

ORDINANCE NO. 3334

AN INTERIM ZONING/URGENCY ORDINANCE OF THE COUNTY OF SAN LUIS OBISPO ESTABLISHING A MORATORIUM ON THE CULTIVATION OF CANNABIS (MARIJUANA) IN ALL UNINCORPORATED AREAS OF THE COUNTY EXCEPT FOR CERTAIN EXCEPTIONS

The Board of Supervisors of the County of San Luis Obispo ordains as follows:

Section 1. Findings and Declarations.

The Board of Supervisors makes the following findings in support of the enactment of this interim zoning/urgency ordinance:

A. This Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §21000, *et seq.*) (“CEQA”) because it can be seen with certainty that there is no possibility that it will have a significant effect on the environment (CEQA Guidelines §15061(b)(3)) and because it consists of regulations and restrictions on activities to assure the maintenance, restoration, or enhancement of natural resources and the environment by prohibiting environmentally destructive components of currently unregulated marijuana cultivation (Class 7 and Class 8, CEQA Guidelines §§15307, 15308). This Ordinance is also exempt from CEQA because it is an urgency measure necessary to protect the County from a current and immediate threat to the public health, safety, and welfare. (Public Resources Code §21080(b)(4); CEQA Guidelines §15269.)

B. Pursuant to Article XI, section 7 of the California Constitution, the County of San Luis Obispo (“County”) may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.

C. Pursuant to Government Code section 65858, to protect the public safety, health, and welfare, the County may as an urgency measure adopt an interim ordinance prohibiting land uses that may be in conflict with contemplated land use regulations that the County is studying or considering or intends to study within a reasonable time.

D. Pursuant to Government Code section 25123, the County may enact an ordinance for the immediate preservation of the public peace, health, or safety, which contains a declaration of the facts constituting the urgency and which shall be effective immediately.

E. The federal Controlled Substances Act (21 U.S.C. §801, *et seq.*) prohibits, except for certain research purposes, the possession, distribution, and manufacture of marijuana. California statutes specify that, except as authorized by law, the possession, cultivation, possession for sale, transportation, administration, or furnishing of marijuana are state criminal violations. State law further punishes one who maintains a place for the purpose of unlawfully selling, using or furnishing, or who knowingly makes available a place for storing, manufacturing, or distributing marijuana.

F. On November 5, 1996, California voters approved Proposition 215, the Compassionate Use Act of 1996 (codified at Health & Safety Code §11362.5) (“CUA”), an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for medical purposes. One of the stated purposes of the CUA is to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use has been recommended by a physician.

G. On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (Health & Safety Code §§11362.7-11362.83) (“MMPA”), became effective to clarify the scope of the CUA and to facilitate the prompt identification of qualified patients and their primary caregivers. Pursuant to the MMPA, a qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per patient and may maintain no more than six mature or twelve immature marijuana plants per patient unless a doctor authorizes an additional amount.

H. On January 1, 2016, Assembly Bill 266, Assembly Bill 243, and Senate Bill 643, which together constitute the “Medical Marijuana Regulation and Safety Act (“MMRSA”), became effective and set forth a comprehensive, state-wide regulatory structure for the cultivation and distribution of medical cannabis.

I. The County’s land use ordinances, Titles 22 and 23 of the County Code, currently do not specifically permit or regulate the use of land or structures for cultivation or processing of marijuana. Pursuant to Section 22.30.225 and Section 22.06.030, Table 2-2, Medical Marijuana Dispensaries are allowed in Commercial Retail and Commercial Services land use categories, outside of any Central Business District and outside of the Coastal Zone, with approval of a minor use permit. This section prohibits cultivation of medical marijuana at a permitted dispensary or on the dispensary property. No other provisions within the County’s land use ordinances discuss cultivation of marijuana.

J. In light of the lack of specific regulation from the County and the lack of clarity in prior state laws governing medicinal marijuana, numerous marijuana growing sites have been encountered in the unincorporated areas of the County, as observed by the County Sheriff’s Office and County Code Enforcement, which have reported the following:

1. It is estimated that in excess of 500 marijuana cultivation sites are in operation in San Luis Obispo County. These sites occur in all areas of the unincorporated portion of the County and in the cities and rural areas. Over the past few years, there has been a steady increase in the number and size of these cultivations and the proximity to more populated areas.

