

ORDINANCE NO. .
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,
STATE OF CALIFORNIA

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AN INTERIM URGENCY ORDINANCE OF THE COUNTY OF SAN MATEO BOARD OF SUPERVISORS MAKING FINDINGS AND EXTENDING THROUGH DECEMBER 12, 2018 THE TEMPORARY MORATORIUM ON COMMERCIAL NONMEDICAL MARIJUANA ACTIVITY AND OUTDOOR CULTIVATION OF MARIJUANA ON THE GROUNDS OF A PRIVATE RESIDENCE, WITHIN THE UNINCORPORATED AREA OF SAN MATEO COUNTY, TO THE FULL EXTENT AUTHORIZED UNDER STATE LAW

SECTION 1. FINDINGS. The Board of Supervisors of San Mateo County (“County”) hereby finds and declares as follows:

WHEREAS, on November 8, 2016, the voters of the State of California enacted Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (the “AUMA”); and

WHEREAS, subject to certain exceptions, the AUMA generally establishes a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including marijuana products, for use by adults 21 years and older, and to tax the commercial growth and retail sale of marijuana; and

WHEREAS, the AUMA permits a county to enact and enforce “reasonable regulations” to regulate the possession, planting, cultivation, harvesting, drying, or processing of marijuana plants, including the complete prohibition of such activities outdoors; and

WHEREAS, the AUMA creates a licensing system whereby the State will issue licenses to businesses authorizing them to cultivate, distribute, transport, store, manufacture, process, and sell nonmedical marijuana and marijuana products for adults 21 years of age and older, with such licenses to be issued by January 1, 2018; and

WHEREAS, the AUMA mandates that State licensing authorities shall not approve an application for a State license if approval of the State license will violate the provisions of any local ordinance or regulation adopted in accordance with the requirements of the AUMA; and

WHEREAS, the AUMA states that nothing in it shall be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under the AUMA; and

WHEREAS, (1) the Federal Controlled Substances Act, 21 U.S.C. §§ 801 *et seq.*, classifies marijuana 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; and (2) 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 marijuana; and

WHEREAS, in a series of memoranda issued in October 2009, June 2011, and August 2013 (the “Ogden” and “Cole” memos), the U.S. Department of Justice provided guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act and generally advised that it is not likely an efficient use of federal resources to prosecute those persons or entities in compliance with a strong and effective state regulatory system for the cultivation and distribution of medical marijuana; and

WHEREAS, the federal government has not sanctioned the cultivation, sale, or possession of nonmedical marijuana in any way; and

WHEREAS, significant concerns have been raised regarding the land use impacts that possession, planting, cultivation, harvesting, drying, processing,

distributing, transporting, storing, manufacturing, and sale of nonmedical marijuana (hereinafter “nonmedical marijuana activity”) will have on public health, safety, and welfare in the County, including the protection of environmental resources and neighborhood quality; and

WHEREAS, as recognized by the Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of marijuana grown for medical use, the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, the County has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses, and preserving the peace and integrity of neighborhoods within the unincorporated area; and

WHEREAS, with respect to commercial medical marijuana activities, Chapter 5.148 “Regulation of Collective Cultivation and Distribution of Medical Marijuana” of the County of San Mateo Ordinance Code, among other things, presently prohibits such commercial activities, including, but not limited to, prohibitions on advertising, sales and profit related to marijuana as well as on the exchange of money or anything of value for marijuana; and

WHEREAS, the Medical Marijuana Regulation and Safety Act (MMRSA), which is comprised of Assembly Bill 243, Assembly Bill 266, and Senate Bill 643, became effective on January 1, 2016. On June 27, 2017, the Governor approved Senate Bill 94 (SB 94), which repealed MMRSA, included certain provisions of MMRSA in the licensing provisions of AUMA and incorporated the framework for marijuana activity established by AUMA. SB 94’s licensing requirements do not apply to qualified patients who cultivate, possess, store, manufacture, or transport marijuana exclusively for their own personal use. Nor do the licensing requirements apply to primary caregivers who

cultivate, possess, store, manufacture, or transport marijuana exclusively for the personal medical purposes of no more than five specified qualified patients; and

