

LB for TC

**CORTE MADERA TOWN COUNCIL
STAFF REPORT**

REPORT DATE: AUGUST 13, 2018
MEETING DATE: AUGUST 21, 2018

TO: HONORABLE MAYOR AND COUNCIL MEMBERS
FROM: PHIL BOYLE, SENIOR PLANNER
SUBJECT: ITEMS RELATED TO MORATORIUM ON CANNABIS-RELATED BUSINESS ACTIVITIES

1. CONSIDERATION AND POSSIBLE ACTION TO APPROVE RESOLUTION 48/2018 ACCEPTING A REPORT DESCRIBING MEASURES TAKEN TO ALLEVIATE THE CONDITIONS THAT LED TO THE ADOPTION OF ORDINANCE NOS. 971 AND 972 WHICH IMPOSED A TEMPORARY PROHIBITION ON MEDICAL AND NONMEDICAL CANNABIS-RELATED BUSINESSES IN CORTE MADERA; AND

2. CONSIDERATION AND POSSIBLE ACTION TO ADOPT URGENCY ORDINANCE NO. 978, EXTENDING, FOR AN ADDITIONAL ONE YEAR, ORDINANCE NO. 971, WHICH IMPOSED A TEMPORARY PROHIBITION ON MEDICAL AND NONMEDICAL CANNABIS-RELATED BUSINESSES FROM LOCATING AND OPERATING IN THE TOWN OF CORTE MADERA, PENDING THE ANALYSIS AND CONSIDERATION OF NEW ZONING AMENDMENTS AND OTHER REGULATIONS APPROPRIATE FOR THIS NEW INDUSTRY.

PURPOSE:

To (1) accept, by resolution, a report describing the measures the Town has taken to alleviate the conditions that lead to Council's adoption of the existing interim ordinance (Ordinance No. 971) which imposed a temporary prohibition on medical and nonmedical cannabis-related businesses in Corte Madera, and (2) consider adopting an urgency ordinance that would extend until September 18, 2019, Ordinance No. 972.

STAFF RECOMMENDATION

Staff recommends that the Town Council approve the attached Resolution 48/2018 ([Attachment 1](#)) and adopt the attached Ordinance No. 978 ([Attachment 2](#)), extending the temporary moratorium on cannabis-related businesses for another year (new expiration date September 18, 2019) in compliance with California Government Code Section 65858 ([Attachment 3](#)) while staff develops a permanent ordinance addressing cannabis businesses and uses.

A 4/5 vote is required by the Town Council in order to adopt the ordinance.

CEQA STATUS

This ordinance is categorically exempt from CEQA under: (a) Section 15308 of the State CEQA Guidelines because it is a regulatory action taken by the Town in accordance with Cal. Gov't Code §65858 to assure maintenance and protection of the environment; (b) Section 15060(c)(2) because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; and (c) Section 15061 because it can be seen with certainty that there is no possibility that the adoption of the ordinance may have a significant effect on the environment since the ordinance prohibits physical changes for a specified period of time.

BACKGROUND

On September 19, 2017, the Town Council adopted, as an urgency ordinance, Ordinance No. 971 which imposed a 45-day prohibition on any medical or nonmedical cannabis related business from locating or operating in the Town of Corte Madera. Ordinance No. 971 expressly exempted from this prohibition state-licensed mobile delivery service business located outside of Corte Madera from delivering medical or nonmedical cannabis products to retail customers located within the Town.

On October 17, 2017, the Town Council adopted, as an urgency ordinance no. 972 which pursuant to Government Code Section 65858 extended the prohibition on any medical or nonmedical cannabis related business from locating or operating in the Town of Corte Madera to September 18, 2018

Pursuant to Government Code Section 65858, the Town Council must issue a written report at least 10 days prior to the expiration of Ordinance No. 972 describing the measures the Town has taken since adoption of that ordinance to alleviate the conditions that led to the adoption of the ordinance. Staff has prepared a report meeting these requirements for the Town Council's review and consideration, and has prepared a resolution for possible adoption of that report (Attachment 1-Resolution 48/2018 and Report).

In accordance with Government Code Section 65858, Ordinance No. 972 expires on September 18, 2018 unless the Town Council adopts, by a 4/5 vote, another urgency ordinance extending the moratorium for a maximum of one year. In total, Ordinance No. 971 may not be in effect for more than two years.

