

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDINANCE NO.

AN ORDINANCE OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, REPEALING SECTION 82.02.070, REPEALING SECTION 810.01.150(r), AND ADDING CHAPTER 84.34 TO DIVISION 4 OF TITLE 8 OF THE SAN BERNARDINO COUNTY CODE, RELATING TO COMMERCIAL CANNABIS ACTIVITIES.

The Board of Supervisors of the County of San Bernardino, State of California, ordains as follows:

SECTION 1. The Board of Supervisors (Board) of the County of San Bernardino (County) finds that:

(a) The federal Controlled Substances Act (“CSA”) (21 U.S.C. sections 801 et seq.) makes it unlawful to manufacture, distribute, or possess any controlled substances, including marijuana, which has, as a Schedule I drug under the CSA, a high potential for abuse and no accepted medical value in treatment.

(b) At the General Election held on November 5, 1996, California voters approved Proposition 215 (Compassionate Use Act of 1996 (“CUA”) (Health and Safety Code section 11362.5)), which provides in relevant part that “Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient’s primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.”

(c) On January 1, 2004, Senate Bill 420 (Medical Marijuana Program (“MMP”) (Health and Safety Code sections 11362.7 et seq.)) went into effect, clarifying the scope of the CUA and allowing cities and counties to adopt and enforce regulations consistent with the CUA and MMP.

(d) On April 5, 2011, the Board of Supervisors adopted Ordinance No. 4140 banning medical marijuana dispensaries, as defined, and banned the outdoor cultivation

1 and growing of marijuana.

2 (e) In *City of Riverside v. Inland Empire Patients Health and Wellness Center,*
3 *Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that “neither the CUA nor
4 the MMP expressly or impliedly preempts the authority of California cities and counties,
5 under their traditional land use and police powers, to allow, restrict, limit, or entirely
6 exclude facilities that distribute medical marijuana, and to enforce such policies by
7 nuisance actions.”

8 (f) In *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Court of
9 Appeal held that “there is no right – and certainly no constitutional right – to cultivate
10 medical marijuana...,” thus affirming the ability of a local governmental entity to prohibit
11 the cultivation of marijuana under its land use authority.

12 (g) On January 1, 2016, the Medical Marijuana Regulation and Safety Act
13 (“MMRSA”), codified in various sections of the Business and Professions Code, the Fish
14 and Game Code, the Health and Safety Code, and the Water Code, went into effect,
15 instituting a dual licensing scheme for “commercial cannabis activity,” including the
16 distribution, manufacture, cultivation, delivery, testing, processing, storing, transporting,
17 and sale of marijuana.

18 (h) The MMRSA preserved the County’s authority to prohibit, regulate and/or
19 license commercial cannabis activity within its jurisdiction as it expressly provides that
20 the MMRSA:

21 (1) Is not intended “to supersede or limit existing local authority for law
22 enforcement activity, enforcement of local zoning requirements or local ordinances, or
23 enforcement of local permit or licensing requirements.” (See Business and Professions
24 Code section 19315(a).)

25 (2) Does not limit the authority or remedies of a local government
26 under any provision of law regarding marijuana, including but not limited to a local
27 government’s right to make and enforce within its limits all police regulations not in
28 conflict with general laws. (See Business and Professions Code section 19316(c).)

1 (3) Authorizes local jurisdictions to “adopt ordinances that establish
2 additional standards, requirements, and regulations for local licenses and permits for
3 commercial cannabis activity.” (See Business and Professions Code section 19316.)

4 (i) The MMRSA requires a local government that wishes to prevent cannabis
5 delivery, as defined at Business and Professions Code section 19300.5, from occurring
6 within its jurisdiction, to enact an ordinance expressly banning deliveries. (See
7 Business and Professions Code section 19340(a).)

