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.

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

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

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.

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.

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.

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

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

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.

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.

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

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

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

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). Then, at a special meeting on October 13, 2015, the City Council adopted an ordinance extending the moratorium through September 8, 2016. 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 and October 13, 2015, as well as the ordinance adopted on October 13, 2015, are included as attachments A, B, and C, respectively.

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.

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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In fall 2015, staff contacted the local United 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. State 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 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

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.

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

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-

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.

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

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

The Marijuana Policy Gap and the Path Forward

Lisa N. Sacco, Coordinator
Analyst in Illicit Drugs and Crime Policy

Erin Bagalman
Analyst in Health Policy

Kristin Finklea
Specialist in Domestic Security

Sean Lowry
Analyst in Public Finance

March 10, 2017

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CRS REPORT
Prepared for Members and
Committees of Congress

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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Contacts

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).

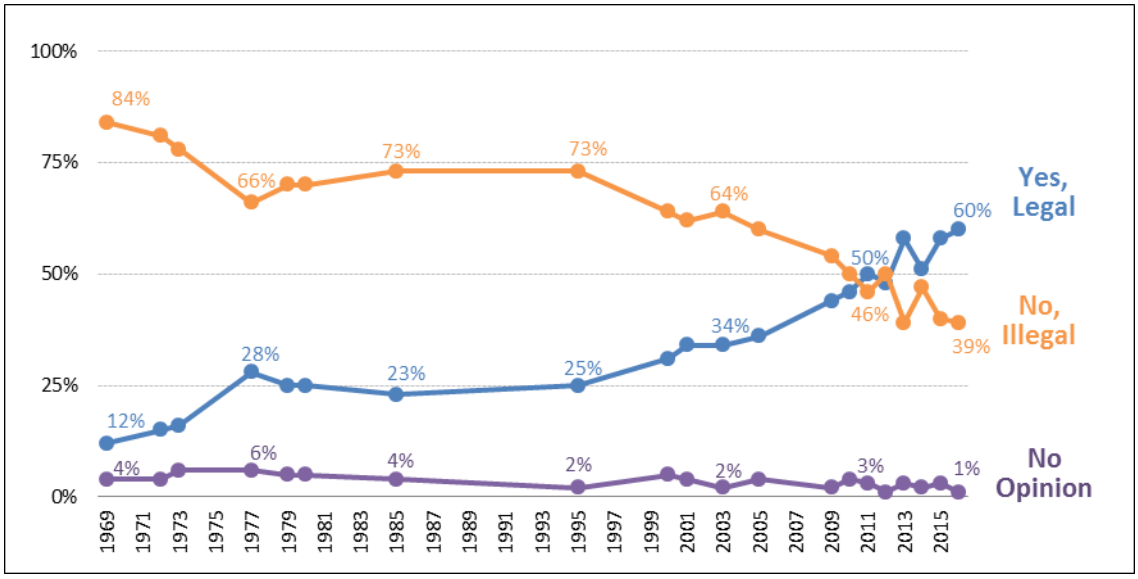
[11] P.L. 91-513; 21 U.S.C. §801 et. seq. For additional information on the CSA, see CRS Report RL34635, *The Controlled Substances Act: Regulatory Requirements*, by Brian T. Yeh; and CRS Report RL30722, *Drug Offenses: Maximum Fines and Terms of Imprisonment for Violation of the Federal Controlled Substances 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.

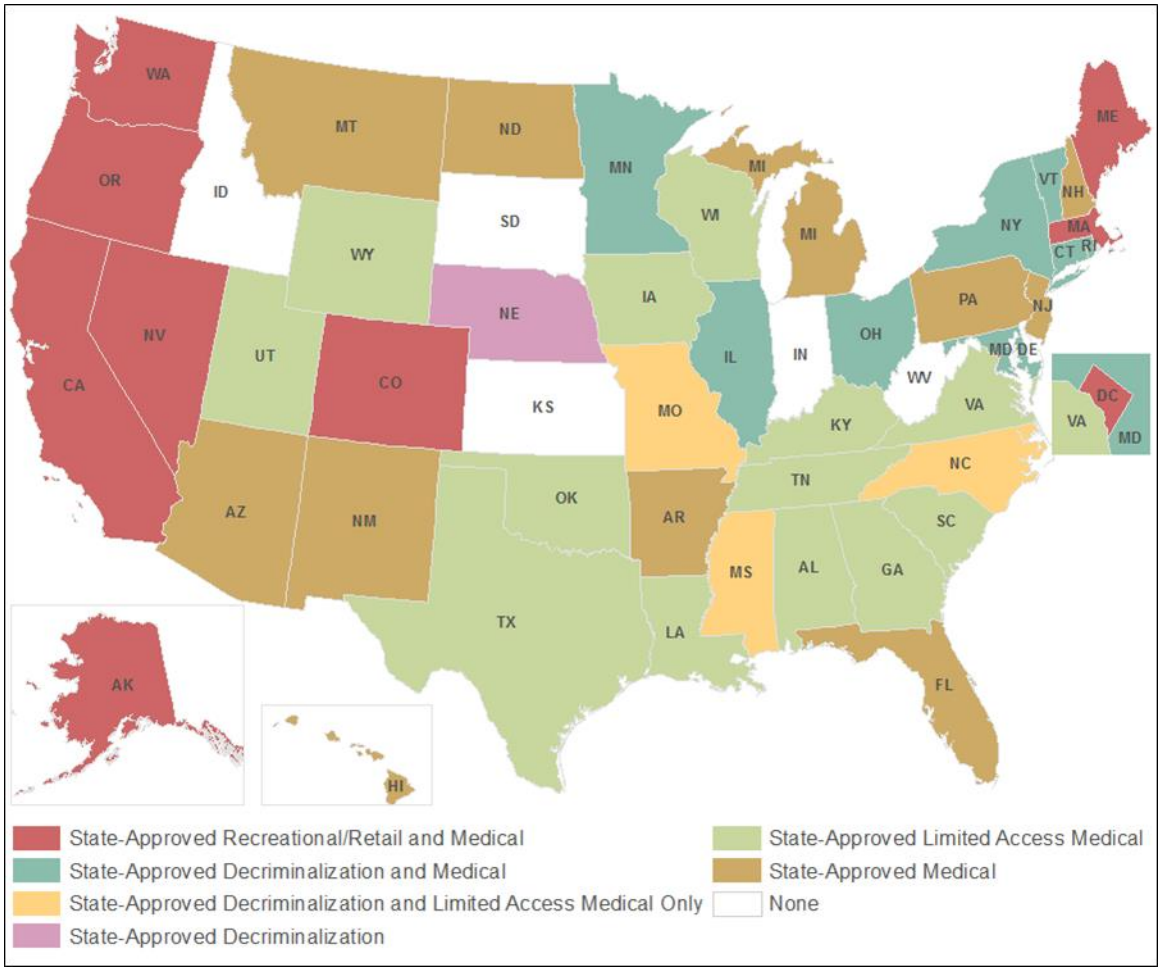
[57] Washington Initiative 502, http://sos.wa.gov/_assets/elections/initiatives/i502.pdf.

[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

(...continued)

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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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.

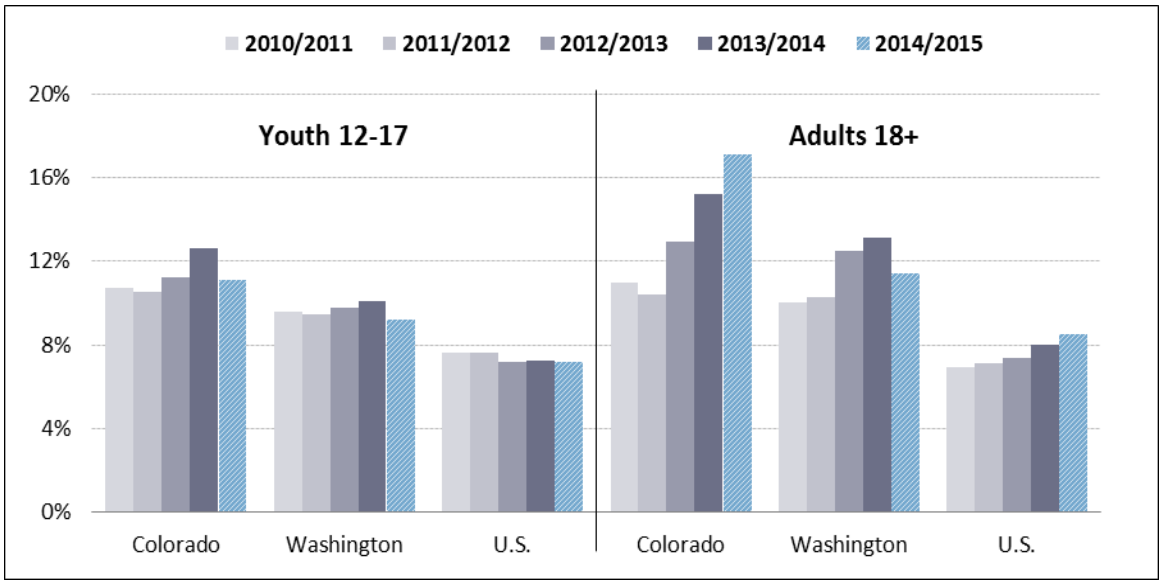
[129] Ibid., p. 7. For a discussion of currency transaction reporting requirements, see *supra* notes 114-115 and surrounding text.

[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.

(...continued)

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

(...continued)

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

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.

8.1
WIRELESS FACILITIES REGULATIONS

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City of Laguna Woods
Agenda Report

TO: Honorable Mayor and City Councilmembers

FROM: Christopher Macon, City Manager

FOR: April 19, 2017 Regular Meeting

SUBJECT: Wireless Facilities 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 13.06.010, 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

Background

The Fiscal Year 2016-17 Budget & Work Plan includes a significant work plan item to "review and update the City's wireless communication facility regulations in order to ensure consistency with federal and state laws, regulations, and orders, as well as to promote clarity and administration."

Section 13.26.210 of the Laguna Woods Municipal Code (Attachment B) contains regulations related to the design and location of wireless communication facilities. Those regulations were adopted in 2003 and have remained unchanged since then.

Since 2003, there have been several changes in federal and state law with the intent of expediting the building of new telecommunications infrastructure, including:

- On February 22, 2012, Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 was enacted into law, which changed how certain modifications to wireless facilities must be processed by local agencies.
- Effective May 15, 2015, the Federal Communications Commission ("FCC") adopted implementing regulations for Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, which, among other things, imposed mandatory timeframes for local agencies to process applications for certain modifications to wireless facilities.
- Effective January 1, 2016, California Assembly Bill 57 was approved, which, among other things, adopted mandatory timeframes for local agencies to process applications for new or collocated wireless facilities.

On February 15, 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 amend the City's regulations related to the installation and modification of wireless facilities (Attachment B).

