

ORDINANCE NO. 17-1108

AN ORDINANCE EXTENDING THE UNCODIFIED URGENCY ORDINANCE OF THE COUNTY OF PLUMAS, ADOPTED PURSUANT TO GOVERNMENT CODE SECTION 65858, IMPOSING A TEMPORARY MORATORIUM ON THE CULTIVATION OF CANNABIS (MARIJUANA) IN THE UNINCORPORATED AREAS OF THE COUNTY OF PLUMAS

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 which was codified as Health and Safety Code Section 11362.5, and entitled “The Compassionate Use Act of 1996” (the “Compassionate Use Act”); and

WHEREAS, the intent of the Compassionate Use Act was to enable persons who are in need of marijuana for medical purposes to obtain and use it under limited, specific circumstances; and

WHEREAS, on January 1, 2004, Senate Bill 420, codified as Health and Safety Code Sections 11362.7, and following, and entitled “The Medical Marijuana Program,” became effective to clarify the scope of the Compassionate Use Act; and

WHEREAS, on October 9, 2015, the Governor of the State of California approved Assembly Bill 243, Assembly Bill 266, and Senate Bill 643 authorizing the promulgation of regulations and standards relating to medical cannabis (also known as marijuana) and its cultivation, including the licensing of cultivation sites by state and local agencies; and

WHEREAS, on February 3, 2016, the Governor of the State of California approved Assembly Bill 21, an urgency measure, repealing Health and Safety Code Section 11362.777(c)(4) which previously provided that if county does not have land use regulations or ordinances regulating or prohibiting the cultivation of cannabis (marijuana), either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to former Health and Safety Code section 11362.777, then commencing March 1, 2016, the State of California shall be the sole licensing authority for medical cannabis (marijuana) cultivation applicants in that county; and

WHEREAS, in November 2016, voters approved Proposition 64, the Adult Use of Marijuana Act (AUMA). Under Proposition 64, adults 21 years of age or older may legally grow, possess, and use cannabis for nonmedicinal purposes, with certain restrictions. In addition, beginning on January 1, 2018, AUMA makes it legal to sell and distribute cannabis through a regulated business, and

WHEREAS, on June 27, 2017, the Governor of the State of California approved Senate Bill 94, which repealed MCRSA and include certain provisions of MCRSA in the licensing provisions of AUMA and renamed these consolidated provisions as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).

WHEREAS, MAUCRSA does not supersede or limit the authority of a county to adopt and

enforce local ordinances to regulate, or completely prohibit, businesses licensed by the State of California under the provisions of MAUCRSA, including but not limited to, local zoning and land use requirements, business license requirements, and requirements relating to reducing exposure to second hand smoke, and further provides that licensing authorities shall not approve licenses that would violate the provisions of any such local ordinance or regulation, and

WHEREAS, the term “cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis (marijuana) plants or any part thereof as provided in Business and Professions Code section 26001(l); and

WHEREAS, the term “cannabis” shall have the same meaning as that set forth in Business and Professions Code section 26001(f); and

WHEREAS, the County’s unique geographic and climate conditions, which include dense forested areas receiving substantial precipitation, along with sparse population in many areas of the County, provide conditions that are favorable to cannabis (marijuana) cultivation and cannabis (marijuana) growers can achieve a high per-plant yield with high economic value because of the County’s favorable growing conditions; and

WHEREAS, various parcels throughout the unincorporated area of the County of Plumas are being used for cannabis (marijuana) cultivation; and

WHEREAS, other public entities have reported adverse impacts from cannabis (marijuana) cultivation, including, but not limited to, disagreeable odors, increased risk of burglary and other property crimes, and acts of violence in connection with the commission of such crimes or the occupants’ attempts to prevent such crimes; and

WHEREAS, the creation of persistent strong odors as cannabis (marijuana) plants mature and flower is offensive to many people and creates an attractive nuisance, alerting persons to the location of valuable cannabis (marijuana) plants and creating an increased risk of crime; and

WHEREAS, the indoor cultivation of substantial amounts of cannabis (marijuana) also frequently requires excessive use of electricity, which often creates an unreasonable risk of fire from the electrical grow lighting systems used in indoor cultivation; and

WHEREAS, the County of Plumas has adopted a Zoning Plan identified as Title 9 (Planning and Zoning) of the Plumas County Code; and

WHEREAS, the Plumas County Zoning Code is a “permissive zoning” ordinance that does not permit the cultivation of cannabis (marijuana) on any lands or zones covered by the Plumas County Zoning Code, but this fact is not well known or understood by the general public whether within Plumas County or outside Plumas County since a search of the Zoning Code will not find the terms “cannabis” or “marijuana” thereby resulting in some persons assuming that such uses are allowed; and

WHEREAS, the enactment of AB 21 described above repealed former Health and Safety Code section 11362.777 subdivision (c)(4) and the reference to “permissive zoning” as a means to

prohibit the cultivation of cannabis (marijuana), thereby adding to the likelihood of some persons assuming that the use of land for the cultivation of cannabis (marijuana) is allowed in Plumas County; and

WHEREAS, concerns have been raised that there are no specific regulations to address the impact cannabis (marijuana) cultivation within the unincorporated areas of the County of Plumas may have on the community as a whole; and

WHEREAS, the County of Plumas has not adopted rules and regulations specifically applicable to cannabis (marijuana) cultivation and the lack of such controls may lead to increased cannabis (marijuana) cultivation and the inability to regulate cannabis (marijuana) cultivation in a manner that will protect the general public, homes and businesses adjacent and near such cultivation, and the persons who are present at such cultivations; and

