

**COUNTY OF SACRAMENTO
CALIFORNIA**

For the Agenda of:
June 21, 2011
Timed: 10:30 a.m.

To: Board of Supervisors

From: Department of Community Planning and Development

Subject: An Interim Urgency Ordinance Of The Sacramento County Zoning Code
Relating To The Cultivation And Dispensing Of Medical Marijuana

Supervisory
Districts: All

Contact: Leighann Moffitt, Interim Planning Manager, 874-5584

Overview

Under direction of the Interim County Executive, an Interim Urgency Ordinance (“Ordinance”) regulating the cultivation and dispensing of medical marijuana has been prepared by County staff including: Business License, Code Enforcement, County Counsel, District Attorney, Planning and Sheriff. This Ordinance was prepared due to urgent concerns within unincorporated Sacramento County communities related to the proliferation of illegal and unpermitted medical marijuana dispensaries and the lack of regulation of the cultivation of medical marijuana. This Ordinance authorizes the cultivation of medical marijuana by qualified patients or caregivers with various limitations and medical marijuana dispensaries subject to discretionary approval of a use permit by the Board of Supervisors with various limitations.

Pursuant to Government Code Section 65858, a 4/5ths Board approval is required and, if approved, the Ordinance will be in effect for 45 days from adoption. Upon notice and hearing, the Board may then extend the Ordinance as described in this report. Staff will return on July 26, 2011, for approval of the extension of the Ordinance and for adoption of an associated Business License Ordinance.

An informational presentation about the Ordinance was provided on the afternoon of June 14, 2011, to interested parties who had contacted County Planning about the item.. A summary of comments and questions raised at this meeting is provided as Attachment 4.

Recommendations

1. Adopt the Interim Urgency Ordinance, provided as Attachment 1.
2. Continue the item to July 26, 2011, for subsequent re-adoption upon appropriate noticing; at which time staff will also present a related Business License Ordinance amendment.

Measures/Evaluation

The dispensing and cultivation of medical marijuana will be permitted under clearly specified conditions.

Fiscal Impact

This Interim Urgency Ordinance has been prepared with existing internal staffing from the participating Departments. The costs to process any requested use permits will be funded through the currently established planning fees. On-going costs associated with enforcing the closure of illegal establishments are not affected by this matter. Funding for the preparation of the permanent Ordinance has not been identified.

BACKGROUND

Sacramento County’s Zoning Code specifies which uses are allowed in various identified zoning categories. Uses that are not permitted are prohibited although the Planning Director has authority to determine whether a use(s) is substantially similar in characteristics, intensity, and compatibility to a use or uses within the zoning classification applicable to the property (SZC 110-30.5(a)). There has been a proliferation of marijuana establishments in the unincorporated area. In a number of circumstances in certain zones, the Planning Director has determined, pursuant to SZC 110-305(a), that medical marijuana dispensaries are not substantially similar in characteristics to permitted or conditionally permitted use in those zones. Regarding cultivation, the current Zoning Code does not define types of crops which may be grown under general agriculture in agricultural or agricultural residential zones.

DISCUSSION

Under oversight of the Interim County Executive, an Interim Urgency Ordinance regulating the cultivation and dispensing of medical marijuana has been prepared by staff of several County Departments and Divisions including: County Executive, Business License, Code Enforcement, County Counsel, District Attorney, Planning and Sheriff. Preparation of this ordinance was prompted due to urgent concerns within unincorporated Sacramento County communities related to the proliferation of illegal and unpermitted medical marijuana dispensaries and the lack of regulation of the cultivation of medical marijuana. Citizens have raised significant concerns about the impacts of such unregulated dispensaries and collectives on the public health and welfare of the community as a whole, including safety, noise, and litter. Therefore, this urgency ordinance is needed while the County develops a permanent regulatory response. Staff estimates that approximately 50 illegal dispensaries are currently operating within the unincorporated County. Code enforcement has issued numerous notices of violations (NOVs) several of which have been heard by the Board of Supervisors. The illegal dispensaries or collectives have been ordered to cease operating. Hearings on similar NOVs are pending.

The Interim Urgency Ordinance is provided as Attachment 1 to this report. A strikethrough version is also provided as Attachment 2.

Consistent with the Compassionate Use Act of 1996, Sacramento County staff, following consultation with and input by the Sheriff and District Attorney, are proposing that dispensaries be permitted within the unincorporated County, subject to strict regulation and oversight. In developing this initial urgency ordinance, staff has developed a detailed set of siting and operational requirements. Feedback from both community members and medical cannabis advocates could result in further refinements as the County moves from an urgency ordinance to final ordinance provisions.

