



# City of Los Banos

At the Crossroads of California

[www.losbanos.org](http://www.losbanos.org)

## AGENDA

### PLANNING COMMISSION

CITY HALL COUNCIL CHAMBERS  
520 J Street  
Los Banos, California

**NOVEMBER 9, 2016**

*If you require special assistance to attend or participate in this meeting, please call the Planning Secretary @ (209) 827-7000 extension 118 at least 48 hours prior to the meeting.*

*The City of Los Banos complies with the Americans with Disabilities Act (ADA) of 1990.*

*Si requiere asistencia especial para atender o participar en esta junta por favor llame a la oficina de la Secretaria del Departamento de Planificación al (209) 827-7000 extensión 118 a lo menos de 48 horas previas de la junta.*

*La Ciudad de Los Banos cumple con la Acta de Americanos con Deshabilidad (ADA) de 1990.*

*Any writings or documents provided to a majority of the Planning Commission regarding any item on this agenda will be made available for public inspection at the meeting and in the Planning Department's office located at City Hall, 520 J Street, Los Banos, California during normal business hours. In addition, such writings and documents may be posted on the City's website at [www.losbanos.org](http://www.losbanos.org).*

*Cualquier escritura o los documentos proporcionaron a una mayoría del Departamento de Planificación con respecto a cualquier artículo en este orden del día será hecho disponible para la inspección pública en la reunión y en la oficina del Secretaria del Departamento de Planificación del City Hall, 520 J Street, Los Banos, California durante horas de oficina normales. Además, tales escrituras y los documentos pueden ser anunciados en el website de la Ciudad en [www.losbanos.org](http://www.losbanos.org).*

1. CALL TO ORDER. **7:00 PM**
2. PLEDGE OF ALLEGIANCE.
3. ROLL CALL: (Planning Commission Members)

Cates \_\_, Faktorovich \_\_, Limon \_\_, Llamas \_\_, McCoy \_\_, Spada \_\_,  
Toscano \_\_

4. APPROVAL OF AGENDA.

*Recommendation: Approve the agenda as submitted.*

5. PUBLIC FORUM: Members of the public may address the Commission on any item of public interest that is within the jurisdiction of the Commission, including agenda and non-agenda items. No action will be taken on non-agenda items. Speakers are limited to a five (5) minute presentation.

6. PUBLIC HEARINGS: If you challenge the proposed action as described herein in court, you may be limited to raising only those issues you or someone else raised at the public hearing described herein or in written correspondence delivered to the City at, or prior to, the public hearing.

A. Public Hearing – to Consider the San Luis Estates Mitigated Negative Declaration (SCH #2016101002) and Associated Vesting Tentative Tract Map #2015-03 for the Subdivision of Approximately 5.5 Acres into 25 Single-Family Residential Lots Ranging from 6,000 Square Feet to 9,519 Square Feet Located on the South Side of San Luis Street Between Jeffrey Road and Miller Lane, More Specifically Identified as Assessor's Parcel Number: 428-121-012 **(Continue to a Date Certain)**.

*Recommendation: Receive staff report, open the public hearing, receive public comment, and continue the public hearing to a date certain.*

B. Public Hearing – to Consider a CEQA Categorical Exemption and Site Plan Review #2016-11 for the Addition of a New 55,180 Square Foot Warehouse Building for Kagome, Inc. Located within the General Industrial Zoning District at 333 Johnson Road; More Specifically Identified as Assessor's Parcel Number: 081-110-005.

1) Planning Commission Resolution No. 2016-52 – Approving Site Plan #2016-11 for the Addition of a New 55,180 Square Foot Warehouse Building for Kagome, Inc. Located at 333 Johnson Road, More Specifically Identified as Assessor's Parcel Number: 081-110-005.

*Recommendation: Receive staff report, open the public hearing, receive public comment, close the public hearing, and adopt the resolution as submitted.*

C. Public Hearing – to Consider and Make a Recommendation to the Los Banos City Council to Amend Article 35, of Title 9, Chapter 3 of the Los Banos Municipal Code to Regulate the Personal, Medical, and Commercial Use of Marijuana in the City of Los Banos.

1) Planning Commission Resolution No. 2016-53 – Recommending to the City Council an Ordinance Amending Article 35, of Title 9, Chapter 3 of the Los Banos Municipal Code to Regulate the Personal, Medical, and Commercial Use of Marijuana in the City of Los Banos.

*Recommendation: Receive staff report, open the public hearing, receive public comment, close the public hearing, and adopt the resolution as submitted.*

7. CONSIDERATION OF APPROVAL OF THE CANCELLATION OF THE REGULAR PLANNING COMMISSION MEETING OF NOVEMBER 23, 2016.

*Recommendation: Approve the meeting cancellation as submitted*

8. CONSIDERATION OF APPROVAL OF THE CANCELLATION OF THE REGULAR PLANNING COMMISSION MEETING OF DECEMBER 14, 2016.

*Recommendation: Approve the meeting cancellation as submitted*

9. CONSIDERATION OF APPROVAL OF THE CANCELLATION OF THE REGULAR PLANNING COMMISSION MEETING OF DECEMBER 28, 2016.

*Recommendation: Approve the meeting cancellation as submitted*

10. COMMUNITY & ECONOMIC DEVELOPMENT DEPARTMENT REPORT.

11. COMMISSIONER REPORTS.

A. Cates

B. Faktorovich

C. Limon

D. Llamas

E. McCoy

F. Spada

G. Toscano

12. ADJOURNMENT.

**APPEAL RIGHTS AND FILING PROCEDURES**

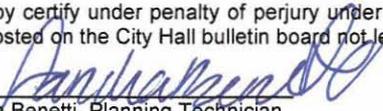
Any person dissatisfied with an act or determination of the Planning Commission may appeal such act or determination to the Planning Commission by filing written notice with the Planning Commission Secretary not later than five (5) business days (excluding holidays) after the day on which the act or determination was made. An appeal must state the act or determination which is being appealed, the identity of the applicant and his/her interest in the matter, and set forth in concise statement(s) the reasons which render the Commission's decision unjustified or inappropriate. (Los Banos Municipal Code Section 9-3.2326)

Concerning an action taken by the Planning Commission related to Chapter 2 Articles 1 through 17 of the Los Banos Municipal Code "Subdivisions", if a subdivider or other affected property owner is dissatisfied with any action of the Commission with respect to a tentative map or the nature and extent of improvements recommended or required he/she may within fifteen (15) days after such

action appeal to the Planning Commission Secretary for a public hearing on the matter. An appeal must state the action being appealed, identify the agenda item by agency number or project title, and set forth in concise statement(s) the reasons for the appeal. (Los Banos Municipal Code Sections 9-2.807)

Appeals must be in writing and include the appellant's name and address and original signature. A filing fee of \$150.00 must accompany the notice of appeal.

I hereby certify under penalty of perjury under the laws of the State of California that the foregoing agenda was posted on the City Hall bulletin board not less than 72 hours prior to the meeting.

  
Sandra Benetti, Planning Technician

Dated this 4<sup>th</sup> day of November 2016



City of  
**Los Banos**  
*At the Crossroads of California*

**PLANNING COMMISSION STAFF REPORT**

**TO: CHAIRMAN SPADA AND PLANNING COMMISSIONERS**  
**FROM: STACY SOUZA ELMS, SENIOR PLANNER** *se*  
**FOR: NOVEMBER 16, 2016**  
**SUBJECT: SITE PLAN REVIEW #2016-11 – KAGOME, INC. EXPANSION**

**RECOMMENDATIONS:**

1. That the Planning Commission adopt Resolution No. 2016-52 approving Site Plan Review #2016-11 for the addition of a new 55,180 square foot warehouse building for Kagome, Inc., located at 333 Johnson Road, more specifically identified as Assessor's Parcel Number: 081-110-005.

**BACKGROUND/DESCRIPTION:**

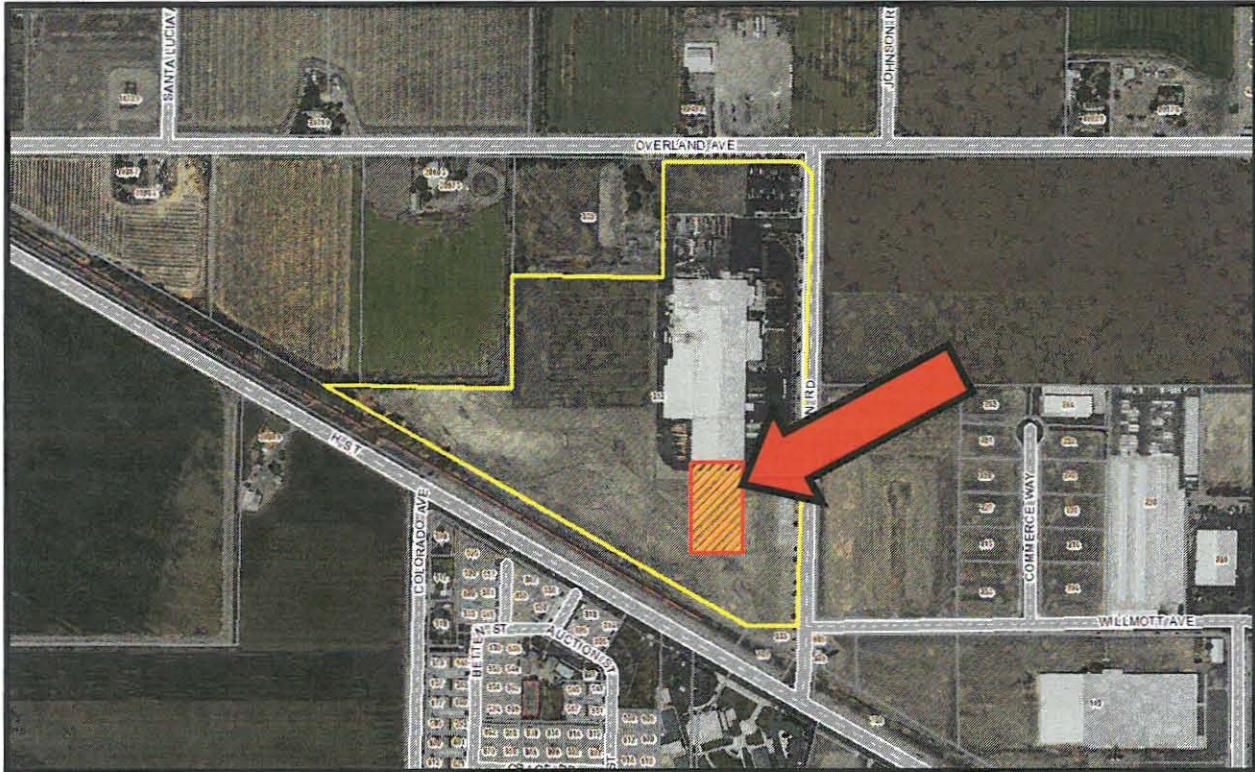
Kagome, Inc., has been doing business in the City of Los Banos since 1989 and provides customized tomato based sauces for global restaurant brands in the United States. Their products can be found across North America, Latin America, Asia, the Middle East, Africa, and Australia.

The project applicant, Kagome, Inc., is proposing to build a new addition their existing facilities consisting of a new 55,180 square foot warehouse building with three (3) loading docks. The new warehouse is to be used for storage and distribution of finished goods.

Currently Kagome, Inc., stores their finished goods in various warehouses off-site, and this proposed expansion will allow them to store their finished product on-site.

**LOCATION AND ACCESS:**

The Project site is located at 333 Johnson Road. The Project site is surrounded by industrial properties to the east and unincorporated Merced County to the north and west. Access to the Project site is off of Johnson Road, which intersects with H Street/Ingomar Grade and Overland Avenue.



**LAND USE:**

Property	Land Use	Zone	General Plan
Project Site	Industrial	I	Industrial
North	Agriculture (County)	A-1	Medium Density
East	Undeveloped	I	Industrial
South	Residential/School	I	Medium Density/Civic
West	Agriculture (County)	A-1	Industrial

I = General Industrial

A-1 = General Agricultural

**ENVIRONMENTAL ASSESSMENT:**

Pursuant to the California Environmental Quality Act (CEQA) and the City of Los Banos Environmental Quality Guidelines, it has been determined that this project is categorically exempt from the provisions of CEQA – Article 19, Section 15332 as the project meets all the criteria for an in-fill project and it can be seen with certainty that the proposed project would not have a significant effect on the environment.

## **SITE PLAN ANALYSIS:**

### ***Code Requirements***

Pursuant to Section 9-3.2316(a) of the Los Banos Municipal Code, the Planning Commission shall review and evaluate a site plan for conformance with the applicable sections of the Code. Upon completion of the review and evaluation of a site plan review application, the Planning Commission shall either deny the site plan or shall grant or modify the site plan subject to reasonable conditions as may be imposed.

### ***Project Design***

The Project proposes the development of a new 55,180 square foot (305'x180.92') warehouse with three (3) loading docks. The addition will be attached to the existing facility by a covered open bay.

The existing facility provides for 101 parking spaces and no additional parking is required for the requested use.

### ***Land Use***

The project site is designated as Industrial pursuant to the Los Banos General Plan and General Industrial (I) pursuant to the Zoning Map. The proposed project is for the construction of a new warehouse to be used for storage, which is appropriately located in the General Industrial (I) zoning district. The proposed use is consistent with the Los Banos General Plan and Zoning Code.

### ***Traffic***

The site plan indicates that access to the site will be provided from existing driveways on Johnson Road. No additional driveways are being requested at this time.

### ***Infrastructure***

**Water:** The City of Los Banos would provide municipal water service to the Project site. The Project will connect to the existing water service that is servicing the existing facility.

**Sewer:** The City of Los Banos would provide wastewater service to the Project site. The Project will connect to the existing sewer service that is servicing the existing facility.

**Storm Drainage:** The City of Los Banos would provide storm water capacity to the Project site. The Project will connect to the existing storm drain system that is servicing the existing facility.

It should be noted that all City infrastructure has been sized to accommodate this expanded use and will be built onsite in accordance with the City's Utility Master Plans.

## **DESIGN REVIEW**

Pursuant to Section 9-3.2818(a) of the Los Banos Municipal Code, the Los Banos Planning Commission held a study session on October 26, 2016 to provide the applicant with feedback early on in the design process. The Commission evaluated

architectural elements for the project site as set forth in Section 9-3.2818(c) of the Los Banos Municipal Code.

Based on discussions with the Planning Commission, no specific suggestions were provided to the applicant.

### **PROJECT REVIEW BOARD**

The Project Review Board (PRB) reviewed the project proposal on May 19, 2015 for the following aspects:

- Building layout;
- Location;
- Orientation of all new and existing structures and the relationship to one another and surrounding properties
- Methods of landscape irrigation;
- Location and design of facilities for physically disabled persons;
- Location of fencing and other screening;
- Location and screening of refuse facilities;
- Traffic circulation on-site and off-site;
- Pedestrian and bicycle circulation and safety;
- Arrangement of off-street parking and loading facilities;
- Location and intensity of all onsite lighting; and
- Provision of municipal and public services.

The PRB has provided a positive recommendation for the development of the proposed project subject to conditions of approval, which are incorporated into the adopting resolution.

### **FINDINGS FOR APPROVAL:**

The Planning Commission shall approve a Site Plan if it makes all of the following findings specified in the Municipal Code. The Planning Commission shall consider and evaluate those aspects of the project set forth in Section 9-3.2317(b) and 9-3.2318(c). In approving a site plan, the Planning Commission shall make the following findings before approving a site plan:

1. That the proposed development is consistent with the general plan, any specific plans, and any design standards adopted by the City Council.
  - a. The General Plan land use designation for the project site is Industrial, which allows primary manufacturing, R&D, wholesale and warehouse distribution, agricultural sales and services, and similar activities including those with outdoor facilities. It also accommodates warehousing and distribution, with support commercial services and ancillary office space.

No large-scale retail uses are allowed to minimize land-use conflicts and provide support for commercial areas.

The following specific General Plan Goals, Objectives, and Policies are applicable to the proposed project:

**ECONOMIC DEVELOPMENT POLICY ED-G-1:**

Help create jobs and improve job quality for existing and future Los Banos residents.

**ECONOMIC DEVELOPMENT POLICY ED-G-3:**

Make Los Banos an ideal place to do business by fostering a business friendly climate.

**ECONOMIC DEVELOPMENT POLICY ED-G-7:**

Seek and promote particular businesses or economic opportunities that provide needed local goods, services, employment, or those that enhance the City's physical and social well being.

**LAND USE POLICY LU-G-1:**

Promote a sustainable, balanced land use pattern that satisfies existing needs and safeguards future needs of the City.

*The project is consistent with the General Plan Industrial land use designation. The proposed additional warehouse would create employment opportunities for the community and the expansion of the existing business fosters economic development and business vitality.*

- b. The zoning designation for the project site is General Industrial (I). The purpose of the General Industrial District is to provide a district exclusively for industrial development wherein manufacturing and other industries can locate and operate away from the restricting influences on nonindustrial uses while maintaining an environment free from offensive or objectionable noise, dust, odor, or other nuisances.

*The proposed development is consistent with the Zoning Code as warehouse facilities are uses permitted in the district. The proposed use allows the exiting business to expand in an area designated specifically for industrial uses.*

2. That the design and location of the proposed development and its relationship to existing or proposed developments and traffic in the vicinity thereof is such that it will not impair the desirability of investment or occupation in the neighborhood; and that it will not unreasonably interfere with the use and enjoyment of existing

or proposed developments in the vicinity thereof, and that it will not create traffic hazards or congestion.

*The Kagome facility and the surrounding area have been planned and designed for the purpose of Industrial uses. The proposed warehouse building is consistent with General Industrial uses on the existing premises and in the surrounding vicinity. The proposed design and operational characteristics of the proposed warehouse building as conditioned will not impair neighboring uses nor interfere with the other uses in the vicinity. Based on the foregoing, the proposed project will not impair the neighborhood, or interfere with the use and enjoyment of existing or proposed developments, and will not create a traffic hazard or congestion.*

3. That the design of the proposed development is in keeping with the character of the surrounding neighborhood and is not detrimental to the harmonious, orderly, and attractive development contemplated by this ordinance and the general plan of the City.

*The design of the proposed project is in keeping with the existing facility and character of the surrounding Industrial neighborhood. The applicant received a positive feedback from the Planning Commission Design Review Study Session on their proposed design.*

4. That the design of the proposed development would provide a desirable environment for its occupants, as well as for its neighbors, and that it is aesthetically of good composition, materials, textures, and colors.

*The proposed design is laid out in a manner that will provide an efficient and desirable environment for the surrounding neighborhood. The proposed project was reviewed by the Planning Commission during a study session and was found to be aesthetically of good composition, materials, textures, and colors consistent with the existing facility and surrounding neighborhood.*

5. That the proposed use complies with all applicable requirements of the zoning district in which it is located and all other applicable requirements.

*The proposed use is permitted in the General Industrial zoning district and is in conformance with all other applicable requirements.*

6. That the overall development of the subject property is designed to ensure the protection of the public health, safety, and general welfare.

*The site design allows for safe circulation of vehicles and safe pathway for handicap access as well as pedestrian access.*

**PUBLIC COMMENT:**

A public hearing notice was published in the Los Banos Enterprise and notices were mailed out to property owners within a 300' radius of the project site on October 28, 2016. As of the date of this staff report, no written comments have been received.

**RECOMMENDATION:**

1. That the Planning Commission adopt Resolution No. 2016-52 approving Site Plan Review #2016-11 for the addition of a new 55,180 square foot warehouse building for Kagome, Inc., located at 333 Johnson Road, more specifically identified as Assessor's Parcel Number: 081-110-005.

**ATTACHMENTS:**

1. Resolution 2016-52
  - Exhibit A: CEQA Findings
  - Exhibit B: Findings for Approval
  - Exhibit C: Conditions of Approval
2. Site Plan
3. Elevations
4. Public Hearing Notice



## RESOLUTION #2016-52

### A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS BANOS APPROVING SITE PLAN #2016-11 FOR THE ADDITION OF A NEW 55,180 SQUARE FOOT WAREHOUSE BUILDING FOR KAGOME, INC. LOCATED AT 333 JOHNSON ROAD, MORE SPECIFICALLY IDENTIFIED AS ASSESSOR'S PARCEL NUMBER: 081-110-005

WHEREAS, the Los Banos General Plan was adopted in July 2009, and is the guiding document for land use in the City of Los Banos; and

WHEREAS, the subject property has a land use designation of Industrial pursuant to the Los Banos General Plan and is zoned General Industrial by the Los Banos Zoning Map; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) and the City of Los Banos Environmental Quality Guidelines, Site Plan Review #2016-11 for Kagome, Inc. was determined to be Categorically Exempt from the provisions of CEQA per Article 19, Section 15332 as the project meets all the criteria for an in-fill project and it can be seen with certainty that the proposed project would not have a significant effect on the environment; and

WHEREAS, a public hearing was duly noticed for November 9, 2016, in accordance with California Government Code Section 65091 by advertisement in the Los Banos Enterprise and by mail to property owners within 300 feet of the project boundaries on October 28, 2016 to consider and take testimony regarding Site Plan Review #2016-11; and

WHEREAS, at the November 9, 2016 Planning Commission Meeting the Los Banos Planning Commission heard and considered testimony, if any, of all persons desiring to be heard; reviewed the Project Site Plan and staff report; studied the compatibility of the applicant's request with adjacent land uses; has considered the applicant's request in accordance with the Site Plan criteria established in Section 9-3.2320 of the Los Banos Municipal Code; and

BASED UPON THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, the Planning Commission of the City of Los Banos does hereby make the findings set forth in Exhibit A (CEQA Findings), and Exhibit B (Findings of Approval), attached hereto and incorporated herein by this reference.

NOW, THEREFORE BE IT RESOLVED that the Planning Commission of the City of Los Banos does hereby approve Site Plan #2016-11 for the addition of a new 55,180 square foot warehouse building for Kagome, Inc., more specifically identified as Assessor's Parcel Number: 081-110-005, subject to the Conditions of Approval set forth

in Exhibit C attached hereto and incorporated herein by this reference.

The foregoing resolution was introduced at a regular meeting of the Planning Commission of the City of Los Banos held on the 9<sup>th</sup> day of November 2016, by Commissioner \_\_\_\_\_, who moved its adoption, which motion was duly seconded by Commissioner \_\_\_\_\_, and the Resolution is hereby adopted by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

\_\_\_\_\_  
Tom Spada, Planning Commission Chair

ATTEST:

\_\_\_\_\_  
Sandra Benetti, Planning Commission Secretary

## EXHIBIT A

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS FOR SITE PLAN REVIEW #2016-11 – KAGOME EXPANSION**

Pursuant to the requirements of California Public Resources Code Section 21000 et seq. ("CEQA") and Title 14, California Code of Regulations Section 15000 et seq. (the "CEQA Guidelines"), the City as Lead Agency under CEQA adopts the following findings required by CEQA, along with the facts and evidence upon which each finding is based.

The City of Los Banos Planning Commission hereby finds as follows:

1. Pursuant to CEQA, the CEQA Guidelines, and the City of Los Banos Environmental Quality Guidelines, Site Plan Review #2016-11 was evaluated and determined to be categorically exempt from the provisions of CEQA – Article 19, Section 15332 as the project meets all the criteria for an in-fill project and it can be seen with certainty that the proposed project would not have a significant effect on the environment.
2. Site Plan Review #2016-11 was adequately noticed on October 28, 2016 for consideration at a public meeting on November 9, 2016.
3. No further environmental documentation is required as the Site Plan Review was contemplated and adequately analyzed in the initial review.
4. Prior to considering the proposed Project, the Los Banos Planning Commission considered the Categorical Exemption.



## EXHIBIT B

### FINDINGS FOR APPROVAL OF SITE PLAN #2016-11 – KAGOME EXPANSION

The City of Los Banos Planning Commission hereby finds as follows:

1. That the proposed development is consistent with the general plan, any specific plans, and any design standards adopted by the City Council.
  - a. The General Plan land use designation for the project site is Industrial, which allows primary manufacturing, R&D, wholesale and warehouse distribution, agricultural sales and services, and similar activities including those with outdoor facilities. It also accommodates warehousing and distribution, with support commercial services and ancillary office space. No large-scale retail uses are allowed to minimize land-use conflicts and provide support for commercial areas.

The following specific General Plan Goals, Objectives, and Policies are applicable to the proposed project:

#### **ECONOMIC DEVELOPMENT POLICY ED-G-1:**

Help create jobs and improve job quality for existing and future Los Banos residents.

#### **ECONOMIC DEVELOPMENT POLICY ED-G-3:**

Make Los Banos an ideal place to do business by fostering a business friendly climate.

#### **ECONOMIC DEVELOPMENT POLICY ED-G-7:**

Seek and promote particular businesses or economic opportunities that provide needed local goods, services, employment, or those that enhance the City's physical and social well being.

#### **LAND USE POLICY LU-G-1:**

Promote a sustainable, balanced land use pattern that satisfies existing needs and safeguards future needs of the City.

*Evidence/Analysis: The project is consistent with the General Plan Industrial land use designation. The proposed additional warehouse would create employment opportunities for the community and the expansion of the existing business fosters economic development and business vitality.*

- b. The zoning designation for the project site is General Industrial (I). The purpose of the General Industrial District is to provide a district exclusively for industrial development wherein manufacturing and other industries can locate and operate away from the restricting influences on nonindustrial uses while maintaining an environment free from offensive or objectionable noise, dust, odor, or other nuisances.

*Evidence/Analysis: The proposed development is consistent with the Zoning Code as warehouse facilities are uses permitted in the district. The proposed use allows the exiting business to expand in an area designated specifically for industrial uses.*

2. That the design and location of the proposed development and its relationship to existing or proposed developments and traffic in the vicinity thereof is such that it will not impair the desirability of investment or occupation in the neighborhood; and that it will not unreasonably interfere with the use and enjoyment of existing or proposed developments in the vicinity thereof, and that it will not create traffic hazards or congestion.

*Evidence/Analysis: The Kagome facility and the surrounding area have been planned and designed for the purpose of Industrial uses. The proposed warehouse building is consistent with General Industrial uses on the existing premises and in the surrounding vicinity. The proposed design and operational characteristics of the proposed warehouse building as conditioned will not impair neighboring uses nor interfere with the other uses in the vicinity. Based on the foregoing, the proposed project will not impair the neighborhood, or interfere with the use and enjoyment of existing or proposed developments, and will not create a traffic hazard or congestion.*

3. That the design of the proposed development is in keeping with the character of the surrounding neighborhood and is not detrimental to the harmonious, orderly, and attractive development contemplated by this ordinance and the general plan of the City.

*Evidence/Analysis: The design of the proposed project is in keeping with the existing facility and character of the surrounding Industrial neighborhood. The applicant received a positive feedback from the Planning Commission Design Review Study Session on their proposed design.*

4. That the design of the proposed development would provide a desirable environment for its occupants, as well as for its neighbors, and that it is aesthetically of good composition, materials, textures, and colors.

*Evidence/Analysis: The proposed design is laid out in a manner that will provide an efficient and desirable environment for the surrounding neighborhood. The proposed project was reviewed by the Planning Commission during a study session and was found to be aesthetically of good composition, materials,*

*textures, and colors consistent with the existing facility and surrounding neighborhood.*

5. That the proposed use complies with all applicable requirements of the zoning district in which it is located and all other applicable requirements.

*Evidence/Analysis: The proposed use is permitted in the General Industrial zoning district and is in conformance with all other applicable requirements.*

6. That the overall development of the subject property is designed to ensure the protection of the public health, safety, and general welfare.

*Evidence/Analysis: The site design allows for safe circulation of vehicles and safe pathway for handicap access as well as pedestrian access.*



## EXHIBIT C

### CONDITIONS OF APPROVAL FOR SITE PLAN #2016 – KAGOME EXPANSION

#### Planning:

1. The followings Conditions of Approval shall apply to and be applicable to the applicant, property owner, and/or developer. Reference to applicant, property owner, and/or developer shall be interpreted to include all including the holder of a building permit or other permit issued by the city in connection with this project. These conditions shall run with the land and shall survive the issuance of an occupancy permit.
2. This Site Plan shall expire if an application for a building permit is not applied for within 24 months from date of approval. One six-month extension may be allowed by written request submitted to and approved by the Community and Economic Development Director.
3. Subject to and in addition to the conditions of approval set forth herein the development and construction of all improvements for the Project shall substantially conform to the conditionally approved Site Plan approved by the Planning Commission consisting of the site plan layout, exterior elevations, landscape plan, floor plan, and color renderings (herein after "site plan"). The applicant shall submit a revised Site Plan to the Community and Economic Development Department reflecting any modifications, additions, and conditions of approval approved by the Planning Commission within 30 days from Planning Commission approval. Said revised Site Plan shall be reviewed by the Community and Economic Development Department and stamped "conditionally approved" for purposes of providing a clear record of the approved Site Plan.
4. Full compliance with all conditions of approval shall be satisfied prior to issuance of any certificate of occupancy. Any proposed modifications to the approved Site Plan during construction and after issuance of occupancy permit shall require approval by the Community and Economic Development Director or Planning Commission as appropriate.
5. Any application for a building permit shall be reviewed by the Community and Economic Development Department for a determination as to whether such application conforms to the prior design and site development review approval by the Planning Commission.
6. The applicant agrees to indemnify, hold harmless, and defend the City of Los Banos, its officers, agents and employees from any and all liability or claims that may be brought against the City of Los Banos arising out of its approval of this site plan, or the environmental determination rendered in connection with the site plan approval, or arising out of the operation of the use or uses allowed under the site plan, save and except that caused solely by the City's active negligence.

7. Construction shall be limited to those hours specified in Section 9-3.2706 of the Los Banos Municipal Code: Monday through Friday from 7:00 am to 9:00 pm; Saturday and Sunday from 8:00 am to 5:00 pm.
8. The applicant shall comply with all requirements of other appropriate governmental agencies.
9. The applicant shall meet all requirements of the currently adopted edition of the California Building, Fire, and City of Los Banos Municipal Codes in effect at time of the building permit application.
10. The applicant shall comply with the Americans with Disabilities Act (ADA) requirements in the design, construction and maintenance of this project.
11. The applicant shall provide a copy of the conditions of approval to all contractors and subcontractors prior to commencement of construction.
12. During construction, and for safety purposes, the public right-of-way shall be kept clear of obstructions and shall be cleaned on a daily basis.
13. The applicant shall require and all contractors and subcontractors shall obtain a City of Los Banos Business License, prior to start of work on the project. All work performed on the project shall comply with the requirements of the California Business and Professions Code.
14. The applicant shall obtain any necessary encroachment permits from Caltrans or other jurisdictions prior to performing any work within that jurisdiction's right-of-way.
15. All structures, foundations, and footings for buildings on the project site shall be designed and constructed to conform to the current California Building Code, including amendments adopted by the City.
16. An engineering soils report shall be prepared in order to identify soil characteristics requiring special structural design. On-site and off-site structural design shall conform to the findings and recommendation of the engineering soils report. The report shall be prepared prior to issuance of a grading permit, subject to review and written approval by the City Engineer.
17. A minimum 200-foot separation shall be maintained between the public right-of-way and material stockpiles, debris piles, or containers and equipment storage during the construction process. If such storage must be located within 200 feet of the public right-of-way, a six-foot high opaque fence shall shield the storage area from view when the storage area is inactive for more than eight hours. This requirement shall be incorporated into the specifications for all construction plans, subject to review and written approval by the Community and Economic Development Department.

18. During construction activities, all food-related trash items shall be enclosed in sealed containers and regularly removed from the project site to avoid attracting wildlife to the project site. Pets shall not be allowed on the construction site. The proper location of the trash containers shall be subject to the review and written approval of the Community and Economic Development Department.
19. Prior to placement of combustible materials on the site, two points of all-weather access, at least one paved, shall be provided, to the satisfaction and written approval of the Fire Chief.
20. Temporary construction trailers shall be permitted only in areas immediately adjacent to or within that portion of the Site Plan where active construction is taking place. Placement of said construction trailer is subject to the written approval of the Community and Economic Development Director and shall be removed in accordance with Title 9, Chapter 3, Article 39 Temporary Use Ordinance of the Los Banos Municipal Code. The Project site shall be controlled of weeds and free of debris and litter. The applicant shall provide protection against wind and water soil erosion.
21. The development site shall be controlled of weeds and free of debris and litter. The applicant shall provide protection against wind and water soil erosion.
22. Due to the possibility that significant buried cultural resources might be found during construction, the following language shall be included in any permits issued for the project site, including, but not limited to building permits for future development, subject to the review and approval of the Los Banos Community Development Department:

“If archaeological resources or human remains are discovered during construction, work shall be halted from the find and the area shall be staked off. The project developer shall notify a qualified professional archaeologist. If the find is determined to be significant, appropriate mitigation measures shall be formulated and implemented.”
23. In the event of an accidental discovery or recognition of any human remains in any location other than a dedicated cemetery, the City shall ensure that this language is included in all permits in accordance with CEQA Guidelines section 15064.5(e):

“If human remains are found during construction there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until the Los Banos Police Department contacts the coroner of Merced County to determine that no investigation of the cause of death is required. If the coroner determines the remains to be Native American, the coroner shall contact the Native American Heritage Commission within 24 hours. The Native American Heritage Commission shall identify the person or persons it believes to be the most likely descendent from the deceased Native American. The most likely descendent may then make recommendations to the landowner or

the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and associated grave goods as provided in Public Resources Code Section 5097.98. The landowner or his authorized representative shall reburial the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further disturbance if: a) the Native American Heritage Commission is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 24 hours after being notified by the commission; b) the descendent identified fails to make a recommendation; or c) the landowner or his authorized representative rejects the recommendation of the descendent, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.”

24. The Project site shall be kept in a dust-free condition during construction of the project in. Prior to issuance of a building permit, dust control requirements shall be included in all construction contract specifications to reduce significant levels of construction-related hazardous air emissions.

- a. All disturbed areas, including storage piles, which are not being actively utilized for construction purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizer/suppressant, or vegetative ground cover.
- b. All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant.
- c. All land clearing, grubbing, scraping, excavation, land leveling, grading, and cut and fill activities shall be effectively controlled of fugitive dust emissions utilizing application of water or by presoaking.
- d. When materials are transported off-site, all material shall be covered, effectively wetted to limit visible dust emissions, or at least six inches of freeboard space from the top of the container shall be maintained.
- e. All operations shall limit or expeditiously remove the accumulation of mud or dirt from adjacent public streets at least once every 24 hours when operations are occurring. (The use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions. The use of blower devices is expressly forbidden.)
- f. Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, said piles shall be effectively stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/suppressant.

25. Prior to issuance of building permits, the developer/applicant shall include the following requirements in all construction bids and documents including contracts (and implemented during construction activities) for the purpose of reducing diesel particulate and acrolein emissions during construction of the project:
- a. All pre-1994 model year and older diesel equipment shall be retrofitted with EPA-certified diesel oxidation catalyst filters;
  - b. Contractor shall maintain records of all purchases of diesel oxidation catalyst filters or biodiesel fuel until construction is complete; and
  - c. The SJVAPCD shall have the right to inspect all construction and demolition equipment, as well as the contractor's records at any time during demolition and construction.
26. The Project site shall include a bicycle rack. Size and location shall be approved by the Community and Economic Development Director.
27. All development impact fees shall be paid in full prior to occupancy and as a condition of issuance of an occupancy permit. The developer shall provide a receipt from the Los Banos Unified School District for all applicable school impact fees.
28. The Applicant will take reasonable steps to preserve all survey monuments. The Applicant is responsible for the preservation of survey monuments within the work area under this permit at Applicant's sole expense. If any monuments are disturbed, the Applicant is responsible for re-establishing the monuments upon completion of the permitted work. Re-establishing of monuments shall be performed by a duly licensed land surveyor and a corner record shall be filed in accordance with State law at Applicant's sole expense.
29. All Community and Economic Development processing and application fees shall be paid in full prior to the issuance of a building permit.

