



CITY OF WHEATLAND

CITY COUNCIL MEETING STAFF REPORT

January 23, 2018

SUBJECT: Public Hearing concerning proposed extension of Ordinance No. 466, An Urgency Ordinance of the City of Wheatland Adopting a Temporary Moratorium on All Commercial Marijuana Land Uses and All Outdoor Marijuana Cultivation in the City of Wheatland.

Consideration of adoption of interim ordinance to extend Ordinance No. 466, An Urgency Ordinance of the City of Wheatland Adopting a Temporary Moratorium on All Commercial Marijuana Land Uses and All Outdoor Marijuana Cultivation in the City of Wheatland.

PREPARED BY: Jennifer T. Buckman, City Attorney

Recommendation

Move to adopt interim ordinance to extend Ordinance No. 467, An Urgency Ordinance of the City of Wheatland Adopting a Temporary Moratorium on All Commercial Marijuana Land Uses and All Outdoor Marijuana Cultivation in the City of Wheatland.

Background/Discussion

On December 12, 2017, the City Council adopted Ordinance No. 466, An Urgency Ordinance of the City of Wheatland Adopting a Temporary Moratorium on All Commercial Marijuana Land Uses and All Outdoor Marijuana Cultivation in the City of Wheatland. The ordinance amends the City Zoning Code to prohibit commercial marijuana land uses and outdoor cultivation of marijuana in the City. Ordinance No. 466 is a short-term interim ordinance adopted pursuant to Government Code section 65858(a).

Unless it is extended, the ordinance will expire on January 26, 2018. Section 65858, subsections (a) and (c), provide in pertinent part that "The interim ordinance shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for one year. Any extension shall also require a four-fifths vote for adoption. Not more than two extensions may be adopted. . . . The legislative body shall not adopt or extend any interim ordinance pursuant to this section unless

the ordinance contains legislative findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare.”

City staff recommends that the City Council extend the urgency ordinance for ten months and 15 days, in order for the interim moratorium to remain in effect until December 11, 2018. City staff and the Planning Commission are continuing to evaluate the City's options and plans regarding the regulation of marijuana land uses in Wheatland. It is anticipated that the Planning Commission will review a draft ordinance on this subject matter and make a recommendation to the City Council in the near future.

The proposed ordinance contains findings as required by section 65858. The findings are essentially the same as those contained in Ordinance No. 466 because circumstances have not changed significantly since December when the City Council adopted the initial urgency ordinance.

A public hearing on this matter has been noticed for the January 23, 2018 City Council meeting. The Council should hear and consider comments at the public hearing prior to taking any action on the proposed ordinance.

Alternatives

The City Council could choose not to extend the urgency interim ordinance, in which case it would expire on January 26 and the State Bureau of Cannabis Control could issue licenses to authorize cannabis businesses to locate in the City.

Fiscal Impact

None.

Attachments

1. Ordinance of the City of Wheatland Extending Ordinance No. 466, An Urgency Ordinance of the City Council of the City of Wheatland Adopting a Moratorium On All Commercial Marijuana Land Uses and All Outdoor Marijuana Cultivation in the City of Wheatland.

ORDINANCE NO. 467

**AN INTERIM ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF WHEATLAND
EXTENDING ORDINANCE NO. 466,
AN URGENCY ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF WHEATLAND
ADOPTING A TEMPORARY MORATORIUM ON ALL COMMERCIAL
MARIJUANA LAND USES AND ALL OUTDOOR MARIJUANA CULTIVATION
IN THE CITY OF WHEATLAND**

The City Council of the City of Wheatland does ordain as follows:

SECTION 1. Purpose and Authority. On December 12, 2017, the City Council adopted Ordinance No. 466, An Urgency Ordinance of the City of Wheatland Adopting a Temporary Moratorium on All Commercial Marijuana Land Uses and All Outdoor Marijuana Cultivation in the City of Wheatland. The ordinance establishes a temporary moratorium on all commercial marijuana land uses and outdoor cultivation in the City. Ordinance No. 466 is a short-term interim ordinance adopted pursuant to Government Code section 65858(a). As such, Ordinance No. 466 will expire on January 26, 2018 unless extended. The purpose of this interim ordinance is to extend Ordinance No. 466. This interim ordinance is adopted pursuant to California Constitution article 11, section 7, Government Code section 65858, and other applicable law.

