

Date: December 11, 2017

To: Honorable Mayor Davis and City Council Members

From: Citizens Advisory Committee Regarding Marijuana Regulations

Subject: Summary of Issues Regarding Marijuana Activities

The Citizens Advisory Committee met on November 13, November 20, November 27, December 4 and December 11, 2017, to discuss the four issues areas outlined in Resolution No. 211 adopted on October 18, 2017. Attached is a summary of the Committee's recommendations:

1. Personal Cultivation in Residential Zones
2. Marijuana Consumption/Smoking in Public Areas
3. Taxes and Fees on Marijuana
4. Regulation of Commercial Marijuana Activities not covered by Measure O

Topic No. 1 – Cultivation in Residential Zones:

No permit shall be required for personal cannabis cultivation. However, if personal cultivation occurs it must be established and maintained accessory to a legally established dwelling unit, as set forth below and under State law.

A. Single-Family Residences and Detached Residential Condominium Projects. Cannabis for personal use may be cultivated at a single-family residence or a dwelling unit in a detached residential condominium project. The following standards apply to both indoor and outdoor cultivation:

1. Cannabis cultivation shall not be visible from a public right-of-way, private drive, or fire lane.
2. Cannabis cultivation shall be limited to six plants per residence, pursuant to AUMA. If a lot is legally improved with a single-family residence and an accessory dwelling unit, no more than six of the combined total number of plants may be cultivated outdoors upon the grounds on that lot.
3. The following additional standards apply to outdoor cultivation:
 - a. Cannabis cultivation shall be limited to a maximum of six plants per lot;
 - b. Cannabis plants may not exceed a maximum height of six feet;
 - c. Cannabis cultivation is prohibited within the required front yard setback;
 - d. Cannabis cultivation at all times shall be located at least 10 feet from side yard and rear yard property lines; and
 - e. Cannabis cultivation areas shall be located within an area that is enclosed and secured by a solid wall or fence;
 - f. All fences and walls shall be of a uniform height in relation to the ground upon which they stand and shall not exceed six feet in height, not to exceed the height limit of the zone, community standards district, or other more restrictive requirement applicable to the lot.
 - g. All interior fences may be constructed of masonry, wood or chain link fencing for the screening, enclosing, or securing of cannabis cultivation areas is prohibited.
 - h. All fences and walls shall be constructed in a workman like manner.
 - i. All fences and walls shall be a uniform neutral color, excluding black, which blends with the surrounding terrain and improvements, and shall be maintained in a neat, orderly condition at all times.

B. All Other Residences. Two-family residences and dwelling units in an apartment house and attached residential condominium projects are expressly prohibited from establishing outdoor cannabis cultivation for personal use. Outdoor cannabis cultivation includes, but is not limited to, cultivation on balconies, patios, common areas, and walkways. Indoor cannabis cultivation is permitted subject to the following standards:

1. Cannabis cultivation shall not be visible from a public right-of-way, private drive, or fire lane.
2. Cannabis cultivation shall be limited to a maximum of six plants per dwelling unit.
3. Cannabis cultivation areas shall be fully enclosed in a building.

Topic No. 2 – Consumption & Smoking in Public Areas:

B.010 - PURPOSE AND AUTHORITY

The City of San Bernardino is committed to the good health and well-being of the residents of the City of San Bernardino. The Health in All Policies Framework adopted by the City Council to ensure that health is a priority in all policies. Smoke-free air is an important component of a healthy community. Therefore, the City is committed to:

- a) Protecting the public health, safety, and general welfare by providing a cannabis smoke-free environment in public and private places where non-cannabis smokers may be exposed to secondhand cannabis smoke; and
- b) Promoting cannabis smoke-free air recognizing that the need to breathe smoke-free air has priority over the desire to smoke cannabis.

B.020 - FINDINGS

The City of San Bernardino finds that:

