CITY of LAGUNA WOODS
CITY COUNCIL
AGENDA

Regular Meeting
Wednesday, May 17, 2017
2:00 p.m.

Laguna Woods City Hall
24264 El Toro Road
Laguna Woods, California 92637

Shari L. Horne
Mayor

Carol Moore
Mayor Pro Tem

Bert Hack
Councilmember

Cynthia Conners
Councilmember

Noel Hatch
Councilmember

Welcome to a meeting of the Laguna Woods City Council!

This meeting may be recorded, televised, and made publically available.

Public Comments: Persons wishing to address the City Council are requested to complete and submit a speaker card to City staff. Speaker cards are available near the entrance to the meeting location. Persons wishing to address the City Council on an item appearing on this agenda will be called upon at the appropriate time during the item's consideration. Persons wishing to address the City Council on an item *not* appearing on the agenda will be called upon during the "Public Comments" item. Persons who do not wish to submit a Speaker Card, or who wish to remain anonymous, may indicate their desire to speak from the floor. Speakers are requested, but not required, to identify themselves.

Americans with Disabilities Act (ADA): It is the intention of the City to comply with the ADA. If you need assistance to participate in this meeting, please contact either the City Clerk's Office at (949) 639-0500/TTY (949) 639-0535 or the California Relay Service at (800) 735-2929/TTY (800) 735-2922. The City requests at least two business days' notice in order to effectively facilitate the provision of reasonable accommodations.

REGULAR MEETING SCHEDULE

The Laguna Woods City Council regularly meets on the third Wednesday of each month at 2 p.m.

AGENDA POSTING AND AVAILABILITY

Regular and Adjourned Regular Meetings: Pursuant to California Government Code Section 54954.2 of the Ralph M. Brown Act, the City of Laguna Woods posts agendas at Laguna Woods City Hall, 24264 El Toro Road, Laguna Woods, California 92637; on the City's website (www.cityoflagunawoods.org); and, at other locations designated by Resolution No. 02-33, at least 72 hours in advance of regular and adjourned regular meetings. Agendas and agenda materials are available at Laguna Woods City Hall during normal business hours and on the City's website. Printed copies of agendas and agenda materials are provided at no charge in advance of meetings. After meetings have occurred, a per page fee is charged for printed copies.

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FOR ADDITIONAL INFORMATION

For additional information, please contact the City Clerk's Office at (949) 639-0500/TTY (949) 639-0535, cityhall@cityoflagunawoods.org, or 24264 El Toro Road, Laguna Woods, California 92637.

AFFIDAVIT OF POSTING

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, Yolie Trippy, Deputy City Clerk, City of Laguna Woods, hereby certify under penalty of perjury that this agenda was posted at Laguna Woods City Hall, 24264 El Toro Road, Laguna Woods, California 92637; on the City's website (www.cityoflagunawoods.org); and, at other locations designated by Resolution No. 02-33, pursuant to California Government Code Section 54954.2 of the Ralph M. Brown Act.

Yolie Trippy — 5-12-17

YOLIE TRIPPY, Deputy City Clerk — Date

I. CALL TO ORDER

II. ROLL CALL

III. PLEDGE OF ALLEGIANCE

IV. PRESENTATIONS AND CEREMONIAL MATTERS

4.1 Saddleback Kiwanis – 50th Anniversary

Recommendation: Approve and present the commendation.

4.2 Drowning Prevention Awareness Period – May-October 2017

Recommendation: Approve and present the proclamation.

4.3 Asian American and Pacific Islander Heritage Month – May 2017

Recommendation: Approve and present the proclamation.

4.4 Building Safety Month – May 2017

Recommendation: Approve and present the proclamation.

4.5 Older Americans Month – May 2017

Recommendation: Approve and present the proclamation.

4.6 Stroke Awareness Month – May 2017

Recommendation: Approve and present the proclamation.

4.7 Water Awareness Month – May 2017

Recommendation: Approve and present the proclamation.

V. PUBLIC COMMENTS

About Public Comments: This is the time and place for members of the public to address the City Council on items *not* appearing on this agenda. Pursuant to State law, the City Council is unable to take action on such items, but may engage in brief discussion, provide direction to City staff, or schedule items for consideration at future meetings.

VI. CONSENT CALENDAR

About the Consent Calendar: All items listed on the Consent Calendar are considered routine and will be enacted by one vote. There will be no separate discussion of these items unless a member of the City Council, City staff, or the public requests that specific items be removed from the Consent Calendar for separate discussion and consideration of action.

6.1 City Council Minutes

Recommendation: Approve the City Council meeting minutes for the regular meeting on April 19, 2017 and the adjourned regular meeting on April 26, 2017.

6.2 City Treasurer's Report

Recommendation: Receive and file the City Treasurer's Report for the month of April 2017.

6.3 Warrant Register

Recommendation: Approve the warrant register dated May 17, 2017 in the amount of $790,757.65.

6.4 Fiscal Year 2016-17 Budget Adjustments

Recommendation: Approve a resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, ADOPTING A FISCAL YEAR 2016-17 BUDGET FOR THE MEASURE M1 FUND; INCREASING THE ADOPTED FISCAL YEAR 2016-17 BUDGETS FOR THE BEVERAGE CONTAINER RECYCLING FUND AND SENIOR MOBILITY FUND; INCREASING THE

ADOPTED FISCAL YEAR 2016-17 BUDGET AND AUTHORIZING TRANSFERS FROM THE GENERAL FUND TO THE FUEL TAX FUND, MEASURE M2 FUND, SENIOR MOBILITY FUND, MEASURE M1 FUND, AND PROPOSITION 84 GRANT FUND; INCREASING THE ADOPTED FISCAL YEAR 2016-17 BUDGETS AND AUTHORIZING TRANSFERS FROM THE TRAFFIC MITIGATION FEES FUND AND CALRECYCLE GRANT FUND TO THE GENERAL FUND; AND, AUTHORIZING THE CLOSURE OF THE CALRECYCLE GRANT FUND, MEASURE M1 FUND, PROPOSITION 84 GRANT FUND, AND TRAFFIC MITIGATION FEES FUND

6.5 Code Enforcement Services

Recommendation: Approve an agreement with Willdan Engineering for code enforcement services and authorize the City Manager to execute the agreement, subject to approval as to form by the City Attorney.

6.6 El Toro Road Regional Traffic Signal Synchronization Program Project P

Recommendation:

1. Approve the "El Toro Road Regional Traffic Signal Synchronization Program Project P" design plans and specifications as recommended by the City Engineer/City Traffic Engineer.

AND

2. Award a contract agreement to Elecnor Belco Electric, Inc. for the construction of the "El Toro Road Regional Traffic Signal Synchronization Program Project P", in the amount of $354,500, plus authorized change orders not to exceed 10% of the base amount; and authorize the City Manager to execute a contract agreement and approve change orders, subject to

approval of the contract agreement as to form by the City Attorney.

AND

3. Authorize the City Manager to enter into agreements with the Orange County Transportation Authority, California Department of Transportation, and participating agencies, as necessary, to facilitate the reimbursement of funds for the "El Toro Road Regional Traffic Signal Synchronization Program Project P", subject to approval as to form by the City Attorney.

6.7 Moulton Parkway Regional Traffic Signal Synchronization Program Project P

Recommendation:

1. Approve the "Moulton Parkway Regional Traffic Signal Synchronization Program Project P" design plans and specifications as recommended by the City Engineer/City Traffic Engineer.

AND

2. Award a contract agreement to Elecnor Belco Electric, Inc. for the construction of the "Moulton Parkway Regional Traffic Signal Synchronization Program Project P", in the amount of $263,289, plus authorized change orders not to exceed 10% of the base amount; and authorize the City Manager to execute a contract agreement and approve change orders, subject to approval of the contract agreement as to form by the City Attorney.

AND

3. Authorize the City Manager to enter into agreements with the Orange County Transportation Authority, California Department of Transportation, and participating agencies, as necessary, to facilitate the reimbursement of funds for the "Moulton Parkway

Regional Traffic Signal Synchronization Program Project P", subject to approval as to form by the City Attorney.

6.8 City Hall Restroom Repair and Improvement Project

Recommendation: Reject all bids received for the "City Hall Restroom Repair and Improvement Project".

6.9 Urban County Community Development Block Grant and Other Programs Cooperation Agreement

Recommendation: Approve amendment four to the cooperation agreement with the County of Orange related to participation in the Urban County Community Development Block Grant (CDBG) program and other United States Department of Housing and Urban Development programs, and authorize the City Manager to execute the amendment subject to approval as to form by the City Attorney.

VII. PUBLIC HEARINGS

7.1 Conditional Use Permit CUP-1135 to allow for exceedances of maximum fence and wall height provisions of the Laguna Woods Municipal Code, along all perimeter fences and walls of Laguna Woods Village

Recommendation:

1. Receive staff report.

AND

2. Open public hearing.

AND

3. Receive public testimony.

AND

4. Close public hearing.

AND

5. Approve a resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT CUP-1135 TO ALLOW FOR EXCEEDANCES OF MAXIMUM FENCE AND WALL HEIGHT PROVISIONS OF THE LAGUNA WOODS MUNICIPAL CODE, ALONG ALL PERIMETER FENCES AND WALLS OF LAGUNA WOODS VILLAGE, LAGUNA WOODS, CA 92637

VIII. CITY COUNCIL BUSINESS

8.1 State Video Franchise and Public, Educational, and Governmental ("PEG") Fees

Recommendation: Approve second reading and adopt an ordinance – read by title with further reading waived – entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, RETROACTIVELY READOPTING SECTION 6.42.020 OF CHAPTER 6.42 OF TITLE 6 OF THE LAGUNA WOODS MUNICIPAL CODE ENTITLED "STATE VIDEO FRANCHISE AND PEG FEES" RELATING TO STATE FRANCHISES FOR CABLE COMMUNICATIONS; AND REAUTHORIZING A FEE TO SUPPORT PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ("PEG") CHANNEL FACILITIES WITHIN THE CITY'S JURISDICTION

8.2 Medical and Non-Medical Marijuana Dispensary Regulations

Recommendation: Approve second reading and adopt an ordinance – read by title with further reading waived – entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, AMENDING SECTIONS 13.08.010, 13.10.020, 13.12.020, 13.13.020, AND 13.26.025 AND ADDING A NEW SECTION 13.26.027 OF THE LAGUNA WOODS MUNICIPAL CODE RELATED TO MEDICAL AND NON-MEDICAL MARIJUANA DISPENSARIES AND DELIVERY SERVICES

8.3 Unfunded Retirement Liability

Recommendation: Approve a resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, INCREASING THE ADOPTED FISCAL YEAR 2016-17 BUDGET FOR THE GENERAL FUND FOR PURPOSES RELATED TO MAKING LUMP SUM PAYMENTS TO PAY OFF THE CITY'S CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CALPERS) UNFUNDED ACCRUED LIABILITY AS OF JUNE 30, 2015, AND MAKING RELATED AUTHORIZATIONS

8.4 City Council Meeting Schedule

Recommendation: Approve the City Council meeting schedule for Fiscal Year 2017-18.

8.5 Fiscal Years 2017-19 Budget and Work Plan Development

Recommendation: Discuss and provide direction to staff.

IX. CITY COUNCIL REPORTS AND COMMENTS

About City Council Comments and Reports: This is the time and place for members of the City Council to provide reports on meetings attended including, but not limited to, meetings of regional boards and entities to which they have been appointed to represent the City and meetings attended at the expense of the City pursuant to California Government Code Section 53232.3. Members of the City Council may also make other comments and announcements.

9.1 Coastal Greenbelt Authority
Councilmember Conners; Alternate: Mayor Horne

9.2 Orange County Fire Authority
Councilmember Hatch

9.3 Orange County Library Advisory Board
Mayor Pro Tem Moore; Alternate: Mayor Horne

9.4 Orange County Mosquito and Vector Control District
Mayor Horne

9.5 San Joaquin Hills Transportation Corridor Agency
Councilmember Hack; Alternate: Councilmember Conners

9.6 South Orange County Watershed Management Area
Mayor Pro Tem Moore; Alternate: Councilmember Hatch

9.7 Other Comments and Reports

X. CLOSED SESSION

XI. CLOSED SESSION REPORT

XII. ADJOURNMENT

Next Regular Meeting: Wednesday, June 21, 2017 at 2 p.m.
Laguna Woods City Hall
24264 El Toro Road, Laguna Woods, California 92637

4.1
COMMENDATION – SADDLEBACK KIWANIS – 50TH ANNIVERSARY

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Certificate of Commendation
City of Laguna Woods
Saddleback Kiwanis
50th Anniversary

WHEREAS, Saddleback Kiwanis was founded on April 22, 1967 by local residents; and

WHEREAS, the members of Saddleback Kiwanis are dedicated to "changing the world, one child and one community at a time"; and

WHEREAS, Saddleback Kiwanis promotes the development of community leaders and positive role models, intercultural understanding and cooperation, fellowship, personal growth, professional development, and community service; and

WHEREAS, since its founding, Saddleback Kiwanis has awarded nearly $1 million in scholarships to students attending local high schools and colleges; and

WHEREAS, the members of Saddleback Kiwanis' Take Pride Committee selflessly volunteer their time to collect trash and litter from streets in Laguna Woods; and

WHEREAS, Saddleback Kiwanis has actively supported the community by sponsoring a variety of clubs and making contributions to the Florence Sylvester Memorial Senior Center, South County Outreach, and other local organizations; and

WHEREAS, it is fitting to recognize and commemorate momentous anniversaries of clubs and organizations that provide services to Laguna Woods residents.

NOW, THEREFORE, BE IT RESOLVED that the Laguna Woods City Council does hereby congratulate Saddleback Kiwanis on the occasion of its 50th Anniversary.

Dated this 17th day of May, 2017

_____
Shari L. Horne
Mayor

_____
Attest: Yolie Trippy
Deputy City Clerk

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4.2
PROCLAMATION – DROWNING PREVENTION AWARENESS PERIOD – MAY-OCTOBER 2017

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Proclamation
City of Laguna Woods
Drowning Prevention Awareness Period
May – October 2017

WHEREAS, drowning is the leading cause of death and disability in California for children under five years of age, and in 2016 there were three fatal drownings and 26 non-fatal incidents in Orange County; and

WHEREAS, drowning is a major problem for adults 50 years of age and older, and in 2016 there were 19 fatal drownings and four non-fatal incidents in Orange County; and

WHEREAS, fatal and non-fatal drowning is a silent event that can occur in as little as two inches of water, including swimming pools, spas, lakes, the ocean, and any other body of water; and

WHEREAS, the Orange County Fire Authority's 24-week water safety campaign began in May and will continue through October; and

WHEREAS, the themes of this year's water safety campaign are "Always Watch Your Child Around Water" and "Never Swim Alone."

NOW, THEREFORE, BE IT RESOLVED that the Laguna Woods City Council does hereby proclaim May – October 2017 as a "Drowning Prevention Awareness Period" in the City of Laguna Woods and encourages residents and businesses to increase their knowledge of proper safety measures to prevent drowning.

Dated this 17th day of May, 2017

_____
Shari L. Horne
Mayor

_____
Attest: Yolie Trippy
Deputy City Clerk

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4.3
PROCLAMATION – ASIAN AMERICAN AND PACIFIC ISLANDER HERITAGE MONTH – MAY 2017

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Proclamation
City of Laguna Woods
Asian American and Pacific Islander Heritage Month
May 2017

WHEREAS, Asian Americans and Pacific Islanders have played a critical role in the social, economic, and political development of the United States; and

WHEREAS, Asian Americans and Pacific Islanders are one of the fastest growing ethnic populations in the state of California; and

WHEREAS, Asian Americans and Pacific Islanders represent more than 11 percent of the population of Laguna Woods; and

WHEREAS, Asian American and Pacific Islander clubs and communities throughout Laguna Woods actively promote cultural heritage and understanding; and

WHEREAS, Asian Americans and Pacific Islanders have a proud legacy of service and dedication to our community, state, and country.

NOW, THEREFORE, BE IT RESOLVED that the Laguna Woods City Council does hereby proclaim May 2017 as "Asian American and Pacific Islander Heritage Month" in the City of Laguna Woods and encourages reflection on the accomplishments that Asian Americans and Pacific Islanders have made throughout history.

Dated this 17th day of May, 2017

_____
Shari L. Horne
Mayor

_____
Attest: Yolie Trippy
Deputy City Clerk

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4.4
PROCLAMATION – BUILDING SAFETY MONTH – MAY 2017

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Proclamation
City of Laguna Woods
Building Safety Month
May 2017

WHEREAS, "Building Safety Month" exists to raise awareness of the importance of building safety in the construction industry and to recognize the lives saved due to the implementation of building codes by local and state agencies; and

WHEREAS, building codes address critical issues of safety, energy efficiency, and sustainability in the built environment that benefit residents and businesses, both in everyday life and in times of disaster; and

WHEREAS, there are steps that all Americans can take to ensure that the places where they live, learn, work, worship, and play are safe and sustainable, including obtaining appropriate building permits and constructing lawful improvements.

NOW, THEREFORE, BE IT RESOLVED that the Laguna Woods City Council does hereby proclaim May 2017 as "Building Safety Month" in the City of Laguna Woods and encourages residents and businesses to recognize the importance of building safety.

Dated this 17th day of May, 2017

_____
Shari L. Horne
Mayor

_____
Attest: Yolie Trippy
Deputy City Clerk

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4.5
PROCLAMATION – OLDER AMERICANS MONTH – MAY 2017

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Proclamation
City of Laguna Woods
Older Americans Month
May 2017

WHEREAS, Laguna Woods is a unique community with an average age of 77; and

WHEREAS, throughout their lives, the residents of Laguna Woods have made countless contributions and sacrifices to ensure a better life for future generations; and

WHEREAS, the City of Laguna Woods recognizes that older adults are trailblazers — advocating for themselves, their peers, and their communities — and paving the way for future generations; and

WHEREAS, the City of Laguna Woods is committed to raising awareness about issues facing older adults and helping older adults to thrive in communities of their choice for as long as possible; and

WHEREAS, our community can provide opportunities to enrich the lives of individuals of all ages by promoting and engaging in activity, wellness, and social involvement; emphasizing home- and community-based services that support independent living; and, ensuring that others can benefit from the contributions and experience of older adults.

NOW, THEREFORE, BE IT RESOLVED that the Laguna Woods City Council does hereby proclaim May 2017 as "Older Americans Month" in the City of Laguna Woods and encourages the recognition of older adults and the people who serve them as being powerful and vital to the fabric of our country.

Dated this 17th day of May, 2017

_____
Shari L. Horne
Mayor

_____
Attest: Yolie Trippy
Deputy City Clerk

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4.6
PROCLAMATION – STROKE AWARENESS MONTH – MAY 2017

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Proclamation
City of Laguna Woods
Stroke Awareness Month
May 2017

WHEREAS, stroke is a leading cause of serious long-term disability and death in the United States, killing about 133,000 people each year; and

WHEREAS, approximately 795,000 people in the United States have a stroke each year, with someone having a stroke every 40 seconds and someone dying of a stroke every four minutes; and

WHEREAS, most Americans do not know if they are at risk for stroke and one in three Americans cannot recall any stroke warning signs or symptoms; and

WHEREAS, the F.A.S.T. warning signs and symptoms of stroke include face drooping, arm weakness, and, speech difficulty; and beyond F.A.S.T., additional stroke warning signs and symptoms include sudden numbness or weakness of the face, arm or leg, especially on one side of the body; sudden confusion, trouble speaking or understanding; sudden trouble seeing in one or both eyes; sudden trouble walking, dizziness, loss of balance or coordination; and, sudden severe headache with no known cause; and

WHEREAS, recognizing stroke warning signs and symptoms, and acting immediately to get medical attention, can save lives and limit disabilities.

NOW, THEREFORE, BE IT RESOLVED that the Laguna Woods City Council does hereby proclaim May 2017 as "Stroke Awareness Month" in the City of Laguna Woods and encourages residents to learn the warning signs and symptoms of strokes.

Dated this 17th day of May, 2017

_____
Shari L. Horne
Mayor

_____
Attest: Yolie Trippy
Deputy City Clerk

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4.7
PROCLAMATION – WATER AWARENESS MONTH – MAY 2017

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Proclamation
City of Laguna Woods
Water Awareness Month
May 2017

WHEREAS, California recently experienced one of its most severe droughts on record with unprecedented actions necessary to protect water resources; and

WHEREAS, while Governor Brown has lifted the drought state of emergency in much of California, he has warned that "the next drought could be around the corner"; and

WHEREAS, water conservation continues to be an essential way of life; and

WHEREAS, the El Toro Water District offers a variety of residential and commercial rebate programs in support of indoor and outdoor water savings; and

WHEREAS, working together to promote efficient water use and conservation habits will help to ensure that Laguna Woods will have water supplies for years to come.

NOW, THEREFORE, BE IT RESOLVED that the Laguna Woods City Council does hereby proclaim May 2017 as "Water Awareness Month" in the City of Laguna Woods and encourages residents and businesses to conserve water wherever possible.

Dated this 17th day of May, 2017

_____
Shari L. Horne
Mayor

_____
Attest: Yolie Trippy
Deputy City Clerk

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6.1-6.9
CONSENT CALENDAR SUMMARY

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City of Laguna Woods
Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Christopher Macon, City Manager

FOR: May 17, 2017 Regular Meeting

SUBJECT: Consent Calendar Summary

Recommendation

Approve all proposed actions on the May 17, 2017 Consent Calendar by single motion and City Council action.

Background

All items listed on the Consent Calendar are considered routine and will be enacted by one vote. There will be no separate discussion of these items unless a member of the City Council, staff, or the public requests that specific items be removed from the Consent Calendar for separate discussion and consideration of action.

Summary

The May 17, 2017 Consent Calendar contains the following items:

6.1 Approval of the City Council meeting minutes for the regular meeting on April 19, 2017 (Attachment A) and the adjourned regular meeting on April 26, 2017 (Attachment B).

6.2 Approval of a motion to receive and file the City Treasurer's Report for the month of April 2017.

6.3 Approval of the warrant register dated May 17, 2017 in the amount of $790,757.65. A list of warrants is included in the agenda packet; detailed information about individual warrants is available at City Hall.

6.4 Approval of a resolution:

- Adopting a Fiscal Year 2016-17 budget for the Measure M1 Fund;
- Increasing the adopted Fiscal Year 2016-17 budgets for the Beverage Container Recycling Fund and Senior Mobility Fund;
- Increasing the adopted Fiscal Year 2016-17 budget and authorizing transfers from the General Fund to the Fuel Tax Fund, Measure M2 Fund, Senior Mobility Fund, Measure M1 Fund, and Proposition 84 Grant Fund;
- Increasing the adopted Fiscal Year 2016-17 budgets and authorizing transfers from the Traffic Mitigation Fees Fund and CalRecycle Grant Fund to the General Fund; and
- Authorizing the closure of the CalRecycle Grant Fund, Measure M1 Fund, Proposition 84 Grant Fund, and Traffic Mitigation Fees Fund.

The proposed budget adjustments are necessary for the reasons set forth in the resolution, which generally relate to 1) adjusting the current fiscal year's budget to accommodate unanticipated expenditures, including a one-time, $90,000 contribution from the General Fund to the Senior Mobility Fund, due to an increase in program usage and costs; 2) increasing appropriations and authorizing transfers to resolve past issues related to fund balance and expenditures in several funds; and, 3) authorizing the closure of several funds that are no longer in use. In January 2017, the City Council approved modifications to Senior Mobility Program fees, which will take effect for travel after June 30, 2017. It is anticipated that those modifications will help to moderate and reduce potential future impacts on the General Fund.

6.5 Approval of an agreement with Willdan Engineering for code enforcement services and authorization for the City Manager to execute the agreement, subject to approval as to form by the City Attorney. A Request for Proposals (RFP) for code enforcement services was released on March 23, 2017 with proposals due by April 14, 2017. A total of two proposals were received (Lilley Planning Group and Willdan Engineering). After reviewing both proposals, staff recommends that the City Council award the agreement to Willdan Engineering due to factors including cost and experience. Willdan Engineering currently provides, or has provided, code enforcement services for the County of Orange and cities including Goleta, Highland, and Tustin.

6.6 [1] Approval of the "El Toro Road Regional Traffic Signal Synchronization Program Project P" design plans and specifications as recommended by the City Engineer/City Traffic Engineer (available at City Hall); [2] Award of a contract agreement to Elecnor Belco Electric, Inc. for the construction of the "El Toro Road Regional Traffic Signal Synchronization Program Project P", in the amount of $354,500, plus authorized change orders not to exceed 10% of the base amount; and authorization for the City Manager to execute a contract agreement and approve change orders, subject to approval of the contract agreement as to form by the City Attorney; and, [3] Authorization FOR the City Manager to enter into agreements with the Orange County Transportation Authority, California Department of Transportation, and participating agencies, as necessary, to facilitate the reimbursement of funds for the "El Toro Road Regional Traffic Signal Synchronization Program Project P", subject to approval as to form by the City Attorney. This project is included in the City's Capital Improvement Program. Bids were invited from April 13 through May 4, 2017. Six bids were received (Calpromax Engineering, Crosstown Electrical & Data, DBX, Dynalectric EMCOR Group, Elecnor Belco Electric, and PTM General Engineering Services) with Elecnor Belco Electric, Inc. bidding the lowest cost.

6.7 Approval of the "Moulton Parkway Regional Traffic Signal Synchronization Program Project P" design plans and specifications as recommended by the City Engineer/City Traffic Engineer (available at City Hall); [2] Award of a contract agreement to Elecnor Belco Electric, Inc. for the construction of the "Moulton Parkway Regional Traffic Signal Synchronization Program Project P", in the amount of $263,289, plus authorized change orders not to exceed 10% of the base amount; and authorization for the City Manager to execute a contract agreement and approve change orders, subject to approval of the contract agreement as to form by the City Attorney; and, [3] Authorization for the City Manager to enter into agreements with the Orange County Transportation Authority, California Department of Transportation, and participating agencies, as necessary, to facilitate the reimbursement of funds for the "Moulton Parkway Regional Traffic Signal Synchronization Program Project P", subject to approval as to form by the City Attorney. This project is included in the City's Capital Improvement Program. Bids were invited from April 13 through May 4, 2017. Six bids were received (Calpromax Engineering, Crosstown Electrical & Data, DBX, Dynalectric EMCOR Group, Elecnor Belco Electric, and PTM General Engineering Services) with Elecnor Belco Electric, Inc. bidding the lowest cost.

6.8 Rejection of all bids received for the "City Hall Restroom Repair and Improvement Project". Bids were invited for the project from April 13 through May 11, 2017. Two bids were received (AGM Construction and Painting and Décor); however, due to cost, staff is recommending that all bids be rejected. If rejected, staff would review the plans and specifications for the Project and issue a new solicitation for bids.

6.9 Approval of amendment four to the cooperation agreement with the County of Orange related to participation in the Urban County Community Development Block Grant (CDBG) program and other United States Department of Housing and Urban Development programs, and authorization for the City Manager to execute the amendment subject to approval as to form by the City Attorney. The amendment would extend the agreement, which was initially approved by the City Council in June 2005, to June 30, 2021. The agreement allows the City to compete for CDBG and other Department of Housing and Urban Development funding.

6.1
CITY COUNCIL MINUTES

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CITY OF LAGUNA WOODS CALIFORNIA
CITY COUNCIL MINUTES
REGULAR MEETING
April 19, 2017
2:00 P.M.
Laguna Woods City Hall
24264 El Toro Road
Laguna Woods, California 92637

I. CALL TO ORDER

Mayor Horne called the Regular Meeting of the City Council of the City of Laguna Woods to order at 2:00 p.m.

II. ROLL CALL

COUNCILMEMBER:	PRESENT:	Conners, Hatch, Moore, Horne
	ABSENT:	Hack
STAFF PRESENT:		City Manager Macon, City Attorney Cosgrove, Administrative Services Director/City Treasurer Cady, Deputy City Clerk Trippy, Development Programs Analyst Pennington

III. PLEDGE OF ALLEGIANCE

Lilly Lachter, resident, led the pledge of allegiance.

IV. PRESENTATIONS AND CEREMONIAL MATTERS

4.1 Moment of Silence – Holocaust Week of Remembrance – April 23-30, 2017

Stuart Hack, Reform Temple of Laguna Woods, made comments.

Councilmember Hack entered the meeting at 2:06 p.m.

Councilmembers made comments.

Mayor Horne called for a moment of silence.

A moment of silence was observed.

4.2 National Donate Life Month – April 2017

Jim Salzer, One Legacy, made comments.

Councilmembers made comments.

Moved by Mayor Pro Tem Moore, seconded by Councilmember Hatch, and carried unanimously on a 5-0 vote, to approve and present the proclamation.

4.3 Environmental Awareness Week – April 22-28, 2017

Councilmembers made comments.

Moved by Councilmember Hatch, seconded by Councilmember Conners, and carried unanimously on a 5-0 vote, to approve and present the proclamation.

V. PUBLIC COMMENT

City Manager Macon noted that the public hearing item regarding "Conditional Use Permit CUP-1135 to allow for exceedances of maximum fence and wall height provisions of the Laguna Woods Municipal Code, along all perimeter fences and walls of Laguna Woods Village" has been cancelled. He stated that it would be brought before the City Council at a future meeting.

Dan Daley, Alzheimer's Orange County, encouraged the community to contact Alzheimer's Orange County if they know anyone who is affected by memory loss.

Mary Wall, resident, asked that the bus shelter in front of Laguna Woods Village Gate 5 be replaced, expressed concern regarding the City's tree trimming and landscaping, and stated that golf carts should not be allowed to travel on sidewalks.

City Manager Macon noted that the City's tree trimming is performed by licensed tree trimming contractors following a scope of work prepared by a certified arborist.

VI. CONSENT CALENDAR

Moved by Mayor Pro Tem Moore, seconded by Councilmember Conners, and carried unanimously on a 5-0 vote, to approve Consent Calendar Items 6.1 – 6.16.

6.1 City Council Minutes

Approved the City Council meeting minutes for the regular meeting on February 15, 2017.

6.2 City Treasurer's Report

Received and filed the City Treasurer's Report for the months of February and March 2017.

6.3 Warrant Register

Approved the warrant register dated April 19, 2017 in the amount of $1,157,869.68.

6.4 Network Server and Printers Replacement and Upgrade

Authorized the City Manager to transfer and expend up to $22,000 from the Fiscal Year 2016-17 General Fund City Council Contingency budget to offset costs associated with the replacement and upgrade of the network server and printers.

6.5 Investment of Financial Assets Policy

Approved a resolution entitled:

> A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, REVIEWING AND ADOPTING A STATEMENT OF THE INVESTMENT POLICY AND ADOPTING AN INVESTMENT POLICY

6.6 Orange County Investment Pool

Approved a resolution entitled:

> A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, AUTHORIZING THE DEPOSIT AND INVESTMENT OF EXCESS FUNDS WITH THE TREASURER-TAX COLLECTOR OF THE COUNTY OF ORANGE, CALIFORNIA

6.7 City Attorney Services

Approved a legal representation letter extending the agreement with Rutan & Tucker, LLP for legal services as City Attorney and authorized the Mayor to execute an acceptance of and agreement to the terms of the legal representation letter.

6.8 As Needed Planning Services

Approved an extension of the agreement with Michael Baker International, Inc. for as needed planning services and authorized the City Manager to execute the extension, subject to approval as to form by the City Attorney.

6.9 Water Quality Services

Approved an extension of the agreement with Charles Abbott Associates, Inc. for water quality services and authorized the City Manager to execute the extension, subject to approval as to form by the City Attorney.

6.10 Building Inspection, Permit Counter, and Building Official Services

Approved an extension of the agreement with CivilSource, Inc. for building inspection, permit counter, and building official services and authorized the City Manager to execute the extension, subject to approval as to form by the City Attorney.

6.11 City Engineering and Traffic Operations Services

Approved an extension of the agreement with CivilSource, Inc. for City engineering and traffic operations services and authorized the City Manager to execute the extension, subject to approval as to form by the City Attorney.

6.12 Building Official Services

Approved an extension of the agreement with Lilley Planning Group for building official services and authorized the City Manager to execute the extension, subject to approval as to form by the City Attorney.

6.13 Certified Access Specialist (CASp) and Building Plan Review Services

Approved an extension of the agreement with CSG Consultants, Inc. for Certified Access Specialist (CASp) and building plan review services and authorized the City Manager to execute the extension, subject to approval as to form by the City Attorney.

6.14 Laguna Woods Civic Support Fund

1. Approved a memorandum of understanding with the Laguna Woods Civic Support Fund related to fundraising and distribution of funds, and insurance, and authorized the Mayor to execute the memorandum of understanding, subject to approval as to form by the City Attorney.

AND

2. Appointed the following individuals to the Board of Directors for the Laguna Woods Civic Support Fund: Fran Williams as a resident member and Steve Carpenter as a business member.

6.15 Moulton Parkway Water Efficient Median Improvement Project

Rejected the single bid received for the "Moulton Parkway Water Efficient Median Improvement Project".

6.16 Pavement Management Plan Project 1) Eastbound El Toro Road (Avenida Sevilla to Paseo de Valenica) 2) Pedestrian Accessibility

1. Approved the "Pavement Management Plan Project 1) Eastbound El Toro Road (Avenida Sevilla to Paseo de Valenica) 2) Pedestrian Accessibility" design plans and specifications as recommended by the City Engineer.

AND

2. Awarded a contract agreement to El Camino Asphalt Paving Corp. for the construction of the "Pavement Management Plan Project 1) Eastbound El Toro Road (Avenida Sevilla to Paseo de Valenica) 2) Pedestrian Accessibility", in the amount of $55,000, plus authorized change orders not to exceed 10% of the base amount; and authorized the City Manager to execute a contract agreement and approved change orders, subject to approval of the contract agreement as to form by the City Attorney.

VII. PUBLIC HEARINGS

7.1 Sign Program SP-1164 to allow for various signage at 24256-24290 El Toro Road and 24310-24380 Moulton Parkway, Laguna Woods, CA 92637

City Manager Macon made a presentation.

Councilmembers discussed the item and staff answered related questions.

Mayor Horne opened the public hearing.

With no requests to speak, the public hearing was closed.

Councilmembers discussed the item and staff answered related questions.

Councilmember Hack left the meeting at 3:17 p.m.

Moved by Councilmember Conners, seconded by Mayor Pro Tem Moore, and carried unanimously on a 4-0 vote, with Councilmember Hack absent, to approve a resolution entitled:

> A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, APPROVING SIGN PROGRAM SP-1164 TO ALLOW FOR VARIOUS SIGNAGE AT 24256-24290 EL TORO ROAD AND 24310-24380 MOULTON PARKWAY, LAGUNA WOODS, CA 92637

7.2 State Video Franchise and Public, Educational, and Governmental ("PEG") Fees

City Manager Macon made a presentation.

Mayor Horne opened the public hearing.

With no requests to speak, the public hearing was closed.

Moved by Mayor Pro Tem Moore, seconded by Councilmember Conners, and carried on a 4-0 vote, with Councilmember Hack absent, to adopt an ordinance – read by title with

further reading waived – entitled:

> AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, RETROACTIVELY READOPTING SECTION 6.42.020 OF CHAPTER 6.42 OF TITLE 6 OF THE LAGUNA WOODS MUNICIPAL CODE ENTITLED "STATE VIDEO FRANCHISE AND PEG FEES" RELATING TO STATE FRANCHISES FOR CABLE COMMUNICATIONS; AND REAUTHORIZING A FEE TO SUPPORT PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ("PEG") CHANNEL FACILITIES WITHIN THE CITY'S JURISDICTION

AND

Moved by Councilmember Conners, seconded by Mayor Pro Tem Moore, and carried on a 4-0 vote, with Councilmember Hack absent, to approve the introduction and first reading of an ordinance – read by title with further reading waived – entitled:

> AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, RETROACTIVELY READOPTING SECTION 6.42.020 OF CHAPTER 6.42 OF TITLE 6 OF THE LAGUNA WOODS MUNICIPAL CODE ENTITLED "STATE VIDEO FRANCHISE AND PEG FEES" RELATING TO STATE FRANCHISES FOR CABLE COMMUNICATIONS; AND REAUTHORIZING A FEE TO SUPPORT PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ("PEG") CHANNEL FACILITIES WITHIN THE CITY'S JURISDICTION

7.3 Building, Planning, and Encroachment Permit Fees

City Manager Macon made a presentation.

Mayor Horne opened the public hearing.

With no requests to speak, the public hearing was closed.

Councilmembers discussed the item and staff answered related questions.

Moved by Mayor Pro Tem Moore, seconded by Councilmember Hatch, and carried on a 4-0 vote, with Councilmember Hack absent, to approve a resolution entitled:

> A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, ADOPTING NEW AND INCREASED OR MODIFIED BUILDING AND PLANNING SERVICES FEES, AND ENCROACHMENT PERMIT FEES

7.4 Medical and Non-Medical Marijuana Dispensary Regulations

City Manager Macon and City Attorney Cosgrove made a presentation.

Councilmembers discussed the item and staff answered related questions.

Mayor Horne opened the public hearing.

Lonnie Painter, Laguna Woods Medical Cannabis and Village Cannabis Club, expressed his support for resident access to medical marijuana in the City.

Lucette Wilson, resident, suggested that medical marijuana dispensaries in the City could be required to provide their own security.

Adrian Gonzalez, property owner in the City, suggested implementing a tax on medical marijuana dispensaries to offset City costs.

An unidentified member of the public reiterated Mr. Gonzalez's thoughts and expressed his support for medical marijuana in the City.

Kathryn Freshley, resident, expressed her opposition to marijuana dispensaries in the City.

With no other requests to speak, the public hearing was closed.

City Manager Macon briefly responded to comments made during the public hearing.

Councilmembers discussed the item and staff answered related questions.

Moved by Mayor Pro Tem Moore, seconded by Councilmember Conners, and carried on a 4-0 vote, with Councilmember Hack absent, to approve the introduction and first reading of an ordinance – read by title with further reading waived – entitled:

> AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, AMENDING SECTIONS 13.08.010, 13.10.020, 13.12.020, 13.13.020, AND 13.26.025 AND ADDING A NEW SECTION 13.26.027 OF THE LAGUNA WOODS MUNICIPAL CODE RELATED TO MEDICAL AND NON-MEDICAL MARIJUANA DISPENSARIES AND DELIVERY SERVICES

VIII. CITY COUNCIL BUSINESS

8.1 Wireless Facilities Regulations

City Manager Macon made a presentation.

Moved by Councilmember Conners, seconded by Mayor Pro Tem Moore, and carried on

a 4-0 vote, with Councilmember Hack absent, to approve the introduction and first reading of an ordinance – read by title with further reading waived – entitled:

> AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, AMENDING SECTIONS 13.06.010, 13.08.010, 13.10.020, 13.12.020, 13.13.020, 13.24.020, AND 13.26.210 OF THE LAGUNA WOODS MUNICIPAL CODE RELATED TO THE INSTALLATION AND MODIFICATION OF WIRELESS FACILITIES

IX. CITY COUNCIL REPORTS AND COMMENTS

9.1 Coastal Greenbelt Authority

Councilmember Conners provided a report.

9.2 Orange County Fire Authority

Councilmember Hatch provided a report.

Mayor Pro Tem Moore briefly responded to the report.

9.3 Orange County Library Advisory Board

Mayor Pro Tem Moore stated that there had been no meeting since the last meeting. She reported on a recent executive committee meeting.

Councilmember Hatch briefly responded to the report.

9.4 Orange County Mosquito and Vector Control District

Mayor Horne provided a report.

Mayor Pro Tem Moore briefly responded to the report.

9.5 San Joaquin Hills Transportation Corridor Agency

No report was given due to Councilmember Hack's absence.

9.6 South Orange County Watershed Management Area

Mayor Pro Tem Moore provided a report.

Councilmembers briefly responded to the report.

9.7 Other Comments and Reports

Mayor Horne reported on a recent meeting of the Orange County Strategic Plan for Aging.

Councilmember Hatch briefly responded to the report.

Mayor Horne reported on a recent tour of the Dairy Fork Constructed Wetland, which is currently under construction.

Councilmembers briefly responded to Mayor Horne's report.

X. CLOSED SESSION – None

XI. CLOSED SESSION REPORT – None

XII. ADJOURNMENT

The meeting was adjourned at 5:47 p.m. The next adjourned regular meeting will be at 2:00 p.m. on Wednesday, April 26, 2017, at Laguna Woods City Hall, 24264 El Toro Road, Laguna Woods, CA 92637. The next regular meeting will be at 2:00 p.m. on Wednesday, May 17, 2017, at Laguna Woods City Hall, 24264 El Toro Road, Laguna Woods, CA 92637.

_____
YOLIE TRIPPY, Deputy City Clerk

Adopted: May 17, 2017

_____
SHARI L. HORNE, Mayor

CITY OF LAGUNA WOODS CALIFORNIA
CITY COUNCIL MINUTES
ADJOURNED REGULAR MEETING
April 26, 2017
2:00 P.M.
Laguna Woods City Hall
24264 El Toro Road
Laguna Woods, California 92637

I. CALL TO ORDER

Mayor Horne called the Adjourned Regular Meeting of the City Council of the City of Laguna Woods to order at 2:00 p.m.

II. ROLL CALL

COUNCILMEMBER:	PRESENT:	Conners, Hatch, Moore, Horne
	ABSENT:	Hack
STAFF PRESENT:	City Manager Macon, Assistant City Attorney Patterson, Administrative Services Director/City Treasurer Cady, Deputy City Clerk Trippy	

III. PLEDGE OF ALLEGIANCE

Nick Bernardino led the pledge of allegiance.

IV. PRESENTATIONS AND CEREMONIAL MATTERS

4.1 Foundation of Laguna Woods Village – 20th Anniversary

Marcy Sheinwold, Foundation of Laguna Woods Village, made comments.

Councilmembers made comments.

Moved by Mayor Pro Tem Moore, seconded by Councilmember Conners, and carried on a 4-0 vote, with Councilmember Hack absent, to approve and present the commendation.

4.2 Heroes Hall at the OC Fair & Event Center Presentation

Nick Bernardino provided an overview of the background, construction, and amenities of the new Heroes Hall at the OC Fair & Event Center.

Councilmembers made comments and Mr. Bernardino answered related questions.

4.3 OC Human Relations Commission Annual Report

Ken Inouye presented the annual report for the OC Human Relations Commission.

Councilmembers made comments and Mr. Inouye answered related questions.

V. PUBLIC COMMENT – None

VI. CONSENT CALENDAR – None

VII. PUBLIC HEARINGS – None

VIII. CITY COUNCIL BUSINESS

8.1 Orange County Food to Families – Food Waste to Energy Organics Recycling Program

City Manager Macon introduced the item.

Chip Monaco, Waste Management, made a presentation.

Councilmembers discussed the item and Mr. Monaco answered related questions.

Moved by Mayor Pro Tem Moore, seconded by Councilmember Conners and carried on a 4-0 vote, with Councilmember Hack absent, to approve a resolution entitled:

> A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, AUTHORIZING THE CITY'S PARTICIPATION IN THE "ORANGE COUNTY FOOD TO FAMILIES – FOOD WASTE TO ENERGY ORGANICS RECYCLING PROGRAM" AND GRANT APPLICATION FOR THE COUNTY OF ORANGE'S FOURTH CYCLE REGIONAL RECYCLING AND WASTE REDUCTION GRANT PROGRAM, AND MAKING RELATED AUTHORIZATIONS

8.2 Fiscal Year 2016-17 Budget Update

City Manager Macon made a presentation.

Kathryn Freshley, resident, asked if revenues received later this fiscal year would make up for the perceived shortfall of revenues through the first seven months of the fiscal year.

City Manager Macon clarified that the City does not receive revenue in even installments. He noted that staff does not anticipate a shortfall this fiscal year.

Councilmembers discussed the item and staff answered related questions.

8.3 Fiscal Years 2017-19 Budget and Work Plan Development

City Manager Macon made a presentation.

Councilmembers discussed the item and staff answered related questions.

Moved by Mayor Pro Tem Moore, seconded by Councilmember Hatch and carried on a 4-0 vote, with Councilmember Hack absent, to direct staff not to budget for long-term disability insurance for employees in the draft Fiscal Years 2017-19 Budget and Work Plan.

Moved by Mayor Pro Tem Moore, seconded by Councilmember Hatch and carried on a 4-0 vote, with Councilmember Hack absent, to direct staff not to budget for the Sharps Waste Mail-Back Program in the draft Fiscal Years 2017-19 Budget and Work Plan.

Moved by Councilmember Hatch, seconded by Mayor Pro Tem Moore and carried on a 4-0 vote, with Councilmember Hack absent, to direct staff not to budget for the Residential Energy Efficiency Improvement Program in the draft Fiscal Years 2017-19 Budget and Work Plan.

Moved by Councilmember Hatch, seconded by Councilmember Conners and carried on a 4-0 vote, with Councilmember Hack absent, to direct staff to prepare the draft Fiscal Years 2017-19 Budget and Work Plan with continued use of the six existing priority focus areas.

Moved by Councilmember Hatch, seconded by Councilmember Conners and carried on a 4-0 vote, with Councilmember Hack absent, to direct staff to include implementation of electronic permitting in the draft Fiscal Years 2017-19 Budget and Work Plan.

Moved by Councilmember Conners, seconded by Mayor Pro Tem Moore and carried on a 4-0 vote, with Councilmember Hack absent, to direct staff to include an update of the Local Hazard Mitigation Plan in the draft Fiscal Years 2017-19 Budget and Work Plan.

Kathryn Freshley, resident, responding to a discussion regarding a work plan item related to the 2020 United States Census, noted that the Laguna Woods Village housing mutual have been working on confirming how many people live in each unit.

Mayor Horne asked that a work plan item be included for staff to review the City's current smoking ordinance and update, if necessary. She expressed interest in considering whether modifications could be made as recommended in the American Lung Association's State of Tobacco Control report.

Moved by Mayor Horne, seconded by Councilmember Conners and carried on a 4-0 vote, with Councilmember Hack absent, to direct staff to include a review and update of smoking regulations in the draft Fiscal years 2017-19 Budget and Work Plan.

Rudy Padrol, member of the public, asked about the City's medical marijuana ordinance.

Staff advised Mr. Padrol to contact Rebecca Pennington, Development Programs Analyst, with specific questions. Staff also advised that the moratorium remains in place and that the ordinance that was introduced and approved for first reading at the meeting on April 19, 2017, requires further City Council action and is not currently effective.

8.4 Unfunded Retirement Liability

By consensus, the City Council agreed to move Item 8.4 to the May 17, 2017 meeting.

IX. CITY COUNCIL REPORTS AND COMMENTS

9.1 Coastal Greenbelt Authority

No report was given.

9.2 Orange County Fire Authority

No report was given.

9.3 Orange County Library Advisory Board

No report was given.

9.4 Orange County Mosquito and Vector Control District

No report was given.

9.5 San Joaquin Hills Transportation Corridor Agency

No report was given.

9.6 South Orange County Watershed Management Area

No report was given.

9.7 Other Comments and Reports – None

X. CLOSED SESSION – None

XI. CLOSED SESSION REPORT – None

XII. ADJOURNMENT

The meeting was adjourned at 5:09 p.m. The next regular meeting will be at 2:00 p.m. on Wednesday, May 17, 2017, at Laguna Woods City Hall, 24264 El Toro Road, Laguna Woods, CA 92637.

_____
YOLIE TRIPPY, Deputy City Clerk

Adopted: May 17, 2017

_____
SHARI L. HORNE, Mayor

6.2
CITY TREASURER'S REPORT

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City of Laguna Woods
City Treasurer's Report
For the Month Ended April 30, 2017

CASH AND INVESTMENTS

	Beginning Balances As of 3/31/17	Earnings & Receipts	Disbursements	Other Adjustments	Ending Balances As of 4/30/17	% of Total Cash & Investment Balances	Maximum % Allowed per Investment Policy
Cash and Cash Equivalents							
Analyzed Checking Account (Note 3)	$ 523,145	$ 857,524	$ (818,040)	$ -	$ 562,629		
Petty Cash	1,521	-	(139)	-	1,382		
Total Cash and Cash Equivalents	$ 524,665	$ 857,524	$ (818,179)	$ -	$ 564,010	5.30%	100.00%
Investments - Interest and Income Bearing							
Local Agency Investment Fund (LAIF) (Notes 1 and 2)	$ 8,584,065	$ 16,834	$ -	$ -	$ 8,600,898	80.86%	90.00%
Certificates of Deposit	1,471,855	202	-	-	1,472,058	13.84%	20.00%
Total Investments	$ 10,055,920	$ 17,036	$ -	$ -	$ 10,072,956		
TOTAL CASH, CASH EQUIVALENTS, AND INVESTMENTS	$ 10,580,585	$ 874,560	$ (818,179)	$ -	$ 10,636,966		

Summary of Total Cash, Cash Equivalents, and Investments (Note 4):

	General Fund	Special Revenue Funds	Totals
Analyzed Checking	$ (893,127)	$ 1,455,755	$ 562,629
Petty Cash	$ 1,382	$ -	$ 1,382
LAIF	$ 8,600,898	$ -	$ 8,600,898
Certificates of Deposit	$ 1,472,058	$ -	$ 1,472,058
Totals	$ 9,181,211	$ 1,455,755	$ 10,636,966

Notes:

Note 1 - LAIF / During this period there were no transfers to or from the LAIF account.

