated in Table 17.32.030, the following uses are not permitted in any residential zone:
 - a. Marijuana Manufacturing.
 - b. Marijuana Testing Laboratory.
 - c. Marijuana Delivery.
 - d. Marijuana Dispensary.
 5. The cultivation of industrial hemp, as defined in section 11018.5 of the California Health & Safety Code, is not permitted in any residential zone to the fullest extent allowed by state law.

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Section 34. Table 17.32.030 "Residential Zone Uses" is amended to change all entries that refer to "Cannabis" to replace the term "Cannabis" with "Marijuana." The amended entries read as follows:

Use	RVL	RL	RML	RM	RH
1. Agricultural					
Marijuana Cultivation					
5. Unclassified Uses					
Marijuana Delivery					
Marijuana Dispensary					
Marijuana Manufacturer					
Marijuana Testing Laboratory					

Section 45. Section 17.36.020, subsection B, is amended to read in its entirety as follows:

- B. Prohibited Uses. The following uses are prohibited:
1. Uses that are listed in Table 17.36.020 but that are not identified as either permitted — "P" — or conditionally-permitted — "MC" or "C"; and
 2. Uses that are excluded from Table 17.36.020, unless they are found by the City to be similar to permitted or conditionally-permitted uses.
 3. Uses where a blank cell appears in Table 17.36.020.
 4. As indicated in Table 17.36.020, the following uses are not permitted in any commercial zone:
 - a. Marijuana Cultivation.
 - b. Marijuana Manufacturing.
 - c. Marijuana Testing Laboratory.
 - d. Marijuana Delivery.
 - e. Marijuana Dispensary.

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5. The cultivation of industrial hemp, as defined in section 11018.5 of the California Health & Safety Code, is not permitted in any commercial zone to the fullest extent allowed by state law.

Section 56. Table 17.36.020 "Commercial Zone Uses" is amended to change the entries under the heading "1. Commercial" that refer to "Cannabis" to replace the term "Cannabis" with "Marijuana." The amended entries read as follows:

Use	Zones										
	NC 1.1	NC 1.2	NC 1.3	NC 2	NC 3	CC 1	CC 2	CC 3	CC 4	RMF 1	NOT E
1. Commercial											
Marijuana Cultivation											
Marijuana Delivery											
Marijuana Dispensary											
Marijuana Manufacturer											
Marijuana Testing Laboratory											

Section 67. Section 17.40.030, subsection B, is amended to read in its entirety as follows:

B. Prohibited Uses. The following uses are prohibited:

1. Uses that are listed in Table 17.40.030 but that are not identified as either permitted — "P" — or conditionally-permitted — "MC," "C," or "O"; and
2. Uses that are excluded from Table 17.40.030, unless they are found by the City to be similar to permitted or conditionally-permitted uses.
3. Uses where a blank cell appears in Table 17.40.030.
4. As indicated in Table 17.40.030, the following uses are not permitted in any mixed-use zone:
 - a. Marijuana Manufacturing.
 - b. Marijuana Testing Laboratory.

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- c. Marijuana Delivery.
 - d. Marijuana Dispensary.
5. The cultivation of industrial hemp, as defined in section 11018.5 of the California Health & Safety Code, is not permitted in any mixed-use zone to the fullest extent allowed by state law.

Section 78. Table 17.40.030 "Mixed-Use Zone Uses" is amended to change the entries under the heading "1. Commercial Uses" that refer to "Cannabis" to replace the term "Cannabis" with "Marijuana." The amended entries read as follows:

USE	ZONES							NOTE
	MU 1	MU 2	MU 3.0	MU 3.1	MU 3.2	MU 3.3	MU 5	
1. Commercial Uses								
Marijuana Delivery								
Marijuana Dispensary								
Marijuana Manufacturer								
Marijuana Testing Laboratory								

Section 89. Section 17.44.020, subsection B, is amended to read in its entirety as follows:

- B. Prohibited Uses. The following uses are prohibited:
- 1. Uses that are listed in Table 17.40.030 but that are not identified as either permitted — "P" — or conditionally-permitted — "MC," "C," or "O"; and
 - 2. Uses that are excluded from Table 17.40.030, unless they are found by the City to be similar to permitted or conditionally-permitted uses.
 - 3. Uses where a blank cell appears in Table 17.40.030.
 - 4. The following uses are not permitted in any mixed-use zone:
 - a. Marijuana Cultivation.
 - b. Marijuana Manufacturing.
 - c. Marijuana Testing Laboratory.

