

ORDINANCE NO. 2017 - 1782

**AN EXTENSION OF AN INTERIM URGENCY ORDINANCE PROHIBITING THE FOLLOWING LAND USES WITHIN THE UNINCORPORATED TERRITORY OF THE COUNTY OF SOLANO: (1) THE COMMERCIAL CULTIVATION OF MEDICAL CANNABIS AND NONMEDICAL MARIJUANA; (2) THE COMMERCIAL DELIVERY, DISTRIBUTION, TRANSPORTATION, MANUFACTURING, RETAIL OPERATIONS, OR TESTING OF MEDICAL CANNABIS AND NON-MEDICAL MARIJUANA; AND (3) THE OUTDOOR CULTIVATION OF MEDICAL CANNABIS OR NON-MEDICAL MARIJUANA FOR PERSONAL USE; ADOPTED AS AN URGENCY MEASURE**

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The Board of Supervisors of the County of Solano ordains as follows:

SECTION 1. Findings

- A. Pursuant to Article XI, section 7 of the California Constitution, the County of Solano ("County") may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.
- B. Pursuant to Government Code section 65858, to protect the public safety, health, and welfare, the County may extend with a four-fifths vote of the board of supervisors an urgency measure adopting an interim ordinance prohibiting land uses that may be in conflict with contemplated land use regulations that the County is studying, considering, or intends to study within a reasonable time.
- C. In November 1996, California voters approved The Compassionate Use Act of 1996 ("Proposition 215"), an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession or cultivation of marijuana for medical purposes.
- D. On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (Health & Safety Code §§11362.7-11362.83) ("MMPA"), became effective to clarify the scope of Proposition 215 and to facilitate the prompt identification of qualified patients and their primary caregivers. Pursuant to the MMPA, a qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per patient and may maintain no more than six mature or twelve immature marijuana plants per patient unless a doctor authorizes an additional amount.
- E. On January 1, 2016, Assembly Bill 266, Assembly Bill 243, and Senate Bill 643, which together constitute the Medical Cannabis Regulation and Safety Act ("MCRSA"), became effective and set forth a comprehensive, state-wide regulatory structure for the commercial cultivation, distribution, transportation, dispensary sales, testing, and home delivery of marijuana, also known as cannabis, for medical purposes. These three bills are codified as Business and Professions Code section 19300 *et seq.*

- F. Business and Professions Code section 19315(a) provides that nothing in MCRSA shall be interpreted to supersede or limit existing local authority for the enforcement of local zoning requirements or other local ordinances, or enforcement of local permit or licensing requirements, for any of the commercial medical cannabis activities made subject to state regulation under the Act.
- G. On January 5, 2016, the Board of Supervisors enacted Ordinance No. 2016-1767, an urgency interim ordinance suspending the issuance or approval of any use permit, variance, building permit, business license, or any other entitlement or license for commercial medical cannabis activities in order to allow the County time to study MCRSA, consult with stakeholders, consider whether to allow these new medical business activities and, if so, where in the County and under what regulations and standards. The moratorium did not address the non-commercial cultivation of medical cannabis by patients or caregivers for personal use. The moratorium was extended on February 9, 2016, and will expire on January 4, 2017, if not further extended by the Board of Supervisors.
- H. On November 8, 2016, California voters approved Proposition 64, the Adult Use of Marijuana Act ("AUMA"), which immediately allows adults 21 or older to grow, possess and use marijuana for nonmedical purposes, subject to certain restrictions. It also allows for the licensing and regulation, by the state and local jurisdictions, of businesses and facilities engaged in the cultivation, manufacturing, distribution, retail operations and delivery, distribution, and testing of marijuana for nonmedical purposes.
- I. Business and Professions Code section 26200(a) of AUMA allows each city and county to prohibit or regulate commercial nonmedical marijuana activities within its jurisdictional area, as the local governing body determines appropriate based on local circumstances.
- J. Under California law, outdoor home gardening is an activity that is incidental to the residential use of property, and is generally not subject to additional local land use regulation. Business and Professions Code section 19315(a) and Health and Safety Code section 11362.2(b)(3) allows each city and county to prohibit the cultivation of marijuana in outdoor home gardens, even when such cultivation is noncommercial and only for the personal medical or nonmedical use of household members, if the local governing body determines such a prohibition is appropriate based on local circumstances.
- K. On November 17, 2016 County staff presented a proposed ordinance to the Solano County Planning Commission to regulate indoor cultivation and ban outdoor cultivation of medical and nonmedical marijuana for personal use. The Planning Commission heard public testimony and continued the hearing to January 19, 2017, directing staff to address various matters raised in public testimony.
- L. At a public hearing noticed in accordance with Government Code section 65090 on December 6, 2016, the Board of Supervisors by a 5-0 vote adopted as an urgency measure an interim ordinance prohibiting all commercial medical cannabis and non-medical marijuana activities, as well as outdoor cultivation of personal use medical cannabis and non-medical marijuana.

