



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:** Planning & Development  
**Department No.:** 053  
**For Agenda Of:** Set Hearing on  
March 21, 2017, for  
April 4, 2017  
**Placement:** Departmental  
**Estimated Time:** 1.5 hours on April 4,  
2017  
**Continued Item:**  
**If Yes, date from:**  
**Vote Required:** 4/5 Vote

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**TO:** Board of Supervisors

**FROM:** Department Glenn S. Russell, Ph.D., Director, Planning and Development,  
Director(s) (805) 568-2085

Contact Info: Daniel T. Klemann, Deputy Director, Long Range Planning  
Division, (805) 568-2072

**SUBJECT:** Nonmedical Marijuana Interim Urgency Ordinance

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**County Counsel Concurrence**

As to form: Yes

**Other Concurrence:** N/A

As to form: N/A

**Auditor-Controller Concurrence**

As to form: N/A

**Recommended Actions:**

That the Board of Supervisors should consider the following actions:

On March 21, 2017:

Set a hearing for April 4, 2017, to consider recommendations regarding an interim urgency ordinance for nonmedical marijuana, as follows:

- a) Adopt the Nonmedical Marijuana Interim Urgency Ordinance imposing a temporary moratorium on any activities associated with the Adult Use of Marijuana Act (AUMA), including the cultivation, distribution, transportation, storage, manufacturing, processing, and selling of nonmedical marijuana, nonmedical marijuana products, and industrial hemp, and on outdoor cultivation (Case No. 17ORD-00000-00004) (Attachment 1).
- b) Determine that the Nonmedical Marijuana Interim Urgency Ordinance is not subject to the requirements of CEQA, pursuant to CEQA Guidelines sections 15061(b)(3) as it has no potential for causing a significant impact on the environment, and 15308 as a regulatory action that will protect the environment (Attachment 2).
- c) Direct staff to return to the Board of Supervisors on May 2, 2017, with a written report pursuant to Government Code section 65858(d) and consideration of an extension of the Nonmedical Marijuana Interim Urgency Ordinance for up to 22 months and 15 days pursuant to Government Code section 65858(b).

### **Summary:**

At the February 14, 2017 hearing, after receiving the staff report and public testimony on the changes to state law regarding the AUMA, the Board of Supervisors (Board) directed staff to return with an interim urgency ordinance to temporarily prohibit cultivation and certain other activities associated with nonmedical marijuana. The purpose of the interim urgency ordinance is to protect public health, safety, and welfare while the county considers comprehensive regulations, along with appropriate environmental review, for marijuana activities in the unincorporated area of Santa Barbara County. In addition, as state licenses for nonmedical marijuana activities are to be issued by January 1, 2018, this ordinance allows the County to retain local control and develop regulations which will continue to protect the public health, safety, and welfare of residents of the County. At the February 14, 2017, hearing, the Board also established a short-term, advisory ad-hoc subcommittee to assist in the development of the comprehensive marijuana regulations for consideration by the full Board.

### **Background**

#### *Legal Framework:*

Under the federal Controlled Substances Act, the manufacture, distribution, or possession of marijuana is a criminal offense. Marijuana is a Schedule I drug, meaning the federal government considers it to be a drug that “has a high potential for abuse,” “has no currently accepted medical use,” and “[t]here is a lack of accepted safety for use of the drug or other substance under medical supervision” (21 U.S.C. section 812(b)(1)). California law is in conflict with federal law.

In 1996, California voters passed Proposition 215, the Compassionate Use Act (CUA). The purpose of the CUA was to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician” (Health & Safety Code section 11362.5(b)(1)(A)). In addition, patients and primary caregivers would not be subject to criminal prosecution or sanction (Ibid section 11362.5(b)(1)(B)). Two additional medical marijuana laws were enacted by the legislature in 2003, the Medical Marijuana

Program Act, and in 2016, the Medical Cannabis Regulation and Safety Act. In response the County adopted ordinances banning medical marijuana dispensaries and banning medical marijuana cultivation, with limited exceptions, in the unincorporated areas of the County.

