



**Contra
Costa
County**

To: Board of Supervisors
From: John Kopchik, Director, Conservation & Development Department
Date: January 17, 2017

Subject: Adoption of Ordinance No. 2017-03 Extending the Urgency Interim Ordinance Related to Various Marijuana Prohibitions

RECOMMENDATION(S):

1. OPEN the hearing, ACCEPT public testimony, and CLOSE the hearing.
2. ADOPT Ordinance No. 2017-03, extending for a period of one year, an urgency interim ordinance prohibiting various activities related to the cultivation, delivery and sale of marijuana and marijuana products.
3. FIND that the adoption of the interim ordinance is exempt from the California Environmental Quality Act (CEQA) per section 15061(b)(3) of the CEQA guidelines.
4. DIRECT staff to schedule a workshop at the Board to consider long term regulatory options.
5. DIRECT the Director of the Department of Conservation and Development to file the Notice of Exemption (NOE) with the County Clerk.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **01/17/2017** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: January 17, 2017

David Twa, County Administrator and Clerk of the Board of Supervisors

Contact: Ruben Hernandez,
(925) 674-7785

By: June McHuen, Deputy

cc:

FISCAL IMPACT:

Adoption of the urgency ordinance will not have a fiscal impact. Depending on the complexity of preparation of permanent marijuana regulations, the cost of analyzing options and preparing permanent ordinance regarding the regulation of marijuana is estimated to be \$20,000 to \$30,000.

BACKGROUND:

In order to prevent the establishment of unregulated marijuana uses in the unincorporated areas of the County, and to provide the County with time to prepare permanent regulations addressing marijuana related land uses as authorized by approval of the Medical Marijuana Regulation and Safety Act (MMRSA) in 2015 and the Adult Use of Marijuana Act (Proposition 64) in November, the Department of Conservation and Development has worked with County Counsel to prepare Ordinance No. 2017-03 extending the previously adopted urgency interim ordinance prohibiting various activities related to the cultivation, delivery and sale of marijuana an additional year until January 30, 2018. The initial urgency interim ordinance (Ordinance No. 2016-04) was adopted by the Board on February 2, 2016 following approval of MMRSA and was extended an additional 10 months and 15 day with adoption of Ordinance No. 2016-10 on March 15, 2016. Pursuant to state law, the one-year extension currently proposed is the last extension possible and the urgency ordinance cannot be further extended beyond the expiration of this extension. The urgency interim ordinance may be repealed prior to it expiring upon the adoption of permanent ordinance(s) addressing marijuana land uses.

At the March 2016 hearing on the first extension of the urgency ordinance, the Board opted to postpone further work on permanent marijuana regulation until after the vote on Proposition 64 in November 2016. Upon the approval of Proposition 64 by California voters, the County, as well as most jurisdictions throughout the state, must begin the process of analyzing and addressing marijuana regulation in accordance with the provisions of Prop. 64. Like the County, most jurisdictions have adopted urgency ordinances prohibiting marijuana land uses in order to thoroughly analyze Prop. 64 and prepare permanent regulations. The issuance of State licenses for commercial marijuana activities is not expected to start until the end of this year or early next year. Therefore, any County ordinance regulating commercial marijuana that may be contemplated by the Board could not be implemented until the State licensing program has been initiated.

PROPOSITION 64 (ADULT USE OF MARIJUANA ACT)

On November 8, 2016 California voters approved Proposition 64 also known as the Adult Use of Marijuana Act (AUMA). Proposition 64 legalized the adult use of recreational marijuana and, among other things, established a comprehensive system to control and regulate the cultivation, distribution, transport, storage, manufacturing, processing and sale of nonmedical marijuana and marijuana products for adults 21 years of age and over.

Personal Use/Cultivation

Under AUMA local jurisdictions cannot ban the indoor cultivation for personal use of up to six nonmedical marijuana plants within a private residence by a person 21 years of age or older. AUMA does permit local jurisdictions the ability to adopt reasonable regulations on the indoor cultivation of marijuana for personal use. Reasonable regulations include requiring the marijuana to be grown in a secure area or requiring building permits for the installation of growing equipment. Local jurisdictions can also allow cultivation for personal use beyond the minimum allowance mandated by AUMA including allowing outdoor cultivation as well as limiting the number of plants to be grown indoors beyond the six allowed by AUMA.

