



County of San Mateo

Inter-Departmental Correspondence

Department: PLANNING AND BUILDING

File #: 16-787

Board Meeting Date: 12/5/2017

Special Notice / Hearing: None
Vote Required: Four-fifths (4/5)

To: Honorable Board of Supervisors

From: John C. Beiers, County Counsel

Subject: Adopt an Interim Urgency Ordinance establishing a temporary moratorium on commercial medical cannabis activity within the unincorporated area of San Mateo County, to the full extent authorized under State law.

RECOMMENDATION:

Adopt an Interim Urgency Ordinance of the County of San Mateo Board of Supervisors making findings and establishing a temporary moratorium on commercial medical cannabis activity within the unincorporated area of San Mateo County, to the full extent authorized under State law, and waive the reading of the ordinance in its entirety.

BACKGROUND:

Due to changes in State law explained in detail below, the State's recent issuance of proposed draft regulations regarding commercial cannabis activity, and the State's intention to begin issuing licenses for commercial cannabis activity on January 1, 2018, this moratorium is necessary to avoid a gap in the regulatory framework for medical cannabis. Under current State law and in contrast to previous law on medical cannabis regulation, in the absence of local regulatory requirements, commercial medical cannabis activity may proceed once the State begins issuing licenses. Local authorities have the ability to regulate such activity. Even if the Board were to adopt immediately the concurrently submitted ordinance setting forth a comprehensive cannabis regulatory scheme, the effective date of the ordinance would not be earlier than January 1, 2018, when the State plans to begin issuing licenses. This proposed moratorium would prohibit commercial medical cannabis activity from proceeding until the Board adopts the ordinance, or, if the Board prefers a different form of ordinance, until staff has developed and proposed a revised ordinance, and the Board has adopted such ordinance.

In 1996, the voters of the State of California approved Proposition 215, "the Compassionate Use Act," which was intended to permit cultivation and possession of medical cannabis by single patient, or the patient's caregiver, for the patient's personal use, and to create a limited defense to the crimes of possessing or cultivating cannabis. Senate Bill 420 (SB 420), the Medical Marijuana Program Act,

became effective on January 1, 2004 and established a statewide identification card system for patients authorized to use medical cannabis and their primary caregivers, and, as amended, provided that qualified patients, persons with valid identification cards and designated primary caregivers could collectively or cooperatively cultivate cannabis. On January 1, 2016, the Medical Marijuana Regulation and Safety Act (“MMRSA”) became effective and provided a regulatory framework for medical cannabis.

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 established a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical cannabis for use by adults 21 years and older. AUMA created a State licensing system for authorizing businesses to cultivate, distribute, transport, store, manufacture, process, and sell nonmedical cannabis, with such licenses to be issued no later than January 1, 2018. Under AUMA, with respect to nonmedical cannabis only, State licensing authorities could not approve an application for a State license if approval of the State license would violate the provisions of any local ordinance or regulation. As discussed below, State law has subsequently changed such that State licensing approval as to both nonmedical and medical cannabis cannot occur if such approval would violate provisions of local ordinance or regulation.

A study session on December 6, 2016 revealed that developing a local regulatory approach to cannabis is complex, with many stakeholders, a wide range of opinions, important policy considerations, and an opportunity to coordinate at a regional level. The federal government has not sanctioned the cultivation, sale, or possession of cannabis and, in fact, classifies cannabis 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 cannabis 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 June 27, 2017, the Governor approved Senate Bill 94 (SB 94), which repealed the Medical Marijuana Regulation and Safety Act (MMRSA), included certain provisions of MMRSA in the licensing provisions of AUMA and incorporated the framework for cannabis activity established by AUMA. MMRSA and AUMA outlined state regulatory frameworks which the State aims to align under one regulatory framework in SB 94. SB 94 preserves local authority to regulate medical and nonmedical cannabis and authorizes licensing authorities to issue rules and regulations on commercial cannabis activity. However, as with non-medical commercial cannabis activity, now if a local authority fails to regulate medical commercial activity under SB 94, a State license can be issued without local control. As anticipated by SB 94, the State recently issued its draft proposed regulatory scheme for cannabis activity on November 16, 2017.

The County’s Ordinance Code presently prohibits commercial activities related to medical cannabis, including advertising, sales, and profit related to medical cannabis, which is why medical cannabis activity has not previously been the subject of a moratorium. However, in light of SB 94 and its changes to the regulation of medical cannabis activity, County staff is presently evaluating options for local regulation of medical cannabis activity and will be proposing an ordinance, concurrently with this moratorium, that will create a regulatory framework for both medical and nonmedical cannabis

activities in the County. If the Board ultimately adopts in its current form the proposed ordinance, the moratorium will be extinguished by operation of law upon the effective date of the proposed ordinance.

DISCUSSION:

In order to avoid the immediate threat to the public health, safety, and welfare which will result from unregulated, commercial cannabis activity related to medical cannabis and to allow the Board sufficient time to study and consider local regulation of medical cannabis activity, it is recommended that the Board establish a temporary moratorium on:

- The establishment, maintenance, and/or operation of any commercial cannabis activity involving medical cannabis, including but not limited to cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transportation, delivery, or sale of medical cannabis or medical cannabis products within the unincorporated area of the County.

However, this moratorium will not apply to cultivation of medical cannabis by a qualified patient or primary caregiver as set forth in Business and Profession Code Section 26033.

It is further recommended that the Board schedule a noticed public hearing within forty-five (45) days from adoption of the urgency ordinance to consider whether to extend the moratorium.

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.