Note 2 - LAIF / LAIF reports interest earnings quarterly. Interest earnings for the quarter ended March 31, 2017 of $16,833.91 posted in April.

Note 3 - Analyzed Checking Account / Monthly activity reported does not reflect April vendor invoicing processed after the date of this report.

Note 4 - In preparation for the installation of new accounting software and pooled bank reconciliation ability, all accounts other than the current checking account were closed to the general fund via a reallocation of checking accounts funds. The net impact on all funds was zero and interest will still be allocated to all funds with cash balances.

City of Laguna Woods
City Treasurer's Report
For the Two Month Period of February and March 2017

INVESTMENT PORTFOLIO DETAIL

CUSIP	Investment #	Issuer	Term	Purchase Date	Settlement Date	Par Value	Market Value	Book Value	Stated Rate (Note 1)	Coupon Type	1st Coupon Date	Rating or Rank (Note 2)	Yield to Maturity 365 Days	Maturity Date
Certificate of Deposits (CDs, Federal Deposit Insurance Corporation [FDIC] Insured)														
02006LM59	2016-1	ALLY BK MIDVALE UTAH	24 months	09/12/16	09/15/16	245,000	243,795	245,000	1.150	Semi-Annual	03/15/17	300	1.150	09/17/18
2366+LAM8	2016-2	CITY BANK	12 months	09/12/16	09/20/16	245,000	244,907	245,000	0.800	Annual	09/20/17	247	0.800	09/20/17
949763BJ4	2016-3	WELLS FARGO BANK	18 months	09/13/16	09/28/16	245,000	244,427	245,000	1.000	Monthly	10/28/16	295	1.000	03/28/18
140420F47	2016-4	CAPITAL ONE BANK USA	18 months	09/13/16	09/21/16	245,000	244,459	245,000	1.000	Semi-Annual	03/21/17	300	1.000	03/21/18
57116ANC8	2017-1	MARLIN BUSINESS BK SALT LAKE	18 months	01/13/17	01/13/17	245,000	245,088	245,000	1.250	Monthly	02/13/17	300	1.250	07/13/18
508176CH5	2017-2	LAKE CITY BANK	24 months	03/08/17	03/22/17	245,000	245,524	245,000	1.600	Monthly	04/22/17	300	1.600	03/22/19
		Accrued Interest - Month End				2,058	2,058	2,058						
		Total CDs				**1,472,058**	**1,470,257**	**1,472,058**						
Pooled Money Investment Accounts (PIMA)														
N/A	N/A	Local Agency Investment Fund (LAIF)	N/A	Various	Various	8,600,898	8,600,898	8,600,898	0.821	N/A	N/A	N/A	N/A	N/A
		Total PIMA				**8,600,898**	**8,600,898**	**8,600,898**						

Notes:

Note 1 - The stated earnings rate for CDs is a fixed rate for the full term.

The stated earnings rate for LAIF balances is an average monthly yield applied to the City's weighted average balance within the total pool. Earnings are paid the month after the end of each quarter.

LAIF average monthly investment yield rates over the last six months were:

2016: Oct. 0.654%, Nov. 0.678%, and Dec. 0.719% / **2017:** Jan. 0.751%, Feb. 0.777%, Mar. 0.821 (April not yet reported)

Note 2 - CDs rank is an IDC Financial Publishing, Inc. compiled ranking, and includes a one-number summary rank of quality comprised of 35 key financial ratios. Ranks range from 1 (the lowest) to 300 (the highest) and fall into one of the following six groups:

Rank	Group
200-300	Superior
165-199	Excellent
125-164	Average
75-124	Below Average
2-74	Lowest Ratios
1	Highest Probability of Failure

Note 3 - Interest received on certificates of deposits for the month of April was $801.11.

City of Laguna Woods
City Treasurer's Report
For the Month Ended April 30, 2017

OTHER FUNDS - HELD IN TRUST

	Beginning Balances As of 3/31/17	Contributions / (Withdrawals)	Administrative Fees & Investment Expense	Unrealized Gain / (Loss)	Ending Balances As of 4/30/17
Other Post-Employment Benefits (OPEB) Trust					
CalPERS California Employers' Retiree Benefit Trust (CERBT)	$ 66,203	$ -	$ (5)	$ 685	$ 66,883
(CERBT holds all assets and administers the OPEB Trust)					
Total Other Funds - Held in Trust	$ 66,203	$ -	$ (5)	$ 685	$ 66,883

City Treasurer's Certification

I, Margaret A. Cady, City Treasurer, do hereby certify:

- That all investment actions executed since the last report have been made in full compliance with the City's Investment of Financial Assets Policy; and
- That the City is able to meet all cash flow needs which might reasonably be anticipated for the next 12 months.

Margaret A Cady
Margaret A. Cady, City Treasurer

5/8/17
Dated

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6.3
WARRANT REGISTER

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CITY OF LAGUNA WOODS
WARRANT REGISTER
5/17/2017

Check	Check	Vendor Name	Description	Amount
		Automatic Bank Debits		
Debit	4/5/2017	ADP PAYROLL SERVICES	Payroll / Pay Period Ended 3/31/2017	$31,355.02
Debit	4/5/2017	CALPERS - RETIREMENT	Retirement Contributions / Pay Period Ended 3/31/2017	2,444.49
Debit	4/14/2017	ADP PAYROLL SERVICES	Payroll Processing Fees / Pay Period Ended 3/31/2017	158.58
Debit	4/19/2017	ADP PAYROLL SERVICES	Payroll / Pay Period Ended 4/14/2017	34,612.20
Debit	4/19/2017	CALPERS - RETIREMENT	Retirement Contributions / Pay Period Ended 4/14/2017	2,444.49
Debit	4/28/2017	ADP PAYROLL SERVICES	Payroll Processing Fees / Pay Period Ended 4/14/2017	183.58
Debit	5/3/2017	ADP PAYROLL SERVICES	Payroll / Pay Period Ended 4/28/2017	31,861.11
Debit	5/8/2017	CALPERS - RETIREMENT	Retirement Contributions / Pay Period Ended 4/28/2017	2,444.49
Debit	5/12/2017	ADP PAYROLL SERVICES	Payroll Processing Fees / Pay Period Ended 4/28/2017	173.86
Debit	4/30/2017	US BANK	Bank Analysis Service Charge - March 2017	84.39
Debit	5/1/2017	CALPERS - HEALTH	Employee Benefit Program / May 2017	4,244.52
Debit	4/19/2017	COUNTY OF ORANGE	Law Enforcement Services / April 2017	223,770.35
Debit	5/8/2017	COUNTY OF ORANGE	Law Enforcement Services / May 2017	223,770.35
		Warrants:		
1092	04/05/2017	ALLIED MECHANICAL AIR SYS, INC.	City Hall Maintenance Services	352.00
1093	04/05/2017	COASTAL CURRENT ELECTRIC	Cancelled Permit Refund	488.00
1094	04/05/2017	CYNTHIA CONNERS	Auto Allowance / April 2017	300.00
1095	04/05/2017	COX COMMUNICATIONS	Encroachment Permit Deposits Balance Refund	1,030.63
1096	04/05/2017	DELTA DENTAL OF CALIFORNIA	Reissued Payment - Employee Benefits Program / March 2017	430.06
1097	04/05/2017	HACK, BERT	Auto Allowance / April 2017	300.00
1098	04/05/2017	PETER HARAMIS	Taxi Voucher Refund	170.00
1099	04/05/2017	ROBERT NOEL HATCH	Auto Allowance / April 2017	300.00
1100	04/05/2017	SHARI HORNE	Auto Allowance / April 2017	300.00
1101	04/05/2017	KONICA MINOLTA BUSINESS	Copier Services / 1st Quarter 2017	267.39
1102	04/05/2017	MANAGED HEALTH NETWORK	Employee Benefits Program / April 2017	16.72
1103	04/05/2017	PAR ELECTRICAL CONTRACTORS,	Encroachment Permit Deposit Balance Refund	1,572.74
1104	04/05/2017	PRACTICAL DATA SOLUTIONS	IT Services / November - March 2017	7,103.54
1105	04/05/2017	RED HAWK FIRE & SECURITY, LLC	City Hall Fire Monitoring Installation / March 2017	299.00
1106	04/05/2017	SOUTHERN CALIFORNIA EDISON	City Hall / March 2017	1,177.76
1107	04/05/2017	SOUTHERN CALIFORNIA EDISON	Irrigation Controller / March 2017	24.73
1108	04/05/2017	SOUTHERN CALIFORNIA EDISON	Irrigation Controller / March 2017	25.18
1109	04/05/2017	SOUTHERN CALIFORNIA EDISON	Ridge Route Dog Park / March 2017	25.06
1110	04/05/2017	VECTUS	City Hall Internet Service / April 2017	399.00
1111	04/05/2017	WEST COAST ARBORISTS, INC	Emergency Tree Pruning	660.00
1112	04/12/2017	360 BUSINESS CONSULTING	Website Hosting / March 2017	200.00
1113	04/12/2017	AT&T	Telephone / 458-3487 / March 2017	37.41
1114	04/12/2017	AT&T	Telephone / 452-0600 / March 2017	1,035.41
1115	04/12/2017	AT&T	Telephone / 639-0500 / March 2017	205.17
1116	04/12/2017	AT&T	Telephone / 770-9359 / March 2017	20.20
1117	04/12/2017	IRWIN B BORNSTEIN, CPA	Financial Consulting Services / January & March 2017	135.00

CITY OF LAGUNA WOODS
WARRANT REGISTER
5/17/2017

Check	Check	Vendor Name	Description	Amount
1118	04/12/2017	CALIFORNIA BLDG STANDARDS COMM	Building Permit Fee Assessment / January - March 2017	171.59
1119	04/12/2017	CLEARSOURCE FINANCIAL	Building and Planning Services Fee Study	150.00
1119	04/12/2017	CLEARSOURCE FINANCIAL	Encroachment Permit Fee Study	150.00
1120	04/12/2017	COPYFORCE	Printing Services	70.04
1121	04/12/2017	COUNTY OF ORANGE	Automated Fingerprint ID System / April 2017	455.67
1122	04/12/2017	COUNTY OF ORANGE	Verification of Nomination Signatures / 2016 Election	142.80
1123	04/12/2017	DEPARTMENT OF CONSERVATION	Strong Motion Instrumentation & Seismic Hazard Mapping Fee / January - March 2017	557.15
1124	04/12/2017	KONICA MINOLTA	Copier Lease / April 2017	482.72
1125	04/12/2017	KONICA MINOLTA BUSINESS	Copier Services / 1st Quarter 2017	1,391.40
1126	04/12/2017	NIEVES LANDSCAPE, INC.	City Hall Landscape Maintenance / April 2017	406.25
1126	04/12/2017	NIEVES LANDSCAPE, INC.	Right of Way Landscape Maintenance / April 2017	11,800.00
1127	04/12/2017	PEAK LIGHTING & ELECTRIC, INC	Residential Street Light Maintenance / March 2017	682.89
1128	04/12/2017	PV MAINTENANCE INC	Street, City Hall & Park Maintenance Services / March 2017	7,580.74
1129	04/12/2017	RED HAWK FIRE & SECURITY, LLC	Annual Fire Sprinkler Inspection	325.00
1130	04/12/2017	SOUTHERN CALIFORNIA EDISON	Irrigation Controller / March 2017	24.04
1131	04/12/2017	SOUTHERN CALIFORNIA EDISON	Residential Streetlights / March 2017	1,671.35
1132	04/12/2017	SOUTHERN CALIFORNIA EDISON	Traffic Signal Control / March 2017	911.93
1133	04/12/2017	STAPLES	Office & Janitorial Supplies	300.40
1134	04/12/2017	THE GAS COMPANY	City Hall Utilities / March 2017	45.23
1135	04/12/2017	TYLER TECHNOLOGIES, INC.	Financial Software Maintenance and Support / April 2017 - March 2018	11,852.00
1135	04/12/2017	TYLER TECHNOLOGIES, INC.	Financial Software License and Conversion Fees	4,699.05
1136	04/12/2017	WM CURBSIDE, LLC	HHW, Medicine and Sharps Collection Program / March 2017	3,692.50
119079	04/12/2017	TRANSFER BETWEEN ACCOUNTS	TRANSFER BETWEEN ACCOUNTS	0.00
1137	04/19/2017	ALDI, INC.	Conditional Use Permit Deposit Balance Refund	637.23
1138	04/19/2017	ANDERSONPENNA PARTNERS, INC.	Code Enforcement Services / March 2017	1,740.00
1139	04/19/2017	AT&T	White Pages / April 2017	4.48
1140	04/19/2017	BALLIET, MICHAEL	Waste Management Consulting Services / February - March 2017	3,518.75
1141	04/19/2017	BUSINESS PLANS, INCORPORATED	125 Cafeteria Plan Administration / April 2017	100.00
1142	04/19/2017	CAA	Water Quality Consulting Services / March 2017	5,115.00
1143	04/19/2017	CALIFORNIA YELLOW CAB	Taxi Voucher Services / March 2017	11,526.00
1144	04/19/2017	CITY OF LAGUNA BEACH	Animal Control & Shelter Services / April 2017	8,043.00
1145	04/19/2017	CIVIL SOURCE	Building Inspection and Counter Services / February 2017	32,937.50
1146	04/19/2017	COPYFORCE	Printing Services	48.49
1147	04/19/2017	COUNTY OF ORANGE	Communication Charges 800 MHz Flat Rate / January - March 2017	360.00
1148	04/19/2017	CSG CONSULTANTS, INC.	Plan Check Services / March 2017	765.00
1149	04/19/2017	EL TORO WATER DISTRICT	Landscape Irrigation / March 2017	1,927.19
1150	04/19/2017	KONE, INC.	City Hall Elevator Maintenance / April 2017	246.98
1151	04/19/2017	LAGUNA WOODS ARCHERY CLUB	Conditional Use Permit Deposit Balance Refund	2,135.05
1152	04/19/2017	LILLEY PLANNING GROUP	Building Official Services / March 2017	2,769.00
1153	04/19/2017	MICHAEL BAKER INTERNATIONAL	General Plan Comprehensive Update Project / March 2017	16,412.50
1154	04/19/2017	MUNICIPAL CODE CORP	Codification of City Ordinances	500.00
1155	04/19/2017	ORANGE COUNTY REGISTER-NOTICES	Public Notices / February 2017	1,137.00
1156	04/19/2017	PRACTICAL DATA SOLUTIONS	Printing Equipment	4,639.62

CITY OF LAGUNA WOODS
WARRANT REGISTER
5/17/2017

Check	Check	Vendor Name	Description	Amount
1157	04/19/2017	SOUTHERN CALIFORNIA EDISON	Traffic Signal Control / March 2017	240.50
119080	04/24/2017	TRANSFER BETWEEN ACCOUNTS	TRANSFER BETWEEN ACCOUNTS	0.00
1158	04/28/2017	DESIREE B SMITH	Final Payroll	1,630.75
1159	04/26/2017	AT&T	Telephone / 581-3974 / April 2017	114.24
1160	04/26/2017	AT&T	Telephone / 583-1105 / March 2017	19.66
1161	04/26/2017	COPYFORCE	Printing Services	232.74
1162	04/26/2017	ICMA RETIREMENT CORPORATION	Quarterly Plan Fee / April - June 2017	125.00
1163	04/26/2017	MANAGED HEALTH NETWORK	Employee Benefits Program / May 2017	14.63
1164	04/26/2017	MICHAEL BAKER INTERNATIONAL	Planning Services / March 2017	9,387.50
1165	04/26/2017	ROBIN MUNSEY	Waste Diversion Deposit Refund	250.00
1166	04/26/2017	NIEVES LANDSCAPE, INC.	Landscape Maintenance Services	486.52
1167	04/26/2017	NUVIS	Landscape Architecture Services / March 2017	877.50
1168	04/26/2017	ORANGE COUNTY REGISTER-NOTICES	Public Notices / March 2017	1,833.00
1169	04/26/2017	PRINCIPAL FINANCIAL GROUP	Long-Term Disability Insurance / May 2017	419.42
1170	04/26/2017	RUTAN & TUCKER, LLP	Legal Services / March 2017	2,377.50
1171	04/26/2017	SADDLEBACK WINDOWS AND DOORS	CDBG Energy Efficiency Improvement Program / FY 2016-17	16,750.00
1172	04/26/2017	SOUTHERN CALIFORNIA EDISON	Irrigation Controllers / April 2017	102.45
1173	04/26/2017	THE CODE GROUP, INC.	Building Official Services / February - March 2017	1,250.00
1174	04/26/2017	ANN-CHRISTINE TROLLEGARD	Waste Diversion Deposit Refund	250.00
1175	04/26/2017	VISION SERVICE PLAN OF AMERICA	Employee Benefits Program / May 2017	120.18
1176	05/01/2017	US POSTMASTER	Conditional Use Permit / Public Notice Mailing	3,384.62
1177	05/03/2017	360 BUSINESS CONSULTING	Website Hosting Services / May 2017	375.00
1178	05/03/2017	BALLIET, MICHAEL	Waste & Recycling Consulting Services / April 2017	2,687.50
1179	05/03/2017	ROBERT M BARRY	Financial Consulting Services / April 2017	1,137.50
1180	05/03/2017	CALIFORNIA YELLOW CAB	NEMT Taxi Voucher Services / March 2017	15,219.00
1181	05/03/2017	CAPTIONING UNLIMITED	Closed Captioning / City Council Meetings	800.00
1182	05/03/2017	DELTA DENTAL OF CALIFORNIA	Employee Benefits Program / May 2017	340.61
1183	05/03/2017	EL TORO WATER DISTRICT	Landscape Irrigation / April 2017	2,991.87
1184	05/03/2017	KONICA MINOLTA	Copier Lease / May 2017	482.72
1185	05/03/2017	LETNER ROOFING	Cancelled Permit Refund	301.04
1186	05/03/2017	LILLEY PLANNING GROUP	Building Official Services / April 2017	1,989.00
1187	05/03/2017	LOGAN MARTINEZ	Cancelled Permit Refund	162.00
1188	05/03/2017	TRANSFER BETWEEN ACCOUNTS	TRANSFER BETWEEN ACCOUNTS	0.00
1189	05/03/2017	PASCO DOORS	Door Maintenance	281.25
1190	05/03/2017	PEAK LIGHTING & ELECTRIC, INC	Residential Street Light Maintenance / April 2017	682.89
1191	05/03/2017	PETTY CASH	Replenish Petty Cash / April 2017	468.41
1192	05/03/2017	RICHARD H RUHL,TRUSTEE	Waste Diversion Deposit Refund	250.00
1193	05/03/2017	SIEMENS INDUSTRY, INC.	Traffic Signal Maintenance / March 2017	2,830.00
1194	05/03/2017	SOUTHERN CALIFORNIA EDISON	City Hall / April 2017	1,330.71
1195	05/03/2017	SOUTHERN CALIFORNIA EDISON	Irrigation Controllers / April 2017	27.46
1196	05/03/2017	SOUTHERN CALIFORNIA EDISON	Irrigation Controllers / April 2017	24.40
1197	05/03/2017	STAPLES	Office Supplies	150.12

CITY OF LAGUNA WOODS
WARRANT REGISTER
5/17/2017

Check	Check	Vendor Name	Description		Amount
1198	05/03/2017	TYLER TECHNOLOGIES, INC.	Financial Software License and Conversion Fees		781.25
1199	05/03/2017	VECTUS	City Hall Internet Service / May 2017		399.00
				Total Bank Debits and Warrants:	**$790,125.91**
		Credit Card Statement Detail-US Bank			
		GovernmentJobs	Accounting Clerk Recruitment Posting		**175.00**
		Credit Card Statement Detail-Bank of America / March 6 - May 5, 2017			
		FedEx Office	Courier Services		22.55
		Jersey Mike's Sub	Volunteer Luncheon		264.50
				Total Credit Cards:	**287.05**
		Petty Cash Expenditure Detail			
		Orange County Clerk-Recorder	Sign Program / Notice of Exemption Filing		50.00
		FedEx Office	Bid Document Binding Service		48.40
		Stater Bros	Volunteer Luncheon & Goods Exchange		47.58
		Kustom Locksmith Service	Water Meter Keys		23.71
				Total Petty Cash:	**169.69**
				TOTAL	**$790,757.65**

6.4
FISCAL YEAR 2016-17 BUDGET ADJUSTMENTS

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RESOLUTION NO. 17-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, ADOPTING A FISCAL YEAR 2016-17 BUDGET FOR THE MEASURE M1 FUND; INCREASING THE ADOPTED FISCAL YEAR 2016-17 BUDGETS FOR THE BEVERAGE CONTAINER RECYCLING FUND AND SENIOR MOBILITY FUND; INCREASING THE ADOPTED FISCAL YEAR 2016-17 BUDGET AND AUTHORIZING TRANSFERS FROM THE GENERAL FUND TO THE FUEL TAX FUND, MEASURE M2 FUND, SENIOR MOBILITY FUND, MEASURE M1 FUND, AND PROPOSITION 84 GRANT FUND; INCREASING THE ADOPTED FISCAL YEAR 2016-17 BUDGETS AND AUTHORIZING TRANSFERS FROM THE TRAFFIC MITIGATION FEES FUND AND CALRECYCLE GRANT FUND TO THE GENERAL FUND; AND, AUTHORIZING THE CLOSURE OF THE CALRECYCLE GRANT FUND, MEASURE M1 FUND, PROPOSITION 84 GRANT FUND, AND TRAFFIC MITIGATION FEES FUND

WHEREAS, the Fiscal Year 2016-17 Budget was adopted by the City Council on June 29, 2016; and

WHEREAS, City Council action is required to increase fund-level budget appropriations adopted as a part of the Fiscal Year 2016-17 Budget; and

WHEREAS, the City Council also approves department-level budget appropriations within the General Fund; and

WHEREAS, an increase in appropriations in the Measure M1 Fund is necessary in order to establish appropriations to expend final funds received in the current fiscal year after the budget was adopted; and

WHEREAS, an increase in appropriations in the Beverage Container Recycling Fund is necessary in order to establish appropriations to offset eligible expenditures of prior grant funding identified after the budget was adopted; and

WHEREAS, increases in appropriations in the General Fund and Senior Mobility Program Fund are necessary in order to establish appropriations to offset an increase in program activity occurring in the current fiscal year after the budget was adopted; and

WHEREAS, the City completed a multi-year reconciliation of the Fuel Tax, Measure M2, and Senior Mobility Funds and identified the need for transfers from the General Fund to resolve past issues related to fund balance and expenditures; and

WHEREAS, the City has identified two special revenue funds (Measure M1 and Proposition 84 Grant) for closure that are no longer in use, including a requirement to establish transfers in from the General Fund to resolve past issues related to fund balance and expenditures; and

WHEREAS, the City has identified two special revenue funds (CalRecycle Grant Funds and Traffic Mitigation Fees) for closure that are no longer in use, including a requirement to establish transfers out to the General Fund to resolve past issues related to fund balance and expenditures.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. The Fiscal Year 2016-17 budget appropriation authorized, on a fund level, for the General Fund is hereby increased by $300,121 from $5,915,795 to $6,215,916.

SECTION 2. The Fiscal Year 2016-17 revenue budget authorized, on a fund level, for the General Fund is hereby increased by $467,451 from $5,561,000 to $5,728,451.

SECTION 3. The Fiscal Year 2016-17 budget appropriation authorized, on a department level, within the General Fund's General Government Department is hereby increased by $300,121 from $911,673 to $1,211,794. The amount of the increase shall be considered non-operating and used to make transfers from the General Fund to other funds related to reconciliation of the Fuel Tax, Measure M2, and Senior Mobility Funds, and the closure of the Measure M1, Proposition 84 Grant, CalRecycle Grant Funds, and Traffic Mitigation Fees.

SECTION 4. The Fiscal Year 2016-17 budget appropriation authorized, on a fund level, for the Measure M1 Fund is hereby increased by $4,200 from $0 to $4,200.

SECTION 5. The Fiscal Year 2016-17 budget appropriation authorized, on a fund level, for the Senior Mobility Program Fund is hereby increased by $90,000 from $240,088 to $330,088.

SECTION 6. The Fiscal Year 2016-17 budget appropriation authorized, on a fund level, for the Beverage Container Recycling Fund is hereby increased by $1,500 from $5,000 to $6,500.

SECTION 7. The Fiscal Year 2016-17 revenue budget authorized, on a fund level, for the following funds is hereby increased as follows:

Fund	Amount of Increase	Current Revenue Budget	Amended Revenue Budget
Fuel Tax	$ 99,360	$ 350,000	$ 449,360
Measure M2	$ 454	$ 1,311,700	$ 1,312,154
Senior Mobility Program	$ 573	$ 225,000	$ 225,573

SECTION 8. The Fiscal Year 2016-17 revenue budgets authorized, on a fund level, for the following funds are hereby increased, as follows, and closure of the following funds is hereby authorized:

Fund	Amount of Increase	Current Revenue Budget	Amended Revenue Budget
Measure M1	$ 184,001	$ 0	$ 184,001
Proposition 84 Grant	$ 15,733	$ 0	$ 15,733

SECTION 9. The Fiscal Year 2016-17 budget appropriations authorized, on a fund level, for the following funds are hereby increased, as follows, and closure of the following funds is hereby authorized:

Fund	Amount of Increase	Current Appropriations Budget	Amended Appropriations Budget
CalRecycle Grant	$ 30,895	$ 0	$ 30,895
Traffic Mitigation Fees	$ 436,556	$ 0	$ 436,556

SECTION 10. The Deputy City Clerk shall certify to the adoption of this resolution.

PASSED, APPROVED AND ADOPTED on this XX day of XX 2017.

_____
SHARI L. HORNE, Mayor

ATTEST:

_____
YOLIE TRIPPY, Deputy City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Resolution No. 17-XX** was duly adopted by the City Council of the City of Laguna Woods at a regular meeting thereof, held on the XX day of XX 2017, by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

_____
YOLIE TRIPPY, Deputy City Clerk

6.5
CODE ENFORCEMENT SERVICES

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AGREEMENT FOR CONSULTANT SERVICES
BETWEEN THE
CITY OF LAGUNA WOODS
AND
WILLDAN ENGINEERING
FOR CODE ENFORCEMENT SERVICES

This AGREEMENT FOR CONSULTANT SERVICES ("AGREEMENT"), is made and entered into this 2nd day of June 2017 ("EFFECTIVE DATE"), by and among the City of Laguna Woods, a California municipal corporation ("CITY"), and Willdan Engineering ("CONSULTANT").

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

SECTION 1. TERM OF AGREEMENT.

Subject to the provisions of SECTION 19 "TERMINATION OF AGREEMENT" of this AGREEMENT, the term of this AGREEMENT shall be for a period beginning on June 2, 2017 and ending at 11:59 p.m. on June 30, 2019. Such term may be extended upon written agreement of both parties to this AGREEMENT through a maximum of 11:59 p.m. on June 30, 2021.

SECTION 2. SCOPE OF SERVICES.

CONSULTANT shall perform the services set forth in EXHIBIT "A" "SCOPE OF SERVICES" and made a part of this AGREEMENT. All work to be performed by CONSULTANT shall be coordinated with, and approved by City Manager of CITY or his or her designee. CONSULTANT shall not begin work on any individual task or assignment until authorized by the City Manager of CITY or his or her designee to proceed.

SECTION 3. ADDITIONAL SERVICES.

CONSULTANT shall not be compensated for any services rendered in connection with its performance of this AGREEMENT which are in addition to or outside of those set forth in this AGREEMENT or listed in EXHIBIT "A" "SCOPE OF SERVICES", unless such additional services are authorized in advance and in writing by the City Council or the City Manager of CITY or his or her designee. CONSULTANT shall be compensated for any such additional services only in the amounts and in the manner agreed to by the City Council or City Manager of CITY or his or her designee.

SECTION 4. COMPENSATION AND METHOD OF PAYMENT.

(a) Subject to any limitations set forth in this AGREEMENT, CITY agrees to pay CONSULTANT the amounts specified in EXHIBIT "B" "COMPENSATION" and made a part of this AGREEMENT. CONSULTANT shall perform work only as requested by CITY. This AGREEMENT does not state, convey, imply or infer a specific, minimum or expected

amount of work or compensation for as needed services or reimbursables. Compensation for services shall not exceed the amounts specified in EXHIBIT "B" "COMPENSATION".

(b) No later than the 15th of each month CONSULTANT shall furnish to CITY an **original** invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the categories required by CITY, which are subject to change at the discretion of CITY. CITY shall independently review each invoice submitted by the CONSULTANT to determine whether the work performed and expenses incurred are in compliance with the provisions of this AGREEMENT. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth in subsection (c). In the event that any charges or expenses are disputed by CITY, the original invoice shall be returned by CITY to CONSULTANT for correction and resubmission.

(c) Except as to any charges for work performed or expenses incurred by CONSULTANT which are disputed by CITY, CITY will use its best efforts to cause CONSULTANT to be paid within thirty (30) days of receipt of CONSULTANT's invoice.

(d) Payment to CONSULTANT for work performed pursuant to this AGREEMENT shall not be deemed to waive any defects in work performed by CONSULTANT, nor to constitute any waiver of any type of relief or remedy, legal or equitable, arising out of any breach or nonperformance of any aspect of the AGREEMENT by CONSULTANT.

SECTION 5. INSPECTION AND FINAL ACCEPTANCE.

CITY may inspect and accept or reject any of CONSULTANT's work under this AGREEMENT, either during performance or when completed. CITY shall reject or finally accept CONSULTANT's work in its discretion within sixty (60) days after submitted to CITY. Any rejection of work by CITY shall be by written explanation. Acceptance of any of CONSULTANT's work by CITY shall not constitute a waiver of any of the provisions of this AGREEMENT including, but not limited to, sections 15 and 16, pertaining to indemnification and insurance, respectively.

SECTION 6. OWNERSHIP OF DOCUMENTS.

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by CONSULTANT in the course of providing any services pursuant to this AGREEMENT shall become the sole property of CITY and may be used, reused or otherwise disposed of by CITY without the permission of the CONSULTANT. Upon completion, expiration or termination of this AGREEMENT, CONSULTANT shall turn over to CITY all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents, notwithstanding any billing or compensation disputes that may then exist between CITY and CONSULTANT. CITY's reuse of such materials on a project other than the project for which they were originally intended shall be at CITY's sole risk.

SECTION 7. CONSULTANT'S BOOKS AND RECORDS.

(a) CONSULTANT shall maintain any and all documents and records demonstrating or relating to CONSULTANT's and any of CONSULTANT's subcontractors' performance of services pursuant to this AGREEMENT. CONSULTANT shall maintain any and all drafts of studies or planning documents, correspondence, notices, ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to CITY pursuant to this AGREEMENT. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by CONSULTANT pursuant to this AGREEMENT. Any and all such documents or records shall be maintained for five (5) years from the end of the term of this AGREEMENT and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon written request by CITY, Federal government, State of California, or their designated representatives. Copies of such documents or records shall be provided directly to the requesting party for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at CONSULTANT's address indicated for receipt of notices in this AGREEMENT.

(c) Where CITY has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of CONSULTANT's business, CITY may, by written request, require that custody of such documents or records be given to the requesting party and that such documents and records be maintained by the requesting party. Access to such documents and records shall be granted to CITY, as well as to its successors-in-interest and authorized representatives.

(d) CONSULTANT shall prepare and submit to CITY reports concerning the performance of the work in this AGREEMENT as CITY shall require.

SECTION 8. STATUS OF CONSULTANT.

(a) CONSULTANT is and shall at all times remain a wholly independent contractor and not an officer, official, employee or agent of CITY. CONSULTANT shall have no authority to bind CITY in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against CITY, whether by contract or otherwise, unless such authority is expressly conferred under this AGREEMENT or is otherwise expressly conferred in writing by CITY.

(b) The personnel performing the services under this AGREEMENT on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of

CITY, shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, officials, employees or agents, except as set forth in this AGREEMENT. CONSULTANT shall not at any time or in any manner represent that CONSULTANT or any of CONSULTANT's officers, officials, employees or agents is in any manner officials, officers, employees or agents of CITY.

(c) Neither CONSULTANT, nor any of CONSULTANT's officers, officials, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to CITY'S employees. CONSULTANT expressly waives any claim CONSULTANT may have to any such rights.

(d) This AGREEMENT shall in no way prohibit the CITY from entering into other agreements or contracts, hiring staff or making other such arrangements with other persons and/or entities relative to the services set forth in EXHIBIT "A" "SCOPE OF SERVICES".

SECTION 9. STANDARD OF PERFORMANCE.

CONSULTANT represents and warrants that it has the qualifications, experience, personnel, and facilities necessary to properly perform the services required under this AGREEMENT in a thorough, competent and professional manner. CONSULTANT shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this AGREEMENT, CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of CONSULTANT under this AGREEMENT.

SECTION 10. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND LICENSES.

(a) CONSULTANT shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this AGREEMENT, including but not limited to regulations and rules pertaining to any grant awards or third-party funding with which this AGREEMENT is funded in whole or in part. CONSULTANT shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this AGREEMENT. CITY shall not be responsible for monitoring CONSULTANT’s compliance with federal, state, and local laws, statutes, codes, ordinances, or regulations. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.

(b) CONSULTANT shall not be debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs, or from receiving Federal contracts, subcontracts, or financial or nonfinancial assistance or benefits, under Executive Order 12549, “Debarment and Suspension” (24 CFR 85.35) or other Federal laws, statutes, codes, ordinances, regulations or rules, at any time during the term of this AGREEMENT.

SECTION 11. NONDISCRIMINATION.

CONSULTANT shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition, sexual orientation or marital status in connection with or related to the performance of this AGREEMENT.

SECTION 12. UNAUTHORIZED ALIENS.

CONSULTANT shall comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended from time to time or replaced by a successor statute, and in connection therewith, shall not employ unauthorized aliens as defined therein. The term "unauthorized aliens" means and includes "undocumented foreign nationals" as defined in the proposed Federal Correcting Hurtful and Alienating Names in Government Expression (CHANGE) Act (H.R. 3785, introduced October 21, 2015). Should CONSULTANT so employ such unauthorized aliens for the performance of work and/or services covered by this AGREEMENT, and should the any liability or sanctions be imposed against CITY for such use of unauthorized aliens, CONSULTANT shall reimburse CITY for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by CITY.

SECTION 13. CONFLICTS OF INTEREST.

(a) CONSULTANT covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of CITY or which would in any way hinder CONSULTANT's performance of services under this AGREEMENT. CONSULTANT further covenants that in the performance of this AGREEMENT, no person having any such interest shall be employed by it as an officer, official, employee, agent or subcontractor without the express written consent of the City Manager of CITY or his or her designee. CONSULTANT agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY in the performance of this AGREEMENT.

(b) CITY understands and acknowledges that CONSULTANT is, as of the date of execution of this AGREEMENT, independently involved in the performance of non-related services for other governmental agencies and private parties. CONSULTANT is unaware of any stated position of CITY relative to such projects. Any future position of CITY on such projects shall not be considered a conflict of interest for purposes of this section.

SECTION 14. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.

(a) All information gained or work product produced by CONSULTANT in performance of this AGREEMENT shall be considered confidential, unless such information is in the public domain or already known to CONSULTANT. CONSULTANT shall not release or disclose any such information or work product to persons or entities other than CITY without

prior written authorization from the City Manager of CITY or his or her designee, except as may be required by law.

(b) CONSULTANT, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager of CITY or his or her designee or unless requested by the City Attorney of CITY, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this AGREEMENT. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives CITY notice of such court order or subpoena.

(c) If CONSULTANT, or any officer, employee, agent or subcontractor of CONSULTANT, provides any information or work product in violation of this AGREEMENT, then CITY shall have the right to reimbursement and indemnity from CONSULTANT for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of CONSULTANT's conduct.

(d) CONSULTANT shall promptly notify CITY should CONSULTANT, its officers, officials, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this AGREEMENT or the work performed thereunder. CITY retains the right, but has no obligation, to represent CONSULTANT or be present at any deposition, hearing or similar proceeding. CONSULTANT agrees to cooperate fully with CITY and to provide CITY with the opportunity to review any response to discovery requests provided by CONSULTANT. However, this right to review any such response does not imply or mean the right by CITY to control, direct, or rewrite said response.

SECTION 15. INDEMNIFICATION.

(a) CITY and its respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "INDEMNITEES") shall have no liability to CONSULTANT or any other person for, and CONSULTANT shall indemnify, defend and hold harmless INDEMNITEES from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "CLAIMS"), which INDEMNITEES may suffer or incur or to which INDEMNITEES may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of the CONSULTANT's performance of or failure to perform any services under this AGREEMENT to the extent resulting from the negligent or willful, wrongful acts or omissions of CONSULTANT, its agents, officers, directors, subcontractors or employees, committed in performing any of the services under this AGREEMENT, including without limitation the violation of any federal, state, and local law, statute, code, ordinance, regulation, or rule.

(b) If any action or proceeding is brought against INDEMNITEES by reason of any of the matters against which CONSULTANT has agreed to indemnify INDEMNITEES as provided above, CONSULTANT, upon notice from CITY, shall defend INDEMNITEES at CONSULTANT's expense by counsel acceptable to CITY, such acceptance not to be unreasonably withheld. INDEMNITEES need not have first paid for any of the matters to which INDEMNITEES are entitled to indemnification in order to be so indemnified. The insurance required to be maintained by CONSULTANT under Section 16 shall insure CONSULTANT's obligations under this section, but the limits of such insurance shall not limit the liability of CONSULTANT hereunder. The provisions of this section shall survive the expiration or earlier termination of this AGREEMENT.

(c) The provisions of this section do not apply to CLAIMS occurring as a result of the CITY's sole negligence or willful acts or omissions.

SECTION 16. INSURANCE.

CONSULTANT agrees to obtain and maintain in full force and effect during the term of this AGREEMENT the insurance policies set forth in EXHIBIT "C" "INSURANCE" and made a part of this AGREEMENT. All insurance policies shall be subject to approval by CITY as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Manager of CITY or his or her designee. CONSULTANT agrees to provide CITY with copies of required policies upon request.

SECTION 17. ASSIGNMENT.

The expertise and experience of CONSULTANT are material considerations for this AGREEMENT. CITY has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon CONSULTANT under this AGREEMENT. In recognition of that interest, CONSULTANT shall not assign or transfer this Agreement or any portion of this AGREEMENT or the performance of any of CONSULTANT's duties or obligations under this AGREEMENT without the prior written consent of the City Council. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this AGREEMENT entitling CITY to any and all remedies at law or in equity, including summary termination of this AGREEMENT. CITY acknowledges, however, that CONSULTANT, in the performance of its duties pursuant to this AGREEMENT, may utilize subcontractors. CONSULTANT shall be solely liable and responsible for the actions, conduct, and performance of subcontractors, including but not limited to ensuring their compliance with Section 10 of this AGREEMENT (Compliance with Applicable Laws; Permits and Licenses).

SECTION 18. CONTINUITY OF PERSONNEL.

CONSULTANT shall make every reasonable effort to maintain the stability and continuity of CONSULTANT's staff assigned to perform the services required under this AGREEMENT. CONSULTANT shall obtain approval, in writing, from CITY of any changes in CONSULTANT's staff assigned to perform the services required under this AGREEMENT,

prior to any such performance.

SECTION 19. TERMINATION OF AGREEMENT.

(a) CITY may terminate this AGREEMENT, with or without cause, at any time by giving thirty (30) days written notice of termination to CONSULTANT. In the event such notice is given, CITY may require CONSULTANT to cease immediately all work in progress.

(b) CONSULTANT may terminate this AGREEMENT at any time upon sixty (60) days written notice of termination to CITY. In the event such notice is given, CITY may require CONSULTANT to cease immediately all work in progress.

(c) If CONSULTANT fails to perform any material obligation under this AGREEMENT, then, in addition to any other remedies, CITY may terminate this AGREEMENT immediately upon written notice.

(d) Upon termination of this AGREEMENT by either CONSULTANT or CITY, all property belonging exclusively to CITY which is in CONSULTANT's possession shall be returned to CITY immediately upon demand by CITY, notwithstanding any billing disputes that may then exist under this AGREEMENT. CONSULTANT shall furnish to CITY a final invoice for work performed and expenses incurred by CONSULTANT, prepared as set forth in SECTION 4 of this AGREEMENT. This final invoice shall be reviewed and paid in the same manner as set forth in SECTION 4 of this AGREEMENT.

SECTION 20. DEFAULT.

In the event that CONSULTANT is in default under the terms of this AGREEMENT, the CITY shall not have any obligation or duty to continue compensating CONSULTANT for any work performed after the date of default and may terminate this AGREEMENT immediately by written notice to the CONSULTANT.

SECTION 21. EXCUSABLE DELAYS.

CONSULTANT shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of CONSULTANT. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this AGREEMENT shall be equitably adjusted for any delays due to such causes.

SECTION 22. COOPERATION BY CITY.

All public information, data, reports, records, and maps as are existing and available to CITY as public records, and which are necessary for carrying out the work as outlined in the EXHIBIT "A" "SCOPE OF SERVICES", shall be furnished to CONSULTANT in a reasonable way to facilitate, without undue delay, the work to be performed under this AGREEMENT.

SECTION 23. NOTICES.

All notices required or permitted to be given under this AGREEMENT shall be in writing and shall be personally delivered, or sent by telecopy or certified mail, postage prepaid and return receipt requested, addressed as follows:

To CITY: City of Laguna Woods
Attn: City Manager
24264 El Toro Road
Laguna Woods, CA 92637

To CONSULTANT: Willdan Engineering
ATTN: Director of Building and Safety
2401 East Katella Avenue, Suite 300
Anaheim, CA 92806

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

SECTION 24. AUTHORITY TO EXECUTE.

The person or persons executing this AGREEMENT on behalf of CONSULTANT represents and warrants that he/she/they has/have the authority to so execute this AGREEMENT and to bind CONSULTANT to the performance of its obligations hereunder.

SECTION 25. BINDING EFFECT.

This AGREEMENT shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

SECTION 26. MODIFICATION OF AGREEMENT.

No amendment to or modification of this AGREEMENT shall be valid unless made in writing and approved by the CONSULTANT and by the City Council or City Manager of CITY. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

SECTION 27. WAIVER.

Waiver by any party to this AGREEMENT of any term, condition, or covenant of this AGREEMENT shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this AGREEMENT shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this AGREEMENT. Acceptance by CITY of any work or services by CONSULTANT shall not constitute a waiver of any of the provisions of this AGREEMENT.

SECTION 28. LAW TO GOVERN; VENUE.

This AGREEMENT shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Orange. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the District of California in which CITY is located.

SECTION 29. ATTORNEYS FEES, COSTS AND EXPENSES.

In the event litigation or other proceeding is required to enforce or interpret any provision of this AGREEMENT, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

SECTION 30. ENTIRE AGREEMENT.

This AGREEMENT, including the attached EXHIBITS "A" through "C", is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between CONSULTANT and CITY prior to the execution of this AGREEMENT. No statements, representations or other agreements, whether oral or written, made by any party which is not embodied herein shall be valid and binding. No amendment to this AGREEMENT shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

SECTION 31. SEVERABILITY.

If a term, condition or covenant of this AGREEMENT is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this AGREEMENT shall not be affected thereby and the AGREEMENT shall be read and construed without the invalid, void or unenforceable provision(s).

SECTION 32. NO THIRD PARTY BENEFICIARIES.

This AGREEMENT, its provisions, and its covenants, are for the sole and exclusive benefit of CITY and CONSULTANT. No other parties or entities are intended to be, nor shall be considered, beneficiaries of the performance by either party of any of the obligations under this AGREEMENT.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

CITY OF LAGUNA WOODS:

By_____
Christopher Macon, City Manager

CONSULTANT:

By_____
James M. Guerra, CBO
Director of Building and Safety

APPROVED AS TO FORM:

_____
David B. Cosgrove, City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

CONSULTANT shall perform and complete code enforcement services by providing all labor, tools, equipment, materials, and supplies necessary to complete work in a professional, thorough, and timely manner, in accordance with standards and specifications as contained in this AGREEMENT.

Regular Code Enforcement Services

CONSULTANT shall provide regular code enforcement services including, but not limited to, enforcing the Laguna Woods Municipal Code; CITY ordinances, regulations, or policies; codes or regulations otherwise applicable to CITY; and, conditions of entitlement, land use approvals, permits, or licenses. Regular code enforcement services may include, but are not limited to:

- Receiving and responding to inquiries and complaints, including by interviewing persons reporting possible code violations; taking steps to identify the existence of reported code violations; providing public education and outreach; resolving disputes; and, referring matters to and coordinating with local, state, and federal authorities or other parties;
- Conducting field checks, inspections, investigations, interviews, consultations, research, and other activities to ensure compliance with codes and identify code violations;
- Taking enforcement actions, including by issuing notices of violation, administrative citations, and stop work orders; levying and collecting fees and civil fines; collaborating with other agencies and service providers; delivering, mailing, and posting legal notices; preparing cases for administrative and legal proceedings (including preparing documents to support inspection and abatement warrants); and, conducting abatement activities;
- Preparing, compiling, and disseminating qualitative and quantitative documentation and data, including correspondence, reports, inventories, logs, records, and photographs; and
- Providing testimony and evidence for administrative and legal proceedings.

Regular code enforcement services may also include, but are not limited to:

- Removing illegal temporary signs from CITY-owned or controlled property, including rights of way, medians, parkways, parks, light poles, bus shelters, structures, and equipment;
- Conducting field checks and inspections of CITY-owned or controlled property for graffiti; vandalism; damaged, faded, or missing road signs; inoperative lighting; trash and litter; depleted pet supplies (at CITY's dog park); and, overgrown vegetation; and
- Providing public education and outreach to individuals and businesses on provisions of the Laguna Woods Municipal Code, as well as proposed or pending changes.

Special Code Enforcement Services

On an as-needed basis, CONSULTANT may develop, or assist in the development of, plans,

procedure manuals, enforcement policies, ordinances, grant applications, or other administrative projects. Work associated with any individual code enforcement case is excluded from "special code enforcement services" and is considered a regular code enforcement service.

Schedule

CONSULTANT shall provide nine (9) hours per week of regular code enforcement services on either Mondays and Wednesdays, or Tuesdays and Thursdays, for four and one-half (4.5) hours each day to be regularly scheduled by CITY and CONSULTANT. On one (1) day per month to be regularly scheduled by CITY and CONSULTANT, services shall also be provided for four (4) additional hours from 4 to 8 p.m., or as otherwise scheduled by CITY and CONSULTANT, for a total of 13 hours of regular code enforcement services for that week. Regular code enforcement services shall not be provided on any day when Laguna Woods City Hall is closed, unless previously authorized in writing by CITY. CITY reserves the right to cancel any regular code enforcement service day with at least 48 hours advance notice.

CONSULTANT shall provide additional regular or special code enforcement services on an as-needed basis, on any day of the week (including weekends and holidays), within two (2) hours of a request by CITY. This AGREEMENT does not state, convey, imply or infer a specific, minimum or expected amount of work or compensation for as-needed code enforcement services.

Standards for Personnel

1. CONSULTANT shall designate a project manager who shall be responsible for overseeing all work performed under this AGREEMENT and coordinating the same with CITY. He or she shall have at least three (3) years of experience involving code enforcement services and be fluent in the English language.

2. At all times, CONSULTANT's assigned personnel responsible for providing regular code enforcement services shall possess the following minimum qualifications:

    - Three (3) years of law enforcement experience in the State of California; or
    - Three (3) years of code enforcement experience in the State of California; or
    - California Association of Code Enforcement Officers (CACEO) officer certification; or
    - International Code Council Property Maintenance and Housing Inspector certification; or
    - International Code Council Zoning Inspector certification; or
    - P.C. 832 Arrest, Search, and Seizure certification; or
    - Such other experience, education, certification, and/or training to demonstrate knowledge of legal and effective investigations, as determined adequate by CITY staff.

Other Requirements

1. CONSULTANT's assigned personnel responsible for providing regular code enforcement services shall wear uniforms consisting of a polo, dress-style, or similar shirt with collar;

long, pants; closed toe shoes; and, identification card in form sufficient to CITY. Uniforms shall be well maintained and in good condition at all times.

2. CONSULTANT's assigned personnel responsible for providing regular code enforcement services shall be provided by CONSULTANT with all equipment necessary to perform regular code enforcement services including, but not limited to, calibrated noise meters, cellular telephones, digital cameras capable of embedding the time and date in photographs, and personal protective equipment to safely enter and inspect spaces impacted by hoarding and similar circumstances. CITY shall make available to CONSULTANT a small workspace, telephone, computer, printer, and copier at Laguna Woods City Hall.

3. CONSULTANT's assigned personnel responsible for providing regular code enforcement services shall document the services that they provide on paper forms and Microsoft Word and Excel documents in form sufficient to CITY. If CITY implements code enforcement software, CONSULTANT's assigned personnel responsible for providing regular code enforcement services shall be required to use it in the performance of their services.