The urgency ordinance is intended to regulate the cultivation and dispensing of medical marijuana in a manner that is consistent with State law and which promotes the health, safety, and general welfare of the residents and businesses within the unincorporated territory of the County of Sacramento. The Interim Urgency Ordinance seeks to balance the needs of medical patients and their caregivers for access to medical marijuana with the needs of neighbors and communities to be protected from public safety and nuisance impacts related to the cultivation or dispensing of medical marijuana. It also seeks to limit the harmful environmental impacts that are sometimes associated with marijuana cultivation and distribution. This Interim Urgency Ordinance will authorize medical marijuana dispensaries upon discretionary approval of a use permit by the Board of Supervisors in several specified commercial zones and will also regulate the cultivation of medical marijuana for personal use; however, a variety of specified conditions must be met.

The ordinance is adopted pursuant to Government Code Section 65858, which requires a 4/5ths approval and will be in effect for 45 days from adoption. Upon notice, the Board may then extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for one year; however, no more than two extensions may be adopted. Staff will return on July 26, 2011 seeking approval of the extension of the Interim Urgency Ordinance and adoption of an associated Business License Ordinance. This item is interim to the preparation of a permanent ordinance.

Summary of Ordinance Provisions Related to Outdoor Cultivation

The ordinance does not allow the outdoor cultivation of marijuana for any purpose because outdoor cultivation is determined to be a public nuisance. However, the current Sacramento County Zoning Code does not specifically address types of crops including marijuana. Therefore, existing outdoor cultivation would be considered a non-conforming use upon adoption of this Interim Urgency Ordinance. As specified in SZC 120-20, the nonconforming use of land may be continued for a period of five (5) years, and thereafter upon issuance of a certificate of non-conforming use pursuant to Section 120-25 of this Article, and consistent with specified conditions 120-20(a) through 120-20(d). Further limitations are specified within Section 120-21 including that the non-conforming use of land shall be discontinued immediately if (a) no buildings are employed in connection with such use; or (b) the only buildings employed are accessory or incidental to the principal use of the land and the replacement cost of such building does not exceed \$1,000. In addition, the County would not have to issue a certification of non-conforming use but could require such non-conforming operations to amortize their use over the 5-year period. The County would require evidence of the uses non-conforming status.

Summary of Ordinance Provisions Related to Indoor Cultivation

The Interim Urgency Ordinance would allow the indoor cultivation of medical marijuana in the residential or agricultural residential zones. The indoor cultivation could occur only in the primary residence of a qualified patient or a caregiver or, in the alternative, within a legal accessory structure located on a legal parcel on which the qualified patient or caregiver maintains his primary residence. Such cultivation would be allowed within a primary residence, provided that such residence maintains a kitchen, bathroom and primary bedroom that are not used for cultivation.

In no case may a qualified patient or caregiver undertake indoor cultivation in both the personal residence and any accessory structure located on the premises. However, cultivation may occur within a residential accessory structure (e.g. a granny or mother-in-law unit), only if that unit is the primary residence of a patient or caregiver. Otherwise, the residential accessory structure is regulated as if it were any other type of accessory structure. Within non-residential accessory structures (e.g. garages, sheds, greenhouses), the cultivation of marijuana is regulated more strictly given concerns about the potential for crime and nuisance impacts from structures less subject to monitoring by the patient or caregiver than a primary residence. Such restrictions include:

- Setbacks based on lot sizes
 - less than 20 acre lots require a 100-foot setback from all lot boundaries to the accessory structure
 - 20 to 160 acres requires 300-foot setbacks from all lot boundaries to the accessory structure
 - more than 160 acres requires a 1,000 foot setback from all lot boundaries to the accessory structure
- Not allowed within 600-feet of schools, school bus stops, school evacuation sites, churches, parks, child care centers, or youth-oriented facilities
- Subject to other standards including security, fencing, placement in the rear portion of the parcel and control of odors.

Cultivation is limited to the following number of plants:

- A maximum of 12 mature plants, or
- A maximum of 24 immature plants, or
- If both mature and immature plants are cultivated, a total of 24 total plants of which a maximum of 12 can be mature plants

All premises must be registered with the Department of Building and Code Enforcement and must provide specified information on an annual basis.

Summary of Ordinance Provisions Related to Dispensaries and Collectives

The Interim Urgency Ordinance allows dispensaries and collectives to be conditionally permitted in the following zones:

- Limited Commercial (LC) zones including within Special Planning Areas with an underlying LC zone; or
- General Commercial (GC) zones including within Special Planning Areas with an underlying GC zone; or
- Light Industrial (M-1) zones including within Special Planning Areas with an underlying M-1 zone.

