



Legislation Text

File #: 18-0080, **Version:** 1

Ad Hoc Cannabis Advisory Committee, in coordination with the Chief Administrative Office, recommending the Board approve Urgency Ordinance **5075**, pursuant to California Government Code section 65858(b), extending the 45-day temporary ban on commercial licenses for both medical and recreational (adult) cannabis, with the exception of the medical cannabis dispensaries allowed to operate under ordinance 4999, with the temporary ban being in effect for a total of 2 years since its initial adoption on December 12, 2017. (4/5 vote required) (Est. Time: 30 Min.)

FUNDING: N/A

DEPARTMENT RECOMMENDATION

Ad hoc Cannabis Advisory Committee, in coordination with the Chief Administrative Office, recommending the Board:

1) Approve Urgency Ordinance 5075, pursuant to California Government Code section 65858(b), extending the 45-day temporary ban on commercial licenses for both medical and recreational (adult) cannabis, with the exception of the medical cannabis dispensaries allowed to operate under ordinance 4999, with the temporary ban being in effect for a total of 2 years since its initial adoption on December 12, 2017 (4/5 vote required).

This ordinance is an interim ordinance adopted as an urgency measure pursuant to Government Code section 65858 and is for the immediate preservation of the public safety, health, and welfare. The proposed moratorium extension is the final extension allowed because the maximum duration of a temporary moratorium is two years. The ordinance articulates the facts constituting the urgency and why the ordinance is necessary to preserve the public, health, and welfare.

Additional reasons for the temporary ban recommendation include:

- Continues the Board of Supervisors message to allow individuals access to medical cannabis.
- Provides time to create trust in the new civil cannabis code compliance process. Many in the community do not think the County can enforce the current personal medical cultivation activities, so how can the County enforce new activities (e.g. commercial licenses).
- Allows time for the Federal Government and State Government to work out recreational and medical commercial issues, including state rules.
- Allows informed decision-making through a measured and steady approach. There is almost a 50/50 split in public opinion in El Dorado County when it comes to allowing recreational cannabis and there is a split when it comes to allowing commercial cannabis.
- Avoids potential pitfalls through learning from benchmark counties that will start commercial operations immediately.
- Allows time for the County to build up an understanding of how an administrative process might work if commercial activities were allowed (e.g. who administers the program and how is it administered).
- There is not an overwhelming local revenue stream that will provide for all local costs or other

community needs at this time (e.g. it does not cover local enforcement, education, health programs and other programs that are related to the use of recreational cannabis or help fund other community needs like road maintenance).

- The recommendation provides for a timeframe and public decisions on medical and recreational commercial cannabis in the near future.

DISCUSSION / BACKGROUND

In September 2015, the California State Legislature enacted the Medical Marijuana Regulation and Safety Act (MMRSA), which was signed into law in October 2015. The MMRSA was a package of three separate bills (AB 243, AB 266 and SB 643) that established a comprehensive dual state licensing framework for the cultivation, manufacture, retail, sale, transport, distribution, delivery, testing, and taxation of medical cannabis in California.

The El Dorado County Board of Supervisors created the ad hoc advisory committee at its March 15th, 2016 special meeting regarding medical marijuana due the October 2015 passage of and February 2016 amendments to MMRSA. During the special meeting, the Board of Supervisors received an overview on the current medical marijuana laws and reports from County departments, stakeholder groups and the public on how medical marijuana policy decisions could affect them. At the conclusion of the meeting, the Board of Supervisors created the ad hoc Medical Marijuana Advisory Committee to collect more information on different medical marijuana topics (e.g. cultivation, dispensaries, compliance, etc.).

The County did not conduct meetings regarding medical marijuana in 2015 due to the major statutory overhauls undertaken by the State of California that resulted in the Medical Marijuana Regulation and Safety Act (MMRSA), signed in October 2015 and amended in February 2016. The County decided to wait before pursuing updated medical marijuana ordinances to ensure that any updates were consistent with the new State laws and regulations.

To date, the Medical Marijuana Advisory Committee has met on nine occasions: May 2nd meeting was on the structure of the future meetings, June 20, 2016 meeting was on cultivation, June 27, 2016 meeting was on niche medical marijuana businesses (e.g. dispensaries, nurseries, etc.), August 22, 2016 meeting was on compliance procedures regarding medical marijuana rules, September 19, 2016 meeting was on taxation and fees for medical marijuana, December 12, 2016 meeting was on conceptual changes to the medical marijuana enforcement procedures (e.g. moving towards more of a civil enforcement process), March 27, 2017 meeting was to discuss the County's administrative decisions for Proposition 64, October 12, 2017 meeting was to discuss recommendations to the Board of Supervisors on new civil enforcement process and October 23, 2017 meeting was to discuss the ad hoc committee's recommendation to the El Dorado County Board of Supervisors on medical and recreational cannabis commercial licenses.

During the time period that the El Dorado County ad hoc Medical Marijuana Advisory Committee was meeting, the California cannabis laws were changing. In June 2016, Governor Edmund G. Brown signed SB 837, which changed the name of the MMRSA to the Medical Cannabis Regulation and Safety Act (MCRSA) and made substantive changes to applicable state laws. The changes affect the various state agencies involved in regulating cannabis businesses as well as potential licensees.

