

TOWN COUNCIL STAFF REPORT

Subject: Proposed Interim Urgency Ordinance establishing a moratorium on the establishment or expansion of cannabis businesses pursuant to Government code section 65858

Meeting Date: September 6, 2017

Written by: Sandra Moberly, Community and Economic Development Manager

RECOMMENDATION: Staff recommends that the Town Council approve the interim urgency ordinance establishing a moratorium on the establishment or expansion of cannabis businesses pursuant to Government Code Section 65858.

BACKGROUND/ANALYSIS:

The voters of the Town of Mammoth Lakes approved Measure M on June 8, 2010 which allowed a maximum of two medical marijuana cooperatives within the Town. In addition to Measure M, the Town Council adopted Municipal Code Chapter 5.38 in June 2010, which established regulations for medical marijuana cooperatives. The Municipal Code limits medical marijuana cooperatives to the Downtown (D), Old Mammoth Road (OMR), and Industrial (I) zoning districts, subject to a use permit. The Municipal Code also requires that medical marijuana cooperatives be separated by 500 feet and 1,000 feet away from public schools, parks, and libraries for cooperatives located in the commercial zones. Measure M did not specifically address cultivation in zoning districts other than residential (i.e., medical marijuana cultivation at private residences as allowed by State Law). In October 2010, the Commission approved two medical marijuana cooperatives, Mammoth Green (UPA 10-002) and Mammoth Lakes Wellness (UPA 10-003). Since 2010, Mammoth Green closed and was replaced by Green Mammoth in 2012 (UPA 12-002). Attachment 2 provides a summary of the existing cannabis businesses.

In 2013, the Planning and Economic Development Commission (PEDC) made the determination that medical marijuana cultivation not located at a private residence shall be allowed as part of a permitted medical marijuana cooperative, so long as the facility is legally affiliated and physically connected to that cooperative. Presently, only 1 out of the 2 medical marijuana cooperatives is approved for a cultivation facility (Mammoth Lakes Wellness located at 3399 Main Street, Suite(s) G, Q-1, and Q-2 [Approved by UPA 10-003A and 10-003B]).

In 2016, the Town Council adopted an urgency ordinance (Ordinance No. 16-04) allowing medical marijuana cultivation operations in the Industrial zone with approval of a use permit. The ordinance prohibits marijuana cultivation in commercial zones, unless those operations are conducted by a permitted cooperative and occurring either in or immediately adjacent to the cooperative's premises. The ordinance does not limit the number of medical marijuana cultivation facilities that could be permitted in the Industrial zone, but does require compliance with the operational standards that apply to cooperatives. Currently, there are two medical cannabis manufacturing facilities with approved use permits and a third facility that has a use permit allowing for storage of cannabis plant material.

The CA Medical Cannabis Regulations and Safety Act (MCRSA) was adopted in September 2015 and became effective on January 1, 2016. The MCRSA created a comprehensive state licensing system for the commercial cultivation, manufacture, retail sale, transport, distribution, delivery, and testing of medical cannabis. The state has indicated that it will need until January 2018 to set up the necessary agencies, information systems, and regulations to begin issuing licenses. Facilities (e.g., cooperatives, cultivators, etc.) that are currently operating in accordance with state and local laws may continue to do so until such time as their license applications are approved or denied by the State.

The CA voters adopted the “Adult Use of Marijuana Act” (Proposition 64) in November 2016 which allows the personal, recreation use of marijuana by adults over the age of 21. Similar to the MCRSA licensing, the State will begin issuing licenses for recreational commercial marijuana operations on January 2018. Proposition 64 did not change what is permitted or allowed under the MCRSA and the regulations and requirements that were adopted as part of the MCRSA regarding licensing remained the same.

In June 2017, the CA Legislature approved Senate Bill (SB) 94, commonly referred to as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).¹ The MAUCRSA repealed the MCRSA and consolidated the licensing requirements for medicinal- and adult-use cannabis into one set of regulations. January 2018 remains the target date for the State to begin issuing licenses. The following is a summary of the changes as a result of the MAUCRSA:

- Replaced all references to “marijuana” or “medical cannabis” with “cannabis” or “medicinal cannabis”
- Allowance for a licensee to obtain multiple types of licenses, but requires premises be separate and distinct (Note: *Testing laboratory licensees are prohibited from obtaining any other commercial cannabis activity license*).² Previously, the MCRSA limited the number of types of medicinal cannabis licenses a person could hold.
- Created the same license types for commercial adult-use cannabis activity and commercial medicinal cannabis activity. The license types will be differentiated with an “M” for medicinal and an “A” for adult-use licenses.
- The 15% cannabis excise tax will be measured by the average market price of the retail sale, instead of by the gross receipts of the retail sale.
- Amended the definition of volatile solvents from including a list of allowed chemical and compounds to instead read “a solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures.”
- Places the onus on the local agency to report to the state whether a license applicant is in compliance with local laws (Note: *This is similar to how the ABC verifies alcohol licenses*).

