

**ORDINANCE NO. NS-300.914**

**AN UNCODIFIED INTERIM ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA ADOPTING A TEMPORARY MORATORIUM ON COMMERCIAL CANNABIS ACTIVITY WITHIN THE UNINCORPORATED AREA OF SANTA CLARA COUNTY AND DECLARING THE URGENCY THEREOF**

**THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA ORDAINS AS FOLLOWS:**

**SECTION 1. Findings and Purpose.**

In accordance with California Government Code section 65858, the Board of Supervisors finds and declares that this Ordinance is deemed necessary for the following reasons:

1. In 1997 and 1998, pursuant to California Health and Safety Code section 11362.5 (the Compassionate Use Act) and the County's police power as granted broadly under article XI, section 7 of the California Constitution, the Board of Supervisors of the County of Santa Clara adopted Ordinance Numbers NS-300.599, NS-300.619, and NS 1200.291, which added Division B26 to Title B of the County of Santa Clara Ordinance Code and amended the Zoning Ordinance of the County of Santa Clara to regulate medicinal cannabis dispensaries within certain zoning districts of the county subject to a use permit and clearance from the Public Health Department and Sheriff.
2. After the adoption of these ordinances, Senate Bill 420 (SB 420), the Medical Marijuana Program Act (Health & Saf. Code, § 11362.7 *et seq.*), became law on January 1, 2004. This bill established a statewide, voluntary registry identification card system for patients authorized to use medical cannabis and their primary caregivers. SB 420, as amended, recognizes that qualified patients, persons with valid identification cards, and designated primary caregivers may collectively or cooperatively cultivate cannabis. However, the California Supreme Court, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, held that nothing in the Compassionate Use Act or the Medical Marijuana Program Act expressly or impliedly preempts local ordinances declaring medical cannabis collectives, cooperatives, or dispensaries a prohibited use in a local jurisdiction.
3. In August 2014, the Board of Supervisors adopted Ordinance No. NS-300.378, which repealed the prior Division B26 of the County of Santa Clara Ordinance Code and replaced it with a prohibition on the establishment or operation of any medicinal cannabis dispensary in the unincorporated area of the county. The Board also adopted Ordinance No. NS-1200.347, amending the Zoning Ordinance to eliminate medicinal cannabis dispensaries as a use classification in the Zoning Ordinance.

4. On October 20, 2015, the Board of Supervisors adopted Ordinance No. NS-300.378, adding Division B26.5 to Title B of the County of Santa Clara Ordinance Code, to regulate medicinal cannabis cultivation by qualified patients and primary caregivers and prohibit all other cultivation.

5. Since the County's adoption of Ordinance No. NS-300.378 relating to medicinal cannabis cultivation, state laws have been enacted to provide a regulatory framework for medical cannabis, the Medical Marijuana Regulation and Safety Act (MMRSA), and nonmedical cannabis, the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA).

6. MMRSA, which is comprised of Assembly Bill 243, Assembly Bill 266, and Senate Bill 643, became effective on January 1, 2016. On June 27, 2017, the Governor approved Senate Bill 94 (SB 94), which repealed MMRSA and includes certain provisions of MMRSA in the licensing provisions of AUMA. These licensing requirements do not apply to qualified patients who cultivate, possess, store, manufacture, or transport cannabis exclusively for their own personal use.<sup>1</sup> Nor do the licensing requirements apply to primary caregivers who cultivate, possess, store, manufacture, or transport cannabis exclusively for the personal medical purposes of no more than five specified qualified patients.<sup>2</sup> SB 94 also consistently replaced the term "marijuana" with "cannabis" in state law, although the definition remains the same. For consistency with state law as revised by SB 94, the County adopted the term "cannabis" in place of "marijuana" in this Ordinance. The adoption of the term "cannabis" herein, however, shall not invalidate references to "marijuana" in any County ordinance, policy, or regulation. The two terms share the same meaning and are used interchangeably in the County Code of Ordinances.

7. On November 8, 2016, California voters approved Proposition 64, which enacted AUMA. AUMA legalizes limited personal use of cannabis and provides a framework for state and local regulation of commercial cannabis activity. The personal use provision makes it legal under California law for anyone 21 years of age or older to possess, cultivate, and process up to six cannabis plants per private residence for personal use.<sup>3</sup> AUMA also establishes a state licensing system for commercial cultivation, testing, and distribution of nonmedical cannabis, and the manufacturing of nonmedical cannabis products, with a deadline of January 1, 2018 for the State to begin issuing licenses.<sup>4</sup> State licensing authorities, however, cannot issue a state license if the commercial

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<sup>1</sup> Sen. Bill No. 94 § 20, adding Bus. & Prof. Code, § 26033, subd. (a) (former Bus. & Prof. Code, § 26033, subd. (a) repealed by Sen. Bill No. 94 § 19).

