ORDINANCE NO. 2016 - 2016-1781

AN INTERIM URGENCY ORDINANCE PROHIBITING THE FOLLOWING LAND USES WITHIN THE UNINCORPORATED TERRITORY OF THE COUNTY OF SOLANO: (1) THE COMMERCIAL CULTIVATION OF MEDICAL CANNABIS AND NONMEDICAL MARIJUANA; (2) THE COMMERCIAL DELIVERY, DISTRIBUTION, TRANSPORTATION, MANUFACTURING, RETAIL OPERATIONS, OR TESTING OF MEDICAL CANNABIS AND NONMEDICAL MARIJUANA; AND (3) THE OUTDOOR CULTIVATION OF MEDICAL CANNABIS OR NONMEDICAL MARIJUANA FOR PERSONAL USE; ADOPTED AS AN URGENCY MEASURE

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

SECTION 1. Findings

A. Pursuant to Article XI, section 7 of the California Constitution, the County of Solano ("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, considering, or intends to study within a reasonable time.

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 or cultivation of marijuana for medical purposes.

D. On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (Health & Safety Code §§11362.7-11362.83) ("MMPA"), became effective to clarify the scope of Proposition 215 and to facilitate the prompt identification of qualified patients and their primary caregivers. Pursuant to the MMPA, a qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per patient and may maintain no more than six mature or twelve immature marijuana plants per patient unless a doctor authorizes an additional amount.

E. On January 1, 2016, Assembly Bill 266, Assembly Bill 243, and Senate Bill 643, which together constitute the Medical Cannabis Regulation and Safety Act ("MCRSA"), became effective and set forth a comprehensive, state-wide regulatory structure for the commercial cultivation, distribution, transportation, dispensary sales, testing, and home delivery of marijuana, also known as cannabis, for medical purposes. These three bills are codified as Business and Professions Code section 19300 et seq.

F. Business and Professions Code section 19315(a) provides that nothing in MCRSA shall be interpreted to supersede or limit existing local authority for the enforcement
of local zoning requirements or other local ordinances, or enforcement of local permit or licensing requirements, for any of the commercial medical cannabis activities made subject to state regulation under the Act.

G. On January 5, 2016, the Board of Supervisors enacted Ordinance No. 2016-1767, an urgency interim ordinance suspending the issuance or approval of any use permit, variance, building permit, business license, or any other entitlement or license for commercial medical cannabis activities in order to allow the County time to study MCRSA, consult with stakeholders, consider whether to allow these new medical business activities and, if so, where in the County and under what regulations and standards. The moratorium did not address the non-commercial cultivation of medical cannabis by patients or caregivers for personal use. The moratorium was extended on February 9, 2016, and will expire on January 4, 2017, if not further extended by the Board of Supervisors.

H. On November 8, 2016, California voters approved Proposition 64, the Adult Use of Marijuana Act (“AUMA”), which immediately allows adults 21 or older to grow, possess and use marijuana for nonmedical purposes, subject to certain restrictions. It also allows for the licensing and regulation, by the state and local jurisdictions, of businesses and facilities engaged in the cultivation, manufacturing, distribution, retail operations and delivery, distribution, and testing of marijuana for nonmedical purposes.

I. Business and Professions Code section 26200(a) of AUMA allows each city and county to prohibit or regulate commercial nonmedical marijuana activities within its jurisdictional area, as the local governing body determines appropriate based on local circumstances.

J. Under California law, outdoor home gardening is an activity that is incidental to the residential use of property, and is generally not subject to additional local land use regulation. Health and Safety Code section 11362.2(b)(3) of AUMA allows each city and county to prohibit the cultivation of marijuana in outdoor home gardens, even when such cultivation is noncommercial and only for the personal nonmedical use of household members, if the local governing body determines such a prohibition is appropriate based on local circumstances.

K. On November 17, 2016 County staff presented a proposed ordinance to the Solano County Planning Commission to regulate indoor cultivation and ban outdoor cultivation of medical and nonmedical marijuana for personal use. The Planning Commission heard public testimony and continued the hearing to January 19, 2017, directing staff to address various matters raised in public testimony.

L. The State of California is currently in the process of developing licensing standards and regulations for medical cannabis business activities, Draft standards and regulations are expected to be released for public comment in the next few months. The State is also beginning to develop licensing standards and regulations for nonmedical marijuana business activities.

M. Without sufficient enforceable regulations and standards in place, there is a current and immediate threat to the public health, safety, and welfare from both outdoor cannabis cultivation and commercial cannabis activities:
1. Many California cities and counties have reported negative impacts from cannabis cultivation, processing, and distribution uses. Harmful effects at unregulated outdoor and indoor cultivation operations have included an increase in criminal activity because of the high monetary value of the marijuana plants, adverse environmental impacts, trespass issues, noise pollution from generators, interference with farming practices, fire danger from grow light systems and marijuana oil extraction operations, and strong offensive odors.

2. Cannabis plants, as they begin to flower and for a period of two months or more, produce a strong odor, which can be detectable far beyond property boundaries if grown outdoors and create an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of trespass and theft.

3. The California Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the concentration of cannabis in any location or premises such as a commercial manufacturer, distributor, retailer or other business without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as odor, loitering, or crime.

4. Absent appropriate regulations and standards, cannabis business activities and personal outdoor cannabis cultivation in the unincorporated area of Solano County pose a potential threat to the public peace, health, and safety by placing additional demands on local law enforcement.

