

1 **URGENCY ORDINANCE NO.**

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

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

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

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

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

28 (c) On June 27, 2017, the Governor approved Senate Bill 94, named the

1 Medicinal and Adult-Use of Cannabis Regulatory and Safety Act (“MAUCRSA”).
2 MAUCRSA consolidated prior State law and established a unified medical and adult use
3 regulatory scheme statewide. Pursuant to MAUCRSA the State cannot issue licenses for
4 cannabis facilities that violate local ordinances.

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

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

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

24 (g) The purpose of this urgency ordinance is to address the increase in illegal
25 commercial cannabis activity, including unlawful cultivation, which presents a serious and
26 immediate risk to public health and safety. This urgency ordinance provides for increased
27 fines and penalties to deter violators and make enforcement actions more impactful in
28 eradicating the illegal activity.

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

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

9
10 SECTION 2. Section 11.0206(a)(1) of the San Bernardino County Code is
11 amended to read:

12
13 **11.0206 Criminal Actions.**

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

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

1 order granting probation and as a condition thereof, may imprison the defendant in a
2 county jail for a period not exceeding the maximum time fixed by law in the case.

3 ...

4 (B) Violations of Chapter 84.34. Upon conviction of a
5 misdemeanor, or upon a plea of nolo contendere (commonly called “no contest”) involving
6 misdemeanor violations of Chapter 84.34, the penalty shall be as follows:

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

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

21
22 SECTION 3. Subsection 11.0208(e)(1) of the County Code is amended to read:

23 **11.0208 Administrative Citation Actions.**

24 ...

25 (e) Administrative Penalties and Costs.

26 (1) Unless otherwise provided in this Code or indicated below, the
27 amount of penalty to be imposed for a violation of this Code and assessed by means of
28 an administrative citation shall be \$100.00 for the first occurrence of a violation; \$200.00

1 for the second occurrence of the same violation within one year; and \$500.00 for the third
2 and each subsequent occurrence of the same violation within one year. The maximum
3 fines imposed in this Section are based upon the provisions of Government Code §
4 section 25132 and will be increased automatically and without amendment to this Section
5 upon any amendment to Government Code § section 25132 increasing the amount of
6 fines permitted.

7 ...

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

10 (I) If the commercial cannabis activity occurring on a
11 property involves the cultivation of cannabis not authorized by Sections 84.34.040 and
12 84.34.050, and the number of cannabis plants located on the premises does not exceed
13 200, the citation fine amount shall be \$1,000.00 for a first citation; \$1,500.00 for a second
14 citation; and \$3,000.00 upon a third or subsequent citation;

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

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

25 SECTION 4. The Board declares that it would have adopted this Ordinance and
26 each section, subsection, sentence, clause, phrase, or portion of it irrespective of the fact
27 that any one or more sections, subsections, clauses, phrases or portions of it be declared
28 invalid and unconstitutional. If for any reason any portion of this Ordinance is declared

1 invalid or unconstitutional, then all other provisions of it shall remain valid and
2 enforceable.

3

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

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6

CURT HAGMAN, Chairman
Board of Supervisors

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8

9 SIGNED AND CERTIFIED THAT A COPY
10 OF THIS DOCUMENT HAS BEEN DELIVERED
11 TO THE CHAIRMAN OF THE BOARD

12 LYNNA MONELL, Clerk of the
13 Board of Supervisors

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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 of
6 said County and State, held on the _____ day of _____, 2021, at which meeting
7 were present Supervisors: _____
8 _____

9 and the Clerk, the foregoing ordinance was passed and adopted by the following vote, to
10 wit:

11 AYES: SUPERVISORS:

12 NOES: SUPERVISORS:

13 ABSENT: SUPERVISORS:

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

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

20 _____
21 Deputy

22 Approved as to Form:

23 MICHELLE BLAKEMORE
24 County Counsel

25 By: _____
26 JOLENA E. GRIDER
27 Deputy County Counsel

28 Date: _____