

ATTACHMENT 1

Nonmedical Marijuana Interim Urgency Ordinance

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ORDINANCE NO. _____

AN INTERIM URGENCY ORDINANCE OF SANTA BARBARA COUNTY, ESTABLISHING A MORATORIUM TO (1) PROHIBIT NONMEDICAL MARIJUANA CULTIVATION AND OTHER NONMEDICAL MARIJUANA ACTIVITIES, SPECIFICALLY ALL NONMEDICAL MARIJUANA OPERATIONS WHICH WOULD REQUIRE A STATE LICENSE UNDER THE ADULT USE OF MARIJUANA ACT, (2) PROHIBIT THE CULTIVATION OF INDUSTRIAL HEMP, AND (3) PROHIBIT OUTDOOR NONMEDICAL MARIJUANA CULTIVATION PURSUANT TO GOVERNMENT CODE SECTION 65858, WITHIN THE UNINCORPORATED AREAS OF SANTA BARBARA COUNTY.

Case No. 17ORD-00000-00004

WHEREAS, on November 8, 2016, the voters of the State of California enacted Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, also known as the Adult Use of Marijuana Act (AUMA) (sections 11018 et seq, 11357, 11358, 11359, 11360, 11361 et seq, and 1362 et seq, of the Health and Safety Code, Division 10 of the Business and Professions Code, and Part 14.5 (commencing with section 34010) of Division 2 of the Revenue and Taxation Code). The AUMA established a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including nonmedical marijuana products, for use by adults 21 years and older, and to tax the growth and retail sale of marijuana for nonmedical use.

WHEREAS, the AUMA creates a licensing system whereby the State will issue licenses to businesses authorizing them to cultivate, distribute, transport, store, manufacture, process, and sell nonmedical marijuana and marijuana products for adults 21 years of age and older, with such licenses to be issued by January 1, 2018. The State shall not approve an application for a State license if approval of the license will violate the provisions of any local ordinance or regulation adopted in accordance with the AUMA.

WHEREAS, the AUMA allows the local governing body to adopt and enforce local ordinances and licenses to regulate new uses allowed under the AUMA or to completely prohibit such uses within the local jurisdiction, to the full extent authorized by a local agency.

WHEREAS, unregulated marijuana operations associated with cultivation, processing, manufacturing, distribution, testing, and sale of marijuana could result in (1) displacement of existing agricultural production activities, (2) impacts to natural resources, and (3) land use conflicts. The County has a compelling interest to protect the public health, safety, and welfare of its residents and businesses, and to preserve the peace and integrity of neighborhoods within the unincorporated area.

WHEREAS, the prohibition of the nonmedical marijuana cultivation and outdoor personal use cultivation is proper and necessary to (1) avoid the risks of criminal activity, (2) avoid degradation of the natural environment, (3) protect the ground water basins that are still in a state of drought, (4) minimize objectionable odors which can interfere with the use and enjoyment of neighboring properties by their occupants, (5) protect neighbors from noise pollution from electric generators, and (6) reduce the risk of indoor electrical fire hazards that may result from unregulated indoor cultivation.

WHEREAS, the prohibition of the nonmedical marijuana cultivation and outdoor personal use cultivation will decrease the potential for theft and use by minors where it is cultivated in visible locations, particularly where such locations are proximate to schools and other youth facilities.

WHEREAS, the prohibition of the nonmedical marijuana dispensaries and retail is necessary since the passage for the Compassionate Use Act when a proliferation of storefront dispensaries occurred in California and in Santa Barbara County creating the need for regulating these new uses in zoning. According to the Sheriff's Office, dispensary storefronts have resulted in negative and harmful secondary effects, including criminal activity.

WHEREAS, due to industrial hemp bearing a close resemblance to marijuana, it can pose the same risks that are associated with marijuana, including risks to public health, safety, and welfare.

WHEREAS, a prohibition on nonmedical marijuana operations subject to state licensure, will provide an opportunity for the County to consider various policy implications, including but not limited to the necessary safety measures and environmental protections for any nonmedical marijuana operation to incorporate, of potentially authorizing and regulating marijuana operations in the unincorporated area before any state licenses can be granted.

WHEREAS, pursuant to Government Code section 65858, on February 14, 2017, the Board of Supervisors directed staff to return with an interim urgency ordinance to prohibit nonmedical marijuana cultivation and other marijuana activities while staff develops a permanent ordinance to prohibit or regulate nonmedical marijuana.

WHEREAS, on November 5, 1996, California voters approved Proposition 215, the Compassionate Use Act of 1996 (Health & Safety Code section 11362.5) (CUA), an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for medical purposes. One of the stated purposes of the CUA is to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use has been recommended by a physician.

WHEREAS, on January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (Health & Safety Code sections 11362.7-11362.83) (MMPA), became effective to clarify the scope of the CUA 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 12 immature marijuana plants per patient unless a doctor authorizes an additional amount.

