

COPY

ORDINANCE # 353

**AN ORDINANCE OF THE MODOC COUNTY BOARD OF SUPERVISORS,
IMPOSING AN EXPRESS BAN ON MARIJUANA CULTIVATION,
MARIJUANA PROCESSING, AND MARIJUANA DISPENSARIES WITHIN
THE COUNTY**

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as Health & Safety Code Section 11362.5 et seq. and entitled "The Compassionate Use Act of 1996" referred to herein as the "CUA");

WHEREAS, the intent of the CUA was to enable Californians to legally possess, use, and cultivate marijuana for medical use under state law once a physician has deemed the use beneficial to a patient's health;

WHEREAS, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program ("MMP"), codified as Health and Safety Code Section 11362.7 et seq., which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under the California Penal Code;

WHEREAS, neither the CUA nor the MMP require or impose an affirmative duty or mandate upon a local government to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction;

WHEREAS, in May 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., et al.*, holding that cities have the authority to ban medical marijuana land uses;

WHEREAS, under the Federal Controlled Substances Act, codified in 21 U.S.C. Section 801 et seq., the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need;

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the "Medical Marijuana Regulation and Safety Act" ("Act"), which is comprised of the state legislative bills known as AB 243, AB 266, and SB 643, into law;

WHEREAS, the Act becomes effective January 1, 2016 and contains provisions that govern the cultivating, processing, transporting, testing, and distributing of medical cannabis to qualified patients. The Act also contains new statutory provisions that:

Allow local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code Section

11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4));

Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business & Professions Code § 19315(a));

Expressly provide that the Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Business & Professions Code § 19316(c)); and

WHEREAS, several California cities and counties have reported negative impacts of marijuana cultivation, processing and distribution activities, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests;

WHEREAS, 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 far beyond property boundaries if grown outdoors;

WHEREAS, Ordinance Number #349-C (Chapter 18.175 of the Title 18 Zoning Code), was adopted on December 13, 2013 by the Modoc County Board of Supervisors to allow limited, small-scale personal cultivation;

WHEREAS, in the case of commercial cultivation a very large number of plants could be cultivated on the same legal parcel, or parcels, within the County of Modoc;

WHEREAS, the strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery;

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the structural integrity of the building, and the use of high wattage grow lights and excessive use of electricity increases the risk of fire which presents a clear and present danger to the building and its occupants;

WHEREAS, the 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;

WHEREAS, based on the experiences of other counties, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the county due to the establishment and operation of marijuana cultivation, processing and distribution activities;

WHEREAS, based on the findings above, the potential establishment of commercial cultivation, processing and distribution of medical marijuana in the County without an express ban on such activities poses a current and immediate threat to the public health, safety, and welfare in the County due to the negative impacts of such activities as described above;

WHEREAS, the issuance or approval of business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for marijuana cultivation, processing, delivery, and/or distribution will result in the aforementioned threat to public health, safety, and welfare; and

WHEREAS, it is in the interest of the County, its residents, and its lawfully permitted businesses that County adopts this ordinance to expressly prohibit the establishment and operation of commercial marijuana cultivation, processing, and dispensary activities as well as the issuance of any use permit, variance, building permit, or any other entitlement, license, or permit for any such activity, except where the County is preempted by federal or state law from enacting a prohibition on any such activity or a prohibition on the issuance of any use permit, variance, building permit, or any other entitlement, license, or permit for any such activity.

NOW THEREFORE, the Modoc County Board of Supervisors does ordain as follows:

Section 1: The Modoc County Board of Supervisors hereby finds that the above recitals are true and correct and are incorporated into the substantive portion of this ordinance.

Section 2: If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one (1) or more sections, subsections, sentences, clauses or phrases be declared, invalid or unconstitutional.

Section 3: The Board of Supervisors finds the approval of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations,

Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the City Council finds the approval of this ordinance is not a project under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

Section 4: This ordinance shall be in full force and effect thirty (30) days after its adoption by a majority vote of The Board of Supervisors.

Section 5: The Board of Supervisors hereby amends Title 18 of the Modoc County Code to add Chapter 18.180 entitled "Commercial Marijuana Uses" to read as follows:

**Chapter 18.180
Commercial Marijuana Uses**

Sections:

- 18.180.010 Purpose.**
- 18.180.020 Definitions.**
- 18.180.030 Prohibited Activities.**
- 18.180.040 Public Nuisance.**
- 18.180.050 Violations.**
- 18.180.060 Severability.**

18.180.010 Purpose.

- A. The Board of Supervisors finds that the prohibitions on commercial marijuana uses including the cultivation; marijuana processing, and marijuana dispensaries, are necessary for the preservation and protection of the public health, safety, and welfare for the County and its community. The County's prohibition of such activities is within the authority under state law.
- B. On October 9, 2015, the governor signed the "Medical Marijuana Regulation and Safety Act" ("Act") into law. The Act becomes effective January 1, 2016 and contains new statutory provisions that:
 - 1. Allow local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4));
 - 2. Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business & Professions Code § 19315(a));
 - 3. Expressly provide that the Act does not limit the authority or remedies of a local government under any provision of law regarding

marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Business & Professions Code § 19316(c)); and