**Utilities and Drainage:**

30. Subject to the review and approval of the Los Banos Public Works Department, project improvement plans shall include Best Management Practices (BMPs) to reduce the introduction of oils and other contaminants to the Los Banos storm water drainage system and main canal. Water quality safeguards shall be installed prior to occupancy of the parking lots. A water quality Best Management Practices plan shall be implemented upon occupancy.

31. A trash enclosure shall be built according to City specifications; colors, materials, and textures matching those of the main building, and provide for recycling services within. A concrete apron is required across the width of the trash enclosure opening that shall extend a minimum depth of ten feet in front of the opening. The location shall be specifically shown on the improvement plans and approved by the Community and Economic Development Director. The trash enclosure shall be large enough to accommodate the solid waste, recyclables, and wet waste for both restaurant tenants. The trash bins shall have lids and the enclosure must be properly screened. The enclosure needs to follow City Standards and Specifications as well as Republic Services Standards.

**Landscape and Lighting:**

32. All ground and rooftop mounted electrical, plumbing and mechanical equipment shall be screened from view of the public right-of-way by continuous parapet wall or landscaping or combination thereof.

**Signage:**

33. A Sign Review application, consistent with the provisions of the City's Sign Ordinance shall be submitted to the Community and Economic Development Department for review prior to the issuance of a building permit.
34. All advertising signage shall be subject to Sign Review and permit approval from both the Community and Economic Development and Building Departments, prior to installation, consistent with the development criteria of the Los Banos Municipal Code Sign Ordinance.

**Design/Aesthetics:**

35. The design of the improvements shall be conforming to the approved site plan. Any significant changes in color or architecture (i.e. paint, texture, material) shall require prior written approval by the Community and Economic Development Director or Planning Commission approval. The applicant shall maintain the color as presented in the site plan for the life of the project. Any changes to the site plan as to color or architecture shall require prior written approval by the Community and Economic Development Director or Planning Commission. This condition shall run with the land and be binding on successors in interest and shall be applicable beyond the issuance of an occupancy permit.
36. Downspouts shall be located within the building walls or architecturally integrated into the design and color of the structures, and there shall be no drainage across the public access ways or across the public right-of-way.
37. All rooftop mechanical equipment and appurtenances shall be screened from view from the public right-of-way and adjacent properties.

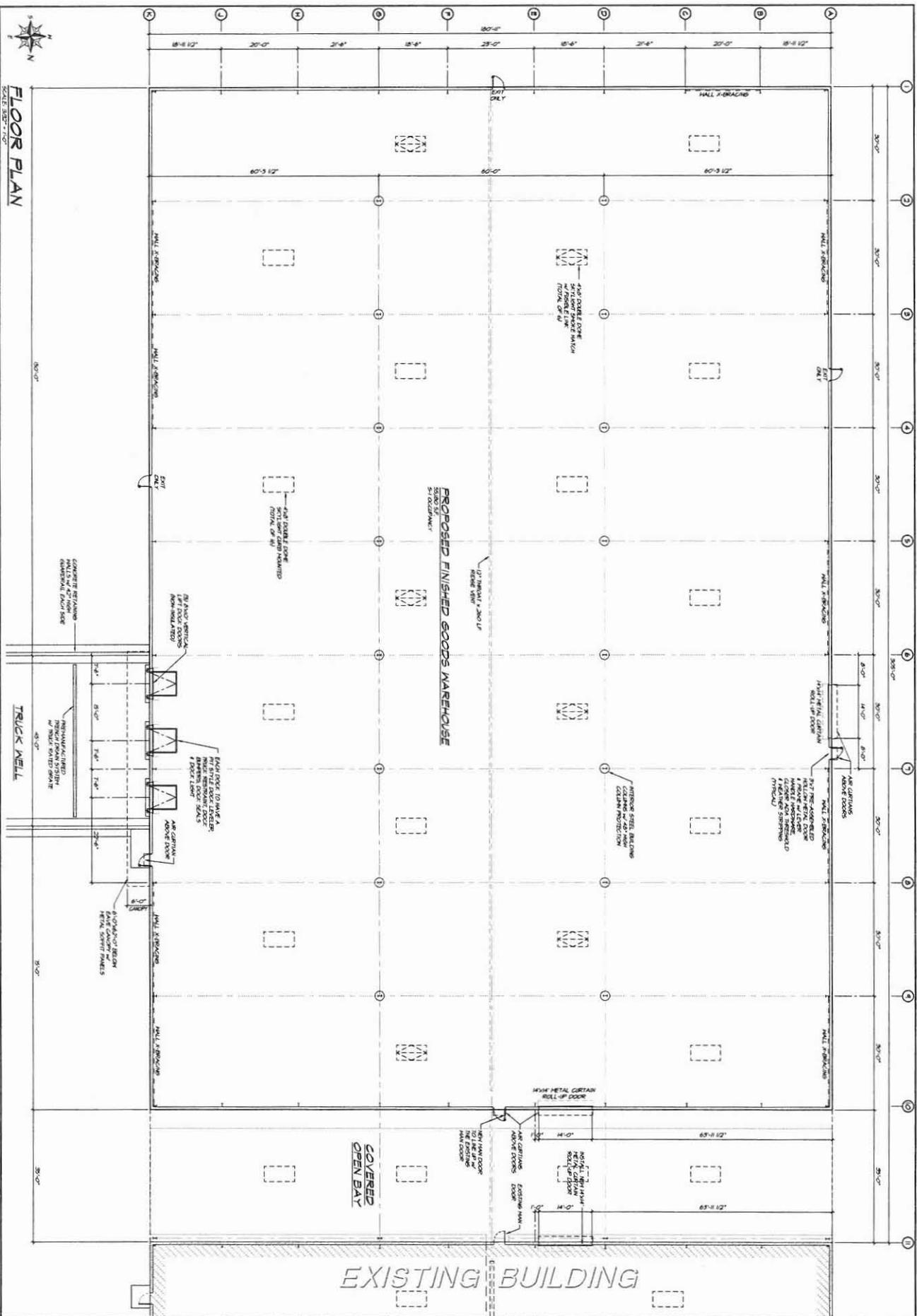
## **Fire Department**

38. There shall be a fire control room, which shall have an exterior access door only and be large enough to accommodate the fire riser and fire alarm annunciator panel.
39. There shall be a permanent sign on the exterior of the fire control room stating "Fire Control Room".
40. A fire sprinkler system shall be provided.
41. A fire alarm system shall be provided with a minimum of 1 pull station and 1 audio visual in each tenant unit.
42. There shall be HVAC smoke detector test and reset switches in the fire control room.
43. The existing fire system back flow unit shall be hydro tested.
44. All existing fire lane curbs on the project site shall be repainted.
45. There shall be a main electrical disconnect located on the exterior of the building for Fire Department use only.
46. Commercial grade Knox Boxes shall be required on the exterior of the building for each tenant in the area of the front entrances. Applications can be obtained through the Fire Department. The Knox Boxes shall have FDC locking caps.
47. A fire alarm control panel shall be located within the fire control room. A minimum of one (1) pull station and one (1) audio visual station shall be provided within 5' of the front entrance. The fire alarm system shall be plan checked and approved by the Los Banos Fire Department. These plans shall be through deferred submittal to the Fire Department.
48. There shall be a second tap to the waterline on Johnson Road.
49. The development shall be required to follow National Fire Protection Association (NFPA) Section Numbers 58-6.5 and 58-6.6.

## **Public Works**

50. The developer/applicant shall prepare improvement plans (separate from the building plans) submitted to the Public Works Department for the entire site and plans shall be approved by the City Engineer prior to the start of any site work. Included in those improvement plans shall be, but not limited to, topography, site, grading and drainage, utilities, circulation striping and signage, landscape, on and offsite lighting (street frontage), and offsite improvements. These improvements shall be installed per City of Los Banos Standards.

51. The existing water lines shall be shown on the improvement plans and the proposed building shall not be allowed to be built over the existing water line.
52. The new building shall have a new water line.
53. A Storm Water Pollution Prevention Plan (SWPPP) shall be generated if the property is greater than 1-acre. In any case Construction and Post-Construction Best Management Practices (BMP's) shall be implemented to the City's MS-4 Phase II designation.
54. The developer/applicant shall prepare a grading and drainage plan prior to the issuance of a building permit. The grading and drainage plan shall be prepared per City standards and shall be approved by the City Engineer prior to the commencement of grading and work of any kind.
55. Storm drain, water main, and sanitary sewer main line improvements shall be installed by the developer/applicant per the City of Los Banos Utility Master Plans.
56. All new utility services are to be under-grounded and all overhead utilities existing within the property shall be placed underground.
57. All development fees, including but not limited to all inspection fees, processing fees, landscape and light plan fees, and improvement plan fees shall be paid prior to issuance of the building permit.
58. Prior to occupancy, the Developer shall form or annex the Subject Property to a Lighting and Landscaping District created for purposes of maintaining public landscape areas, signage and public lighting including a share of traffic signal maintenance costs as authorized pursuant to the Landscape and Lighting Act of 1972, Part 2 of Division 15 of the California Streets and Highways Code, and Article XIII D of the California Constitution. The form, terms and conditions and the tax rate for the formation of the Lighting and Landscaping District, or in the alternative the annexation of the Subject Property to an existing district, shall be as approved by the City Council, as determined in its sole and exclusive discretion. It is the intent of the parties that the assessment of the Subject Property will be apportioned to each parcel in proportion to the special benefit it receives. District formation or annexation shall be at the sole cost of the Developer.
59. The following note shall be on all improvement plans: The Contractor shall be responsible for protecting and preserving survey monuments and other survey markers. Any survey monuments damaged as a direct result of construction activities shall be re-established by a duly licensed land surveyor at the Contractor's sole expense. A corner record shall be filed in accordance with State law for any reset monuments at the Contractor's sole expense.



**FLOOR PLAN**  
SCALE: 3/8" = 1'-0"

DATE	12/10/2010
BY	JAK
CHKD	JAK
NO.	A1

PROPOSED BUILDING ADDITION FOR:  
**KAGOME, INC.**  
535 SOUTH JOHNSON ROAD  
LOS BANOS, CALIFORNIA

**COVERED OPEN BAY**

**MODERN STEEL STRUCTURES**  
"The Valley's Finest Builders of Pre-Engineered Metal Structures!"

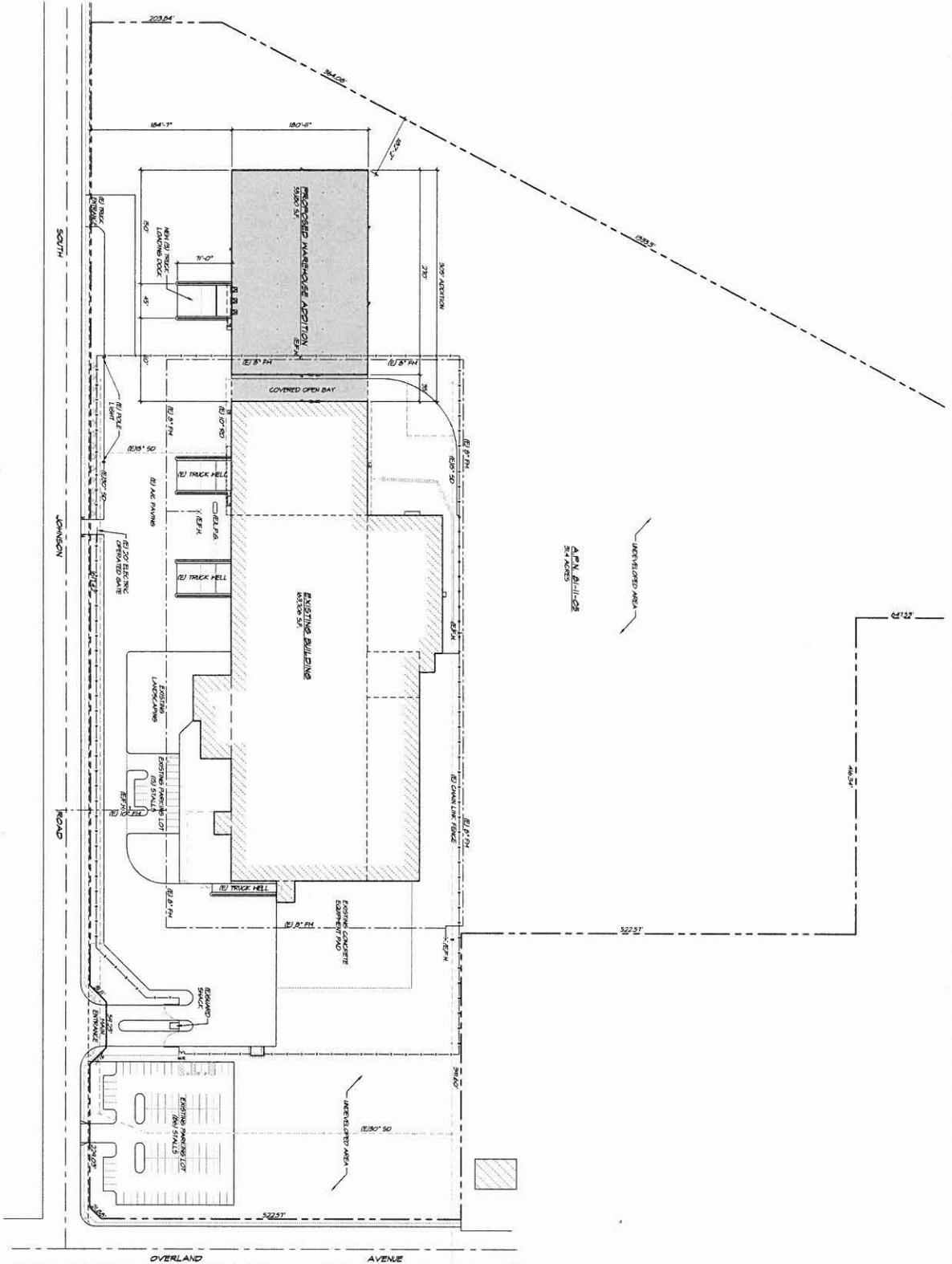
Mobile Address: P.O. Box 383, Corona, CA 92627  
 Office Address: 8840 Shields Blvd., Corona, CA 92627  
 Sales Address: info@modernsteel.com  
 Toll-Free Number: 1-800-393-6371

**GENERAL BUILDING CONTRACTOR**  
Contractors License #221047-01, CA, 081

REVISIONS	1BY
-----------	-----



  
**S I T E P L A N**  
 SCALE 1" = 40'-0"



DATE	10/24/14
BY	JLD
CHKD	JLD
APP'D	JLD
SCALE	1" = 40'-0"
<b>SP1</b>	
OF 3 SHEETS	

PROPOSED BUILDING ADDITION FOR:  
**KAGOME, INC.**  
 333 SOUTH JOHNSON ROAD  
 LOS BANOS, CALIFORNIA




**MODERN STEEL STRUCTURES**  
 "The Valley's Finest Builders of Pre-Engineered Metal Structures"

Mailing Address: P.O. Box 988, Corona, CA 92627  
 Office Address: 3840 North Dixie, Corona, CA 92627  
 E-Mail Address: [ms@modernsteel.com](mailto:ms@modernsteel.com)  
 TEL: (951) 261-1111 FAX: (951) 261-1111

**GENERAL BUILDING CONTRACTOR**  
Contractors License 8219142-01, CA, CBI

REVISIONS	BY





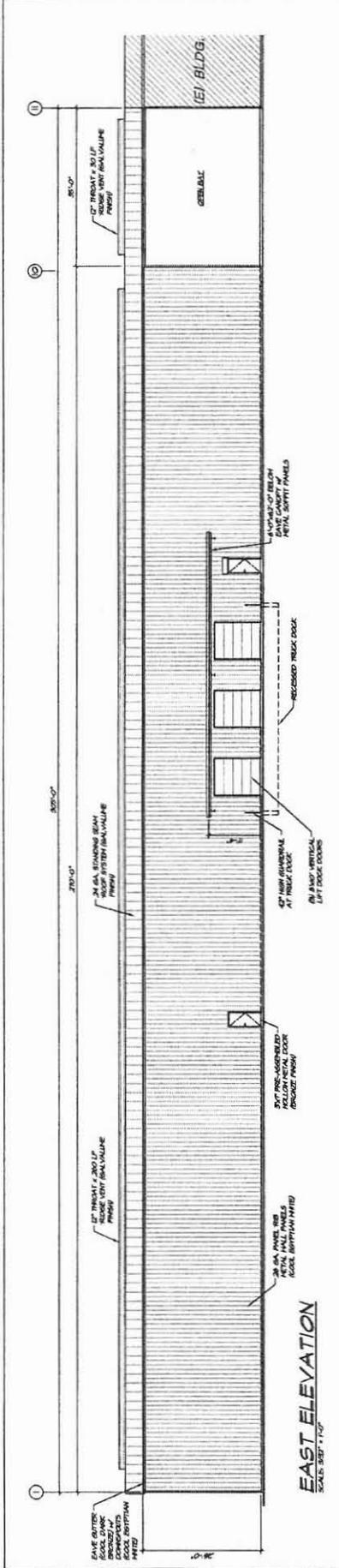
NO.	DATE	BY	REVISIONS

**MODERN STEEL STRUCTURES**  
 "The Valley's Finest Builders of Pre-Engineered Metal Structures"  
 A Division of  
 GENERAL BUILDING CONTRACTORS  
 1011 North Main Street  
 Modesto, California 95201  
 TEL: (209) 528-1100 FAX: (209) 528-1101

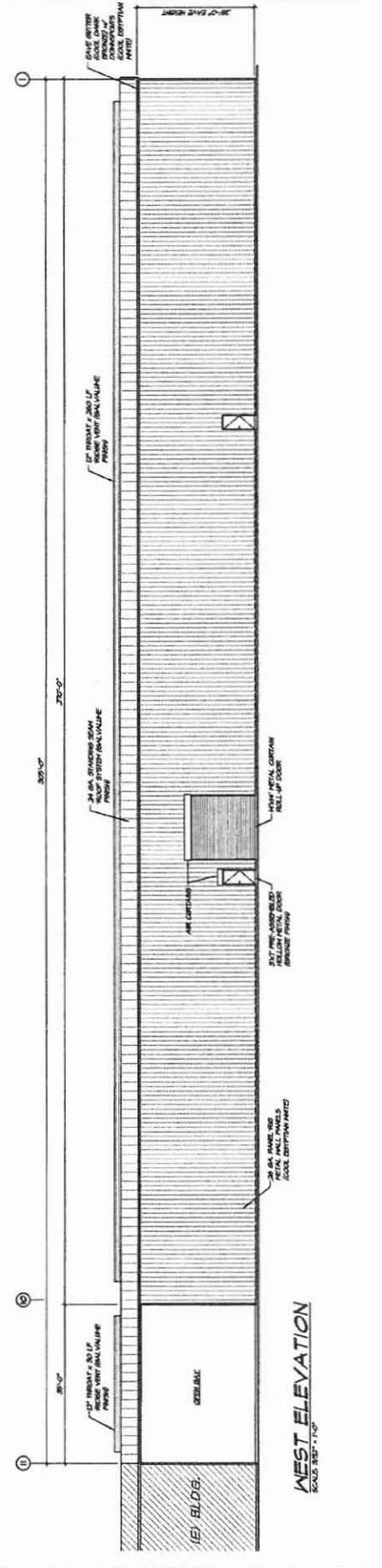


**KAGOME, INC.**  
 PROPOSED BUILDING ADDITION FOR  
 555 SOUTH JOHNSON ROAD  
 LOS BANOS, CALIFORNIA

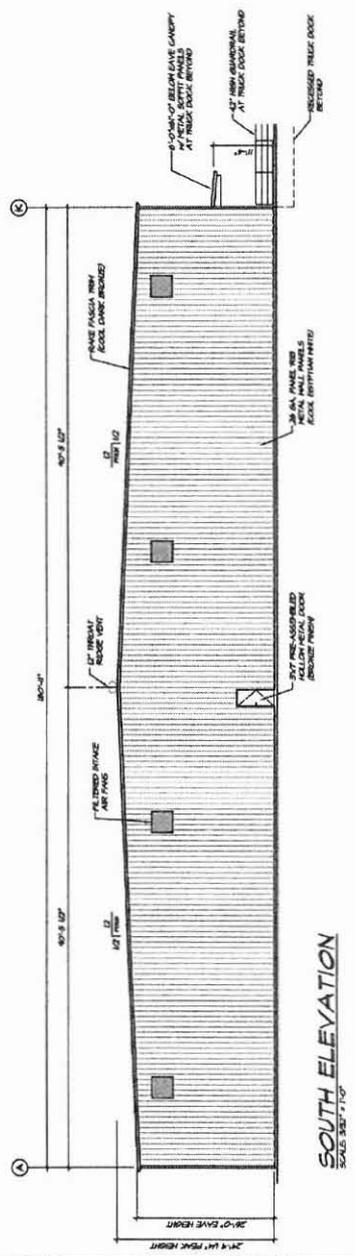
DATE	02/24/06
APP.	JFD
SCALE	AS SHOWN
SHEET	A2
OF	04



**EAST ELEVATION**  
 SCALE 3/8" = 1'-0"



**WEST ELEVATION**  
 SCALE 3/8" = 1'-0"



**SOUTH ELEVATION**  
 SCALE 3/8" = 1'-0"



City of  
**Los Banos**  
*At the Crossroads of California*

---

**COMMUNITY & ECONOMIC DEVELOPMENT DEPARTMENT**

Date: October 28, 2016

Regarding: Notice of Public Hearing

Proposal: Site Plan Review #2016-11 – Kagome, Inc.

NOTICE IS HEREBY GIVEN THAT a Public Hearing will be held by the Los Banos Planning Commission to consider Site Plan Review #2016-11 and CEQA Exemption for the addition of a new 55,180 square foot warehouse building for Kagome, Inc. The project site located within the General Industrial zoning district at 333 Johnson Road; more specifically identified as Assessor's Parcel Number: 081-110-005.

A PUBLIC HEARING on this matter will be held at the next scheduled meeting of the Planning Commission on Wednesday, November 9, 2016 at 7:00 p.m. in the Council Chambers of Los Banos City Hall located at 520 "J" Street. Questions regarding the above-referenced item may be directed to Stacy Souza Elms, Senior Planner at City Hall or at (209) 827-7000, Ext. 133.

All persons are invited to be present at the public hearing. Written and oral testimony is invited. Notice is hereby further given that if you challenge the above described Project in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this Notice, or in written correspondence delivered to the Planning Commission at, or prior to, the public hearing.

Additional information may be obtained from the Community & Economic Development Department at 520 J Street, Los Banos, California. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Office of the City Clerk at (209) 827-7000. Notification at least 72 hours prior to the public hearing will enable the City to make reasonable arrangements to allow participation at this hearing

THE CITY OF LOS BANOS

Stacy Souza Elms  
Senior Planner





City of  
**Los Banos**  
*At the Crossroads of California*

**PLANNING COMMISSION STAFF REPORT**

**TO: CHAIRMAN SPADA AND COMMISSIONERS**

**FROM: STACY SOUZA ELMS, SENIOR PLANNER** *se*  
**GARY BRIZZEE, POLICE CHIEF**  
**WILLIAM A. VAUGHN, CITY ATTORNEY**

**FOR: NOVEMBER 9, 2016**

**SUBJECT: AN ORDINANCE OF THE CITY OF LOS BANOS AMENDING ARTICLE 35, OF TITLE 9, CHAPTER 3 OF THE LOS BANOS MUNICIPAL CODE TO REGULATE THE PERSONAL, MEDICAL, AND COMMERCIAL USE OF MARIJUANA IN THE CITY OF LOS BANOS**

**RECOMMENDATION:**

For the Planning Commission to hold a public hearing and consider making a recommendation to the City Council regarding Approval of a Zoning Ordinance Amendment to Article 35, of Title 9, Chapter 3 of the Los Banos Municipal Code to Regulate the Personal, Medical, and Commercial Use of Marijuana.

**BACKGROUND:**

On March 1, 2006 the City adopted Ordinance 1046 banning medical marijuana dispensaries in any zoning district within the City of Los Banos. On January 20, 2016, in response to the Medical Marijuana Regulation and Safety Act (MMRSA) the City amended the Los Banos Municipal Code pertaining to Medical Marijuana establishing a complete ban on marijuana cultivation, processing, deliveries, and dispensaries in the City based upon various health, safety and welfare and land use concerns relating to marijuana cultivation, dispensing, and consumption.

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 (Non-medical/recreational marijuana).

If AUMA passes, some of its provisions will take effect on November 9, 2016. AUMA would with restrictions immediately legalize possession, transport, purchase, use, cultivation, and transfer of personal non-medical/recreational marijuana for individuals 21 years of age or older. Under AUMA, adults could possess up to 28.5 grams 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 for personal use. AUMA would also allow the cultivation of up to six marijuana plants within a private residence for personal use.

AUMA would also legalize the commercial cultivation of marijuana, commercial marijuana delivery services, commercial marijuana manufacturing, commercial marijuana storage, commercial marijuana testing, and commercial recreational marijuana retail sales and services.

However, AUMA allows for local control of marijuana uses. It would allow local governments to:

- Ban all marijuana-related commercial activities outright.
- Ban outdoor cultivation of marijuana for personal use, unless the California Attorney General determines marijuana is no longer illegal under Federal law (if marijuana is federally legalized, outdoor cultivation could be regulated, but not prohibited).
- Reasonably regulate indoor cultivation in private residences for personal use, but not ban it outright. AUMA would allow individuals to grow up to six marijuana plants in their home, and to possess all of the marijuana those plants provide.

## **DISCUSSION:**

If AUMA becomes law, recreational use of marijuana will be legalized, as will recreational possession and use of marijuana and some level of indoor and outdoor cultivation for personal use. Cultivation can create air quality, energy, and water quality damage 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. AUMA allows local governments to reasonably regulate indoor cultivation for personal use and reasonably regulate or ban altogether outdoor cultivation for personal use.

If AUMA becomes law, it would allow for the development of many new commercial marijuana-related businesses, including recreational dispensaries, recreational retail services, recreational delivery, and large scale cultivation operations. However, AUMA also gives local governments the authority to regulate these uses. While AUMA indicates a local government cannot prevent transportation of marijuana or marijuana products on public roads, AUMA authorizes cities to “reasonably regulate” or prohibit any commercial marijuana-related business entirely. 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.

### **RECOMMENDATION:**

Staff recommends the Planning Commission adopt Resolution 2016-\_\_ recommending the City Council adopt an ordinance to regulate or ban to the extent allowable (1) personal marijuana use and cultivation, (2) medical marijuana uses, and (3) commercial marijuana uses.

1) Regulation of Personal Marijuana Uses: As indicated above, passage of AUMA would legalize recreational use of marijuana. However, the ordinance staff recommends includes a provision banning personal recreational use of marijuana to the extent such use is illegal under State law. Additionally the Ordinance provides that all smoking, ingesting, and consumption of marijuana or marijuana products to the extent that it is allowed under State law shall be done in a manner so as to not cause a nuisance to nearby residents or persons with noxious odors which are disturbing to people of reasonable sensitivity residing or present on adjacent or nearby property or areas open to the public.

The City is also allowed to ban outdoor cultivation of marijuana entirely. It should be noted that, should the City ban outdoor cultivation and recreational retail uses, it may be ineligible for some state grant funding as a result. Alternatively, some cities are allowing outdoor cultivation with regulations such as:

- Outdoor, residential cultivation so long as plants are enclosed;
- Property owner must approve of cultivation on the property; and
- Limiting the number of plants.

If AUMA passes, the City cannot ban indoor cultivation of marijuana in private residences outright, but it may “reasonably regulate” such cultivation. The Ordinance staff recommends bans all outdoor cultivation entirely to the extent allowed by California law, and bans indoor cultivation in all structures that are not private residences entirely. It allows indoor cultivation in private residences or accessory structures to private residences and imposes reasonable regulations on that form of cultivation for personal use.

2) Regulation of Medical Marijuana Uses: The Medical Marijuana Regulation and Safety Act (“MMRSA”) is left largely intact by AUMA, and so the potential for medical marijuana uses, including qualified patient or primary caregiver cultivation, still exists. The recommended ordinance would impose the same regulations on medical marijuana cultivation as on recreational cultivation and would ban all collectives, cooperatives, dispensaries, operators, establishments, delivery services, processors, and providers. Alternatively, the City could:

- Adopt looser regulations for those who have a verified medical need to cultivate marijuana indoors or outdoors.
- Allow dispensaries but limit the number allowed in the jurisdiction.

- Allow dispensaries but impose separation requirements from parks, schools, churches, and other dispensaries..
- Limit dispensaries to a specified zoning designation
- Allow delivery services.
- Impose security requirements including limiting the hours of operation of any dispensaries and prohibiting loitering.

3) Regulation of Commercial Marijuana Uses: If AUMA becomes law, it will likely lead to the creation of a variety of new commercial marijuana ventures, including recreational retail services. The Ordinance staff recommends a ban on all commercial marijuana activity, including commercial cultivation, commercial manufacturing, commercial testing, delivery services, and any commercial dispensaries or recreational retailers. Alternatively, the City could allow some or all of these uses, with whatever regulations the City sees fit. Some other options include:

- Allowing commercial cultivation with a local tax imposed on growth.
- Allowing some retailers with zoning limitations on location or number.
- Allowing commercial delivery to originate or terminate in the City.

#### **FINDINGS FOR ZONING CODE AMENDMENT:**

Prior to taking an action to recommend approval of a Zoning Code amendment, the Planning Commission must make the following findings:

1. The proposed Zoning/Development Code amendment conforms with the goals, objectives and policies of the General Plan; and
2. The proposed Zoning Code amendment is necessary to implement the General Plan and to provide for public safety, convenience and/or general welfare; and
3. The proposed Zoning Code amendment conforms with the intent of the Zoning/Development Code and is consistent with all other related provisions thereof; and
4. The proposed Zoning Code amendment is reasonable and beneficial at this time.

The Zoning Code amendment conforms to the goals, objectives and policies of the General Plan, which provides for orderly, functional patterns of land uses, sensitive to the natural environment and meeting the long-term social and economic needs of the community. The city of Los Banos 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 Zoning Code amendment is necessary to implement the General Plan and to provide for public safety, convenience and/or general welfare. This amendment is proposed and enacted to protect and preserve the public health, safety, welfare and convenience, and to enhance the quality of life of the citizens of the City. California cities that have permitted cultivation and marijuana dispensaries have experienced negative affects to the public health, safety and welfare of its citizens. Cities that have permitted marijuana dispensaries have 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 proposed Zoning Code amendment conforms with the intent of the Zoning Code, specifically that zones are created and land uses established to protect the physical, social and economic stability of residential, commercial, recreational and other land uses within the City to assure orderly and beneficial development; to protect existing resident and property owners from the adverse effects of incompatible uses; to reduce hazards to the public resulting from inappropriate land uses; and to establish the City of Los Banos as a safe community with a high quality of life for residents. The proposed Zoning Code amendment is consistent with provisions contained in the Zoning Code, specifically the land use regulation is being enacted to protect residential properties and dwellings from incompatible uses, light, glare, odors, visual blight and other objectionable conditions; and to protect adjacent properties from incompatible uses, light, glare, odors, visual blight, and other objectionable conditions resulting from uses having a higher intensity.

The Zoning Code amendment is reasonable and beneficial at this time. The City desires to regulate marijuana land uses within the city limits. Although the City has adopted regulations, it is recommended that the language in the Zoning Code be updated to clearly meet the City's desire to retain local control over these land uses in the event AUMA passes.

**FISCAL IMPACT:**

Unknown.

**OPTIONS:**

After consideration of the staff report, and public testimony, the Planning Commission may consider the following options:

a. Recommend approval of the Zoning Code amendment to the City Council by approving Resolution 2016-\_\_ that:

(1) Recommends that the City Council adopt an Ordinance amending Article 35, of Title 9, Chapter 3 of the Los Banos Municipal Code to Regulate the Personal, Medical, and Commercial Use of Marijuana; and

(2) Determines that the proposed text amendments to the Municipal Code are exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the CEQA Guidelines in that there is no possibility that the text amendments would have a potential significant effect on the environment and directs the appropriate City official to file a Notice of Exemption with the County of Merced.

b. Recommend additional/alternative amendments to the Ordinance.

- c. Refer the item back to staff for additional analysis.
- d. Recommend the City Council take no action on the proposed Ordinance.

**CONCLUSION:**

Staff recommends that the Planning Commission recommend to the City Council Approval of a Zoning Ordinance Amendment to Article 35, of Title 9, Chapter 3 of the Los Banos Municipal Code to Regulate the Personal, Medical, and Commercial Use of Marijuana.

## RESOLUTION NO. 2016-\_\_

A RESOLUTION OF THE LOS BANOS PLANNING COMMISSION RECOMMENDING TO THE CITY COUNCIL AN ORDINANCE AMENDING ARTICLE 35, OF TITLE 9, CHAPTER 3 OF THE LOS BANOS MUNICIPAL CODE TO REGULATE THE PERSONAL, MEDICAL, AND COMMERCIAL USE OF MARIJUANA IN THE CITY OF LOS BANOS

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, on March 1, 2006 the City adopted Ordinance 1046 banning medical marijuana dispensaries in any zoning district within the City of Los Banos; and

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the " Medical Marijuana Regulation and Safety Act" ("MMRSA"), which is comprised of the state legislative bills known as AB 243, AB 266, and SB 643, into law;

WHEREAS, the Act became effective January 1, 2016 and contains provisions that govern the cultivating, processing, transporting, testing, and distributing of medical cannabis to qualified patients. The Act also contains statutory provisions that:

1. Allow local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code Section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4));
2. Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana ( Business & Professions Code § 19315(a));
3. Expressly provide that the Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws ( Business & Professions Code § 19316(c)); and
4. Require a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code section 19300.5(m) of the Act, from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity ( Business & Professions Code § 19340(a));

WHEREAS, on January 20, 2016, in response to the MMRSA the City amended Article 35, of Title 9, Chapter 3, of the Los Banos Municipal Code pertaining to Medical Marijuana (Marijuana Ordinance). The Marijuana Ordinance places a complete ban on marijuana

cultivation, processing, deliveries, and dispensaries in the City based upon various health, safety and welfare and land use findings relating to marijuana cultivation, dispensing, and consumption, which findings are incorporated herein by reference; and

WHEREAS, the City of Los Banos has identified a number of health, safety, and welfare concerns associated with marijuana activities. These concerns are set forth in the original reports accompanying the Marijuana Ordinance and its amendment, and are incorporated herein by reference. These concerns continue and have been exemplified throughout Merced County and the State as evidenced by numerous area agency police reports and news articles and stories. Some of the continued documented problems include offensive odors, trespassing, theft, violent encounters, fire hazards and problems associated with mold, fungus, and pests; and

WHEREAS, the City desires to continue to prohibit or regulate all marijuana activities within the City to the extent allowed by California law. This Ordinance 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, on November 8, 2016 AUMA passed by a majority of the electorate votes and is now law with many of its provisions taking effect on November 9, 2016; and

WHEREAS, the AUMA regulates, 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 the AUMA adds Section 11362.1 to the Health and Safety Code, which makes 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, the AUMA makes it lawful for persons 21 years of age or older 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, the AUMA makes it lawful for persons 21 years of age or older to smoke or ingest marijuana or marijuana products; and

WHEREAS, to regulate commercial use of marijuana, the AUMA adds 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, the 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, the 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, the AUMA authorizes cities to “reasonably regulate” without completely prohibiting personal 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, the AUMA authorizes cities to completely prohibit outdoor personal 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, the AUMA authorizes cities to completely prohibit the establishment or operation of one or more marijuana business licensed under Division 10 within its local jurisdiction; and

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

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the health and safety of the occupants; including structural damage to the building due to increased moisture and excessive mold growth which can occur and can pose a risk of fire and electrocution; additionally, the use of pesticides and fertilizers can lead to chemical contamination within the structure; 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) pursuant to 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 projects, which 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 Chapter 3, Title 9 by Article 35 to clarify the substantive objectives of the Municipal Code regarding the City’s regulation of marijuana within

its City limits and to address changes to California law through the passage of Proposition 64 – AUMA on November 8, 2016.

