Meeting Date: June 22, 2017

Subject: COMMERCIAL MARIJUANA ORDINANCE
An Ordinance of the City of Beverly Hills adding Article 47, Cannabis Prohibitions and Regulations to Chapter 3 of Title 10 of the Beverly Hills Municipal Code. Pursuant to the provisions set forth in the California Environmental Quality Act, the Planning Commission will also consider adoption of a Categorical Exemption for this project.

Project Applicant: City Initiated Action

Recommendation: That the Planning Commission:
1. Conduct a public hearing to receive testimony on the proposed ordinance; and
2. Adopt the attached resolution memorializing the Commission's findings and making recommendations to the City Council.

REPORT SUMMARY
On November 8, 2016, Proposition 64, the Adult Use of Marijuana Act (AUMA) passed with 57% voter approval in California and became law on November 9, 2016. In Beverly Hills, it passed with 64% voter approval. What is unknown is if the voters in Beverly Hills supported the recreational use of marijuana or if they supported both the recreational use and the allowance of commercial cannabis businesses in Beverly Hills.

At the January 24, 2017 City Council study session, Council discussed the change in law and directed staff to draft an ordinance regarding marijuana and marijuana-based businesses that would be as restrictive as possible under the new regulations. The City Council also provided direction to allow the delivery of medical marijuana within the City, and re-iterated these viewpoints at the City Council Priorities study session held on April 20, 2017.

Existing regulations within the City of Beverly Hills Municipal Code (§1C-3-2761: Marijuana Dispensary, Store, Co-Op, or Cultivation Operation Prohibited (Attachment A)) ban several types of marijuana-related businesses in the City of Beverly Hills. The proposed ordinance (Attachment B) strengthens the wording of the current ordinance to expressly prohibit all forms of cannabis-related businesses with the exception of allowing medical marijuana delivery to residents.
The proposed ordinance addresses the commercial prohibition and regulation of cannabis and related businesses. It does not discuss, prohibit, or further regulate the personal cultivation of marijuana beyond state law. As the state is required by the AUMA to begin licensing cannabis-based businesses no later than January 1, 2018, staff is bringing forward an ordinance to specifically address the commercial licensing aspect of the AUMA. Staff will be researching what, if any, regulations are necessary for the reasonable regulation of residential marijuana cultivation.

DISCUSSION

Federal Law
Marijuana use, possession, and distribution is illegal under federal law 21 U.S.C. § 801 et seq. There are no exceptions or special treatments allowed for medical use.

California law cannot be less restrictive than federal law. However, in August 2013, Deputy Attorney General James Cole issued what has become known as the Cole Memo (Attachment C). This memo allows federal prosecutors to consider whether a marijuana case is located in a state with a "strong and effective regulatory and enforcement system" for legalized marijuana when deciding whether to prosecute. This prosecutorial discretion implies that law-abiding patients and distributors in such states will, in general, be ignored by the federal government for prosecution.

In 2017, Attorney General Jeff Sessions ordered federal prosecutors to pursue maximum sentences in all drug-related cases. He has expressed disapproval of marijuana legalization.

Additionally, due to federal banking restrictions, over 70% of all cannabis-based businesses are cash-only in the states where cannabis is legal. The United States Department of Justice and the United States Treasury Department's Financial Crimes Enforcement Network have issued guidelines allowing banks to work with marijuana businesses that are in compliance with new state legalization laws. However, even with the new Treasury guidelines, bank officials continue to be reluctant to do business with growers, manufacturers, dispensaries, and other cannabis businesses as they fear that they will still be subject to investigation for accepting cash that drug sniffing dogs can target. Given that marijuana remains a Schedule I controlled substance under federal law, banks fear they could be prosecuted under money laundering laws for accepting funds from legalized businesses where that business is still illegal under federal law. This in turn causes marijuana businesses to keep too much cash on hand, making them targets for burglaries and robberies.

Proposition 64, The Adult Use of Marijuana Act (AUMA)
On November 8, 2016, the AUMA passed in California. This proposition legalizes marijuana under state law, for use and personal cultivation by adults 21 or older. It also imposes state taxes on marijuana sales and commercial cultivation; provides for industry licensing and establishes standards for marijuana products; and allows local regulation and taxation of marijuana business. Further, the AUMA specifically provides that local jurisdictions may still adopt and enforce ordinances to regulate non-medical marijuana activities/businesses through local zoning, land use, and police powers (Attachment D). However, any jurisdiction that prohibits all commercial businesses and does not allow for outdoor personal cultivation would
not be eligible to receive state funding for a variety of programs, including education of children on the dangers of marijuana use. A timeline for the legalization of marijuana in California can be found at www.beverlyhills.org/marijuana.

The California Health and Safety Code (Attachment E) reflects the changes instituted by the passage of the AUMA. The following activities became legal under state law on November 9, 2016:

- The recreational use of marijuana by adults 21 or older when not in public.
- Residential cultivation of up to six plants where the resident keeps the harvest.
- Public possession of up to 28.5 grams of cannabis or 8 grams of concentrate.

Some of the activities that are illegal under the AUMA include:

- Consuming marijuana or marijuana products in any public place.
- Consuming marijuana in a vehicle or getting high and driving, which includes motor vehicles, boats, vessels, and other vehicles used for transportation.
  - This applies to both drivers and passengers.
  - Open packages or containers of marijuana or marijuana products are also not allowed within the vehicle.
- Buying unlicensed marijuana.
- Selling unlicensed marijuana.
- Smoking marijuana anywhere that smoking has been prohibited by a local jurisdiction.
- Smoking marijuana within 1,000 feet of a school, day care center, or youth center while children are present.
- Possessing, smoking or ingesting marijuana or marijuana products in or upon the grounds of a school, day care center, or youth center while children are present.

Under the AUMA, the state must begin issuing licenses to cannabis-based businesses no later than January 1, 2018, where it is not specifically prohibited by local law. It will then become legal to buy licensed, commercial marijuana in jurisdictions that permit such businesses.

Additionally, other types of businesses such as the manufacturing of marijuana products, testing marijuana products for potency, nurseries, commercial cultivation, etc. can be licensed under state law where not prohibited by local law. If no local law exists, a state license will be issued and will be valid until expiration, even if a local government prohibits a particular business type after a state license has been issued. Under state law, the City cannot prohibit the transportation of marijuana through the City by a licensed business and/or carrier.

Beverly Hills Municipal Code §10-3-2761 – Current City Regulation
The Municipal Code currently prohibits marijuana dispensaries, stores, cooperatives, and cultivation operations. Although the current zoning ordinance expressly prohibits marijuana dispensaries, stores, cooperatives, and cultivation operations, it does not directly prohibit other commercial cannabis industries such as laboratory testing facilities, nurseries, and distribution centers. There is a de facto prohibition of the establishment of any cannabis-based businesses, as they are not listed as a permitted use in any zone in the City, and therefore are currently
considered prohibited.

Should the City take no action to modify the Municipal Code, beginning no later than January 1, 2018, the state may issue licenses to businesses who wish to undertake these activities within the City limits where permitted by zoning ordinance. As stated above, there is a de facto prohibition in place; however, the City Attorney’s Office has suggested the City strengthen the current ordinance to be more specific. By clarifying the ordinance, it is unlikely that the state will issue a license. Should the state determine that the Municipal Code does not prohibit a certain business type, then that business would be allowed to operate within the City.

The state has announced they intend to release applications for state business licenses this fall. It is possible that the state could issue licenses prior to the January 1, 2018, deadline established by the AUMA, once they begin receiving applications.

**Beverly Hills Municipal Code §10-3-100 – Current City Regulation**

The definition of a marijuana dispensary, store, cooperative, or cultivation operation is defined in the current City Municipal Code 10-3-100. This definition includes an exception that only allows for the personal cultivation of medical marijuana. To date, the City has received no complaints on any excessive indoor or outdoor cultivation of marijuana.

Under the AUMA, the recreational cultivation of up to six plants is allowed at a residence. This can be done either indoor or outdoor. The resident must keep the harvest and is not allowed to sell the harvest. They are allowed to give the harvest away to persons over the age of 21.

The AUMA does allow a local jurisdiction to reasonably regulate the cultivation of up to six plants per residence. It is important to note that under state law marijuana plants must either be kept inside a person’s private residence or, if they are grown outdoors, they must be in a locked space that is not visible by normal, unaided vision from a public place. Staff is investigating whether any additional regulations for residential cultivation would be necessary or feasible for this community. As such, residential cultivation regulations may be revisited as part of a future ordinance if necessary.

**Public Health and Safety**

There is concern for public health and safety with the legalization of the recreational use of marijuana. Numerous articles and reports on public health and safety, including those specifically mentioned below, can be found at [www.beverlyhills.org/marijuana](http://www.beverlyhills.org/marijuana). Of concern is that Colorado has experienced an increase in traffic fatalities involving marijuana and the number of hospitalizations related to marijuana has also increased.

**Public Health**

In the "Monitoring Health Concerns Related to Marijuana in Colorado: 2016" report by Colorado’s Department of Health and Environment, they reviewed scientific literature on potential health effects of marijuana use. Some of those studies have moderate to substantial evidence that marijuana does have some detrimental health effects which are listed below:

- Weekly marijuana use by adolescents is associated with impaired learning, memory, math and reading, even 28 days after last use.
- Strong evidence shows that marijuana smoke contains many of the same cancer-
causing chemicals found in tobacco smoke.

- It can take up to four hours after consuming an edible marijuana product to reach the peak THC (tetrahydrocannabinol, the main psychoactive component of marijuana) blood concentration and feel the full effects.
- The risk of a motor vehicle crash increases among drivers with recent marijuana use and, the higher the blood THC level the higher the motor vehicle crash risk.
- Strong evidence shows that daily or near daily marijuana users are more likely to have impaired memory lasting a week or more after quitting.
- Biological evidence shows that THC passes through the placenta to the fetus, so that the unborn child is exposed to THC. THC also has been shown to pass through breast milk to a breastfeeding child. There is moderate evidence that suggests if a child’s mother used marijuana while pregnant there could be impaired cognitive function and attention.

Additionally, the use of marijuana by both youths and adults has increased since the legalization of marijuana in Colorado. The national average for youth (ages 12-17) marijuana use is 7.20%. Colorado is at 11.13%, the highest in the nation. The national average for adult use is 19.70%, while in Colorado it is at 31.75%.

**Hospitalizations**

Per the Colorado Department of Public Safety, Division of Criminal Justice, Office of Research and Statistics released in "Marijuana Legalization in Colorado: Early Findings", hospitalizations have increased since the legalization of marijuana. Prior to the legalization of medical marijuana, the rate of hospitalizations due to marijuana was 575 per 100,000. During the medical marijuana era, this increased to 803 hospitalizations per 100,000. When retail commercialization of marijuana occurred, there was a significant increase to 2,413 hospitalizations per 100,000. This data excludes Emergency Department visits.

In the "SUPPLEMENT to: “The Legalization of Marijuana in Colorado: The Impact, Volume 4, September 2016”, Emergency Department visits have increased by 35% since the legalization of recreational marijuana going from 660 per 100,000 to 889 per 100,000.

**Traffic Accidents**

Marijuana-related traffic deaths increased 48% in the three-year average (2013-2015) since Colorado legalized recreational marijuana compared to the three-year average (2010-2012) prior to legalization. During the same time period, all traffic deaths increased 11%. Also of note, the number of driving under the influence of drugs (DUIDs) involving marijuana has increased from 674 per year in 2014 to over 760 in 2016.

In 2009, Colorado marijuana-related traffic deaths involving operators testing positive for marijuana represented 10% of all traffic fatalities. By 2015, that number doubled to 21%.

