



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: September 6, 2016

TO: Mayor and Councilmembers

FROM: Planning Division, Community Development Department

SUBJECT: Interim Emergency Zoning Ordinance Prohibiting Non-Medical Marijuana Businesses

RECOMMENDATION:

That Council of the City of Santa Barbara adopt by reading in full, and by four-fifths vote, An Interim Emergency Zoning Ordinance of the Council of the City of Santa Barbara Prohibiting Non-Medical Marijuana-Related Businesses.

SUMMARY:

In order to immediately preserve and protect public health, safety, and welfare from the impacts of non-medical marijuana related businesses and transactions that may become lawful if Proposition 64, the Adult Use of Marijuana Act ("AUMA"), is passed by the California Voters in the November 2016 election, staff is recommending that Council adopt the proposed interim emergency zoning ordinance ("Interim Ordinance"). The Interim Ordinance will prohibit the operation of any non-medical marijuana business related activities within the City of Santa Barbara, for at least 45 days, or a period not to exceed 22 months and 15 days, if the Interim Ordinance is subsequently extended by Council on October 18, 2016. Adoption of the Interim Ordinance will give City Staff, Council, and the Planning Commission the opportunity to study whether or not non-medical marijuana related businesses should be permitted or prohibited within the City, and if permitted, the appropriate regulations and locations for such uses.

DISCUSSION:

Background

Proposition 64, The Adult Use of Marijuana Act, is a statewide initiative that will be considered for approval by the People of the State of California at the November 8, 2016 General Election ballot. If approved by the voters, the AUMA would legalize the cultivation, processing, manufacture, distribution, testing, sale, transport, purchase, use, transfer, and possession up to certain limits by adults over the age of 21 of non-medical marijuana. It would allow for new marijuana businesses, including dispensaries, retail services, and

delivery services. The AUMA would also give medical marijuana dispensaries operating lawfully before September 1, 2016 a priority in obtaining a non-medical license. The AUMA allows local governments to regulate marijuana related activities, but it does not allow complete prohibition of indoor cultivation of medical marijuana for personal use. The City Council approved limited cultivation for medical marijuana patients earlier this year.

The AUMA has the political support of Lt. Governor Gavin Newsom and the California Medical Association. Recent polls show approximately 60% support among California voters for legalization, and according to government filings, pro-Proposition 64 interests have contributed \$11.4 million to passing the measure, while opponents have raised less than \$200,000. The AUMA received a relatively favorable ballot summary from the Attorney General, who stated that it would prohibit marijuana sales to persons under the age of 21, impose a 15% statewide excise tax, and allow some degree of local regulation and taxation of marijuana.

Impact to the City

The passage of the AUMA could immediately allow marijuana related businesses in any zone that allows retail or similar non-marijuana related commercial land uses in the City of Santa Barbara. While the City Attorney believes the City's existing Zoning Ordinance is "permissive," meaning it prohibits any use not specifically listed and allowed, that issue is not free from doubt. A sudden influx of non-medical marijuana businesses would likely have unanticipated and negative effects upon neighborhoods, communities, and zoning districts in ways that have not been evaluated.

Allowing non-medical marijuana businesses to open and become established before appropriate procedures and regulations are enacted could cause adverse impacts to surrounding development and unacceptable risks to the health, safety, and welfare of the City's residents and the general public. Therefore, it is urgent that the City have the opportunity to consider whether such facilities should be allowed or prohibited in the City and, if allowed, to develop regulations governing the location and operation of non-medical marijuana related businesses to prevent potential adverse impacts that could result from the unregulated placement and operation of such uses.

Given the time required to undertake the necessary study and planning, it is crucial that this interim emergency ordinance be immediately enacted to ensure that no non-medical marijuana businesses that may conflict with state or federal law, or the City's General Plan, zoning, and/or development policies, are permitted in the interim.

The proposed interim emergency ordinance is authorized by both Charter section 511 and Government Code section 65858.

