Los Angeles County
Department of Regional Planning

Planning for the Challenges Ahead

Richard J. Bruckner
Director

May 24, 2016

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

HEARING ON ORDINANCE EXTENDING INTERIM ORDINANCE NO. 2016-0022U ON THE INTERIM BAN ON THE CULTIVATION, MANUFACTURING, LABORATORY TESTING AND DISTRIBUTION OF MEDICAL MARIJUANA IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF LOS ANGELES (ALL SUPERVISORIAL DISTRICTS) (4-VOTES)

SUBJECT

The Board of Supervisors (Board) enacted Interim Ordinance No. 2016-0022U on April 12, 2016, to temporarily prohibit the cultivation, manufacturing, laboratory testing and distribution of medical marijuana, and prohibit their establishment on all properties located in the unincorporated territory of the County of Los Angeles. During the period of this ban, the Department of Regional Planning (Department) is conducting a comprehensive zoning study in collaboration with the Offices of the Treasurer and Tax Collector, Public Health, Agricultural Commissioner, Sherriff, District Attorney, and County Counsel, and will provide options for the Board to consider for regulating or banning such activities.

IT IS RECOMMENDED THAT THE BOARD AFTER THE PUBLIC HEARING:

Adopt the ordinance extending Interim Ordinance No. 2016-0022U for a period of 10 months and 15 days.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The Board enacted Interim Ordinance No. 2016-0022U on April 12, 2016, to temporarily prohibit the cultivation, manufacturing, laboratory testing and distribution of medical marijuana, and prohibit their establishment on all properties located in the unincorporated territory of the County of Los Angeles. During this ban, a study

will be prepared focusing on possible impacts that medical marijuana activities, conducted pursuant to the Medical Marijuana Regulation and Safety Act (MMRSA), could have on the properties located in all zones in the County unincorporated territory.

FISCAL IMPACT/FINANCING

Extension of Interim Ordinance No. 2016-0022U will not result in a loss of revenue generated from permit fees. Marijuana dispensaries have been banned in the unincorporated County since 2011. The cultivation, manufacturing, laboratory testing, or distribution of medical marijuana are not listed as allowed land uses in Title 22 (Zoning Code), and thus are not permitted. There are no pending applications for medical marijuana related uses, and in the absence of the Interim Ordinance, no new applications would be accepted under the Department's current regulations.

If the Board directs staff to develop regulations to allow medical marijuana uses in the unincorporated County, it is not known at this time what zones would allow medical marijuana uses, which departments would regulate or what type of application(s) would be required. Additional research is necessary to provide an estimate of anticipated application fees and costs to the various County departments to implement new regulations.

During the extension of the Interim Ordinance it is anticipated that funding will not be necessary to research and prepare the comprehensive zoning study. The Department is working collaboratively with the offices of the Treasurer and Tax Collector, Public Health, Agricultural Commissioner, Sherriff, District Attorney, and County Counsel to obtain the information necessary to complete the study.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Interim Ordinance No. 2016-0022U, first adopted by the Board on April 12, 2016, will expire on May 27, 2016, unless extended by Board action. Pursuant to Government Code Section 65858, Interim Ordinance No. 2016-0022U temporarily prohibits the cultivation, manufacturing, laboratory testing, and distribution of medical marijuana, until these facilities can be fully analyzed and recommendations can be made to the Board for possible adoption.

In 1996, the Compassionate Use Act (CUA) was enacted for the purpose of "ensur[ing] that seriously ill Californians have the right to obtain and use marijuana for medical purposes" upon a physician's recommendation (Health & Safety Code, § 11362.5(b)(1)(A)). The CUA decriminalizes the cultivation and possession of

marijuana, but only for a patient or the patient's primary caregiver where the marijuana is possessed or cultivated for the medical purposes of the patient upon the written or oral recommendation of a physician (Health & Safety Code, § 11362.5(d)).

In 2003, the Medical Marijuana Program Act (MMPA) was enacted to clarify the scope and applicability of the CUA, and to "facilitate the prompt identification of qualified patients and their designated primary caregivers in order to avoid unnecessary arrest and prosecution..." and "[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects." (Stats. 2003, Ch. 875, section 1(b)(1) & (3)). The MMPA also exempts cooperative and collective cultivation of medical marijuana by qualified patients and their primary caregivers from certain State criminal sanctions (Health & Safety Code, § 11362.775).

