



DATE: November 1, 2016

CATEGORY: Public Hearing

DEPT.: Community Development, Police, and City Attorney's Office

TITLE: **Urgency Ordinance for Temporary Moratorium Prohibiting Outdoor Cultivation of Marijuana Within the City of Mountain View**

RECOMMENDATION

1. Adopt An Interim Urgency Ordinance Prohibiting the Outdoor Cultivation of Marijuana Within the City of Mountain View, to be read in title only, further reading waived, four-fifths vote required, becoming effective immediately.
2. Authorize staff to draft a report as required by Government Code Section 65858(d) which must be completed at least 10 days prior to the expiration of the interim ordinance which must describe the measures taken to alleviate the condition which led to the adoption of the ordinance.

BACKGROUND

On October 4, 2016, a majority of the City Council requested staff draft an ordinance regarding the outdoor cultivation of marijuana in light of the measure on the November 8, 2016 ballot to avoid or minimize a regulatory gap while developing regulations. Staff believes an urgency ordinance is the best way to implement the direction provided by Council.

Known as the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA), Proposition 64 would legalize the nonmedical use of marijuana by persons 21 years of age and over. The AUMA creates a licensing and regulatory system parallel to the Medical Marijuana Regulation and Safety Act (MMRSA) licensing nonmedical marijuana land uses. California already regulates the medical use of marijuana through the MMRSA.

The AUMA would make it legal for persons 21 years of age or older to: (1) smoke or ingest marijuana or marijuana products; (2) possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older, without any compensation, 28.5

grams of marijuana, or 8 grams of concentrated marijuana, including as contained in marijuana products; and (3) possess, plant, cultivate, harvest, dry, or process up to six living marijuana plants for personal use. The Council expressed concern that if AUMA passes, outdoor cultivation of marijuana could be legal as of November 9, 2016, and the City does not have regulations in place.

Local Regulatory Authority

Local authority to reasonably regulate land uses, such as commercial nonmedical marijuana businesses, is preserved under the AUMA. However, it places some limits on the authority of local jurisdictions.

Local jurisdiction may not:

- Prohibit persons over the age of 21 to possess, process, transport, purchase, or give away to persons 21 years of age or older not more than 28.5 grams of nonconcentrated marijuana and not more than 8 grams of concentrated marijuana, including marijuana products.
- Prevent the use of public roads for the delivery of marijuana.
- Prohibit personal indoor cultivation.

Local jurisdiction may:

- Adopt business or land use regulations prohibiting or regulating commercial nonmedical marijuana businesses.
- Adopt regulations banning or regulating personal outdoor cultivation.
- Adopt regulations “reasonably regulating” personal indoor cultivation.

AUMA Regulatory Time Frame

At the present time, staff is only focused on the outdoor cultivation aspect of the AUMA because, if passed, it will be immediately effective under State law. As to other marijuana-related land uses, the State must still develop regulatory and licensing infrastructure, thus allowing cities more time to study and develop regulations.

State licensing and enforcement responsibilities would be distributed among three agencies: (1) the Department of Consumer Affairs, which will license transportation, storage, distribution, and sales; (2) the Department of Food and Agriculture, which will license commercial cultivation; and (3) the Department of Public Health, which license for manufacturing and testing facilities. Each of these State authorities must begin issuing licenses by January 1, 2018. It is widely understood State licensing infrastructure will not be in place until late 2017, thus allowing cities more time to study those aspects of regulation. Local jurisdictions would be able to establish standards, requirements, and regulations regarding health and safety, environmental protection, testing, security, food safety, and worker protections that exceed State standards.

Outdoor Cultivation of Marijuana

If the AUMA passes, it would become effective on November 9, 2016, and personal cultivation of up to six marijuana plants would immediately be legal. While cities may not ban personal indoor cultivation at a private residence, the AUMA permits local governments to “reasonably regulate” personal cultivation and prohibit both personal and commercial outdoor cultivation. Local bans of outdoor cultivation of marijuana may continue until such time as the California Attorney General determines that the use of nonmedical marijuana is lawful in the State of California under Federal law.

Proposed Interim Urgency Ordinance

Staff proposes an urgency ordinance placing a moratorium on the outdoor cultivation of marijuana as an interim step. An urgency ordinance takes effect immediately. Adopting an urgency ordinance prohibiting marijuana cultivation prior to November 9, 2016 would preserve the status quo as outdoor cultivation is currently illegal because it is not expressly permitted by the City Code. The AUMA would require cities to expressly prohibit outdoor cultivation rather than relying on the concept of permissive zoning. The approach recommended by staff preserves the City’s options regarding regulation of outdoor cultivation and provides time for the City to study the impacts of outdoor cultivation in Mountain View and consider regulations that address the concerns of this community while ensuring there is not a gap in the regulatory scheme.

