

FINDINGS IN SUPPORT OF ORDINANCE NO. 2017-26

- A. In 1996, California voters approved Proposition 215, the Compassionate Use Act. The purpose of the Compassionate Use Act is to enable persons who are in need of marijuana for specified medical purposes to obtain and use marijuana under limited circumstances. The Compassionate Use Act (Health and Safety Code (HSC) § 11362.5) established a limited defense for qualified patients and their primary caregivers to the crimes of possessing or cultivating marijuana.
- B. In 2003, the Legislature enacted the Medical Marijuana Program. The Medical Marijuana Program (HSC §§ 11362.7-11362.83) established regulations and procedures regarding the issuance of identification cards to patients qualified to use medical marijuana, and clarifies what is a “reasonable” amount of marijuana for personal medical use. The Medical Marijuana Program also established a defense to criminal liability for the collective or cooperative cultivation of marijuana. (HSC § 11362.775.) Medical marijuana dispensaries began opening throughout the state as medical marijuana collectives under the Compassionate Use Act and the Medical Marijuana Program.
- C. In 2008, the Board of Supervisors adopted Ordinance No. 2008-05 to prohibit the establishment of medical marijuana dispensaries in the unincorporated area of Contra Costa County.
- D. The federal Controlled Substances Act (Title 21, United States Code § 801 et seq.) prohibits, except for certain research purposes, the possession, distribution, and manufacture of marijuana, and there is no medical necessity exception to prosecution and conviction under the Controlled Substances Act.
- E. The California Supreme Court in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, held that neither the Compassionate Use Act nor the Medical Marijuana Program expressly or impliedly preempt the authority of California counties and cities, under their traditional land use and police powers, to allow, restrict, limit, or entirely exclude facilities that distribute medical marijuana. Similarly, in *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Court of Appeal held that nothing in the Compassionate Use Act nor the Medical Marijuana Program preempts California counties and cities from exercising their police powers to prohibit the cultivation and sale of marijuana within their jurisdictions.
- F. The Medical Marijuana Regulation and Safety Act, later renamed the Medical Cannabis Regulation and Safety Act, was signed by the Governor on October 9, 2015. The purpose of the act was to regulate the cultivation, dispensing, manufacturing, distribution, and transportation of medical marijuana. The act affirmed the authority of counties and cities to regulate commercial medical marijuana activities through the adoption of land use ordinances.

- G. On November 8, 2016, the voters of the State of California adopted Proposition 64, which enacted the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”). AUMA took effect November 9, 2016. AUMA makes it legal under California law for anyone 21 years of age or older to possess, plant, cultivate, harvest, dry, and process up to six marijuana plants per private residence for personal use (the “Personal Use Grows”), subject to certain restrictions. (HSC, §§ 11362.2 & 11362.3.) AUMA also makes it legal under California law for anyone 21 years of age or older to do all of the following (collectively, the “Personal Use Exceptions”):
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. Smoke, except where smoking is prohibited, and ingest marijuana and marijuana products; and
 4. Possess, transport, purchase, obtain, use, manufacture or give away marijuana accessories to persons 21 years of age or older without any compensation whatsoever. (HSC, § 11362.1.)
- H. Under state law, living plants of Personal Use Grows, and marijuana from those plants in excess of 28.5 grams, must be kept in a locked space, enclosed, and must not be visible by normal unaided vision from a public place. (HSC, § 11362.2(a).) Cities and counties also may enact and enforce reasonable regulations to regulate Personal Use Grows, and they may prohibit Personal Use Grows outdoors. (HSC, § 11362.2(a)(1), (b)(1) & (b)(3).)
- I. On June 27, 2017, the Governor signed Senate Bill 94, the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”), which went into effect immediately. MAUCRSA combined the state’s medical cannabis regulations with the adult-use cannabis rules in AUMA. Under MAUCRSA, state commercial cannabis licenses will be available January 1, 2018, for various activities, including cultivation, manufacturing, testing, retailing, distributing, and microbusiness, as long as the activities are allowed in the local jurisdiction where the activity would be located. Applicants for state cannabis licenses may apply for medical or adult-use licenses in any category.
- J. Under MAUCRSA, cities and counties retain local authority to license, regulate, limit, or completely ban marijuana businesses within their jurisdictions. (BPC, § 26200.) A state license will not be issued to a business if the business cannot lawfully be established in the city or county in which it intends to locate. (BPC, § 26055(d).)

- K. The County is considering and developing regulations to govern the commercial cultivation, distribution, transport, storage, manufacturing, processing, and sale of medical cannabis and medical cannabis products, and of adult-use cannabis and adult-use cannabis products. It is necessary to adopt Ordinance No. 2017-26 to provide the County with additional time to determine the extent of these regulations and to complete all required environmental review related to those regulations. Under current Ordinance No. 2017-03, commercial marijuana activities are banned through January 30, 2018. Absent the adoption of Ordinance No. 2017-26, commercial marijuana activities could arguably be located, after January 30, 2018, in residential areas or in close proximity to schools, churches, day care centers, and other sensitive uses incompatible with commercial marijuana activities.