Discussion

Today's meeting is an opportunity for City Council action, as well as public input, on the proposed wireless facilities regulations (Attachment A). The regulations are intended to ensure consistency with federal and state laws, regulations, and orders; protect local interests; and, promote clarity and administration.

As called for in the Local Hazard Mitigation Plan, the proposed regulations include requirements for new and certain modified ground-mounted wireless facilities to install and maintain an on-site backup generator, or similar on-site energy source, in order to provide backup power for the wireless facility for a period of not less than 24 continuous hours. Those requirements would help to minimize impacts to individuals in hazard areas during energy shortages.

Environmental Review

This project has no possibility of directly impacting the environment, nor is it reasonably foreseeable that the adoption of this ordinance will have indirect impacts on the environment. Therefore, the adoption of this ordinance is not a project subject to the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations. Furthermore, even if CEQA did apply, this project would be categorically exempt

under sections 15303 (New Construction or Conversion of Small Structures), 153011 (Accessory Structures), and 15322 (In-Fill Development Projects) of Title 14 of the California Code of Regulations.

Fiscal Impact

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

Attachments: A – Proposed Ordinance
Exhibit A – Code Amendment Text
B – Existing Laguna Woods Municipal Code Section 13.26.210 (Wireless Communication Facilities)

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ORDINANCE NO. 17-XX

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

WHEREAS, the City's Fiscal Year 2016-17 Budget & Work Plan includes a significant work plan item to "review and update the City's wireless communication facility regulations in order to ensure consistency with federal and state laws, regulations, and orders, as well as to promote clarity and administration"; and

WHEREAS, the City seeks to ensure that its zoning laws are consistent with the goals, policies, and standards set forth in the City General Plan, federal law, and state law as it relates to the installation and modification of certain wireless facilities within the City; and

WHEREAS, on February 22, 2012, Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified at 47 U.S.C. § 1455(a) ("Section 6409(a)") was enacted into law, which changed how certain modifications to wireless facilities must be processed by local agencies; and

WHEREAS, effective May 15, 2015, the Federal Communications Commission ("FCC") adopted implementing regulations for Section 6409(a), set forth at 47 C.F.R. § 1.40001, which, among other things, imposed mandatory timeframes for local agencies to process applications for certain modifications to wireless facilities; and

WHEREAS, effective January 1, 2016, California Assembly Bill No. 57 ("AB 57"), codified at Gov. Code § 65964.1, was approved, which, among other things, adopted mandatory timeframes for local agencies to process applications for new or collocated wireless facilities; and

WHEREAS, both the federal and state government have passed the aforementioned laws with the intent to expedite the pace of building new telecommunications infrastructure; and

WHEREAS, proposed language and terminology for amendments to the Laguna Woods Municipal Code intended to ensure the City's procedural and

substantive requirements for wireless facilities are consistent with the above-described recent changes to state and federal law is set forth in the attached Exhibit A to this Ordinance (the "Code Amendments"); and

WHEREAS, the proposed Code Amendments also protect local interests, including siting and locational considerations, as well as requirements related to the provision of on-site backup generators intended to minimize impacts to individuals in hazard areas during energy shortages consistent with Project C of the City's Local Hazard Mitigation Plan for calendar years 2013-2017; 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 February 15, 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. The City Council hereby finds and determines that (i) each of the recitals to this Ordinance are true and correct, and are adopted herein as findings; (ii) the Code Amendments comply with all applicable requirements of State law; (iii) the Code Amendments will not adversely affect the health, safety, or welfare of the residents within the community; (iv) the Code Amendments are in the public interest of the City of Laguna Woods; and, (v) the Code Amendments are consistent with the Laguna Woods General Plan and its various elements.

SECTION 2. After reviewing the entire project record, it has been determined with certainty that there is no possibility that the Code Amendments could have a significant effect on the environment. Accordingly, pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations, the City Council certifies that the Code Amendments are not subject to CEQA. The City Council further determines and certifies that, even if the Code Amendments were subject to CEQA, they are categorically exempt from the requirements of CEQA pursuant to sections 15303 (New Construction or Conversion of Small Structures), 15311 (Accessory Structures), and

15332 (In-Fill Development Projects) of Title 14 of the California Code of Regulations.

SECTION 3. 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 are hereby amended to read as set forth in Exhibit A, attached to this Ordinance and incorporated herein by this reference.

SECTION 4. This Ordinance shall take effect and be in full force and operation thirty (30) days after adoption.

SECTION 5. 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 6. 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 7. 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

EXHIBIT A
CODE AMENDMENTS

Paragraphs (530) ("Major facility") and (555) ("Minor facility") of Subsection (d) ("Specific terms") of Section 13.06.010 ("Definitions") of Chapter 13.06 ("Definitions") of Title 13 ("Zoning") of the Laguna Woods Municipal Code are repealed in their entirety (deletions shown with ~~strike through~~):

~~(530) *Major facility*: A wireless communication facility that is ground mounted and does not exceed the maximum height of the applicable zoning district in which the major facility is located.~~

~~(555) *Minor facility*: A wireless communication facility that is either wall mounted, utility mounted, or roof mounted in such a manner that the entire facility is screened by solid material on four sides, is architecturally compatible with surrounding land uses and does not exceed the maximum height of the applicable zoning district in which the minor facility is located.~~

Section 13.08.010 ("Intent and 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**
~~Wireless Communication Facilities~~	~~U~~	~~U~~	~~U~~	~~13.26.120~~
Wireless Facilities	Varies – See Code References			13.26.210

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**
~~Wireless Communication Facilities~~	~~U~~	~~U~~	~~U~~	~~13.26.120~~
Wireless Facilities	Varies – See Code References			13.26.210

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**
~~Wireless Communication Facilities~~	~~U~~	~~U~~	~~13.26.120~~
Wireless Facilities	Varies – See Code References		13.26.210

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~~):

	Districts		
Land Use Types	**Public/Institutional**	**Private**	**Code References**
~~Wireless Communication Facilities~~	~~U~~	~~U~~	~~13.26.210~~
Wireless Facilities	Varies – See Code References		13.26.210

Subsection (a) ("Use permits") of Section 13.24.020 ("Types of permits") of Chapter 13.24 ("Discretionary Permits and Procedures") 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~~):

Sec. 13.24.020. - Types of permits.

(a) Use permits.

(1) The purpose of a use permit is to provide for the public review of detailed final plans for a proposed use. Uses which require a use permit are regarded as having a relatively moderate to high potential for adverse impacts on the subject site or surrounding community Due to the nature or magnitude of the use vis-a-vis the sensitivity of the subject site or surrounding community.

(2) Establishment, maintenance and operation of the use or uses proposed by the application shall be in compliance with the information and specifications shown on the approved use permit.

(3) The following are special use types subject to supplemental regulations as specified in this Code and may require additional findings above those required ~~per Subsection 13.24.110(e)~~ by this Section in consideration of an approval of such uses:

a. Affordable housing Incentive.

b. Off-street parking alternative.

c. Condominium conversion.

d. Fence/wall height modification.

e. Wireless facilities.

The existing Section 13.26.210 ("Wireless communication facilities") of Chapter 13.26 ("Special Regulations") of Title 13 ("Zoning") of the Laguna Woods Municipal Code is repealed in its entirety and replaced with a new Section 13.26.210 ("Wireless Facilities") to read as follows:

Sec. 13.26.210. - Wireless Facilities.

(a) *Purpose and intent.* The purpose of these requirements and guidelines is:

(1) To regulate the location and design of Wireless Facilities as defined herein to facilitate the orderly deployment and development of wireless communications services in the City;

(2) To ensure the design and location of Wireless Facilities are consistent with policies of the City previously adopted to guide the orderly development of the City;

(3) To promote the public health, safety, comfort, convenience, quality of life and general welfare of the City's residents;

(4) To protect property values and enhance aesthetic appearance of the City by maintaining architectural and structural integrity;

(5) To protect views from obtrusive and unsightly accessory uses and facilities; and

(6) To ensure the City's requirements and guidelines for Wireless Facilities are consistent with state and federal law, including without limitation, Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. § 1455(a)) and its implementing regulations (set forth in 47 C.F.R. § 1.40001), Section 332(c) of the Communications Act of 1934 (codified at 47 U.S.C. § 332), and California Assembly Bill No. 57 ("AB 57"), effective January 1, 2016 (codified at Gov. Code § 65964.1).

(b) *Scope.* This Section does not intend to, and shall not be interpreted to apply to:

(1) Prohibit or effectively prohibit Personal Wireless Services; or

(2) Unreasonably discriminate among providers of functionally equivalent Personal Wireless Services; or

(3) Regulate the installation, operation, Collocation, modification or removal of Wireless Facilities on the basis of the environmental effects of RF emissions to the extent that such emissions comply with all applicable FCC regulations; or

(4) Prohibit or effectively prohibit any Collocation or modification that the City may not deny under California or federal law; or

(5) Preempt any applicable state or federal law.

(c) *Implementing Policies and Procedures.* The Director may adopt such policies and procedures as he or she deems necessary to implement the requirements of this Section, or to otherwise preserve and maintain the public health, safety, welfare, and convenience, provided such policies and procedures are consistent with this Section and not in conflict with all applicable state and federal laws.

(d) *Definitions.* For purposes of this Section only, the following words, phrases, and terms as used in this Section shall have the meaning as indicated below. The "definitions" and "general rules for construction of language" set forth in Section 13.06.010 of this Code shall also apply to this Section.

(1) *Applicant*: any Person submitting an Application for a Permit.

(2) *Application*: an application for a Permit.

(3) *Base Station*: has the same meaning as the term is defined in 47 C.F.R. § 1.40001(b)(1), as amended from time to time or replaced by a successor regulation.

(4) *Collocation*: has the same meaning as the term is defined in 47 C.F.R. § 1.40001(b)(2), as amended from time to time or replaced by a successor regulation.

(5) *CPUC*: the California Public Utilities Commission.

(6) *Department*: the City's Community Development Department.

(7) *Director*: the City Manager or his or her designee.

(8) *Eligible Facilities Request*: has the same meaning as the term is defined by 47 C.F.R. § 1.40001(b)(3), as amended from time to time or replaced by a successor regulation.

(9) *Eligible Facility Request Permit* or *EFR Permit*: a permit issued pursuant to this Section authorizing a Eligible Facilities Request.

(10) *Eligible Support Structure*: has the same meaning as the term is defined by 47 C.F.R. § 1.40001(b)(4), as amended from time to time or replaced by a successor regulation.

(11) *Existing*: only when capitalized, has the same meaning as the term is defined by 47 C.F.R. § 1.40001(b)(5), as amended from time to time or replaced by a successor regulation.

(12) *FCC*: the Federal Communications Commission.