SECTION 2. Findings. The City Council of the City of Wheatland finds as follows:

A. A. In 2015, the Legislature passed, and the Governor signed into law, three bills (Assembly Bills 243 and 266, and Senate Bill 643), which collectively created a licensing and regulatory framework for medical cannabis through the Medical Cannabis Regulation and Safety Act.

B. On November 8, 2016, the people of the State of California passed Proposition 64, the "Control, Regulate and Tax the Adult Use of Marijuana Act," which legalized non-medical use and cultivation of marijuana by persons 21 years of age and over and created a state and local regulatory and licensing system governing commercial cultivation, testing, manufacturing and distribution of non-medical marijuana and marijuana products. AUMA allows local governments to reasonably regulate the cultivation of marijuana for personal use through zoning and other local laws, and it allows local governments to ban outdoor cultivation. Under AUMA, local governments maintain the ability to adopt business and land use regulations and/or prohibitions for commercial marijuana activities.

C. On April 28, 2017, California's three state cannabis licensing authorities, the Department of Food and Agriculture's CalCannabis Cultivation Licensing program, the Department of Consumer Affairs' Bureau of Cannabis Control, and the Department of Public Health's Manufactured Cannabis Safety Branch, released draft regulations to implement the

Medical Cannabis Regulation and Safety Act of 2015. These licensing authorities had planned to move forward with a separate draft regulatory package for implementation of the Adult Use of Marijuana Act, but this process posed a risk of creating conflicting laws and regulations.

D. In late June 2017, the Legislature passed and the Governor signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which creates one regulatory system for both medicinal and adult-use cannabis. As a result, the state cannabis licensing authorities withdrew the medical cannabis regulations they had proposed in April 2017 and began working on new regulations to implement MAUCRSA.

E. On November 16, 2017, California's three state cannabis licensing authorities publicly noticed proposed emergency regulations for commercial medicinal and adult-use cannabis.

F. The unregulated cultivation of marijuana can adversely affect the health, safety and well-being of the City, its residents and the environment. Such cultivation, without certain safeguards, increases the risk of criminal activity, degradation of the natural environment, electrical fire hazards and malodorous smells, particularly if substantial amounts of marijuana are concentrated in one place.

G. The cultivation of marijuana at locations or premises within the vicinity of schools creates unique risks that the marijuana plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with the cultivation or distribution of marijuana at such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation of marijuana at such locations or premises is especially hazardous to public safety and welfare, and to the protection of juveniles and the person or persons cultivating the marijuana plants.

H. As marijuana plants begin to flower, they produce an extremely strong odor that is offensive to many people and detectable well beyond property boundaries upon which they are grown.

I. The strong, distinctive odor of marijuana plants may create an attractive nuisance, alerting individuals to the location of the plants and thereby creating the risk of potential crimes such as burglary, robbery, armed robbery, assault, attempted murder and murder. The cultivation of marijuana outdoors increases the risk of such activity and, when it occurs in or near residential zones, intrudes upon residential uses.

J. As recognized by the 2008 Guidelines, the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding residences or businesses may be negatively impacted by nuisance activity such as loitering or crime.

K. Indoor cultivation of substantial amounts of marijuana requires excessive use of electricity for high-wattage grow lighting systems used in marijuana cultivation, which often

creates an unreasonable risk of fire and increases the chances of a fire, thereby presenting a clear and present danger to occupants.

L. The limited right to cultivate marijuana conferred under state law does not authorize any person to create or maintain a public nuisance or otherwise exempt these persons from local land use regulations.

