



DATE: December 13, 2016

CATEGORY: Unfinished Business

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

TITLE: **Extension of an Interim Urgency
Ordinance Prohibiting Outdoor
Cultivation of Marijuana in the City
of Mountain View**

RECOMMENDATION

Adopt an Ordinance Extending the Duration of an Interim Urgency Ordinance Prohibiting the Outdoor Cultivation of Marijuana Within the City of Mountain View for 10 Months and 15 Days, to be read in title only, further reading waived, four-fifths vote required, becoming effective immediately (Attachment 1 to the Council report).

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 possible approval of Proposition 64, also known as the Adult Use of Marijuana Act (AUMA), by the voters on November 8, 2016. While cities may not ban personal indoor cultivation at a private residence, the AUMA permits local governments to reasonably regulate personal indoor 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.

The passage of the AUMA immediately legalized personal marijuana cultivation. Had the City Council not adopted the Interim Urgency Ordinance prohibiting outdoor cultivation prior to the passage of the AUMA, a regulatory gap would have occurred allowing the activity in the City. The City Council adopted the urgency ordinance to allow time for staff to study issues related to outdoor cultivation and provide information to the Council for their consideration when deciding whether to regulate outdoor cultivation. A number of other cities in the region also adopted interim urgency ordinances prohibiting outdoor cultivation prior to the passage of the AUMA. In fact, 6 of the 15 cities in Santa Clara County adopted urgency ordinances and 8

adopted regular ordinances related to recreational marijuana (one city, the City of Santa Clara, has not adopted any ordinance).

Presently, staff is only focused on the outdoor cultivation aspect of the AUMA because on November 9, 2016, it became legal to grow six plants at each private residence unless otherwise regulated by the city. As to other marijuana-related land uses, the Council has not provided direction to staff. In terms of a timeline, the State must still develop regulatory and licensing infrastructure, which is not likely to occur before December 2017; thus, allowing the City more time to study and develop regulations regarding the commercial distribution of marijuana, should the Council be interested in doing so.

The initial term of the November 1, 2016 Interim Urgency Ordinance is 45 days. It will expire on December 16, 2016, unless extended. 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. Staff is recommending an extension for 10 months and 15 days, which would result in 1 year duration of the Interim Urgency Ordinance. It would expire on October 31, 2017 unless extended for an additional 1-year period by Council.

Per Government Code Section 65858(d), the City Council is required to issue a report (Report) 10 days prior to the expiration of the initial 45-day term, describing measures taken to alleviate conditions which led to the adoption of the ordinance. On November 1, 2016, in conjunction with adopting the Interim Urgency Ordinance, the City Council authorized staff to complete the Report.

The Report was issued on December 2, 2016, and was made available to the public on the City's website and the City Clerk's Office (Attachment 2). Several study areas related to outdoor marijuana cultivation are addressed in the Report per Council direction: crime and security, odor, water usage, neighborhood impacts, environmental impacts, and a survey of regional cities' outdoor cultivation regulations. The Report is intended to inform the Council and public of issues related to outdoor marijuana cultivation identified by staff, and summarize staff's progress on these issues to date, in order for the Council to consider whether to extend the Interim Urgency Ordinance or consider any potential regulations regarding outdoor cultivation.

ANALYSIS

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. The initial interim urgency ordinance contained findings related to potential negative effects of outdoor cultivation of marijuana in the areas of crime and security; odors constituting a nuisance; neighborhood impacts; water usage; and impacts of chemicals common to outdoor marijuana cultivation on sensitive habitats, uses, and populations.

With the exception of the water usage findings,¹ the potential impacts which pose a threat to public health, safety, or welfare still exist, and will require more study in order to develop regulations to address these impacts. For example, although a cursory survey has been performed of other cities' approaches to regulating outdoor cultivation, a more detailed review is still under way. Staff will more closely study the permanent regulatory approach of cities similar in size, composition, and density to Mountain View to evaluate if those regulatory approaches may be suitable for Mountain View. In addition, more research and study of the potential negative effects of outdoor marijuana cultivation must be performed.

Because the necessary additional research and study will not be completed prior to the expiration of the 45-day initial term of the interim urgency ordinance, staff is recommending extending the ordinance for an additional 10 months and 15 days, to October 31, 2017, as authorized by Government Code 65858. This option effectively results in a one-year temporary moratorium on outdoor marijuana cultivation in the City, allowing time to fully study the impacts of outdoor cultivation and develop a regulatory approach which could range from a simple regulation such as sight and distance requirements or permanent ban to a more detailed regulatory scheme. Staff does not believe a 22 month and 15 day (two year) extension of the ordinance is necessary, but that option is available to Council if it wishes. There are also larger issues related to extending the ordinance which may be impacted by Council's potential exploration of regulating other aspects of marijuana-related land uses in the City, including medical marijuana.

The extension of the interim 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.

¹ Staff researched water usage issues and found mature marijuana plants require more water than some fruit and vegetable plants, and less than others. Staff determined it would be inconsistent to regulate a specific plant such as marijuana, and not others, based on water use. The water usage finding was therefore removed from the extended interim urgency ordinance.

FISCAL IMPACT – None, other than staff time.

ALTERNATIVES

1. Adopt an extension of the Interim Urgency Ordinance for an additional term of 22 months and 15 days.
2. Do not adopt an extension of the Interim Urgency Ordinance and let the initial ordinance expire on December 16, 2016.
3. Adopt an extension of the Interim Urgency Ordinance, direct staff to continue to study the identified issues and regulatory approaches of other cities, but defer consideration of a regulatory scheme until the City Council has had the opportunity to discuss the other aspects of AUMA and potential City regulations.
4. Provide other direction to staff.

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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Attachments: 1. Extension of Interim Urgency Ordinance
2. Report Pursuant to Government Code 65858(d)