Additionally, since Washington State legalized recreational marijuana use, marijuana-related DUIDs accidents have also doubled. The Washington State Traffic Safety Commission also reports that drivers with active THC in their blood involved in a fatal driving accident have increased by 122% from 2010 (16) to 2014 (23).
**Crimes at or near Marijuana Businesses**

Marijuana-industry-related crime is where licensed marijuana businesses were either the victim or perpetrator of a crime. In Denver, burglary or attempted burglary accounted for 64% of marijuana-industry-related crime while theft accounted for another 11% of marijuana-industry-related crime in 2014. Overall, marijuana businesses make up less than 1% of all businesses in Denver but account for approximately 11% of all reported business burglaries from 2012-2015. However, marijuana industry-related crime represents less than 1/2 of 1% of overall crime in Denver. In 2015, of the 192 marijuana industry-related crimes, 117 were burglaries and 21 were for theft.

A 2016 study, "A Micro-Temporal Geospatial Analysis of Medical Marijuana Dispensaries and Crime in Long Beach California" found that an increase of one dispensary per square mile related to a 0.4% to 2.6% increase in property crime. Additionally, greater densities of medical marijuana dispensaries were related to higher rates of violent crimes in areas adjacent to the dispensary locations. The 2016 study found that a citywide decline in dispensaries from the March 2012 peak of 37 dispensaries to the August/September 2013 low of 5 dispensaries, was associated with a decline of 182.5 violent crimes per year and 219.3 property crimes per year. Comparatively, an equivalent drop of alcohol outlets was associated with a decline of only 26.2 violent crimes and 113.9 property crimes per year. These results suggest that local agencies that enact and enforce bans on dispensaries will reduce crime in neighborhoods next to where the dispensaries are located.

While advocates for cannabis-based businesses will state that overall arrests for marijuana have declined significantly since the legalization of marijuana in places like Colorado and Washington, this is most likely due to the fact that possession and being under the influence in public (but not driving) is now legal.

**Attached Draft Ordinance**

The attached draft ordinance would add Article 47 to Chapter 3 of Title 10, BHMC § 10-3-47, "Cannabis Prohibitions and Regulations" to the Municipal Code. As outlined in the ordinance, with the exception of delivery of medical marijuana to a resident, all other commercial marijuana businesses would be prohibited.

The AUMA allows cities to establish reasonable regulations of the cultivation of up to six plants at a residence. At this time, staff is not proposing any local regulations for limiting the indoor or outdoor cultivation beyond state law. Should the City desire to adopt reasonable regulations for personal cultivation, then a taskforce would be formed while draft regulations were created. Staff anticipates that the correct plan of action would take over a year to develop due to the various nuances associated with personal cultivation.

**GENERAL PLAN CONSISTENCY**

The proposed changes are consistent with the City's General Plan including the following goals and policies that relate to the support of businesses in the City:

- Goal LU 2 Community Character and Quality. A built environment that is distinguished by its high level of site planning, architecture, landscape design, and sensitivity to its natural setting and history.
- Goal LU 15 Economic Sustainability. Vital and successful businesses that contribute to
the City's identity and culture, provide high-paying jobs, and contribute revenue that sustains the level and quality of services in the City.

- Policy LU 2.9 Public Safety. Require that development be located and designed to promote public safety by providing street-fronting uses, lighting, sightlines, and features that enhance community safety. (Imp. 2.1, 2.4)
- Policy LU 15.2 Priority Businesses. Retain and build upon the key business sectors contributing to the City's identity, economy, and revenue for resident services, such as entertainment-related Class-A offices, high end retail and fashion, restaurant, hotel, technology, and supporting uses.
- Policy ES 1.4 Retain Existing Industries. Consistent with future economic sustainability plans, encourage existing industries such as luxury retail, tourism, hoteling, finance, entertainment and media businesses and services to remain and expand within the City.

ENVIRONMENTAL ASSESSMENT
This Ordinance has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. The adoption and implementation of the Ordinance is eligible for a class 5 categorical exemption for minor changes in land use limitations and will not have a significant environmental impact. This Ordinance is exempt from the environmental review requirements of CEQA pursuant to Section 15305 of Title 14 of the California Code of Regulations.

PUBLIC OUTREACH AND NOTIFICATION
Notice for this item was published in the Beverly Hills Courier on Friday, June 9, 2017, and the Beverly Hills Weekly on Thursday, June 15, 2017.

Staff has been contacted by two cannabis industry advocates prior to the publication of the public hearing notice. Staff has spoken with both advocates and they do not wish the City to prohibit any marijuana-based businesses. Communications received in writing in support or opposition of this ordinance are attached to this report (Attachment F)

CONCLUSION
The proposed ordinance will prohibit all marijuana-based businesses in the City of Beverly Hills with the exception of the delivery of medical marijuana to residents and the transportation of marijuana through the City. Based upon the direction received at the City Council Study Session on January 24, 2017 and at the City Council Priorities Setting Session, staff believes the proposed ordinance is consistent with the stated objectives.

An informational report on this ordinance will be provided to the Health and Safety Commission on Monday, June 26, 2017. Then on July 18, 2017, it will be presented to the City Council at both the Study Session and Formal Session.

Report Reviewed By:

Ryan Kohl, AICP, Assistant Director of Community Development / City Planner
Attachment A

Current Ordinance
Beverly Hills, California
City Code

10-3-2761: MARIJUANA DISPENSARY, STORE, CO-OP, OR CULTIVATION OPERATION PROHIBITED:

No person shall establish or conduct any "marijuana dispensary, store, co-op or cultivation operation", as defined in section 10-3-100 of this chapter, in any zone or overlay zone. (Ord. 11-0-2606, eff. 4-1-2011)

10-3-100: WORDS DEFINED:

MARIJUANA DISPENSARY, STORE, CO-OP, OR CULTIVATION OPERATION: A business or other person or entity, including any location, structure, facility, residence, or similar enclosure for the same, used, in full or in part, as a place at or in which marijuana is sold, traded, exchanged, bartered for in any way, made available, located, stored, placed, planted, cultivated, or processed, including, without limitation, any location, structure, facility, residence or similar enclosure if used in connection with the delivery of marijuana; except that cultivation or storage by a patient or that patient's caregiver, at the residence of the patient and incidental to a residential use by such patient, and for the sole use of the patient who resides there, shall not be considered a dispensary.
Attachment B

Resolution and Draft Ordinance
RESOLUTION NO. ___

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE PROHIBITING ALL COMMERCIAL CANNABIS ACTIVITY (BOTH MEDICAL AND NON-MEDICAL) EXCEPT FOR DELIVERIES OF MEDICAL CANNABIS, AND MAKING A FINDING OF EXEMPTION FROM CEQA UNDER SECTION 15061(B)(3) OF THE CEQA GUIDELINES

The Planning Commission of the City of Beverly Hills hereby finds, resolves, and determines as follows:

Section 1. On October 9, 2015, Governor Brown signed Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643 into law, which collectively are now known as the Medical Cannabis Regulation and Safety Act (hereinafter "MCRSA"). The MCRSA establishes a State licensing scheme for commercial medical cannabis uses, while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. It is anticipated that on January 1, 2018, the State will begin issuing licenses to medical cannabis businesses. The MCRSA allows the City to completely prohibit commercial medical cannabis activities.

Section 2. On November 8, 2016, California voters passed Proposition 64 (the Control, Regulate, and Tax Adult Use of Marijuana Act, herein referred to as the "AUMA"), which added Division 10 (Cannabis) to the California Business and Professions Code, sections 26000, et seq.. The AUMA grants State agencies the authority to create, issue, renew, discipline, suspend, or revoke licenses for non-medical cannabis businesses. The AUMA provides that the State shall begin issuing licenses to cannabis businesses under Division 10 of
Section 3. The City Council has expressed that the City should adopt an ordinance as restrictive as possible in terms of prohibiting all commercial cannabis activity, while allowing for medical cannabis deliveries into the City, because the State will begin issuing licenses for such commercial businesses no later than January 1, 2018. Although the current zoning ordinance directly prohibits all marijuana dispensaries, stores, cooperatives, and cultivation operations, it does not directly prohibit other commercial cannabis industries such as laboratory testing facilities, nurseries, and distribution centers. Nonetheless, there is a de facto prohibition of the establishment of any cannabis-based businesses because they are not listed as a permitted use in any zone in the City and thus are currently considered prohibited.

Section 4. The Planning Commission of the City of Beverly Hills, at a duly noticed public hearing on June 22, 2017, considered zone text amendments to the Beverly Hills Municipal Code adding Article 47 to Chapter 3 of Title 10 as set forth in Exhibit A ("Code Amendments"). At the public hearing, the Planning Commission received oral and documentary evidence relative to the proposed Code Amendments.

Section 5. The Planning Commission finds that prohibiting commercial cannabis activity is necessary for the preservation and protection of the public health, safety, and welfare of the city. In addition, the establishment of such businesses would change the character
of the City’s commercial districts and would be inconsistent with various General Plan Policies including ES 1.4 Retain Existing Industries and LU 15.2 Retain Priority Businesses due to the fact that cannabis-based businesses do not retain or build upon the key businesses that contribute to the City’s identity.

**Section 6.** The Planning Commission further finds that the establishment of cannabis-based businesses has the potential to adversely change the character of the Beverly Hills community.

Cannabis-based businesses do not currently exist in the City. General Plan Policy ES 1.4 provides that the City shall encourage existing industries in the City, such as luxury retail, tourism, hoteling, finance, entertainment, and media businesses to remain and expand in the City in order to maintain a strong sustainable economic base. Cannabis-based businesses are not an existing industry of the City and the establishment of these types of businesses in the City would be inconsistent with this policy. Further, General Plan Land Use Goal 15 states that the City seeks to have vital and successful businesses that contribute to the City’s identity and culture, provide high-paying jobs, and contribute revenue that sustains the level and quality of services in the City. General Plan Policy LU 15.2 sets forth the City’s policy to retain and build upon key businesses that contribute to the City’s identity such as entertainment-related Class-A offices, high end retail and fashion, restaurant, hotel, technology, and supporting uses. Cannabis-based businesses are not a part of this list nor do they contribute positively to the City’s identity. The location of cannabis-based businesses in the City would be contrary to General Plan Land Use Goal 15 and General Plan Policies ES 1.4 and LU 15.2.
Section 7. The Code Amendments are consistent with the objectives, principles, and standards of the General Plan. General Plan Goal “LU 2 – Community Character and Quality” calls for a built environment that is distinguished by its high level of site planning and includes the General Plan Policy “LU 2.9 Public Safety” which requires developments be located and designed to promote public safety. There are no locations in the City where a cannabis-based business would promote public safety. Additionally, General Plan Goal “LU 15 – Economic Sustainability” establishes that vital and successful businesses contribute to the City’s identity and culture, provide high-paying jobs and contribute revenue that sustains the level and quality of services in the City. This goal is supported by General Plan Policy “LU 15.2 – Priority Businesses” which focuses on retaining and building upon key business sectors that contribute to the City’s identity. Other relevant General Plan Policies include “ES 1.4 – Retain Existing Industries” which encourages existing industries such as luxury retail, tourism, hoteling, finance, entertainment, and media businesses to remain and expand within the City.