- M. The State of California is currently in the process of developing licensing standards and regulations for medical cannabis business activities, Draft standards and regulations are expected to be released for public comment in the next few months. The State is also beginning to develop licensing standards and regulations for non-medical marijuana business activities.
- N. Without sufficient enforceable regulations and standards in place, there is a current and immediate threat to the public health, safety, and welfare from both outdoor cannabis cultivation and commercial cannabis activities:
  - 1. Many California cities and counties have reported negative impacts from cannabis cultivation, processing, and distribution uses. Harmful effects at unregulated outdoor and indoor cultivation operations have included an increase in criminal activity because of the high monetary value of the marijuana plants, adverse environmental impacts, trespass issues, noise pollution from generators, interference with farming practices, fire danger from grow light systems and marijuana oil extraction operations, and strong offensive odors.
  - 2. Cannabis plants, as they begin to flower and for a period of two months or more, produce a strong odor, which can be detectable far beyond property boundaries if grown outdoors and create an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of trespass and theft.
  - 3. The California Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the concentration of cannabis in any location or premises such as a commercial manufacturer, distributor, retailer or other business without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as odor, loitering, or crime.
  - 4. Absent appropriate regulations and standards, cannabis business activities and personal outdoor cannabis cultivation in the unincorporated area of Solano County pose a potential threat to the public peace, health, and safety by placing additional demands on local law enforcement and impacting the quality of life and character of neighborhoods.
- O. Other than the prohibition of medical marijuana dispensaries contained in Section 28.70.20(c)(1), there are currently no provisions in Chapter 28 of the Solano County Code ("Zoning Regulations") specifically allowing or regulating the location, zoning standards, or other aspects of where medical cannabis or non-medical marijuana may be cultivated, distributed, transported, tested, and delivered. The Zoning Regulations do not provide specific development standards or definitions relative to these activities. In addition, the Zoning Regulations do not provide specific development regulations relative to the cultivation of medical cannabis or non-medical marijuana as an agricultural product.
- P. Due to the new conditions brought about by the passage of Proposition 64 and the anticipated release of draft standards and regulations from the state for non-medical marijuana and medical cannabis businesses, an extension of the new moratorium on

all commercial cultivation, manufacturing, testing, distribution, transportation, retail operations and home delivery, as well as personal use outdoor cultivation of medical cannabis and non-medical marijuana is necessary to protect the public peace, health, and safety while the County develops a permanent ordinance.

- Q. In order to allow a reasonable time for the County to consider and study these new commercial activities, as well as what zones, standards and regulations the County deems appropriate for these business activities and how best to implement them, it is necessary to extend the suspension of the approval of any commercial medical cannabis or non-medical marijuana cultivation, manufacturing, testing, distribution, transportation, retail operations and home delivery within the jurisdiction of the County.
- R. In addition, due to the passage of Proposition 64, an extension of the moratorium on outdoor cultivation of cannabis for personal medical or non-medical use is necessary to protect the public peace, health, and safety while the County develops a permanent ordinance.
- S. An extension of the moratorium on all forms of commercial medical and non-medical cannabis cultivation, manufacturing, testing, distribution, transportation, retail operations and home delivery, as well as personal cultivation outdoors of cannabis for medical or non-medical use as defined in AUMA and MCMRSA will provide the County time to draft and adopt regulations consistent with Proposition 64, AB 266, AB 243, SB 643, Proposition 215, and Senate Bill 420 that will regulate such activity while being consistent with the General Plan, Zoning Regulations, and compatible with surrounding land neighborhoods.
- T. By extending this interim ordinance, it is the intent of the board of supervisors to enact a moratorium that is only temporary in order to provide time for the County to study and develop appropriate regulations and standards for non-medical marijuana and medical cannabis uses consistent with AUMA, MCRSA and the state standards promulgated by the State for both Acts.

## SECTION 2. Definitions

For purposes of this interim ordinance, the following definitions shall apply:

The terms “cannabis” and “marijuana” are interchangeable and refer to any plant or any part defined as “cannabis” in section 19300.5(f) of the Business and Professions Code or defined as “marijuana” in section 11018 of the Health and Safety Code.

