



# Board Agenda Item 8

DATE: March 28, 2017

TO: Board of Supervisors

SUBMITTED BY: Daniel C. Cederborg, County Counsel

SUBJECT: Marijuana Ordinances and Potential Amendments

## RECOMMENDED ACTION(S):

1. **Provide direction to County Counsel regarding potential amendments to Chapters 10.60, 10.62 and 10.64 of the Fresno County Ordinance Code related to the regulation of marijuana cultivation and sale.**
2. **Determine that direction provided to County Counsel regarding potential amendments to Chapters 10.60, 10.62 and 10.64 of the Fresno County Ordinance Code related to the regulation of marijuana cultivation and sale, is exempt from the requirements of the California Environmental Quality Act, Public Resources Code section 21000, et seq., and direct staff to file a Notice of Exemption with the Office of the Fresno County Clerk.**

## ALTERNATIVE ACTION(S):

The Board may decline to provide direction to County Counsel regarding amendments to the Ordinance Code at this time.

## FISCAL IMPACT:

There is no increase of 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.

The following highlights significant actions taken by the Board of Supervisors to address the threats to public safety posed by the cultivation of marijuana:

- **January 7, 2014:** Board of Supervisors enacted Ordinance Number 14-001, which banned outdoor cultivation of medical marijuana in the unincorporated territory of the County. (Ord. Chapter 10.60).

Violation of the Ordinance was declared a public nuisance that is subject to abatement (Ord. Chapter 10.62) and administrative penalties (Ord., Chapter 10.64). Persons cited for violations of the Ordinance may appeal to the Board. (Ord., Chapters 10.62 and 10.64.)

- **February 24, 2015:** Board of Supervisors enacted Ordinance Number 15-003, which clarified the original intent of Ordinance Number 14-001, with respect to the interaction between the notice of abatement order procedure in Chapter 10.62 and the administrative fine citation procedure in Chapter 10.64. These amendments clarified existing law and the original intent of the Board that these two procedures are parallel, concurrent and may be pursued in the alternative. Ordinance No. 15-003 included additional technical amendments intended to clarify the text of Ordinance Number 14-001, and an additional explicit finding based on evidence given by the Sheriff's Office that supported the necessity of substantial fine amounts to accomplish the purpose of the cultivation ban. Ordinance Number 15-003 remains in effect.
- **December 6, 2016:** In response to the apparent passage of Proposition 64, titled the "Adult Use of Marijuana Act" (AUMA), the Board
  - enacted Interim Ordinance 16-017 establishing a moratorium on the possession, planting, cultivation, harvesting, drying, processing of nonmedical marijuana outdoors on the grounds of a private residence to the fullest extent permitted by State law, and the establishment or operation of businesses engaged in commercial nonmedical marijuana activity in all Zoning Districts of Fresno County.
  - adopted Resolution of Intention directing County staff to make necessary investigations and studies as may be required to amend the 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.
- **January 7, 2017:** The Board enacted an extension of Interim Urgency Ordinance No. 16-017 through December 5, 2018.

#### ***Potential Amendments for Consideration by the Board of Supervisors***

To address the changes to State law enacted by the passage of Proposition 64, and further refine the County's regulation of marijuana cultivation and sale, County Counsel offers the following proposed amendments for the Board's consideration:

1. Amend Chapters 10.60, 10.62, and 10.64 to apply to both medical and nonmedical marijuana in the unincorporated territory of Fresno County, as follows,
  - a. Prohibit the cultivation of marijuana outdoors;
  - b. Prohibit the cultivation of marijuana indoors, except where that cultivation occurs within a person's private residence, in a locked space, and are not visible by normal unaided vision from a public place and is limited to no more than six plants.
2. Consider creating the office of hearing officer in the County to hear abatement and administrative fine appeals, and amend Chapters 10.62 and 10.64 to designate the hearing officer. The hearing officer may be a County employee but cannot be an employee of the County Department which issued the notice of abatement or administrative citation, as applicable.
3. Amend Chapter 10.64 to change or cap the amount of administrative fines.

***Process to Amend Ordinance Code Consistent With Board Direction***

To implement the direction received from the Board at today's meeting, County Counsel will prepare a draft Ordinance. County Counsel will circulate that draft to County Departments involved with the administration and enforcement of the provisions of the Ordinance Code related to marijuana cultivation and sale for comment. County Counsel will then revise the draft Ordinance to address any comments received from County Departments, and then submit the revised draft Ordinance to the Department of Public Works and Planning for analysis under the California Environmental Quality Act (CEQA). Upon completion of all steps necessary to comply with CEQA, the proposed Ordinance will be scheduled for a first reading before the Board. County Counsel anticipates that the first reading of the Ordinance will be scheduled before the end of 2017.

***Recommended Action Number One is Exempt from California Environmental Quality Act (CEQA)***

County Counsel, in consultation with the Department of Public Works and Planning, has determined that approval of Recommended Action Number One is exempt from the requirements of CEQA. Providing direction to County Counsel regarding the preparation of potential amendments to the Fresno County Ordinance Code related to the regulation of marijuana cultivation and sale will not result in any change to the Ordinance Code. Instead, County Counsel will receive the Board's direction and prepare proposed amendments to the Ordinance Code. Prior to Board consideration of such proposed amendments to the Ordinance Code, the County will take all steps necessary to comply with the requirements of CEQA.

Therefore, it can be seen with certainty that approval of Recommended Action Number One will have no possibility of having a significant effect on the environment, and is therefore not subject to CEQA. (CEQA Guidelines, section 15061(b)(3).)

**REFERENCE MATERIAL:**

BAI #33, January 7, 2014  
BAI #8, December 2, 2014  
BAI #30, February 24, 2015  
BAI #6, December 6, 2016  
BAI #8, January 10, 2017

**CAO ANALYST:**

Ronald Alexander