Commercial Activities

Proposition 64 (AUMA) provides for local control of commercial nonmedical marijuana activities by allowing local jurisdictions the option of adopting permanent regulations prohibiting or regulating commercial nonmedical marijuana activities. According to AUMA, if permanent local regulations prohibiting or regulating commercial nonmedical marijuana are not adopted prior to the state licensing program taking effect, which is not anticipated to be ready until the end of 2017- early 2018, the state would at that time be the only licensing authority for commercial nonmedical marijuana activities. AUMA does not prohibit local jurisdictions from adopting ordinances regulating commercial marijuana activities after the state begins the

issuance of licenses.

INTERIM ORDINANCE

Upon adoption of the current urgency interim ordinance no commercial nonmedical marijuana activities, or cultivation or delivery medical marijuana, would be permitted in the unincorporated areas of the County excepting from this the provision in Proposition 64 allowing for the personal indoor cultivation of up to 6 plants within a private residence by a person 21 years or older. This extension of the urgency interim ordinance is the second, and last, extension allowed by state law and would expire on January 30, 2018.

LONG-TERM REGULATORY OPTIONS

Upon adoption of the attached urgency interim ordinance, the County will have 12-months to adopt permanent regulations prohibiting or regulating commercial marijuana activities, the cultivation of marijuana for personal use, and the delivery of marijuana. Below, staff has summarized the primary regulatory approaches that could be considered by the Board.

General Prohibition

With the exception of the provisions within Proposition 64 allowing for the personal indoor cultivation of up to 6 plants within a private residence by a person 21 years or older, the Board may choose to prohibit all forms of medical and nonmedical marijuana activities, including commercial cultivation, sale and delivery of marijuana, and the cultivation of marijuana for personal use beyond what is permitted by Proposition 64. If the Board were to pursue this path, all marijuana land use activities would be prohibited, with the exception of personal cultivation as provided for in Proposition 64, which is also subject to reasonable regulation.

Licensing of Commercial Activities

Under AUMA local jurisdictions may adopt permanent regulations addressing the cultivation, distribution, transport, storage, manufacturing, processing and sale of marijuana and marijuana products. The Board could choose to allow all or some of these activities and to impose limitations on those activities that are allowed. As stated previously, the state is developing a licensing program for commercial activities which will apply where such activities are not prohibited by local jurisdictions.

Options Related to Cultivation for Personal Use

AUMA permits the indoor cultivation of up to six marijuana plants within a private residence by persons over 21 years of age (six plants per residence regardless of the # of residents). AUMA prohibits local jurisdictions from placing unreasonable restrictions on this provision of the law. Local jurisdictions may adopt reasonable regulations on the indoor cultivation of marijuana for personal use such as requiring that the plants be grown in lockable room, or requiring a building permit for installation of growing systems. These are just two examples of the types of "reasonable" regulations that may be adopted. It is anticipated that additional reasonable regulations will be identified as time goes on and other jurisdictions begin adopting permanent regulations. AUMA also authorizes local jurisdictions the ability to adopt ordinances permitting personal cultivation in excess of what is permitted by AUMA including allowing personal cultivation of more than six plants, or allowing outdoor personal cultivation. Jurisdictions are permitted to regulate personal cultivation beyond what is authorized by AUMA as they see fit.

INTER-DEPARTMENTAL MEETING ON MARIJUANA REGULATION

On December 12, 2016 an Inter-Departmental Meeting was held at the Department of Conservation and Development to discuss the approval of Proposition 64. Staff from County Counsel, the District Attorney, County Administrators Office, the Treasurer-Tax Collectors Office, Office of the Sheriff, Health Services Department (Behavioral Health, Environmental Health and Public Health), the Agriculture Department, and the Department of Conservation and Development (DCD) were present at the meeting. Input was provided from all departments in attendance on issues related to the passing of Proposition 64 as well as input on the potential benefits and

negatives of marijuana regulation. The meeting provided helpful initial perspectives. DCD would recommend that DCD consult further with these departments as the County process continues to more fully capture their expertise and to allow them more time to assess the implications of the new law. DCD greatly appreciates the assistance provided by these departments. Table 1 below provides a summary of the preliminary input collected by DCD at the meeting.