DISCUSSION

As discussed in the report (Attachment 1) related to measures taken to address the conditions requiring the interim ordinance, or moratorium, Staff has continued to deepen its understanding of cannabis-related issues through a variety of resources. Staff has gathered additional information regarding the types of cannabis-related businesses that could be licensed by the State; discussed mobile delivery business models with industry representatives; attended seminars related to regulatory best practices for cannabis-related businesses; and met with planning staff from other local jurisdictions to understand regional regulatory responses and other jurisdiction's policy directions.

In the last several months staff has also hired a consultant to provide project management services in coordination with Planning Department Staff. Staff has also developed a public survey and has tentatively scheduled two public workshops for September to get a sense of the community opinions about cannabis and to answer questions about the State law. The public workshops will be followed by public hearings before the Planning Commission and the Town Council to discuss and potentially adopt

permanent cannabis regulations for the Town. The goal is to have an ordinance adopted by the end of 2018 or early in 2019.

As a result, staff is recommending the Town Council (1) adopt the attached resolution (48/2018) accepting the report on measures the Town has taken to date, and (2) adopt the attached urgency ordinance, Ordinance No. 978, extending the existing prohibition on any medical or nonmedical cannabis-related businesses from locating or operating in the Town until September 18, 2019.

OPTIONS

1. Approve Resolution 48/2018 and Adopt Draft Ordinance No. 978
2. Approve Resolution 48/2018 and Adopt Draft Ordinance No. 978 with modifications
3. Approve Resolution 48/2018, with or without modifications, and allow Ordinance Nos. 971 and 972 to expire on September 18, 2018

ATTACHMENTS

1. Draft Resolution 48/2018 (contains report – Exhibit A)
2. Draft Ordinance No. 978
3. California Government Code Section 65858

RESOLUTION NO. 48/2018

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF CORTE MADERA
ACCEPTING A REPORT DESCRIBING THE MEASURES TAKEN TO ALLEVIATE
THE CONDITION WHICH LED TO THE ADOPTION OF INTERIM
ORDINANCE NO. 971 TEMPORARILY PROHIBITING MEDICAL AND
NONMEDICAL CANNIBAS RELATED BUSINESSES FROM LOCATING AND
OPERATNG IN THE TOWN OF CORTE MADERA**

WHEREAS, the Town Council of the Town of Corte Madera adopted Interim Ordinance No. 971 on September 19, 2017, for the purpose of temporarily prohibiting medical and nonmedical cannabis-related businesses from locating and operating in the Town of Corte Madera pending analysis and consideration by the Planning Commission and ultimately the Council of new zoning amendments and other regulations for the cannabis industry. Interim Ordinance No. 971 is in effect for 45 days, until November 3, 2017; and

WHEREAS, the Town Council of the Town of Corte Madera adopted Interim Ordinance No. 972 on October 17, 2017 which extended the temporary prohibiting medical and nonmedical cannabis-related businesses from locating and operating in the Town of Corte Madera until September 18, 2018; and

WHEREAS, town staff has prepared a staff report and draft ordinance (Ordinance 978) to extend the moratorium to September 18, 2019; and

WHEREAS, pursuant to CA Government Code Section 65858(d), the Town Council of the Town of Corte Madera is required to issue a written report describing the measures taken to alleviate the conditions that led to the adoption of the Interim Ordinance No 971 ten days prior to the expiration or extension of that Ordinance; and

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Corte Madera that:

In accordance with California Government Code Section 65858(d), the Town Council hereby accepts the report dated August 9, 2018 and attached hereto as Exhibit A, describing the measures taken to alleviate the conditions that led to the adoption of Interim Ordinance No. 971.

I HEREBY CERTIFY that the foregoing resolution was duly and regularly adopted by the Town Council of Corte Madera at a regular meeting held on the 21st day of August, 2018, by the following vote, to wit:

AYES: Councilmembers:

NOES: Councilmembers:

ABSTAIN: Councilmembers:

ABSENT: Councilmembers:

Bob Ravasio, Mayor

ATTEST:

Rebecca Vaughn, Town Clerk

Attachments:

1. Exhibit A: Report on Measures Taken to Alleviate the Conditions that Led to the Adoption of Ordinance No. 971

Attachment 1

EXHIBIT A

**TOWN OF CORTE MADERA
PLANNING & BUILDING DEPARTMENT**

August 9, 2018

**REPORT ON MEASURES TAKEN TO ALLEVIATE THE CONDITIONS THAT LED TO THE
ADOPTION OF ORDINANCE NO. 971**

On October 17, 2017 staff provided a report to the Town Council describing the measures taken to alleviate the conditions that led to the adoption of the Ordinance No. 971, adopted September 19, 2017. Also on October 17, 2017, the Council extended the temporary prohibition on medical and non-medical cannabis-related businesses in Corte Madera until September 18, 2018. This is a follow up report describing the additional measures Town staff has taken since October 17, 2017 to alleviate the conditions that led to the adoption of Ord. No. 971.