M. The Federal Controlled Substances Act (21 U.S.C. § 801 et seq.) classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, has no currently accepted medical use in treatment in the United States and has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, transport, or possess with intent to manufacture, distribute or dispense marijuana. The Federal Controlled Substances Act does not exempt the cultivation, manufacture, distribution, dispensation, transportation or possession of marijuana as may be authorized under a state law.

N. The City Council desires to establish reasonable regulations governing the cultivation of marijuana within the City and commercial processing, manufacturing, distribution and sale of marijuana in a manner that complies with state law and balances the City's interest in preserving the health, safety, and welfare of its residents. Due to the late adoption of MAUCRSA, the three state cannabis licensing agencies did not release their proposed regulations until November 16, 2017. Because the City Council has a limited meeting schedule during November and December due to the holidays, it will not be possible for the City Council to consider all the new information received from the state cannabis licensing agencies, and to consider its regulatory options, until after January 1, 2018.

O. The City is preparing, and the City Planning Commission and City Council will consider, a regular ordinance that addresses commercial marijuana activities and outdoor cultivation of marijuana in the City. There is insufficient time, however, for the City Council to both (1) preserve the status quo pending its consideration and adoption of a regular ordinance to address commercial marijuana activities and outdoor cultivation of marijuana in the City, and (2) consider and adopt such a regular ordinance through the regular zoning ordinance-adoption procedures.

P. This urgency ordinance is necessary to promote the immediate preservation of the peace, health, and safety of the public against the potential detrimental impacts of outdoor marijuana cultivation, and of commercial marijuana cultivation, processing, manufacturing, distribution (including deliveries) and sale uses, all of which constitute a current and immediate threat to the safety, health and welfare of residents and businesses within the City. The City has a significant interest in preserving the health, safety, and welfare of its residents by enacting reasonable regulations on outdoor marijuana cultivation, and in protecting the public against businesses and commercial enterprises that traditionally have been an attraction for criminal and other activities that threaten public safety. For the reasons set forth in subparagraphs A through O, above, and for the immediate preservation of the public peace, health and safety of the community, it is necessary to adopt this ordinance as an urgency measure and to extend the temporary moratorium on all outdoor cultivation of marijuana and all commercial marijuana land

uses. This moratorium will provide City staff, the Planning Commission, and the City Council with a reasonable and sufficient period of time to consider and craft a comprehensive ordinance lawfully regulating commercial and personal marijuana activity within the City.

Q. This ordinance complies with State law and imposes reasonable regulations that the City Council concludes are necessary to protect public safety, health and welfare of residents and businesses within the City. This ordinance is consistent with the City's General Plan, Municipal Code, and other applicable zoning ordinances and regulations.

SECTION 3. Extension of Ordinance No. 466; Effective Date. The effective period of City Ordinance No. 466 is hereby extended for 10 months and 15 days. The ordinance shall expire on December 11, 2018, unless the interim ordinance is subsequently extended by another interim ordinance. This ordinance is declared to be an urgency interim ordinance and it therefore shall become effective immediately after it is adopted by the City Council.

SECTION 4. Enforcement. Wheatland Municipal Code sections 1.16.010 and 18.88.030, concerning criminal enforcement of zoning ordinance violations, shall not apply to the enforcement of Ordinance No. 466, as extended by this Ordinance.

SECTION 5. Posting. Within 15 days after the City Council adopts this interim urgency ordinance, the City Clerk shall cause the ordinance to be posted in at least three public places within the City.

PASSED AND ADOPTED by the City Council of the City of Wheatland on the 23rd day of January, 2018, by the following four-fifths vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Joseph Henderson, Mayor

Attest:

Lisa J. Thomason, City Clerk

I hereby certify that the foregoing is a true and correct copy of City of Wheatland Ordinance No. 467, which ordinance was duly introduced, adopted and posted pursuant to law.

Lisa J. Thomason, City Clerk