Table 1: Pros and Cons of Marijuana Regulation

CATEGORY	PROS	CONS
Commercial Cultivation	<ul style="list-style-type: none"> -Tax Revenues -Reduction of Grey market -Benefits of General Regulation vs. Unregulated -Job and Economic Development Potential -Green Jobs -Local Production "Grow Local" 	<ul style="list-style-type: none"> -Complex Regulation -Safety and Security Considerations -Financial Restrictions/Considerations of Revenues -Odor, Visual and Safety Concerns for Large Scale Outdoor Cultivation -Energy Efficiency Considerations for Large Scale Indoor Cultivation
Retail Sales/Distribution	<ul style="list-style-type: none"> -"Farmstand" Sales -Local Dollars Spent Locally (taxes/economic development) -Improved local availability for a legal substance 	<ul style="list-style-type: none"> -Clients Spend Dollars in Other Jurisdictions -Conflicts with Tobacco Prevention Efforts -Increased Availability Detrimental to Public Health/Youth Influence
Delivery	<ul style="list-style-type: none"> -Service to elderly/ill (medical) -Track and trace -Reduction of driving under the influence 	<ul style="list-style-type: none"> -Safety of delivery drivers --Less able to enforce/monitor regulations (age limitations)
Expanded Personal Cultivation	<ul style="list-style-type: none"> -Owner approval requirement for rental units may have merit 	<ul style="list-style-type: none"> -Increased exposure -Increased visual and odor impacts
Manufacture/Processing	<ul style="list-style-type: none"> -Tax revenues/ economic development 	<ul style="list-style-type: none"> -Safety/Fire/Chemical

Based on the input provided at the inter-departmental meeting, it is clear that there are numerous benefits and drawbacks that may result from the regulation or prohibition of marijuana. During the process of preparing permanent regulations staff from the Department of Conservation and Development would ensure that every department that participated in the inter-departmental meeting has the opportunity to participate and comment on future regulation.

FINANCIAL IMPLICATIONS

While it appears that there are as many approaches to "revenue enhancement" from the regulation of Recreational Marijuana as there are Counties in California, the majority of Counties have taken a "wait and see" approach at least to the question of how to tax growers, distributors, or retail sales. It appears that the State is not likely to have regulations in place for several months or perhaps not until 2018. There also are tax disputes. While the medical marijuana law only levies a retail tax, Proposition 64 applies two taxes to legal recreational marijuana: a 15% tax on the retail price and a cultivation tax of \$9.25 per ounce for flowers and \$2.75 per ounce for leaves and stems trimmed from the plant. The cultivation tax is fiercely opposed by growers, who say they shouldn't be taxed on trimmings that might get tossed, never making it to market. Instead, they are advocating a tax when all marketable product is brought in for testing.

It is recommended that the Inter-Departmental Team continue to review the issues of which areas (growers, distributors, or retailers) if any, would be areas for the County to consider imposing a tax that would support the costs of any regulations that the County would impose.

NEXT STEPS

Since approval of Proposition 64, most jurisdictions have adopted similar urgency ordinances in order to take some time to properly weigh the impacts of the various forms of marijuana regulation or prohibition. Due to the complexity of the topic, the wide range of options available to the Board and value of incorporating the expertise and perspectives from a wide range of staff and stakeholders, staff recommends a workshop be scheduled as soon as possible before the Board (perhaps February or March). The purpose of the workshop would be to provide the Board with additional information on the policy options, enable a broad and thorough discussion, and provide staff with preliminary direction on the type of approach the Board wishes to take so that staff could then formulate drafts of regulations. DCD proposes to coordinate with other involved departments to prepare for and participate in the workshop

CONSEQUENCE OF NEGATIVE ACTION:

If Ordinance No. 2017-03 is not adopted, the current urgency interim ordinance would remain effective through January 30, 2017.

CHILDREN'S IMPACT STATEMENT:

Adoption of the urgency ordinance would ensure that unregulated marijuana land uses could not be established therefor protecting the establishment of such uses in sensitive areas such as near schools and playgrounds.

CLERK'S ADDENDUM

Speakers: Ashley Gargenquast, Tully & Weiss, Attorneys at Law; Patty Hoyt ADAPT San Ramon Valley; Eric Thomas, residence of Briones; Teagan Clive, resident of Rodeo. CLOSED the hearing; and ADOPTED Ordinance No. 2017-03, extending for a period of one year, an urgency interim ordinance prohibiting various activities related to the cultivation, delivery and sale of marijuana and marijuana products.

ATTACHMENTS

Ordinance No. 2017-03

AUMA FAQs

Ten Day Status Report