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STAFF REPORT

TO: Board of Supervisors

FROM: Greg Gillott, County Counsel
Grace Pak, Deputy County Counsel

DATE: February 6, 2018

RE: Extension of Urgency Ordinance No. 1767 Prohibiting Commercial Nonmedical Marijuana Activity and Cultivation of Nonmedical Marijuana

RECOMMENDATION:

Conduct a public hearing and adopt by a 4/5 affirmative vote, a final one-year extension of the attached urgency ordinance prohibiting commercial nonmedical marijuana activities and cultivation of nonmedical marijuana within unincorporated Amador County ("County") to the fullest extent permitted by state law.

BACKGROUND:

On February 28, 2017, the Board of Supervisors adopted Interim Urgency Ordinance No. 1767 following the passage of Proposition 64 in November 2016, and later extended the ordinance for an additional ten months and fifteen days. The urgency ordinance is set to expire on February 26, 2018 unless extended by the Board for an additional one year period.

On November 8, 2016, California voters approved Proposition 64, the Adult Use of Marijuana Act ("AUMA"), which legalized recreational use of marijuana for adults 21 years or older. Under current state law, adults may use, possess, process, transport, purchase, obtain or give away not more than 28.5 grams of cannabis or eight grams of concentrated cannabis. Additionally, adults 21 years or older may personally cultivate no more than six plants within a single private residence. Local governments have the ability to enact and enforce "reasonable regulations", but cannot impose outright bans on the indoor personal use cultivation. Local

Staff Report

TO: Board of Supervisors
DATE: February 6, 2018
PAGE: 2
RE: Extension of Urgency Ordinance No. 1767

jurisdictions may, however, ban outdoor cultivation of nonmedical marijuana and nonmedical commercial marijuana activities.

On June 27, 2017, California enacted SB 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”) to harmonize the recreational and medicinal marijuana regulatory schemes into one framework. Previously, the Medical Cannabis Regulation and Safety Act (“MCRSA”) enacted in June 2016 created a regulatory and licensing structure for medical cannabis only, but upon passage of Proposition 64, MAUCRSA was adopted and largely relied on the regulatory structure outlined in Proposition 64. Among its non-substantive changes, MAURSA changed references in the law from “marijuana” to “cannabis”. Substantively, MAUCRSA sets forth a licensing scheme with respect to both commercial medicinal and recreational cannabis, but still allows local jurisdictions to retain control to completely ban or prohibit commercial cultivation and related activities.

On September 16, 2017, the Legislature passed AB 133, a trailer bill, amending and making technical changes to certain provisions in MAUCRSA. On November 16, 2017, the California Department of Food & Agriculture released its emergency regulations regarding cannabis cultivation. On November 16, 2017, the Department of Public Health’s Manufactured Cannabis Safety Branch (“MCSB”) released its emergency regulations governing the standards and licensing procedures for manufacturing of commercial cannabis products. On December 7, 2017, the Bureau of Cannabis Control (“BCC”) released its emergency regulations regarding distributors, dispensaries, testing laboratories, and microbusinesses.

On January 1, 2018, the cannabis licensing authorities began issuing temporary licenses. Temporary licenses are only available for commercial cannabis cultivation or other activities upon verification from the local jurisdiction that commercial activities are approved and/or authorized. No state licenses shall be issued to applicants in local jurisdiction where such activities are banned.

On January 4, 2018, United States Attorney General Sessions (“Sessions Memo”) issued a Memorandum to all United States Attorneys regarding marijuana enforcement. The Sessions Memo rescinded previous memoranda issued by Deputy Attorney Generals Ogden and Cole under prior administrations related to federal marijuana enforcement guidelines, which had advised that marijuana enforcement under the federal Controlled Substances Act for states that had authorized use of medical or recreational marijuana was generally not an efficient use of resources if those states had strong and effective regulatory and enforcement systems.

Staff Report

TO: Board of Supervisors
DATE: February 6, 2018
PAGE: 3
RE: Extension of Urgency Ordinance No. 1767

EXISTING COUNTY ORDINANCES:

On January 26, 2016, this Board amended Amador County Code Chapter 19.84 regarding medical marijuana dispensaries and Chapter 19.86 regarding medical marijuana cultivation and related activities in light of the Medical Marijuana Regulation and Safety Act (“MMRSA”) which became effective on January 1, 2016. Specifically, this Board adopted changes including the prohibition of indoor and outdoor activities related to marijuana, changed the limited exception allowing cultivation of medical marijuana to a maximum area of 100 square feet not to exceed 12 mature or immature plants, and included additional conditions for cultivation of medical marijuana.

Any violations of the County’s ordinance are declared to be a public nuisance and may be enforced by Code Enforcement under Amador County Code Chapter 2.06.

DISCUSSION:

The proposed one-year extension of the interim urgency ordinances would continue to prohibit commercial or industrial uses involving marijuana including manufacturing, processing, laboratory testing, storing, wholesale distribution, and retail sales and deliveries. It would also continue to prohibit outdoor and indoor planting, cultivating, harvesting, drying, curing, or processing marijuana plants for nonmedical use except as authorized under state law.

At the February 14, 2017 Board of Supervisors’ meeting, the Board discussed the changes posed by Proposition 64 and provided direction to staff regarding possible updates to the County Code. At that time, the Board directed staff to prepare an urgency ordinance prohibiting recreational marijuana cultivation and commercial activities pending the establishment of permanent local regulations. The Board also appointed Supervisors Axe and Oneto to an Ad Hoc Committee to assist in defining and drafting language to be included in a permanent ordinance.

On February 28, 2017, the Board of Supervisors adopted a temporary urgency ordinance following a duly-noticed public hearing, which prohibited commercial nonmedical marijuana activities and outdoor cultivation of nonmedical marijuana for 45 days. On April 11, 2017, the Board of Supervisors extended the temporary urgency ordinance for an additional ten months and fifteen days. The urgency ordinance will expire on February 26, 2018 unless extended for an additional one year.

Since extending the interim urgency ordinance in April 2017, the Ad Hoc Committee held a meeting in August 2017 regarding marijuana related activities and the potential effects of those activities in the County. Generally, the direction of the Ad Hoc Committee was to prepare a

Staff Report

TO: Board of Supervisors
DATE: February 6, 2018
PAGE: 4
RE: Extension of Urgency Ordinance No. 1767

permanent ordinance that was generally consistent with the status quo of the County's regulations (including the urgency ordinance). Staff has also continued to monitor developments regarding cannabis legislation and regulations.

Based on the rapidly changing legal and regulatory landscape, further time is needed for County staff to review and assess the implications of these developments and to develop a permanent, comprehensive County ordinance addressing both commercial medical and nonmedical marijuana that provides an efficient and cost-effective mechanism for enforcement of violations.

FISCAL IMPACT:

None.

CONCLUSION

Adopt a final, one-year extension of the interim urgency ordinance to allow the County sufficient time to study and consider local regulation of marijuana activity pursuant to the revised urgency findings.

Attachments: Urgency Ordinance Extension
Urgency Ordinance No. 1767
Notice of Public Hearing
Proof of Publication

cc: CAO
Amador County Sheriff's Office
District Attorney
Planning Department
Code Enforcement
Agriculture Department
Environmental Health
Public Health