WHEREAS, on January 1, 2016, Assembly Bill 266, Assembly Bill 243, and Senate Bill 643, which together constitute the Medical Marijuana Regulation and Safety Act (MMRSA), became effective and set forth a comprehensive, state-wide regulatory structure for the cultivation and distribution of medical cannabis.

WHEREAS, on January 19, 2016, the Board of Supervisors adopted the Medical Marijuana Regulations (Santa Barbara Code, Chapter 35, Article X) which prohibited cultivation in the unincorporated area of Santa Barbara County, except for two limited exemptions for small personal cultivation sites and legal non-conforming medical marijuana cultivation sites existing prior to January 19, 2016 and legal under State law.

WHEREAS, on February 14, 2017, the Board of Supervisors directed the establishment of a short-term, advisory ad-hoc subcommittee to assist staff in the development of a permanent ordinance related to the regulation of medicinal and nonmedical marijuana.

WHEREAS, the ad-hoc committee and staff have begun the research to prepare the necessary studies and reports for the Board of Supervisors' consideration of a permanent ordinance related to the regulation of medicinal and nonmedical marijuana.

WHEREAS, under the federal Controlled Substances Act, the manufacture, distribution, or possession of marijuana is a criminal offense. Marijuana is a Schedule I drug, meaning the federal government considers it to be a drug that "has a high potential for abuse," "has no currently accepted medical use" and "[t]here is a lack of accepted safety for use of the drug or other substance under medical supervision." (21 U.S.C. section 812(b)(1)). California law is in conflict with federal law which creates additional risks to public health, safety and welfare that the County will study as part of creating a permanent ordinance.

WHEREAS, other jurisdictions, including County of San Luis Obispo, City of Carpinteria, City of Ventura, and the City of Camarillo, have enacted urgency ordinances to prohibit cultivation and/or distribution of medical marijuana or new uses allowed under the AUMA. This interim urgency ordinance shall avoid creating a void of local regulation which could result in the disproportionate allocation of nonmedical marijuana activities within the unincorporated areas of the County.

WHEREAS, the United States Drug Enforcement Administration reports that marijuana cultivation is associated with illegally diverted water, illegal deforestation, and soil contamination. Rodenticide and insecticide toxicants have frequently been discovered at marijuana cultivation sites and are known to have detrimental impacts on wildlife. In addition, marijuana plants are relatively high water-using plants, requiring roughly 1,200 gallons of water a year.

WHEREAS, according to a recent study of marijuana cultivation in California by staff of the California Department of Fish and Wildlife¹, the National Marine Fisheries Services, and other academic researchers, water demand for marijuana cultivation has the potential to divert excessive amounts of water. This can have harmful impacts on state and federally listed salmon and steelhead trout. The water demand associated with cultivation and its biological impacts are of particular concern in the County, which has known water supply constraints as well as state and federally listed species that could be affected by such water diversion.

NOW, THEREFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, ORDAINS AS FOLLOWS:

SECTION 1: Interim Urgency Ordinance Necessity and Limitations.

This interim urgency ordinance is necessary for the immediate preservation of the public peace, health, safety, and general welfare. The interim urgency ordinance is necessary to give staff time to establish registration and permitting requirements, create additional measures to protect the environment, provide for additional enforcement capability, and limit further degradation of the environment.

Nothing in this interim urgency ordinance shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance, (2) allow the use of marijuana inconsistent with the AUMA, or (3) allow any cultivation, distribution, or consumption of marijuana that is otherwise illegal.

¹ "Impacts of Surface Water Diversions for Marijuana Cultivation on Aquatic Habitat in Four Northwestern California Watersheds." Plos.org. March 18, 2015. California Department of Fish and Wildlife, Eureka, California, United States of America and National Marine Fisheries Service, Arcata, California, United States of America
<http://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0120016&type=printable>

SECTION 2: Definitions.

For purposes of this interim urgency ordinance, the terms defined below shall have the following meaning:

- A. "Cultivation" shall mean any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.
- B. "Industrial Hemp" shall have the meaning set forth in Health and Safety Code section 11018.5 as that section now appears and may be amended or renumbered.
- C. "Indoor" or "indoors" shall mean any area that is contained within a fully enclosed and secured permanent structure that contains fixed exterior walls and a roof, that is not open to or accessible by the public without authorization by the licensee. Structures of a temporary or non-secure nature, including but not limited to moveable greenhouses, tents, hoop houses, and high tunnels are not considered "indoor" or "indoors" for purposes of this definition.
- D. "Marijuana" shall have the meaning set forth in Health and Safety Code section 11018 as that section now appears and may be amended or renumbered.
- E. "Outdoor" or "outdoors" shall mean any area that is not indoor, including, but not limited to, cultivation not within a fully enclosed and secure structure that complies with the California Building Code.

SECTION 3: Additional Findings.

