



Public Hearing

**City of San Bernardino
Request for Council Action**

Date: December 20, 2017

To: Honorable Mayor and City Council Members

From: Andrea M. Miller, City Manager *TR for AM*
By: Mark Persico, AICP, Community Development Director

Subject: Accept the Recommendations of the Citizen's Advisory Committee on Marijuana and Adopt Interim Urgency Ordinance

Recommendations

1. Accept the recommendations of Citizen's Advisory Committee on Marijuana.
2. Adopt an Interim Ordinance as an Urgency Ordinance for 45 days.
3. Adopt a Resolution authorizing the City Manager to notify the California Bureau of Cannabis Control of the City of San Bernardino Cannabis Ordinance pursuant to Business and Professions Code Section 26055 (f)(1).

Background

On November 8, 2016, California voters approved Proposition 64, The Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA). Some of the provisions within this Act took effect immediately to include legalized possession, transport, purchase, use, and transfer of recreational marijuana for individuals 21 years of age or older, and adult possession.

Additionally, on November 8, 2016, San Bernardino voters approved Measure O, which garnered 26,037 votes, or 55.12% of the total. The measure, which was the result of a citizens' petition, regulates marijuana businesses by establishing a regulatory permit process, and the measure establishes a registration system and requires the City to grant permits meeting the requirements of the measure.

On September 20, 2017, the Mayor and City Council authorized creation of a Citizen's Advisory Committee on Marijuana (CAC) and directed staff to prepare a Request for Proposal (RFP) for the hiring of a consultant to assist the CAC in making recommendations to the City Council. Specifically, the CAC was charged with "the duty to evaluate, analyze, and propose options and standards to establish marijuana regulations that will protect the public health, safety, and welfare of the residents of San Bernardino."

On October 9, 2017, the RFP for consultant services was issued. Ten proposals were received by the deadline of October 25, 2017. Following a thorough evaluation by a staff review committee, HdL Companies was selected as the successful bidder.

On October 18, 2017, the Mayor and City Council adopted Resolution No. 2017-211 appointing members to the CAC and directing they return with a set of recommendations by December 20, 2017, on the following topics:

1. Personal Cultivation in Residential Zones
2. Marijuana Consumption/Smoking in Public Places
3. Taxes and Fees on Marijuana
4. Regulation of Commercial Marijuana Activities not covered by Measure O

Discussion

1) Accept Recommendation of the CAC

The CAC conducted five public meetings on November 13, November 20, November 27, December 4, and December 11, 2017, to receive public comment and discuss the four assigned topics. The Committee worked through the topics and has provided the Mayor and City Council with a set of recommendations (Attachment 1). The final set of recommendations was voted on by the CAC on December 11, 2017, and passed on an 8-0 vote, with Chair Alexander absent.

2) Adopt an Interim Control Ordinance as an Urgency Ordinance for 45 days

The CAC work was concluded on December 11, 2017, when the final set of recommendations was transmitted to the City Council. But given that cases pending against Measure O will not be heard by the courts until December 28, 2018, there is a need for an interim measure because the City must have regulations in effect before January 1, 2018, or lose local land use control. The Mayor and City Council need adequate time for further deliberation on the CAC recommendations and to provide direction to staff. Additionally, because these are land use issues, staff will need to prepare appropriate environmental review under the California Environmental Quality Act (CEQA) and the Planning Commission will need to conduct noticed public hearings. These necessary steps require time and the imposition of a temporary moratorium is prudent to allow further actions to occur.

State law allows a city to adopt an interim ordinance (Attachment 2) that prohibits uses while a city studies the issue. The interim ordinance typically establishes a moratorium, or temporary prohibition, on the specified land uses based on documented health, safety, and general welfare concerns. The moratorium requires a four-fifths vote, must contain a finding that there is a current and immediate threat to the public health, safety, and welfare, and may be adopted without following the notice and adoption procedures

for other ordinances. The measure has an initial duration of 45 days and may be extended beyond that by subsequent action.

At the December 11, 2017, CAC meeting staff discussed the need for an interim ordinance. The topic was presented as a “receive and file action” so there was no vote. But the CAC generally supported the moratorium, and understood that the Mayor and City Council needed time after receiving their recommendations to process and implement an ordinance related to marijuana uses.

3) Authorize City Manager to notify the California Bureau of Cannabis Control of City regulations

Cities are required to notify the California Bureau of Cannabis Control “of any ordinance or regulation related to commercial cannabis activity and the name and contact information for the person who will serve as the contact for state licensing authorities regarding commercial cannabis activity,” pursuant to Business and Professions Code section 26055 (f)(1). The Resolution (Attachment 3) authorizes and directs the City Manager to send a letter and ordinances to the Bureau of Cannabis Control.

Conclusion

The CAC has spent considerable time discussing the issues assigned to them, but there are still unresolved legal issues regarding the validity and enforceability of Measure O, and its implications for Proposition 64 and SB 94. A 45 day Interim Urgency Ordinance will allow the City Council to review the court decision on Measure O and make any necessary amendments to the municipal Code as may be deemed appropriate.

Staff recommends that the City Council accept the recommendations of the CAC, adopt the 45 day Interim Urgency Ordinance, and adopt the Resolution authorizing the City Manager to transmit documents to the California Bureau of Cannabis Control.

Attachments

Attachment 1	Recommendations of the CAC
Attachment 2	Interim Urgency Ordinance
Attachment 3	Resolution – Notifying California Bureau of Cannabis Control

Ward(s): All

Synopsis of Previous Council Actions: