ORDINANCE NO. 2016-1767

AN INTERIM URGENCY ORDINANCE TEMPORARILY PROHIBITING THE COMMERCIAL CULTIVATION OF MEDICAL MARIJUANA AND THE DELIVERY, DISTRIBUTION, TRANSPORTATION, MANUFACTURING AND TESTING FACILITIES FOR MEDICAL MARIJUANA WITHIN THE UNINCORPORATED TERRITORY OF THE COUNTY OF SOLANO, DECLARING ITS URGENCY AND THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT

The Board of Supervisors of the County of Solano ordains as follows:

SECTION 1. Findings

A. The possession, sale, cultivation, or transportation of marijuana is ordinarily a crime under California law.

B. The manufacture, distribution, or possession of marijuana is a federal offense under the Controlled Substances Act (CSA), a federal regulatory system designed to combat recreational drug abuse.

C. 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.

D. The Courts have held that Proposition 215 does not conflict with the federal Controlled Substances Act because, in adopting these state laws, California did not "legalize" marijuana but instead exercised the state's reserved powers not to punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition.

E. In 2003, 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.

F. In February 2007, the California State Board of Equalization issued a Special Notice confirming its policy of taxing medical marijuana transactions, as well as its requirement that businesses engaging in such transactions hold a Seller's Permit.

G. In August 2008, the California Attorney General published "Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use." Section IV of this document provides guidelines regarding collectives and cooperatives. In this section, the Attorney General states: "Although medical marijuana 'dispensaries' have been operating in California for years, dispensaries, as such, are not recognized under state law."

H. On October 9, 2015, Governor Brown signed three separate bills, AB 266 (Bonta), AB 243 (Wood), and SB 643 (McGuire), creating a licensing and regulatory framework for medical marijuana by providing for commercial cultivation, distribution, transportation, dispensary sales, testing, and home delivery of medical marijuana. AB 243 provides that marijuana is an agricultural product for the purposes of these bills. These bills took effect on January 1, 2016.
I. The sale or distribution of legal prescription and non-prescription drugs and medical remedies is generally an acceptable type of land use in most commercial zoning districts in the incorporated and unincorporated areas of Solano County.

J. Pharmacies are a land use allowed by right in the County’s Business and Professional Office (C-O) zoning district, although the structure used for such a business must comply with all applicable zoning standards and building codes, and the operator must obtain a business license.

K. Other than the prohibition of medical marijuana dispensaries contained in Section 28.70.20(c)(1), there are currently no ordinances in Chapter 28 of the Solano County Code (“Zoning Regulations”) specifically regulating or monitoring the location, zoning standards, or other aspects of the facilities where medical marijuana may be cultivated, distributed, transported, tested, and delivered. The Zoning Regulations do not provide specific development regulations or definitions relative to the cultivation of medical marijuana in residential-based settings.

L. In order to allow time for the County to consider and study possible enactment of the implementing regulations, it is necessary to suspend the approval of all medical marijuana cultivation, manufacturing, testing, distribution, transportation, and home delivery that may be in conflict with development standards and implementing regulations the County intends to consider or study within a reasonable time.

M. A moratorium on all forms of medical marijuana cultivation, manufacturing, testing, distribution, transportation, and home delivery will provide the County time to draft and adopt regulations consistent with AB 266, AB 243, SB 643, Proposition 215, Senate Bill 420 and the federal government’s enforcement priorities that will regulate such activity while being consistent with the General Plan, Zoning Regulations, and compatible with surrounding land neighborhoods.

SECTION 2. Interim Prohibition

From and after the date of this ordinance, no use permit, variance, building permit, business license, or any other entitlement or license for use shall be approved or issued for the cultivation, manufacturing, testing, distribution, transportation, or delivery of medical marijuana. For purposes of this ordinance, the definitions of medical marijuana cultivation, manufacturing, testing, distribution, transportation, and delivery shall be as defined in California Business and Professions Code section 19300.5 and AB 266, AB 243, SB 643.

The exemption provided in Section 14-17(a) of the Solano County Code, allowing a business to operate after having filed an application for a business license and pending final action on that application, shall not apply to any business that cultivates, manufactures, tests, distributes, transports, or delivers medical marijuana.

SECTION 3. Urgent Need

This interim ordinance is urgently needed for the immediate preservation of the public health, safety, and general welfare, and it shall take effect immediately upon adoption, and it shall be of no further force and effect 45 days following the date of its adoption unless extended in accordance with the provisions set forth in California Government Code section 65858.
SECTION 4. Authority

California Government Code section 65858 provides that an urgency measure in the form of an interim zoning ordinance may be adopted by a four-fifths vote of the board of supervisors, which shall be initially effective for only 45 days following its date of adoption. Government Code section 65858 further provides that such an interim ordinance may be extended for an additional 10 months and 15 days. At that time, the board may further extend the interim ordinance for an additional year.

SECTION 5. Penalties

The definitions and penalties for land use violations that are prescribed in Section 28.113 of the Solano County Code shall apply to violations of the provisions of this interim ordinance.

SECTION 6. Severability

If any provision of this interim ordinance or the application of it to any persons or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of the interim ordinance are declared to be severable.

Passed and adopted by the Solano County Board of Supervisors at its regular meeting on January 5, 2016, by the following vote:

AYES: SUPERVISORS: Seifert, Spering, Thomson, Vasquez and Chairwoman Hannigan

NOES: SUPERVISORS: None.

EXCUSED: SUPERVISORS: None.

[Signature]
Chair
Solano County Board of Supervisors

ATTEST:
Birgitta E. Corsello, Clerk
Solano County Board of Supervisors

By: [Signature]
Jeanette Bellinder, Chief Deputy Clerk