The purpose of Ordinance No. 971 was to allow Town staff, the Planning Commission, and the Town Council, a reasonable amount of time to analyze, consider, and adopt through the required public process with appropriate community outreach and engagement – new policies and regulations applicable to medical and nonmedical cannabis-related businesses.

Since the adoption of Ordinance No. 971, staff has gathered additional information regarding the types of cannabis-related businesses that could be licensed by the State; discussed mobile delivery business models with industry representatives; attended seminars related to regulatory best practices for cannabis-related businesses; and met with local planning staff from other jurisdictions to understand regional regulatory responses and other jurisdiction's policy directions.

In the last several months staff has also hired a consultant to provide project management services in coordination with Planning Department Staff. Staff has also developed a public survey that will be available via the Town's website to get a sense of the community opinions and concerns about cannabis. Finally, staff has developed a schedule of public workshops this fall to gather opinions and answer questions the community has regarding cannabis regulations, cannabis use and cannabis businesses. The public workshops will be followed by public hearings before the Planning Commission and the Town Council to discuss and potentially adopt permanent cannabis regulations for the Town. The goal is to have an ordinance adopted by the end of 2018 or early in 2019.

These actions described above were necessary first steps to alleviate the conditions leading to the adoption of the interim urgency ordinance. However, do to the current workload and Town priorities staff still needs additional time to complete the lengthy process of analyzing, considering, and adopting appropriate regulations to govern this new industry. Therefore, a one year extension of the urgency ordinance will be considered by the Town Council at the August 21, 2018 Town Council meeting.

Phil Boyle,
Senior Planner

ORDINANCE NO. 978

AN URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CORTE MADERA EXTENDING, FOR ONE YEAR ORDINANCE NO. 971, FOR A TEMPORARY PROHIBITION ON MEDICAL AND NONMEDICAL CANNABIS-RELATED BUSINESSES LOCATING AND OPERATING IN THE TOWN OF CORTE MADERA, PENDING THE ANALYSIS AND CONSIDERATION OF NEW ZONING AMENDMENTS AND OTHER REGULATIONS APPROPRIATE FOR THIS NEW INDUSTRY.

FINDINGS:

The Town Council of the Town of Corte Madera makes the following findings:

WHEREAS, Corte Madera is a vital and active Town that retains a strong sense of community. The Town strives to retain this atmosphere and a diverse mix of business establishments while promoting the long-term economic health of the community as a whole; and

WHEREAS, Corte Madera desires to protect its existing character, including its vibrant and diverse business sector and at the same time create a supportive environment for a variety of uses, including existing residential areas, to thrive in a manner consistent with the community character; and

WHEREAS, in September 2015, the California Legislature adopted the *Medical Cannabis Regulation and Safety Act* (MCRSA) in effort to clarify and establish a statewide regulatory framework to oversee the medical cannabis-related businesses; and

WHEREAS, on November 8, 2016, California voters approved Proposition 64, known as the *Control, Regulate and Tax Adult Use of Marijuana Act* (with a designated short title of the “Adult Use of Marijuana Act,” or “AUMA”), which, among other things, legalized the recreational use of nonmedical marijuana for individuals 21 years of age or older and establishing a state-wide scheme to license businesses in the *nonmedical* cannabis-related industry; and

WHEREAS, On June 15, 2017, the California Legislature passed new legislation combining and coordinating government oversight of the State’s medical and nonmedical cannabis industries into one master regulatory regime, and it is anticipated that State will begin issuing licenses to medical and nonmedical cannabis-related businesses after January 1, 2018; and

WHEREAS, under State law, the Town retains the authority to prohibit any cannabis businesses from operating within its borders, and to the extent such businesses are allowed to operate in the Town, the Town may impose additional regulations on those businesses than those imposed by the State; and

WHEREAS, the Town of Corte Madera currently prohibits “medical marijuana dispensaries” within the Town’s boundaries, as such uses are defined in the Town’s Zoning Ordinance, but does not currently expressly prohibit nonmedical marijuana dispensaries or any other business related to medical or nonmedical cannabis from operating in the Town, nor does it impose any industry-specific regulations on those businesses; and