NOW, THEREFORE, the Planning Commission of the City of Los Banos hereby resolves as follows:

Section 1: 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: The Planning Commission finds that 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

Section 3: 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, 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 4: 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 OF LOS BANOS AMENDING ARTICLE 35, OF TITLE 9, CHAPTER 3 OF THE LOS BANOS MUNICIPAL CODE TO REGULATE THE PERSONAL, MEDICAL, AND COMMERCIAL USE OF MARIJUANA IN THE CITY OF LOS BANOS” which is attached as Exhibit A to the resolution and which is incorporated here by reference.

Section 5: 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 6: The Secretary of the Planning Commission shall certify to the adoption of this Resolution.

The foregoing Resolution was introduced at a regular meeting of the Planning Commission of the City of Los Banos held on the 9th day of November 2016, by Planning Commissioner \_\_\_\_\_ who moved its adoption, which motion was duly seconded by Planning Commissioner \_\_\_\_\_ and the Resolution adopted by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

\_\_\_\_\_  
Tom Spada, Planning Commission Chairman

ATTEST:

\_\_\_\_\_  
Sandra Benetti, Planning Commission Secretary



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF LOS BANOS AMENDING ARTICLE 35, OF TITLE 9, CHAPTER 3 OF THE LOS BANOS MUNICIPAL CODE TO REGULATE THE PERSONAL, MEDICAL, AND COMMERCIAL USE OF MARIJUANA IN THE CITY OF LOS BANOS**

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, on March 1, 2006 the City adopted Ordinance 1046 banning medical marijuana dispensaries in any zoning district within the City of Los Banos; and

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the " Medical Marijuana Regulation and Safety Act" ("MMRSA"), which is comprised of the state legislative bills known as AB 243, AB 266, and SB 643, into law;

WHEREAS, the Act became effective January 1, 2016 and contains provisions that govern the cultivating, processing, transporting, testing, and distributing of medical cannabis to qualified patients. The Act also contains statutory provisions that:

1. Allow local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code Section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4));
2. Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana ( Business & Professions Code § 19315(a));
3. Expressly provide that the Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws ( Business & Professions Code § 19316(c)); and
4. Require a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code section 19300.5(m) of the Act, from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity ( Business & Professions Code § 19340(a));

WHEREAS, on January 20, 2016, in response to the MMRSA the City amended Article 35, of Title 9, Chapter 3, of the Los Banos Municipal Code pertaining to Medical Marijuana (Marijuana Ordinance). The Marijuana Ordinance places a complete ban on marijuana cultivation, processing, deliveries, and dispensaries in the City based upon various health, safety

and welfare and land use findings relating to marijuana cultivation, dispensing, and consumption, which findings are incorporated herein by reference; and

WHEREAS, the City of Los Banos has identified a number of health, safety, and welfare concerns associated with marijuana activities. These concerns are set forth in the original reports accompanying the Marijuana Ordinance, and are incorporated herein by reference. These concerns continue and have been exemplified throughout Merced County and the State as evidenced by numerous area agency police reports and news articles and stories. Some of the continued documented problems include offensive odors, trespassing, theft, violent encounters, fire hazards and problems associated with mold, fungus, and pests; and

WHEREAS, the City desires to continue to prohibit or regulate all marijuana activities within the City to the extent allowed by California law. This Ordinance 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, on November 8, 2016 AUMA passed by a majority of the electorate votes and is now law with many of its provisions taking effect on November 9, 2016; and

WHEREAS, the AUMA regulates, 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 the AUMA adds Section 11362.1 to the Health and Safety Code, which makes 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 not in the form of concentrated cannabis or not more than eight grams of marijuana in the form of concentrated cannabis including as contained in marijuana products; and

WHEREAS, the AUMA makes it lawful for persons 21 years of age or older 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, the AUMA makes it lawful for persons 21 years of age or older to smoke or ingest marijuana or marijuana products; and

WHEREAS, to regulate commercial use of marijuana, the AUMA adds 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, the 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, the 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, the AUMA authorizes cities to “reasonably regulate” without completely prohibiting personal 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, the AUMA authorizes cities to completely prohibit outdoor personal 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, the AUMA authorizes cities to completely prohibit the establishment or operation of one or more marijuana business licensed under Division 10 within its local jurisdiction; and

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

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the health and safety of the occupants; including structural damage to the building due to increased moisture and excessive mold growth which can occur and can pose a risk of fire and electrocution; additionally, the use of pesticides and fertilizers can lead to chemical contamination within the structure; 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) pursuant to 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 projects, which 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, the Planning Commission held a public hearing on November 9, 2016 and recommended approval of the Zoning Ordinance amendment with findings of General Plan consistency, and

WHEREAS, while the City Council believes that all marijuana activities are prohibited by the City's existing regulations, it desires to adopt this Ordinance to make it absolutely clear that all marijuana activity, including, but not limited to, dispensing, distribution, cultivation, delivery and manufacturing are prohibited in all zoning districts in the City; and

WHEREAS, this Ordinance would amend Chapter 3, Title 9 by Article 35 to clarify the substantive objectives of the Municipal Code regarding the City's regulation of marijuana within its City limits and to address changes to California law through the passage of Proposition 64 – AUMA on November 8, 2016.

**THE CITY COUNCIL OF THE CITY OF LOS BANOS DOES ORDAIN AS FOLLOWS:**

**Section 1.** The City Council of the City of Los Banos hereby finds that the above recitals are true and correct and are incorporated into the substantive portion of this Ordinance.

**Section 2.** The City Council hereby repeals Article 35 of the Los Banos Municipal Code in its entirety and reenacts Article 35 "Marijuana Regulation" to read as follows:

**Article 35**

**MARIJUANA REGULATION**

**Part One  
General**

**9-3.3501. Legislative Findings and Statement of Purpose.**

A. The City Council finds that the regulation of medical and non-medical marijuana activities, specifically prohibitions on all commercial marijuana activity, marijuana dispensaries, marijuana processing, marijuana delivery, outdoor marijuana cultivation, and the regulation of indoor cultivation for personal use are necessary for the preservation and protection of the public health, safety, and welfare for the City and its residents. The City Council's prohibition and regulation of such activities is within the authority conferred upon the City Council by state law.

B. The City Council finds that this Article exercises its police power to enact and enforce regulations for the public benefit, safety, and welfare of the City and its residents by; (1) prohibiting all commercial non-medical marijuana land uses in all zoning districts within the City; (2) prohibiting medical marijuana dispensary and related land uses in all zoning districts within the City; (3) prohibiting the outdoor cultivation of marijuana for personal use in all zoning districts within the City; and (4) reasonably regulating the indoor cultivation of marijuana for personal use in all zoning districts within the City.

**9-3.3502. Definitions.**

For purposes of this Article, the following definitions shall apply:

“Commercial marijuana activity” includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, dispensing, distribution, delivery or sale of marijuana and marijuana products as provided for in Division 10 of the Business and Professions Code.

“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 Division 10 of the Business and Professions Code 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 licensed pursuant to Division 10 of the Business and Professions Code.

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

"Marijuana" means any or all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin or separated resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including marijuana infused in foodstuff or any other ingestible or consumable product containing marijuana. The term "marijuana" shall also include medical marijuana" as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California or subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362. 83 (Medical Marijuana Program Act).

“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 Dispensary" or "Marijuana Dispensaries" means any business, office, store, facility, location, retail storefront or wholesale component of any establishment, cooperative or collective that delivers (as defined in Business & Professions Code section 19300.5(m) or any successor statute thereto) whether mobile or otherwise, dispenses, distributes, exchanges, transmits, transports, sells or provides marijuana to any person for any reason, including members of any medical marijuana cooperative or collective consistent with the August 2008

Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California, or for the purposes set forth in California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

"Marijuana Processing" means any method used to prepare marijuana or its byproducts for commercial retail and/ or wholesale, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create marijuana related products and concentrates.

"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.

"Medical marijuana collective" or " cooperative or collective" means any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes that is organized in the manner set forth in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California or subject to the provisions of California Health and Safety Code Section 11362.5 Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

"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.

### **9-3.3503. Prohibited Use and Activities.**

(a) All Commercial Marijuana Uses and Activities Prohibited. The establishment or operation of any business of commercial marijuana activity is expressly prohibited in all zoning districts of the City. No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the establishment or operation of any such business or operation in any zoning district of the City, and no person or entity shall otherwise establish such businesses or operations in any zoning district of the City. Such businesses or operations may include, but are not limited to:

1. The transportation, delivery, storage, distribution, dispensing or sale of marijuana, marijuana products, or marijuana accessories;
2. The cultivation of marijuana;

3. The manufacturing, processing, 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 and Professions Code, as it may be amended from time to time.

(b) Medical Marijuana Dispensaries Prohibited. The establishment or operation of any medical marijuana collective, cooperative, dispensary, delivery service, operator, establishment, processing operation, or provider is expressly prohibited in all zoning districts of the City. No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the establishment of any collective, cooperative, dispensary, delivery service, operator, establishment, processing operation, or provider in any zoning district of the City, and no person or entity including primary caregivers and qualified patients, collectives, cooperatives or dispensaries shall otherwise establish or conduct such activities in any zoning district of the City.

1. Cultivation of medical marijuana pursuant to Section 11362.77 of the California Health & Safety Code is subject to the cultivation requirements set forth in section 9-3.3504 of this Article.

(c) Outdoor Cultivation of Marijuana Prohibited. Outdoor cultivation of marijuana is expressly prohibited in all zoning districts of the City. No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the outdoor cultivation of marijuana in the City, and no person or entity including primary caregivers and qualified patients, collectives, cooperatives or dispensaries, shall otherwise conduct such activity in the City.

(d) Indoor Cultivation of Marijuana for Non Personal Use Prohibited. Indoor cultivation of marijuana for non-personal uses is expressly prohibited in all zoning districts of the City. No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the indoor cultivation of marijuana for non-personal uses in the City, and no person or entity including primary caregivers and qualified patients, collectives, cooperatives or dispensaries, shall otherwise conduct such activity in the City.

1. Cultivation of medical marijuana pursuant to Section 11362.77 of the California Health & Safety Code is subject to the cultivation requirements set forth in section 9-3.3504 of this Article.

#### **9-3.3504. Regulation of Indoor Cultivation of Marijuana for Personal Use.**

(a) When authorized by state law, an authorized grower (a person 21 years of age or older) shall be allowed to cultivate marijuana only in a private residence in a residential zone, only indoors, and only for personal use, subject to the restrictions set forth in Section 11362.2 of the Health and Safety Code and the local following regulations:

1. No authorized grower shall cultivate marijuana until and unless they first register with the City and provide written permission of the property owner or an authorized property management company to cultivate marijuana on the premises.
2. The marijuana cultivation area shall be located indoors within a residential structure and shall not exceed fifty square feet and not exceed ten feet in height, nor shall it come within twelve (12) inches of the ceiling or any cultivation lighting. Cultivation in a greenhouse on the property of the residence but not physically part of the home is permitted, as long as it is fully enclosed, secure, not visible from a public right-of-way, a public place, or adjacent residence and meeting all requirements in this Article.
3. Marijuana cultivation lighting shall not exceed one thousand two hundred watts in total for the total cultivation area within the residence.
4. The use of gas products such as but not limited to CO<sub>2</sub>, butane, methane, or any other flammable or non-flammable gas for marijuana cultivation or processing is prohibited.
5. There shall be no exterior visibility or evidence of marijuana cultivation outside the private residence from the public right-of-way, a public place, or adjacent residence including but not limited to any marijuana plants, equipment used in the growing and cultivation operation, and any light emanating from cultivation lighting.
6. The authorized grower shall reside full-time in the residence where the marijuana cultivation occurs.
7. The authorized grower shall not participate in marijuana cultivation in any other location within the City.
8. The residence shall include fully functional and usable kitchen, bathroom, and bedroom areas for their intended use by the resident authorized grower, and the premises shall not be used primarily or exclusively for marijuana cultivation.
9. The marijuana cultivation area shall be in compliance with the current adopted edition of the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or equivalent), as amended from time to time.
10. The building official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers.
11. The marijuana cultivation area shall not result in a nuisance or adversely affect the health, welfare, or safety of the resident or nearby residents by creating dust, glare, heat, noise, noxious gasses, odors, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.

12. No more than 6 marijuana plants, mature or immature, are permitted for indoor personal cultivation under this Article.

13. Marijuana in excess of 28.5 grams produced by plants kept for indoor personal cultivation under this Article must be kept in a locked space on the grounds of the private residence not visible from the public right-of-way.

(b) It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel within the City to create a public nuisance in the course of cultivating marijuana plants or any part thereof in any location, indoor or outdoor. A public nuisance may be deemed to exist, if such activity produces:

1. Odors which are disturbing to people of reasonable sensitivity residing or present on adjacent or nearby property or areas open to the public.
2. Repeated responses to the parcel by law enforcement personnel.
3. A repeated disruption to the free passage of persons or vehicles in the neighborhood, excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public.
4. Any other impacts on the neighborhood which are disruptive of normal activity in the area including, but not limited to, grow lighting visible outside the dwelling, excessive vehicular traffic or parking occurring at or near the dwelling, and excessive noise emanating from the dwelling.
5. Outdoor growing and cultivation of marijuana.

**9-3.3505. Personal Use and Consumption of Marijuana.**

(a) For purposes of this Article, 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 State law. No person shall smoke, ingest, or otherwise consume marijuana or marijuana products, whether recreational or medical, in the City of Los Banos to the extent it is unlawful under State law. No person shall smoke, ingest, or otherwise consume marijuana or marijuana products, whether recreational or medical, on any property owned, leased, used, rented or controlled by the City including but not limited to public streets and sidewalks, parks, City facilities, open space, bike and walking trails, plazas, recreation and sports facilities.

(b) All smoking, ingesting, and consumption of marijuana or marijuana products to the extent that it is allowed under State law shall be done in a manner so as to not cause a nuisance to nearby residents or persons with noxious odors which are disturbing to people of reasonable sensitivity residing or present on adjacent or nearby property or areas open to the public.

**9-3.3506. Public Nuisance.** Any violation of this Article is hereby declared to be a public nuisance and may be summarily abated by the City pursuant to Code of Civil Procedure 731 or any other remedy available to the City.

**9-3.3507. Administrative Penalties.** In addition to any other remedy or penalty set forth in this Article or this Code, administrative penalties may be imposed pursuant to applicable provisions of Chapter 11 Title 4 of this Code against any responsible party, in violation of any of the provisions of this Article. Imposition, enforcement, collection and administrative review of administrative penalties imposed shall be conducted pursuant to Chapter 11 Title 4 of this Code.

**9-3.3508. Remedies.** The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any other criminal, civil, or administrative remedy or penalty authorized by, or set forth in, the Los Banos Municipal Code. None of the penalties or remedies authorized by, or set forth in, the Los Banos Municipal Code shall prevent the City from using any other penalty or remedy under state statute which may be available to enforce this section or to abate a public nuisance. Violation of this Article shall constitute a crime punishable as a misdemeanor or infraction in the discretion of the City Attorney.

**Section 3.** To the extent that the terms and provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance, motion, resolution, rule or regulation governing the same subject, the terms of this Ordinance shall prevail with respect to the subject matter thereof and such inconsistent or conflicting provisions of prior ordinances, motions, resolutions, rules or regulations are hereby repealed.

**Section 4.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

**Section 5.** The proposed amendments to the Los Banos Municipal Code do not propose any changes to City policies or regulations that would result in a direct or indirect physical environmental impact; therefore it has been determined that this ordinance amendment is covered by the general rule that the California Environmental Quality Act applies only to projects which have the potential for causing a significant effect on the environment pursuant to CEQA guidelines section 15601(b)(3) and is not subject to environmental review.

**Section 6.** This Ordinance shall go into effect and be in full force and operation thirty (30) days after its final passage and adoption. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be

posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

Introduced by Council Member \_\_\_\_\_ and seconded by Council Member \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, 2016.

Passed on the \_\_\_\_ day of \_\_\_\_\_, 2016 by the following vote:

AYES:            Council Members

NOES:

ABSENT:

APPROVED:

\_\_\_\_\_  
Michael Villalta, Mayor

ATTEST:

\_\_\_\_\_  
Lucille L. Mallonee, City Clerk



September 12, 2016



## Frequently Asked Questions (FAQs)

### Adult Use of Marijuana Act<sup>1</sup>

#### Proposition 64

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

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

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

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

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

---

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

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

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

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

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

**Answer:** Yes. The AUMA prohibits state licensing authorities from issuing a license to a commercial nonmedical marijuana business if operation of the business violates a local ordinance of the jurisdiction in which the business will operate. This means that a city wishing to adopt business or land use regulations prohibiting or regulating commercial nonmedical marijuana businesses must adopt an ordinance prior to the date the state begins issuing licenses, which the League anticipates will be in late 2017.<sup>2</sup>

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

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

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

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

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

---

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

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

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

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

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

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





1400 K Street, Suite 400 • Sacramento, California 95814  
Phone: 916.658.8200 Fax: 916.658.8240  
www.cacities.org

## MEMORANDUM<sup>1</sup>

To: League of California Cities' City Managers Department  
League of California Cities' City Attorneys Department  
From: League Staff  
Date: September 26, 2016  
Re: The Control, Regulate and Tax Adult Use of Marijuana Act

---

On November 8, 2016, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA" or "Act") will come before California voters as Proposition 64. If passed, the AUMA will legalize the nonmedical use of marijuana by persons 21 years of age and over, and the personal cultivation of up to six marijuana plants. In addition, the AUMA will create a state regulatory and licensing system governing the commercial cultivation, testing, and distribution of nonmedical marijuana, and the manufacturing of nonmedical marijuana products. The regulatory system governing these commercial marijuana activities largely mirrors the Medical Marijuana Regulation and Safety Act ("MMRSA"), but there are key differences. This memorandum will provide an overview of the AUMA, highlight the ways in which the AUMA differs from the MMRSA, and identify the issues that cities will need to take action on if the AUMA passes.

### **I. Overview of the AUMA**

#### **A. Personal Nonmedical Marijuana Use**

The AUMA makes it legal for persons 21 years of age or older to: (1) smoke or ingest marijuana or marijuana products; (2) possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older, without any compensation, 28.5 grams of marijuana, or 8 grams of concentrated marijuana, including as contained in marijuana products; and (3) possess, plant, cultivate, harvest, dry or process up to six living marijuana plants for personal use.<sup>2</sup> The AUMA requires that marijuana in excess of 28.5 grams that is produced by plants kept pursuant to the personal cultivation provision of the Act be kept in a locked space on the grounds of a private residence that is not visible from a public place.<sup>3</sup>

Although persons 21 years of age or older may use and possess nonmedical marijuana under the Act, their ability to engage in these activities is not unfettered. The AUMA prohibits the smoking

---

<sup>1</sup> **DISCLAIMER:** These materials are not offered as or intended to be legal advice. Readers should seek the advice of an attorney when confronted with legal issues. Attorneys should perform an independent evaluation of the issues raised in these materials.

<sup>2</sup> Health & Saf. Code § 11362.2(a).

<sup>3</sup> Health & Saf. Code § 11362.2(a)(2).

of marijuana: (1) in any public place, except where a local jurisdiction has authorized use on the premises of a retailer or microbusiness in accordance with Business and Professions Code section 26200; (2) where smoking tobacco is prohibited; (3) within 1,000 feet of a school, day care center, or youth center while children are present; and (3) while driving, or riding in the passenger seat of, any vehicle used for transportation.<sup>4</sup> Moreover, individuals cannot possess marijuana on school grounds, in day care centers, or in youth centers while children are present, or possess an open container of marijuana or marijuana products while driving, operating, or riding in any vehicle used for transportation.<sup>5</sup> The AUMA further provides that cities may prohibit possession and smoking in buildings owned, leased, or occupied by the city, and that employers, including cities, may maintain a drug and alcohol free workplace by prohibiting the use, consumption, possession, transfer, transportation, sale, display or growth of marijuana in the workplace.<sup>6</sup>

### **1. Personal Cultivation**

The AUMA provides that local governments can reasonably regulate, but cannot ban, personal indoor cultivation of up to six living marijuana plants within the person's private residence.<sup>7</sup> The Act defines private residence as "a house, an apartment unit, a mobile home, or other similar dwelling unit."<sup>8</sup> This includes cultivation in a greenhouse on the same property as the residence that is not physically part of the home, as long as it is fully enclosed, secure, and not visible from a public space.<sup>9</sup>

The AUMA completely protects the ability of local governments to regulate, and to ban, personal outdoor cultivation operations.<sup>10</sup> However, it purports to repeal any ordinance that bans outdoor cultivation upon the California Attorney General's determination that nonmedical use of marijuana is lawful under federal law.<sup>11</sup>

### **B. Commercial Nonmedical Marijuana Activity**

Under the AUMA, California will have a comprehensive state regulatory system for nonmedical marijuana that governs the industry from "seed to sale." The Bureau of Marijuana Control, currently the Bureau of Medical Cannabis Regulation, which is within the Department of Consumer Affairs, will have primary responsibility for administering and enforcing the AUMA.<sup>12</sup>

The AUMA divides state licensing and enforcement responsibilities among three agencies: (1) the Department of Consumer Affairs, which will issue licenses for marijuana the transportation,

---

<sup>4</sup> Health & Saf. Code §§ 11362.3; 11362.4.

<sup>5</sup> Health & Saf. Code §§ 11362.3(3), 11362.3(4).

<sup>6</sup> Health & Saf. Code § 11362.45 (f)-(g).

<sup>7</sup> Health & Saf. Code §§ 11362.1(a)(3), 11362.2.

<sup>8</sup> Health & Saf. Code § 11362.2(5).

<sup>9</sup> Health & Saf. Code § 11362.2(a)(2).

<sup>10</sup> Health & Saf. Code § 11362.2(b)(3).

<sup>11</sup> Health & Saf. Code § 11362.2(b)(4).

<sup>12</sup> Bus. & Prof. Code § 26010.

storage, distribution, and sale of marijuana;<sup>13</sup> (2) the Department of Food and Agriculture will issue marijuana cultivation licenses, which will administer the provisions of the AUMA related to the cultivation of marijuana;<sup>14</sup> and (3) the Department of Public Health, which will issue licenses for marijuana manufacturers and testing laboratories.<sup>15</sup> Each of these state licensing authorities is responsible for creating regulations governing their respective areas of responsibility, and must begin issuing licenses by January 1, 2018.<sup>16</sup>

A state marijuana license will be valid for one year.<sup>17</sup> A separate state license is required for each commercial marijuana business location.<sup>18</sup> With the exception of testing facilities, any person or entity licensed under the AUMA may apply for and be issued more than one type of state license.<sup>19</sup>

## 1. Local Control

All nonmedical marijuana businesses must have a state license.<sup>20</sup> A state license cannot issue to an applicant whose operations would violate the provisions of any local ordinance or regulation.<sup>21</sup> However a state applicant need not provide documentation that the applicant has a local license or permit.

The AUMA does not limit the authority of a local jurisdiction to adopt and enforce local ordinances regulating or completely prohibiting state-licensed marijuana businesses.<sup>22</sup> Local jurisdictions may establish “standards, requirements, and regulations regarding health and safety, environmental protection, testing, security, food safety, and worker protections that exceed state standards.”<sup>23</sup>

## 2. Local Enforcement

Like the MMRSA, the AUMA establishes a dual enforcement scheme for commercial marijuana activities that violate either state or local laws. The state licensing authorities will enforce state statutes and regulations. State authorities can suspend or revoke state licenses,<sup>24</sup> pursue civil penalties against violating businesses in an amount equal to three times the applicable licensing fee per violation,<sup>25</sup> or may prosecute violators criminally.<sup>26</sup> Local authorities will be responsible

---

<sup>13</sup> Bus. & Prof. Code § 26012(a)(1).

<sup>14</sup> Bus. & Prof. Code § 26012(a)(2).

<sup>15</sup> Bus. & Prof. Code § 26012(3).

<sup>16</sup> Bus. & Prof. Code §§ 26012(c), 26013 (a).

<sup>17</sup> Bus. & Prof. Code § 26050(c).

<sup>18</sup> Bus. & Prof. Code § 26055(c).

<sup>19</sup> Bus. & Prof. Code § 26053.

<sup>20</sup> Bus. & Prof. Code § 26038.)

<sup>21</sup> Bus. & Prof. Code § 26055(e).

<sup>22</sup> Bus. & Prof. Code § 26200(a). But see, Bus. & Prof. Code §§ 19340(f), 26080(b), 26090(c) [prohibiting cities from preventing the use of public roads to lawfully transport or deliver nonmedical marijuana].

<sup>23</sup> Bus. & Prof. Code § 26201.

<sup>24</sup> Bus. & Prof. Code § 2603.

<sup>25</sup> Bus. & Prof. Code § 26038(a)

<sup>26</sup> Bus. & Prof. Code § 26038(c).

for enforcing local ordinances and regulations.<sup>27</sup> For state-licensed facilities operating within a city, a city may have authority to enforce state law and regulations “if delegated the power to do so by the [B]ureau [of Marijuana Control] or a licensing authority.”<sup>28</sup>

## **II. Key Differences Between the AUMA and MMRSA**

### **A. Licensing**

The MMRSA established dual licensing of medical marijuana businesses, requiring both local approval and a state license in order for a business to operate legally.<sup>29</sup> Specifically, the MMRSA requires applicants to provide the relevant state licensing entity with documentation proving their compliance with local ordinances and regulations.<sup>30</sup>

The AUMA does not require an applicant to provide evidence of local permission prior to being issued a state license.<sup>31</sup> Instead, the AUMA prohibits state licensing entities from approving licenses for activities that would violate local ordinances.<sup>32</sup> Thus, state licensing officials bear the onus of evaluating local regulatory compliance.

Under this system, the AUMA allows a nonmedical marijuana business licensed by the state to operate within city limits unless the city’s municipal code prohibits the use. Cities that wish to regulate or prohibit nonmedical marijuana businesses will need to do so before the State begins issuing licenses, either by enacting a nonmedical marijuana ordinance/regulation or by amending an existing medical marijuana ordinance/regulation to include nonmedical marijuana within its scope.

### **B. License Revocation**

Under the MMRSA, revocation of a local license or permit unilaterally terminates the ability of the medical marijuana business to operate in the jurisdiction issuing the permit, until such time as the local permitting entity reinstates it.<sup>33</sup>

Under the AUMA, if a local jurisdiction revokes a local license, permit, or authorization for a licensee to engage in commercial marijuana activity within the local jurisdiction, the Bureau of Marijuana Control must initiate proceedings to determine whether the state license issued should be suspended or revoked within ten days of being notified by the local jurisdiction of the local revocation.<sup>34</sup> Note, however, that, even if the state license is not suspended or revoked immediately, the business cannot operate within the local jurisdiction once local revocation occurs.

---

<sup>27</sup> Bus. & Prof. Code § 26200 (b).

<sup>28</sup> Bus. & Prof. Code § 23202(a).

<sup>29</sup> Bus. & Prof. Code § 19320(b).

<sup>30</sup> Bus. & Prof. Code § 19322(a).

<sup>31</sup> Bus. & Prof. Code § 26056.

<sup>32</sup> Bus. & Prof. Code § 26055(e).

<sup>33</sup> Bus. & Prof. Code § 19320(d).

<sup>34</sup> Bus. & Prof. Code § 26200(c).

### **C. Personal, Indoor Cultivation**

Under the MMRSA, local governments possess the power to regulate and completely ban personal, indoor cultivation.<sup>35</sup> Under the AUMA local governments can “reasonably regulate” indoor cultivation of up to six marijuana plants for personal use, but cannot ban it.<sup>36</sup>

### **D. Personal Outdoor Cultivation**

Under the MMRSA local governments can prohibit all outdoor cultivation. Under the AUMA local governments can prohibit all outdoor cultivation, until such time as the Attorney General determines that the use of nonmedical marijuana is lawful in the State of California under federal law.<sup>37</sup> Upon such determination, the AUMA purports to repeal all local bans on outdoor cultivation.<sup>38</sup>

### **E. Amendment**

Any portion of the MMRSA can be amended at any time, if there is sufficient political support within the Legislature for making substantive changes to the regulatory structure. Under some circumstances, an amendment to the MMRSA by the Legislature might arguably violate The Compassionate Use Act of 1996 (adopted by the voters as Proposition 215), which decriminalized the personal use of medical marijuana.<sup>39</sup>

Under the AUMA, the Legislature may amend Sections 5 (relating to the use of medical marijuana for medical purposes) and 6 (relating to state licensing) and the provisions relating to penalties by majority vote. The Legislature may amend any other provision of the Act by a 2/3 vote. Any amendment must further the purposes and intent of the AUMA. The purpose and intent of the Act include allowing local governments to ban nonmedical marijuana businesses.

### **F. Taxation**

The AUMA imposes new state taxes on medical and nonmedical marijuana in the following manner:

- Effective January 1, 2018, the AUMA imposes an excise tax at the rate of 15% of gross retail sales receipts.<sup>40</sup>
  - This tax will be in addition to existing state and local sales tax.<sup>41</sup> Given that state and local sales taxes can range from 7-10%, the combined excise tax + sales tax at the retail level could approach 25%;

---

<sup>35</sup> Health & Saf. Code § 11362.777(g); *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, 984; *Kirby v. County of Fresno* (2015) 242 Cal.App.4th 940, 969-970.

<sup>36</sup> Bus. & Prof. Code § 11362.2(b)(1).

<sup>37</sup> Bus. & Prof. Code § 11362.2(b)(4).

<sup>38</sup> Bus. & Prof. Code § 11362.2(b)(4).

<sup>39</sup> Health & Saf. Code § 11362.5.

<sup>40</sup> Rev. & Tax Code § 34011(a).

- Effective January 1, 2018, the AUMA imposes a separate cultivation tax on all harvested marijuana as follows:<sup>42</sup>
  - \$9.25 per dry-weight ounce on all marijuana flowers;
  - \$2.75 per dry-weight ounce on all marijuana leaves;
- The AUMA prohibits imposition of state and local sales taxes on medical marijuana.<sup>43</sup>
- The AUMA exempts marijuana cultivated for personal use from taxation.<sup>44</sup>

The AUMA does not pre-empt local taxation.<sup>45</sup> However, the AUMA's estimated cumulative tax rate of nearly 35% on the purchase of nonmedical marijuana has potentially troubling implications for local governments. A high state tax rate by itself may depress sales and stimulate the black market. Any local taxation of marijuana should be governed by an awareness that a high retail sales tax rate, imposed on an industry that, until recently, has not been regulated at all, might stimulate black market activity and compromise the anticipated yield of revenue. In order to avoid such a result, cities might consider imposing an excise tax on discrete commercial nonmedical marijuana activities rather than on retail sales. New taxes on marijuana require compliance with Proposition 218.

### 1. Allocation of State Tax Revenues

After repaying certain state agencies for marijuana regulatory costs not covered by license fees, and making certain grants to universities for research and development and the Governor's Office of Business and Economic Development, the AUMA distributes the remaining tax revenue as follows:

- 60% for youth programs, substance abuse education, prevention and treatment;
- 20% for environmental cleanup and remediation; and
- 20% for state and local programs that reduce DUI and grant programs designed to reduce negative health impacts resulting from marijuana legalization

### G. Deliveries

Under the MMRSA, medical marijuana deliveries can only be made from a state-licensed dispensary in a city, county, or city and county that does not explicitly prohibit it by local ordinance.<sup>46</sup> A delivery person must carry a copy of the dispensary's state-issued license, a government ID, and a copy of the delivery request.<sup>47</sup> The patient or caregiver requesting the delivery must also maintain a copy of the delivery request.<sup>48</sup> Dispensaries and delivery people who comply with MMRSA are immune from prosecution for marijuana transportation.<sup>49</sup>

---

<sup>41</sup> Rev. & Tax Code § 34011(d).

<sup>42</sup> Rev. & Tax Code § 34012.

<sup>43</sup> Rev. & Tax Code § 34011(g).

<sup>44</sup> Rev. & Tax Code § 34012(j).

<sup>45</sup> Rev. & Tax Code § 34021.

<sup>46</sup> Bus. & Prof. Code § 19340(a).

<sup>47</sup> Bus. & Prof. Code §§ 19340(b)(2), 19340(d).

<sup>48</sup> Bus. & Prof. Code § 19340(e).

<sup>49</sup> Bus. & Prof. Code § 19317(f).

Under the AUMA, deliveries can be made by a state-licensed retailer, microbusiness, or nonprofit unless they are prohibited by local ordinance.<sup>50</sup> Although the AUMA does require a customer requesting delivery to maintain a copy of the delivery request, there is no express requirement that delivery people carry or maintain any records.<sup>51</sup> Moreover, unlike the MMRSA, the AUMA does not require that deliveries come *from* a dispensary. Instead, it states that “Deliveries, as defined in this division, may only be made *by* a licensed retailer or microbusiness, or a licensed nonprofit under Section 26070.5.”<sup>52</sup> Thus, there is at least some question regarding whether deliveries may be made from non-retail locations by retail employees.

Under both the MMRSA and the AUMA, local jurisdictions can ban or regulate deliveries within their borders.<sup>53</sup> However, local jurisdictions cannot prevent a delivery service from using public roads to simply pass through its jurisdiction from a licensed dispensary to a delivery location outside of its boundaries.<sup>54</sup>

### III. Local Regulatory Options<sup>55</sup>

The AUMA preserves the authority of a city to adopt business regulations and land use regulations for nonmedical marijuana activities.<sup>56</sup>

#### A. Personal Marijuana Cultivation

Under the AUMA local governments can regulate or ban all personal, outdoor cultivation, until such time as the Attorney General determines that the use of nonmedical marijuana is lawful in the State of California under federal law. In addition, local governments can “reasonably regulate,” **but cannot ban**, personal, indoor cultivation. Nothing in the AUMA requires a city to enact an ordinance or regulation by a certain date. However, assuming that the AUMA passes, if a city does not have a ban or regulatory scheme governing personal, outdoor cultivation or a regulatory scheme governing personal, indoor cultivation in place before November 9, 2016, a person may legally engage in personal cultivation of up to six marijuana plants at his or her private residence.

---

<sup>50</sup> Bus. & Prof. Code §26090(a).

<sup>51</sup> Bus. & Prof. Code §26090(b).

<sup>52</sup> Bus. & Prof. Code § 26090(a).

<sup>53</sup> Bus. & Prof. Code §§ 19340(a), 19316(a), 26200.

<sup>54</sup> Bus. & Prof. Code §§ 19340(f), 26080(b), 26090(c).

<sup>55</sup> For a thorough discussion of the various marijuana regulatory options that a city may consider, see McEwen, *Medical Marijuana-Revisited After New State Laws* (Spring 2016) <<http://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2016/Spring-2016/5-2016-Spring-Medical-Marijuana-%E2%80%93-Revisited-After>>. In addition, sample ordinances may be found on the League’s website, at: <http://www.cacities.org/Policy-Advocacy/Hot-Issues/Medical-Marijuana>. **But note:** the regulatory schemes discussed in the McEwen paper and posted on the League’s website pertain to medical marijuana businesses under the MMRSA and may need to be modified to comply with the requirements of the AUMA.

