

## CHAPTER 1 - COMMERCIAL CANNABIS ACTIVITY

### Sections:

#### 4-10000 - FINDINGS.

The Board of Supervisors of the County of San Joaquin finds and declares as follows:

- (a) In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code Section 11362.5 and titled the "Compassionate Use Act of 1996").
- (b) The intent of Proposition 215 was to enable persons who are in need of cannabis for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances.
- (c) In 2004, Senate Bill 420 was enacted (codified as California Health and Safety Code Section 11362.7 et seq. and titled the "Medical Marijuana Program Act") to clarify the scope of the Compassionate Use Act of 1996. The Medical Marijuana Program Act allows counties to adopt and enforce rules and regulations consistent with its provisions.
- (d) In 2011, Assembly Bill 2650 was enacted (codified as California Health and Safety Code section 11362.768). This law affirms that counties can adopt ordinances that restrict the location and establishment of a medical cannabis cooperative, collective, dispensary, operator, establishment, or provider.
- (e) The Supreme Court of California held in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, 753 ( "*Inland Empire*" ) that the objectives of the Compassionate Use Act of 1996 and Medical Marijuana Program Act were modest and that those acts did not create a broad right to access medical cannabis.
- (f) *Inland Empire* states that neither the Compassionate Use Act of 1996 nor the Medical Marijuana Program Act "expressly or impliedly preempts the authority of California cities and counties, under their traditional land use and police powers, to allow, restrict, limit, or entirely exclude" the distribution of medical cannabis. (Id. at p. 762.)
- (g) The Court of Appeal of California, Third Appellate District, held in *Browne v. County of Tehama* (2013) 213 Cal. App. 4th 704 upheld a Tehama County ordinance regulating the cultivation of medical cannabis based on the Court's finding that "[n]either the Compassionate Use Act of 1996 nor the Medical Marijuana Program grants petitioners, or anyone for that matter, an *unfettered right* to cultivate marijuana for medical purposes. Accordingly, the regulation of cultivation of medical marijuana does not conflict with either statute." (Id. at p. 711, original italics.)
- (h) The Court of Appeal of California, Third Appellate District, held in *James Maral, et al. v. City of Live Oak* (2013) 221 Cal. App. 4th 975, that the reasoning of *Inland Empire* applies to the cultivation of medical cannabis as well as its distribution, as both are addressed in the Compassionate Use Act of 1996 and Medical Marijuana Program Act. Accordingly, the Court of Appeal of California held that Compassionate Use Act of 1996 and Medical Marijuana Program Act do not preempt a municipality's police power to prohibit the cultivation of all cannabis within that municipality.
- (i) In 2015, Assembly Bills 243 and 266, and Senate Bill 643 were enacted collectively as the "Medical Marijuana Regulation & Safety Act." The Act created a structure for licensing of medical cannabis cultivation, product manufacturing, testing, transportation, storage, and distribution to be regulated by various state agencies when there is approval from the local government where the activity is occurring. On January 1, 2016, the Medical Marijuana Regulation & Safety Act went into effect, but it is not expected to have regulations in place to issue licenses until January 2018. In June 2016, Senate Bill 837 was enacted which, among other changes, amended the name of the Act to the "Medical Cannabis Regulation and Safety Act" ("MCRSA").

