

# INFORMATION



## **Purpose:**

Personal and commercial legal marijuana grow operations and noxious activities complaints.

## **Background:**

There continues to be conversation regarding legal marijuana use and grow operations in common interest development industry as a result of many states have legalizing the use and in some cases commercially manufacturing and selling of the plant. Common interest developments such as Tahoe Donner are advised review their CC&Rs as they relate to businesses, noxious activities, and common area rules, to name a few, to see how these type of activity is to be allowed, prohibited, and enforced.

In 2015, the Covenants Committee and the Board of Directors reviewed the information at that time and the discussion is on the table of both the Covenants Committee and Board of Directors due to the upcoming elections and Proposition 64.

The Town of Truckee Town Council, Police Department, and Community Development department have begun a public information process to discuss potential outcomes, new ordinances and enforcement should the Proposition 64 become law. A copy of the most recent Town of Truckee staff reports is provided.

## *Noxious Activities*

Under California state law, growing and smoking is legal within the limits established. Federal law still has this use as illegal. Within the TD governing documents prohibitions noxious activities is stated as,

“(c) Prohibition of Noxious Activities. No illegal, noxious or offensive activities shall be carried out or conducted upon any Lot or Common Area no shall anything be done within the Properties which is or could become an unreasonable annoyance or nuisance to neighboring property Owners. Without limiting the foregoing, no Owner shall permit noise, including, but not limited to barking dogs.....to emanate from an Owner’s Lot or from activities within the Common Area, which would unreasonably disturb any other Owner’s or tenant’s enjoyment of his or her Lot or the Common Area.”

Smells and other noxious behavior can be couched into this. The Covenants rule noxious activity basically repeats what the CC&Rs state. Noxious smells can be subjective, and the own-ness any complaint is on the complainant is to provide evidence.

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## *Business Activities*

Tahoe Donner governing documents provide restrictions on business activities with the following:

“No business or commercial activities of any kind shall be conducted in any Residence, Condominium or outbuilding or any other portion of any residential or multiple family residential lot if those activities involve any of the following (C&RS Article VIII, Section 1,f):

1. Exterior advertising
2. Increased traffic or parking
3. More than an insignificant number of deliveries of goods or other commercial materials
4. Visible storage of goods or other commercial materials
5. Excessive noise

## *Gardens and Nurseries*

There is no prohibition against gardens or nurseries so long as any structure relating complies with other existing rules and regulations.

## *Enforcement*

The dilemma arising in enforcement is due to the State/Federal legality of a grow operation. From management’s research, the neighbor is legally growing marijuana within the state, but not within Federal laws.

## **Recommendation:**

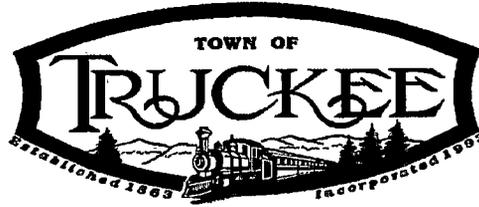
Management recommends continued following of the Town of Truckee planning process for the regulation and enforcement of marijuana use, and advance community engagement in this discussion to determine the actions needed in the future.

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**Prepared By:** Annie Rosenfeld, Director of Facilities and Risk Management and Covenants Committee

**Board Meeting Date:**

**General Manager Approval to Place on the Agenda:**



MEETING DATE: September 13, 2016

TO: Honorable Mayor and Council Members

FROM: Jenna Endres, Senior Planner

JE

DPW

DPW

SUBJECT: Update on Proposition 64 (Adult Use of Marijuana Act) Ballot Measure

APPROVED BY DPW for TL  
Tony Lashbrook, Town Manager

**RECOMMENDATION:** That the Town Council receive an update on the Proposition 64 (Adult Use of Marijuana Act) ballot measure and that the Council provide feedback and direction to Town staff on establishing a public process and community discussion regarding implementation of regulations and procedures for medical and/or recreational marijuana.

**DISCUSSION:**

***Background***

Proposition 64, otherwise known as the Adult Use of Marijuana Act, has been placed on the November 8, 2016 State of California ballot. If this ballot measure passes, the use of recreational marijuana within California will be legalized. In fall 2015, the State legislation implemented several bills which addressed the regulation of medical marijuana. Collectively, this legislation was known as the Medical Marijuana Regulation and Safety Act (MMRSA). This legislation established a regulatory framework for the state's multi-billion dollar medical marijuana industry:

AB 266—Established new Bureau of Medical Marijuana Regulation.

- Created licensing of dispensaries, deliveries, distributors, and transport-17 different license types
- Allowed "dual" licensing process for local jurisdictional control

AB 243—Placed Department of Food and Agriculture in charge of licensing and regulation of indoor/outdoor cultivation.

SB 643—Set requirements for physician recommendations; additional requirements for licensing.

These bills fundamentally changed the way in which medical marijuana is regulated within the State. The bills cumulatively regulate medical marijuana dispensaries, deliveries, and cultivation. The bills establish a two-tier system where the State licenses such uses, but first the applicant must obtain all necessary approvals from the local jurisdiction. Local jurisdictions have the right to allow or prohibit such uses, consistent with the MMRSA and the concept of local authority to regulate land use. The MMRSA initially set tight deadlines for adoption of local resolutions and ordinances to address dispensaries, deliveries and cultivation and for local jurisdictions to maintain local control over such

uses. The timeline did not allow for a robust public involvement process with the Planning Commission and community on potential land use changes. During this process last fall, Town staff committed to following up with the Town Council in summer/fall 2016 with an expected timeline for a more in-depth discussion with the Commission and community.

