

COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

February 7, 2017

Brian C. Crawford
DIRECTOR

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Marin County Board of Supervisors
3501 Civic Center Drive
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Re: Proposed Ordinance Prohibiting Nonmedical Cannabis Business Activities
in Unincorporated Area of Marin County

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Dear Supervisors:

RECOMMENDATION: Conduct a merit hearing and adopt an ordinance prohibiting nonmedical cannabis business activities in unincorporated area of Marin County

SUMMARY: On November 8, 2016, California voters enacted Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, also known as the Adult Use of Marijuana Act (AUMA). This initiative legalizes nonmedical use of marijuana (cannabis) by adults 21 years and older and established a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical cannabis, including cannabis products, for use by adults 21 years and older, and to tax the commercial growth and retail sale of cannabis. Under AUMA, the State will issue licenses to businesses authorizing them to cultivate, distribute, transport, store, manufacture, process, and sell nonmedical cannabis and cannabis products for adults 21 years of age and older with such licenses to be issued by January 1, 2018. The AUMA also allows persons 21 years or older to possess, transport, purchase, obtain, or give away limited amounts of cannabis to persons 21 years or older, allows planting up to six cannabis plants per person, and allows smoking or ingestion of cannabis products.

More importantly, the AUMA retains the ability for counties and cities to adopt and enforce local ordinances to regulate nonmedical cannabis businesses licensed under the AUMA, including prohibition, and to adopt "reasonable regulations" around indoor cultivation, as well as the possession of the cannabis produced by the plants. The state will not approve an application for a State license if that approval will conflict with any local ordinance or regulation adopted in accordance with the AUMA. If the Board adopts the proposed ordinance, staff will notify the state agencies (Department of Consumer Affairs, Department of Food and Agriculture, and the Department of Public Health) with licensing authority under AUMA of the County's ban, a practice recommended by the California League of Cities.

The County is currently implementing its medical cannabis dispensary licensing program by reviewing applications for up to four licenses that may be issued by the County Administrator. As this program is the County's first attempt to implement the Medical Cannabis Regulation and Safety Act (MCRSA),

information gained from regulating medical cannabis could be very useful in informing decisions regarding the AUMA. In the meantime, unregulated cannabis activity, particularly cultivation and sale, could result in: (1) displacement of existing agricultural production activities; (2) impacts to natural resources; and (3) land use conflicts.

Unlike MCRSA, the AUMA does not have protective language that defers to permissive zoning that prohibits uses not explicitly allowed as a permitted or conditional use. In contrast, the AUMA anticipates that cities and counties will adopt ordinances explicitly prohibiting and/or regulating nonmedical cannabis businesses, and explicitly designates nonmedical cannabis as an agricultural product – thus if the county’s permissive zoning allows agricultural uses, the county may be precluded from arguing that cultivation of nonmedical cannabis is prohibited. With exception to indoor cultivation for personal nonmedical use that is identified under the AUMA, the prohibition will apply to all other cultivation (indoors and outdoors) of nonmedical cannabis. Therefore, adoption of the proposed prohibition on all nonmedical cannabis businesses that are otherwise subject to a state license will allow the County to prohibit nonmedical cannabis businesses from taking place in the interim, and to consider various policy implications of potentially authorizing and regulating these businesses before any state licenses can be granted. Your Board conducted a first reading of the proposed ordinance on January 31, 2017.

FISCAL/STAFFING IMPACT: Administration of the ordinance may impact the CDA’s Code Enforcement program and enforcement resources from the Sheriff’s Department. There may be additional costs borne to the County Administrator’s Office, County Counsel, and other departments should the Board wish to develop regulations governing nonmedical cannabis businesses under the AUMA. Staff will monitor these impacts and work with the County Administrator to inform any potential budget considerations.

REVIEWED BY: (These boxes must be checked)

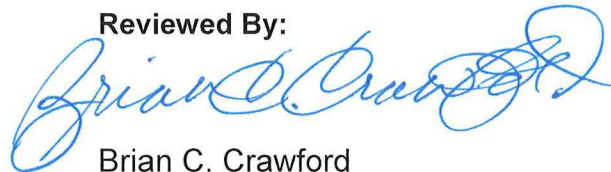
<input type="checkbox"/> Department of Finance	<input type="checkbox"/> N/A
<input checked="" type="checkbox"/> County Counsel	<input type="checkbox"/> N/A
<input type="checkbox"/> Human Resources	<input type="checkbox"/> N/A

SIGNATURE:



Tom Lai
Assistant Director

Reviewed By:



Brian C. Crawford
Director

Attachment: (1) Proposed Ordinance