(13) *Historic Resource:* Any building, site, structure, object, or district, which may have historical, prehistoric, architectural, archaeological, cultural, or scientific importance and is listed or eligible for listing in the National Register of Historic Places, the California Register of Historical Resources, or a local register of historical resources, including without limitation, any historically or architecturally significant, decorative, or specially designed utility, transit, or street light pole located in the public right-of-way.

(14) *Historic Protected Location:*

a. Any site that has a Historic Resource or is in the Immediate Vicinity of a Historic Resource; or

b. Any eligible national register historic district, listed or eligible California register historic district, or local historic or conservation district.

(15) *Immediate Vicinity*: only when capitalized, “Immediate Vicinity” shall mean within two hundred (200) feet of the property lines surrounding a Historic Resource, Park, Residence or public right-of-way.

(16) *Over-the-Air Reception Devices* or *OTARD*s: any antennae or mast listed in 47 C.F.R. § 1.4000(a)(i)-(iv), as amended from time to time or replaced with a successor regulation.

(17) *Park*: any public park located in the City.

(18) *Park Protected Location*: any site that is a Park or is in the Immediate Vicinity of a Park.

(19) *Permit*: a Wireless Use Permit or an Eligible Facility Request Permit.

(20) *Permittee*: a Person issued a Permit.

(21) *Person*: any individual, group, company, partnership, association, joint stock company, trust, corporation, society, syndicate, club, business, or governmental entity. "Person" shall not include the City.

(22) *Personal Wireless Service*: shall have the same meaning as the term is defined in 42 U.S.C. § 332(c)(7)(C)(i), as amended from time to time or replaced by a successor statute.

(23) *Protected Location*: a Historic Protected Location, Park Protected Location, or Residential Protected Location.

(24) *Replace*: only when capitalized, “Replace” means to remove previously permitted equipment and install new equipment at a permitted Wireless Facility that is identical in size or smaller than the previously permitted equipment.

(25) *Residence*: any structure intended for lawful use as a dwelling, including single-family attached and detached homes and multiple-family structures.

(26) *Residential Protected Location*: any site that has a Residence or is in the Immediate Vicinity of a Residence.

(27) *Reviewing Authority:*

a. For requests for an Eligible Facility Request Permit, the “Reviewing Authority” is the Director.

b. For requests that require a Wireless Use Permit and appeals of any decision of the Director, the "Reviewing Authority" is the City Council.

(28) *Section 6409(a)*: Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. § 1455(a)) and its implementing regulations (codified at 47 C.F.R. § 1.40001), as that statute and those regulations are amended from time to time or replaced with a successor statute or regulation.

(29) *Site*: only when capitalized, "Site" has the same meaning as the term is defined by 47 C.F.R. § 1.40001(b)(6), as amended from time to time or replaced by a successor regulation.

(30) *Substantial Change* or *Substantially Change*: has the same meaning as the term is defined by 47 C.F.R. § 1.40001(b)(7), as amended from time to time or replaced by a successor regulation.

(31) *Tower*: has the same meaning as the term is defined by 47 C.F.R. § 1.40001(b)(9), as amended from time to time or replaced by a successor regulation.

(32) *Transmission Equipment*: has the same meaning as the term is defined by 47 C.F.R. § 1.40001(b)(8), as amended from time to time or replaced by a successor regulation.

(33) *Unprotected Location*: means a site that is not a Historic Protected Location, Park Protected Location, nor a Residential Protected Location.

(34) *Wireless Facility*: has the same meaning as the term "personal wireless service facilities" is defined by 47 U.S.C. § 332(c)(7)(C)(ii), as amended from time to time or replaced by a successor statute. The term "Wireless Facility" also includes any Base Station, Tower or Transmission Equipment.

(35) *Wireless Use Permit:* a permit issued pursuant to this Section authorizing a Permittee to construct, install, and maintain a Wireless Facility.

(e) *Applicability; Exemptions.*

(1) *Applicability.* This Section applies to all new Wireless Facilities and all modifications to Existing Wireless Facilities unless the Wireless Facility qualifies for an exemption under state or federal law or subsection (e)(2) below.

(2) *Exemptions.* In addition to any exemptions provided by state or federal law, this Section does not apply to:

a. Amateur radio facilities;

b. Antennas for OTARDs; or

c. Wireless Facilities owned and operated by the City for its use.

(f) *Development Requirements.* Wireless Facilities shall comply with each of the following requirements.

(1) *Signage.* A Wireless Facility shall not bear any signs or advertising devices other than certification, public safety, warning, or other required seals or required signage that are required by governmental agencies acting in their regulatory capacity.

(2) *Screening and Camouflage*.

a. Any and all Transmission Equipment shall be located within a building, an enclosure, or an underground vault in a manner that complies with the development standards of the zoning district in which such Transmission Equipment is located. In addition, if Transmission Equipment is located above ground, it shall be visually compatible with the surrounding buildings and either shrouded by sufficient landscaping to screen the Transmission Equipment from view, or designed to match the architecture of adjacent buildings. If Transmission Equipment will be visible from a Protected Location or a public street, the Applicant shall provide a solid masonry block wall, or another material that is acceptable to the Reviewing Authority, that will screen the Transmission Equipment from the Protected Location or public street. If no recent and/or reasonable architectural theme is present, the Reviewing Authority may require a particular design that is deemed suitable to the subject location.

b. All screening used in connection with a wall mounted and/or roof mounted Wireless Facility shall be compatible with the architecture, color, texture, and materials of the building or structure to which it is attached.

c. A Wireless Facility's exterior finish shall be comprised of nonreflective material(s) and painted, screened, or camouflaged to blend with the materials and colors of surrounding buildings, structures, or environments.

d. A roof mounted Wireless Facility that extends above the existing parapet of the building on which it is mounted shall be screened by a material and in a manner that is compatible with the existing design and architecture of the building to the satisfaction of the Reviewing Authority.

e. A roof mounted Wireless Facility requiring the placement of any guy wires, supporting structures, or accessory equipment shall be located and designed so as to minimize the visual impact as viewed from surrounding properties and public rights-of-way, including any public views from higher elevations.

(3) *Illumination.* Wireless Facilities may not be illuminated unless specifically required by the Federal Aviation Administration ("FAA") or other governmental agencies acting in their regulatory capacity.

(4) *Consent to Collocation.* The Permittee and the property owner, if different from the Permittee, shall consent to future Collocation of other Wireless Facilities on or with the Permittee's Wireless Facility, unless such Collocation is technically infeasible; provided however, this requirement shall not be construed to encourage the installation of a larger Wireless Facility (such as a Tower) where a smaller and more discrete Wireless Facility (such as a distributed antennae system or "DAS") would be sufficient to meet the Personal Wireless Service needs of the community.

(5) *Setbacks.* A Wireless Facility shall be considered an accessory structure for the purpose of determining applicable setback requirements. If the Wireless Facility is located in a residential zoning district or a Protected Residential Location, then the Wireless Facility shall comply with the setback requirements for the nearest residential zoning district. In all other

instances, the Wireless Facility shall comply with the applicable setback requirements for the zoning district in which it is located.

(6) *Height.* A Wireless Facility shall not exceed the maximum building height for the zoning district in which it is located; provided however:

a. A roof mounted Wireless Facility may exceed the height of the structure on which it is mounted by up to fifteen (15) feet if the Applicant demonstrates to the Reviewing Authority's satisfaction that: (i) the extended height is technically necessary for operation of the Facility, (ii) the Facility is Collocated, or contains adequate space suitable for future Collocation, and the extended height is necessary for such Collocation, and (iii) the extended height is otherwise consistent with the requirements set forth in this Section;

b. A utility mounted Wireless Facility may exceed the height of the structure on which it is mounted by up to four (4) feet if the Applicant demonstrates to the Reviewing Authority's satisfaction that the extended height: (i) is technically necessary for operation of the Wireless Facility, and (ii) is otherwise consistent with the requirements set forth in this Section; and

c. A ground mounted Wireless Facility may exceed the maximum building height for the zoning district in which it is located if: (i) the Applicant demonstrates to the Reviewing Authority's satisfaction that exceeding the height limitation is technically necessary for operation of the Wireless Facility; (ii) the Wireless Facility is Collocated, or contains adequate space suitable for future Collocation, and the extended height is necessary for such Collocation, and (iii) the extended height is otherwise consistent with the requirements set forth in this Section.

(7) *Horizontal Protrusion.*

a. No portion of a Wireless Facility may protrude beyond property lines or into any portion of property where such Wireless Facility is not itself permitted (such as in a required setback); provided, however, the Reviewing Authority may approve the location of guy wires in a required setback if the Applicant

demonstrates to the Reviewing Authority's satisfaction that such approval is technically necessary for the operation of the Wireless Facility and otherwise consistent with the requirements set forth in this Section.

b. A utility mounted Wireless Facility shall not protrude horizontally from the side(s) of the structure on which it is mounted by more than eighteen (18) inches; provided however, the Wireless Facility may exceed the protrusion requirement if the Applicant demonstrates to the Reviewing Authority's satisfaction that the extended protrusion is technically necessary for operation of the Facility.

(8) *Location and Siting.*

a. Unless specifically exempt by federal law, state law or this Section, the following types of Wireless Facilities are prohibited in Historic Protected Locations:

1. Ground mounted Wireless Facilities; and

2. Wall mounted, utility mounted, or roof mounted Wireless Facilities that: (i) are not screened by solid material on four sides; (ii) are not architecturally compatible with surrounding land uses; and (iii) exceed the maximum height of the applicable zoning district in which the Wireless Facility is located. For the purposes of determining such maximum height, no additional height that may be otherwise permissible under subsection (f)(6) above shall be considered.

b. A new Wireless Facility shall not be located within 1,500 feet of any existing Wireless Facility unless:

1. The new Wireless Facility is wall mounted, utility mounted, or roof mounted and: (i) is screened by solid material on four sides; (ii) is architecturally compatible with surrounding land uses; and (iii) does not exceed the maximum height of the applicable zoning district in which the Facility is located. For the purposes of determining such maximum height, no additional height that may be otherwise permissible under subsection (f)(6) above shall be considered; or

2. The Reviewing Authority determines that: (i) the Applicant has demonstrated to the Reviewing Authority's satisfaction that a shorter distance between the new and existing Wireless Facilities is technically necessary, (ii) the area served by the new Wireless Facility could not be served by one or more Wireless Facilities that meet the criteria set forth in subsection "1" above, (iii) the selected Site would result in less visual obtrusiveness in the surrounding area, and (iv) the new and existing Wireless Facilities are not located within 500 feet of each other.

c. A ground mounted Wireless Facility:

1. Shall not be located in any required setback;

2. Shall not be located in a required parking area, vehicle maneuvering area, vehicle/pedestrian circulation area, or area of landscaping such that it interferes with, or in any way impairs, the utility or intended function of such area; and

3. To the extent possible, shall be located in close proximity to existing above ground utilities, such as electrical towers or utility poles (not scheduled for removal or undergrounding within eighteen (18) months of the date the Application is deemed complete), light poles, trees of comparable height, water tanks and other areas where the Wireless Facility will not detract from the image or appearance of the City.

d. *City-Owned Property and Public Right-of-Way.*

1. The City Council may approve by resolution, following a duly noticed public hearing, a list of sites located on City-owned property or within the public right-of-way that are pre-approved for Wireless Facilities. Each site shall include a description of permissible development and design characteristics of the permissible types of Wireless Facility, including but not limited to maximum height requirements. The City shall make such resolution available to all persons upon request. The City Council may subsequently amend the list of preapproved sites or Wireless Facilities by resolution from time

to time. Wireless Facilities on preapproved sites require an Eligible Facilities Request Permit or a Wireless Use Permit, as applicable, and must otherwise comply with the Laguna Woods Municipal Code.