4. CONSULTANT's assigned personnel responsible for providing regular code enforcement services shall retrieve and respond to all emails, voicemails, and messages received prior to the beginning of each shift, no later than the end of that same shift, and document the same in form sufficient to CITY.

EXHIBIT "B"

COMPENSATION

CONSULTANT shall be compensated on an hourly basis using the following rates:

Service	Hourly Rate Weekdays[1]	Hourly Rate Weekends/Federal Holidays[1]
Regular Code Enforcement Services	$58 per hour	$87 per hour
Special Code Enforcement Services	$65 per hour	$97.50 per hour

[1] Hourly rates are not subject to minimums or maximums and are all inclusive with the exception of reproduction; oversized and specialty printing; and, courier and mailing services, all of which must be authorized by CITY, in advance, and may only be charged to CITY at cost (as evidenced by receipts). Reproduction and oversized and specialty printing shall be subject to a 10% markup over cost. CONSULTANT shall not be reimbursed for any other expenses including, but not limited to, mileage; travel; lodging; food; drink; computer, voice, and data line usage; and, the provision and maintenance of required uniforms or equipment.

Hourly rates will not increase during the term of this AGREEMENT.

EXHIBIT "C"

INSURANCE

A. Insurance Requirements. CONSULTANT shall provide and maintain insurance, acceptable to the City Manager of CITY or his or her designee or City Attorney, in full force and effect throughout the term of this AGREEMENT, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONSULTANT, its agents, representatives or employees. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. CONSULTANT shall provide the following scope and limits of insurance:

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:

(1) Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001).

(2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the written approval of CITY.

(3) Workers' Compensation insurance as required by the Labor Code of State of California and Employer's Liability insurance and covering all persons providing services on behalf of the CONSULTANT and all risks to such persons under this AGREEMENT.

(4) Errors and omissions liability insurance appropriate to the CONSULTANT's profession.

2. Minimum Limits of Insurance. CONSULTANT shall maintain limits of insurance no less than:

(1) General Liability: $1,000,000 per occurrence for all covered losses and no less than $2,000,000 general aggregate for bodily injury, personal injury and property damage.

(2) Automobile Liability: $1,000,000 per accident for bodily injury and property damage.

(3) Workers' Compensation and Employer's Liability: Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of $1,000,000 per accident.

B. Other Provisions. Insurance policies required by this AGREEMENT shall contain the following provisions:

1. All Policies. Each insurance policy required by this AGREEMENT shall be endorsed and state that the coverage shall not be suspended, voided, cancelled by the insurer or either party to this AGREEMENT, reduced in coverage or in limits except after 30 days' prior written notice by Certified mail, return receipt requested, has been given to the City Manager of CITY or his or her designee.

2. General Liability and Automobile Liability Coverages.

(1) CITY, and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities CONSULTANT performs; products and completed operations of CONSULTANT; premises owned, occupied or used by CONSULTANT; or automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, and their respective elected and appointed officers, officials, or employees.

(2) CONSULTANT's insurance coverage shall be primary insurance with respect to CITY, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self insurance maintained by CITY, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, CONSULTANT's insurance.

(3) CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(4) Any failure to comply with the reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to CITY, and its respective elected and appointed officers, officials, employees or volunteers.

3. Workers' Compensation and Employer's Liability Coverage. Unless the City Manager of CITY or his or her designee otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against CITY, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by CONSULTANT.

C. Other Requirements. CONSULTANT agrees to deposit with CITY, at or before the effective date of this contract, certificates of insurance necessary to satisfy CITY that the insurance provisions of this contract have been complied with. The City Attorney may require that CONSULTANT furnish CITY with copies of original endorsements effecting coverage required by this Section. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. CITY reserves the right to inspect

complete, certified copies of all required insurance policies, at any time.

1. CONSULTANT shall furnish certificates and endorsements from each subcontractor identical to those CONSULTANT provides.

2. Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY or its respective elected or appointed officers, officials, employees and volunteers or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.

3. The procuring of such required policy or policies of insurance shall not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions and requirements of this AGREEMENT.

6.6
EL TORO ROAD REGIONAL TRAFFIC SIGNAL SYNCHRONIZATION PROGRAM PROJECT P
(NO REPORT)

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6.7
MOULTON PARKWAY REGIONAL TRAFFIC SIGNAL SYNCHRONIZATION PROGRAM
PROJECT P
(NO REPORT)

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6.8
CITY HALL RESTROOM REPAIR AND IMPROVEMENT PROJECT
(NO REPORT)

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6.9
URBAN COUNTY COMMUNITY DEVELOPMENT BLOCK GRANT AND OTHER PROGRAMS COOPERATION AGREEMENT

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AMENDMENT FOUR TO COOPERATION AGREEMENT BETWEEN THE COUNTY OF ORANGE AND CITY OF LAGUNA WOODS

This Amendment Number FOUR (hereinafter "Amendment FOUR") is made and entered into by the County of Orange, a political subdivision of the State of California, ("COUNTY") and CITY OF LAGUNA WOODS, a municipal corporation, ("CITY"), DUNS Number 602270279 which are sometimes individually referred to as "Party" or collectively referred to as "Parties", and is effective as of July 1, 2018, hereinafter referred to as "EFFECTIVE DATE".

WHEREAS, COUNTY and CITY executed that certain COOPERATION AGREEMENT "Small-City" (hereinafter "Original Agreement" or "Agreement") for commencement July 1, 2005; and

WHEREAS, the Original Agreement was amended by Amendment ONE, effective as of July 16, 2008; and

WHEREAS, the Original Agreement was amended by Amendment TWO, effective as of July 1 2012; and

WHEREAS, the Original Agreement was amended by Amendment THREE, effective as of July 1, 2015; and

WHEREAS, U.S. Department of Housing and Urban Development ("HUD") Notice CPD-14-07 allows "automatic" renewals for up to three years provided that COUNTY sends a letter to CITY notifying it that the Original Agreement will be renewed unless CITY notifies COUNTY that it wishes to terminate the agreement and a copy of such a letter is provided to HUD; and

WHEREAS, COUNTY sent CITY a letter notifying CITY of such renewal on February 2, 2017; and

WHEREAS, CITY did not advise COUNTY that it wished to terminate the Original Agreement with County; and

WHEREAS, the Parties desire to further amend the Original Agreement at this time in the manner set forth herein.

NOW, THEREFORE, the Parties hereby agree to the following modifications to the Original Agreement:

1. Section 2 of the Original Agreement is amended in its entirety as follows:

"COUNTY shall have the authority to carry out activities, which will be funded from annual Community Development Block Grant (CDBG), Home Investment Partnership (HOME) and Emergency Solutions Grant (ESG) Program funds appropriated for Federal Fiscal Years 2018-2019, 2019-2020 and 2020-2021 and from any program income generated from the expenditure of such funds."

2. Section 6 of the Original Agreement shall be amended to add subsection (c.) as follows:
   "c. A policy to undertake or assist in undertaking, community renewal and lower-income housing assistance activities."

3. Section 9 of the Original Agreement shall read as amended in its entirety as follows:

   This Agreement shall cover Fiscal Years 2018-2019, 2019-2020 and 2020-2021, respectively of CDBG, HOME and ESG program applications, including any subsequent Supplemental sources (Paragraph 23 of the Agreement). In no event shall this agreement be terminated by either Party before June 30, 2021, except as allowed in legislation enacted by the U.S. Congress for termination or withdrawal from the Urban County Program and as permitted by HUD.

4. Section 10 shall be added to Agreement to read:

   "In accordance with HUD Notice CPD 14-07, and subsequent CPD Notices, this Agreement will be automatically extended for an additional 3 (three) year period (July 1, 2021 to June 30, 2024) unless COUNTY or CITY provides written notice that it elects not to participate in a new qualification period. COUNTY shall notify CITY in writing of its right not to participate any longer than the date specified in HUD's Urban County Qualification Notice for the next qualification period."

5. Section 11. Of the Original Agreement is amended to read:

   "CITY and COUNTY agree to adopt amendments (s) to this Agreement as may be required by HUD to meet any new Urban County Qualification requirement(s) subsequent to June 30, 2020. The COUNTY will notify CITY of its right to terminate its participation in the program based on the adoption of any such amendment. If either CITY or COUNTY refuses to adopt any such amendment, this automatic renewal provision herein will be void."

6. Section 24. Is amended to read:

   "CITY may void this Agreement only if it submits to COUNTY on or before June 2017 the notification from HUD that CITY has qualified as a "Metropolitan City" or an "Entitlement City" prior to the completion of the

re-qualification process for Fiscal Years 2018-19, 2019-2020, and 2020-2021. Upon such notification by HUD, CITY also must submit to COUNTY and HUD written notification of its decision to either remain in the Urban County Program as a "Metropolitan City" or become an "Entitlement City" as a separate entity."

7. All other provisions of the Original Agreement, as amended, a copy of which is attached hereto as Exhibit A and incorporated by this reference, to the extent they are not inconsistent with this Agreement, remain unchanged and in full force and effect.

IN WITNESS WHEREOF, CITY has caused this Amendment FOUR to be executed by its City Manager and attested by its City Clerk; COUNTY has caused this Amendment FOUR to be executed by the Director of the Orange County Community Resources; each having been duly authorized by the CITY Council and the COUNTY Board of Supervisors, respectively.

ATTEST:

City of_____, a municipal
Corporation in the State of California

By: _____

Name:

Title: City Manager

Date: _____

By:_____

Name:

Title: City Clerk

Date:_____

COUNTY OF ORANGE, a political
subdivision of the State of California

By: _____

Dylan Wright, Director

Orange County Community Resources

Date: _____

//

ORIGINAL FORM CONTRACT

APPROVED AS TO FORM and REQUIRED COUNTY COUNSEL STATEMENT:

"The terms and provisions of the agreement are fully authorized under State and local law and the agreement provides full legal authority for the County."

Carolyn S. Frost

By: Deputy County Counsel

Date: 04/26/17

7.1
CONDITIONAL USE PERMIT CUP-1135 TO ALLOW FOR EXCEEDANCES OF MAXIMUM FENCE AND WALL HEIGHT PROVISIONS OF THE LAGUNA WOODS MUNICIPAL CODE, ALONG ALL PERIMETER FENCES AND WALLS OF LAGUNA WOODS VILLAGE

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City of Laguna Woods
Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Christopher Macon, City Manager

FOR: May 17, 2017 Regular Meeting

SUBJECT: Conditional Use Permit CUP-1135 to allow for exceedances of maximum fence and wall height provisions of the Laguna Woods Municipal Code, along all perimeter fences and walls of Laguna Woods Village

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Recommendation

1. Receive staff report.

AND

2. Open public hearing.

AND

3. Receive public testimony.

AND

4. Close public hearing.

AND

5. Approve a resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT CUP-1135 TO ALLOW FOR EXCEEDANCES OF MAXIMUM FENCE AND WALL HEIGHT PROVISIONS OF THE LAGUNA WOODS

MUNICIPAL CODE, ALONG ALL PERIMETER FENCES AND WALLS OF LAGUNA WOODS VILLAGE, LAGUNA WOODS, CA 92637

Background

The City has received a conditional use permit application from the Golden Rain Foundation of Laguna Woods (Applicant), with concurrence from Third Laguna Hills Mutual and United Laguna Woods Mutual, to allow for exceedances of maximum fence and wall height provisions of the Laguna Woods Municipal Code, up to a maximum height of seven feet when viewed from adjoining properties, along all perimeter fences and walls of Laguna Woods Village. The application was neither initiated nor requested by the City.

Project Location: Perimeter of Laguna Woods Village
Laguna Woods, CA 92637

A vicinity map is included as Attachment A.

The project location is within an existing residential community, known as Laguna Woods Village, which is primarily residential in nature. If approved, the perimeter fences and walls of Laguna Woods Village would be modified, over time, in both height and material.

Section 13.16.230 of the Laguna Woods Municipal Code limits fence and wall heights to a maximum of six feet when viewed from adjoining properties. Issuance of a conditional use permit is required when exceptions and modifications are made to the fence and wall height provisions of the Laguna Woods Municipal Code.

Discussion

At today's meeting, the City Council will conduct a public hearing regarding the application for a conditional use permit to allow for exceedances of maximum fence and wall height provisions of the Laguna Woods Municipal Code, along all perimeter fences and walls of Laguna Woods Village, after which approval will be considered (Attachment B).

If the conditional use permit is approved, Laguna Woods Village's perimeter fences and walls would be permitted to reach a maximum height of seven feet when viewed from adjoining properties, an increase of one foot from what the Laguna Woods Municipal Code allows by right. The application does not propose any change in the

location of fences or walls, but does indicate a present intention to replace existing barbed wire with shepherd's hook over a 24-year period. The conditional use permit would neither require the use of shepherd's hook nor prevent the use of solid, masonry block, similar to Laguna Woods Village's existing perimeter walls. Barbed wire would not be permitted as a replacement material due to a City prohibition on the installation of new barbed wire in 2003. That prohibition applies to new barbed wire; existing barbed wire is allowed to remain in-place.

In many cases, Laguna Woods Village's perimeter walls and fences already exceed six feet when viewed from adjoining properties due to legal, non-conforming barbed wire toppings. The conditional use permit would allow the barbed wire to be replaced with a new material (e.g., shepherd's hook or masonry), at a height of up to seven feet. Absent the conditional use permit, if the barbed wire were to be removed (which there is no current City requirement to do so), fence and wall height would be limited to six feet, which is lower than currently exists in certain locations.

The proposed resolution approving the conditional use permit includes conditions of approval (Exhibit A to Attachment B), which would regulate the modification of the perimeter fences and walls in a manner that is consistent with the purpose and intent of Section 13.16.230 of the Laguna Woods Municipal Code. In order to maintain the conditional use permit's effectiveness, at least 900 lineal feet of fencing and walls would be required to be modified every calendar year beginning in 2018. "Modified" would include height increases in excess of six feet and/or removal and replacement of barbed wire with shepherd's hook, masonry, or similar materials.

Environmental Review

This project is categorically exempt under sections 15301 (Existing Facilities) and 15303(e) (Small Structures) of the California Environmental Quality Act (CEQA) guidelines.

Fiscal Impact

The City's expenses associated with processing this project are recovered through planning services fees.

Report Prepared With: Rebecca M. Pennington, Development Programs Analyst

Attachments: A – Vicinity Map
B – Proposed Resolution
Exhibit A – Proposed Conditions of Approval

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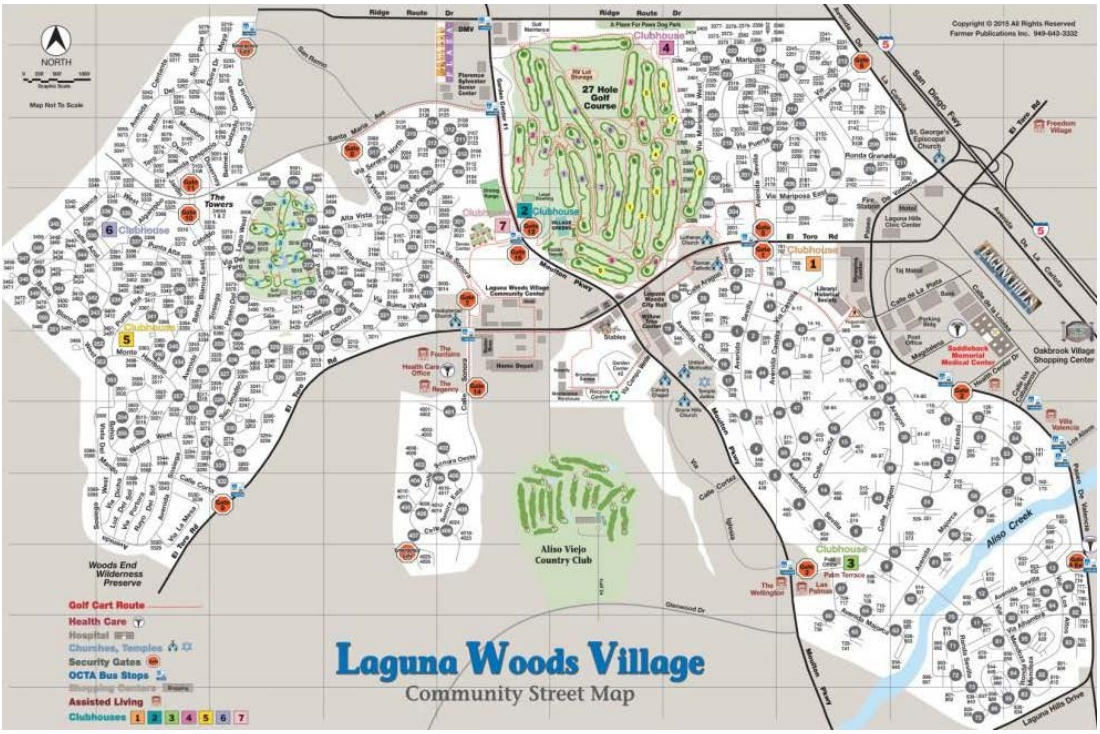
Vicinity Map
Perimeter of Laguna Woods Village

Project Area



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RESOLUTION NO. 17-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT CUP-1135 TO ALLOW FOR EXCEEDANCES OF MAXIMUM FENCE AND WALL HEIGHT PROVISIONS OF THE LAGUNA WOODS MUNICIPAL CODE, ALONG ALL PERIMETER FENCES AND WALLS OF LAGUNA WOODS VILLAGE, LAGUNA WOODS, CA 92637

WHEREAS, on May 17, 2017, the City Council of the City of Laguna Woods, after giving notice thereof as required by law, held a public hearing concerning the requested conditional use permit to allow for exceedances of maximum fence and wall height provisions of the Laguna Woods Municipal Code, along all perimeter fences and walls of Laguna Woods Village; and

WHEREAS, the City Council has carefully considered all pertinent testimony, as well as all information contained in the agenda report prepared for this application, as presented at the public hearing; and

WHEREAS, staff has reviewed the environmental form submitted by the applicant in accordance with the City's procedures. Based upon the information received and staff's assessment of the information, the project has been determined to be categorically exempt pursuant to sections 15301 (Existing Facilities) and 15303(e) (Small Structures) of the California Environmental Quality Act (CEQA); and

WHEREAS, all legal prerequisites have occurred prior to the adoption of this resolution; and

WHEREAS, the City Council makes the following findings subject to the conditions of approval:

1. The proposed use or project is consistent with the City of Laguna Woods General Plan.

   The proposed project is consistent with the Residential Community (RC) land use designation of the City's General Plan. Additionally, Objective 1 of the General Plan Housing Element is to maintain and improve residential neighborhoods and support quality housing for all residents. The proposal would allow for the exceedances of maximum fence and wall height

provisions of the Laguna Woods Municipal Code, up to a maximum height of seven feet along all perimeter fences and walls of Laguna Woods Village. Conditions of approval would also provide for the replacement of barbed wire with masonry, shepherd's hook, or similar materials. As such, the applicant would be able to maintain and improve existing perimeter walls by increasing height or modifying materials.

2. The use, activity or improvements proposed are consistent with the provisions of the City Zoning Code.

   The proposed project, which seeks an exception and modification of the maximum fence and wall height provisions of Section 13.16.230 of the Laguna Woods Municipal Code, is permitted under the City's Zoning Code contingent upon receiving a conditional use permit and making certain findings that the project will not result in or create a traffic hazard and will not create conditions or situations that may be objectionable, detrimental or incompatible with other permitted uses in the vicinity.

3. The approval of the permit application is in compliance with the requirements of the California Environmental Quality Act.

   Based upon the information received from the applicant and staff's assessment of the information, the proposed project has been determined to be categorically exempt under sections 15301 (Existing Facilities) and 15303(e) (Small Structures) of the California Environmental Quality Act (CEQA) guidelines.

4. The location, size, design and operating characteristics of the proposed use will not create conditions or situations that may be incompatible with other permitted uses in the vicinity.

   The proposal to allow for exceedances of maximum fence and wall height provisions of the Laguna Woods Municipal Code, along all perimeter fences and walls of Laguna Woods Village shall have no demonstrable adverse effect upon abutting properties. The project boundaries are generally similar to the City's jurisdiction lines. The project area also abuts the cities of Aliso Viejo, Laguna Beach, and Laguna Hills, as well as unincorporated areas. Neighboring properties in all cardinal directions have a wide variety of land uses, most of which include the use of fences and/or walls of varying heights and materials.

5. The approval of the permit application will not result in conditions or circumstances contrary to the public health, safety and the general welfare.

   With the approval of the conditional use permit, conditions of approval have been added, which would regulate the modification of the perimeter fences and walls in a manner that is consistent with the purpose and intent of Section 13.16.230 of the Laguna Woods Municipal Code. Such conditions will assist in protecting the general public from any potential hazard.

6. The approval of the permit application is in compliance with all City-required public facilities regulations.

   The proposal to allow for exceedances of maximum fence and wall height provisions of the Laguna Woods Municipal Code, up to a maximum height of seven feet, along all perimeter fences and walls of Laguna Woods Village has been evaluated against all City regulations through the conditional use permit process and is deemed in compliance, subject to the conditions of approval.

7. The height and location of the fence or wall as proposed will not result in or create a traffic hazard.

   The current locations of the existing perimeter fences and walls included in the proposal do not present any known traffic hazard. The applicant has represented the same. The potential maximum height of fences and walls in excess of what is permitted by right is minimal (one foot). For modification of existing fences and walls, the applicant may be required to obtain building permits. For construction of new fences and walls, the applicant may be required to obtain building permits and planning approval (setback review, etc.). Existing law and the Laguna Woods Municipal Code gives the City the ability to challenge and abate hazardous conditions.

8. The location, size, design and other characteristics of the fence or wall will not create conditions or situations that may be objectionable, detrimental or incompatible with other permitted uses in the vicinity.

   Permitted uses in the vicinity include a wide variety of land uses, most of which include the use of fences and/or walls of varying heights and materials. The potential maximum height of fences and walls in excess of what is permitted by right is minimal (one foot). The permitted materials for

the increased fence height are ordinary, consisting of shepherd's hook, masonry, or similar materials. The proposed modifications would not create conditions or situations that would be objectionable, detrimental, or incompatible to the uses in the abutting area.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. The above recitals are true and correct.

SECTION 2. The City Council approves Conditional Use Permit CUP-1135 subject to the conditions of approval found in Exhibit A.

SECTION 3. The Deputy City Clerk shall certify to the adoption of this resolution.

PASSED, APPROVED AND ADOPTED on this XX day of XX 2017.

_____
SHARI L. HORNE, Mayor

ATTEST:

_____
YOLIE TRIPPY, Deputy City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Resolution No. 17-XX** was duly adopted by the City Council of the City of Laguna Woods at a regular meeting thereof, held on the XX day of XX 2017, by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

_____
YOLIE TRIPPY, Deputy City Clerk

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Exhibit A to Resolution No. 17-XX

Conditions of Approval for Conditional Use Permit CUP-1135

1. The proposed project shall be constructed, developed, used, operated, and permanently maintained in accordance with the terms of the application, plans, drawing, and conditions imposed in the resolution of approval.

2. The Applicant(s)/Owner(s) shall comply with all of the requirements of Resolution No. 17-XX, adopted as part of Conditional Use Permit CUP-1135.

3. The Applicant(s)/Owner(s) shall comply with all requirements of the City of Laguna Woods Municipal Code, as it pertains to this application, and such requirements are made a condition of permit approval. This includes, but is not limited to, all requirements related to building permits, engineering review, and plan review, generally, of proposed construction plans.

4. This conditional use permit allows exceedances of maximum fence and wall height provisions of the Laguna Woods Municipal Code, up to a maximum height of seven feet when viewed from adjoining properties, along all perimeter fences and walls of Laguna Woods Village. Permitted materials for any portion of a fence or wall in excess of six feet in height are shepherd's hook, masonry, or similar materials as determined by the City Manager.

5. Subject to the termination provisions below, this conditional use permit shall remain in effect, indefinitely, provided that at least 900 lineal feet of perimeter fencing and walls for Laguna Woods Village is modified each calendar year with the first requirement of 900 lineal feet due no later than December 31, 2018. For the purpose of this section, "modified" shall mean increased in height in excess of six feet and/or the removal and replacement of barbed wire with shepherd's hook, masonry, or similar materials as determined by the City Manager.

6. Termination: It is a specific condition of this conditional use permit that the Applicant(s)/Owner(s) shall prosecute the perimeter walls and fencing modifications hereunder diligently and to completion, completing no less than 900 lineal feet of modifications each calendar year, until all such

modifications have been completed, and failure to do so shall be grounds for revocation of the CUP as to all then-remaining unmodified portions of the perimeter walls and fencing, under Laguna Woods Municipal Code Section 13.24.080(a)(3). The Applicant(s)/Owner(s) shall provide the City with a report on each December 31, beginning on December 31, 2018, indicating the amount of lineal feet of fencing and walls that the Applicant(s)/Owner(s) have succeeded in modifying over the preceding calendar year, the location and nature of such modifications, and the location(s) of modifications planned for the upcoming calendar year. Upon the Applicant(s)/Owner(s)' failure to modify at least 900 lineal feet of the perimeter walls and fencing in any given calendar year, the City may notice a public hearing on the revocation of this conditional use permit for all remaining unmodified portions of the perimeter walls and fencing. Such revocation shall not affect those portions of perimeter walls and fencing previously modified in compliance with the approvals granted hereunder, but the Applicant(s)/ Owner(s)' completion of such portions does not and shall not create any vested rights to any continued completion of any remaining, unmodified portions if the Applicant(s)/Owner(s) fail to modify the required 900 lineal feet per year.

7. The Applicant(s)/Owner(s), or successor in interest, shall as a condition of issuance of this permit, at its sole expense, defend, indemnify, and hold harmless the City and its respective elected and appointed boards, officials, officers, agents, employees and volunteers from any claim, action, or proceeding against the City and its respective elected and appointed boards, officials, officers, agents, employees and volunteers to attach, set aside, void or annul an approval of the City Council, Planning Agency, or other decision-making body, or staff action concerning this conditional use permit approval, or its implementation. The Applicant(s)/Owner(s) shall pay all of the City's defense costs incurred by counsel of the City's choosing, and shall reimburse the City for any and all court costs and other parties' attorney fees that the City may be required by a court to pay as a result of such defense. The Applicant(s)/Owner(s) may its sole discretion participate in the defense of any such action under this condition, with its own counsel.

8.1
STATE VIDEO FRANCHISE AND PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ("PEG") FEES

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City of Laguna Woods
Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Christopher Macon, City Manager

FOR: May 17, 2017 Regular Meeting

SUBJECT: State Video Franchise and Public, Educational, and Governmental ("PEG") Fees

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Recommendation

Approve second reading and adopt an ordinance – read by title with further reading waived – entitled:

> AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, RETROACTIVELY READOPTING SECTION 6.42.020 OF CHAPTER 6.42 OF TITLE 6 OF THE LAGUNA WOODS MUNICIPAL CODE ENTITLED "STATE VIDEO FRANCHISE AND PEG FEES" RELATING TO STATE FRANCHISES FOR CABLE COMMUNICATIONS; AND REAUTHORIZING A FEE TO SUPPORT PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ("PEG") CHANNEL FACILITIES WITHIN THE CITY'S JURISDICTION

Background

Section 6.42.020 of the Laguna Woods Municipal Code contains regulations related to the imposition of a Public, Educational, and Governmental ("PEG") fee on state franchised video service providers operating within the City. Those regulations were adopted in 2007 and have remained unchanged since then. The PEG fee is charged in the amount of 1% of gross revenue and is used by the City to support any PEG-related purpose consistent with state and federal law (e.g., the operation and maintenance of the City's television channel; "Channel 31").

In 2006, the California Legislature adopted the Digital Infrastructure and Video Competition Act ("DIVCA"), which changed the manner in which video service providers are regulated by placing local franchising with a state franchising system administered by the California Public Utilities Commission. DIVCA authorizes cities to adopt an ordinance imposing a fee on state franchise holders to support PEG-related purposes, provided, however, that ordinances adopting PEG fees "shall expire, and may be reauthorized, upon the expiration of the state franchise" (Cal. Pub. Utilities Code § 5870(n).).

Pacific Bell Telephone Company d/b/a SBC Pacific Bell Telephone Company d/b/a AT&T California ("AT&T") and Cox Communications California, LLC d/b/a Cox Communications ("Cox") hold state video franchises to operate in Laguna Woods. Those franchises expired on March 30, 2017 and April 27, 2017, respectively.

On April 19, 2017, a public hearing was held and the City Council introduced and approved the first reading of an ordinance (Attachment A) which, if adopted, would retroactively readopt and reauthorize the PEG fee effective March 30, 2017.

Discussion

Today's meeting is an opportunity for City Council action, as well as public input, on the proposed retroactive readoption and reauthorization of PEG fees charged to state video franchisees (Attachment A). The proposed ordinance would also repeal and replace Urgency Ordinance No. 17-02, which pertains to the exact same issue.

If the City Council takes the recommended action at today's meeting, the proposed ordinance would become effective in 30 days.

Environmental Review

The adoption of regulations is not a project under the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Fiscal Impact

Funds to support this project are included in the City's budget.

In Fiscal Year 2015-16, the City received approximately $3,000 in PEG fees from state video franchisees. If the City Council does not reauthorize the PEG fee, the City would no longer receive PEG fees from state video franchisees following the expiration of existing state video franchises.

Attachment: A – Proposed Ordinance

ORDINANCE NO. 17-XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, RETROACTIVELY READOPTING SECTION 6.42.020 OF CHAPTER 6.42 OF TITLE 6 OF THE LAGUNA WOODS MUNICIPAL CODE ENTITLED "STATE VIDEO FRANCHISE AND PEG FEES" RELATING TO STATE FRANCHISES FOR CABLE COMMUNICATIONS; AND REAUTHORIZING A FEE TO SUPPORT PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ("PEG") CHANNEL FACILITIES WITHIN THE CITY'S JURISDICTION

WHEREAS, the City Council adopted Ordinance No. 07-03 on June 27, 2007, wherein a new Chapter 6.42 was added to Title 6 of the Laguna Woods Municipal Code called "Regulation of State Video Franchise Holders" that imposed certain fees on cable providers within the City's jurisdiction; and

WHEREAS, Public Utilities Code section 5870(n) provides that the Public, Educational, and Governmental ("PEG") PEG fee may be reauthorized upon the expiration of an applicable state franchise; and

WHEREAS, the first state franchise to include the City, California Video Franchise Certificate Franchise No. 0002 granted to Pacific Bell Telephone Company d/b/a SBC Pacific Bell Telephone Company d/b/a AT&T California ("AT&T"), expires on March 30, 2017; and

WHEREAS, the second state franchise to include the City, California Video Franchise Certificate Franchise No. 0003 granted to Cox Communications California, LLC d/b/a Cox Communications ("Cox"), expires on April 27, 2017; and

WHEREAS, on April, 2017, the City Council held a duly noticed public hearing on the proposed Ordinance at which it considered all of the information, evidence, and testimony presented, both written and oral.

WHEREAS, the City Council intends to readopt Section 6.42.020 of the Laguna Woods Municipal Code to reauthorize the collection of PEG fees.

THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Section 6.42.020 of Chapter 6.42 of Title 6 of the Laguna Woods Municipal Code entitled "State Video Franchise and PEG Fees" is hereby readopted in its entirety to read as follows:

Sec. 6.42.020. - State video franchise and PEG fees.

(a) For any state video franchise holder operating within the boundaries of the City, there shall be a fee paid to the City equal to five (5%) percent of the gross revenue of that State video franchise holder.

(b) For any state video franchise holder operating within the boundaries of the City, there shall be an additional fee paid to the City equal to one (1%) percent of the gross revenue of that state video franchise holder, which fee shall be used by the City for any Public, Educational, and/or Governmental (PEG) purposes consistent with State and Federal law.

(c) Gross revenue, for the purposes of subsections (a) and (b) above, shall have the definition set forth in California Public Utilities Code § 5860.

(d) The City Council, may, by resolution, opt to temporarily waive the collection, but not the imposition, of the franchise fee and/or the PEG fee.

SECTION 2. In readopting this Section 6.42.020 of Chapter 6.42 of Title 6 of the Laguna Woods Municipal Code, the City intends, to the extent required by California Public Utilities Code section 5870(n), to reauthorize the Public, Educational, and Governmental ("PEG") channel facilities fee adopted by the City on June 2, 2009, effective March 30, 2017. In adopting this Ordinance, the City does not in any manner affect or alter the continuing obligation of State franchisees to collect and pay the preexisting PEG fee.

SECTION 3. This Ordinance shall take effect and be in full force and operation thirty (30) days after adoption. Upon the effective date of this Ordinance, Urgency Ordinance No. 17-XX shall be repealed and replaced in its entirety. Furthermore, the City Council declares its intent that the reauthorization of the PEG access fees shall be retroactive to March 30, 2017, to the end that there be no interruption of PEG fee revenues to the City.

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 of 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 Deputy City Clerk shall certify to the passage of this Ordinance and shall cause this Ordinance to be published or posted as required by law.

SECTION 6. All of the above-referenced documents and information have been and are on file with the City Clerk of the City.

PASSED, APPROVED AND ADOPTED this XX day of XX 2017.

_____
SHARI L. HORNE, Mayor

ATTEST:

_____
YOLIE TRIPPY, Deputy City Clerk

APPROVED AS TO FORM:

_____
DAVID B. COSGROVE, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Ordinance No. 17-XX** was duly introduced and placed upon its first reading at a regular meeting of the City Council on the XX day of XX 2017, and that thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the XX day of XX 2017 by the following vote to wit:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

_____
YOLIE TRIPPY, Deputy City Clerk

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8.2
MEDICAL AND NON-MEDICAL MARIJUANA DISPENSARY REGULATIONS

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City of Laguna Woods
Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Christopher Macon, City Manager
David B. Cosgrove, City Attorney

FOR: May 17, 2017 Regular Meeting

SUBJECT: Medical and Non-Medical Marijuana Dispensary Regulations

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Recommendation

Approve second reading and adopt an ordinance – read by title with further reading waived – entitled:

> AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, AMENDING SECTIONS 13.08.010, 13.10.020, 13.12.020, 13.13.020, AND 13.26.025 AND ADDING A NEW SECTION 13.26.027 OF THE LAGUNA WOODS MUNICIPAL CODE RELATED TO MEDICAL AND NON-MEDICAL MARIJUANA DISPENSARIES AND DELIVERY SERVICES

Background

The City presently has a regulatory ordinance permitting medical marijuana dispensaries, codified at Section 13.26.025 of the Laguna Woods Municipal Code. The ordinance was adopted in 2008 and subsequently amended in 2012.

At a special meeting on September 10, 2015, the City Council adopted an urgency ordinance that imposed a moratorium on the establishment, location, or operation of medical marijuana dispensaries for a 45-day period (September 10, 2015 through October 24, 2015). At a special meeting on October 13, 2015, the City Council adopted an ordinance extending the moratorium through September 8, 2016. Then, at a regular meeting on August 17, 2016, the City Council adopted an ordinance

extending the moratorium through September 8, 2017. Pursuant to state law, the moratorium may not be extended beyond September 8, 2017.

During the moratorium, all operation of Section 13.26.025 of the Laguna Woods Municipal Code is suspended and the City may not issue regulatory permits in furtherance of the establishment, location, or operation of a medical marijuana dispensary within the City. The agenda reports from the meetings on September 10, 2015, October 13, 2015, and August 17, 2016, as well as the ordinance adopted on August 17, 2016, are included as attachments A, B, C, and D, respectively, and incorporated herein by reference.

For reasons, and in light of findings, set forth in the ordinances, and in accordance with applicable sections of state law, the moratorium was deemed necessary for the immediate preservation of the public health, safety, and welfare, to prohibit any uses that may be in conflict with a contemplated zoning proposal that the City is considering or intends to study within a reasonable time.

As described in the ordinances, the moratorium is intended to provide the City time to study the effect of medical marijuana dispensaries on the community, and to assess its ability to draft and adopt regulations consistent with its inherent police power to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within its jurisdiction.

On April 19, 2017, a public hearing was held and the City Council introduced and approved the first reading of an ordinance (Attachment H) which, if adopted, would take the actions summarized under the "Recommended Action" heading herein.

Discussion

Today's meeting is an opportunity for City Council action, as well as public input, on the proposed second reading and adoption of the ordinance that was introduced and approved for the first reading on April 19, 2017 (Attachment H). If the City Council takes the recommended action, the proposed ordinance would become effective in 30 days. Until then, the moratorium would remain in effect.

Since August 17, 2016, staff has continued the investigations requested by the City Council with a focus on analyzing the impact of Proposition 64, as well as public safety and land use implications related to any prospective establishment, location, or operation of medical marijuana dispensaries in Laguna Woods. With the recent

change in presidential administrations, staff has also reviewed the administration's public statements related to marijuana. A brief summary of federal and state law, and the results of staff's investigations are organized under the subheadings below.

A. Federal Law

Without question, marijuana (both medical and non-medical) is, and remains, illegal under federal law. It remains classified as a Schedule 1 controlled substance under the Controlled Substances Act (21 USC §§ 801 *et seq*). As indicated in the agenda reports dated September 10, 2015, October 13, 2015, and August 17, 2016, the California Supreme Court has held that bans on medical marijuana dispensaries are permissible under a city's inherent zoning power, but it has, thus far, declined to reach the issue whether permitting such dispensaries would violate the Controlled Substances Act or California Government Code Section 37100[1].

Notwithstanding federal illegality, a majority of states and the District of Columbia have legalized or decriminalized certain marijuana-related activity. Such actions have been a contributing factor in the promulgation of revised federal enforcement policies. Specifically, on August 29, 2013, Deputy Attorney General James J. Cole issued a directive to all United States Attorneys entitled *Guidance Regarding Marijuana Enforcement*. The Cole Memorandum reaffirms the federal illegality of marijuana, but also indicates that the United States Department of Justice is committed to using its limited investigative and prosecutorial resources to address what it has determined to be "priority threats," including:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or illegal activity;
- Preventing violence and use of firearms in the cultivation and distribution of marijuana;

[1] California Government Code Section 37100, which relates broadly to cities' legislative powers, provides: "The legislative body may pass ordinances not in conflict with the Constitution and laws of the State or the United States." The City Council may, therefore, not pass an ordinance directly in conflict with either federal or state law.

- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public land; and
- Preventing marijuana possession or use on federal property.

The aforementioned priorities were further referenced in a memorandum from the United States Department of Treasury, Financial Crimes Enforcement Network, dated February 14, 2014. The Treasury Memorandum provides guidance to various financial institutions that might deal with medical marijuana dispensaries operating under state law, and requires different forms of "suspicious activity reports" depending upon individual facts and circumstances relating to the individual medical marijuana dispensary customers of financial institutions.

From those memoranda, one might infer that the current risk of federal enforcement against, at least, medical marijuana dispensaries operating consistent with state law, and cities that adopt enabling regulations, is diminished, particularly if local regulatory efforts are directed at avoiding the priority federal threats identified above. It should be noted, however, that the aforementioned limitations on federal enforcement do not change congressional legislative policy under the Controlled Substances Act, nor do they confer immunity on any party from any federal criminal prosecution or forfeiture action. (See, e.g., *United States v. McIntosh* 833 F.3d 1163, 1179 n. 5 (9th Cir. 2016.)). Further, federal enforcement policies may change at any time. While it can reasonably be inferred that the formal and public definition of enforcement priorities for medical marijuana-related activities undertaken pursuant to state law signal at least a recent federal intention to eschew strict enforcement, recent public statements from the White House[2] and United States Department of Justice[3] indicate that a more aggressive enforcement posture is likely to be taken with respect to, at least, non-medical marijuana-related activities, irrespective of whether such activities are undertaken pursuant to state law.

[2] At a press briefing on February 23, 2017, White House Press Secretary Spicer stated "I do believe that you'll see greater enforcement of it" in response to a question regarding whether the federal government will take action related to states legalizing marijuana for recreational purposes.

[3] A memorandum from United States Attorney General Sessions dated April 5, 2017 states that the Department of Justice's Task Force on Crime Reduction and Public Safety's Violent Crime Reduction Strategy Development Subcommittee will review "existing policies in the areas of charging, sentencing, and marijuana to ensure consistency with the Department's overall strategy on reducing violent crime and with Administration goals and priorities."

Regarding federal enforcement, it should be noted that in 2014, the United States Congress passed a budget amendment that eliminated all funding for investigations and prosecutions conducted by the United States Department of Justice related to state medical marijuana laws (the Rohrabacher–Farr Amendment), which effectively ended the federal government's enforcement of medical marijuana-related laws. The amendment has been passed several times since 2014 and a version of it (now known as the Rohrabacher-Blumenauer Amendment) was passed with the Consolidated Appropriations Act of 2017. The amendment is effective through September 30, 2017 and, at that point, will be subject to Congressional reauthorization.

In a May 5, 2018, signing statement on the Consolidated Appropriations Act of 2017, President Trump wrote that he will treat the Rohrabacher-Blumenauer Amendment "consistently with [his] constitutional responsibility to take care that the laws be faithfully executed." That statement has been interpreted by some – including leadership at the Drug Policy Alliance and Marijuana Majority – as adding further ambiguity to the federal government's enforcement posture (Attachment E).

Federal legislators have introduced several pieces of legislation intended to support medical marijuana use, including H.R. 714 and H.R. 715 (which would both move marijuana off of the Controlled Substances Act's Schedule 1), as well as H.R. 975, which would exempt certain activities from punitive enforcement if undertaken in concert with State law. A more complete list of legislation under consideration can be found on the National Organization for the Reform of Marijuana Laws' website (www.norml.org). While the rescheduling of marijuana, or the establishment of protections from federal law, would likely represent a dramatic reduction in exposure to potential liability by cities considering a regulatory approach to medical and/or non-medical marijuana dispensaries, no such legislation has been signed into law.

In short, federal policy on marijuana remains murky. The Controlled Substance Act's classification of marijuana as a Schedule 1 controlled substance remains the controlling law of the land, and federal enforcement policies have varied in response to evolving permissive treatment of both medical and non-medical uses under state laws. Nothing in those enforcement policies contradicts applicable federal law, however, and reliance on them in no way serves to insulate anyone from potential federal prosecution, and its rather dire consequences, if federal enforcement priorities change. A comprehensive analysis of the unclear nature of federal policy in this field was recently issued by the Congressional Research Service[4], entitled,

[4] According to its website, "The Congressional Research Service (CRS) works exclusively for the United States Congress, providing policy and legal analysis to committees and Members of both

"The Marijuana Policy Gap and the Path Forward" (Attachment F). That report details gaps in policies between the federal government and the states, frames many of the issues that the United States Congress has yet to decide upon, and provides helpful background on both social and legal implications of the present tensions between the various levels of government on this issue.

B. State Law – Medical Marijuana

Staff's previous agenda reports have provided background regarding the California Compassionate Use Act (Health and Safety Code Section 11362.5), the Medical Marijuana Program Act (Health and Safety Code Section 11362.7), and the Medical Marijuana Regulation and Safety Act (MMRSA). The MMRSA has initiated a major reworking of the regulatory scheme enacted by earlier statutes.

Currently, all three State licensing agencies (Department of Food and Agriculture, and Department of Public Health, and Bureau of Medical Cannabis Regulation) plan to complete their rule-making processes by the end of 2017, and begin accepting applications for medical marijuana dispensary licenses on January 1, 2018. While the City Council does not have the ability to extend its existing moratorium on the establishment, location, or operation of medical marijuana dispensaries beyond September 8, 2017, it could adopt regulations to be effective at a later date.

C. State Law – Proposition 64

On November 8, 2016, approximately 57% of California voters voted to approve Proposition 64 (Control, Regulation, and Tax Adult Use of Marijuana Act) which, among other things, decriminalized certain forms of non-medical marijuana-related activities under state law. Those same activities remain illegal under federal law. In Laguna Woods, Proposition 64 failed with approximately 51% of voters opposed.

Table 1: Proposition 64 Election Results – Laguna Woods

Registration	Ballots Cast	Turnout	Yes	No
13,912	12,235	87.9%	5,516 (≈49%)	5,826 (≈51%)

Laguna Woods turnout for the Proposition 64 election was high at nearly 88% of registered voters. The fairly evenly divided results on whether to legalize the use of

the House and Senate, regardless of party affiliation. As a legislative branch agency within the Library of Congress, CRS has been a valued and respected resource on Capitol Hill for more than a century." (https://www.loc.gov/crsinfo/)

marijuana by adults for non-medical purposes suggests to staff that Laguna Woods is not the appropriate location for an early foray into the newly approved and soon-to-be regulated non-medical marijuana industry.

With respect to non-medical marijuana dispensaries, Proposition 64 neither currently allows their establishment, nor requires cities to permit their future establishment. Non-medical marijuana dispensaries will continue to be illegal under state law, until the State implements the licensing program envisioned by Proposition 64. At that time, which is expected to be January 1, 2018, non-medical marijuana dispensaries will be required to obtain a license from the State. If a city elects to prohibit non-medical marijuana dispensaries, the State will not issue licenses. Any operation of non-medical marijuana dispensaries without a State license would be illegal.

While the approval of Proposition 64 primarily affects the use of marijuana by adults for non-medical purposes, it also exempts medical marijuana from sales and use tax unless the qualified patient or primary caregiver fails to present both a valid Medical Marijuana Identification Card issued by the Department of Public Health and a valid government-issued identification card at the time of purchase. As a result, the City's only new, business-generated sources of revenue to offset new costs associated with providing law enforcement and other City services for, or as a result of, prospective medical marijuana dispensaries, would be: 1) sales and use tax from purchases where insufficient identification is presented to qualify for exemption, 2) a nominal amount of property tax, 3) regulatory fees to recover reasonably quantifiable costs, 4) a voter-approved business license tax, and/or 5) individual development agreements with applicants. The latter would be voluntary and is not something that the City could require of applicants in the normal course of processing development applications.

Staff does not believe that the City has adequate financial means to provide any level of reasonable assurance that enforcement costs associated with medical or non-medical marijuana dispensaries could be accommodated within the City's budget, absent some additional level of taxation or other financial arrangement. The Orange County Registrar of Voters estimates the cost of a holding a special election to seek voter-approval of such a tax at $85,832 to $93,507. The City would also incur other costs related to preparing and filing a ballot measure with no certainty of outcome. As an alternative, the City could wait to consolidate a ballot measure with the next general election in November 2018 for significant savings.

In January 2017, staff met with Orange County Sheriff Hutchens and members of her command staff to discuss the approval of Proposition 64 and the Orange County

Sheriff's Department's perspective on medical and non-medical marijuana in light of that voter-approved change in state law. Sheriff Hutchens expressed continuing concerns, which are detailed in her letter dated January 30, 2017 (Attachment G).

D. State Law – Impact on Medical Marijuana Collectives and Cooperatives

Under the Medical Marijuana Program Act, medical marijuana patients and primary caregivers were allowed to "...associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes" (Health and Safety Code Section 11362.775). The MMRSA includes a new licensing scheme for medical marijuana cultivation, manufacturing, transportation, and dispensing, but does not appear to contemplate the continuation of non-profit collectives and cooperatives, at least as they operate currently. Such collectives and cooperatives will have one year from the date that the Department of Consumer Affairs begins to issue licenses under the MMRSA to bring their operations into compliance with state law, and will have to determine what permitted segment of the medical marijuana supply chain they seek to obtain permission to conduct. They will also be required to obtain corresponding necessary permits from applicable cities, which reserve the right under state law to prohibit such activities.

Regarding medical marijuana cultivation, the City presently allows qualified patients and primary caregivers to cultivate medical marijuana for non-commercial purposes, in accordance with applicable provisions of the MMRSA[5]. Those allowances will not be affected by the State-mandated changes to collectives and cooperatives.

E. Law Enforcement Deployment Study

One of the studies requested by the City Council at the meeting on October 13, 2015, was a "deployment study to assess the availability of existing local law enforcement resources to respond to potential adverse secondary effects generated by medical marijuana dispensaries, as well as to assess the potential to align permitted hours of operation accordingly." In light of the recent, significant increases in the City's law enforcement costs, which have been driven, in large part, by an overextension of

[5] For qualified patients, this generally includes a limit of 100 square feet of cultivated area. For primary caregivers, this generally includes a limit of 500 square feet of cultivated area and a limit of five specified qualified patients for whom he or she is the primary caregiver. For additional information, see Section 13.26.026 of the Laguna Woods Municipal Code. Separately, Proposition 64 allows individuals to grow up to six marijuana plants at their home for personal use, regardless of whether the use is medical or non-medical.

locally assigned law enforcement personnel, staff continues to believe that it is imperative to consider carefully the availability of deputies to handle a potentially increased call volume, as well as the fiscal ramifications thereof. A reemergence of equity concerns on the part of surrounding cities that would be required to provide law enforcement personnel to augment the City's assigned personnel, if unavailable or insufficient, could have dramatic and deeply impactful fiscal consequences.

The City contracted with the Center for Public Safety Management (CPSM) to complete the deployment study. CPSM is the exclusive provider of public safety technical assistance for the International City/County Management Association (ICMA) and has conducted more than 240 law enforcement studies for jurisdictions throughout the country, ranging in size from much smaller than Laguna Woods to as large as Indianapolis, Indiana. Other California clients have included the cities of Alameda, Carlsbad, El Centro, Hermosa Beach, Santa Ana, and Santa Clara.

