



AGENDA ITEM NO. 7

CITY OF HAWTHORNE

CITY COUNCIL

AGENDA BILL

For the meeting of January 10, 2017
Originating Department: Planning & Community Development

City Manager: Arnold Shadbeh *Planning Director: Brian James*

SUBJECT:

Resolution No. 7872, A Resolution of the City Council of the City of Hawthorne, Issuing a Written Public Report Describing the Measures Undertaken to Alleviate the Condition Which Led to the Adoption of Urgency Ordinance No. 2133 Pertaining to the Moratorium on the Establishment of Nonmedical Marijuana uses in the City of Hawthorne during the Pendency of the City's Review and Adoption of Permanent Zoning Regulations.

RECOMMENDED MOTION:

1. Approval of Resolution No. 7872, A Public Report Regarding the Status of the City of Hawthorne's Moratorium , January 10, 2017

NOTICING PROCEDURES:

72 hours posted notice pursuant to the Ralph M. Brown Act. In addition, a written report describing the measures taken to alleviate the conditions which led to the adoption of Interim Urgency Ordinance No. 2133 was posted by the City Clerk's Department on December 22, 2016 as well as made available to the public.

FISCAL IMPACT:

None

ATTACHMENTS:

1. Public Report Regarding the Status of the City of Hawthorne's Moratorium on the Establishment of Nonmedical Marijuana uses in the City of Hawthorne Prohibiting the Establishment of Nonmedical Marijuana uses in the City of Hawthorne during the pendency of the City's Review and Adoption of Permanent Zoning Regulations.

EXHIBIT A
**Public Report Regarding the Status of the City of Hawthorne's
Moratorium on the Establishment of Nonmedical Marijuana uses
in the City of Hawthorne during the Pendency of the City's
Review and Adoption of Permanent Zoning Regulations.**
January 10, 2017

On December 13, 2016, the City Council of the City of Hawthorne adopted Interim Urgency Ordinance No. 2133. That Ordinance initiated a moratorium on the establishment of nonmedical marijuana uses in the City of Hawthorne during the pendency of the City's Review and Adoption of Permanent Zoning Regulations for a period of 45 days. The interim ordinance was enacted to ensure protection of the public health, safety and welfare related to the passage of State Proposition 64 which became effective November 9, 2016.

Pursuant to Government Code Section 65858(d), the City prepared this report to describe the measures taken to alleviate the conditions that led to the adoption of the interim urgency moratorium ordinance No. U-2133.

RESEARCH

Since the December 13, 2016, enactment of the moratorium, Staff have been engaged in research and analysis related to potential commercial non-medical uses and outdoor cultivation in residences of marijuana in the City, in order to evaluate the land use and other implications of the new State regulations. This initiation research has included:

- Review of approaches being considered by other local governments, including whether commercial non-medical marijuana uses should be permitted, regulated or prohibited;
- Review of potential conflicts between federal and state statutes as well as legal decisions associated with non-medical marijuana uses; and
- Review of potential for direct and secondary adverse impacts of non-medical marijuana uses as reported by other jurisdictions and law enforcement agencies.

The current interim ordinance was adopted to allow staff sufficient time to analyze the new law related to Proposition 64 to determine the appropriate City response. The interim prohibition adopted by the City Council on December 13, 2016 will expire on January 27, 2017 unless further extended. Since it is infeasible for sufficient measures to be taken by January 27, 2017, it is recommended that the City Council extend the interim ordinance for an additional ten (10) months and fifteen (15) days.

Consistent with California Government Code Section 65858(c), the proposed actions finds that there is a current and immediate threat to the public health, safety, or welfare, and the approval of additional permits or entitlements for commercial and medical marijuana uses would increase that threat to public health, safety, or welfare.

RESOLUTION NO. 7872

A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF HAWTHORNE, CALIFORNIA, ISSUING A WRITTEN PUBLIC REPORT DESCRIBING THE MEASURES UNDERTAKEN TO ALLEVIATE THE CONDITION WHICH LED TO THE ADOPTION OF URGENCY ORDINANCE NO. U-2133 PERTAINING TO THE MORATORIUM ON THE ESTABLISHMENT OF NONMEDICAL MARIJUANA USES IN THE CITY OF HAWTHORNE.