2. Unless otherwise exempt by federal or state law, Wireless Facilities on City-owned property or in the public right-of-way require a written lease agreement, license, or other agreement acceptable to the City Attorney's Office between the City and the operator of the Wireless Facility. The existence of a lease agreement, license, or similar agreement shall not relieve the operator of any obligations to obtain appropriate Permits for the Wireless Facility or otherwise comply with the Laguna Woods Municipal Code.

3. All lease agreements, licenses, or similar agreements for Wireless Facilities on City-owned property or in the public right-of-way shall be nonexclusive. To the extent technically feasible, the operator of a Wireless Facility located on City-owned property or in the public right-of-way shall make the supporting structure of the Facility available to any other Applicant wishing to Collocate.

(9) *Safety and Security.*

a. A ground mounted Wireless Facility shall be secured from access by the general public with a fence or other form or screening of a type and dimensions approved by the Reviewing Authority.

b. A ground mounted Wireless Facility shall be covered with a clear anti-graffiti material of a type approved by the Reviewing Authority. The Reviewing Authority may waive this requirement if the Applicant demonstrates to the satisfaction of the Reviewing Authority that there is adequate other security around the Wireless Facility to prevent graffiti.

(10) *Backup Power Requirement.*

a. This provision shall only apply to applications for the construction of new ground-mounted Wireless Facilities, or

modification to a preexisting ground-mounted Wireless Facility, that require the issuance of a Wireless Use Permit.

b. All construction of new ground-mounted Wireless Facilities, or modification to an existing ground-mounted Wireless Facility, that require the issuance of a Wireless User Permit, shall be required to install and maintain an on-site backup generator, or similar on-site energy source, that is of sufficient capacity and maintained in such condition as to be readily capable of powering all of the equipment located on said Wireless Facility so as to allow the Wireless Facility to continue to function for a period of not less than 24 hours of continuous use when regular energy systems as provided by the local utility company to the subject Wireless Facility are inoperable, interrupted, or otherwise experiencing shortages.

c. Other Standards.

1. *Number*. More than one on-site backup generator or similar on-site energy source may be installed to serve a single ground-mounted Wireless Facility in order to meet the requirements of this section.

2. *Aesthetics*. On-site backup generators and similar on-site energy sources shall be architecturally integrated into one or more concealing structures or otherwise screened from view from public right-of-way and residential properties by topography, plantings, walls, or fencing.

3. *Noise*. On-site backup generators and similar on-site energy sources shall be installed and operated in a manner that results in compliance with the noise standards set forth in this Code.

4. *Water Quality*. On-site backup generators and similar on-site energy sources shall be installed in a manner that results in compliance with applicable National Pollutant Discharge Elimination System (NPDES) requirements and water quality-related best management practices, as may be required at the City’s discretion.

5. *Limitations on Operation*. In order to control noise and minimize operational impacts, on-site backup generators

and similar on-site energy sources shall only be operated when regular energy systems as provided by the local utility company to the subject automobile service station are inoperable, interrupted, or otherwise experiencing shortages.

d. Permitting. To the greatest extent authorized by state and federal law, the installation of on-site backup generators, or similar on-site energy sources, shall be included as a condition of approval for the conditional use permit sought from the City, or as a site development permit when no conditional use permit is required. The applicant shall be responsible for determining whether additional permits or approvals are required from the City, Orange County Fire Authority, South Coast Air Quality Management District, and other regulatory agencies.

e. Submittals. The City may require such submittals and fees as are reasonably necessary to implement and enforce this section including, but not limited to, site plans, visual renderings, and reports from qualified professionals to substantiate the demand and power-generating adequacy of the on-site backup generator or similar on-site energy source.

(g) *Types of Permits Required.*

(1) *Wireless Use Permit.* Unless specifically exempt by federal law, state law or this Section, all new Wireless Facilities and modifications or Collocations to existing Wireless Facilities that do not qualify as an Eligible Facilities Request require a Wireless Use Permit.

(2) *Eligible Facility Request Permit.* Unless specifically exempt by federal law, state law or this Section, all Eligible Facilities Requests require an Eligible Facilities Request Permit.

(h) *Applications; Fees; Deposits.*

(1) *Contents of Application.* Except as set forth in subsections "m" and "n" below, Applications for a Permit must include all of the following:

a. *Use Permit Application Materials.* Any and all materials required for a "Use Permit" under Chapter 13.24 of this Code, including a fully completed and executed form application required by Section 13.24.030(a) of this Code, as may be amended

from time-to-time or replaced by a successor ordinance. Unless otherwise exempt under either federal or state law, if the proposed Wireless Facility is to be located on a City-held easement or right-of-way, on City-owned property, or on a City-owned building or structure, the form application must be signed by an authorized representative of the City. The form application must state what approval is being sought (*i.e.*, a Wireless Use Permit or an Eligible Facility Request Permit).

b. *Required Licenses or Approvals.* Evidence that the Applicant has all current licenses and registrations from the FCC, the CPUC, and any other applicable regulatory bodies where such license(s) or registration(s) are necessary to provide Personal Wireless Services utilizing the proposed Wireless Facility. Furthermore, the Applicant is required to provide any other evidence that it possesses the required licenses and approvals to provide Personal Wireless Services within the City.

c. *Prior Approvals.* For proposed modifications to Existing Wireless Facilities, the Applicant must provide copies of the approved plans, photo simulations, staff report/resolution, and/or approval letters from the original discretionary approval(s) along with the most recent discretionary approval(s) for the Existing Wireless Facility. Notwithstanding the foregoing, this requirement can be independently waived by the City to the extent the required approvals are in the City's possession.

d. *Carriers.* For modifications to Existing Wireless Facilities, the Application must identify all carriers currently using the Wireless Facility. For all proposed Wireless Facilities, the Application must identify all carriers that will use the Facility if the Permit is approved (if known).

e. *Plans.* Three (3) full-size construction-ready plans of the proposed Wireless Facility with an exact PDF copy on compact disk, wet stamped by a professional engineer, showing the entire proposed Wireless Facility and any appurtenant structures, including, where applicable, any required on-site backup generator, or similar on-site energy source, in plan and elevation views, all proposed changes in plan and elevation views, and all utility runs

and points of contact. These plans must be drawn at 1" = 20' or a comparable scale and contain all of the following information:

1. Location, type, dimensions, height, number, color and technical specifications of any proposed antennas.

2. Location, type, dimensions, gross floor area, height, materials and color of proposed equipment structure. Location of exhaust ports or outlets.

3. Location of existing and proposed power, telephone and other utilities serving the site.

4. Specific landscape, screening and fencing materials. Landscape plans shall include size, species, location, distance apart, plus irrigation and maintenance plans. For applications that will require compliance with Section 4.28 of the Laguna Woods Municipal Code, this particular requirement must be satisfied by providing the landscape documentation package required under that Section.

5. Proposed setbacks from property lines, nearest Residence and residentially zoned properties.

6. Location of adjacent roadways and proposed means of access.

7. Location and extent of any streams, wetlands, or landslide hazard areas on or within 100 feet of the underlying property.

8. Lot size and lot coverage calculations for the underlying property.

f. *Drawings/Simulations.* Where applicable, the Applicant must provide all of the following:

1. Two (2) color copies of photographs of the existing site conditions.

2. Two (2) color copies of photo simulations showing the proposed changes to the site.

3. Two (2) color copies of photo simulations of the proposed Wireless Facility from any Historic Resource(s), Park(s), Residence(s), and public right(s)-of-way in the Immediate Vicinity of the Wireless Facility.

4. For modifications to Existing Wireless Facilities, dimensioned elevation drawings of the Existing Wireless Facility showing the existing and proposed antennas and equipment structures (at 1/8" = 1' or comparable scale).

g. *RF Exposure Compliance Report.* A radio frequency ("RF") report acceptable to the City prepared and certified by an RF engineer that certifies that the proposed Wireless Facility, as well as any collocated Wireless Facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the site of the proposed Wireless Facility.

h. *Environmental Review.* Additional information, such as engineer diagrams, site diagrams, plans, technical information, and any other information with respect to the potential visual, noise, public health, and safety impacts of the proposed Wireless Facility to permit the City to conduct a preliminary environmental review.

i. *Letter of Justification.* A letter of justification accompanied by written documentation that explains and validates the Applicant's efforts to develop the proposed Wireless Facility is in accordance with federal and state law, as well as this Section. The letter of justification shall also include: (i) a description of the technical objectives to be achieved; (ii) an annotated topographical map that identifies the targeted service area to be benefitted; (iii) the estimated number of potentially affected users in the targeted service area; and (iv) full-color signal propagation maps with objective units

of signal strength measurement that show the Applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites. The letter of Justification shall include a written statement demonstrating how the proposed Wireless Facility complies with all federal guidelines regarding interference and American National Standards Institute ("ANSI") standards applicable to the Facility, including but not limited to nonionizing electromagnetic radiation ("NIER") standards, and stating that the proposed Wireless Facility will comply with all applicable federal and state laws, including specifically FCC and Federal Aviation Administration ("FAA") regulations, and the City's General Plan, this Code, and all City ordinances, resolutions and policies.

j. *Alternative Sites Analysis.* The Applicant must provide a list of all sites considered as alternatives to the location of the proposed Wireless Facility, together with a general description of the site design considered at each alternate site. The Applicant must also provide a written explanation for why the alternative sites considered were unacceptable or infeasible, unavailable or not as consistent with the development standards in this Section as the location of the proposed Wireless Facility. This explanation must include a meaningful comparative analysis and such technical information and other factual justification as are necessary to document the reasons written explanation. If an Existing Wireless Facility is listed among the alternatives, the Applicant must specifically address why the modification of the Existing Wireless Facility is not a viable option. When an Applicant proposes a site in the public right-of-way, the initial alternative sites analysis required for a complete Application may evaluate other potential locations within the right-of-way.

k. *Exemptions.* Applications for an Eligible Facility Request Permit are exempt from the requirements set forth above for "Environmental Analysis", "Letter of Justification" and "Alternative Site Analysis" , and subsections (c)(6) and (c)(7) of Section 13.24.030 of this Code (relating to properties within 300 feet of the

site), as amended from time to time or replaced by a successor ordinance.

l. *Waivers.* The Director may waive one or more of the above-listed Application requirements only when: (i) the Applicant attends a pre-submittal consultation meeting with City staff for the proposed Wireless Facility, (ii) the Director finds that compliance with the Application requirement would create an unnecessary or unreasonable burden on the Applicant, and (iii) the Director memorializes the waiver and grounds therefor in a writing.