2. Many of the marijuana cultivation sites are clearly visible from public areas and roadways and are easily accessible by the public, including youths and children, and this has led to violent encounters with growers protecting their crops. The strong, pungent odor of growing marijuana plants has also drawn attention to cultivation sites, and there has been a significant increase in odor complaints from neighbors and businesses near grow sites. Marijuana growers have been observed to live illegally in tents and trailers near their grow sites, dumping sewage and trash onto the ground. Due to the lack of local regulations for marijuana cultivation in the County, several collectives/dispensaries from other counties have moved their cultivation sites to this County. Documented gang members have been found at several of these sites.

3. A large variety of fertilizers, rodenticides, insecticides, and other harmful chemicals, many of them banned in California, are routinely found at these grow sites. Dangerous electrical and plumbing problems are also frequently encountered. Several recent marijuana cultivations were operating on land where endangered species were present.

K. Cultivation of marijuana has been associated with serious harmful effects in the areas where cultivation sites are located, to owners of property in such areas, and to people living, visiting, conducting business or otherwise present in the area, as reported by numerous other California counties and cities. Harmful effects at both outdoor and indoor cultivation operations have included an increase in criminal activity because of the high monetary value of the marijuana plants, adverse environmental impacts, noise pollution from generators, interference with farming practices, fire danger from grow light systems and marijuana oil extraction operations, excessive energy consumption, and strong offensive odors.

1. Each marijuana plant under various planting conditions may yield an average of two to four pounds in its lifetime. The street value of a single cannabis plant is substantial. Prices for domestically produced high-grade cannabis sold in California can reach a value of \$240 per ounce. Thus, a single marijuana plant can yield up to \$15,500 in salable marijuana.

2. The United States Drug Enforcement Administration reports that marijuana cultivation is associated with illegally diverted water, illegal deforestation, and soil contamination. Rodenticide and insecticide toxicants have frequently been discovered at marijuana cultivation sites and have detrimental impacts on wildlife. In addition, marijuana plants are relatively high water-using plants, requiring roughly 1,200 gallons of water.

3. According to a recent study of marijuana cultivation in Northern California by staff of the California Department of Fish and Wildlife and the National Marine Fisheries Services and academic researchers, water demand for marijuana cultivation has the potential to divert excessive amounts of water and to have harmful impacts on state and federally listed salmon and steelhead trout. The water demand associated with cultivation and its biological impacts are of particular concern in the County, which has known water supply constraints and state and federally listed species that could be affected by such water use.

L. Without sufficient regulations, standards, procedures, and thresholds which are enforceable pursuant to an adopted ordinance, there is a current and immediate threat to the public health, safety, and welfare from these marijuana cultivation facilities.

M. Crop production is allowed in all land use categories without the need for a use permit and is intended to apply to the production of grains, field crops, vegetables, fruit, tree nuts, flower fields and seed production, ornamental crops, and tree and sod farms. The current County land use regulations related to crop production do not adequately address the unique legal, land use, environmental, and public health, safety, and welfare issues and impacts associated with cultivating marijuana, as described above.

N. The study of potential land use regulation of marijuana cultivation is urgently needed because the County has received inquiries from operators seeking to obtain licenses for existing or new cultivation operations within the unincorporated areas of the County, notwithstanding the fact that the County has not yet adopted regulations and requirements for the establishment of such uses.

O. A temporary moratorium on cultivation of marijuana is necessary while the County develops a permanent ordinance. It is the intent of this interim ordinance to enact a moratorium that is only temporary in order to provide time for the County to study and develop appropriate regulations for marijuana cultivation consistent with the MMRSA, the CUA, the MMPA, and other applicable regulations.

P. It is also the intent of this interim ordinance to act as a land use regulation or ordinance regulating or prohibiting the cultivation of marijuana, as described in Health & Safety Code section 11362.777.

