REQUEST FOR COUNCIL ACTION

CITY COUNCIL MEETING DATE:
DECEMBER 20, 2016

TITLE:
ORDINANCE TO COMPLY WITH NEW STATE LAW (PROP 64); ORDINANCE TO REGULATE INDOOR CULTIVATION OF MARIJUANA FOR PERSONAL USE; REQUIRE INDIVIDUALS OBTAIN RESIDENTIAL CULTIVATION PERMIT SUBJECT TO REASONABLE REGULATIONS; PROHIBIT INDOOR COMMERCIAL AND OUTDOOR MARIJUANA CULTIVATION {STRATEGIC PLAN 1; 3; 4; 5}

[Signature]
CITY MANAGER

CLERK OF COUNCIL USE ONLY:

APPROVED
☐ As Recommended
☐ As Amended
☐ Ordinance on 1st Reading
☐ Ordinance on 2nd Reading
☐ Implementing Resolution
☐ Set Public Hearing For

CONTINUED TO

FILE NUMBER

RECOMMENDED ACTION

1. Adopt an ordinance amending Chapter 18 to limit indoor cultivation of marijuana to no more than six (6) living marijuana plants by individuals 21 years of age or older for personal use in a private residence or accessory structure within the City of Santa Ana per Proposition 64.

2. Require individuals obtain a residential cultivation permit subject to reasonable regulations.

3. Completely ban commercial and outdoor marijuana cultivation.

DISCUSSION

On December 15, 2015, the City adopted Ordinance No. NS-2889 banning the cultivation of marijuana or medical marijuana anywhere in the City (Santa Ana Municipal Code Section 18-620(e).)

On June 28, 2016, the Secretary of State certified Prop 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("Prop 64") for the November 8, 2016 ballot. Prop 64, provides for the legalization of non-medical (recreational) marijuana use. Specifically, Prop 64 authorizes individuals 21 years of age or older to plant, cultivate, harvest, dry, or process no more than six (6) living marijuana plants for personal use at a private residence. A city may enforce "reasonable regulations" related to such marijuana cultivation but may not prohibit cultivation from occurring in a private residence or accessory structure. However, cities are authorized to completely prohibit

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outdoor cultivation. On November 8, 2016, 57% of the electorate voted "Yes" on the Proposition and the provisions of Prop 64 took effect on November 9, 2016.

The proposed Ordinance amends Ordinance NS-2889 which completely banned all cultivation within the City, to comply with Prop 64. Specifically, the proposed ordinance amends Chapter 18 of the Santa Ana Municipal Code and seeks to regulate indoor cultivation of up to six (6) living marijuana plants for personal use in a private residence or accessory structure with reasonable regulations and limits such cultivation to individuals 21 years of age or older who obtain a residential cultivation permit. The proposed amendment would maintain a citywide prohibition on indoor commercial and outdoor marijuana cultivation.

The proposed Ordinance requires applicants pay a fee prior to the issuance of a residential cultivation permit to defray, in part, the cost of investigation and inspection. The residential cultivation permit fee will be established by a subsequent resolution of the City Council.

The proposed Ordinance supports and reaffirms the objective of Ordinance NS-2864 and promotes the health, safety and welfare of the residents of Santa Ana. Staff recommends the approval of the proposed ordinance.

**STRATEGIC PLAIN ALIGNMENT**

Approval of this item supports the City’s efforts to meet Goal No. 1 Community Safety, Goal No. 3 Economic Development, Goal No. 4 Government Financial Stability, and Goal No. 5 Community Health, Livability, Engagement and Sustainability.

**FISCAL IMPACT**

There is no fiscal impact associated with this action. A future item will be presented to the City Council that will provide the cost and fee structure of the residential cultivation permit program.

