

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

August 10, 2021

FROM

LEONARD X. HERNANDEZ, Chief Executive Officer, County Administrative Office

SUBJECT

Urgency Ordinance and Companion Regular Ordinance Proposed to Increase Penalties and Fines for Illegal Commercial Cannabis Activity

RECOMMENDATION(S)

1. Receive a report from staff regarding enhanced enforcement of illegal commercial cannabis cultivation and discuss community concerns related to illegal activity.
2. Consider proposed urgency ordinance amending Sections 11.0206(a)(1) and 11.0208(e)(1) of Chapter 2 of Division 1 of Title 1 of the San Bernardino County Code regarding violations and enforcement by establishing increased penalties and fines for violations of the commercial cannabis activity prohibition.
 - a. Make alterations, if necessary, to proposed urgency ordinance.
 - b. Approve introduction of proposed urgency ordinance.
 - 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.
 - c. **ADOPT URGENCY ORDINANCE No. 4412** (Four votes required).
 - d. Direct the Clerk of the Board to file a Notice of Exemption.
3. Consider proposed ordinance amending Sections 11.0206(a)(1) and 11.0208(e)(1) of Chapter 2 of Division 1 of Title 1 of the San Bernardino County Code regarding violations and enforcement by establishing increased penalties and fines for violations of the commercial cannabis activity prohibition.
 - a. Make alterations, if necessary, to proposed ordinance.
 - b. Approve introduction of proposed ordinance.
 - An 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.
 - c. **SCHEDULE ORDINANCE FOR FINAL ADOPTION ON TUESDAY, AUGUST 24, 2021, on the consent calendar.**
 - d. Direct the Clerk of the Board to file a Notice of Exemption.

(Presenter: Luther Snoke, Chief Operating Officer, 387-3101)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

**Ensure Development of a Well-Planned, Balanced, and Sustainable County.
Provide for the Safety, Health and Social Service Needs of County Residents.**

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FINANCIAL IMPACT

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost).

BACKGROUND INFORMATION

The County Code prohibits commercial cannabis activity, including commercial cultivation, distribution, transportation, delivery, storage, laboratory testing, manufacturing, processing, provision or sales of cannabis and cannabis products. The proposed ordinances establish increased penalties and fines for violations of the commercial cannabis activity prohibitions in the County Code. The existing enforcement and penalty framework has been insufficient to deter the proliferation of illegal commercial cannabis activity, specifically outdoor cultivation, throughout the unincorporated areas of the county. The rise in illegal commercial cannabis activity has contributed to an increase in crime, blight, public nuisances, environmental damage and pollution. Immediate threats to public health and safety, as well as the adverse secondary impacts of illegal commercial cannabis activity, urgently necessitate the proposed revisions to the County Code.

State Law and Local Regulation of Cannabis

Senate Bill 94, named the Medicinal and Adult-Use of Cannabis Regulatory and Safety Act (“MAUCRSA”) consolidated prior state law and established a unified medicinal and adult use regulatory scheme statewide. Pursuant to MAUCRSA, the State cannot issue licenses for commercial cannabis facilities that violate local ordinances. To aid in this, MAUCRSA established a mechanism for communication between State agencies and local jurisdictions to ensure that only locally approved activities receive State licenses. It expresses that nothing in MAUCRSA can be interpreted to supersede or limit a local agency’s authority to adopt and enforce local ordinances to regulate businesses licensed by the State, and the local agency maintains authority over land use and zoning, business licensing and regulations. Local agencies maintain the authority to completely prohibit the establishment or operation of one or more types of businesses licensed under MAUCRSA within the local jurisdiction.

County Ordinance No. 4309, adopted by the Board of Supervisors (Board) on August 23, 2016 (Item No. 111), is codified in Chapter 84.34 of the County Development Code, entitled Commercial Cannabis Activity. Section 84.34.030 prohibits all commercial cannabis activity within the unincorporated areas of the County. Enforcement of this prohibition is governed by Chapter 2 of Division 1 of Title 1 of the County Code.

Community Concerns Task Force

The County Administrative Office has formed a multi-disciplinary task force to address urgent community concerns. Chief among these concerns is the proliferation of illegal cannabis cultivation at large grow sites being established all over the San Bernardino County desert. The estimated number of sites have increased significantly over the past year from approximately 200 to over 900.

Community Concerns and Crime Suppression Funding

As part of the 2021-22 Recommended Budget, the Board approved a funding allocation to Community Concerns and Crime Suppression reserves in the amounts of \$10.4 million and \$4.0 million, respectively. The majority of these funds will be used for the purpose of addressing the illegal marijuana cultivation issues present in the County through increased Sheriff and Code Enforcement resources.