CPSM analyzed calls for service and the activities of deputies assigned to the City for a 10 month period from September 1, 2015 through June 30, 2016. During that time, there were 4,330 calls for service which, when combined with non-call activity (e.g., report writing, briefings, equipment check-in/out, meal breaks, and commute time between Laguna Woods and the Aliso Viejo substation) resulted in findings of the hourly deployment workloads shown in Table 2.

Table 2: Hourly Deployment Workloads – September 2015 through June 2016

Shift	Weekday Workload	Weekend Workload
Day	59%	53%
Night	51%	52%
Swing	61%	58%
Average (All Shifts)	57%	54%

While there is no single standard for optimal law enforcement workload, the City and the Orange County Sheriff's Department agree that 60% is an optimal level of reactive versus proactive time (meaning that a workload of up to 60% allows for an adequate amount of time to be spent providing crime prevention services).

Staff has reached the following conclusions:

1. Current deployment has resulted in an optimal workload that allows for timely responses to calls for service, as well as availability to work proactively. That workload would be imperiled by any significant increase in call volume. Staff

cannot say with certainty that call volume would or would not increase as a result of medical or non-medical marijuana dispensaries, but in light of the significant financial challenges posed by existing law enforcement costs, staff recommends an extremely conservative view of that particular possibility.

2. Current deployment has resulted in approximate equity with cities that have previously raised concerns regarding its adequacy. Equity concerns could be exacerbated by any significant increase in call volume, particularly due to 1) the City's regular deployment of no more than two deputies at a given time, and 2) the Sheriff's Department's policy of responding to calls for service at marijuana dispensaries with a minimum of two deputies. In almost every foreseeable instance, the unknown, but potentially increased, call volume that medical or non-medical marijuana dispensaries may generate would require supplemental coverage from deputies assigned to cities other than Laguna Woods, either to respond to those calls directly or to handle unrelated calls that occur when Laguna Woods deputies are responding to dispensary calls. Staff is unable to quantify the impact that would have on equity or budgets.

F. Recommended Action

As staff advised on September 10, 2015, October 13, 2015, August 17, 2016, and April 19, 2017, the City's legally safest course, and the one followed by most Orange County cities, would be to prohibit medical and non-medical marijuana dispensaries. An ordinance to that effect is included as Attachment H. Such bans have been authorized by the California Supreme Court in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729. They are also specifically authorized under both the MMRSA and Proposition 64.

Prohibiting dispensaries would place the City on well-defined legal ground, help insulate against the adverse secondary effects that the City is advised such uses may generate, and allow the City to monitor the development of state law, and developing federal enforcement policies, with a minimum of legal risk. It is the only option that staff can confirm, with any degree of certainty, that the City has sufficient resources to implement.

Presently, the City's regulations do not address medical marijuana deliveries. Staff is advised that medical marijuana delivery services, acting colorably in compliance with existing state law, have provided medical marijuana to Laguna Woods residents for some time, without any known incidence of crime. In deference to concerns that

qualified patients and primary caregivers have access to well-regulated medical marijuana products, staff's recommendation includes specific language that would allow medical marijuana dispensaries operating in compliance with state law at locations outside of Laguna Woods to make deliveries to addresses in Laguna Woods. Beginning in 2018, medical marijuana products that are sold in dispensaries or provided for delivery will be subject to the same stringent, statewide testing, manufacturing, and packaging/labeling standards mandated by the MMRSA. Many, if not most, medical marijuana dispensaries that offer delivery services also offer telephone consultations to aid in product selection for individuals who are unable to travel to the dispensary. Under staff's recommendation, therefore, licensed dispensaries in other cities would be able to deliver medical marijuana to qualified patients and primary caregivers in Laguna Woods, but the dispensaries themselves could not be located here. That approach would differentiate Laguna Woods from surrounding cities such as Aliso Viejo, Irvine, Laguna Beach, Laguna Hills, and Lake Forest that have prohibited medical marijuana deliveries.

As of January 1, 2018, non-medical marijuana cultivation, dispensary, and transport activities are also scheduled to come under state regulation. This raises the prospect of state-qualified, non-medical marijuana dispensaries offering delivery services. Staff has considered recommending that the local allowance of marijuana deliveries be limited to medical users only, but is concerned with the likely difficulties involved in enforcement given the lack of any bright line distinction between the two types as relates to delivery to end users. Staff believes that making such a distinction would likely generate more enforcement challenges, and costs, than simply relying on the state scheme to determine what deliveries would be permitted, whether they consist of medical or non-medical marijuana. As such, the proposed ordinance does not draw a distinction between delivery to medical or non-medical marijuana users, and instead merely requires that any delivery service that purports to deliver to locations in Laguna Woods must do so in a manner consistent with state law.

Staff has also been asked about potential preferences in regulations that would allow existing Laguna Woods-based medical marijuana collectives and cooperatives to continue to operate. Unfortunately, the State Legislature, through its enactment of the MMRSA, has mandated that those entities modify their operations in the coming years, to conform to the new state licensing scheme. As staff understands it, those pending state regulations will put collectives and cooperatives on an even regulatory footing with, and in competition with, all other marijuana retailers. The City is unable to adopt land use regulations that seek to protect the interests of certain medical marijuana dispensaries to the detriment or exclusion of others. Permitting

dispensaries under current state laws would necessarily permit all retailers to open businesses in Laguna Woods, consistent with applicable regulations. It would also not guarantee that any particular dispensary is able to secure real property to operate in Laguna Woods, as those decisions would be made by private property owners and be market-driven. Staff's recommendation does nothing to prevent collectives and cooperatives without dispensary presences to continue to operate in Laguna Woods, provided that they can do so in a manner consistent with state law, until such time as the new state licensing scheme may compel changes to their manner of operation.

In summary, staff's recommendation WOULD:

1. Prohibit the establishment, location, or operation of medical and non-medical marijuana dispensaries – none of which currently exist in Laguna Woods

2. Allow the delivery of medical or non-medical marijuana to qualified patients, primary caregivers, or customers by medical or non-medical marijuana dispensaries operating in compliance with state law at locations outside of Laguna Woods, including those located in Santa Ana and San Diego

3. Allow medical marijuana collectives and cooperatives without dispensary presences to continue to operate in Laguna Woods, in a manner consistent with state law, until such time as state law prohibits their doing so

    - At the point at which medical marijuana collectives and cooperatives can no longer operate, medical marijuana dispensaries and delivery services will be subject to the same stringent, statewide testing, manufacturing, and packaging/labeling standards mandated by the MMRSA.

4. Direct staff to re-agendize a City Council discussion of potential regulations permitting the establishment, location, and operation of medical and/or non-medical marijuana dispensaries should marijuana be moved off of the Controlled Substances Act's Schedule 1

Staff's recommendation WOULD NOT:

1. Change the City's existing regulations related to marijuana cultivation. The City's existing regulations 1) expressly prohibit the commercial cultivation of medical marijuana, 2) implicitly prohibit the commercial cultivation of non-medical marijuana, and 3) expressly allow the cultivation of medical

marijuana by qualified patients and primary caregivers, provided that such cultivation qualifies for the exemption set forth in subdivision (g) of Section 11362.777 of California Health and Safety Code and is otherwise conducted in accordance with State and local laws.

2. Implement any local legislative change regarding the operation of medical marijuana collectives and cooperatives without dispensary presences (but, to the extent that coming state law regulations call for such operations to become dispensaries, such dispensaries would need to be located outside of Laguna Woods; deliveries from such dispensaries to qualified patients and primary caregivers located in Laguna Woods would be permitted)

3. Prevent the City Council from reconsidering potential regulations permitting the establishment, location, and operation of medical and/or non-medical marijuana dispensaries if circumstances change in the future

If the City Council takes the recommended action at today's meeting, the proposed ordinance would become effective in 30 days. Until then, the existing moratorium would remain in effect.

G. Other Potential Action

If the City Council is interested in considering potential regulations that would permit the establishment, location, and operation of medical and/or non-medical marijuana dispensaries, such a discussion could be agendized for a future meeting.

The City Council may also request additional information from staff, direct staff to prepare alternate ordinances for future consideration, or provide other direction.

Environmental Review

Neither the adoption of the proposed ordinance, nor study and analysis relative to the moratorium, are projects under the requirements of the California Environmental Quality Act (CEQA). The adoption of this ordinance is not a project under the requirements of the California Environmental Quality Act (CEQA), pursuant to sections 15061(b)(3), 15321, and 15378 of the CEQA Guidelines. The adoption of the Zoning Code amendments present no possibility that the activity in question will pose a significant effect on the environment, since there are no commercial dispensary or cultivation facilities present within the City, and this ordinance will

continue that baseline condition; the ordinance relates to enforcement actions in connection with permits and permitted activities, and relates to general policy and procedure making of the City.

Fiscal Impact

The recommended action could be accommodated in the City's existing budget, which includes $35,090 for medical marijuana-related studies and analysis services. If the City Council chooses to continue further study and analysis, additional funds may be required. If that is the case, a resolution adopting an amended budget would be agendized for City Council consideration at a future meeting.

Attachments:
- A – Agenda Report from September 10, 2015
- B – Agenda Report from October 13, 2015
- C – Agenda Report from August 17, 2016
- D – Ordinance No. 16-02
- E – "Trump indicated where he stands on medical marijuana for the first time since he took office," Business Insider, Jeremy Berke, May 5, 2017
- F – "The Marijuana Policy Gap and the Path Forward", Congressional Research Service, March 10, 2017
- G – Letter from Orange County Sheriff (January 30, 2017)
- H – Proposed Ordinance

City of Laguna Woods
Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Christopher Macon, City Manager
David B. Cosgrove, City Attorney

FOR: September 10, 2015 Special Meeting

SUBJECT: Medical Marijuana Dispensaries Ordinance

Recommendation

1. Receive staff report.

AND

2. Open public hearing.

AND

3. Receive public testimony.

AND

4. Close public hearing.

AND

5. Adopt an ordinance – read by title with further reading waived – entitled:

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTIONS 36934, 36937, AND 65858, ADOPTING A MORATORIUM ON ESTABLISHING, LOCATING, OR OPERATING MEDICAL MARIJUANA DISPENSARIES

Previous Meeting

Background

The City presently has a regulatory ordinance permitting medical marijuana dispensaries, codified at Section 13.26.025 of the Laguna Woods Municipal Code. The ordinance was adopted in 2008 and subsequently amended in 2012.

Discussion

1. The City's Medical Marijuana Dispensary Ordinance.

The regulatory ordinance permitting medical marijuana dispensaries requires an applicant to undergo a background check from the Police Chief, and requires the Police Chief's input with respect to the acceptability of the applicant's background, suitability of the proposed location, format and location of security cameras, and other matters as may be determined appropriate by the Police Chief. The ordinance also provides that in the event that an applicant is not the legal owner of a property, an application must be accompanied by a notarized acknowledgement from the applicable property owner that a medical marijuana dispensary will be operated on the property. City staff believes that latter provision has proven to be a significant hurdle to past parties interested in locating dispensaries in Laguna Woods.

To date, the City has not received a completed application for a medical marijuana dispensary. With the medical marijuana dispensary bans that exist in almost all other Orange County cities, as well as the interest in permitted medical marijuana dispensary facilities currently experienced by the City of Santa Ana and others; recovery in the local real estate market since the regulatory ordinance was originally enacted in 2008; and, information that City staff has received that one or more properties in the City are being marketed for sale for purchase by prospective medical marijuana dispensary permit applicants, City staff believes that renewed interest in locating a medical marijuana dispensary within Laguna Woods will result in one or more applications being received soon.

2. The City's Land Use Regulatory Review Process.

The City is in the process of updating its overall land use regulatory structure. On April 16, 2014, the City Council adopted an update of the General Plan Safety Element. On December 17, 2014, the City Council adopted a Climate Adaptation Plan. On July 29, 2015, the City Council adopted an update of the General Plan Conservation Element. On May 20, 2015 the City Council adopted an update of the Building & Planning Services Fee Schedule.

Previous Meeting

The City's land use regulatory analysis is ongoing. On June 24, 2015, City Council included within its budget and work plan for Fiscal Year 2015-16, a General Plan Comprehensive Update Project and a Commercial Zoning Code Uses and Parking Standards Update Project. Staff is presently working to advance those directives.

3. Communication from the Orange County Sheriff's Department.

Realizing that local conditions pointed to the probability of a medical marijuana dispensary seeking to locate in Laguna Woods, and in analyzing how the present regulatory climate for medical marijuana dispensaries fits within a broader scheme of the City's review of land uses generally, City staff consulted with the Sheriff's Department regarding its contemplated role in the medical marijuana dispensary permitting process. That consultation resulted in a letter from the Sheriff's Department dated August 24, 2015 (Attachment A).

In the aforementioned letter, the Sheriff's Department makes clear its position that medical marijuana dispensaries are inconsistent with federal law and often operated in a manner that is inconsistent with state law. The Sheriff's Department further indicates a lack of support for any municipal code provision that would allow the establishment of medical marijuana dispensaries for reasons including described "adverse secondary effects" and conditions compromising the "health and welfare of the community and negatively [impacting] the residents' quality of life." Accordingly, the Sheriff's Department urges repeal of the City's regulatory ordinance and, likewise, recommends that the City consult with the cities of Dana Point, Laguna Hills, and Lake Forest, all of which have had prior experience with medical marijuana dispensaries and their effects.

The Sheriff's Department states that while it will conduct a LiveScan background check that it believes is consistent with its contractual obligations under the City's law enforcement services contract, it will not "review or approve any security plan of a dispensary, and will not determine the 'acceptability' of any applicant and the 'suitability' of the proposed location."

4. Federal and California Law regarding Medical Marijuana.

The adverse secondary effects alleged by the Sheriff's Department arise against a developing but still somewhat uncertain legal background regarding a city's ability to permit medical marijuana dispensaries.

Previous Meeting

The California Supreme Court in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, (2013) 56 Cal. 4th 729, noted that under the federal Controlled Substances Act, marijuana is considered as a drug, without accepted medical use and treatment, and without any medical necessity exception to prosecution and conviction under federal law. Notwithstanding, California has had medical marijuana legislation for some time. In 1996, the electorate enacted the Compassionate Use Act, Health and Safety Code Section 11362.5. That Act decriminalized possession and cultivation of marijuana for medical purposes, under specified circumstances. In 2004, the California Legislature adopted the Medical Marijuana Program, Health and Safety Code Section 11362.7, which expanded the Compassionate Use Act, provided for identification cards for qualified patients and their caregivers, and decriminalized collective cultivation and various possession, processing, transportation and distribution prohibitions.

Despite the broad legislative statements of intent in the Compassionate Use Act and Medical Marijuana Program, courts have taken a more limited view of their practical impact. The California Supreme Court has specifically denied that either ensures Californians of a right to obtain and use marijuana for medical purposes, and has upheld the authority of cities to regulate, and even ban, medical marijuana dispensaries, under their traditional local zoning power (*City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, *supra*; 56 Cal. 4th 729, 749.).

Although the law is clear that a city can ban medical marijuana dispensaries, it is significantly less clear how, and whether, a city may permit them. In the *Riverside* case, the California Supreme Court specifically declined to pass on the City of Riverside's argument that, if the Compassionate Use Act and Medical Marijuana Program were construed to require local jurisdictions to accommodate medical marijuana dispensaries, they would be pre-empted by federal law. The California Supreme Court likewise refused to consider whether Government Code Section 37100 forbids a city from adopting ordinances authorizing local land use for medical marijuana dispensaries, as being potentially in conflict with federal law.

The cities of Long Beach and Santa Ana both have enacted medical marijuana dispensary permit regulations, based on a lottery assignment of eligible locations. The Long Beach ordinance was overturned by the appellate court in *Pack v. Superior Court of Los Angeles*, (2011) 199 Cal. App. 4th 1070, indicating it was inconsistent with, and pre-empted by, Federal law (the opinion has subsequently been de-published). Santa Ana's lottery system is currently the subject of litigation, *Dillon, et al. v. City of Santa Ana*, Orange County Superior Court Case No. 30-

Previous Meetings

2015-00786940. In the *Dillon* case, a preliminary injunction was denied on June 19, 2015, which would have prevented the City from permitting medical marijuana dispensaries that won the lottery. The case is now proceeding through pleading and discovery phases and is being monitored by City staff.

5. The Potential Moratorium for Further Study of Dispensary Uses.

City staff believes that the overall situation described herein leaves the City in an uncertain and compromised position with respect to its medical marijuana dispensary permitting regulations. As a practical matter, without the cooperation of the Sheriff's Department, the City cannot fulfill the portions of its regulatory ordinance that call for participation of the Police Chief. It is uncertain the extent to which the City could privately contract with investigative or other public safety consultants for similar services, and whether the information gleaned from such private consultants would yield the same level of efficacy and safety in terms of reviews that might otherwise be conducted by the Sheriff's Department. The result raises the prospect of incomplete reviews of medical marijuana dispensaries, which is particularly troubling given the roster of adverse secondary effects that the Sheriff's Department alleges such medical marijuana dispensaries pose.

There are a number of other practical land use questions that also arise regarding the establishment, location, and operation of medical marijuana dispensaries in Laguna Woods. It is City staff's understanding that medical marijuana dispensaries that formerly operated in other South Orange County cities received significant amounts of traffic, which could reasonably be expected to be compounded if a lone South Orange County permitted medical marijuana dispensary were to arise within Laguna Woods. As such, City staff believes that it needs to undertake analysis of parking and traffic demands from those types of operations, to avoid unsafe traffic turning movements, parking or stopping, and to assure that adequate parking and access to such facilities is required, to avoid negative effects on surrounding uses.

City staff would also like to pursue the Sheriff's Department's recommendation of discussion with neighboring cities regarding their experiences with the municipal service and public safety demands attendant to medical marijuana dispensaries. Issues such as appropriate lighting; hours of operation; distance from potentially sensitive surrounding uses; the nature, format, and availability of security camera monitoring; and, the balance between patient privacy and the safety of medical marijuana dispensary patrons and surrounding uses, all require further study.

Previous Meeting

At today's meeting, City staff is recommending adoption of an urgency ordinance adopting a moratorium on the establishment, location, or operation of medical marijuana dispensaries (Attachment B). Such moratoria are authorized under Government Code Section 65858, which requires a finding that there is a current and immediate threat to public health, safety, or welfare, and that the approval of use permits or entitlements for use otherwise required in order to comply with the ordinance would result in that threat to public health, safety, or welfare.

Here, City staff believes that the required findings are met for the reasons stated in this agenda report, and as further elaborated on in the proposed urgency ordinance. Under present statements from the Sheriff's Department regarding its level of participation with respect to the City's regulatory ordinance, the City would have to apply either a truncated or amended permit application review process that would likely result in a review less thorough than that originally contemplated as required under the regulatory ordinance. The adverse secondary effects alleged by the Sheriff's Department certainly pose the types of threat to public health, safety, or welfare contemplated under the urgency ordinance, and City staff requires time to investigate the background information upon which the Sheriff's Department's letter has been issued, as well as to investigate the experience of other cities.

If the City Council chooses to adopt the urgency ordinance, the moratorium would be in effect for a period of 45 days. City staff would be required to provide a report to the City Council on measures taken to alleviate the conditions leading to the urgency ordinance 10 days before it expires. If conditions warrant, the moratorium could be extended for up to 10 months and 15 days, upon a regular noticed public hearing otherwise consistent with standard zoning measure requirements. Should the conditions that led to the initial enactment of the urgency ordinance persist, the moratorium could be extended for up to another year beyond that.

City staff is aware that there are strong and deeply-held opinions on all sides of the medical marijuana dispensaries issue; however, the City's land use policies must deal with the legal uncertainty on the subject, the uncertainty with respect to the City's regulatory ordinance and the role of its Police Chief, and the prospect of adverse secondary effects that have been raised by the City's law enforcement services provider. City staff believe that a moratorium would allow further study, discussion with other cities that have experience with medical marijuana dispensaries, and further development of the City's updated land use regulatory structure, in order to determine whether or how medical marijuana dispensaries might compatibly be integrated into the City's land use.

Previous Meeting

Environmental Review

The adoption of the proposed urgency ordinance and moratorium is not a project under the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15601(b)(3) of the CEQA Guidelines.

Fiscal Impact

Fiscal impacts associated with the proposed urgency ordinance and moratorium are uncertain at this time. For City staff to take measures to alleviate the conditions leading to the urgency ordinance, and provide associated reporting, it is anticipated that costs would be incurred for services including legal, planning, and traffic engineering, as well as potential public safety services and public noticing. City staff would seek to accommodate such costs in the City's budget.

Attachments: A – Orange County Sheriff's Department Letter
B – Proposed Ordinance

Previous Meeting

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City of Laguna Woods
Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Christopher Macon, City Manager
David B. Cosgrove, City Attorney

FOR: October 13, 2015 Special Meeting

SUBJECT: Medical Marijuana Dispensaries Ordinance

Previous Meeting

Recommendation

1. Receive staff report.

AND

2. Open public hearing.

AND

3. Receive public testimony.

AND

4. Close public hearing.

AND

5. Take one of the following actions:

   A. Adopt an ordinance – read by title with further reading waived – entitled:

   AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA PURSUANT TO CALIFORNIA

GOVERNMENT CODE SECTIONS 36934, 36937, AND 65858, EXTENDING A MORATORIUM ON ESTABLISHING, LOCATING, OR OPERATING MEDICAL MARIJUANA DISPENSARIES FOR THE PURPOSE OF PURSUING PROHIBITION THEREOF

OR

B. Adopt an ordinance – read by title with further reading waived – entitled:

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTIONS 36934, 36937, AND 65858, EXTENDING A MORATORIUM ON ESTABLISHING, LOCATING, OR OPERATING MEDICAL MARIJUANA DISPENSARIES FOR THE PURPOSE OF FURTHER STUDY AND ANALYSIS

Background

The City presently has a regulatory ordinance permitting medical marijuana dispensaries, codified at Section 13.26.025 of the Laguna Woods Municipal Code. The ordinance was adopted in 2008 and subsequently amended in 2012.

At a special meeting on September 10, 2015, the City Council adopted an urgency ordinance that imposed a moratorium on the establishment, location, or operation of medical marijuana dispensaries for a 45-day period (September 10, 2015 through October 24, 2015). During the moratorium, all operation of Section 13.26.025 of the Laguna Woods Municipal Code is suspended and the City may not issue regulatory permits in furtherance of the establishment, location, or operation of a medical marijuana dispensary within the City. The agenda report from the meeting on September 10, 2015, a letter from the Orange County Sheriff that was attached thereto, and the urgency ordinance are included as attachments A, B, and C.

For reasons, and in light of findings, set forth in the ordinance, and in accordance with applicable sections of State law, the moratorium was deemed necessary for the immediate preservation of the public health, safety, and welfare, to prohibit any uses that may be in conflict with a contemplated zoning proposal that the City is considering or intends to study within a reasonable time.

As described in the ordinance, the moratorium was intended to provide the City time to study the effect of medical marijuana dispensaries on the community, and to

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assess its ability to draft and adopt regulations consistent with its inherent police power to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within its jurisdiction.

Discussion

Since September 10, 2015, staff has undertaken a number of investigations related to medical marijuana dispensaries, including reviewing federal law and enforcement policies, examining California's proposed Medical Marijuana Regulation and Safety Act (which, at the time of this writing, is currently on the Governor's desk for signature or veto), discussing medical marijuana dispensary experiences and policies with a number of other cities, meeting with the Orange County Sheriff's Department, meeting with a representative of Law Enforcement Against Prohibition (a non-profit organization that advocates for the regulation and control of marijuana and other drugs), and conducting preliminary research on the availability and types of testing of marijuana products for potential use in medicinal contexts. The results of staff's investigations are organized under the subheadings below.

A. Federal Law

Without question, marijuana is, and remains, illegal under federal law. It remains classified as a Schedule 1 controlled substance under the Controlled Substances Act (21 USC §§ 801 *et seq*). As indicated in the agenda report dated September 10, 2015, the California Supreme Court has held that bans on medical marijuana dispensaries are permissible under a city's inherent zoning power, but it has, thus far, declined to reach the issue whether permitting such dispensaries would violate the Controlled Substances Act or California Government Code Section 37100[1].

Notwithstanding federal illegality, some 20 states and the District of Columbia have legalized or decriminalized certain marijuana-related activity. Such action has been a contributing factor in the promulgation of revised federal enforcement policies.

Specifically, on August 29, 2013, Deputy Attorney General James J. Cole issued a directive to all United States Attorneys entitled *Guidance Regarding Marijuana Enforcement*, which is included as Attachment D. The Cole Memorandum reaffirms the federal illegality of marijuana, but also indicates that the Department of Justice

[1] California Government Code Section 37100, which relates broadly to cities' legislative powers, provides: "The legislative body may pass ordinances not in conflict with the Constitution and laws of the State or the United States." The City Council may, therefore, not pass an ordinance directly in conflict with either federal or State law.

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is committed to using its limited investigative and prosecutorial resources to address what it has determined to be "priority threats," including:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or illegal activity;
- Preventing violence and use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public land; and
- Preventing marijuana possession or use on federal property.

The aforementioned priorities were further referenced in a memorandum from the Department of Treasury, Financial Crimes Enforcement Network, dated February 14, 2014, which is included as Attachment E. The Treasury Memorandum provides guidance to various financial institutions that might deal with medical marijuana dispensaries operating under state law and requires different forms of "suspicious activity reports" depending upon individual facts and circumstances relating to the individual dispensary customers of financial institutions.

From those memoranda, one might infer that the current risk of federal enforcement against both medical marijuana dispensaries operating consistent with state law, and cities that adopt enabling regulations, is diminished, particularly if local regulatory efforts are directed at avoiding the priority federal threats identified above. It should be noted, however, that the aforementioned limitations on federal enforcement do not change congressional legislative policy under the Controlled Substances Act, nor do they confer immunity on any party from any federal criminal prosecution or forfeiture action. Further, federal enforcement policies may change at any time, potentially with the impending shift in presidential administrations.

The formal and public definition of enforcement priorities for marijuana-related activities undertaken pursuant to state law signals at least a present federal intention

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to eschew strict enforcement, perhaps to see how state law and experiences with medical marijuana dispensing and usage develop.

Staff contacted the local Unites States Attorney's Office to inquire whether the Cole Memorandum was still in effect, and to solicit any guidance federal enforcement authorities had with respect to medical marijuana dispensaries. The United States Attorney's Office confirmed that the Cole Memorandum is still applicable, but (not surprisingly) declined to provide further guidance.

B. California Medical Marijuana Law

Staff's agenda report dated September 10, 2015 provided background regarding the California Compassionate Use Act (Health and Safety Code Section 11362.5) and the Medical Marijuana Program (Health and Safety Code Section 11362.7). A major reworking of those statutes appears to be in the making with the potential enactment of the Medical Marijuana Regulation and Safety Act ("MMRSA").

The MMRSA actually consists of three different pieces of legislation, Assembly Bill 243 (Wood), Assembly Bill 266 (Bonta), and Senate Bill 643 (McGuire). Each of the bills has passed the California Legislature and, as of the time of this writing, are on the Governor's desk for signature or veto. The bills are joined, meaning that all must be signed or all will fail. City staff understands that the Governor is expected to sign each of the bills, which is the action endorsed by the League of California Cities, California Police Chiefs Association, and Cannabis Industry Association. The California State Sheriffs' Association has taken a neutral position.

If signed into law, the MMRSA would provide for comprehensive state licensing and regulation of medical marijuana cultivation, transportation, and distribution. It would place the Department of Food and Agriculture in charge of licensing indoor and outdoor cultivation sites, mandate the Department of Pesticide Regulation to develop pesticide standards for cultivation, and require the Department of Public Health to develop standards for the production and labeling of edible products.

The MMRSA would also create a Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs. It contemplates a dual licensing system, with the State issuing licenses and local governments issuing permits for medical marijuana dispensaries, beginning in 2018. It would require the Department of Consumer Affairs to license dispensaries, distributors, and transport entities dealing with medical marijuana, and provide restrictions on holding more than one such license in the medical marijuana cultivation and distribution chain. It would also

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enact medical marijuana testing standards and tie the validity of state licenses to local permits (i.e., a state license becomes invalid if a local permit is denied or revoked). Under the MMRSA, local governments would retain the right to choose whether to permit or prohibit medical marijuana dispensaries.

The MMRSA looks to be a bit of game-changer for California law. It would provide a comprehensive state licensing and oversight authority for medical marijuana, from grower to patient. Regulations would include uniform requirements related to security, health, and safety, as well as quality assurance and testing protocols. It would also specifically authorize local governments to regulate medical marijuana dispensaries, including the ability to charge taxes and fees.

In many respects, for local governments favoring allowance of medical marijuana dispensaries, the systems contemplated under the MMRSA would take much of the guesswork out of how to tailor local regulations to comply with State law. Those systems would offer a defined regulatory framework within which local regulations and revenue measures are specifically contemplated and authorized. With current federal enforcement policies drawing heavily on whether local medical marijuana activities comply with state law, those systems would also afford some additional predictability on exposure under federal law.

C. Communications with Other Jurisdictions

Staff has spent a substantial amount of time since September 10, 2015 interviewing and communicating with other cities having experience in medical marijuana issues. Staff reached out to both cities that permit medical marijuana dispensaries (Santa Ana, San Diego) and those that do not (Dana Point, Lake Forest). In addition, staff met with Orange County Sheriff Sandra Hutchens.

A number of common themes emerged from the communications conducted. Taken together, this information indicates to staff that if the City Council is interested in maintaining a regulatory approach to medical marijuana dispensaries, significant additional study would be required to develop regulations to protect the public health, safety, and welfare of residents, patients, and other affected parties, alike. It is staff's opinion that the City's existing regulatory ordinance is not only at an impasse due to the Orange County Sheriff's Department's unwillingness to be fully involved, but also inadequate, having not benefitted from the significant body of knowledge and practical experience garnered by other jurisdictions since its initial adoption in 2008, as medical marijuana dispensaries have become increasingly common.

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The following are some of the recurring themes of the comments that staff received:

1. Dispensaries Are Highly-Funded, Cash-Based Businesses

It is clear to staff that while the particulars may vary amongst individual medical marijuana dispensaries, medical marijuana is a highly funded and growing industry. The demand for medical marijuana, coupled with restrictions on federally-chartered banking and credit card companies, results in large numbers of transactions of a primarily cash basis. That means that dispensaries frequently have large amounts of cash on-site, and patients travelling to dispensaries can be expected to do so with cash in-hand. Reports were that some dispensaries handled upwards of $100,000 each week, with cash stored both on-site and at associated off-site locations.

The prevalence and influx of cash presents a number of security challenges, which are further evidenced by the reportedly frequent presence of armed guards and weapons at medical marijuana dispensaries. While armed guards and weapons can be lawfully present, the practice nevertheless speaks to a potential recognition of, and perceived susceptibility to, robbery and other crime. As a result, staff believes that if the City Council is interested in maintaining a regulatory approach, limitations should be placed on the amount of cash permitted to be on-site at any given time, and the proximity of dispensaries to banks and automatic teller machines where patients may obtain cash, thus creating potential secondary targets for robbery.

2. Unpermitted Dispensaries Tend to Congregate, which May Be Indicative of Tendencies that would Also Attend Permitted Dispensaries

Multiple jurisdictions advised that once a single, unpermitted medical marijuana dispensary opened in a specific neighborhood or location, other nearby dispensaries soon followed. One city indicated that it had as many as seven dispensaries operating on a single commercial property at one point. Whether related to convenience for patients, or a perception that a particular jurisdiction was "friendly" to dispensaries, the presence of a single dispensary tended to be a catalyst for others. This appeared to be more common in jurisdictions without permitting ordinances, which indicates that factors such as patient convenience, location, and market may drive dispensary siting decisions more than considerations of permissible zoning or permitting.

If the City Council is interested in maintaining a regulatory approach, staff believes that consideration should be given to limiting the maximum number of dispensaries and evaluating the compatibility of dispensaries relative to zoning districts, in order to promote land use balance in the city.

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3. Dispensaries Are Reported to Generate Substantial Adverse Secondary Effects, though Empirical Support for this Perception is Thin

Medical marijuana dispensaries are widely regarded amongst government agencies as having the potential to generate adverse secondary effects. While it should be noted that no jurisdiction with whom staff spoke had specific statistical support for an increase in crime directly attributable to dispensaries, the anecdotal and personal experiences of the professionals with whom staff spoke were unequivocal. There is a lack of significant history with jurisdictions *explicitly* permitting dispensaries in Orange County and, as a result, most of the anecdotal and personal experiences shared related to unpermitted dispensaries. Still, all parties that staff interviewed, including Law Enforcement Against Prohibition, acknowledged that if unregulated, dispensaries raised the prospect of generating adverse secondary effects

In addition to robberies, which are believed to be underreported, a common adverse secondary effect cited was illegal transactions involving eligible medical marijuana patients transferring product to others, frequently in a dispensary's parking lot. On-site use of medical marijuana products was reportedly prevalent and some incidents of drugged-driving were reported in the immediate vicinity of dispensaries.

Staff concurs with the notion that some level of adverse secondary effects are likely to occur in Laguna Woods, from even lawfully operating medical marijuana dispensaries. Those effects may occur for reasons sometimes beyond the control of dispensary operators, including the actions of patients once medical marijuana has been purchased. Staff also believes that significant traffic could be expected at any Laguna Woods dispensary, because surrounding jurisdictions have enacted bans, and in some cases, have a demonstrated history of strict enforcement against any such uses. This higher level of expected traffic could correlate to higher levels of monitoring and enforcement efforts for the City[2].

What remains unresolved is the City's ability to mitigate potential adverse secondary effects through some application of State law and local regulation. If the City Council is interested in maintaining a regulatory approach, staff would anticipate an intensive effort to draft regulations that would include additional outreach to public and private parties regarding best practices. It would also be informative to monitor experiences with permitted dispensaries in Santa Ana (first permitted dispensary

[2] Even lawfully operating dispensaries would involve periodic monitoring, to assure compliance with conditions of approval and operations that maintain compliance with State law.

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opened in August 2015) and San Diego (first permitted dispensary opened in March 2015), as well as other cities with more mature permit processes (e.g., Berkeley, Oakland, Richmond, West Hollywood).

While the Orange County Sheriff's Department has indicated that the need for law enforcement services will not automatically increase as a result of the permitting of one or more medical marijuana dispensaries, the potential for adverse secondary effects raises the distinct potential for a future escalation in staffing levels that could strain or exceed the City's financial resources absent a commensurate reduction in service levels elsewhere in the organization. Depending on the nature of the effects generated, a strain could also be placed on Orange County Sheriff's Department deputies assigned to the cities of Aliso Viejo, Laguna Hills, and other nearby cities, if the City's regular staffing proves insufficient to respond.

If the City Council is interested in maintaining a regulatory approach, the unknown extent to which potential adverse secondary effects may occur and the associated financial challenges that could be posed by increased enforcement activity, lead staff to recommend that the City Council consider pursing a ballot measure to impose a supplemental tax on dispensaries (Santa Ana's Measure BB allows for an up to 10% business license tax on gross receipts, which is currently being collected at 5%), as well as a deployment study to most effectively align permitted hours of operations for dispensaries with available law enforcement resources.

4. Traffic and Parking Require Additional Study

The observable demand for medical marijuana dispensaries, coupled with feedback from other jurisdictions regarding local traffic and parking impacts and the lack of permitted dispensaries in South Orange County, leads to a staff concern about the adequacy of the limited traffic and parking standards contained in the City's existing regulatory ordinance. If the City Council is interested in maintaining a regulatory approach, staff recommends that a traffic and parking demand analysis be undertaken, including on-site traffic and parking counts at permitted dispensaries, in order to establish standards to mitigate potential adverse secondary effects.

5. Product Accessibility to Minors Is a Particular Concern

Regardless of individual opinions on the worth of marijuana for medicinal purposes, demand for its recreational use is undeniable. Jurisdictions frequently cited concerns with the perceived ease with which medical marijuana patient identification cards can be obtained (a factor beyond the control of medical marijuana dispensaries) and

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the transfer of products from eligible medical marijuana patients to others, including minors. Those concerns exacerbated with dispensaries located near high schools (Laguna Hills High School is located just south of Laguna Woods). One jurisdiction's local school district reported a dramatic drop in drug-related school expulsions and suspensions following the closure of unpermitted dispensaries.

While the regulations adopted by the City Council in 2008 sought to limit the sale of medical marijuana to Laguna Woods residents, that provision was subsequently removed from the regulatory ordinance in the interest of constitutionality. The City Attorney advises that it remains unadvisable to consider such a territorial limit.

D. Testing Availability and Protocols

At the meeting on September 10, 2015, a concern was raised about the dispensing of medical marijuana products whose potency and purity is unknown to the patient. Staff conducted preliminary research of the types of testing commercially available, to see if it would make sense to require such testing as a part of potentially revised City regulations. It appears that such testing includes the following:

1. Potency Testing

Potency testing informs patients about the concentration of active cannabinoids. Testing for THC, as well as other chemical components, is available, which medical users claim helps direct appropriate dosage for appropriate symptoms.

2. Pesticide Testing

Pesticides are used in both indoor and outdoor growing operations. Pesticide testing permits identification of both the types and levels of pesticides, to test insecticide or fungicide constituents that may harm health.

3. Microbiological Screening

The climate conditions that foster the cultivation of cannabis can also germinate bacteria and fungi. Microbiological screening can be performed to identify yeasts, molds, coliforms, and bacteria, such as salmonella.

4. Terpene Analysis

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Different strains of cannabis have different aromatic compounds that are said to produce different physical effects. Terpene analysis allows for characterization to distinguish various strains, said to be used for treatment of various symptoms.

5. Residual Solvent Testing

Solvents are sometimes used in preparation of concentrated forms of cannabis (wax, hash or other oils, etc.), where after the concentrated product is produced, solvents (acetone, hexane, butane, propane, isopropanol, and others) are removed using heat or vacuum processes. Residual solvent testing can detect both the quality of solvents used and the effectiveness of the solvent removal efforts.

To date, staff has not generated information about the costs of those various tests, or analyzed what impact they might have on the accessibility of medical marijuana to patients. One concern staff has with potentially requiring medical marijuana product testing is that it would effectively dictate a violation of federal law (i.e., transport of medical marijuana for ultimate use). Securing the benefits of laboratory testing therefore poses legal risk[3]. That risk might be shielded, somewhat, with potential passage and implementation of the Medical Marijuana Regulation and Safety Act, which specifically requires the establishment of quality assurance testing protocols prior to transporting a product. Unless and until that State law becomes effective, however, any regulations requiring laboratory testing would entail some risk.

E. Potential Actions

As staff advised on September 10, 2015, the City's legally safest course, and the one followed by most Orange County cities, would be to prohibit medical marijuana dispensaries. In the City's case, that would take the form of a repeal of the medical marijuana dispensary regulatory ordinance. Such bans have been authorized by the California Supreme Court in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729. Repealing the regulatory ordinance would place the City on well-defined legal ground, help insulate against the adverse secondary effects that the City is advised such uses may generate, and allow the City to monitor the development of State law, and developing federal enforcement policies, with a minimum of legal risk. If this is the City Council's direction, staff requests that the existing moratorium be extended to allow for consideration and

[3] This was one of the factors that led to the prior invalidation of the Long Beach medical marijuana dispensary regulations. The court found that by mandating laboratory testing, the city effectively compelled transportation of marijuana products, in contravention of federal law.

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adoption of an appropriate ordinance (Attachment F). The operation of medical marijuana delivery services and personal cultivation for use as provided for in the Compassionate Use Act would not be affected by such a prohibition; only physical dispensaries – none of which currently exist – would be prohibited.

If it is the City Council's preference to continue to maintain a regulatory approach, staff believes that significant additional study is still required. That study would be consistent with the pursuit of regulations that seek to mitigate local concerns and potential adverse secondary effects, with an eye toward protecting public health, safety, and welfare, as well as quality of life and patient access. In this scenario, staff recommends that the existing moratorium be extended for a period of 10 months and 15 days (Attachment G). The moratorium could be shortened or lifted in advance of that date, should the additional study be completed and regulations adopted by the City Council. Such moratorium extension could be accompanied by direction to staff to undertake the following actions, all of which are recommended:

1. Review and thorough analysis of the provisions of the California Medical Marijuana Regulation and Safety Act, if enacted, including monitoring the activities of the departments of Consumer Affairs, Food and Agriculture, Pesticide Regulation, and Public Health, as they develop a more comprehensive statewide scheme for medical marijuana licensing, permitting, and control.

2. Analysis of traffic and parking for operating, permitted medical marijuana dispensaries, to help assess accessibility, parking demand, and traffic flow characteristics, to help staff determine what land use designations, zoning districts, and surrounding uses, would most compatibly allow medical marijuana dispensaries to integrate with the City's existing uses.

3. Review of the zoning designations in which existing permitting jurisdictions permit medical marijuana dispensaries, and their distance requirements from potentially sensitive uses.

4. Gathering of information on the availability and cost of laboratory services for testing the potency and purity of medical marijuana products, and the feasibility, desirability, and effectiveness of limiting permitted medical marijuana dispensaries to the sale of certified or otherwise tested products.

5. Monitoring of developments in federal enforcement practices on medical marijuana dispensaries operating under color of state law.

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6. Investigation of the operating hours of medical marijuana dispensaries in other jurisdictions, along with similar medically-related businesses (including pharmacy counters), to help strike a balance between convenient access to medical marijuana and the prevention of sales to minors or recreational users.

7. Completion of a deployment study to assess the availability of existing local law enforcement resources to respond to potential adverse secondary effects generated by medical marijuana dispensaries, as well as to assess the potential to align permitted hours of operation accordingly.

8. Negotiation of processes and standards for in-depth background checks of potential medical marijuana dispensaries with the Orange County Sheriff's Department and/or potential private investigative services.

9. Assessment and analysis of the City's ability to implement a business license tax or other charge on medical marijuana dispensaries, at least in part to help fund oversight and enforcement efforts, and the procedural requirements (including potential Proposition 218 voter approval) for same.

10. Development of regulations and fees for City Council consideration, informed by the preceding studies and investigations, and intended to adequately mitigate potential adverse secondary effects resultant of the primarily cash basis of medical marijuana dispensaries, traffic and parking demand, and other public health, safety, and welfare concerns, while preserving quality of life and patient access. (The City Council would be under no obligation to adopt permitting regulations.)

Environmental Review

The adoption of either proposed ordinance and extension of the moratorium is not a project under the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Fiscal Impact

Prohibition of medical marijuana dispensaries could be accommodated in the City's existing budget.

It is estimated that the development of regulations for City Council consideration, including all of the associated actions recommended by staff, would require one-time expenditures of $35,090 for planning, deployment, legal, and fee study-related

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services over the next 10 months and 15 days. If that is the action taken, a resolution adopting an amended budget would be brought before the City Council at a future meeting. The cost of a potential ballot measure related to taxation of dispensaries has not yet been calculated.

Attachments:
A – Agenda Report from September 10, 2015
B – Orange County Sheriff's Department Letter
C – Urgency Ordinance, Ordinance No. 15-03
D – United States Attorney's Office "Cole Memorandum"
E – Department of Treasury, Financial Crimes Enforcement Network Memorandum
F – Proposed Ordinance for Pursuit of Prohibition
G – Proposed Ordinance for Further Study and Analysis

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City of Laguna Woods
Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Christopher Macon, City Manager
David B. Cosgrove, City Attorney

FOR: August 17, 2016 Regular Meeting

SUBJECT: Medical Marijuana Dispensaries Ordinance

Recommendation

1. Receive staff report.

AND

2. Open public hearing.

AND

3. Receive public testimony.

AND

4. Close public hearing.

AND

5. Take one of the following actions:

   A. Adopt an ordinance – read by title with further reading waived – entitled:

   AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA PURSUANT TO CALIFORNIA

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GOVERNMENT CODE SECTIONS 36934, 36937, AND 65858, EXTENDING A MORATORIUM ON ESTABLISHING, LOCATING, OR OPERATING MEDICAL MARIJUANA DISPENSARIES FOR THE PURPOSE OF PURSUING PROHIBITION THEREOF

OR

B. Adopt an ordinance – read by title with further reading waived – entitled:

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For reasons, and in light of findings, set forth in the ordinances, and in accordance with applicable sections of State law, the moratorium was deemed necessary for the immediate preservation of the public health, safety, and welfare, to prohibit any uses that may be in conflict with a contemplated zoning proposal that the City is considering or intends to study within a reasonable time.

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As described in the ordinances, the moratorium is intended to provide the City time to study the effect of medical marijuana dispensaries on the community, and to assess its ability to draft and adopt regulations consistent with its inherent police power to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within its jurisdiction.

Discussion

Since September 10, 2015, staff has undertaken a number of investigations related to medical marijuana dispensaries, including reviewing federal law and enforcement policies, examining the Medical Marijuana Regulation and Safety Act, discussing medical marijuana dispensary experiences and policies with a number of other cities, meeting with the Orange County Sheriff's Department, meeting with a representative of Law Enforcement Against Prohibition (a non-profit organization that advocates for the regulation and control of marijuana and other drugs), and conducting preliminary research on the availability and types of testing of marijuana products for potential use in medicinal contexts. Earlier results of many of those investigations were reported in the October 13, 2015 agenda report.

Since October 13, 2015, staff has continued the investigations requested by the City Council with a particular focus on analyzing pending and potential changes in State law related to medical marijuana, as well as public safety and land use implications related to any prospective future establishment, location, or operation of medical marijuana dispensaries within Laguna Woods. A summary of federal law, and the results of staff's investigations follow.

A. Federal Law

Without question, marijuana is, and remains, illegal under federal law. It remains classified as a Schedule 1 controlled substance under the Controlled Substances Act (21 USC §§ 801 *et seq*). As indicated in the agenda reports dated September 10, 2015 and October 13, 2015, the California Supreme Court has held that bans on medical marijuana dispensaries are permissible under a city's inherent zoning power, but it has, thus far, declined to reach the issue whether permitting such dispensaries would violate the Controlled Substances Act or California Government Code Section 37100[1].

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Staff's agenda report dated September 10, 2015 provided background regarding the California Compassionate Use Act (Health and Safety Code Section 11362.5) and the Medical Marijuana Program (Health and Safety Code Section 11362.7). A major reworking of the regulatory scheme enacted by those statutes is underway as a result of the Medical Marijuana Regulation and Safety Act ("MMRSA").

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The MMRSA is a game-changer for California law. It provides a comprehensive state licensing and oversight authority for medical marijuana, from grower to patient. Regulations include uniform requirements related to security, health, and safety, as well as quality assurance and testing protocols. It also specifically authorizes local governments to regulate medical marijuana dispensaries, including the ability to charge taxes and fees. Taxes remain subject to voter-approval.

In many respects, for local governments favoring allowance of medical marijuana dispensaries, the systems that will be established under the MMRSA take much of the guesswork out of how to tailor local regulations to comply with State law. Those systems offer a defined regulatory framework within which local regulations and revenue measures are specifically contemplated and authorized. With current federal enforcement policies drawing heavily on whether local medical marijuana activities comply with state law, those systems also afford some additional predictability on exposure under federal law.

That being said, there is still much work to be done at the State level to implement the MMRSA. In its "Overview of the Governor's Proposals to Implement the Medical Marijuana Regulation and Safety Act" dated February 18, 2016 (Attachment D), the State Legislative Analyst's Office candidly admitted:

> "The scope and complexity of new state-level activities required by the act, however, are significant. Undertaking such activities requires considerable coordination among agencies and affects multiple areas of statewide importance—including public health, public safety, and environmental protection. Moreover, there remains uncertainty regarding the ultimate size of the regulated medical marijuana industry and other unknown factors, such as

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whether voters will opt to legalize recreational marijuana in the coming years. Given these potential challenges and uncertainties, we believe close monitoring over the status, pace, and effectiveness of MMRSA implementation will be an important task for the Legislature in the coming years."

Obviously, the "important task" the Legislative Analyst's Office identified for the Legislature is equally (or more) important for local entities such as the City, who are on the front line not only of the implementation of the State regulatory scheme, but also the land use and financial impacts of this emerging industry. The City still does not have a complete picture of how the State regulatory structure will look, or operate.

C. Proposition 64 (Control, Regulate, and Tax Adult Use of Marijuana Act)

On June 30, 2016, the Control, Regulate, and Tax Adult Use of Marijuana Act qualified as a statewide ballot measure for the November 8, 2016 General Election. It was later designated Proposition 64 and is described as follows:

"Legalizes marijuana and hemp under state law. Designates state agencies to license and regulate marijuana industry. Imposes state excise tax on retail sales of marijuana equal to 15% of sales price, and state cultivation taxes on marijuana of $9.25 per ounce of flowers and $2.75 per ounce of leaves. **Exempts medical marijuana from some taxation.** Establishes packaging, labeling, advertising, and marketing standards and restrictions for marijuana products. Allows local regulation and taxation of marijuana. Prohibits marketing and advertising marijuana to minors. Authorizes resentencing and destruction of records for prior marijuana convictions. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: Net reduced costs ranging from tens of millions of dollars to potentially exceeding $100 million annually to state and local governments related to enforcing certain marijuana-related offenses, handling the related criminal cases in the court system, and incarcerating and supervising certain marijuana offenders. Net additional state and local tax revenues potentially ranging from the high hundreds of millions of dollars to over $1 billion annually related to the production and sale of marijuana. Most of these funds would be required to be spent for specific purposes such as substance use disorder education, prevention, and treatment." (California Secretary of State)

While Proposition 64 relates primarily to the legalization of marijuana for adults for non-medicinal purposes, its passage would also newly exempt medical marijuana from sales and use tax. In that scenario, other than a nominal amount of property tax, the City's only new sources of revenue to offset new costs associated with providing law enforcement and other City services for or as a result of prospective medical marijuana dispensaries, would be: 1) regulatory fees, 2) a voter-approved tax, and/or 3) individual development agreements with applicants.