Section 8. The Code Amendments have been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. The Code Amendments do not authorize construction and, in fact, prohibit certain development in order to protect the public health, safety and general welfare. Therefore, the Planning Commission recommends that the City Council find that it can be seen with certainty that the Code Amendments do not have the possibility to have a significant effect on the environment, and are therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.
Section 9. The records related to this determination are on file with the City’s Community Development Department, 455 N. Rexford Drive, Beverly Hills, California 90210. The Planning Commission hereby recommends that the City Council adopt an Ordinance which will add Article 47, Cannabis Prohibitions and Regulations, to Chapter 3 of Title 10 of the City’s zoning code substantially as set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

Section 10. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his/her Certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted:

Farshid Joe Shooshani
Chair of the Planning Commission of the City of Beverly Hills

Attest:

Ryan Gohlich, AICP
Secretary of the Planning Commission
Approved as to form:

David M. Snow
Assistant City Attorney

Approved as to content:

Ryan Gohlich, AICP
Assistant Director / City Planner
Community Development Department
Exhibit A

AN ORDINANCE OF THE CITY OF BEVERLY HILLS PROHIBITING ALL COMMERCIAL CANNABIS ACTIVITY (BOTH MEDICAL AND NON-MEDICAL) EXCEPT FOR DELIVERIES OF MEDICAL CANNABIS, MAKING RELATED MUNICIPAL CODE AMENDMENTS, AND FINDING THE ORDINANCE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS PROHIBITING ALL COMMERCIAL CANNABIS ACTIVITY (BOTH MEDICAL AND NON-MEDICAL) EXCEPT FOR DELIVERIES OF MEDICAL CANNABIS, MAKING RELATED MUNICIPAL CODE AMENDMENTS, AND FINDING THE ORDINANCE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS DOES ORDAIN AS FOLLOWS:

SECTION 1. Findings and Purpose.

A. The City of Beverly Hills, California (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California.

B. On November 8, 2016, California voters approved the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”). The AUMA added Division 10 to the California Business and Professions Code, sections 26000, et seq., which grants State agencies the authority to create, issue, renew, discipline, suspend, or revoke licenses for cannabis businesses. The AUMA provides that the State shall begin issuing licenses to cannabis businesses under Division 10 of the California Business and Professions Code by January 1, 2018. California Business and Professions Code section 26055(e) provides that a State licensing authority shall not approve an application for a State license for commercial non-medical cannabis activity if approval of the State license will violate the provisions of any local ordinance.

C. On October 9, 2015, Governor Brown signed Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643 into law, which collectively are now known as the Medical Cannabis Regulation and Safety Act (hereinafter “MCRSA”). The MCRSA establishes a State licensing scheme for commercial medical cannabis uses, while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. It is anticipated that on January 1, 2018, the State will beginning issuing licenses to medical cannabis businesses. The MCRSA allows the City to completely prohibit commercial medical cannabis activities.

D. On June 22, 2017, the Planning Commission of the City of Beverly Hills held a public hearing on this proposed Ordinance, at which time all persons interested in the proposed Ordinance had the opportunity and did address the Planning Commission on these matters. Following the receipt of public testimony the Planning Commission closed the public hearing.

E. At the conclusion of the Planning Commission hearing and after due consideration of the testimony, the Planning Commission adopted Resolution No. _______ recommending that the City Council adopt the proposed Ordinance, to prohibit all commercial cannabis activity except for the delivery of medical cannabis.
F. On July __, 2017, the City Council of the City of Beverly Hills held a public hearing on the proposed Ordinance, at which time all persons interested in the proposed Ordinance had the opportunity and did address the City Council on these matters. Following the receipt of public testimony the City Council closed the public hearing.

G. All legal prerequisites to the adoption of this Ordinance have occurred.

SECTION 2. The definition of “Person” contained in Section 1-2-1 (Application of Definitions) of Chapter 2 (Definitions) of Title 1 (General Provisions) is hereby amended to read as follows:

“PERSON: A natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, cooperative, and collective, and any manager, lessee, agent, servant, officer or employee thereof.”

SECTION 3. The definition of Marijuana Dispensary, Store, Co-Op, or Cultivation Operation from Section 10-3-100 (Words Defined) of Article 1 (Definitions) of Chapter 3 (Zoning) of Title 10 (Planning and Zoning) is hereby deleted, with all other definitions remaining in effect without amendment.

SECTION 4. The City Council of the City of Beverly Hills hereby deletes Section 10-3-2761 (Marijuana Dispensary, Store, Co-Op, or Cultivation Operation Prohibited) from Article 27 (Other Uses and Building Restrictions) of Chapter 3 (Zoning) of Title 10 (Planning and Zoning).

SECTION 5. The City Council of the City of Beverly Hills hereby adds Article 47 (Cannabis Prohibitions and Regulations) to Chapter 3 (Zoning) of Title 10 (Planning and Zoning) to read as follows:

“ARTICLE 47 CANNABIS PROHIBITIONS AND REGULATIONS

Section 10-3-4700: Purpose.
Section 10-3-4701: Definitions.
Section 10-3-4702: Prohibited uses and activities.
Section 10-3-4703: Exceptions.
Section 10-3-4704: Violation, penalty.

10-3-4700 Purpose.

A. The purpose of this article is to expressly prohibit the establishment of commercial cannabis uses in the city.

B. The city council finds that prohibitions on commercial cannabis activity are necessary for the preservation and protection of the public health, safety, and welfare of the city. The prohibition of such uses is within the authority conferred upon the city council by State law and is an exercise of its police powers to enact and enforce regulations for the public health, safety and welfare of the city.
10-3-4701 Definitions.

For purposes of this chapter, the following definitions shall apply.

A. “AUMA” means the Control, Regulate and Tax Adult Use of Marijuana Act approved by the voters on November 8, 2016, as the same may be amended from time to time.

B. “Cannabis” means 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. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” also means marijuana as defined by California Health and Safety Code section 11018, as it is amended from time to time. “Cannabis” includes cannabis that is used for medical, non-medical, or other purposes.

“Cannabis” 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. “Cannabis” also does not include industrial hemp, as defined in California Health and Safety Code section 11018.5.

C. “Cannabis accessories” means any equipment, products or materials of any kind which is intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis or cannabis products into the human body.

D. “Cannabis product” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

E. “Commercial cannabis activity” means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, delivery or sale of cannabis and cannabis product for medical, non-medical, or any other purpose and includes the activities of any business licensed by the State or other government entity under Chapter 3.5 of Division 8 or Division 10 of the California Business and Professions Code, or any provision of State law that permits the licensing of cannabis businesses.

F. “Concentrated cannabis” means manufactured cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product’s potency. Resin from granular trichomes from a cannabis plant is a concentrate.

G. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
H. “Delivery” means the commercial transfer of cannabis or cannabis products to a customer. “Delivery” also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under California law that enables customers to arrange for or facilitate the commercial transfer by a State licensed retailer of cannabis or cannabis products.

I. “Distribution” means the procurement, sale, and transport of cannabis and cannabis products between entities licensed under Chapter 3.5 of Division 8 or Division 10 of the California Business and Professions Code, as they may be amended from time to time.

J. “Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.

K. “MCRSA” means the Medical Cannabis Regulation and Safety Act as contained, codified, enacted, and signed into law on October 9, 2015, as Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643, as the same may be amended from time to time.

L. “Private residence” means a house, an apartment unit, condominium, or other similar dwelling that is lawfully used as a residence.

10-3-4702 Prohibited uses and activities.

A. Commercial cannabis activity, whether or not for profit, is prohibited in all zones, specific plan areas, and overlay zones of the city. No person shall establish, operate, maintain, conduct, allow, or engage in commercial cannabis activity anywhere within the city. To the extent that this prohibition conflicts with any other provision of this Municipal Code, this prohibition will control.

B. A property owner shall not rent, lease or otherwise permit any person or business that engages in commercial cannabis activity to occupy real property in the city. A property owner shall not allow any person or business to establish, operate, maintain, conduct, or engage in commercial cannabis activity on any real property owned or controlled by that property owner that is located in the city.

C. Subsection A above shall prohibit all activities for which a State license is required pursuant to the MCRSA or the AUMA, as the same may be amended from time to time. Accordingly, the city shall not issue any permit, license or other entitlement for any activity for which a State license is required under the MCRSA or the AUMA, as the same may be amended from time to time. The city shall also not issue any local license to a non-profit entity pursuant to California Business and Professions Code section 26070.5.

D. To the extent not already prohibited by subsection A above, all deliveries of cannabis or cannabis products for non-medical purposes, to or from any location are expressly prohibited. No person shall conduct or perform any delivery of any cannabis or cannabis products for a non-medical purpose, which delivery either originates or terminates within the city. This subsection shall not prohibit any person from transporting cannabis through the jurisdictional limits of the city for delivery or distribution to a person located outside the city.
where such transport does not involve delivery or distribution within the jurisdictional limits of the city.

10-3-4703 Exceptions.

A. Notwithstanding Subsection 10-3-4702 above, the delivery of medical cannabis from a business located outside the city and licensed under the MCRSA, or any other provision of law that permits State licenses for medical cannabis businesses, shall be permitted into the city.

B. To the extent that the following activities are permitted by State law, nothing in this article shall prohibit a person 21 years of age or older from:

1. Possessing, processing, purchasing, transporting, obtaining or giving away to persons 21 years of age or older, without compensation whatsoever, not more than 28.5 grams of cannabis not in the form of concentrated cannabis;

2. Possessing, processing, purchasing, transporting, obtaining or giving away to persons 21 years of age or older, without compensation whatsoever, up to eight grams of cannabis in the form of concentrated cannabis;

3. Smoking or ingesting cannabis or cannabis products except as prohibited by California Health and Safety Code section 11362.3;

4. Possessing, transporting, purchasing, obtaining, using, manufacturing, or giving away cannabis accessories to persons 21 years of age or older without compensation whatsoever; or

5. Engaging in the cultivation of six or fewer live cannabis plants within a single private residence, inside an accessory structure located upon the grounds of a private residence, or if grown outdoors within a locked space that is not visible by normal, unaided vision from a public place.

10-3-4705 Violation, penalty.

In addition to any other enforcement permitted by this Section 10-3-205 of the Beverly Hills Municipal Code, the city attorney or city prosecutor may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this chapter. In any civil action brought pursuant to this article, a court of competent jurisdiction may award reasonable attorneys’ fees and costs to the prevailing party. Notwithstanding the penalties set forth in Section 10-3-205 of the Beverly Hills Municipal Code, no provision of Section 10-3-205 or this Article 47 authorizes a criminal prosecution, arrest or penalty inconsistent with or prohibited by Health and Safety Code section 11362.71, et seq. or section 11362.1, et seq., as the same may be amended from time to time. In the event of any conflict between the penalties enumerated under Section 10-3-205 of the Beverly Hills Municipal Code and any penalties set forth in State law, the maximum penalties allowable under State law shall govern.”
SECTION 6. Planning Division Staff has determined that the proposed Project is exempt from the requirements of the California Environmental Quality Act ("CEQA") and the City’s CEQA Guidelines pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed Project to prohibit commercial cannabis activity except for the delivery of medical cannabis will have a significant effect on the environment. The proposed Project will not result in a permanent alteration of property nor the construction of any new or expanded structures. The City Council has reviewed Planning Division Staff’s determination of exemption, and based on its own independent judgment, concurs with Staff’s determination of exemption. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Los Angeles in accordance with CEQA Guidelines.

SECTION 7. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 8. Restatement of Existing Law. Neither the adoption of this Ordinance nor the repeal of any other Ordinance of this City shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any penalty or the penal provisions applicable to any violation thereof.

SECTION 9. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the city within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance and shall cause this Ordinance and the City Clerk’s certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this city.

SECTION 10. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:  
Effective:

LILI BOSSE  
Mayor of the City of Beverly Hills

ATTEST:

________________________ (SEAL)
BYRON POPE  
City Clerk
Attachment C

Cole Memo
MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- 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.

These priorities will continue to guide the Department’s enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.1

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice 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. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department’s guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

1 These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department’s interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.
must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department’s previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation’s compliance with such a system, may allay the threat that an operation’s size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department’s enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation’s large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases—and in all jurisdictions—should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.
As with the Department’s previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department’s authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman
Acting Assistant Attorney General, Criminal Division

Loretta E. Lynch:
United States Attorney
Eastern District of New York
Chair, Attorney General’s Advisory Committee

Michele M. Leonhart
Administrator
Drug Enforcement Administration

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

Ronald T. Hosko
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigation
Attachment D

California Business and Professional Code
State of California

BUSINESS AND PROFESSIONS CODE

Section 26200

26200. (a) Nothing in this division shall be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction.