ANALYSIS

The proposed ordinance addresses the limited issue of personal and commercial outdoor cultivation. The AUMA authorizes cities to prohibit both personal and commercial outdoor cultivation. The City intends to adopt an interim urgency

ordinance in order to allow sufficient time to study both uses and develop appropriate regulations.

Study Issues Related to Outdoor Cultivation

In order to adopt an urgency ordinance pursuant to Government Code Section 65858, certain findings are required. Specifically, the ordinance must state why it is needed to address a current and immediate threat to public health, safety, or welfare (Attachment 1). The outdoor cultivation of marijuana creates a number of potential negative effects on the health, safety, and welfare of the community.

Staff recommends Council adopt the proposed urgency ordinance to allow staff to study potential impacts of outdoor marijuana cultivation. In particular, staff would study:

- The impact of outdoor cultivation in each zoning district;
- Potential nuisance created by odors from plants associated with outdoor marijuana cultivation;
- Security concerns and potential increased criminal activity related to outdoor cultivation;
- Appropriate security measures for outdoor cultivation;
- The impact of common outdoor cultivation practices to the City's natural habitats;
- The impact of increased water use due to outdoor cultivation;
- Potential impacts of outdoor cultivation on neighboring properties and sensitive uses; and
- Potential inconsistencies with General Plan policies.

The proposed study issues are expected to take longer to study than the 45 days an interim urgency ordinance is effective. However, State law sets forth a procedure for extending urgency ordinances. An interim urgency ordinance may be extended by either 10 months and 15 days (establishing a 1-year moratorium); or 22 months and 15 days (establishing a 2-year moratorium). If the Council adopts the urgency ordinance, and the AUMA is approved by voters, staff intends to return in December 2016 to

extend the urgency ordinance for the maximum 2-year extension authorized by Government Code Section 65858(b). The extension is the limit of the ordinance and the City Council may enact regulations within that time frame and terminate the interim regulations. Staff expects to bring back recommendations for a permanent ordinance by the end of 2017.

The City does not face the same urgency to act with regard to other aspects of marijuana regulation promulgated by the AUMA because the State needs considerable time to develop its regulatory infrastructure. State licensing will not be in place until late 2017. The City may always consider regulation of both medical and nonmedical marijuana uses in the future. If the AUMA is approved by the voters, Council could direct staff to develop regulations prior to January 1, 2018. This would be a significant work item impacting the Police Department, the Community Development Department, and the City Attorney's Office and could be placed on the priority list by Council next year if desired.

The Community Development Department will work with the City Attorney's Office to prepare accessible information to the public regarding allowable and prohibited marijuana-related issues per State regulations and the City Code.

Zoning Ordinance Amendment

Staff has determined the most appropriate location for outdoor cultivation regulations to exist is the Zoning Ordinance's provisions governing allowable land uses (Chapter 36, Division 2).

A four-fifths vote (equivalent to six votes) is required to pass an urgency ordinance. If passed, the ordinance takes effect immediately and remains in effect for no more than 45 days.

In addition to the ordinance, staff is seeking authorization from Council to draft a report as required by Government Code Section 65858(d) which must be completed at least 10 days prior to the expiration of the interim ordinance which must describe the measures taken to alleviate the condition which led to the adoption of the ordinance.

The adoption of the urgency ordinance is not subject to the California Environmental Quality Act ("CEQA"). Pursuant to CEQA Guidelines Section 15060(c)(2), the activity will not result in a direct or reasonably foreseeable indirect change in the environment; and pursuant to CEQA Guidelines Section 15060(c)(3), the activity is not a project as

defined in CEQA Guidelines Section 15378 because it has no potential for resulting in physical change to the environment, directly or indirectly.

A copy of the full text of the AUMA (Attachment 2) and the League of California Cities' FAQ document regarding the AUMA (Attachment 3) are attached to this report for reference.

FISCAL IMPACT – None, other than staff time.

ALTERNATIVES

Council could choose not to adopt the ordinance and outdoor cultivation of marijuana would then be permitted on November 9, 2016, if the AUMA is adopted by the voters on November 8, 2016.

PUBLIC NOTICING

Notice was published in a newspaper of general circulation in accordance with Government Code 65090 at least 10 days before this hearing in order for consideration of an extension term of the interim urgency ordinance authorized by Government Code Section 65858(b). Agenda posting and use of social media.

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KC-CB/7/CAM/011-11-01-16CR-E

- Attachments: 1. Interim Urgency Ordinance
2. Proposition 64 (AUMA)
3. League of California Cities' FAQ