

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 ESTABLISHING A TEMPORARY
MORATORIUM ON COMMERCIAL MEDICAL CANNABIS ACTIVITY 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, in 1996, the voters of the State of California approved Proposition 215, "the Compassionate Use Act", which was intended to permit cultivation and possession of medical cannabis by single patient, or the patient's caregiver, for the patient's personal use, and to create a limited defense to the crimes of possessing or cultivating cannabis; and

WHEREAS, Senate Bill 420 (SB 420), the Medical Marijuana Program Act, became effective on January 1, 2004 and established a statewide identification card system for patients authorized to use medical cannabis and their primary caregivers, and, as amended, provided that qualified patients, persons with valid identification cards and designated primary caregivers could collectively or cooperatively cultivate cannabis; and

WHEREAS, on January 1, 2016, the Medical Marijuana Regulation and Safety Act (“MMRSA”) became effective and provided a regulatory framework for medical cannabis; and

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, 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 cannabis and cannabis products for adults 21 years of age and older, with such licenses to be issued by January 1, 2018; and

WHEREAS, under AUMA, with respect to nonmedical cannabis only, State licensing authorities could not approve an application for a State license if approval of the State license would violate the provisions of any local ordinance or regulation. State law has subsequently changed such that State licensing approval as to both nonmedical and medical cannabis cannot occur if such approval would violate provisions of local ordinance or regulation; and

WHEREAS, (1) 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; 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 cannabis; 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 cannabis 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 cannabis; and

WHEREAS, the federal government has not sanctioned the cultivation, sale, or possession of nonmedical cannabis 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 cannabis will have on public health, safety, and welfare in San Mateo 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 cannabis grown for medical use, the cultivation or other concentration of cannabis 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 of San Mateo 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 medical cannabis 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 cannabis as well as on the exchange of money or anything of value for cannabis; 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 cannabis activity established by AUMA. SB 94's licensing requirements do not apply to qualified patients who cultivate, possess, store, manufacture, or transport cannabis exclusively for their own personal use. Nor do the licensing requirements apply to primary caregivers who

cultivate, possess, store, manufacture, or transport cannabis 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 cannabis and authorizes licensing authorities to issue rules and regulations on commercial cannabis activity. However, as with non-medical commercial cannabis activity, now if a local authority fails to regulate medical commercial activity under SB 94, a State license can be issued without local control. As anticipated by SB 94, the State recently issued its draft proposed regulatory scheme for cannabis activity on November 16, 2017; and

WHEREAS, until the County has adopted its own regulations taking into account SB 94 and the state regulations, it might be argued that commercial cannabis activity related to medical cannabis is insufficiently regulated and could pose a current and immediate threat to the public health, safety, and welfare of County residents; and

WHEREAS, with respect to medical cannabis activities authorized by 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 of SB 94 and the State's draft proposed regulations has been completed and any necessary local regulations or code revisions have been adopted and made effective; and

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

WHEREAS, a local moratorium on medical cannabis activity, to the full extent allowed under SB 94, is required to allow an opportunity for the County to consider the various policy implications of authorizing medical cannabis activity in the unincorporated area of San Mateo County and to develop a comprehensive approach to the cannabis-

related activities authorized by AUMA and SB 94 and addressed by the State's draft proposed regulations; and

WHEREAS, this interim ordinance is necessary in that there is a current and immediate threat to the public health, safety, and welfare from unregulated medical cannabis activity;

WHEREAS, this interim ordinance has been designed to facilitate citizens' continued access to cannabis, when recommended by a doctor, while the Board takes the time necessary to study the issue; and

WHEREAS, Government Code section 65858 authorizes the Board of Supervisors to adopt as an urgency measure an interim ordinance, effective immediately upon a four-fifths vote of the Board of Supervisors, to protect the public health, safety, and welfare. The interim ordinance is effective for a period of forty-five (45) days, unless extended pursuant to 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.

In accordance with Government Code section 65858, from and after the date of this Ordinance, a temporary moratorium is hereby established and imposed as of December 5, 2017 as follows:

- (1) The establishment, maintenance, and/or operation of any commercial cannabis activity involving medical cannabis, including but not limited to cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transportation, delivery or sale of medical cannabis or medical cannabis products, is prohibited in every zoning district in the unincorporated County.
- (2) This ordinance does not apply to the cultivation of medical cannabis by a qualified patient or primary caregiver as set forth in Business and Profession Code Section 26033 subdivisions (a) and (b) (added by Senate Bill 94), provided that the cultivation is performed in compliance will all applicable local and state laws and regulations.
- (3) It is not a violation of this ordinance for any person employed by a licensed cannabis delivery service to travel on a public road within the unincorporated area of the county for the purpose of delivering cannabis to persons located in a city or county where the delivery of cannabis is not prohibited.

This moratorium will last for a period of forty-five (45) days from the adoption of this ordinance to allow the County an opportunity to consider options and legal authority

to enact land use controls regulating medical cannabis activity in a manner consistent with the newly-enacted State law and recently drafted proposed State regulations.

SECTION 3. DEFINITIONS.

For the purposes of this Ordinance:

- (1) The term “cannabis” shall mean all items included in the definitions of “cannabis” and “cannabis products” as set forth in Health and Safety Code Sections 11018 and 11018.1.
- (2) The term “commercial cannabis activity” shall include all commercial activities as set forth and defined as “commercial cannabis activity” in Business and Professions Code Section 26001.

SECTION 4. AUTHORITY; URGENCY STATEMENT.

The Board of Supervisors of the County of San Mateo hereby finds that there is a current and immediate threat to the public health, safety and welfare that warrants the establishment of a temporary moratorium on commercial cannabis activity involving medical cannabis as described in this Ordinance. This finding is based upon all of the facts recited in this Ordinance, in the memorandum to the Board of Supervisors dated November 27, 2017, and all matters and information presented to this Board at its meeting on December 5, 2017.

SECTION 5. 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 6. 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 for forty-five (45) days from the date of its adoption by the Board of Supervisors. Nothing in this Ordinance precludes the Board of Supervisors from taking further action to extend the term of this temporary moratorium in accordance with the provisions of Government Code Section 65858.