WHEREAS, on December 13, 2016, the City Council of the City of Hawthorne adopted Interim Urgency Ordinance No. 2133 that initiated a moratorium on the establishment of nonmedical marijuana uses in the City of Hawthorne, for a period not to exceed 45 days; and

WHEREAS, pursuant to Government Code Section 65858(d), the City prepared this report to describe the measures taken to alleviate the conditions that led to the adoption of the interim urgency moratorium ordinance; and

WHEREAS, the written public report is attached to this resolution as Exhibit "A," and

WHEREAS, the written public report attached as Exhibit A was both posted and placed on file and made available for public review in the Office of the City Clerk beginning on December 22, 2016.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Hawthorne, California, does hereby resolve and order as follows:

Section 1. That the recitals in this Resolution are true and correct.

Section 2. That the City of Hawthorne issues the written public report (attached as Exhibit "A") describing the measures taken to alleviate the condition which led to the adoption of interim urgency ordinance No. 2133.

Section 3. That the City Council hereby finds that it can be seen with certainty that there is no possibility the adoption of this resolution and issuance of the written public report attached as Exhibit A may have a significant effect on the environment, because the written report and the moratorium will impose greater limitations on development in the City, and will

thereby serve to reduce potentially significant adverse environmental impacts. These actions are therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations.

Section 4. The City Clerk shall certify to the adoption of this Resolution and shall cause this Resolution and this certification to be entered in the Book of Resolutions of the Council of the City.

Section 5. This resolution shall be in full force and effect immediately upon its passage and adoption thereof.

Section 6. The City Attorney is authorized to make minor typographical changes to this Resolution that does not change the substance of this Resolution.

PASSED, APPROVED AND ADOPTED this 10th day of January, 2017.

ALEX VARGAS, Mayor
City of Hawthorne, California

ATTEST:

NORBERT A. HUBER, City Clerk
City of Hawthorne, California

APPROVED AS TO FORM:

RUSSELL MIYAHIRA, City Attorney
City of Hawthorne, California



CITY OF HAWTHORNE CITY COUNCIL AGENDA BILL

For the meeting of January 10, 2017

Originating Department: Department of Planning & Community Development

City Manager: Arnold Shadbahr Planning Director: Brian James

SUBJECT:

PUBLIC HEARING: Ordinance No. U-2134, an Interim Ordinance of the City Council of the City of Hawthorne, California, Extending the Moratorium on the Establishment of Nonmedical Marijuana uses in the City of Hawthorne for an Additional 10 Months and 15 Days, Declaring the Urgency Thereof and the Immediate Effectiveness of this Ordinance Pursuant to Government Code Sections 65858, 36934 and 36937, and Approving Staff's Determination of Exemption from California Environmental Quality Act review Pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations.

RECOMMENDED MOTION:

Adopt Ordinance No. U-2134 on January 10, 2017, by a four-fifth vote of the City Council of the City of Hawthorne.

NOTICING PROCEDURES: Ten-day (10) public hearing notice was published in the Hawthorne Press Tribune on December 29, 2016 and January 5, 2017 pursuant to Government Code sections 65090 and 6061. In addition, a written report describing the measures taken to alleviate the conditions which led to the adoption of Interim Urgency Ordinance No. 2133 was posted by the City Clerk's Department on December 22, 2016.

FISCAL IMPACT: None

SUMMARY:

On November 8, 2016, the People of the State of California passed Proposition 64, the Adult Use of Marijuana Act (AUMA), to legalize recreational marijuana usage (See Attachment 2 for a summary). The AUMA allows local governments

to regulate, control, and prohibit certain nonmedical marijuana uses including nonmedical marijuana businesses and the indoor/outdoor cultivation of nonmedical marijuana in private residences. If local governments do not enact ordinances addressing nonmedical marijuana use, the AUMA and associated state laws and regulations will govern. As of today, private individuals may cultivate nonmedical marijuana both indoors and outdoors per the parameters of the AUMA. Cities may still impose bans on outdoor cultivation after November 9, 2016. However, if ordinances were not enacted prior to November 9, 2016, cities may not impose bans on private indoor cultivation per the parameters of the AUMA. In regards to the establishment of regulations or prohibitions concerning nonmedical marijuana businesses, cities must adopt ordinances prior to the time that the State begins issuing licenses, which is anticipated to be in late 2017. Nonmedical marijuana business cannot be established without a state license or in cities that expressly prohibit such businesses.

Sections 17.14.030 17.16.030, 17.19.030, 17.34.025, 17.18.030, 17.87.050, 17.32.025, 17.28.025, 17.25.025, and 17.26.025 of the Municipal Code prohibit "Marijuana cultivation, marijuana processing, marijuana delivery, and marijuana dispensaries, except where the city is prohibited by federal or state law from enacting a prohibition on any such activity." Notwithstanding these provisions, the Municipal code does not expressly address the sale, distribution or cultivation of nonmedical marijuana. In the absence of this Interim Ordinance's immediate effectiveness, the provisions of the AUMA may be fully effective and nonmedical marijuana uses may be able to establish prior to the City being able to consider and adopt appropriate regulations addressing nonmedical marijuana. It is with an abundance of caution that this Ordinance is being proposed.