WHEREAS, MMRSA and AUMA outlined state regulatory frameworks which the State aims to align under one regulatory framework in SB 94. SB 94 preserves local authority to regulate medical and nonmedical marijuana and authorizes licensing authorities to issue rules and regulations on commercial marijuana activity. As anticipated by SB 94, the State recently issued its proposed regulatory scheme for marijuana activity on November 16, 2017; and

WHEREAS, until the state regulations are finally adopted and enforceable and the County has adopted its own regulations taking into account SB 94 and the state regulations, commercial cannabis activity will be insufficiently regulated and poses a current and immediate threat to the public health, safety, and welfare of County residents; and

WHEREAS, with respect to nonmedical marijuana activities authorized by AUMA and SB 94, the Board of Supervisors finds that it is necessary to protect the health, safety and welfare, specifically the County's and the public's interests in the County's aesthetic, economic, health, safety and community character, until additional staff review has been completed and any necessary local regulations or code revisions have been adopted and made effective; and

WHEREAS, the citizens in the unincorporated County will benefit from the County more fully addressing the potential impacts of indoor and outdoor marijuana cultivation for personal use, as authorized by AUMA and SB 94, by unincorporated County residents; and

WHEREAS, there is an immediate need to prevent unregulated nonmedical marijuana grows in the unincorporated County, which have the potential to affect the character and aesthetic of the community; and

WHEREAS, there is an immediate need to prevent potential grandfathering of nonmedical outdoor marijuana cultivation upon the grounds of private residences; and

WHEREAS, there is a current and immediate threat to the public health, safety, and welfare from unregulated nonmedical marijuana activity;

WHEREAS, a local moratorium on nonmedical marijuana activity, to the full extent allowed under the AUMA and SB 94, is required to allow an opportunity for the County to consider the various policy implications of authorizing nonmedical marijuana activity in the unincorporated area of the County and to develop a comprehensive approach to the marijuana-related activities authorized by AUMA and SB 94; and

WHEREAS, on December 13, 2016, the Board of Supervisors unanimously enacted a temporary 45-day moratorium on (1) all commercial or industrial use involving marijuana (including, without limitation, manufacture, processing, laboratory testing, labeling, storing, wholesale, distribution and retail) within the unincorporated area of the County and (2) outdoor planting, cultivation, harvesting, drying, or processing of marijuana plants for nonmedical use within the unincorporated area of the County, after determining that such a temporary moratorium was necessary, in that there is a current and immediate threat to the public health, safety, and welfare from unregulated nonmedical marijuana activity and after determining that the County requires an opportunity to consider the various policy implications surrounding nonmedical marijuana activity in the County; and

WHEREAS, on January 24, 2017, the Board of Supervisors extended the moratorium until December 12, 2017 after finding at that time that the bases for the temporary 45-day moratorium still existed; and

WHEREAS, since extending the moratorium, the Board of Supervisors held a July 11, 2017 study session regarding marijuana-related activities and the potential impacts of such activities in the County, and

WHEREAS, since the Board of Supervisors extended the moratorium, County staff has worked on developing a comprehensive regulatory approach to marijuana-related activities allowed under State law and has conducted outreach across the County regarding the County's proposed regulatory approach to marijuana-related activity; and

WHEREAS, County staff has prepared a form of ordinance containing a comprehensive regulatory approach to marijuana-related activities for the Board of Supervisors' consideration and will present said ordinance at the December 5, 2017 Board of Supervisors' meeting, but even if the ordinance is approved, the soonest it would be effective would be after the current December 12, 2017 expiration date for this moratorium, creating, in the absence of a moratorium, the potential for marijuana-related activity to proceed prior to the effective date of the proposed ordinance; and