In October 2015, the legislature enacted a comprehensive package of bills to establish a statewide regulatory structure for commercial medical marijuana activities. Together, Assembly Bill 266, Assembly Bill 243, and Senate Bill 643 comprise MMRSA and regulate licensing and enforcement of commercial medical marijuana. MMRSA, which became effective January 1, 2016, and which will be administered and overseen by the newly created State Bureau of Medical Marijuana Regulations, provides statewide uniform standards, but allows local jurisdictions to implement additional standards. MMRSA provides a dual licensing structure for commercial medical marijuana activities including cultivation, manufacturing, laboratory testing, distribution, dispensing, and transportation. It also preserves police power for local jurisdictions to permit, regulate, or ban medical marijuana activities.

Marijuana dispensaries have been banned in the unincorporated County since 2011. The cultivation, manufacturing, laboratory testing, or distribution of medical marijuana are not listed as allowed land uses in Title 22 (Zoning Code), and thus are not permitted. Although the prohibition of marijuana in the unincorporated County of Los Angeles is consistent with federal law, state laws allow marijuana for medical use and thus are in conflict with federal law.

IMPACT ON CURRENT SERVICES OR PROJECTS (OR PROJECTS)

The proposed ordinance would not impact current services or projects as the comprehensive zoning study and associated tasks can be conducted without the need for additional staff. Additional funding will not be necessary to complete the zoning study. Studies related to water, such as water supply analyses, development of best management practices, outreach, and environmental review

will be conducted by the Department in coordination with the Offices of the Treasurer and Tax Collector, Public Health, Agricultural Commissioner, Sherriff, District Attorney, and County Counsel.

CONCLUSION

If Interim Ordinance No. 2016-0022U is not extended, marijuana uses may develop in unincorporated areas of the County without appropriate regulations and development standards, and those facilities may cause irreparable harm to the physical appearance, condition, and character of the area, may impact water supplies and/or water quality and may negatively impact the health, safety, and welfare of the general public. Additionally, unless Interim Ordinance No. 2016-0022U is extended, an irreversible incompatibility of land uses and the possible loss of vegetative habitat and groundwater supply may reasonably occur, to the detriment of the public health, safety, and welfare. Such conditions pose a current and immediate threat to human health, safety or welfare absent the extension of the restrictions of Interim Ordinance No. 2016-0022U.

The provisions of Section 65858 limit the effective period of Interim Ordinance No. 2016-0022U to only 45 days. In view of the approaching May 27, 2016, expiration date, it is recommended that the Interim Ordinance be extended for ten months and 15 days as provided in Section 65858. This will allow sufficient time for the Department to complete a comprehensive zoning study with possible ordinance amendment options for the Board's consideration.

Extension of this ordinance requires that the Board conduct a public hearing at which time the ordinance extending Interim Ordinance No. 2016-0022U may be adopted by no less than a four-fifths vote. The date of the public hearing has been set for May 24, 2016. Notice of this public hearing has been published as required by law.

The proposed ordinance, extending Interim Ordinance No. 2016-0022U, has been prepared by County Counsel and transmitted to you.

If you have any questions, please contact Bruce Durbin of my staff at (213) 974-6432 or BDurbin@planning.lacounty.gov.

Respectfully submitted,

Richard J. Bruckner for RJB
Director

RJB:MC:BD:LJ:lj:ems

c: Executive Office, Board of Supervisors
County Counsel
Agricultural Commissioner
Assessor
Chief Executive Office
District Attorney
Public Health
Public Works
Sheriff
Treasurer and Tax Collector

Attachments

S_AP_052416_BL_MARIJUANA_EMERGENCY_ORD

COUNTY OF LOS ANGELES
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MARY C. WICKHAM
County Counsel

May 18, 2016

Richard J. Bruckner, Director
Department of Regional Planning
1390 Hall of Records
320 West Temple Street
Los Angeles, California 90012-3225

Re: Urgency Ordinance Extension to Ban Medical Marijuana Activities

Dear Mr. Bruckner:

As requested, enclosed are the analysis and ordinance to extend Interim Urgency Ordinance No. 2016-0022U which temporarily imposes a ban on the cultivation, manufacturing, laboratory testing, and distribution of medical marijuana, and prohibits their establishment on all properties located in the unincorporated territory of the County of Los Angeles. This interim ordinance will require a public hearing and a four-fifths vote by the Board of Supervisors ("Board"). If approved, this ordinance will extend Interim Ordinance No. 2016-0022U for an additional 10 months and 15 days.