(2) *Filing Fee.*

a. A filing fee to defray the cost of processing and notification for each Application brought under this section shall be paid by the Applicant at the time the Application is accepted. Such fees shall be in accordance with the fee schedule currently in effect as adopted by resolution by the City Council.

b. Should the Applicant fail to provide the required filing fee, the City shall either (1) not accept the Application, or (2) deem and the Application incomplete.

c. The City may refund a filing fee in whole upon a determination that the application was erroneously required or filed. The City may refund a fee pro rata, based on the cost of processing the application, if the application is withdrawn prior to a decision thereon.

(3) *Future Application Developments and Modifications.* The City Council authorizes the Director to develop and make publicly available forms for Permit Applications and other materials specific for Wireless Facilities, and from time-to-time to update and amend such publicly available forms and materials as the Director deems appropriate.

(i) *Application Submittal and Resubmittal Meetings.*

(1) *Pre-Submittal Consultation Meeting.* Before submitting an Application for a Wireless Use Permit for a proposed Wireless Facility in a Protected Location or a public right-of-way, an Applicant shall schedule and attend a pre-submittal consultation meeting with the Director or other designated City staff. For all other Applications, pre-submittal consultation

meetings are strongly encouraged but not required. City staff will endeavor to provide Applicants with a pre-submittal consultation meeting within fifteen (15) working days after receipt of a written request for a meeting.

(2) *Application Submittal Meeting.* All Applications must be submitted to the City at a pre-scheduled submittal meeting. City staff will endeavor to provide Applicants with a submittal meeting within five (5) working days after receipt of a written request for a meeting.

(3) *Application Resubmittal Meeting.* All resubmittals of Applications must be submitted to the City at a pre-scheduled resubmittal meeting. City staff will endeavor to provide Applicants with a resubmittal meeting within five (5) working days after receipt of a written request for a meeting.

(4) *Waiver of Meeting Requirements.* The Director, in his or her sole discretion, may waive in writing the requirement for any of the above-listed meetings.

(j) *Initial Review of Permit Applications.*

(1) *Completeness Determination.* Following receipt of a new or resubmitted Application for a Permit, the Director shall make an initial determination as to whether the Application is complete. If the Director determines the Application is not complete, the Director shall provide written notice to the Applicant that clearly and specifically delineates all missing documents, information, or payments within the timeframes set forth below.

a. *Eligible Facility Request Permits.* For Applications for EFR Permits, the Director shall provide the Applicant with written notice of his or her completeness determination within the timeframes set forth in 47 C.F.R. § 1.40001(c)(3), as that regulation is amended from time to time or replaced with a successor regulation.

b. *Wireless Use Permits.* For Applications for Wireless Use Permits, the Director shall provide the Applicant with written notice of his or her completeness determination within the timeframes set forth in Government Code § 65964.1, as that statute is amended from time to time or replaced with a successor statute.

c. *Tolling Agreement.* The timeframe to review any Application for completeness may be extended by mutual agreement of the Applicant and the Director.

(2) *Initial Categorization Determination.* At the time the Director determines an Application is complete, the Director shall also make an initial determination as to whether the proposal will be categorized as an Application for one of the following:

a. An Eligible Facilities Request for a modification to an Eligible Support Structure that is one of the following: (i) a Tower in the public right-of-way; (ii) a Tower that is not in a public right-of-way; or (iii) a Base Station in any location; or

b. A Wireless Use Permit for a new or modified Wireless Facility in one or more of the following locations: (i) a public right-of-way; (ii) a Historic Protected Location; (iii) a Park Protected Location; and (iv) a Residential Protected Location.

The Director shall provide written notice to the Applicant of his or her initial categorization determination.

An Application for a proposal that the Director determines is an Eligible Facilities Request shall be processed in accordance with subsections (k)(1), (l)(1), and (m)(1) of this Section.

Applications for all other proposals shall be processed in accordance with subsections (k)(2), (l)(2), and (m)(2) of this Section.

(k) *Timeframes and Reviewing Authority.*

(1) *Eligible Facility Request Permits.* The Director shall approve or deny an Application for an EFR Permit within the timeframes set forth in 47 C.F.R. § 1.40001(c)(2), as that regulation is amended from time to time or replaced with a successor regulation.

(2) *Wireless Use Permits.* The City Council shall approve, conditionally approve, or deny an Application for a Wireless Use Permit within the timeframes set forth in Government Code § 65964.1, as that statute is amended from time to time or replaced with a successor statute.

(3) *Tolling Agreement.* The timeframes to approve, conditionally approve, or deny any Application may be extended by mutual agreement of the Applicant and the Director.

(l) *Notice and Hearing Requirements.*

(1) *Eligible Facility Request Permits.* Unless otherwise required by state or federal law, Applications for EFR Permits may be acted upon administratively without notice or a public hearing.

(2) *Wireless Use Permits.* Before the City Council approves an Application for a Wireless Use Permit, the City shall comply with the notice and public hearing requirements for approval of a "Use Permit" set forth in Chapter 13.24 of this Code, including without limitation, the requirements set forth in Section 13.24.040(2), as that Section is amended from time to time or replaced with a successor ordinance. Any public hearing for a Wireless Use Permit may be continued to a time certain without further notice.

(m) *Required Findings.*

(1) *Eligible Facility Request Permits.* If the Director determines a proposal meets the criteria for an Eligible Facilities Request set forth in Section 6409(a), the Director shall issue an EFR Permit unless the Director makes one or more of the following findings:

a. The proposal involves a structure that was constructed or modified without all regulatory approvals required at the time it was constructed or modified;

b. The proposal Substantially Changes the physical dimensions of the Eligible Support Structure;

c. The proposal entails excavation or deployment outside the Site;

d. The proposal would defeat one or more of the concealment elements of the Eligible Support Structure;

e. The proposal does not comply with one or more conditions of the underlying approval(s) for the Eligible Support Structure and any appurtenant equipment, provided however, this

limitation does not apply if the proposal merely changes the physical dimensions of the Eligible Support Structure in a manner that does not qualify as a "Substantial Change";

f. The proposal involves the replacement of the entire Eligible Support Structure;

g. The Applicant has not paid all outstanding balances owed to the City for the reasonable and necessary costs of processing the Application, including any fees imposed pursuant to this Section; or

h. The proposal does not qualify for mandatory approval under Section 6409(a) for any other lawful reason.

(2) *Wireless Use Permits.* The City Council shall approve an Application for a Wireless Use Permit if it determines it can make all of the following findings:

a. The Applicant has paid all outstanding balances owed to the City for the reasonable and necessary costs of processing the Application, including any fees imposed pursuant to this Section.

b. The proposed Wireless Facility satisfies all of the findings required for approval of a "Use Permit" set forth in Chapter 13.24 of this Code, including without limitation, the findings required by Section 13.24.040(4)(a), as that Section is amended from time to time or replaced with a successor ordinance.

c. The proposed Wireless Facility blends into the surrounding environment or is architecturally integrated into a concealing structure and is screened or camouflaged by existing or proposed new topography, vegetation, buildings, or other structures. Any such improvements are appropriate for and compatible with the site and surrounding area.

d. The size, design, and operation of the proposed Wireless Facility is compatible with any supporting structures, surrounding structures, and existing uses on surrounding properties.

e. Unless infeasible, the location of the proposed Wireless Facility conforms to one or more of the following in order of preference:

1. The proposed Wireless Facility is Collocated with an Existing Wireless Facility;

2. The proposed Wireless Facility is attached to an existing structure such as an existing building, communication tower, church steeple or utility; or

3. The proposed Wireless Facility is located in an Unprotected Location.

f. *For ground mounted Wireless Facilities only*, no existing building or support structure can reasonably accommodate the proposed Wireless Facility. Evidence supporting this finding may consist of any of the following:

1. No existing buildings or support structures are located within the geographic area proposed to be served by the proposed Wireless Facility;

2. Existing buildings or support structures are not of sufficient height or structural strength to satisfy the proposed Wireless Facility's operational or engineering requirements.

3. The proposed Wireless Facility would create electromagnetic interference with another Wireless Facility on an Existing structure, or the Existing Transmission Equipment on an Existing building or support structure would create interference with the Applicant's proposed Transmission Equipment.

4. The costs, fees, or contractual provisions required by a property owner or by an incumbent wireless service provider in order to Collocate the proposed Wireless Facility on an existing building or structure, or to adapt an existing building or structure for the location of the proposed Wireless Facility, are unreasonable.

5. There are other limiting factors that render Existing buildings and structures unsuitable for use by the Applicant for the proposed Wireless Facility.

g. Alternative sites for the location of the proposed Wireless Facility are unacceptable, infeasible, unavailable, or less consistent with the development requirements in this Section.

h. The Site will provide adequate ingress and egress to the proposed Wireless Facility.

i. There is a documented public need for the proposed Wireless Facility.

j. The proposed Wireless Facility is the least intrusive means to achieve the Facility's technical objectives.

k. The proposed Wireless Facility will comply with all applicable state and federal regulations for such facilities, including safety regulations and FCC regulations regarding interference with the reception or transmission of other *wireless* service signals within the City and surrounding community.

l. *For Wireless Facilities in a Public Right-of-Way only*, the proposed Wireless Facility will not create any significant blockage to public views.

m. *For Wireless Facilities in a Historic Protected Location only*, the proposed Wireless Facility will not significantly impair the views of any Historic Resource or significantly degrade the aesthetic attributes of any Historic Resource.

n. *For Wireless Facilities in a Park Protected Location only*, the proposed Wireless Facility will not significantly impair the views of any Park or significantly degrade the aesthetic or natural attributes that define the Park.

o. *For Wireless Facilities in a Residential Protected Location only*, the proposed Wireless Facility will not significantly impair the views from any Residence or significantly detract from any of the defining characteristics of the zoning district in which it is located.

(3) *Denial of Permit.* If an Application for a Permit is denied, the Director (in the case of an EFR Permit) or City Council (in the case of a Wireless Use Permit) shall make a written determination setting forth the grounds for denial supported by substantial evidence contained in a written record, as may be required by law.

(n) *Transfers Involving a Wireless Facility or Wireless Use Permit.* Within 30 days after a Permitee transfers any interest in the Wireless Facility or any Permit(s) issued for the Facility, the Permitee shall deliver written notice to the City. The written notice must include: (1) the transferee's legal name; and (2) the transferee's full contact information, including a primary contact person, mailing address, telephone number and email address. Failure to submit the notice required herein shall be a cause for the City to revoke the applicable permits pursuant to and following the procedure set out in subsection (t) below. By accepting the transfer, the transferee shall be deemed to have accepted all Permit terms and conditions.

