



PISMO BEACH COUNCIL AGENDA REPORT

Agenda Item #7.C

SUBJECT/TITLE:

URGENCY ORDINANCE PROHIBITING MANUFACTURING, PROCESSING, LABORATORY TESTING, LABELING, STORING AND WHOLESALE AND RETAIL DISTRIBUTION OF CANNABIS

RECOMMENDATION:

Adopt an Urgency **Ordinance** prohibiting outdoor cultivation, manufacturing, processing, laboratory testing, labeling, storing and wholesale and retail distribution of cannabis and declaring the same to be an urgency measure to take effect immediately.

BACKGROUND:

Chapter 9.06 of the Pismo Beach Municipal Code prohibits the establishment or operation of medical marijuana dispensaries within the City. A medical marijuana dispensary is defined as “any facility in a single fixed location where a primary caregiver makes available, sells, transmits, gives or otherwise provides medical marijuana, or cannabis, for medical purposes.”

Proposition 64, the “Control, Regulate, and Tax Adult Use of Marijuana Initiative” was approved by California voters in the November 8, 2016 election. This initiative legalizes recreational (i.e. non-medicinal) marijuana use for those 21 years of age and over, and establishes a Bureau of Marijuana Control to regulate and license the marijuana industry.

Certain portions of Proposition 64 took effect immediately after Election Day. Specifically, recreational use by adults and cultivation in private residences is now permitted. This has immediate implications for the City, including requiring revisions to the City’s municipal code to bring it into conformance with law, and potential local regulation and taxation of the cannabis industry not previously contemplated by the City.

The attached Urgency Ordinance (**Attachment 1**) prohibits the manufacturing, processing, laboratory testing, labeling, storing and wholesale and retail distribution of cannabis in the City. The ordinance is intended allow the City Council time to more comprehensively study the issues surrounding medical and recreational cannabis use, and to give staff direction toward the development of a comprehensive regulatory scheme. While such operations are not anticipated to begin until a comprehensive state licensing scheme is in effect late in 2017, staff does not recommend waiting until such time to begin the process of addressing its potential impacts on the City.

Government Code Section 65858 authorizes the City Council to adopt a moratorium as an Urgency Ordinance to preserve the public health, safety or welfare. The Urgency Ordinance establishing a moratorium requires a four-fifths (4/5) vote for adoption. A temporary moratorium would prohibit the manufacturing, processing, laboratory testing, labeling, storing and wholesale and retail distribution of cannabis products in the City.

If adopted, the Urgency Ordinance expires 45 days after adoption, or December 30, 2016 if adopted tonight. At a future date, after notice and a public hearing, the Council may extend the ordinance for 10 months and 15 days and subsequently extend the ordinance for an additional year. Any extension requires a four-fifths vote for adoption. Not more than two extensions may be adopted. Ten days prior to the expiration of the interim ordinance or any extension, the City Council must issue a report describing the measures taken to alleviate the condition which led to the adoption of the ordinance.

Staff anticipates returning to Council at a subsequent meeting with a regular ordinance to take the place of the urgency ordinance that similarly prohibits “commercial” marijuana activities.

FISCAL IMPACT:

There is no immediate fiscal impact anticipated from the adoption of this urgency ordinance.

ALTERNATIVES:

1. Do not adopt urgency ordinance. This alternative is not recommended, as the City would have no regulatory mechanisms in place until such time that it is able to adopt a regular ordinance regulating the potential impacts of the adoption of Proposition 64.

ATTACHMENTS:

1. Proposed Urgency Ordinance

Prepared by: Dave Fleishman, City Attorney

Meeting Date: November 15, 2016

City Manager Approval:



URGENCY ORDINANCE NO. O-2016-XXX

**AN INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PISMO
BEACH, CALIFORNIA PROHIBITING OUTDOOR CULTIVATION,
MANUFACTURING, PROCESSING, LABORATORY TESTING, LABELING,
STORING AND WHOLESALE AND RETAIL DISTRIBUTION OF CANNABIS AND
DECLARING THE SAME TO BE AN URGENCY MEASURE TO TAKE EFFECT
IMMEDIATELY**

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code Section 11362.5 and entitled “The Compassionate Use Act of 1996” or “CUA”); and

WHEREAS, the intent of Proposition 215 was to enable critically ill Californians who are in need of marijuana for medical purposes to use it without fear of criminal prosecution. Proposition 215 further provided that “nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.” The ballot arguments supporting Proposition 215 expressly acknowledged that “Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere”; and

WHEREAS, in 2004, the Legislature enacted Senate Bill 420 (referred to as the “Medical Marijuana Program” or “MMP”) to clarify the scope of Proposition 215 and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the MMP to expressly recognize the authority of cities to “[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances; and

