

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL

FROM: DAVID GUHIN, DIRECTOR OF PLANNING AND ECONOMIC DEVELOPMENT

SUBJECT: URGENCY ORDINANCE TO IMPOSE TEMPORARY MORATORIUM ON THE OUTDOOR CULTIVATION OF CANNABIS FOR EITHER PERSONAL OR COMMERCIAL PURPOSES

AGENDA ACTION: ORDINANCE

RECOMMENDATION

It is recommended by the Planning and Economic Development Department that the Council (1) adopt an urgency ordinance to impose a temporary moratorium on the outdoor cultivation of cannabis, for either personal or commercial purposes, to allow time for development of appropriate regulations, and (2) direct staff to return to the Council on May 2, 2017 to present, for Council's consideration, a written report describing the measures taken to alleviate the condition leading to the adoption of the urgency ordinance and to provide Council an opportunity to determine whether to extend the temporary moratorium on the outdoor cultivation of cannabis for an additional 10 months and 15 days to allow additional time for study and finalization of appropriate regulations.

EXECUTIVE SUMMARY

In an urban setting, the outdoor cultivation of cannabis can create substantial adverse impacts on surrounding neighbors, including noxious odors, security risks and environmental hazards. Council is aware that, in the past, outdoor cannabis cultivation for medical purposes has occurred -- and has caused significant concerns -- in a number of city neighborhoods. With the passage last November of Proposition 64, legalizing the non-medical use and cultivation of cannabis, the City anticipates increasing interest and heightened neighborhood concerns about outdoor cannabis cultivation.

As the start of a new outdoor growing season nears, the Planning and Economic Department recommends that the Council place a temporary moratorium on outdoor cultivation of cannabis to give the City adequate time to study and

ADOPTION OF URGENCY ORDINANCE TO IMPOSE CANNABIS TAXATION
PAGE 2 OF 6

consider its regulatory options. The proposed moratorium addresses *only* the outdoor cultivation of cannabis. The proposed moratorium will not affect current state and local allowances for the personal use or possession of cannabis, personal or commercial cultivation of cannabis indoors or in greenhouses (so called “mixed light”), or the manufacturing, distribution or dispensing of medical cannabis.

Currently, the City Code allows for outdoor cultivation of cannabis in two respects. First, the City Code does not address *personal* cannabis cultivation, and thus state law provisions apply within the City. State law permits any adult 21 years of age or over to cultivate up to six plants for personal use per single private residence as a matter of right, and absent local restrictions on outdoor cultivation, state law allows such personal use cultivation to occur outdoors. Second, the City Code permits *commercial* cultivation of medical cannabis within the City’s industrial zones, subject to issuance of a conditional use permit. Nothing in the current Code precludes a commercial cultivator from seeking a use permit to conduct cultivation outdoors for medical purposes. The Code does, however, preclude commercial cultivation (whether indoor or outdoor) for non-medicinal use.

State law allows local jurisdictions to regulate -- or prohibit entirely -- the outdoor cultivation of cannabis for personal and/or commercial purposes. The City has not yet exercised that regulatory authority, but it may wish to do so, particularly in light of expanding opportunities for cannabis cultivation under the new state law legalizing recreational cannabis use. The proposed moratorium would place a temporary ban on outdoor cannabis cultivation until the City is able to complete its study and evaluation of the issue.

Over the past year, the Council’s Medical Cannabis Policy Subcommittee has been working with staff and with cannabis industry stakeholders to develop comprehensive policies to regulate medical cannabis businesses within the city limits. The Subcommittee’s efforts have included consideration of issues surrounding cannabis cultivation. The Subcommittee has heard from residents complaining of overwhelming odors from adjacent outdoor cannabis cultivation and expressing concerns about possible risks of theft or other criminal activities, as well as degradation of the environment from pesticide use. While the Subcommittee has remained strongly supportive of permitting indoor and mixed light cultivation of medical cannabis, subject to appropriate regulation, the Subcommittee has recognized the potential adverse impacts of *outdoor* cannabis cultivation in an urban setting.

