



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: P&D
Department No.: 053
For Agenda Of: 2/16/10
Placement: Departmental
Estimated Tme: 20 minutes
Continued Item: From 1/19/10
If Yes, date from:
Vote Required: 4/5 vote

TO: Board of Supervisors
FROM: Planning and Development: Glenn Russell, Ph.D., Director 568-2085
County Counsel: Dennis Marshall, County Counsel 568-2950
Contact Info: Dianne Black, Development Services Director 568-2086
Rachel Van Mullem, Deputy County Counsel 568-2950
SUBJECT: Extension of the Urgency Ordinance for a Moratorium on Approval of Medical Marijuana Dispensaries for a Period of Ten Months and Fifteen Days

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: NA

Other Concurrence:

As to form: NA

Recommended Actions:

That the Board of Supervisors:

- 1) Issue this report pursuant to Government Code section 65858 (d);
- 2) Adopt the attached extension of the urgency ordinance for a moratorium on approval of Medical Marijuana Dispensaries for 10 months and 15 days (Attachment A);
- 3) Determine that the urgency ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060(c)(2) and 15060(c)(3) and direct staff to file the attached Notice of Exemption (Attachment B) with the County Clerk.

Background/Analysis

On January 19, 2010, your Board of Supervisors adopted an Urgency Ordinance establishing a moratorium on approval of Medical Marijuana Dispensaries for a 45 day period. This urgency ordinance was adopted to allow the County time to study options for regulation of MMDs and establish those regulations. Ten days prior to expiration of the urgency ordinance (February 23, 2010),

Government Code section 65858 (d) requires that your Board issue a written report describing the measures taken to alleviate the condition which led to adoption of the ordinance. This Board letter shall constitute the required report. Your Board may by four-fifths vote extend the interim ordinance for 10 months and 15 days. Staff previously indicated that the ordinance could be extended once for a period of 22 months and 15 days. However, due to the method of notice and publishing that occurred for the initial ordinance, this extension is limited to 10 months and 15 days. An additional extension for 12 months will be available if the required findings can be made.

Staff recommends extending the urgency ordinance for 10 months and 15 days. This additional time will allow Planning and Development, the Sheriff and County Counsel staff to examine alternatives and provide an evaluation of the regulating or banning MMDs. Further, the additional time will allow Planning and Development staff time to study methods to address existing MMDs, including the following:

- Allow existing legal MMDs to continue to operate as legal non-conforming;
- Eliminate the existing MMDs by payment of just compensation;
- Require removal of existing MMDs without compensation after a reasonable amortization period; or
- Determine that the existing MMDs are a nuisance and provide for immediate elimination.

The court of appeal decision in *Qualified Patients Association v. City of Anaheim* (G040077, app. pending, argued September 23, 2009.) on the City's Anaheim's ordinance may provide some guidance on the defensibility of the final option. A decision is expected by spring/summer 2010, but the case may be appealed to the California Supreme Court.

Since the January 19, 2010 adoption of the 45-day moratorium, Planning and Development Department has included the review of regulatory approaches of MMDs in the 2010-2011 Annual Work Program and Departmental budget. The scope of work to develop proposed ordinances includes:

1. Research other jurisdictions regulatory approaches to MMDs.
2. Conduct public outreach on potential approaches.
3. Prepare draft ordinance to regulate or ban MMDs.
4. Conduct required CEQA analysis.
5. Present draft ordinances to the Planning Commission and Board of Supervisors for recommendation and adoption.
6. Submit to and process amendments with California Coastal Commission (for changes to the Coastal Zoning Ordinance).

The County Planning Commission reviewed the proposed work program on February 3, 2010 and recommended funding of the MMD ordinance project. The Montecito Planning Commission will review the draft work program on February 24, 2010, with Board consideration of the work program scheduled in March 2010 and departmental budget in June 2010.

Environmental Review:

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The draft moratorium ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060(c)(2) [activity will not result in a direct or reasonably foreseeable indirect physical change in the environment] and 15060(c)(3) [activity is not a project as defined in Section 15378]. The draft ordinance has no potential for resulting in a physical change to the environment directly or indirectly as it prevents change to the environment pending completion of the County's contemplated research and study.

Attachments:

- A. Urgency Ordinance for a Moratorium on Medical Marijuana Dispensaries
- B. Notice of Exemption

Fiscal and Facilities Impacts:

Budgeted in the FY 2009-2010 Planning and Development adopted budget, under the Administration Division, page D-300. Future ordinance development will be included in the proposed budget for FY 2010-2011.

Instructions:

Please notice the attached ordinance pursuant to Government Code section 65090 at least ten days prior to the hearing.

Authored by:

Dianne Black, Development Services Director, P&D
Rachel Van Mullem, Deputy County Counsel