<sup>2</sup> Sen. Bill No. 94 § 20, adding Bus. & Prof. Code, § 26033, subd. (b) (former Bus. & Prof. Code, § 26033, subd. (b) repealed by Sen. Bill No. 94 § 19).

<sup>3</sup> Health & Saf. Code, § 11362.2.

<sup>4</sup> Sen. Bill No. 94 §§ 11 & 12, amending Bus. & Prof. Code, §§ 26012 & 26013.

cannabis activity for which an applicant seeks a license would violate any local ordinance or regulation.<sup>5</sup> AUMA imposes no limitation on the ability of local jurisdictions to adopt and enforce local ordinances to regulate commercial cannabis businesses, including but not limited to the ability to completely prohibit the establishment or operation of one or more types of commercial cannabis activities that the State would otherwise license under AUMA.<sup>6</sup>

8. Although MMRSA and AUMA outlined state regulatory frameworks, which the State aims to align under one regulatory framework in SB 94, the State has yet to fully establish its regulatory scheme for commercial cannabis activity. On April 28, 2017, the Bureau of Medical Cannabis Regulation issued draft proposed medical cannabis regulations for public review and comment. The State has yet to release draft regulations for nonmedical commercial cannabis activity. SB 94, however, preserves local authority to regulate medical and nonmedical cannabis and requires state licensing authorities to contact local jurisdictions for confirmation of an applicant's local license or authorization before issuing any state license for commercial cannabis activity.<sup>7</sup> Although SB 94 authorizes licensing authorities to issue rules and regulations on commercial cannabis activity and permits licensing authorities to adopt emergency regulations, the State has yet to propose any additional regulations.<sup>8</sup>

9. Until the state regulations are finally adopted and enforceable, commercial cannabis activity will be insufficiently regulated and poses a current and immediate threat to the public health, safety, and welfare, including the following potential effects:

a. *Increased criminal activity.* A number of factors, including the high monetary value of cannabis plants and the reliance of commercial cannabis establishments on cash transactions, can result in increased crime from commercial cannabis activity. The U.S. Drug Enforcement Agency reports that each cannabis plant may yield an average of one-half to two pounds in its lifetime. The per-pound price of domestically produced high-grade cannabis can reach \$2,000 to \$5,000. The strong odor of cannabis creates an attractive nuisance, alerting persons to the location of valuable plants, and increasing the risk of burglary, armed robbery, or other violent crimes. Experts have also found that employees and customers of commercial cannabis establishments are disproportionately targeted for crime because of the reliance of cannabis businesses on cash transactions, which can result in large amounts of cash on hand. The California Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use confirmed that the cultivation or

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<sup>5</sup> Sen. Bill No. 94 § 41, amending Bus. & Prof. Code, § 26055, subd. (d).

<sup>6</sup> Sen. Bill No. 94 § 102, amending Bus. & Prof. Code, § 26200.

<sup>7</sup> Sen. Bill No. 94 § 41, amending Bus. & Prof. Code, § 26055.

<sup>8</sup> Sen. Bill No. 94 § 12, amending Bus. & Prof. Code, § 26013, subds. (a) & (b).

other concentration of cannabis in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activities such as crime or loitering.

The potential for increased crime from unregulated commercial cannabis activity is not limited to retail establishments. At least one city in Santa Clara County has reported a rise in cannabis-related arrests for illegal laboratories. The City of Mountain View Police Department arrested suspects during eight drug lab investigations from 2012 to 2016. Seven of the eight lab investigations involved Butane Honey Oil (BHO) extraction, which is closely associated to cannabis cultivation as the leftover cannabis plant cuttings are primarily used in BHO labs. A wide variety of solvents are used for BHO extraction, many of which are highly flammable and have resulted in explosions, fires, severe injuries, and death. The Mountain View Police Department had not encountered any illicit drug labs in the city prior to 2012.

b. *Adolescent cannabis use.* The establishment of commercial cannabis activity is also associated with increased cannabis use in adolescents. A study on adolescent cannabis use found that the percentage of adolescents using cannabis in states with legalized recreational and medical cannabis use was higher than in states that either did not legalize any cannabis or only legalized medical cannabis: 11.31 percent of adolescents used cannabis in states legalizing both recreational and medicinal cannabis, compared to 8.52 percent of adolescents in states that only legalized medicinal cannabis and an even lower percentage, 5.99 percent, of adolescents used cannabis in states that did not legalize any cannabis. Locally, the Office of the Public Defender conducted an analysis that appears to link the proliferation and proximity of cannabis dispensaries in San José to increased substance-related suspensions in East Side Union High School District. During the 2011-2012 school year, the District experienced a 106 percent increase in substance-related suspensions (administering 614 substance-related suspensions compared to 297 the previous school year), while overall suspensions decreased 28.36 percent over the same time period. This increase in substance-related suspensions coincided with the number of cannabis dispensaries in San José reaching approximately 100.