Hassan Hagnani, AICP
Executive Director of
Planning & Building Agency
City of Santa Ana

Sonia R. Carvalho
City Attorney
City of Santa Ana

Exhibit: 1. Ordinance
ORDINANCE NO. NS-____

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF SANTA ANA TO COMPLY WITH NEW STATE
LAW (PROP 64); ORDINANCE TO REGULATE INDOOR
CULTIVATION OF MARIJUANA FOR PERSONAL USE
TO NO MORE THAN SIX (6) LIVING MARIJUANA PLANTS
WITHIN A PRIVATE RESIDENCE SUBJECT TO
REASONABLE REGULATIONS; REQUIRE INDIVIDUALS
OBTAIN RESIDENTIAL CULTIVATION PERMIT; PROHIBIT
COMMERCIAL AND OUTDOOR MARIJUANA CULTIVATION

THE CITY COUNCIL OF THE CITY OF SANTA ANA DOES ORDAIN AS follows:

Section 1. The City Council of the City of Santa Ana hereby finds, determines, and
declares as follows:

A. On December 15, 2015, the City Council approved passed Ordinance No. 2889
banning the cultivation of marijuana or medical marijuana anywhere in the City. Per
the approval of Prop 64, the City now desires to limit and regulate indoor cultivation
of marijuana for personal use to no more than six (6) living marijuana plants within a
private residence subject to reasonable regulations and require individuals 21 years
old or older, to obtain a residential cultivation permit for such cultivation. The City
also desires to continue to ban outdoor marijuana cultivation and indoor commercial
marijuana cultivation within City limits to the extent allowed by California law. This
Ordinance effectuates that aim.

1. On June 28, 2016, the Secretary of State certified Prop 64, the Control,
Regulate, and Tax Adults Use of Marijuana Act ("Prop 64"), for the November 8,
2016 ballot;

2. On November 8, 2016, 57% of the electorate voted "Yes" on the Proposition and
the provisions of Prop 64 took effect on November 9, 2016.

3. Prop 64 authorizes the cultivation by individuals 21 years of age or older to
plant, cultivate, harvest, dry, or process up to six (6) living marijuana plants in a
private residence for personal use.

4. The provisions of the AUMA and its amendments to the Health and Safety Code
took effect on November 9, 2016.

5. Pursuant to the AUMA, the City may enact reasonable regulations for the
cultivation of non-medical marijuana that occurs inside a residence or accessory
structure to a private residence located upon the grounds of a private residence
that is fully enclosed and secure area. (Health and Safety Code sections
11362.2(a)(1) and 11362.2(b)(1).) The City may completely prohibit outdoor
non-medical marijuana cultivation until such time as the California Attorney
General determines that non-medical use of marijuana is lawful in California under Federal law. The City may also prohibit indoor commercial cultivation.

6. The California Attorney General has not made a determination that non-medical use of marijuana is lawful in California under Federal law.

7. The City of Santa Ana has a compelling interest in ensuring it is compliant with State law and that marijuana is not cultivated in an illegal manner, in protecting the public health, safety and welfare of its residents and businesses, and in preserving the lawful use of land within its borders.

B. All provisions of the Santa Ana Municipal Code which are repeated herein are repeated solely in order to comply with the provisions of section 418 of the Charter of the City of Santa Ana. Any such restatement of existing provisions of the Code is not intended, nor shall it be interpreted, as constituting a new action or decision of the City Council, but rather such provisions are repeated for tracking purposes only in conformance with the Charter.

Section 2. Pursuant to the California Environmental Quality Act ("CEQA") and the state CEQA Guidelines, the adoption of this Ordinance is exempt from CEQA review pursuant to California Code of Regulations section 15061(b)(3), which is applicable if it can be seen with certainty that there is no possibility that the project may have a significant effect on the environment. As a result, a Notice of Exemption will be filed upon the adoption of this ordinance.

Section 3. Section 18-611, subdivisions (i) through (r) are hereby added to Article XIII of Chapter 18 of the Santa Ana Municipal Code to read in full as follows:

(i) "Private Residence" shall have the same definition as that contained in Health and Safety Code section 11362.2(5).

