



**COMMUNITY DEVELOPMENT DEPARTMENT**

CITY HALL

10300 TORRE AVENUE • CUPERTINO, CA 95014-3255

TELEPHONE: (408) 777-3308 www.cupertino.org

**CITY COUNCIL STAFF REPORT**

Meeting: September 19, 2016

Subject

Extension of an Urgency Ordinance imposing a moratorium on all commercial, non-medical marijuana land uses including dispensaries, marijuana cultivation and cultivation facilities, commercial cannabis activities and marijuana transport and deliveries. (Application No.: MCA-2016-06; Location: City-wide; Applicant: City of Cupertino)

Recommended Action

That the City Council:

1. Find that the proposed actions are exempt from CEQA; and
2. Enact Urgency Ordinance No. 17-XXXX - "An Interim Urgency Ordinance of the City Council of the City of Cupertino Extending Moratorium on Non-Medical Marijuana Dispensaries, Marijuana Cultivation and Cultivation Facilities, Commercial Cannabis Activities and Marijuana Transport and Deliveries within the City of Cupertino Pending Completion of an Update to the City's Zoning Code" (Attachment A.)

Discussion

*Background*

Upon adoption of the Medical Cannabis Regulation and Safety Act ("MCRSA") by the State of California in September 2015, the City's Municipal Code was updated to establish regulations regarding medical marijuana businesses, cultivation facilities, transport and deliveries in January 2016.

Subsequently, on November 8, 2016, the people of California approved the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA" or Proposition 64), which allows the non-medical use, personal cultivation, and establishment of commercial marijuana facilities and businesses in California. The AUMA also established a licensing scheme for non-medical marijuana cultivation and manufacturer, testing, and distribution establishments. The proposed measure, however, allowed local agencies land use control over such uses. Since the Cupertino Municipal Code does not list non-

medical marijuana dispensaries, cultivation sites, and other non-medical marijuana establishments as either permitted or conditionally-permitted land uses, such activities, are both prohibited under the principles of permissive zoning (any use not enumerated is deemed prohibited) and illegal under federal law.

As a preemptive measure, and in anticipation of the passage of the AUMA, the City Council adopted Ordinance No. 16-2153, as a temporary moratorium on non-medical marijuana businesses, cultivation facilities, transport and deliveries in order to ensure that the City retain as much local control as legally possible over the portions of the proposition that went into effect immediately, on October 18, 2016 (Attachment B.)

Urgency Ordinances are effective for 45 days from date of adoption but may be extended for a period of 10 months and 15 days, and possibly more, as allowed per Govt. Code § 65858(a). Subsequently, upon further review of the legislative field at that time, in November 2016, staff recommended that the City Council extend the moratorium for a period of 10 months and 15 days. The City Council adopted Ordinance No. 16-2160 to extend the urgency as recommended (see Attachment C.) Ordinance No. 16-2160 expires on September 30, 2017.

Urgency ordinances may be extended for an additional 12 months pursuant to Govt. Code § 65858(a.) with a four-fifths vote of the Council (i.e., 4 out of 5 council members voting yes).

### *Analysis*

In addition to the adoption of the MCRSA and the AUMA, in June 2017, Governor Brown signed SB 94 (the Medicinal and Adult-Use Cannabis Regulation and Safety Act or “MAUCRSA,”) a budget trailer bill that made significant changes to California’s commercial cannabis regulatory structure. SB 94 effectively repealed the MCRSA (medical marijuana regulations) and incorporated some of its provisions into the licensing provisions of AUMA. MAUCRSA effectively set up a new hybrid regulatory structure and created more operator-friendly standards than under MCRSA. Since this regulation is fairly new and there is little guidance on the City’s responsibilities during the licensing process, it is recommended that the moratorium be extended further.