(b) Nothing in this division shall be interpreted to require a licensing authority to undertake local law enforcement responsibilities, enforce local zoning requirements, or enforce local licensing requirements.

(c) A local jurisdiction shall notify the bureau upon revocation of any local license, permit, or authorization for a licensee to engage in commercial marijuana activity within the local jurisdiction. Within 10 days of notification, the bureau shall inform the relevant licensing authorities. Within 10 days of being so informed by the bureau, the relevant licensing authorities shall commence proceedings under Chapter 3 (commencing with Section 26030) to determine whether a license issued to the licensee should be suspended or revoked.

(d) Notwithstanding paragraph (1) of subdivision (a) of Section 11362.3 of the Health and Safety Code, a local jurisdiction may allow for the smoking, vaporizing, and ingesting of marijuana or marijuana products on the premises of a retailer or microbusiness licensed under this division if:

(1) Access to the area where marijuana consumption is allowed is restricted to persons 21 years of age and older;

(2) Marijuana consumption is not visible from any public place or non-age restricted area; and

(3) Sale or consumption of alcohol or tobacco is not allowed on the premises.

(Added November 8, 2016, by initiative Proposition 64, Sec. 6.1.)
State of California

BUSINESS AND PROFESSIONS CODE

Section 26201

26201. Any standards, requirements, and regulations regarding health and safety, environmental protection, testing, security, food safety, and worker protections established by the state shall be the minimum standards for all licensees under this division statewide. A local jurisdiction may establish additional standards, requirements, and regulations.

(Added November 8, 2016, by initiative Proposition 64, Sec. 6.1.)
Attachment E

California Health and Safety Code
HEALTH AND SAFETY CODE - HSC
DIVISION 10. UNIFORM CONTROLLED SUBSTANCES ACT [11000 - 11651] (Division 10 repealed and added by Stats. 1972, Ch. 1407.)

CHAPTER 6. Offenses and Penalties [11350 - 11392] (Chapter 6 added by Stats. 1972, Ch. 1407.)

ARTICLE 2. Marijuana [11357 - 11362.9] (Article 2 added by Stats. 1972, Ch. 1407.)

11357. Possession.

(a) Except as authorized by law, possession of not more than 28.5 grams of marijuana, or not more than four grams of concentrated cannabis, or both, shall be punished or adjudicated as follows:

(1) Persons under the age of 18 shall be guilty of an infraction and shall be required to:

(A) Upon a finding that a first offense has been committed, complete four hours of drug education or counseling and up to 10 hours of community service over a period not to exceed 60 days.

(B) Upon a finding that a second offense or subsequent offense has been committed, complete six hours of drug education or counseling and up to 20 hours of community service over a period not to exceed 90 days.

(2) Persons at least 18 years of age but less than 21 years of age shall be guilty of an infraction and punishable by a fine of not more than one hundred dollars ($100).

(b) Except as authorized by law, possession of more than 28.5 grams of marijuana, or more than four grams of concentrated cannabis, shall be punished as follows:

(1) Persons under the age of 18 who possess more than 28.5 grams of marijuana or more than four grams of concentrated cannabis, or both, shall be guilty of an infraction and shall be required to:

(A) Upon a finding that a first offense has been committed, complete eight hours of drug education or counseling and up to 40 hours of community service over a period not to exceed 90 days.

(B) Upon a finding that a second or subsequent offense has been committed, complete 10 hours of drug education or counseling and up to 60 hours of community service over a period not to exceed 120 days.

(2) Persons 18 years of age or over who possess more than 28.5 grams of marijuana, or more than four grams of concentrated cannabis, or both, shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars ($500), or by both such fine and imprisonment.

(c) Except as authorized by law, every person 18 years of age or over who possesses not more than 28.5 grams of marijuana, or not more than four grams of concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be punished as follows:

(1) A fine of not more than two hundred fifty dollars ($250), upon a finding that a first offense has been committed.

(2) A fine of not more than five hundred dollars ($500), or by imprisonment in a county jail for a period of not more than 10 days, or both, upon a finding that a second or subsequent offense has been committed.

(d) Except as authorized by law, every person under the age of 18 who possesses not more than 28.5 grams of marijuana, or not more than four grams of concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of an infraction and shall be punished in the same manner provided in paragraph (1) of subdivision (b).

(Amended November 8, 2016, by initiative Proposition 64, Sec. 8.1. Note: This section was amended on Nov. 4, 2014, by initiative Prop. 47.)
(a) Every person who sells, dispenses, distributes, furnishes, administers, or gives, or offers to sell, dispense, distribute, furnish, administer, or give, or possesses for sale any synthetic cannabinoid compound, or any synthetic cannabinoid derivative, to any person, is guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment.

(b) Every person who uses or possesses any synthetic cannabinoid compound, or any synthetic cannabinoid derivative, is guilty of a public offense, punishable as follows:

(1) A first offense is an infraction punishable by a fine not exceeding two hundred fifty dollars ($250).

(2) A second offense is an infraction punishable by a fine not exceeding two hundred fifty dollars ($250) or a misdemeanor punishable by imprisonment in a county jail not exceeding six months, a fine not exceeding five hundred dollars ($500), or by both that fine and imprisonment.

(3) A third or subsequent offense is a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

(c) As used in this section, the term "synthetic cannabinoid compound" refers to any of the following substances or an analog of any of the following substances:

(1) Adamantoylindoles or adamantoylindazoles, which includes adamantyl carboxamide indoles and adamantyl carboxamide indazoles, or any compound structurally derived from 3-(1-adamantoyl)indole, 3-(1-adamantoyl)indazole, 3-(2-adamantoyl)indole, N-(1-adamantyl)-1H-indole-3-carboxamide, or N-(1-adamantyl)-1H-indazole-3-carboxamide by substitution at the nitrogen atom of the indole or indazole ring with alkyl, haloalkyl, alkenyl, cyanoalkyl, hydroxyalkyl, cycloalkylethyl, cycloalkylmethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole or indazole ring to any extent and whether or not substituted in the adamantyl ring to any extent, including, but not limited to, 2NE1, 5F-AKB-48, AB-001, AKB-48, AM-1248, AM-1249, AM-1249, JWH-018 adamantyl carboxamide, STS-135.

(2) Benzoylindoles, which includes any compound structurally derived from a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent, including, but not limited to, AM-630, AM-661, AM-679, AM-694, AM-1241, AM-2233, RCS-4, WIN 48,098 (Pravadoline).

(3) Cyclohexylphenols, which includes any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the phenolic ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the cyclohexyl ring to any extent, including, but not limited to, CP 47,497, CP 55,490, CP 55,940, CP 56,667, cannabicyclohexanol.

(4) Cyclopropanoylindoles, which includes any compound structurally derived from 3-(cyclopropylmethanoyl)indole, 3-(cyclopropylmethanone)indole, 3-(cyclobutylmethanone)indole or 3-(cyclopentylmethanone)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the cyclopropyl, cyclobutyl, or cyclopentyl rings to any extent.


(6) Naphthoylnaphthalenes, which includes any compound structurally derived from naphthalene-1-yl-(naphthalene-1-yl) methanone with substitutions on either of the naphthalene rings to any extent, including, but not limited to, CB-13.
(7) Naphthoylpyroles, which includes any compound structurally derived from 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent, including, but not limited to, JWH-145, JWH-147, JWH-150, JWH-156, JWH-243, JWH-244, JWH-245, JWH-246, JWH-292, JWH-293, JWH-307, JWH-308, JWH-309, JWH-346, JWH-348, JWH-363, JWH-364, JWH-365, JWH-367, JWH-368, JWH-369, JWH-370, JWH-371, JWH-392.

(8) Naphthylmethylindenes, which includes any compound containing a naphthyldeneindene structure or which is structurally derived from 1-(1-naphthyl)methylindene with substitution at the 3-position of the indene ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent, including, but not limited to, JWH-171, JWH-176, JWH-220.

(9) Naphthylmethylindoles, which includes any compound structurally derived from an H-indol-3-yl-(1-naphthyl) methane by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent, including, but not limited to, JWH-145, JWH-147, JWH-150, JWH-156, JWH-243, JWH-244, JWH-245, JWH-246, JWH-292, JWH-293, JWH-307, JWH-308, JWH-309, JWH-346, JWH-348, JWH-363, JWH-364, JWH-365, JWH-367, JWH-368, JWH-369, JWH-370, JWH-371, JWH-392.

(10) Phenylacetylindoles, which includes any compound structurally derived from 3-phenylacetylindole by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent, including, but not limited to, cannabipiperidinol, JWH-167, JWH-201, JWH-202, JWH-203, JWH-204, JWH-205, JWH-206, JWH-207, JWH-208, JWH-209, JWH-237, JWH-248, JWH-249, JWH-250, JWH-251, JWH-302, JWH-303, JWH-304, JWH-305, JWH-306, JWH-311, JWH-312, JWH-313, JWH-314, JWH-315, JWH-316, RCS-8.

(11) Quinolindolecarboxylates, which includes any compound structurally derived from quinolin-8-yl-1H-indole-3-carboxylic acid by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, benzyl, halobenzyl, alkenyl, haloalkenyl, alkoxy, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)alkyl, (4-tetrahydropyran)alkyl, or 2-(4-morpholinyl)alkyl, whether or not further substituted in the quinoline ring to any extent, including, but not limited to, BB-22, 5-Fluoro-PB-22, PB-22.

(12) Tetramethylcyclopropanoylindoles, which includes any compound structurally derived from 3-tetramethylcyclopropanoylindole, 3-(1-tetramethylcyclopropyl)indole, 3-(2,2,3,3-tetramethylcyclopropyl)indole or 3-(2,2,3,3-tetramethylcyclopropyl)carbonyl)indole with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the tetramethylcyclopropanoyl ring to any extent, including, but not limited to, 5-bromo-UR-144, 5-chloro-UR-144, 5-fluoro-UR-144, A-796,260, A-834,735, AB-034, UR-144, XLR11.

(13) Tetramethylcyclopropane-thiazole carboxamides, which includes any compound structurally derived from 2,2,3,3-tetramethyl-N-(thiazol-2-ylidene)cyclopropanecarboxamide by substitution at the nitrogen atom of the thiazole ring by alkyl, haloalkyl, benzyl, halobenzyl, alkenyl, haloalkenyl, alkoxy, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)alkyl, (4-tetrahydropyran)alkyl, or 2-(4-morpholinyl)alkyl, whether or not further substituted in the thiazole ring to any extent, whether or not substituted in the tetramethylcyclopropyl ring to any extent, including, but not limited to, A-836,339.

(14) Unclassified synthetic cannabinoids, which includes all of the following:

(A) AM-087, (6aR,10aR)-3-(2-methyl-6-bromohex-2-yl)-6,6,9-t rimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol.

(B) AM-356, methanandamide, including (5Z,8Z,11Z,14Z)--[ (1R)-2-hydroxy-1-methylethyl]cos[a]-5,8,11,14-tetraenamide and arachidonyl-1'-hydroxy-2'-propylamide.

(C) AM-411, (6aR,10aR)-3-(1-adamantyl)-6,6,9-trimethyl-6 a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol.
(D) AM-855, (4aR,12bR)-8-hexyl-2,5,5-trimethyl-1,4,4a,8,9,10,11,12b-octahydropaphthal[3,2-c]isochromen-12-ol.

(E) AM-905, (6aR,9R,10aR)-3-[(E)-hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzoc[en]chromen-1-ol.

(F) AM-906, (6aR,9R,10aR)-3-[(Z)-hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol.

(G) AM-2389, (6aR,9R,10aR)-3-(1-hexyl-cyclobut-1-yl)-6a,7,8,9,10a-hexahydro-6,6-dimethyl-6H-dibenzo[b,d]pyran-1,9-diol.

