



## Frequently Asked Questions About Proposition 64 – the Adult Use of Marijuana Act (AUMA)

On November 8, 2016, California voters passed [Proposition 64](#), entitled the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”). The AUMA passed with 57.13% of the vote and legalizes nonmedical, recreational marijuana. The complete text of the AUMA can be found at the [Office of the Attorney General](#). Below is a FAQ on the changes that have come into effect following the passage of the AUMA.

### 1. When does the AUMA take effect?

The AUMA took effect on November 9, 2016. Adults over 21 years old may possess, consume, and cultivate nonmedical, recreational marijuana in California. However, businesses may **not** grow, distribute, or sell nonmedical, recreational marijuana until they receive a state license. The State must begin to issue licenses no later than January 1, 2018.

### 2. Can I smoke or use marijuana?

Yes. You can smoke or use nonmedical, recreational marijuana if you are an adult over 21 years old, subject to certain restrictions. The AUMA allows adults to:

- Possess, process, transport, purchase, obtain, or give away to adults over 21 years old without any compensation whatsoever, not more than 28.5 grams (about one ounce) of marijuana or 8 grams of concentrated cannabis, including as contained in marijuana products.
- Smoke or ingest marijuana or marijuana products at a privately owned residence. If you are a tenant who rents, your landlord has the right to ban smoking of marijuana and/or tobacco on the leased premises.
- Possess, plant, cultivate, harvest, dry, or process up to six living marijuana plants per residence (not person) at one time and possess the marijuana produced by these plants. Any marijuana produced in excess of 28.5 grams must be kept in a locked space not visible from a public place.

### 3. Can I grow marijuana at home?

Yes. You do not need a state license to grow up to six living marijuana plants indoors in a private residence that you own (i.e. home, apartment unit, mobile home, or other similar dwelling), subject to local laws relating to public health and safety. Cities and counties may reasonably regulate indoor cultivation inside a private residence to reduce potential health and safety risks. Indoor cultivation includes growing marijuana plants in a fully enclosed

and secure accessory structure (i.e. greenhouse) that is located upon the grounds of a private residence and not visible from a public space. If you are a tenant who rents, your landlord has the right to ban indoor cultivation of nonmedical, recreational marijuana on the leased premises.

Cities and counties may completely ban outdoor cultivation. At this time, the County of Santa Clara does not allow outdoor cultivation of marijuana for nonmedical, recreational purposes (Ord. Code [§ B26.5-3](#)). This ordinance applies to you if you live in the unincorporated area of the county. If you live in an incorporated city, please consult your city authorities.

#### **4. Can I smoke marijuana in public?**

No. You may not smoke marijuana in public places. Smoking marijuana is not allowed in places where smoking tobacco is not allowed, including but not limited to businesses, schools, day care centers, youth centers, government buildings, and hospitals. Smoking on the premises of certain public establishments (i.e. smoke lounges) will not be allowed until the business receives a license from the state. State licensing has not yet begun, but must begin no later than January 1, 2018. Business establishments that allow customers to smoke or ingest marijuana on the premises may not sell or serve alcohol or tobacco.

#### **5. Can I open a marijuana shop?**

No. Marijuana shops need a license from the state to operate. The State will begin issuing licenses for marijuana businesses no later than January 1, 2018. Until then, **no nonmedical, recreational marijuana business may legally operate in California.**

The AUMA allows cities and counties to regulate or prohibit the establishment of nonmedical, recreational marijuana businesses. The Board of Supervisors of the County of Santa Clara has not yet considered or approved any legislation to regulate or prohibit nonmedical, recreational marijuana businesses of any kind.

If you live within the boundaries of an incorporated city, please refer to your city's website for further information. The City of San Jose has a [medical marijuana program](#).

