



Board Agenda Item 25

DATE: November 6, 2018

TO: Board of Supervisors

SUBMITTED BY: Daniel C. Cederborg, County Counsel

SUBJECT: Expiration of Interim Urgency Ordinance Establishing Moratorium on Nonmedical Marijuana Report

RECOMMENDED ACTION(S):

Approve and authorize issuance of Report prepared pursuant to Government Code section 65858, subdivision (d), describing the measures taken to alleviate the condition which led to the adoption of Urgency Ordinance No. 17-001.

Approval of the Report is required by California Government Code § 65858, which requires the legislative body issue the Report at least ten days prior to the expiration of the Interim Urgency Ordinance. Interim Urgency Ordinance No. 17-001 will expire on December 5, 2018. Approval of the Report based on the forthcoming expiration of the Interim Urgency Ordinance is requested due to Board Agenda timing requirements for the item. This item is countywide.

ALTERNATIVE ACTION(S):

There is no viable alternative action as issuance of the Report is required by State law.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended action.

DISCUSSION:

On December 6, 2016, your Board considered and adopted an Interim Urgency Ordinance prohibiting, in all Zone Districts of Fresno County, the possession, planting, cultivation, harvesting, drying, or processing of nonmedical marijuana outdoors on the grounds of private residences to the fullest extent permitted by State law, and the establishment or operation. On January 10, 2017, your Board extended the interim ordinance for an additional twenty-two (22) months and fifteen (15) days.

Since your Board extended the interim ordinance, County Counsel has begun the process of identifying changes to the Ordinance Code, which may be appropriate to address the threats posed by nonmedical marijuana. However, significant changes in State law and regulations implementing Proposition 64 and changes in neighboring jurisdictions' ordinances regarding marijuana cultivation and sale require further analysis to address the conditions which led to the adoption of the interim ordinance.

These changes include passage of Senate Bill 94, the Medical and Adult-Use Cannabis and Regulation and Safety Act ("MAUCRSA"), on June 15, 2017. MAUCRSA repealed the Medical Adult Use of Marijuana Act and provides a consolidated licensing system for both commercial medical and commercial adult-use activity.

The Bureau of Cannabis Control ("Bureau") is the licensing authority for commercial medical and adult-use cannabis. On June 4, 2018, the Bureau readopted emergency cannabis regulations, to be effective for one year, to allow time for the Bureau to engage in the regular rulemaking process to adopt its final non-emergency regulations. These proposed rule changes seek to address issues that have arisen since adoption of the emergency regulation in December 2017. However, these proposed rules are not final and may be subject change over the one year period of the readopted emergency regulations.

Since the extension of the interim ordinance, County Counsel has confirmed that the Bureau lacks enforcement authority over violations of MARCUSA. Over this same period of time, neighboring local jurisdictions have adopted or have considered for adoption ordinances to allow large scale cannabis cultivation and/or commercial sale of recreational marijuana and marijuana products. The first recreational marijuana dispensary within Fresno County began operation on October 13, 2018, in the City of Coalinga. In May 2018, a recreational dispensary opened in the City of Woodlake in Tulare County. The City of Fresno continues to consider an ordinance to allow a limited number of recreational dispensaries within its boundary limits.

On December 4, 2018, County Counsel will return to your Board and present a second Interim Urgency Ordinance for consideration and adoption to allow staff adequate time to continue researching and developing proposed revisions to the Ordinance Code of Fresno County to address the threat to public health, safety, and welfare posed by nonmedical marijuana based on the changes in circumstances previously identified. County Counsel expects to circulate a draft of the proposed revision to the Ordinance Code ("the Proposed Ordinance") in the next six (6) months for review and comment by County Departments. The Proposed Ordinance will then be submitted to the Department of Public Works and Planning for environmental review. The Department will conduct the appropriate level of environmental review and work with County Counsel to schedule the Proposed Ordinance for appropriate public hearings.

The Recommended Action is Exempt from California Environmental Quality Act (CEQA)

The Report required by Government Code section 65858, subdivision (d), results from work performed by County Counsel to identify changes to the Ordinance Code, which may be appropriate to address the threats posed by nonmedical marijuana. Such work has involved preliminary collection of data and information, none of which has resulted in a disturbance in an environmental resource, or has the possibility of causing a significant effect on the environment. Acceptance and issuance of the Report is therefore exempt from the requirements of CEQA. (CEQA Guidelines §§ 15061, subdivision (b)(3), and 15306.)

REFERENCE MATERIAL:

BAI #8, January 10, 2017
BAI #5, December 6, 2016

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Staff Report

CAO ANALYST:

Yussel Zalapa