- (j) In 2016, voters approved Proposition 64 known as the "Adult Use of Marijuana Act" ("AUMA"). AUMA legalized possession and use of cannabis for persons over 21 for personal non-medical use with certain limitations. It also created a structure for licensing of adult use cannabis that substantially mirrors, but is separate, from the MCRSA.
- (k) Under AUMA, no county may completely prohibit persons over 21 years of age from engaging in personal cultivation of not more than six cannabis plants inside a private residence (including a house, an apartment unit, a mobile home, or other similar dwelling), or inside an accessory structure to a private residence, located upon the grounds of a private residence that is fully enclosed and secure.
- (l) This chapter is enacted, consistent with the provisions of Health and Safety Code Section 11362.7 et seq., the Medical Marijuana Program Act, MCRSA, and AUMA to protect the public health, safety, and welfare of County residents in relation to commercial cannabis activities.
- (m) Medical and adult use cannabis cultivation creates offensive and irritating odor, especially when the plants are flowering.
- (n) The "street value" of a single cannabis plant is substantial. The Federal Drug Enforcement Administration reports that each cannabis plant under various planting conditions may yield an average of two hundred thirty-six (236) grams, or about one-half (½) pound, to eight hundred forty-six (846) grams, or nearly two (2) pounds in its lifetime. Pound prices for domestically produced high-grade cannabis sold illegally within Northern California can reach two thousand dollars (\$2,000.00) to five thousand dollars (\$5,000.00), and far greater amounts in other states. Thus, a single cannabis plant can yield four thousand dollars (\$4,000.00) or more in salable cannabis.
- (o) The County's unique geographic and climatic conditions, which include rural, agricultural and riparian areas with access to waterways, along with the sparse population in many areas of the County, provide conditions that are favorable to cannabis cultivation. Cannabis growers can achieve a high per-plant yield because of the County's favorable climate and growing conditions.
- (p) According to the San Joaquin County Sheriff's Office, cannabis cultivation by individuals and collectives has been increasing in San Joaquin County for several years. In 2011, there were thirty-one thousand eight hundred and eighty-seven (31,887) illicit, non-medical cannabis plants discovered and eradicated by the San Joaquin County Sheriff's Office; in 2012, ninety-five thousand five hundred and thirty-six (95,536) plants; in 2013, one hundred thirty-seven thousand four hundred fifty-four (137,454) plants; in 2014, one hundred forty-two thousand five hundred and ninety-five (142,595); in 2015, ninety-eight thousand sixty-five (98,065) plants; and in 2016, one hundred and seven thousand four hundred and one (107,401) plants. In 2014, there were fifty-two (52) outdoor medical cannabis grows, and sixty-six (66) indoor medical cannabis grows. In 2016 approximately sixty-five search warrants were executed in San Joaquin County on illicit, non-medical cannabis cultivation sites. Further, County Sheriff discovered a large cultivation ring operating in three counties, a large indoor cultivation site containing over fourteen thousand (14,000) plants, a nursery cultivating one thousand thirty-nine plants (1,039), ninety (90) pounds processed cannabis buds, three hundred (300) drying plants, and a butane honey oil lab with approximately 8-10 lbs. of concentrated cannabis "honey oil," a warehouse containing seven thousand one hundred and seventy-eight, (7,178) plants, ninety-four (94) pounds of processed cannabis, and ten (10) one-pound packages of cannabis for sale, and forty (40) drying plants. In 2014, a San Joaquin County Sheriff's Officer was shot at while investigating an outdoor cannabis grow. From 2008 to 2016, there were 29 homicides directly related to cannabis. Many of the people responsible for the cannabis activities did not have medical cannabis recommendations, while others either had recommendations for extremely large quantities (i.e., ninety-nine (99) plants, sixteen (16) pounds of processed) and/or were growing as a collective.
- (q) Large scale cannabis cultivation is often concealed in a legitimately cultivated crop such as corn.

- (r) Outdoor grows illegally planted in crops threaten farm employees, interfere with farming practices, and can result in significant crop loss.
- (s) Outdoor grows often use chemicals and pesticides, many of which are illegal and extremely toxic to people and wildlife and which may pollute soil, ground water, and/or nearby water sources.
- (t) Investigations of cannabis grows are time consuming and dangerous for the San Joaquin County Sheriff's Office.
- (u) The San Joaquin County Sheriff's Office's investigations of cannabis grows have taken over one thousand (1,000) investigative hours, and resulted in over eighty (80) arrests and the seizure of over forty-five (45) firearms, equipment, and over one hundred twenty-five thousand dollars (\$125,000.00). The cases resulting from these investigations are being prosecuted in both state and federal court.
- (v) Cannabis cultivation and other commercial cannabis activities attract crime and associated violence; in this County and others cultivation and other commercial cannabis activities have been a magnet for thefts, robberies, illegal firearms, shootings, and homicides.
- (w) Outdoor cultivation is very visible and may be easily accessible to the public, including children and youths.
- (x) Both outdoor and indoor grows require large amounts of water, which is sometimes illegally diverted from farms, homes, wells, or waterways.
- (y) Indoor grows require extensive energy consumption, which is often illegally consumed and/or wired in an improper and dangerous manner.
- (z) Both outdoor and indoor grows may contain armed guards and/or booby trap devices that threaten severe bodily harm or death to those who attempt to access them. Such devices may be a threat to any person that enters the area of the grow, but are often designed specifically to injure law enforcement personnel. Especially during harvest and processing season there is an immediate threat of violent crime depending on the size, location, gang/drug trafficker involvement, and monetary value of these cannabis grows.
- (aa) Eradication of illegal cannabis grows may be dangerous and labor intensive for law enforcement officials because of the potential of armed suspects, booby traps, and varying conditions of the grow.
- (bb) Cannabis cultivation creates an increased likelihood of criminal activity.
- (cc) Cannabis cultivation is harmful to the welfare of residents, creates a nuisance, and threatens the safety and premises of nearby landowners and their families.
- (dd) Cannabis cultivation poses an urgent and immediate threat to the public peace, health, and safety.
- (ee) If cannabis cultivation is not banned to the extent possible under state law then large quantities of illegal cannabis may be introduced into the local market and will bring with it increasing threats to public peace, health, and safety.
- (ff) San Joaquin County has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses, in preventing the establishment of nuisances, while also allowing the consumption of medical cannabis for ill residents pursuant to Compassionate Use Act of 1996 and the Medical Marijuana Program Act and consumption of adult use cannabis pursuant to AUMA.
- (gg) Nothing in this chapter shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. § 841 or to license any activity that is prohibited under the act except as mandated by state law.
- (hh) The Federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., classifies cannabis as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for

abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, cannabis. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of cannabis for medical purposes.

(Ord. No. 4493, 5-23-2017)

#### 4-10002 - PURPOSE AND INTENT.

It is the purpose and intent of this chapter pursuant to Government Code Section 25123(d), MCRSA and AUMA to immediately prohibit commercial cannabis activities, except as allowed under Health and Safety Code Section 11362.2(b)(2), to preserve the public peace, health, safety, and general welfare of the citizens of San Joaquin County.