WHEREAS, an ordinance expressly prohibiting the cultivation of cannabis (marijuana) in Plumas County will preclude any interpretation that Plumas does not prohibit the cultivation of cannabis (marijuana), and will further clarify for the public, and serve to notify state cannabis licensing authorities, that the cultivation of cannabis (marijuana) is not a permitted use of land in Plumas County; and

WHEREAS, in order to allow time for the County of Plumas, through its Planning and Building Services Department, to consider, study, and assess various approaches to regulating cannabis (marijuana) cultivation, it is necessary to suspend the establishment of cannabis (marijuana) cultivation that may be in conflict with the development standards and regulations the County of Plumas, through its Planning and Building Services Department, intends to consider or study; and

WHEREAS, on October 24, 2017, after taking public testimony at a noticed public hearing, the Board of Supervisors passed by a unanimous vote (5-0) an uncodified Urgency Ordinance (Ordinance No. 17-1107) adopted pursuant to Government Code Section 65858, imposing a Temporary Moratorium on cultivation of cannabis (marijuana) in the unincorporated areas of the County of Plumas (the “interim ordinance”); and

WHEREAS, Ordinance No. 17-1107, by its terms is only effective for a period of forty-five (45) days, and is scheduled to expire on December 7, 2017; and

WHEREAS, Government Code section 65858 authorizes local governments to adopt, after a noticed public hearing, an ordinance to extend an interim urgency ordinance if the extension ordinance contains legislative findings that there is a current and immediate threat to public health, safety, and welfare; and

WHEREAS, the purpose of this Ordinance is to extend the moratorium to continue to protect against the current and immediate threats that cannabis (marijuana) cultivation poses to public health, safety, and welfare and to prevent adverse impacts from cultivation of cannabis (marijuana) on nearby properties and residents; and

WHEREAS, at least ten (10) days prior to the expiration of Ordinance No. 17-1107 a written report has been prepared and issued describing the measures taken to alleviate the

conditions which led to the adoption of the interim ordinance; and

WHEREAS, the notice of public hearing required by Government Code section 65858 for the extension of Ordinance 17-1107 has been provided in accordance with applicable law.

NOW, THEREFORE, the Board of Supervisors of the County of Plumas, State of California, ordains as follows:

SECTION 1. The Board of Supervisors of the County of Plumas determines as follows:

- A. The above recitals are true and correct and are incorporated herein as if set forth in full and are relied upon independently by the Board of Supervisors for its adoption of this urgency ordinance.
- B. There is a current and immediate threat to public health, safety, and welfare in that the establishment of, or the issuance or approval of any permit, certificate of occupancy, or other entitlement for the establishment of, cannabis (marijuana) cultivation in the unincorporated areas of the County of Plumas will result in land uses and land developments that may conflict with amendments to the Plumas County Code that may be adopted as a result of the study that is to be undertaken.
- C. There is no feasible alternative to enactment of this moratorium ordinance that will satisfactorily mitigate or avoid the previously identified impacts to the public health, safety and welfare with a less burdensome or restrictive effect.
- D. In order to ensure the effective implementation of the County of Plumas' land use objectives and policies, a temporary moratorium on the establishment and/or approval of cannabis (marijuana) cultivation is necessary.
- E. This ordinance is exempt from environmental review pursuant to State CEQA Guidelines Section 15061(b)(3) in that there is nothing in this ordinance or its implementation that could have a foreseeable significant effect on the environment.

SECTION 2. Imposition of Moratorium.

In accordance with Government Code Section 65858, for the period of this ordinance, or any extension thereof, cannabis (marijuana) cultivation shall be considered a prohibited use in any zoning district of the unincorporated areas of the County of Plumas. No permits or authorizations shall be approved or issued for the establishment of cannabis (marijuana) cultivation while this ordinance is in effect. For the purposes of this ordinance, the term "cannabis (marijuana) cultivation" shall not apply to the personal cultivation of not more than six living cannabis plants by a person within that person's private residence, or upon the grounds of that private residence (e.g., in an outdoor garden area), are in a locked space, and are not visible by normal unaided vision from a public place. Not more than six living cannabis plants may be planted, cultivated, harvested, dried, or processed within a single private residence or upon the grounds of that private residence, at one time. The term "private residence" shall mean a house, an apartment unit, a mobile home, or other similar dwelling.

SECTION 3. 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 law.

SECTION 4. Conflicting Laws.

For the term of this ordinance, as set forth in Section 6 below, the provisions of this ordinance shall govern. To the extent that there is any conflict between the provisions of this ordinance and the provisions of any other County code, ordinance, resolution or policy, all such conflicting provisions shall be suspended.

SECTION 5. Effective Date and Term.

This ordinance is declared an urgency measure for the immediate protection and preservation of the public peace, health, safety and welfare for the reasons stated in Section 1, and it shall take effect immediately upon its adoption by a four-fifths (4/5) vote of the Board of Supervisors pursuant to Government Code Section 65858 and Government Code Section 25123 (d). This ordinance shall continue in effect for twenty-two (22) months and fifteen (15) days from the date of its adoption and shall thereafter be of no further force. The clerk shall cause this ordinance to be published as required by law.

The foregoing ordinance was adopted at a regular meeting of the Plumas County Board of Supervisors of the County of Plumas, State of California, held on the 27th day of November 2017, by the following vote:

AYES:

NOES:

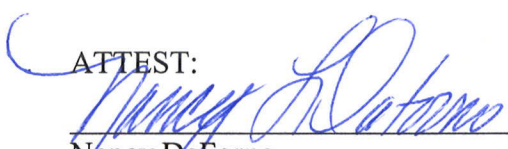
ABSTAIN:

ABSENT:



Lori Simpson, Chair
Board of Supervisors

ATTEST:



Nancy DaForno
Clerk of the Board