



STAFF REPORT

TOWN COUNCIL MEETING OF DECEMBER 13, 2016

To: Town Council

From: Town Manager
Town Attorney

Subject: Uncodified urgency interim zoning ordinance making findings and establishing a temporary moratorium prohibiting the outdoor cultivation of non-medical marijuana and prohibiting the sale of non-medical marijuana.

Date: November 10, 2016

RECOMMENDATION:

- 1) Hear staff presentation, hold discussion, and hear public testimony;
- 2) Adopt an uncodified ordinance making findings and establishing a forty-five-(45) day moratorium on the outdoor cultivation of non-medical marijuana and prohibiting the sale of non-medical marijuana; and,
- 3) Find that the ordinance is not subject to California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060(c)(2), 15061(b)(3), and 15308.

DISCUSSION:

At the November 8, 2016 general election the voters of the State of California approved Proposition 64, which legalizes the recreational use of marijuana in California by adults aged 21 or over. Proposition 64 permits the personal use and cultivation of marijuana and creates a statewide dual licensing scheme for the regulation of marijuana-related businesses, including commercial cultivation, distribution, testing, delivery, and retail establishments.

However, under Proposition 64 the Town retains a large measure of local control over marijuana cultivation and businesses. For example, Proposition 64 enacts Health and Safety Code section 11362.2(b)(3), which permits the Town to prohibit the planting, cultivation, harvesting, drying or processing of marijuana plants outdoors.

Proposition 64 contains provisions which permit the wholesale and retail sale of non-medical marijuana except as prohibited or regulated by a local agency. Proposition 64 also enacts Business and Professions Code section 26200, which permits the Town to prohibit the establishment of retail marijuana businesses as specified in proposed Business and Professions Code section 26070.

The Town does not presently have business licensing and express zoning regulations governing non-medical marijuana retail establishments. Though businesses may not engage in the sale of marijuana without a State license, and the California State Bureau of Marijuana Control Regulation will not begin issuing licenses until late 2017 or early 2018, the Town may preserve the status quo in the interim while investigating whether and to what degree non-medical marijuana retail and wholesale businesses should be regulated, or whether the Town would prefer to prohibit such businesses as authorized by Business and Professions Code section 26200.

The Town has a permissive zoning ordinance, meaning that uses not expressly permitted are presumptively prohibited unless an authorized Town official finds that the proposed use is substantially the same in character and intensity as those land uses listed in the code. Thus, the Town could arguably not take any action regarding a moratorium on establishing non-medical marijuana retail and wholesale businesses, and instead rely on the presumptive prohibition to prevent the establishment of non-medical marijuana retail and wholesalers. However, the more conservative course of action to ensure local control of non-medical marijuana wholesalers and retailers is to expressly regulate licensing and zoning for those uses.

For these reasons, staff recommends that the Town establish a moratorium on the outdoor cultivation of marijuana to allow sufficient time to research the effects of such activity and prepare an ordinance for the Council's review.

The Town is authorized to adopt this urgency ordinance pursuant to Government Code section 65858. The interim ordinance shall be effective for forty-five (45) days following adoption and thereafter may be extended by subsequent four-fifths (4/5ths) vote of the Town Council. The extension can be done one of two ways. One, the extension can be for a period of 10 months and 15 days and then an additional one-year extension can be granted at the end of that time. Or, a single extension of 22 months and 15 days can be done.

ENVIRONMENTAL REVIEW:

This Ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060, subdivision (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061, subdivision (b)(3) (there is no possibility the activity in question may have a significant effect on the environment).

FINANCIAL IMPLICATIONS:

None.