(H) BAY 38-7271, (4S)-3-(2-Hydroxymethylindanyl-4-oxo)phenyl-4,4,4-trifluorobutyl-1-sulfonate.

(I) CP 50,556-1, Levonantradol, including 9-hydroxy-6-methyl-3-[5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenantridin-1-yl]acetate; [(6S,6aR,9R,10aR)-9-hydroxy-6-methyl-3-[(2R)-5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate; and [9-hydroxy-6-methyl-3-[5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate.

(J) HU-210, including (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzoc[c]chromen-1-ol; (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyl octan-2-yl)-6a,7,10,10a-tetrahydrobenzoc[c]chromen-1-ol and (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzoc[c]chromen-1-ol.

(K) HU-211, Dexamabinol, including (6aS,10aS)-9-(hydroxy methyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol and (6aS,10aS)-9-(hydroxy methyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol.

(L) HU-243, 3-dimethylhexyl-11-hydroxyhexahydrophecanabinol.

(M) HU-308, [(91R,2R,5R)-2-[2,6-dimethoxy-4-(2-methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl]methanol.

(N) HU-331, 3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-m ethylethenyl)phenyl]-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-1,4-dione.

(O) HU-336, (6aR,10aR)-6,6,9-trimethyl-3-pentyl-6a,7,10,10a-tetrahydrobenzoc[c]chromen-1-ol.

(P) JTE-907, N-(benzol[1,3]dioxol-5-ylimethyl)-7-methoxy-2-o xo-8-pentoxy-1,2-dihydroquinoline-3-carboxamide.

(Q) JWH-051, ((6aR,10aR)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzoc[c]chromen-9-y1)methanol.

(R) JWH-057 (6aR,10aR)-3-(1,1-dimethylheptyl)-6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-Dibenzo[b,d]pyran.

(S) JWH-133 (6aR,10aR)-3-(1,1-Dimethylbutyl)-6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran.

(T) JWH-359, (6aR,10aR)-1-methoxy-6,6,9-trimethyl-3-[(2R)-1,1,2-trimethylbutyl]-6a,7,10,10a-tetrahydrobenzoc[c]chromen.

(U) URB-597 [3-[(3-carbamoylphenyl)phenyl]-N-cyclohexylcarbamate]

(V) URB-602 [1,1'-Biphenyl]-3-yl-carbamic acid, cyclohexyl ester; OR cyclohexyl [1,1'-biphenyl]-3-ylcarbamate.

(W) URB-754 6-methyl-2-[(4-methylphenyl)amino]-4H-3,1-b enzoxazin-4-one.

(X) URB-937 3-carboxamoyl-6-hydroxy-[1,1'-biphenyl]-3-yl cyclohexylcarbamate.

(Y) WIN 55,212-2, including (R)-[(+)-2,3-dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthylmethanone and (2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone.

(d) The substances or analogs of substances identified in subdivision (c) may be lawfully obtained and used for bona fide research, instruction, or analysis if that possession and use does not violate federal law.

(e) As used in this section, "synthetic cannabinoid compound" does not include either of the following:

(1) Any substance for which there is an approved new drug application, as defined in Section 505 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 355) or which is generally recognized as safe and effective for use pursuant to Section 501, 502, and 503 of the federal Food, Drug, and Cosmetic Act and Title 21 of the Code of Federal Regulations.

(2) With respect to a particular person, any substance for which an exemption is in effect for investigational use for that person pursuant to Section 505 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 355), to the extent that the conduct with respect to that substance is pursuant to the exemption.

(Amended by Stats. 2016, Ch. 624, Sec. 2. Effective September 25, 2016.)
11358. Planting, Harvesting, or Processing.

Every person who plants, cultivates, harvests, dries, or processes marijuana plants, or any part thereof, except as otherwise provided by law, shall be punished as follows:

(a) Every person under the age of 18 who plants, cultivates, harvests, dries, or processes any marijuana plants shall be punished in the same manner provided in paragraph (1) of subdivision (b) of Section 11357.

(b) Every person at least 18 years of age but less than 21 years of age who plants, cultivates, harvests, dries, or processes not more than six living marijuana plants shall be guilty of an infraction and a fine of not more than one hundred dollars ($100).

(c) Every person 18 years of age or over who plants, cultivates, harvests, dries, or processes more than six living marijuana plants shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars ($500), or by both such fine and imprisonment.

(d) Notwithstanding subdivision (c), a person 18 years of age or over who plants, cultivates, harvests, dries, or processes more than six living marijuana plants, or any part thereof, except as otherwise provided by law, may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code if:

(1) The person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code;

(2) The person has two or more prior convictions under subdivision (c); or

(3) The offense resulted in any of the following:

(A) Violation of Section 1052 of the Water Code relating to illegal diversion of water;

(B) Violation of Section 13260, 13264, 13272, or 13387 of the Water Code relating to discharge of waste;

(C) Violation of Fish and Game Code Section 5550 or Section 5652 of the Fish and Game Code relating to waters of the state;

(D) Violation of Section 1602 of the Fish and Game Code relating to rivers, streams and lakes;

(E) Violation of Section 374.8 of the Penal Code relating to hazardous substances or Section 25189.5, 25189.6, or 25189.7 of the Health and Safety Code relating to hazardous waste;

(F) Violation of Section 2080 of the Fish and Game Code relating to endangered and threatened species or Section 3513 of the Fish and Game Code relating to the Migratory Bird Treaty Act; or

(G) Intentionally or with gross negligence causing substantial environmental harm to public lands or other public resources.

(Amended November 8, 2016, by initiative Proposition 64, Sec. 8.2.)

11359. Possession for Sale.

Every person who possesses for sale any marijuana, except as otherwise provided by law, shall be punished as follows:

(a) Every person under the age of 18 who possesses marijuana for sale shall be punished in the same manner provided in paragraph (1) of subdivision (b) of Section 11357.

(b) Every person 18 years of age or over who possesses marijuana for sale shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars ($500), or by both such fine and imprisonment.

(c) Notwithstanding subdivision (b), a person 18 years of age or over who possesses marijuana for sale may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code if:

(1) The person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code;

(2) The person has two or more prior convictions under subdivision (b); or

(3) The offense occurred in connection with the knowing sale or attempted sale of marijuana to a person under the age of 18 years.

(d) Notwithstanding subdivision (b), a person 21 years of age or over who possesses marijuana for sale may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code if the offense involves
knowingly hiring, employing, or using a person 20 years of age or younger in unlawfully cultivating, transporting, carrying, selling, offering to sell, giving away, preparing for sale, or peddling any marijuana.

(Amended November 8, 2016, by Initiative Proposition 64, Sec. 8.3.)

11360. Unlawful Transportation, Importation, Sale, or Gift.

(a) Except as otherwise provided by this section or as authorized by law, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any marijuana shall be punished as follows:

(1) Persons under the age of 18 years shall be punished in the same manner as provided in paragraph (1) of subdivision (b) of Section 11357.

(2) Persons 18 years of age or over shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars ($500), or by both such fine and imprisonment.

(3) Notwithstanding paragraph (2), a person 18 years of age or over may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of two, three or four years if:

(A) The person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code;

(B) The person has two or more prior convictions under paragraph (2);

(C) The offense involved the knowing sale, attempted sale, or the knowing offer to sell, furnish, administer or give away marijuana to a person under the age of 18 years; or

(D) The offense involved the import, offer to import, or attempted import into this state, or the transport for sale, offer to transport for sale, or attempted transport for sale out of this state, of more than 28.5 grams of marijuana or more than four grams of concentrated cannabis.

(b) Except as authorized by law, every person who gives away, offers to give away, transports, offers to transport, or attempts to transport not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of an infraction and shall be punished by a fine of not more than one hundred dollars ($100). In any case in which a person is arrested for a violation of this subdivision and does not demand to be taken before a magistrate, such person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his or her written promise to appear in court, as provided in Section 853.6 of the Penal Code, and shall not be subjected to booking.

(c) For purposes of this section, "transport" means to transport for sale.

(d) This section does not preclude or limit prosecution for any aiding and abetting or conspiracy offenses.

(Amended November 8, 2016, by Initiative Proposition 64, Sec. 8.4.)

11361. (a) Every person 18 years of age or over who hires, employs, or uses a minor in unlawfully transporting, carrying, selling, giving away, preparing for sale, or peddling any marijuana, who unlawfully sells, or offers to sell, any marijuana to a minor, or who furnishes, administers, or gives, or offers to furnish, administer, or give any marijuana to a minor under 14 years of age, or who induces a minor to use marijuana in violation of law shall be punished by imprisonment in the state prison for a period of three, five, or seven years.

(b) Every person 18 years of age or over who furnishes, administers, or gives, or offers to furnish, administer, or give, any marijuana to a minor 14 years of age or older shall be punished by imprisonment in the state prison for a period of three, four, or five years.

(Amended by Stats. 1986, Ch. 1035, Sec. 2.)

11361.1. (a) The drug education and counseling requirements under Sections 11357, 11358, 11359, and 11360 shall be:

(1) Mandatory, unless the court finds that such drug education or counseling is unnecessary for the person, or that a drug education or counseling program is unavailable;

(2) Free to participants, and the drug education provides at least four hours of group discussion or instruction based on science and evidence-based principles and practices specific to the use and abuse of marijuana and other controlled substances.
(b) For good cause, the court may grant an extension of time not to exceed 30 days for a person to complete the
drug education and counseling required under Sections 11357, 11358, 11359, and 11360.

(Added November 8, 2016, by initiative Proposition 64, Sec. 8.5.)

11361.5. Destruction of Arrest and Conviction Records; Procedure; Exceptions.

(a) Records of any court of this state, any public or private agency that provides services upon referral under
Section 1000.2 of the Penal Code, or of any state agency pertaining to the arrest or conviction of any person for a
violation of Section 11357 or subdivision (b) of Section 11360, or pertaining to the arrest or conviction of any
person under the age of 18 for a violation of any provision of this article except Section 11357.5, shall not be kept
beyond two years from the date of the conviction, or from the date of the arrest if there was no conviction, except
with respect to a violation of subdivision (d) of Section 11357, or any other violation by a person under the age of
18 occurring upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1
through 12 during hours the school is open for classes or school-related programs, the records shall be retained
until the offender attains the age of 18 years at which time the records shall be destroyed as provided in this
section. Any court or agency having custody of the records, including the statewide criminal databases, shall
provide for the timely destruction of the records in accordance with subdivision (c), and such records must also be
pursued from the statewide criminal databases. As used in this subdivision, "records pertaining to the arrest or
conviction" shall include records of arrests resulting in the criminal proceeding and records relating to other
offenses charged in the accusatory pleading, whether defendant was acquitted or charges were dismissed. The two-
year period beyond which records shall not be kept pursuant to this subdivision shall not apply to any person who
is, at the time at which this subdivision would otherwise require record destruction, incarcerated for an offense
subject to this subdivision. For such persons, the two-year period shall begin to run from the date the person is
released from custody. The requirements of this subdivision do not apply to records of any conviction occurring
prior to January 1, 1976, or records of any arrest not followed by a conviction occurring prior to that date, or
records of any arrest for an offense specified in subdivision (c) of Section 1192.7, or subdivision (c) of Section
667.5 of the Penal Code.

(b) "His subdivision applies only to records of convictions and arrests not followed by conviction occurring prior to
January 1, 1976, for any of the following offenses:

(1) Any violation of Section 11357 or a statutory predecessor thereof.

(2) Unlawful possession of a device, contrivance, instrument, or paraphernalia used for unlawfully smoking
marijuana, as violation of Section 11364, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(3) Unlawful visitation or presence in a room or place in which marijuana is being unlawfully smoked or used, in
violation of Section 11365, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(4) Unlawfully using or being under the influence of marijuana, in violation of Section 11550, as it existed prior to
January 1, 1976, or a statutory predecessor thereof.

