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URGENCY ORDINANCE NO. 4412

An urgency ordinance of the County of San Bernardino, State of California, to amend Section 11.0206(a)(1) and Section 11.0208(e)(1) of Chapter 2 of Division 1 of Title 1 of the San Bernardino County Code, relating to increased fines for engaging in prohibited commercial cannabis activity.

The Board of Supervisors of the County of San Bernardino, State of California, ordains as follows:

SECTION 1. The Board of Supervisors of San Bernardino County finds that:

(a) Federal Law (codified at 21 U.S.C. Sections 801 et seq., entitled the "Controlled Substances Act") ("CSA") makes it unlawful to manufacture, distribute, or possess any controlled substances, including marijuana, which has, as a Schedule I drug under the CSA, a high potential for abuse and no accepted medical value in treatment; and,

(b) In 2016, the San Bernardino County Board of Supervisors passed Ordinance 4309 which added Chapter 84.34 to Division 4 of Title 8 of the San Bernardino County Code making it unlawful to engage in commercial cannabis activity within the unincorporated areas of San Bernardino County. In approving Ordinance 4309, the Board of Supervisors found that commercial cannabis activity, whether for purported medical purposes or otherwise, in the unincorporated area of San Bernardino County may adversely affect the health, safety, and well-being of County residents and has the potential for detrimental impacts on the County. The continued Countywide prohibition of commercial cannabis activity is proper and necessary to avoid the potential risks of criminal activity – including trespassing, theft, violent robberies and robbery attempts - degradation of the natural environment, unauthorized use of water, malodorous conditions, nuisance noise, damage to residences and other buildings, and dangerous electrical alterations and use of electricity.

1 (c) On June 27, 2017, the Governor approved Senate Bill 94, named the
2 Medicinal and Adult-Use of Cannabis Regulatory and Safety Act (“MAUCRSA”).
3 MAUCRSA consolidated prior State law and established a unified medical and adult use
4 regulatory scheme statewide. Pursuant to MAUCRSA the State cannot issue licenses
5 for cannabis facilities that violate local ordinances.

6 (d) Of critical importance, MAUCRSA amended Business and Professions
7 Code section 26200 and expressly noted that nothing in its provisions can be
8 interpreted to supersede or limit a local agency’s authority to adopt and enforce local
9 ordinances to regulate businesses licensed by the State, and that local agencies
10 maintain authority over land use and zoning, business licensing, and regulations.

11 (e) In 2019, the San Bernardino County Board of Supervisors adopted
12 Ordinance 4360, which amended Section 84.34.030 of Chapter 84.34 of Division 4 of
13 Title 8 of the San Bernardino County Code making it a misdemeanor to engage in
14 commercial cannabis activity within the unincorporated areas of San Bernardino
15 County.

16 (f) Despite passing multiple laws addressing commercial cannabis activity,
17 the unlawful cultivation of cannabis within the unincorporated areas of San Bernardino
18 County has increased exponentially over the past several years. In addition, the illegal
19 operation of dispensaries continues to occur. Limited public resources are severely
20 taxed by the proliferation of illicit commercial cannabis activity which brings violent crime
21 to the neighboring areas and impacts the health and safety of the communities where
22 that illicit activity occurs. The rise in illegal commercial cannabis activity has contributed
23 to an increase in crime, blight, public nuisance, environmental damage, significant water
24 usage, theft of electricity and pollution. Conditions have worsened so quickly for these
25 communities that immediate action is urgently needed.

26 (g) The purpose of this urgency ordinance is to address the increase in illegal
27 commercial cannabis activity, including unlawful cultivation, which presents a serious
28 and immediate risk to public health and safety. This urgency ordinance provides for

1 increased fines and penalties to deter violators and make enforcement actions more
2 impactful in eradicating the illegal activity.

3 (h) In order to address the immediate threat to the public peace, health, safety
4 and welfare, this ordinance helps to ensure that the enforcement efforts of the Sheriff's
5 Department and Land Use Services, Code Enforcement Division are supported by
6 meaningful penalties that will ameliorate the illegal activity that continues to occur.