<sup>56</sup> Health & Saf. Code § 11362.2; Bus. & Prof. Code §§ 26201, 26200(a).

## B. Nonmedical Marijuana Businesses

The AUMA recognizes a range of businesses, including dispensaries, cultivators, manufacturers, distributors, transporters, and testing laboratories. Cities may expressly ban, adopt business regulations, or adopt land use regulations pertaining to any or all of these businesses.

Again, the AUMA does not require a city to enact a regulatory scheme or ban by a certain date. However, assuming that the AUMA passes in November, if a city wishes to regulate or ban marijuana businesses before marijuana businesses may legally operate within the city, the regulations or ban will need to take effect before the state begins issuing nonmedical marijuana business licenses. The League anticipates that cities have until January 1, 2018 to enact bans or regulations relating to nonmedical marijuana businesses, because: (1) nonmedical marijuana businesses cannot operate in any city without a state license;<sup>57</sup> (2) the state licensing agencies in charge of implementing the AUMA have stated that they anticipate that they will not begin issuing licenses under the MMRSA until January 2018, and it is unlikely that said agencies will be able to begin issuing licenses under the AUMA before they begin issuing licenses under the MMRSA; and (3) the AUMA does not require state agencies to issue licenses until January 1, 2018.<sup>58</sup> It is not the League's position that state licensing agencies cannot issue licenses before January 1, 2018, just that it is unlikely that they will do so.

## C. Caution Against Use of Permissive Zoning

Under a permissive zoning code, any use not enumerated in the code is presumptively prohibited, unless an authorized city official finds that the proposed use is substantially the same in character and intensity as those land uses listed in the code.<sup>59</sup> Although the MMRSA upheld a city's authority to rely on permissive zoning to prohibit medical marijuana land uses, it is unlikely that cities will succeed in arguing that nonmedical marijuana land uses are prohibited by permissive zoning under the AUMA. This is so because: (1) the statutory language in the AUMA regarding local control seems to anticipate that a city will adopt an ordinance explicitly prohibiting and/or regulating nonmedical marijuana businesses (rather than relying on the silence of its Code to argue for a prohibited use);<sup>60</sup> (2) the AUMA does not contain the same protective language as the

---

<sup>57</sup> Bus. & Prof. Code § 26038.

<sup>58</sup> Bus. & Prof. Code § 26012 (c).

<sup>59</sup> See *City of Corona v. Naulls* (2008) 166 Cal.App.4th 418, 433-436. See also *County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861, 871 [holding that "medical marijuana dispensaries and pharmacies are not 'similarly situated' for public health and safety purposes"]; *City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1091 [holding that a medical marijuana dispensary was not substantially similar to the listed commercial use classifications for personal services, retail sales, pharmacies and medical supplies]; *County of Tulare v. Nunes* (2013) 215 Cal.App.4th 1188, 1205 [holding that a medical marijuana collective did not qualify as an "agricultural" land use because "marijuana is a controlled substance and is not treated as a mere crop or horticultural product under the law"].

<sup>60</sup> Bus. & Prof. Code § 26200 ["Nothing in this division shall be interpreted to supersede or limit the authority of a local jurisdiction to *adopt and enforce* local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related

MMRSA with respect to permissive zoning;<sup>61</sup> and (3) the AUMA explicitly designates nonmedical marijuana as an agricultural product—thus if a city’s permissive zoning code authorizes agricultural uses, the city may be precluded from arguing that marijuana is prohibited.<sup>62</sup> Therefore, cities that wish to ban all or some nonmedical marijuana activities should adopt express prohibitions, even if they operate under a permissive zoning code.

#### IV. What actions need to be taken?

At this time city officials should: (1) review the city’s municipal code; (2) consider whether they wish to regulate the personal cultivation of nonmedical marijuana indoors; (3) consider whether they wish to regulate or ban the personal cultivation of nonmedical marijuana outdoors; (4) consider whether they wish to enact business regulations of nonmedical marijuana businesses; (5) consider whether they wish to enact land use regulations of nonmedical marijuana businesses; (6) consider whether they wish to enact local taxes on marijuana; and (7) comply with Proposition 218 if they decide to enact local taxes on marijuana.

Cities should prioritize considering or enacting ordinances regulating personal nonmedical marijuana cultivation, because it will be legal under state law on November 9, 2016 if the AUMA passes, whereas nonmedical marijuana businesses will not be able to operate lawfully until the state licensing system becomes operational (likely in late 2017). **Although cultivation for personal use will be legal as of November 9, 2016 if the AUMA is approved by voters, local governments will not lose any regulatory authority if they do not have an ordinance in place addressing personal cultivation before the election. Locals will retain the ability to regulate personal cultivation and to enact related ordinances at any time after the election. The only change the AUMA will make in this area is to prohibit local bans of indoor cultivation for personal use. No ordinance enacted prior to the election can prevent this change in the law.**

---

to reducing exposure to second hand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction.”] (emphasis added).

<sup>61</sup> Compare Health & Saf. Code § 11362.777(b)(3) [a “person or entity shall not submit an application for a state license . . . if the proposed cultivation of marijuana will violate the provisions of any local ordinance or regulation, or if medical marijuana is prohibited by the city, county, or city and county in which the cultivation is proposed to occur, either expressly or otherwise under principles of permissive zoning”] with Bus. & Prof Code § 26205(e) [“Licensing authorities shall not approve an application for a state license under this division if approval of the state license will violate the provisions of any local ordinance or regulation adopted in accordance with Section 26200.”].

<sup>62</sup> Bus. & Prof. Code § 26067(a).



**Proposition 64**  
**Marijuana Legalization. Initiative Statute.**

**Yes/No Statement**

A **YES** vote on this measure means: Adults 21 years of age or older could legally grow, possess, and use marijuana for nonmedical purposes, with certain restrictions. The state would regulate nonmedical marijuana businesses and tax the growing and selling of medical and nonmedical marijuana. Most of the revenue from such taxes would support youth programs, environmental protection, and law enforcement.

A **NO** vote on this measure means: Growing, possessing, or using marijuana for nonmedical purposes would remain illegal. It would still be legal to grow, possess, or use marijuana for medical purposes.

**Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact**

- The size of the measure's fiscal effects could vary significantly depending on:
  - (1) how state and local governments choose to regulate and tax marijuana,
  - (2) whether the federal government enforces federal laws prohibiting marijuana, and
  - (3) how marijuana prices and consumption change under the measure.
- Net additional state and local tax revenues that could eventually range from the high hundreds of millions of dollars to over \$1 billion annually. Most of these funds would be required to be spent for specific purposes such as youth programs, environmental protection, and law enforcement.

- Net reduced costs potentially in the tens of millions of dollars annually to state and local governments primarily related to a decline in the number of marijuana offenders held in state prisons and county jails.

### **Ballot Label**

**Fiscal Impact:** Additional tax revenues ranging from high hundreds of millions of dollars to over \$1 billion annually, mostly dedicated to specific purposes. Reduced criminal justice costs of tens of millions of dollars annually.

## **BACKGROUND**

### **State Marijuana Laws**

*Marijuana Generally Illegal Under State Law.* Under current state law, it is generally illegal to possess or use marijuana. (Please see the nearby box for detailed information on how marijuana is used.) Penalties for marijuana-related activities vary depending on the offense. For example, possession of less than one ounce of marijuana (the equivalent of roughly 40 marijuana cigarettes, also known as “joints”) is punishable by a fine, while selling or growing marijuana may result in a jail or prison sentence.

**How do Individuals Use Marijuana?**

**Smoking.** The most common way individuals use marijuana is by smoking it.

Typically, users smoke the dried flowers of the marijuana plant. Dried marijuana leaves can also be smoked but this is rare because leaves contain only small amounts of tetrahydrocannabinol (THC), which is the ingredient in marijuana that produces a “high.” Marijuana leaves, flowers, and stalks can also be processed into concentrated marijuana and smoked. Examples of concentrated marijuana include hash and hash oil. Concentrated marijuana is much stronger than dried marijuana, often containing five to ten times the THC levels found in dried marijuana flowers.

**Vaporizing.** Some users consume marijuana with devices called vaporizers. A vaporizer heats up dried marijuana or concentrated marijuana but does not burn it. This heating process creates a gas containing THC that is inhaled.

**Eating.** Marijuana can also be added to food. Edible marijuana products are typically made by adding THC from the plant into ingredients (like butter or oil) that are used to prepare foods such as brownies, cookies, or chocolate bars.

**Other Methods.** Other less common ways of using marijuana include drinking beverages infused with marijuana and rubbing marijuana infused lotions on the skin.

**Proposition 215 Legalized Medical Marijuana.** In 1996, voters approved Proposition 215, which made it legal under state law for individuals of any age to use marijuana in California for medical purposes. Individuals must have a recommendation from a doctor to use medical marijuana. In 2003, the Legislature legalized medical marijuana collectives, which are nonprofit

organizations that grow and provide marijuana to their members. Collectives are not now licensed or regulated by the state, but cities and counties can regulate where and how medical marijuana is grown and sold by individuals or collectives.

***State Currently Adopting New Medical Marijuana Regulations.*** Recently, new state laws were adopted to begin regulating medical marijuana. As shown in Figure 1, a new Bureau of Medical Cannabis Regulation and other state agencies are responsible for this regulation. The new laws require the state to set standards for labelling, testing, and packaging medical marijuana products and to develop a system to track such products from production to sale. Currently, these regulations are being developed by the different regulatory agencies. Under the new laws, medical marijuana collectives must be closed within a few years and replaced by state-licensed businesses. Local governments will continue to have the ability to regulate where and how medical marijuana businesses operate.

**Figure 1**  
**Medical Marijuana Industry to Be Regulated by Multiple State Agencies**

Regulatory Agency	Primary Responsibilities
Bureau of Medical Cannabis Regulation	License medical marijuana distributors, transporters, testing facilities, and retailers.
Department of Food and Agriculture	License and regulate medical marijuana growers.
Department of Public Health	License and regulate producers of edible marijuana products.
State Water Resources Control Board	Regulate the environmental impacts of marijuana growing on water quality.
Department of Fish and Wildlife	Regulate environmental impacts of marijuana growing.
Department of Pesticide Regulation	Regulate pesticide use for growing marijuana.

***Taxes on Medical Marijuana.*** State and local governments currently collect sales tax on medical marijuana. A small number of cities also impose additional taxes specifically on medical

marijuana. The total amount of state and local taxes collected on medical marijuana likely is several tens of millions of dollars annually.

### **Federal Marijuana Laws**

Under federal law, it is illegal to possess or use marijuana, including for medical use. The U.S. Supreme Court ruled in 2005 that federal agencies could continue under federal law to prosecute individuals who possess or use marijuana for medical purposes even if legal under a state's law. Currently, however, the U.S. Department of Justice (DOJ) chooses not to prosecute most marijuana users and businesses that follow state and local marijuana laws if those laws are consistent with federal priorities. These priorities include preventing minors from using marijuana and preventing marijuana from being taken to other states.

### **PROPOSAL**

This measure (1) legalizes adult nonmedical use of marijuana, (2) creates a system for regulating nonmedical marijuana businesses, (3) imposes taxes on marijuana, and (4) changes penalties for marijuana-related crimes. These changes are described below.

#### **Legalization of Adult Nonmedical Use of Marijuana**

*Personal Use of Nonmedical Marijuana.* This measure changes state law to legalize the use of marijuana for nonmedical purposes by adults age 21 and over. Figure 2 summarizes what activities would be allowable under the measure. These activities would remain illegal for individuals under the age of 21.

**Figure 2**

**Proposition 64 Legalizes Nonmedical Marijuana Activities, With Restrictions**

Activity	Activities Allowed Under the Measure	Activities Not Allowed Under the Measure
<b>Smoking marijuana</b>	Smoking marijuana in a private home or at a business licensed for on-site marijuana consumption.	Smoking marijuana (1) while driving a car, (2) in any public place (other than at a business licensed for on-site consumption), or (3) anywhere that smoking tobacco is prohibited.
<b>Possessing marijuana for personal use</b>	Possession of up to 28.5 grams (about one ounce) of marijuana and up to 8 grams of concentrated marijuana (such as hash).	Possession of marijuana on the grounds of a school, day care center, or youth center while children are present.
<b>Growing marijuana</b>	Growing up to six marijuana plants and keeping the marijuana produced by the plants within a private home.	Growing in an area that is unlocked or visible from a public place.
<b>Giving away marijuana</b>	Giving away to other adults up to 28.5 grams of marijuana and up to 8 grams of concentrated marijuana.	Providing marijuana to minors under the age of 21 for nonmedical use.

**Purchasing Marijuana.** Under the measure, adults age 21 and over would be able to purchase marijuana at state-licensed businesses or through their delivery services. Businesses could generally not be located within 600 feet of a school, day care center, or youth center, unless allowed by a local government. In addition, businesses selling marijuana could not sell tobacco or alcohol. Under the measure, local governments could authorize licensed businesses to allow on-site consumption of marijuana. However, such businesses could not allow consumption in areas within the presence or sight of individuals under the age of 21 or areas visible from a public place. In addition, businesses allowing on-site marijuana consumption could not allow consumption of alcohol or tobacco.

**Regulation of Nonmedical Marijuana Businesses**

**State Regulation of Nonmedical Marijuana Businesses.** This measure changes the name of the Bureau of Medical Cannabis Regulation to the Bureau of Marijuana Control and makes it also responsible for regulating and licensing nonmedical marijuana businesses. In addition, the measure requires other state agencies to regulate and license different parts of the nonmedical

marijuana industry. These state agencies would have responsibilities similar to the ones they currently have for medical marijuana. The measure requires each licensing agency to charge fees that cover its marijuana regulatory costs. Under the measure, the system for tracking medical marijuana products that must be developed under current law would be expanded to include marijuana for nonmedical use. The measure also creates the Marijuana Control Appeals Panel to hear appeals from individuals affected by a decision of the state's regulatory agencies. Decisions of the panel could be appealed to the courts.

***Local Regulation of Nonmedical Marijuana Businesses.*** Under the measure, cities and counties could regulate nonmedical marijuana businesses. For example, cities and counties could require nonmedical marijuana businesses to obtain local licenses and restrict where they could be located. Cities and counties could also completely ban marijuana-related businesses. However, they could not ban the transportation of marijuana through their jurisdictions.

**Taxation of Marijuana**

The measure imposes new state taxes on growing and selling both medical and nonmedical marijuana. As shown in Figure 3, the new tax on growing marijuana would be based on a dollar amount per ounce of marijuana, and the new excise tax would be based on the retail price of marijuana products sold.

<b>Figure 3</b>		
<b>Taxation of Marijuana Under Proposition 64</b>		
Type of Tax	Type of Marijuana Taxed	Rate
New state tax on growing	Both medical and nonmedical.	\$9.25 per ounce of dried marijuana flowers and \$2.75 per ounce of dried marijuana leaves.
New state retail excise tax	Both medical and nonmedical.	15 percent of retail price.
Existing state and local sales tax	Nonmedical only.	Rates vary across the state but average around 8 percent.
Existing and future local taxes	Can apply to both medical and nonmedical.	Subject to local government decisions.

The measure would also affect sales tax revenue to the state and local governments in two ways. First, legalizing the sale of nonmedical marijuana will result in new sales tax revenue. (This would happen automatically, as generally products are subject to this tax under current law.) Second, the sale of medical marijuana, which is currently subject to sales tax, is specifically exempted from that tax. The measure does not change local governments' existing ability to place other taxes on medical marijuana and does not restrict their ability to tax nonmedical marijuana.

Beginning in 2020, the tax on growing marijuana would be adjusted annually for inflation. The measure also allows the state Board of Equalization to annually adjust the tax rate for marijuana leaves to reflect changes in the price of marijuana flowers relative to leaves. In addition, the measure allows the board to establish other categories of marijuana (such as frozen marijuana) for tax purposes and specifies that these categories would be taxed at their value relative to marijuana flowers.

*Allocation of Certain State Tax Revenues.* Revenues collected from the new state retail excise tax and the state tax on growing marijuana would be deposited in a new state account, the California Marijuana Tax Fund. Certain fines on businesses or individuals who violate regulations created by the measure would also be deposited into this fund. Monies in the fund would first be used to pay back certain state agencies for any marijuana regulatory costs not covered by license fees. A portion of the monies would then be allocated in specific dollar amounts for various purposes, as shown in Figure 4.

**Figure 4**  
**Proposition 64 Allocates a Portion of State Revenues for Specific Purposes**

Purpose	Annual Funding	Duration
Grants for certain services (such as job placement assistance and substance use disorder treatment) in communities most affected by past drug policies	\$10 million to \$50 million <sup>a</sup>	2018-19 and ongoing
Evaluate effects of the measure	\$10 million	2018-19 through 2028-29
Create and adopt methods to determine whether someone is driving while impaired, including by marijuana	\$3 million	2018-19 through 2022-23
Study the risks and benefits of medical marijuana	\$2 million	2017-18 and ongoing

<sup>a</sup> \$10 million in 2018-19, increasing by \$10 million annually until 2022-23, and \$50 million each year thereafter.

All remaining revenues (the vast majority of monies deposited in the fund) would be allocated as follows:

- 60 percent for youth programs—including substance use disorder education, prevention, and treatment.
- 20 percent to clean up and prevent environmental damage resulting from the illegal growing of marijuana.
- 20 percent for (1) programs designed to reduce driving under the influence of alcohol, marijuana, and other drugs and (2) a grant program designed to reduce any potential negative impacts on public health or safety resulting from the measure.

**Penalties for Marijuana-Related Crimes**

*Change in Penalties for Future Marijuana Crimes.* The measure changes state marijuana penalties. For example, possession of one ounce or less of marijuana is currently punishable by a \$100 fine. Under the measure, such a crime committed by someone under the age of 18 would instead be punishable by a requirement to attend a drug education or counseling program and

complete community service. In addition, selling marijuana for nonmedical purposes is currently punishable by up to four years in state prison or county jail. Under the measure, selling marijuana without a license would be a crime generally punishable by up to six months in county jail and/or a fine of up to \$500. In addition, individuals engaging in any marijuana business activity without a license would be subject to a civil penalty of up to three times the amount of the license fee for each violation. While the measure changes penalties for many marijuana-related crimes, the penalties for driving a vehicle while under the impairment of marijuana would remain the same. The measure also requires the destruction—within two years—of criminal records for individuals arrested or convicted for certain marijuana-related offenses.

*Individuals Previously Convicted of Marijuana Crimes.* Under the measure, individuals serving sentences for activities that are made legal or are subject to lesser penalties under the measure would be eligible for resentencing. For example, an offender serving a jail or prison term for growing or selling marijuana could have their sentence reduced. (A court would not be required to resentence someone if it determined that the person was likely to commit certain severe crimes.) Qualifying individuals would be resentenced to whatever punishment they would have received under the measure. Resentenced individuals currently in jail or prison would be subject to community supervision (such as probation) for up to one year following their release, unless a court removes that requirement. In addition, individuals who have completed sentences for crimes that are reduced by the measure could apply to the courts to have their criminal records changed.

## FISCAL EFFECTS

### Fiscal Effects Subject to Significant Uncertainty

This measure would affect both costs and revenues for state and local governments. The size of these effects could vary significantly depending primarily on three key factors:

- First, it would depend on how state and local governments chose to regulate and tax marijuana. For example, if many cities and counties banned marijuana businesses, the amount of revenue from taxes on marijuana would be less than without such bans.
- Second, it would depend on whether the U.S. DOJ enforced federal laws prohibiting marijuana. For example, if the U.S. DOJ chose to prosecute state-licensed marijuana businesses, there could be significantly reduced revenue from marijuana taxes. This analysis assumes the U.S. DOJ will follow its current policy regarding enforcement of marijuana laws.
- Third, the fiscal effects would depend heavily on how marijuana prices and consumption change under the measure. This analysis assumes that the price of marijuana would decline significantly. This is primarily because (1) businesses would become more efficient at producing and distributing marijuana and (2) the price of marijuana would no longer be inflated to compensate for the risk of selling an illegal drug. This analysis also assumes that marijuana consumption would increase under the measure. This is primarily because of (1) the reduced price and (2) the reduced legal risk for marijuana users.

The actual effects on marijuana prices and consumption are unknown, as are the regulatory and enforcement actions of the state, federal, and local governments. As such, the potential cost and revenue impacts of this measure described below are subject to significant uncertainty.

### **Effects on State and Local Costs**

*Reduction in Various Criminal Justice Costs.* The measure would result in reduced criminal justice costs for the state and local governments. This is primarily related to a decline in the number of offenders held in state prisons and county jails for growing and selling marijuana. The measure would also reduce the number of such offenders placed under community supervision (such as county probation). In addition, the measure would likely reduce other criminal justice costs, such as state court costs for the handling of related criminal cases.

The above cost reductions would be partially offset by increased costs in several areas. In particular, the courts would incur costs to process applications from individuals seeking to be resentenced or have their criminal records changed. In addition, there would be costs to supervise resentenced offenders in the community. These various costs would be incurred largely within the first couple of years following the passage of the measure. In addition, there would be ongoing costs in a few areas. For example, there would be court costs to destroy records of arrest and conviction for individuals who commit certain marijuana-related crimes. In addition, there would be ongoing costs to operate drug education and counseling programs as required by the measure. There would also be some increased criminal justice costs (such as county jail and state court costs) to the extent that increased marijuana use leads to increased marijuana-related crime (such as driving while impaired by marijuana).

In total, the net reduction in state and local criminal justice costs from the above changes could be in the tens of millions of dollars annually. In many cases, these resources would likely be redirected to other criminal justice activities.

***Effects on State and Local Health Programs.*** The measure could also have various fiscal effects on state and local health programs as a result of increased marijuana use. For example, the measure could result in an increase in the number of individuals seeking publicly funded substance use treatment. Any additional costs for such services could be partially or entirely offset by additional funding that would be available for substance use treatment under the measure. Although research on the health effects of marijuana use is limited, there is some evidence that smoking marijuana has harmful effects. For example, marijuana smoke is among a list of substances identified by the state to cause cancer. To the extent that an increase in marijuana use negatively affects users' health, it would increase somewhat state and local health program costs.

***Increased State Regulatory Costs.*** The measure would also result in costs for the state to regulate nonmedical marijuana businesses. These costs would vary depending on how the state chooses to regulate marijuana but could amount to several tens of millions of dollars annually. Eventually, these costs would likely be entirely offset by license fees and tax revenues.

### **Effects on State and Local Revenues**

***Tax Revenues Could Reach \$1 Billion Annually, but Not Right Away.*** State and local governments would receive more revenues—including sales, excise, and income taxes—from marijuana sales allowed under this measure. This increase in tax revenue would result primarily from (1) new state excise taxes on growing and selling marijuana, (2) individuals switching from

illegal purchases of marijuana (made from individuals who do not pay all the taxes they owe) to legal purchases (at businesses that collect and pay the taxes they owe), and (3) an increase in consumption of marijuana. In addition, lower marijuana prices due to the measure may provide individuals using marijuana now with some savings. This could allow them to purchase other legal products that generate tax revenue. These revenue increases, however, would be partially offset by the loss of sales taxes now collected on medical marijuana sales, as the measure exempts such purchases from these taxes.

In total, our best estimate is that the state and local governments could eventually collect net additional revenues ranging from the high hundreds of millions of dollars to over \$1 billion annually. However, the revenues are likely to be significantly lower in the first several years following the passage of the measure. This is because it will take a couple of years for the state to issue licenses to marijuana businesses. In addition, it will likely take time for newly licensed businesses to set up efficient production and distribution systems. Prices in the legal market will likely fall as more legal businesses are licensed and as they become more efficient. As this occurs, more consumers will begin purchasing marijuana legally. It is unknown precisely how long this process will take but it could be several years after the measure passes before revenues reach the range described above. As discussed earlier, the measure requires that most of these funds be spent on specified purposes.

***Additional Local Government Revenues.*** The measure could result in additional revenues if local governments impose taxes on marijuana. The amount of additional revenues could vary significantly, depending primarily on how many local governments impose marijuana taxes and at what rates. These revenues could easily amount to tens of millions of dollars annually.

*Potential Impact on Local Economies in Marijuana Producing Areas.* Exports of marijuana currently contribute significantly to the economy in parts of Northern California, such as Humboldt, Mendocino, and Trinity Counties. Precisely how this measure would affect these local economies is unknown. Lower marijuana prices and more opportunity for legal cultivation elsewhere could hurt the economy in these areas, reducing local government tax revenues. If, however, local growers and businesses successfully marketed their marijuana products as premium goods, consumers might be willing to pay above-average prices for them. If that occurred, it could help offset some of the negative economic effects in those areas.



## William A. Vaughn

---

**From:** Phil Price <philp@thePriceCompany.com>  
**Sent:** Tuesday, August 16, 2016 9:01 AM  
**To:** William A. Vaughn  
**Cc:** Sarah Dunn  
**Subject:** RE: Roberta C. Muncy - Jobob Inc. ESOP  
**Attachments:** ERISA Outlines RMD Trust Beneficiary.pdf

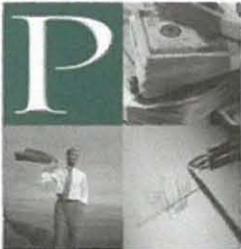
Dear Bill,

I believe the trust meets the requirements to have its beneficiaries be the designated beneficiaries of the Plan. I have attached an explanation from one of our legal resources. Please review and see if you come to the same conclusion I have. If you have any questions, please feel free to contact me.

Best Regards,



**Philip D. Price, President**  
**THE PRICE COMPANY**  
5151 N. Palm Avenue, Ste. 920  
Fresno, CA 93704  
(559) 224-7656 (p)  
(559) 224-3509 (f)  
[www.ThePriceCompany.com](http://www.ThePriceCompany.com)



---

**From:** William A. Vaughn [<mailto:wvaughn@wavlaw.net>]  
**Sent:** Monday, August 08, 2016 11:25 AM  
**To:** Phil Price  
**Subject:** Roberta C. Muncy - Jobob Inc. ESOP

PhilP – Per our conversation on Friday attached is the Roberta C. Muncy Trust 2016; and proposed beneficiary designation; for your review and comment. – BillV

**William A. Vaughn**  
LAW OFFICES OF WILLIAM A. VAUGHN  
525 J Street, Suite A  
Los Banos, CA 93635  
209.826.3531  
[wvaughn@wavlaw.net](mailto:wvaughn@wavlaw.net)

Law Offices of

OLSON

HAGEL &amp;

FISHBURN

LLP

Lance H. Olson  
Deborah B. Caplan  
Richard C. Mladich  
Richard R. Rios

Bruce J. Hagel  
of counsel  
Diane M. Fishburn  
of counsel  
Christopher W. Waddell  
Betty Ann Downing  
Lacey E. Keys  
Emily A. Andrews  
Erika M. Boyd

**Northern California**  
555 Capitol Mall  
Suite 1425  
Sacramento, CA  
95814-4602

Tel: (916) 442-2952  
Fax: (916) 442-1280

**Southern California**  
3605 Long Beach Blvd  
Suite 426  
Long Beach, CA  
90807-6010

Tel: (562) 427-2100  
Fax: (562) 427-2237

December 7, 2015

RECEIVED

DEC 07 2015

VIA MESSENGERINITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

Office of the Attorney General  
1300 "I" Street  
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

**RE: Submission of Amendment to Statewide Initiative Measure –  
Control, Regulate and Tax Adult Use of Marijuana Act, No. 15-0103**

Dear Ms. Johansson:

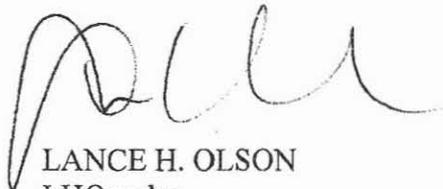
As you know, I serve as counsel for the proponents of the proposed statewide initiative, "Control, Regulate and Tax Adult Use of Marijuana Act." The proponents of the proposed initiative are Dr. Donald Lyman and Mr. Michael Sutton. On their behalf, I am enclosing the following documents:

- The amended text of "Control, Regulate and Tax Adult Use of Marijuana Act"
- A red-line version showing the changes made in the amended text
- Signed authorizations from each of the proponents for the submission of the amended text together with their requests that the Attorney General's Office prepare a circulating title and summary using the amended text.

Please continue to direct all inquiries or correspondence relative to this proposed initiative to me at the address listed below:

Lance H. Olson  
Olson, Hagel & Fishburn LLP  
555 Capitol Mall, Suite 1425  
Sacramento, CA 95814

Very truly yours,

**OLSON HAGEL & FISHBURN LLP**


LANCE H. OLSON  
LHO:mdm

E:\WPDOC\PUBLIC\POL\40083-4\Amendment Cover Letter 12.7.15.docx



**VIA MESSENGER**

December 7, 2016

Office of the Attorney General  
1300 "I" Street  
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

Re: Submission of Amendment to Control, Regulate and Tax Adult Use of Marijuana Act, No. 15-0103, and Request to Prepare Circulating Title and Summary

Dear Ms. Johansson:

On November 2, 2015, the proponents of a proposed statewide initiative titled "Control, Regulate and Tax Adult Use of Marijuana Act" ("Initiative") submitted a request that the Attorney General prepare a circulating title and summary pursuant to section 10(d) of Article II of the California Constitution. Pursuant to Elections Code section 9002(b), the proponents hereby submit timely amendments to the text of the Initiative. As one of the proponents of the Initiative, I approve the submission of the amended text to the Initiative and I declare that the amendment is reasonably germane to the theme, purpose, and subject of the Initiative. I request that the Attorney General prepare a circulating title and summary using the amended Initiative.

Sincerely,



Michael Sutton

**VIA MESSENGER**

December 7, 2016

Office of the Attorney General  
1300 "I" Street  
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

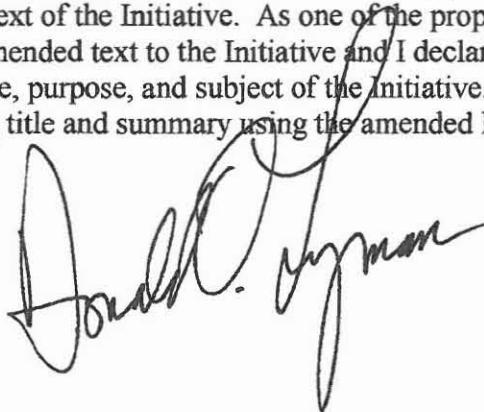
Re: Submission of Amendment to Control, Regulate and Tax Adult Use of Marijuana Act, No. 15-0103, and Request to Prepare Circulating Title and Summary

Dear Ms. Johansson:

On November 2, 2015, the proponents of a proposed statewide initiative titled "Control, Regulate and Tax Adult Use of Marijuana Act" ("Initiative") submitted a request that the Attorney General prepare a circulating title and summary pursuant to section 10(d) of Article II of the California Constitution. Pursuant to Elections Code section 9002(b), the proponents hereby submit timely amendments to the text of the Initiative. As one of the proponents of the Initiative, I approve the submission of the amended text to the Initiative and I declare that the amendment is reasonably germane to the theme, purpose, and subject of the Initiative. I request that the Attorney General prepare a circulating title and summary using the amended Initiative.

Sincerely,

Dr. Donald Lyman

A handwritten signature in black ink, appearing to read "Donald Lyman". The signature is written in a cursive style with a large, looping initial "D".

**SECTION 1. TITLE.**

This measure shall be known as the Control, Regulate and Tax Adult Use of Marijuana Act (“the Adult Use of Marijuana Act”).

**SECTION 2. FINDINGS AND DECLARATIONS.**

A. Currently in California, nonmedical marijuana use is unregulated, untaxed, and occurs without any consumer or environmental protections. The Control, Regulate and Tax Adult Use of Marijuana Act will legalize marijuana for those over 21 years old, protect children, and establish laws to regulate marijuana cultivation, distribution, sale and use, and will protect Californians and the environment from potential dangers. It establishes the Bureau of Marijuana Control within the Department of Consumer Affairs to regulate and license the marijuana industry.

B. Marijuana is currently legal in our state for medical use and illegal for nonmedical use. Abuse of the medical marijuana system in California has long been widespread, but recent bipartisan legislation signed by Governor Jerry Brown is establishing a comprehensive regulatory scheme for medical marijuana. The Control, Regulate and Tax Adult Use of Marijuana Act (hereafter called the Adult Use of Marijuana Act) will consolidate and streamline regulation and taxation for both nonmedical and medical marijuana.

C. Currently, marijuana growth and sale is not being taxed by the State of California, which means our state is missing out on hundreds of millions of dollars in potential tax revenue every year. The Adult Use of Marijuana Act will tax both the growth and sale of marijuana to generate hundreds of millions of dollars annually. The revenues will cover the cost of administering the new law and will provide funds to: invest in public health programs that educate youth to prevent and treat serious substance abuse; train local law enforcement to enforce the new law with a focus on DUI enforcement; invest in communities to reduce the illicit market and create job opportunities; and provide for environmental cleanup and restoration of public lands damaged by illegal marijuana cultivation.

D. Currently, children under the age of 18 can just as easily purchase marijuana on the black market as adults can. By legalizing marijuana, the Adult Use of Marijuana Act will incapacitate the black market, and move marijuana purchases into a legal structure with strict safeguards against children accessing it. The Adult Use of Marijuana Act prohibits the sale of nonmedical marijuana to those under 21 years old, and provides new resources to educate youth against drug abuse and train local law enforcement to enforce the new law. It bars marijuana businesses from being located within 600 feet of schools and other areas where children congregate. It establishes mandatory and strict packaging and labeling requirements for marijuana and marijuana products. And it mandates that marijuana and marijuana products cannot be advertised or marketed towards children.

E. There are currently no laws governing adult use marijuana businesses to ensure that they operate in accordance with existing California laws. Adult use of marijuana may only be

accessed from the unregulated illicit market. The Adult Use of Marijuana Act sets up a comprehensive system governing marijuana businesses at the state level and safeguards local control, allowing local governments to regulate marijuana-related activities, to subject marijuana businesses to zoning and permitting requirements, and to ban marijuana businesses by a vote of the people within a locality.

F. Currently, illegal marijuana growers steal or divert millions of gallons of water without any accountability. The Adult Use of Marijuana Act will create strict environmental regulations to ensure that the marijuana is grown efficiently and legally, to regulate the use of pesticides, to prevent wasting water, and to minimize water usage. The Adult Use of Marijuana Act will crack down on the illegal use of water and punish bad actors, while providing funds to restore lands that have been damaged by illegal marijuana grows. If a business does not demonstrate they are in full compliance with the applicable water usage and environmental laws, they will have their license revoked.

G. Currently, the courts are clogged with cases of non-violent drug offenses. By legalizing marijuana, the Adult Use of Marijuana Act will alleviate pressure on the courts, but continue to allow prosecutors to charge the most serious marijuana-related offenses as felonies, while reducing the penalties for minor marijuana-related offenses as set forth in the Act.

H. By bringing marijuana into a regulated and legitimate market, the Adult Use of Marijuana Act creates a transparent and accountable system. This will help police crackdown on the underground black market that currently benefits violent drug cartels and transnational gangs, which are making billions from marijuana trafficking and jeopardizing public safety.