In light of those concerns, the Subcommittee has given direction to staff to incorporate into the draft comprehensive cannabis zoning amendment a ban on all outdoor growing of cannabis, whether for commercial or personal use. Under the draft ordinance, indoor and mixed light cultivation will remain allowable through a permit process for commercial use, and by right in accordance with

ADOPTION OF URGENCY ORDINANCE TO IMPOSE CANNABIS TAXATION
PAGE 3 OF 6

state law for personal use. The draft comprehensive ordinance will reflect the Subcommittee's direction as to outdoor cultivation. The public and City decision-makers will have an opportunity to further study and evaluate the matter when the draft is presented to the Subcommittee next month, and then through the course of public hearings before the Planning Commission and ultimately the City Council.

To best protect the public peace, health and safety while the City completes the evaluation and public processing of the draft comprehensive ordinance, a moratorium on outdoor cultivation of cannabis is proposed. The moratorium is an urgency ordinance under Government Code section 65858 that would go into effect immediately upon enactment and last for an initial period of 45 days. If, after the initial period of 45 days, additional time is necessary for the issue to be studied and regulations finalized, Council may adopt a subsequent urgency ordinance to maintain the moratorium in effect for up to an additional 10 months and 15 days. Under the City Charter, five affirmative votes are necessary to adopt an urgency ordinance.

BACKGROUND

Current state law and city ordinances permit cultivation of cannabis, both indoors and outdoors, within certain regulatory limits:

On November 5, 1996, the California State voters passed Proposition 215, known as the "Compassionate Use Act," legalizing medical use of cannabis. Proposition 215 and subsequent implementing regulations allow patients, primary caregivers and non-profit collectives to possess and cultivate cannabis for personal medical use.

In October 2015, the State enacted the Medical Cannabis Regulation and Safety Act (MCRSA), establishing a state licensing framework and authorizing local regulation of medical cannabis. MCRSA requires both state and local licensing for commercial cultivation of cannabis for medical use. MCRSA specified that individual patients may to cultivate up to 100 square feet of cannabis for their own personal use without a state license, and primary caregivers serving five or fewer patients may cultivate up to 500 square feet of cannabis without a state license.

On November 8, 2016, California voters passed Proposition 64, known as the "Adult Use of Marijuana Act." Proposition 64 legalizes recreational use of cannabis for adults 21 and older, and establishes a comprehensive state-wide commercial licensing and regulatory structure for non-medical cannabis businesses. Like the state laws regulating medical cannabis, Proposition 64 allows enactment of local regulations on the cannabis industry in addition to the regulations that will be imposed by the state.

ADOPTION OF URGENCY ORDINANCE TO IMPOSE CANNABIS TAXATION
PAGE 4 OF 6

Proposition 64 makes it legal for adults 21 and older to cultivate up to six cannabis plants per single private residence. Local jurisdictions may enact reasonable regulations on cultivation for personal use, whether indoor or outdoor. Local jurisdictions may, at their discretion, prohibit outdoor cultivation entirely, but they may not preclude indoor or mixed-light cultivation of up to six plants for personal use. Proposition 64 provides, however, that if a city completely prohibits outdoor cultivation for personal use, it will not be eligible for certain public safety grants from state taxes collected under Act. The Subcommittee did not believe that the loss of state excise tax grants would be significant, given that the City is seeking to impose its own excise tax on the cannabis industry to address funding concerns, and that the future availability of state grants is uncertain.

Currently, the City Code allows for outdoor cultivation of cannabis in two respects. First, the City Code does not address *personal* cannabis cultivation, and thus state law provisions apply within the City. State law permits any adult 21 years of age or over to cultivate up to six plants for personal use per single private residence as a matter of right, and absent local restrictions on outdoor cultivation, state law allows such personal use cultivation to occur outdoors. Second, the City Code permits *commercial* cultivation of medical cannabis within the City's industrial zones, subject to issuance of a conditional use permit. Nothing in the current Code precludes a commercial cultivator from seeking a use permit to conduct cultivation outdoors for medical purposes. The Code does, however, preclude commercial cultivation (whether indoor or outdoor) for non-medicinal use.

