

ORDINANCE NO. 17-12

**AN INTERIM ZONING/URGENCY ORDINANCE OF THE COUNTY OF
SISKIYOU EXTENDING THE MORATORIUM ESTABLISHED BY SISKIYOU
COUNTY ORDINANCE 17-11 PROHIBITING COMMERCIAL CANNABIS
ACTIVITIES (BOTH MEDICAL AND NON-MEDICAL) IN ALL
UNINCORPORATED TERRITORY OF THE COUNTY OF SISKIYOU**

The Board of Supervisors of the County of Siskiyou does ordain as follows:

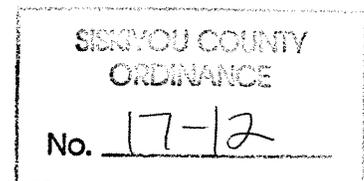
SECTION 1. Findings and Declarations.

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

- A. Pursuant to Article XI, section 7, of the California Constitution, the County of Siskiyou ("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.
- B. 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.
- C. On August 8, 2017, the Board of Supervisors adopted Interim Zoning/Urgency Ordinance No. 17-11, which prohibits all Commercial Cannabis Activities in all zones in the unincorporated area of the County ("Ordinance No. 17-11"). Ordinance No. 17-11 will expire on September 22, 2017, unless extended prior to that date
- D. Section 4 of Ordinance No. 17-11 provides as follows:

"Moratorium. In order to protect the public health, safety and welfare and pursuant to the provisions of Government Code Sections 25121 and 65858, a moratorium is hereby placed on the following:

- A. Commercial Cannabis Activity, whether or not for profit, is expressly prohibited in all zones in the unincorporated area of the County. This prohibition shall apply to all activities for which a State license is required pursuant to MAUCRSA, as the same may be amended from time to time.
- B. No person shall establish, operate, maintain, or allow Commercial Cannabis Activity in the unincorporated area of the County.
- C. No application for a permit or entitlement that authorizes the establishment, operation, maintenance, development or construction of any



use that allows Commercial Cannabis Activity in the unincorporated area of the County shall be approved.”

E. Section 5 of Ordinance No. 17-11 limits this interim prohibition as follows:

“Exceptions.

A. This ordinance shall not prohibit the transportation of cannabis or cannabis products on public roads by a licensee transporting cannabis or cannabis products through the jurisdictional limits of the unincorporated area of the County in compliance with state law.

B. This ordinance shall also not prohibit any Commercial Cannabis Activity that the County is required by law to allow within its jurisdiction pursuant to MAUCRSA.”

F. Government Code section 65858(a) provides that after notice pursuant to Section 65090 and a public hearing, a legislative body may extend an interim urgency ordinance for ten (10) months and fifteen (15) days and subsequently for one year upon a four-fifths vote of the Board of Supervisors.

G. As stated in Ordinance No. 17-11, 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. The Federal Controlled Substances Act prohibits, except for certain research purposes, the possession, distribution, and manufacture of marijuana.

H. In November 1996, California voters approved “The Compassionate Use Act of 1996” (“Proposition 215”), an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana. The intent of the proposition was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances.

I. In 2004, the Legislature enacted Senate Bill 420 to clarify the scope of Proposition 215. Senate Bill 420 required the California Attorney General to adopt guidelines to ensure the security and non-diversion of marijuana grown for medical use. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to “[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances.

J. In August 2008, the California Attorney General published “Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use.” As recognized by the Attorney General's August 2008 Guidelines, 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.