(Ord. No. 4493, 5-23-2017)

#### 4-10003 - RELATIONSHIP TO OTHER LAWS.

This chapter is not intended to, nor shall it be construed or given effect in a manner that causes it to apply to, any activity that is regulated by state law to the extent that application of this chapter would conflict with such law or would unduly interfere with the achievement of state regulatory purposes. It is the intention of the Board that this chapter shall be interpreted to be compatible and consistent with county and state enactments and in furtherance of the public purposes which those enactments express. It is the intention that the provisions of this chapter will supersede any other provisions of this code found to be in conflict.

(Ord. No. 4493, 5-23-2017)

#### 4-10004 - DEFINITIONS.

Unless otherwise specified, the following definitions shall be applicable throughout this chapter:

- (a) "Cannabis" 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 all parts of the plant. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as it now reads or as amended.
- (b) "Commercial cannabis activity" means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery or sale of cannabis or cannabis products as provided in MCRSA or AUMA, except possession of medical cannabis by qualified patient or primary caregiver and adult use described in Health and Safety Code Section 11362.1(a)(3) inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure.
- (c) "County" means the County of San Joaquin or the unincorporated area of the County of San Joaquin as required by the context.

- (d) "Collective" is the planting, growing, harvesting, drying, processing, or storage of one or more medical cannabis plants or any part thereof in any location on behalf of more than one qualified patient.
- (e) "Medical cannabis" means cannabis used for medical purposes in accordance with California Health and Safety Code Sections 11362.7 et seq. as it now reads or as amended and MCRSA as it now reads or as amended.
- (f) "Cannabis Cultivation" means the planting, growing, harvesting, drying, processing, or storage of one or more cannabis plants or any part thereof.
- (g) "Primary caregiver" shall be an individual that (1) consistently assumes responsibility for the house, health, or safety of the medical cannabis patient, (2) satisfies the criteria as expressed in California Supreme Court Case *People v. Mentch* (2008) 45 Cal. 4th 274, 283, which are that the person (i) consistently provides caregiving to the medical cannabis patient, (ii) provided that caregiving independent of any assistance in taking medical cannabis, (iii) provided that caregiving at or before the time they assumed responsibility for assisting with medical cannabis; and (3) holds a valid State of California, California Medical Cannabis Identification Card designating them as a primary caregiver.
- (h) "Qualified patient" shall be a person with a doctor's recommendation for medical cannabis/cannabis and holds a valid State of California, California Medical Cannabis Identification Card designating them as a patient.

(Ord. No. 4493, 5-23-2017)

#### 4-10005 - COMMERCIAL CANNABIS ACTIVITY.

Commercial cannabis activity by any person, including but not limited to a qualified patient or primary caregiver as individuals or in a cooperative or collective, is prohibited in the County.

(Ord. No. 4493, 5-23-2017)

#### 4-10006 - PROHIBITED COMMERCIAL CANNABIS ACTIVITIES DECLARED A NUISANCE.

The establishment, maintenance, or operation of any commercial cannabis activity within the County is declared to be a nuisance and each person or responsible party is subject to abatement, and/or penalties for misdemeanor infractions, and/or administrative penalties under this chapter.

(Ord. No. 4493, 5-23-2017)

#### 4-10007 - PENALTIES FOR VIOLATION.

- (a) Illegal commercial cannabis activity is an unlawful violation of this Code and pursuant to San Joaquin County Code of Ordinances Title 1, Division 2, Chapter 1, a misdemeanor punishable by a fine of not more than five hundred dollars (\$500.00), imprisonment in the County Jail for no longer than six (6) months, or an alternative to detention, or by both such fine and imprisonment/alternative to detention, and/or any other enforcement remedies available to the County under any applicable state or federal statute or pursuant to any other lawful power the County may possess.
- (b) Each day illegal commercial cannabis activity continues shall constitute a separate violation and be subject to the maximum penalty and any other enforcement remedies available to the County under any applicable state or federal statute or pursuant to any other lawful power the County may possess.

- (c) In addition to enforcement pursuant to this chapter, the County may bring a civil suit or action against the person responsible for such violation(s) and that person shall be liable to the County for costs of the suit, including, but not limited to, attorney's fees.

(Ord. No. 4493, 5-23-2017)

4-10008 - REMEDIES CUMULATIVE.

All remedies provided for herein are cumulative and not exclusive, and are in addition to any other remedy or penalty provided by law. Nothing in this chapter shall be deemed to authorize or permit any activity that violates any provision of state or federal law.

(Ord. No. 4493, 5-23-2017)

4-10009 - CEQA.

The County performed a California Environmental Quality Act Initial Study and, based on that study, prepared and adopted a negative declaration stating that this chapter will not have a significant effect on the environment.

(Ord. No. 4493, 5-23-2017)

4-10010 - SEVERABILITY.

If any part or subsection of this chapter is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity, unlawfulness, or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any other part of this chapter.

(Ord. No. 4493, 5-23-2017)