ALTERNATIVES:

1. Do not adopt the moratorium.
2. Provide staff further direction.

Attachment: Ordinance

ORDINANCE NO. ____

**AN UNCODIFIED URGENCY ORDINANCE OF THE TOWN COUNCIL
OF THE TOWN OF LOOMIS MAKING FINDINGS AND ESTABLISHING
A TEMPORARY MORATORIUM PROHIBITING THE OUTDOOR CULTIVATION
AND SALE OF NONMEDICAL MARIJUANA**

WHEREAS, the Town of Loomis re-affirms and confirms that the zoning code is adopted and operates under the principles of permissive zoning, meaning that any land use not specifically authorized or identified in the zoning code is prohibited; and

WHEREAS, at the November 8, 2016 general election, the People of the State of California approved Proposition 64, legalizing the use and possession of recreational marijuana; and

WHEREAS, Proposition 64 enacts Health and Safety Code section 11362.2(b)(3), which permits a local agency to prohibit the planting, cultivation, harvesting, drying or processing of marijuana plants outdoors upon the grounds of a private residence; and

WHEREAS, Proposition 64 enacts Business and Professions Code section 26200 which permits a local agency to prohibit the establishment of marijuana businesses as specified in proposed Business and Professions Code section 26070; and

WHEREAS, it is in the interest of the Town, its residents, and its lawfully permitted businesses that the Town adopt regulations addressing the outdoor cultivation of marijuana so as to limit potential negative impacts while allowing Town residents the ability to grow marijuana as authorized by proposed Health and Safety Code section 11362.1; and

WHEREAS, it is in the interest of the Town, its residents, and its lawfully permitted businesses that the Town adopt regulations concerning the appropriate business licensing and zoning for the sale of nonmedical marijuana; and

WHEREAS, the Town wishes to impose land use regulations on marijuana; and

WHEREAS, the Town wishes to impose business licensing and land use regulations which will govern the establishment of marijuana businesses; and

WHEREAS, the Town must study and analyze concerns about the potential negative impacts on the public health, safety, and welfare arising from outdoor marijuana cultivation, including, but not limited to, nuisance odors associated with outdoor marijuana cultivation, criminal activity, and other impacts; and

WHEREAS, the Town must study and analyze concerns about the potential negative impacts on the public health, safety, and welfare arising from the sale of nonmedical marijuana, including, but not limited to, licensing oversight, criminal and nuisance activity, nuisance odor, parking, and other impacts; and

WHEREAS, the Town must study the scope of the Town's police power and draft the necessary municipal code provisions; and

WHEREAS, the Town intends to consider or study or intends to prepare a marijuana cultivation and marijuana sale zoning proposal, and a marijuana business license ordinance proposal within a reasonable time, to determine whether and to what degree outdoor marijuana cultivation and marijuana sale should be regulated to ensure these uses are undertaken in conformance with the Town's General Plan, Zoning Ordinance, Business Licensing Ordinance, and applicable California Health and Safety Code and Business and Professions Code provisions; and

WHEREAS, the Town Council hereby finds that this Ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060, subdivision (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061, subdivision (b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the Town Council further finds that this Ordinance is categorically exempt from review under CEQA under the Class 8 Categorical Exemption (regulatory activity to assure the protection of the environment, CEQA Guidelines section 15308); and

WHEREAS, Government Code section 65858 expressly authorizes the Town Council to adopt an urgency ordinance prohibiting any uses which may be in conflict with a contemplated general plan, specific plan, or zoning proposal which the legislative body of the Town or the planning commission or the planning department is considering or studying or intends to study within a reasonable time, for the purpose of the immediate preservation of the public health or safety.

WHEREAS, the Town desires that such moratorium take effect immediately upon its adoption in accordance with Section 36934 of the California Government Code; and

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOOMIS
HEREBY ORDAINS AS FOLLOWS:**

Section 1. Findings. The recitals set forth above are hereby incorporated by reference. Additionally, the Town Council finds as follows:

1. The outdoor cultivation of marijuana and sale of nonmedical marijuana have significant impacts or the potential for significant impacts on the Town.
2. These impacts include increased robberies, burglaries, and other crimes, and the nuisance of strong and noxious odors.
3. Health and Safety Code section 11362.2 allows cities and counties to adopt and enforce local regulations prohibiting the outdoor cultivation of marijuana.
4. The unregulated outdoor cultivation of marijuana in the Town of Loomis can adversely affect the health and safety of the Town and its residents. Comprehensive civil regulation of premises used for marijuana cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, and malodorous smells may result from unregulated outdoor marijuana cultivation.

