



CITY OF COMMERCE AGENDA REPORT

TO: Mayor and City Council **Item No.** _____

FROM: Norma Copado, Assistant City Attorney

SUBJECT: PUBLIC HEARING – Extension of Interim Urgency Ordinance No. 691
Imposing a Citywide Moratorium on the Establishment or Operation of
Non-Medical Marijuana Businesses and Cultivation

MEETING DATE: January 16, 2018

Recommendations:

That the City Council adopt the attached Interim Urgency Ordinance declaring and imposing a ten (10) month and fifteen (15) day extension on the existing citywide moratorium on the establishment and operation of commercial cannabis activities authorized by the Adult Use of Marijuana Act.

Fiscal Impact:

The recommended City Council action does not have a fiscal impact.

Background:

On November 8, 2016, California voters approved Proposition 64 enacting the Adult Use of Marijuana Act (“AUMA”). The AUMA legalized various non-medical marijuana activities for persons 21 years of age or older, including but not limited to non-medical marijuana businesses, dispensaries, retailers, delivery services, use, possession, transportation, manufacture, testing, indoor and outdoor cultivation, and other activities as detailed and outlined in the AUMA (collectively, “Non-Medical Marijuana Uses”).

Senate Bill 94 became law on June 27, 2017, which merged California’s licensing scheme relative to medical marijuana activities and businesses, with the licensing scheme enacted by the AUMA. What was formerly known as the AUMA has now been renamed to the “Medicinal and Adult-Use Cannabis Regulation and Safety Act” (hereinafter, “MAUCRSA” or “AUMA”).

AB 133 became law on September 18, 2017, which, amongst other changes, removes the requirement that different commercial license types of cannabis businesses (e.g., cultivators, manufacturers, retailers, etc.) maintain “separate and distinct” premises. By removing that requirement, a single physical location can now hold multiple state licenses, subject to applicable local ordinances.

Government Code Sections 36937 and 65858 authorize the adoption of an urgency ordinance to protect the public health, safety, and welfare and to prohibit certain land uses that may conflict with land use regulations that the City Council is considering or intends to study within a reasonable time.

On December 5, 2017, the City Council adopted Interim Urgency Ordinance No. 691 temporarily prohibiting all Non-Medical Marijuana Uses authorized by the AUMA. The purpose of the moratorium was to allow staff time to: study the negative direct and secondary impacts associated with Non-Medical Marijuana; study and determine whether such uses should be allowed in the City, and if so appropriate regulations; and to study and determine the potential locations, zoning districts, or development standards that should be applied to Non-Medical Marijuana Uses.

Interim Ordinance No. 691 is scheduled to expire on January 19, 2018, unless the City Council takes action to extend it.

Analysis:

In accordance with Government Code section 65858, the City Council may extend Ordinance No. 691 twice: the first time for ten (10) months and fifteen (15) days, and the second for an additional (1) year. Before each extension, the City Council must hold a public hearing, and approve a public report describing the actions taken by the City to alleviate the conditions necessitating the moratorium.

On January 9, 2018, City Council was presented for its review and consideration the requisite public report describing actions taken by the City since adoption of Urgency Ordinance No. 691. The attached Ordinance proposes enacting the first extension of the moratorium. The proposed Ordinance is similar to Interim Urgency Ordinance No. 691 approved by the City Council on December 5, 2017.

In the opinion of staff, an extension of the moratorium on Non-Medical Marijuana Activities is appropriate given the following:

- The circumstances justifying the City Council's adoption of Interim Urgency Ordinance No. 691 continue to exist.
- Some or all Non-Medical Marijuana Uses may be associated with negative direct and secondary impacts on the health, safety and welfare of City residents; especially if unregulated.
- The AUMA was approved by California voters on November 8, 2016. Senate Bill 94 became law on June 27, 2017, which merged California's licensing scheme relative to medical marijuana activities and businesses, with the licensing scheme enacted by the AUMA. What was formerly known as the AUMA has now been renamed to

the “Medicinal and Adult-Use Cannabis Regulation and Safety Act” (hereinafter, “MAUCRSA” or “AUMA”).

- AB 133 became law on September 18, 2017 which, amongst other changes, removes the requirement that different commercial license types of cannabis businesses (e.g., cultivators, manufacturers, retailers, etc.) maintain “separate and distinct” premises. By removing that requirement, a single physical location can now hold multiple state licenses, subject to applicable local ordinances.
- At this time it is unclear how efficiently the AUMA will be administered by the State, and whether the statutory scheme will adequately address the local health, safety, and welfare concerns of local residents.
- The City has not yet studied the potential health, safety, and welfare impacts of recreational marijuana on local residents, businesses, and the community, and the City has not yet made a determination as to the locations, zoning districts, or development standards that should be applied to Non-Medical Marijuana Uses to preserve such interests, or whether a complete ban on such uses is necessary.
- The City has not yet studied the desirability or compatibility of Non-Medical Marijuana Activities in context of citizen needs and other land uses in the City, and extensive surveying needs to be completed in order so the City Council may make an informed decision as to whether to permanently prohibit such uses, or authorize them subject to reasonable regulation.
- The possession, use, transportation, distribution, sale, and other marijuana-related activities, for medical or recreational purposes, remain illegal under the federal Controlled Substances Act. Marijuana is classified as a Schedule 1 substance; a designation reserved for substances with a high propensity for abuse and addiction, and lacking any recognized medical benefits. The federal Drug Enforcement Agency has considered reclassifying marijuana, and has altered its enforcement policy; particularly enforcement in states – such as California – which have legalized its use for medical and non-medical purposes. However, as recent as January 4, 2018, the United States Department of Justice issued a memorandum on federal marijuana enforcement policy. In this regard, Attorney General Jeff Sessions directs all U.S. Attorneys to enforce the laws enacted by Congress and to follow well-established principles when pursuing prosecutions related to marijuana activities. This most recent federal policy mandate requires City staff to monitor federal enforcement activities of cannabis activity and uses legalized at the state and local levels.

Adoption of the Ordinance extending the moratorium requires a 4/5 vote of the City Council. If approved, the Ordinance would expire no later than December 4, 2018 (unless rescinded earlier by the City Council), at which point the City Council will have the option of

extending the moratorium for an additional year (if necessary), or adopting permanent regulations concerning Non-Medical Marijuana Uses.

Environmental:

Extension of Interim Ordinance No. 691 is a discretionary action subject to the California Environmental Quality Act (“CEQA”). The action is exempt pursuant to Sections 15060(c)(2) and 15060(c)(3) of the State Guidelines for Implementation of the CEQA. Sections 15060(c)(2) and 15060(c)(3) pertain to activities that will not result in a direct or reasonably foreseeable indirect change to the environment and that are not defined as a project under Section 15378. This Ordinance has no potential for resulting in physical change to the environment directly or indirectly in that it prevents change to the environment pending the completion of the contemplated research and studies.

- Enclosure:
- 1) Report reviewed and considered on January 9, 2018 by City Council on actions taken to alleviate the conditions giving rise to Interim Urgency Ordinance No. 691; and
 - 2) Ordinance extending the moratorium on Non-Medical Marijuana Activities for ten (10) months and fifteen (15) days.