WHEREAS, in the event the Board of Supervisors approves of the proposed ordinance, it is intended that said ordinance will, when it becomes effective, supersede this moratorium; and

WHEREAS, the Board of Supervisors has determined that the bases for enacting the temporary 45-day moratorium and extending that moratorium still exist, and that it is necessary in order to protect the public health, safety, and welfare to extend the moratorium for an additional 12 months from its current expiration date of December 12, 2017, as authorized by Government Code Section 65858; and

WHEREAS, this ordinance does not require review under the California Environmental Quality Act (Pub. Resources Code §§ 21000 et seq., "CEQA") based on the following:

- (1) Under CEQA Guidelines Section 15060(c)(2), the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and under CEQA Guidelines Section 15060(c)(3), the activity is not a project as defined in Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly.

- (2) Even assuming the adoption of the ordinance was a project, it is categorically exempt from CEQA pursuant to Section 15308 of the CEQA Guidelines as a regulatory action taken by the County pursuant to its police power and in accordance with Government Code section 65858 to assure maintenance and protection of the environment pending the evaluation and adoption of contemplated local legislation, regulation, and policies.

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

SECTION 2. MORATORIUM IMPOSED.

The moratorium, imposed by interim ordinance, unanimously enacted on December 13, 2016, and extended on January 24, 2017 for an additional 10 months and 15 days, provides as follows:

- (1) Any commercial or industrial use involving marijuana, including but not limited to manufacture, processing, laboratory testing, labeling, storing, wholesale, distribution and retail, is prohibited in every zoning district in the unincorporated County.

- (2) Outdoor planting, cultivation, harvesting, drying, or processing of marijuana plants for nonmedical use is prohibited in every zoning district in the unincorporated County. Indoor planting, cultivation, harvesting, drying, or processing of marijuana plants for nonmedical use is limited to residential

districts, is limited to six (6) plants per residence, and must be entirely for the personal use of a resident of the residence who is twenty-one (21) years of age or older. The County reserves the right to enact regulations regarding the indoor cultivation of marijuana at a later date.

- (3) This ordinance does not affect the rights of individuals as established by State law to possess or use medical marijuana subject to a valid doctor's recommendation.

In accordance with Government Code Section 65858, the above interim ordinance imposing the moratorium is hereby extended for an additional 12 months from its current December 12, 2017 expiration date. This moratorium shall last until December 12, 2018, in order to allow the County an opportunity to continue considering options and legal authority to regulate nonmedical marijuana activity in a manner consistent with State law that has changed since this moratorium began and with to-be-adopted State regulations regarding marijuana-related activities. In addition, the extended moratorium will ensure that no marijuana-related activity takes place prior to the effective date of any ordinance implementing a regulatory approach to marijuana.

SECTION 3. DEFINITIONS.

For the purposes of this Ordinance:

- (1) The term "marijuana" shall mean all items defined as "cannabis" and "cannabis products" in Health and Safety Code Sections 11018 and 11018.1.
- (2) The term "indoor cultivation" shall mean cultivation inside a fully enclosed private residence as defined in Health and Safety Code Section 11362.2(b)(2).
- (3) The term "outdoor cultivation" shall mean any cultivation that is not defined as indoor cultivation as defined in Health and Safety Code Section 11362.2(b)(2).

SECTION 4. SEVERABILITY.

If any provision of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, it is the intent of the Board of Supervisors that such invalid provision(s) be severed from the remaining provisions of this Ordinance.

SECTION 5. EFFECTIVE DATE.

This ordinance and moratorium shall take effect immediately based on the findings by the Board of Supervisors that this ordinance is adopted consistent with Government Code Section 65858, and is necessary for the protection of the public health, safety, and general welfare. Pursuant to Government Code Section 65858, this ordinance shall be in full force and effect until December 12, 2018, unless the Board of Supervisors repeals the interim ordinance at an earlier date.