The enclosed analysis and ordinance may be presented to the Board for its consideration. We understand the ordinance is set for public hearing before the Board on May 24, 2016.

Very truly yours,

MARY C. WICKHAM
County Counsel

By Sari Steel by Eve
SARI J. STEEL
Principal Deputy County Counsel
Property Division

APPROVED AND RELEASED:

LAWRENCE L. HAFETZ
Acting Chief Deputy

SJS:vn
Enclosures

HOA.100673886.2

ANALYSIS

This ordinance extends Interim Ordinance No. 2016-0022U for an additional ten (10) months and fifteen (15) days, to April 11, 2017, to allow the Los Angeles County Department of Regional Planning to complete its comprehensive zoning study to review the possible impacts that medical marijuana activities could have on the properties located in all zones in the County unincorporated territory and to consider a possible zoning ordinance amendment to address those impacts. Interim Ordinance No. 2016-0022U adopted on April 12, 2016, temporarily imposes a ban on the cultivation, manufacturing, laboratory testing, and distribution of medical marijuana, and prohibits their establishment on all properties located in the unincorporated territory of the County of Los Angeles.

This extension ordinance is an urgency measure that requires a public hearing and a four-fifths vote by the Board of Supervisors for adoption.

MARY C. WICKHAM
County Counsel

By Sari Steel by gmc

SARI J. STEEL
Principal Deputy County Counsel
Property Division

SJS:ss

Requested: 5-16-16

Revised: 5-17-16

HOA.100637238.3

ORDINANCE NO. _____

An ordinance extending Interim Ordinance No. 2016-0022U, temporarily imposing a ban on the cultivation, manufacturing, laboratory testing, and distribution of medical marijuana, and prohibits their establishment on all properties located in the unincorporated territory of the County of Los Angeles.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Interim Prohibition.

Pursuant to section 65858 of the Government Code, the Board of Supervisors ("Board") having held a public hearing, hereby extends Interim Ordinance No. 2016-0022U to April 11, 2017. Interim Ordinance No. 2016-0022U provided, and this extension similarly provides, that no facilities, premises, or property shall be established, developed, leased, rented, or used for "cultivation," "manufacturing," "laboratory testing," or "distribution" of medical marijuana.

SECTION 2. Adoption and Expiration of Initial Interim Ordinance; Authority.

Interim Ordinance No. 2016-0022U was adopted on April 12, 2016. Unless this ordinance takes effect on or before May 27, 2016, Interim Ordinance No. 2016-0022U will expire. Government Code section 65858 provides that any urgency measure in the form of an initial interim ordinance may be adopted without following the procedures otherwise required prior to adoption of a zoning ordinance, by a four-fifths vote of the Board, which shall be effective for only forty-five (45) days following its adoption. Government Code section 65858 further provides that such an urgency measure may

be extended, following compliance with that section, for up to an additional ten (10) months and fifteen (15) days beyond the original forty-five (45) day period, and it can be extended a second time for an additional year.

SECTION 3. Definitions and Penalties.

For purposes of this ordinance, the following definitions shall apply:

A. "Cultivation" shall mean any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of medical marijuana.

B. "Distribution" shall mean the procurement, sale, and transport of medical marijuana and medical marijuana products between entities.

C. "Laboratory" means any facility or site that offers or performs tests of medical marijuana or medical marijuana products.

D. "Laboratory testing" shall mean the process by which medical marijuana is evaluated for quality control.

E. "Manufacture" or "manufacturing" shall mean the process by which medical marijuana is produced, prepared, propagated, or compounded, either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis.

F. "Medical marijuana" shall mean a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical marijuana patients in California pursuant to the Compassionate Use Act of 1996 ("Proposition 215"). Medical marijuana does not include "industrial hemp" as defined by

section 81000 of the Food and Agricultural Code or section 11018.5 of the Health and Safety Code.