8 (j) The Board of Supervisors finds that commercial cannabis activities,
9 whether for medical purposes or otherwise in the unincorporated area of the County,
10 may adversely affect the health, safety, and well-being of County residents and have
11 the potential for adverse impacts on the County. The continued County-wide prohibition
12 of commercial cannabis activities is proper and necessary to avoid the potential risks of
13 criminal activity — including trespassing, theft, violent robberies and robbery attempts
14 — degradation of the natural environment, malodorous smells, damage to residences
15 and other buildings, excessive use and pollution of water in a time of historic drought,
16 and dangerous electrical alterations and use.

17 (k) In light of the findings set forth herein the County desires to revise the
18 County Code relating to marijuana to further specify that all forms of commercial
19 cannabis activity are prohibited within the unincorporated area of the County, including
20 deliveries, except in the limited and specified circumstances established herein.

21
22 SECTION 2. Section 82.02.070 of the County Code is repealed.

23
24 SECTION 3. Section 810.01.150, subdivision (r) (“Medical Marijuana
25 Dispensary”) of the County Code is repealed and all subsequent subsections are
26 sequentially renumbered. For example, current subdivision (s) (“Medical Services,
27 Hospital”) shall be redesignated as subdivision (r).

28

1 SECTION 4. Chapter 84.34 is added to Division 4 of Title 8 of the San
2 Bernardino County Code to read:

3 **Chapter 84.34 Commercial Cannabis Activity**

4 **Sections:**

5 **84.34.010 Purpose.**

6 **84.34.020 Definitions.**

7 **84.34.030 Prohibition of Commercial Cannabis Activity.**

8 **84.34.040 Exemption for Cultivation by Specified Persons.**

9 **84.34.050 Exemption for Primary Caregiver Affiliated with Licensed**
10 **Facility.**

11 **84.34.010 Purpose.**

12 The purpose of this chapter is to prohibit, to the maximum extent allowed under
13 state law, the operation of commercial cannabis activity, with limited exceptions, within
14 the unincorporated area of the County, pursuant to the authority granted by Article XI,
15 section 7 of the California Constitution, Business and Professions Code sections 19300
16 et seq., Government Code sections 25845, 53069.4, and 65850, and Health and Safety
17 Code sections 11362.83 and 11362.768(f).

18 **84.34.020 Definitions.**

19 The definitions in this section are intended to apply to this chapter only. Any
20 term which is not specifically defined herein shall have the definition as provided by
21 Division 10 of the Development Code or elsewhere within the County Code.

22 (a) ***Cannabis or Marijuana.*** All parts of the plant *Cannabis sativa* Linnaeus,
23 *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the
24 resin, whether crude or purified, extracted from any part of the plant; and every
25 compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds,
26 or resin. "Cannabis" also means the separated resin, whether crude or purified,
27 obtained from marijuana. "Cannabis" also includes "marijuana" as defined by Section
28 11018 of the Health and Safety Code as currently enacted or hereafter amended.

1 (b) **Cannabis Concentrate.** Cannabis that has undergone a process to
2 concentrate the cannabinoid active ingredient, thereby increasing the product's
3 potency. Concentrate includes, but is not limited to, wax, oil, and tinctures.

4 (c) **Cannabis Plant.** Any mature or immature cannabis plant, any cannabis
5 seedling or any clipping or cutting from a cannabis plant that contains roots.

6 (d) **Cannabis Product.** Cannabis that has undergone a process whereby
7 the raw cannabis has been transformed into a concentrate, including, but not limited to,
8 cannabis concentrate. Cannabis product also includes products containing cannabis
9 and other ingredients, such as, but not limited to, edible cannabis products and topical
10 cannabis products.

11 (e) **Commercial Cannabis Activity.** Any enterprise or activity, whether or
12 not for profit, gain or benefit, concerning the cultivation, production, storage,
13 processing, manufacture, dispensing, delivery, distribution, laboratory testing,
14 transportation, provision, or sale of cannabis or cannabis products, for medical
15 purposes or otherwise. Without limiting the foregoing, commercial cannabis activity
16 specifically includes, but is not limited to, those activities defined as “commercial
17 cannabis activity” by Business and Professions Code section 19300.5, as currently
18 enacted or hereafter amended.