Any person subject to an arrest or conviction for those offenses may apply to the Department of Justice for
destruction of records pertaining to the arrest or conviction if two or more years have elapsed since the date of the
conviction, or since the date of the arrest if not followed by a conviction. The application shall be submitted upon a
form supplied by the Department of Justice and shall be accompanied by a fee, which shall be established by the
department in an amount which will defray the cost of administering this subdivision and costs incurred by the state
under subdivision (c), but which shall not exceed thirty-seven dollars and fifty cents ($37.50). The application form
may be made available at every local police or sheriff’s department and from the Department of Justice and may
require that information which the department determines is necessary for purposes of identification.

The department may request, but not require, the applicant to include a self-administered fingerprint upon the
application. If the department is unable to sufficiently identify the applicant for purposes of this subdivision without
the fingerprint or without additional fingerprints, it shall so notify the applicant and shall request the applicant to
submit any fingerprints which may be required to effect identification, including a complete set if necessary, or,
alternatively, to abandon the application and request a refund of all or a portion of the fee submitted with the
application, as provided in this section. If the applicant fails or refuses to submit fingerprints in accordance with the
department's request within a reasonable time which shall be established by the department, or if the applicant
requests a refund of the fee, the department shall promptly mail a refund to the applicant at the address specified
in the application or at any other address which may be specified by the applicant. However, if the department has
notified the applicant that election to abandon the application will result in forfeiture of a specified amount which is
a portion of the fee, the department may retain a portion of the fee which the department determines will defray the
actual costs of processing the application, provided the amount of the portion retained shall not exceed ten
dollars ($10).
Upon receipt of a sufficient application, the Department of Justice shall destroy records of the department, if any, pertaining to the arrest or conviction in the manner prescribed by subdivision (c) and shall notify the Federal Bureau of Investigation, the law enforcement agency which arrested the applicant, and, if the applicant was convicted, the probation department which investigated the applicant and the Department of Motor Vehicles, of the application.

(c) Destruction of records of arrest or conviction pursuant to subdivision (a) or (b) shall be accomplished by permanent obliteration of all entries or notations upon the records pertaining to the arrest or conviction, and the record shall be prepared again so that it appears that the arrest or conviction never occurred. However, where (1) the only entries upon the record pertain to the arrest or conviction and (2) the record can be destroyed without necessarily effecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(d) Notwithstanding subdivision (a) or (b), written transcriptions of oral testimony in court proceedings and published judicial appellate reports are not subject to this section. Additionally, no records shall be destroyed pursuant to subdivision (a) if the defendant or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of those records has received a certified copy of the complaint in the civil action, until the civil action has finally been resolved. Immediately following the final resolution of the civil action, records subject to subdivision (a) shall be destroyed pursuant to subdivision (c) if more than two years have elapsed from the date of the conviction or arrest without conviction.

(Amended November 8, 2016, by initiative Proposition 64, Sec. 8.6.)

11361.7. (a) Any record subject to destruction or permanent obliteration pursuant to Section 11361.5, or more than two years of age, or a record of a conviction for an offense specified in subdivision (a) or (b) of Section 11361.5 which became final more than two years previously, shall not be considered to be accurate, relevant, timely, or complete for any purposes by any agency or person. The provisions of this subdivision shall be applicable for purposes of the Privacy Act of 1974 (5 U.S.C. Section 552a) to the fullest extent permissible by law, whenever any information or record subject to destruction or permanent obliteration under Section 11361.5 was obtained by any state agency, local public agency, or any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, and is thereafter shared with or disseminated to any agency of the federal government.

(b) No public agency shall alter, amend, assess, condition, deny, limit, postpone, qualify, revoke, surcharge, or suspend any certificate, franchise, incident, interest, license, opportunity, permit, privilege, right, or title of any person because of an arrest or conviction for an offense specified in subdivision (a) or (b) of Section 11361.5, or because of the facts or events leading to such an arrest or conviction, on or after the date the records of such arrest or conviction are required to be destroyed by subdivision (a) of Section 11361.5, or two years from the date of such conviction or arrest without conviction with respect to arrests and convictions occurring prior to January 1, 1976. As used in this subdivision, "public agency" includes, but is not limited to, any state, county, city and county, city, public or constitutional corporation or entity, district, local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency thereof.

(c) Any person arrested or convicted for an offense specified in subdivision (a) or (b) of Section 11361.5 may, two years from the date of such a conviction, or from the date of the arrest if there was no conviction, indicate in response to any question concerning his prior criminal record that he was not arrested or convicted for such offense.

(d) The provisions of this section shall be applicable without regard to whether destruction or obliteration of records has actually been implemented pursuant to Section 11361.5.

(Added by Stats. 1976, Ch. 952.)

11361.8. (a) A person currently serving a sentence for a conviction, whether by trial or by open or negotiated plea, who would not have been guilty of an offense, or who would have been guilty of a lesser offense under the Control, Regulate and Tax Adult Use of Marijuana Act had that act been in effect at the time of the offense may petition for a recall or dismissal of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing or dismissal in accordance with Sections 11357, 11358, 11359, 11360, 11362.1, 11362.2, 11362.3, and 11362.4 as those sections have been amended or added by that act.

(b) Upon receiving a petition under subdivision (a), the court shall presume the petitioner satisfies the criteria in subdivision (a) unless the party opposing the petition proves by clear and convincing evidence that the petitioner does not satisfy the criteria. If the petitioner satisfies the criteria in subdivision (a), the court shall grant the
petition to recall the sentence or dismiss the sentence because it is legally invalid unless the court determines that granting the petition would pose an unreasonable risk of danger to public safety.

(1) In exercising its discretion, the court may consider, but shall not be limited to evidence provided for in subdivision (b) of Section 1170.18 of the Penal Code.

(2) As used in this section, "unreasonable risk of danger to public safety" has the same meaning as provided in subdivision (c) of Section 1170.18 of the Penal Code.

(c) A person who is serving a sentence and is resentenced pursuant to subdivision (b) shall be given credit for any time already served and shall be subject to supervision for one year following completion of his or her time in custody or shall be subject to whatever supervision time he or she would have otherwise been subject to after release, whichever is shorter, unless the court, in its discretion, as part of its resentencing order, releases the person from supervision. Such person is subject to parole supervision under Section 3000.08 of the Penal Code or post-release community supervision under subdivision (a) of Section 3451 of the Penal Code by the designated agency and the jurisdiction of the court in the county in which the offender is released or resides, or in which an alleged violation of supervision has occurred, for the purpose of hearing petitions to revoke supervision and impose a term of custody.

(d) Under no circumstances may resentencing under this section result in the imposition of a term longer than the original sentence, or the reinstatement of charges dismissed pursuant to a negotiated plea agreement.

(e) A person who has completed his or her sentence for a conviction under Sections 11357, 11358, 11359, and 11360, whether by trial or open or negotiated plea, who would not have been guilty of an offense or who would have been guilty of a lesser offense under the Control, Regulate and Tax Adult Use of Marijuana Act had that act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the conviction dismissed and sealed because the prior conviction is now legally invalid or redesignated as a misdemeanor or infraction in accordance with Sections 11357, 11358, 11359, 11360, 11362.1, 11362.2, 11362.3, and 11362.4 as those sections have been amended or added by that act.

(f) The court shall presume the petitioner satisfies the criteria in subdivision (e) unless the party opposing the application proves by clear and convincing evidence that the petitioner does not satisfy the criteria in subdivision (e). Once the applicant satisfies the criteria in subdivision (e), the court shall redesignate the conviction as a misdemeanor or infraction or dismiss and seal the conviction as legally invalid as now established under the Control, Regulate and Tax Adult Use of Marijuana Act.

(g) Unless requested by the applicant, no hearing is necessary to grant or deny an application filed under subdivision (e).

(h) Any felony conviction that is recalled and resentenced under subdivision (b) or designated as a misdemeanor or infraction under subdivision (f) shall be considered a misdemeanor or infraction for all purposes. Any misdemeanor conviction that is recalled and resentenced under subdivision (b) or designated as an infraction under subdivision (f) shall be considered an infraction for all purposes.

(i) If the court that originally sentenced the petitioner is not available, the presiding judge shall designate another judge to rule on the petition or application.

(j) Nothing in this section is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant.

(k) Nothing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of the Control, Regulate and Tax Adult Use of Marijuana Act.

(l) A resentencing hearing ordered under the Control, Regulate and Tax Adult Use of Marijuana Act shall constitute a "post-conviction release proceeding" under paragraph (7) of subdivision (b) of Section 28 of Article 1 of the California Constitution (Marsy's Law).

(m) The provisions of this section shall apply equally to juvenile delinquency adjudications and dispositions under Section 602 of the Welfare and Institutions Code if the juvenile would not have been guilty of an offense or would have been guilty of a lesser offense under the Control, Regulate and Tax Adult Use of Marijuana Act.

(n) The Judicial Council shall promulgate and make available all necessary forms to enable the filing of the petitions and applications provided in this section.

(Added November 8, 2016, by initiative Proposition 64, Sec. 8.7.)

**11362.** As used in this article "felony offense," and offense "punishable as a felony" refer to an offense prior to July 1, 2011, for which the law prescribes imprisonment in the state prison, or for an offense on or after July 1, 2011,
imprisonment in either the state prison or pursuant to subdivision (h) of Section 1170 of the Penal Code, as either an alternative or the sole penalty, regardless of the sentence the particular defendant received.

(Amended by Stats. 2011, Ch. 15, Sec. 163. Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)

11362.1. (a) Subject to Sections 11362.2, 11362.3, 11362.4, and 11362.45, but notwithstanding any other provision of law, it shall be lawful under state and local law, and shall not be a violation of state or local law, for persons 21 years of age or older to:

(1) Possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever, not more than 28.5 grams of marijuana not in the form of concentrated cannabis;

(2) Possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever, not more than eight grams of marijuana in the form of concentrated cannabis, including as contained in marijuana products;

(3) Possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants;

(4) Smoke or ingest marijuana or marijuana products; and

(5) Possess, transport, purchase, obtain, use, manufacture, or give away marijuana accessories to persons 21 years of age or older without any compensation whatsoever.

(b) Paragraph (5) of subdivision (a) is intended to meet the requirements of subsection (f) of Section 863 of Title 21 of the United States Code (21 U.S.C. Sec. 863(f)) by authorizing, under state law, any person in compliance with this section to manufacture, possess, or distribute marijuana accessories.

(c) Marijuana and marijuana products involved in any way with conduct deemed lawful by this section are not contraband nor subject to seizure, and no conduct deemed lawful by this section shall constitute the basis for detention, search, or arrest.

(Added November 8, 2016, by initiative Proposition 64, Sec. 4.4.)

11362.2. (a) Personal cultivation of marijuana under paragraph (3) of subdivision (a) of Section 11362.1 is subject to the following restrictions:

(1) A person shall plant, cultivate, harvest, dry, or process plants in accordance with local ordinances, if any, adopted in accordance with subdivision (b).

(2) The living plants and any marijuana produced by the plants in excess of 28.5 grams are kept within the person's private residence, or upon the grounds of that private residence (e.g., in an outdoor garden area), are in a locked space, and are not visible by normal unaided vision from a public place.

(3) Not more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of that private residence, at one time.

(b) (1) A city, county, or city and county may enact and enforce reasonable regulations to reasonably regulate the actions and conduct in paragraph (3) of subdivision (a) of Section 11362.1.

(2) Notwithstanding paragraph (1), no city, county, or city and county may completely prohibit persons engaging in the actions and conduct under paragraph (3) of subdivision (a) of Section 11362.1 inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure.