¹ The full text of SB-94 is available online at: http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB94.

² New code language is expected at some point altering the “separate and distinct” requirement in order to allow for co-location of uses.

- Allows for cultivators and manufacturers to distribute their own products. The previous rules required a third party distributor.

On August 9, 2017, staff presented initial information regarding commercial cannabis regulations to the Planning and Economic Development Commission (PEDC). The Commission had a number of questions and requested that staff put together a working group to review questions and issues raised by the Commission and bring the item back to the Commission at a later date. Staff is assembling the working group and expects meetings to commence in the next several weeks.

As stated previously, the State intends to begin issuing cannabis licenses in January 2018 and the Town does not currently have local rules and regulations governing the establishment or commercial cannabis activities. Staff has concerns that there is not adequate time to assemble a working group, respond to questions and concerns raised by the PEDC on August 9, and prepare comprehensive updates to the Town's marijuana requirements by the deadline of January 2018. Based on this information staff has worked with the Town Attorney to develop an urgency ordinance for Town Council consideration that the Town Council to establish a moratorium on the establishment or expansion of cannabis businesses until the adoption of an ordinance that establishes a comprehensive policy as it relates to commercial and medical marijuana activities.

OPTIONS ANALYSIS

Option 1: Approve the interim urgency ordinance establishing a moratorium on the establishment or expansion of cannabis businesses pursuant to Government Code Section 65858.

Option 2: Do not approve the interim urgency ordinance establishing a moratorium on the establishment or expansion of cannabis businesses pursuant to Government Code Section 65858. Provide additional direction to staff regarding marijuana businesses.

STAFFING CONSIDERATIONS:

Staff has begun working on establishment of regulations for all forms of marijuana activities in town. The urgency ordinance will allow staff sufficient time to analyze all options and prepare a thorough and well-vetted ordinance addressing all forms of marijuana businesses in town.

LEGAL CONSIDERATIONS:

The Town Attorney has worked closely with staff on marijuana-related issues and will continue to do so.

ATTACHMENTS:

- Town Council Ordinance 17-__: An Interim Urgency establishing a moratorium on the establishment or expansion of cannabis businesses pursuant to Government code section 65858

ORDINANCE NO. _____

AN INTERIM URGENCY ORDINANCE OF THE TOWN OF MAMMOTH LAKES ESTABLISHING A MORATORIUM ON THE ESTABLISHMENT OR EXPANSION OF CANNABIS BUSINESSES PURSUANT TO GOVERNMENT CODE SECTION 65858

WHEREAS, the voters of the State of California approved Proposition 215, entitled the Compassionate Use Act of 1996, the intent of which was to enable persons in need of marijuana (also known as cannabis) for medicinal purposes to obtain and use it under limited, specified circumstances; and

WHEREAS, in 2015 the California Legislature adopted a series of laws collectively comprising the Medical Cannabis Regulation and Safety Act (MCRSA), establishing a framework for the licensure and regulation of medical cannabis; and

WHEREAS, Proposition 64, also known as the Adult Use of Marijuana Act (AUMA), was approved by the voters on November 8, 2016. As a result, it is no longer illegal under state law, regardless of medical purposes, to: (1) possess, process, transport, purchase, obtain, or give away certain amounts of marijuana or concentrated cannabis, including as contained in marijuana products, to those 21 years old or older; (2) possess, plant, cultivate, harvest, dry, or process not more than six living plants and the marijuana produced by those plants; (3) smoke or ingest marijuana or marijuana products; and (4) possess, transport, purchase, obtain, use, manufacture, or give away marijuana accessories without compensation to those 21 years old or older; and

WHEREAS, to regulate the commercial non-medical marijuana industry, the AUMA added Division 10 to the California Business and Professions Code, establishing state licensing requirements for commercial marijuana activity, defined as the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, delivery, or sale of marijuana and marijuana products, regardless of medical purposes and granting state agencies the “exclusive authority to create, issue, renew, discipline, suspend, or revoke” licenses for businesses including the transportation, storage, distribution, sale, cultivation, manufacturing, and testing of marijuana, except as otherwise authorized. The AUMA states that these state agencies shall create the rules and regulations relating to these activities and begin issuing licenses by January 1, 2018; and