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Purpose of Proposed Ordinances

The proposed urgency ordinance would amend the existing violations and enforcement sections in Title 1 of the County Code, by adding increased penalties and fines for violations of the commercial cannabis activity prohibition. Adoption of the proposed urgency ordinance would provide for immediate implementation of the new increased penalties, justified by the adverse impacts of illegal cannabis growing sites and the rapid proliferation of these sites. The companion ordinance contains the same language as the urgency ordinance. Its adoption provides for amendment of the County Code by the standard procedure of introduction followed by final adoption on the next Board meeting agenda.

Current Fines and Penalties

Violations of the prohibited commercial cannabis activity regulations may be prosecuted criminally as an infraction or a misdemeanor, or they may receive standard administrative citations.

Criminal Penalties: If prosecuted as an infraction, fines would be imposed as follows:

1st offense: \$100; 2nd offense: \$200; 3rd offense: \$500.

If prosecuted as a misdemeanor, the fine would be not less than \$500 and no more than \$1,000, or the individual may be imprisoned in the County jail for not more than six months.

Administrative Penalties: Current administrative penalties are the same as infractions:

1st offense: \$100; 2nd offense: \$200; 3rd offense: \$500.

Additional Fines and Penalties Proposed

In addition to the standard fines and penalties outlined above, the proposed amendments to the County Code would add the following increased fines and penalties specific to illegal commercial cannabis activities. The Community Concerns Task Force has recommended a grow site classification by size, with the highest penalties assessed to large sites, defined as cultivation of 200 or more plants.

Proposed Criminal Penalties: (applicable to each individual convicted)

Misdemeanor involving cultivation of less than 200 plants:

1st conviction a base fine of up to \$1,000;

2nd conviction a base fine of up to \$1,500;

3rd and subsequent convictions a base fine of up to \$3,000;

Or imprisonment in the County jail for not more than six months for any conviction;

Or both a fine and imprisonment.

Misdemeanor involving operation of a dispensary, delivery, manufacturing, distribution, or cultivation involving 200 or more plants:

1st conviction a base fine of up to \$3,000;

2nd conviction a base fine of up to \$6,000;

3rd and subsequent conviction a base fine of up to \$10,000;

Or imprisonment in the County jail for a period of not more than six months for any conviction;

Or both a fine and imprisonment.

Proposed Administrative Citation Fines:

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Cultivation involving less than 200 plants:

- 1st citation the fine shall be \$1,000;
- 2nd citation the fine shall be \$1,500;
- 3rd and subsequent citations the fine shall be \$3,000.

Operation of a dispensary, delivery, manufacturing, distribution, or cultivation involving 200 or more plants:

- 1st citation a fine of \$3,000;
- 2nd citation a fine of \$6,000;
- 3rd and subsequent citations a fine of \$10,000.

It is important to note that each day commercial cannabis activity occurs in violation of the County Code may be cited as a separate violation. Violations of the commercial cannabis activity prohibition may also be enforced through existing enforcement mechanisms such as civil penalties and injunctive relief.

In summary, the proposed ordinances continue the prohibition of commercial cannabis activity in the County Code and establish increased penalties and fines for engaging in illegal commercial cannabis activity. These ordinances do not impact authorizations in State law for the personal use of cannabis. The urgency ordinance is proposed as an urgency measure necessary for the immediate protection and preservation of the public peace, health, safety and welfare, and shall take effect immediately upon its adoption, pursuant to Government Code section 25123(d).

California Environmental Quality Act Compliance

The proposed ordinances are recommended to minimize and reduce environmental impacts in San Bernardino County due to the illegal cultivation of cannabis. Neither of the ordinances is subject to the California Environmental Quality Act (CEQA), pursuant to sections 15060(c)(2) and 15061(b)(3) of the CEQA Guidelines. These sections apply to actions that will not result in significant physical impacts to the environment. Each ordinance would also be exempt from CEQA pursuant to section 15308 of the CEQA Guidelines, which applies to actions undertaken by a regulatory agency to ensure protection of the environment.

PROCUREMENT

N/A

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Kristina M. Robb, Supervising Deputy County Counsel, 387-5455) on July 8, 2021; Finance (Kathleen Gonzalez, Administrative Analyst III, 387-5412) on July 9, 2021; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on July 12, 2021.

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Record of Action of the Board of Supervisors
San Bernardino County

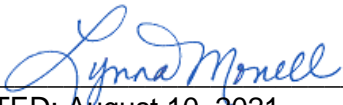
Public Comment: Evan Brosowsky, Erik Sundstrom, Amy Tessier, Jeff Taylor, Patty Domay, Pat Horwath, Janelle Miller, Pat Flanagan, Joe Smeeth, Jack Unger, Jane Hunt-Ruble

Board Direction: The Board directed staff to return at a later date with a permanent ordinance.

APPROVED WITH BOARD DIRECTION REC. NOS. 1 & 2; NO ACTION TAKEN ON REC. NO. 3

Moved: Dawn Rowe Seconded: Curt Hagman
Ayes: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: August 10, 2021



cc: LUSD-Rahhal w/ NOE & Rec.
File - Administrative Office w/ attachments

JLL 08/23/2021