19 (f) **Cultivation.** Any activity involving the planting, growing, harvesting,
20 drying, curing, grading, or trimming of cannabis, whether conducted indoors or
21 outdoors.

22 (g) **Delivery.** The transfer of cannabis or cannabis products by: a person or
23 entity located within the unincorporated County directly to an individual within the
24 unincorporated County; or, a person, entity or location outside of the unincorporated
25 County to an individual within the unincorporated County. Delivery includes the use of
26 any technology platform that enables entities or individuals to arrange for or facilitate
27 the transfer of cannabis or cannabis products.

28 (h) **Dispensary.** A facility or location, whether fixed or mobile, where

1 cannabis, cannabis products, or devices for the use of cannabis or cannabis products
2 are offered, made available to, or provided, either individually or in any combination,
3 with or without remuneration, for medical purposes or otherwise. A dispensary
4 includes those facilities defined as a “dispensary” by Business and Professions Code
5 section 19300.5, as currently enacted or hereafter amended.

6 (i) **Distribution.** The procurement, sale, and transport of cannabis or
7 cannabis products between entities or facilities. Distribution does not include such
8 transactions if done directly to an individual end-user.

9 (j) **Edible Cannabis Product.** Manufactured cannabis that is intended to
10 be used, in whole or in part, for human consumption, including, but not limited to, any
11 type of food, drink, or pill, for medical purposes or otherwise.

12 (k) **Enforcement Officer.** Any County employee, Special District employee,
13 or agent of the County or Special District with the authority to enforce any provision of
14 the County Code, specifically:

15 (1) The Code Enforcement Chief, Program Manager, each Code
16 Enforcement Supervisor, and each Code Enforcement Officer or other designated
17 employee of the Code Enforcement Division of the Land Use Services Department, or
18 successor department thereto;

19 (2) The Building Official, each Regional Building and Safety
20 Supervisor, each Building Inspector, and other designated employees of the Building
21 and Safety Division of the Land Use Services Department;

22 (3) The Fire Chief/Fire Warden, Fire Marshal, and other designated
23 employees of the San Bernardino County Fire Protection District;

24 (4) The Director, each Inspector, and other designated employees of
25 the Environmental Health Services Division of the Department of Public Health;

26 (5) The Division Chief, each Animal Control Supervisor/Officer, and
27 other designated employees of the Animal Care and Control Program of the
28 Department of Public Health;

1 (6) The Sheriff-Coroner, each Deputy Sheriff (all ranks), and other
2 designated employees of the Department of the Sheriff-Coroner;

3 (7) The Director and other designated employees of the Public Works
4 Department;

5 (8) The Agricultural Commissioner, Agricultural/Standards Officers,
6 and other designated employees of the Department of Agriculture/Weights and
7 Measures; and

8 (9) Any other director and other designated employees of a County
9 department or Special District as designated by the County Executive Officer or the
10 Board of Supervisors.

11 (l) **Identification Card.** A document issued by the California Department of
12 Public Health that identifies a person authorized under California law to engage in the
13 medical use of marijuana and the person's designated primary caregiver, if any.

14 (m) **Manufacture.** To produce, prepare, propagate, compound, blend,
15 extract, infuse, or otherwise make or prepare a cannabis product. The manufacture of
16 cannabis includes the use of non-volatile solvents and volatile solvents. Volatile
17 solvents include, but are not limited to, volatile organic compounds, including:

18 (1) Explosive gases, such as butane, propane, xylene, styrene,
19 gasoline, kerosene, O2 and H2; and

20 (2) Dangerous poisons, toxins, or carcinogens, such as methanol, iso-
21 propyl alcohol, methylene chloride, acetone, benzene, toluene, and tri-chloro-ethylene.

22 (n) **Manufacturer.** A person or facility that conducts the production,
23 preparation, propagation, manufacture, or compounding of manufactured cannabis, or
24 cannabis products, either directly or indirectly or by extraction methods, or
25 independently by means of chemical synthesis or by a combination of extraction and
26 chemical synthesis. Manufacturer includes, but is not limited to, those persons defined
27 as "manufacturers" by Business and Professions Code section 19300.5, as currently
28 enacted or hereafter amended.