Studies have shown that adolescent cannabis use can have harmful short- and long-term effects. The County's Department of Alcohol and Drug Services prepared a policy brief in which it cited studies finding that cannabis is unique in its impact on adolescents and young adults because of the lasting effects it has on memory and executive functioning. At least one study found that adolescents who use cannabis have a greater likelihood of developing an addiction than adults. According to the study, 17 percent of youth who begin using before age 18 become addicted, while only 9 percent of users generally become addicted.<sup>9</sup> Additionally, an article in *The New England Journal*

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<sup>9</sup> Presentation by Sue Nelson, Behavioral Health Services, to the Health Advisory Commission (October 19, 2016) (on file with the Clerk of the Board).

*of Medicine* concluded that repeated use of cannabis, especially in adolescents, may result in “long-lasting changes in brain function that can jeopardize educational, professional, and social achievements.” The article goes on to predict that a policy shift towards legalization of cannabis will likely result in an increase in the number of persons who suffer from negative health consequences.

c. *Adverse environmental impacts.* The Office of the District Attorney, Narcotics Prosecution Team, prepared an analysis documenting the volume of local illegal indoor and outdoor cannabis grows. From 2011-2014, the Sheriff’s Marijuana Eradication Team (MET) removed 355,005 cannabis plants and seized 1,838 pounds of processed cannabis bud derived mostly from outdoor grow locations. For 2016, MET reported the removal of 100,147 cannabis plants and the seizure of 1,006 pounds of processed cannabis. MET enforcement actions in 2016 resulted in 22 arrests, including six arrests involving weapons possession. The illegal grows create profound environmental damage because the growers divert water from waterways, deforest sensitive habitats, cut terraces into hillsides causing runoff and instability, use high levels of unregulated pesticides (some of which are banned in the U.S.) that contaminate the soil and water, and leave vast amounts of garbage and human waste. Cannabis cultivation can also lead to immediate and severe consequences due to fire hazards associated with cannabis cultivation. In Santa Clara County, near the area of Casa Loma Road in Santa Cruz, a fire lasting from September 26, 2016 to October 12, 2016 related to a portable generator used in a cannabis cultivation operation burned approximately 4,474 acres and destroyed 28 structures, including 12 homes.

10. A number of California cities and counties have reported these and other adverse impacts and negative secondary effects from medical cannabis dispensaries and cultivation sites, including hazardous construction, unsafe electrical wiring, noxious odors, and fumes affecting neighboring properties and businesses, and increased crime in and around cultivation sites and dispensaries.

11. Cannabis continues to be listed as a Schedule 1 drug under the Federal Controlled Substances Act (“CSA”), 21 U.S.C. § 801 *et seq.*, and it is illegal to manufacture, distribute, or possess a Schedule 1 drug under federal law. Drugs listed on Schedule 1 are considered the most dangerous due to a high potential for abuse and potentially severe psychological and/or physical dependence.

12. As a result of the continuing conflict between State and federal laws and the unsettled State regulatory framework for commercial cannabis activity, coupled with the evidence demonstrating the public health, safety, and welfare threat that insufficiently regulated cannabis presents to the public, including negative and harmful secondary effects associated with commercial cannabis activity, and the inadequate regulations in the Ordinance Code and Zoning Ordinance to effectively address the negative secondary impacts associated with commercial cannabis activity, the Board finds that commercial cannabis activity presents a current and immediate threat to the public health, safety, and welfare. The establishment of commercial cannabis activity in the unincorporated

County is a current and immediate threat because of the public health and safety risks created if commercial cannabis businesses are set up in advance of, and after the start of, the issuance of State licenses, beginning in January 2018, without adequate State and local regulations to mitigate for the adverse impacts on the public health, safety, and welfare of the community surrounding the commercial cannabis activity. The Board further finds that a temporary moratorium on the establishment of commercial cannabis businesses in unincorporated Santa Clara County is warranted so the Board of Supervisors may review and consider possible amendments to the County's Zoning Ordinance to address this threat on a permanent basis.

**SECTION 2. Moratorium.**

**A. Prohibition on Commercial Cannabis Activity**

The establishment, maintenance, and/or operation of any commercial cannabis activity in the unincorporated area of Santa Clara County is prohibited.