5. It is the purpose and intent of this ordinance to implement state law by providing a means for regulating the cultivation of marijuana in a manner that is consistent with state law and which balances the needs of residents who desire to cultivate marijuana with the health and safety of residents and businesses in the Town of Loomis.

6. The limited right to cultivate marijuana plants granted under Health and Safety Code section 11362.1(a)(3) does not confer the right to create or maintain a public nuisance. By adopting the moratorium contained in this ordinance, the Town of Loomis will achieve a significant reduction in the aforementioned harms and potential harms caused or threatened by the unregulated cultivation of marijuana in the Town.

7. There is a current and immediate threat to the public health and safety of the Town and its community, thereby necessitating the immediate enactment of this urgency ordinance in order to ensure that the outdoor cultivation and sale of nonmedical marijuana only occur under adequate regulations, and that these regulations are effective by the time the Proposition becomes effective.

Section 2. Moratorium. Based on the recitals, and the findings above, the Town Council hereby declares the following temporary moratorium.

1. For as long as the moratorium is in effect, the outdoor cultivation of marijuana is hereby prohibited within Town limits.

2. For as long as the moratorium is in effect, the sale of marijuana is hereby prohibited within Town limits.

3. For purposes of this ordinance, the term "marijuana" has the meaning set forth in subdivision (s) of Section 26001 of the California Business and Professions Code.

Section 3. Authority. Based on the foregoing recitals and findings which are all deemed true and correct, this interim ordinance is urgently needed for the immediate preservation of the public health and safety. This urgency ordinance is enacted pursuant to the authority conferred upon the Town Council of the Town of Loomis by Government Code section 36934, and therefore shall be in full force and effect immediately upon its adoption by a four-fifths (4/5ths) vote of the Town Council.

Section 4. Enforcement. Violations of this ordinance shall constitute a public nuisance and may be enforced pursuant to the provisions of Chapters 1.20 and 7.04 of the Loomis Municipal Code, or any other applicable law.

Section 5. Severability. If any provision, clause, word, sentence or paragraph of this Ordinance, or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not result in the invalidity of the entire ordinance which can be given effect without the invalid provision or application. The Loomis Town Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

Section 6. CEQA. The Town Council hereby finds that this Ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections

15060, subdivision (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061, subdivision (b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the Town Council further finds that the Ordinance is categorically exempt from review under CEQA under the Class 8 Categorical Exemption (regulatory activity to assure the protection of the environment, CEQA Guidelines section 15308).

Section 7. Effective Date and Justification of Urgency. This Ordinance shall take effect immediately upon its adoption as an Urgency Ordinance. A statement of the reason for its urgency is that unless adopted, the public's health and safety may be at risk because Proposition 64 contains provisions which permit the outdoor cultivation of marijuana except as prohibited or regulated by a local agency, and that permit the sale of nonmedical marijuana except as prohibited or regulated by a local agency. If this Ordinance was not immediately effective, the Town would not be able to regulate the outdoor cultivation of marijuana or the establishment of businesses engaging in the wholesale or retail sale of nonmedical marijuana. Therefore, its immediate effect is necessary for the preservation of the public health and safety.

Section 8. Publication. The Town Clerk shall certify the passage of this ordinance and cause a summary of this ordinance to be published after its passage, with the names of those members of the Town Council voting for and against the ordinance, in a newspaper of general circulation, published and circulated in the Town in accordance with Section 36933 of the Government Code. The full text of this ordinance will be available for viewing in the Town Clerk's Office.

This Ordinance was **PASSED and ADOPTED** by a four-fifths (4/5ths) vote of the Town Council of the Town of Loomis on December ____, 2016.

AYES:
NOES:
ABSENT:
ABSTAIN:

Brian Baker, Mayor

ATTEST:

Crickett Strock, Town Clerk