(j) "Premises" means a single, legal parcel of property. Where contiguous legal parcels under common ownership or control, such contiguous legal parcels shall constitute a single "premises" for purposes of this chapter.

(k) "Parcel" means property assigned a separate parcel number by the Orange County assessor.

(l) "Marijuana Products" shall have the same definition as that contained in Health and Safety Code section 11018.1.

(m) "Marijuana Accessories" shall have the same definition as that contained in Health and Safety Code section 11018.2.

(n) "Personal Cultivation" shall mean the planting, cultivating, harvesting, drying, or processing of marijuana plants for personal use within a private residence or accessory structure to a private residence.
(o) "Commercial Cultivation" shall mean the planting, cultivating, harvesting, drying, or processing of marijuana plants in any structure other than a private residence.

(p) "Outdoor Cultivation" shall mean the planting, cultivating, harvesting, drying, or processing of marijuana plants in any location within the City of Santa Ana that is not within a fully enclosed and secure structure.

(q) "Fully enclosed and secure structure" means a space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors.

(r) "Residential Cultivation Permit" shall mean a permit issued by the City of Santa Ana to individuals 21 years of age or older to allow for the personal cultivation of marijuana in a private residence for up to six (6) living marijuana plants subject to reasonable regulations.

Section 4. Subsection (e) only of Section 18-620 of Article XIII of Chapter 18 of the Santa Ana Municipal Code is hereby deleted in its entirety:

Section 18-620. Compliance with this article and state law.

(e) Cultivation of marijuana or medical marijuana is prohibited anywhere in the city. No person, including a qualified patient or primary caregiver, shall cultivate marijuana or medical marijuana in the city.

Section 5: Section 18-620 of Article XIII of Chapter 18 of the Santa Ana Municipal Code is hereby amended to add Section 18-620(e), subdivisions (1), (i)-(v) and, (2), (3), (4)(i)-(ii), (5)(i)(1-5), (6)(i)-(iii)(1-5), (iv), and (v) and is to read in full as follows:

18-620. Compliance with this article and state law

(e) Cultivation of Marijuana.

(1) Personal Cultivation. Individuals 21 years of age or older who obtain a residential cultivation permit as set forth in subdivision (e)(6) may plant, cultivate, harvest, dry, or process up to (6) living marijuana plants for personal use in a private residence or accessory structure to a single private residence in the City of Santa Ana. As a condition to the issuance of a permit, the permit holder must agree to periodic inspections performed by a Code Enforcement Officer and or his/her designee (upon 48 hours’ notice) and must comply with the following requirements:

   (i) The marijuana cultivation area shall be located indoors within a private residence or accessory structure on a single parcel of property;
(ii) No more than six (6) living marijuana plants is permitted for indoor personal cultivation;

(iii) Marijuana in excess of 28.5 grams produced by plants kept for indoor personal cultivation must be kept in a locked space on the grounds of the private residence not visible from the public right-of-way.

(iv) There shall be no exterior visibility or evidence of marijuana cultivation outside the private residence from the public right-of-way, including but not limited to any marijuana plants, equipment used in the growing and cultivation operation, or any light emanating from the cultivation; or

(v) The cultivation may not violate any California Building, Electrical or Fire Codes or any other health and safety standards.

(2) Commercial Cultivation. Commercial cultivation of marijuana or medical marijuana is prohibited anywhere in the City. No person, including a qualified patient or primary caregiver, shall engage, permit, or participate in the commercial cultivation of marijuana in the City.

(3) Outdoor Cultivation. Outdoor cultivation of marijuana or medical marijuana is prohibited anywhere in the City. No person, including a qualified patient or primary caregiver, shall engage, permit, or participate in the outdoor cultivation of marijuana in the City.

(4) Nuisance.

