

BOARD OF SUPERVISORS, COUNTY OF SIERRA, STATE OF CALIFORNIA

**RESOLUTION ORDERING AN ELECTION FOR
THE SUBMISSION TO THE VOTERS OF
SIERRA COUNTY ORDINANCE NO. 1081
AT THE NEXT REGULARLY
SCHEDULED COUNTY ELECTION TO BE HELD ON
JUNE 5, 2018 - STATEWIDE DIRECT PRIMARY ELECTION**

RESOLUTION NO. 2018-007

WHEREAS, on December 19, 2017 the people of Sierra County submitted a referendum petition on Sierra County's Ordinance No. 1081 adding Chapter 8.02 to the Sierra County Code imposing an express ban on commercial marijuana cultivation, marijuana processing, and marijuana dispensaries within Sierra County; and

WHEREAS, on December 21, 2017 the County Clerk certified that the referendum petition contained the required number of valid signatures and determined that the petition was sufficient; and

WHEREAS, pursuant to Elections Code Section 9144 and 9145 the Board of Supervisors shall either repeal the entire ordinance or submit the ordinance to voters at the next regularly scheduled county election occurring not less than 88 days from the order of the election, or at a special election to be held for that purpose occurring not less than 88 days after the date the order of the election; and

WHEREAS, on January 2, 2018 the Board of Supervisors ordered the submission of Ordinance No. 1081 to the voters of Sierra County at the next regularly scheduled county election to be held on June 5, 2018; and

NOW, THEREFORE, BE IT RESOLVED by the Sierra County Board of Supervisors that:

1. The Board of Supervisors hereby orders the submission of Sierra County Ordinance No. 1081 to the voters at the next regularly scheduled county election to be held in and for the County of Sierra on Tuesday, June 5, 2018.
2. Pursuant to Elections Code section 9140, the Board of Supervisors hereby submits to the voters of the County of Sierra, the following Measure:

“Shall a measure imposing a prohibition on commercial marijuana cultivation, commercial marijuana processing, and marijuana dispensaries within Sierra County be adopted?”

Yes _____
No _____

4. The Measure shall pass only if a majority of the votes cast by the voters voting on the Measure are “yes” votes. In the event a majority of the electors voting on the Measure vote in favor thereof, the Sierra County Code shall be amended to read as set forth in Exhibit “A” attached hereto and incorporated herein and, pursuant to Elections Code section 9122, shall become effective ten (10) days after the date the vote is declared by the Board of Supervisors.
5. The Sierra County Clerk as the Ex-officio Registrar of Voters is hereby directed to prepare and conduct all functions for the election and canvass the returns of the election as set forth in the Elections Code, and to do all things required by law to present the proposed Measure to the electorate, including but not limited to, preparing and publishing all required postings, notices and filings.
6. Pursuant to Elections Code section 9160(b), the Board of Supervisors hereby directs County Counsel to prepare an impartial analysis of the proposed Measure. Arguments for and against the Measure may be filed and published consistent with Elections Code section 9162, et seq.

PASSED AND ADOPTED by the Board of Supervisors of the County of Sierra at a regular meeting of said Board held on the 16th day of January, 2018, by the following vote of said Board:

AYES: Supervisors Adams, Huebner, Roen, Beard, Schlefstein

NOES: None

ABSENT: None

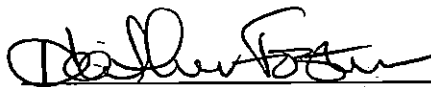
ABSTAIN: None

COUNTY OF SIERRA



SCOTT A. SCHLEFSTEIN, CHAIRMAN
BOARD OF SUPERVISORS

ATTEST:



HEATHER FOSTER
CLERK TO THE BOARD

APPROVED AS TO FORM:



DAVID PRENTICE
COUNTY COUNSEL

EXHIBIT A

AN ORDINANCE OF THE COUNTY OF SIERRA, CALIFORNIA, IMPOSING AN EXPRESS BAN ON COMMERCIAL MARIJUANA CULTIVATION, MARIJUANA PROCESSING, AND MARIJUANA DISPENSARIES WITHIN THE COUNTY

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as Health & Safety Code Section 11362.5 et seq. and entitled "The Compassionate Use Act of 1996" referred to herein as the "CUA");

WHEREAS, the intent of the CUA was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law once a physician has deemed the use beneficial to a patient's health;

WHEREAS, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program ("MMP"), codified as Health and Safety Code Section 11362.7 et seq., which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under the California Penal Code;

WHEREAS, neither the CUA nor the MMP require or impose an affirmative duty or mandate upon a local government to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction;

WHEREAS, in May 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, et al., holding that cities have the authority to ban medical marijuana land uses;

WHEREAS, under the Federal Controlled Substances Act, codified in 21 U.S.C. Section 801 et seq., the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need;

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the "Medical Marijuana Regulation and Safety Act" ("Act"), which is comprised of the state legislative bills known as AB 243, AB 266, and SB 643, into law;

WHEREAS, On June 27, 2017 Governor Jerry Brown signed into law SB 94 which repealed the MCRSA, included certain provisions of the MCRSA in the licensing provisions of AUMA and created a single regulatory scheme for both medical and non-medical cannabis known as the Medical and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA").