G. The definitions and penalties for land use violations that are prescribed in Title 22 of the Los Angeles County Code shall apply to the interpretation and to violations of the provisions of this interim ordinance.

SECTION 4. Zoning Study Initiated, Determination of Immediate Threat.

The Los Angeles County Regional Planning Department ("Regional Planning") has been conducting a comprehensive zoning study to review the possible impacts that medical marijuana activities, conducted pursuant to the Medical Marijuana Regulation and Safety Act ("MMRSA"), could have on the properties located in all zones in the County unincorporated territory, and to consider a possible permanent zoning ordinance amendment to address those impacts.

In October 2015, the Legislature enacted a comprehensive package of bills to establish a statewide regulatory structure for commercial medical marijuana activities. Together, AB 266, AB 243, and SB 643 comprise MMRSA and regulate licensing and enforcement of commercial medical marijuana. MMRSA, which became effective January 1, 2016, and which will be administered and overseen by the newly created State Bureau of Medical Marijuana Regulations, provides statewide uniform standards, but allows local jurisdictions to implement additional standards. MMRSA provides a dual licensing structure for commercial medical marijuana activities including cultivation, manufacturing, laboratory testing, distribution, dispensing, and transportation. It also

preserves police power for local jurisdictions to permit, regulate, or ban medical marijuana activities.

As a result of this new legislation, the County has been receiving inquiries concerning County permitting and licensing for these activities.

Since 2011, the County has banned the dispensing of medical marijuana from storefront locations throughout all of the unincorporated territory in Title 22 – Planning and Zoning of the Los Angeles County Code. The use of land for cultivation, manufacturing, laboratory testing, or distribution of medical marijuana is not specifically allowed under the County's permissive zoning code, but the County does not have a ban specifically prohibiting these medical marijuana activities.

The dispensing, cultivation, manufacturing, laboratory testing, and distribution of medical marijuana remain illegal under federal law, but MMRSA allows qualified individuals and entities, who possess both State and local permits and licenses, to engage in these activities. Notwithstanding, these activities have been associated with certain risks and crime.

Outdoor cultivation where it is readily observable by neighbors and the general public increases the risk of trespassing and burglary. It also increases the rise of violence in connection with either the commission of such crimes or the occupants' attempts to prevent such crimes. Additionally, outdoor cultivation is often associated with violations of local, State, and federal environmental laws and pesticide regulations, threatening harm to local waterways and groundwater quality, and endangering the public health and safety.

Indoor cultivation and the processing, manufacturing, distribution, and testing of medical marijuana within a residence or other structure used or intended for human occupancy, presents potential health and safety risks to those living in the residence or otherwise occupying the structure, especially to children, including, but not limited to, increased risk of fire from grow light systems, increased risk of adverse chemical reactions, exposure to fertilizers, pesticides, and anti-fungus/mold agents and exposure to potential property crimes.

Based on the findings above, the Board finds that the potential establishment of medical marijuana cultivation, manufacturing, laboratory testing, and/or distribution and the use of property for these purposes in the unincorporated territory of the County poses a current and immediate threat to the public health, safety, and welfare in the County due to the negative impacts of such activities as described above. The Board further finds that the issuance or approval of business licenses, subdivisions, use permits, variances, building permits, site plans, or any other applicable entitlement for medical marijuana cultivation, manufacturing, laboratory testing, and/or distribution absent necessary and appropriate regulations will result in the aforementioned threat to public health, safety, and welfare.

SECTION 5. Severability.

If any provision of this interim ordinance extension or the application thereof to any person, property, or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the

invalid provisions or application, and, to this end, the provisions of the interim ordinance are hereby declared to be severable.

SECTION 6. Area of Applicability.

This interim ordinance extension applies to all properties in the unincorporated territory of the County of Los Angeles.

SECTION 7. Urgent Need.

This interim ordinance extension is urgently needed for the immediate preservation of the public health, safety, and welfare, and it shall take effect on May 27, 2016, and it shall be of no further force and effect ten (10) months and fifteen (15) days following the date of its taking effect, unless further extended in accordance with the provisions set forth in Government Code section 65858.

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