Q. This Ordinance is adopted as an urgency ordinance pursuant to the provisions of Government Code sections 25123 and 25131 and as an interim zoning ordinance pursuant to the provisions of Government Code section 65658 and shall be effective for a period of 45 days from its passage. Based on the findings set forth above in this section of the Ordinance, the Board of Supervisors finds and determines that the adoption of this Ordinance as an urgency ordinance is necessary for the immediate preservation of the public peace, health, safety, and welfare pursuant to the requirements of Government Code sections 25123, 25131, and 65858, and is necessary to provide additional time to prepare the studies and reports required to consider a comprehensive ordinance and/or general plan amendment addressing marijuana cultivation in the unincorporated areas of the County.

Section 2. Applicability

This Ordinance applies within all unincorporated areas of San Luis Obispo County.

Section 3. Definitions

For purposes of this Ordinance, the following terms have the definitions set forth below:

- A.** “County.” The County of San Luis Obispo.
- B.** “Cannabis or marijuana.” Cannabis, or marijuana, shall have the meaning set forth in the California Business and Professions Code Section 19300.5(f), the Medical Marijuana Regulation and Safety Act, as it was enrolled in 2015 in AB 266. This definition also includes medical cannabis or medical marijuana.
- C.** “Cultivation.” The planting, growing, harvesting, drying or processing of marijuana plants or any part thereof.
- D.** “Fence.” A wall or a barrier connected by boards, masonry, rails, panels, wire or any other materials for the purpose of enclosing space or separating parcels of land. The term “fence” does not include retaining walls, plastic, tarp, bamboo coverings, corrugated metal, or other materials not designed or manufactured for use as a fence.
- E.** “Identification card.” An “identification card” as defined in California Health and Safety Code Section 11362.5 et seq., as may be amended.

- F.** “Immature plant.” A marijuana plant that has not begun to bloom or flower.
- G.** “Indoors.” Within a fully enclosed and secure structure that complies with the California Building Code (CBC), as adopted by the County of San Luis Obispo, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2” x 4” or thicker studs overlain with 3/8” or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement. For purposes of this Ordinance, cultivation within a greenhouse or “hoophouse” shall not be considered indoor cultivation.
- H.** “Outdoors.” Any location that is not “indoors” within a fully enclosed and secure structure as defined herein. For purposes of this Ordinance, cultivation within a “hoophouse” shall be considered outdoor cultivation.
- I.** “Mature plant.” A marijuana plant that has begun to bloom or flower; or that contains one or more blooms, flowers, or buds.
- J.** “Person with an identification card.” Person with an identification card shall have the meaning set forth in the California Health and Safety Code Section 11362.7.
- K.** “Place of worship.” A structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.
- L.** “Primary caregiver.” A “primary caregiver” as defined in Health and Safety Code Section 11362.7(d).
- M.** “Qualified patient.” A “qualified patient” as defined in Health and Safety Code Section 11362.7(f) and does not include primary caregivers.
- N.** “School.” An institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code, or any child or day care facility. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, including a vocational or professional institution of higher education, a community or junior college, and a college or university.
- O.** “Sheriff” or “Sheriff’s Office.” The Sheriff’s Office of the County of San Luis Obispo or the authorized representatives thereof.
- P.** “Site.” See the definition of “Site” in Section 22.80.030.S. of the County Code, if in the inland area, or in Section 23.11.030, if in the Coastal Zone. Except, for purposes of this Ordinance and its application to uses within duplexes, triplexes, apartments, and mobile homes, “site” is defined as one dwelling unit.

- Q.** “Youth-oriented facility.” Elementary school, middle school, high school, public park, and any establishment that advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors. This shall include a day care or preschool facility.

Section 4. Prohibition on Cultivation.

Cultivation of marijuana is prohibited in all land use categories within the unincorporated areas of San Luis Obispo County. The County shall not permit or allow, or process applications for land use entitlements for, the use of real property for the cultivation of marijuana.