WHEREAS, if the Town of Corte Madera does not adopt regulations that specifically prohibit or regulate cannabis related-businesses prior to January 1, 2018, the State may issue licenses to such businesses to operate within the Town; and

WHEREAS, the regulations and licensing requirements enacted by the State of California will likely not be adequately tailored to protect the unique culture and character of the Corte Madera community; and

WHEREAS, to adopt permanent cannabis industry specific zoning amendments, the Planning Commission and then Town Council must proceed through a public hearing process – with careful analysis and appropriate community outreach and engagement – to determine whether any cannabis-related businesses should be allowed to operate in the Town and, if allowed to operate, how those businesses should be regulated.

WHEREAS, there is insufficient time for the Town to undertake and complete the Planning Commission and Town Council public hearing process necessary for permanent zoning amendments to take effect prior to January 2018 when the State anticipates it will begin licensing cannabis-related businesses.

WHEREAS, allowing State to issue cannabis-related businesses licenses to physically locate and operate in the Town of Corte Madera before the Town considers the extent to which, and conditions under which, such businesses may be allowed to operate in Corte Madera would pose an immediate threat to public health, safety and welfare to Corte Madera residents and business community by irreparably changing the small-town, family-oriented, residential character of the community that Corte Madera residents have long sought to thoughtfully create and maintain and impeding the Town’s goals for a diverse business community that is compatible with that character; and

WHEREAS, the Town’s approval of building permits, use permits, or other permits or licenses for cannabis-related businesses licensed by the State to locate and operate in Corte Madera, as would be required under the Town’s current zoning ordinance, would likewise result in an immediate threat to public health, safety and welfare, by hampering and irreparably impeding the

Town's goals for a diverse business community that is compatible with the small-town, family-oriented, residential character of the Town; and

WHEREAS, on September 19, 2017, the Town Council of Corte Madera adopted an urgency ordinance (Corte Madera Ordinance No. 971) pursuant to California Government Code Section 65858 temporarily prohibiting all medical and nonmedical cannabis-related businesses from locating and operating in the Town of Corte Madera pending the analysis and consideration of new zoning amendments and other regulations appropriate for this new industry. Ordinance No. 971 remained in effect for 45 days from its adoption, until November 3, 2017; and

WHEREAS, as required by Section 65858(d), the Corte Madera Town Council has accepted, by approving Resolution 52/2017 on October 17, 2017, a report describing the measures taken to alleviate the conditions that led to the adoption of Ordinance 971. Such measures include: 1) Town staff gathering information and conducting additional research related to the types and operational characteristics of the cannabis-related business industry; 2) staff attending seminars related to regulatory best practices; 3) staff discussing and sharing information with planning staff from other local jurisdictions to understand the regional regulatory response and other jurisdiction's policy direction; and 4) staff initiating the development of a draft work plan, including a general timeline for obtaining public input and conducting required public hearings for zoning amendments. These efforts were intended to deepen Staff's understanding of the new cannabis industry and identify key issues that should be considered by the Planning Commission and Council when assessing new regulations to govern the cannabis industry; and

WHEREAS, the Town needed additional time to properly and carefully consider and conduct further study, and bring forward to the Planning Commission, and ultimately the Town Council, to allow the Town to determine whether to allow any medical and/or nonmedical cannabis businesses to operate in the Town, and if such businesses are to be allowed to operate, how to regulate those businesses, and to adopt the necessary legislation to implement those policy decisions; and

WHEREAS, on October 17, 2017 the Council extended Ordinance No. 971 another 10 months and 15 days (with the approval of Ordinance 972) through the date of September 18, 2018, giving the Town time to complete that process without imposing an immediate threat to public health, safety and welfare to Corte Madera residents; and

WHEREAS, Town requires additional time to complete its review of this matter including, but not limited to, Town meetings and public hearings before the Planning Commission and Town Council prior to prohibiting or adopting any regulations; and

WHEREAS, Town Council accepted a Report Describing the Measures Taken to Alleviate the Condition Which Led to the Adoption of Interim Ordinance No. 971 for the temporary prohibition of medical and nonmedical cannabis related businesses from locating and operating

within the Town of Corte Madera (Resolution 48/2018);

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF CORTE MADERA DOES ORDAIN AS FOLLOWS:

Section 1. The above recitals and findings are incorporated herein by this reference.