WHEREAS, the Act becomes effective January 1, 2018 and contains provisions that govern the cultivating, processing, transporting, testing, and distributing of medical cannabis to qualified patients. The Act also contains new statutory provisions that:

Allow local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana excepting 6 plants per parcel for Adult use and their intent not to administer a conditional permit program pursuant to Health & Safety Code Section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4));

Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business & Professions Code § 19315(a));

Expressly provide that the Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Business & Professions Code § 19316(c)).

WHEREAS, several California cities and counties have reported negative impacts of marijuana cultivation, processing and distribution activities, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests;

WHEREAS, marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors;

WHEREAS, in the case of multiple qualified patients who are in control of the same legal parcel, or parcels, of property, or in the case of collective or cooperative cultivation, or in the case of a caregiver growing for numerous patients, a very large number of plants could be cultivated on the same legal parcel, or parcels, within the Sierra County.

WHEREAS, the strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery;

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the structural integrity of the building, and the use of high wattage grow lights and excessive use of electricity increases the risk of fire which presents a clear and present danger to the building and its occupants;

WHEREAS, the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime;

WHEREAS, based on the experiences of other counties, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the due to the establishment and operation of marijuana cultivation, processing and distribution activities;

WHEREAS, prior to the effective date of this ordinance, the cultivation, processing and distribution of medical marijuana is prohibited to the to the extent such activities are prohibited by the Federal Controlled Substances Act or other law;

WHEREAS, based on the findings above, the potential establishment of the cultivation, processing and distribution of medical marijuana in Sierra County without an express ban on such activities poses a current and immediate threat to the public health, safety, and welfare in the due to the negative impacts of such activities as described above;

WHEREAS, the issuance or approval of business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for marijuana cultivation, processing, and/or distribution will result in the aforementioned threat to public health, safety, and welfare; and

WHEREAS, it is in the interest of Sierra County residents, and its lawfully permitted businesses that adopts this ordinance to expressly prohibit the establishment and operation of marijuana cultivation, processing, and dispensary activities as well as the issuance of any use permit, variance, building permit, or any other entitlement, license, or permit for any such activity, except where the is preempted by federal or state law from enacting a prohibition on any such activity or a prohibition on the issuance of any use permit, variance, building permit, or any other entitlement, license, or permit for any such activity.

NOW, THEREFORE, BE IT ORDAINED that the Board of Supervisors of the County of Sierra, State of California, do hereby approve ORDINANCE OF SIERRA COUNTY BOARD OF SUPERVISORS, STATE OF CALIFORNIA AN ORDINANCE IMPOSING AN EXPRESS BAN ON COMMERCIAL MARIJUANA CULTIVATION, MARIJUANA PROCESSING AND MARIJUANA DISPENSARIES WITHIN THE COUNTY

Section 1. The County of Sierra hereby finds that the above recitals are true and correct and are incorporated into the substantive portion of this ordinance.

Section 2: The Board adds Chapter 8.02 entitled "Commercial Marijuana" to the Sierra County Code to read as follows:

Legislative Findings and Statement of Purpose.

A. The Board of Supervisors finds that the prohibitions on commercial marijuana cultivation, marijuana processing and marijuana dispensaries are necessary for the preservation and protection of the public health, safety, and welfare for the County of Sierra and its community. The prohibition of such activities is within their authority under state law.

1. Local governments may enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4));

2. The Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business & Professions Code § 19315(a));

3. The Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Business & Professions Code § 19316(c)); and

C. The Board of Supervisors finds that this chapter: (1) expresses its intent to prohibit the commercial cultivation of marijuana in Sierra County and to not administer a conditional permit program pursuant to Health & Safety Code section 11362.777 for the cultivation of marijuana in Sierra County; (2) exercises its local authority to enact and enforce local regulations and ordinances, including those regarding the permitting, licensing, or other entitlement of the activities prohibited by this chapter; (3) exercises its police power to enact and enforce regulations for the public benefit, safety, and welfare of Sierra County and its community; and (4) expressly prohibits the cultivation, sale, dispensing of medical marijuana in Sierra County.