7 (i) Consistent with Government Code section 25123(d), the Board finds that
8 increased fines and penalties for violations of the commercial cannabis activity
9 prohibition are necessary for the immediate preservation of the public peace, health and
10 safety of the residents of the County.

11
12 SECTION 2. Section 11.0206(a)(1) of the San Bernardino County Code is
13 amended to read:

14
15 **11.0206 Criminal Actions.**

16 (a) Criminal Penalties for Violations. It is unlawful for any person to violate
17 any provision of this Code, or to violate any provision of any permit issued pursuant to
18 this Code, or the conditions of approval for such permit granted pursuant to this Code.
19 Unless otherwise specified in another part of this Code, any person committing such
20 violation shall be deemed guilty of a misdemeanor.

21 (1) Misdemeanor Violations. Except as provided below, upon
22 conviction of a misdemeanor, or upon a plea of nolo contendere (commonly called "no
23 contest"), the penalty shall be a base fine of not less than \$500.00 and not more than
24 \$1,000.00, or by imprisonment in the County jail for a period of not more than six
25 months, or by both such base fine and imprisonment. Any court costs that the court may
26 otherwise be required to impose pursuant to applicable State law or local ordinance
27 shall be imposed in addition to the base fine. The court, or judge thereof, in the order
28 granting probation, may suspend the imposing or the execution of the sentence and

1 may direct that the suspension may continue for a period of time not exceeding three
2 years, and upon those terms and conditions as it shall determine. The court, or judge
3 thereof, in the order granting probation and as a condition thereof, may imprison the
4 defendant in a county jail for a period not exceeding the maximum time fixed by law in
5 the case.

6 ...

7 (B) Violations of Chapter 84.34. Upon conviction of a
8 misdemeanor, or upon a plea of nolo contendere (commonly called "no contest")
9 involving misdemeanor violations of Chapter 84.34, the penalty shall be as follows:

10 (I) Any person convicted of a misdemeanor for cannabis
11 cultivation in violation of Chapter 84.34 where the number of cannabis plants located on
12 the premises is less than 200 shall be punished by a base fine of up to \$1,000.00 upon
13 a first conviction; by a base fine of up to \$1,500.00 for a second conviction; by a base
14 fine of up to \$3,000.00 upon a third or subsequent conviction; by imprisonment in the
15 County jail for a period of not more than six months; or by both such base fine and
16 imprisonment;

17 (II) Any person convicted of a misdemeanor for
18 commercial cannabis activity related to operation of a dispensary, or delivery,
19 manufacturing, transportation, distribution, or cultivation where the number of cannabis
20 plants located on the premises is greater than 200 in violation of Chapter 84.34, shall be
21 punished by a base fine of up \$3,000.00 upon a first conviction; by a base fine of up to
22 \$6,000.00 upon a second conviction; by a base fine of up to \$10,000.00 upon a third or
23 subsequent conviction; or by imprisonment in the County jail for a period of not more
24 than six months; or by both such base fine and imprisonment.

25
26 SECTION 3. Subsection 11.0208(e)(1) of the County Code is amended to read:

27 **11.0208 Administrative Citation Actions.**

28 ...

1 (e) Administrative Penalties and Costs.

2 (1) Unless otherwise provided in this Code or indicated below, the
3 amount of penalty to be imposed for a violation of this Code and assessed by means of
4 an administrative citation shall be \$100.00 for the first occurrence of a violation; \$200.00
5 for the second occurrence of the same violation within one year; and \$500.00 for the
6 third and each subsequent occurrence of the same violation within one year. The
7 maximum fines imposed in this Section are based upon the provisions of Government
8 Code section 25132 and will be increased automatically and without amendment to this
9 Section upon any amendment to Government Code section 25132 increasing the
10 amount of fines permitted.

11 ...