(o) *Preemption Exemption.* An Applicant or Permittee may seek an exemption from any requirement of this Section on the basis that it is preempted by state or federal law. An Applicant seeking an exemption on the basis that denial of a Permit would effectively prohibit Personal Wireless Service must demonstrate with clear and convincing evidence all the following:

(1) The Applicant has the legal right to access the rights-of-way or private property necessary for the proposed Wireless Facility;

(2) A significant gap in the Applicant's service coverage exists; and

(3) All alternative sites identified in the Application review process are either technically infeasible or not available.

(p) *Notice of Decision; Appeals.*

(1) *Notice of the Decision.* Within five (5) working days after final decision by the Reviewing Authority on an Application submitted for approval pursuant to this Section, notice of the decision shall be mailed to the Applicant at the address provided on the Application and to all other persons who have filed a written request for notice of the decision with the Department. If the Application is denied, the Reviewing Authority shall provide the reasons for any denial either in the written decision or in some

other written record available at the same time as the notice of decision is provided.

(2) *Appeals.* Any interested person may appeal a final decision by the Director in accordance with the appeal procedures set forth in Chapter 13.24 of this Code. The appeal must state in plain terms the grounds for the appeal and the facts that support those grounds. The appellant must pay a fee established by a resolution of the City Council at the time the appeal is filed. The City Council shall hear the appeal.

(q) *Non-Waiver of Enforcement.* An Applicant or Permittee shall not be relieved of its obligation to comply with every provision of the Code, any Permit issued hereunder, or any applicable law or regulation by reason of any failure of the part of the City to notice, enforce or prompt compliance by the Applicant or Permittee.

(r) *Amendment of Permits.* Any Permit issued under this Section may be amended in accordance with the amendment procedures applicable to "Use Permits," set forth in Chapter 13.24 of this Code, including Section 13.24.090 as that Section is amended from time to time or replaced by a successor ordinance. Notwithstanding the foregoing, amendments to a Permit that qualify as an Eligible Facilities Request shall be processed in accordance with the procedures applicable to EFR Permits set forth in this Section.

(s) *Reservation of Right to Review Permits for Changed Circumstances.* Any Wireless Use Permit issued under this Section shall be subject to the reservation of the City's right and jurisdiction to review and require the Permittee obtain an amendment to the Wireless Use Permit (including any conditions of approval) based on changed circumstances. Changed circumstances include, but are not limited to, the following:

(1) Increased height or size of the Wireless Facility without proper authorization from the City;

(2) Additional impairment of the views from surrounding properties;

(3) Change in the type of antenna or supporting structure;

(4) Changed color or materials;

(5) A substantial change in location on the site; and

(6) An effective increase in signal output above or near the maximum permissible exposure ("MPE") limits imposed by the revised radio frequency emissions guidelines by the FCC.

(t) *Revocation of Permits.* Any Permit issued under this Section may be revoked in accordance with the revocation procedures applicable to "Use Permits," set forth in Chapter 13.24 of this Code, including Section 13.24.080 as that Section is amended from time to time or replaced by a successor ordinance.

(u) *Abandonment/Discontinuation of Wireless Facility; Removal; Relocation.*

(1) *Discontinued use.* The operator of a lawfully erected Wireless Facility, and the owner of the Site upon which it is located, shall promptly notify the Director in writing in the event that use of the Wireless Facility is discontinued for any reason. In the event that discontinued use is permanent, then the owner(s) and/or operator(s) shall promptly remove the Wireless Facility, repair any damage to the site caused by such removal, and restore the Site as appropriate such as to be in conformance with applicable Zoning Codes. All such removal, repair and restoration shall be completed within ninety (90) days after the use is discontinued, and shall be performed in accordance with all applicable health and safety requirements and requirements relating to abandonment of utility facilities. . For purposes of this subsection, a discontinued use shall be permanent unless the Wireless Facility is likely to be operative and used within the immediately following three (3) month period.

(2) *Abandonment.* A Wireless Facility that is inoperative or unused for a period of six (6) continuous months shall be deemed abandoned. Written notice of the City's determination of abandonment shall be provided to the operator of the Wireless Facility and the owner(s) of the Site upon which it is located. Such notice may be delivered in person, or mailed to the address(es) stated on the Wireless Facility's Permit Application, and shall be deemed given at the time it is hand delivered or placed in first class mail. Such notice shall also provide that in the event the Wireless Facility is not removed as otherwise provided in this Section, the Wireless Facility shall be deemed to be abandoned, and may be removed, retained, or otherwise disposed of by the City.

(3) *Removal of abandoned facility or hearing.* The operator of the Wireless Facility and the owner(s) of the Site on which it is located, shall within thirty (30) days after notice of abandonment is given either (a)

remove the Wireless Facility and restore the Site, or (2) provide the Department with written objection to the City's determination of abandonment and request for hearing before the City Council. If a written objection is timely received and a hearing is properly requested, the City shall conduct a hearing, and the procedures for hearings, notices and related fees set forth in Chapter 13.24 of this Code shall apply. At such hearing, the operator and/or owner shall be given the opportunity to provide evidence that the Wireless Facility was in use during the relevant six (6) month period, and that it is presently operational. The operator and/or owner shall also be given the opportunity to rebut or cross examine any evidence provided by the City to the contrary. The City Council shall review all evidence, determine whether or not the facility was properly deemed abandoned, and provide the operator written notice of its determination. As part of its determination the City Council may, but is not required to, provide the appealing owner or operator additional time to remove or salvage the abandoned Wireless Facility.

(4) *Removal by City*. The City may remove any abandoned Wireless Facility, repair any and all damage to the Site caused by such removal, and otherwise restore the Site at any time after the latter of: (1) thirty (30) days following delivery of the notice of abandonment, or (2) immediately following delivery of a notice of decision by the City Council, or expiration of any additional time granted for approval, if applicable. The City may, but shall not be required to, store the removed Facility (or any part thereof). The owner of the Site upon which the abandoned Wireless Facility was located, and all prior operators of the Wireless Facility, shall be jointly liable for the entire cost of such removal, repair, restoration and storage, and shall remit payment to the City promptly after demand therefore is made. The City may, in lieu of storing the removed Wireless Facility, convert it to the City's use, sell it, or dispose of it in any manner deemed by the City to be appropriate.

(5) *Penalties.* The operator of the abandoned Wireless Facility, and the owners of the Site upon which the Facility is located shall be in violation of this Section for failure to timely comply with any requirements hereunder. Each such person shall be subject to penalties for each such violation, pursuant to this Code.

(6) *City lien on property.* Until the cost of removal, repair, restoration and storage is paid in full, a lien may be placed on the personal property and any real property on which the abandoned Wireless Facility

was located, for the full amount of the cost of removal, repair, restoration and storage. The Director shall cause the lien to be recorded in the Orange County Recorder's Office.

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

ITEM 8.1 - Attachment B

Sec. 13.26.210. - Wireless communication facilities.

(a) *Purpose and intent.* The purpose of these requirements and guidelines is to regulate the location and design of wireless communication facilities as defined herein to facilitate the orderly deployment and development of wireless communications services in the City of Laguna Woods, to ensure the design and location of wireless communications facilities are consistent with policies of the City previously adopted to guide the orderly development of the City of Laguna Woods, to promote the public health, safety, comfort, convenience, quality of life and general welfare of the City's residents, to protect property values and enhance aesthetic appearance of the City by maintaining architectural and structural integrity, and by protecting views from obtrusive and unsightly accessory uses and facilities.

(1) In adopting and implementing the regulatory provisions of this section, it is the intent of the Laguna Woods City Council to further the objectives specified above, and to create reasonable regulations in conformance with the provisions of the Telecommunication Act of 1996 without unnecessarily burdening the Federal interests in ensuring access to telecommunication services, in promoting fair and effective competition among competing communication service providers, and in eliminating local restrictions and regulations that, with regard to antennas, may preclude reception of an acceptable signal quality or may unreasonably delay, prevent, or increase the cost of installation, maintenance, or use of such antennas.

(2) The Laguna Woods City Council has found and determined that these requirements and guidelines for wireless communication facilities are necessary to attain such purposes.

(3) These regulations are intended to supersede any applicable provisions of the Laguna Woods Zoning Code pertaining to such antenna structures and appurtenant communication equipment and to establish minimum requirements and flexible guidelines for the governance of wireless communications facilities, taking into consideration the rapid technological advances and the proliferation in use of radio communication services.

(b) *Applicability.*

(1) All wireless communication facilities which are erected, located, or modified within the City of Laguna Woods on or following the effective date of this Code shall comply with this section, subject to the categorical exemptions under Paragraph (4) of this section, provided that:

a. All facilities for which applications were determined complete by the Planning Department prior to the effective date of this Code shall be exempt from the regulations and guidelines of this section.

b. All facilities for which building permits were issued by the City of Laguna Woods prior to the effective date of this Code shall be exempt from the regulations and guidelines of this chapter, unless and until such time as Subsection (b)(1)c of this section applies.

c. All facilities for which building permits and any extension thereof have expired shall comply with the provisions of this Code.

d.

All facilities constructed or erected prior to the effective date of this Code that are in violation of applicable laws, ordinances, or other regulations shall be considered an illegal nonconforming facility and shall be subject to abatement as a public nuisance.

(2) The following uses shall be exempt from the provisions of this section until such time as Federal regulations are repealed or amended to eliminate the necessity of the exemption:

a. Any antenna structure that is one meter (39.37 inches) or less in diameter and is designed to receive direct broadcast satellite service, including direct-to-home satellite service, as defined by Section 207 of the Telecommunications Act of 1996, Title 47 of the Code of Federal Regulations, and any interpretive decisions thereof issued by the Federal Communications Commission;

b. Any antenna structure that is two meters (78.74 inches) or less in diameter located in a commercial or industrial zone and is designed to transmit or receive radio communication by satellite antenna;

c. Any antenna structure that is one meter (39.37 inches) or less in diameter or diagonal measurement and is designed to receive multipoint distribution service, provided that no part of the antenna structure extends more than 12 feet above the principal building on the same lot.

(3) The following uses shall be exempt from the provisions of this section, so long as the antenna structure complies with all other zoning requirements:

a. Any antenna structure that is designed and used solely to receive UHF, VHF, AM, and FM broadcast signals from licensed radio and television stations.

b. Any antenna structure that is designed and used solely in connection with authorized operations of an amateur radio station licensed by the FCC (i.e., a "HAM" radio transmission).

(c) *Distances.* For the purpose of this section, all distances shall be measured in a straight line without regard to intervening structures, from the nearest point of the proposed major facility to the relevant property line at point five feet above ground level.