On December 13, 2016, the City Council adopted Ordinance No. U-2133, which imposed an initial 45-day moratorium on the establishment of nonmedical marijuana uses in the City of Hawthorne during the pendency of the City's review and adoption of permanent zoning regulations. The initial 45-day moratorium is scheduled to expire on January 27, 2017. City staff intended to study and address the impacts of nonmedical marijuana uses within the City, but did not complete these tasks during the initial 45-day moratorium.

A written report describing the measures taken to alleviate the conditions which led to the adoption of the aforementioned Interim Urgency Ordinance No. 2133, was posted by the City Clerk's Department on December 22, 2016.

The findings contained in Interim Urgency Ordinance No. 2133 continue to exist and based upon the findings, there continues to be a current and immediate threat to the public health, safety, or welfare pending the completion of studies and the adoption of an ordinance that establishes appropriate zoning

regulations concerning this issue. Based upon the aforementioned, staff recommends the extension of the moratorium on nonmedical marijuana uses in the City for an additional ten (10) months and fifteen (15) days.

Pursuant to Government Code Section 65858(a), this extension of the Interim Ordinance must be adopted by not less than a four-fifths vote of the City Council and would be in effect until December 12, 2017. The Planning Director and the City Clerk's office shall undertake all actions legally necessary to extend this Interim Ordinance in the event the studies and reports desired by the City Council will not be concluded on or before the 45th day subsequent to the adoption of this Interim Ordinance.

CEQA:

The City Council hereby finds that it can be seen with certainty that there is no possibility the adoption of the Ordinance would have a significant effect on the environment. The moratorium would impose limitations on the use of nonmedical marijuana, would allow time to formulate regulations addressing the use of nonmedical marijuana in the City, would not result in physical development or alterations, and would serve to reduce potentially significant impacts and threats to safety and public health. It is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations.

ATTACHMENTS:

Attachment 1: Ordinance No. U-2134

Attachment 2: Published Public Hearing Notice

**NOTICE THAT THE HAWTHORNE CITY COUNCIL
WILL CONSIDER ADOPTING AN ORDINANCE EXTENDING THE MORATORIUM
ON THE ESTABLISHMENT OF NONMEDICAL MARIJUANA USES IN THE CITY
OF HAWTHORNE FOR AN ADDITIONAL 10 MONTHS AND 15 DAYS DURING THE
PENDENCY OF THE CITY’S REVIEW AND ADOPTION OF PERMANENT ZONING
REGULATIONS .**

NOTICE IS HEREBY GIVEN that on **January 10, 2017**, at 6:00 P.M., the Hawthorne City Council will consider adopting an ordinance extending the establishment of nonmedical marijuana uses in the City of Hawthorne for an additional 10 months and 15 days during the pendency of the City’s review and adoption of permanent zoning regulations.

On December 13, 2016, the City Council adopted Ordinance No. 2133, “An Interim Urgency Ordinance of the City of Hawthorne, California, Prohibiting the Establishment of Nonmedical Marijuana uses in the City of Hawthorne during the Pendency of the City’s Review and Adoption of Permanent Zoning Regulations, Declaring the Urgency Thereof and the Immediate Effectiveness of this Ordinance Pursuant to Government Code Section 65858, 36934 and 36937.”

At the January 10, 2017 Public Hearing, the City Council will consider adopting an Ordinance extending the existing moratorium that prohibits the establishment of nonmedical marijuana uses in the City of Hawthorne during the pendency of the City’s review and adoption of permanent zoning regulations, for another ten (10) months and fifteen (15) days pursuant to California Government Code sections 65858(a).

If you challenge the subject matter of this public hearing in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to, the public hearing.

A copy of the Ordinance extending the existing moratorium and a copy of the written public report describing measures taken to alleviate the conditions that led to the adoption of the moratorium will be filed with the City Clerk on December 22, 2016. Ordinance No. 2133, which imposed the existing moratorium, is on file with the City Clerk and available for public inspection during regular office hours. (City Hall is closed on January 2nd and 6th, 2017.) Further information may be obtained by contacting the City Clerk at 4455 West 126th Street, Hawthorne, CA 90250 (310) 349-2915.