(3) Notwithstanding paragraph (3) of subdivision (a) of Section 11362.1, a city, county, or city and county may completely prohibit persons from engaging in actions and conduct under paragraph (3) of subdivision (a) of Section 11362.1 outdoors upon the grounds of a private residence.

(4) Paragraph (3) shall become inoperative upon a determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law, and an act taken by a city, county, or city and county under paragraph (3) shall be deemed repealed upon the date of such determination by the Attorney General.

(5) For purposes of this section, "private residence" means a house, an apartment unit, a mobile home, or other similar dwelling.

(Added November 8, 2016, by initiative Proposition 64, Sec. 4.5.)

11362.3. (a) Nothing in Section 11362.1 shall be construed to permit any person to:
(1) Smoke or ingest marijuana or marijuana products in any public place, except in accordance with Section 26200 of the Business and Professions Code.

(2) Smoke marijuana or marijuana products in a location where smoking tobacco is prohibited.

(3) Smoke marijuana or marijuana products within 1,000 feet of a school, day care center, or youth center while children are present at such a school, day care center, or youth center, except in or upon the grounds of a private residence or in accordance with Section 26200 of, or Chapter 3.5 (commencing with Section 19300) of Division 8 of, the Business and Professions Code and only if such smoking is not detectable by others on the grounds of such a school, day care center, or youth center while children are present.

(4) Possess an open container or open package of marijuana or marijuana products while driving, operating, or riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.

(5) Possess, smoke or ingest marijuana or marijuana products in or upon the grounds of a school, day care center, or youth center while children are present.

(6) Manufacture concentrated cannabis using a volatile solvent, unless done in accordance with a license under Chapter 3.5 (commencing with Section 19300) of Division 8 of, or Division 10 of, the Business and Professions Code.

(7) Smoke or ingest marijuana or marijuana products while driving, operating a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.

(8) Smoke or ingest marijuana or marijuana products while riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation except as permitted on a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation that is operated in accordance with Section 26200 of the Business and Professions Code and while no persons under the age of 21 years are present.

(b) For purposes of this section, “day care center” has the same meaning as in Section 1596.76.

(c) For purposes of this section, “smoke” means to inhale, exhale, burn, or carry any lighted or heated device or pipe, or any other lighted or heated marijuana or marijuana product intended for inhalation, whether natural or synthetic, in any manner or in any form. “Smoke” includes the use of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in a place.

(d) For purposes of this section, “volatile solvent” means volatile organic compounds, including: (1) explosive gases, such as Butane, Propane, Xylene, Styrene, Gasoline, Kerosene, O2 or H2; and (2) dangerous poisons, toxins, or carcinogens, such as Methanol, Iso-propyl Alcohol, Methylene Chloride, Acetone, Benzene, Toluene, and Trichloro-ethylene.

(e) For purposes of this section, “youth center” has the same meaning as in Section 11353.1.

(f) Nothing in this section shall be construed or interpreted to amend, repeal, affect, restrict, or preempt laws pertaining to the Compassionate Use Act of 1996.

(Added November 8, 2016, by Initiative Proposition 64, Sec. 4.6.)

11362.4. (a) A person who engages in the conduct described in paragraph (1) of subdivision (a) of Section 11362.3 is guilty of an infraction punishable by no more than a one hundred dollar ($100) fine; provided, however, that persons under the age of 18 shall instead be required to complete four hours of a drug education program or counseling, and up to 10 hours of community service, over a period not to exceed 60 days once the drug education program or counseling and community service opportunity are made available to the person.

(b) A person who engages in the conduct described in paragraphs (2) through (4) of subdivision (a) of Section 11362.3 shall be guilty of an infraction punishable by no more than a two-hundred-fifty-dollar ($250) fine, unless such activity is otherwise permitted by state and local law; provided, however, that persons under the age of 18 shall instead be required to complete four hours of drug education or counseling, and up to 20 hours of community service, over a period not to exceed 90 days once the drug education program or counseling and community service opportunity are made available to the person.

(c) A person who engages in the conduct described in paragraph (5) of subdivision (a) of Section 11362.3 shall be subject to the same punishment as provided under subdivision (c) or (d) of Section 11357.

(d) A person who engages in the conduct described in paragraph (6) of subdivision (a) of Section 11362.3 shall be subject to punishment under Section 11379.6.

(e) A person who violates the restrictions in subdivision (a) of Section 11362.2 is guilty of an infraction punishable by no more than a two-hundred-fifty-dollar ($250) fine.
(f) Notwithstanding subdivision (e), a person under the age of 18 who violates the restrictions in subdivision (a) of Section 11362.2 shall be punished under subdivision (a) of Section 11358.

(g) (1) The drug education program or counseling hours required by this section shall be mandatory unless the court makes a finding that such a program or counseling is unnecessary for the person or that a drug education program or counseling is unavailable.

(2) The drug education program required by this section for persons under the age of 18 must be free to participants and provide at least four hours of group discussion or instruction based on science and evidence-based principles and practices specific to the use and abuse of marijuana and other controlled substances.

(h) Upon a finding of good cause, the court may extend the time for a person to complete the drug education or counseling, and community service required under this section.

(Added November 8, 2016, by initiative Proposition 64, Sec. 4.7.)

**11362.45.** Nothing in Section 11362.1 shall be construed or interpreted to amend, repeal, affect, restrict, or preempt:

(a) Laws making it unlawful to drive or operate a vehicle, boat, vessel, or aircraft, while smoking, ingesting, or impaired by, marijuana or marijuana products, including, but not limited to, subdivision (e) of Section 23152 of the Vehicle Code, or the penalties prescribed for violating those laws.

(b) Laws prohibiting the sale, administering, furnishing, or giving away of marijuana, marijuana products, or marijuana accessories, or the offering to sell, administer, furnish, or give away marijuana, marijuana products, or marijuana accessories to a person younger than 21 years of age.

(c) Laws prohibiting a person younger than 21 years of age from engaging in any of the actions or conduct otherwise permitted under Section 11362.1.

(d) Laws pertaining to smoking or ingesting marijuana or marijuana products on the grounds of, or within, any facility or institution under the jurisdiction of the Department of Corrections and Rehabilitation or the Division of Juvenile Justice, or on the grounds of, or within, any other facility or institution referenced in Section 4573 of the Penal Code.

(e) Laws providing that it would constitute negligence or professional malpractice to undertake any task while impaired from smoking or ingesting marijuana or marijuana products.

(f) The rights and obligations of public and private employers to maintain a drug and alcohol free workplace or require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of marijuana in the workplace, or affect the ability of employers to have policies prohibiting the use of marijuana by employees and prospective employees, or prevent employers from complying with state or federal law.

(g) The ability of a state or local government agency to prohibit or restrict any of the actions or conduct otherwise permitted under Section 11362.1 within a building owned, leased, or occupied by the state or local government agency.

(h) The ability of an individual or private entity to prohibit or restrict any of the actions or conduct otherwise permitted under Section 11362.1 on the individual's or entity's privately owned property.

(i) Laws pertaining to the Compassionate Use Act of 1996.

(Added November 8, 2016, by initiative Proposition 64, Sec. 4.8.)

**11362.5.** (a) This section shall be known and may be cited as the Compassionate Use Act of 1996.

(b) (1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person’s health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.
(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.

(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

(e) For the purposes of this section, "primary caregiver" means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person.

(Added November 5, 1996, by initiative Proposition 215, Sec. 1.)

11362.9. (a) (1) It is the intent of the Legislature that the state commission objective scientific research by the premier research institute of the world, the University of California, regarding the efficacy and safety of administering marijuana as part of medical treatment. If the Regents of the University of California, by appropriate resolution, accept this responsibility, the University of California shall create a program, to be known as the California Marijuana Research Program.

(2) The program shall develop and conduct studies intended to ascertain the general medical safety and efficacy of marijuana and, if found valuable, shall develop medical guidelines for the appropriate administration and use of marijuana. The studies may include studies to ascertain the effect of marijuana on motor skills.

(b) The program may immediately solicit proposals for research projects to be included in the marijuana studies. Program requirements to be used when evaluating responses to its solicitation for proposals, shall include, but not be limited to, all of the following:

(1) Proposals shall demonstrate the use of key personnel, including clinicians or scientists and support personnel, who are prepared to develop a program of research regarding marijuana's general medical efficacy and safety.

(2) Proposals shall contain procedures for outreach to patients with various medical conditions who may be suitable participants in research on marijuana.

(3) Proposals shall contain provisions for a patient registry.

(4) Proposals shall contain provisions for an information system that is designed to record information about possible study participants, investigators, and clinicians, and deposit and analyze data that accrues as part of clinical trials.

(5) Proposals shall contain protocols suitable for research on marijuana, addressing patients diagnosed with acquired immunodeficiency syndrome (AIDS) or human immunodeficiency virus (HIV), cancer, glaucoma, or seizures or muscle spasms associated with a chronic, debilitating condition. The proposal may also include research on other serious illnesses, provided that resources are available and medical information justifies the research.

(6) Proposals shall demonstrate the use of a specimen laboratory capable of housing plasma, urine, and other specimens necessary to study the concentration of cannabinoids in various tissues, as well as housing specimens for studies of toxic effects of marijuana.

(7) Proposals shall demonstrate the use of a laboratory capable of analyzing marijuana, provided to the program under this section, for purity and cannabinoid content and the capacity to detect contaminants.

(c) In order to ensure objectivity in evaluating proposals, the program shall use a peer review process that is modeled on the process used by the National Institutes of Health, and that guards against funding research that is biased in favor of or against particular outcomes. Peer reviewers shall be selected for their expertise in the scientific substance and methods of the proposed research, and their lack of bias or conflict of interest regarding the applicants or the topic of an approach taken in the proposed research. Peer reviewers shall judge research proposals on several criteria, foremost among which shall be both of the following:

(1) The scientific merit of the research plan, including whether the research design and experimental procedures are potentially biased for or against a particular outcome.

(2) Researchers' expertise in the scientific substance and methods of the proposed research, and their lack of bias or conflict of interest regarding the topic of, and the approach taken in, the proposed research.

(d) If the program is administered by the Regents of the University of California, any grant research proposals approved by the program shall also require review and approval by the research advisory panel.

(e) It is the intent of the Legislature that the program be established as follows:

http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=HSC&division=10.&title=&part=&chapter=6.&article=2
(1) The program shall be located at one or more University of California campuses that have a core of faculty experienced in organizing multidisciplinary scientific endeavors and, in particular, strong experience in clinical trials involving psychopharmacologic agents. The campuses at which research under the auspices of the program is to take place shall accommodate the administrative offices, including the director of the program, as well as a data management unit, and facilities for storage of specimens.

(2) When awarding grants under this section, the program shall utilize principles and parameters of the other well-tested statewide research programs administered by the University of California, modeled after programs administered by the National Institutes of Health, including peer review evaluation of the scientific merit of applications.

(3) The scientific and clinical operations of the program shall occur, partly at University of California campuses, and partly at other postsecondary institutions, that have clinicians or scientists with expertise to conduct the required studies. Criteria for selection of research locations shall include the elements listed in subdivision (b) and, additionally, shall give particular weight to the organizational plan, leadership qualities of the program director, and plans to involve investigators and patient populations from multiple sites.

(4) The funds received by the program shall be allocated to various research studies in accordance with a scientific plan developed by the Scientific Advisory Council. As the first wave of studies is completed, it is anticipated that the program will receive requests for funding of additional studies. These requests shall be reviewed by the Scientific Advisory Council.

(5) The size, scope, and number of studies funded shall be commensurate with the amount of appropriated and available program funding.

(f) All personnel involved in implementing approved proposals shall be authorized as required by Section 11604.

(g) Studies conducted pursuant to this section shall include the greatest amount of new scientific research possible on the medical uses of, and medical hazards associated with, marijuana. The program shall consult with the Research Advisory Panel analogous agencies in other states, and appropriate federal agencies in an attempt to avoid duplicative research and the wasting of research dollars.

(h) The program shall make every effort to recruit qualified patients and qualified physicians from throughout the state.

(i) The marijuana studies shall employ state-of-the-art research methodologies.

(jj) The program shall ensure that all marijuana used in the studies is of the appropriate medical quality and shall be obtained from the National Institute on Drug Abuse or any other federal agency designated to supply marijuana for authorized research. If these federal agencies fail to provide a supply of adequate quality and quantity within six months of the effective date of this section, the Attorney General shall provide an adequate supply pursuant to Section 11478.

(k) The program may review, approve, or incorporate studies and research by independent groups presenting scientifically valid protocols for medical research, regardless of whether the areas of study are being researched by the committee.

(l) (1) To enhance understanding of the efficacy and adverse effects of marijuana as a pharmacological agent, the program shall conduct focused controlled clinical trials on the usefulness of marijuana in patients diagnosed with AIDS or HIV, cancer, glaucoma, or seizures or muscle spasms associated with a chronic, debilitating condition. The program may add research on other serious illnesses, provided that resources are available and medical information justifies the research. The studies shall focus on comparisons of both the efficacy and safety of methods of administering the drug to patients, including inhalational, tinctural, and oral, evaluate possible uses of marijuana as a primary or adjunctive treatment, and develop further information on optimal dosage, timing, mode of administration, and variations in the effects of different cannabinoids and varieties of marijuana.

(2) The program shall examine the safety of marijuana in patients with various medical disorders, including marijuana's interaction with other drugs, relative safety of inhalation versus oral forms, and the effects on mental function in medically ill persons.

(3) The program shall be limited to providing for objective scientific research to ascertain the efficacy and safety of marijuana as part of medical treatment, and should not be construed as encouraging or sanctioning the social or recreational use of marijuana.

(m) (1) Subject to paragraph (2), the program shall, prior to any approving proposals, seek to obtain research protocol guidelines from the National Institutes of Health and shall, if the National Institutes of Health issues research protocol guidelines, comply with those guidelines.
(2) If, after a reasonable period of time of not less than six months and not more than a year has elapsed from the date the program seeks to obtain guidelines pursuant to paragraph (1), no guidelines have been approved, the program may proceed using the research protocol guidelines it develops.

(n) In order to maximize the scope and size of the marijuana studies, the program may do any of the following:

(1) Solicit, apply for, and accept funds from foundations, private individuals, and all other funding sources that can be used to expand the scope or timeframe of the marijuana studies that are authorized under this section. The program shall not expend more than 5 percent of its General Fund allocation in efforts to obtain money from outside sources.

(2) Include within the scope of the marijuana studies other marijuana research projects that are independently funded and that meet the requirements set forth in subdivisions (a) to (c), inclusive. In no case shall the program accept any funds that are offered with any conditions other than that the funds be used to study the efficacy and safety of marijuana as part of medical treatment. Any donor shall be advised that funds given for purposes of this section will be used to study both the possible benefits and detriments of marijuana and that he or she will have no control over the use of these funds.

(o) (1) Within six months of the effective date of this section, the program shall report to the Legislature, the Governor, and the Attorney General on the progress of the marijuana studies.

(2) Thereafter, the program shall issue a report to the Legislature every six months detailing the progress of the studies. The interim reports required under this paragraph shall include, but not be limited to, data on all of the following:

(A) The names and number of diseases or conditions under study.

(B) The number of patients enrolled in each study by disease.

(C) Any scientifically valid preliminary findings.

(p) If the Regents of the University of California implement this section, the President of the University of California shall appoint a multidisciplinary Scientific Advisory Council, not to exceed 15 members, to provide policy guidance in the creation and implementation of the program. Members shall be chosen on the basis of scientific expertise. Members of the council shall serve on a voluntary basis, with reimbursement for expenses incurred in the course of their participation. The members shall be reimbursed for travel and other necessary expenses incurred in their performance of the duties of the council.

(q) No more than 10 percent of the total funds appropriated may be used for all aspects of the administration of this section.

(r) This section shall be implemented only to the extent that funding for its purposes is appropriated by the Legislature in the annual Budget Act.

(Amended by Stats. 2016, Ch. 828, Sec. 3. Effective January 1, 2017. Note: Sections 11362.7 to 11362.83 (added by Stats. 2003, Ch. 875) are in Article 2.5, which follows this section.)
Attachment F

Public Comments
Dear Planning Commission

I, Ryan Bacchas would like to have this document read into public record, as letter serving purpose for education, explanation and exploration toward welcoming a newly and continually regulated Cannabis Retail Market to the city of Beverly Hills. As you are aware with the passage of Proposition 64, "The Regulate and Tax Adult Use of Marijuana Act" (AUMA), Municipal Authorities have the option to come to Resolutions adopting State Law and Ordinances further regulating the Commercial Activity chosen to occur or, ban and prohibit activity outside of individual personal use. I implore the city to explore the potential and possibilities toward allowing a small Regulated Market in order to not only prevent a surge of Black Market and Illicit Dealers but, provide domestic, nearby and visiting consumers with a way to obtain their products from high end, professional and reputable outlets with quality lab tested state approved products. With California being well known for its role in the Cannabis Culture, Industry and Movement, there will be a plethora of locals, tourist, even residents who would imagine and even seek a more luxurious or high end boutique style of their indulgence. This is something that Beverly Hills would be ideal and prime in offering given the long standing history and overall exclusive nature of the city; efforts in providing such a market as an option to consumers is something that can benefit all parties even the local businesses.

Providing a regulated market to adult consumers is a door for many opportunities, not only profitable for the city but, publicly and socially responsible for the protection of its citizens, to provide a regulated market for consumers to migrate from the Black Market. In addition to being able to effectively eliminate the black market, it gives the City privilege to necessary state funds, equipment and tools towards things like Cannabis impaired drivers, public education for adult consumption and discouragement of use by minors, and enforcement activity toward upholding local law. Of course just as the other historical, prestige's and respectable businesses in the area, these operations would be owned and comprised of professionals within the industry with and not limited to;

- Accredited business backgrounds
- History of professional conduct
- Statements or proof of Financial Capability required in the process of applying to create and operate a Cannabis retailer, Lounge, Coffee shop, boutique etc. This should include but would not be limited to statements or proof of financial capability to; obtain a $1,000,000 dollar insurance bond; conduct possible or necessary in tenet or commercial remodel or update to building to meet conforming standards; ability to obtain product that is quality insured and lab tested; appropriate plan or planner for creation P.O.S system and record of all proceeds and revenue generated for audits, inspections and insurance of compliance; Executive Summary of how business is to be run with a rough list of operation expenditures, projected revenue and how the business will be run in order to insure success;
- Understanding of the expectations, rules and regulations to be kept within compliance for obligations of excise fees and taxes generated from product,
properly documented through receipts and appropriate records, separated, to be collected and directed to the City.

In exploring the regulated market, an explanation for the regulations and rules that retailers would be held to, in addition to the basic and fundamental practices of any business operating under sensitive uses, include items such but not limited to;

- Physical Appearance in accordance to surround and neighboring businesses and properties (Internally and Externally)
- Appropriate and/or Reasonable Hours of Operation
- Proper management staff meeting criterial age requirements.
- Qualified Managerial and Supervising Staff
- Frequent Upkeep and Maintenance of premises
- Proper Signage including clear prohibition of Minors
- Appropriate means of security or use of security team and/or agency
- Safe or Maximally Secured Vault for all Cash kept on Premises
- Proper means of transportation of cash (i.e use of security, vehicle etc.)
- Permanent waste management and proper disposal techniques including trash receptacles and dumpsters to be locked and restricted from access by the public
- Odor Control and appropriate ventilation
- Windows, doors and openings to have opaque cover restricting sight from exterior of the building
- Operate in distance applicable to Superseding Law (600 Ft of Residential Zones 200 ft. of Schools and Daycares)
- Partitioned entrances and exit ways.
- Exterior Signage conforming to surrounding establishments
- Exclusion of words on the outside that contain the words, wording and/or referencing of or to "marijuana," "cannabis," and/or derivatives thereof, with no bearable of pictures, murals graphics or depictions referencing and/or relating to "Marijuana," "Cannabis" and/or any derivatives thereof the substance.
- No residential conversion or living quarters on the premise
- All required business permits and licenses current and clearly displayed at entrance inside the building
- Permanently installed, operational video surveillance, monitors and recording devices both externally and internal, which have full view of all areas except employee bathrooms, with minimal and minimum parameters; capturing full view of the public right-of-way and any parking lot under control of business; adequate quality, color, rendition and resolution to allow the ready identification of any potential individual committing a crime on the interior or exterior of the property; recording capability to fourteen (14) days of logged history; 24/7 running system
- Professionally Installed burglar and fire systems with third party vendor that has 24/7 year round staffing
- Security staff in place and on site during hours of Operation
- No controlled substance including any Cannabis product that violates applicable state law
- Properly ventilated premise to prevent permeation outside the premises
- On site consumption as regulated by City
- Delivery reserved to outlet as legally permitted by State

In the review for process toward issuance toward a permit, things to be expected in an application vary but, for the most part include;

- Name and Address of Applicant(s) and/or each corporate officer of LLC, Joint Venture or Partnership
- Evidence that the applicant: (A) Is the owner of the property where business is to be established(?); (B) Has approval and written consent and notarized documentation of owners' acceptance to use of property for establishment of business.
- The Legal Description of the property, primarily address (Accessors' Parcel Number may be submitted as well).
- Detailed Site Plan at a minimum identifying the proposed location of the building and structures including landscaped areas, parking areas, driveways and means of ingress and regress
- Statement detailing plans for use of each building and structure as displayed in site plan
- Professional Floor with three (3) submittal color photo copies included with application submittal
- Map showing mandated distance from Residencies, Schools and Daycares
- Three (3) color photo copies of complete site plan and three (3) hard copies of Executive Summary, Business Plan and Mission Statement.
- Two (2) photo copies of government issue I.D (i.e DMV License, Driver’s License, Social Security Identification Card, Passport) from each owner and/or corporate officer.
- A signed and notarized statement by the applicant(s) that he/she/they certifies under the penalty of perjury that all information contained in application is accurate, correct and true.
- Check or Money order for Application Fee

Grounds for denial would be things like erroneous and falsified information, failure of background check, inability to provide substantial evidence that applicants can be financially and professionally responsible for conduct and operation of proposed the business. The fees to be associated with the cost and issuance of permit as well as oversight by departments and task force conducted, would include but not be limited to;

- Agencies involved in review, renewal and/or issuance of permit including Planning, Health and Safety, City Manager, Code Enforcement, Fire Department, Police Department and Task Force; square feet of premise being used in operation; fee specific to each activity occurring on the premise (i.e on site
consumption, culinary practices). They could generated to the general fund where Council would consider the uses such as, enforcement of such provisions allowing and regulating practices; prevention of minor use; education; infrastructure within city limits; funding of city employee pensions.

The concepts that could be explored by that of retailer, include the classic Amsterdam coffee shop model, a lounge with pool tables and media centers, restaurant serving food infused with THC and other Cannabis derivatives, with other rooms for commingling (V.I.P rooms), Social Clubs and many other creative takes. Not only do these example and potential models provide the safe easy access for consumers that they need, it would serve as an innovative yet conservative platform towards a “high-end quality boutique,” style of the Commercial Business for which the reputation of Beverly Hills would guarantee; especially attractive and reasonable for the more exclusive consumers in or nearby this area. I encourage and urge Planning, whilst making their findings and proclamations heard, to consider these facts and reasons towards allowing a regulated and taxed commercial Cannabis Market in order to mutually benefit consumers and residents as well as to finally eliminate and quall the black market through balanced and effective policy. There is a way to implement these measures and insure their success as well as success to any adopted mechanism regarding this, I will assist you.