- a) Secondhand cannabis smoke has been repeatedly identified as a health hazard.
- b) There is no constitutional right to smoke cannabis in public.
- c) The U.S. Surgeon General found there is no risk-free level of exposure to secondhand cannabis smoke. Separating cannabis smokers from non-cannabis smokers, cleaning the air, and ventilating buildings cannot eliminate exposure of non-cannabis smokers to secondhand cannabis smoke.
- d) The California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure.
- e) The California Environmental Protection Agency included secondhand smoke on the Proposition 65 list of chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm.
- f) Exposure to secondhand cannabis smoke anywhere has negative health impacts, and exposure to secondhand cannabis smoke occurs at significant levels outdoor, as evidenced by the following:
 - 1) Levels of secondhand cannabis smoke exposure outdoors can reach levels attained indoors depending on the direction and amount of wind and number and proximity of cannabis smokers;
 - 2) Cannabis smoking near building entryways can increase air pollution levels by more than two times as compared with background levels, with maximum levels reaching the "hazardous" range on the U.S. Environmental Protection Agency Air Quality Index; and
 - 3) A person may have to move nearly 23 feet away from the source of the cannabis smoke to be completely free from exposure to secondhand cannabis smoke in outdoor places.
- g) Cannabis has been found to be toxic. In addition, cannabis exposure during fetal development, a critical window for brain development, has lasting adverse consequences. Cannabis adversely affects maternal and fetal health during pregnancy, contributing to multiple adverse outcomes such as preterm delivery and stillbirth. In addition, cannabis exposure during adolescence, also a critical window for brain development, may have lasting adverse consequences.
- h) Cannabis packaging are a major and persistent source of litter, and in most cases,

do not biodegrade, and are often cast onto sidewalks and streets, frequently ending up in storm drains that flow into creeks, rivers, and ultimately the ocean.

- i) Studies on electronic cigarettes' vapor emissions and cartridge contents have found a number of dangerous substances including chemicals known to the State of California to cause cancer, such as formaldehyde, acetaldehyde, lead, nickel, and chromium.
- j) Several studies have concluded that vapor from electronic cigarettes may cause passive or secondhand inhalation of vapor by nearby people.
- k) There are no studies proving that inhalation of vapor from electronic cigarettes is not harmful to health, and the long-term health risks of the use of electronic cigarettes on device users and nearby people remain unknown.
- l) Secondhand cannabis smoke contains many of the same chemicals and carcinogens as secondhand tobacco smoke. Results from laboratory testing under standard conditions found that secondhand cannabis smoke contained more than twice as much tar and ammonia as tobacco smoke and more than eight times as much hydrogen cyanide.

B.030- DEFINITIONS

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

- a) "Business" means any sole proprietorship, partnership, limited liability company, joint venture, corporation, association, or other entity formed for profit-making purposes or for nonprofit charitable, religious, philanthropic, educational, political, social, or similar purposes. A government agency is not a business within the meaning of this chapter.
- b) "City" means the City of San Bernardino, a Charter City in the State of California.
- c) "City campus" means enclosed areas and unenclosed areas under the legal control of the City, including property that is owned, leased, or maintained by the City or governed by the City Council.
- d) "Prohibited smoking area" means a designated portion of an unenclosed area where cannabis smoking is prohibited.
 - 1) Cannabis smoking shall be prohibited within one thousand (1,000) feet of any of the following:
 - A) Any school (k-12) regardless if it is a public, private or charter school;
 - B) Day care center as defined in Section 1596.76 of the Health and Safety Code;
 - C) Youth center as defined in Section 11353.1 of the Health and Safety Code; and
 - D) Any library, park, bicycle paths or area in which the primary purpose is used for minors.
 - E) Any alcohol rehabilitation center or substance abuse facility.
- e) "Dining area" means any area which is available to or customarily used by the general public or an employee and which is designed, established, or regularly used for consuming food or drink.
- f) "Electronic smoking device" means an electronic device that can be used to deliver an inhaled dose of cannabis, cannabis oils or other substances, including any component, part, or accessory of such a device, whether or not sold separately. "Electronic smoking device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, vaping pens or any other product name or descriptor.
- g) "Employee" means any natural person who is employed or retained as an independent contractor by any employer in consideration for direct or indirect monetary wages or