ORDINANCE NO. U-2134

AN INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAWTHORNE, CALIFORNIA, EXTENDING THE MORATORIUM ON THE ESTABLISHMENT OF NONMEDICAL MARIJUANA RELATED USES IN THE CITY OF HAWTHORNE FOR AN ADDITIONAL 10 MONTHS AND 15 DAYS, DECLARING THE URGENCY THEREOF AND THE IMMEDIATE EFFECTIVENESS OF THIS ORDINANCE PURSUANT TO GOVERNMENT CODE SECTIONS 65858, 36934 AND 36937 AND APPROVING STAFF'S DETERMINATION OF EXEMPTION FROM CALIFORNIA ENVIRONMENTAL QUALITY ACT REVIEW PURSUANT TO TITLE 14, SECTION 15061(B)(3) AND OF THE CALIFORNIA CODE OF REGULATIONS.

THE CITY COUNCIL OF THE CITY OF HAWTHORNE DOES ORDAIN AS FOLLOWS:

Section 1. *Legislative Findings.*

A. Implicit in any plan or regulation is the City's interest in maintaining the quality of life and the character of the City's neighborhoods, as without stable, well-planned neighborhoods, sections of the City can quickly deteriorate, with consequences to social, environmental, and economic values.

B. The People of California voted to approve Proposition 64, the Adult Use of Marijuana Act ("AUMA"), in the statewide election occurring on November 8, 2016.

C. The AUMA allows for local governments to regulate, control, and prohibit various nonmedical marijuana uses authorized by the AUMA, and if local governments fail to enact local ordinances concerning such matters, the AUMA and associated state laws and regulations will govern. Specifically, the AUMA allows for the cultivation and distribution of nonmedical marijuana commercially and the indoor and outdoor cultivation of nonmedical marijuana at the residences of private individuals.

D. Sections 17.14.030, 17.16.030, 17.19.030, 17.34.025, 17.18.030, 17.87.050, 17.32.025, 17.28.025, 17.25.025, and 17.26.025 of the Municipal Code prohibit "Marijuana cultivation, marijuana processing, marijuana delivery, and marijuana dispensaries, except where the city is prohibited by federal or state law from enacting a prohibition on any such activity." Notwithstanding these provisions, the Municipal code does not expressly address the sale, distribution or cultivation of nonmedical marijuana, nor address the unique legal, land use, and public health, safety and welfare issues and impacts associated with nonmedical marijuana uses. It is with an abundance of caution that this

Interim Ordinance is proposed.

E. Under the Federal Controlled Substances Act, the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution.

F. The indoor cultivation of marijuana has potential adverse effects to the health and safety of the occupants; including structural damage to the building due to increased moisture and excessive mold growth which can occur and can pose a risk of fire and electrocution; additionally, the use of pesticides and fertilizers can lead to chemical contamination within the structure.

G. Based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of marijuana cultivation, processing, and distribution uses.

H. The City Council finds that the existing zoning regulations are not adequate to expressly regulate nonmedical marijuana uses that may threaten the public health, safety, and welfare. The City Council further finds that there is a current and immediate threat to the public health, safety, and welfare presented by the issuance of permits or licenses related to nonmedical marijuana uses in the City. In the absence of this Interim Ordinance's immediate effectiveness, the provisions of the AUMA may be fully effective and nonmedical marijuana uses may be able to establish per the AUMA prior to the City being able to consider and adopt appropriate regulations addressing nonmedical marijuana.

I. On December 13, 2016, the City Council of the City of Hawthorne unanimously adopted Interim Urgency Ordinance No. 2133, which imposed an initial 45-day moratorium on the establishment of nonmedical marijuana uses in the City of Hawthorne during the pendency of the City's review and adoption of permanent zoning regulations. The initial 45-day moratorium is scheduled to expire on January 27, 2017.

J. On December 13, 2016, the City Council of the City of Hawthorne further directed City staff to study the impact of nonmedical marijuana uses within the City on the public health, safety and welfare. City staff intends to address the City Council's direction, but did not complete these tasks during the initial 45-day moratorium.

K. A written report describing the measures taken to alleviate the conditions which led to the adoption of the aforementioned Interim Urgency Ordinance No. 2133, was posted by the City Clerk's Department on December 22, 2016 and was issued by the City Council on January 10, 2017, which was at least ten (10) days prior to the expiration of the Interim Urgency Ordinance No. 2133, in compliance with State law.

L. Pursuant to Government Code Section 65090, a public hearing was conducted on January 10, 2017, notice issued at least ten (10) days prior to the date of the hearing, at which time the City Council considered this Interim Urgency Ordinance to extend the 45-day moratorium on the establishment of nonmedical marijuana uses in the City of Hawthorne, for an additional ten (10) months and fifteen (15) days.