### Proposition 215 (Compassionate Use Act of 1996)

California voters approved Proposition 215 (Compassionate Use Act) in 1996. The primary purpose of the Compassionate Use Act was to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes”. Subsequent legislation established a voluntary program for identification cards to be issued by counties for qualified patients and primary caregivers, and provided criminal immunity to qualified patients and primary caregivers for certain activities involving medical marijuana.

Many marijuana advocates argued that this immunity from state criminal sanctions also preempted local zoning prohibitions against medical marijuana establishments. This resulted in numerous court battles between local agencies and medical marijuana dispensaries. In May 2013, the California Supreme Court resolved the issues, ruling unanimously that that Compassionate Use Act and subsequent legislation did not preempt local ordinances that completely and permanently banned medical marijuana facilities.

### *Town’s Regulatory History*

The following is a summary of Town actions taken with regard to the regulation of medical marijuana:

**June 2005**—Town Council adopted an interim ordinance prohibiting marijuana dispensaries.

- A series of workshops were held and public input was taken
- The ordinance expired in April 2006; no new regulations were adopted

**January 2008**—Director’s Determination establishes that dispensaries are not allowed.

- Community Development Director determined that dispensaries are not a “similar use” to any use in the Development Code

**November 2015**—Town Council maintained current Town practice of prohibiting dispensaries.

- Council also discussed medical marijuana delivery services and cultivation practices and determined that delivery services are prohibited and that due to Truckee’s climatic conditions, cultivation did not appear to be an emerging issue.
- Council requested that Town staff develop a community engagement process to revisit all marijuana-related issues once the status of recreational use is known.

### ***Recommended Action***

Town staff anticipates a high level of community interest on this topic and recommends that the Town embark on a public process to discuss and determine how the community wishes to regulate medical and/or recreational marijuana usage. Two processes are set forth below which depict different pathways depending on the outcome of Proposition 64. Further, staff proposes two sets of public processes the Council may elect to have this community dialogue.

### *Proposed Process*

Staff is proposing that the Town hold a public engagement process discussing the full array of items related to medical and/recreational marijuana, which includes the following:

- Cultivation-both indoor and outdoor
- Delivery services
- Dispensaries and retail establishments
- Taxation
- Licensing
- Processing

Staff has identified two different ways the Council could elect to have this community dialogue including (1) holding a series of Town Council-led workshops or (2) establishing a Council-appointed ad hoc committee. Each scenario is described below in greater detail:

#### Town Council-Led Workshops

Under this scenario, the Council would convene a series of public workshops, likely over a two-three month period. All five Council members would participate and the public would be invited to attend and comment on the various topics being presented and discussed. The focus of these workshops would likely include both education-based and policy-based topics and discussions. These workshops would likely be scheduled as special Council meetings and staff would coordinate with each Council member on their availability prior to finalizing the schedule.

#### Town Council-Appointed Ad Hoc Committee

Under this scenario, the Council would appoint stakeholders to an ad hoc committee. Stakeholders will be identified through a separate outreach process as it is not obvious who may be interested in participating in the process. Once formed, this committee would take the lead on managing the community engagement process and would report back to the Council upon completion. This committee would not only serve to provide recommendations to the Council, but would also provide for the involvement, education and engagement of key stakeholders during the process. Staff recommends that this committee disband once the process is complete. If the Council wishes to implement this approach, staff recommends a subsequent discussion on the formation of the committee, including number of members, selection of key stakeholders, meeting format and duration of the process. This process would be formalized through future adoption of a Council resolution. Generally, one or two Council members would be appointed to the ad hoc committee.

There may be alternatives to the above-described public engagement process. Staff has outlined these options given past successes with both approaches. The Council may wish to discuss other alternatives at the upcoming meeting.

#### *Proposed timeline*

Staff recommends kicking off the public engagement process in January 2017. We see the November election as a key point that will largely determine how the public engagement process will proceed. This timeframe will also provide ample opportunity to inform the community and key stakeholders of the upcoming process. A January 2017 start time will also allow the new Council members to get up to speed on the issues. Lastly, this timeframe will allow the newly-elected Council, as a whole, to begin deliberations regarding the Town's next steps on marijuana regulation.

#### *Election Outcome*

As discussed above, if Proposition 64 passes, staff anticipates holding a public process to discuss the full array of items related to both medical and recreational marijuana. Should the proposition fail, this discussion will be limited to medical marijuana regulations, which include many of the same discussion points. Regardless of the outcome, staff anticipates that much of the above-described process will remain the same.

### ***Staff Recommendation***

Of the two options described above, staff recommends the Council move forward with a Council-led workshop format. Staff believes it will be valuable for each Council member to participate in the entire process and to hear the variety of opinions shared on each of the discussion topics. As the final decisionmaker on future marijuana regulations, staff believes this approach will enable the Council to be fully-informed on the range of issues associated with marijuana regulation.

Staff also recommends that the process include options for public outreach and engagement outside of the workshops. This could include utilization of social media and online surveys (i.e. Flashvote, Survey Monkey, etc.). This will ensure that information is provided to those who are unable to attend or participate in the series of workshops we expect to host during this process.

**FISCAL IMPACT:** Unknown at this time. Once a public engagement process is better defined, staff will return to the Town Council with more information on the process' anticipated fiscal impact.

**PUBLIC COMMUNICATIONS:** In addition to standard noticing of this agenda item, staff has provided notice of the Council meeting to medical/recreational marijuana advocates and stakeholders.

**ATTACHMENTS:** None.