



COUNTY OF SAN MATEO
Inter-Departmental Correspondence
County Counsel



DATE: January 17, 2017
BOARD MEETING DATE: January 24, 2017
SPECIAL NOTICE/HEARING: Posted January 14, 2017
VOTE REQUIRED: Four-fifths (4/5)

TO: Honorable Board of Supervisors

FROM: John C. Beiers, County Counsel

SUBJECT: Adopt an Interim Ordinance extending the temporary moratorium on commercial nonmedical marijuana activity and outdoor cultivation of marijuana on the grounds of a private residence, within the unincorporated area of San Mateo County, to the full extent authorized under State law.

RECOMMENDATION:

Adopt an Interim Urgency Ordinance extending the temporary moratorium on commercial nonmedical marijuana activity and outdoor cultivation of marijuana on the grounds of a private residence, within the unincorporated area of San Mateo County, to the full extent authorized under State law.

BACKGROUND:

On November 8, 2016, the voters of the State of California enacted Proposition 64, known as the Control, Regulate and Tax Adult Use of Marijuana Act (the "AUMA"), which establishes a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana for use by adults 21 years and older.

Commercially, the AUMA creates a State licensing system which will authorize business to legally cultivate, distribute, transport, store, manufacture, process, and sell nonmedical marijuana, with such licenses to be issued no later than January 1, 2018. However, State licensing authorities cannot approve an application for a State license if approval of the State license will violate the provisions of any local ordinance or regulation.

Recreationally, the AUMA generally allows adults 21 years of age or older to possess, process, transport, purchase, obtain, or give away to persons 21 years or older certain amounts of marijuana and to plant, cultivate, harvest, dry, or process up to six (6) marijuana plants in their private residences. However, local authorities may enact and

enforce “reasonable regulations” regarding the six marijuana plants, including the complete prohibition of outdoor planting, cultivating, harvesting, drying, and/or processing.

As the study session on December 6, 2016 revealed, developing a local regulatory approach to nonmedical marijuana is complex, with many stakeholders, a wide range of opinions, important policy considerations, and an opportunity to coordinate at a regional level.

The County’s Ordinance Code presently prohibits commercial activities related to medical marijuana, including advertising, sales, and profit related to marijuana, and multiple cities within the County have already established temporary moratoriums on nonmedical marijuana activities. The State has yet to fully establish the regulatory scheme for nonmedical commercial marijuana. Finally, the federal government has not sanctioned the cultivation, sale, or possession of nonmedical marijuana and, in fact, classifies marijuana as a Schedule 1 Drug under the Federal Controlled Substances Act, 21 U.S.C. §§ 801 *et seq.*

Significant concerns have been raised regarding the impacts that possession, planting, cultivation, harvesting, drying, processing, distributing, transporting, storing, manufacturing, and sale of nonmedical marijuana will have on public health, safety, and welfare in the County, including, without limitation, protection of environmental resources and neighborhood quality; youth exposure, education and outreach; proper security and safety measures; and increased crime and nuisance.

On December 13, 2016, the Board of Supervisors unanimously enacted a temporary 45-day moratorium on (1) all commercial or industrial use involving marijuana (including, without limitation, manufacture, processing, laboratory testing, labeling, storing, wholesale, distribution and retail) within the unincorporated area of the County and (2) outdoor planting, cultivation, harvesting, drying, or processing of marijuana plants for nonmedical use within the unincorporated area of the County.

On January 14, 2017, staff posted notice of the hearing to extend the temporary moratorium and, in the notice, included a report of the measures taken to alleviate the conditions that led to adoption of the interim ordinance on December 13, 2016, as required by Government Code section 65858(d). Those measures are as follows:

- The County has convened an interdepartmental effort to comprehensively evaluate issues related to marijuana, composed of staff from the County Manager’s Office, the District Attorney’s Office, Environmental Health, the San Mateo County Health System, Department of Planning and Building, the San Mateo County Agricultural Commissioner, and the County Counsel’s Office;
- The County is working to develop a public process to facilitate input from stakeholders regarding both medical and nonmedical marijuana;
- Staff has reached out to other jurisdictions within the County to convene a County-wide regional approach to issues relating to marijuana; and
- Staff has researched and analyzed the requirements of the newly enacted State

laws governing both medical and nonmedical marijuana.

DISCUSSION:

In order to avoid the immediate threat to the public health, safety, and welfare which will result from unregulated, commercial, nonmedical marijuana activity and outdoor cultivation for personal use and to allow the Board sufficient time to study and consider local regulation of nonmedical marijuana activity, it is recommended that the Board extend the temporary moratorium on:

- All commercial and/or industrial use involving nonmedical marijuana, including, without limitation, the manufacture, processing, testing, labeling, storing, distribution, wholesale, and retail within the unincorporated area of the County; and
- Outdoor planting, cultivating, harvesting, drying, and/or processing of nonmedical marijuana.

It is recommended that, pursuant to Government Code Section 65858, the Board extend the temporary moratorium for an additional 10 months and 15 days, until December 12, 2017. This will provide staff an opportunity to consider options and legal authority to regulate nonmedical marijuana activity in a manner consistent with the newly-enacted State laws.

County Counsel has reviewed and approved the proposed urgency ordinance as to form.

SHARED VISION 2025:

Adopting this proposed urgency ordinance is consistent with the County's healthy community, prosperous community, livable community, environmentally conscious community, and collaborative community shared vision goals.

FISCAL IMPACT:

There is no known fiscal impact associated with adopting this proposed urgency ordinance.

[CCO-159084]