



Board Agenda Item 7

DATE: December 4, 2018

TO: Board of Supervisors

SUBMITTED BY: Daniel C. Cederborg, County Counsel

SUBJECT: Regulation of Nonmedical Cannabis

RECOMMENDED ACTION(S):

- 1. Consider and adopt Interim Ordinance pursuant to Government Code Section 65858 establishing a moratorium on the possession, planting, cultivation, harvesting, drying, processing of nonmedical cannabis outdoors on the grounds of a private residence, and the establishment or operation of businesses engaged in commercial nonmedical cannabis activity in all Zoning Districts of Fresno County based on changes in circumstances after adoption of the previous interim urgency ordinance. Adoption of the Initial Interim Ordinance is effective for a period of up to 45 days unless earlier terminated or extended (4/5 vote).**
- 2. Determine that the adoption of the Interim Urgency Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to sections 15061, subdivision (b)(3), 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 cannabis, and the establishment or operation of businesses engaged in commercial nonmedical cannabis activity in all Zoning Districts of Fresno County.

ALTERNATIVE ACTION(S):

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 actions.

DISCUSSION:

In recent years, Fresno County has been confronted with threats to public health and safety resulting from the possession, cultivation, and sale of cannabis. The Board of Supervisors has received evidence from the Fresno County Sheriff's Office 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 the unincorporated territory of Fresno County.

In 2015, the California State Legislature enacted three bills that collectively established a comprehensive state regulatory framework for the licensing and enforcement of cultivation, manufacturing, retail sale, transportation, storage, delivery, and testing of medicinal cannabis in California. This regulatory scheme was known as the Medical Cannabis Regulation and Safety Act (MCRSA).

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.

On December 6, 2016, the Board adopted an Interim Urgency Ordinance No. 16-017 prohibiting, in all Zoning Districts of Fresno County, the 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, consistent with State law. The Board extended this ordinance on January 10, 2017, for an additional twenty-two (22) months and fifteen (15) days through the adoption of Ordinance No. 17-001. This ordinance will expire on December 5, 2018.

On June 27, 2017, the State adopted Senate Bill No. 94, titled the Medical and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). MAUCRSA repealed MCRSA and incorporated provisions of the repealed act into the licensing provisions of AUMA. MAUCRSA provides a consolidated licensing system for both commercial medical and commercial medical and commercial adult-use cannabis activity. MAUCRSA also allows for vertical integration by license holders, which was prohibited under MCRSA, allowing a person to hold licenses in more than two separate licensing categories. MAUCRSA also renamed all statutory references to marijuana in AUMA and the incorporated provisions of MCRSA to cannabis.

MAUCRSA provides certain opportunities for cities and counties to regulate nonmedical cannabis within their jurisdictions. MAUCRSA would, among other things,

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

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

Since the Board adopted Interim Urgency Ordinance No. 17-001, neighboring local jurisdictions have adopted or have considered for adoption ordinances to allow large scale cannabis cultivation, manufacturing, distribution and/or the commercial sale of recreational cannabis and cannabis products. In May 2018, a recreational cannabis dispensary opened in the City of Woodlake in Tulare County. On October 13, 2018, the first recreational cannabis dispensary within Fresno County began operation in the City of Coalinga.

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 upon termination of a prior interim 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 from an event, occurrence or set of circumstances different from the event, occurrence, or set of circumstances that led to the adoption of this prior interim ordinance; 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. After notice and a public hearing, the Board could extend the Ordinance for 10 months and 15 days and then subsequently extend the Ordinance for additional one year. It is anticipated that the additional extension will be needed to allow adequate time to prepare and complete processing of the Ordinance amendment.

If adopted, the Interim Urgency Ordinance must go into effect on December 6, 2018, to avoid termination pursuant to Government Code section 65858, subdivision (e), upon the automatic termination of Interim Urgency Ordinance No. 17-001 on December 5, 2018.

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

Staff has determined that adopt of the Interim Urgency Ordinance is exempt from the requirements of CEQA. The adoption of the Interim Urgency Ordinance imposes a temporary moratorium on the possession, planting, cultivation, harvesting, drying, processing, or storage of nonmedical cannabis outdoors on the grounds of a private residence, and the establishment or operation of a business engaged in commercial cannabis 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 AUMA. By prohibiting uses temporally, 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.)

REFERENCE MATERIAL:

BAI #25, November 6, 2018
BAI #8, January 10, 2017
BAI #5, December 6, 2016

ATTACHMENTS INCLUDED AND/OR ON FILE:

Interim Urgency Ordinance

CAO ANALYST:

Yussel Zalapa