Staff does not believe that the City has adequate financial means to provide any level of reasonable assurance that the costs associated with medical marijuana dispensaries could be accommodated within the City's budget, absent some additional level of taxation or other financial arrangement. The passage of Proposition 64 would have a material impact on staff's analysis of the financial viability of potential medical marijuana dispensary regulations. It is a present unknown element that inhibits staff's ability to offer a cogent, strategic, and long-term plan for the role of medical marijuana in the City's overall land uses. Staff, therefore, recommends that the City Council refrain from committing the City to any specific affirmative action prior to the time that the outcome of the statewide vote on Proposition 64 is known.

D. Law Enforcement Deployment Study

One of the studies requested by the City Council at the meeting on October 13, 2015, was a "deployment study to assess the availability of existing local law enforcement resources to respond to potential adverse secondary effects generated by medical marijuana dispensaries, as well as to assess the potential to align permitted hours of operation accordingly." The deployment study will, in many ways, be a foundational document for the other studies requested by the City Council, as well as the potential development of medical marijuana dispensary regulations. In light of the recent, significant increases in the City's law enforcement costs, which were driven, in large part, by an overextension of locally assigned law enforcement personnel, staff believes that it is imperative to consider carefully the availability of deputies to handle a potentially increased call volume, as well as the fiscal ramifications thereof. A reemergence of equity concerns on the part of the surrounding cities that would be required to provide law enforcement personnel to augment the City's assigned personnel, if unavailable or insufficient, could have dramatic and deeply impactful fiscal consequences.

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The City's deployment of law enforcement personnel was modified effective July 1, 2015, to include an additional patrol shift and two additional full-time deputies. That deployment schedule was not fully implemented until September 2015, while the Orange County Sheriff's Department undertook a recruitment to fill the new positions. Accordingly, the City was not able to begin the deployment study until a sufficient amount of time had passed to generate data adequate to analyze under the modified deployment schedule. In July 2016, the City awarded a contract to the Center for Public Safety Management ("CPSM") to complete a deployment study using data from September 2015 through June 2016 (10 months).

CPSM is a highly qualified, independent consultant. CPSM is the exclusive provider of public safety technical assistance for the International City/County Management Association and has conducted more than 240 law enforcement studies for jurisdictions throughout the country, ranging in size from much smaller than Laguna Woods to as large as Indianapolis, Indiana. Other California clients have included the cities of Alameda, Carlsbad, Hermosa Beach, Santa Ana, and Santa Clara. The deployment study is scheduled for completion in November 2016.

E. Traffic and Parking Analysis

Another of the studies requested by the City Council at the meeting on October 13, 2015, was an "analysis of traffic and parking for operating, permitted medical marijuana dispensaries, to help assess accessibility, parking demand, and traffic flow characteristics, to help staff determine what land use designations, zoning districts, and surrounding uses, would most compatibly allow medical marijuana dispensaries to integrate with the City's existing uses." Staff has gathered a variety of information related to traffic and parking, and has also crafted a scope of work for parking surveys at Orange County-based medical marijuana dispensaries. Parking surveys are being conducted by Michael Baker International, a planning and engineering firm.

Staff anticipates that the parking surveys will be complete by the end of October 2016. This process was slowed by complications in obtaining permission to survey parking conditions at medical marijuana dispensaries operating within the City of San Diego. Staff had originally pursued surveying locations within the City of San Diego, largely because San Diego has more established, lawfully permitted medical marijuana dispensaries than currently exist in Orange County. (The first permitted medical marijuana dispensary opened in San Diego in March 2015, as opposed to August 2015 in the City of Santa Ana.) Unfortunately, the logistics of a

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shared effort with San Diego did not come to fruition, and ultimately, staff chose to conduct the parking surveys in Santa Ana, at lawfully permitted medical marijuana dispensaries that have been operational for at least 10 months.

F. Zoning and Distance Requirements

The City Council requested that staff review "zoning designations in which existing permitting jurisdictions permit medical marijuana dispensaries, and their distance requirements from potentially sensitive uses." Staff has substantially completed that review and has preliminarily determined that the Community Commercial district ("CC") would most appropriately accommodate medical marijuana dispensaries, given the nature of the operation and high level of anticipated demand for lawfully permitted medical marijuana dispensaries in South Orange County. The CC district is the largest and highest intensity non-residential district. This approach would be consistent with the approach taken in the City's existing ordinance.

The MMRSA requires that medical marijuana dispensaries be located "beyond at least a 600-foot radius from a school, as required by Section 11362.768 of the Health and Safety Code." For the purpose of that requirement, the term "school" means "any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes" (Health and Safety Code Section 11362.768(h)).

The MMRSA distance requirement is substantially less restrictive than the City's current ordinance, which prohibits medical marijuana dispensaries within 1,000 feet of another medical marijuana dispensary, any school, daycare, nursery, playground, or property zoned planned, or otherwise designated for such use, or any youth-oriented establishment. Staff has not completed its review of distance requirements from all potentially sensitive uses, but has preliminarily determined that deference to the State's standard for distance requirements from schools would be acceptable, in the absence of compelling evidence that an additional 400 feet is necessary.

G. Other Studies and Activities

The City Council has also requested that staff investigate "the operating hours of medical marijuana dispensaries in other jurisdictions, along with similar medically-

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related businesses (including pharmacy counters), to help strike a balance between convenient access to medical marijuana and the prevention of sales to minors or recreational users." Staff has surveyed medical marijuana dispensaries operating in the City of Santa Ana, as well as pharmacies in and around Laguna Woods, for their regular hours of operation, and has secured preliminary information on this topic. In isolation, however, this information is only partially helpful. The results of this survey still have to be compared and evaluated in light of the findings of the Law Enforcement Deployment Study, to place operations hours within the context of probable requests for police services.

Staff also met with a representative from HdL's Medical Marijuana Management Program to discuss revenue implications, fiscal accountability, the calculation and establishment of regulatory fees, and taxation issues related to medical marijuana dispensaries. Staff has had several similar conversations with staff from Clear Source Financial Consulting, particularly with respect to regulatory cost recovery.

H. Potential Actions

1. Potential Prohibition.

As staff advised on September 10, 2015, and again on October 13, 2015, the City's legally safest course, and the one followed by most Orange County cities, would be to prohibit medical marijuana dispensaries. In the City's case, that would take the form of a repeal of the medical marijuana dispensary regulatory ordinance. Such bans have been authorized by the California Supreme Court in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729. They are also specifically authorized under the MMRSA. Repealing the regulatory ordinance would place the City on well-defined legal ground, help insulate against the adverse secondary effects that the City is advised such uses may generate, and allow the City to monitor the development of State law, and developing federal enforcement policies, with a minimum of legal risk. If this is the City Council's direction, staff requests that the moratorium be extended to allow for consideration and adoption of an appropriate ordinance (Attachment E).

It is important to note that the operation of medical marijuana delivery services and personal cultivation for use as provided for in the Compassionate Use Act would not be affected by such a prohibition. Only physical medical marijuana dispensaries – none of which currently exist – would be prohibited.

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2. Continued Regulatory Approach.

If it is the City Council's preference to continue to maintain a regulatory approach, staff believes that additional study is still required, and that the potential development of regulations must logically follow both the evolution of the State's regulatory mechanisms under the MMRSA, and the outcome of voter action on Proposition 64. The regulatory issues, and the City's ability to respond to medical marijuana dispensing operations, will also be heavily informed by the outcome of the City's Law Enforcement Deployment Study. The additional studies are more specifically outlined in Resolution No. 15-05 and supplemented by discussion in this agenda report. Such action would be consistent with the pursuit of regulations that seek to mitigate local concerns and potential adverse secondary effects, with an eye toward protecting public health, safety, and welfare, as well as quality of life and patient access.

In this scenario, staff recommends that the existing moratorium be extended for approximately six months, through March 17, 2017 (Attachment F). While State law permits a moratorium extension of up to another year, staff believes that six months would effectively allow for a four-month period following the November 8, 2016 election for the City Council to either adopt regulations or prohibit medical marijuana dispensaries. Pursuant to State law, the moratorium could be shortened or lifted in advance of that date, but it could not be extended again. No extension of the moratorium would obligate the City Council to adopt permitting regulations.

Environmental Review

The adoption of either proposed ordinance and extension of the moratorium is not a project under the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Fiscal Impact

Prohibition of medical marijuana dispensaries could be accommodated in the City's existing budget.

On October 28, 2015, the City Council appropriated $35,090 for medical marijuana-related studies and analysis services. If the City Council chooses to extend the moratorium for further study and analysis, additional funds may be

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required. If that were the case, a resolution adopting an amended budget would be agendized for City Council consideration at a future meeting.

Attachments: A – Agenda Report from September 10, 2015
B – Agenda Report from October 13, 2015
C – Ordinance No. 15-05
D – State MMRSA Implementation Status Document
E – Proposed Ordinance for Pursuit of Prohibition
F – Proposed Ordinance for Further Study and Analysis

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ORDINANCE NO. 16-02

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTIONS 36934, 36937, AND 65858, EXTENDING A MORATORIUM ON ESTABLISHING, LOCATING, OR OPERATING MEDICAL MARIJUANA DISPENSARIES FOR THE PURPOSE OF FURTHER STUDY AND ANALYSIS

WHEREAS, in 2008, the City adopted a regulatory process for medical marijuana dispensaries, codified in Section 13.26.025 of the Laguna Woods Municipal Code, which potentially allows medical marijuana dispensaries in the City's community commercial (CC) and professional and administrative office (PA) zoning districts; and

WHEREAS, to date, the City does not have any medical marijuana dispensaries operating within its jurisdiction; and

WHEREAS, under subsections (i)(d)(1) and (j)(1) of Section 13.26.025 of the Laguna Woods Municipal Code, the City's regulatory process for issuance of a permit to operate a medical marijuana dispensary calls for the City's Police Chief (provided under contract with the Orange County Sheriff's Department) to approve components of the applicant's "security plan", make a determination as to the "acceptability" of the applicant's background, and make a determination as to the "suitability" of the proposed location of the dispensary; and

WHEREAS, in a letter dated August 24, 2015, the Orange County Sheriff's Department advised the City that it does not believe that the tasks assigned to it under the City's medical marijuana dispensary permitting ordinance are included within the City's law enforcement services contract, and except as to limited background investigations specifically called for under such contract, the Orange County Sheriff declines to perform such services, for the reasons stated in the letter; and

WHEREAS, the Orange County Sheriff Department's letter also advised that, in its experience, medical marijuana dispensaries have numerous "adverse secondary effects" on communities, many of which, should they be legitimately ascribed to the presence of medical marijuana dispensaries, would present an immediate threat to public health, safety, or welfare; and

WHEREAS, in 2013, the California Supreme Court ruled in *City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* that cities can prohibit medical marijuana dispensaries in their jurisdictions as part of their "broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders" (56 Cal.4th 729, 738); and

WHEREAS, the California Supreme Court's decision in *City of Riverside* did not address the extent to which State and Federal law "forbid[] a city to adopt ordinances authorizing the use of local land for operation of medical marijuana facilities because such ordinances would 'conflict with the ... laws of ... the United States'" (*Id.*, at 762, fn. 14); and

WHEREAS, to date, there are no published decisions that address the extent to which a city can permit medical marijuana dispensaries in its jurisdiction; and

WHEREAS, in October of 2015, the Governor of California signed three bills into law (collectively titled the "Medical Marijuana Regulation and Safety Act" or the "MMRSA") that substantially reworked existing State laws relating to medical marijuana (i.e., the Compassionate Use Act [Health and Safety Code Section 11362.5] and the Medical Marijuana Program [Health and Safety Code Section 11362.7]); and

WHEREAS, although the MMRSA took effect January 1, 2016, the State anticipates it will need until January of 2018 to set up the necessary agencies, information systems, and regulations to implement and administer many aspects of the MMRSA (such as issuing State licenses for dispensary and cultivation operations); and

WHEREAS, on June 30, 2016, the Control, Regulate, and Tax Adult Use of Marijuana Act (later designated as "Proposition 64") qualified as a statewide ballot measure for the November 8, 2016 General Statewide Election, which primarily relates to the statewide legalization of marijuana for adults for non-medicinal (*i.e.*, recreational) purposes; and

WHEREAS, if adopted by the voters, Proposition 64 will also exempt medical marijuana from sales and use tax; and

WHEREAS, the City is in the process of a broad analysis and updating of its General Plan, zoning, and land use regulations, which has included adoption of a Safety Element, a Climate Adaptation Plan, a Conservation Element, and a Building

and Planning Services Fee Schedule. In addition, City Council has included in the Fiscal Year 2015-16 Budget and Work Plan a comprehensive update of the General Plan and Commercial Zoning Code Uses and Parking Standards Update; and assessment of the compatibility of medical marijuana dispensary uses in various zoning districts of the City, or at all, is timely given the revisions and analysis the City is undertaking with respect to other land uses in its jurisdiction; and

WHEREAS, in light of the foregoing, among other issues, on September 10, 2015, the City Council adopted Ordinance No. 15-03 as an urgency ordinance imposing a 45-day moratorium to suspend the allowance of medical marijuana dispensaries, and any establishment, location, or operation of any such facility, in order to undertake further investigation and study various issues relating to the potential siting and operation of a medical marijuana dispensary within the city limits of Laguna Woods; and

WHEREAS, on October 13, 2015, the City Council adopted Ordinance No 15-05 extending the moratorium through September 8, 2016; and

WHEREAS, in Ordinances Nos. 15-03 and 15-05, the City Council found and declared there is a current and immediate threat to the public health, safety, or welfare that calls for a temporary moratorium on any allowance or permitting of medical marijuana dispensaries within the City's jurisdiction; and

WHEREAS, the moratorium established by adoption of Ordinances Nos. 15-03 and 15-05 are set to expire on their own terms on September 8, 2016; and

WHEREAS, Government Code Section 65858 authorizes the extension of an urgency ordinance by adoption, after a public hearing, of another urgency ordinance to prohibit uses of land which may conflict with a contemplated zoning proposal which the legislative body, planning commission, or planning department is considering or studying, or intends to study, within a reasonable time; and

WHEREAS, on August 17, 2016, the City Council held a duly noticed public hearing concerning an extension of the moratorium established by Ordinances Nos. 15-03 and 15-05; and

WHEREAS, on August 17, 2016, the City Council received and considered a report prepared by staff, and as required pursuant to Government Code Section 656858(d), describing the measures that have been taken and progress made to date

to alleviate the conditions which led to the imposition of the moratorium by adoption of Ordinances Nos. 15-03 and 15-05; and

WHEREAS, as set forth in the report prepared by staff, which was considered by the City Council, during the period since the adoption of Ordinances Nos. 15-03 and 15-05, City staff has undertaken a number of investigations related to medical marijuana dispensaries, including reviewing federal law and enforcement policies, examining California's "Medical Marijuana Regulation & Safety Act," examining Proposition 64, discussing medical marijuana dispensary experiences and policies with a number of other cities, meeting with the Orange County Sheriff's Department, meeting with a representative of Law Enforcement Against Prohibition (a non-profit organization that advocates for the regulation and control of marijuana and other drugs), conducting preliminary research on the availability and types of testing of marijuana products for potential use in medicinal contexts, commissioning a deployment study to assess the availability of existing local law enforcement resources to respond to potential adverse secondary effects generated by medical marijuana dispensaries, as well as to assess the potential to align permitted hours of operation accordingly (the "Law Enforcement Deployment Study"), commissioning traffic and parking analysis, and others; and

WHEREAS, staff needs additional time to complete the Law Enforcement Deployment Study and investigate many other issues relating to the potential establishment, location, or operation of medical marijuana dispensaries within the city limits of Laguna Woods including, but not limited to, the compatibility of dispensaries relative to zoning districts, financial challenges that could be posed by increased enforcement activity, and traffic and parking demand; and

WHEREAS, after consideration of all of the information, evidence, and testimony presented at the public hearing held on August 17, 2016, the City Council finds and declares that the current and immediate threat to the public health, safety, or welfare described in the findings adopted pursuant to Ordinances Nos. 15-03 and 15-05 still exist and it is therefore necessary to extend the moratorium as additional time is needed to address the current and immediate threat that prompted the moratorium adopted by Ordinances Nos. 15-03 and 15-05 and to complete the tasks set forth in the report prepared by staff; and

WHEREAS, extension of the moratorium will allow City staff to effectively study, and City staff intends to study in the near future and within a reasonable time, the issues set forth in Ordinances Nos. 15-03 and 15-05 and the report prepared by staff.

THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. In adopting this Ordinance, the City Council finds and determines that each of the recitals to this Ordinance and Ordinances Nos. 15-03 and 15-05 are true and correct, are adopted herein as findings, and that the adoption of this Ordinance is necessary to protect the public safety, health and welfare, as those terms are defined in Government Code Sections 36937(b) and 65858(a) in at least the following respects:

A. In 1996, California voters approved Proposition 215 (Health and Safety Code section 11362.5, et. seq.), entitled "The Compassionate Use Act of 1996" ("Act"), to enable persons who are in need of marijuana for specified medical purposes to obtain and use marijuana under limited, specified circumstances.

B. In 2003, the State legislature enacted Senate Bill 420 to clarify the provisions of the Act and empower local governments to adopt and enforce regulations consistent with Senate Bill 420 in this field.

C. In 2008, the City adopted a permitting process for medical marijuana dispensaries, codified in Section 13.26.025 of the Laguna Woods Municipal Code, which allows medical marijuana dispensaries in the City's community commercial (CC) and professional and administrative office (PA) zoning districts, subject to the issuance of a regulatory permit.

D. Under subsections (i)(d)(1) and (j)(1) of Section 13.26.025 of the Laguna Woods Municipal Code, the City cannot issue a permit to operate a medical marijuana dispensary unless the Orange County Sheriff's Department, acting as the City's Police Chief, has approved components of the applicant's "security plan", made a determination as to the "acceptability" of the applicant's background, and made a determination as to the "suitability" of the proposed location of the dispensary. In a letter dated August 24, 2015, the Orange County Sheriff's Department advised the City that it "will not review or approve any security plan of a dispensary, and will not determine the 'acceptability' of any applicant and the 'suitability' of the proposed location."

E. The Orange County Sheriff Department's letter also indicated that, in its experience, medical marijuana dispensaries have numerous "adverse secondary effects" on communities.

F. While the City has made a conscientious effort to plan for specific uses within all zone districts and to anticipate conflicts between competing land uses in order to protect the public's health, safety and welfare, the City Council is concerned that the City's current permitting process for medical marijuana dispensaries may not be effective without the contemplated participation of the Orange County Sheriff's Department, and may not provide sufficient development regulations for the establishment, location, or operation of medical marijuana dispensaries.

G. In 2013, the California Supreme Court ruled that cities and counties can ***prohibit*** medical marijuana dispensaries in their jurisdictions as part of their "broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders." (*City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* (2013) 56 Cal.4th 729, 738.)

H. The California Supreme Court did not address the extent to which State and Federal law may "*forbid*[] a city to adopt ordinances authorizing the use of local land for operation of medical marijuana facilities because such ordinances would 'conflict with the ... laws of ... the United States.'" (*City of Riverside*, *supra*, at 762, fn. 14.)

I. To date, there are no published decisions that address the extent to which a city can permit medical marijuana dispensaries in their jurisdiction.

J. Effective January 1, 2016, the Medical Marijuana Regulation and Safety Act substantially reworks existing State laws relating to medical marijuana (i.e., the Compassionate Use Act [Health and Safety Code Section 11362.5] and the Medical Marijuana Program [Health and Safety Code Section 11362.7]).

K. The State anticipates it will need until January of 2018 to set up the necessary agencies, information systems, and regulations to implement and administer many aspects of the MMRSA (such as issuing State licenses for dispensary and cultivation operations).

L. If adopted by the voters at the General Statewide Election on November 8, 2016, Proposition 64 will, among other things, legalize non-medical (i.e., recreational) marijuana for adults for under State law and exempt and exempt medical marijuana from sales and use tax.

M. The City Council finds that allowing the establishment, location, and operation of medical marijuana dispensaries without the ability to implement existing security

safeguards in the Laguna Woods Municipal Code, and in the face of assertions that permitting such facilities could result in the creation of adverse secondary effects.

N. Among other issues, City staff needs additional time to continue to study the issues identified in Ordinances Nos. 15-03 and 15-05 and the report prepared by staff, which include without limitation:

1. Review and thorough analysis of the provisions of the California Medical Marijuana Regulation and Safety Act, including monitoring the activities of the departments of Consumer Affairs, Food and Agriculture, Pesticide Regulation, and Public Health, as they develop a more comprehensive statewide scheme for medical marijuana licensing, permitting, and control.

2. Review and thorough analysis of the provisions of the proposed Proposition 64, including analyzing whether and, if so, how the City can generate revenue to offset new costs associated with providing law enforcement and other City services for or as a result of prospective established medical marijuana dispensaries if it is not permitted to tax the sale of medical marijuana.

3. Analysis of traffic and parking for operating, permitted medical marijuana dispensaries, to help assess accessibility, parking demand, and traffic flow characteristics, to help staff determine what land use designations, zoning districts, and surrounding uses, would most compatibly allow medical marijuana dispensaries to integrate with the City's existing uses.

4. Review of the zoning designations in which existing permitting jurisdictions permit medical marijuana dispensaries, and their distance requirements from potentially sensitive uses.

5. Gathering of information on the availability and cost of laboratory services for testing the potency and purity of medical marijuana products, and the feasibility, desirability, and effectiveness of limiting permitted medical marijuana dispensaries to the sale of certified or otherwise tested products.

6. Monitoring of developments in federal enforcement practices on medical marijuana dispensaries operating under color of state law.

7. Investigation of the operating hours of medical marijuana dispensaries in other jurisdictions, along with similar medically-related businesses (including pharmacy counters), to help strike a balance between convenient access to medical marijuana and the prevention of sales to minors or recreational users.

8. Completion of the Law Enforcement Deployment Study to assess the availability of existing local law enforcement resources to respond to potential adverse secondary effects generated by medical marijuana dispensaries, as well as to assess the potential to align permitted hours of operation accordingly.

9. Negotiation of processes and standards for in-depth background checks of potential medical marijuana dispensaries with the Orange County Sheriff's Department and/or potential private investigative services.

10. Assessment and analysis of the City's ability to implement a business license tax or other charge on medical marijuana dispensaries, at least in part to help fund oversight and enforcement efforts, and the procedural requirements (including potential Proposition 218 voter approval) for same.

11. Development of regulations and fees for City Council consideration, informed by the preceding studies and investigations, and intended to adequately mitigate potential adverse secondary effects resultant of the primarily cash basis of medical marijuana dispensaries, traffic and parking demand, and other public health, safety, and welfare concerns, while preserving quality of life and patient access.

O. In order to allow the City consider, study, and adopt any appropriate regulations for medical marijuana dispensaries, it is necessary to continue to suspend the operation and effectiveness of Section 13.26.025 of the Laguna Woods Municipal Code, and to continue to temporarily prohibit the establishment, location, and operation of medical marijuana dispensaries within the City's jurisdiction.

P. Extending the moratorium will provide the City time to study the effect of medical marijuana dispensaries on the community, and to assess its ability to draft and adopt regulations consistent with its inherent police power to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within its jurisdiction.

SECTION 2. The moratorium established by Ordinance No. 15-05 expires on September 8, 2016. Commencing upon the expiration of Ordinance No. 15-05, the moratorium established by Ordinance No. 15-05 is hereby extended and shall continue for a period of the earlier of [A] August 16, 2017, or [B] the effective date of an ordinance adopted by the City Council amending the Zoning Code to address the potential establishment, location, or operation of medical marijuana dispensaries within the city limits of Laguna Woods.

SECTION 3. The penalties that are set forth in the Laguna Woods Municipal Code shall apply to violations of the provisions of this Ordinance.

SECTION 4. This Ordinance is declared to be an urgency ordinance by authority conferred on the City Council of the City of Laguna Woods by Government Code sections 36934, 36937, and 65858, and shall be in full force and effect immediately upon its adoption by a four-fifths vote of the City Council.

SECTION 5. At least ten (10) days prior to the expiration of the moratorium as extended by this Ordinance, staff shall prepare, and the City Council shall consider and receive and file, a written report pursuant to Government Code Section 65858(d) describing the measures taken to alleviate the condition or conditions which led to the adoption of this Ordinance.

SECTION 6. The City Council finds and determines that the adoption of this Ordinance is not a project under the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines.

SECTION 7. If any section, subsection, subdivision, paragraph, sentence, clause or phrase, or portion of this Ordinance 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 adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

SECTION 8. The Deputy City Clerk shall certify as to the adoption of this Ordinance and shall cause this Ordinance to be published or posted as required by law.

PASSED, APPROVED AND ADOPTED this 17th day of August 2016.

NOEL HATCH, Mayor

ATTEST:

YOLIE TRIPPY, Deputy City Clerk

APPROVED AS TO FORM:

DAVID B. COSGROVE, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Ordinance No. 16-02** was duly adopted and passed at a regular meeting of the City Council on the 17th day of August 2016 by the following vote to wit:

AYES: COUNCILMEMBERS: Conners, Hack, Hatch, Horne, Moore
NOES: COUNCILMEMBERS: -
ABSENT: COUNCILMEMBERS: -

YOLIE TRIPPY, Deputy City Clerk

ITEM 8.2 - Attachment E

BUSINESS INSIDER

Trump indicated where he stands on medical marijuana for the first time since he took office

JEREMY BERKE
13H

President Donald Trump issued his first statement on medical marijuana since he took office.

Trump on Friday signed a $1.1 trillion omnibus spending bill that will keep the federal government funded through September 30.

The congressionally approved bill includes a rider — the Rohrabacher - Blumenauer Amendment — that disallows the Department of Justice and the Drug Enforcement Agency from using federal funds to prosecute medical marijuana businesses in states where medical marijuana is legal.

Marijuana is illegal at the federal level, though 29 states have varying degrees of medical marijuana legalization on the books. The amendment doesn't extend to recreational marijuana, which is legal in eight states.

President Donald Trump.

Alex Wong/Getty Images

Trump, who has stayed mum on the topic of marijuana since the election, finally gave an indication as to where he stands on the issue in his statement after he signed the bill:

> "Division B, section 537 provides that the Department of Justice may not use any funds to prevent implementation of medical marijuana laws by various States and territories. I will treat this provision consistently with my constitutional responsibility to take care that the laws be faithfully executed."

Tom Angell, the founder of Marijuana Majority, an advocacy group, told Business Insider he thinks that Trump's statement is the federal government's way of "asserting their right" to go after certain medical marijuana businesses if they choose to at a later date.

"[M]y read is it's basically saying they reserve the right to do whatever they want and enforce prohibition regardless of the statutory prohibition on doing so," Angell said, though he doesn't think it necessarily indicates a federal crackdown on medical marijuana is coming.

A variety of medicinal marijuana buds in jars are pictured at Los Angeles Patients & Caregivers Group dispensary in California.

Thomson Reuters

A federal court — the 9th circuit, which has blocked two of Trump's high-profile executive actions — ruled last year that the amendment protects patients and providers acting in accordance with state medical marijuana laws, despite the Justice Department insisting the opposite, notes Angell.

Michael Collins, the deputy director of the Drug Policy Alliance, said in an email that Trump continues to send "mixed messages" on marijuana.

"After stating during the campaign that he was '100%' in support of medical marijuana, he now issues a signing statement casting doubt on whether his Administration will adhere to a congressional rider that stops DOJ from going after medical marijuana programs," Collins said.

"The uncertainty is deeply disconcerting for patients and providers, and we urge the Administration to clarify their intentions immediately," Collins added.

Robert Capecchi, the director of federal policies for the Marijuana Policy Project, said in an email that Congress is growing "increasingly comfortable" with states adopting medical and recreational marijuana policies.

"Unfortunately, spending prohibitions like these expire at the end of the fiscal year, so there is still a need for a long-term solution," Capecchi added.

Jeff Sessions, the attorney general, told Colorado Gov. John Hickenlooper during a private meeting in April that prosecuting state-legal marijuana businesses wouldn't be a priority for the Justice Department.

The Marijuana Policy Gap and the Path Forward

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Summary

Under federal law, the cultivation, possession, and distribution of marijuana are illegal, except for the purposes of sanctioned research. States, however, have established a range of laws and policies regarding marijuana's medical and recreational use. Most states have deviated from an across-the-board prohibition of marijuana, and it is now more so the rule than the exception that states have laws and policies allowing for some cultivation, sale, distribution, and possession of marijuana—all of which are contrary to the federal Controlled Substances Act (CSA). As of March 2017, nearly 90% of the states, as well as Puerto Rico and the District of Columbia, allow for the *medical use* of marijuana in some capacity. Also, eight states and the District of Columbia now allow for some *recreational use* of marijuana. These developments have spurred a number of questions regarding their potential implications for federal law enforcement activities and for the nation's drug policies as a whole.

Thus far, the federal response to state actions to decriminalize or legalize marijuana largely has been to allow states to implement their own laws on marijuana. The Department of Justice (DOJ) has nonetheless reaffirmed that marijuana growth, possession, and trafficking remain crimes under federal law irrespective of states' positions on marijuana. Rather than targeting individuals for drug use and possession, federal law enforcement has generally focused its counterdrug efforts on criminal networks involved in the drug trade.

While the majority of the American public supports marijuana legalization, some have voiced apprehension over possible negative implications. Opponents' concerns include, but are not limited to, the potential impact of legalization on (1) marijuana use, particularly among youth; (2) road incidents involving marijuana-impaired drivers; (3) marijuana trafficking from states that have legalized it into neighboring states that have not; and (4) U.S. compliance with international treaties. Proponents of legalization have been encouraged by potential outcomes that could result from marijuana legalization, including a new source of tax revenue for states and a decrease in marijuana-related arrests. Many of these potential implications are yet to be fully measured.

Given the current marijuana policy gap between the federal government and many of the states, there are a number of issues that Congress may address. These include, but are not limited to, issues surrounding availability of financial services for marijuana businesses, federal tax treatment, oversight of federal law enforcement, allowance of states to implement medical marijuana laws and involvement of federal health care workers, and consideration of marijuana as a Schedule I drug under the CSA. The marijuana policy gap has widened each year for some time. It has only been a few years since states began to legalize recreational marijuana, but over 20 years since they began to legalize medical marijuana. In addressing state-level legalization efforts and considering marijuana's current placement on Schedule I, Congress could take one of several routes. It could elect to take no action, thereby upholding the federal government's current marijuana policy. It may also decide that the CSA must be enforced in states and not allow them to implement conflicting laws on marijuana. Alternatively, Congress could choose to reevaluate marijuana's placement as a Schedule I controlled substance.

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Introduction

Marijuana is the most commonly used illicit drug in the United States.[1] It is a psychoactive drug that generally consists of leaves and flowers of the cannabis sativa plant. Its history dates back thousands of years, but in the United States, it became popular as a recreational drug in the early 20th century.[2] The THC[3] content of marijuana is dependent on both the variety of the cannabis plant and the part used.[4] Under federal law, cannabis and its derivatives are classified as Schedule I controlled substances—thus prohibiting their possession, cultivation, or distribution—under the Controlled Substances Act (CSA), regardless of its THC content, unless specifically exempted or listed in another schedule (see "Controlled Substances Act").

The percentage of the population 12 and older currently using (past month use of) marijuana has generally increased over the last several years—from 6.9% in 2010 to 8.3% in 2015.[5] The rate of past-month marijuana use among youth (aged 12-17), however, has remained relatively unchanged over this period (7.0%).[6] Youth also generally perceive that obtaining marijuana—if they desire it—is relatively easy.[7] Indeed, marijuana is available throughout the United States; 34% of state and local law enforcement agencies that were surveyed by the Drug Enforcement Administration (DEA) reported an increase in availability over the last year, and 62% reported that availability had remained the same.[8]

This report provides a background on federal marijuana policy and an overview of state trends with respect to marijuana decriminalization and legalization—for both medical and recreational

[1] In 2015, an estimated 22.2 million individuals in the United States aged 12 or older (8.3% of this population) were current (past month) users of marijuana. See Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, *Results from the 2015 National Survey on Drug Use and Health: Detailed Tables*, September 2016, Tables 1.1A and 1.1B, http://www.samhsa.gov/data/sites/default/files/NSDUH-DetTabs-2015/NSDUH-DetTabs-2015/NSDUH-DetTabs-2015.htm. Hereinafter, *Results from 2015 NSDUH*.

[2] David F. Musto, *The American Disease: Origins of Narcotic Control*, 3rd ed. (New York: Oxford University Press, 1999), p. 219.

[3] THC stands for delta-9-tetrahydrocannabinol, the primary psychoactive chemical compound, or cannabinoid, in marijuana.

[4] Industrial hemp is a variety of the cannabis plant that has low THC content and is cultivated for use in the production of a wide range of products. THC levels for hemp are generally less than 1%. For further information about hemp, see CRS Report RL32725, *Hemp as an Agricultural Commodity*, by Renée Johnson. While hemp is mentioned in this report, it largely focuses on marijuana.

[5] For each year from 2010 to 2014, the estimated percentage of the population currently using marijuana was 6.9%, 7.0%, 7.3%, 7.5%, and 8.4% respectively. The difference between each year's estimate (2010 – 2013) and the 2014 estimate (8.4%) is statistically significant at the .05 level. For 2014 to 2015, however, the percentage dropped from 8.4% to 8.3%; this change is not statistically significant at the .05 level. See Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, *Results from 2015 NSDUH*; and *Results from the 2014 National Survey on Drug Use and Health: Summary of National Findings*, September 2015, p. 6 (hereinafter, *Results from 2014 NSDUH*). Of note, some warn of potential bias in drug usage survey data because of misreporting by respondents. See Beau Kilmer, Jonathan P. Caulkins, and Gregory Midgette, et al., *Before the Grand Opening: Measuring Washington State's Marijuana Market in the Last Year Before Legalized Commercial Sales*, RAND Drug Policy Research Center, 2013.

[6] Results from *2015 NSDUH*, Table 1.2B; and *Results from 2014 NSDUH*.

[7] Nearly half of surveyed youth indicated that marijuana would be "fairly easy" or "very easy" to obtain if desired. *Results from the 2015 NSDUH*, Table 3.1B.

[8] Based on assessments from 1,444 local, state, and tribal law enforcement agencies that responded to the DEA's 2016 National Drug Threat Survey. U.S. Drug Enforcement Administration, *2016 National Drug Threat Assessment Summary*, DEA-DCT-DIR-001-17, November 2016 (hereinafter, *2016 National Drug Threat Assessment Summary*).

uses. It then analyzes relevant issues for federal law enforcement and the implications of state marijuana legalization. The report also outlines a number of related policy questions that Congress may confront, including legalization in the District of Columbia, financial services for marijuana businesses, the medical nature of marijuana, oversight of federal law enforcement, and evaluation of marijuana as a Schedule I drug.

Controlled Substances Act

Marijuana is currently listed as a Schedule I controlled substance under the CSA.[9] This indicates that the federal government has determined that

> (A) The drug or other substance has a high potential for abuse.
>
> (B) The drug or other substance has no currently accepted medical use in treatment in the United States.
>
> (C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.[10]

Controlled Substances Act (CSA)

The CSA was enacted as Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970.[11] It regulates the manufacture, possession, use, importation, and distribution of certain drugs, substances, and precursor chemicals. Under the CSA, there are five schedules under which substances may be classified—Schedule I being the most restrictive. Substances placed onto one of the five schedules are evaluated on

- actual or relative potential for abuse;
- known scientific evidence of pharmacological effects;
- current scientific knowledge of the substance;
- history and current pattern of abuse;
- scope, duration, and significance of abuse;
- risk to public health;
- psychic or physiological dependence liability; and
- whether the substance is an immediate precursor of an already scheduled substance.

U.S. federal drug control policies—specifically those positions relating to marijuana—continue to generate debates among policymakers, law enforcement officials, scholars, and the public. Even before the federal government's move in 1970 to criminalize the manufacture, distribution, dispensation, and possession of marijuana,[12] there were significant discussions over marijuana's place in American society.

Evolution of Public Opinion

Changes in state and local marijuana laws are coupled with a general shift in public attitudes toward the substance. In 1969, 12% of the surveyed population supported legalizing marijuana;

[9] For more information on the CSA, see the text box, "Controlled Substances Act (CSA)."

[10] 21 U.S.C. §812(b)(1).

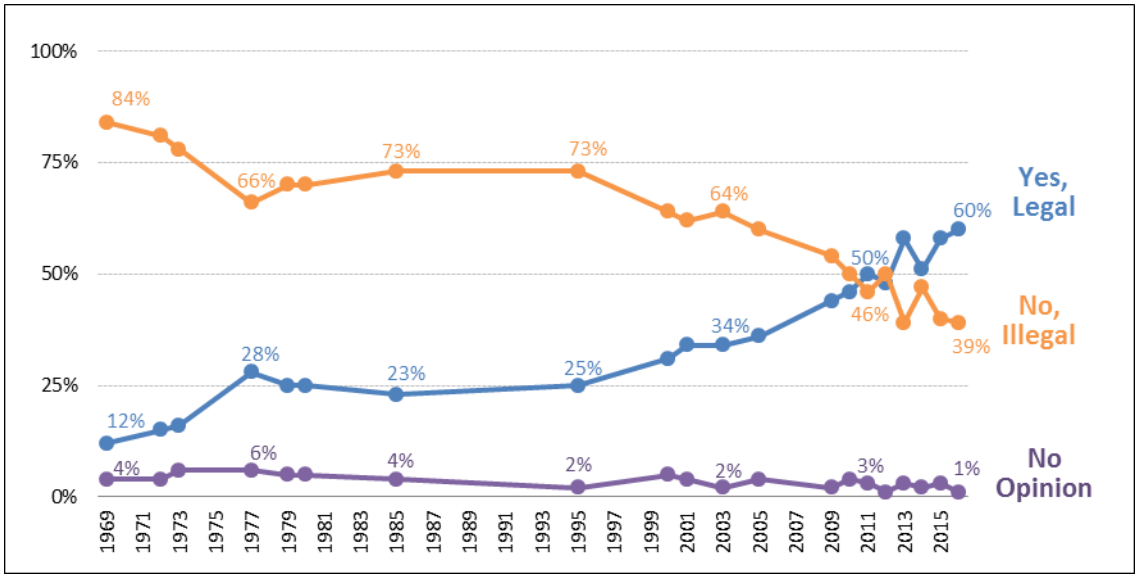
[11] P.L. 91-513; 21 U.S.C. §801 et. seq. For additional information on the CSA, see CRS Report RL34635, *The Controlled Substances Act: Regulatory Requirements*, by Brian T. Yeh; and CRS Report RL30722, *Drug Offenses: Maximum Fines and Terms of Imprisonment for Violation of the Federal Controlled Substances Act and Related Laws*, by Brian T. Yeh.

[12] 21 U.S.C. §§812 and 841.

today, 60% of surveyed adults feel that marijuana should be legalized.[13] Support for legalization has more than doubled over the last 20 years. In addition, nearly 60% of respondents indicate that the federal government should not enforce federal marijuana prohibition laws in those states that allow for its use.[14]

Figure 1. Views on Legalization of Marijuana

Percentage of Americans who support or are against legalizing marijuana, 1969-2016



Source: CRS presentation of Gallup data. Gallup News Service, *Gallup Poll Social Series: Crime*, http://www.gallup.com.

Notes: Question: "Do you think marijuana should be made legal or not?" Sample sizes vary from year to year. 2016 data are based on telephone interviews conducted October 5-9, 2016, with a random sample of 1,017 adults aged 18 and older living in the United States.

Marijuana as Medicine

As mentioned, marijuana's placement on Schedule I of the CSA means that it has no currently accepted medical use according to the federal government. Under federal law, marketing a drug as medicine requires approval from the Food and Drug Administration (FDA).[15] While most states have laws allowing for medicinal use of marijuana, the FDA has not approved marijuana, any drug containing marijuana, or any drug containing a plant-derived chemical constituent of marijuana for medicinal use. The FDA has, however, approved two drugs containing synthetic

[13] The poll question is "Do you think marijuana should be made legal or not?" See Art Swift, *Support for Legal Marijuana Use Up to 60% in U.S.*, Gallup, October 19, 2016 (based on poll data from October 2016). For purposes of this question, it does not distinguish between medical and recreational marijuana. Of note, in August 2016, the Pew Research Center found similar levels of support for marijuana legalization among American adults. See Abigail Geiger, *Support for marijuana legalization continues to rise*, Pew Research Center, article based on Aug. 23-Sept. 2 Pew Research Center survey, October 12, 2016, http://www.pewresearch.org.

[14] Pew Research Center for the People & the Press, *In Debate Over Legalizing Marijuana, Disagreement Over Drug's Dangers*, April 14, 2015 (based on poll data from March 2015).

[15] Federal Food, Drug, and Cosmetic Act (FFDCA, 21 U.S.C. §§301 et seq.). For more information CRS Report R41983, *How FDA Approves Drugs and Regulates Their Safety and Effectiveness*, by Susan Thaul.

THC.[16] In addition, drugs containing plant-derived THC and/or cannabidiol (CBD, a nonpsychoactive chemical component of marijuana) are in the drug development and approval process.[17] See **Appendix A** for further discussion of these drugs.

Individuals use marijuana to treat medical issues such as lack of appetite, nausea, chronic pain, spasticity, anxiety, and other maladies; however, the efficacy of this treatment is unclear from available scientific evidence.[19] While some individuals report (both anecdotally and in scientific studies) benefits and alleviation of symptoms from use of marijuana, reports are inconsistent. Some have argued that the scientific field has been unable to robustly determine the medicinal value and merits of marijuana due to regulatory restrictions on quality, quantity, and use of marijuana in scientific research.[20]

Risks Associated with Marijuana Use

The FDA's eight-factor analysis includes an assessment of risks associated with marijuana use. Marijuana is known to affect the central nervous system, the cardiovascular system, the respiratory system, and the immune system. Its effects may vary according to how it is consumed (e.g., inhaled or ingested), how much of it is consumed, how often it is consumed, and over what time frame it is consumed.

Some of marijuana's most widely recognized effects are among the reasons people use it recreationally: it can reduce inhibition, improve mood, enhance sensory perception, and heighten imagination (among other effects). Some common effects are more problematic: it can cause dizziness, confusion, ataxia (i.e., uncoordinated movements), delusions, and agitation (among other effects). Marijuana's acute effects can impair an individual's ability to perform daily activities, such as studying or driving. Chronic use of marijuana can lead to abuse or dependence and, in the case of heavy chronic use, the potential for withdrawal (with symptoms like insomnia, weight loss, and irritability).[18]

Scientific Evaluations of Medical Marijuana Effects

Recent evaluations conducted separately by the FDA and the National Academies of Sciences, Engineering, and Medicine (the National Academies) illustrate the challenge of meeting the required standard of evidence for demonstrating effective medical use. While taking different approaches to their evaluations, both the FDA and the National Academies have found that the current evidence base falls short. According to the FDA, "no published studies conducted with marijuana meet the criteria of an adequate and well-controlled efficacy study," and "the criteria for adequate safety studies [have] also not been met."[21] According to the National Academies,

[16] These drugs are Nabilone, an antiemetic (to reduce nausea or prevent vomiting) for patients receiving chemotherapy for cancer, and Dronabinol, both an antiemetic for patients on chemotherapy and an appetite stimulant for patients with AIDS-related weight loss. See **Appendix A** for additional information regarding FDA-approved drugs.

[17] Department of Health and Human Services, Food and Drug Administration, *FDA and Marijuana: Questions and Answers*, http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm421168.htm#determinations. For an explanation of the FDA's drug development and approval process, see http://www.fda.gov/Drugs/DevelopmentApprovalProcess/default.htm.

[18] Department of Justice, Drug Enforcement Administration, "Denial of Petition to Initiate Proceedings to Reschedule Marijuana," 81 *Federal Register* 53687-53766 and 53767-53845, August 12, 2016.

[19] Penny F. Whiting, Robert F. Wolff, and Sophan Deshpande, et al., "Cannabinoids for Medical Use," *Journal of the American Medical Association*, vol. 313, no. 24 (June 2015), pp. 2456-2473.

[20] See, for example, Chapter 15 of National Academies of Sciences, Engineering, and Medicine, *The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research*, Washington, DC, 2017, p. S-1, doi: 10.17226/24625.

[21] Department of Justice, Drug Enforcement Administration, "Denial of Petition to Initiate Proceedings to Reschedule Marijuana," 81 *Federal Register* 53687-53766 and 53767-53845, August 12, 2016. The criteria for adequate and well-controlled studies are defined under 21 C.F.R. §314.126.

"conclusive evidence regarding the short- and long-term health effects (harms and benefits) of cannabis use remains elusive."[22] These studies are discussed in more detail in **Appendix A**.

Federal Regulation of Marijuana Research

Individuals who seek to conduct research on any controlled substance must do so in accordance with the CSA and other federal laws.[23] For all controlled substances, individuals must obtain a registration issued by the Attorney General, as delegated to the DEA[24] in accordance with associated rules and regulations issued by the Attorney General.[25] Also, DEA regulations require *all* registrants to comply with strict storage requirements for controlled substances.[26]

Some have argued that federal regulation of marijuana research unnecessarily impedes the clinical trials that are required for FDA approval, and the Obama Administration simplified some small steps within the larger process. In recent years, the federal government has attempted to make marijuana research easier.

- In June 2015, HHS eliminated one step in obtaining research-grade marijuana for research that is not funded by the National Institutes of Health.[27]
- In December 2015, the DEA announced a waiver to make it easier for researchers conducting clinical trials with CBD to modify their research protocols and obtain more CBD than was initially approved.[28]
- In August 2016, the DEA announced a new policy intended to increase the number of approved sources of research-grade marijuana.[29]

Prior to the August 2016 change, some contended that marijuana provided to researchers was "both qualitatively and quantitatively inadequate."[30] The DEA's recent policy change

[22] National Academies of Sciences, Engineering, and Medicine, *The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research*, Washington, DC, 2017, p. S-1, doi: 10.17226/24625.

[23] For regulatory requirements under the CSA, see CRS Report RL34635, *The Controlled Substances Act: Regulatory Requirements*, by Brian T. Yeh.

[24] As authorized under 21 U.S.C. §871, the Attorney General may delegate any of his/her control and enforcement functions under the CSA to any officer or employee of the Department of Justice—many of these functions are performed by the DEA.

[25] See 21 U.S.C. §822. This requirement is also described under 21 CFR 1301.11(a): Every person who manufactures, distributes, dispenses, imports, or exports any controlled substance or who proposes to engage in the manufacture, distribution, dispensing, importation or exportation of any controlled substance shall obtain a registration unless exempted by law or pursuant to §§1301.22 through 1301.26.

[26] For the purposes of ensuring the secure storage and distribution of *all* controlled substances, all applicants and registrants must generally "provide effective controls and procedures to guard against theft and diversion of controlled substances." See 21 C.F.R. §1301.71.

[27] Department of Health and Human Services, "Announcement of Revision to the Department of Health and Human Services Guidance on Procedures for the Provision of Marijuana for Medical Research as Published on May 21, 1999," 80 *Federal Register* 35960-35961, June 23, 2015.

[28] Department of Justice, Drug Enforcement Administration, "DEA Eases Requirements for FDA-Approved Clinical Trials on Cannabidiol," press release, December 23, 2015.

[29] Department of Justice, Drug Enforcement Administration, "Applications to Become Registered under the Controlled Substances Act to Manufacture Marijuana to Supply Researchers in the U.S.," 81 *Federal Register* 53846-53848, August 12, 2016.

[30] Marc Kaufman, "Federal Marijuana Monopoly Challenged," *Washington Post*, December 12, 2005; and Department of Justice, Drug Enforcement Administration, "Lyle E. Craker; Denial of Application," 74 *Federal Register* 2101, January 14, 2009.

may appease those researchers seeking better quality and quantity of marijuana. For broader discussion of this issue, see **Appendix A**.

Current Federal Status of Marijuana and the Policy Gap with States

While the federal government maintains marijuana's current placement as a Schedule I controlled substance, states have established a range of laws and policies regarding its medical and recreational use. These developments have spurred a number of questions regarding potential implications for federal drug enforcement activities and for the nation's drug policies as a whole. In 1970, the CSA placed the control of marijuana under federal jurisdiction *regardless* of state regulations and laws, and its status has remained unchanged under federal law for nearly 50 years. For more background on federal marijuana policy and the history of how marijuana came to be illegal in the United States, see **Appendix B**.