M. The City Council of the City of Hawthorne has considered the written and oral testimony provided at the public hearing and desires to extend the moratorium on the establishment of nonmedical marijuana uses in the City of Hawthorne for an additional ten (10) months and fifteen (15) days.

N. The City Council of the City of Hawthorne finds that there is a continued need to study existing zoning regulations governing the use of nonmedical marijuana in the City of Hawthorne because of the potential adverse effects of non-medical marijuana uses and their threat to the public health, safety, and welfare of the community.

O. The findings contained in Interim Urgency Ordinance No. 2133 continue to exist and are hereby incorporated herein by this reference. Based upon the findings incorporated by reference in Section 1 of this Ordinance, the City Council finds and determines that there continues to be a current and immediate threat to the public health, safety, or welfare, and the establishment of nonmedical marijuana uses in the City of Hawthorne will result in a continued threat to public health, safety and welfare pending the completion of studies and the adoption of an ordinance that establishes appropriate zoning regulations/prohibitions concerning nonmedical marijuana uses.

Section 2. CEQA Finding. The City Council hereby finds that it can be seen with certainty that there is no possibility the adoption of the Ordinance would have a significant effect on the environment. The moratorium would impose limitations on the use of nonmedical marijuana, would allow time to formulate regulations addressing the use of nonmedical marijuana in the City, would not result in physical development or alterations, and would serve to reduce potentially significant impacts and threats to safety and public health. It is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations.

Section 3. Extension of Moratorium. The City Council of the City of Hawthorne hereby extends the moratorium on the establishment of nonmedical marijuana uses in the City of Hawthorne, for an additional ten (10) months and fifteen (15) days, to take effect immediately after the expiration of the 45-day moratorium, which became effective December 13, 2016 and expires on January 27, 2017.

Section 4. Moratorium Defined. Notwithstanding any other ordinance or

provision of the Hawthorne Municipal Code, no person shall establish a business that sells, distributes or cultivates marijuana or be issued a building permit or any other entitlement authorizing building or structure to be used for marijuana related uses during the term of the moratorium described in Section 3 above.

Section 5. *Moratorium Exclusion.* Notwithstanding any other provision of this Interim Ordinance, the moratorium established under Section 3 and 4 shall not apply to any license for which a Federal or State law precludes the City's jurisdiction.

Section 6. *Term of Moratorium.* The moratorium extension adopted by this Interim Urgency Ordinance shall commence on January 27, 2017, and shall terminate on December 12, 2017, which is ten (10) months and fifteen (15) days from the date of expiration of Interim Urgency Ordinance NO. 2133, unless extended by the City Council at a regularly noticed public hearing pursuant to California Government Code Section 65858. .

Section 7. *Penalty.* Violation of any provision of this Interim Ordinance shall constitute a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment. Each and every day such a violation exists shall constitute a separate and distinct violation of this Ordinance. In addition to the foregoing, any violation of this Interim Urgency Ordinance shall constitute a public nuisance and be subject to abatement as provided by all applicable provisions of law.

Section 8. *Effective Date; Findings of Urgency; and Duration.*

A. This Interim Ordinance is adopted as an urgency ordinance pursuant to the provisions of Government Code Sections 65858, 36934 and 36937, and shall take effect immediately upon its adoption. Based upon the findings set forth in Section 1 above, the City Council finds and determines that the adoption of this Interim Ordinance is an urgency ordinance authorized by Government Code Section 65858, and is necessary for the immediate preservation of the public peace, health and safety.

B. Pursuant to Government Code Section 65858(a), this Interim Ordinance shall be adopted by not less than a four-fifths vote of the City Council and shall be in effect for ten (10) months and fifteen (15) days. The Planning Director and the City Clerk's office shall undertake all actions legally necessary to extend this Interim Ordinance in the event the studies and reports desired by the City Council will not be concluded on or before the termination of this Interim Urgency Ordinance.

Section 9. *Severability.* If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof, is

for any reason held to be unlawful, such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unlawful.

Section 10. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the summarized ordinance to be published once in a newspaper of general circulation, published and circulated in the City of Hawthorne, or if there is none, he shall cause it to be posted in at least three public places in the City of Hawthorne, California.

PASSED, APPROVED, and ADOPTED this 10th day of January, 2017.

ALEX VARGAS,
MAYOR
City of Hawthorne, California

ATTEST:

NORB HUBER,
CITY CLERK
City of Hawthorne, California

APPROVED AS TO FORM:

RUSSELL I. MIYAHIRA,
CITY ATTORNEY
City of Hawthorne, California