

ORDINANCE NO. 17-011

**AN UNCODIFIED INTERIM URGENCY ORDINANCE OF THE
COUNTY OF ORANGE, CALIFORNIA, ADOPTING A TEMPORARY
URGENCY ORDINANCE PROHIBITING COMMERCIAL CANNABIS
ACTIVITY, INCLUDING DISTRIBUTION, COMMERCIAL CULTIVATION,
OUTDOOR PERSONAL CULTIVATION, DELIVERY, MANUFACTURING,
AND TESTING**

WHEREAS, on November 14, 2017, the Board of Supervisors ("Board") considered a first reading to amend the Zoning Code and the Business and Licenses Code to Prohibit Commercial Cannabis Activities, including Distribution, Commercial Cultivation, Outdoor Personal Cultivation, Delivery, Manufacturing, and Testing ("Commercial Cannabis Activity Prohibition Ordinance"); and

WHEREAS, the second reading necessary to consider the Commercial Cannabis Activity Prohibition Ordinance is not scheduled and cannot occur until the next regularly scheduled meeting of the Board, December 5, 2017; and

WHEREAS, if the Board adopts the Commercial Cannabis Activity Prohibition Ordinance at the December 5, 2017 meeting, it will not become effective until January 5, 2018; and

WHEREAS, the State of California has indicated it will begin issuing licenses for commercial cannabis activities on January 1, 2018; and

WHEREAS, in order to allow time for the County of Orange to fully consider and make effective the Commercial Cannabis Activity Prohibition Ordinance, and potentially study and assess alternate approaches to regulation of commercial cannabis activity, it is necessary to enact an interim urgency prohibition on the issuance of any permits concerning commercial cannabis activities as defined in the proposed urgency ordinance; and

WHEREAS, pursuant to California Government Code Section 65858 this moratorium shall be effective for forty-five (45) days, and may be extended by further Board action for an additional ten (10) months and fifteen (15) days.

The Board of Supervisors of the County of Orange does ordain as follows:

SECTION 1. Recitals.

The above recitals are true and correct and are incorporated herein as if set forth in full and are relied upon by this Board for its adoption of this urgency ordinance.

SECTION 2. Definitions.

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

- (1) "Cannabis" or "Marijuana" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the 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. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. The term "cannabis" shall also have the same meaning as set forth in Section 19300.5(f) of the California Business and Professions Code, as may be amended from time to time. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.
- (2) "Cannabis cultivation" shall mean any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis, and shall also include the possession, manufacturing, processing, storing, laboratory testing, transporting, distribution, delivery, or sale of cannabis, whether all or any combination of those activities, and whether for medical or non-medical purposes or sale.
- (3) "Cannabis dispensary" shall mean a facility or location, whether fixed or mobile, where cannabis or cannabis products are offered, made available to, or provided, either individually, or in any combination, with or without remuneration, for medical purposes or otherwise. A dispensary includes those facilities defined as "dispensary" by Business and Professions Code section 19300.5, as enacted, or as hereafter amended. Cannabis dispensary or marijuana dispensary shall also mean "Retailer" and "Distributor" and "Microbusiness" as defined by Business and Professions Code section 26070, as enacted, or as hereafter amended.
- (4) "Commercial Cannabis activity" includes the cultivation, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products whether for medical or non-medical purposes.
- (5) "Commercial cannabis cultivation" or "Commercial marijuana cultivation" shall mean cannabis cultivation, as defined in this section, for commercial use or purposes, and whether for medical or non-medical purposes. For the purpose of this subsection, "processing" (as contained in the definition of

cannabis cultivation) shall mean any method used to prepare cannabis or its by-products for commercial retail and/or wholesale sale, including without limitation drying, cleaning, curing, packaging, and extraction of active ingredients to create cannabis products or cannabis-related products and concentrates.

- (6) "Cannabis products" shall mean cannabis that has undergone a process whereby the plant material has been transformed into concentrate, including, but not limited to, concentrated cannabis, edible or topical product containing cannabis or concentrated cannabis and other ingredients.
- (7) "Delivery" shall mean the commercial transfer of cannabis or cannabis products to a customer whether for medical or non-medical purposes. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer.
- (8) "Distribution" means the procurement, sale, and transport of cannabis and cannabis products between licensees whether for medical or non-medical purposes.
- (9) "License" means a state license issued under the Medicinal and Adult-Use Cannabis Regulation and Safety Act, Business and Professions Code, section 26000, et seq.
- (10) "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product whether for medical or non-medical purposes.
- (11) "Manufacturer" means the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products, or labels or relabels its container.
- (12) "Operation" means any act encompassing commercial cannabis activity, as defined herein, or any commercial transfer of cannabis or cannabis products.
- (13) "Personal cannabis cultivation" or "Personal marijuana cultivation" shall mean cannabis cultivation for personal use, medicinal use, or purposes in accordance with all applicable state laws.
- (14) "Testing Laboratory" means a laboratory, facility or entity that offers or performs tests of cannabis or cannabis products.

SECTION 3. Prohibited activities.