Several locational conditions must be met as summarized below:

- Not allowed within 300 feet of any residentially or agricultural-residentially zoned properties (however, the Ordinance as drafted does not pertain to residential uses on non-residentially zoned properties)
- Not allowed on parcels within 1,000 feet of a school, school bus stop, school evacuation site, church, park, child care center or youth oriented facility

Finally, specified operating conditions are summarized below (please see the ordinance for a full list and associated details):

- no growing or cultivating of marijuana on-site
- a visible store-front location is required
- employees (and others) may not have certain felony or misdemeanor convictions and must be 18 years of age or older
- a valid physician's recommendation is required and no physician is allowed on-site
- no use or consumption of marijuana is allowed on-site
- no drug paraphernalia allowed
- must have a separate area for dispensing
- requires adequate security
- no signs that obstruct the entrance or windows
- no display or marijuana can be viewed from outside
- must maintain certain records and confidentiality of records
- must submit annual financial audit to the County
- must submit a monthly summary of activity to the County
- graffiti must be removed
- hours are limited to 7 a.m. to 7 p.m.
- a manager or owner must be present at all times
- the dispensary or collective is limited to dispensing to any individual no more than twice per day
- transactions must occur on the premises (e.g. no off-site delivery)
- no beverages, food or food products shall be dispensed, sold or distributed in any manner

Analysis of Potential Locations for Dispensaries and Collectives

In order to facilitate a discussion around the selection of initial zoning categories for the conditional permitting of medical marijuana dispensaries and collectives, Planning conducted a GIS mapping exercise. A map of this analysis, provided as Attachment 3, graphically portrays the three zoning classifications (LC, GC and M-1) along with a 300-foot setback from residential and agricultural residential zoned properties and a 1,000 foot buffer from the list of sensitive uses. However, it is crucial to explain that there are significant caveats associated with this analysis. Not all information is available in the GIS system and information may not be entirely up-to-date. Therefore, any actual application within one of the specified zones must be accompanied by its own site specific information as to whether the site meets the various parameters of the ordinance.

Public Information Presentation of June 14, 2011

An informational presentation about the Ordinance was provided to interested parties who had contacted County Planning about the item on the afternoon of June 14, 2011 at the County Administration Building. Given the urgent nature of the item, broad noticing was not possible; however, Planning informed via e-mail a number of interested stakeholder groups and community members about this meeting. Attachment 1 provides a summary of comments and questions raised at this meeting as. However, additional analysis by the County staff members involved in preparation of the Ordinance will be required to respond to these issues, therefore, staff will provide a more substantive response at the hearing to re-affirm adoption of the Ordinance.

Planning staff would characterize the majority of attendees at the meeting of June 14th as proponents or advocates for medical marijuana, although a few community members were in attendance. This was in part due to the lack of time for adequate noticing due to the urgent nature of the item and the fact that limited outreach was provided primarily to individuals and groups that had contacted County Planning staff on the topic. Planning staff is working with the chairs of the Community Planning Advisory Council (CPACs) to schedule similar informational presentations at upcoming CPAC meetings. In addition, a work program and funding for preparation of a permanent ordinance must be prepared.

The questions and comments were many and varied as provided in Attachment 1. While some verbal responses were provided during the meeting, staff must defer a written analysis to a future Board hearing so that the larger County staff group can provide the most accurate and defensible responses. It is possible, and even likely, that the analysis of these questions could lead to staff recommendations for modifications during the development of a permanent ordinance.

MEASURES/EVALUATION

The dispensing and cultivation of medical marijuana will be permitted under clearly specified conditions.

FINANCIAL ANALYSIS

This Interim Urgency Ordinance has been prepared with existing internal staffing from the participating Departments. The costs to process any requested use permits will be funded through the currently established planning fees. On-going costs associated with enforcing the closure of illegal establishments are not affected by this matter.

Respectfully submitted,

APPROVED:
STEVEN C. SZALAY
Interim County Executive

NAVDEEP S. GILL
Chief Operations Officer

An Interim Urgency Ordinance Of The Sacramento County Zoning Code Relating To The Cultivation And Dispensing Of Medical Marijuana

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Attachments:

- Attachment 1 - Final version - An Interim Urgency Ordinance of the Sacramento County Zoning Code Adopted Pursuant to Government Code Section 65858 Relating to the Cultivation and Dispensing of Medical Marijuana
- Attachment 2 - Strikethrough version - An Interim Urgency Ordinance of the Sacramento County Zoning Code Adopted Pursuant to Government Code Section 65858 Relating to the Cultivation and Dispensing of Medical Marijuana
- Attachment 3 - Map of potentially available sites zoned LC (Limited Commercial), GC (General Commercial) and M-1 (Light Industrial), or with those underlying zones within Special Planning Areas (SPAs) eliminating areas that may be within 300-feet of residential or agricultural residential zoned parcels and within 1,000-feet of the listed sensitive uses.
- Attachment 4- Comments and questions – Medical Marijuana Interim Urgency Ordinance Informational Meeting of June 14, 2011