(i) It is hereby declared to be unlawful, a public nuisance, and a violation of this Chapter for any person owning, leasing, occupying, or having charge or possession of any parcel within the City to cause or allow such parcel to be used for the cultivation of marijuana, unless the person is authorized by state law to grow marijuana within a private residence, and such authorized person is complying with all requirements of this Chapter.

(ii) No person shall grow marijuana upon any parcel until and unless they first secure a residential cultivation permit from the City of Santa Ana Planning and Building Department as set forth in subdivision (e)(6).

(5) Public Nuisance Prohibited.

(i) It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel within the City to create a public nuisance in the course of cultivating marijuana plants or any part thereof in any location, indoor or outdoor. A public nuisance may be deemed to exist, if such activity produces:
(1) Odors which are disturbing to people of reasonable sensitivity residing or present on adjacent or nearby property or areas open to the public;

(2) Repeated responses to the parcel by law enforcement personnel;

(3) A repeated disruption to the free passage of persons or vehicles in the neighborhood, excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public;

(4) Any other impacts on the neighborhood which are disruptive of normal activity in the area including, but not limited to, grow lighting visible outside the dwelling, excessive vehicular traffic or parking occurring at or near the dwelling, and excessive noise emanating from the dwelling.

(5) Outdoor and Commercial growing and cultivation of marijuana.

(6) Application for residential cultivation permit; contents; required fee.

(i) Every person 21 years of age or older who desires to cultivate up to six (6) living marijuana plants shall apply for a residential cultivation permit under this section. The permit shall be issued for a single private residence where the cultivation will take place.

(ii) To obtain a residential cultivation permit, application shall be made to the Director of Planning and Building or his or her designated representative. Prior to submitting such application, a nonrefundable fee, as established by resolution of the City Council, shall be paid to the department of finance to defray, in part, the cost of the investigation and inspection required by this article. The City’s Department of Finance shall issue a receipt showing that such application fee has been paid. The receipt, or a copy thereof, shall be supplied to the Director of Planning and Building at the time such application is filed. Permit issuance fees required under this article shall be in addition to any license, permit, or fee required under any other chapter of this Code.

(iii) Each applicant for a residential cultivation permit shall furnish the following information:

(1) The applicant’s full true name and physical address of the private residence where the marijuana will be cultivated;

(2) A valid California Drivers’ License or other government issued identification that clearly states the applicant’s date of birth; and

(3) The name of each person owning, leasing, occupying, or having charge of any legal parcel or premises where marijuana will be cultivated;
(4) If the applicant is leasing the premises, a notarized signature from the owner of the parcel consenting to the cultivation of marijuana at the premises on a form acceptable to the City;

(5) If the residence is a condominium complex, a notized signature from the Association consenting to the cultivation of marijuana at the premises on a form acceptable to the City.

(iv) The initial permit shall be valid for no more than two years. The applicant must submit a renewal application prior to the expiration of the residential cultivation permit.

(v) If the Director of Planning and Building and/or his or her designee finds that any person holding a residential cultivation permit under the provisions of section 18-620(e)(1) through (6) has violated the provisions of this article he or she may revoke the permit. No such revocation shall become effective until the permit holder has been notified in writing by certified mail of his or her right to appeal the revocation or suspension decision pursuant to the provisions of Chapter 3 of this Code. If a timely appeal is filed, the revocation shall be effective only upon decision of the hearing officer. Otherwise the revocation shall become effective after the timely appeal period has passed.

Section 6. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

ADOPTED this _______ day of __________, 2016.

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Miguel A. Pulido
Mayor
APPROVED AS TO FORM
Sonia B. Carvalho, City Attorney

By: [Signature]
Tanara Bogosian
For City Attorney

AYES: Councilmembers: ________________________________

NOES: Councilmembers: ________________________________

ABSTAIN: Councilmembers: ________________________________

NOT PRESENT: Councilmembers: ________________________________

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Maria Hulzar, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-______ to be the original ordinance adopted by the City Council of the City of Santa Ana on ____________________, and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: ____________________

Clerk of the Council
City of Santa Ana