N. Other than the prohibition of medical marijuana dispensaries contained in Section 28.70.20(c)(1), there are currently no provisions in Chapter 28 of the Solano County Code ("Zoning Regulations") specifically allowing or regulating the location, zoning standards, or other aspects of where medical cannabis or nonmedical marijuana may be cultivated, distributed, transported, tested, and delivered. The Zoning Regulations do not provide specific development standards or definitions relative to these activities. In addition, the Zoning Regulations do not provide specific development regulations relative to the cultivation of medical cannabis as an agricultural product.

O. Due to the passage of Proposition 64 and the anticipated release of draft standards and regulations from the state for medical cannabis businesses, a moratorium on all commercial cultivation, manufacturing, testing, distribution, transportation, retail operations and home delivery, as well as personal use outdoor cultivation of medical cannabis and nonmedical marijuana is necessary to protect the public peace, health, and safety while the County develops a permanent ordinance.

P. In order to allow a reasonable time for the County to consider and study these new commercial activities, as well as what zones, standards and regulations the County deems appropriate for these business activities and how best to implement them, it is necessary to suspend the approval of any commercial cannabis cultivation, manufacturing, testing, distribution, transportation, retail operations and home delivery within the jurisdiction of the County.
Q. In addition, due to the passage of Proposition 64, a moratorium on outdoor cultivation of cannabis for personal medical or nonmedical use is necessary to protect the public peace, health, and safety while the County develops a permanent ordinance.

R. A moratorium on all forms of commercial medical and nonmedical cannabis cultivation, manufacturing, testing, distribution, transportation, retail operations and home delivery, as well as personal cultivation outdoors of cannabis for medical or nonmedical use as defined in AUMA and MCMRSA will provide the County time to draft and adopt regulations consistent with Proposition 64, AB 266, AB 243, SB 643, Proposition 215, and Senate Bill 420 that will regulate such activity while being consistent with the General Plan, Zoning Regulations, and compatible with surrounding land neighborhoods.

S. It is the intent of this interim ordinance to enact a moratorium that is only temporary in order to provide time for the County to study and develop appropriate regulations and standards for recreational and medical cannabis uses consistent with AUMA, MCRSA and the state standards promulgated by the State for both Acts.

SECTION 2. Definitions

For purposes of this interim ordinance, the following definitions shall apply:

The terms "cannabis" and "marijuana" are interchangeable and refer to any plant or any plant part defined as "cannabis" in section 19300.5(f) of the Business and Professions Code or defined as "marijuana" in section 11018 of the Health and Safety Code.

The term "cultivation of marijuana for personal use" refers to the planting, growing, harvesting, drying, curing, or processing within a single private residence, or upon the grounds of that private residence, of not more than six living marijuana plants at one time, as those activities are described in sections 11362.1(a)(3) and 11362.2(a)(3), of the Health and Safety Code, provided, however, that if any of the marijuana produced by such plants is provided, with or without compensation, to anyone who is not either a member of the household or a qualified patient for whom a member is a primary caregiver, then the cultivation of such plants is hereby defined as being for commercial purposes rather than for personal use.

The terms "commercial marijuana activity" and "commercial cannabis activity" are interchangeable and refer to the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery, or sale of marijuana and marijuana products, as such activities are more fully described in sections 19300.5 or 26001 of the Business and Professions Code.

SECTION 3. Interim Prohibition of Commercial Marijuana Activity

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 any commercial cannabis or marijuana activity including the commercial cultivation, manufacturing, testing, distribution, transportation, retail operation, or delivery of cannabis or marijuana, whether for medical or nonmedical purposes.

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 engaged in, or proposing to engage in, commercial marijuana activity.

SECTION 4. Interim Prohibition of Outdoor Cultivation of Marijuana for Personal Use

The cultivation of marijuana for personal use in an outdoor home garden is declared to be an activity that is not incidental to the residential use of property. From and after the date of this ordinance, and pursuant to section 11362.2(b)(3) of the Health and Safety Code, the outdoor cultivation of marijuana for personal use is prohibited. The cultivation of marijuana for personal use completely inside a lawful private residence, or inside an accessory structure to a private residence and which is located on the same parcel as the private residence, is not subject to this prohibition, provided the structure in which the cultivation is being conducted is fully enclosed and secure and the plants therein are not visible by normal unaided vision from a public place.

SECTION 5. Urgent Need and Effective Period

This interim ordinance is urgently needed for the immediate preservation of the public health, safety, and general welfare. It shall take effect immediately upon adoption and 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 6. 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. Such an interim ordinance may be extended for an additional period of time in compliance with Government Code section 65858.

SECTION 7. 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 8. 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.

SECTION 9. Exemption from the California Environmental Quality Act

This interim ordinance is exempt from California Environmental Quality Act (Public Resources Code §21000 et seq.; “CEQA”) because it will preserve the status quo while the County develops a permanent ordinance. Therefore, it can be seen with certainty that there is no possibility that the interim ordinance may have a significant effect on the environment. (CEQA Guidelines, § 15061(b)(3).)
Passed and adopted by the Solano County Board of Supervisors at its regular meeting on Dec. 6, 2016 by the following vote:

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

NOES: Supervisors None

EXCUSED: Supervisors None

ERIN HANNIGAN, Chairwoman
Solano County Board of Supervisors

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

By: Jeanette Neiger, Chief Deputy Clerk