ORDINANCE NO. 2016- 1771
EXTENSION OF 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, ADOPTED AS AN URGENCY MEASURE

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

SECTION I. 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. On October 9, 2015, Governor Brown signed three bills, AB 266 (Bonata), 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.

G. 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 relative to the cultivation of medical marijuana as an agricultural product.

H. 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.

I. A moratorium on all forms of County approval, permitting, or authorization 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.

J. On January 5, 2016, the Board of Supervisors adopted Ordinance No. 2016-1767, an urgency interim ordinance temporarily suspending the issuance or approval of any use permit, variance, building permit, business license, or any other entitlement or license for the cultivation, manufacturing, testing, distribution, transportation, or delivery of medical marijuana. The interim urgency ordinance will expire on February 20, 2016, unless extended prior to that date by a four-fifths vote of the Board of Supervisors, after notice and hearing.

K. Section 2 of Ordinance No. 2016-1767 provides as follows:

"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."

L. Since the enactment of Ordinance No. 2016-1767, the County has taken the following measures to alleviate the conditions which led to the adoption of that urgency interim ordinance:

a. The County has worked with RCRC and CSAC on AB 21, a proposed urgency measure that would make corrections and clarifications to a section of the Health and Safety Code enacted by AB 243.

b. County staff is preparing to draft several possible ordinance options, consistent with the 2015 medical marijuana legislative package and AB 21, for consideration by the Planning Commission and the Board of Supervisors.

c. County staff is reviewing the various marijuana initiative measures currently being proposed, and is preparing to advise the Board of
Supervisors how any measure that qualifies for the ballot could impact the County’s regulatory authority if enacted.

M. It is appropriate to extend Ordinance No. 2016-1767 to provide staff additional time to continue working on the tasks described above, and to provide time for public input and Planning Commission review of any proposed changes to the County’s Zoning regulations.

SECTION II. Extension of Interim Prohibition

The effective period of Section 2 of Ordinance No. 2016-1767, enacted January 5, 2016, and originally effective for a period of 45 days, is extended for an additional period of 10 months and 15 day, and shall expire on January 4, 2017, unless the interim prohibition established by that section is rescinded, superseded, or further extended prior to such date by the Board of Supervisors.

SECTION III. 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 IV. 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 enacted without published notice may be extended, after publishing notice, for an additional 10 months and 15 days. After such an extension, the board may further extend the interim ordinance for an additional year.

SECTION V. 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 VI. 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 February 9, 2016 by the following vote:

AYES: Supervisors Seifert, Spering, Vasquez
      and Chairwoman Hannigan

NOES: Supervisors None.

EXCUSED: Supervisors Thomson

ERIN HANNIGAN, Chairwoman
Solano County Board of Supervisors

ATTEST:
BIRGITTA E. CORSELLO, Clerk
Solano County Board of Supervisors

By: Jeanette Bellinder, Chief Deputy Clerk