Medical Marijuana Storefront Collective Dispensaries

The proposed Interim Ordinance would not prohibit Medical Marijuana Storefront Collective Dispensaries under the provisions of SBMC Chapter 28.80. Medical Marijuana dispensary applicants would be allowed to continue through the permit application process and to operate under, and in compliance with, a Storefront Collective Dispensary Permit issued under SBMC Chapter 28.80. The proposed Interim Ordinance would also not prohibit the cultivation of medical marijuana for personal use by qualified patients under SBMC §28.87.300.

Urgency Measure

Pursuant to Section 65858 of the California Government Code and City Charter section 511, the City may adopt an interim zoning ordinance to protect the public safety, health, and welfare by prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal, as an urgency measure. An urgency measure must be passed by City Council by four-fifths vote (i.e., 6 of 7). The statute has not been interpreted as to whether the vote requirement is four-fifths of the total Council membership or four-fifths of those present and voting. Accordingly, the City Attorney advises that the safest course of action is to obtain unanimous approval in the event all Council members are not present and voting. The proposed Interim Ordinance must also contain findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of use permits, building permits, or any other applicable entitlement for use that is required in order to comply with the City's zoning ordinance would result in that threat to public health, safety, or welfare (see findings in the referenced Ordinance).

The Interim Ordinance would become effective immediately upon adoption and would continue in effect for 45 days unless subsequently extended by Council. No later than ten days before expiration of the measure on October 21, 2016 a written report must be prepared that describes the measures taken to alleviate the conditions which led to the adoption of this Interim Ordinance. The proposed ordinance delegates that report to the City Administrator, and would be due on October 11, 2016. After notice and public hearing, the Council may, by four-fifths vote, extend the proposed Interim Ordinance for up to an additional 22 months and 15 days.

General Plan Consistency

The City's General Plan is implemented with regard to land use policy by SBMC Title 28, the Zoning Ordinance, which states, "An Official Land Use Zoning Ordinance for the City of Santa Barbara is hereby adopted and established to serve the public health, safety, comfort, convenience and general welfare and to provide the economic and social advantages resulting from an orderly planned use of land resources, and to encourage, guide and provide a definite plan for the future growth and development of said City." The proposed Interim Ordinance would affect all land use zones within the City's jurisdiction. Proposing an interim urgency ordinance conforms to the goals, objectives, and policies of the General Plan, and as implemented by the Zoning Ordinance. The leading statement in

the “General Plan Purpose and Need” declares, “The health, safety and welfare of the community are of primary importance in the City.”

Subsequent Consideration of Non-Medical Marijuana Prohibition or Regulation

If Council adopts the Interim Ordinance prohibiting non-medical marijuana businesses in all land-use zones, it will concurrently direct the City Administrator, acting by and through such City departments as he or she may deem appropriate (e.g., Community Development, Finance, Parks and Recreation, Fire, Police), to study the ramifications of non-medical marijuana related businesses and report the findings for consideration by the Planning Commission and City Council. This will provide the opportunity to consider whether such facilities should be allowed or prohibited in the City and, if allowed, to develop regulations so that appropriate land use decisions can be made to regulate the locations, operations, activities, and operating parameters for the marijuana-related land uses allowed in the AUMA.

Areas of consideration for future regulation would be those non-medical marijuana related activities for which the AUMA allows for local control and regulation. If passed the AUMA will allow local governments to:

- Ban all marijuana related commercial activity;
- Ban outdoor cultivation; and
- Reasonably regulate indoor cultivation in private residences, but not ban it outright.

BUDGET/FINANCIAL INFORMATION:

There may be potential staff code compliance costs that would need to be budgeted upon adoption of the Interim Ordinance, as well as costs associated with the necessary study and planning for subsequent non-medical marijuana related City regulations.

PREPARED BY: Tony Boughman, Assistant Planner

SUBMITTED BY: George Buell, Community Development Director

APPROVED BY: City Administrator's Office