

CITY OF SANTA ROSA  
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL

FROM: DAVID GUHIN, DIRECTOR OF PLANNING AND ECONOMIC DEVELOPMENT

SUBJECT: URGENCY ORDINANCE TO EXTEND TEMPORARY MORATORIUM ON THE OUTDOOR CULTIVATION OF CANNABIS FOR COMMERCIAL PURPOSES

AGENDA ACTION: ORDINANCE

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RECOMMENDATION

It is recommended by the Planning and Economic Development Department that the Council adopt an urgency ordinance to extend a temporary moratorium on the outdoor commercial cultivation of cannabis to allow time for development of appropriate regulations.

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EXECUTIVE SUMMARY

On May 23, 2017, the City Council approved a temporary moratorium on outdoor commercial cultivation of cannabis within the city limits. The temporary moratorium was set in place through an urgency ordinance adopted pursuant to Government Code section 65858. The urgency ordinance went into effect immediately and is effective for a period of 45 days. The 45-day period is set to end on July 7, 2017.

The draft comprehensive cannabis ordinance is being finalized by staff and is expected to be presented to the Medical Cannabis Policy Subcommittee later this month. Following a review with the Subcommittee, the draft will go through public hearings before the Planning Commission and ultimately the City Council in late 2017.

To best protect the public peace, health and safety while the City completes the evaluation and public processing of the draft comprehensive ordinance, Department of Planning and Economic Development recommends that the Council extend the temporary moratorium on outdoor commercial cultivation of cannabis. Due to expiration of the moratorium on July 7, 2017, additional time is needed to complete the public process of reviewing the comprehensive policy

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and finalizing the regulations. Under Government Code section 65858, Council may adopt a subsequent ordinance to extend the temporary moratorium for up to an additional 10 months and 15 days allowing time to complete the process. 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 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.

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 the Act. The Medical Cannabis Policy Subcommittee considered this restriction, but did not believe that the loss of state excise tax grants would be significant, given that the City is imposing 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

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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

Section 8 of the City Charter authorizes 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 addition, 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.

On May 23, 2017, the City Council approved an urgency ordinance establishing a temporary moratorium on outdoor commercial cultivation of cannabis within the city limits. The urgency ordinance was adopted pursuant to Government Code section 65858 and went into effect immediately. In accordance with section 65858, that initial moratorium was effective for a period of only 45 days. The 45-day period is set to end on July 7, 2017

Government Code section 65858 requires that the Council issue a written report, at least ten days prior to the expiration of the moratorium, describing the measures taken to alleviate the condition which led to the adoption of the urgency ordinance.

During the last 45 days, staff has been finalizing the draft comprehensive cannabis ordinance, which is expected to be presented to the Medical Cannabis Policy Subcommittee later this month. Following a review with the Subcommittee, the draft will go through public hearings before the Planning Commission and ultimately the City Council in late 2017.

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 extend the temporary moratorium to allow additional time for study, public review and finalization of appropriate regulations.

It is important to note that the proposed moratorium will *only* affect the outdoor commercial cultivation of cannabis. The proposed moratorium will not affect current state and local allowances for the personal use or possession of cannabis,

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personal cultivation of cannabis outdoors, indoors or in mixed light, or the commercial indoor and mixed light cultivation, manufacturing, distribution or dispensing of medical cannabis.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

The Medical Cannabis Policy Subcommittee held a special evening meeting on April 17, 2017 to discuss the potential outdoor cultivation ban. In addition, the 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 is expected to be released in late June. On May 23, 2017, the City Council approved a temporary ordinance establishing a moratorium on outdoor commercial cultivation of cannabis within the city limits.

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. On June 6<sup>th</sup>, 2017 the voters approved Measure D that will generate revenue to support these ongoing costs which are anticipated to be at least \$1,000,000 annually.

ENVIRONMENTAL IMPACT

Adoption of this urgency ordinance is not a project under the California Environmental Quality Act (CEQA), and the CEQA Guidelines, title 14, section 15078 (b) of the California Code of Regulations 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

- Attachment 1 - Correspondence
- Ordinance

CONTACT

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