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- d. Marijuana Delivery.
 - e. Marijuana Dispensary.
5. The cultivation of industrial hemp, as defined in section 11018.5 of the California Health & Safety Code, is not permitted in any open-space zone to the fullest extent allowed by state law.

Section 910. Table 17.44.020 "Open-Space Zone Uses" is amended to change the entries that refer to "Cannabis" to replace the term "Cannabis" with "Marijuana." The amended entries read as follows

Use	OS/ 1	OS/ S1	OS 2 / OS 3	OS / S2	OSC
1. Agricultural Uses					
Marijuana Cultivation					
2. Commercial Uses					
Marijuana Delivery					
Marijuana Dispensaries					
Marijuana Manufacturer					
Marijuana Testing Laboratory					

Section 4011. The following sentence is added to the end of section 17.52.040(H) of the San Clemente Municipal Code: "Any use that is not expressly permitted or prohibited in a specific plan is subject to the City's general zoning ordinance. This includes, among other things, the citywide prohibition on all cultivation of industrial hemp, as defined in section 11018.5 of the California Health & Safety Code, and all Marijuana Dispensary, Marijuana Manufacturer, Marijuana Delivery, and Marijuana Testing Laboratory uses."

Section 4112. The following definitions are added to section 17.88.030 of the San Clemente Municipal Code:

"Commercial marijuana activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery, or sale of marijuana and marijuana products.

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

“Delivery” means the commercial transfer of marijuana or marijuana products to a customer. “Delivery” also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under California law, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

“Distribution” means the procurement, sale, and transport of marijuana and marijuana products between entities for commercial use purposes.

“Licensee” means the holder of any state issued license related to marijuana activities, including but not limited to licenses issued under Division 10 of the Business & Professions Code.

“Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.

“Marijuana” means all parts of the plant Cannabis sativa L., 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 does not include:

- a. Industrial hemp, as defined in section 11018.5 of the California Health & Safety Code; or
- b. The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

“Marijuana accessories” means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.

“Marijuana products” means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.

“Marijuana Testing Laboratory” means a facility, entity, or site that offers or performs tests of marijuana or marijuana products.

“Person” includes any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate,

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or any other group or combination acting as a unit, and the plural as well as the singular.

“Private residence” means a house, an apartment unit, a mobile home, or other similar dwelling.

“Sale” includes any transaction whereby, for any consideration, title to marijuana is transferred from one person to another, and includes the delivery of marijuana or marijuana products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of marijuana or marijuana products by a licensee to the licensee from whom such marijuana or marijuana product was purchased.

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ATTACHMENT 6

NOTICE OF EXEMPTION

TO: Orange County Clerk/Recorder
Attn: EIR Clerk
12 Civic Center Plaza, Room 106
Santa Ana, CA 92701

FROM: Planning Department
City of San Clemente
100 Avenida Presidio
San Clemente, CA 92672

Title:

An Ordinance of the City Council of the City of San Clemente, California Approving Zoning Amendment 16-313, Amending Title 17 of the San Clemente Municipal Code, to Regulate the Personal, Medical, and Commercial Use of Marijuana and Title 9 of the San Clemente Municipal Code to establish reasonable regulations of limited home cultivation of Marijuana for personal use.

Location - Specific: City-wide

Description of Action:

This action is adoption of an Ordinance amending Title 17 of the San Clemente Municipal Code to establish reasonable regulation of limited home cultivation of marijuana for personal use, while maintaining the prohibition on personal, medical, and commercial uses of marijuana in all zones of the City.

Name of Public Agency Approving the Action:

Planning Commission, City of San Clemente

Exempt Status: (check one) (State type and section number)

Not a project; exempt. Sections: 15060(c)(2); 15060(c)(3), 150378(a); 15061(b)(3)

Reasons why activity is not subject to CEQA and exempt:

This Ordinance is not a project within the meaning of CEQA Guidelines sections 15378, 15060(c)(2), and 15060(c)(3) because it has no potential to result in physical change in the environment, directly or indirectly. The Ordinance does not authorize or allow for the permitting of any new development and it would be "purely speculative to assume that the [Ordinance] will require any new buildings to be constructed. . . ." (*Union of Medical Marijuana Patients Inc. v. City of San Diego* (4th Dist., Div. 1, 2016) ___ Cal.App.5th ___, Case No. D068185.) In the alternative, under section 15061(b)(3), the activity is exempt from the requirements of CEQA because it is covered by the general rule that CEQA applies only to activities that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Lead Agency or Contact Person:
James Pechous

Area Code/Telephone/Extension
949-361-6195

Date: 10/20/16

Signature: 