

ORDINANCE NO. 2016-04

URGENCY INTERIM ORDINANCE PROHIBITING THE CULTIVATION OF MEDICAL MARIJUANA AND THE DELIVERY OF MEDICAL MARIJUANA IN THE UNINCORPORATED AREA OF CONTRA COSTA COUNTY

The Contra Costa County Board of Supervisors ordains as follows:

SECTION I. FINDINGS AND PURPOSE.

- A. In 1996, California voters approved Proposition 215, the Compassionate Use Act. The purpose of the Compassionate Use Act is to enable persons who are in need of marijuana for specified medical purposes to obtain and use marijuana under limited circumstances. The Compassionate Use Act (Health and Safety Code (HSC) § 11362.5) established a limited defense for qualified patients and their primary caregivers to the crimes of possessing or cultivating marijuana.
- B. In 2003, the Legislature enacted the Medical Marijuana Program. The Medical Marijuana Program (HSC §§ 11362.7-11362.83) established regulations and procedures regarding the issuance of identification cards to patients qualified to use medical marijuana. The Medical Marijuana Program also established a defense to criminal liability for the collective or cooperative cultivation of marijuana. (HSC § 11362.775.) Medical marijuana dispensaries began opening throughout the state as medical marijuana collectives under the Compassionate Use Act and the Medical Marijuana Program.
- C. In 2008, the Board of Supervisors adopted Ordinance No. 2008-05 to prohibit the establishment of medical marijuana dispensaries in the unincorporated area of Contra Costa County.
- D. The federal Controlled Substances Act (Title 21, United States Code § 801 et seq.) prohibits, except for certain research purposes, the possession, distribution, and manufacture of marijuana, and there is no medical necessity exception to prosecution and conviction under the Controlled Substances Act.
- E. The California Supreme Court in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, held that neither the Compassionate Use Act nor the Medical Marijuana Program expressly or impliedly preempt the authority of California counties and cities, under their traditional land use and police powers, to allow, restrict, limit, or entirely exclude facilities that distribute medical marijuana.
- F. The Medical Marijuana Regulation and Safety Act (MMRSA) was signed by the Governor on October 9, 2015. The MMRSA consisted of three bills: AB 243, AB 266, and SB 643. The purpose of the MMRSA is to regulate the cultivation, dispensing,

ORDINANCE NO. 2016-04

manufacturing, distribution, and transportation of medical marijuana. Under the MMRSA, to conduct any of these activities, a person or business needs a license from the state and a local permit.

G. The MMRSA affirmed the authority of counties and cities to regulate the following commercial medical marijuana activities through the adoption of land use ordinances:

1. Cultivation. The County may regulate or ban the cultivation of medical marijuana. If the County does not ban cultivation or establish cultivation regulations by March 1, 2016, the State will be the sole licensing authority for medical marijuana cultivation applicants in the unincorporated area of the County. (HSC § 11372.777(c)(4).)
2. Deliveries. Deliveries by dispensaries are permitted with a State license unless a city or county explicitly prohibits delivery of medical marijuana and medical marijuana products. (Business and Professions Code (BPC) §§ 19340(a), 19340(b)(1).)
3. Other Commercial Activities. Under the MMRSA, in order to obtain a State license for dispensing, distribution, transport, or manufacturing activities, a person must also have a local license. If there is no local license or permit, or ordinance providing for such, then a marijuana business may not obtain a State license, and may not operate a business performing commercial cannabis activity. (BPC § 19320(a).)

H. On December 15, 2015, the Board of Supervisors directed staff to prepare and present to the Board an interim urgency ordinance prohibiting the cultivation and delivery of medical marijuana in order to provide staff the time to analyze and provide a future report to the Board on various long-term options in response to the MMRSA.

I. Without sufficient regulations that are enforceable pursuant to an adopted ordinance, there is a current and immediate threat to the public health, safety, and welfare from unregulated medical marijuana cultivation and medical marijuana deliveries, including the following harmful impacts:

1. Several California jurisdictions have reported negative impacts of marijuana cultivation and delivery uses, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests.
2. Marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable beyond property

boundaries if grown outdoors. The strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary or robbery.