I. The Adult Use of Marijuana Act creates a comprehensive regulatory structure in which every marijuana business is overseen by a specialized agency with relevant expertise. The Bureau of Marijuana Control, housed in the Department of Consumer Affairs, will oversee the whole system and ensure a smooth transition to the legal market, with licenses issued beginning in 2018. The Department of Consumer Affairs will also license and oversee marijuana retailers, distributors, and microbusinesses. The Department of Food and Agriculture will license and oversee marijuana cultivation, ensuring it is environmentally safe. The Department of Public Health will license and oversee manufacturing and testing, ensuring consumers receive a safe product. The State Board of Equalization will collect the special marijuana taxes, and the Controller will allocate the revenue to administer the new law and provide the funds to critical investments.

J. The Adult Use of Marijuana Act ensures the nonmedical marijuana industry in California will be built around small and medium sized businesses by prohibiting large-scale cultivation licenses for the first five years. The Adult Use of Marijuana Act also protects consumers and small businesses by imposing strict anti-monopoly restrictions for businesses that participate in the nonmedical marijuana industry.

### SECTION 3. PURPOSE AND INTENT.

The purpose of the Adult Use of Marijuana Act is to establish a comprehensive system to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including marijuana products, for use by adults 21 years and older, and to tax the commercial growth and retail sale of marijuana. It is the intent of the People in enacting this Act to accomplish the following:

- (a) Take nonmedical marijuana production and sales out of the hands of the illegal market and bring them under a regulatory structure that prevents access by minors and protects public safety, public health, and the environment.
- (b) Strictly control the cultivation, processing, manufacture, distribution, testing and sale of nonmedical marijuana through a system of state licensing, regulation, and enforcement.
- (c) Allow local governments to enforce state laws and regulations for nonmedical marijuana businesses and enact additional local requirements for nonmedical marijuana businesses, but not require that they do so for a nonmedical marijuana business to be issued a state license and be legal under state law.
- (d) Allow local governments to ban nonmedical marijuana businesses as set forth in this Act.
- (e) Require track and trace management procedures to track nonmedical marijuana from cultivation to sale.
- (f) Require nonmedical marijuana to be comprehensively tested by independent testing services for the presence of contaminants, including mold and pesticides, before it can be sold by licensed businesses.
- (g) Require nonmedical marijuana sold by licensed businesses to be packaged in child-resistant containers and be labeled so that consumers are fully informed about potency and the effects of ingesting nonmedical marijuana.
- (h) Require licensed nonmedical marijuana businesses to follow strict environmental and product safety standards as a condition of maintaining their license.
- (i) Prohibit the sale of nonmedical marijuana by businesses that also sell alcohol or tobacco.
- (j) Prohibit the marketing and advertising of nonmedical marijuana to persons younger than 21 years old or near schools or other places where children are present.
- (k) Strengthen the state's existing medical marijuana system by requiring patients to obtain by January 1, 2018, a new recommendation from their physician that meets the strict standards signed into law by the Governor in 2015, and by providing new privacy protections for patients who obtain medical marijuana identification cards as set forth in this Act.

- (l) Permit adults 21 years and older to use, possess, purchase and grow nonmedical marijuana within defined limits for use by adults 21 years and older as set forth in this Act.
- (m) Allow local governments to reasonably regulate the cultivation of nonmedical marijuana for personal use by adults 21 years and older through zoning and other local laws, and only to ban outdoor cultivation as set forth in this Act.
- (n) Deny access to marijuana by persons younger than 21 years old who are not medical marijuana patients.
- (o) Prohibit the consumption of marijuana in a public place unlicensed for such use, including near K-12 schools and other areas where children are present.
- (p) Maintain existing laws making it unlawful to operate a car or other vehicle used for transportation while impaired by marijuana.
- (q) Prohibit the cultivation of marijuana on public lands or while trespassing on private lands.
- (r) Allow public and private employers to enact and enforce workplace policies pertaining to marijuana.
- (s) Tax the growth and sale of marijuana in a way that drives out the illicit market for marijuana and discourages use by minors, and abuse by adults.
- (t) Generate hundreds of millions of dollars in new state revenue annually for restoring and repairing the environment, youth treatment and prevention, community investment, and law enforcement.
- (u) Prevent illegal production or distribution of marijuana.
- (v) Prevent the illegal diversion of marijuana from California to other states or countries or to the illegal market.
- (w) Preserve scarce law enforcement resources to prevent and prosecute violent crime.
- (x) Reduce barriers to entry into the legal, regulated market.
- (y) Require minors who commit marijuana-related offenses to complete drug prevention education or counseling and community service.
- (z) Authorize courts to resentence persons who are currently serving a sentence for offenses for which the penalty is reduced by the Act, so long as the person does not pose a risk to public safety, and to redesignate or dismiss such offenses from the criminal records of persons who have completed their sentences as set forth in this Act.

(aa) Allow industrial hemp to be grown as an agricultural product, and for agricultural or academic research, and regulated separately from the strains of cannabis with higher delta-9 tetrahydrocannabinol concentrations.

#### **SECTION 4. PERSONAL USE.**

**Sections 11018 of the Health and Safety Code is hereby amended, and Sections 11018.1 and 11018.2 of the Health and Safety Code are hereby added to read:**

##### **11018. Marijuana**

"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 ~~the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination:~~

*(a) industrial hemp, as defined in Section 11018.5; or*

*(b) the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.*

##### **11018.1. Marijuana Products**

"*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.

##### **11018.2. Marijuana Accessories**

"*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.

**Sections 11362.1 through 11362.45 are added to the Health and Safety Code, to read:**

##### **11362.1.**

*(a) Subject to Sections 11362.2, 11362.3, 11362.4, and 11362.45, but notwithstanding any other provision of law, it shall be lawful under state and local law, and shall not be a violation of state or local law, for persons 21 years of age or older to:*

*(1) Possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever, not more than 28.5 grams of marijuana not in the form of concentrated cannabis;*

- (2) Possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever, not more than eight grams of marijuana in the form of concentrated cannabis, including as contained in marijuana products;*
- (3) Possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants;*
- (4) Smoke or ingest marijuana or marijuana products; and*
- (5) Possess, transport, purchase, obtain, use, manufacture, or give away marijuana accessories to persons 21 years of age or older without any compensation whatsoever.*
- (b) Paragraph (5) of subdivision (a) is intended to meet the requirements of subdivision (f) of Section 863 of Title 21 of the United States Code (21 U.S.C. § 863(f)) by authorizing, under state law, any person in compliance with this section to manufacture, possess, or distribute marijuana accessories.*
- (c) Marijuana and marijuana products involved in any way with conduct deemed lawful by this section are not contraband nor subject to seizure, and no conduct deemed lawful by this section shall constitute the basis for detention, search, or arrest.*

*11362.2.*

*(a) Personal cultivation of marijuana under paragraph (3) of subdivision (a) of Section 11362.1 is subject to the following restrictions:*

- (1) A person shall plant, cultivate, harvest, dry, or process plants in accordance with local ordinances, if any, adopted in accordance with subdivision (b) of this section.*
- (2) The living plants and any marijuana produced by the plants in excess of 28.5 grams are kept within the person's private residence, or upon the grounds of that private residence (e.g., in an outdoor garden area), are in a locked space, and are not visible by normal unaided vision from a public place.*
- (3) Not more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of that private residence, at one time.*
- (b)(1) A city, county, or city and county may enact and enforce reasonable regulations to reasonably regulate the actions and conduct in paragraph (3) of subdivision (a) of Section 11362.1.*
- (2) Notwithstanding paragraph (1), no city, county, or city and county may completely prohibit persons engaging in the actions and conduct under paragraph (3) of subdivision (a) of Section 11362.1 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.*
- (3) Notwithstanding paragraph (3) of subdivision (a) of Section 11362.1, a city, county, or city and county may completely prohibit persons from engaging in actions and conduct under paragraph (3) of subdivision (a) of Section 11362.1 outdoors upon the grounds of a private residence.*
- (4) Paragraph (3) of this subdivision shall become inoperable upon a determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law, and an act taken by a city, county, or city and county under paragraph (3) shall be deemed repealed upon the date of such determination by the California Attorney General.*
- (5) For purposes of this section, "private residence" means a house, an apartment unit, a mobile home, or other similar dwelling.*

11362.3.

(a) Nothing in Section 11362.1 shall be construed to permit any person to:

- (1) Smoke or ingest marijuana or marijuana products in any public place, except in accordance with Section 26200 of the Business and Professions Code.
  - (2) Smoke marijuana or marijuana products in a location where smoking tobacco is prohibited.
  - (3) Smoke marijuana or marijuana products within 1,000 feet of a school, day care center, or youth center while children are present at such a school, day care center, or youth center, except in or upon the grounds of a private residence or in accordance with Section 26200 of the Business and Professions Code or Chapter 3.5 of Division 8 of the Business and Professions Code and only if such smoking is not detectable by others on the grounds of such a school, day care center, or youth center while children are present.
  - (4) Possess an open container or open package of marijuana or marijuana products while driving, operating, or riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.
  - (5) Possess, smoke or ingest marijuana or marijuana products in or upon the grounds of a school, day care center, or youth center while children are present.
  - (6) Manufacture concentrated cannabis using a volatile solvent, unless done in accordance with a license under Chapter 3.5 of Division 8 or Division 10 of the Business and Professions Code.
  - (7) Smoke or ingest marijuana or marijuana products while driving, operating a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.
  - (8) Smoke or ingest marijuana or marijuana products while riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation except as permitted on a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation that is operated in accordance with Section 26200 of the Business and Professions Code and while no persons under the age of 21 years are present.
- (b) For purposes of this section, "day care center" has the same meaning as in Section 1596.76.
- (c) For purposes of this section, "smoke" means to inhale, exhale, burn, or carry any lighted or heated device or pipe, or any other lighted or heated marijuana or marijuana product intended for inhalation, whether natural or synthetic, in any manner or in any form. "Smoke" includes the use of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in a place.
- (d) For purposes of this section, "volatile solvent" means volatile organic compounds, including: (1) explosive gases, such as Butane, Propane, Xylene, Styrene, Gasoline, Kerosene, O<sub>2</sub> or H<sub>2</sub>; and (2) dangerous poisons, toxins, or carcinogens, such as Methanol, Iso-propyl Alcohol, Methylene Chloride, Acetone, Benzene, Toluene, and Tri-chloro-ethylene.
- (e) For purposes of this section, "youth center" has the same meaning as in Section 11353.1.
- (f) Nothing in this section shall be construed or interpreted to amend, repeal, affect, restrict, or preempt laws pertaining to the Compassionate Use Act of 1996.

11362.4.

(a) A person who engages in the conduct described in paragraph (1) of subdivision (a) of Section 11362.3 is guilty of an infraction punishable by no more than a one hundred dollar (\$100) fine; provided, however, that persons under the age of 18 shall instead be required to complete four hours of a drug education program or counseling, and up to 10 hours of community service, over

*a period not to exceed 60 days once the drug education program or counseling and community service opportunity are made available to the person.*

*(b) A person who engages in the conduct described in paragraphs (2) through (4) of subdivision (a) of Section 11362.3 shall be guilty of an infraction punishable by no more than a two hundred and fifty dollar (\$250) fine, unless such activity is otherwise permitted by state and local law; provided, however, that persons under the age of 18 shall instead be required to complete four hours of drug education or counseling, and up to 20 hours of community service, over a period not to exceed 90 days once the drug education program or counseling and community service opportunity are made available to the person.*

*(c) A person who engages in the conduct described in paragraph (5) of subdivision (a) of Section 11362.3 shall be subject to the same punishment as provided under subdivisions (c) or (d) of Section 11357.*

*(d) A person who engages in the conduct described in paragraph (6) of subdivision (a) of Section 11362.3 shall be subject to punishment under Section 11379.6.*

*(e) A person who violates the restrictions in subdivision (a) of Section 11362.2 is guilty of an infraction punishable by no more than a two hundred and fifty dollar (\$250) fine.*

*(f) Notwithstanding subdivision (e), a person under the age of 18 who violates the restrictions in subdivision (a) of Section 11362.2 shall be punished under subdivision (a) of Section 11358.*

*(g)(1) The drug education program or counseling hours required by this section shall be mandatory unless the court makes a finding that such a program or counseling is unnecessary for the person or that a drug education program or counseling is unavailable.*

*(2) The drug education program required by this section for persons under the age of 18 must be free to participants and provide at least four hours of group discussion or instruction based on science and evidence-based principles and practices specific to the use and abuse of marijuana and other controlled substances.*

*(h) Upon a finding of good cause, the court may extend the time for a person to complete the drug education or counseling, and community service required under this section.*

*11362.45.*

*Nothing in section 11362.1 shall be construed or interpreted to amend, repeal, affect, restrict, or preempt:*

*(a) Laws making it unlawful to drive or operate a vehicle, boat, vessel, or aircraft, while smoking, ingesting, or impaired by, marijuana or marijuana products, including, but not limited to, subdivision (e) of Section 23152 of the Vehicle Code, or the penalties prescribed for violating those laws.*

*(b) Laws prohibiting the sale, administering, furnishing, or giving away of marijuana, marijuana products, or marijuana accessories, or the offering to sell, administer, furnish, or give away marijuana, marijuana products, or marijuana accessories to a person younger than 21 years of age.*

*(c) Laws prohibiting a person younger than 21 years of age from engaging in any of the actions or conduct otherwise permitted under Section 11362.1.*

*(d) Laws pertaining to smoking or ingesting marijuana or marijuana products on the grounds of, or within, any facility or institution under the jurisdiction of the Department of Corrections and Rehabilitation or the Division of Juvenile Justice, or on the grounds of, or within, any other facility or institution referenced in Section 4573 of the Penal Code.*

- (e) Laws providing that it would constitute negligence or professional malpractice to undertake any task while impaired from smoking or ingesting marijuana or marijuana products.*
- (f) The rights and obligations of public and private employers to maintain a drug and alcohol free workplace or require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of marijuana in the workplace, or affect the ability of employers to have policies prohibiting the use of marijuana by employees and prospective employees, or prevent employers from complying with state or federal law.*
- (g) The ability of a state or local government agency to prohibit or restrict any of the actions or conduct otherwise permitted under Section 11362.1 within a building owned, leased, or occupied by the state or local government agency.*
- (h) The ability of an individual or private entity to prohibit or restrict any of the actions or conduct otherwise permitted under Section 11362.1 on the individual's or entity's privately owned property.*
- (i) Laws pertaining to the Compassionate Use Act of 1996.*

## **SECTION 5. USE OF MARIJUANA FOR MEDICAL PURPOSES.**

**Sections 11362.712, 11362.713, 11362.84 and 11362.85 are added to the Health and Safety Code, and 11362.755 of the Health and Safety Code is amended to read:**

*11362.712.*

*(a) Commencing on January 1, 2018, a qualified patient must possess a physician's recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2 of the Business and Professions Code. Failure to comply with this requirement shall not, however, affect any of the protections provided to patients or their primary caregivers by Section 11362.5.*

*(b) A county health department or the county's designee shall develop protocols to ensure that, commencing upon January 1, 2018, all identification cards issued pursuant to Section 11362.71 are supported by a physician's recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2 of the Business and Professions Code.*

*11362.713.*

*(a) Information identifying the names, addresses, or social security numbers of patients, their medical conditions, or the names of their primary caregivers, received and contained in the records of the Department of Public Health and by any county public health department are hereby deemed "medical information" within the meaning of the Confidentiality of Medical Information Act (Civil Code § 56, et seq.) and shall not be disclosed by the Department or by any county public health department except in accordance with the restrictions on disclosure of individually identifiable information under the Confidentiality of Medical Information Act.*

*(b) Within 24 hours of receiving any request to disclose the name, address, or social security number of a patient, their medical condition, or the name of their primary caregiver, the Department of Public Health or any county public health agency shall contact the patient and inform the patient of the request and if the request was made in writing, a copy of the request.*

*(c) Notwithstanding Section 56.10 of the Civil Code, neither the Department of Public Health, nor any county public health agency, shall disclose, nor shall they be ordered by agency or court to disclose, the names, addresses, or social security numbers of patients, their medical*

conditions, or the names of their primary caregivers, sooner than the 10th day after which the patient whose records are sought to be disclosed has been contacted.

(d) No identification card application system or database used or maintained by the Department of Public Health or by any county department of public health or the county's designee as provided in Section 11362.71 shall contain any personal information of any qualified patient, including but not limited to, the patient's name, address, social security number, medical conditions, or the names of their primary caregivers. Such an application system or database may only contain a unique user identification number, and when that number is entered, the only information that may be provided is whether the card is valid or invalid.

11362.755.

(a) ~~The department shall establish application and renewal fees for persons seeking to obtain or renew identification cards that are sufficient to cover the expenses incurred by the department, including the startup cost, the cost of reduced fees for Medi-Cal beneficiaries in accordance with subdivision (b), the cost of identifying and developing a cost-effective Internet Web-based system, and the cost of maintaining the 24-hour toll-free telephone number.~~ Each county health department or the county's designee may charge ~~an additional~~ a fee for all costs incurred by the county or the county's designee for administering the program pursuant to this article.

(b) *In no event shall the amount of the fee charged by a county health department exceed \$100 per application or renewal.*

(c) Upon satisfactory proof of participation and eligibility in the Medi-Cal program, a Medi-Cal beneficiary shall receive a 50 percent reduction in the fees established pursuant to this section.

(d) *Upon satisfactory proof that a qualified patient, or the legal guardian of a qualified patient under the age of 18, is a medically indigent adult who is eligible for and participates in the County Medical Services Program, the fee established pursuant to this section shall be waived.*

(e) *In the event the fees charged and collected by a county health department are not sufficient to pay for the administrative costs incurred in discharging the county health department's duties with respect to the mandatory identification card system, the Legislature, upon request by the county health department, shall reimburse the county health department for those reasonable administrative costs in excess of the fees charged and collected by the county health department.*

11362.84.

*The status and conduct of a qualified patient who acts in accordance with the Compassionate Use Act shall not, by itself, be used to restrict or abridge custodial or parental rights to minor children in any action or proceeding under the jurisdiction of family or juvenile court.*

11362.85.

*Upon a determination by the California Attorney General that the federal schedule of controlled substances has been amended to reclassify or declassify marijuana, the Legislature may amend or repeal the provisions of the Health and Safety Code, as necessary, to conform state law to such changes in federal law.*

## **SECTION 6. MARIJUANA REGULATION AND SAFETY.**

**Division 10 is hereby added to the Business and Professions Code to read as follows:**

## ***Division 10. Marijuana***

### ***Chapter 1. General Provisions and Definitions***

26000.

*(a) The purpose and intent of this division is to establish a comprehensive system to control and regulate the cultivation, distribution, transport, storage, manufacturing, processing, and sale of nonmedical marijuana and marijuana products for adults 21 years of age and over.*

*(b) In the furtherance of subdivision (a), this division expands the power and duties of the existing state agencies responsible for controlling and regulating the medical cannabis industry under Chapter 3.5 of Division 8 to include the power and duty to control and regulate the commercial nonmedical marijuana industry.*

*(c) The Legislature may, by majority vote, enact laws to implement this division, provided such laws are consistent with the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act.*

26001.

*For purposes of this division, the following definitions shall apply:*

*(a) "Applicant" means the following:*

*(1) The owner or owners of a proposed licensee. "Owner" means all persons having (A) an aggregate ownership interest (other than a security interest, lien, or encumbrance) of 20 percent or more in the licensee and (B) the power to direct or cause to be directed, the management or control of the licensee.*

*(2) If the applicant is a publicly traded company, "owner" includes the chief executive officer and any member of the board of directors and any person or entity with an aggregate ownership interest in the company of 20 percent or more. If the applicant is a nonprofit entity, "owner" means both the chief executive officer and any member of the board of directors.*

*(b) "Bureau" means the Bureau of Marijuana Control within the Department of Consumer Affairs.*

*(c) "Child resistant" means designed or constructed to be significantly difficult for children under five years of age to open, and not difficult for normal adults to use properly.*

*(d) "Commercial marijuana activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery or sale of marijuana and marijuana products as provided for in this division.*

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

*(f) "Customer" means a natural person 21 years of age or over.*

*(g) "Day care center" shall have the same meaning as in Section 1596.76 of the Health and Safety Code.*

*(h) "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 this division, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.*

*(i) "Director" means the Director of the Department of Consumer Affairs.*

- (j) "Distribution" means the procurement, sale, and transport of marijuana and marijuana products between entities licensed pursuant to this division.
- (k) "Fund" means the Marijuana Control Fund established pursuant to Section 26210.
- (l) "Kind" means applicable type or designation regarding a particular marijuana variant or marijuana product type, including, but not limited to, strain name or other grower trademark, or growing area designation.
- (m) "License" means a state license issued under this division.
- (n) "Licensee" means any person or entity holding a license under this division.
- (o) "Licensing authority" means the state agency responsible for the issuance, renewal, or reinstatement of the license, or the state agency authorized to take disciplinary action against the licensee.
- (p) "Local jurisdiction" means a city, county, or city and county.
- (q) "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.
- (r) "Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of marijuana or marijuana products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages marijuana or marijuana products or labels or re-labels its container, that holds a state license pursuant to this division.
- (s) "Marijuana" has the same meaning as in Section 11018 of the Health and Safety Code, except that it does not include marijuana that is cultivated, processed, transported, distributed, or sold for medical purposes under Chapter 3.5 of Division 8.
- (t) "Marijuana accessories" has the same meaning as in Section 11018.2 of the Health and Safety Code.
- (u) "Marijuana products" has the same meaning as in Section 11018.1 of the Health and Safety Code, except that it does not include marijuana products manufactured, processed, transported, distributed, or sold for medical purposes under Chapter 3.5 of Division 8.
- (v) "Nursery" means a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of marijuana.
- (w) "Operation" means any act for which licensure is required under the provisions of this division, or any commercial transfer of marijuana or marijuana products.
- (x) "Package" means any container or receptacle used for holding marijuana or marijuana products.
- (y) "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.
- (z) "Purchaser" means the customer who is engaged in a transaction with a licensee for purposes of obtaining marijuana or marijuana products.
- (aa) "Sell," "sale," and "to sell" include 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.

(bb) "Testing service" means a laboratory, facility, or entity in the state, that offers or performs tests of marijuana or marijuana products, including the equipment provided by such laboratory, facility, or entity, and that is both of the following:

(1) Accredited by an accrediting body that is independent from all other persons involved in commercial marijuana activity in the state.

(2) Registered with the Department of Public Health.

(cc) "Unique identifier" means an alphanumeric code or designation used for reference to a specific plant on a licensed premises.

(dd) "Unreasonably impracticable" means that the measures necessary to comply with the regulations require such a high investment of risk, money, time, or any other resource or asset, that the operation of a marijuana establishment is not worthy of being carried out in practice by a reasonably prudent business person.

(ee) "Youth center" shall have the same meaning as in Section 11353.1 of the Health and Safety Code.

## **Chapter 2. Administration**

26010.

(a) The Bureau of Medical Marijuana Regulation established in Section 19302 in Chapter 3.5 of Division 8 is hereby renamed the Bureau of Marijuana Control. The director shall administer and enforce the provisions of this division in addition to the provisions of Chapter 3.5 of Division 8. The director shall have the same power and authority as provided by subdivisions (b) and (c) of Section 19302.1 for purposes of this division.

(b) The bureau and the director shall succeed to and are vested with all the duties, powers, purposes, responsibilities, and jurisdiction vested in the Bureau of Medical Marijuana Regulation under Chapter 3.5 of Division 8.

(c) In addition to the powers, duties, purposes, responsibilities, and jurisdiction referenced in subdivision (b), the bureau shall heretofore have the power, duty, purpose, responsibility, and jurisdiction to regulate commercial marijuana activity as provided in this division.

(d) Upon the effective date of this section, whenever "Bureau of Medical Marijuana Regulation" appears in any statute, regulation, or contract, or in any other code, it shall be construed to refer to the bureau.

26011.

Neither the chief of the bureau nor any member of the Marijuana Control Appeals Panel established under Section 26040 shall have nor do any of the following:

(a) Receive any commission or profit whatsoever, directly or indirectly, from any person applying for or receiving any license or permit under this division or Chapter 3.5 of Division 8.

(b) Engage or have any interest in the sale or any insurance covering a licensee's business or premises.

(c) Engage or have any interest in the sale of equipment for use upon the premises of a licensee engaged in commercial marijuana activity.

(d) Knowingly solicit any licensee for the purchase of tickets for benefits or contributions for benefits.

(e) Knowingly request any licensee to donate or receive money, or any other thing of value, for the benefit of any person whatsoever.

26012.

*(a) It being a matter of statewide concern, except as otherwise authorized in this division:*

*(1) The Department of Consumer Affairs shall have the exclusive authority to create, issue, renew, discipline, suspend, or revoke licenses for the transportation, storage unrelated to manufacturing activities, distribution, and sale of marijuana within the state.*

*(2) The Department of Food and Agriculture shall administer the provisions of this division related to and associated with the cultivation of marijuana. The Department of Food and Agriculture shall have the authority to create, issue, and suspend or revoke cultivation licenses for violations of this division.*

*(3) The Department of Public Health shall administer the provisions of this division related to and associated with the manufacturing and testing of marijuana. The Department of Public Health shall have the authority to create, issue, and suspend or revoke manufacturing and testing licenses for violations of this division.*

*(b) The licensing authorities and the bureau shall have the authority to collect fees in connection with activities they regulate concerning marijuana. The bureau may create licenses in addition to those identified in this division that the bureau deems necessary to effectuate its duties under this division.*

*(c) Licensing authorities shall begin issuing licenses under this division by January 1, 2018.*

26013.

*(a) Licensing authorities shall make and prescribe reasonable rules and regulations as may be necessary to implement, administer and enforce their respective duties under this division in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Such rules and regulations shall be consistent with the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act.*

*(b) Licensing authorities may prescribe, adopt, and enforce any emergency regulations as necessary to implement, administer and enforce their respective duties under this division. Any emergency regulation prescribed, adopted or enforced pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.*

*(c) Regulations issued under this division shall be necessary to achieve the purposes of this division, based on best available evidence, and shall mandate only commercially feasible procedures, technology, or other requirements, and shall not unreasonably restrain or inhibit the development of alternative procedures or technology to achieve the same substantive requirements, nor shall such regulations make compliance unreasonably impracticable.*

26014.

*(a) The bureau shall convene an advisory committee to advise the bureau and licensing authorities on the development of standards and regulations pursuant to this division, including best practices and guidelines that protect public health and safety while ensuring a regulated environment for commercial marijuana activity that does not impose such unreasonably*

*impracticable barriers so as to perpetuate, rather than reduce and eliminate, the illicit market for marijuana.*

*(b) The advisory committee members shall include, but not be limited to, representatives of the marijuana industry, representatives of labor organizations, appropriate state and local agencies, public health experts, and other subject matter experts, including representatives from the Department of Alcoholic Beverage Control, with expertise in regulating commercial activity for adult-use intoxicating substances. The advisory committee members shall be determined by the director.*

*(c) Commencing on January 1, 2019, the advisory committee shall publish an annual public report describing its activities including, but not limited to, the recommendations the advisory committee made to the bureau and licensing authorities during the immediately preceding calendar year and whether those recommendations were implemented by the bureau or licensing authorities.*

26015.

*A licensing authority may make or cause to be made such investigation as it deems necessary to carry out its duties under this division.*

26016.

*For any hearing held pursuant to this division, except a hearing held under Chapter 4, a licensing authority may delegate the power to hear and decide to an administrative law judge. Any hearing before an administrative law judge shall be pursuant to the procedures, rules, and limitations prescribed in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.*

26017.

*In any hearing before a licensing authority pursuant to this division, the licensing authority may pay any person appearing as a witness at the hearing at the request of the licensing authority pursuant to a subpoena, his or her actual, necessary, and reasonable travel, food, and lodging expenses, not to exceed the amount authorized for state employees.*

26018.

*A licensing authority may on its own motion at any time before a penalty assessment is placed into effect, and without any further proceedings, review the penalty, but such review shall be limited to its reduction.*

### **Chapter 3. Enforcement**

26030.

*Grounds for disciplinary action include:*

*(a) Failure to comply with the provisions of this division or any rule or regulation adopted pursuant to this division.*

*(b) Conduct that constitutes grounds for denial of licensure pursuant to Chapter 3 (commencing with Section 490) of Division 1.5.*

*(c) Any other grounds contained in regulations adopted by a licensing authority pursuant to this division.*

*(d) Failure to comply with any state law including, but not limited to, the payment of taxes as required under the Revenue and Taxation Code, except as provided for in this division or other California law.*

*(e) Knowing violations of any state or local law, ordinance, or regulation conferring worker protections or legal rights on the employees of a licensee.*

*(f) Failure to comply with the requirement of a local ordinance regulating commercial marijuana activity.*

*(g) The intentional and knowing sale of marijuana or marijuana products by a licensee to a person under the legal age to purchase or possess.*

26031.

*Each licensing authority may suspend or revoke licenses, after proper notice and hearing to the licensee, if the licensee is found to have committed any of the acts or omissions constituting grounds for disciplinary action. The disciplinary proceedings under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director of each licensing authority shall have all the powers granted therein.*

26032.

*Each licensing authority may take disciplinary action against a licensee for any violation of this division when the violation was committed by the licensee's agent or employee while acting on behalf of the licensee or engaged in commercial marijuana activity.*

26033.

*Upon suspension or revocation of a license, the licensing authority shall inform the bureau. The bureau shall then inform all other licensing authorities.*

26034.

*Accusations against licensees under this division shall be filed within the same time limits as specified in Section 19314 or as otherwise provided by law.*

26035.

*(a) The director shall designate the persons employed by the Department of Consumer Affairs for purposes of the administration and enforcement of this division. The director shall ensure that a sufficient number of employees are qualified peace officers for purposes of enforcing this division.*

26036.

*Nothing in this division shall be interpreted to supersede or limit state agencies from exercising their existing enforcement authority, including, but not limited to, under the Fish and Game Code, the Food and Agricultural Code, the Government Code, the Health and Safety Code, the Public Resources Code, the Water Code, or the application of those laws.*

26037.

*(a) The actions of a licensee, its employees, and its agents that are: (1) permitted under a license issued under this division and any applicable local ordinances; and (2) conducted in accordance*

*with the requirements of this division and regulations adopted pursuant to this division, are not unlawful under state law and shall not be an offense subject to arrest, prosecution, or other sanction under state law, or be subject to a civil fine or be a basis for seizure or forfeiture of assets under state law.*

*(b) The actions of a person who, in good faith, allows his or her property to be used by a licensee, its employees, and its agents, as permitted pursuant to a state license and any applicable local ordinances, are not unlawful under state law and shall not be an offense subject to arrest, prosecution, or other sanction under state law, or be subject to a civil fine or be a basis for seizure or forfeiture of assets under state law.*

26038.

*(a) A person engaging in commercial marijuana activity without a license required by this division shall be subject to civil penalties of up to three times the amount of the license fee for each violation, and the court may order the destruction of marijuana associated with that violation in accordance with Section 11479 of the Health and Safety Code. Each day of operation shall constitute a separate violation of this section. All civil penalties imposed and collected pursuant to this section by a licensing authority shall be deposited into the General Fund except as provided in subdivision (b).*

*(b) If an action for civil penalties is brought against a licensee pursuant to this division by the Attorney General on behalf of the people, the penalty collected shall be deposited into the General Fund. If the action is brought by a district attorney or county counsel, the penalty shall first be used to reimburse the district attorney or county counsel for the costs of bringing the action for civil penalties, with the remainder, if any, to be deposited into the General Fund. If the action is brought by a city attorney or city prosecutor, the penalty collected shall first be used to reimburse the city attorney or city prosecutor for the costs of bringing the action for civil penalties, with the remainder, if any, to be deposited into the General Fund.*

*(c) Notwithstanding subdivision (a), criminal penalties shall continue to apply to an unlicensed person engaging in commercial marijuana activity in violation of this division.*

#### **Chapter 4. Appeals**

26040.

*(a) There is established in state government a Marijuana Control Appeals Panel which shall consist of three members appointed by the Governor and subject to confirmation by a majority vote of all of the members elected to the Senate. Each member, at the time of his or her initial appointment, shall be a resident of a different county from the one in which either of the other members resides. Members of the panel shall receive an annual salary as provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.*

*(b) The members of the panel may be removed from office by the Governor, and the Legislature shall have the power, by a majority vote of all members elected to each house, to remove any member from office for dereliction of duty, corruption or incompetency.*

*(c) A concurrent resolution for the removal of any member of the panel may be introduced in the Legislature only if five Members of the Senate, or ten Members of the Assembly, join as authors.*

26041.

*All personnel of the panel shall be appointed, employed, directed, and controlled by the panel consistent with state civil service requirements. The director shall furnish the equipment, supplies, and housing necessary for the authorized activities of the panel and shall perform such other mechanics of administration as the panel and the director may agree upon.*

26042.

*The panel shall adopt procedures for appeals similar to the procedures used in Articles 3 and 4 in Chapter 1.5 in Division 9 of the Business and Professions Code. Such procedures shall be adopted in accordance with the Administrative Procedure Act (Government Code, Title 2, Division 3, section 11340 et seq.).*

26043.

*(a) When any person aggrieved thereby appeals from a decision of the bureau or any licensing authority ordering any penalty assessment, issuing, denying, transferring, conditioning, suspending or revoking any license provided for under this division, the panel shall review the decision subject to such limitations as may be imposed by the Legislature. In such cases, the panel shall not receive evidence in addition to that considered by the bureau or the licensing authority.*

*(b) Review by the panel of a decision of the bureau or a licensing authority shall be limited to the following questions:*

*(1) Whether the bureau or any licensing authority has proceeded without or in excess of its jurisdiction.*

*(2) Whether the bureau or any licensing authority has proceeded in the manner required by law.*

*(3) Whether the decision is supported by the findings.*

*(4) Whether the findings are supported by substantial evidence in the light of the whole record.*

26044.

*(a) In appeals where the panel finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the bureau or licensing authority, it may enter an order remanding the matter to the bureau or licensing authority for reconsideration in the light of such evidence.*

*(b) Except as provided in subdivision (a), in all appeals, the panel shall enter an order either affirming or reversing the decision of the bureau or licensing authority. When the order reverses the decision of the bureau or licensing authority, the board may direct the reconsideration of the matter in the light of its order and may direct the bureau or licensing authority to take such further action as is specially enjoined upon it by law, but the order shall not limit or control in any way the discretion vested by law in the bureau or licensing authority.*

26045.

*Orders of the panel shall be subject to judicial review under Section 1094.5 of the Code of Civil Procedure upon petition by the bureau or licensing authority or any party aggrieved by such order.*

## Chapter 5. Licensing

26050.

(a) *The license classification pursuant to this division shall, at a minimum, be as follows:*

- (1) *Type 1 = Cultivation; Specialty outdoor; Small.*
- (2) *Type 1A = Cultivation; Specialty indoor; Small.*
- (3) *Type 1B = Cultivation; Specialty mixed-light; Small.*
- (4) *Type 2 = Cultivation; Outdoor; Small.*
- (5) *Type 2A = Cultivation; Indoor; Small.*
- (6) *Type 2B = Cultivation; Mixed-light; Small.*
- (7) *Type 3 = Cultivation; Outdoor; Medium.*
- (8) *Type 3A = Cultivation; Indoor; Medium.*
- (9) *Type 3B = Cultivation; Mixed-light; Medium.*
- (10) *Type 4 = Cultivation; Nursery.*
- (11) *Type 5 = Cultivation; Outdoor; Large.*
- (12) *Type 5A = Cultivation; Indoor; Large.*
- (13) *Type 5B = Cultivation; Mixed-light; Large.*
- (14) *Type 6 = Manufacturer 1.*
- (15) *Type 7 = Manufacturer 2.*
- (16) *Type 8 = Testing.*
- (17) *Type 10 = Retailer.*
- (18) *Type 11 = Distributor.*
- (19) *Type 12 = Microbusiness.*

(b) *All licenses issued under this division shall bear a clear designation indicating that the license is for commercial marijuana activity as distinct from commercial medical cannabis activity licensed under Chapter 3.5 of Division 8. Examples of such a designation include, but are not limited to, "Type 1 – Nonmedical," or "Type 1NM."*

(c) *A license issued pursuant to this division shall be valid for 12 months from the date of issuance. The license may be renewed annually.*

(d) *Each licensing authority shall establish procedures for the issuance and renewal of licenses.*

(e) *Notwithstanding subdivision (c), a licensing authority may issue a temporary license for a period of less than 12 months. This subdivision shall cease to be operable on January 1, 2019.*

26051.