- C. The Board of Supervisors finds that this chapter: (1) expresses its intent to prohibit the commercial cultivation of marijuana in the County and to not administer a conditional permit program pursuant to Health & Safety Code section 11362.777 for the commercial cultivation of marijuana in the County; (2) exercises its local authority to enact and enforce local regulations and ordinances, including those regarding the permitting, licensing, or other entitlement of the activities prohibited by this chapter; (3) exercises its police power to enact and enforce regulations for the public benefit, safety, and welfare of the County and its community.

18.180.020 Definitions.

For purposes of this chapter, the following definitions shall apply:

- A. "Marijuana" means any or all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin or separated resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including marijuana infused in foodstuff or any other ingestible or consumable product containing marijuana. The term "marijuana" shall also include "medical marijuana" as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California or subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).
- B. "Marijuana Cultivation" means growing, planting, harvesting, drying, curing, grading, trimming, or processing of marijuana for commercial use.
- C. "Marijuana Processing" means any method used to prepare marijuana or its byproducts for commercial retail and/or wholesale, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create marijuana related products and concentrates.
- D. "Marijuana Dispensary" or "Marijuana Dispensaries" means any business, office, store, facility, location, retail storefront or wholesale component of any establishment, cooperative or collective that delivers (as defined in Business & Professions Code section 19300.5(m) or any successor statute thereto) whether mobile or otherwise, dispenses, distributes, exchanges, transmits,

transports, sells or provides marijuana to any person for any reason, including members of any medical marijuana cooperative or collective consistent with the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California, or for the purposes set forth in California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

18.180.030 Prohibited Activities.

Commercial marijuana cultivation, marijuana processing, and marijuana dispensaries shall be prohibited activities in the County, except where the County is preempted by federal or state law from enacting a prohibition on any such activity. No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the activities of marijuana cultivation, marijuana processing, marijuana delivery, or the establishment or operation of a marijuana dispensary in the County, and no person shall otherwise establish or conduct such activities in the County, except where the County is preempted by federal or state law from enacting a prohibition on any such activity for which the use permit, variance, building permit, or any other entitlement, license, or permit is sought.

18.180.040 Public Nuisance.

Any violation of this chapter is hereby declared to be a public nuisance.

18.180.050 Violations.

Any violation of this chapter shall be punishable as provided in Chapters 8.20 and 18.158 of this Code or any successor section thereto.

18.180.060 Severability.

If any section, subsection, sentence or clause of this chapter is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter.

Passed and adopted this 12th day of April, 2016, by the following vote:

RESULT: APPROVED [UNANIMOUS]
MOVER: Geri Byrne, Supervisor District V
SECONDER: Patricia Cullins, Supervisor District II
AYES: Allan, Cullins, Rhoads, Wills, Byrne

Dated: April 12, 2016

COUNTY OF MODOC



Kathie Rhoads, Chair
Modoc County Board of Supervisors

ATTEST

Tiffany Martinez,
Deputy Clerk to the Board

APPROVED AS TO FORM:

County Counsel

MODOC COUNTY BOARD OF SUPERVISORS

APRIL 12, 2016

3.a. Ordinance: Second reading and approval of an Ordinance to amend Title 18 Zoning Ordinance by adding Chapter 18.180 "Commercial Marijuana Uses".

Motion by Supervisor Byrne, seconded by Supervisor Cullins to waive the second reading and approve of an Ordinance to amend Title 18 Zoning Ordinance by adding Chapter 18.180 "Commercial Marijuana Uses".

Motion Approved:

RESULT: APPROVED [UNANIMOUS]

MOVER: Geri Byrne, Supervisor District V

SECONDER: Patricia Cullins, Supervisor District II

AYES: David Allan, Supervisor District I, Patricia Cullins, Supervisor District II, Kathie Rhoads, Supervisor District III, James Wills, Supervisor District IV, and Geri Byrne, Supervisor District V

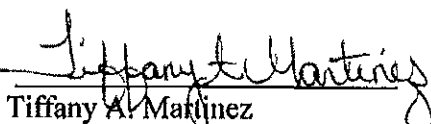
STATE OF CALIFORNIA

COUNTY OF MODOC

I, Tiffany Martinez, Deputy Clerk to the Board of Supervisors in and for the County of Modoc, State of California, do hereby certify that the above and foregoing is a full, true and correct copy of an ORDER as appears on the Minutes of said Board of Supervisors dated April 12, 2016 on file in my office.

WITNESS my hand and the seal of the Board of Supervisors this 12th day of April 2016.




Tiffany A. Martinez
Deputy Clerk of the Board