WHEREAS, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land...”; and

WHEREAS, notwithstanding the changes in California law, the Federal Controlled Substances Act still classifies marijuana as a Schedule 1 Drug, defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for medical purposes,

although there is recent case law that raises a question as to whether the Federal Government may enforce the Act in those states where medical marijuana is allowed; and

WHEREAS, Proposition 64, the “Control, Regulate, and Tax Adult Use of Marijuana Initiative” was approved by California voters in the November 8, 2016 election. This initiative legalizes recreational (i.e. non-medicinal) marijuana use for those 21 years of age and over, and establishes a Bureau of Marijuana Control to regulate and license the marijuana industry; and

WHEREAS, certain portions of Proposition 64 took effect immediately after Election Day. Specifically, recreational use by adults and cultivation in private residences is now permitted. This has immediate implications for the City, including requiring revisions to the City’s municipal code to bring it into conformance with law, and potential local regulation and taxation of the cannabis industry not previously contemplated by the City; and

WHEREAS, the City Council finds there is a current and immediate threat to the health, safety, and welfare of City residents arising from the risks associated with the outdoor cultivation, manufacture, processing, laboratory testing, labeling, storing and wholesale and retail distribution of cannabis, whether medical or recreational. Citywide prohibition of all activities, from cultivation to point of sale, is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells and indoor electrical fire hazards that may result from such activities; and

WHEREAS, several California cities have reported negative impacts of marijuana processing and distribution uses, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and attempted robbery, and fire hazards; and

WHEREAS, medical marijuana dispensaries are currently prohibited under the City’s municipal code. The City Council desires to enact this interim urgency ordinance to expressly clarify that outdoor cultivation, manufacture, processing, laboratory testing, labeling, storing and wholesale and retail distribution of cannabis, whether medical or recreational, are also prohibited in all zones throughout the City; and

WHEREAS, the immediate ban of all commercial or industrial cannabis activities will allow the City to investigate and research the safety and options of regulation and taxation; and

WHEREAS, the immediate ban of all commercial or industrial cannabis activities will enable the City to develop a comprehensive approach to cannabis, including analysis of the provisions of Proposition 64.

NOW, THEREFORE, the City Council of the City of Pismo Beach does ordain as follows:

SECTION 1.

The foregoing recitals are adopted by the City Council as findings in support of this interim ordinance.

SECTION 2.

The following regulation is hereby imposed. This regulation shall prevail over any conflicting provisions of the Pismo Beach Municipal Code or the other ordinances, resolutions, policies and regulations of the City of Pismo Beach:

Except as otherwise permitted by California law, any use involving cannabis is prohibited in every zoning district in the City, including but not limited to outdoor cultivation, manufacture, processing, laboratory testing, labeling, storing and wholesale and retail distribution.

SECTION 3.

Based upon the findings set forth in Section 1, above, this is an interim urgency ordinance adopted pursuant to Government Code Section 65858. This ordinance shall therefore take effect immediately upon adoption. This ordinance shall remain in effect for forty-five (45) days from the date of adoption; that is, until December 30, 2016. The amendments to the City's Local Coastal Plan and zoning ordinance created by this urgency ordinance do not require certification from the California Coastal Commission. The Coastal Act does not deprive local governments from exercising their statutory power to enforce urgency ordinances, nor require prior review and approval of such ordinances by the Coastal Commission, provided that the ordinances are not in conflict with the Coastal Act. Certification by the Coastal Commission is required only for amendments that authorize a use other than that designated as a permitted use in the LCP. *Conway v. City of Imperial Beach* (1997) 52 Cal.App.4th 78.

SECTION 4.

This ordinance shall not be interpreted in any manner to conflict with controlling provisions of state or federal law, including, without limitation, the Constitution of the State of California. If any section, subsection or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. If this ordinance, or any section, subsection or clause of this ordinance shall be deemed unconstitutional or invalid as applied to a particular appeal, the validity of this ordinance and its sections, subsections and clauses in regard to other contracts shall not be affected.

SECTION 5.

The City Clerk shall certify to the passage and adoption of this Ordinance, shall enter the same in the book of original ordinances of the City and shall make a minute of the

passage and adoption thereof in the records of the meeting at which the same is passed and adopted.

Before the expiration of fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause the same to be posted in three public places within the City of Pismo Beach, to wit: 1) City Hall, 760 Mattie Road, Pismo Beach, 2) U.S. Post Office, Shell Beach Road, Pismo Beach, 3) U.S. Post Office, Crest Drive, Pismo Beach.

ADOPTED at a regular meeting of the City Council held this 15th day of November, 2016, on motion of Council Member _____, seconded by Council Member _____, and on the following roll call vote, to wit:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**
- RECUSED:**

Approved:

Attest:

Shelly Higginbotham, Mayor

Erica Inderlied, City Clerk

APPROVED AS TO FORM:

David M. Fleishman, City Attorney