



Report Pursuant to Government Code Section 65858(d)

Interim Urgency Ordinance Prohibiting the Outdoor Cultivation of Marijuana with the City of Mountain View

Date Issued: December 2, 2016

BACKGROUND

On November 1, 2016, the City Council adopted an interim urgency ordinance prohibiting outdoor cultivation of marijuana in the City. The ordinance was adopted in response to the possibility of Proposition 64, also known as the Adult Use of Marijuana Act (AUMA) being approved by the voters on November 8, 2016. The AUMA was approved by the voters and legalized personal marijuana cultivation as November 9, 2016. Adoption of the interim urgency ordinance allows the City time to further study the impacts of personal outdoor cultivation to allow for development of more comprehensive regulations if desired.

Pursuant to Government Code Section 65858(d), the City Council must issue a written report describing measures taken to alleviate conditions which led to the adoption of the ordinance at least 10 days prior to the expiration of the initial 45-day term of the interim urgency ordinance. The initial term of the November 1, 2016 interim urgency ordinance is 45 days. The ordinance may be extended for either 10 months and 15 days, with the option of an additional 1-year extension, or 22 months and 15 days. In other words, an urgency ordinance may be extended so that its full duration is either 1 or 2 years. Any extension requires a four-fifths vote (6 votes). The content of this report is intended to inform the Council of issues related to outdoor marijuana cultivation identified by staff and staff's progress on these issues to date, in order for the Council to consider whether to extend the interim urgency ordinance.

The City Council expressed interest in specific information such as: ascertaining Mountain View voter data regarding the AUMA to determine the general level of support for legalizing recreational marijuana; reviewing surrounding cities' outdoor cultivation ordinances; evaluating crime and security issues; studying odor and water usage impacts; and evaluating land use and neighborhood impacts of outdoor cultivation.

THE AUMA

The most recent data available from the Santa Clara Registrar of Voters office indicates the AUMA passed Statewide by an approximate count of 58 percent in favor and 42 percent against with all precincts reporting. Mountain View precinct voter statistics will not be available until the Santa Clara County Registrar of Voters formally certifies the results of the election on December 8, 2016. On November 17, 2016, the *Mountain View Voice* reported approximately 68 percent of the total ballots cast in the City voted in favor of the AUMA, and 32 percent voted against, and every City precinct held at least a simple majority in favor of the AUMA. The *Mountain View Voice* relied on precinct information from the Santa Clara County Registrar of Voters as the source for Mountain View voter statistics.

STUDY ITEMS

Government Code Section 65858(d) is not specific as to the form or contents of the report other than it must describe measures taken to alleviate conditions which led to the adoption of the initial interim urgency ordinance. The conditions in each jurisdiction are specific to it, and the legislative body of each jurisdiction may specify areas of study it is interested in to better understand the conditions which necessitated the ordinance and to inform future development of comprehensive regulations. In this case, the City Council was interested in particular study items as follows:

Crime & Security

Marijuana plants are very valuable, with estimates ranging from \$3,000 to \$5,000 per mature plant. The value of a plant is based on how much marijuana the plant can produce. As with any valuable commodity, marijuana plants can provide an attractive target for theft.

From 2012 to present, the Mountain View Police Department (MVPD) arrested suspects during eight drug lab investigations. These lab investigations involved seven Butane Honey Oil (BHO) extraction labs and one dimethyltryptamine (DMT) lab. BHO labs are closely associated to marijuana cultivation as the leftover marijuana plant cuttings are primarily used in BHO labs. From 2005 through 2011, MVPD did not encounter any illicit drug labs in the City.

From 2005 to present, MVPD compiled the following summary of additional marijuana-related investigations:

- Three (3) of 8 homicide cases involved marijuana.
- Two (2) of 22 attempted homicide cases involved marijuana.

- Eleven (11) of 98 robberies involved marijuana.
- Three (3) of 5 home invasion robberies involved marijuana.

These investigations involved dried marijuana in the form it is used as a drug, not in plant form.

Nuisance: Odor

Marijuana plants, as they begin to flower and for a period of two months or more, produce a strong skunk-like odor, offensive to many people and detectable beyond property boundaries, which can impact neighboring properties if grown outdoors. The smell of cannabis flower buds is produced by chemicals known as terpenes or terpenoids. A number of California cities report receiving complaints regarding strong odors from outdoor grows, and some cities have in response adopted ordinances banning outdoor cultivation, classifying the activity as a public nuisance. The larger the size of the outdoor grows, the more intense the odors are.