1 (o) **Person with an Identification Card.** An individual who is a qualified
2 patient and who has applied for and received a valid identification card pursuant to the
3 Medical Marijuana Program (Health and Safety Code section 11362.7 et seq.) as
4 currently in effect or hereafter amended.

5 (p) **Private Residence.** A single-family dwelling, a multi-family dwelling unit,
6 a mobile home, or a residential accessory structure thereto. For purposes of this
7 chapter, a residential accessory structure includes only those structures that are limited
8 to the sole use of the single-family dwelling, multi-family dwelling unit, or mobile home
9 in which the person with an identification card or primary caregiver resides. A private
10 residence does not include: hotels, motels, bed and breakfast inns, residential care
11 facilities, group residential facilities, transitional housing, or any other use subject to the
12 Transient Occupancy Tax as provided in Section 14.0203 of the County Code.

13 (q) **Primary Caregiver.** The individual designated by a qualified patient or
14 person with an identification card as one who has consistently assumed responsibility
15 for the housing, health, or safety of the patient and who meets the definition of a
16 “primary caregiver” as defined by Health and Safety Code section 11362.7, as currently
17 enacted or hereafter amended.

18 (r) **Qualified Patient.** A person entitled to the protections of Health and
19 Safety Code section 11362.5, but who does not have an identification card.

20 (s) **Topical Cannabis Product.** A product containing cannabis that is
21 intended for external use, such as but not limited to, lotions, balms, and oils.

22 (t) **Transport.** The transfer of cannabis or cannabis products from one
23 facility or site to another facility or site, for the purposes of conducting commercial
24 cannabis activity.

25 (u) **Testing Laboratory.** A facility, entity, or site that offers or performs tests
26 of cannabis or cannabis products. A testing laboratory includes, but is not limited to,
27 those facilities, entities, and sites defined by Business and Professions Code section
28 19300.5, as currently enacted or hereafter amended.

1 **84.34.030 Prohibition of Commercial Cannabis Activity.**

2 Except as expressly provided by Sections 84.34.040 and 83.34.050, commercial
3 cannabis activity shall not be considered a permitted or conditionally permitted use in
4 any land use zoning district. Commercial cannabis activity, including delivery, is
5 prohibited in all land use zoning districts, as those may be amended from time to time,
6 and no permit of any type shall be issued therefor. It shall be unlawful for any person
7 to conduct, cause to be conducted, or permit to be conducted, a commercial cannabis
8 activity within the unincorporated area of the County. This section shall not affect the
9 right to possess or use cannabis as authorized by federal or state law.

10 **84.34.040 Exemption for Cultivation by Specified Persons.**

11 Notwithstanding Section 84.34.030, the prohibition concerning commercial
12 cannabis activity does not apply to a person with an identification card cultivating
13 cannabis for his or her personal medical use or to a primary caregiver cultivating
14 cannabis for the personal medical use of no more than five (5) specified persons with
15 identification cards, subject to the following requirements:

16 (a) The cannabis is not sold, distributed, donated, or provided to any other
17 person or entity.

18 (b) A primary caregiver may only receive compensation in full compliance
19 with Health and Safety Code section 11362.765, subdivision (c).

20 (c) Cultivation may only be conducted indoors at the private residence of the
21 person with an identification card or the primary caregiver of the person with an
22 identification card.

23 (d) Cultivation shall be limited to no more than:

24 (1) Twelve (12) cannabis plants per person with an identification card
25 or primary caregiver per private residence; and,

26 (2) An aggregate total of twenty-four (24) cannabis plants per private
27 residence when more than one person with an identification card or primary caregiver
28 lives at the private residence.