- K. In the case of *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, 56 Cal.4th 729 (2013), the California Supreme Court established that neither the CUA nor the MMP preempt a local ban on medical marijuana dispensaries, and that "[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land ...".
- L. On October 9, 2015, Governor Brown signed into law an act that came to be known as the Medical Cannabis Regulation and Safety Act ("MCRSA"). Comprised of three separate bills, AB 266 (Bonta), AB 243 (Wood), and SB 643 (McGuire). The act created a licensing and regulatory framework for medical marijuana by providing for commercial cultivation, distribution, transportation, dispensary sales, testing, and home delivery of medical marijuana. These bills took effect on January 1, 2016.
- M. A.B. 243 expressly provided that the exemption of certain persons from state laws regulating the cultivation of marijuana or related activities does not limit or prevent a county from regulating or banning marijuana cultivation, storage, manufacture, transport, provision, or other activity by such persons.
- N. On November 8, 2016, California voters approved Proposition 64, the Control Regulate and Tax Adult Use Marijuana Act ("AUMA"). The AUMA legalizes the personal use of marijuana for non-medical purposes by those who are 21 years of age or older. The AUMA added Division 10 to the California Business & Professions Code, Section 26000 *et seq.*, which grants State agencies the authority to create, issue, renew, discipline, suspend, or revoke licenses for cannabis businesses, including commercial cultivation, manufacturing, distribution, and testing. The AUMA further provides that the State will begin to issue licenses to non-medical cannabis businesses by January 1, 2018. The AUMA allows counties to prohibit non-medical cannabis businesses within their jurisdiction.
- O. On June 27, 2017, the Governor signed into law Senate Bill 94, which repealed MCRSA, included certain provisions of MCRSA in the licensing provisions of AUMA, and created a single regulatory scheme for both medical and nonmedical cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). MAUCRSA requires that State licensing authorities begin issuing licenses to cannabis businesses beginning January 1, 2018.
- P. MAUCRSA retains the provisions in MCRSA and AUMA that grant counties control over whether cannabis businesses can operate within their jurisdiction. Specifically, California Business and Professions Code section 26200 provides that the MAUCRSA shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local laws that completely prohibit the establishment or operation of one or more cannabis businesses licensed under the State, within that local jurisdiction. MAUCRSA

also provides that a State licensing authority shall not approve an application for State license to engage in commercial cannabis activity if approval of the State license will violate the provisions of any local ordinance or regulation.

- Q. The County of Siskiyou zoning ordinance is adopted and operates under the principles of permissive zoning, meaning that any land use not specifically authorized or identified in the County's zoning code is prohibited. (See Siskiyou County Code, § 10-6.303.)
- R. Other than the regulation of medical cannabis cultivation and the prohibition on mobile delivery contained in Chapter 14 of Title 10 of the Siskiyou County Code, there are currently no ordinances in Title 10 of the County Code specifically permitting, regulating or monitoring the location, zoning standards, or other aspects of the lands or structures where cannabis may be commercially cultivated, manufactured, distributed, processed, stored, packaged, labeled, transported, tested, and/or delivered.
- S. On July 11, 2017, the Board of Supervisors considered a limited staff report and public comment on a potential pilot Commercial Medical Cannabis Cultivation program.
- T. 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 commercial cultivation of cannabis.
- U. The County's unique geographic and climatic conditions, which include dense forested areas receiving substantial precipitation, along with the sparse population in many areas of the County, provide conditions that are favorable to cannabis cultivation.
- V. Numerous cannabis growing sites in excess of the twelve (12) cannabis plant limit set forth in Chapter 14, Title 10, of the Siskiyou County Code have been encountered in the unincorporated area of the County, as observed and reported by the County Sheriff's Office, and as observed and reported by members of the public, as well as cannabis growers themselves, speaking to the Board at its July 11, 2017 meeting, among others.
- W. The study of potential land use regulation of commercial cannabis activities is urgently needed because members of the public have expressed to the Board of Supervisors a desire to establish state licensed commercial cannabis activities in the unincorporated areas of the County, notwithstanding the fact that the County has not yet studied or adopted regulations and requirements for the establishment of such uses. It is the purpose and intent of the Board to regulate commercial cannabis activities in a manner that is consistent with state law.
- X. While the permissive nature of the County Code prohibits the activities of cultivators that are attempting to engage in large scale cannabis cultivation in

anticipation of future state licensing, the County requires sufficient time to develop regulations, standards, procedures, thresholds and potential prohibitions, which are enforceable pursuant to an adopted permanent ordinance. A continued express moratorium on approval of a permit or entitlement that authorizes the establishment, operation, maintenance, development or construction of any use that allows Commercial Cannabis Activity in the unincorporated area of the County may further provide clarity to growers confused by ever changing state law, alleviating the current and immediate threat to the public health, safety, and welfare, posed by such activities.