On November 8, 2016, the voters of the State of California approved Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (also known as the Adult Use of Marijuana Act or AUMA). The AUMA establishes a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacturing, distribution, testing, and sale of nonmedical marijuana, including marijuana products, for use by adults 21 years and older, and to tax the growth and retail sale of marijuana. It also sets forth provisions for the cultivation of industrial hemp. The AUMA requires a state license to engage in commercial nonmedical marijuana activity and requires the state to start issuing licenses on January 1, 2018. Nonmedical marijuana operators will have to conform to all state regulations and the issuance of these licenses will also require the local jurisdiction's approval, if the County adopts regulations in accordance with Business & Professions Code section 26200.

The AUMA does not limit the authority of a local governing body to adopt and enforce local ordinances regulating or completely prohibiting state-licensed marijuana operations. Moreover, local jurisdictions may regulate or ban all outdoor cultivation and may impose reasonable regulations on personal cultivation (Health and Safety Code section 11362.2(3)(b)). Personal indoor cultivation of six plants is still permitted during the term of this interim urgency ordinance.

Urgency Ordinance:

Government Code section 65858 allows your Board to adopt an interim urgency ordinance to protect public safety, health, and welfare while studying and developing regulations. Unregulated nonmedical marijuana activity, particularly cultivation and sale, could result in (1) displacement of existing agricultural production activities, (2) impacts to natural resources, and (3) create land use conflicts. Therefore, enacting this urgency ordinance will temporarily prohibit all approvals of, and activities related to, the AUMA, while providing the county time to analyze these issues and create and adopt an appropriate regulatory framework.

Government Code section 65858 also provides that an interim ordinance and any extensions cannot exceed a total of two years and contain legislative findings that the approval of permits or other entitlements would pose a current and immediate threat to the public health, safety, or welfare. An interim ordinance requires a four-fifths vote for adoption. If your Board adopts the attached interim urgency ordinance today, the ordinance will be in effect for 45 days, expiring on May 19, 2017. At least 10 days prior to expiration, Government Code section 65858(d) requires that your Board issue a written report describing the measures taken to alleviate the conditions which led to adoption of the ordinance. Because this 45-day ordinance would be adopted following notice pursuant to Government Code section 65090, and after a public hearing, Government Code section 65858(b) allows your Board, by a four-fifths vote, to extend the interim ordinance for 22 months and 15 days. Staff recommends that your Board direct staff to return to your Board on May 2, 2017, to issue the written report pursuant to Government Code section 65858(d) and, at the same hearing, consider an extension of the interim ordinance.

Environmental Review:

The interim urgency ordinance is exempt from CEQA pursuant to CEQA Guidelines sections:

- 15061(b)(3), as it has no potential for causing a significant impact on the environment; and

- 15308, as it is an action by a regulatory agency that will protect the environment.

The interim urgency ordinance has no potential for resulting in a physical change to the environment directly or indirectly, as it prohibits any development projects related to nonmedical marijuana pending completion of the County's research and study.

### **Fiscal Analysis:**

The urgency ordinance was not included in Planning and Development's Fiscal Year (FY) 2016-2017 budget, since the legislation was adopted in November of 2016. It is estimated that the urgency ordinance will require approximately \$10,000 in FY 2016-2017 in project costs. This cost can be covered using funds remaining in the medical marijuana budget. Staffing and budget allocations for work on the long-term marijuana ordinance amendments are included in the proposed Long Range Planning Division work program for FY 2017-2018, including adjustments to the current work program to accommodate work anticipated to be necessary through June 30, 2017.

The proposed ordinance prohibits most marijuana cultivation and other marijuana activities. There is no reliable method to estimate the level of code enforcement activity resulting from the adoption of this ordinance. However, since the January 19, 2016, approval of Medical Marijuana Regulation (Santa Barbara County Code, Chapter 35, Article X), Planning and Development enforcement staff time has been approximately 1.0 Full-Time Equivalent (FTE). This does not include staff resources from other County departments. Given the broad interest in cultivation, it is expected that a high level of code enforcement activity will continue. Staff cannot predict how many violations may occur as a result of the proposed ordinance. Therefore, staff cannot quantify the fiscal, staffing, and facilities impacts of enforcing the proposed ordinance.

### **Special Instructions:**

Planning and Development will fulfill noticing requirements. The Clerk of the Board shall provide a copy of the executed Ordinance amendments and Board Minute Order(s) to Planning and Development, Attn.: David Villalobos.

### **Attachments:**

1. Nonmedical Marijuana Interim Urgency Ordinance
2. Notice of Exemption

### **Authored by:**

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