(a) *In determining whether to grant, deny, or renew a license authorized under this division, a licensing authority shall consider factors reasonably related to the determination, including, but not limited to, whether it is reasonably foreseeable that issuance, denial, or renewal of the license could:*

- (1) *allow unreasonable restraints on competition by creation or maintenance of unlawful monopoly power;*
- (2) *perpetuate the presence of an illegal market for marijuana or marijuana products in the state or out of the state;*
- (3) *encourage underage use or adult abuse of marijuana or marijuana products, or illegal diversion of marijuana or marijuana products out of the state;*
- (4) *result in an excessive concentration of licensees in a given city, county, or both;*

*(5) present an unreasonable risk of minors being exposed to marijuana or marijuana products; or*

*(6) result in violations of any environmental protection laws.*

*(b) A licensing authority may deny a license or renewal of a license based upon the considerations in subdivision (a).*

*(c) For purposes of this section, "excessive concentration" means when the premises for a retail license, microbusiness license, or a license issued under Section 26070.5 is located in an area where either of the following conditions exist:*

*(1) The ratio of a licensee to population in the census tract or census division in which the applicant premises are located exceeds the ratio of licensees to population in the county in which the applicant premises are located, unless denial of the application would unduly limit the development of the legal market so as to perpetuate the illegal market for marijuana or marijuana products.*

*(2) The ratio of retail licenses, microbusiness licenses, or licenses under Section 26070.5 to population in the census tract, division or jurisdiction exceeds that allowable by local ordinance adopted under Section 26200.*

26052.

*(a) No licensee shall perform any of the following acts, or permit any such acts to be performed by any employee, agent, or contractor of such licensee:*

*(1) Make any contract in restraint of trade in violation of Section 16600;*

*(2) Form a trust or other prohibited organization in restraint of trade in violation of Section 16720;*

*(3) Make a sale or contract for the sale of marijuana or marijuana products, or to fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the consumer or purchaser thereof shall not use or deal in the goods, merchandise, machinery, supplies, commodities, or services of a competitor or competitors of such seller, where the effect of such sale, contract, condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of trade or commerce;*

*(4) Sell any marijuana or marijuana products at less than cost for the purpose of injuring competitors, destroying competition, or misleading or deceiving purchasers or prospective purchasers;*

*(5) Discriminate between different sections, communities, or cities or portions thereof, or between different locations in such sections, communities, cities or portions thereof in this state, by selling or furnishing marijuana or marijuana products at a lower price in one section, community, or city or any portion thereof, or in one location in such section, community, or city or any portion thereof, than in another, for the purpose of injuring competitors or destroying competition; or*

*(6) Sell any marijuana or marijuana products at less than the cost thereof to such vendor, or to give away any article or product for the purpose of injuring competitors or destroying competition.*

*(b) Any person who, either as director, officer or agent of any firm or corporation, or as agent of any person, violates the provisions of this chapter, assists or aids, directly or indirectly, in such violation is responsible therefor equally with the person, firm or corporation for which such person acts.*

- (c) A licensing authority may enforce this section by appropriate regulation.*
- (d) Any person or trade association may bring an action to enjoin and restrain any violation of this section for the recovery of damages.*

26053.

- (a) The bureau and licensing authorities may issue licenses under this division to persons or entities that hold licenses under Chapter 3.5 of Division 8.*
- (b) Notwithstanding subdivision (a), a person or entity that holds a state testing license under this division or Chapter 3.5 of Division 8 is prohibited from licensure for any other activity, except testing, as authorized under this division.*
- (c) Except as provided in subdivision (b), a person or entity may apply for and be issued more than one license under this division.*

26054.

- (a) A licensee shall not also be licensed as a retailer of alcoholic beverages under Division 9 or of tobacco products.*
- (b) No licensee under this division shall be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued, unless a licensing authority or a local jurisdiction specifies a different radius. The distance specified in this section shall be measured in the same manner as provided in paragraph (c) of Section 11362.768 of the Health and Safety Code unless otherwise provided by law.*
- (c) It shall be lawful under state and local law, and shall not be a violation of state or local law, for a business engaged in the manufacture of marijuana accessories to possess, transport, purchase or otherwise obtain small amounts of marijuana or marijuana products as necessary to conduct research and development related to such marijuana accessories, provided such marijuana and marijuana products are obtained from a person or entity licensed under this division or Chapter 3.5 of Division 8 permitted to provide or deliver such marijuana or marijuana products.*

26054.1

- (a) No licensing authority shall issue or renew a license to any person that cannot demonstrate continuous California residency from or before January 1, 2015. In the case of an applicant or licensee that is an entity, the entity shall not be considered a resident if any person controlling the entity cannot demonstrate continuous California residency from and before January 1, 2015.*
- (b) Subdivision (a) shall cease to be operable on December 31, 2019 unless reenacted prior thereto by the Legislature.*

26054.2

- (a) A licensing authority shall give priority in issuing licenses under this division to applicants that can demonstrate to the authority's satisfaction that the applicant operated in compliance with the Compassionate Use Act and its implementing laws before September 1, 2016, or currently operates in compliance with Chapter 3.5 of Division 8.*
- (b) The bureau shall request that local jurisdictions identify for the bureau potential applicants for licensure based on the applicants' prior operation in the local jurisdiction in compliance with state law, including the Compassionate Use Act and its implementing laws, and any*

applicable local laws. The bureau shall make the requested information available to licensing authorities.

(c) In addition to or in lieu of the information described in subdivision (b), an applicant may furnish other evidence to demonstrate operation in compliance with the Compassionate Use Act or Chapter 3.5 of Division 8. The bureau and licensing authorities may accept such evidence to demonstrate eligibility for the priority provided for in subdivision (a).

(d) This section shall cease to be operable on December 31, 2019 unless otherwise provided by law.

26055.

(a) Licensing authorities may issue state licenses only to qualified applicants.

(b) Revocation of a state license issued under this division shall terminate the ability of the licensee to operate within California until the licensing authority reinstates or reissues the state license.

(c) Separate licenses shall be issued for each of the premises of any licensee having more than one location, except as otherwise authorized by law or regulation.

(d) After issuance or transfer of a license, no licensee shall change or alter the premises in a manner which materially or substantially alters the premises, the usage of the premises, or the mode or character of business operation conducted from the premises, from the plan contained in the diagram on file with the application, unless and until prior written assent of the licensing authority or bureau has been obtained. For purposes of this section, material or substantial physical changes of the premises, or in the usage of the premises, shall include, but not be limited to, a substantial increase or decrease in the total area of the licensed premises previously diagrammed, or any other physical modification resulting in substantial change in the mode or character of business operation.

(e) Licensing authorities shall not approve an application for a state license under this division if approval of the state license will violate the provisions of any local ordinance or regulation adopted in accordance with Section 26200.

26056.

An applicant for any type of state license issued pursuant to this division shall comply with the same requirements as set forth in Section 19322 of Chapter 3.5 of Division 8 unless otherwise provided by law, including electronic submission of fingerprint images, and any other requirements imposed by law or a licensing authority, except as follows:

(a) notwithstanding paragraph (2) of subdivision (a) of Section 19322 of Chapter 3.5 of Division 8, an applicant need not provide documentation that the applicant has obtained a license, permit or other authorization to operate from the local jurisdiction in which the applicant seeks to operate;

(b) an application for a license under this division shall include evidence that the proposed location meets the restriction in subdivision (b) of Section 26054; and

(c) for applicants seeking licensure to cultivate, distribute, or manufacture nonmedical marijuana or marijuana products, the application shall also include a detailed description of the applicant's operating procedures for all of the following, as required by the licensing authority:

(1) Cultivation.

(2) Extraction and infusion methods.

(3) The transportation process.

*(4) The inventory process.*

*(5) Quality control procedures.*

*(6) The source or sources of water the applicant will use for the licensed activities, including a certification that the applicant may use that water legally under state law.*

*(d) The applicant shall provide a complete detailed diagram of the proposed premises wherein the license privileges will be exercised, with sufficient particularity to enable ready determination of the bounds of the premises, showing all boundaries, dimensions, entrances and exits, interior partitions, walls, rooms, and common or shared entryways, and include a brief statement or description of the principal activity to be conducted therein, and, for licenses permitting cultivation, measurements of the planned canopy including aggregate square footage and individual square footage of separate cultivation areas, if any.*

26056.5.

*The bureau shall devise protocols that each licensing authority shall implement to ensure compliance with state laws and regulations related to environmental impacts, natural resource protection, water quality, water supply, hazardous materials, and pesticide use in accordance with regulations, including but not limited to, the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.), the California Endangered Species Act (Fish and Game Code, Section 2800 et. seq.), lake or streambed alteration agreements (Fish and Game Code, Section 1600 et. seq.), the Clean Water Act, the Porter-Cologne Water Quality Control Act, timber production zones, wastewater discharge requirements, and any permit or right necessary to divert water.*

26057.

*(a) The licensing authority shall deny an application if either the applicant, or the premises for which a state license is applied, do not qualify for licensure under this division.*

*(b) The licensing authority may deny the application for licensure or renewal of a state license if any of the following conditions apply:*

*(1) Failure to comply with the provisions of this division, any rule or regulation adopted pursuant to this division, or any requirement imposed to protect natural resources, including, but not limited to, protections for instream flow and water quality.*

*(2) Conduct that constitutes grounds for denial of licensure under Chapter 2 of Division 1.5, except as otherwise specified in this section and Section 26059.*

*(3) Failure to provide information required by the licensing authority.*

*(4) The applicant or licensee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, except that if the licensing authority determines that the applicant or licensee is otherwise suitable to be issued a license, and granting the license would not compromise public safety, the licensing authority shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant, and shall evaluate the suitability of the applicant or licensee to be issued a license based on the evidence found through the review. In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the licensing authority shall include, but not be limited to, the following:*

*(A) A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.*

*(B) A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code.*

*(C) A felony conviction involving fraud, deceit, or embezzlement.*

*(D) A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.*

*(E) A felony conviction for drug trafficking with enhancements pursuant to Sections 11370.4 or 11379.8.*

*(5) Except as provided in subparagraphs (D) and (E) of paragraph (4) and notwithstanding Chapter 2 of Division 1.5, a prior conviction, where the sentence, including any term of probation, incarceration, or supervised release, is completed, for possession of, possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance is not considered substantially related, and shall not be the sole ground for denial of a license. Conviction for any controlled substance felony subsequent to licensure shall be grounds for revocation of a license or denial of the renewal of a license.*

*(6) The applicant, or any of its officers, directors, or owners, has been subject to fines or penalties for cultivation or production of a controlled substance on public or private lands pursuant to Sections 12025 or 12025.1 of the Fish and Game Code.*

*(7) The applicant, or any of its officers, directors, or owners, has been sanctioned by a licensing authority or a city, county, or city and county for unauthorized commercial marijuana activities or commercial medical cannabis activities, has had a license revoked under this division or Chapter 3.5 of Division 8 in the three years immediately preceding the date the application is filed with the licensing authority, or has been sanctioned under Sections 12025 or 12025.1 of the Fish and Game Code.*

*(8) Failure to obtain and maintain a valid seller's permit required pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.*

*(9) Any other condition specified in law.*

26058.

*Upon the denial of any application for a license, the licensing authority shall notify the applicant in writing.*

26059.

*An applicant shall not be denied a state license if the denial is based solely on any of the following:*

*(a) A conviction or act that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made for which the applicant or licensee has obtained a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.*

*(b) A conviction that was subsequently dismissed pursuant to Sections 1203.4, 1203.4a, or 1203.41 of the Penal Code or any other provision allowing for dismissal of a conviction.*

## **Chapter 6. Licensed Cultivation Sites**

26060.

*(a) Regulations issued by the Department of Food and Agriculture governing the licensing of indoor, outdoor, and mixed-light cultivation sites shall apply to licensed cultivators under this division.*

*(b) Standards developed by the Department of Pesticide Regulation, in consultation with the Department of Food and Agriculture, for the use of pesticides in cultivation, and maximum tolerances for pesticides and other foreign object residue in harvested cannabis shall apply to licensed cultivators under this division.*

*(c) The Department of Food and Agriculture shall include conditions in each license requested by the Department of Fish and Wildlife and the State Water Resources Control Board to ensure that individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability, and to otherwise protect fish, wildlife, fish and wildlife habitat, and water quality.*

*(d) The regulations promulgated by the Department of Food and Agriculture under this division shall, at a minimum, address in relation to commercial marijuana activity, the same matters described in subdivision (e) of Section 19332 of Chapter 3.5 of Division 8.*

*(e) The Department of Pesticide Regulation, in consultation with the State Water Resources Control Board, shall promulgate regulations that require that the application of pesticides or other pest control in connection with the indoor, outdoor, or mixed light cultivation of marijuana meets standards equivalent to Division 6 (commencing with Section 11401) of the Food and Agricultural Code and its implementing regulations.*

26061.

*(a) The state cultivator license types to be issued by the Department of Food and Agriculture under this division shall include Type 1, Type 1A, Type 1B, Type 2, Type 2A, Type 2B, Type 3, Type 3A, Type 3B, Type 4, and Type 5, Type 5A, and Type 5B unless otherwise provided by law.*

*(b) Except as otherwise provided by law, Type 1, Type 1A, Type 1B, Type 2, Type 2A, Type 2B; Type 3, Type 3A, Type 3B and Type 4 licenses shall provide for the cultivation of marijuana in the same amount as the equivalent license type for cultivation of medical cannabis as specified in subdivision (g) of Section 19332 of Chapter 3.5 of Division 8.*

*(c) Except as otherwise provided by law:*

*(1) Type 5, or "outdoor," means for outdoor cultivation using no artificial lighting greater than one acre, inclusive, of total canopy size on one premises.*

*(2) Type 5A, or "indoor," means for indoor cultivation using exclusively artificial lighting greater than 22,000 square feet, inclusive, of total canopy size on one premises.*

*(3) Type 5B, or "mixed-light," means for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, greater than 22,000 square feet, inclusive, of total canopy size on one premises.*

*(d) No Type 5, Type 5A, or Type 5B cultivation licenses may be issued before January 1, 2023.*

*(e) Commencing on January 1, 2023, A Type 5, Type 5A, or Type 5B licensee may apply for and hold a Type 6 or Type 7 license and apply for and hold Type 10 license. A Type 5, Type 5A, or Type 5B licensee shall not eligible to apply for or hold a Type 8, Type 11, or Type 12 license.*

26062.

*The Department of Food and Agriculture, in conjunction with the bureau, shall establish a certified organic designation and organic certification program for marijuana and marijuana products in the same manner as provided in Section 19332.5 of Chapter 3.5 of Division 8.*

26063.

*(a) The bureau shall establish standards for recognition of a particular appellation of origin applicable to marijuana grown or cultivated in a certain geographical area in California.*

*(b) Marijuana shall not be marketed, labeled, or sold as grown in a California county when the marijuana was not grown in that county.*

*(c) The name of a California county shall not be used in the labeling, marketing, or packaging of marijuana products unless the marijuana contained in the product was grown in that county.*

26064.

*Each licensed cultivator shall ensure that the licensed premises do not pose an unreasonable risk of fire or combustion. Each cultivator shall ensure that all lighting, wiring, electrical and mechanical devices, or other relevant property is carefully maintained to avoid unreasonable or dangerous risk to the property or others.*

26065.

*An employee engaged in the cultivation of marijuana under this division shall be subject to Wage Order No. 4-2001 of the Industrial Welfare Commission.*

26066.

*Indoor and outdoor marijuana cultivation by persons and entities licensed under this division shall be conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, water quality, woodland and riparian habitat protection, agricultural discharges, and similar matters. State agencies, including, but not limited to, the Board of Forestry and Fire Protection, the Department of Fish and Wildlife, the State Water Resources Control Board, the California regional water quality control boards, and traditional state law enforcement agencies, shall address environmental impacts of marijuana cultivation and shall coordinate when appropriate with cities and counties and their law enforcement agencies in enforcement efforts.*

26067.

*(a) The Department of Food and Agriculture shall establish a Marijuana Cultivation Program to be administered by the secretary. The secretary shall administer this section as it pertains to the cultivation of marijuana. For purposes of this division, marijuana is an agricultural product.*

*(b) A person or entity shall not cultivate marijuana without first obtaining a state license issued by the department pursuant to this section.*

*(c)(1) The department, in consultation with, but not limited to, the bureau, the State Water Resources Control Board, and the Department of Fish and Wildlife, shall implement a unique identification program for marijuana. In implementing the program, the department shall consider issues including, but not limited to, water use and environmental impacts. In implementing the program, the department shall ensure that:*

*(A) Individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability. If a watershed cannot support additional cultivation, no new plant identifiers will be issued for that watershed.*

*(B) Cultivation will not negatively impact springs, riparian wetlands and aquatic habitats.*

*(2) The department shall establish a program for the identification of permitted marijuana plants at a cultivation site during the cultivation period. A unique identifier shall be issued for each marijuana plant. The department shall ensure that unique identifiers are issued as quickly as possible to ensure the implementation of this division. The unique identifier shall be attached at the base of each plant or as otherwise required by law or regulation.*

*(A) Unique identifiers will only be issued to those persons appropriately licensed by this section.*

*(B) Information associated with the assigned unique identifier and licensee shall be included in the trace and track program specified in Section 26170.*

*(C) The department may charge a fee to cover the reasonable costs of issuing the unique identifier and monitoring, tracking, and inspecting each marijuana plant.*

*(D) The department may promulgate regulations to implement this section.*

*(3) The department shall take adequate steps to establish protections against fraudulent unique identifiers and limit illegal diversion of unique identifiers to unlicensed persons.*

*(d) Unique identifiers and associated identifying information administered by local jurisdictions shall adhere to the requirements set by the department and be the equivalent to those administered by the department.*

*(e) (1) This section does not apply to the cultivation of marijuana in accordance with Section 11362.1 of the Health and Safety Code or the Compassionate Use Act.*

*(2) Subdivision (b) of this section does not apply to persons or entities licensed under either paragraph (3) of subdivision (a) of Section 26070 or subdivision (b) of Section 26070.5.*

*(f) "Department" for purposes of this section means the Department of Food and Agriculture.*

## **Chapter 7. Retailers and Distributors**

### **26070. Retailers and Distributors**

*(a) State licenses to be issued by the Department of Consumer Affairs are as follows:*

*(1) "Retailer," for the retail sale and delivery of marijuana or marijuana products to customers.*

*(2) "Distributor," for the distribution of marijuana and marijuana products. A distributor licensee shall be bonded and insured at a minimum level established by the licensing authority.*

*(3) "Microbusiness," for the cultivation of marijuana on an area less than 10,000 square feet and to act as a licensed distributor, Level 1 manufacturer, and retailer under this division, provided such licensee complies with all requirements imposed by this division on licensed cultivators, distributors, Level 1 manufacturers, and retailers to the extent the licensee engages in such activities. Microbusiness licenses that authorize cultivation of marijuana shall include conditions requested by the Department of Fish and Wildlife and the State Water Resources Control Board to ensure that individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flow needed to maintain flow variability, and otherwise protect fish, wildlife, fish and wildlife habitat, and water quality.*

*(b) The bureau shall establish minimum security and transportation safety requirements for the commercial distribution and delivery of marijuana and marijuana products. The transportation*

*safety standards established by the bureau shall include, but not be limited to, minimum standards governing the types of vehicles in which marijuana and marijuana products may be distributed and delivered and minimum qualifications for persons eligible to operate such vehicles.*

*(c) Licensed retailers and microbusinesses, and licensed nonprofits under Section 26070.5, shall implement security measures reasonably designed to prevent unauthorized entrance into areas containing marijuana or marijuana products and theft of marijuana or marijuana products from the premises. These security measures shall include, but not be limited to, all of the following:*

*(1) Prohibiting individuals from remaining on the licensee's premises if they are not engaging in activity expressly related to the operations of the dispensary.*

*(2) Establishing limited access areas accessible only to authorized personnel.*

*(3) Other than limited amounts of marijuana used for display purposes, samples, or immediate sale, storing all finished marijuana and marijuana products in a secured and locked room, safe, or vault, and in a manner reasonably designed to prevent diversion, theft, and loss.*

#### *26070.5*

*(a) The bureau shall, by January 1, 2018, investigate the feasibility of creating one or more classifications of nonprofit licenses under this section. The feasibility determination shall be made in consultation with the relevant licensing agencies and representatives of local jurisdictions which issue temporary licenses pursuant to subdivision (b).*

*The bureau shall consider factors including, but not limited to, the following:*

*(1) Should nonprofit licensees be exempted from any or all state taxes, licensing fees and regulatory provisions applicable to other licenses in this division?*

*(2) Should funding incentives be created to encourage others licensed under this division to provide professional services at reduced or no cost to nonprofit licensees?*

*(3) Should nonprofit licenses be limited to, or prioritize those, entities previously operating on a not-for-profit basis primarily providing whole-plant marijuana and marijuana products and a diversity of marijuana strains and seed stock to low income persons?*

*(b) Any local jurisdiction may issue temporary local licenses to nonprofit entities primarily providing whole-plant marijuana and marijuana products and a diversity of marijuana strains and seed stock to low income persons so long as the local jurisdiction:*

*(1) confirms the license applicant's status as a nonprofit entity registered with the California Attorney General's Registry of Charitable Trusts and that the applicant is in good standing with all state requirements governing nonprofit entities;*

*(2) licenses and regulates any such entity to protect public health and safety, and so as to require compliance with all environmental requirements in this division;*

*(3) provides notice to the bureau of any such local licenses issued, including the name and location of any such licensed entity and all local regulations governing the licensed entity's operation, and;*

*(4) certifies to the bureau that any such licensed entity will not generate annual gross revenues in excess of two million dollars (\$2,000,000).*

*(c) Temporary local licenses authorized under subdivision (b) shall expire after twelve months unless renewed by the local jurisdiction.*

*(d) The bureau may impose reasonable additional requirements on the local licenses authorized under subdivision (b).*

*(e) (1) No new temporary local licenses shall be issued pursuant to this section after the date the bureau determines that creation of nonprofit licenses under this division is not feasible, or if the bureau determines such licenses are feasible, after the date a licensing agency commences issuing state nonprofit licenses.*

*(2) If the bureau determines such licenses are feasible, no temporary license issued under subdivision (b) shall be renewed or extended after the date on which a licensing agency commences issuing state nonprofit licenses.*

*(3) If the bureau determines that creation of nonprofit licenses under this division is not feasible, the bureau shall provide notice of this determination to all local jurisdictions that have issued temporary licenses under subdivision (b). The bureau may, in its discretion, permit any such local jurisdiction to renew or extend on an annual basis any temporary license previously issued under subdivision (b).*

### **Chapter 8. Distribution and Transport**

26080.

*(a) This division shall not be construed to authorize or permit a licensee to transport or distribute, or cause to be transported or distributed, marijuana or marijuana products outside the state, unless authorized by federal law.*

*(b) 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 this division.*

### **Chapter 9. Delivery**

26090.

*(a) Deliveries, as defined in this division, may only be made by a licensed retailer or microbusiness, or a licensed nonprofit under Section 26070.5.*

*(b) A customer requesting delivery shall maintain a physical or electronic copy of the delivery request and shall make it available upon request by the licensing authority and law enforcement officers.*

*(c) A local jurisdiction shall not prevent delivery of marijuana or marijuana products on public roads by a licensee acting in compliance with this division and local law as adopted under Section 26200.*

### **Chapter 10. Manufacturers and Testing Laboratories**

26100.

*The Department of Public Health shall promulgate regulations governing the licensing of marijuana manufacturers and testing laboratories. Licenses to be issued are as follows:*

*(a) "Manufacturing Level 1," for sites that manufacture marijuana products using nonvolatile solvents, or no solvents.*

*(b) "Manufacturing Level 2," for sites that manufacture marijuana products using volatile solvents.*

*(c) "Testing," for testing of marijuana and marijuana products. Testing licensees shall have their facilities or devices licensed according to regulations set forth by the Department. A testing*

licensee shall not hold a license in another license category of this division and shall not own or have ownership interest in a non-testing facility licensed pursuant to this division.

(d) For purposes of this section, "volatile solvents" shall have the same meaning as in subdivision (d) of Section 11362.2 of the Health and Safety Code unless otherwise provided by law or regulation.

#### 26101.

(a) Except as otherwise provided by law, no marijuana or marijuana products may be sold pursuant to a license provided for under this division unless a representative sample of such marijuana or marijuana product has been tested by a certified testing service to determine:

(1) Whether the chemical profile of the sample conforms to the labeled content of compounds, including, but not limited to, all of the following:

(A) Tetrahydrocannabinol (THC).

(B) Tetrahydrocannabinolic Acid (THCA).

(C) Cannabidiol (CBD).

(D) Cannabidiolic Acid (CBDA).

(E) The terpenes described in the most current version of the cannabis inflorescence monograph published by the American Herbal Pharmacopoeia.

(F) Cannabigerol (CBG).

(G) Cannabinol (CBN).

(2) That the presence of contaminants does not exceed the levels in the most current version of the American Herbal Pharmacopoeia monograph. For purposes of this paragraph, contaminants includes, but is not limited to, all of the following:

(A) Residual solvent or processing chemicals, including explosive gases, such as Butane, propane, O<sub>2</sub> or H<sub>2</sub>, and poisons, toxins, or carcinogens, such as Methanol, Iso-propyl Alcohol, Methylene Chloride, Acetone, Benzene, Toluene, and Tri-chloro-ethylene.

(B) Foreign material, including, but not limited to, hair, insects, or similar or related adulterant.

(C) Microbiological impurity, including total aerobic microbial count, total yeast mold count, *P. aeruginosa*, *aspergillus spp.*, *s. aureus*, aflatoxin B1, B2, G1, or G2, or ochratoxin A.

(b) Residual levels of volatile organic compounds shall satisfy standards of the cannabis inflorescence monograph set by the United States Pharmacopeia (U.S.P. Chapter 467).

(c) The testing required by paragraph (a) shall be performed in a manner consistent with general requirements for the competence of testing and calibrations activities, including sampling, using standard methods established by the International Organization for Standardization, specifically ISO/IEC 17020 and ISO/IEC 17025 to test marijuana and marijuana products that are approved by an accrediting body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Agreement.

(d) Any pre-sale inspection, testing transfer, or transportation of marijuana products pursuant to this section shall conform to a specified chain of custody protocol and any other requirements imposed under this division.

#### 26102.

A licensed testing service shall not handle, test, or analyze marijuana or marijuana products unless the licensed testing laboratory meets the requirements of Section 19343 in Chapter 3.5 of Division 8 or unless otherwise provided by law.

26103.

*A licensed testing service shall issue a certificate of analysis for each lot, with supporting data, to report the same information required in Section 19344 in Chapter 3.5 of Division 8 or unless otherwise provided by law.*

26104.

*(a) A licensed testing service shall, in performing activities concerning marijuana and marijuana products, comply with the requirements and restrictions set forth in applicable law and regulations.*

*(b) The Department of Public Health shall develop procedures to:*

*(1) ensure that testing of marijuana and marijuana products occurs prior to distribution to retailers, microbusinesses, or nonprofits licensed under Section 26070.5;*

*(2) specify how often licensees shall test marijuana and marijuana products, and that the cost of testing marijuana shall be borne by the licensed cultivators and the cost of testing marijuana products shall be borne by the licensed manufacturer, and that the costs of testing marijuana and marijuana products shall be borne a nonprofit licensed under Section 26070.5; and*

*(3) require destruction of harvested batches whose testing samples indicate noncompliance with health and safety standards promulgated by the Department of Public Health, unless remedial measures can bring the marijuana or marijuana products into compliance with quality assurance standards as promulgated by the Department of Public Health.*

26105.

*Manufacturing Level 2 licensees shall enact sufficient methods or procedures to capture or otherwise limit risk of explosion, combustion, or any other unreasonably dangerous risk to public safety created by volatile solvents. The Department of Public Health shall establish minimum standards concerning such methods and procedures for Level 2 licensees.*

26106.

*Standards for the production and labeling of all marijuana products developed by the Department of Public Health shall apply to licensed manufacturers and microbusinesses, and nonprofits licensed under Section 26070.5 unless otherwise specified by the Department of Public Health.*

### **Chapter 11. Quality Assurance, Inspection, and Testing**

26110.

*(a) All marijuana and marijuana products shall be subject to quality assurance, inspection, and testing.*

*(b) All marijuana and marijuana products shall undergo quality assurance, inspection, and testing in the same manner as provided in Section 19326 in Chapter 3.5 of Division 8 except as otherwise provided in this division or by law.*

## **Chapter 12. Packaging and Labeling**

26120.

(a) Prior to delivery or sale at a retailer, marijuana and marijuana products shall be labeled and placed in a resealable, child resistant package.

(b) Packages and labels shall not be made to be attractive to children.

(c) All marijuana and marijuana product labels and inserts shall include the following information prominently displayed in a clear and legible fashion in accordance with the requirements, including font size, prescribed by the bureau or the Department of Public Health: *not less than 8 point font*:

(1) Manufacture date and source.

(2) The following statements, in bold print:

(A) For marijuana: **“GOVERNMENT WARNING: THIS PACKAGE CONTAINS MARIJUANA, A SCHEDULE I CONTROLLED SUBSTANCE. KEEP OUT OF REACH OF CHILDREN AND ANIMALS. MARIJUANA MAY ONLY BE POSSESSED OR CONSUMED BY PERSONS 21 YEARS OF AGE OR OLDER UNLESS THE PERSON IS A QUALIFIED PATIENT. MARIJUANA USE WHILE PREGNANT OR BREASTFEEDING MAY BE HARMFUL. CONSUMPTION OF MARIJUANA IMPAIRS YOUR ABILITY TO DRIVE AND OPERATE MACHINERY. PLEASE USE EXTREME CAUTION.”**

(B) For marijuana products: **“GOVERNMENT WARNING: THIS PRODUCT CONTAINS MARIJUANA, A SCHEDULE I CONTROLLED SUBSTANCE. KEEP OUT OF REACH OF CHILDREN AND ANIMALS. MARIJUANA PRODUCTS MAY ONLY BE POSSESSED OR CONSUMED BY PERSONS 21 YEARS OF AGE OR OLDER UNLESS THE PERSON IS A QUALIFIED PATIENT. THE INTOXICATING EFFECTS OF MARIJUANA PRODUCTS MAY BE DELAYED UP TO TWO HOURS. MARIJUANA USE WHILE PREGNANT OR BREASTFEEDING MAY BE HARMFUL. CONSUMPTION OF MARIJUANA PRODUCTS IMPAIRS YOUR ABILITY TO DRIVE AND OPERATE MACHINERY. PLEASE USE EXTREME CAUTION.”**

(3) For packages containing only dried flower, the net weight of marijuana in the package.

(4) Identification of the source and date of cultivation, the type of marijuana or marijuana product and the date of manufacturing and packaging.

(5) The appellation of origin, if any.

(6) List of pharmacologically active ingredients, including, but not limited to, tetrahydrocannabinol (THC), cannabidiol (CBD), and other cannabinoid content, the THC and other cannabinoid amount in milligrams per serving, servings per package, and the THC and other cannabinoid amount in milligrams for the package total, and the potency of the marijuana or marijuana product by reference to the amount of tetrahydrocannabinol and cannabidiol in each serving.

(7) For marijuana products, a list of all ingredients and disclosure of nutritional information in the same manner as the federal nutritional labeling requirements in 21 C.F.R. section 101.9.

(8) A list of any solvents, nonorganic pesticides, herbicides, and fertilizers that were used in the cultivation, production, and manufacture of such marijuana or marijuana product.

(9) A warning if nuts or other known allergens are used.

(10) Information associated with the unique identifier issued by the Department of Food and Agriculture.

(11) Any other requirement set by the bureau or the Department of Public Health.

*(d) Only generic food names may be used to describe the ingredients in edible marijuana products.*

*(e) In the event the bureau determines that marijuana is no longer a schedule I controlled substance under federal law, the label prescribed in subdivision (c) shall no longer require a statement that marijuana is a schedule I controlled substance.*

### **Chapter 13. Marijuana Products**

26130.

*(a) Marijuana products shall be:*

*(1) Not designed to be appealing to children or easily confused with commercially sold candy or foods that do not contain marijuana.*

*(2) Produced and sold with a standardized dosage of cannabinoids not to exceed ten (10) milligrams tetrahydrocannabinol per serving.*

*(3) Delineated or scored into standardized serving sizes if the marijuana product contains more than one serving and is an edible marijuana product in solid form.*

*(4) Homogenized to ensure uniform disbursement of cannabinoids throughout the product.*

*(5) Manufactured and sold under sanitation standards established by the Department of Public Health, in consultation with the bureau, for preparation, storage, handling and sale of food products.*

*(6) Provided to customers with sufficient information to enable the informed consumption of such product, including the potential effects of the marijuana product and directions as to how to consume the marijuana product, as necessary.*

*(b) Marijuana, including concentrated cannabis, included in a marijuana product manufactured in compliance with law is not considered an adulterant under state law.*

### **Chapter 14. Protection of Minors**

26140.

*(a) No licensee shall:*

*(1) Sell marijuana or marijuana products to persons under 21 years of age.*

*(2) Allow any person under 21 years of age on its premises.*

*(3) Employ or retain persons under 21 years of age.*

*(4) Sell or transfer marijuana or marijuana products unless the person to whom the marijuana or marijuana product is to be sold first presents documentation which reasonably appears to be a valid government-issued identification card showing that the person is 21 years of age or older.*

*(b) Persons under 21 years of age may be used by peace officers in the enforcement of this division and to apprehend licensees, or employees or agents of licensees, or other persons who sell or furnish marijuana to minors. Notwithstanding any provision of law, any person under 21 years of age who purchases or attempts to purchase any marijuana while under the direction of a peace officer is immune from prosecution for that purchase or attempt to purchase marijuana. Guidelines with respect to the use of persons under 21 years of age as decoys shall be adopted and published by the bureau in accordance with the rulemaking portion of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).*

*(c) Notwithstanding subdivision (a), a licensee that is also a dispensary licensed under Chapter 3.5 of Division 8 may:*

*(1) Allow on the premises any person 18 years of age or older who possesses a valid identification card under Section 11362.71 of the Health and Safety Code and a valid government-issued identification card;*

*(2) Sell marijuana, marijuana products, and marijuana accessories to a person 18 years of age or older who possesses a valid identification card under Section 11362.71 of the Health and Safety Code and a valid government-issued identification card.*

## **Chapter 15. Advertising and Marketing Restrictions**

26150.