Additionally, the state did not have a licensing structure in place to license medical marijuana facilities which were regulated under MCRSA since 2015. As mentioned earlier, while the state agencies were in the process of establishing a licensing structure for both, medical and non-medical, marijuana facilities, SB 94 merged the licensing requirements of both, under the authority of the Bureau of Cannabis Control (formerly the Bureau of Medical Cannabis Regulation and Bureau of Medical Marijuana

Regulation), which anticipates issuing licenses on January 1, 2018. As indicated on the bureau's website, "Applications will be available for all cannabis cultivation licenses—both medical and adult-use (nonmedical)—on January 1, 2018."

Therefore, an extension of the moratorium is recommended for the full 10 months and 15 days as allowed under the Govt. Code. The extension of the Urgency Ordinance continues to ensure that the City retains the ability to regulate, allow or prohibit non-medical marijuana dispensaries, cultivation sites and delivery services in the future. The extension allows the City to:

- Analyze the effect of recently approved legislation regarding both non-medical and medical marijuana,
- Analyze the effectiveness of state regulations and licensing,
- Consider additional regulation or licensing, and
- Prepare a regular ordinance to amend the City's Municipal Code in compliance with SB 94.

The additional Interim Urgency Ordinance contains findings stating the basis for the urgency, as well as the facts to justify the preservation of the public health, safety, and welfare. These have been documented in the staff report (and attachments) regarding medical marijuana dated January 19, 2016 and in the staff report (and attachments) on the non-medical marijuana urgency ordinance dated October 18, 2016. The findings, facts, and analysis contained within those staff reports remain valid, and are incorporated by reference. It is recommended that Council adopt the current Urgency Ordinance which will extend the prohibitions in place for an additional 12 months.

Should the ordinance not be extended, the City has two options – either adopt a regular ordinance to establish regulations regarding non-medical marijuana commercial activities, cultivation, deliveries and transportation or, be subject to State regulations. State regulations may not be as restrictive as regulations that the City Council may desire in the areas where local control may be exercised.

In the interest of protecting the health, safety, and welfare of the residents in the City of Cupertino, it is the purpose and intent of this ordinance to extend a temporary moratorium on all commercial marijuana land uses in the City and prohibit all marijuana cultivation for personal use in the City while the City evaluates and adopts appropriate land uses and reasonable regulations following the passage of the Control, Regulate, and Tax Adult Use of Marijuana Act (Proposition 64).

This ordinance is not intended to interfere with a patient's access and use of medical marijuana, as provided for in California Health and Safety Code section 11362.5. This ordinance is intended to supplement existing law. Nothing herein is intended to impair any existing City ordinance concerning medical or non-medical marijuana within the City. Any restrictions provided herein, and remedies flowing herefrom, are cumulative to any other restriction or remedy provided under existing local, state, or federal law.

#### *Noticing and Public Comment*

In compliance with the Government Code, the following noticing has been conducted:

- Legal notice and Display Ad in the newspaper
- Public hearing notices/agenda on the City's website and at City Hall/Community Hall.

No communication has been received on this issue as of the date of production of this staff report.

#### *Environmental Impact (CEQA)*

The proposed Ordinances are not a project within the meaning of section 15378 of the California Environmental Quality Act ("CEQA") Guidelines because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that these Ordinances are found to be a project under CEQA, they are exempt CEQA Guidelines section 15061(b)(3) because they can be seen with certainty to have no possibility of a significant effect on the environment, as such uses are already prohibited under the Municipal Code.

#### *Next Steps*

Upon review of the steps taken by the state to regulate marijuana facilities, cultivation etc., a regular ordinance will be presented for consideration by the Planning Commission and the City Council at a later date. In conjunction with this, should the Council wish to allow such uses, it could also consider taxation. Such a tax may only be imposed upon a vote of the citizens.

#### Sustainability Impact

No impacts

#### Fiscal Impact

No impacts

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Prepared by: Piu Ghosh, Principal Planner

Reviewed by: Benjamin Fu, Assistant Director of Community Development

Aarti Shrivastava, Assistant City Manager

Approved for Submission by: David Brandt, City Manager

Attachments:

A. Draft Urgency Ordinance No. 17-XXXX

B. Urgency Ordinance No. 16-2153

C. Extension of Urgency Ordinance (Ordinance No. 16-2160)