WHEREAS, the AUMA allows local governments authority to prohibit or regulate commercial marijuana activities and subject the commercial marijuana activities to zoning and permitting requirements; and

WHEREAS, in June 2017 the California Legislature adopted the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which repealed MCRSA and further developed the state’s regulatory framework for both medicinal and non-medicinal marijuana, while preserving the authority of cities and counties to determine whether and how to allow

medicinal and non-medicinal marijuana businesses, commercial cultivation and sale to occur within their jurisdictions; and

WHEREAS, the Town of Mammoth Lakes currently regulates the production and sale of marijuana for medicinal purposes through the Mammoth Lakes Municipal Code, but does not have explicit land use, zoning, and permitting requirements or prohibitions in place regarding commercial cannabis activities; and

WHEREAS, the California Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, if the State of California begins issuing licenses for commercial non-medicinal marijuana activities prior to the Town adopting appropriate land use, zoning, and public safety regulations, negative effects on the public health, safety, and welfare would likely occur as a result of commercial non-medicinal marijuana activities near schools, parks, residential zones, and other sensitive receptors; and

WHEREAS, based on the findings herein, the state legalization of commercial marijuana activities in the Town without regulation poses a current and immediate threat to the public health, safety, and welfare in the Town due to the negative land use and public safety impacts of such unregulated uses; and

WHEREAS, it is in the interest of the Town and its residents that the Town undertake a review to consider zoning, land use, and public safety measures to prohibit or regulate commercial marijuana activities and to establish how existing and future medicinal marijuana-related land uses should be regulated in light of the regulation of commercial marijuana activities; and

WHEREAS, California Government Code Section 65858 expressly authorizes the Town Council to adopt by four-fifths (4/5) vote, without following the procedures otherwise required for the adoption of a zoning ordinance, an urgency ordinance that would go into effect immediately following its passage, which is necessary for the immediate protection of the public health, safety, and welfare; and

WHEREAS, the Town of Mammoth Lakes has previously adopted an interim urgency ordinance pursuant to Government Code section 65858 regulating the operation of medicinal marijuana dispensaries, which ordinance was adopted on November 18, 2009 and subsequently expired as provided by law; and

WHEREAS, Government Code Section 65858(f) permits the Town of Mammoth Lakes, following termination of a previous interim urgency ordinance, to adopt another interim urgency ordinance to protect the public safety, health, and welfare from an event, occurrence or set of

circumstances different from the event, occurrence or set of circumstances that led to the adoption of the prior interim urgency ordinance; and

WHEREAS, the Town's previous interim urgency ordinance regulating medicinal marijuana dispensaries was adopted at a time when there was considerable uncertainty regarding cities' authority to regulate medicinal marijuana dispensaries and cities had very little experience with regulating medicinal marijuana dispensaries and observing the effects of the operation of dispensaries on neighborhoods and communities, and the Town wished to have more time to decide how to regulate dispensaries in Mammoth Lakes; and

WHEREAS, following the Town Council's adoption of an ordinance permitting dispensaries to operate, the passage of MCRSA, AUMA, and MAUCRSA has completely changed the treatment of non-medicinal marijuana under state law, and created numerous new issues for the Town to consider in deciding how to regulate medicinal and non-medicinal marijuana, thus satisfying the requirement of Government Code Section 65858(f); and

WHEREAS, the Town of Mammoth Lakes wishes to study its options for regulating the establishment and operation of non-medicinal marijuana businesses and new or expanded medicinal marijuana businesses, land uses, or operations, and wishes to adopt an interim ordinance prohibiting: (i) the operation of non-medicinal marijuana businesses in Mammoth Lakes; (ii) the operation of medicinal marijuana businesses, land uses, dispensaries, cooperatives, or facilities that do not have a valid use permit in Mammoth Lakes; and (iii) the issuance of any new use permit, or the amendment of any existing use permit for any purpose other than the expansion of storage space, for any medicinal marijuana businesses, land uses, dispensaries, cooperatives, or facilities in Mammoth Lakes, while the Town studies its options for the regulation of such establishments; and

WHEREAS, the Town Council intends to keep this urgency ordinance in effect only until the adoption of an ordinance that establishes a comprehensive policy as it relates to commercial and medicinal marijuana activities; and

WHEREAS, the Town Council also intends for the Town to immediately begin work to consider and study a comprehensive policy regarding commercial and medicinal marijuana activities and enact a policy as soon as possible; and

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF MAMMOTH LAKES DOES ORDAIN AS FOLLOWS:

Section 1. The recitals above are incorporated herein.