*For purposes of this chapter:*

*(a) "Advertise" means the publication or dissemination of an advertisement.*

*(b) "Advertisement" includes any written or verbal statement, illustration, or depiction which is calculated to induce sales of marijuana or marijuana products, including any written, printed, graphic, or other material, billboard, sign, or other outdoor display, public transit card, other periodical literature, publication, or in a radio or television broadcast, or in any other media; except that such term shall not include:*

*(1) Any label affixed to any marijuana or marijuana products, or any individual covering, carton, or other wrapper of such container that constitutes a part of the labeling under provisions of this division.*

*(2) Any editorial or other reading material (e.g., news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any licensee, and which is not written by or at the direction of the licensee.*

*(c) "Advertising sign" is any sign, poster, display, billboard, or any other stationary or permanently-affixed advertisement promoting the sale of marijuana or marijuana products which are not cultivated, manufactured, distributed, or sold on the same lot.*

*(d) "Health-related statement" means any statement related to health, and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of marijuana or marijuana products and health benefits, or effects on health.*

*(e) "Market" or "Marketing" means any act or process of promoting or selling marijuana or marijuana products, including but not limited to, sponsorship of sporting events, point of sale advertising, development of products specifically designed to appeal to certain demographics, etc.*

26151.

*(a) All advertisements and marketing shall accurately and legibly identify the licensee responsible for its content.*

*(b) Any advertising or marketing placed in broadcast, cable, radio, print and digital communications shall only be displayed where at least 71.6 percent of the audience is reasonably expected to be 21 years of age or older, as determined by reliable, up-to-date audience composition data.*

*(c) Any advertising or marketing involving direct, individualized communication or dialogue controlled by the licensee shall utilize a method of age affirmation to verify that the recipient is 21 years of age or older prior to engaging in such communication or dialogue controlled by the licensee. For purposes of this section, such method of age affirmation may include user confirmation, birth date disclosure, or other similar registration method.*

*(d) All advertising shall be truthful and appropriately substantiated.*

26152.

*No licensee shall:*

*(a) Advertise or market in a manner that is false or untrue in any material particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter tends to create a misleading impression;*

*(b) Publish or disseminate advertising or marketing containing any statement concerning a brand or product that is inconsistent with any statement on the labeling thereof;*

*(c) Publish or disseminate advertising or marketing containing any statement, design, device, or representation which tends to create the impression that the marijuana originated in a particular place or region, unless the label of the advertised product bears an appellation of origin, and such appellation of origin appears in the advertisement;*

*(d) Advertise or market on a billboard or similar advertising device located on an Interstate Highway or State Highway which crosses the border of any other state;*

*(e) Advertise or market marijuana or marijuana products in a manner intended to encourage persons under the age of 21 years to consume marijuana or marijuana products;*

*(f) Publish or disseminate advertising or marketing containing symbols, language, music, gestures, cartoon characters or other content elements known to appeal primarily to persons below the legal age of consumption; or*

*(g) Advertise or market marijuana or marijuana products on an advertising sign within 1,000 feet of a day care center, school providing instruction in kindergarten or any grades 1 through 12, playground, or youth center.*

26153.

*No licensee shall give away any amount of marijuana or marijuana products, or any marijuana accessories, as part of a business promotion or other commercial activity.*

26154.

*No licensee shall publish or disseminate advertising or marketing containing any health-related statement that is untrue in any particular manner or tends to create a misleading impression as to the effects on health of marijuana consumption.*

26155.

*(a) The provisions of subsection (g) of section 26152 shall not apply to the placement of advertising signs inside a licensed premises and which are not visible by normal unaided vision from a public place, provided that such advertising signs do not advertise marijuana or marijuana products in a manner intended to encourage persons under the age of 21 years to consume marijuana or marijuana products.*

*(b) This chapter does not apply to any noncommercial speech.*

## **Chapter 16. Records**

26160.

- (a) A licensee shall keep accurate records of commercial marijuana activity.*
- (b) All records related to commercial marijuana activity as defined by the licensing authorities shall be maintained for a minimum of seven years.*
- (c) The bureau may examine the books and records of a licensee and inspect the premises of a licensee as the licensing authority, or a state or local agency, deems necessary to perform its duties under this division. All inspections shall be conducted during standard business hours of the licensed facility or at any other reasonable time.*
- (d) Licensees shall keep records identified by the licensing authorities on the premises of the location licensed. The licensing authorities may make any examination of the records of any licensee. Licensees shall also provide and deliver copies of documents to the licensing agency upon request.*
- (e) A licensee, or its agent or employee, that refuses, impedes, obstructs, or interferes with an inspection of the premises or records of the licensee pursuant to this section, has engaged in a violation of this division.*
- (f) If a licensee, or an agent or employee of a licensee, fails to maintain or provide the records required pursuant to this section, the licensee shall be subject to a citation and fine of up to thirty thousand dollars (\$30,000) per individual violation.*

26161.

- (a) Every sale or transport of marijuana or marijuana products from one licensee to another licensee must be recorded on a sales invoice or receipt. Sales invoices and receipts may be maintained electronically and must be filed in such manner as to be readily accessible for examination by employees of the bureau or Board of Equalization and shall not be commingled with invoices covering other commodities.*
- (b) Each sales invoice required by subdivision (a) shall include the name and address of the seller and shall include the following information:*
  - (1) Name and address of the purchaser.*
  - (2) Date of sale and invoice number.*
  - (3) Kind, quantity, size, and capacity of packages of marijuana or marijuana products sold.*
  - (4) The cost to the purchaser, together with any discount applied to the price as shown on the invoice.*
  - (5) The place from which transport of the marijuana or marijuana product was made unless transport was made from the premises of the licensee.*
  - (6) Any other information specified by the bureau or the licensing authority.*

## **Chapter 17. Track and Trace System**

26170.

- (a) The Department of Food and Agriculture, in consultation with the bureau and the State Board of Equalization, shall expand the track and trace program provided for under Article 7.5 to include the reporting of the movement of marijuana and marijuana products throughout the distribution chain and provide, at a minimum, the same level of information for marijuana and marijuana products as required to be reported for medical cannabis and medical cannabis*

products, and in addition, the amount of the cultivation tax due pursuant to Part 14.5 of the Revenue and Taxation Code. The expanded track and trace program shall include an electronic seed to sale software tracking system with data points for the different stages of commercial activity including, but not limited to, cultivation, harvest, processing, distribution, inventory, and sale.

(b) The Department, in consultation with the bureau, shall ensure that licensees under this division are allowed to use third-party applications, programs and information technology systems to comply with the requirements of the expanded track and trace program described in subdivision (a) to report the movement of marijuana and marijuana products throughout the distribution chain and communicate such information to licensing agencies as required by law.

(c) Any software, database or other information technology system utilized by the Department to implement the expanded track and trace program shall support interoperability with third-party cannabis business software applications and allow all licensee-facing system activities to be performed through a secure application programming interface (API) or comparable technology which is well documented, bi-directional, and accessible to any third-party application that has been validated and has appropriate credentials. The API or comparable technology shall have version control and provide adequate notice of updates to third-party applications. The system should provide a test environment for third-party applications to access that mirrors the production environment.

#### **Chapter 18. License Fees**

26180.

Each licensing authority shall establish a scale of application, licensing, and renewal fees, based upon the cost of enforcing this division, as follows:

(a) Each licensing authority shall charge each licensee a licensure and renewal fee, as applicable. The licensure and renewal fee shall be calculated to cover the costs of administering this division. The licensure fee may vary depending upon the varying costs associated with administering the various regulatory requirements of this division as they relate to the nature and scope of the different licensure activities, including, but not limited to, the track and trace program required pursuant to Section 26170, but shall not exceed the reasonable regulatory costs to the licensing authority.

(b) The total fees assessed pursuant to this division shall be set at an amount that will fairly and proportionately generate sufficient total revenue to fully cover the total costs of administering this division.

(c) All license fees shall be set on a scaled basis by the licensing authority, dependent on the size of the business.

(d) The licensing authority shall deposit all fees collected in a fee account specific to that licensing authority, to be established in the Marijuana Control Fund. Moneys in the licensing authority fee accounts shall be used, upon appropriation by the Legislature, by the designated licensing authority for the administration of this division.

26181.

The State Water Resources Control Board, the Department of Fish and Wildlife, and other agencies may establish fees to cover the costs of their marijuana regulatory programs.

## **Chapter 19. Annual Reports; Performance Audit**

26190.

*Beginning on March 1, 2020, and on or before March 1 of each year thereafter, each licensing authority shall prepare and submit to the Legislature an annual report on the authority's activities concerning commercial marijuana activities and post the report on the authority's website. The report shall include, but not be limited to, the same type of information specified in Section 19353, and a detailed list of the petitions for regulatory relief or rulemaking changes received by the office from licensees requesting modifications of the enforcement of rules under this division.*

26191.

*(a) Commencing January 1, 2019, and by January 1 of each year thereafter, the Bureau of State Audits shall conduct a performance audit of the bureau's activities under this division, and shall report its findings to the bureau and the Legislature by July 1 of that same year. The report shall include, but not be limited to, the following:*

*(1) The actual costs of the program.*

*(2) The overall effectiveness of enforcement programs.*

*(3) Any report submitted pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.*

*(b) The Legislature shall provide sufficient funds to the Bureau of State Audits to conduct the annual audit required by this section.*

## **Chapter 20. Local Control**

26200.

*(a) Nothing in this division shall be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to second hand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction.*

*(b) Nothing in this division shall be interpreted to require a licensing authority to undertake local law enforcement responsibilities, enforce local zoning requirements, or enforce local licensing requirements.*

*(c) A local jurisdiction shall notify the bureau upon revocation of any local license, permit, or authorization for a licensee to engage in commercial marijuana activity within the local jurisdiction. Within ten (10) days of notification, the bureau shall inform the relevant licensing authorities. Within ten (10) days of being so informed by the bureau, the relevant licensing authorities shall commence proceedings under Chapter 3 of this Division to determine whether a license issued to the licensee should be suspended or revoked.*

*(d) Notwithstanding paragraph (1) of subdivision (a) of Section 11362.3 of the Health and Safety Code, a local jurisdiction may allow for the smoking, vaporizing, and ingesting of marijuana or marijuana products on the premises of a retailer or microbusiness licensed under this division if:*  
*(1) Access to the area where marijuana consumption is allowed is restricted to persons 21 years of age and older;*

- (2) *Marijuana consumption is not visible from any public place or non-age restricted area; and*
- (3) *Sale or consumption of alcohol or tobacco is not allowed on the premises.*

26201.

*Any standards, requirements, and regulations regarding health and safety, environmental protection, testing, security, food safety, and worker protections established by the state shall be the minimum standards for all licensees under this division statewide. A local jurisdiction may establish additional standards, requirements, and regulations.*

26202.

- (a) *A local jurisdiction may enforce this division and the regulations promulgated by the bureau or any licensing authority if delegated the power to do so by the bureau or a licensing authority.*
- (b) *The bureau or any licensing authority shall implement the delegation of enforcement authority in subdivision (a) through a memorandum of understanding between the bureau or licensing authority and the local jurisdiction to which enforcement authority is to be delegated.*

## **Chapter 21. Funding**

26210.

- (a) *The Medical Marijuana Regulation and Safety Act Fund established in Section 19351 of Chapter 3.5 of Division 8 is hereby renamed the Marijuana Control Fund.*
- (b) *Upon the effective date of this section, whenever "Medical Marijuana Regulation and Safety Act Fund" appears in any statute, regulation, or contract, or in any other code, it shall be construed to refer to the Marijuana Control Fund.*

26211.

*(a) Funds for the initial establishment and support of the regulatory activities under this division, including the public information program described in subdivision (c), and for the activities of the Board of Equalization under Part 14.5 of Division 2 of the Revenue and Taxation Code until July 1, 2017, or until the 2017 Budget Act is enacted, whichever occurs later, shall be advanced from the General Fund and shall be repaid by the initial proceeds from fees collected pursuant to this division, any rule or regulation adopted pursuant to this division, or revenues collected from the tax imposed by Sections 34011 and 34012 of the Revenue and Taxation Code, by January 1, 2025.*

*(1) Funds advanced pursuant to this subdivision shall be appropriated to the bureau, which shall distribute the moneys to the appropriate licensing authorities, as necessary to implement the provisions of this division, and to the Board of Equalization, as necessary, to implement the provisions of Part 14.5 of Division 2 of the Revenue and Taxation Code.*

*(2) Within 45 days of this section becoming operative:*

*(A) The Director of Finance shall determine an amount of the initial advance from the General Fund to the Marijuana Control Fund that does not exceed thirty million dollars (\$30,000,000);*

*and*

*(B) There shall be advanced a sum of five million dollars (\$5,000,000) from the General Fund to the Department of Health Care Services to provide for the public information program described in subdivision (c).*

*(b) Notwithstanding subdivision (a), the Legislature shall provide sufficient funds to the Marijuana Control Fund to support the activities of the bureau, state licensing authorities under this division, and the Board of Equalization to support its activities under Part 14.5 of Division 2 of the Revenue and Taxation Code. It is anticipated that this funding will be provided annually beginning on July 1, 2017.*

*(c) The Department of Health Care Services shall establish and implement a public information program no later than September 1, 2017. This public information program shall, at a minimum, describe the provisions of the Control, Regulate, and Tax Adult Use of Marijuana Act of 2016, the scientific basis for restricting access of marijuana and marijuana products to persons under the age of 21 years, describe the penalties for providing access to marijuana and marijuana products to persons under the age of 21 years, provide information regarding the dangers of driving a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation while impaired from marijuana use, the potential harms of using marijuana while pregnant or breastfeeding, and the potential harms of overusing marijuana or marijuana products.*

**Section 147.6 of the Labor Code is hereby added as follows:**

147.6.

*(a) By March 1, 2018, the Division of Occupational Safety and Health shall convene an advisory committee to evaluate whether there is a need to develop industry-specific regulations related to the activities of licensees under Division 10 of the Business and Professions Code, including but not limited to, whether specific requirements are needed to address exposure to second-hand marijuana smoke by employees at facilities where on-site consumption of marijuana is permitted under subdivision (d) of Section 26200 of the Business and Professions Code, and whether specific requirements are needed to address the potential risks of combustion, inhalation, armed robberies or repetitive strain injuries.*

*(b) By October 1, 2018, the advisory committee shall present to the board its findings and recommendations for consideration by the board. By October 1, 2018, the board shall render a decision regarding the adoption of industry-specific regulations pursuant to this section.*

**Section 13276 of the Water Code is amended to read:**

13276.

*(a) The multiagency task force, the Department of Fish and Wildlife and State Water Resources Control Board pilot project to address the Environmental Impacts of Cannabis Cultivation, assigned to respond to the damages caused by marijuana cultivation on public and private lands in California, shall continue its enforcement efforts on a permanent basis and expand them to a statewide level to ensure the reduction of adverse impacts of marijuana cultivation on water quality and on fish and wildlife throughout the state.*

*(b) Each regional board shall, and the State Water Resources Control Board may, address discharges of waste resulting from medical marijuana cultivation and commercial marijuana cultivation under Division 10 of the Business and Profession Code and associated activities, including by adopting a general permit, establishing waste discharge requirements, or taking action pursuant to Section 13269. In addressing these discharges, each regional board shall include conditions to address items that include, but are not limited to, all of the following:*

*(1) Site development and maintenance, erosion control, and drainage features.*

- (2) Stream crossing installation and maintenance.
- (3) Riparian and wetland protection and management.
- (4) Soil disposal.
- (5) Water storage and use.
- (6) Irrigation runoff.
- (7) Fertilizers and soil.
- (8) Pesticides and herbicides.
- (9) Petroleum products and other chemicals.
- (10) Cultivation-related waste.
- (11) Refuse and human waste.
- (12) Cleanup, restoration, and mitigation.

## **SECTION 7. MARIJUANA TAX.**

*Part 14.5 (commencing with Section 34010) is added to Division 2 of the Revenue and Taxation Code, to read:*

### *Part 14.5. Marijuana Tax*

#### *34010.*

*For purposes of this part:*

- (a) *“Board” shall mean the Board of Equalization or its successor agency.*
- (b) *“Bureau” shall mean the Bureau of Marijuana Control within the Department of Consumer Affairs.*
- (c) *“Tax Fund” means the California Marijuana Tax Fund created by Section 34018.*
- (d) *“Marijuana” shall have the same meaning as set forth in Section 11018 of the Health and Safety Code and shall also mean medical cannabis.*
- (e) *“Marijuana products” shall have the same meaning as set forth in Section 11018.1 of the Health and Safety Code and shall also mean medical concentrates and medical cannabis products.*
- (f) *“Marijuana flowers” shall mean the dried flowers of the marijuana plant as defined by the Board.*
- (g) *“Marijuana leaves” shall mean all parts of the marijuana plant other than marijuana flowers that are sold or consumed.*
- (h) *“Gross receipts” shall have the same meaning as set forth in Section 6012.*
- (i) *“Retail sale” shall have the same meaning as set forth in Section 6007.*
- (j) *“Person” shall have the same meaning as set for in section 6005.*
- (k) *“Microbusiness” shall have the same meaning as set for in Section 26070(a)(3) of the Business and Professions Code.*
- (l) *“Nonprofit” shall have the same meaning as set for in Section 26070.5 of the Business and Professions Code.*

#### *34011.*

*(a) Effective January 1, 2018, a marijuana excise tax shall be imposed upon purchasers of marijuana or marijuana products sold in this state at the rate of fifteen percent (15%) of the gross receipts of any retail sale by a dispensary or other person required to be licensed pursuant to Chapter 3.5 of Division 8 of the Business and Professions Code or a retailer, microbusiness,*

*nonprofit, or other person required to be licensed pursuant to Division 10 of the Business and Professions Code to sell marijuana and marijuana products directly to a purchaser.*

*(b) Except as otherwise provided by regulation, the tax levied under this section shall apply to the full price, if non-itemized, of any transaction involving both marijuana or marijuana products and any other otherwise distinct and identifiable goods or services, and the price of any goods or services, if a reduction in the price of marijuana or marijuana products is contingent on purchase of those goods or services.*

*(c) A dispensary or other person required to be licensed pursuant to Chapter 3.5 of Division 8 of the Business and Professions Code or a retailer, microbusiness, nonprofit, or other person required to be licensed pursuant to Division 10 of the Business and Professions Code shall be responsible for collecting this tax and remitting it to the board in accordance with rules and procedures established under law and any regulations adopted by the board.*

*(d) The excise tax imposed by this section shall be in addition to the sales and use tax imposed by the state and local governments.*

*(e) Gross receipts from the sale of marijuana or marijuana products for purposes of assessing the sales and use tax under Part 1 of this division shall include the tax levied pursuant to this section.*

*(f) No marijuana or marijuana products may be sold to a purchaser unless the excise tax required by law has been paid by the purchaser at the time of sale.*

*(g) The sales and use tax imposed by Part 1 of this division shall not apply to retail sales of medical cannabis, medical cannabis concentrate, edible medical cannabis products or topical cannabis as those terms are defined in Chapter 3.5 of Division 8 of the Business and Professions Code when a qualified patient (or primary caregiver for a qualified patient) provides his or her card issued under Section 11362.71 of the Health and Safety Code and a valid government-issued identification card.*

34012.

*(a) Effective January 1, 2018, there is hereby imposed a cultivation tax on all harvested marijuana that enters the commercial market upon all persons required to be licensed to cultivate marijuana pursuant to Chapter 3.5 of Division 8 of the Business and Professions Code or Division 10 of the Business and Professions Code. The tax shall be due after the marijuana is harvested.*

*(1) The tax for marijuana flowers shall be nine dollars and twenty five cents (\$9.25) per dry-weight ounce.*

*(2) The tax for marijuana leaves shall be set at two dollars and seventy five cents (\$2.75) per dry-weight ounce.*

*(b) The board may adjust the tax rate for marijuana leaves annually to reflect fluctuations in the relative price of marijuana flowers to marijuana leaves.*

*(c) The board may from time to time establish other categories of harvested marijuana, categories for unprocessed or frozen marijuana or immature plants, or marijuana that is shipped directly to manufacturers. These categories shall be taxed at their relative value compared with marijuana flowers.*

*(d) The board may prescribe by regulation a method and manner for payment of the cultivation tax that utilizes tax stamps or state-issued product bags that indicate that all required tax has been paid on the product to which the tax stamp is affixed or in which the marijuana is packaged.*

(e) *The tax stamps and product bags shall be of the designs, specifications and denominations as may be prescribed by the board and may be purchased by any licensee under Chapter 3.5 of Division 8 of the Business and Professions Code or under Division 10 of the Business and Professions Code.*

(f) *Subsequent to the establishment of a tax stamp program, the board may by regulation provide that no marijuana may be removed from a licensed cultivation facility or transported on a public highway unless in a state-issued product bag bearing a tax stamp in the proper denomination.*

(g) *The tax stamps and product bags shall be capable of being read by a scanning or similar device and must be traceable utilizing the track and trace system pursuant to Section 26170 of the Business and Professions Code.*

(h) *Persons required to be licensed to cultivate marijuana pursuant to Chapter 3.5 of Division 8 of the Business and Professions Code or Division 10 of the Business and Professions Code shall be responsible for payment of the tax pursuant to regulations adopted by the board. No marijuana may be sold unless the tax has been paid as provided in this part.*

(i) *All marijuana removed from a cultivator's premises, except for plant waste, shall be presumed to be sold and thereby taxable under this section.*

(j) *The tax imposed by this section shall be imposed on all marijuana cultivated in the state pursuant to rules and regulations promulgated by the board, but shall not apply to marijuana cultivated for personal use under Section 11362.1 of the Health and Safety Code or cultivated by a qualified patient or primary caregiver in accordance with the Compassionate Use Act.*

(k) *Beginning January 1, 2020, the rates set forth in subdivisions (a), (b), and (c) shall be adjusted by the board annually thereafter for inflation.*

34013.

(a) *The board shall administer and collect the taxes imposed by this part pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). For purposes of this part, the references in the Fee Collection Procedures Law to "fee" shall include the tax imposed by this part, and references to "feepayer" shall include a person required to pay or collect the tax imposed by this part.*

(b) *The board may prescribe, adopt, and enforce regulations relating to the administration and enforcement of this part, including, but not limited to, collections, reporting, refunds, and appeals.*

(c) *The board shall adopt necessary rules and regulations to administer the taxes in this part. Such rules and regulations may include methods or procedures to tag marijuana or marijuana products, or the packages thereof, to designate prior tax payment.*

(d) *The board may prescribe, adopt, and enforce any emergency regulations as necessary to implement, administer and enforce its duties under this division. Any emergency regulation prescribed, adopted, or enforced pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding any other provision of law, the emergency regulations adopted by the board may remain in effect for two years from adoption.*

(e) *Any person who fails to pay the taxes imposed under this part shall, in addition to owing the taxes not paid, be subject to a penalty of at least one-half the amount of the taxes not paid, and*

shall be subject to having its license revoked pursuant to Section 26031 of the Business and Professions Code or pursuant to Chapter 3.5 of Division 8 of the Business and Professions Code. (f) The board may bring such legal actions as are necessary to collect any deficiency in the tax required to be paid, and, upon the board's request, the Attorney General shall bring the actions.

34014.

(a) All persons required to be licensed involved in the cultivation and retail sale of marijuana or marijuana products must obtain a separate permit from the board pursuant to regulations adopted by the board. No fee shall be charged to any person for issuance of the permit. Any person required to obtain a permit who engages in business as a cultivator, dispensary, retailer, microbusiness or nonprofit pursuant to Chapter 3.5 of Division 8 of the Business and Professions Code or Division 10 of the Business and Professions Code without a permit or after a permit has been canceled, suspended, or revoked, and each officer of any corporation which so engages in business, is guilty of a misdemeanor.

(b) The board may require every licensed dispensary, cultivator, microbusiness, nonprofit, or other person required to be licensed, to provide security to cover the liability for taxes imposed by state law on marijuana produced or received by the cultivator, microbusiness, nonprofit, or other person required to be licensed in accordance with procedures to be established by the board. Notwithstanding anything herein to the contrary, the board may waive any security requirement it imposes for good cause, as determined by the board. "Good cause" includes, but is not limited to, the inability of a cultivator, microbusiness, nonprofit, or other person required to be licensed to obtain security due to a lack of service providers or the policies of service providers that prohibit service to a marijuana business. A person may not commence or continue any business or operation relating to marijuana cultivation until any surety required by the board with respect to the business or operation have been properly prepared, executed and submitted under this part.

(c) In fixing the amount of any security required by the board, the board shall give consideration to the financial hardship that may be imposed on licensees as a result of any shortage of available surety providers.

34015.

(a) The marijuana excise tax and cultivation tax imposed by this part is due and payable to the board quarterly on or before the last day of the month following each quarterly period of three months. On or before the last day of the month following each quarterly period, a return for the preceding quarterly period shall be filed with the board by each person required to be licensed for cultivation or retail sale under Divisions 8 or 10 of the Business and Professions Code using electronic media. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board. If the cultivation tax is paid by stamp pursuant to section 34012(d) the board may by regulation determine when and how the tax shall be paid.

(b) The board may require every person engaged in the cultivation, distribution or retail sale of marijuana and marijuana products required to be licensed pursuant to Chapter 3.5 of Division 8 of the Business or Professions Code or Division 10 of the Business and Professions Code to file, on or before the 25th day of each month, a report using electronic media respecting the person's inventory, purchases, and sales during the preceding month and any other information as the board may require to carry out the purposes of this part. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

34016.

*(a) Any peace officer, or board employee granted limited peace officer status pursuant to paragraph (6) of subdivision (a) of Section 830.11 of the Penal Code, upon presenting appropriate credentials, is authorized to enter any place as described in paragraph (3) and to conduct inspections in accordance with the following paragraphs, inclusive.*

*(1) Inspections shall be performed in a reasonable manner and at times that are reasonable under the circumstances, taking into consideration the normal business hours of the place to be entered.*

*(2) Inspections may be at any place at which marijuana or marijuana products are sold to purchasers, cultivated, or stored, or at any site where evidence of activities involving evasion of tax may be discovered.*

*(3) Inspections shall be requested or conducted no more than once in a 24-hour period.*

*(b) Any person who fails or refuses to allow an inspection shall be subject to a misdemeanor. Each offense shall be punished by a fine not to exceed five thousand dollars (\$5,000), or imprisonment not exceeding one year in a county jail, or both the fine and imprisonment. The court shall order any fines assessed be deposited in the California Marijuana Tax Fund.*

*(c) Upon discovery by the board or a law enforcement agency that a licensee or any other person possesses, stores, owns, or has made a retail sale of marijuana or marijuana products, without evidence of tax payment or not contained in secure packaging, the board or the law enforcement agency shall be authorized to seize the marijuana or marijuana products. Any marijuana or marijuana products seized by a law enforcement agency or the board shall within seven days be deemed forfeited and the board shall comply with the procedures set forth in Sections 30436 through 30449, inclusive.*

*(d) Any person who renders a false or fraudulent report is guilty of a misdemeanor and subject to a fine not to exceed one thousand dollars (\$1,000) for each offense.*

*(e) Any violation of any provisions of this part, except as otherwise provided, is a misdemeanor and is punishable as such.*

*(f) All moneys remitted to the board under this part shall be credited to the California Marijuana Tax Fund.*

34017.

*The Legislative Analyst's Office shall submit a report to the Legislature by January 1, 2020, with recommendations to the Legislature for adjustments to the tax rate to achieve the goals of undercutting illicit market prices and discouraging use by persons younger than 21 years of age while ensuring sufficient revenues are generated for the programs identified in Section 34019.*

34018.

*(a) The California Marijuana Tax Fund is hereby created in the State Treasury. The Tax Fund shall consist of all taxes, interest, penalties, and other amounts collected and paid to the board pursuant to this part, less payment of refunds.*

*(b) Notwithstanding any other law, the California Marijuana Tax Fund is a special trust fund established solely to carry out the purposes of the Control, Regulate and Tax Adult Use of Marijuana Act and all revenues deposited into the Tax Fund, together with interest or dividends earned by the fund, are hereby continuously appropriated for the purposes of the Control,*

*Regulate and Tax Adult Use of Marijuana Act without regard to fiscal year and shall be expended only in accordance with the provisions of this part and its purposes.*

*(c) Notwithstanding any other law, the taxes imposed by this part and the revenue derived therefrom, including investment interest, shall not be considered to be part of the General Fund, as that term is used in Chapter 1 (commencing with section 16300) of Part 2 of Division 4 of the Government Code, shall not be considered General Fund revenue for purposes of Section 8 of Article XVI of the California Constitution and its implementing statutes, and shall not be considered "moneys" for purposes of subdivisions (a) and (b) of Section 8 of Article XVI of the California Constitution and its implementing statutes.*

34019.

*(a) Beginning with fiscal year 2017-2018 the Department of Finance shall estimate revenues to be received pursuant to sections 34011 and 34012 and provide those estimates to the Controller no later than June 15 of each year. The Controller shall use these estimates when disbursing funds pursuant to this section. Before any funds are disbursed pursuant to subdivisions (b), (c), (d), and (e) of this section the Controller shall disburse from the Tax Fund to the appropriate account, without regard to fiscal year, the following:*

*(1) Reasonable costs incurred by the board for administering and collecting the taxes imposed by this part; provided, however, such costs shall not exceed four percent (4%) of tax revenues received.*

*(2) Reasonable costs incurred by the Bureau, the Department of Consumer Affairs, the Department of Food and Agriculture, and the Department of Public Health for implementing, administering, and enforcing Chapter 3.5 of Division 8 of the Business and Professions Code and Division 10 of the Business and Professions Code to the extent those costs are not reimbursed pursuant to Section 26180 of the Business and Professions Code or pursuant to Chapter 3.5 of Division 8 of the Business and Professions Code. This paragraph shall remain operative through fiscal year 2022-2023.*

*(3) Reasonable costs incurred by the Department of Fish and Wildlife, the State Water Resources Control Board, and the Department of Pesticide Regulation for carrying out their respective duties under Chapter 3.5 of Division 8 of the Business and Professions Code or Division 10 of the Business and Professions Code to the extent those costs are not otherwise reimbursed.*

*(4) Reasonable costs incurred by the Controller for performing duties imposed by the Control, Regulate and Tax Adult Use of Marijuana Act, including the audit required by Section 34020.*

*(5) Reasonable costs incurred by the State Auditor for conducting the performance audit pursuant to Section 26191 of the Business and Professions Code.*

*(6) Reasonable costs incurred by the Legislative Analyst's Office for performing duties imposed by Section 34017.*

*(7) Sufficient funds to reimburse the Division of Labor Standards Enforcement and Occupational Safety and Health within the Department of Industrial Relations and the Employment Development Department for the costs of applying and enforcing state labor laws to licensees under Chapter 3.5 of Division 8 of the Business and Professions Code and Division 10 of the Business and Professions Code.*

*(b) The Controller shall next disburse the sum of ten million dollars (\$10,000,000) to a public university or universities in California annually beginning with fiscal year 2018-2019 until fiscal year 2028-2029 to research and evaluate the implementation and effect of the Control, Regulate and Tax Adult Use of Marijuana Act, and shall, if appropriate, make recommendations to the*

*Legislature and Governor regarding possible amendments to the Control, Regulate and Tax Adult Use of Marijuana Act. The recipients of these funds shall publish reports on their findings at a minimum of every two years and shall make the reports available to the public. The Bureau shall select the universities to be funded. The research funded pursuant to this subdivision shall include but not necessarily be limited to:*

*(1) Impacts on public health, including health costs associated with marijuana use, as well as whether marijuana use is associated with an increase or decrease in use of alcohol or other drugs.*

*(2) The impact of treatment for maladaptive marijuana use and the effectiveness of different treatment programs.*

*(3) Public safety issues related to marijuana use, including studying the effectiveness of the packaging and labeling requirements and advertising and marketing restrictions contained in the Act at preventing underage access to and use of marijuana and marijuana products, and studying the health-related effects among users of varying potency levels of marijuana and marijuana products.*

*(4) Marijuana use rates, maladaptive use rates for adults and youth, and diagnosis rates of marijuana-related substance use disorders.*

*(5) Marijuana market prices, illicit market prices, tax structures and rates, including an evaluation of how to best tax marijuana based on potency, and the structure and function of licensed marijuana businesses.*

*(6) Whether additional protections are needed to prevent unlawful monopolies or anti-competitive behavior from occurring in the nonmedical marijuana industry and, if so, recommendations as to the most effective measures for preventing such behavior.*

*(7) The economic impacts in the private and public sectors, including but not necessarily limited to, job creation, workplace safety, revenues, taxes generated for state and local budgets, and criminal justice impacts, including, but not necessarily limited to, impacts on law enforcement and public resources, short and long term consequences of involvement in the criminal justice system, and state and local government agency administrative costs and revenue.*

*(8) Whether the regulatory agencies tasked with implementing and enforcing the Control, Regulate and Tax Adult Use of Marijuana Act are doing so consistent with the purposes of the Act, and whether different agencies might do so more effectively. (9) Environmental issues related to marijuana production and the criminal prohibition of marijuana production.*

*(10) The geographic location, structure, and function of licensed marijuana businesses, and demographic data, including race, ethnicity, and gender, of license holders.*

*(11) The outcomes achieved by the changes in criminal penalties made under the Control, Regulate, and Tax Adult Use of Marijuana Act for marijuana-related offenses, and the outcomes of the juvenile justice system, in particular, probation-based treatments and the frequency of up-charging illegal possession of marijuana or marijuana products to a more serious offense.*

*(c) The Controller shall next disburse the sum of three million dollars (\$3,000,000) annually to the Department of the California Highway Patrol beginning fiscal year 2018-2019 until fiscal year 2022-2023 to establish and adopt protocols to determine whether a driver is operating a vehicle while impaired, including impairment by the use of marijuana or marijuana products, and to establish and adopt protocols setting forth best practices to assist law enforcement agencies. The department may hire personnel to establish the protocols specified in this subdivision. In addition, the department may make grants to public and private research*

*institutions for the purpose of developing technology for determining when a driver is operating a vehicle while impaired, including impairment by the use of marijuana or marijuana products.*

*(d) The Controller shall next disburse the sum of ten million dollars (\$10,000,000) beginning fiscal year 2018-2019 and increasing ten million dollars (\$10,000,000) each fiscal year thereafter until fiscal year 2022-2023, at which time the disbursement shall be fifty million dollars (\$50,000,000) each year thereafter, to the Governor's Office of Business and Economic Development, in consultation with the Labor and Workforce Development Agency and the Department of Social Services, to administer a Community Reinvestments grants program to local health departments and at least fifty-percent to qualified community-based nonprofit organizations to support job placement, mental health treatment, substance use disorder treatment, system navigation services, legal services to address barriers to reentry, and linkages to medical care for communities disproportionately affected by past federal and state drug policies. The Office shall solicit input from community-based job skills, job placement, and legal service providers with relevant expertise as to the administration of the grants program. In addition, the Office shall periodically evaluate the programs it is funding to determine the effectiveness of the programs, shall not spend more than four percent (4%) for administrative costs related to implementation, evaluation and oversight of the programs, and shall award grants annually, beginning no later than January 1, 2020.*

*(e) The Controller shall next disburse the sum of two million dollars (\$2,000,000) annually to the University of California San Diego Center for Medicinal Cannabis Research to further the objectives of the Center including the enhanced understanding of the efficacy and adverse effects of marijuana as a pharmacological agent.*

*(f) By July 15 of each fiscal year beginning in fiscal year 2018-2019, the Controller shall, after disbursing funds pursuant to subdivisions (a), (b), (c), (d), and (e), disburse funds deposited in the Tax Fund during the prior fiscal year into sub-trust accounts, which are hereby created, as follows:*

*(1) Sixty percent (60%) shall be deposited in the Youth Education, Prevention, Early Intervention and Treatment Account, and disbursed by the Controller to the Department of Health Care Services for programs for youth that are designed to educate about and to prevent substance use disorders and to prevent harm from substance use. The Department of Health Care services shall enter into inter-agency agreements with the Department of Public Health and the Department of Education to implement and administer these programs. The programs shall emphasize accurate education, effective prevention, early intervention, school retention, and timely treatment services for youth, their families and caregivers. The programs may include, but are not limited to, the following components:*

*(A) Prevention and early intervention services including outreach, risk survey and education to youth, families, caregivers, schools, primary care health providers, behavioral health and substance use disorder service providers, community and faith-based organizations, foster care providers, juvenile and family courts, and others to recognize and reduce risks related to substance use, and the early signs of problematic use and of substance use disorders.*

*(B) Grants to schools to develop and support Student Assistance Programs, or other similar programs, designed to prevent and reduce substance use, and improve school retention and performance, by supporting students who are at risk of dropping out of school and promoting alternatives to suspension or expulsion that focus on school retention, remediation, and professional care. Schools with higher than average dropout rates should be prioritized for grants.*

- (C) Grants to programs for outreach, education and treatment for homeless youth and out-of-school youth with substance use disorders.
- (D) Access and linkage to care provided by county behavioral health programs for youth, and their families and caregivers, who have a substance use disorder or who are at risk for developing a substance use disorder.
- (E) Youth-focused substance use disorder treatment programs that are culturally and gender competent, trauma-informed, evidence-based and provide a continuum of care that includes screening and assessment (substance use disorder as well as mental health), early intervention, active treatment, family involvement, case management, overdose prevention, prevention of communicable diseases related to substance use, relapse management for substance use and other co-occurring behavioral health disorders, vocational services, literacy services, parenting classes, family therapy and counseling services, medication-assisted treatments, psychiatric medication and psychotherapy. When indicated, referrals must be made to other providers.
- (F) To the extent permitted by law and where indicated, interventions shall utilize a two-generation approach to addressing substance use disorders with the capacity to treat youth and adults together. This would include supporting the development of family-based interventions that address substance use disorders and related problems within the context of families, including parents, foster parents, caregivers and all their children.
- (G) Programs to assist individuals, as well as families and friends of drug using young people, to reduce the stigma associated with substance use including being diagnosed with a substance use disorder or seeking substance use disorder services. This includes peer-run outreach and education to reduce stigma, anti-stigma campaigns, and community recovery networks.
- (H) Workforce training and wage structures that increase the hiring pool of behavioral health staff with substance use disorder prevention and treatment expertise. Provide ongoing education and coaching that increases substance use treatment providers' core competencies and trains providers on promising and evidenced-based practices.
- (I) Construction of community-based youth treatment facilities.
- (J) The departments may contract with each county behavioral health program for the provision of services.
- (K) Funds shall be allocated to counties based on demonstrated need, including the number of youth in the county, the prevalence of substance use disorders among adults, and confirmed through statistical data, validated assessments or submitted reports prepared by the applicable county to demonstrate and validate need.
- (L) The departments shall periodically evaluate the programs they are funding to determine the effectiveness of the programs.
- (M) The departments may use up to four percent (4%) of the moneys allocated to the Youth Education, Prevention, Early Intervention and Treatment Account for administrative costs related to implementation, evaluation and oversight of the programs.
- (N) If the Department of Finance ever determines that funding pursuant to marijuana taxation exceeds demand for youth prevention and treatment services in the state, the departments shall provide a plan to the Department of Finance to provide treatment services to adults as well as youth using these funds.
- (O) The departments shall solicit input from volunteer health organizations, physicians who treat addiction, treatment researchers, family therapy and counseling providers, and professional education associations with relevant expertise as to the administration of any grants made pursuant to this paragraph.