- Y. It is appropriate to extend the moratorium established in Ordinance No. 17-11 to provide staff with additional time to study, develop, draft and adopt a permanent ordinance consistent with the General Plan and state law; to provide time for public input and the Planning Commission review of any proposed changes to the County's zoning regulations; and to allow staff and the Board the opportunity to continue to research and select the best course of action for the County's citizens and the community at large.
- Z. The purpose of this Ordinance is to protect the public safety, health and welfare from a current and immediate threat posed by commercial cannabis land uses. Absent the adoption of this interim urgency ordinance extending Ordinance No. 17-11, it is likely that the establishment and operation of commercial cannabis land uses and commercial cultivation would result in detrimental impacts, which may include, without limitation, criminal activity, odors, and degradation of the natural environment.
- AA. In accordance with California Government Code Section 65858(c), which provides that interim ordinances that have the effect of denying approvals needed for the development of projects with a significant component of multifamily housing (as defined in California Government Code Section 65858, subdivision (g) and (h)) may not be extended except upon written findings adopted by the legislative body as specified in the subdivision, the Board hereby finds that the prohibition established pursuant to this ordinance will not have the effect of denying approvals needed for the development of projects with a significant component of multi-family housing; and that, therefore, the findings specified in Section 65858, subdivision (c), need not be made.
- BB. Notice of a public hearing on the extension of the moratorium established by Ordinance 17-11 was published in accordance with Government Code sections 65090 and 65858(a).
- CC. In accordance with Government Code section 65858(a), a public hearing was held on September 5, 2017 concerning the extension of the moratorium established by Ordinance No. 17-11.
- DD. Since the enactment of Ordinance No. 17-11, the County has taken the following measures to alleviate the conditions which led to the adoption of

that urgency interim ordinance:

- a. The County Counsel's Office has continued to review pertinent state legislation and has contacted other jurisdictions in the region regarding their approaches on regulation of commercial cannabis activities.
- b. The Community Development Department has identified staff that will be assigned to review the County's zoning code and to study which zones might be considered for various commercial cannabis activities and where those activities should be prohibited. The Community Development Department has also begun assessing the potential need for contracted services for such review.
- c. The County Counsel's Office has prepared an extension of the commercial cannabis activity moratorium for an additional ten (10) months and fifteen (15) days in accordance with Government Code section 65858.

EE. The circumstances and conditions that led to the adoption of Ordinance No. 17-11, which are set forth in the findings of Ordinance No. 17-11, have not been alleviated as of the date of this Ordinance and continue to create the concerns described in Ordinance No. 17-11.

SECTION 2. Declaration of Urgency.

- A. The Board finds and declares that there is a continuing current and immediate threat to the public health, safety and welfare arising from the absence of express provisions in the County Code regulating commercial cannabis activities in the unincorporated areas of the County.
- B. Based on the recitals and findings above, which are all deemed true and correct, the Board of Supervisors determines and finds that this interim zoning/urgency ordinance is urgently needed for the immediate preservation of the public peace, health, safety, and welfare pursuant to the Government Code section 25121, 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 regulation of commercial cannabis activities, including commercial cultivation, manufacture, distribution, processing, storing, laboratory testing, labeling, packaging, transportation, delivery or sale of cannabis and cannabis products, in the unincorporated areas of Siskiyou County.

SECTION 3. Extension of Interim Prohibition On Commercial Cannabis Activity Land Uses in the Unincorporated Area of Siskiyou County.

- A. Extension of Moratorium. In order to protect the public health, safety and welfare the prohibitions on Commercial Cannabis Activity in all zones in the unincorporated area of the County established by Siskiyou County Interim Zoning/Urgency Ordinance 17-11 at Section 4 (a)-(c), and as excepted at its Section 5, is hereby extended for ten

(10) months and fifteen (15) days, unless earlier terminated or extended by action of this Board.