3. The potential for burglary or robbery is high because marijuana plants are valuable. The U.S. Drug Enforcement Agency reports that each marijuana plant under various planting conditions may yield an average of between one-half to two pounds in its lifetime. Prices for domestically produced high-grade marijuana sold illegally within Northern California can reach \$2,000 to \$5,000 per pound.
 4. Harmful effects at outdoor and indoor cultivation facilities have included an increase in criminal activity because of the high monetary value of the marijuana plants, adverse environmental impacts, interference with farming practices, fire danger from grow light systems, extensive energy consumption, and strong offensive odors, as reported by other California counties and cities.
 5. The indoor cultivation of marijuana has potential adverse effects to the structural integrity of a building, and the use of high wattage grow lights and excessive use of electricity increases the risk of fire, which presents a clear danger to the building and its occupants.
 6. The California Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of 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.
- J. It is necessary to prohibit the cultivation of medical marijuana and the delivery of medical marijuana to provide the County with time to consider regulations governing these activities, and to determine the extent of these regulations. Absent this interim ordinance, the cultivation of medical marijuana and the delivery of medical marijuana could arguably be located in residential areas or in close proximity to schools, churches, day care centers and other sensitive uses incompatible with the cultivation of medical marijuana and the delivery of medical marijuana.

SECTION II. DEFINITIONS. For purposes of this ordinance, the following words and phrases have the following meanings:

- (a) "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

- (b) “Delivery” means the commercial transfer of medical marijuana or medical marijuana products from a medical marijuana dispensary to a primary caregiver or qualified patient, as defined in Health and Safety Code section 11362.7, or a testing laboratory. “Delivery” also includes the use by a medical marijuana dispensary of any technology platform owned and controlled by the medical marijuana dispensary, or independently licensed by the State of California, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a medical marijuana dispensary of medical marijuana or medical marijuana products.

SECTION III. PROHIBITED USES.

- (a) The following uses are prohibited in all zoning districts of the County:
- (1) The cultivation of medical marijuana.
 - (2) The delivery of medical marijuana.
- (b) While this interim ordinance is in effect, no applications for land-use entitlements or building permits shall be accepted or processed, and no land-use entitlements or building permits shall be approved or issued, for the cultivation of medical marijuana or the delivery of medical marijuana.

SECTION IV. ENFORCEMENT. The County may seek compliance with this ordinance under the remedies authorized by Ordinance Code Chapter 14-6 (abatement), Ordinance Code Chapter 14-12 (administrative penalties), and any other remedy allowed by law.

SECTION V. REPORTS. In accordance with subdivision (d) of Government Code section 65858, ten days before the expiration of this ordinance or any extension of it, the Department of Conservation and Development shall file with the Clerk of this Board a written report describing the measures taken to alleviate the conditions that led to the adoption of this urgency interim ordinance.

SECTION VI. SEVERABILITY. If any provision or clause of this ordinance or the application thereof to any person or circumstances is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other ordinance provisions or clauses or applications thereof that can be implemented without the invalid provision or clause or application, and to this end the provisions and clauses of this ordinance are declared to be severable.

SECTION VII. DECLARATION OF URGENCY. This ordinance is hereby declared to be an urgency ordinance for the immediate preservation of the public safety, health, and welfare of

the County, and it shall take effect immediately upon its adoption. The facts constituting the urgency of this ordinance's adoption are set forth in Section I.

SECTION VIII. EFFECTIVE PERIOD. This ordinance becomes effective immediately upon passage by four-fifths vote of the Board and shall continue in effect for a period of 45 days, pursuant to Government Code section 65858. Within 15 days of passage, this ordinance shall be published once with the names of the supervisors voting for and against it in the Contra Costa Times, a newspaper published in this County.

PASSED ON _____ by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST: DAVID J. TWA,
Clerk of the Board of Supervisors
and County Administrator

Board Chair

By: _____
Deputy

[SEAL]

TLG:
H:\2016\Conservation and Development\medical marijuana urgency ord - final.wpd