12 (B) If the violation concerns commercial cannabis activity subject
13 to Chapter 84.34, the following fines shall apply:

14 (I) If the commercial cannabis activity occurring on a
15 property involves the cultivation of cannabis not authorized by Sections 84.34.040 and
16 84.34.050, and the number of cannabis plants located on the premises does not exceed
17 200, the citation fine amount shall be \$1,000.00 for a first citation; \$1,500.00 for a
18 second citation; and \$3,000.00 upon a third or subsequent citation;

19 (II) If the commercial cannabis activity occurring on a
20 property involves the cultivation of cannabis and the number of cannabis plants located
21 on the premises exceeds 200, the citation fine amount shall be \$3,000.00 for a first
22 citation; \$6,000.00 for a second citation; and \$10,000.00 upon a third or subsequent
23 citation;

24 (III) If the commercial cannabis activity occurring on a
25 property involves the operation of a dispensary, or delivery, manufacturing,
26 transportation or distribution, as defined in section 84.34.020, the citation fine amount
27 shall be \$3,000.00 for a first citation; \$6,000.00 for a second citation; and \$10,000.00
28 upon a third or subsequent citation.

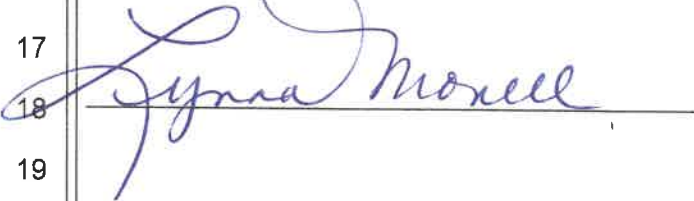
1 SECTION 4. The Board declares that it would have adopted this Ordinance and
2 each section, subsection, sentence, clause, phrase, or portion of it irrespective of the
3 fact that any one or more sections, subsections, clauses, phrases or portions of it be
4 declared invalid and unconstitutional. If for any reason any portion of this Ordinance is
5 declared invalid or unconstitutional, then all other provisions of it shall remain valid and
6 enforceable.

7
8 SECTION 5. This ordinance shall take effect immediately upon its adoption.

9
10 
11 CURT HAGMAN, Chairman
12 Board of Supervisors

13 SIGNED AND CERTIFIED THAT A COPY
14 OF THIS DOCUMENT HAS BEEN DELIVERED
15 TO THE CHAIRMAN OF THE BOARD

16 LYNNA MONELL, Clerk of the
17 Board of Supervisors

18 
19

1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF SAN BERNARDINO)

4 I, LYNNA MONELL, Clerk of the Board of Supervisors of San Bernardino County,
5 State of California, hereby certify that at a regular meeting of the Board of Supervisors
6 of said County and State, held on the 10th day of August, 2021, at which meeting were
7 present Supervisors: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Curt
8 Hagman, Joe Baca, Jr. and the Clerk, the foregoing ordinance was passed and adopted
9 by the following vote, to wit:

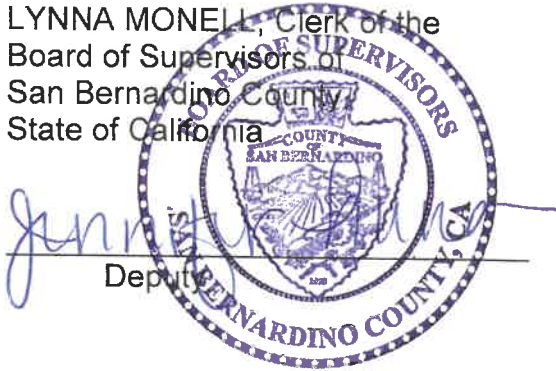
10 AYES: SUPERVISORS: Col. Paul Cook (Ret.), Janice Rutherford,
11 Dawn Rowe, Curt Hagman, Joe Baca, Jr.

12 NOES: SUPERVISORS: None

13 ABSENT: SUPERVISORS: None

14 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official
15 seal of the Board of Supervisors this 10th day of August, 2021.

16 LYNNA MONELL, Clerk of the
17 Board of Supervisors of
18 San Bernardino County,
19 State of California



20 Approved as to Form:

21 MICHELLE BLAKEMORE
22 County Counsel

23 By: Jolena E. Grider
24 JOLENA E. GRIDER
25 Deputy County Counsel

26 Date: 8/11/21