The City does not keep statistics on odor complaints in the City. However, most marijuana odor complaints are related to smoking marijuana, not from growing the plant. If the ordinance is extended, staff will research how other cities have regulated odors produced by outdoor marijuana cultivation.

Water Usage

Water consumption information for outdoor marijuana plants is difficult to ascertain. Some studies staff reviewed indicate generally mature marijuana plants require more water than some fruit and vegetable plants, and less than others. In terms of a specific water usage amounts, some studies estimate up to six gallons per day are needed to sustain an adult plant. These usage estimates are consistent with some common garden high-water-use plants. The City does not currently regulate landscapes or water use at private residences. As such, staff determined that it would be inconsistent to regulate a specific plant such as marijuana based on water use.

Environmental Impacts

Cultivation of Marijuana plants can involve the use of pesticides, herbicides, and rodenticides which may have negative effects on the environment and wildlife. Some research indicates larger outdoor marijuana cultivation sites contain excessive quantities of these chemicals due to growers taking extra precautions to protect valuable marijuana plants. Staff requires more time to fully research this issue to determine the extent of potential impacts.

Zoning District and Neighborhood Impacts

Staff is currently studying the possible impacts of outdoor marijuana cultivation in the various zoning districts. The AUMA allows the outdoor cultivation of marijuana for personal use at a private residence:

The living plants and any marijuana produced by the plants in excess of 28.5 grams are kept within the person's private residence, or upon the grounds of that private residence (e.g., in an outdoor garden area), are in a locked space, and are not visible by normal unaided vision from a public place.

The Mountain View Zoning Ordinance permits private residences in all the residential districts (R1, R2, R3, and R4) as well as in many of the City's Precise Plans. If the ordinance is extended, staff will continue to study the potential impact of odor, visibility, and crime caused by outdoor cultivation in each zoning district and potential security measures to address any such concerns. The study will include analysis of "public places" in different types of residential developments.

Surrounding Jurisdictions

Staff researched the ordinances of other cities and towns in Santa Clara County to determine the prevalence of marijuana cultivation regulations regionally. The following table summarizes these ordinances:

CITY/TOWN	ORDINANCE BANNING OUTDOOR CULTIVATION	NOTES
City of Campbell	Yes	Urgency Ordinance adopted 11/16
City of Gilroy	Yes	Non-Urgency Ordinance (permanent ban) adopted 1/16
City of Los Altos	Yes	Urgency Ordinance adopted 1/16 and extended
City of San Jose	Yes	Urgency Ordinance adopted 11/16 (prohibits nonmedical cultivation only)
City of Saratoga	Yes	Urgency Ordinance adopted 11/16

CITY/TOWN	ORDINANCE BANNING OUTDOOR CULTIVATION	NOTES
City of Monte Sereno	Yes	Non-Urgency Ordinance (permanent ban) adopted 1/16
City of Cupertino	Yes	Urgency Ordinance adopted 10/16
City of Palo Alto	Yes	Non-Urgency Ordinance (permanent ban) introduced 10/16
Town of Los Gatos	Yes	Non-Urgency Ordinance (permanent ban) adopted 2/16
City of Milpitas	Yes	Urgency Ordinance adopted 3/16 and extended
City of Sunnyvale	Yes	Non-Urgency Ordinance (permanent ban) adopted 1/16
City of Morgan Hill	Yes	Non-Urgency Ordinance (permanent ban) adopted 1/16
City of Santa Clara	No	
Town of Los Altos Hills	Yes	Non-Urgency Ordinance (permanent ban) adopted 6/16

Public Education

Public education is an important part of regulating. Staff prepared a handout outlining the current laws regarding marijuana-related activities which will be available in the Community Development Department office and on the City website.

CONCLUSION

Staff has initiated but has not completed its review of the above identified study items. Additional time will be required to make recommendations on regulating outdoor cultivation of marijuana. Staff anticipates study of the issues will be complete by the end of 2017. On December 13, 2016, the City Council will consider extending the interim urgency ordinance.

This report was issued by the City Council in accordance with Government Code Section 65858(d). A copy of the report was also made available for public review at the City Clerk's office, 500 Castro Street, Mountain View, California, 94041, 10 days prior to the expiration of the initial 45-day term of the interim urgency ordinance.

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