The term “cultivation of marijuana for personal use” refers to the cultivation of both non-medical marijuana and medical cannabis: the planting, growing, harvesting, drying, curing, or processing within a single private residence, or upon the grounds of that private residence, of not more than six living marijuana plants at one time, as those activities are described in sections 11362.1(a)(3) and 11362.2(a)(3), of the Health and Safety Code; and the planting, growing, harvesting, drying, curing, or processing of up to 100 square feet of medical cannabis by a qualified patient or up to 500 square feet by a caregiver as described in Health and Safety Code section 11362.777(g) and Business and Professions Code section 19319.

The terms “commercial marijuana activity” and “commercial cannabis activity” are interchangeable and refer to the cultivation, possession, manufacture, distribution,

processing, storing, laboratory testing, labeling, transportation, distribution, delivery, or sale of marijuana and marijuana products, as such activities are more fully described in sections 19300.5 or 26001 of the Business and Professions Code.

### SECTION 3. Interim Prohibition of Commercial Marijuana Activity

From and after the date of this ordinance, no use permit, variance, building permit, business license, or any other entitlement or license for use shall be approved or issued for any commercial cannabis or marijuana activity including the commercial cultivation, manufacturing, testing, distribution, transportation, retail operation, or delivery of cannabis or marijuana, whether for medical or nonmedical purposes.

The exemption provided in Section 14-17(a) of the Solano County Code, allowing a business to operate after having filed an application for a business license and pending final action on that application, shall not apply to any business engaged in, or proposing to engage in, commercial marijuana activity.

### SECTION 4. Interim Prohibition of Outdoor Cultivation of Marijuana for Personal Use

The cultivation of marijuana for personal use in an outdoor home garden is declared to be an activity that is not incidental to the residential use of property. From and after the date of this ordinance, and pursuant to section 11362.2(b)(3) of the Health and Safety Code and Business and Professions Code section 19315(a), the outdoor cultivation of marijuana for personal use is prohibited. The cultivation of marijuana for personal use completely inside a lawful private residence, or inside an accessory structure to a private residence and which is located on the same parcel as the private residence, is not subject to this prohibition, provided the structure in which the cultivation is being conducted is fully enclosed and secure and the plants therein are not visible by normal unaided vision from a public place.

### SECTION 5. Urgent Need and Effective Period

This extension of the interim ordinance is urgently needed for the continued preservation of the public health, safety, and general welfare. It shall take effect immediately upon expiration of the 45-day urgency ordinance enacted on December 6, 2016 and shall be of no further force and effect 10 months and 15 days following the date it takes effect, unless extended for an additional 12 months in accordance with the provisions set forth in California Government Code section 65858.

### SECTION 6. Authority

California Government Code section 65858 provides that an urgency measure in the form of an interim zoning ordinance may be adopted, which shall be initially effective for only 45 days following its date of adoption. Such an interim ordinance may be extended by a four-fifths vote of the board of supervisors for an additional period of time, either 10 months and 15 days with the possibility for an additional 12-month extension or for 22 months and 15 days in compliance with Government Code section 65858.

### SECTION 7. Penalties

The definitions and penalties for land use violations that are prescribed in Section 28.113 of the Solano County Code shall apply to violations of the provisions of this interim ordinance.

SECTION 8. Severability

If any provision of this interim ordinance or the application of it to any persons or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of the interim ordinance are declared to be severable.

SECTION 9. Exemption from the California Environmental Quality Act

This interim ordinance is exempt from California Environmental Quality Act (Public Resources Code §21000 *et seq.*; "CEQA") because it will preserve the status quo while the County develops a permanent ordinance. Therefore, it can be seen with certainty that there is no possibility that the interim ordinance may have a significant effect on the environment. (CEQA Guidelines, § 15061(b)(3).)

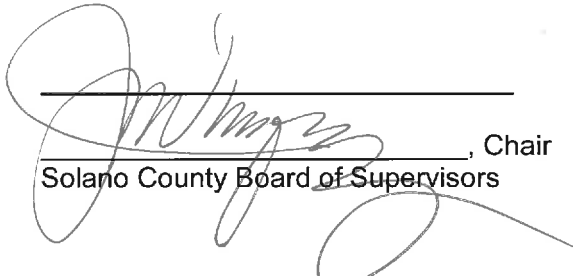
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Passed and adopted by the Solano County Board of Supervisors at its regular meeting on January 10, 2016 by the following vote:


AYES: Supervisors Hannigan, Spering, Thomson  
and Chair Vasquez

NOES: Supervisors Brown

EXCUSED: Supervisors None.

  
 \_\_\_\_\_, Chair  
 Solano County Board of Supervisors

ATTEST:  
Birgitta E. Corsello, Clerk  
Board of Supervisors

By:   
Jeanette Neiger, Chief Deputy Clerk