Select Consequences of Marijuana Use Under Federal Law

Marijuana use may subject an individual to a number of consequences under federal law regardless of whether that individual has been convicted of a marijuana-related offense. For example, marijuana users may lose their ability to purchase and possess a firearm, or be barred from living in public housing. Under the Gun Control Act, it is unlawful to possess, ship, transport, receive, or dispose of any firearm or ammunition to any person "who is an unlawful user of or addicted to any controlled substance" as defined by the CSA.[31] In addition, federal law also establishes that "illegal drug users" are ineligible for federally assisted housing.[32] The law requires public housing agencies and owners of federally assisted housing to establish standards that would allow the agency or owner to prohibit admission to, or terminate the tenancy or assistance of, any such applicant or tenant.[33]

DEA Rejection of Petitions to Reschedule

There has been mounting public pressure for the DEA to reevaluate marijuana as a Schedule I controlled substance. Over the years, several entities have submitted petitions to reschedule marijuana.[34] In August 2016, after a five-year evaluation process done in conjunction with the Food and Drug Administration (FDA), the DEA rejected two petitions submitted by two state governors and a New Mexico health provider, respectively, to move marijuana to a less-restrictive schedule under the CSA.[35] Consistent with past practice,[36] the rejections were based on a conclusion by both the FDA and DEA that marijuana continues to meet the criteria for inclusion

[31] See 18 U.S.C. §§922(g)(3), 924(a)(2) and 27 C.F.R. §478.11.

[32] 42 U.S.C. §§13661-13662.

[33] For a broader discussion of legal consequences of marijuana use, see CRS Report R43435, *Marijuana: Medical and Retail—Selected Legal Issues*, by Todd Garvey, Charles Doyle, and David H. Carpenter.

[34] Any interested party may petition the Administrator of the DEA to initiate rulemaking proceedings to reschedule a controlled substance. See 21 U.S.C. §811(a) and 21 C.F.R. §1308.43(a) for relevant rules and regulations.

[35] In 2011, the governors of Rhode Island and Washington petitioned the DEA to have marijuana and "related items" removed from Schedule I of the CSA and rescheduled as medical cannabis in Schedule II. In 2009, Bryan Krumm, a health provider in New Mexico, petitioned the DEA to have marijuana removed from Schedule I of the CSA and rescheduled in any schedule other than Schedule I.

[36] The DEA has previously denied petitions to reschedule marijuana. For example, in 2002 a petition was filed to have marijuana removed from Schedule I and rescheduled as cannabis in Schedule III, IV, or V. In 2011, the DEA rejected the petition. See Drug Enforcement Administration, "Denial of Petition to Initiate Proceedings to Reschedule Marijuana," 76 *Federal Register* 40552-40589, July 8, 2011.

on Schedule I—namely that it has a high potential for abuse, has no currently accepted medical use, and lacks an accepted level of safety for use under medical supervision.[37]

It is important to note that both Congress and the Administration have the power to alter marijuana's status as a Schedule I substance. Congress could amend the CSA to move marijuana to a lower schedule or remove it entirely from control. The Administration could also make such changes on its own, though it is bound by the CSA to evaluate a substance prior to altering its scheduling status.[38]

Trends in States

Over the past few decades, most states have deviated from an across-the-board prohibition of marijuana, and as of March 2017, nearly 90% of the states, as well as Puerto Rico and the District of Columbia, allowed for the *medical use* of marijuana in some capacity.[39] Also, eight states and the District of Columbia now allow for the *recreational use* of marijuana.[40] It is now more so the rule than the exception that states have laws and policies allowing for some manufacturing, sale, distribution, and possession of marijuana—all of which are contrary to the CSA, except for the purposes of sanctioned research.[41] Evolving state-level positions on marijuana include decriminalization initiatives, legal exceptions for medical use, and legalization of certain quantities for recreational use. See **Figure 2** at the end of this section for the various marijuana policies of states.

Decriminalization and legalization initiatives in the states reflect growing public support for the legalization of marijuana. As mentioned, just prior to passage of the CSA in 1970, 12% of surveyed individuals aged 18 and older felt that marijuana should be made legal. In 2016, more than half (60%) of surveyed U.S. adults expressed that marijuana should be legalized.[42]

Decriminalization

Marijuana *decriminalization* differs markedly from *legalization*. A state decriminalizes conduct by removing the accompanying criminal penalties; however, civil penalties remain. If, for instance, a state decriminalizes the possession of marijuana in small amounts,[43] possession of it

[37] See Drug Enforcement Administration, "Denial of Petition to Initiate Proceedings to Reschedule Marijuana," 81 *Federal Register* 53767-53845, August 12, 2016; and Drug Enforcement Administration, "Denial of Petition to Initiate Proceedings to Reschedule Marijuana," 81 *Federal Register* 53687-53766, August 12, 2016.

[38] Federal rulemaking proceedings to add, delete, or change the schedule of a drug or substance may be initiated by the Attorney General (through the DEA), by the Secretary of Health and Human Services, or by petition from any interested person; 21 U.S.C. §811(a). Congress may change the scheduling status of a drug or substance through legislation.

[39] National Conference of State Legislatures, *State Medical Marijuana Laws*, November 2016. Some states allow broad access to medical marijuana while others have more narrow conditions under which access is granted. For example, in Alabama medical marijuana may only be dispensed by the University of Alabama and only to treat a person with an epileptic condition under certain conditions. Also, some states allow cannabidiol (CBD)-only medical marijuana. CBD is a chemical compound of marijuana.

[40] States have established rules surrounding marijuana use—see "Recreational Legalization" for a discussion of state regulations.

[41] The notable exception is the distribution of marijuana for research purposes.

[42] Art Swift, *Support for Legal Marijuana Use Up to 60% in U.S.*, Gallup, October 19, 2016 (based on poll data from October 2016).

[43] Typically one ounce or less, but the amount varies from state to state.

still violates state law, but possession of quantities within the specified *small amount* is considered a civil offense and subject to a civil penalty, not criminal prosecution. By decriminalizing possession of marijuana in small amounts, states are *not legalizing* its possession. In addition, as these initiatives generally relate to the *possession* (rather than the manufacture or distribution) of small amounts of marijuana, decriminalization initiatives do not impede federal law enforcement's priority of targeting high-level drug offenders, or so-called "big fish," rather than individual users.

Decriminalization initiatives by the states do not appear to be at odds with the CSA because both maintain that possessing marijuana is in violation of the law. For example, individuals in possession of small amounts of marijuana in Nebraska—a state that has decriminalized possession of small amounts—are in violation of both the CSA and Nebraska state law. The difference lies in the associated penalties for these federal and state violations. Under the CSA, a person convicted of simple possession (first offense) of marijuana may be punished with up to one year imprisonment and/or fined not more than $1,000.[44] Under Nebraska state law, a person in possession (first offense) of an ounce or less of marijuana is subject to a civil penalty of not more than $300.[45]

In recent years, several states have decriminalized the possession of small amounts of marijuana; however, some of these states continue to treat possession of small amounts of marijuana as a criminal offense under specific circumstances. In New York, for example, the possession of small amounts of marijuana is still considered a crime when it is "open to public view."[46] In 2015, just over 21,000 individuals in New York were arrested for criminal possession of marijuana in the fifth degree, a misdemeanor.[47]

Decriminalization in Cities

Several cities have officially or unofficially decriminalized marijuana possession regardless of what has occurred at the state level. In November 2014, New York City (NYC) Mayor de Blasio and NYC Police Commissioner Bratton announced a change in marijuana enforcement policy; individuals found to be in possession of marijuana (25 grams or less)[48] *may* be eligible to receive a summons instead of being arrested.[49] The New York City Police Department (NYPD) issues so-called "pot tickets" for those in possession of 25 grams or less. In 2016, however, preliminary data indicated that marijuana possession arrests were increasing in NYC compared to 2015—this increase could be the result of changes in NYPD arrest policies; this remains unclear.[50]

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[44] 21 U.S.C. §844.

[45] Also, the judge may order the offender to attend a drug use and abuse education course. See §28-416 of the Nebraska Revised Statutes.

[46] NY Pen. Law §221.10.

[47] State-level arrest data provided to CRS by the New York State Department of Criminal Justice Services.

[48] Under NY Pen. Law §221.10, a person is guilty of criminal possession of marihuana in the fifth degree when he knowingly and unlawfully possesses "1. marihuana in a public place ... and such marihuana is burning or open to public view; or 2. one or more preparations, compounds, mixtures or substances containing marihuana and... are of an aggregate weight of more than twenty-five grams."

[49] City of New York, *Transcript: Mayor de Blasio, Police Commissioner Bratton Announce Change in Marijuana Policy*, November 10, 2014.

[50] City-level arrest data provided to CRS by the New York State Department of Criminal Justice Services. Also see Jennifer Fermino, John Annese, and Ginger Adams Otis, "NYPD cracks down on marijuana possession in NYC, sees big uptick in arrests for carrying pot," *New York Daily News*, June 2, 2016.

Just as there are disparities in state and federal laws and policies, some cities' decriminalization initiatives run contrary to the laws and policies of the states. In Pennsylvania, the state government has not decriminalized marijuana possession, but Pittsburgh, Philadelphia, State College, and Harrisburg have all decriminalized possession in some form. In 2016, Harrisburg's city council unanimously voted to make possession of 30 grams or less of marijuana punishable by a $75 fine and public use punishable by a $150 fine.[51]

Medical Marijuana Exceptions

In 1996, California became the first state to amend its drug laws to allow for the medicinal use of marijuana. As of March 2017, over half of the states, the District of Columbia, Puerto Rico, and Guam have comprehensive policies allowing for the medicinal use of marijuana.[52] Seventeen additional states allow for so-called "limited access medical marijuana," which refers to cannabis with low THC content or CBD oil.[53]

As noted, the CSA does not distinguish between the medical and recreational use of marijuana. Under the CSA, marijuana has "no currently accepted medical use in treatment in the United States,"[54] and states' allowance of its use for medical purposes is at odds with the federal position. Federal law enforcement has investigated, arrested, and prosecuted individuals for medical marijuana-related offenses regardless of whether they are in compliance with state law; however, federal law enforcement emphasizes the investigation and prosecution of growers and dispensers over individual users of medical marijuana. Federal enforcement priorities are discussed further in "Federal Response to State Divergence."

Recreational Legalization

In contrast to marijuana *decriminalization* initiatives wherein civil penalties remain for violations involving marijuana possession, marijuana *legalization* measures remove all state-imposed penalties for specified activities involving marijuana. Until 2012, the recreational use of marijuana had not been legal in any U.S. state since prior to the passage of the CSA in 1970. In November 2012, citizens of Colorado and Washington voted to legalize, regulate, and tax small amounts of marijuana for recreational use.[55] In November 2014, legalization initiatives also passed in Alaska, Oregon, and the District of Columbia (DC), further expanding the disparities between federal and state marijuana laws. Later, in November 2016, recreational legalization initiatives passed in Massachusetts, California, Maine, and Nevada.

These recreational legalization initiatives all legalized the possession of specific quantities of marijuana by individuals aged 21 and over and (with the exception of DC) set up state-administered regulatory schemes for the sale of marijuana;[56] however, there are variations among

[51] Christine Vendel, "It's official: Harrisburg council reduces penalties for pot possession," *Penn Live*, July 5, 2016; and City of Harrisburg, City Council.

[52] Several states are implementing recently enacted laws. National Conference of State Legislatures, *State Medical Marijuana Laws*, November 2016.

[53] As previously mentioned, CBD is a chemical compound in marijuana. Unlike THC, it does not have a psychoactive component.

[54] 21 U.S.C. §812(b)(1).

[55] For more detail regarding both Washington Initiative 502 and Colorado Amendment 64, see CRS Report R43034, *State Legalization of Recreational Marijuana: Selected Legal Issues*, by Todd Garvey and Brian T. Yeh

[56] Regulatory schemes include restrictions and requirements for licensing the production, processing, and retail of marijuana, and procedures for the issuance of licenses.

the initiatives. For example, Colorado, Alaska, Oregon, Massachusetts, Nevada, Maine, California, and DC allow for individuals to grow their own marijuana plants while Washington does not. These legalization initiatives also specify that many actions involving marijuana remain crimes. For example, in Washington, as well as other states, the operation of a motor vehicle while under the influence of marijuana remains a crime.[57] In some states such as Colorado, individuals over the age of 21 may grow small amounts of marijuana for personal use, but marijuana may not be consumed "openly and publicly or in a manner that endangers others."[58] In an example of city-level initiatives breaking from state-level policies, in November 2016, the city of Denver voted to allow designated areas where public consumption of marijuana would be allowed.[59] **Figure 2** highlights the status of marijuana laws by state.

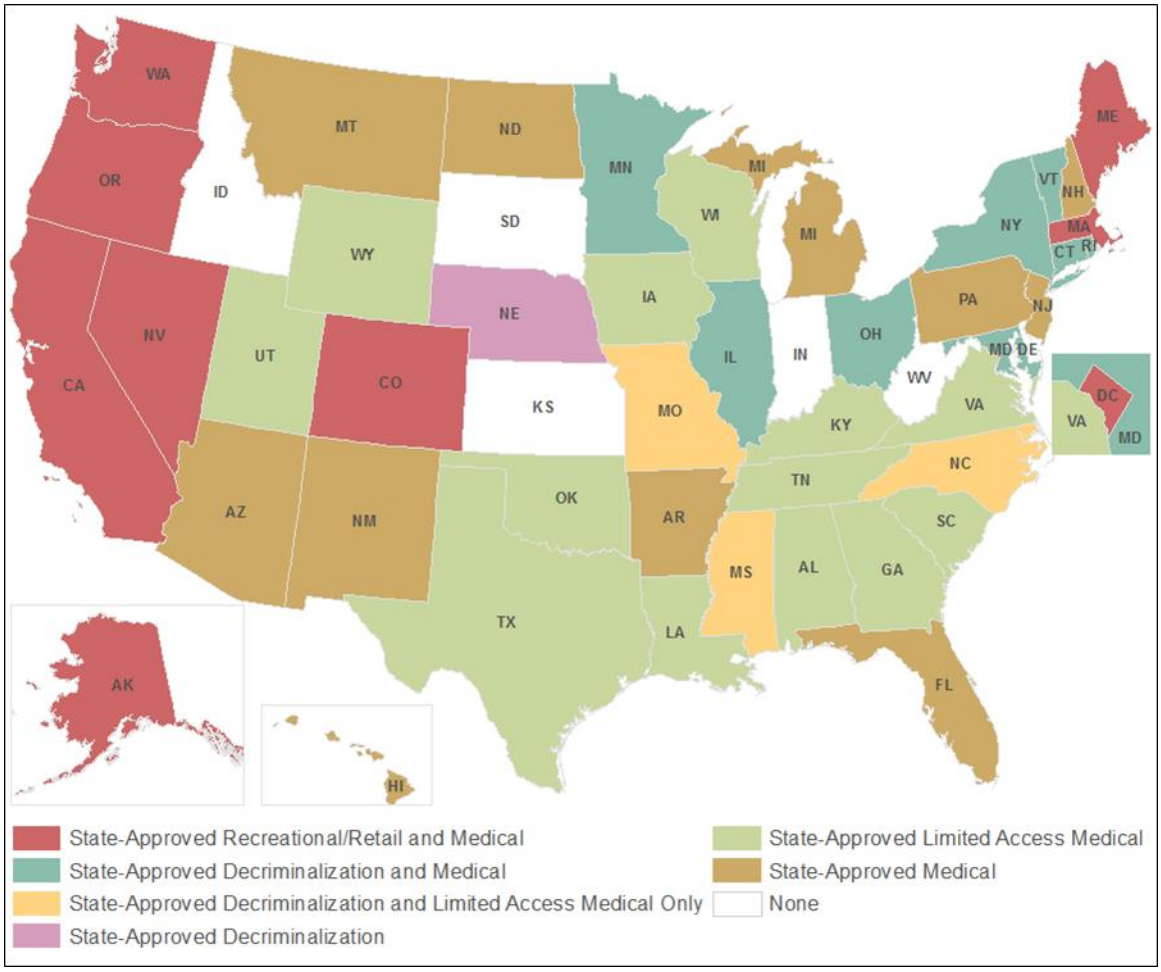
[57] Washington Initiative 502, http://sos.wa.gov/_assets/elections/initiatives/i502.pdf.

[58] Colorado Amendment 64, http://www.leg.state.co.us/LCS/Initiative%20Referendum/1112initrefr.nsf/c63bddd6b9678de787257799006bd391/cfa3bae60c8b4949872579c7006fa7ee/$FILE/Amendment%2064%20-%20Use%20&%20Regulation%20of%20Marijuana.pdf. For information on the Colorado regulatory system, see the website of the Colorado Department of Revenue, Marijuana Enforcement Division: https://www.colorado.gov/pacific/enforcement/marijuanaenforcement.

[59] Denver Initiated Ordinance 300, https://www.denvergov.org/content/dam/denvergov/Portals/778/documents/VoterInfo/Sample_Ballot/2016GeneralComboSampleBallotWatermark.pdf.

Figure 2. Map of State Marijuana Laws

March 2017



Source: CRS presentation of data from the National Conference of State Legislatures and the Drug Enforcement Administration.

Notes: Limited-access medical marijuana refers to cannabis with low THC content or cannabidiol (CBD) oil. "State-approved" refers to either state laws that (1) allow for recreational and/or medical marijuana and/or (2) decriminalize the possession of marijuana in small amounts.

Federal Response to State Divergence

Enforcement Focused on Traffickers

Rather than targeting individuals for drug use and possession, federal law enforcement has generally focused its counterdrug efforts on criminal networks involved in the drug trade. Notably, federal policing efforts on marijuana enforcement appear consistent with this position. Federal marijuana enforcement efforts have largely been focused on *traffickers and distributors* of illicit drugs, rather than the low-level users; rather, arrests for marijuana *possession* offenses are largely made by state and local police.[60] President Obama once noted that "[it] would not

[60] For a discussion of drug enforcement in the United States, see CRS Report R43749, *Drug Enforcement in the United* (continued...)

make sense from a prioritization point of view for us to focus on recreational drug users in a state that has already said that under state law that's legal."[61] While it is not yet clear how the Trump Administration will proceed with drug enforcement priorities, the White House press secretary indicated there may be increased enforcement against recreational marijuana, and stated that there is a "big difference" between medical and recreational marijuana.[62]

Department of Justice Guidance Memos for U.S. Attorneys

After some states began to legalize the medical use of marijuana, the Department of Justice (DOJ) reaffirmed that marijuana growth, possession, and trafficking remain crimes under federal law irrespective of how individual states may change their laws and positions on marijuana.[63] DOJ has clarified federal marijuana policy through several memos providing direction for U.S. Attorneys in states that allow the medical use of marijuana. In the so-called "Ogden Memo" of 2009, former Deputy Attorney General David Ogden reiterated that combating major drug traffickers remains a central priority and stated:

> [t]he prosecution of significant traffickers of illegal drugs, including marijuana, and the disruption of illegal drug manufacturing and trafficking networks continues to be a core priority in the [Justice] Department's efforts against narcotics and dangerous drugs, and the Department's investigative and prosecutorial resources should be directed towards these objectives. As a general matter, pursuit of these priorities should not focus federal resources in your States on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana.[64]

In a follow-up memorandum to U.S. Attorneys, former Deputy Attorney General James Cole restated that enforcing the CSA remained a core priority of DOJ, even in states that had legalized medical marijuana. He clarified that "[t]he Ogden Memorandum was never intended to shield such activities from federal enforcement action and prosecution, even where those activities purport to comply with state law."[65]

In his memo, Deputy Attorney General Cole warned those who might assist medical marijuana dispensaries in any way. He stated that "[p]ersons who are in the business of cultivating, selling or distributing marijuana, *and those who knowingly facilitate such activities* [emphasis added], are in violation of the Controlled Substances Act, regardless of state law."[66] This has been interpreted by some to mean, for example, that building owners and managers are in violation of

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States: History, Policy, and Trends, by Lisa N. Sacco.

[61] "Marijuana Not High Obama Priority," *ABC Nightline*, December 14, 2012.

[62] The White House, Office of the Press Secretary, *Press Briefing by Press Secretary Sean Spicer, 2/23/2017, #15*, February 22, 2017, https://www.whitehouse.gov/the-press-office/2017/02/23/press-briefing-press-secretary-sean-spicer-2232017-15.

[63] United States Attorney's Office, "Statement From U.S. Attorney's Office on Initiative 502," press release, December 5, 2012.

[64] Deputy Attorney General David W. Ogden, *Memorandum for Selected United States Attorneys*, U.S. Department of Justice, Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana, Washington, DC, October 19, 2009, pp. 1-2.

[65] Deputy Attorney General James M. Cole, *Memorandum for United States Attorneys*, U.S. Department of Justice, Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use, Washington, DC, June 29, 2011, p. 2.

[66] Ibid.

the CSA by allowing medical marijuana dispensaries to operate in their buildings.[67] Deputy Attorney General Cole further warned that "[t]hose who engage in transactions involving the proceeds of such activity [cultivating, selling, or distributing of marijuana] may be in violation of federal money laundering statutes and other federal financial laws."[68] This warning may be one reason why medical marijuana dispensaries have had difficulty accessing bank services.[69] In an August 2013 memorandum, Deputy Attorney General Cole stated that while marijuana remains an illegal substance under the CSA, DOJ would focus its resources on the "most significant threats in the most effective, consistent, and rational way."[70] The memo outlined eight enforcement priorities for DOJ:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.[71]

In a February 2014 memorandum, Deputy Attorney General Cole further reinforced these enforcement priorities, specifically as they relate to the prosecution of marijuana-related financial crimes. The memo directed the U.S. Attorneys that "in determining whether to charge individuals or institutions with ... [certain financial] offenses based on marijuana-related violations of the CSA, prosecutors should apply the eight enforcement priorities described in the August 29 guidance."[72]

In October 2014, DOJ released another memo to the U.S. Attorneys that reiterated the applicability of the eight enforcement priorities to their marijuana efforts in Indian country.[73] It

[67] Jennifer Medina, "U.S. Attorneys in California Set Crackdown on Marijuana," *New York Times*, October 8, 2011, p. 10.

[68] Deputy Attorney General James M. Cole, *Memorandum for United States Attorneys*, U.S. Department of Justice, Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use, Washington, DC, June 29, 2011, p. 2.

[69] John Ingold, "Last Bank Shuts Doors on Colorado Pot Dispensaries," *The Denver Post*, October 1, 2011; Jonathan Martin, "Medical-Marijuana Dispensaries Run Into Trouble at the Bank," *The Seattle Times*, April 29, 2012.

[70] Deputy Attorney General James M. Cole, *Memorandum for all United States Attorneys*, U.S. Department of Justice, Guidance Regarding Marijuana Enforcement, Washington, DC, August 29, 2013, p. 1.

[71] Ibid., pp. 1-2.

[72] Deputy Attorney General James M. Cole, *Memorandum for All United States Attorneys*, U.S. Department of Justice, Guidance Regarding Marijuana Related Financial Crimes, Washington, DC, February 14, 2014, p. 2.

[73] Executive Office for United States Attorneys, *Policy Statement Regarding Marijuana Issues in Indian Country*, (continued...)

responded to the American Indian tribes' requests for guidance on CSA enforcement on tribal lands. DOJ reiterated that the August 2013 Cole memo does not prohibit the federal government from enforcing federal law in Indian Country, and adds the following:

> The eight priorities in the Cole Memorandum will guide United States Attorneys' marijuana enforcement efforts in Indian Country, including in the event that sovereign Indian Nations seek to legalize the *cultivation or use* of marijuana in Indian Country [emphasis added].[74]

Unlike the Cole memo, DOJ did not specifically refer to *distribution* and regulation of marijuana. It was unclear whether distribution of marijuana would be tolerated on tribal lands should tribal governments seek to legalize and distribute marijuana. Despite the lack of clarity, some tribes moved forward with plans to grow and sell marijuana at tribe-owned stores on tribal lands.[75] Since the memo was released, the DEA has led marijuana enforcement actions on tribal lands,[76] but it remains unclear whether legal marijuana will be tolerated on tribal land as it has been tolerated in states.

Monitoring Enforcement Priorities

In a review of the DOJ memoranda, the Government Accountability Office (GAO) concluded that "DOJ has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Rather, DOJ has left such lower-level or localized marijuana activity to state and local law enforcement authorities through enforcement of their own drug laws."[77] GAO has recommended that DOJ monitor the effects of state-level marijuana legalization initiatives relative to the eight DOJ enforcement priorities. This evaluation noted that DOJ has used a number of tools to help assess these effects. For instance, DOJ indicated to GAO that U.S. Attorneys were in contact with officials in states such as Colorado and Washington that had legalized marijuana. In addition, DOJ reported that it relies upon information from sources such as "federal surveys on drug use; state and local research; and feedback from federal, state, and local law enforcement."[78] Notably, DOJ has reportedly not been documenting its specific monitoring process, and GAO has recommended that DOJ develop a "clear plan" for how it will monitor and document the effects of state marijuana legalization on federal enforcement priorities.[79]

(...continued)

October 28, 2014.

[74] Monty Wilkinson, *Memorandum*, U.S. Department of Justice, Policy Statement Regarding Marijuana Issues in Indian Country, Washington, DC, October 28, 2014.

[75] "Native American Tribes Approve Plan to Grow and Sell Marijuana in Oregon," *The New York Times*, December 19, 2015; Noelle Crombie, "Warm Springs Tribes Launch Ambitious Pot Venture, Hope for Economic Windfall," *The Oregonian - Oregon Live*, April 29, 2016; John Gillie, "Two Marijuana Retailers Opening Soon in City that Still Bans Cannabis Sales," *The News Tribune*, January 28, 2017; and Jackie Valley, "Las Vegas Paiutes' Newest Venture: Medical Marijuana," *Las Vegas Sun*, March 1, 2016.

[76] Steven Nelson, "DEA Raid on Tribe's Cannabis Crop Infuriates and Confuses Reformers," *U.S. News & World Report*, October 26, 2015; and Cary Spivak, "Milwaukee Journal Sentinel," November 18, 2015.

[77] U.S. Government Accountability Office, *State Marijuana Legalization: DOJ Should Document Its Approach to Monitoring the Effects of Legalization*, GAO-16-1, December 2015, p. 9.

[78] Ibid., p. 27.

[79] Ibid.

Federal Enforcement in States: Directives through Federal Appropriations[80]

Over the past several years, Congress has included provisions in appropriations acts that prohibit DOJ from using appropriated funds to prevent certain states and the District of Columbia[81] from "implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana."[82] The current appropriations provision is in effect until April 28, 2017.[83] Courts have interpreted the appropriation provision to restrict DOJ from using appropriated funds (1) to take legal action directly against states and (2) to initiate criminal prosecutions of state officials for any action related to the implementation of a state medical marijuana law.[84] Several federal courts also have interpreted the provision as prohibiting DOJ from prosecuting individuals who, while strictly complying with the laws of one of the states covered by the appropriations provisions, have allegedly distributed, possessed, or cultivated medical marijuana in violation of *federal* law.[85] Although the appropriations provision restricts DOJ's ability to expend funds to enforce federal law, at least one court has made clear that the provision "does not provide immunity from prosecution for federal marijuana offenses."[86]

[80] This section was contributed by Todd Garvey, Legislative Attorney, Congressional Research Service. For a more detailed analysis of this issue, see CRS Legal Sidebar WSLG1451, *District Court Holds Appropriations Language Limits Enforcement of Federal Marijuana Prohibition*, by Todd Garvey.

[81] The provision specifically lists 43 jurisdictions: Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, Wyoming, the District of Columbia, Guam, and Puerto Rico.

[82] See, for example, P.L. 113-235, §538 (2014) and P.L. 114-113, §542 (2015).

[83] P.L. 114-254, §101(1).

[84] See, for example, United States v. Marin All. for Med. Marijuana, 139 F. Supp. 3d 1039, 1044 (E.D. Cal. 2015) (citing the DOJ's interpretation that the appropriation provision prohibits "federal actions that interfere with a state's promulgation of regulations implementing its statutory provisions, or with its establishment of a state licensing scheme.").

[85] See, for example, United States v. McIntosh, 833 F.3d 1163, 1177 (9th Cir. 2016) (holding that the 2015 appropriations restriction "prohibits DOJ from spending funds from relevant appropriations for the prosecution of individuals who engaged in conduct permitted by the State Medical Marijuana Laws [of California, Oregon, and Washington] and who fully comply with such laws); United States v. Daleman, No. 1:11-CR-00385-DAD-BAM, 2017 U.S. Dist. LEXIS 23213 (E.D. Cal. Feb. 17, 2017) (denying defendant's motion to enjoin the Department of Justice from using funds for his prosecution because defendant failed to establish that he "*strictly* complied with all relevant conditions imposed by state law on the use, distribution, possession, and cultivation of medical marijuana.") (emphasis in original); *Marin All. for Med. Marijuana*, 139 F. Supp. at 1040 (holding that the 2015 appropriations provision bars DOJ from using appropriated funds to enforce an injunction prohibiting a medical marijuana dispensary from engaging in activities that are compliant with California's medical marijuana law).

[86] *McIntosh*, 833 F.3d at 1179, n. 5 ("The CSA prohibits the manufacture, distribution, and possession of marijuana. Anyone in any state who possesses, distributes, or manufactures marijuana for medical or recreational purposes (or attempts or conspires to do so) is committing a federal crime. The federal government can prosecute such offenses for up to five years after they occur.... Congress could restore funding tomorrow, a year from now, or four years from now, and the government could then prosecute individuals who committed offenses while the government lacked funding. Moreover, a new president will be elected soon, and a new administration could shift enforcement priorities to place greater emphasis on prosecuting marijuana offenses."). See also United States v. Nixon, 839 F.3d 885, 886 (9th Cir. 2016) (per curiam) (holding that the appropriations provision does not "impact[] the ability of a federal district court to restrict the use of a medical marijuana as a condition of probation.").

Financial Services for Marijuana Businesses[87]

As explained below, so long as marijuana remains classified as a Schedule I controlled substance under federal law, financial institutions and their directors, officers, employees, and owners could be subject to severe criminal and administrative sanctions[88] for providing financial services to marijuana businesses, even if those businesses are operating in compliance with state law.[89] A consequence of these legal risks is that many financial institutions reportedly have been unwilling to provide financial services to state-authorized marijuana businesses.[90]

Bank Secrecy Act[91] and Federal Anti-Money Laundering Laws

Federal law classifies marijuana as a Schedule I controlled substance.[92] As a result, it is a federal crime to grow, sell, or merely possess the drug.[93] In addition to facing the prospect of a federal criminal prosecution, imprisonment, and criminal fines, those who violate the federal CSA may suffer a number of additional adverse consequences under federal law.[94] For example, federal authorities may confiscate any property used to grow marijuana or facilitate its sale or use, as well as all proceeds derived from the sale of marijuana.[95] When financial institutions provide financial services to business customers, they generally are not directly involved in the sale, possession, or distribution of their customers' products. However, financial institutions commonly acquire the *proceeds* from the sale of their customers' products. To the extent that a bank acquires such proceeds with the knowledge that they are derived from the sale of marijuana in violation of federal law, the proceeds potentially could be confiscated by federal authorities,[96] even when the underlying actions are permissible under state law.[97] For example, if a bank originates a loan to a

[87] This section was contributed by David H. Carpenter, Legislative Attorney, Congressional Research Service.

[88] See, for example, United States v. HSBC Bank USA, N.A., No. 12-CR-763, 2013 U.S. Dist. LEXIS 92438, 31-38 (E.D. N.Y. July 1, 2013) (approving a deferred prosecution agreement with a financial institution for, among other things, "fail[ing] to implement an effective [anti-money laundering] program to monitor suspicions transactions ... [which] permitted Mexican and Colombian drug traffickers to launder at least $881 million in drug trafficking proceeds through HSBC Bank USA undetected"; the agreement "imposes upon HSBC significant, and in some respect extraordinary, measures," including the forfeiture of $1.256 billion, remedial measures, and the admission of criminal violations).

[89] *McIntosh*, 833 F.3d at 1179, n. 5.

[90] Steve Leblanc, "Can Sen. Elizabeth Warren help fix banking issues for the cannabis industry?," *Associated Press*, January 3, 2017, available at http://www.thecannabist.co/2017/01/03/elizabeth-warren-marijuana-banking/70517/; Lisa Lambert, "Got bank? Election could create flood of marijuana cash with no place to go," *Reuters*, October 31, 2016, available at http://www.reuters.com/article/us-usa-marijuana-banks-idUSKBN12V0D5.

[91] The "Bank Secrecy Act" is commonly used to refer to Titles I and II of the Act of October 26, 1970, P.L. 91-508, 84 Stat. 1114–24 (1970).

[92] 21 U.S.C. §812(c), Sch.I(c)(10).

[93] Ibid. §§841-890.

[94] Ibid. For a detailed description of the CSA's civil and criminal provisions, see CRS Report RL30722, *Drug Offenses: Maximum Fines and Terms of Imprisonment for Violation of the Federal Controlled Substances Act and Related Laws*, by Brian T. Yeh.

[95] 18 U.S.C. §§981(a)(1)(A), 982(a)(1). For information on the procedural requirements and potential defenses associated with asset forfeiture, see CRS Report 97-139, *Crime and Forfeiture*, by Charles Doyle.

[96] Ibid. §981(a)(1)(C) ("The following property is subject to forfeiture to the United States ... (C) Any property, real or personal, which constitutes or is derived from proceeds traceable to ... any offense constituting 'specified unlawful activity' (as defined in section 1956(c)(7) of this title) [i.e., the list of predicate offenses for money laundering (18 U.S.C. §1956)], or a conspiracy to commit such offense.").

[97] *McIntosh*, 833 F.3d at 1179, n. 5.

business openly operating as a state-authorized medical marijuana dispensary, then the principal and interest payments earned by the bank on that loan could be subject to forfeiture, if the bank knew that those payments derived from the sale of marijuana in violation of federal law.[98]

In addition to the risk of asset forfeiture, federal anti-money laundering laws (i.e., Sections 1956 and 1957 of the criminal code) criminalize the handling of proceeds that are known to be derived from certain unlawful activities,[99] including the sale and distribution of marijuana.[100] Violators of these anti-money laundering laws may be subject to fines and imprisonment,[101] and any real or personal property involved in or traceable to prohibited transactions is subject to criminal or civil forfeiture.[102] For example, a bank employee could be subject to a 20-year prison sentence and criminal money penalties under Section 1956 for knowingly engaging in a financial transaction involving marijuana-related proceeds that is conducted with the intent to promote a further offense (e.g., withdrawing marijuana-generated funds in order to pay the salaries of medical marijuana dispensary employees).[103] Similarly, a bank officer could face a 10-year prison term and criminal money penalties under Section 1957 for knowingly depositing or withdrawing $10,000 or more in cash that is derived from the distribution and sale of marijuana.[104]

Furthermore, Congress has crafted laws that affirmatively enlist financial institutions[105] to aid in the investigation and prosecution of those who violate federal laws, including the CSA.[106] For example, financial institutions generally must file suspicious activity reports (SARs)[107] with the

[98] See, for example, United States v. Funds Held ex rel. Wetterer, 210 F.3d 96, 104 (2d Cir. 2000) ("In this Circuit, the government's burden is to show a nexus between the illegal conduct and the seized property. Once the government establishes that there is probable cause to believe that a nexus exists between the seized property and the predicate illegal activity, the burden shifts to the claimant to show by a preponderance of the evidence (1) that the defendant property was not in fact used unlawfully, or (2) that the predicate illegal activity was committed without the knowledge of the owner-claimant, 18 U.S.C. § 981(a)(2), that is, that the claimant is an 'innocent owner.'") (internal citations and quotations omitted).

[99] 18 U.S.C. §§1956(c)(7), 1957(f)(3). For a full list of predicate offenses, see the "Specified Unlawful Activities" section of CRS Report RL33315, *Money Laundering: An Overview of 18 U.S.C. 1956 and Related Federal Criminal Law*, by Charles Doyle.

[100] 18 U.S.C. §§1956, 1957. For a detailed analysis of federal anti-money laundering laws, see CRS Report RL33315, *Money Laundering: An Overview of 18 U.S.C. 1956 and Related Federal Criminal Law*, by Charles Doyle.

[101] Section 1956 violations are punishable by imprisonment for not more than 20 years and fines of up to $500,000 or twice the value of the property involved, whichever is greater. 18 U.S.C. §1956(a)(1). Section 1957 violations are punishable by imprisonment for not more than 10 years and fines of up $250,000 (or $500,000 for organizations) or twice the value of the property involved in the transaction, whichever is greater. Ibid. §§1957(b), 1957(h), 3571, 3559. Conspiracy to violate either section carries the same maximum penalties, as does aiding and abetting the commission of either offense. Ibid. §§2, 1956(h). See, for example, United States v. Lyons, 740 F.3d 702, 715 (1st Cir. 2014). For a detailed description of the penalties for violating these laws, see CRS Report RL30722, *Drug Offenses: Maximum Fines and Terms of Imprisonment for Violation of the Federal Controlled Substances Act and Related Laws*, by Brian T. Yeh.

[102] 18 U.S.C. §§981(a)(1)(A), 982(a)(1).

[103] Ibid. §1956(a)(1)(A)(i). See for example, Department of Justice, "Man Sentenced to 35 Months Imprisonment for Bank Fraud and Money Laundering," Press Release, July 19, 2013, available at https://www.justice.gov/usao-edwi/pr/man-sentenced-35-months-imprisonment-bank-fraud-and-money-laundering (announcing the sentence of an individual who pled guilty to violating 18 U.S.C. §1956 and other criminal laws while working as a bank officer).

[104] Ibid. §1957(a), (d).

[105] For the purposes of the Bank Secrecy Act and anti-money laundering laws, the term "financial institution" is defined broadly to include banks, savings associations, credit unions, broker dealers, insurance companies, pawnbrokers, automobile dealers, casinos, cash checkers, travel agencies, and precious metal dealers, among others. 31 U.S.C. §5312(a)(2).

[106] See, for example, 12 U.S.C. §§1951-59; 31 U.S.C. §§5311-32.

[107] Filing SARs are mandatory under certain circumstances, but financial institutions may file SARs even when not (continued...)

Treasury Department's Financial Crimes Enforcement Network (FinCEN) regarding financial transactions[108] suspected to be derived from specified illegal activities,[109] including the sale of marijuana.[110] Depository institutions[111] and certain other financial institutions[112] also must establish and maintain anti-money laundering programs, designed to ensure that the institutions' officers and employees will have sufficient knowledge of their customers and of the businesses of those customers to identify the circumstances under which filing SARs is appropriate.[113] Even in the absence of suspicion, financial institutions must file currency transaction reports (CTRs) with FinCEN relating to transactions involving $10,000 or more in cash or other "currency."[114] The failure to comply with these reporting requirements can result in fines and imprisonment.[115]

Additionally, financial institutions, their employees, and certain other affiliated parties could be subject to administrative enforcement actions by federal regulators for violating the Bank Secrecy Act or anti-money laundering laws.[116] For example, the federal banking regulators[117] may utilize

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(...continued)

mandated by law. See, for example, 12 C.F.R. §§1020.320(a) (banks); 1022.320(a) (money services businesses).

[108] "Transaction":

> means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, security, contract of sale of a commodity for future delivery, option on any contract of sale of a commodity for future delivery, option on a commodity, purchase or redemption of any money order, payment or order for any money remittance or transfer, purchase or redemption of casino chips or tokens, or other gaming instruments or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

31 C.F.R. §1010.100(bbb).

[109] 18 U.S.C. §§1956(c)(7), 1957(f)(3). For a full list of predicate offenses, see the "Specified Unlawful Activities" section of CRS Report RL33315, *Money Laundering: An Overview of 18 U.S.C. 1956 and Related Federal Criminal Law*, by Charles Doyle.

[110] 21 U.S.C. §§841-890; 31 U.S.C. §5318(g); 31 C.F.R. §1020.320.

[111] There are several different types of depository institutions, including banks, savings associations, and credit unions. A depository charter can be issued by either a state or federal chartering authority.

[112] Some financial institutions are exempt from establishing anti-money laundering programs. 31 U.S.C. §5318(h)(2); 31 C.F.R. §1010.205.

[113] See generally 31 U.S.C. §5318(h)(1); 31 C.F.R. §§1020.200-1020.220. See also 12 U.S.C. §1786(q)(1) (credit unions); 12 U.S.C. §1818(s) (banks and savings associations). See also CRS Legal Sidebar WSLG1515, *Wake Up Call for Financial Institution Management: Anti-Money Laundering Program Is Your Personal Responsibility*, by M. Maureen Murphy.

[114] 31 U.S.C. §5313; 31 C.F.R. subpt.1020C; 31 C.F.R. subpt.1010C. "Currency" is defined as:

> The coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes U.S. silver certificates, U.S. notes and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country.

31 C.F.R. §1010.100(m).

[115] 31 U.S.C. §5322. The willful failure to file SARs and CTRs is punishable by imprisonment for not more than five years or not more than 10 years in cases of a substantial pattern of violations or transactions involving other illegal activity. Ibid. Structuring a transaction to avoid the reporting requirement exposes the offender to the same maximum terms of imprisonment. Ibid. §5324(d). For a detailed description of penalties for violations of Bank Secrecy Act reporting and monitoring requirements, see CRS Report RL33315, *Money Laundering: An Overview of 18 U.S.C. 1956 and Related Federal Criminal Law*, by Charles Doyle.

[116] See, for example, 12 U.S.C. §§1786, 1818, 1831o.

[117] For these purposes, the federal banking regulators are: the Office of the Comptroller of the Currency (OCC) for national banks and federal savings associations; the Board of Governors of the Federal Reserve System for domestic (continued...)

administrative enforcement powers against depository institutions and their directors, officers, controlling shareholders, employees, agents, and affiliates that engage in unlawful, marijuana-related activities.[118] The banking regulators have the legal authority, for instance, to issue cease and desist orders, impose civil money penalties, and issue removal and prohibition orders that temporarily or permanently ban individuals from working for any depository institution.[119] The banking regulators also have the authority, under certain circumstances, to revoke an institution's federal deposit insurance coverage and to take control of and liquidate a depository institution.[120] In fact, a criminal conviction for violating the Bank Secrecy Act or anti-money laundering laws is an explicit ground for the appointment of the Federal Deposit Insurance Corporation "as receiver [to] place the insured depository institution in liquidation."[121]

FinCEN and DOJ Guidance to Financial Institutions

In response to state marijuana legalization efforts, FinCEN issued guidance with respect to marijuana-related financial crimes on February 14, 2014.[122] This guidance appears to provide a roadmap for financial institutions seeking to comply with suspicious activity reporting requirements when providing financial services to state-authorized marijuana businesses, while also alerting FinCEN to transactions that might trigger federal enforcement priorities.[123]

The guidance notes that:

> [b]ecause federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity. Therefore, a financial institution is required to file a SAR on activity involving a marijuana-related business (including those duly licensed under state law) in accordance with this guidance and [FinCEN regulations].[124]

FinCEN advised financial institutions that, in providing services to a marijuana business, they must file one of three types of special SARs:

(...continued)

operations of foreign banks and state-chartered banks that are members of the Federal Reserve System; the Federal Deposit Insurance Corporation (FDIC) for state savings associations and state-chartered banks that are not members of the Federal Reserve System; and the National Credit Union Administration (NCUA) for federally insured credit unions. Ibid. §§1766, 1813(q).

[118] See, for example, ibid. §1786 (credit unions); ibid. §§1818, 1831o (banks and savings associations). See also Office of the Comptroller of the Currency, "OCC Assesses $2.5 Million Civil Money Penalty Against Gibraltar Private Bank and Trust Company for Bank Secrecy Act Violations, Press Release, February 25, 2016, available at https://www.occ.gov/news-issuances/news-releases/2016/nr-occ-2016-20.html (ordering the payment of a civil money penalty and remedial actions for allegedly "fail[ing] to maintain an effective Bank Secrecy Act/Anti-Money Laundering (BSA/AML) compliance program.").

[119] Ibid.

[120] See, for example, ibid. §§1786, 1787 (credit unions); ibid. §§1818, 1821, 1831o (banks and savings associations).

[121] 12 U.S.C. §1821(c)(5)(M), (d)(2)(E).

[122] Department of the Treasury, *Financial Crimes Enforcement Network, BSA Expectations Regarding Marijuana-Related Business*, FIN-2014-G001, February 14, 2014, available at https://www.fincen.gov/resources/statutes-regulations/guidance/bsa-expectations-regarding-marijuana-related-businesses. The Administration could reverse or otherwise make significant changes to its enforcement priorities and policies. See generally CRS Report R43708, *The Take Care Clause and Executive Discretion in the Enforcement of Law*, by Todd Garvey.

[123] Ibid.

[124] Ibid., p. 3.

1. A marijuana limited SAR: The marijuana limited SAR is seen to be appropriate when the bank determines, after the exercise of due diligence, that a customer is not engaged in any activities that violate state law or implicate the investigation and prosecution priorities in the 2014 Cole Memorandum (see "Department of Justice Guidance Memos for U.S. Attorneys");[125]
2. A marijuana priority SAR: A marijuana priority SAR must be filed when the financial institution believes a customer is engaged in activities that implicate DOJ's investigation and prosecution priorities;[126] and
3. A marijuana termination SAR: A financial institution is instructed to file a marijuana termination SAR when it finds it necessary to sever its relationship with a customer to maintain an effective anti-money laundering program.[127]

FinCEN also provides examples of "red flags" that may indicate that a marijuana priority SAR is appropriate.[128] The FinCEN guidance does not impact financial institutions' obligations to file currency transaction reports.[129]

Select Implications of State Marijuana Legalization

While the majority of the American public supports marijuana legalization, some have voiced concern over possible negative implications, particularly with respect to *recreational* legalization. Some concerns were outlined as enforcement priorities by DOJ in monitoring state legalization.[130] These implications include, but are not limited to, the potential impact of legalization on (1) use of marijuana, particularly among youth; (2) traffic-related incidents involving marijuana-impaired drivers; (3) trafficking of marijuana from states that have legalized it into neighboring states that have not; and (4) U.S. compliance with international treaties. On the other hand, some have been encouraged by the potential outcomes from marijuana legalization, including new tax revenue for states and a potential decrease in marijuana-related arrests.

Not all potential implications are discussed in this report, and some are yet to be fully measured. Of note, data on potential effects of marijuana legalization should be interpreted with caution, as they are fairly limited, and not all factors are presented when reporting changes in statistics since state legalization. Further, conclusions about the impact of marijuana legalization would be premature without broader inclusion of both historical data and additional years of post-legalization data, as well as consideration of other factors aside from legalization.

U.S. Demand for Marijuana

As discussed, marijuana is the most commonly used illicit drug in the United States. In 2015, an estimated 22.2 million individuals aged 12 or older were current (past month) users of marijuana.

[125] Ibid., pp. 3-4.

[126] Ibid., p. 4.

[127] Ibid., pp. 4-5.

[128] Ibid., pp. 5-7. Some examples of "red flags" noted in the guidance are: "[t]he business is unable to produce satisfactory documentation or evidence to demonstrate that it is duly licensed and operating consistently with state law"; and "[a] customer seeks to conceal or disguise involvement in marijuana-related business activity." Ibid.

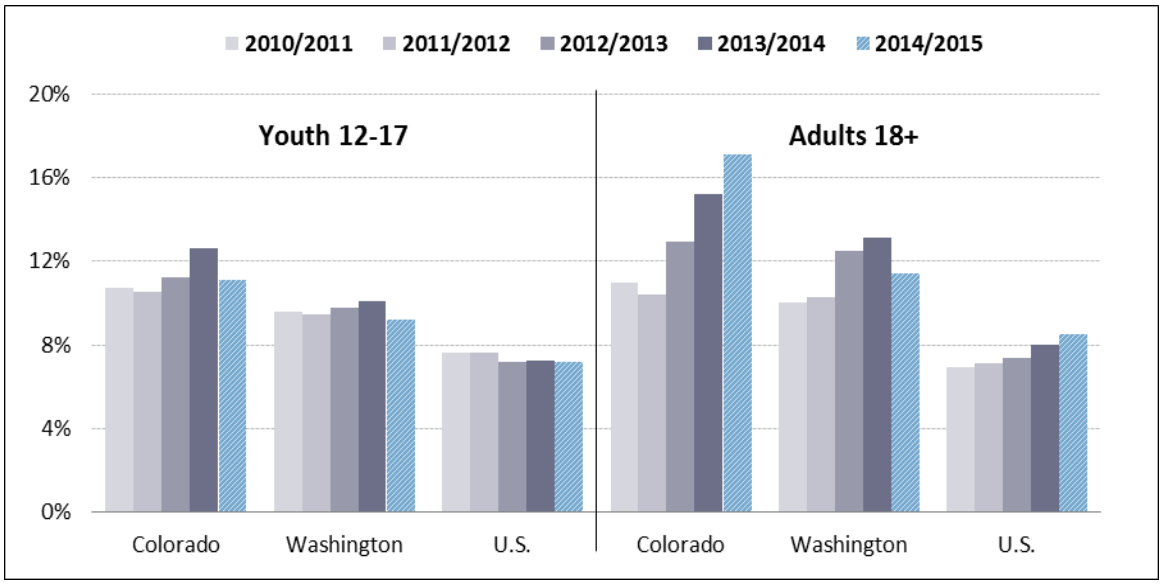
[129] Ibid., p. 7. For a discussion of currency transaction reporting requirements, see *supra* notes 114-115 and surrounding text.