Section 2. The Town Council hereby finds, determines, and declares that this urgency ordinance establishing a temporary moratorium as set forth below and adopted pursuant to California Government Code 65858 is necessary because:

A. Certain provisions of AUMA became effective immediately on November 9, 2016, and the AUMA directs the State of California to start issuing licenses for non-medical marijuana-related businesses by January 1, 2018 or sooner. As stated in the recitals, if the State of California

begins issuing licenses for commercial non-medical marijuana activities prior to the Town adopting appropriate land use, zoning, and public safety regulations, negative effects on the public health, safety, and welfare would likely occur as a result of commercial non-medical marijuana activities near schools, parks, residential zones, and other sensitive receptors. The AUMA allows local governments to prohibit or reasonably regulate certain activities thereunder.

B. The Town of Mammoth Lakes does not currently have explicit land use, zoning, and permitting requirements in place governing activities relating to commercial marijuana activities.

C. The Town needs time to consider, review, and enact a comprehensive policy relating to commercial marijuana activities, and therefore, it is necessary to suspend any establishment of medicinal or commercial marijuana activities, or the expansion of existing medicinal marijuana activities, as such uses may be in conflict with the development standards and implementation regulations that the Town will ultimately impose after the Town has considered and studied the issue, which shall be accomplished in an expedited fashion.

D. A temporary moratorium will provide the Town with time to study commercial marijuana activities and potential impacts such land uses may have on the public health, safety, and welfare, as well as how medicinal marijuana activities should be regulated in conjunction with commercial marijuana activities.

E. A temporary moratorium will also provide clarity and consistency that the Town will not allow the establishment of commercial non-medical marijuana activities until the Town has established a comprehensive policy regulating such operations and the State of California begins issuing licenses for such operations.

F. There is a current and immediate threat to the public health, safety, and welfare of the Town and its residents, thereby necessitating the immediate enactment of this moratorium as an urgency ordinance in order to ensure commercial marijuana activities, and new or expanded medicinal marijuana activities, are prohibited in the Town until a comprehensive policy is adopted. Imposition of a moratorium will allow the Town sufficient time to conclude the preparation and enactment of a comprehensive ordinance for the regulation commercial marijuana activities.

Section 3. The following are prohibited pursuant to this ordinance, so long as this ordinance and any extensions are in effect, provided that italicized terms shall be interpreted in accordance with their definitions in the AUMA as amended by the MAUCRSA: (i) the application, establishment, or operation of any *commercial non-medicinal cannabis activities*, defined as the *cultivation*, possession, *manufacture*, *distribution*, processing, storing, laboratory *testing*, labeling, transportation, *delivery*, or *sale* of non-medicinal *cannabis*, *cannabis products*, and *cannabis accessories*; (ii) the establishment of any new medical marijuana cooperative, cultivation facility, processing facility, or other land use or activity that does not have a valid use permit and for which a permit is required pursuant to Chapter 5.38, Chapter 17.24, Chapter 17.28, and/or Section 17.68.100 of the Mammoth Lakes Municipal Code; and (iii) the issuance of any new use permit, or the amendment of any existing use permit for any purpose other than the expansion of storage space, for any existing and/or approved medical marijuana cooperative, cultivation facility,

processing facility, or other related land use or activity for which a permit is required pursuant to Chapter 5.38, Chapter 17.24, Chapter 17.28, and/or Section 17.68.100 of the Mammoth Lakes Municipal Code.

Section 4. The Town Council hereby enacts this interim urgency ordinance by not less than a four-fifths vote, and in light of the findings set forth herein, under the authority granted to it by Article XI, Section 7 of the California Constitution and Section 65858(a) of the California Government Code, which allows the Town to adopt an interim urgency ordinance, in order to protect the public safety, health, and welfare, prohibiting any uses that may be in conflict with a zoning proposal that the Town Council, planning commission or the planning department is considering or studying or intends to study within a reasonable time.

Section 5. The Town Council hereby directs the Community Development Department and Police Department to consider and study possible means of regulating or prohibiting medical marijuana dispensaries, including zoning-based regulations and other regulations.

Section 6. The Town Council finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 7. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The Town Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

Section 8. This ordinance shall become effective immediately upon adoption and shall be in effect for forty-five days from the date of adoption unless extended by the Town Council as provided for in Government Code Section 65858.

Section 9. The Town Clerk shall certify to the passage of this ordinance and cause the same or a summary thereof to be published within fifteen (15) days after adoption in a newspaper of general circulation, printed and published in Mammoth Lakes, California.

PASSED AND ADOPTED this _____ day of _____, 2017 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

John Wentworth
Mayor

ATTEST:

Jamie Gray
Town Clerk

APPROVED AS TO FORM:

Andrew J. Morris
Town Attorney