#### **6. Does the AUMA affect medical marijuana patients or primary caregivers?**

No. The AUMA does not affect the existing rights of qualified patients or primary caregivers. Under Proposition 215, entitled "The Compassionate Use Act of 1996," seriously ill Californians have the right to obtain and use medical marijuana with a physician's recommendation. The County of Santa Clara allows qualified patients or primary caregivers to store or possess no more than eight ounces or the amount that is reasonably related to the qualified patient's current medical needs (Ord. Code [§ B26.5-4](#)). Medical marijuana patients in the unincorporated areas of the County may grow marijuana plants indoors in a single space in a single room no larger than 50 square feet (Ord. Code [§ B26.5-5](#)) and may grow up

to 12 marijuana plants outdoors for medical purposes with certain limitations (Ord. Code [§ B26.5-6](#)).

The County of Santa Clara currently prohibits the establishment or operation of any medical marijuana dispensaries in the unincorporated area of the county (Ord. Code [Division B26](#)). However, qualified patients or primary caregivers with a physician's recommendation may continue to purchase marijuana at medical collectives and dispensaries in certain cities and counties. The City of San Jose maintains a list of [Registered Collectives](#). Patients who have a Medical Marijuana Identification Card will be exempt from the state sales and use tax on the retail sales of medical marijuana.

## **7. How do I get a medical marijuana ID card?**

The Santa Clara County Department of Public Health locally administers the statewide Medical Marijuana Identification Card. Learn more about the [Application Process](#).

## **8. Can I make concentrated cannabis at home?**

No. You are not allowed to make concentrated cannabis at home. Only State-licensed businesses may manufacture concentrated cannabis. The AUMA prohibits the personal use of volatile solvents like explosive gases (i.e. butane, propane, xylene, styrene, gasoline, kerosene, O<sub>2</sub> or H<sub>2</sub>) and dangerous poisons, toxins, or carcinogens (i.e. methanol, iso-propyl alcohol, methylene chloride, acetone, benzene, toluene, and trichloro-ethylene) to manufacture concentrated cannabis. The County of Santa Clara similarly prohibits the use of compressed flammable gases or alcohol to make concentrated cannabis by way of a solvent-based extraction method (Ord. Code [§ B26.5-4](#)). At-home hash oil extraction has caused numerous fires and explosions throughout California and Santa Clara County.

## **9. Will marijuana be taxed?**

Yes. Nonmedical, recreational marijuana is subject to an excise tax, cultivation tax, and sales tax. Starting January 1, 2018, at the time of sale purchasers of marijuana or marijuana products sold in California must pay an excise tax of 15% of the gross receipts of any retail sale by a dispensary or licensed business. A business licensed by the State to cultivate marijuana must pay a cultivation tax on all harvested marijuana that enters the commercial market. The cultivation tax on marijuana flowers is \$9.25 per dry-weight ounce, and the cultivation tax on marijuana leaves is \$2.75 per dry-weight ounce. State and local governments may also impose additional sales and use tax on nonmedical, recreational marijuana but not medical marijuana.

At this time, the Board of Supervisors of the County of Santa Clara has not yet considered or approved legislation to impose any additional sales and use taxes on marijuana.

## **10. Who should I contact about an illegal marijuana grow site?**

Illegal grow sites should be reported to your local city police or to the [Santa Clara County Sheriff's Office Marijuana Eradication Team \("MET"\)](#). The MET can be reached at (408)

808-4420. Individuals reporting illegal grow sites may remain anonymous. Maps, diagrams, GPS coordinates, and tips may be emailed to [SO\\_MET@sheriff.sccgov.org](mailto:SO_MET@sheriff.sccgov.org) or faxed to (408) 293-5192.

### **11.Can I smoke or use marijuana while driving?**

No. You cannot operate a car or other vehicle while impaired by marijuana and you cannot smoke or ingest marijuana or marijuana products while driving or operating a motor vehicle. It is also illegal to 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 (i.e. car or motorcycle), boat, vessel, aircraft, or any other vehicle used for transportation. The California Highway Patrol will be establishing and adopting protocols to determine whether a driver is operating a vehicle while impaired by the use of marijuana or marijuana products.