*(2) Twenty percent (20%) shall be deposited in the Environmental Restoration and Protection Account, and disbursed by the Controller as follows:*

*(A) To the Department of Fish and Wildlife and the Department of Parks and Recreation for the cleanup, remediation, and restoration of environmental damage in watersheds affected by marijuana cultivation and related activities including, but not limited to, damage that occurred prior to enactment of this part, and to support local partnerships for this purpose. The Department of Fish and Wildlife and the Department of Parks and Recreation may distribute a portion of the funds they receive from the Environmental Restoration and Protection Account through grants for purposes specified in this paragraph.*

*(B) To the Department of Fish and Wildlife and the Department of Parks and Recreation for the stewardship and operation of state-owned wildlife habitat areas and state park units in a manner that discourages and prevents the illegal cultivation, production, sale and use of marijuana and marijuana products on public lands, and to facilitate the investigation, enforcement and prosecution of illegal cultivation, production, sale, and use of marijuana or marijuana products on public lands.*

*(C) To the Department of Fish and Wildlife to assist in funding the watershed enforcement program and multiagency task force established pursuant to subdivisions (b) and (c) of Section 12029 of the Fish and Game Code to facilitate the investigation, enforcement, and prosecution of these offenses and to ensure the reduction of adverse impacts of marijuana cultivation, production, sale, and use on fish and wildlife habitats throughout the state.*

*(D) For purposes of this paragraph, the Secretary of the Natural Resources Agency shall determine the allocation of revenues between the departments. During the first five years of implementation, first consideration should be given to funding purposes specified in subparagraph (A).*

*(E) Funds allocated pursuant to this paragraph shall be used to increase and enhance activities described in subparagraphs (A), (B), and (C), and not replace allocation of other funding for these purposes. Accordingly, annual General Fund appropriations to the Department of Fish and Wildlife and the Department of Parks and Recreation shall not be reduced below the levels provided in the Budget Act of 2014 (Chapter 25 of Statutes of 2014).*

*(3) Twenty percent (20%) shall be deposited into the State and Local Government Law Enforcement Account and disbursed by the Controller as follows:*

*(A) To the Department of the California Highway Patrol for conducting training programs for detecting, testing and enforcing laws against driving under the influence of alcohol and other drugs, including driving under the influence of marijuana. The Department may hire personnel to conduct the training programs specified in this subparagraph.*

*(B) To the Department of the California Highway Patrol to fund internal California Highway Patrol programs and grants to qualified nonprofit organizations and local governments for education, prevention and enforcement of laws related to driving under the influence of alcohol and other drugs, including marijuana; programs that help enforce traffic laws, educate the public in traffic safety, provide varied and effective means of reducing fatalities, injuries and economic losses from collisions; and for the purchase of equipment related to enforcement of laws related to driving under the influence of alcohol and other drugs, including marijuana.*

*(C) To the Board of State and Community Corrections for making grants to local governments to assist with law enforcement, fire protection, or other local programs addressing public health and safety associated with the implementation of the Control, Regulate and Tax Adult Use of Marijuana Act. The Board shall not make any grants to local governments which have banned*

*the cultivation, including personal cultivation under Section 11362.2(b)(3) of the Health and Safety Code, or retail sale of marijuana or marijuana products pursuant to Section 26200 of the Business and Professions Code or as otherwise provided by law.*

*(D) For purposes of this paragraph the Department of Finance shall determine the allocation of revenues between the agencies; provided, however, beginning in fiscal year 2022-2023 the amount allocated pursuant to subparagraph (A) shall not be less than ten million dollars (\$10,000,000) annually and the amount allocated pursuant to subparagraph (B) shall not be less than forty million dollars (\$40,000,000) annually. In determining the amount to be allocated before fiscal year 2022-2023 pursuant to this paragraph, the Department of Finance shall give initial priority to subparagraph (A).*

*(g) Funds allocated pursuant to subdivision (f) shall be used to increase the funding of programs and purposes identified and shall not be used to replace allocation of other funding for these purposes.*

*(h) Effective July 1, 2028, the Legislature may amend this section by majority vote to further the purposes of the Control, Regulate and Tax Adult Use of Marijuana Act, including allocating funds to programs other than those specified in subdivisions (d) and (f) of this section. Any revisions pursuant to this subdivision shall not result in a reduction of funds to accounts established pursuant to subdivisions (d) and (f) in any subsequent year from the amount allocated to each account in fiscal year 2027-2028. Prior to July 1, 2028, the Legislature may not change the allocations to programs specified in subdivisions (d) and (f) of this section.*

34020.

*The Controller shall periodically audit the Tax Fund to ensure that those funds are used and accounted for in a manner consistent with this part and as otherwise required by law.*

34021.

*(a) The taxes imposed by this Part shall be in addition to any other tax imposed by a city, county, or city and county.*

34021.5

*(a) (1) A county may impose a tax on the privilege of cultivating, manufacturing, producing, processing, preparing, storing, providing, donating, selling, or distributing marijuana or marijuana products by a licensee operating under Chapter 3.5 of Division 8 of the Business and Professions Code or Division 10 of the Business and Professions Code.*

*(2) The board of supervisors shall specify in the ordinance proposing the tax the activities subject to the tax, the applicable rate or rates, the method of apportionment, if necessary, and the manner of collection of the tax. The tax may be imposed for general governmental purposes or for purposes specified in the ordinance by the board of supervisors.*

*(3) In addition to any other method of collection authorized by law, the board of supervisors may provide for the collection of the tax imposed pursuant to this section in the same manner, and subject to the same penalties and priority of lien, as other charges and taxes fixed and collected by the county. A tax imposed pursuant to this section is a tax and not a fee or special assessment. The board of supervisors shall specify whether the tax applies throughout the entire county or within the unincorporated area of the county.*

*(4) The tax authorized by this section may be imposed upon any or all of the activities set forth in paragraph (1), as specified in the ordinance, regardless of whether the activity is undertaken*

*individually, collectively, or cooperatively, and regardless of whether the activity is for compensation or gratuitous, as determined by the board of supervisors.*

*(b) A tax imposed pursuant to this section shall be subject to applicable voter approval requirements imposed by law.*

*(c) This section is declaratory of existing law and does not limit or prohibit the levy or collection of any other fee, charge, or tax, or a license or service fee or charge upon, or related to, the activities set forth in subdivision (a) as otherwise provided by law. This section shall not be construed as a limitation upon the taxing authority of a county as provided by law.*

*(d) This section shall not be construed to authorize a county to impose a sales or use tax in addition to the sales and use tax imposed under an ordinance conforming to the provisions of Sections 7202 and 7203 of the Revenue and Taxation Code.*

## **SECTION 8. CRIMINAL OFFENSES, RECORDS, AND RESENTENCING.**

**Sections 11357, 11358, 11359, 11360 and 11361.5 of the Health and Safety Code are amended, and Sections 11361.1 and 11361.8 are added to read as follows:**

### **11357. Possession**

~~(a) Except as authorized by law, every person who possesses any concentrated cannabis shall be punished by imprisonment in the county jail for a period of not more than one year or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.~~

~~(ba) Except as authorized by law, every person who possession of not more than 28.5 grams of marijuana, other than or not more than four grams of concentrated cannabis, is guilty of an infraction punishable by a fine of not more than one hundred dollars (\$100), or both, shall be punished or adjudicated as follows:~~

~~(1) Persons under the age of 18 shall be guilty of an infraction and shall be required to:~~

~~(A) Upon a finding that a first offense has been committed, complete four hours of drug education or counseling and up to 10 hours of community service over a period not to exceed 60 days.~~

~~(B) Upon a finding that a second offense or subsequent offense has been committed, complete six hours of drug education or counseling and up to 20 hours of community service over a period not to exceed 90 days.~~

~~(2) Persons at least 18 years of age but less than 21 years of age shall be guilty of an infraction and punishable by a fine of not more than one hundred dollars (\$100).~~

~~(eb) Except as authorized by law, every person who possession of more than 28.5 grams of marijuana, or more than four grams of other than concentrated cannabis, shall be punished as follows:~~

~~(1) Persons under the age of 18 who possess more than 28.5 grams of marijuana or more than four grams of concentrated cannabis, or both, shall be guilty of an infraction and shall be required to:~~

(A) Upon a finding that a first offense has been committed, complete eight hours of drug education or counseling and up to 40 hours of community service over a period not to exceed 90 days.

(B) Upon a finding that a second or subsequent offense has been committed, complete 10 hours of drug education or counseling and up to 60 hours of community service over a period not to exceed 120 days.

(2) Persons 18 years of age or over who possess more than 28.5 grams of marijuana, or more than four grams of concentrated cannabis, or both, shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment.

(dc) Except as authorized by law, every person 18 years of age or over who possesses not more than 28.5 grams of marijuana, or not more than four grams of ~~other than~~ concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be punished by a as follows:

(1) A fine of not more than two hundred fifty dollars (\$250), upon a finding that a first offense has been committed.

(2) A fine of not more than five hundred dollars (\$500), or by imprisonment in a county jail for a period of not more than 10 days, or both, upon a finding that a second or subsequent offense has been committed.

(ed) Except as authorized by law, every person under the age of 18 who possesses not more than 28.5 grams of marijuana, or not more than four grams of ~~other than~~ concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a ~~misdemeanor~~ ~~an~~ infraction and shall be punished in the same manner provided in paragraph (1) of subdivision (b) of this section. ~~subject to the following dispositions:~~

(1) A fine of not more than two hundred fifty dollars (\$250), upon a finding that a first offense has been committed.

(2) A fine of not more than five hundred dollars (\$500), or commitment to a juvenile hall, ranch, camp, forestry camp, or secure juvenile home for a period of not more than 10 days, or both, upon a finding that a second or subsequent offense has been committed.

#### 11358. Planting, harvesting, or processing

Every person who plants, cultivates, harvests, dries, or processes any marijuana plants, or any part thereof, except as otherwise provided by law, shall be punished as follows:

(a) Every person under the age of 18 who plants, cultivates, harvests, dries, or processes any marijuana plants shall be punished in the same manner provided in paragraph (1) of subdivision (b) of section 11357.

(b) Every person at least 18 years of age but less than 21 years of age who plants, cultivates, harvests, dries, or processes not more than six living marijuana plants shall be guilty of an infraction and a fine of not more than one hundred dollars (\$100).

(c) Every person 18 years of age or over who plants, cultivates, harvests, dries, or processes more than six living marijuana plants shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment.

*(d) Notwithstanding subdivision (c), a person 18 years of age or over who plants, cultivates, harvests, dries, or processes more than six living marijuana plants, or any part thereof, except as otherwise provided by law, shall may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code if:*

*(1) the person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code;*

*(2) the person has two or more prior convictions under subdivision (c); or*

*(3) the offense resulted in any of the following:*

*(A) violation of Section 1052 of the Water Code relating to illegal diversion of water;*

*(B) violation of Section 13260, 13264, 13272, or 13387 of the Water Code relating to discharge of waste;*

*(C) violation of Fish and Game Code Section 5650 or Section 5652 of the Fish and Game Code relating to waters of the state;*

*(D) violation of Section 1602 of the Fish and Game Code relating to rivers, streams and lakes;*

*(E) violation of Section 374.8 of the Penal Code relating to hazardous substances or Sections 25189.5, 25189.6, or 25189.7 of the Health and Safety Code relating to hazardous waste;*

*(F) violation of Section 2080 of the Fish and Game Code relating to endangered and threatened species or Section 3513 of the Fish and Game Code relating to the Migratory Bird Treaty Act; or*

*(G) intentionally or with gross negligence causing substantial environmental harm to public lands or other public resources.*

#### 11359. Possession for sale

Every person who possesses for sale any marijuana, except as otherwise provided by law, shall be punished as follows:

*(a) Every person under the age of 18 who possesses marijuana for sale shall be punished in the same manner provided in paragraph (1) of subdivision (b) of section 11357.*

*(b) Every person 18 years of age or over who possesses marijuana for sale shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment.*

*(c) Notwithstanding subdivision (b), a person 18 years of age or over who possesses marijuana for sale may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code if:*

*(1) the person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code;*

*(2) the person has two or more prior convictions under subdivision (b); or*

*(3) the offense occurred in connection with the knowing sale or attempted sale of marijuana to a person under the age of 18 years.*

*(d) Notwithstanding subdivision (b), a person 21 years of age or over who possesses marijuana for sale may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code if the offense involves knowingly hiring, employing, or using a person 20 years of age or younger in unlawfully cultivating, transporting, carrying, selling, offering to sell, giving away, preparing for sale, or peddling any marijuana.*

11360. Unlawful transportation, importation, sale, or gift

(a) Except as otherwise provided by this section or as authorized by law, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any marijuana shall be punished *as follows*:

(1) *Persons under the age of 18 years shall be punished in the same manner as provided in paragraph (1) of subdivision (b) of section 11357.*

(2) *Persons 18 years of age or over shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment.*

(3) *Notwithstanding paragraph (2), a person 18 years of age or over may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period two, three, or four years if:*

(A) *the person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code;*

(B) *the person has two or more prior convictions under paragraph (2);*

(C) *the offense involved the knowing sale, attempted sale, or the knowing offer to sell, furnish, administer or give away marijuana to a person under the age of 18 years; or*

(D) *the offense involved the import, offer to import, or attempted import into this state, or the transport for sale, offer to transport for sale, or attempted transport for sale out of this state, of more than 28.5 grams of marijuana or more than four grams of concentrated cannabis.*

(b) Except as authorized by law, every person who gives away, offers to give away, transports, offers to transport, or attempts to transport not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of an *infraction-misdemeanor* and shall be punished by a fine of not more than one hundred dollars (\$100). In any case in which a person is arrested for a violation of this subdivision and does not demand to be taken before a magistrate, such person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his or her written promise to appear in court, as provided in Section 853.6 of the Penal Code, and shall not be subjected to booking.

(c) *For purposes of this section, "transport" means to transport for sale.*

(d) *This section does not preclude or limit prosecution for any aiding and abetting or conspiracy offenses.*

11361.1.

(a) *The drug education and counseling requirements under sections 11357, 11358, 11359, and 11360 shall be:*

(1) *mandatory, unless the court finds that such drug education or counseling is unnecessary for the person, or that a drug education or counseling program is unavailable;*

(2) *free to participants, and the drug education provide at least four hours of group discussion or instruction based on science and evidence-based principles and practices specific to the use and abuse of marijuana and other controlled substances.*

(b) *For good cause, the court may grant an extension of time not to exceed 30 days for a person to complete the drug education and counseling required under sections 11357, 11358, 11359; and 11360.*

**Subdivision (a) of Section 11361.5 of the Health and Safety Code is amended to read:**

11361.5. Destruction of arrest and conviction records; Procedure; Exceptions

(a) Records of any court of this state, any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, or of any state agency pertaining to the arrest or conviction of any person for a violation of ~~subdivision (b), (c), (d), or (e)~~ of Section 11357 or subdivision (b) of Section 11360, *or pertaining to the arrest or conviction of any person under the age of 18 for a violation of any provision of this article except Section 11357.5*, shall not be kept beyond two years from the date of the conviction, or from the date of the arrest if there was no conviction, except with respect to a violation of ~~subdivision (e)~~ of Section 11357, *or any other violation by a person under the age of 18 occurring upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs*, the records shall be retained until the offender attains the age of 18 years at which time the records shall be destroyed as provided in this section. Any court or agency having custody of the records, *including the statewide criminal databases*, shall provide for the timely destruction of the records in accordance with subdivision (c), *and such records must also be purged from the statewide criminal databases. As used in this subdivision, "records pertaining to the arrest or conviction" shall include records of arrests resulting in the criminal proceeding and records relating to other offenses charged in the accusatory pleading, whether defendant was acquitted or charges were dismissed. The two-year period beyond which records shall not be kept pursuant to this subdivision shall not apply to any person who is, at the time at which this subdivision would otherwise require record destruction, incarcerated for an offense subject to this subdivision. For such persons, the two-year period shall begin to run from the date the person is released from custody.* The requirements of this subdivision do not apply to records of any conviction occurring prior to January 1, 1976, or records of any arrest not followed by a conviction occurring prior to that date, *or records of any arrest for an offense specified in subdivision (c) of Section 1192.7, or subdivision (c) of Section 667.5 of the Penal Code.*

**Section 11361.8 is added to the Health and Safety Code to read:**

11361.8

(a) *A person currently serving a sentence for a conviction, whether by trial or by open or negotiated plea, who would not have been guilty of an offense or who would have been guilty of a lesser offense under the Control, Regulate and Tax Adult Use of Marijuana Act had that Act been in effect at the time of the offense may petition for a recall or dismissal of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing or dismissal in accordance with Sections 11357, 11358, 11359, 11360, 11362.1, 11362.2, 11362.3, and 11362.4 as those sections have been amended or added by this Act.*

(b) *Upon receiving a petition under subdivision (a), the court shall presume the petitioner satisfies the criteria in subdivision (a) unless the party opposing the petition proves by clear and convincing evidence that the petitioner does not satisfy the criteria. If the petitioner satisfies the criteria in subdivision (a), the court shall grant the petition to recall the sentence or dismiss the sentence because it is legally invalid unless the court determines that granting the petition would pose an unreasonable risk of danger to public safety.*

- (1) *In exercising its discretion, the court may consider, but shall not be limited to evidence provided for in subdivision (b) of Section 1170.18 of the Penal Code.*
- (2) *As used in this section, "unreasonable risk of danger to public safety" has the same meaning as provided in subdivision (c) of Section 1170.18 of the Penal Code.*
- (c) *A person who is serving a sentence and resentenced pursuant to subdivision (b) shall be given credit for any time already served and shall be subject to supervision for one year following completion of his or her time in custody or shall be subject to whatever supervision time he or she would have otherwise been subject to after release, whichever is shorter, unless the court, in its discretion, as part of its resentencing order, releases the person from supervision. Such person is subject to parole supervision under Penal Code Section 3000.08 or post-release community supervision under subdivision (a) of Section 3451 of the Penal Code by the designated agency and the jurisdiction of the court in the county in which the offender is released or resides, or in which an alleged violation of supervision has occurred, for the purpose of hearing petitions to revoke supervision and impose a term of custody.*
- (d) *Under no circumstances may resentencing under this section result in the imposition of a term longer than the original sentence, or the reinstatement of charges dismissed pursuant to a negotiated plea agreement.*
- (e) *A person who has completed his or her sentence for a conviction under Sections 11357, 11358, 11359, and 11360, whether by trial or open or negotiated plea, who would not have been guilty of an offense or who would have been guilty of a lesser offense under the Control, Regulate and Tax Adult Use of Marijuana Act had that Act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the conviction dismissed and sealed because the prior conviction is now legally invalid or redesignated as a misdemeanor or infraction in accordance with Sections 11357, 11358, 11359, 11360, 11362.1, 11362.2, 11362.3, and 11362.4 as those sections have been amended or added by this Act.*
- (f) *The court shall presume the petitioner satisfies the criteria in subdivision (e) unless the party opposing the application proves by clear and convincing evidence that the petitioner does not satisfy the criteria in subdivision (e). Once the applicant satisfies the criteria in subdivision (e), the court shall redesignate the conviction as a misdemeanor or infraction or dismiss and seal the conviction as legally invalid as now established under the Control, Regulate and Tax Adult Use of Marijuana Act.*
- (g) *Unless requested by the applicant, no hearing is necessary to grant or deny an application filed under subdivision (e).*
- (h) *Any felony conviction that is recalled and resentenced under subdivision (b) or designated as a misdemeanor or infraction under subdivision (f) shall be considered a misdemeanor or infraction for all purposes. Any misdemeanor conviction that is recalled and resentenced under subdivision (b) or designated as an infraction under subdivision (f) shall be considered an infraction for all purposes.*
- (i) *If the court that originally sentenced the petitioner is not available, the presiding judge shall designate another judge to rule on the petition or application.*
- (j) *Nothing in this section is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant.*
- (k) *Nothing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of the Control, Regulate and Tax Adult Use of Marijuana Act.*

(l) A resentencing hearing ordered under this act shall constitute a "post-conviction release proceeding" under paragraph (7) of subdivision (b) of Section 28 of Article I of the California Constitution (Marsy's Law).

(m) The provisions of this section shall apply equally to juvenile delinquency adjudications and dispositions under Section 602 of the Welfare and Institutions Code if the juvenile would not have been guilty of an offense or would have been guilty of a lesser offense under the Control, Regulate and Tax Adult Use of Marijuana Act.

(l) The Judicial Council shall promulgate and make available all necessary forms to enable the filing of the petitions and applications provided in this section.

## **SECTION 9. INDUSTRIAL HEMP.**

**Section 11018.5 of the Health and Safety Code is amended to read as follows:**

### *11018.5. Industrial hemp*

(a) "Industrial hemp" means a fiber or oilseed crop, or both, that is limited to nonpsychoactive types of the plant *Cannabis sativa* L. ~~and the seed produced therefrom,~~ having no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in the dried flowering tops, ~~whether growing or not; and that is cultivated and processed exclusively for the purpose of producing the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, the resin extracted from any part of the plant; and or any other every~~ compound, manufacture, salt, derivative, mixture, or preparation of the ~~plant, its seeds or mature stalks, except the resin or flowering tops extracted produced therefrom, fiber, oil, or cake, or the sterilized seed, or any component of the seed, of the plant that is incapable of germination.~~

(b) *The possession, use, purchase, sale, cultivation, processing, manufacture, packaging, labeling, transporting, storage, distribution, use and transfer of industrial hemp shall not be subject to the provisions of this Division or of Division 10 of the Business and Professions Code, but instead shall be regulated by the Department of Food and Agriculture in accordance with the provisions of Division 24 of the Food and Agricultural Code, inclusive.*

**Sections 81000, 81006, 81008, and 81010 of the Food and Agricultural Code are amended to read, and Section 81007 of the Food and Agricultural Code is repealed as follows:**

### **81000. Definitions**

For purposes of this division, the following terms have the following meanings:

(a) "Board" means the Industrial Hemp Advisory Board.

(b) "Commissioner" means the county agricultural commissioner.

(c) "Established agricultural research institution" means ~~a public or private institution or organization that maintains land for agricultural research, including colleges, universities, agricultural research centers, and conservation research centers.~~

*any institution that is either:*

(1) *a public or private institution or organization that maintains land or facilities for agricultural research, including colleges, universities, agricultural research centers, and conservation research centers; or*

(2) *an institution of higher education (as defined in Section 1001 of the Higher Education Act of 1965 (20 U.S.C. 1001)) that grows, cultivates or manufactures industrial hemp for*

*purposes of research conducted under an agricultural pilot program or other agricultural or academic research.*

(d) "Industrial hemp" has the same meaning as that term is defined in Section 11018.5 of the Health and Safety Code.

(e) "Secretary" means the Secretary of Food and Agriculture.

(f) "Seed breeder" means an individual or public or private institution or organization that is registered with the commissioner to develop seed cultivars intended for sale or research.

(g) "Seed cultivar" means a variety of industrial hemp.

(h) "Seed development plan" means a strategy devised by a seed breeder, or applicant seed breeder, detailing his or her planned approach to growing and developing a new seed cultivar for industrial hemp.

81006. Industrial hemp growth limitations; Prohibitions; Imports; Laboratory testing

(a)(1) Except when grown by an established agricultural research institution or a registered seed breeder, industrial hemp shall be grown only as a densely planted fiber or oilseed crop, or both, in acreages of not less than ~~five acres~~ *one-tenth of an acre* at the same time, ~~and no portion of an acreage of industrial hemp shall include plots of less than one contiguous acre.~~

(2) Registered seed breeders, for purposes of seed production, shall only grow industrial hemp as a densely planted crop in acreages of not less than *one-tenth of an* ~~two acres~~ at the same time, ~~and no portion of the acreage of industrial hemp shall include plots of less than one contiguous acre.~~

(3) Registered seed breeders, for purposes of developing a new California seed cultivar, shall grow industrial hemp as densely as possible in dedicated acreage of not less than *one-tenth of an* acre and in accordance with the seed development plan. The entire area of the dedicated acreage is not required to be used for the cultivation of the particular seed cultivar.

(b) Ornamental and clandestine cultivation of industrial hemp is prohibited. All plots shall have adequate signage indicating they are industrial hemp.

(c) Pruning and tending of individual industrial hemp plants is prohibited, except when grown by an established agricultural research institution or when the action is necessary to perform the tetrahydrocannabinol (THC) testing described in this section.

(d) Culling of industrial hemp is prohibited, except when grown by an established agricultural research institution, when the action is necessary to perform the THC testing described in this section, or for purposes of seed production and development by a registered seed breeder.

(e) Industrial hemp shall include products imported under the Harmonized Tariff Schedule of the United States (2013) of the United States International Trade Commission, including, but not limited to, hemp seed, per subheading 1207.99.03, hemp oil, per subheading 1515.90.80, oilcake, per subheading 2306.90.01, true hemp, per heading 5302, true hemp yarn, per subheading 5308.20.00, and woven fabrics of true hemp fibers, per subheading 5311.00.40.

(f) Except when industrial hemp is grown by an established agricultural research institution, a registrant that grows industrial hemp under this section shall, before the harvest of each crop and as provided below, obtain a laboratory test report indicating the THC levels of a random sampling of the dried flowering tops of the industrial hemp grown.

(1) Sampling shall occur as soon as practicable when the THC content of the leaves surrounding the seeds is at its peak and shall commence as the seeds begin to mature, when the first seeds of approximately 50 percent of the plants are resistant to compression.

- (2) The entire fruit-bearing part of the plant including the seeds shall be used as a sample. The sample cut shall be made directly underneath the inflorescence found in the top one-third of the plant.
- (3) The sample collected for THC testing shall be accompanied by the following documentation:
  - (A) The registrant's proof of registration.
  - (B) Seed certification documentation for the seed cultivar used.
  - (C) The THC testing report for each certified seed cultivar used.
- (4) The laboratory test report shall be issued by a laboratory registered with the federal Drug Enforcement Administration, shall state the percentage content of THC, shall indicate the date and location of samples taken, and shall state the Global Positioning System coordinates and total acreage of the crop. If the laboratory test report indicates a percentage content of THC that is equal to or less than three-tenths of 1 percent, the words "PASSED AS CALIFORNIA INDUSTRIAL HEMP" shall appear at or near the top of the laboratory test report. If the laboratory test report indicates a percentage content of THC that is greater than three-tenths of 1 percent, the words "FAILED AS CALIFORNIA INDUSTRIAL HEMP" shall appear at or near the top of the laboratory test report.
- (5) If the laboratory test report indicates a percentage content of THC that is equal to or less than three-tenths of 1 percent, the laboratory shall provide the person who requested the testing not less than 10 original copies signed by an employee authorized by the laboratory and shall retain one or more original copies of the laboratory test report for a minimum of two years from its date of sampling.
- (6) If the laboratory test report indicates a percentage content of THC that is greater than three-tenths of 1 percent and does not exceed 1 percent, the registrant that grows industrial hemp shall submit additional samples for testing of the industrial hemp grown.
- (7) A registrant that grows industrial hemp shall destroy the industrial hemp grown upon receipt of a first laboratory test report indicating a percentage content of THC that exceeds 1 percent or a second laboratory test report pursuant to paragraph (6) indicating a percentage content of THC that exceeds three-tenths of 1 percent but is less than 1 percent. If the percentage content of THC exceeds 1 percent, the destruction shall take place within 48 hours after receipt of the laboratory test report. If the percentage content of THC in the second laboratory test report exceeds three-tenths of 1 percent but is less than 1 percent, the destruction shall take place as soon as practicable, but no later than 45 days after receipt of the second test report.
- (8) A registrant that intends to grow industrial hemp and who complies with this section shall not be prosecuted for the cultivation or possession of marijuana as a result of a laboratory test report that indicates a percentage content of THC that is greater than three-tenths of 1 percent but does not exceed 1 percent.
- (9) Established agricultural research institutions shall be permitted to cultivate or possess industrial hemp with a laboratory test report that indicates a percentage content of THC that is greater than three-tenths of 1 percent if that cultivation or possession contributes to the development of types of industrial hemp that will comply with the three-tenths of 1 percent THC limit established in this division.
- (10) Except for an established agricultural research institution, a registrant that grows industrial hemp shall retain an original signed copy of the laboratory test report for two years from its date of sampling, make an original signed copy of the laboratory test report available to the department, the commissioner, or law enforcement officials or their designees upon request, and shall provide an original copy of the laboratory test report to each person purchasing,

transporting, or otherwise obtaining from the registrant that grows industrial hemp the fiber, oil, cake, or seed, or any component of the seed, of the plant.

(g) If, in the Attorney General's opinion issued pursuant to Section 8 of the act that added this division, it is determined that the provisions of this section are not sufficient to comply with federal law, the department, in consultation with the board, shall establish procedures for this section that meet the requirements of federal law.

**81007. Prohibitions; De minimis considerations**

~~(a) Except as provided in subdivision (b) or as necessary to perform testing pursuant to subdivision (f) of Section 81006, the possession, outside of a field of lawful cultivation, of resin, flowering tops, or leaves that have been removed from the hemp plant is prohibited.~~

~~(b) The presence of a de minimis amount, or insignificant number, of hemp leaves or flowering tops in hemp bales that result from the normal and appropriate processing of industrial hemp shall not constitute possession of marijuana.~~

**81008. Attorney General reports; Requirements**

~~(a) Not later than January 1, 2019, or five years after the provisions of this division are authorized under federal law, whichever is later, the Attorney General shall report to the Assembly and Senate Committees on Agriculture and the Assembly and Senate Committees on Public Safety the reported incidents, if any, of the following:~~

~~(1) A field of industrial hemp being used to disguise marijuana cultivation.~~

~~(2) Claims in a court hearing by persons other than those exempted in subdivision (f) of Section 81006 that marijuana is industrial hemp.~~

~~(b) A report submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.~~

~~(c) Pursuant to Section 10231.5 of the Government Code, this section is repealed on January 1, 2023, or four years after the date that the report is due, whichever is later.~~

**81010. Operation of division**

~~(a) This division, and Section 221 of the Food and Agricultural Code, shall not become operative unless authorized under federal law on January 1, 2017.~~

~~(b) The possession, use, purchase, sale, production, manufacture, packaging, labeling, transporting, storage, distribution, use, and transfer of industrial hemp shall be regulated in accordance with this division. The Bureau of Marijuana Control has authority to regulate and control plants and products that fit within the definition of industrial hemp but that are produced, processed, manufactured, tested, delivered, or otherwise handled pursuant to a license issued under Division 10 of the Business and Professions Code.~~

**SECTION 10. AMENDMENT.**

This Act shall be broadly construed to accomplish its purposes and intent as stated in Section 3. The Legislature may by majority vote amend the provisions of this Act contained in Sections 5 and 6 to implement the substantive provisions of those sections, provided that such amendments are consistent with and further the purposes and intent of this Act as stated in Section 3.

Amendments to this Act that enact protections for employees and other workers of licensees under Section 6 of this Act that are in addition to the protections provided for in this Act or that

otherwise expand the legal rights of such employees or workers of licensees under Section 6 of this Act shall be deemed to be consistent with and further the purposes and intent of this Act. The Legislature may by majority vote amend, add, or repeal any provisions to further reduce the penalties for any of the offenses addressed by this Act. Except as otherwise provided, the provisions of the Act may be amended by a two-thirds vote of the Legislature to further the purposes and intent of the Act.

#### **SECTION 11. CONSTRUCTION AND INTEPRETATION.**

The provisions of this Act shall be liberally construed to effectuate the purposes and intent of the Control, Regulate and Tax the Adult Use of Marijuana Act; provided, however, no provision or provisions of this Act shall be interpreted or construed in a manner to create a positive conflict with federal law, including the federal Controlled Substances Act, such that the provision or provisions of this Act and federal law cannot consistently stand together.

#### **SECTION 12. SEVERABILITY.**

If any provision in this Act, or part thereof, or the application of any provision or part to any person or circumstance is held for any reason to be invalid or unconstitutional, the remaining provisions and parts shall not be affected, but shall remain in full force and effect, and to this end the provisions of this Act are severable.

#### **SECTION 13. CONFLICTING INITIATIVES.**

In the event that this measure and another measure or measures concerning the control, regulation, and taxation of marijuana, medical marijuana, or industrial hemp appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure shall be null and void.