- profit, or any natural person who volunteers his or her services for an employer.
- h) "Employer" means any business with one or more employees.
 - i) "Enclosed area" means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has:
 - 1) Any type of overhead cover and at least three walls or other vertical constraint to airflow; or
 - 2) Four walls or other vertical constraints to airflow.
 - j) "Person" means any natural person, business, personal representative, receiver, trustee, assignee, or any other legal entity.
 - k) "Place of employment" means any area under the legal or de facto control of an employer that an employee or the general public may have cause to enter in the normal course of operations, regardless of the hours of operation.
 - l) "Public place" means any place, publicly or privately owned, when being used for a public event, including but not limited to a farmers' market, parade, craft fair, festival, or any other event open to the general public.
 - m) "Recreational area" means any area that is owned, controlled, or used by the City and open to the general public for recreational purposes, regardless of any fee or age requirement. "Recreational area" includes, but is not limited to, parks, picnic areas, playgrounds, sports fields, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, skateboard parks, and amusement parks. "Recreational area" does not include golf courses.
 - n) "Service area" means any publicly or privately-owned area designed to be used or is regularly used by one or more persons to receive a service, wait to receive a service, or to make a transaction, whether or not such service or transaction includes the exchange of money. "Service area" includes, but is not limited to, areas including or adjacent to information kiosks, automatic teller machines, ticket lines, bus stops or shelters, mobile vendor lines, or cab stands.
 - o) "Smoke" means the gases, oils, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization, when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco, cannabis, cannabis oils, or nicotine and the purpose of inhalation is solely olfactory, such as smoke from incense. "Smoke" includes, but is not limited to, tobacco smoke, electronic smoking device vapors, and cannabis smoke.
 - p) "Smoking" means inhaling, exhaling, burning, or carrying any ignited, heated, or activated cigar, cigarette, cigarillo, pipe, hookah, electronic smoking device, or any plant product intended for human inhalation including, but not limited to, cannabis or cannabis products.
 - q) "Cannabis concentrate" means cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product's potency. Resin from granular trichomes from a cannabis plant is a concentrate for purposes of this division. A cannabis concentrate is not considered food, as defined by Section 109935 of the Health and Safety Code, or drug, as defined by Section 109925 of the Health and Safety Code.
 - r) "Cannabis paraphernalia" means any item designed for the consumption, use, or preparation of cannabis or cannabis product.
 - s) "Cannabis product" means:
 - 1) Any product containing, made, or derived from cannabis or cannabis products that is intended for human consumption, whether smoked, heated,

absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, bong, blunts, pipes; and

2) Any electronic smoking device. Notwithstanding any provision of subparagraphs (1) and (2) to the contrary, "cannabis products" includes any component, part, or accessory of a cannabis product, whether or not sold separately.

t) "Unenclosed area" means any area that is not an enclosed area.

B.040 - APPLICATION OF THE CHAPTER

This chapter shall be applicable in the incorporated areas of the City of San Bernardino and in all City buildings, whether owned, leased, or controlled by the City, and on all City campuses.

B.050 - PROHIBITION OF SMOKING AND INHALING IN ENCLOSED PLACES

The City shall enforce the California smoke-free workplace law (Labor Code section 6404.5), which prohibits smoking in enclosed places of employment, in all areas subject to this chapter. In addition, all cannabis smoking and the use of cannabis products are prohibited in the enclosed areas of the following places:

- a) All businesses that are not places of employment and which have a common or shared air space with an enclosed area, such as, without limitation, openings, cracks, air ventilation systems, doorways, hallways, and stairways, in which smoking is prohibited by law. Notwithstanding any other provision of this chapter, the fact that cannabis smoke enters one enclosed area from another enclosed area is conclusive proof that the areas share a common or shared air space; and
- b) Public places as defined in section B.030 (I).
- c) Any area within 50 feet of any door, window, opening, or vent, into a public place, dining area, service area, or recreational area except for such areas on private residential property.

B.060 - PROHIBITION OF SMOKING AND INHALING IN UNENCLOSED AREAS

Smoking and inhaling of cannabis products are prohibited in the unenclosed areas of the following places as defined in Section B.030 (d) and B.070 (b):

- a) Dining areas
- b) Entryways
- c) Public places
- d) Recreational areas
- e) Service areas
- f) Places of employment.

B.070 - PROHIBITION OF SMOKING AND INHALING IN CITY VEHICLES AND ON CITY CAMPUSES

- a) Smoking and inhaling of cannabis products are prohibited in all vehicles leased, owned, or operated by the City or any district governed by the City.
- b) Smoking and the use of cannabis or cannabis products are prohibited in all enclosed areas and unenclosed areas of a City campus.

B.080 - REASONABLE SMOKING DISTANCE REQUIRED

- a) Smoking and inhaling of cannabis in all unenclosed areas is prohibited within a reasonable distance from any enclosed or unenclosed areas in which smoking is prohibited.

- b) A private property or Business owner may authorize a Designated Smoking Area in an unenclosed area of his or her private property.

B.090 - ADDITIONAL SMOKING-RELATED PROHIBITIONS

- a) A person who owns, manages, operates, or otherwise controls the use of any place where cannabis smoking is prohibited by this chapter may not knowingly or intentionally permit cannabis smoking in those places. For purposes of this section, a person has acted knowingly or intentionally if the person has not taken the following actions to prevent cannabis smoking by another person:
 - 1) Requested that a person who is smoking refrain from cannabis smoking in the prohibited place; and
 - 2) Requested that a person who is smoking cannabis leave the prohibited place if the person refuses to stop smoking in the prohibited place after being asked to stop. This section does not require physically ejecting a person from a place or taking steps to prevent smoking under circumstances that would involve risk of physical harm.
- b) No person shall intimidate, harass, or otherwise retaliate against any person who seeks compliance with this section. Moreover, no person shall intentionally or recklessly expose another person to cannabis smoke in response to that person's effort to achieve compliance with this section.