(d) Regulations for both major and minor wireless communication facilities.

(1) Both major and minor facilities shall be erected, located, operated and maintained at all times in compliance with this section and all applicable laws and regulations of the City, the State of California, and the United States of America.

(2) Both major and minor facilities are conditionally permitted in the applicable land use designations subject to the following table:

Land Use Designations	Major	Minor
Nonresidential	CUP	CUP

Residential	Not permitted	CUP
Open Space	Not permitted	CUP

(3) Application requirements and procedures.

a. Both major and minor facilities proposed to be erected, located, operated and maintained at all times shall require a conditional use permit (CUP). Each applicant applying for a CUP shall submit a completed CUP application in accordance with the requirements set forth in this Code, and such additional or different requirements as are made applicable by this section. In addition to the City submittal requirements, a scaled site plan shall be provided to the City which shows illustrating the following information:

1. The proposed location of the wireless telecommunications antenna facility.
2. Elevations of the wireless telecommunication antenna facility with dimensions.
3. The height of any existing or proposed structure(s).
4. Location of any accessory equipment facility.
5. Locations of all guy wires.
6. Location of all aboveground and belowground wiring and connection cables.
7. Location of existing or proposed easements on the property.
8. The height of any panels, microwave dishes, or whip antennas, above ground level.
9. The distance between the antenna facility and any existing or proposed accessory equipment facility.
10. Any other necessary information as may be required by the Community Development Department.

Any application that is improperly submitted or fails to contain all of the information as required by this section shall be deemed incomplete.

b. Each application shall contain a letter of justification accompanied by written documentation that explains and validates the applicant's efforts to locate the facility in accordance with the screening and site selection guidelines set forth in this section.

c. Each application shall contain a narrative and map that discloses the exact location and nature of any and all existing facilities that are owned, operated or used by the applicant within the City of Laguna Woods, or within five miles of its geographic borders, as well as any proposed or planned sites that may reasonably be known to the applicant at the time the application is made.

d.

Each application shall contain a narrative and appropriate maps that disclose the geographic area(s) within the City of Laguna Woods that will be serviced by the proposed facility, the geographic area(s) bordering the City of Laguna Woods, if any, that will be serviced by the proposed facility, the nature of the Service to be provided or purpose of the facility, the reasons, if any, why the applicant cannot locate the facility outside the City of Laguna Woods, and the efforts, if any, that applicant has made to locate the facility outside the City of Laguna Woods.

e. A radio frequency (RF) report prepared by a qualified RF engineer acceptable to the City to demonstrate that the proposed facility, as well as any collocated facilities, complies with current Federal RF emission standards. This RF report shall also include signal strength exhibits.

f. Computerized visual assessments or other exhibits equivalent in a form and manner acceptable to the Community Development Director showing the before and after visual appearances of the proposed facility.

g. A preliminary environmental review in accordance with the City submittal requirements, with special emphasis placed upon the nature and extent of visual, public, health, and safety impacts.

h. Evidence of any required licenses and approvals to provide wireless services in the City.

i. Notwithstanding any permit that may be granted in accordance with this section, the facility shall be erected, located, operated and maintained at all times in compliance with this section and all applicable laws, regulations and requirements of the Building Code, and every other Code and regulation imposed or enforced by the City of Laguna Woods, the State of California, and the United States federal government. Applicants are separately required to obtain all applicable building and construction permits that may be required prior to erecting or installing the facility.

(4) General development requirements. The facility shall comply with each of the following requirements:

a. A facility shall not bear any signs or advertising devices other than certification, public safety, warning, or other required seals or required signage.

b. Any and all accessory equipment, or other equipment associated with the operation of the facility, including but not limited to transmission cables, shall be located within a building, an enclosure, or underground vault in a manner that complies with the development standards of the zoning district in which such equipment is located. In addition, if equipment is located above ground, it shall be visually compatible with the surrounding buildings and either shrouded by sufficient landscaping to screen the equipment from view, or designed to match the architecture of adjacent buildings. If accessory equipment will be visible from a residential area or an arterial street, the applicant shall provide a solid masonry block wall that will screen the equipment from the residential area or another material that is acceptable to the

Community Development Director. If no recent and/or reasonable architectural theme is present, the Community Development Director may require a particular design that is deemed suitable to the subject location.

c. The facility's exterior finish shall be comprised of nonreflective material(s) and painted, screened, or camouflaged to blend with surrounding building's or structure's materials and colors.

d. All screening used in connection with a wall mounted and/or roof mounted facility shall be compatible with the architecture, color, texture, and materials of the building or structure to which it is attached.

e. Facilities may not be illuminated unless specifically required by the Federal Aviation Administration or other governmental agencies.

f. The applicant and the property owner if different from the applicant shall consent to future collocation of other facilities on or with the applicant's facility, unless technological requirements preclude that collocation.

(5) Setback requirements and guidelines. A facility shall be considered an accessory structure. If the facility is located in a residential zone or within 200 feet of a residential use, then the facility shall comply with the setback requirements for such zone. In all other instances, the extent of compliance with the setback requirements for the zone in which the facility is located shall be considered, by the City in connection with the processing of the CUP.

(6) Screening and site selection guidelines. In addition to the above requirements, the City shall consider the following guidelines in conjunction with the processing of a CUP:

a. The proposed facility should blend into the surrounding environment or be architecturally integrated into a concealing structure, taking into consideration alternate sites that are available, including collocation.

b. The proposed facility should be screened or camouflaged by existing or proposed new topography, vegetation, buildings, or other structures. Any such improvements shall be appropriate for and compatible with the site and surrounding area.

c. The total size of the proposed facility should be compatible with surrounding and supporting structures.

d. If feasible, the location of the proposed facility should conform to the following in order of preference:

1. Collocated with an existing facility or located at a preapproved location;
2. Attached to an existing structure such as an existing building, communication tower, church steeple or utility;
3. Located in an industrial zoning district;
4. Located in a commercial zoning district;

e.

Proximity of the proposed facility to residential structures and to boundaries of residentially zoned districts.

f. The availability of suitable alternative locations for the facility.

g. The nature of existing uses on adjacent and nearby properties.

h. Proposed ingress and egress to the facility.

(e) *Required findings for both major and minor wireless communication facilities.*

(1) Wireless communications facilities findings. In addition to the required findings for conditional use permits contained in this Code, the following findings are required for every major and minor conditional use permit (CUP) for wireless facilities:

a. That the proposed facility will not create any significant blockage to public views and;

b. That the proposed facility will be an enhancement to the City due to its ability to provide additional communication capabilities and;

c. That the proposed facility will be aesthetically integrated into its surrounding land uses and;

d. That the proposed facility will comply with FCC regulations regarding interference with the reception or transmission of other wireless service signals within the City and surrounding community and;

e. That the proposed facility will operate in compliance with all other applicable Federal regulations for such facilities, including safety regulations and;

f. That the public need for the use of the antenna facility has been documented.

(2) If the Planning Commission does not approve an application for such conditional use permit, the Planning Commission shall make a written determination supported by findings as required by law.

(f) *Additional regulations for minor facilities.* In addition to the requirements above, the following requirements shall apply to the following types of facilities:

(1) *Minor facility height requirements.* Notwithstanding any other provision in the Laguna Woods Municipal Code, no minor facility shall exceed the maximum building height for the applicable zoning district. A roof mounted facility may exceed the height of the structure on which it is mounted up to 15 feet for the necessary operation and safety of the facility. Such permit to exceed the height for a minor facility shall not be considered for approval unless:

a. The applicant demonstrates to the Community Development Director's satisfaction that exceeding the height limitation is necessary for operation of the facility; or

b. The facility is collocated, or contains adequate space suitable for future collocation, and the height in excess of zoning requirements is necessary to the proposed shared use.

(2) *Utility mounted facilities, vertical extensions.* A utility mounted facility may, if approved by the Planning Commission, exceed the maximum building height limit for the applicable zoning district. The extent that the utility mounted facility exceeds the height of the existing utility pole or structure and the need for such height increase shall be taken into consideration by the City in conjunction

with the processing of the CUP for the utility mounted facility. A utility mounted facility shall not exceed the height of a utility pole or structure by more than four feet of its existing height. Any extension above four feet shall receive Planning Commission approval of a conditional use permit.

(3) *Utility mounted facilities, horizontal extension.* The extent that the utility mounted facility protrudes or extends horizontally from the existing utility pole or structure, and there is a need for such extension, additional considerations shall be taken into account by the City in conjunction with its processing of a CUP for a utility mounted facility. A utility mounted facility may not protrude or extend horizontally more than 18 inches from the existing utility pole or structure unless such utility mounted facility receives Planning Commission approval of a conditional use permit.

(g) *Additional regulations for major facilities.* In addition to the requirements of above, the following requirements shall apply to the following types of facilities:

(1) *Location requirements.*

a. No portion or extension of a major facility shall protrude beyond property lines or extend into any portion of property where such facility is not itself permitted; provided, however, that the City may approve the location of guy wires in a required setback if such approval is consistent with the guidelines and requirements set forth in this section.

b. A ground mounted facility shall not be located in a required parking area, vehicle maneuvering area, vehicle/pedestrian circulation area or area of landscaping such that it interferes with, or in any way impairs, the utility or intended function of such area.

c. A ground mounted facility shall not be permitted unless the reviewing authority makes the additional finding that, based upon evidence submitted by the applicant, no existing building or support structure can reasonably accommodate the proposed facility. Evidence supporting this finding will be reviewed by the reviewing authority and may consist of any of the following:

1. No existing buildings or support structures are located within the geographic area proposed to be served by the applicant's facility.
2. Existing buildings or support structures are not of sufficient height or structural strength to satisfy the applicant's operational or engineering requirements.
3. The applicant's proposed facility would create electromagnetic interference with another facility on an existing structure, or the existing antenna array on an existing building or support structure would create interference with the applicant's proposed antenna array.
4. The costs, fees, or contractual provisions required by a property owner, or by an incumbent wireless service provider, in order to collocate a new antenna array on an existing building or structure, or to adapt an existing building or structure for the location of the new antenna array, are unreasonable.
5. There are other limiting factors that render existing buildings and structures unsuitable for use by the applicant.

d.

If the proposed major facility cannot be collocated, it must be sited at least 1,500 feet from any existing major facility unless the reviewing authority determines that a shorter distance is required for technological reasons, the area served could not be served by one or more minor facilities, and that it would result in less visual obtrusiveness in the surrounding area.

(2) *Additional design requirements.*

a. A ground mounted facility shall be secured from access by the general public with a fence of a type or other form or screening approved by either the Community Development Director or the Planning Commission.

b. A ground mounted facility shall be covered with a clear anti-graffiti material of a type approved by the Community Development Director. The Community Development Director may grant an exception to this requirement if the applicant demonstrates to the satisfaction of the Community Development Director that there is adequate security around the facility to prevent graffiti.