Definitions.

For purposes of this chapter, the following definitions shall apply:

A. "Marijuana" means any or all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin or separated 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, including marijuana infused in foodstuff or any other ingestible or consumable product containing marijuana. The term "marijuana" shall also include "medical marijuana" as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California or subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

B. "Commercial Cannabis Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis for medical or recreational use, including nurseries, that is intended to be transported, processed, manufactured, distributed, dispensed, delivered, or sold in accordance with the Medical and Adult-Use Marijuana Regulation and Safety Act (MAUCRSA) for use by adult use and medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215) or recreational use pursuant to (AUMA), found at Section 11362.5 of the Health and Safety Code. "Marijuana Processing" means any method used to prepare marijuana or its byproducts for commercial retail and/or wholesale,

including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create marijuana related products and concentrates.

D. "Marijuana Dispensary" or "Marijuana Dispensaries" means any business, office, store, facility, location, retail storefront or wholesale component of any establishment, cooperative or collective that delivers (as defined in Business & Professions Code section 19300.5(m) or any successor statute thereto) whether mobile or otherwise, dispenses, distributes, exchanges, transmits, transports, sells or provides marijuana to any person for any reason, including members of any medical marijuana cooperative or collective consistent with the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California, or for the purposes set forth in California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

E. "Medical marijuana collective" or "cooperative or collective" means any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes that is organized in the manner set forth in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California or subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

Prohibited Activities.

Commercial Marijuana cultivation, marijuana processing, collectives and marijuana dispensaries shall be prohibited activities in the County of Sierra, except where preempted by federal or state law from enacting a prohibition on any such activity. No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the activities of marijuana cultivation, marijuana processing, marijuana, or the establishment or operation of a marijuana dispensary in the , and no person shall otherwise establish or conduct such activities in Sierra County, except where preempted by federal or state law from enacting a prohibition on any such activity for which the use permit, variance, building permit, or any other entitlement, license, or permit is sought.

Delivery

Sierra County hereby exempts commercial deliveries within the county from the prohibited activities. Sierra County residents may receive commercial delivery of medical or recreational marijuana. All deliveries must be by a driver licensed by the State of California and in compliance with all state law and regulations related to commercial delivery of marijuana.

Public Nuisance.

Any violation of this chapter is hereby declared to be a public nuisance.

Violations.

Any violation of this chapter shall be punishable as provided in Section 1.16 of Sierra County Code or any successor section thereto.

Constitutionality/Severability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, 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 the ordinance and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

Section 3: If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one (1) or more sections, subsections, sentences, clauses or phrases be declared, invalid or unconstitutional.

Section 4: The Board of Supervisors finds the approval of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the Board finds the approval of this ordinance is not a project under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

Section 5: This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirtieth (30th) day after its passage. Before the expiration of fifteen (15) days after passage of this ordinance, it shall be published once with the names of the members of the Board of Supervisors, voting for and against the ordinance in the Mountain Messenger, a newspaper of general circulation published in the County of Sierra, State of California. (Note: Per Government Code 25123, all ordinances shall become **effective** 30 days from the date of final **passage**, except the following ordinances, which shall take effect **immediately**: (a) Those calling or otherwise relating to an election. (b) Those specifically required by this code or by any other law to take immediate effect. (c) Those fixing the amount of money to be raised by taxation, or the rate of taxes to be levied. (d) Those for the immediate preservation of the public peace, health, or safety, which shall contain a declaration of the facts constituting the urgency, and shall be passed by a four-fifths vote of the board of supervisors. (e) Those specifically relating to the adoption or implementation of a memorandum of understanding with an employee organization. (f) Those relating to salaries and other compensation of officers, other than elected officers, and employees.)

Introduced at a regular meeting of the Board of Supervisors held on the 7th day of November, 2017, and passed and adopted by the Board of Supervisors of the County of Sierra, State of California, on the 21st day of November, 2017, by the following roll call vote, to-wit:

AYES: Supervisors Adams, Roen, Beard, Schlefstein, Huebner
 NOES: None
 ABSTAIN: None
 ABSENT: None

COUNTY OF SIERRA



 PETER HUEBNER
 CHAIRMAN, BOARD OF SUPERVISORS

ATTEST:



 HEATHER FOSTER
 CLERK OF THE BOARD

APPROVED AS TO FORM:



 DAVID A. PRENTICE
 COUNTY COUNSEL