[130] See James M. Cole, *Memorandum for all United States Attorneys*, U.S. Department of Justice, Guidance Regarding Marijuana Enforcement, Washington, DC, August 29, 2013, pp. 1-2.

The percentage of users has gradually increased over the last several years—from 6.9% in 2010 to 8.3% in 2015.[131] The rate of past-month marijuana use among youth (aged 12 to 17), however, has remained fairly unchanged over this period (7.0%).[132]

Figure 3. Estimates of Current Marijuana Use in Colorado, Washington, and the United States, 2010-2015

Percentages Among Youth (Ages 12-17) and Adults (18 and Older)



Source: Created by the Congressional Research Service (CRS) based on available population data from the Substance Abuse and Mental Health Services Administration (SAMHSA), *National Survey on Drug Use and Health (NSDUH)*, State Data, 2010/2011, 2011/2012, 2012/2013, 2013/2014, and 2014/2015, http://www.samhsa.gov/data/.

Notes: This figure presents yearly estimates of marijuana use in Colorado, Washington, and the United States and does not show statistical changes in these data. To review year-to-year, statistically significant changes, if any, see the NSDUH state data reports. The 2015/2016 state data are not yet available from SAMHSA. Annual state-level estimates are based on 2 calendar years of pooled NSDUH data, so two consecutive sets of estimates have a one-year overlap. For more information on the NSDUH methodology, see 2014-2015 National Survey on Drug Use and Health: Guide to State Tables and Summary of Small Area Estimation Methodology. Current use of marijuana is defined as use in the past 30 days.

In the states that legalized recreational marijuana in November 2012 (Washington and Colorado), the percentages of youth (aged 12-17) and adults (aged 18 and older) who are current users have changed in various ways over the 2010-2015 period according to survey data. For adults, the changes generally match national trends over the same time period (see **Figure 3**). Colorado and Washington have higher percentages of use for adults and youth compared to national estimates—both before and after recreational legalization began. Of note, the 2014/2015 percentages of marijuana use among youth are fairly similar to the percentages reported in 2010/2011, while adult percentages are higher than those reported in 2010/2011.[133] Rates of drug use may be

[131] *Results from 2015 NSDUH*, Tables 1.1A and 1.1B.

[132] Results from *2015 NSDUH*, Table 1.2B and *Results from the 2014 National Survey on Drug Use and Health: Summary of National Findings*.

[133] Substance Abuse and Mental Health Services Administration (SAMHSA), *National Survey on Drug Use and Health (NSDUH)*, State Data, 2010/2011, 2011/2012, 2012/2013, 2013/2014, and 2014/2015, http://www.samhsa.gov/data/. The observed differences between estimates were not evaluated in terms of statistical significance—the probability that (continued...)

influenced by many possible factors including availability of the drug, family, peers, school, economic status, and community variables.[134]

Of note, some state government officials in states that have legalized marijuana have monitored changes in drug use patterns and emerging research on the health effects of marijuana. For example, the Colorado Department of Public Health and Environment (CDPHE) was given the responsibility to "monitor changes in drug use patterns, broken down by county and race and ethnicity, and the emerging science and medical information relevant to the health effects associated with marijuana use."[135]

Marijuana-Related Traffic Incidents

The recent use of marijuana has been shown to impair driving ability.[136] According to the National Highway Traffic Safety Administration (NHTSA), "[l]ow doses of THC moderately impair cognitive and psychomotor tasks associated with driving, while severe driving impairment is observed with high doses, chronic use and in combination with low doses of alcohol."[137] Some may be concerned that recreational marijuana legalization could be associated with an increase in marijuana-related traffic incidents. In Colorado, despite limited traffic data, the Department of Public Safety reports the following:

> [T]he number of summons issued for Driving Under the Influence [DUI] in which marijuana or marijuana-in-combination[[138]] with other drugs [was recorded] decreased 1% between 2014 and 2015 (674 to 665).
>
> The prevalence of marijuana or marijuana-in-combination identified by CSP [Colorado State Patrol] as the impairing substance increased from 12% of all DUIs in 2014 to 15% in 2015.
>
> The Denver Police Department found summons where marijuana or marijuana-in-combination was recorded increased from 33 to 73 between 2013 and 2015. Citations for marijuana or marijuana-in-combination account for about 3% of all DUIs in Denver. Toxicology results from Chematox Laboratory showed an increase in positive cannabinoid screens for drivers, from 57% in 2012 to 65% in 2014. Of those that tested positive on the initial screen, the percent testing positive for delta-9 Tetrahydrocannabinol (THC) at 2 nanograms/millileter rose from 52% in 2012 to 67% in 2014.

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an observed difference in the population estimates would occur due to random variability if there was no difference in the estimates being compared. To review year-to-year, statistically significant changes, see the NSDUH state data reports.

[134] National Institute on Drug Abuse, *Preventing Drug Use among Children and Adolescents (In Brief)*, October 2003, https://www.drugabuse.gov/publications/preventing-drug-abuse-among-children-adolescents/chapter-1-risk-factors-protective-factors/what-are-risk-factors.

[135] See Colorado Revised Statutes, Title 25, §1.5-110. See the most recent report, CDPHE, Retail Marijuana Public Health Advisory Committee, *Monitoring Health Concerns Related to Marijuana in Colorado: 2016*, 2016.

[136] Blood THC concentrations drop quickly after individuals smoke marijuana. See Rebecca L. Hartman and Marilyn A. Huestis, "Cannabis effects on driving skills," *Clinical Chemistry*, vol. 59, no. 3 (March 2013), pp. 478-492; and Rebecca L. Hartman, Timothy L. Brown, and Gary Milavetz, et al., "Cannabis effects on driving lateral control with and without alcohol," *Drug and Alcohol Dependence*, vol. 154 (September 1, 2015), pp. 25-37.

[137] National Highway Traffic Safety Administration, *Drug and Human Performance Fact Sheets: Cannabis/Marijuana (Δ 9 -Tetrahydrocannabinol, THC)*, https://one.nhtsa.gov/people/injury/research/job185drugs/cannabis.htm.

[138] In this report, the concept of marijuana "in combination" references marijuana in combination with other drugs.

> Fatalities with THC-only or THC-in-combination positive drivers increased 44%, from 55 in 2013 to 79 in 2014. Note that the detection of any THC in [the] blood is not an indicator of impairment but only indicates presence in the system. Detection of delta-9 THC, one of the psychoactive properties of marijuana, may be an indicator of impairment.[139]

In monitoring the impacts of recreational marijuana legalization in Washington State, government researchers report that there was no trend identified in the percentage of drivers testing positive for marijuana (either marijuana only or marijuana in combination with other drugs/alcohol) for those involved in traffic fatalities and who were tested for drugs or alcohol.[140] They also report that "marijuana incidents"[141] on the highways and roads decreased from 2,462 in 2012 to 625 in 2014. Changes in these data may be influenced by many possible factors including changes in enforcement practices and priorities. It is possible that the sharp drop in marijuana incidents may be explained by the legalization of marijuana possession[142] after 2012. For example, many traffic stops involving the smell of marijuana would no longer require further law enforcement investigation unless the individual in question is under the age of 21, there is suspicion of drug trafficking, or other reasons.

Marijuana Arrests

After the legalization of the possession, sale, manufacturing, and distribution of certain quantities of marijuana for recreational purposes, one might expect the number of marijuana arrests to go down in jurisdictions that have done so. Indeed, Washington State reports that "all criminal activities involving marijuana decreased between 2012 and 2014."[143] Possession was cited as the most common criminal activity, and the number of marijuana possession arrests decreased from 5,133 in 2012 to 2,091 in 2013, and then to 1,918 in 2014.[144] Additionally, the number of marijuana incidents decreased from 6,336 in 2012 to 2,326 in 2014.[145]

In Colorado, the number of marijuana arrests decreased by nearly half from 12,894 in 2012 to 6,502 in 2013, and then increased to 7,004 in 2014. Of note, the number of marijuana arrests for youth (aged 10-17) increased by 6%, from 3,235 in 2012 to 3,400 in 2014, after a slight decline in 2013.[146]

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[139] Jack Reed, *Marijuana Legalization in Colorado: Early Findings: A Report Pursuant to Senate Bill 13-283*, Colorado Department of Public Safety, March 2016, p. 6, (hereinafter, *Marijuana Legalization in Colorado: Early Findings: A Report Pursuant to Senate Bill 13-283*).

[140] Washington State Office of Financial Management, Forecasting and Research Division, *Monitoring the Impacts of Recreational Marijuana Legalization*, 2015 Update Report, January 2016, p. 3, (hereinafter, *Monitoring the Impacts of Recreational Marijuana Legalization*).

[141] OFM relies on the FBI's definition of the term "incident" and states the following: "an 'incident' occurs when any law enforcement officer investigates a scene or situation, whether that investigation results in an arrest or not. Incidents involving multiple illicit drugs or other criminal activities are counted only once, and are included in whichever category is listed first by the local law enforcement agency." Ibid., p. 4.

[142] Washington State legalized the possession of marijuana in limited amounts by adults.

[143] *Monitoring the Impacts of Recreational Marijuana Legalization*, pp. 3 and 17.

[144] Ibid, p. 17.

[145] Of note, over this same period, the number of incidents increased each year for amphetamines/methamphetamines and heroin, and decreased each year for incident data in which no drug type was provided and drug type was unknown. See *Monitoring the Impacts of Recreational Marijuana Legalization*, p. 14.

[146] *Marijuana Legalization in Colorado: Early Findings: A Report Pursuant to Senate Bill 13-283*, p. 22.

Marijuana Trafficking

Transnational Trafficking

Mexican transnational criminal organizations have historically been the primary foreign suppliers of marijuana to the United States, with small amounts also coming from Canada and the Caribbean. While anecdotal reports about the impact of domestic legalization initiatives on the domestic marijuana black market exist, officials have noted that there is an "intelligence gap" with respect to data on exactly how domestic legalization has impacted the amount of Mexican-produced marijuana entering the United States.[147] For one, estimates on domestic marijuana consumption cannot speak to the source of this marijuana. In addition, drug seizure data from the various federal, state, and local law enforcement agencies do not give a sense of the origin of the marijuana. Further, there is no marijuana "signature program," like there is for cocaine and heroin, that can help determine the geographic origin of cannabis plants used to produce the seized marijuana.[148]

Marijuana cultivation in Mexico has decreased, though it is unclear precisely how this affects or is driven by U.S. demand for Mexican marijuana. One of the tradeoffs has been an increase in production of other drugs. Reportedly, the trafficking organizations have shifted production to more profitable drugs such as heroin and methamphetamine.[149] Consistent with a decline in Mexican marijuana cultivation, there has been a general decline in marijuana seizures along the Southwest border between 2010 and 2015. However, the DEA's outlook on marijuana trafficking is that "Mexico-produced marijuana will continue to be trafficked into the United States in bulk quantities and will likely increase in quality to compete with domestically-produced marijuana."[150]

One notable statistic is that since the first states began legalizing marijuana for recreational use in 2012, there has been a "sharp decline" in the number of individuals prosecuted and sentenced for federal marijuana trafficking offenses.[151] As experts have noted, however, this decline could be driven by a number, or combination, of factors such as federal efforts to prosecute marijuana-related drug offenders, efforts by drug traffickers to conceal their illegal contraband entering the United States, and the amount of illegal marijuana being shipped into the United States.[152]

Trafficking from States that Have Legalized into Other States

Some states have alleged that there has been increased marijuana trafficking from nearby states that have legalized marijuana possession or sale for medical or recreational purposes. For instance, according to DEA testimony, there has been increased marijuana trafficking in states surrounding Colorado since the state legalized recreational use.[153] The Rocky Mountain High

[147] U.S. Drug Enforcement Administration, *2015 National Drug Threat Assessment Summary*, DEA-DCT-DIR-008-16, October 2015, p. 71 (hereinafter, *2015 National Drug Threat Assessment Summary*).

[148] *National Drug Threat Assessment Summary 2016*, p. 116.

[149] Nick Miroff, "Losing Marijuana Business, Mexican Cartels Push Heroin and Meth," *The Washington Post*, January 11, 2015.

[150] *National Drug Threat Assessment Summary 2016*, p. 125.

[151] U.S. Sentencing Commission, *Quick Facts: Drug Trafficking Offenses*, May 2016.

[152] Christopher Ingraham, "Federal Marijuana Smuggling is Declining in the Era of Legal Weed," *The Washington Post*, May 26, 2016, referencing statements by Beau Kilmer, a drug policy researcher at RAND Corp.

[153] U.S. Congress, Senate Committee on the Judiciary, *Hearing on Oversight of the Drug Enforcement Administration*, Testimony of Administrator Michele M. Leonhart [transcript], 113th Cong., 2nd sess., April 30, 2014. Administrator (continued...)

Intensity Drug Trafficking Area (HIDTA) reported 394 instances of interdiction of Colorado marijuana destined for 36 other states in 2015.[154] Additionally, the HIDTA's report indicates that interdiction experts estimate these seizures represent about 10% or less of the total amount that is moved across the border undetected.[155]

In December 2014, Nebraska and Oklahoma filed a lawsuit in the U.S. Supreme Court[156] against Colorado claiming that their law enforcement and criminal justice systems had been adversely impacted by Colorado's laws legalizing marijuana.[157] The complaint included claims that Colorado's "statutes and regulations are devoid of safeguards to ensure marijuana cultivated and sold in Colorado is not trafficked to other states."[158] In March 2016, however, the Supreme Court declined to hear the case challenging Colorado's marijuana law.[159]

The Changing Domestic Black Market

There have been reports of changes in the domestic black market for marijuana as states have moved to legalize it for medical and recreational purposes. For instance, the market in Denver, CO, has been described as smaller and less violent than it previously was. In addition, buyers there are said to be purchasing more from "mom-and-pop operations" rather than from entities affiliated with larger cartels.[160] Most of the domestically produced marijuana (other than that which is produced in accordance with various state laws) is cultivated in California.[161] This cultivation is carried out not only by U.S. persons, but also by foreign criminal networks. For instance, Mexican traffickers run large outdoor grow sites in California, which are sometimes established on public lands.

The DEA has indicated that marijuana concentrates—such as hashish, hash oil, and keif—are a growing concern for federal law enforcement. These substances have "potency levels far exceeding those of leaf marijuana."[162] The DEA has also stated that one effect of state marijuana legalization initiatives has been an increase in seizures of marijuana concentrates and an increase in the number of THC extraction laboratories in the United States.[163]

Broadly, there has been a shifting demand for higher-quality marijuana. The marijuana produced in the United States and Canada is generally thought to be of superior quality to the marijuana

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Leonhart further stated, "Take for instance, Kansas, and we've talked to our partners in Kansas and they've already been seeing a 61 percent increase in marijuana seizures coming from Colorado."

[154] Rocky Mountain High Intensity Drug Trafficking Area, *The Legalization of Marijuana in Colorado: The Impact*, September 2016, p. 4.

[155] Ibid., p. 110.

[156] The Constitution provides the Supreme Court with original jurisdiction over "Controversies between two or more States," meaning such claims can be filed directly with the Supreme Court without first being litigated in the lower federal courts. U.S. CONST., art. III, §2. cl. 1.

[157] Jack Healy, "Nebraska and Oklahoma Sue Colorado Over Marijuana Law," *The New York Times*, December 18, 2014.

[158] States of Nebraska and Oklahoma v. State of Colorado, S. Ct., Complaint, p. 3.

[159] Nebraska, et al. v. Colorado, 577 U.S. ___, 136 S. Ct. 1034 (2016); *see also* David G. Savage, "Supreme Court Rejects Challenge to Colorado Marijuana Law From Other States," *The Los Angeles Times*, March 21, 2016.

[160] Tom James, "The Failed Promise of Legal Pot," *The Atlantic*, May 9, 2016.

[161] *National Drug Threat Assessment Summary 2015*, p. 72.

[162] *National Drug Threat Assessment Summary 2015*, p. v.

[163] *National Drug Threat Assessment Summary 2016*, p. 105.

produced in Mexico. To be responsive to the U.S. demand for high-quality marijuana, Mexican drug traffickers have tried to improve their product.[164] However, it is not just U.S. consumers who demand higher-quality marijuana. The demand exists in Mexico as well; there have even been anecdotal reports of traffickers moving high-quality marijuana produced in the United States across the Southwest border for sale and distribution in Mexico.[165] U.S. officials have not yet reported data on the quantity or frequency of this southbound smuggling.

The Marijuana Gray Market

In Colorado, state law allows the cultivation of up to 99 marijuana plants for patients and caregivers and up to 6 plants per individual for recreational purposes. In what has been dubbed "the gray market," marijuana is sometimes being grown legally *but then sold illegally.*[166] In addition to federal and local enforcement actions against gray market actors, Colorado Governor Hickenlooper reportedly is seeking to establish new limits on residential plants and give law enforcement additional resources to combat unlicensed marijuana growers.[167]

Legalization Impact on Criminal Networks

A number of criminal networks rely on profits generated from the sale of illegal drugs—including marijuana—in the United States. Mexican drug trafficking organizations control more of the wholesale distribution of marijuana than other major drug trafficking organizations in the United States.[168] One estimate has placed the proportion of U.S.-consumed marijuana that was imported from Mexico at somewhere between 40% and 67%.[169] While the Mexican criminal networks control the wholesale distribution of illicit drugs in the United States, they "are not generally directly involved in retail distribution of illicit drugs."[170] In order to facilitate the retail distribution and sale of drugs in the United States, Mexican drug traffickers have formed relationships with U.S. street, prison, and outlaw motorcycle gangs.[171] Although these gangs have historically been involved with retail-level drug distribution, their ties to the Mexican criminal networks have allowed them to become increasingly involved at the wholesale level as well. Trafficking and distribution of illicit drugs is a primary source of revenue for these gangs.[172]

A number of organizations have assessed the potential profits generated from illicit drug sales, both worldwide and in the United States, but "[e]stimates of marijuana ... revenues suffer particularly high rates of uncertainty."[173] The former National Drug Intelligence Center (NDIC),

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[164] Ibid., p. 116.

[165] John Burnett, "Legal Pot In the U.S. May Be Undercutting Mexican Marijuana," *NPR All Things Considered*, December 1, 2014.

[166] John Frank, "Colorado governor calls marijuana gray market 'a clear and present danger'," *The Denver Post*, November 15, 2016.

[167] Brian Eason "The top 10 issues facing Colorado lawmakers Eason and John Frank, in the 2017 session," *The Denver Post*, January 9, 2017.

[168] *National Drug Threat Assessment Summary 2016*.

[169] Beau Kilmer, Jonathan P. Caulkins, and Brittany M. Bond, et al., *Reducing Drug Trafficking Revenues and Violence in Mexico: Would Legalizing Marijuana in California Help?*, RAND International Programs and Drug Policy Research Center, 2010.

[170] Organization of American States, *The Drug Problem in the Americas: Studies: The Economics of Drug Trafficking*, p. 18.

[171] *National Drug Threat Assessment Summary 2016*.

[172] Ibid. See also *National Drug Threat Assessment Summary 2015*.

[173] Organization of American States, *The Drug Problem in the Americas: Studies: The Economics of Drug Trafficking*, (continued...)

for instance, estimated that the sale of illicit drugs in the United States generates between $18 billion and $39 billion in U.S. wholesale drug proceeds for the Colombian and Mexican drug trafficking organizations annually.[174] The proportion that is attributable to marijuana sales, however, is unknown.[175] Without a clear understanding of (1) actual proceeds generated by the sale of illicit drugs in the United States, (2) the proportion of total proceeds attributable to the sale of marijuana, and (3) the proportion of marijuana sales controlled by criminal organizations and affiliated gangs, any estimates of how marijuana legalization might impact the drug trafficking organizations are purely speculative.

Marijuana proceeds are generated at many points along the supply chain, including production, transportation, and distribution. Experts have debated which aspects of this chain—and the related proceeds—would be most heavily impacted by marijuana legalization. In addition, the potential impact of marijuana legalization in some subset of the states (complicated by varying legal frameworks and regulatory regimes) may be more difficult to model than the impact of federal marijuana legalization. For instance, in evaluating the potential fiscal impact from the 2012 Washington and Colorado legalization initiatives on the profits of Mexican drug trafficking organizations, the Organization of American States (OAS) hypothesized that "[a]t the extreme, Mexican drug trafficking organizations could lose some 20 to 25 percent of their drug export income, and a smaller, though difficult to estimate, percentage of their total revenues."[176]

Other scholars have based their estimates on a hypothetical federal legalization of marijuana when estimating the potential financial impact of marijuana legalization. Under this scenario, small-scale growers at the start of the marijuana production-to-consumption chain might be put out of business by professional farmers, a few dozen of which "could produce enough marijuana to meet U.S. consumption at prices small-scale producers couldn't possibly match."[177] Large drug trafficking organizations generate a majority of their marijuana-related income (which some estimates place at between $1.1 billion to $2.0 billion) from exporting the drug to the United States and selling it to wholesalers on the U.S. side of the border.[178] This revenue could be jeopardized if the United States were to legalize the production and consumption of recreational marijuana. Of note, the Tax Foundation has estimated that the annual U.S. marijuana

(...continued)

2013, p. 7.

[174] U.S. Department of Justice, National Drug Intelligence Center, *National Drug Threat Assessment 2009,* December 2008, p. 49.

[175] A 2006 Office of National Drug Control Policy figure estimated that over 60% of Mexican drug trafficking organizations' revenue could be attributed to marijuana sales. However, a number of researchers and experts have questioned the accuracy of this number and provided other estimates of marijuana proceeds. See, for example, Beau Kilmer, *Debunking the Mythical Numbers about Marijuana Production in Mexico and the United States*, RAND Drug Policy Research Center. See also U.S. Government Accountability Office, *Drug Control: U.S. Assistance has Helped Mexican Counternarcotics Efforts, but Tons of Illicit Drugs Continue to Flow into the United States*, GAO-07-1018, August 2007. Another estimate has placed the proportion of Mexican DTO export revenues attributable to marijuana at between 15% and 26% of total drug revenues. See Beau Kilmer, Jonathan P. Caulkins, and Brittany M. Bond, et al., *Reducing Drug Trafficking Revenues and Violence in Mexico: Would Legalizing Marijuana in California Help?*, RAND International Programs and Drug Policy Research Center, 2010.

[176] Organization of American States, *The Drug Problem in the Americas: Studies: The Economics of Drug Trafficking*, p. 41.

[177] Jonathan P. Caulkins, Angela Howken, and Beau Kilmer, "How Would Marijuana Legalization Affect Me Personally?" in *Marijuana Legalization: What Everyone Needs to Know* (Oxford University Press, 2012).

[178] Beau Kilmer, Jonathan P. Caulkins, and Brittany M. Bond, et al., *Reducing Drug Trafficking Revenues and Violence in Mexico: Would Legalizing Marijuana in California Help?*, RAND International Programs and Drug Policy Research Center, 2010.

market is $45 billion—0.28% of GDP.[179] Under a legalization regime, some portion of the revenue that might have previously been generated by traffickers could be lost to authorized sellers (in the form of profits) and governments (in the form of taxes).

International Response[180]

Developments in state marijuana laws and policies, particularly those that relate to recreational marijuana activities, have raised some concerns about the United States' compliance with three United Nations (U.N.) drug control treaties that impose certain international obligations relating to marijuana. These treaties generally seek to curb the use of controlled substances while carving out exceptions for medicinal and scientific uses. The United States is a party to the following drug treaties:

- The Single Convention on Narcotic Drugs (Single Convention)[181] requires parties to the convention to "take such legislative and administrative measures as may be necessary ... to limit exclusively to medical and scientific purposes" the manufacture, distribution, trade, use, and possession of "cannabis."[182]
- The 1971 Convention on Psychotropic Substances requires that specific controls be placed upon THC.[183]
- The 1988 U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances requires parties to establish criminal penalties for the possession, purchase, or cultivation of marijuana for nonmedicinal consumption, but only to the extent that such action is consistent with the "constitutional principles and basic concepts of [the country's] legal system."[184]

The International Narcotics Control Board (INCB or Board) and the Commission on Narcotic Drugs of the Economic and Social Council (Commission) are responsible for monitoring parties' compliance with these treaties,[185] though they appear to have limited ability to enforce such compliance. For example, the Single Convention provides that the Commission may "call the attention of the Board to any matters which may be relevant to the functions of the Board,"[186] while the Board may take measures that are "most consistent with the intent to further the co-operation of Governments with the Board and to provide the mechanism for a continuing

[179] Gavin Ekins and Joseph Henchman, *Marijuana Legalization and Taxes: Federal Revenue Impact*, Tax Foundation, May 12, 2016.

[180] This section was authored by Brian T. Yeh, Legislative Attorney, Congressional Research Service.

[181] Single Convention on Narcotic Drugs, March 30, 1961, 18 U.S.T. 1407, https://www.unodc.org/unodc/en/treaties/single-convention.html (last visited January 6, 2017). The Single Convention was amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs.

[182] Ibid. at art. 2, 4, 21, 28.

[183] Convention on Psychotropic Substances, February 21, 1971, 32 U.S.T. 543. The convention directs parties to "prohibit all use except for scientific and very limited medical purposes by duly authorized persons, in medical or scientific establishments which are directly under the control of their Governments or specifically approved by them."

[184] December 20, 1988, S. Treaty Doc. No. 101-4 (1989).

[185] Single Convention on Narcotic Drugs, art. 5, March 30, 1961, 18 U.S.T. 1407; Convention on Psychotropic Substances, art. 17, 19, February 21, 1971, 32 U.S.T. 543; Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, art. 21, 22, December 20, 1988, S. Treaty Doc. No. 101-4 (1989).

[186] Single Convention on Narcotic Drugs, art. 8.

dialogue between Governments and the Board which will lend assistance to and facilitate effective national action to attain the aims of this Convention."[187]

It is unclear whether, or to what extent, the enactment of state laws authorizing the use of marijuana for recreational purposes affects the United States' compliance with the drug treaties. Some assert that state-level recreational marijuana legalization (and the federal government response to those state laws) does not conform with the international obligations regarding marijuana, while others disagree with this interpretation. For example, the then-President of the INCB stated in 2013 that recreational marijuana legalization in states is inconsistent with the Single Convention's requirement that parties limit lawful uses of cannabis to medical and scientific purposes.[188] On the other hand, in 2014, the then-Assistant Secretary of State for International Narcotics and Law Enforcement Affairs appeared to express a contrary view when he urged the international community to "accept flexible interpretation of" the U.N. Drug Control Conventions.[189] He appealed to countries "to tolerate different national drug policies, to accept the fact that some countries will have very strict drug approaches; other countries will legalize entire categories of drugs."[190] A Stanford University professor has also opined that the United States is not in violation of the drug control conventions on account of state-level laws,[191] although a Brookings Institution fellow has argued otherwise.[192]

Some observers have raised doubts about claims that the drug treaties contain the "flexibilities" that can accommodate state recreational marijuana laws; they have instead argued for reforms of the treaties to expressly permit them.[193] Yet in September 2014, President Obama disagreed that the international drug control regime needs revision in light of marijuana policy developments.[194] The Trump Administration's stance on this issue has not yet been articulated.

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[187] Ibid, at art. 9(5).

[188] Raymond Yans, INCB President, *Report of the International Narcotics Control Board*, March 11-15, 2013, at 7, https://www.incb.org/documents/Speeches/Speeches2013/CND_2013_Speech_FINAL_ENGLISH_120313_cl.pdf; "INCB has to underline, it is our mandate, the central role of the 1961 Convention which needs to be implemented worldwide, on the national level, but also on the sub-national level."

[189] U.S. Department of State, William R. Brownfield, *Trends in Global Drug Policy*, New York Foreign Press Center Briefing, October 9, 2014.

[190] Ibid.

[191] Keith Humphreys, "Can the United Nations Block U.S. Marijuana Legalization?*," Huffington Post*, September 25, 2013 (updated November 25, 2013); "Countries with federated systems of government like the U.S. and Germany can only make international commitments regarding their national-level policies. Constitutionally, U.S. states are simply not required to make marijuana illegal as it is in federal law. Hence, the U.S. made no such commitment on behalf of the 50 states in signing the UN drug control treaties."

[192] Jonathan Rauch, "Marijuana Legalization Poses a Dilemma for International Drug Treaties," *Brookings*, October 14, 2014; quoting Brookings fellow Wells Bennett as saying that "if 10, 15, 20 states enact and operate responsible regimes for the regulation of marijuana—we will be enforcing the Controlled Substances Act less and less in jurisdictions that have regulated, legal marijuana markets. And that will create more and more tension with our international commitments to suppress marijuana. At that point, it will be extraordinarily difficult for the U.S. to maintain that it complies with its obligations."

[193] See, for example, Wells Bennett and John Walsh, "Marijuana Legalization Is an Opportunity to Modernize International Drug Treaties," October 2014, *Brookings*.

[194] The White House, *Presidential Determination—Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2015*, September 15, 2014. "The U.N. drug conventions ... allow sovereign nations the flexibility to develop and adapt new policies and programs in keeping with their own national circumstances while retaining their focus on achieving the conventions' aim of ensuring the availability of controlled substances for medical and scientific purposes, preventing abuse and addiction, and suppressing drug trafficking and related criminal activities.... [R]evising the U.N. drug conventions is not a prerequisite to advancing the common and shared responsibility of international cooperation designed to enhance the positive goals we have set to counter illegal drugs and crime."

Tax Revenue

All eight of the states that have legalized marijuana for recreational purposes levy some combination of taxes and business licensing fees at the level of marijuana cultivation or retail sales (in addition to general state sales taxes).[195] Tax rates on the cultivation and retail sales are more commonly levied on an *ad valorem* basis, or as a percentage of price.[196] The tax treatment of medical marijuana varies by state. In some states, medical marijuana is indirectly taxed further back the distribution chain at the cultivator level. In addition, states tax the retail sales of medical marijuana differently. In Colorado, for example, medical marijuana sales are exempt from a 10% special excise tax that applies to recreational marijuana sales, but they are still subject to the 2.9% general state sales tax.[197] In Washington, medical marijuana sales are subject to the same 37% excise tax that applies to recreational sales, but they are exempt from the state's 6.5% general sales tax.[198]

While some states utilize marijuana-related revenue streams for general spending purposes, others have approved measures to dedicate a portion of this revenue for spending on education (Colorado and Oregon), criminal justice programs (Alaska), or public health and substance abuse programs (Washington).[199]

Overall, though, these tax and spending regimes have been subject to change, as government officials and voters respond to changes in revenue collections and budget priorities.

Selected Issues Before Congress—The Path Forward

Given the current federal marijuana policy gap with certain states, there are a number of issues that Congress may address. These include, but are not limited to, issues surrounding financial services for marijuana businesses, federal tax issues for these businesses, oversight of federal law enforcement, allowance of states to implement medical marijuana laws and involvement of federal health care workers, and consideration of marijuana's designation as a Schedule I drug.

Provision of Financial Services to the Marijuana Industry

In spite of the guidance issued by FinCEN and DOJ, many financial institutions remain reluctant to openly enter relationships with state-authorized marijuana businesses.[200] Some marijuana businesses and marijuana industry proponents have complained that even when marijuana

[195] As mentioned in the "Recreational Legalization" section of this report, Washington, DC, has not legalized the commercial sale of recreational marijuana.

[196] Alaska is the only state that imposes a flat dollar tax rate on marijuana: $50 per ounce is imposed when marijuana is sold or transferred from a marijuana cultivation facility to a retail marijuana store or marijuana product manufacturing facility. See Alaska Department of Revenue, "Marijuana Tax," accessed January 11, 2017, http://www.tax.alaska.gov/programs/programs/index.aspx?60000.

[197] See Colorado Department of Revenue, "Marijuana Taxes," accessed January 11, 2017, https://www.colorado.gov/pacific/tax/marijuana-taxes-quick-answers.

[198] See Washington Department of Revenue, "Taxes Due on Marijuana," accessed January 11, 2017, http://dor.wa.gov/Content/FindTaxesAndRates/marijuana/Default.aspx.

[199] See Office of Governor Bill Walker, "Governor Walker Signs Historic Criminal Justice Reform Bill," press release, July 11, 2016, at; Laurel Andrews, "Here's Where Half of the Revenue from Alaska's Legal Pot Will Go," *Alaska Dispatch News*, July 14, 2016.

[200] Sophie Quinton, *Why Marijuana Businesses Still Can't Get Bank Accounts*, The PEW Charitable Trusts, March 22, 2016.

businesses are able to open bank accounts or secure other financial services, those customer relationships are frequently terminated in relatively short order, especially when the existence of the relationship between the financial institution and the marijuana business becomes public.[201]

Over the years, several legislative proposals have been designed to jump-start financial relationships with state-authorized marijuana businesses. Some of these proposals would attempt to alleviate BSA reporting burdens beyond the measures detailed in the 2014 FinCEN guidance.[202] These proposals also would amend banking laws to prevent banking regulators from "prohibit[ing], penaliz[ing], or otherwise discourag[ing] a depository institution from providing financial services to a marijuana-related legitimate business" (i.e., one that is in compliance with a state or local marijuana regulatory regime).[203]

While such measures, if enacted, might help around the edges, many financial institutions and their federal regulators may remain apprehensive about ties to the marijuana industry while marijuana is listed as a Schedule I controlled substance under the CSA. In the absence of legislative change to the CSA, financial institutions must proceed with the knowledge that the Administration could reverse or otherwise make significant changes to its enforcement priorities and policies.[204] In other words, while these financial institutions may not be the subject of law enforcement investigations currently, the option remains.

Other legislative proposals[205] would reclassify marijuana as a Schedule II substance—this would legalize marijuana for medical purposes. This would likely do more to ease bank concerns with providing financial services to *medical* marijuana businesses but would not *entirely* eliminate a financial institution's legal risks, particularly if it associates with medical marijuana businesses that operate in states or localities lacking strong regulatory oversight and enforcement standards. Additionally, the reclassification of marijuana to Schedule II probably would have little impact on the provision of financial services to *recreational* marijuana businesses because they would still be operating in violation of the CSA.

Federal Tax Treatment

Marijuana producers and retailers may not deduct the costs of selling their product (e.g., payroll, rent, or advertising) for the purposes of the federal income tax filings.[206] The Internal Revenue Code (IRC) Section 280E states that

> No deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted.

[201] Ibid. See also David Migoya, "Oregon bank opens doors to Colorado marijuana businesses," *The Denver Post*, January 20, 2015,

[202] See, for example, S. 683, 114th Cong.; S. 1726, 114th Cong.; H.R. 1538, 114th Cong.; and H.R. 2076, 114th Cong.

[203] Ibid.

[204] See generally CRS Report R43708, *The Take Care Clause and Executive Discretion in the Enforcement of Law*, by Todd Garvey.

[205] See, for example, S. 683, 114th Cong.; H.R. 1538, 114th Cong.

[206] For more legal analysis, see CRS Report R44056, *Marijuana and Federal Tax Law: In Brief*, by Erika K. Lunder.

Media reports indicate that the Internal Revenue Service (IRS) has enforced Section 280E in audits of marijuana-related businesses by refusing to accept these businesses' deductions.[207] IRC Section 280E does not prohibit a marijuana business from deducting the costs of cultivating or acquiring marijuana as a "cost of goods sold," though.[208] Effectively this constitutes an implicit tax on marijuana-related businesses equal to the value of the tax benefit of such deductions if these firms had engaged in an industry that was legal under federal law. One such public case involves the Sacramento-based Canna Care marijuana dispensary. The IRS disallowed $2.6 million in deductions for employee salaries, rent, and other costs over a three-year period, which resulted in the business owing $875,000 in additional taxes. Canna Care challenged the IRS in U.S. Tax Court, but ultimately the court upheld the IRS ruling.[209]

The discrepancies between federal, state, and local tax treatments of marijuana-related businesses may create economic incentives to engage in the underground economy. In addition to the uncertainty of federal tax enforcement procedures (and costs of any related legal assistance), the inability of marijuana businesses to deduct their business expenses is effectively an implicit tax up to 39.6% (if organized as sole-proprietor or partnership) or 35% (if organized as a C corporation) of the cost of these expenses.[210] These implicit taxes are paid in addition to state and local sales and special excise taxes.[211] The status quo administration of federal tax laws creates an economic advantage for illicit marijuana sellers, who are not subject to direct taxation of their sales.

Past marijuana-related tax proposals have varied in scope.[212] Some would have exempted a business (that conducts marijuana sales in compliance with state law) from the Section 280E prohibition against allowing business-related tax credits or deductions for expenditures in connection with trafficking in controlled substances.[213] In contrast, one bill would have removed marijuana from all lists of controlled substances (and, indirectly, IRC §280E restrictions on marijuana),[214] and another would have imposed a federal excise tax on domestic recreational marijuana retail sales that would begin at 10% of the price and phase in a tax rate of 25% over four years.[215]

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[207] For example, see Jeff Daniels, "IRS Said to be Auditing Colorado Marijuana Businesses," *CNBC*, July 12, 2016, http://www.cnbc.com/2016/07/12/irs-said-to-be-auditing-colorado-marijuana-businesses.html; and Will Yankowicz, "Marijuana Companies' Biggest Battle Might Be Against the IRS," *Slate*, July 1, 2016, http://www.slate.com/blogs/moneybox/2016/07/01/legal_cannabis_businesses_pay_taxes_under_a_code_reserved_for_illegal_drug.html.

[208] See CRS Report R44056, *Marijuana and Federal Tax Law: In Brief*, by Erika K. Lunder.

[209] See Canna Care, Inc. v. Commissioner, T.C. Memo 2015-206, October 22, 2015, http://ustaxcourt.gov/UstcInOp/OpinionViewer.aspx?ID=10586.

[210] With 35% being the top, marginal tax bracket for corporations and 39.6% being the top, marginal tax bracket for individuals under the federal income tax code.

[211] Colorado imposes a sales tax of 10% and an excise tax of 15% on retail marijuana sales, in addition to a general 2.9% state sales tax and any local sales taxes. See State of Colorado Department of Revenue, "Retail Marijuana Return Filing Overview," January 29-31, 2014, http://www.colorado.gov/cms/forms/dor-tax/RetailMarijuanaReturnFilingOverviewJan2014.pdf. The state of Washington, which began allowing recreational marijuana sales in 2014, will impose an excise tax of 25% on the sales price of marijuana within an established, state-distribution system.

[212] For more general analysis of federal proposals to tax marijuana, see CRS Report R43785, *Federal Proposals to Tax Marijuana: An Economic Analysis*, by Jane G. Gravelle and Sean Lowry.

[213] See the Small Business Tax Equity Act of 2015 (H.R. 1855; S. 987) from the 114th Congress.

[214] See the Regulate Marijuana Like Alcohol Act (H.R. 1013) from the 114th Congress.

[215] See the Marijuana Tax Revenue Act of 2015 (H.R. 1014) from the 114th Congress.

Oversight of Federal Law Enforcement

Review of Agency Missions

In exercising its oversight authorities, Congress may choose to examine the extent to which (if at all) federal law enforcement missions—in particular the DEA's mission—are impacted by state legalization of marijuana. For instance, policymakers may elect to review the mission of each federal law enforcement agency involved in enforcing the CSA and examine how its drug-related investigations may be influenced by the varying state-level policies regarding marijuana. As noted, federal law enforcement has generally prioritized the investigation of drug traffickers and dealers over that of low-level drug users. Policymakers may question whether these policies and priorities are implemented consistently across states with different drug policies regarding marijuana.

Cooperation with State and Local Law Enforcement

One issue policymakers may debate is whether or how to incentivize task forces, fusion centers, and other coordinating bodies charged with combating drug-related crimes. Before determining whether to increase, decrease, or maintain funding for coordinated efforts such as task forces, policymakers may consider whether state and local counterparts are able to effectively achieve task force goals if the respective state marijuana policy is not in agreement with federal marijuana policy. Policymakers may choose to evaluate whether certain drug task forces are sustainable in states that have established policies that are either inconsistent—such as in states that have *decriminalized* small amounts of marijuana possession—or are in direct conflict—including states that have *legalized* either medical or recreational marijuana—with federal drug policy. For instance, might there be any internal conflicts that prevent task force partners from collaborating effectively to carry out their investigations?

Of note, the Arizona Court of Appeals ruled that patients who possess marijuana in compliance with the Arizona Medical Marijuana Act are entitled to the return of their marijuana that law enforcement may have seized during a traffic stop.[216] In states such as Colorado, media reports indicate that some local law enforcement officers avoid seizing marijuana in certain cases because they do not want to have to return the marijuana to its owner—an act that is tantamount to distribution of a Schedule I controlled substance, a violation of federal law.[217]

Oversight and Continuation of Federal Enforcement Priorities

As noted, in responding to states with recreational legalization initiatives, DOJ issued federal enforcement priorities for states with legal marijuana. According to DOJ, it monitors the effects of state legalization by

- collaborating with other DOJ components and other federal agencies in assessment of marijuana enforcement-related data;
- prosecuting cases that threaten federal enforcement priorities; and
- consulting with state officials about areas of federal concern.[218]

[216] State v. Okun, 231 Ariz. 462 (Ariz. Ct. App. 2013). The U.S. Supreme Court denied certiorari in 2014. Arizona v. Okun, 572 U.S. ___, 134 S. Ct. 1759 (2014).

[217] Jessica Maher, "Law enforcement conflicts still exist with legal pot," *Reporter-Herald*, January 2, 2014.

[218] U.S. Government Accountability Office, *DOJ Should Document Its Approach to Monitoring the Effects of* (continued...)

As of December 2015, however, DOJ has not documented its efforts to monitor the effects of state legalization and ensure that these priorities are being emphasized. It is unclear how the metrics to evaluate these priorities will be used to determine whether federal intervention is needed in states that have legalized.[219] For example, one of the eight enforcement priorities listed by Deputy Attorney General Cole was to prevent the diversion of marijuana to other states. While it seems the DEA is aware of increased marijuana trafficking from Colorado to Kansas, it is unclear what level of increased trafficking might trigger action by the federal government against state marijuana laws. Congress may choose to exercise oversight over DOJ's enforcement priorities and metrics for tracking illicit activity in the states. Congress may also request research on or an investigation of this issue outside of actions by the Administration.

The Administration may alter or reverse its enforcement priorities at any time. As mentioned, in a February 2017 White House press statement, the Trump Administration indicated there may be increased enforcement against recreational marijuana, and stated that there is a "big difference" between medical and recreational marijuana.[220]

Medical Marijuana

State Medical Marijuana Laws and Federal Law Enforcement

State medical marijuana laws have raised questions for federal policymakers about enforcing federal law related to marijuana in situations where individuals or organizations are acting in compliance with state law. In previous Congresses, Members of both the House and the Senate have introduced legislation that would amend the CSA such that provisions relating to marijuana would not apply to a person who is acting in compliance with relevant state law.[221]

As discussed, in recent years, Congress has included policy riders in appropriations acts to prohibit DOJ from using funds to prevent states from implementing their medical marijuana laws.[222] Congress may decide to alter, maintain, or reverse this provision. Notably, in a February 2017 White House press statement, the Trump Administration signaled some acceptance of the medicinal use of marijuana: "[t]he President understands the pain and suffering that many people go through who are facing especially terminal diseases and the comfort that some of these drugs, including medical marijuana, can bring to them."[223]

(...continued)

Legalization, GAO-16-1, December 30, 2015.

[219] Ibid, pp. 30-31.

[220] The White House, Office of the Press Secretary, *Press Briefing by Press Secretary Sean Spicer, 2/23/2017, #15*, February 22, 2017, https://www.whitehouse.gov/the-press-office/2017/02/23/press-briefing-press-secretary-sean-spicer-2232017-15.

[221] See, for example, the Compassionate Access, Research Expansion, and Respect States (CARERS) Act of 2015 (H.R. 1538/S. 683 in the 114th Congress).

[222] See the Consolidated Appropriations Act, 2016 (P.L. 114-113), §542; and the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235), §538 from the 114th Congress. Of note, the medical marijuana provision remains in effect during the FY2017 continuing resolution (The Further Continuing Appropriations Act, 2017 (P.L. 114-254).) that continues appropriations for the bureaus and agencies funded through the annual Commerce, Justice, Science, and Related Agencies appropriations until April 28, 2017

[223] The White House, Office of the Press Secretary, *Press Briefing by Press Secretary Sean Spicer, 2/23/2017, #15*, February 22, 2017, https://www.whitehouse.gov/the-press-office/2017/02/23/press-briefing-press-secretary-sean-spicer-2232017-15.

State Medical Marijuana Laws and Federal Health Care Providers

A topic of particular interest to federal policymakers has been how federal health care providers—especially those in the Department of Veterans Affairs (VA)—deal with state medical marijuana laws. VA policy does not deny health care services to veterans who participate in state marijuana programs; however, it does prohibit VA providers from completing the forms that effectively take the place of prescriptions in state medical marijuana programs.[224] Members in both chambers have introduced legislation that would allow VA providers to complete such forms.[225] Similar provisions passed the Senate as part of an FY2016 appropriations bill, and passed the Senate Committee on Appropriations as part of an FY2017 appropriations bill; however, neither were included in an enacted appropriations law.[226]

Consideration of Marijuana as a Schedule I Drug: Maintain or Minimize the Gap

As the gap between federal and state policies on marijuana widens each year, policymakers might decide to reevaluate federal marijuana policy. It has only been a few years since states began to legalize recreational marijuana, but over 20 years since they began to legalize medical marijuana. A large majority of states now have marijuana policies that contradict the CSA.

In addressing state-level legalization efforts, Congress could take one of several routes. It could elect to take no action, thereby upholding the federal government's current marijuana policy and enforcement priorities. It may also decide that the CSA must be enforced in states and direct federal law enforcement to strictly enforce the CSA, even when individuals may be in compliance with state laws. Alternatively, Congress could choose to reevaluate marijuana's placement as a Schedule I controlled substance. Given the history of its scheduling, Congress may consider establishing a committee of experts to evaluate the efficacy of marijuana laws in the United States and address other issues such as the medicinal value and harm of marijuana use.[227]

Upon reevaluation, should Congress determine that marijuana no longer meets the criteria to be a Schedule I substance, it could take legislative action to remove it from the list of substances on that schedule. In doing so, Congress may (1) place marijuana on one of the other schedules (II, III, IV, or V) of controlled substances or (2) remove marijuana as a controlled substance altogether. If Congress chooses to remove marijuana as a controlled substance, it could alternatively seek to regulate and tax commercial marijuana activities. If marijuana *remains* a controlled substance under the CSA under any schedule, this would not eliminate the existing conflict with states that have legalized recreational marijuana. If the conflict remains, Congress may choose to continue to allow states to carry on with implementation of recreational marijuana

[224] Department of Veterans Affairs, Veterans Health Administration (VHA), *Access to Clinical Programs for Veterans Participating In State- Approved Marijuana Programs*, VHA Directive 2011-004, Washington, DC, January 31, 2011, http://www.va.gov/vhapublications/viewpublication.asp?pub_id=2362. This directive expired on January 31, 2016; however, it is cited in VHA Directive 1134 (published on November 28, 2016) and thus appears to remain in effect.

[225] See the Veterans Equal Access Act (H.R. 667 in the 114th Congress); and the Compassionate Access, Research Expansion, and Respect States (CARERS) Act of 2015 (H.R. 1538/S. 683 in the 114th Congress).

[226] See §246 of H.R. 2029 (in the 114th Congress) as engrossed in the Senate on November 10, 2015, and §249 of S. 2806 (in the 114th Congress) as reported to the Senate on April 18, 2016.

[227] These would be similar to the efforts of the National Commission on Marihuana and Drug Abuse, also known as the Shafer Commission, which was established under the CSA to study marijuana in the United States. See **Appendix B** for further discussion of the Shafer Commission.

laws, or it may choose to press for increased enforcement action against or within the states to attempt to stop state-sanctioned, recreational marijuana.

Appendix A. Medical Research on Marijuana

Approved Drugs and Ongoing Research

The Food and Drug Administration (FDA) has approved two drugs containing synthetic THC: nabilone and dronabinol. Nabilone is FDA-approved as an antiemetic (to reduce nausea or prevent vomiting) for patients receiving chemotherapy for cancer.[228] Dronabinol is FDA-approved as both an antiemetic for patients on chemotherapy and an appetite stimulant for patients with AIDS-related weight loss.[229] In addition, drugs containing plant-derived THC and/or cannabidiol (CBD, a nonpsychoactive chemical component of marijuana) are in the drug development and approval process.[230]

The UK-based GW Pharmaceuticals has plant-derived cannabinoid drug products in trials with the goal of FDA approval.[231] Its drug Sativex®, which is composed primarily of plant-derived THC and CBD, has already gained approval in 30 other countries for the treatment of spasticity[232] due to multiple sclerosis.[233] In 2014, the company announced that the FDA had granted "Fast Track" designation to Sativex as a potential pain reliever for patients with advanced cancer;[234] however, in 2015, three trials of Sativex failed to show superiority over a placebo.[235] The company continues to seek approval of Sativex and other plant-derived cannabinoid products for treatment of various conditions (e.g., childhood epilepsy).[236]

Scientific Evaluations of Marijuana

Recent evaluations conducted separately by the FDA and the National Academies of Sciences, Engineering, and Medicine (the National Academies) illustrate the challenge of meeting the required standard of evidence. While taking different approaches to their evaluations, both the FDA and the National Academies have found that the current evidence base falls short.