ANALYSIS

State law and the City Charter authorize adoption of an interim urgency ordinance, to take effect immediately upon passage, when deemed necessary by the Council to preserve the public peace, health or safety. In particular, Government Code section 65858 authorizes the Council to adopt, as an urgency measure, an interim ordinance to prohibit any uses that may be in conflict with a contemplated zoning proposal that is under consideration or study (such as the pending comprehensive cannabis policy), if the Council finds that there is a current and immediate threat to the public health, safety or welfare.

In light of the community's significant concerns about the potential adverse effects of outdoor cultivation of cannabis (including odor, safety and potential environmental degradation), in light of the fact that the City Code currently allows personal outdoor cultivation of cannabis pursuant to state law and allows application for outdoor commercial cultivation of medical cannabis with a use permit, and in light of the fact that a comprehensive medical cannabis is currently underway, staff is recommending the Council enact a temporary moratorium on all outdoor personal and commercial cannabis cultivation, medical or otherwise, to

ADOPTION OF URGENCY ORDINANCE TO IMPOSE CANNABIS TAXATION
PAGE 5 OF 6

allowing staff and decision-makers time to complete the study and finalization of appropriate regulation of outdoor cannabis cultivation. We are nearing the start of the outdoor growing season for cannabis and without such a moratorium in place, outdoor cannabis cultivation could occur that might soon be in conflict with adopted land use regulations, anticipated to be considered by the Council within the next several months.

If the City Council is to adopt a moratorium, it is advisable to have such in place by April 1, 2017, prior to the planting season for outdoor cultivation.

In addition, if the Council adopts the proposed temporary moratorium, Government Code section 65858 requires that the Council issue a written report, at least ten days prior to the expiration of that moratorium, describing the measures taken to alleviate the condition which led to the adoption of the urgency ordinance. Section 65858 allows the Council, after public notice, to extend the temporary moratorium for an additional 10 months and 15 days, if needed. The Department of Planning and Economic Development thus recommends that Council direct staff to return to the Council on May 2, 2017 to present, for Council's consideration, a written report describing the measures taken to alleviate the condition leading to the adoption of the urgency ordinance, and to provide Council an opportunity to consider whether to extend the temporary prohibition on the outdoor cultivation of cannabis for an additional 10 months and 15 days to allow additional time for study and finalization of appropriate regulations.

Again, it is important to note that the proposed moratorium will *only* affect the outdoor cultivation of cannabis. The proposed moratorium will not affect current state and local allowances for the personal use or possession of cannabis, personal or commercial cultivation of cannabis indoors or in mixed light, or the manufacturing, distribution or dispensing of medical cannabis.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

The Medical Cannabis Policy Subcommittee has held sixteen public meetings over the last year to provide input regarding shifting regulations, statewide legalization, drafting ordinances, interim policies and taxation approaches and rates. The Subcommittee reviewed and provided direction to staff regarding the limiting of outdoor cultivation that will be reflected in the draft comprehensive ordinance that will be released in April.

FISCAL IMPACT

All costs that the City will incur in connection with adopting, implementing and enforcing regulations for the cannabis industry in Santa Rosa, will be funded by the General Fund.

ADOPTION OF URGENCY ORDINANCE TO IMPOSE CANNABIS TAXATION
PAGE 6 OF 6

On March 7th 2017, the City Council approved a ballot measure for June 6th, 2017 to generate revenue to support these ongoing costs which are anticipated to be at least \$1,000,000 annually. The proposed ballot measure, if approved, would provide resources to the General Fund to cover these additional costs.

ENVIRONMENTAL IMPACT

Adoption of this urgency ordinance is not a project under the California Environmental Quality Act, title 14, section 15078 (b) of the California Code of Regulations (CEQA Guidelines) because it is general policy making and/or an administrative activity of the government that will not result in direct or indirect physical changes to the environment.

ATTACHMENTS

- Ordinance

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