(3) *Height requirements.* Notwithstanding any other provision in the Laguna Woods Municipal Code, no major facility shall exceed the maximum building height for the applicable zoning district unless such facility receives Planning Commission approval and considers the following:

a. The applicant demonstrates to the Community Development Director's satisfaction that exceeding the height limitation is reasonably necessary for operation of the facility; or

b. The facility is collocated, or contains adequate space suitable for future collocation, and the excess in height is reasonably necessary to the proposed shared use.

(4) *Additional screening and site selection guidelines.* The following screening and site selection guidelines shall be considered by the City in conjunction with the processing of a major facility CUP:

a. A major facility should not be located within 200 feet of any property containing a residential use.

b. If technical data require the placement of a major facility to be located within 1,500 feet of an existing major facility, under Section 13.26.210, the new major facility should be located at least 500 feet from the existing major facility.

c. A ground mounted facility should be located in close proximity to existing above ground utilities, such as electrical tower or utility poles (not scheduled for removal or undergrounding in the next 18 months), light poles, trees of comparable height, water tanks and other areas where the facility will not detract from the image or appearance of the City.

d. A roof mounted facility that extends above the existing parapet of the building on which it is mounted shall be screened by a material and in a manner that is compatible with the existing design and architecture of the building to the satisfaction of the Community Development Director.

e.

A roof mounted facility, requiring the placement of any guy wires, supporting structures, or accessory equipment shall be located and designed so as to minimize the visual impact as viewed from surrounding properties and public streets, including any pertinent public views from higher elevations.

f. No part of a ground mounted facility should be located in any required setback.

(h) *Public property facilities*.

(1) *Preapproved locations.*

a. The City may approve by resolution, following a duly noticed public hearing, a list of sites which may be located on public property or within the public right-of-way and which are approved for major facilities. Each site shall include a description of permissible development and design characteristics, including but not limited to maximum height requirements. The City shall make said resolution available to all persons upon request. The approved list of locations may be subsequently amended by resolution from time to time.

b. All facilities located on a public property site which is preapproved in accordance with this section following the effective date of this Code must obtain approval of a CUP in accordance with the Laguna Woods Municipal Code, and any additional or different requirements made applicable by this section.

c. All leases of public property that is preapproved in accordance with this section shall be nonexclusive. The operator of a facility located on such public property shall make the supporting structure of the facility available to any other applicant wishing to collocate to the extent technically feasible.

(2) *Requirement for separate lease agreement.* Any lease of City-owned property for the purpose of erecting a wireless communications facility shall require a negotiated lease agreement or other written license granted by the City of Laguna Woods. The existence of a lease agreement or license shall not relieve an applicant of any obligations to obtain appropriate permits or otherwise comply with the Laguna Woods Municipal Code.

(i) *Coordinated antenna plans.*

(1) *Requirements.* Any wireless service provider may apply for Planning Commission approval of a coordinated antenna plan (CAP) by filling a CUP to obtain preapproval for the use of proposed and potential future locations for facilities, subject to the following requirements:

a. The CAP shall specify permissible development and design characteristics for identified future locations, including but not limited to maximum height and size, type of supporting structure, and type of antenna.

b. The CAP shall identify potential future locations by lot and parcel number.

c. Applications for a CAP may be considered by the Planning Commission after holding a noticed public hearing thereon in accordance with this Code.

d.

Following Planning Commission approval of a CAP, each facility that complies with the specifications of the CAP may be approved subject to Community Development Director review and approval in accordance with the requirements set forth and referenced herein. Except for the type of permit, nothing in this section shall relieve the applicant of the obligation to comply with the regulations, requirements, and guidelines as required by this chapter, and the Community Development Director may recommend denial of a CUP, or place conditions upon its approval, notwithstanding prior approval of a CAP.

e. Any conditions placed on the approval of a CUP for a facility that complies with the CAP shall be consistent with the specifications of the CAP.

f. The CAP shall not vest any permanent rights to use the preapproved locations for facilities beyond the date of expiration. Unless extended, the CAP shall expire 24 months following its approval by the Planning Commission regardless of whether any CUP has been granted pursuant to the CAP. The Planning Commission may at its discretion, after written request therefore, extend the term of the CAP for up to twenty four (24) additional months; no CAP shall continue longer than 48 months.

(2) *Findings.* The Planning Commission shall approve a CAP based upon the following findings:

a. The intent and purpose of this section, and all its regulations and requirements will be preserved.

b. Any future facility complying with the specifications imposed by the CAP will not have a significant adverse impact on the subject site or surrounding community beyond those impacts considered in the approval of the CAP.

c. Any future facilities within the specifications of the CAP will be consistent with the General Plan and the uses permitted in the Laguna Woods Zoning Code, subject to subsequent approval of a CUP.

(3) *Application procedures.* Each applicant for a CAP shall submit the following information:

a. Written application on a form prescribed by the Community Development Department;

b. A map clearly indicating the following information:

1. Lot and parcel dimensions for proposed locations;

2. Location, size, height and use of all existing buildings and structures on the proposed location and abutting properties;

3. Location, height, and description of all existing aboveground utility facilities on the proposed location and abutting properties;

4. Location, size, and dimensions of all existing yards, setbacks, landscape areas, parking, walls, fences, and spaces between structures on the proposed location and abutting properties.

5. Any other information as may be required by the Community Development Department.

c.

Letter of justification indicating for each location the proposed maximum height of the facility; the anticipated type of antenna structure; any anticipated accessory equipment to be located on the site; proposed screening materials, if any; and willingness to collocate on the proposed location.

d. All applicable permit processing fees as established by resolution. An additional permit fee for each proposed facility shall be submitted with each subsequent application for a CUP, and with each request for modification of a permit.

(4) *Modification procedures.* Subsequent approval of a CUP for a major or minor facility subject to a CAP requires strict compliance with the specifications of the CAP (in addition to any additional conditions of the CUP); provided, however, that the Community Development Director may approve a minor modification of the CAP concurrent with an application for a CUP. For the purposes of this section, a minor modification shall include any adjustment to the approved specifications of the CAP which (a) does not increase the height of the facility by more five percent from the approved maximum height, (b) does not move the location of the facility closer to any approved location, (c) does not move the location of the facility within 200 feet of a residential property or school facility, and (d) does not otherwise significantly increase the adverse impacts upon the subject site or surrounding community.

(j) *Appeal or review and notices.* Any applicant or the operator and/or owner of a facility may appeal a final decision of the Community Development Director or Planning Commission. All appeals shall be processed in accordance with this Code, including required fees.

(k) *Reservation of right to review permits.*

(1) *Changed circumstance.* Any conditional use permit granted or approved pursuant to this section shall be granted or approved by the City and its Planning Commission with the reservation of the right and jurisdiction to review and modify the permit (including the conditions of approval) based on changed circumstances. Changed circumstances include, but are not limited to, the following in relation to the approved facility as described and diagramed in the related site plan: increased height or size of the facility; additional impairment of the views from surrounding properties; change in the type of antenna or supporting structure; changed color or materials; substantial change in location on the site; and an effective increase in signal output above or near the maximum permissible exposure (MPE) limits imposed by the revised radio frequency emissions guidelines by the Federal Communications Commission.

(2) *Additional right to revoke for violation.* The reservation of right to review any permit granted or approved hereunder by the City, its Planning Commission and/or City Council is in addition to, and not in lieu of, the right of the City, its Planning Commission and/or City Council to review and revoke or modify any permit granted or approved hereunder for any violations of the conditions imposed on such permit.

(3)

Modification of permit/collocation. Upon review, any changed circumstance as determined by the Community Development Director shall require the application and approval of a modification to the original conditional use permit, provided that any modification to accommodate collocated facilities may be approved administratively without the approval of the Planning Commission.

(l) *Facility removal.*

(1) *Discontinued use.* The operator of a lawfully erected facility, and the owner of the premises upon which it is located, shall promptly notify the Community Development Director in writing in the event that use of the facility is discontinued for any reason. In the event that discontinued use is permanent, then the owner(s) and/or operator(s) shall promptly remove the facility, repair any damage to the premises caused by such removal, and restore the premises as appropriate such as to be in conformance with applicable Zoning Codes. All such removal, repair and restoration shall be completed within 90 days after the use is discontinued, and shall be performed in accordance with all applicable health and safety requirements. For purposes of this subsection, a discontinued use shall be permanent unless the facility is likely to be operative and used within the immediately following three-month period.

(2) *Abandonment.* A facility that is inoperative or unused for a period of six continuous months shall be deemed abandoned. Written notice of the City's determination of abandonment shall be provided to the operator of the facility and the owner(s) of the premises upon which the facility is located. Such notice may be delivered in person, or mailed to the address(es) stated on the facility permit application, and shall be deemed given at the time delivered or placed in the mail. A written notice of the City's determination of abandonment shall be mailed or delivered to the operator of the facility at the address stated in the relevant permit application.

(3) *Removal of abandoned facility or hearing.* The operator of the facility and the owner(s) of the property on which it is located, shall within 30 days after notice of abandonment is given either (1) remove the facility and restore the premises, or (2) provide the Community Development Department with written objection to the City's determination of abandonment and request for hearing before the Community Development Director. If a written objection is timely received and a hearing is properly requested, the procedures for hearings, notices and related fees set forth in this code shall apply. The operator and/or owner shall be given the opportunity to provide evidence that the facility was in use during the relevant six-month period and that it is presently operational. The operator and/or owner shall be given the opportunity to cross examine any evidence provided by the City to the contrary. The Community Development Director shall review all evidence, determine whether or not the facility was properly deemed abandoned, and provide the operator notice of its determination.

(4) *Removal by City.* The City may remove the abandoned facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as is appropriate to be in compliance with applicable code at any time: (1) after 30 days following the notice of abandonment, or (2) following a notice of decision by the Community Development Director, if applicable, subject

to the owner/operator's right of appeal under this Code. The City may, but shall not be required to, store the removed facility (or any part thereof). The owner of the premises upon which the abandoned facility was located, and all prior operators of the facility, shall be jointly liable for the entire cost of such removal, repair, restoration and storage, and shall remit payment to the City promptly after demand therefore is made. The City may, in lieu of storing the removed facility, convert it to the City's use, sell it, or dispose of it in any manner deemed by the City to be appropriate.

(5) *Penalties.* The operator of the facility, and the owners of the premises upon which it is located shall be in violation of this chapter for failure to timely comply with any requirements hereunder. Each such person shall be subject to penalties for each such violation, pursuant to this Code.

(6) *City lien on property.* Until the cost of removal, repair, restoration and storage is paid in full, a lien shall be placed on the personal property and any real property on which the abandoned facility was located, for the full amount of the cost of removal, repair, restoration and storage. The Community Development Director shall cause the lien to be recorded in the Orange County Recorder's Office.

(Ord. No. 03-03, § 5(18.60.200), 4-16-2003)

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