**B. Applicability**

For purposes of this Ordinance, "commercial cannabis activity" shall include all commercial activities as set forth and defined as commercial cannabis activity in Business and Professions Code section 26001 as amended by Senate Bill 94, including, but not limited to the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transportation, delivery, or sale of cannabis or cannabis products.

"Cannabis," as defined in Health and Safety Code section 11018 as amended by Senate Bill 94, means all parts of the plant *Cannabis sativa L.*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include either of the following:

- (a) Industrial hemp, as defined in Section 11018.5.
- (b) The weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other product.<sup>10</sup>

"Cannabis products," as defined in Health and Safety Code section 11018.1 as amended by Senate Bill 94, means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.<sup>11</sup>

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<sup>10</sup> Sen. Bill No. 94 § 115, amending Health & Saf. Code, § 11018.

<sup>11</sup> Sen. Bill No. 94 § 116, amending Health & Saf. Code, § 11018.1.

C. Exemptions

1. This Ordinance will not apply to cannabis cultivation for personal use in compliance with AUMA, or the cultivation of medicinal cannabis by a qualified patient or primary caregiver as set forth in Business and Profession Code section 26033 subdivisions (a) and (b) (added by Senate Bill 94), provided that the cultivation is performed in strict compliance with the regulations in Division B26.5 of the County of Santa Clara Ordinance Code and all other applicable state laws and regulations.

2. It is not a violation of this Ordinance for any person employed by a licensed cannabis delivery service to travel on a public road within the unincorporated area of the county for the purpose of delivering cannabis to persons located in a city or county where the delivery of cannabis is not prohibited.

**SECTION 3. Compliance with the California Environmental Quality Act.**

The Board of Supervisors finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) because the activity is not a project as defined by Section 15378 of the CEQA guidelines. The Ordinance has no potential for resulting in physical change to the environment either directly or indirectly. Furthermore, pursuant to Section 15060(c)(2) of the CEQA Guidelines, the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment because this Ordinance prevents changes in the environment pending the contemplated review of Zoning Ordinance amendments applicable to commercial cannabis activity.

**SECTION 4. Enforcement.**

1. This Ordinance may be enforced by any peace officer, or by any employee, agent, or officer of any of the following County departments or agencies:

- (a) Office of the Sheriff
- (b) Department of Planning and Development
- (c) Office of the County Counsel
- (d) Office of the District Attorney
- (e) Consumer and Environmental Protection Agency
- (f) Office of the Fire Marshal

2. Enforcement under this section shall be at the discretion of the enforcing agency, pursuant to the following:

- (a) If a peace officer, or any employee, agent, or officer of an enforcing agency determines that the establishment, maintenance, or operation of commercial cannabis activity prohibited under this Ordinance is being performed, the enforcing agency shall be authorized to summarily abate the activity through the seizure and

confiscation of cannabis plants (including dried or processed plants) or products pursuant Division A1, Chapter III, of the Ordinance Code.

- (b) Any person who violates this Ordinance shall be subject to the penalties and enforcement actions listed in in Division A1, Chapter II, of the Ordinance Code.
- (c) The County may enforce the provisions of Chapter 5.80 of the Zoning Ordinance against any person who violates this Ordinance.
- (d) In addition to the civil remedies and criminal penalties set forth above, any violation of this Ordinance may be subject to administrative remedies, as set forth by Division A37 of the Ordinance Code, and any other fines, fees, penalties allowed by law.

3. Any violation of this Ordinance is hereby declared a public nuisance and may be abated by the County pursuant to Chapter III of Division A1 of the County Ordinance Code.

**SECTION 5. Effective Date.**

This Ordinance is declared to be an urgency measure adopted pursuant to Government Code section 65858. As set forth in the findings above, this Ordinance is necessary for preserving the public safety, health, and welfare. Pursuant to Government Code section 65858, this Ordinance is effective immediately and shall be in full force and effect for 45 days from the date of its adoption. This 45-day period may be extended by the Board of Supervisors in accordance with the provisions of Government Code section 65858.

**SECTION 6. Severability.**

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Ordinance are severable. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases will be held unconstitutional, invalid, or unenforceable.

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**PASSED AND ADOPTED** by the Board of Supervisors of the County of Santa Clara, State of California, on September 12, 2017, by the following vote:

**AYES: CHAVEZ, CORTESE, SIMITIAN, WASSERMAN, YEAGER**  
**NOES: NONE**  
**ABSENT: NONE**  
**ABSTAIN: NONE**



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DAVE CORTESE, President  
Board of Supervisors

ATTEST:



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MEGAN DOYLE  
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:



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MARCELO QUIÑONES  
Deputy County Counsel