On November 8, 2016, California voters passed Proposition 64, also known as the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), by a vote of 57.1% in favor and 43.9% against. Locally, El Dorado County voters rejected Proposition 64 by a vote 50.1% against and 49.9% in favor (these numbers include the cities of Placerville and South Lake Tahoe). Proposition 64 legalized the non-medical use of cannabis by persons 21 years of age and over, and the cultivation of no more than six (6) living cannabis plants for personal use, subject to reasonable regulations adopted by local jurisdictions. AUMA also created a state regulatory and licensing framework governing the commercial cultivation, manufacture, testing and distribution of nonmedical cannabis.

On June 27, 2017, Governor Brown signed into law the Legislature-approved Senate Bill 94 (SB 94). SB 94 combined elements of the MCRSA and AUMA to establish a single, streamlined regulatory and licensing structure for both medicinal and adult-use cannabis activities, since there were discrepancies between the MCRSA and AUMA. The new, consolidated provisions under SB 94 are now known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), to be governed by the California Bureau of Cannabis Control. MAUCRSA notably refers to medical cannabis as "medicinal cannabis" and nonmedical/recreational cannabis as "adult-use cannabis."

The Bureau of Cannabis Control has created temporary regulations. Permanent regulations are expected in early 2018.

At the Board of Supervisors meeting on November 14, 2017, the Board conceptually approved the temporary ban on commercial licenses for both medical and recreational (adult) cannabis, with the exception of the medical cannabis dispensaries allowed to operate under ordinance 4999. In addition, the Board of Supervisors dissolved the ad hoc Medical Marijuana Advisory Committee after it had achieved its goals to bring recommendations on personal medical marijuana cultivation and commercial licenses.

On December 12, 2017, the Board approved the temporary ban on commercial licenses for both medical and recreational (adult) cannabis, for 45 days, with the exception of the medical cannabis dispensaries allowed to operate under ordinance. In addition, this agenda item created a new ad hoc Cannabis Advisory Committee (with the two members of the El Dorado County Board of Supervisors making up the members of the ad hoc Cannabis Committee).

The proposed ordinance also directs the Cannabis Advisory Committee to consider and study possible means to regulate or prohibit commercial cannabis activities, including possible amendments to the County Zoning Ordinance and the means to fund the regulation and enforcement of any new commercial cannabis activities and to study and create ballot measures for different cannabis commercial uses tied to taxation for a local election. This direction is consistent with the purpose of a temporary urgency ordinance imposing a moratorium on a particular use. (See Gov. Code, § 65858, subd. (a) ["[A county] may adopt as an urgency measure an interim ordinance prohibiting any uses . . . that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time."].)

ALTERNATIVES

The Board could allow the temporary moratorium to expire by its own terms because it was only effective for 45 days from adoption on December 12, 2017. Allowing the moratorium to expire does not authorize commercial cannabis activities in the County, but could lead to the misconception that commercial cannabis activities are allowed in the absence of an express ban and could also lead to the erroneous issuance of a state commercial cannabis license by the Bureau of Cannabis Control.

The proposed ordinance extends the moratorium for the entire 2 years pursuant to section 65858, subdivision (b), which is the maximum duration of a land use moratorium enacted as a temporary urgency ordinance. Alternatively, under subdivision (a) of section 65858, the Board could extend the moratorium for only 10 months and 15 days, after which time it could be extended an additional year. Under either scenario, the temporary moratorium may not be extended past 2 years.

OTHER DEPARTMENT / AGENCY INVOLVEMENT

Sheriff's Office; District Attorney; County Counsel; Planning and Building; Environmental Management; Agriculture, Weights and Measures; Treasurer-Tax Collector; and Air Quality Management District.

CAO RECOMMENDATION

It is recommended that the Board approve this item.

FINANCIAL IMPACT

During a presentation to the El Dorado County Board of Supervisors, on May 5, 2017, consulting firm HdL, gave revenue projects and regulation costs for the permitting of nine different cannabis businesses (e.g. three manufacturers, three dispensaries and three indoor cultivation facilities). HdL estimated that the nine different licensed cannabis businesses could bring in the following amount of revenue depending on the tax rate:

- Conservative (\$4 square foot for cultivation and 4% sales tax rate) - \$840,000
- Moderate (\$6 square foot for cultivation and 5% sales tax rate) - \$1,080,000
- Aggressive (\$10 square foot for cultivation and 6% sales tax rate) - \$1,380,000

The estimated cost to regulate the nine sanctioned business for a year is \$157,000. The estimate assumes workload for permitting, inspecting and compliance review, reporting and permit renewal. The yearly cost does not include the initial permit application process. The cost of this process is difficult to estimate. HdL estimated that the annual permit fee for a commercial license should be \$17,500 to cover the cost of the annual staff work. These cost estimates are only for the regulation of the nine sanctioned businesses. The cost estimates did not include resources needed to enforce violations related to non-sanctioned businesses, with costs that would likely be much higher.

The estimates by HdL are only for nine different licensed cannabis businesses. HdL was able to provide these estimates through work with jurisdictions across the State of California in addition to evaluating over 700 pro-formas and having access to actual sales tax information for all retail businesses in every county and city in the state.

CLERK OF THE BOARD FOLLOW UP ACTIONS

N/A

STRATEGIC PLAN COMPONENT

Public Safety

Healthy Community

CONTACT

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