



Board Agenda Item 5

DATE: December 6, 2016
TO: Board of Supervisors
SUBMITTED BY: Daniel C. Cederborg, County Counsel
SUBJECT: Regulation of Nonmedical Marijuana

RECOMMENDED ACTION(S):

1. Consider and adopt Resolution of Intention initiating amendments to various sections of the Ordinance Code of Fresno County addressing the possession, planting, cultivation, harvesting, drying, or processing of marijuana, and the establishment or operation of businesses engaged in commercial nonmedical marijuana activity in all Zoning Districts of Fresno County.
2. Consider and adopt Interim Ordinance pursuant to Government Code Section 65858 establishing a moratorium on the possession, planting, cultivation, harvesting, drying, processing of nonmedical marijuana outdoors on the grounds of a private residence, and the establishment or operation of businesses engaged in commercial nonmedical marijuana activity in all Zoning Districts of Fresno County. Adoption of the initial Interim Ordinance is effective for a period of up to 45 days unless earlier terminated or extended.
3. Determine that the approval of the Resolution of Intention and the adoption of the Interim Urgency Ordinance are exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to sections 15061, subdivision (b)(3), 15306, and 15308 of the State CEQA Guidelines, and direct staff to file a Notice of Exemption with the Office of the Fresno County Clerk.

Approval of the recommended actions would allow staff an opportunity to research and develop appropriate proposed regulations for the possession, planting, cultivation, harvesting, drying, or processing of marijuana, and the establishment or operation of businesses engaged in commercial nonmedical marijuana activity in all Zoning Districts of Fresno County.

ALTERNATIVE ACTION(S):

Determine that initiation of the proposed Ordinance amendment process is not necessary and determine that the specific findings cannot be made pursuant to Government Code Section 65858, and take no action on the recommended action.

FISCAL IMPACT:

There is no increase in net county cost associated with the recommended action.

DISCUSSION:

Background

In recent years, Fresno County has been confronted with threats to public health and safety resulting from the possession, cultivation, and sale of marijuana. The Board of Supervisors has received evidence from the Fresno County Sheriff's Department and members of the public of the threats to public safety, such as armed robberies with shots fired, incidents with juveniles and young adults, and closure and arrests of operators for violation of both state and federal laws, including seizure of illegal firearms, loitering, increased traffic, noise, and a loss of trade for other businesses located nearby.

In 2014, the Board responded to these threats with innovative ordinances which (1) banned the cultivation of medical marijuana in the unincorporated territory of Fresno County, (2) imposed administrative fines for unlawful cultivation of medical marijuana, and (3) banned the operation of medical marijuana collectives and dispensaries in unincorporated territory of Fresno County.

At the time these ordinances were enacted, nonmedical marijuana was illegal under both State and Federal Law. Therefore, there was no need for the County's Ordinance Code to specifically address the cultivation, possession, or sale of nonmedical marijuana.

On November 8, 2016, the voters of the State of California were presented with Proposition 64, titled the "Adult Use of Marijuana Act" (AUMA). The purpose of AUMA is to establish a comprehensive system to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including marijuana products. As of the date this Agenda Item was prepared, it appears that the AUMA has received the required approval of voters to become law. According to the Secretary of State's website, approximately 55% of voters approved of the AUMA. The Secretary of State is scheduled to certify the results of the November 8 election on or about December 16.

Assuming the AUMA goes into effect, the law will provide certain opportunities for cities and counties to regulate nonmedical marijuana within their jurisdictions. The AUMA, would, among other things,

- i. permit cities and counties to completely prohibit the possession, planting, cultivation, harvesting, drying, or processing of nonmedical marijuana outdoors upon the grounds of a private residence. (Health & Safety Code § 11362.2, subd. (b)(3), as amended by AUMA.)
- ii. permit cities and counties to completely prohibit the establishment or operation of businesses engaged in commercial nonmedical marijuana activity. (Business and Professions Code § 26200, as amended by AUMA.)

While additional investigations and studies would be required to adopt permanent changes to the County's Ordinance Code to address nonmedical marijuana, based on the evidence received by the Board from the Fresno County Sheriff and the public of a threat to the public health, safety, and welfare from the possession, cultivation, and sale of marijuana, the Board may determine that an interim urgency ordinance is necessary to protect the public health, safety and welfare.

In order to adopt an Interim Urgency Ordinance, the Board must make specific findings pursuant to Government Code Section 65858 as follows:

1. That there is a current and immediate threat to the public health, safety, or welfare; and
2. That the approval of additional entitlements for the land use required to comply with a zoning ordinance would result in that threat to public health, safety, or welfare.

If adopted, the Interim Urgency Ordinance would be in effect for 45 days and could be extended once for 22 months and 15 days for a total period not to exceed two years. It is anticipated that the additional extension will be needed in order to allow adequate time to prepare and complete processing of the Ordinance amendment.

The Recommended Actions are Exempt from CEQA

Staff has determined that approval of the Recommended Actions are exempt from the requirements of CEQA. Approval of the Resolution of Intention directs County staff to make necessary investigations and studies as may be required to amend the Fresno County Zoning Ordinance to address the County's regulation of possession, planting, cultivation, harvesting, drying, or processing of nonmedical marijuana outdoors on the grounds of a private residence and the establishment or operation of businesses engaged in commercial marijuana activity in all Zoning Districts of Fresno County, set dates for the prescribed public hearings, and give proper notice thereof. Such work by County staff involves gathering information, data, and conducting studies which will not result in a serious or major disturbance in an environmental resource, or have the possibility of causing a significant effect on the environment. Adoption of the Resolution of Intention is therefore exempt from the requirements of CEQA. (CEQA Guidelines §§ 15061, subdivision (b)(3) and 15306.)

The adoption of the Interim Urgency Ordinance imposes a temporary moratorium on the possession, planting, cultivation, harvesting, drying, processing, or storage of nonmedical marijuana outdoors on the grounds of a private residence, and the establishment or operation of a business engaged in commercial marijuana activity, in all Zone Districts of Fresno County. This moratorium will have the effect of temporarily prohibiting a direct or reasonably foreseeable indirect physical change in the environment by prohibiting certain land uses in Fresno County which were illegal prior to the AUMA. By prohibiting such uses temporarily, the Interim Urgency Ordinance will have the effect of maintaining and protecting the environment while the County studies whether or how to regulate nonmedical marijuana. It can be seen with certainty that adoption of the Interim Urgency Ordinance will not have the possibility of causing a significant effect on the environment, and will in fact maintain and protect the environment. Adoption of the Interim Urgency Ordinance is therefore exempt from the requirements of CEQA. (CEQA Guidelines §§ 15061, subdivision (b)(3) and 15308.)

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Resolution of Intention, Interim Urgency Ordinance

CAO ANALYST:

Deborah Paolinelli