Section 5. Exemptions

- A.** Existing Nonconforming Cultivation. Cultivation of individual marijuana plants on sites reasonably proven to have been under cultivation as of August 23, 2016, will be recognized as existing nonconforming cultivation, provided that, the marijuana cultivation area has not expanded in size since August 23, 2016, and the entire site complies fully with all County and State ordinances and statutes, and, notwithstanding any other provision of Titles 20, 22 or 23, the site has obtained and posted a street address, and all outdoor cultivation activities occur within a secure fence at least six (6) feet in height that fully encloses the cultivation area. No portion of any marijuana plant shall be visible from the outside of the fence enclosure.
- B.** New Indoor Cultivation. The indoor cultivation of six (6) or fewer marijuana plants (including both mature and immature plants) with a combined canopy that does not exceed one-hundred (100) square feet in size, per qualified patient at any one time, or the indoor cultivation by a primary caregiver for up five (5) qualified patients, and with a combined canopy that does not exceed five-hundred (500) square feet in size, and does not exceed six (6) marijuana plants per qualified patient, within the unincorporated area of the County, if all of the following criteria are met:
- 1.** The person(s) growing the marijuana is/are a qualified patient or a primary caregiver and whose identification card(s) or physician recommendations are available for inspection on site.
 - 2.** Cultivation is not occurring in any of the following areas, as measured in a straight line from the nearest exterior wall of the building in which the marijuana is cultivated to the nearest boundary line of the property on which the facility, building, or structure, or portion of the facility, building, or structure in which the below-listed use occurs is located:
 - i.** Within one thousand (1,000) feet of a youth-oriented facility, a school, a park, or any place of worship as defined herein.
 - ii.** In any location where the marijuana plants are visible from the public right of way or publicly traveled private roads.

3. Cultivation is accessory to an existing, permitted use of a legal parcel, except where the entire cultivation site is located within the Agriculture land use category of San Luis Obispo County's General Plan.
4. The cultivation does not subject offsite persons of normal sensitivity to objectionable odors.
5. Cultivation occurring indoors in a residential land use category does not allow odors to escape the structure in which the cultivation is occurring.
6. Cultivation does not use water that has been obtained from any source without compliance with all applicable state and local regulations.
7. Exterior signage does not indicate or advertise the presence or availability of marijuana.
8. Cultivation does not adversely affect the health or safety of nearby residents, such as by creating glare, heat, noise, odor, smoke, traffic, or other impacts, or by the use or storage of fertilizers, pesticides, or waste, and does not exceed the noise level standards set forth in the County General Plan Noise Element.
9. Inspections of the premises and buildings where cultivation, processing, or storage of marijuana occurs shall be open for inspections by County officials and/or law enforcement personnel responsible for enforcement of this ordinance upon reasonable notice.

C. New Outdoor Cultivation. The outdoor cultivation of six (6) or fewer marijuana plants (including both mature and immature plants) with a combined canopy that does not exceed one-hundred (100) square feet in size, per qualified patient at any one time, or the outdoor cultivation by a primary caregiver for up five (5) qualified patients, and with a combined canopy that does not exceed five-hundred (500) square feet in size, and does not exceed six (6) marijuana plants per qualified patient, within the unincorporated area of the County, if all of the following criteria are met:

1. The person(s) growing the marijuana is/are a qualified patient or a primary caregiver and whose identification card(s) or physician recommendations are available for inspection on site.
2. Cultivation is not occurring in any of the following areas, as measured in a straight line from the nearest point of the fence required below to the nearest boundary line of the property on which the facility, building, or structure, or portion of the facility, building, or structure in which the below-listed use occurs is located:
 - i. On any vacant/or undeveloped parcel.
 - ii. Within one thousand (1,000) feet of a youth-oriented facility, a school, a park, or any place of worship as defined herein.
 - iii. In a mobile home park, as defined in Health and Safety Code Section 18214.1.