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[228] FDA first approved nabilone in 1985 under the trade name Cesamet®, which is registered to Meda Pharmaceuticals Inc. See http://www.accessdata.fda.gov/scripts/cder/ob/results_product.cfm?Appl_Type=N&Appl_No=018677.

[229] FDA first approved dronabinol in 1985 under the trade name Marinol®, which is registered to AbbVie Inc. See http://www.accessdata.fda.gov/scripts/cder/ob/results_product.cfm?Appl_Type=N&Appl_No=018651.

[230] Department of Health and Human Services, Food and Drug Administration, *FDA and Marijuana: Questions and Answers*, http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm421168.htm#determinations. For an explanation of the FDA's drug development and approval process, see http://www.fda.gov/Drugs/DevelopmentApprovalProcess/default.htm.

[231] GW Pharmaceuticals, "GW Pharmaceuticals plc Reports Fourth Quarter and Year-End 2016 Financial Results and Operational Progress," press release, December 5, 2016, http://ir.gwpharm.com/releasedetail.cfm?ReleaseID=1002545.

[232] Spasticity refers to problems with muscle control. It is a disorder often found in people with multiple sclerosis, cerebral palsy, and other conditions.

[233] Ibid.

[234] GW Pharmaceuticals, "GW Pharmaceuticals Announces that Sativex Receives Fast Track Designation from FDA in Cancer Pain," press release, April 28, 2014, http://ir.gwpharm.com/releasedetail.cfm?ReleaseID=842890. For an explanation of FDA's "Fast Track" designation, see http://www.fda.gov/forpatients/approvals/fast/ucm20041766.htm.

[235] GW Pharmaceuticals, "GW Pharmaceuticals and Otsuka Announce Results From Two Remaining Sativex(R) Phase 3 Cancer Pain Trials," press release, October 27, 2015.

[236] GW Pharmaceuticals, "GW Pharmaceuticals plc Reports Fourth Quarter and Year-End 2016 Financial Results and Operational Progress," press release, December 5, 2016. Of note, the FDA does not release this kind of information, which is proprietary; this information is publicly available because the company released it.

FDA Evaluation. The FDA evaluated only marijuana, not drugs containing a plant-derived chemical constituent of marijuana or drugs containing synthetic THC. Its analysis of marijuana's potential therapeutic effects is limited to 11 published studies that met criteria for inclusion in the review (e.g., that the study must be a randomized controlled trial).[237] The studies examined marijuana's use to treat neuropathic pain (five studies), stimulate appetite in patients with HIV (two studies), treat glaucoma (two studies), treat spasticity in multiple sclerosis (one study), and treat asthma (one study).[238] The evaluation also assessed potential risks of marijuana use (see text box, "Risks Associated with Marijuana Use"). The evaluation, called an eight-factor analysis, was conducted by the FDA pursuant to a request by the DEA.[239] The DEA requests such scientific and medical evaluations from the Secretary of Health and Human Services (HHS) in response to petitions asking the DEA to reschedule marijuana administratively.[240]

National Academies Evaluation. The National Academies evaluated cannabis, its constituents, and drugs containing synthetic THC. For each of 11 health topics, the report assessed "fair- and good-quality" research, relying on systematic reviews published since 2011 (where available) and primary research published after the systematic review (or since 1999, if no systematic review exists).[241] The 11 health topics are (1) therapeutic effects; (2) cancer; (3) cardiometabolic risk; (4) respiratory disease; (5) immunity; (6) injury and death; (7) prenatal, perinatal, and postnatal exposure to cannabis; (8) psychosocial effects; (9) mental health; (10) problem cannabis use; and (11) cannabis use and abuse of other substances.[242] The report presents nearly 100 conclusions, including some related to the challenges in conducting research with cannabis and cannabinoids.

Federal Research Requirements for Marijuana

Many federal research requirements are standard across all schedules of controlled substances; however, some requirements vary according to the assigned schedule of the particular substance. Federal regulations are more stringent for Schedule I substances—including marijuana. Examples of this include the following:

- For Schedule I substances, such as marijuana, even if practitioners have a DEA registration for a substance in Schedules II-V, they must obtain a *separate* DEA registration for Schedule I substances.
- Individuals who seek to register to manufacture a controlled substance in Schedule I or II are subject to production quota limitations as determined by the DEA,[243] but registrants for substances in Schedules III-V are not subject to such quotas.

[237] Department of Justice, Drug Enforcement Administration, "Denial of Petition to Initiate Proceedings to Reschedule Marijuana," 81 *Federal Register* 53687-53766 and 53767-53845, August 12, 2016.

[238] Ibid.

[239] The term "eight-factor analysis" refers to the eight factors to be included pursuant to 21 U.S.C. §811(c).

[240] The request for a scientific and medical evaluation is required by 21 U.S.C. §811(b). The results of the most recent eight-factor analysis prior to August 2016 are available at Department of Justice, Drug Enforcement Administration, "Denial of Petition to Initiate Proceedings to Reschedule Marijuana," 76 *Federal Register* 40551-40589, July 8, 2011.

[241] National Academies of Sciences, Engineering, and Medicine, *The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research*, Washington, DC, 2017, p. S-3, doi: 10.17226/24625.

[242] Ibid.

[243] See 21 U.S.C. §826.

- Researchers are required to store Schedule I and II substances in electronically monitored safes, steel cabinets, or vaults that meet or exceed certain specifications.[244] They are required to store Schedule III-V substances by secure standards but the requirements are less stringent than those required for Schedule I and II substances.
- When researchers apply for a DEA registration to conduct research involving Schedule I controlled substances, they must comply with federal regulations specifying the form and content of the research protocols.[245] The DEA Administrator must forward a copy of the application and research protocol to HHS, which is responsible for determining "the qualifications and competency of the applicant, as well as the merits of the protocol."[246] The HHS Secretary delegates that responsibility to the FDA. *No equivalent process is required for Schedule II-V controlled substances.*

Marijuana Supply for Researchers

Under the CSA, the Attorney General is required to register an applicant to manufacture Schedule I or II controlled substances "if he determines that such registration is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971."[247] In the case of marijuana, the National Center for Natural Products Research at the University of Mississippi has been the only registered manufacturer, operating under a contract administered by the National Institute on Drug Abuse (NIDA) within HHS's National Institutes of Health. For nearly 50 years, it has been the only official source through which researchers may obtain marijuana for research purposes—and which some have referred to as a "federal research monopoly."[248] Some have contended that marijuana provided by NIDA to researchers is "both qualitatively and quantitatively inadequate."[249] Marijuana's status as a Schedule I drug has reportedly created difficulty for researchers who seek to study the substance but are potentially unable to meet the strict requirements of the CSA, or perhaps they seek to utilize a different quality of marijuana than what is available through NIDA.

In August 2016, the DEA announced a policy change "designed to foster research by expanding the number of DEA-registered marijuana manufacturers."[250] Under the new policy, the DEA is willing to license additional growers to "operate independently, provided the grower agrees (through a written memorandum of agreement with DEA) that it will only distribute marijuana

[244] 21 C.F.R. §§1301.72(a)(1)(i)-(iii) (specifications required for safes and steel cabinets storing Schedule I and II drugs or substances); see also 21 C.F.R. §§1301.72(a)(2) and 1301.72(a)(3)(i)-(vi) (specifications required for vaults storing Schedule I and II drugs or substances).

[245] 21 C.F.R. §1301.18(a).

[246] 21 U.S.C. §823(f); 21 C.F.R. §1301.32(a).

[247] 21 USC §823(a).

[248] See *NIDA's Role in Providing Marijuana for Research*, available at http://www.drugabuse.gov/drugs-abuse/marijuana/nidas-role-in-providing-marijuana-research; and Marc Kaufman, "Federal Marijuana Monopoly Challenged," *Washington Post*, December 12, 2005.

[249] Marc Kaufman, "Federal Marijuana Monopoly Challenged," *Washington Post*, December 12, 2005; and Department of Justice, Drug Enforcement Administration, "Lyle E. Craker; Denial of Application," 74 *Federal Register* 2101, January 14, 2009.

[250] Department of Justice, Drug Enforcement Administration, *DEA Announces Actions Related to Marijuana and Industrial Hemp*, August 11, 2016.

with prior, written approval from DEA."[251] In addition, under the new policy, these growers will only be permitted to supply marijuana to DEA-registered researchers whose "protocols have been determined by [HHS] to be scientifically meritorious." This new approach, DEA states, will allow individuals to obtain a DEA cultivation registration "not only to supply federally funded or other academic researchers, but also for strictly commercial endeavors funded by the private sector and aimed at drug product development." Given that both the FDA and the DEA identified the lack of research as a significant factor in denying the rescheduling petitions in 2016, and to the extent that this policy may increase the amount of marijuana research conducted, the change *could* contribute to future debate on rescheduling.

[251] Department of Justice, Drug Enforcement Administration, "Applications To Become Registered Under the Controlled Substances Act To Manufacture Marijuana To Supply Researchers in the United States," 81 *Federal Register* 53846-53848, August 12, 2016.

Appendix B. Background on Federal Marijuana Policy

Early 20th Century

Prior to 1937, the growth and use of marijuana was legal under federal law.[255] During the course of promoting federal legislation to control marijuana, Henry Anslinger, the first commissioner of the Federal Bureau of Narcotics (FBN),[256] and others submitted testimony to Congress regarding the evils of marijuana use, claiming that it incited violent and insane behavior.[257] Of note, Commissioner Anslinger had informed Congress that "the major criminal in the United States is the drug addict; that of all the offenses committed against the laws of this country, the narcotic addict is the most frequent offender."[258] The federal government *unofficially* banned marijuana under the Marihuana Tax Act of 1937 (MTA; P.L. 75-238).[259] The MTA imposed a strict regulation requiring a high-cost transfer tax stamp on marijuana sales, and these stamps were rarely issued by the federal government.[260] Shortly after passage of the MTA, all states made the possession of marijuana illegal.[261]

Anti-marijuana Propaganda

In the early 20th century, enforcement of drug laws was primarily the responsibility of local police, and the FBN occasionally assisted.[252] Due to limited and reduced appropriations during the Great Depression, the FBN budget and the number of narcotic agents declined and remained low for years. Publicity and warnings of the dangers of narcotics, in particular marijuana, became methods of drug control for the FBN.[253] In seeking federal control of marijuana and uniform narcotic laws, Commissioner Anslinger made personal appeals to civic groups and legislators and pushed for, and received, editorial support in newspapers; many newspapers maintained a steady stream of anti-marijuana propaganda in the 1930s.[254]

[252] David F. Musto, *The American Disease: Origins of Narcotic Control*, 3rd ed. (New York: Oxford University Press, 1999), pp. 183-200, p. 228.

[253] Ibid., p. 214.

[254] Richard J. Bonnie and Charles H. Whitebread II, *The Marijuana Conviction: A History of Marijuana Conviction in the United States* (New York: The Lindesmith Center, 1999), pp. 94-95.

[255] States regulated marijuana but did not begin to ban it until after 1937.

[256] In 1930, the Federal Bureau of Narcotics (FBN) was established within the Treasury to handle narcotic enforcement.

[257] See statements by H. J. Anslinger, Commissioner of Narcotics, Bureau of Narcotics, Department of the Treasury and Dr. James C. Munch, before the U.S. Congress, House Committee on Ways and Means, *Taxation of Marihuana*, 75th Cong., 1st sess., April 27-30, May 4, 1937, HRG-1837-WAM-0002.

[258] U.S. Congress, House Committee on Ways and Means, *Taxation of Marihuana*, 75th Cong., 1st sess., April 27-30, May 4, 1937, HRG-1837-WAM-0002, p. 7.

[259] Congressional testimony indicated that marijuana, while it was a problem in the Southwest United States starting in the mid-1920s, became a "national menace" in the mid-1930s (1935-1937). See statement by H. J. Anslinger, Commissioner of Narcotics, Bureau of Narcotics, Department of the Treasury, before the U.S. Congress, House Committee on Ways and Means, *Taxation of Marihuana*, 75th Cong., 1st sess., April 27, 1937.

[260] Charles F. Levinthal, *Drugs, Society, and Criminal Justice*, 3rd ed. (New York: Prentice Hall, 2012), p. 58.

[261] In Leary v. United States (395 U.S. 6 (1968)), the MTA was overturned by the U.S. Supreme Court as a violation of the Fifth Amendment's privilege against compelled self-incrimination.

Mid-20th Century

In the decades after enactment of the MTA, Congress continued to pass drug control legislation and further criminalized drug abuse. For example, the Boggs Act (P.L. 82-255), passed in 1951, established mandatory prison sentences for some drug offenses, while the 1956 Narcotic Control Act (P.L. 84-728) further increased penalties for drug offenses. In conjunction with growing support for a medical approach to addressing drug abuse, there was a strong emphasis on law enforcement control of narcotics. Congress shifted the constitutional basis for drug control from its taxing authority to its power to regulate interstate commerce,[262] and in 1968 the FBN merged with the Bureau of Drug Abuse Control and was transferred from Treasury to the Department of Justice.[263] Several years later, President Nixon would declare a war on drugs.[264]

Congress and President Nixon enhanced federal control of drugs in the enactment of comprehensive federal drug laws—including the Controlled Substances Act (CSA), enacted as Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91-513). The CSA placed the control of marijuana and other plant, drug, and chemical substances under federal jurisdiction regardless of state regulations and laws. In designating marijuana as a Schedule I controlled substance, this legislation *officially* prohibited the manufacture, distribution, dispensation, and possession of marijuana.[265]

The Shafer Commission

As part of the CSA, the National Commission on Marihuana and Drug Abuse, also known as the Shafer Commission, was established to study marijuana in the United States.[266] Specifically, this commission was charged with examining issues such as

> (A) the extent of use of marihuana in the United States to include its various sources of users, number of arrests, number of convictions, amount of marihuana seized, type of user, nature of use;
>
> (B) an evaluation of the efficacy of existing marihuana laws;
>
> (C) a study of the pharmacology of marihuana and its immediate and long-term effects, both physiological and psychological;
>
> (D) the relationship of marihuana use to aggressive behavior and crime;
>
> (E) the relationship between marihuana and the use of other drugs; and
>
> (F) the international control of marihuana.[267]

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[262] As stated in Article I, §8, cl. 3 of the U.S. Constitution, "Congress shall have the Power ... To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." For more information about the commerce clause, see CRS Report R43023, *Congressional Authority to Enact Criminal Law: An Examination of Selected Recent Cases*, by Charles Doyle.

[263] David F. Musto, *The American Disease: Origins of Narcotic Control*, 3rd ed. (New York: Oxford University Press, 1999), p. 239. The shift in constitutional authority was part of the Drug Abuse Control Amendments of 1965 (P.L. 89-74).

[264] For a broader discussion of the federal government's drug enforcement history, see CRS Report R43749, *Drug Enforcement in the United States: History, Policy, and Trends*, by Lisa N. Sacco.

[265] 21 U.S.C. §812 and §841. Of note, growing a marijuana plant is considered *manufacturing* marijuana.

[266] The commission was composed of two Members of the Senate, two Members of the House, and nine members appointed by the President of the United States. President Nixon appointed Raymond Shafer as the commissioner.

[267] P.L. 91-513, §601(d).

The Shafer Commission, in concluding its review, produced two reports: (1) *Marihuana: A Signal of Misunderstanding*, and (2) *Drug Use in America: Problem in Perspective*.[268]

In its first report, the Shafer Commission discussed the perception of marijuana as a major social problem and how it came to be viewed as such.[269] It made a number of recommendations, including the development of a "social control policy seeking to discourage marihuana use, while concentrating primarily on the prevention of heavy and very heavy use."[270] In this first report, the commission also called the application of criminal law in cases of personal use of marijuana "constitutionally suspect" and declared that "total prohibition is functionally inappropriate."[271] Of note, federal criminalization and prohibition of marijuana was never altered, either administratively or legislatively, to comply with the recommendations of the Shafer Commission.

In its second report, the Shafer Commission reviewed the use of all drugs in the United States, not solely marijuana. It examined the origins of the country's drug problem, including the social costs of drug use, and once again made specific recommendations regarding social policy. Among other conclusions regarding marijuana, the commission indicated that aggressive behavior generally cannot be attributed to its use.[272] The commission also reaffirmed its previous findings and recommendations regarding marijuana and added the following statement:

> The risk potential of marihuana is quite low compared to the potent psychoactive substances, and even its widespread consumption does not involve social cost now associated with most of the stimulants and depressants (Jones, 1973; Tinklenberg, 1971). Nonetheless, the Commission remains persuaded that availability of this drug should not be institutionalized at this time.[273]

At the conclusion of the second report, the Shafer Commission recommended that Congress launch a subsequent commission to reexamine the broad issues surrounding drug use and societal response.[274] While a number of congressionally directed commissions regarding drugs have since been established,[275] no such commission has been directed to review the comprehensive issues of drug use, abuse, and response in the United States.

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[268] National Commission on Marihuana and Drug Abuse, *Marihuana: A Signal of Misunderstanding*, First Report of the National Commission on Marihuana and Drug Abuse, Washington, DC, March 1972 (hereinafter, First Report of the Shafer Commission); and National Commission on Marihuana and Drug Abuse, *Drug Use in America: Problem in Perspective*, Second Report of the National Commission on Marihuana and Drug Abuse, Washington, DC, March 1973 (hereinafter, Second Report of the Shafer Commission).

[269] The commission stated that three factors contributed to the perception of marijuana as a major national problem, including "[1] the illegal behavior is highly visible to all segments of our society, [2] use of the drug is perceived to threaten the health and morality not only of the individual but of society itself, and [3] most important, the drug has evolved in the late sixties and early seventies as a symbol of wider social conflicts and public issues." First Report of the Shafer Commission, p. 6.

[270] First Report of the Shafer Commission, p. 134.

[271] Ibid., pp. 142-143.

[272] Second Report of the Shafer Commission, p. 158.

[273] Ibid, p. 224. In this statement, the Shafer Commission cites the following studies: R.T. Jones, *Mental Illness and Drugs: Pre-Existing Psychopathology and Response to Psychoactive Drugs*, Paper Prepared for the National Commission on Marihuana and Drug Abuse, 1973; and J.R. Tinklenberg, *Marihuana and Crime*, Paper Prepared for the National Commission on Marihuana and Drug Abuse, Unpublished, October 1971.

[274] Second Report of the Shafer Commission, pp. 410-411.

[275] See, for example, the President's Media Commission on Alcohol and Drug Abuse Prevention and the National Commission on Drug-Free Schools.

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ORANGE COUNTY SHERIFF'S DEPARTMENT

OFFICE OF THE SHERIFF

SHERIFF-CORONER
SANDRA HUTCHENS

RECEIVED
FEB 01 2017
City Clerk
City of Laguna Woods

January 30, 2017

Chris Macon, City Manager
City of Laguna Woods
24264 El Toro Road
Laguna Woods, CA 92637

Dear Mr. Macon,

I am writing to reaffirm my strong opposition to the City of Laguna Woods' issuance of any permits for marijuana dispensaries in the City as I expressed in my original letter dated August 24, 2015. I continue to believe that if the City were to issue a permit for a marijuana dispensary in the City, the City would see an increase in crime to the detriment of the safety and security of its residents. I understand in September of 2015 the City Council placed a moratorium on establishing, locating, or operating marijuana dispensaries in the City. I further understand the City has since taken the issue into consideration with the recent passing of California Proposition 64, also known as the Control, Regulate and Tax Adult Use of Marijuana Act. I urge the City Council not to enact or reenact any municipal code sections that would allow for the establishment of medical or recreational marijuana dispensaries in the City and instead join other cities and counties in refusing to allow marijuana dispensaries in their communities.

As stated in my original letter, the Orange County Sheriff's Department has taken an active role in investigating marijuana storefronts. These storefronts have used the title of "dispensaries", "collectives", "cooperatives", and "alternative health care" to name a few. In our experience, these businesses distribute/sell marijuana outside of California law and even if they were to operate within California law, sale or distribution of marijuana has been, and remains illegal under Federal Law.

My original letter outlined some adverse secondary effects of medical marijuana distribution storefronts and my opinion that they will result in increased violent crime such as robberies, aggravated assaults and murders, as well as increased traffic, noise, drug dealing, money laundering and firearms violations has not changed. We only need to look to Colorado to see what the effects will be. The city of Denver saw a large increase in their homeless population after the enactment of the marijuana legislation in Colorado. Overall, Colorado saw an increase in revenue from taxing marijuana but it was largely offset by an increased cost of law enforcement due to drugged-driving incidents, fatal crashes and a spike in gang related crime.

Colorado also had lawsuits filed against it from Nebraska and Oklahoma due to spikes in law enforcement issues related to cannabis products being transported into those states from Colorado. If dispensaries were permitted then the City of Laguna Woods would subject itself to similar, serious problems, especially since it would be the only city in the Sheriff's jurisdiction to allow it.

My original letter also addressed some concerns over requirements placed on the Police Chief by the City of Laguna Woods Municipal Code section 13.26.025. – "Medical Marijuana Dispensaries." I understand that the moratorium placed on this code is allowing the city to consider changes to the code to address these concerns.

I am still adamantly opposed to the issuance of any permit allowing the operation of a medical or recreational marijuana dispensary or any other medical marijuana storefront because: 1 – In my experience, these storefronts do not operate within California law; 2 – Marijuana is illegal under Federal Law. 3 – It has been demonstrated that medical marijuana storefronts may have the potential to increase crime. 4 – These storefronts compromise the health and welfare of the community and negatively impact the residents' quality of life.

My opinion has not changed with the passage of Proposition 64. While personal, nonmedical use of marijuana within defined limits has been decriminalized under California law, the law does not currently permit any storefront to legally sell marijuana for recreational purpose. Any storefront which purports to be "Proposition 64 Compliant" is in violation of the law.

The City of Laguna Woods is a valued contract partner and I appreciate your consideration of my input regarding these important issues. It is our goal to keep the City and its residents safe. Please do not hesitate to contact us if we may provide further information and assistance.

Sincerely,

Sandra Hutchens
Sheriff-Coroner

ORDINANCE NO. 17-XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, AMENDING SECTIONS 13.08.010, 13.10.020, 13.12.020, 13.13.020, AND 13.26.025 AND ADDING A NEW SECTION 13.26.027 OF THE LAGUNA WOODS MUNICIPAL CODE RELATED TO MEDICAL AND NON-MEDICAL MARIJUANA DISPENSARIES AND DELIVERY SERVICES

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5, and entitled "The Compassionate Use Act of 1996" or "CUA"); and

WHEREAS, in 2004, the Legislature enacted Senate Bill 420 (codified as Health and Safety Code Section 11362.7 et seq., and referred to as the "Medical Marijuana Program Act" or "MMPA") to clarify the scope of the CUA and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specific state criminal statutes; and

WHEREAS, in 2008, the City adopted a regulatory process for medical marijuana dispensaries, codified in Section 13.26.025 of the Laguna Woods Municipal Code, which potentially allows medical marijuana dispensaries in the City's community commercial (CC) and professional and administrative office (PA) zoning districts; and

WHEREAS, to date, the City does not have any medical marijuana dispensaries operating within its jurisdiction; and

WHEREAS, under subsections (i)(d)(1) and (j)(1) of Section 13.26.025 of the Laguna Woods Municipal Code, the City's regulatory process for issuance of a permit to operate a medical marijuana dispensary calls for the City's Police Chief (provided under contract with the Orange County Sheriff's Department) to approve components of the applicant's "security plan", make a determination as to the "acceptability" of the applicant's background, and make a determination as to the "suitability" of the proposed location of the dispensary; and

WHEREAS, in a letter dated August 24, 2015, the Orange County Sheriff's Department advised the City that it does not believe that the tasks assigned to it under the City's medical marijuana dispensary permitting ordinance are included within

the City's law enforcement services contract, and except as to limited background investigations specifically called for under such contract, the Orange County Sheriff declines to perform such services, for the reasons stated in the letter; and

WHEREAS, the Orange County Sheriff Department's letter also advised that, in its experience, medical marijuana dispensaries have numerous "adverse secondary effects" on communities, many of which, should they be legitimately ascribed to the presence of medical marijuana dispensaries, would present an immediate threat to public health, safety, or welfare; and

WHEREAS, in October of 2015, the Governor of California signed three bills into law (collectively titled the "Medical Marijuana Regulation and Safety Act" or the "MMRSA") that substantially reworked existing State laws relating to medical marijuana (i.e., the CUA and the MMPA); and

WHEREAS, although the MMRSA took effect January 1, 2016, the State anticipates that it will need until January of 2018 to set up the necessary agencies, information systems, and regulations to implement and administer many aspects of the MMRSA (such as issuing State licenses for dispensary and cultivation operations); and

WHEREAS, in November of 2016, California voters approved Proposition 64 (Control, Regulation, and Tax Adult Use of Marijuana Act) which, among other things, decriminalized certain forms of non-medical marijuana-related activities under state law, and exempted medical marijuana from sales and use tax provided that certain specified forms of identification are produced; and

WHEREAS, in *City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* (2013) 56 Cal.4th 729, 738, the California Supreme Court ruled that cities can prohibit medical marijuana dispensaries in their jurisdictions as part of their "broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders"; and

WHEREAS, the MMRSA and Proposition 64 also specifically authorize cities to prohibit medical and non-medical marijuana dispensaries; and

WHEREAS, the City Council included in the Fiscal Year 2015-16 Budget and Work Plan an assessment of the compatibility of medical marijuana dispensary uses in various zoning districts of the City; and

WHEREAS, on September 10, 2015, the City Council adopted Ordinance No. 15-03 as an urgency ordinance imposing a 45-day moratorium to suspend the allowance of medical marijuana dispensaries, and any establishment, location, or operation of any such facility, in order to undertake further investigation and study various issues relating to the potential siting and operation of a medical marijuana dispensary within the city limits of Laguna Woods; and

WHEREAS, on October 13, 2015, the City Council adopted Ordinance No 15-05 extending the moratorium through September 8, 2016; and

WHEREAS, on August 17, 2016, the City Council adopted Ordinance No. 16-02 extending the moratorium through September 8, 2017; and

WHEREAS, in a letter dated January 30, 2017, after City staff conferred regarding any potential policy changes that may have occurred after the passage of Proposition 64, the Orange County Sheriff's Department advised the City that she remains "adamantly opposed" to the issuance of any permit for marijuana dispensaries, whether for medical or recreational uses; that asserts that "...it has been demonstrated medical marijuana storefronts may have the potential to increase crime[.]"; and

WHEREAS, on April 19, 2017, the City Council received and considered a report prepared by staff, and as required pursuant to Government Code Section 65858(d), describing the measures that have been taken and progress made to date to alleviate the conditions which led to the imposition of the moratorium; and

WHEREAS, as set forth in the report prepared by staff and its exhibits, which was considered by the City Council, during the period since the imposition of the moratorium, City staff has undertaken a number of investigations of the potential public safety and land use implications related to any prospective establishment, location, or operation of medical and non-medical marijuana dispensaries in Laguna Woods, including without limitation:

- Reviewing federal law and enforcement policies;
- Analyzing the impacts of the MMRSA;
- Analyzing the impacts of Proposition 64;

- Discussing medical marijuana dispensary experiences and policies with a number of other cities;

- Meeting with the Orange County Sheriff's Department;

- Meeting with a representative of Law Enforcement Against Prohibition (a non-profit organization that advocates for the regulation and control of marijuana and other drugs);

- Conducting research on the availability and types of testing of marijuana products for potential use in medical contexts;

- Commissioning a deployment study to assess the availability of existing local law enforcement resources to respond to potential adverse secondary effects generated by medical marijuana dispensaries, as well as to assess the potential to align permitted hours of operation accordingly (the "Law Enforcement Deployment Study");

- Analyzing business-generated sources of revenue to offset new costs associated with providing law enforcement and other City services for, or as a result of, prospective medical marijuana dispensaries; and

- Analyzing whether the City has adequate financial means to provide any level of reasonable assurance that enforcement costs associated with medical or non-medical marijuana dispensaries could be accommodated within the City's budget, absent some additional level of taxation or other financial arrangement; and

WHEREAS, on April 19, 2017, the City Council also considered proposed amendments to the Laguna Woods Municipal Code, as identified in Exhibit A attached hereto and incorporated herein by reference ("Code Amendment"), to:

1. Prohibit the establishment, location, or operation of medical and non-medical marijuana dispensaries; and

2. Allow medical marijuana deliveries otherwise consistent with state law, whether by collectives and cooperatives without dispensary presences in the City of Laguna Woods for such time as they may do so under applicable state law, or by persons or entities properly licensed by the

State of California once the state's MMRSA and Control, Regulation, and Tax Adult Use of Marijuana Act regulations take effect; and

WHEREAS, the Community Development Director or his or her designee prepared an exhibit, including proposed language and terminology for the proposed Code Amendments and any additional information and documents deemed necessary for the City Council to take action, and such exhibit was available for public inspection at City Hall and, upon request, was supplied to all persons desiring a copy, at least ten days prior to the scheduled City Council public hearing date; and

WHEREAS, on April 19, 2017, the City Council held a duly noticed public hearing on the proposed Code Amendments at which it considered all of the information, evidence, and testimony presented, both written and oral.

THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. In adopting this Ordinance, the City Council finds and determines that each of the recitals to this Ordinance and Ordinances Nos. 15-03, 15-05 and 16-02 are true and correct, are adopted herein as findings.

SECTION 2. This Ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including but not limited to Article XI, Section 7 of the California Constitution, the CUA, the MMPA, the MMRSA, and Proposition 64.

SECTION 3. The City Council hereby finds and determines that (i) the Code Amendments comply with all applicable requirements of State law; (ii) the Code Amendments will not adversely affect the health, safety, or welfare of the residents within the community; (iii) the Code Amendments are in the public interest of the City of Laguna Woods; and, (iv) the Code Amendments are consistent with the Laguna Woods General Plan and its various elements.

SECTION 4. After reviewing the entire project record, the City Council finds and determines that the adoption of this Ordinance is not a project under the requirements of the California Environmental Quality Act (CEQA), pursuant to sections 15061(b)(3), 15321, and 15378 of the CEQA Guidelines. It can be seen with certainty that the adoption of the Zoning Code amendments presents no possibility that the activity in question will pose a significant effect on the environment, since there are no commercial dispensary or cultivation facilities present within the city,

and this ordinance will continue that baseline condition; the ordinance relates to enforcement actions in connection with permits and permitted activities, and relates to general policy and procedure making of the City.

SECTION 5. Sections 13.08.010, 13.10.020, 13.12.020, 13.13.020, and 13.26.025 of the Laguna Woods Municipal Code are hereby amended, and Section 13.26.027 is hereby added, to read as set forth in Exhibit A, attached to this Ordinance and incorporated herein by this reference.

SECTION 6. Staff is directed to agendize a City Council discussion of potential regulations permitting the establishment, location, and operation of medical and/or non-medical marijuana dispensaries should Federal laws change such that marijuana is no longer a Schedule 1 controlled substance under the Controlled Substances Act.

SECTION 7. This Ordinance shall take effect and be in full force and operation thirty (30) days after adoption.

SECTION 8. If any section, subsection, subdivision, paragraph, sentence, clause or phrase, or portion of this Ordinance 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 adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

SECTION 9. The Deputy City Clerk shall certify as to the adoption of this Ordinance and shall cause this Ordinance to be published or posted as required by law.

SECTION 10. All of the above-referenced documents and information have been and are on file with the City Clerk of the City.

PASSED, APPROVED AND ADOPTED this XX day of XX 2017.

_____

SHARI L. HORNE, Mayor

ATTEST:

_____
YOLIE TRIPPY, Deputy City Clerk

APPROVED AS TO FORM:

_____
DAVID B. COSGROVE, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Ordinance No. 17-XX** was duly introduced and placed upon its first reading at a regular meeting of the City Council on the XX day of XX 2017, and that thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the XX day of XX 2017 by the following vote to wit:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

_____
YOLIE TRIPPY, Deputy City Clerk

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EXHIBIT A
CODE AMENDMENTS

Section 13.08.010 ("Table of permitted uses") of Chapter 13.08 ("Residential Districts") of Title 13 ("Zoning") of the Laguna Woods Municipal Code is amended to read as follows (additions shown with underlining and deletions shown with ~~strike through~~):

	Districts			
Land Use Types	**RMF**	**RC**	**RT**	**Code References**
Marijuana Delivery	P	P	P	13.26.027
Marijuana Dispensary	X	X	X	13.26.025

Section 13.10.020 ("Table of permitted uses") of Chapter 13.10 ("Commercial Districts") of Title 13 ("Zoning") of the Laguna Woods Municipal Code is amended to read as follows (additions shown with underlining and deletions shown with ~~strike through~~):

	Districts			
Land Use Types	**NC**	**CC**	**PA**	**Code References**
Marijuana Delivery	P	P	P	13.26.027
~~Medical~~ Marijuana Dispensary	X	~~RP~~ X	X	13.26.025

Section 13.12.020 ("Table of permitted uses") of Chapter 13.12 ("Open Space Districts") of Title 13 ("Zoning") of the Laguna Woods Municipal Code is amended to read as follows (additions shown with underlining and deletions shown with ~~strike through~~):

	Districts		
Land Use Types	**OS-P**	**OS-R**	**Code References**
Marijuana Delivery	P	P	13.26.027
Marijuana Dispensary	X	X	13.26.025

Section 13.13.020 ("Table of permitted uses") of Chapter 13.13 ("Community Facilities Districts") of Title 13 ("Zoning") of the Laguna Woods Municipal Code is amended to read as follows (additions shown with underlining and deletions shown with ~~strike through~~):

	Community Facilities		
Land Use Types	**Public/Institutional**	**Private**	**Code References**
Marijuana Delivery	P	P	13.26.027
~~Medical~~ Marijuana Dispensary	X	X	13.26.025

Section 13.26.025 ("Medical marijuana dispensaries") of Chapter 13.26 ("Special Regulations") of Title 13 ("Zoning") of the Laguna Woods Municipal Code is repealed in its entirety and replaced with the following:

Sec. 13.26.025. - Marijuana dispensaries.

(a) *Legislative purpose.* It is the intent of the City of Laguna Woods to prohibit the establishment and operation of marijuana dispensaries within the boundaries of the City of Laguna Woods.

(b) *Definitions.* For the purpose of this Title 13, the following words and phrases shall have the meanings respectively ascribed to them by this section:

(05) When used in reference to marijuana, *commercial cultivation* shall mean any cultivation activity that does not qualify for the exemption set forth in subdivision (g) of Section 11362.777 of the

California Health and Safety Code or subdivision (a) of Section 11362.1 of the California Health and Safety Code, as those statutes may be amended from time to time.

(10) When used in reference to marijuana, *cultivation* or *cultivate* shall have the same meaning as set forth in subdivision (l) of Section 19300.5 and subdivision (e) of Section 26001 of the California Business and Professions Code, as those statutes may be amended from time to time.

(15) When used in reference to marijuana, *customer* shall have the same meaning as set forth in subdivision (f) of Section 26001 of the California Business and Professions Code, as amended from time to time.

(20) *Marijuana* means and includes all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the 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. *Marijuana* also means the separated resin, whether crude or purified, obtained from marijuana.

Marijuana also means and includes: “marijuana” as defined by Section 11018 of the California Health and Safety Code, as amended from time to time; “cannabis,” “cannabis concentrate,” “manufactured cannabis” and “medical cannabis” as defined by California Business & Professions Code Section 19300.5, as amended from time to time; “marijuana products” as defined by California Health and Safety Code Section 11018.1, as amended from time to time; and “marijuana accessories” as defined by California Health and Safety Code Section 11018.2, as amended from time to time.

Marijuana 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. For the purpose of this section, *marijuana* does not mean "industrial hemp" as defined by Section 81000 of the California

Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

(25) *Marijuana dispensary* means a premises where marijuana is offered for retail sale, regardless of whether the marijuana is used for medical or non-medical purposes.

Marijuana dispensary shall not include the following uses: (1) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health & Safety Code; (2) a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code; (3) a residential care facility for persons with chronic life threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code; (4) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code; (5) a residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code.

(30) *Marijuana delivery* means the commercial transfer of marijuana to a customer, qualified patient, or primary caregiver by a person or entity with a valid state marijuana transport license.

(35) *Medical marijuana* shall have the same meaning as "medical cannabis" as defined by California Business & Professions Code Section 19300.5.

(40) *Primary caregiver* shall have the same meaning as set forth in subdivision (d) of Section 11362.7 of the California Health and Safety Code, as amended from time to time.

(45) *Qualified patient* shall have the same meaning as set forth in subdivision (f) of Section 11362.7 of the California Health and Safety Code, as amended from time to time.

(c) *Prohibition.* Marijuana dispensaries are expressly prohibited in all zoning districts throughout the City, regardless of whether the marijuana is used for medical or non-medical purposes. No person shall establish, operate, conduct, permit or allow any marijuana dispensary use anywhere within the City. A State license for the operation of a marijuana dispensary does not entitle the licensee to establish, operate, conduct, permit or allow a marijuana dispensary within City limits.

(d) *No nonconforming uses.* Nothing in this Chapter 13.26, nor in Section 13.02.180 relating to nonconforming uses, shall be deemed to permit any marijuana dispensary, marijuana delivery service, or commercial cultivation activity to operate or continue to operate in any manner inconsistent with state law, regardless of whether that dispensary, delivery service or commercial cultivation activity predates the adoption of this section. No legal nonconforming use otherwise applicable to any such marijuana dispensary, marijuana delivery service, or commercial cultivation activity under this Title 13 shall in any way excuse or permit any operation in any way inconsistent with state law requirements, as such state law requirements may exist at the time of the adoption of this section, or as state law requirements may subsequently be adopted and amended.

(e) *Public Nuisance.* Establishing, operating, conducting, permitting or allowing any marijuana dispensary within City limits shall be, and is hereby declared to be, a public nuisance and may be summarily abated by the City pursuant to California Code of Civil Procedure § 731 or any other remedy available at law.

(f) *Civil Penalties.* In addition to any other enforcement permitted by this section, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person who violates any provision of this section. In any civil action that is brought pursuant to this section, a court of competent jurisdiction may award civil penalties and costs to the prevailing party.

Section 13.26.027 ("Marijuana deliveries") of Chapter 13.26 ("Special Regulations") of Title 13 ("Zoning") of the Laguna Woods Municipal Code is hereby added to read as follows:

Sec. 13.26.027. - Marijuana deliveries.

(a) *Legislative purpose.* It is the intent of the City of Laguna Woods to allow marijuana delivery services by persons lawfully permitted under state law to transport and deliver marijuana within the boundaries of the City of Laguna Woods, to facilitate the medical and non-medical uses of marijuana by persons who desire to avail themselves of state law policies permitting the same, but only under strict compliance with existing state law governing marijuana dispensaries, marijuana deliveries and cultivation, and state law and regulations as they may evolve under the Compassionate Use Act (CUA), the Medical Marijuana Program Act (MMPA), the Medical

Marijuana Regulation and Safety Act (MMRSA), and the Control, Regulation, and Tax Adult Use of Marijuana Act (Proposition 64), as each of those statutes and their corresponding regulations are adopted and amended from time to time. In so doing, the City of Laguna Woods attempts to reconcile the advancing state policy regarding liberalization of marijuana cultivation, transport, distribution, and use, while still avoiding the offsite and other public impacts of permanent commercial cultivation or marijuana dispensary facilities within the City's jurisdiction, to protect the public health, safety, and welfare of the residents.

(b) *Definitions.* All definitions set forth in Section 13.16.025 of this Title 13, as amended from time to time, shall apply under this section.

(c) *State-licensed marijuana deliveries permitted*. Marijuana delivery services lawfully operating from locations outside the City's jurisdiction are permitted to deliver marijuana to customers, qualified patients, and primary caregivers within the City, provided the marijuana delivery service has any and all necessary state licenses and is operating in a manner consistent with state law.

(d) *Public Nuisance.* Marijuana delivery services within City limits that do not comply with state law or this Chapter shall be, and are hereby declared to be, a public nuisance and may be summarily abated by the City pursuant to California Code of Civil Procedure § 731 or any other remedy available at law.

(e) *Civil Penalties.* In addition to any other enforcement permitted by this section, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person who violates any provision of this section. In any civil action that is brought pursuant to this section, a court of competent jurisdiction may award civil penalties and costs to the prevailing party.

8.3
UNFUNDED RETIREMENT LIABILITY

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City of Laguna Woods
Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Christopher Macon, City Manager

FOR: May 17, 2017 Regular Meeting

SUBJECT: Unfunded Retirement Liability

Recommendation

Approve a resolution entitled:

> A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, INCREASING THE ADOPTED FISCAL YEAR 2016-17 BUDGET FOR THE GENERAL FUND FOR PURPOSES RELATED TO MAKING LUMP SUM PAYMENTS TO PAY OFF THE CITY'S CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CALPERS) UNFUNDED ACCRUED LIABILITY AS OF JUNE 30, 2015, AND MAKING RELATED AUTHORIZATIONS

Background

Like many local governments in California, the City contracts with the California Public Employees' Retirement System (CalPERS) to provide pension benefits for retirees. The City makes annual required contributions to CalPERS that are based on a variety of assumptions including, but not limited to, rates of return on pooled investments managed by CalPERS. The difference between the sum of the City's annual required contributions and the total projected cost of earned pension benefits is referred to as the City's unfunded accrued liability.

CalPERS produces an annual valuation report for each city's pension plans based on information available as of June 30 of the preceding year. The valuation reports include the annual required contributions for the coming fiscal year, a projection of

the annual required contributions for the following fiscal year, calculations of plan funded/unfunded status, and related information.

The City's most current valuation reports are based on information as of June 30, 2015. The City's total unfunded accrued liability is calculated at $486,899. Annual required contributions will total $24,275 for Fiscal Year 2017-18 and are projected to total $33,102 for Fiscal Year 2018-19.

On December 21, 2016, the CalPERS Board of Administration voted to lower their discount rate (assumed rate of return on investments) from 7.5 to 7%, over the next three years, beginning in Fiscal Year 2017-18. CalPERS advises that cities should anticipate increases of up to 3% in annual required contributions over that three-year period, as well as increases of up to 40% in unfunded accrued liability.

In 2017, the CalPERS Board of Administration will initiate a review of its asset allocation mix and discount rate. That review is expected to be complete in early 2018 and may include recommendations for further reductions of the discount rate, which would result in even greater near- and long-term costs to cities.

Discussion

Today's meeting is an opportunity for City Council action, as well as public input, on the proposal to make lump sum payments to pay off the City's CalPERS unfunded accrued liability as of June 30, 2015. Assuming such payments were made prior to June 1, 2017, they would total $483,218 and cause the City's pension plans to be fully funded according to the most current actuarial projections. They would also help to reduce annual required contributions and mitigate impacts of reductions in the CalPERS discount rate.

Fiscal Impact

The proposed lump sum payments would result in a savings of approximately $597,583 over the next 30 years. That savings would increase if CalPERS elects to further reduce discount rates in the future.

The City's unassigned General Fund balance totals more than $8 million. Sufficient funds are available to make the proposed lump sum payments.

Report Prepared With: Margaret Cady, CPA, Administrative Services Director/City Treasurer

Attachment: A – Proposed Resolution

RESOLUTION NO. 17-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, INCREASING THE ADOPTED FISCAL YEAR 2016-17 BUDGET FOR THE GENERAL FUND FOR PURPOSES RELATED TO MAKING LUMP SUM PAYMENTS TO PAY OFF THE CITY'S CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CALPERS) UNFUNDED ACCRUED LIABILITY AS OF JUNE 30, 2015, AND MAKING RELATED AUTHORIZATIONS

WHEREAS, the Fiscal Year 2016-17 Budget was adopted by the City Council on June 29, 2016; and

WHEREAS, City Council action is required to increase fund-level budget appropriations adopted as a part of the Fiscal Year 2016-17 Budget; and

WHEREAS, the City Council also approves department-level budget appropriations within the General Fund; and

WHEREAS, the City contracts with the California Public Employees' Retirement System ("CalPERS") to provide pension benefits for retirees; and

WHEREAS, CalPERS has calculated the City's unfunded accrued liability as of June 30, 2015 at $486,899, inclusive of both the "classic" and California Public Employees' Pension Reform Act ("PEPRA") plans; and

WHEREAS, making lump sum payments totaling $483,218, prior to June 1, 2017, will pay off the City's CalPERS unfunded accrued liability as of June 30, 2015 and result in both near- and long-term savings; and

WHEREAS, an increase in the General Fund budget is necessary in order to accommodate additional expenses related to making lump sum payments to pay off the City's CalPERS unfunded accrued liability.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. The Fiscal Year 2016-17 budget appropriation authorized, on a fund level, for the General Fund is hereby increased by $483,218 from $6,215,916 to $6,699,134.

SECTION 2. The Fiscal Year 2016-17 budget appropriation authorized, on a department level, within the General Fund's General Government Department is hereby increased by $483,218 from $1,211,794 to $1,695,012. The amount of the increase shall be considered non-operating and used to make lump sum payments to pay off the City's CalPERS unfunded accrued liability for both the "classic" and California Public Employees' Pension Reform Act ("PEPRA") plans, prior to June 1, 2017. The City Manager and Administrative Services Director/City Treasurer are authorized to make such payments.

SECTION 3. The Deputy City Clerk shall certify to the adoption of this resolution.

PASSED, APPROVED AND ADOPTED on this XX day of XX 2017.

_____
SHARI L. HORNE, Mayor

ATTEST:

_____
YOLIE TRIPPY, Deputy City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Resolution No. 17-XX** was duly adopted by the City Council of the City of Laguna Woods at a regular meeting thereof, held on the XX day of XX 2017, by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

_____
YOLIE TRIPPY, Deputy City Clerk

8.4
CITY COUNCIL MEETING SCHEDULE

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City of Laguna Woods
Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Christopher Macon, City Manager

FOR: May 17, 2017 Regular Meeting

SUBJECT: City Council Meeting Schedule

Recommendation

Approve the City Council meeting schedule for Fiscal Year 2017-18.

Discussion

The City Council regularly meets on the third Wednesday of each month at 2 p.m. Staff is generally recommending a continuance of that meeting schedule with the addition of an adjourned regular meeting in April 2018, and the cancellation of regular meetings in October 2017 and March 2018. Specific proposed scheduling and accompanying notes are included as Attachment A.

All proposed meetings would occur at Laguna Woods City Hall, 24264 El Toro Road, Laguna Woods, CA 92637, unless otherwise noticed.

Fiscal Impact

Sufficient funds to support the proposed City Council meeting schedule could be included in the Fiscal Years 2019-19 Budget & Work Plan. Aside from noticing and reproduction expenses, recurring out-of-pocket expenses for City Council meetings are generally limited to $100 per hour for closed captioning services.

Attachment: A – Proposed City Council Meeting Schedule for Fiscal Year 2017-18

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CITY OF LAGUNA WOODS
CITY COUNCIL MEETING SCHEDULE
FISCAL YEAR 2017-18

MEETING DATE/TIME & TYPE	NOTES
Wednesday, July 19, 2017 at 2 p.m. Regular Meeting	
Wednesday, August 16, 2017 at 2 p.m. Regular Meeting	
Wednesday, September 20, 2017 at 2 p.m. Regular Meeting	
~~Wednesday, October 18, 2017 at 2 p.m. Regular Meeting~~ Cancelled	October 18, 2017 regular meeting cancelled
Wednesday, November 15, 2017 at 2 p.m. Regular Meeting	
Wednesday, December 20, 2017 at 2 p.m. Regular Meeting	
Wednesday, January 17, 2018 at 2 p.m. Regular Meeting	
Wednesday, February 21, 2018 at 2 p.m. Regular Meeting	
~~Wednesday, March 21, 2018 at 2 p.m. Regular Meeting~~ Cancelled	March 21, 2018 regular meeting cancelled
Wednesday, April 18, 2018 at 2 p.m. Regular Meeting	
Wednesday, April 25, 2018 at 2 p.m. Adjourned Regular Meeting	Budget/work plan workshop and other business
Wednesday, May 16, 2018 at 2 p.m. Regular Meeting	
Wednesday, June 20, 2018 at 2 p.m. Regular Meeting	

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8.5
FISCAL YEARS 2017-19 BUDGET AND WORK PLAN DEVELOPMENT

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City of Laguna Woods
Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Christopher Macon, City Manager

FOR: May 17, 2017 Regular Meeting

SUBJECT: Fiscal Years 2017-19 Budget and Work Plan Development

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Recommendation

Discuss and provide direction to staff.

Discussion

Today's meeting is one of several opportunities for the City Council to receive public input and provide direction to staff on the development of the Fiscal Years 2017-19 Budget and Work Plan.

Fiscal Years 2017-19 Budget and Work Plan Meeting Schedule (tentative and subject to change)		
Wednesday, April 26, 2017 at 2 p.m.	–	*kick-off workshop, discussion and development*
Wednesday, May 17, 2017 at 2 p.m.	–	*discussion and development*
Wednesday, June 21, 2017 at 2 p.m.	–	*discussion and development*
Wednesday, June 28, 2017 at 2 p.m.	–	*consideration of adoption*

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