



COMMUNITY DEVELOPMENT DEPARTMENT

CITY HALL

10300 TORRE AVENUE • CUPERTINO, CA 95014-3255

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

CITY COUNCIL STAFF REPORT

Meeting: October 18, 2016

Subject

Enact an Urgency Ordinance to prohibit non-medical marijuana cultivation, dispensaries, transport and deliveries and commercial cannabis activities within the City of Cupertino. (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. 16-2153 "An Interim Urgency Ordinance of the City Council of the City of Cupertino Establishing a Moratorium on Non-Medical Marijuana Dispensaries, Marijuana 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

Following the adoption of three bills (Assembly Bill 243, Assembly Bill 266, and Senate Bill 643) creating a licensing and regulatory framework for medical marijuana, in January 2016, the City adopted an urgency ordinance and a regular ordinance amending the Municipal Code to disallow all medical marijuana dispensaries, other medical marijuana businesses, and commercial cultivation of medical marijuana but to allow cultivation of medical marijuana for personal use and allow delivery/transport of medical marijuana by qualified caregivers or qualified patients, in conformance with state law. However, those ordinances did not regulate non-medical marijuana, which remains prohibited under both federal and state law.

Proposition 64, on the November 8, 2016 ballot, would allow the non-medical use, personal cultivation, and establishment of commercial marijuana facilities and businesses. Proposition 64 also establishes a licensing scheme for non-medical marijuana cultivation and manufacturer, testing, and distribution establishments. The proposed measure allows local agencies land use control over such uses. This Urgency

Ordinance is proposed to ensure that the City retain its local control over non-medical marijuana use while the state regulations and licensing are fleshed out and to allow additional time to prepare a regular ordinance to amend the City's Municipal Code in compliance with Proposition 64.

Currently, 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) an illegal under both state and federal law.

Discussion

Staff recommends that the City Council adopt an Urgency Ordinance which prohibits activities related to the cultivation, delivery, and other commercial cannabis activities of non-medical marijuana similar to one adopted for medical marijuana in January 2016. The Urgency Ordinance is effective immediately in order to ensure that the City has an ordinance before the November 8, 2016 General Election to preserve Cupertino's local control over this important topic. If passed, Proposition 64 provides for a state licensing program for distribution and cultivation, which is not expected to begin for at least a year. However, some provisions of Proposition 64, specifically, personal use cultivation, would be effective immediately.

The Urgency Ordinance is effective for 45 days from date of adoption. If needed, the Urgency Ordinance may be extended, for up to a 22 month period, which would allow the City adequate time to prepare an ordinance amendment to the City's Municipal Code. Should Proposition 64 pass, staff will bring a regular ordinance to the Planning Commission and the City Council's consideration which will proceed under the usual path, and would be effective thirty days after the ordinance enactment.

The proposed Urgency Ordinance stipulates that the City's current prohibition on all of the potential marijuana business that could possibly operate under the medical marijuana laws applied equally to non-medical marijuana. Proposition 64 allows the City to prohibit outdoor cultivation of marijuana for personal recreational use but not indoor cultivation of marijuana for personal recreational use. The Urgency Ordinance prohibits outdoor cultivation for personal use but allows indoor cultivation of recreational marijuana for personal use if it occurs in conformance with state law. If Proposition 64 passes, the City can also consider regulations of indoor cultivation.

The 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. As stated in the staff report dated January 19, 2016 and the materials provided when Council considered

medical marijuana, many California cities have experienced negative secondary effects from medical marijuana businesses, including dispensaries, cultivation facilities, and delivery services. In addition, the negative effects of non-medical marijuana use are also widely documented in various news stories from states where recreational marijuana use has been legalized¹ and in the attached 2015 report from the Colorado Association of Chiefs of Police (Attachment B.) These negative impacts have included unsafe construction and electrical wiring, noxious fumes and odors, and increased crime in and around marijuana establishments.

The state has yet to license medical marijuana facilities. According to the California Bureau of Medical Cannabis Regulation, the “Bureau is still in the early stages of development and won’t be accepting applications for licenses until 2018” (Attachment C.) Therefore, assuming Proposition 64 passes, state licensing of non-medical marijuana is not anticipated at least until 2018.

Although the City does not take formal position on Proposition 64, adoption of the Urgency Ordinance ensures that the City does not lose the ability to regulate, allow or prohibit non-medical marijuana dispensaries, cultivation sites and delivery services in the future should the City wish to consider allowing such uses to operate within the City at a later date.

Noticing and Public Comment

Urgency ordinances do not require any noticing.

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.

Sustainability Impact

No impacts

Fiscal Impact

¹ See, for example, <http://www.golocalpdx.com/news/report-claims-legalized-marijuana-is-proving-to-have-negative-consequences>; <http://www.newsweek.com/unexpected-side-effects-legalizing-weed-339931>.

No impacts

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. 16-2139 “An Interim Urgency Ordinance of the City Council of the City of Cupertino Establishing a Moratorium on Medical Marijuana Dispensaries, Marijuana Cultivation Facilities, Commercial Cannabis Activities and Medical Marijuana Deliveries within the City of Cupertino Pending Completion of an Update to the City’s Zoning Code”
- B. 2015 Association of Colorado Chiefs of Police Report ([http://www.nccpsafety.org/assets/files/library/Legalized Marijuana Practical Guide for Law Enforcement.pdf](http://www.nccpsafety.org/assets/files/library/Legalized_Marijuana_Practical_Guide_for_Law_Enforcement.pdf))
- C. Bureau of Medical Cannabis Regulation Frequently Asked Questions (http://www.bmcr.ca.gov/about_us/faq.shtml)