- iv. In any location where the marijuana plants are visible from the public right of way or publicly traveled private roads.
 - v. Within one hundred (100) feet of the property line of a parcel under separate ownership.
3. Cultivation is accessory to an existing, permitted use of a legal parcel, except where the entire cultivation site is located within the Agriculture land use category of the County of San Luis Obispo's General Plan.
 4. Cultivation does not subject offsite persons of normal sensitivity to objectionable odors.
 5. No lights are used to assist the growing of the marijuana plants.
 6. Cultivation does not use water that has been obtained from any source without compliance with all applicable state and local regulations.
 7. Cultivation does not create erosion or result in runoff into any street, creek, river, or body of water.
 8. Notwithstanding any provision of Title 22 or Title 23, all cultivation activities occur within a secure fence at least six (6) feet in height that fully encloses the cultivation area. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth, except shade cloth may be used on the inside of the fence. No portion of any marijuana plant shall be visible from the outside of the fence enclosure.
 9. Exterior signage does not indicate or advertise the presence or availability of marijuana.
 10. Cultivation does not adversely affect the health or safety of nearby residents, such as by creating glare, heat, noise, odor, smoke, traffic, or other impacts, or by the use or storage of fertilizers, pesticides, or waste, and does not exceed the noise level standards set forth in the County General Plan Noise Element.
 11. If the site is leased or rented, written authorization from the current property owner is maintained onsite authoring the tenant or lessee to cultivate marijuana onsite. The written authorization shall be made available for inspection by enforcement officials upon request and shall be renewed annually.
 12. Inspections of the premises and buildings where cultivation, processing, or storage of marijuana occurs shall be open for inspections by County officials and/or law enforcement personnel responsible for enforcement of this ordinance upon reasonable notice.

Section 7. Registration Requirement.

Within sixty (60) days of adoption of this ordinance, or prior to the commencement of marijuana cultivation, any qualified patient, primary caregiver, collective or other entity cultivating marijuana within the unincorporated area of San Luis Obispo County shall register with the San Luis Obispo County Planning and Building Department.

Registration shall be on a form provided by the Planning and Building Department and at a minimum shall require the name and mailing address of the registrant; the address and Assessor's Parcel Number of the cultivation location; size of existing cultivation, and, if asserting an Existing Nonconforming Cultivation, a statement that the registrant began cultivating medical marijuana at the location address on or before August 23, 2016. Proof of cultivation will need to be submitted at the time of registration.

Section 8. Public Nuisance.

A violation of any provision of this Ordinance shall be deemed to be a public nuisance and subject to the enforcement process as set forth in Section 8. Sections 22.74.150.B. and 23.10.140.b. do not apply to existing nonconforming cultivation.

Section 9. Enforcement.

This Ordinance may be enforced by any of the following means:

- A.** In accordance with the provisions of Chapter 22.74 of the County Code in the Inland Area, or of Chapter 23.10 in the Coastal Zone, or by the prosecution of a civil action, including an action for injunctive relief. The remedy of injunctive relief may take the form of a court order, enforceable through civil contempt proceedings, prohibiting the maintenance of the violation of this Ordinance or requiring compliance with other terms. Notwithstanding the foregoing, violation of this Ordinance does not constitute a misdemeanor or infraction.
- B.** Through the abatement process established by Government Code Section 25845.
- C.** In accordance with the provisions of Chapter 1.05 of the County Code.

Section 10. Severability.

If any provision, word, phrase, section or subsection of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance and the application of such provision, word, phrase, section or subsection to other persons or circumstances shall not be affected thereby. To this end, provisions of this Ordinance are severable.

Section 11. No Vested Right To Be Established.

The Board of Supervisors declares that this urgency ordinance is enacted for the limited purposes described above and for the time period allowed by the ordinance and Government Code section 65858. The Board has directed its staff to research and prepare a permanent ordinance to regulate the cultivation of marijuana and to bring such ordinance before the Board prior to the expiration of this ordinance. No existing cultivation site or continuing cultivation site shall acquire any right to continue the cultivation of marijuana by virtue of the existing provisions of Title 22 or Title 23 or the provisions of this Ordinance.

Section 12. Effective Date.

The Board of Supervisors declares that this Ordinance is necessary as an urgency measure for preserving the public health, safety and welfare. This Ordinance shall take effect immediately upon its passage and shall expire 45 days thereafter unless extended pursuant to law.

AYES: Supervisors Bruce S. Gibson, Frank R. Mecham, Debbie Arnold, and Chairperson Lynn Compton

NOES: Supervisor Adam Hill

ABSENT: None

ABSTAINING: None

Lynn Compton
Chairperson of the Board of Supervisors,
County of San Luis Obispo, State of California

ATTEST:

TOMMY GONG
County Clerk and Ex-Officio Clerk
of the Board of Supervisors County
of San Luis Obispo, State of California

By: Annette Ramirez
Deputy Clerk