1 (e) A private residence where cultivation occurs must be a fully enclosed
2 structure, that includes solid walls, and a ceiling, roof, or top. Cultivation of cannabis
3 plants within the limitations described above must be conducted in one distinct
4 designated cultivation area within the private residence. The designated cultivation
5 area must be separately secured and locked from all other uses of the private
6 residence, such that all cannabis plants are reasonably secured from theft and from
7 access by minors or other unauthorized persons. The cultivation must not be
8 perceptible from the exterior of the private residence, by means, including but not
9 limited to:

- 10 (1) Common visual observation, including any form of signage;
- 11 (2) Odors, smells, fragrances, or other olfactory stimulus generated by
12 the cultivation;
- 13 (3) Light pollution, glare, or brightness of artificial illumination
14 associated with the cultivation.

15 (f) The cultivation must be subordinate, incidental, and accessory to the
16 residential use.

17 (g) The designated area where cannabis is cultivated must be in full
18 compliance with all other applicable requirements of the County Code, including, but
19 not limited to, the building, safety, and technical codes and requirements relevant to
20 obtaining necessary building, plumbing, electrical, mechanical, or other permits,
21 inspection of the residence, and the issuance of a certificate of occupancy.

22 (h) The cultivation of cannabis shall not occur outdoors in the yard, curtilage,
23 or other area outside of a private residence.

24 (i) No cultivation is permitted within the common areas of a multi-family
25 dwelling, residential development, mobile home park, or other similar residential
26 arrangements.

27 (k) If the person with an identification card or a primary caregiver cultivates
28 cannabis within any private residence that he or she does not own, written consent

1 must be obtained from the property owner prior to commencing the cultivation of
2 cannabis plants on the property. Such written documentation shall include the property
3 owner's express consent to the cultivation of cannabis within the residence, and to any
4 material alterations to the private residence associated with the cultivation of cannabis
5 plants, including but not limited to alterations to walls, windows, ventilation, plumbing,
6 or electrical, in addition to obtaining all necessary building permits. The written consent
7 must be maintained at the private residence and provided upon request to an
8 enforcement officer.

9 (l) All cultivation must be conducted in full compliance with the
10 Compassionate Use Act (Health and Safety Code section 11362.5), the Medical
11 Marijuana Program (Health and Safety Code section 11362.7 et seq.) and the Medical
12 Marijuana Regulation and Safety Act (Business and Professions Code section 19300 et
13 seq.), as currently enacted or hereafter amended.

14 (m) The following activities shall not be permitted pursuant to this exemption,
15 but such restrictions shall not be deemed to prohibit the use of lawful fertilizers,
16 additives, supplements or nutrients:

17 (1) Any activity involving the use of a chemical or other process to
18 enhance tetrahydrocannabinol (THC) in cannabis; or

19 (2) The manufacture of cannabis product.

20 (n) Cultivation shall not occur within any private residence containing a child
21 day care, as defined by Section 810.01.060, subdivision (e).

22 (o) A primary caregiver shall provide the identification card number of each of
23 his or her patients to enforcement officers, upon request, when acting in the course of
24 their official duties while investigating compliance with the requirements of this chapter.

25 (p) If, after the adoption of this chapter, any federal or state law is passed
26 which requires the County to allow the cultivation of cannabis by any persons not
27 included within the exemption stated above, the exemption shall be expanded to
28 include those persons specifically identified by said federal or state law, upon the date

1 the law becomes effective. Any plant limitations imposed by said federal or state law, if
2 in an amount less than specified in this section, shall apply to the additional exempted
3 persons. All other provisions of this section shall apply to the additional exempted
4 persons. It is the intent of this provision that the cultivation of cannabis within the
5 unincorporated areas of the County is as restrictive as allowed under state law.