The Board of Supervisors hereby finds and determines as follows:

- A. Several California counties and cities have enacted interim urgency ordinances to study the adverse effects of enacting the AUMA, including armed robberies and murders; burglaries; traffic, noise and drug dealing; organized crime, money laundering, and firearms violations; and poisonings, both intentional and unintentional.
- B. The County of Santa Barbara Land Use and Development Code (35.20.030 - Allowable Development and Planning Permit Requirements), Montecito Land Use and Development Code (35.42.030 - Development and Land Use Approval Requirements), and Article II Zoning Ordinance (35-118.1 - Conformance to Regulations) provide that when a use is not specifically enumerated it is prohibited, and activities associated with the AUMA are not an enumerated use in either code.
- C. To address the potential, adverse effects of enacting the AUMA that are set forth in section 4, paragraph A of this interim urgency ordinance, it is necessary for the County to study its legal framework, the potential impacts it may have on the public health, safety, and welfare, and evaluate potential amendments to the Santa Barbara County Land Use and Development Code, Santa Barbara County Montecito Land Use and Development Code, and Santa Barbara County Article II Zoning Ordinance.
- D. Based upon the foregoing, the Board of Supervisors finds that there is a current and immediate threat to public health, safety, and welfare and prohibits the approval of any use permits, variances, building permits or other applicable entitlement for the activities associated with AUMA. Therefore, a temporary moratorium on the approval and issuance of such use permits, variances, building permits or other applicable entitlements is necessary.

SECTION 4: Purpose and Authority.

The County of Santa Barbara Board of Supervisors enacts this interim urgency ordinance pursuant to authority granted by Article XI section 7 of the California Constitution and section 65858 of the California Government Code. This interim urgency ordinance applies within all unincorporated areas of Santa Barbara County. It is the purpose and intent of this interim urgency ordinance to immediately prohibit all activities associated with AUMA in a manner that is consistent with state law and which is necessary to protect the public health, safety, and general welfare and prohibiting any uses that may be in conflict with a zoning proposal that the County is considering or studying or intends to study within a reasonable time.

SECTION 5: Intent.

The purpose and intent of this interim urgency ordinance is to provide staff time to study and establish land use regulations concerning the cultivation, manufacture, testing, distribution, transportation, and storage of nonmedical marijuana and industrial hemp within the County of Santa Barbara in order to limit and control such activities in a manner that is (1) necessary to protect the public health, safety, and welfare of the residents, (2) consistent with the policy preferences the Board of Supervisors, (3) consistent with the AUMA, and (4) designed to eliminate the potential for significant additional impacts on the environment and unmitigated growth pending environmental review as required by the California Environmental Quality Act.

SECTION 6: Prohibition.

1. Any activities associated with the AUMA, including the cultivation, distribution, transportation, storage, manufacturing, processing, and selling of nonmedical marijuana, nonmedical marijuana products, and industrial hemp in all land use categories within the unincorporated areas of Santa Barbara County are prohibited.
2. The County shall not permit or allow, or process applications for land use entitlements for any activities associated with the AUMA, including the cultivation, distribution, transportation, storage, manufacturing, processing, and selling of nonmedical marijuana, nonmedical marijuana products, and industrial hemp in all land use categories within the unincorporated areas of Santa Barbara County.
3. Personal cultivation of nonmedical marijuana outdoors is prohibited in accordance with Health and Safety Code 11362.2(b)(3).

SECTION 7: Nuisance Declared.

A violation of any provision of this interim urgency ordinance shall be deemed to be a public nuisance. In addition, all cultivation of commercial nonmedical marijuana, in any amount or quantity, is hereby declared to be unlawful in all zones and a public nuisance that may be abated and subject to enforcement.

SECTION 8: CEQA.

This interim urgency ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3), as it has no potential for causing a significant impact on the environment, and section 15308, as a regulatory action that will protect the environment.

SECTION 9: Enforcement

Violations of any provisions of this interim urgency ordinance shall be enforced per enforcement

standards in compliance with (1) the Santa Barbara County Land Use and Development Code, Chapter 35.108 (Enforcement and Penalties), or (2) the Santa Barbara County Coastal Zoning Ordinance Section 35-185 (Enforcement, Legal Procedures, and Penalties), or (3) the Santa Barbara County Montecito Land Use and Development Code Chapter 35.498 (Enforcement and Penalties), and also (4) Chapter 24A of the Santa Barbara County Code.

SECTION 10: Severability.

If any provision of this interim urgency ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provision of this interim urgency ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this interim urgency ordinance are severable. The Board of Supervisors hereby declares that it would have adopted this interim urgency ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 11: Effective Date.

This interim urgency ordinance shall take effect and be in full force immediately upon adoption by at least a four-fifths vote of the Board of Supervisors, and shall be in effect for 45 days from the date of adoption unless extended by the Board of Supervisors pursuant to Government Code section 65858.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this _____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

JOAN HARTMANN, CHAIR
BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA

ATTEST:

MONA MIYASATO, COUNTY EXECUTIVE OFFICER
CLERK OF THE BOARD

By _____
Deputy Clerk

APPROVED AS TO FORM:

MICHAEL C. GHIZZONI
COUNTY COUNSEL

By _____
Deputy County Counsel