- (1) A cannabis dispensary, as defined in this chapter, is expressly prohibited and not an allowable activity within any zoning district within unincorporated areas of Orange County.
- (2) Commercial cannabis cultivation, as defined in this chapter, is expressly prohibited and not an allowable activity within any zoning district within unincorporated areas of Orange County.
- (3) Delivery services may not locate their distribution center within any zoning district within unincorporated areas of Orange County.
- (4) A Manufacturer, as defined in this chapter, is expressly prohibited and not an allowable activity within any zoning district within unincorporated areas of Orange County.
- (5) Testing Laboratories, as defined in this chapter, are expressly prohibited and not an allowable activity within any zoning district within unincorporated areas of Orange County.
- (6) Personal cannabis cultivation, as defined in this chapter, shall not exceed the number of living plants permitted by California Health and Safety Code Sections 11362.1 and 11362.2. Personal cannabis cultivation is limited solely to inside a person's private residence, or inside an accessory structure to a private residence located on the grounds of the private residence, that is fully enclosed and secure. Personal cannabis cultivation is expressly prohibited outdoors upon the grounds of any private residence or any other outdoor location within unincorporated.

SECTION 4. Public Nuisance.

Any activity or condition caused, or permitted to exist, in violation of any provision of this chapter shall be, and is hereby declared to be, a public nuisance and may be summarily abated by the County pursuant to Section 731 of the California Code of Civil Procedure or any other remedy available at law.

SECTION 5. Violations.

- (1) In addition to any other remedies permitted by this chapter or available at law, the County Counsel may bring a civil action for injunctive relief and civil penalties against any person who violates any provision of this chapter. In any civil action that is brought pursuant to this chapter, a court of competent jurisdiction may award civil penalties and costs to the prevailing party.
- (2) Any violation of this chapter shall be a misdemeanor, punishable as

provided by state law.

SECTION 6. Environmental Review.

The Board of Supervisors finds that this Ordinance is exempt from the California Environmental Quality Act (CEQA) because this activity is not a project pursuant to Sections 15060(c)(2), 15060(c)(3), 15061(b)(3), and 15378(a) of the State CEQA Guidelines. This activity has no potential to result in physical change in the environment, directly or indirectly. Alternatively, the activity is exempt from the requirements of CEQA because it is covered by the general rule that CEQA applies only to activities that have the potential for causing a significant effect on the environment; and here, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect or physical change to the environment.

SECTION 7. Findings.

This interim urgency ordinance is enacted pursuant to Government Code Section 65858. This Board hereby finds an interim urgency prohibition is necessary because failure to do so will result in a threat to the public health, safety and welfare of the community in that: (a) the State could issue licenses allowing commercial cannabis activities in unincorporated Orange County before the January 5, 2018 effective date of the proposed Commercial Cannabis Activity Prohibition Ordinance or before the County can consider and adopt alternate regulations, and the County wishes to make clear that in the interim, such commercial cannabis activities are prohibited in County unincorporated areas; (2) marijuana cultivation and the presence of dispensaries in the unincorporated area of Orange County can adversely affect the health, safety, and well-being of County residents. Prohibition of commercial cannabis or marijuana cultivation and dispensaries is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated marijuana cultivation, and that are especially significant if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place; (3) 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; (3) 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; (5) 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; and (6) based on the experiences of other counties and cities, 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 uses, and marijuana dispensaries

SECTION 8. Effective Date.

This interim urgency ordinance shall take effect immediately upon its adoption by a four-fifths (4/5^{ths}) vote of this Board. This interim urgency ordinance shall continue in effect for forty-five days from the date of its adoption and shall thereafter be of no further force and effect unless otherwise extended pursuant to Government Code Section 65858.

SECTION 9. Report.

Ten days prior to the expiration of this interim urgency ordinance or any extension, OC Planning shall issue a written report describing the measures taken, or recommending measures, to alleviate the condition which led to the adoption of this interim urgency ordinance.


SECTION 10. Severability.

If any provision of this ordinance or the applications thereof to any person or circumstances is held invalid, the remainder of the ordinance and the applications of such provision will remain in effect to the extent permitted by applicable law.

This ordinance shall take effect immediately.

THE FOREGOING was **PASSED** and **ADOPTED** by the following vote of the Orange County Board of Supervisors on December 05, 2017, to wit:

AYES: Supervisors: LISA A. BARTLETT, MICHELLE STEEL, ANDREW DO
TODD SPITZER
NOES: SHAWN NELSON
EXCUSED:
ABSTAINED:




CHAIRMAN

STATE OF CALIFORNIA)
) ss:
COUNTY OF ORANGE)

I, ROBIN STIELER, Clerk of the Board of Orange County, California, hereby certify that a copy of this document has been delivered to the Chairman of the Board and that the above and foregoing Ordinance was duly and regularly adopted by the Orange County Board of Supervisors.

IN WITNESS WHEREOF, I have hereto set my hand and seal.



ROBIN STIELER
Clerk of the Board.
County of Orange, State of California



Ordinance No.: 17-011
Agenda Date: 12/05/2017
Item No.: S50B



I certify that the foregoing is a true and correct copy of the Ordinance adopted by the Board of Supervisors, Orange County, State of California

Robin Stieler, Clerk of the Board of Supervisors.

By: 

Deputy