Section 2. Ordinance Nos. 971 and 972, adopted as interim urgency ordinances by the Town Council on September 19, 2017 and October 17, 2017 respectively, are hereby extended for one additional year. Ordinance No. 978 expires on September 18, 2019 and cannot be extended again under Cal. Gov't Code Section 65858.

Section 3. This ordinance is categorically exempt from CEQA under: (a) Section 15308 of the State CEQA Guidelines because it is a regulatory action taken by the Town in accordance with Cal. Gov't Code §65858 to assure maintenance and protection of the environment; (b) Section 15060(c)(2) because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; and (c) Section 15061 because it can be seen with certainty that there is no possibility that the adoption of the ordinance may have a significant effect on the environment since the ordinance prohibits physical changes for a specified period of time.

Section 4. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Town Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

Section 5. This ordinance takes effect immediately upon its adoption by at least a four fifths affirmative vote of the Town Council. The Town Clerk shall cause this ordinance to be published and/or posted within fifteen days after its adoption, but any failure by the Town Clerk to publish and/or post this ordinance as required by this Section shall not alter the effectiveness of this ordinance.

This ordinance was adopted on the 21st day of August 2018, by the following vote, to wit:

AYES:
NOES:

ABSENT:
ABSTAIN:

Mayor of the Town of Corte Madera

Attest:

Town Clerk of the Town of Corte Madera

Approved as to form:

Town Attorney of the Town of Corte Madera

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GOVERNMENT CODE - GOV

TITLE 7. PLANNING AND LAND USE [65000 - 66499.58] (*Heading of Title 7 amended by Stats. 1974, Ch. 1536.)*

DIVISION 1. PLANNING AND ZONING [65000 - 66210] (*Heading of Division 1 added by Stats. 1974, Ch. 1536.)*

CHAPTER 4. Zoning Regulations [65800 - 65912] (*Chapter 4 repealed and added by Stats. 1965, Ch. 1880.)*

ARTICLE 2. Adoption of Regulations [65850 - 65863.13] (*Article 2 added by Stats. 1965, Ch. 1880.)*

65858. (a) Without following the procedures otherwise required prior to the adoption of a zoning ordinance, the legislative body of a county, city, including a charter city, or city and county, to protect the public safety, health, and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time. That urgency measure shall require a four-fifths vote of the legislative body for adoption. The interim ordinance shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for one year. Any extension shall also require a four-fifths vote for adoption. Not more than two extensions may be adopted.

(b) Alternatively, an interim ordinance may be adopted by a four-fifths vote following notice pursuant to Section 65090 and public hearing, in which case it shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may by a four-fifths vote extend the interim ordinance for 22 months and 15 days.

(c) The legislative body shall not adopt or extend any interim ordinance pursuant to this section unless the ordinance contains legislative findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare. In addition, any interim ordinance adopted pursuant to this section that has the effect of denying approvals needed for the development of projects with a significant component of multifamily housing may not be extended except upon written findings adopted by the legislative body, supported by substantial evidence on the record, that all of the following conditions exist:

(1) The continued approval of the development of multifamily housing projects would have a specific, adverse impact upon the public health or safety. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date that the ordinance is adopted by the legislative body.

(2) The interim ordinance is necessary to mitigate or avoid the specific, adverse impact identified pursuant to paragraph (1).

(3) There is no feasible alternative to satisfactorily mitigate or avoid the specific, adverse impact identified pursuant to paragraph (1) as well or better, with a less burdensome or restrictive effect, than the adoption of the proposed interim ordinance.

(d) Ten days prior to the expiration of that interim ordinance or any extension, the legislative body shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance.

(e) When an interim ordinance has been adopted, every subsequent ordinance adopted pursuant to this section, covering the whole or a part of the same property, shall automatically terminate and be of no further force or effect upon the termination of the first interim

ordinance or any extension of the ordinance as provided in this section.

(f) Notwithstanding subdivision (e), upon termination of a prior interim ordinance, the legislative body may adopt another interim ordinance pursuant to this section provided that the new interim ordinance is adopted 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 ordinance.

(g) For purposes of this section, “development of multifamily housing projects” does not include the demolition, conversion, redevelopment, or rehabilitation of multifamily housing that is affordable to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or that will result in an increase in the price or reduction of the number of affordable units in a multifamily housing project.

(h) For purposes of this section, “projects with a significant component of multifamily housing” means projects in which multifamily housing consists of at least one-third of the total square footage of the project.

(Amended by Stats. 2001, Ch. 939, Sec. 1. Effective January 1, 2002.)