6 **83.04.050 Exemption for Primary Caregiver Affiliated with Licensed Facility.**

7 (a) Notwithstanding Section 84.34.030, the prohibition against commercial
8 cannabis does not apply to a person designated as a primary caregiver by a qualified
9 patient or person with an identification card, if such primary caregiver is the owner or
10 operator of one of the following licensed facilities, or is one of no more than three
11 employees who are designated by the owner or operator of one of the following licensed
12 facilities:

13 (1) A clinic licensed pursuant to Chapter 1 (commencing with Section
14 1200) of Division 2 of the Health and Safety Code;

15 (2) A health care facility licensed pursuant to Chapter 2 (commencing
16 with Section 1250) of Division 2 of the Health and Safety Code;

17 (3) A residential care facility for persons with chronic life-threatening
18 illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of
19 Division 2 of the Health and Safety Code;

20 (4) A residential care facility for the elderly licensed pursuant to
21 Chapter 3.2 (commencing with Section 1569) of Division 2 of the Health and Safety
22 Code;

23 (5) A hospice, or a home health agency licensed pursuant to Chapter
24 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code.

25 (b) Before commencing a commercial cannabis activity, operators of those
26 entities or facilities listed above shall register with the Land Use Services Department,
27 and renew said registration on an annual basis. Upon said registration and each
28 renewal thereof, the operator shall provide proof of a valid license as provided by

1 Chapters 2, 3.01, 3.2, 8 and/or 8.5 of Division 2 of the Health and Safety Code.

2 (c) No facility or entity listed above shall conduct outdoor cultivation of
3 cannabis.

4 **83.04.060. Landlords.**

5 Nothing in this chapter is intended, nor shall it be construed, to preclude a
6 landlord from limiting or prohibiting marijuana cultivation, smoking, or other related
7 activities by tenants.

8 **83.04.070. Application with other laws.**

9 Nothing in this chapter shall be construed to allow the use of cannabis that is
10 otherwise illegal under state or federal law. No provision of this chapter shall be
11 deemed a defense or immunity to any action brought against any person by the San
12 Bernardino County District Attorney, the Attorney General of the State of California, or
13 the Attorney General of the United States of America.

14
15 SECTION 5. The Board declares that it would have adopted this ordinance and
16 each section, subsection, sentence, clause, phrase, or portion of it irrespective of the
17 fact that any one or more sections, subsections, clauses, phrases or portions of it be
18 declared invalid and unconstitutional. If for any reason any portion of this ordinance is
19 declared invalid or unconstitutional, then all other provisions of it shall remain valid and
20 enforceable.

21
22 SECTION 6. The Board finds that this ordinance is not subject to environmental
23 review under the California Environmental Quality Act (CEQA) pursuant to Title 14 of
24 the California Code of Regulations section 15060(c)(2) (the activity will not result in a
25 direct or reasonably foreseeable indirect physical change in the environment) and
26 section 15060(c)(3) (the activity is not a project as defined in Section 15378) because it
27 has no potential for resulting in physical change of the environment, directly or
28 indirectly.

1 SECTION 7. This ordinance shall take effect thirty (30) days from the date of
2 adoption.

3
4 JAMES RAMOS, Chairman
5 Board of Supervisors

6 SIGNED AND CERTIFIED THAT A COPY
7 OF THIS DOCUMENT HAS BEEN DELIVERED
8 TO THE CHAIRMAN OF THE BOARD

9 LAURA H. WELCH, Clerk of the
10 Board of Supervisors

11 _____
12 STATE OF CALIFORNIA)
13) ss.
14 COUNTY OF SAN BERNARDINO)

15 I, LAURA H. WELCH, Clerk of the Board of Supervisors of the County of San
16 Bernardino, State of California, hereby certify that at a regular meeting of the Board of
17 Supervisors of said County and State, held on the _____ day of _____, 2016,
18 at which meeting were present Supervisors: _____

19 _____,
20 and the Clerk, the foregoing ordinance was passed and adopted by the following vote,
21 to wit:

22 AYES: SUPERVISORS:

23 NOES: SUPERVISORS:

24 ABSENT: SUPERVISORS:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Board of Supervisors this ____ day of _____, 2016.

LAURA H. WELCH, Clerk of the Board of Supervisors of the County of San Bernardino, State of California

Deputy

Approved as to Form:

JEAN-RENE BASLE
County Counsel

By: _____
KENNETH C. HARDY
Deputy County Counsel

Date: _____