B. Definitions.

“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 cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. “Cannabis” also does not include “industrial hemp”, as defined by Section 11018.5 of the Health and Safety Code.

“Commercial cannabis activity” means the activities (including, cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, packaging, transportation, delivery or sale of cannabis and cannabis products for non-medical, medical or any other purpose) licensed by the State or other government entity under Division 10 of the California Business and Professions Code or other provision of State law that regulates the licensing of a cannabis business.

“County” means the County of Siskiyou.

“MAUCRSA” means the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), as codified in Division 10 of the California Business and Professions Code, as the same may be amended from time to time.

SECTION 4. Enforceability.

- A. Violations of this ordinance shall constitute a public nuisance and may be enforced in accordance with:
- a. the provisions of Chapter 5 of Title 1 of the Siskiyou County Code, including prosecution of a civil action and the seeking of injunctive relief;
 - b. the abatement process established by Government Code section 25845; or
 - c. any other applicable law.
- B. Notwithstanding the above, this ordinance does not authorize a criminal prosecution, arrest, or penalty inconsistent with or prohibited by state law.

SECTION 5. Authority. This Ordinance is adopted as an Urgency Ordinance pursuant to the provisions of Government Code section 25123 and 25131, and as Interim Zoning Ordinance pursuant to the provisions of Government code section 65658.

SECTION 6. Report. In order to comply with the provisions of Government Code Section 65858 (d) regarding the issuance of a report, such report and consideration of the extension of this ordinance shall be placed on the Board's agenda at a meeting of the Board which is at least ten (10) days before the expiration of this ordinance.

SECTION 7. County Counsel. County Counsel, in consultation with the Community Development Director, is directed to provide a written report to the Board for its consideration at the meeting described in Section 7, above describing the measures taken to alleviate the condition that led to the adoption of this ordinance.

SECTION 8. Effective Date and Duration. This interim zoning/urgency ordinance, passed by at least a four-fifths vote of the Board of Supervisors, is declared to be an urgency ordinance for preserving the public health, safety and welfare, and shall take effect and be enforced concurrent with the expiration of Interim Urgency Ordinance No. 17-11. This interim zoning/urgency ordinance was introduced, passed, and adopted at one and the same meeting, and shall have the effect of extending Ordinance No. 17-11 for ten (10) months and fifteen (15) days until August 6, 2018, at which time it shall expire, unless the interim prohibition established therein is rescinded, superseded, or further extended as permitted by State law.

SECTION 9. Publication. This ordinance, within 15 days of adoption, shall be published once in a newspaper of general circulation, printed and published in the County of Siskiyou as required by law.

SECTION 10. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 11. CEQA. The Board of Supervisors hereby finds that this ordinance to extend the existing prohibition on commercial cannabis activity consistent with State law is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060, subdivision (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061, subdivision (b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the board of Supervisors further finds that the ordinance is categorically exempt from review under CEQA under the Class 8 Categorical Exemption (regulatory activity to assure protection of the environment).

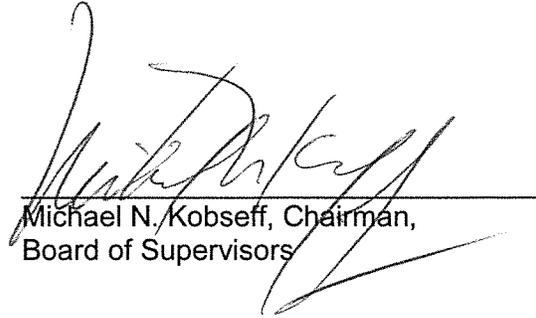
PASSED AND ADOPTED this 5th day of September, 2017, at a regular meeting of the Board of Supervisors by the following vote:

AYES: Supervisors Criss, Haupt, Valenzuela, Nixon and Kobseff

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE



Michael N. Kobseff, Chairman,
Board of Supervisors

ATTEST:
COLLEEN SETZER, CLERK,
Board of Supervisors

By 
Deputy