B.100 - OTHER REQUIREMENTS AND PROHIBITIONS

- a) No employer or business doing business with the City and within the City of San Bernardino shall knowingly or intentionally permit cannabis smoking or inhaling in an area which is under the employer's or business's control and in which cannabis smoking is prohibited.
- b) No person shall litter or dispose of cannabis packaging or cannabis products waste within the boundaries of an area in which cannabis smoking or cannabis products is prohibited except into a waste receptacle or ash can.
- c) No person, employer, or business shall intimidate or threaten or effect any reprisal against another person for the purpose of retaliating against that person for seeking to obtain compliance with this chapter.
- d) Causing, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.

B.110 - POSTING OF SIGNS

A person, employer, or business that has legal or de facto control of an area in which cannabis smoking, or the use of cannabis products is prohibited by this chapter shall post a clear, conspicuous and unambiguous "No Smoking and No Vaping" or "Smoke-Free" sign at each point of ingress to the area, and in at least one other conspicuous point within the area. The signs will have letters of no less than one inch in height and shall include the international "No Smoking and No Vaping" symbol (consisting of a pictorial representation of a burning cigarette, cannabis leaf and e-cigarette enclosed in a red circle with a red bar across it). Signs posted on the exterior of buildings to comply with this section shall include the reasonable distance requirement set forth in section B.080. At least one sign with a City phone number (to be determined by the director of Community Development and made available on the department's website which complaints can be directed must be placed conspicuously in each place in which cannabis smoking is prohibited. The Community Development Department shall be responsible for providing appropriate signs in public facilities controlled by the

City. Notwithstanding this section, the presence or absence of signs shall not be a defense to a charge of cannabis smoking or the use of cannabis products in violation of any other provision of this chapter.

B.120 - INTERPRETATION

This chapter shall not be interpreted or construed to permit cannabis smoking where it is otherwise restricted by other applicable laws.

B.130 - PENALTIES AND ENFORCEMENT

- a) The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.
- b) Each incident of smoking or use of cannabis or cannabis products in violation of this chapter is an infraction punishable by a fine of \$50 for a first violation within one year, a fine of \$100 for a second violation within one year, and a fine of \$200 for a third or subsequent violation occurring within one year
- c) Nothing in this section shall be construed to limit the authority of the City to treat any violation of this chapter as a public nuisance pursuant to any City or state law.
- d) Enforcement of this chapter is at the sole discretion of the City.

B.140 - OTHER LAWS

It is not the intention of this chapter to regulate any conduct where the regulation of such conduct has been preempted by the State of California.

B.150 - STATUTORY CONSTRUCTION AND SEVERABILITY

It is the intent of the City to supplement applicable state and federal law and not to duplicate or contradict such laws, and this chapter shall be construed consistently with that intention. If any part of this chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining parts of this chapter, or its application to any other person or circumstance. The City hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof independently, irrespective of the fact that any one or more other section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof be declared invalid or unenforceable.

B.160 - PUBLIC EDUCATION

The City Community Development Department shall conduct an ongoing educational effort to inform the public about the purpose and requirements of this chapter as well as to provide guidance to persons, employers, and businesses. However, lack of such education shall not be a defense to a violation of this chapter.

B.170 - NO PRIVATE RIGHT OF ACTION

Nothing in this chapter shall create a right of action in any person against the City or its agents to compel enforcement of this chapter against private parties.

Topic No. 3 – Taxes and Fees:

The following additional standards should apply to Taxes and Fees:

1. The City will collect a gross receipts tax of 3%.
2. The City will collect a cultivation facilities fee for permit processing and annual review based upon actual City costs.
3. The City will collect a fee of \$1/sqft of canopy space per cultivation facility and \$1/sqft of leased space for Labs. Manufacturing, Distribution, processing and Micro Businesses.
4. The City will collect a Special Event fee for cost recovery based upon actual City costs.

Topic No. 4 – Commercial Activities Not Covered by Measure O

If Measure O covers applies to medical and adult use of cannabis, the Committee is still concerned about Special Marijuana Events.

The issues of concern are:

1. Reputation of the City
2. Public health and safety
3. Odor
4. Security
5. Traffic
6. Parking
7. Trespassing on Private Property
8. Trash and debris