

ORDINANCE NO.

**AN UNCODIFIED URGENCY ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SHASTA, ADOPTED PURSUANT TO GOVERNMENT
CODE SECTION 65858, IMPOSING A TEMPORARY MORATORIUM ON
COMMERCIAL CANNABIS ACTIVITY, THE DELIVERY OF CANNABIS, AND
TEMPORARY EVENTS INVOLVING THE ONSITE SALE OR CONSUMPTION OF
CANNABIS, IN THE UNINCORPORATED AREAS OF THE COUNTY OF SHASTA**

WHEREAS, on November 14, 2017, the Board of Supervisors adopted Ordinance 2017-07, which, in summary, (1) prohibits commercial cannabis activity, (2) prohibits delivery of cannabis, and (3) prohibits temporary events involving the onsite sale or consumption of cannabis, in the unincorporated area of the County of Shasta; and

WHEREAS, in connection with Ordinance 2017-07, the Board of Supervisors found that adverse impacts have been reported related to the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery, and sale of cannabis, including but not limited to, disagreeable odors, negative effects on the environment, unsanitary conditions, negative effects on physical, mental and community health, violation of building codes, increased risk of burglary and other property crimes, and acts of violence in connection with the commission of such crimes or attempts to prevent such crimes; and

WHEREAS, the effective date of Ordinance 2017-07 is December 14, 2017; and

WHEREAS, the County of Shasta has been notified of an intent to circulate a referendum petition on Ordinance 2017-07, pursuant to Elections Code section 9144; and

WHEREAS, if the referendum petition is presented to the Board of Supervisors prior to the effective date of Ordinance 2017-07 with the required number of valid signatures, Ordinance 2017-07 shall be suspended pursuant to Elections Code section 9144 and the Supervisors shall either (1) repeal the ordinance in its entirety or (2) submit the ordinance to the voters; and

WHEREAS, pursuant to Business & Professions Code section 26012, the State of California shall commence issuing licenses for commercial cannabis activity by January 1, 2018; and

WHEREAS, the State shall not issue a license that violates the provisions of any local ordinance; and

WHEREAS, should Ordinance 2017-07 be suspended as of January 1, 2018, the State may commence the issuance of licenses for commercial cannabis activity, the delivery of

cannabis, and/or temporary events involving the onsite sale or consumption in the unincorporated area of the County of Shasta; and

WHEREAS, the suspension of Ordinance 2017-07, combined with the issuance of State licenses, creates a lack of local control which may lead to the establishment of commercial cannabis activity, delivery of cannabis, and temporary events involving the onsite sale or consumption of cannabis, in the unincorporated area of Shasta County, and the inability to regulate those activities in a manner that will protect the public health, safety, and welfare, of residents, children, and businesses from harmful secondary effects of the aforementioned activities; and

WHEREAS, in order to allow time for the referendum process to conclude, including the possible consideration of Ordinance 2017-07 by the electorate, it is necessary to maintain the restrictions of Ordinance 2017-07 pending the outcome of the referendum process.

NOW, THEREFORE, The Board of Supervisors of the County of Shasta ordains as follows:

SECTION 1. The Board of Supervisors of the County of Shasta determines as follows:

- A. The above recitals are true and correct and are incorporated herein as if set forth in full and are relied upon independently by the Board of Supervisors for its adoption of this urgency ordinance.
- B. The Legislative Findings in Section II of Ordinance 2017-07 are true and correct and are incorporated herein as if set forth in full and are relied upon independently by the Board of Supervisors for its adoption of this urgency ordinance.
- C. There is a current and immediate threat to public health, safety, and welfare in that the potential suspension of Ordinance 2017-07 by the referendum process, combined with the issuance of licenses by the State commencing on January 1, 2018, will result in land uses and land developments that may conflict with amendments to the Shasta County Code that may be adopted by the electorate should Ordinance 2017-07 be submitted to the voters as part of the referendum process.
- D. There is no feasible alternative to enactment of this moratorium ordinance that will satisfactorily mitigate or avoid the previously identified impacts to the public health, safety and welfare with a less burdensome or restrictive effect.
- E. In order to ensure the effective implementation of the County of Shasta's land use objectives and policies, a temporary moratorium on the activities outlined below is necessary. This ordinance is consistent with the County General Plan on the basis that the ordinance discourages excess grading and safeguards against disturbance and development on unstable slopes (General Plan Sections 5.1, 6.1), protects against degradation and misappropriation of water resources (General Plan Sections 5.1, 6.6), reduces exposure of the general public to

hazardous materials (General Plan Section 5.6), protects agricultural, timber, recreation and other resource lands for their intended lawful purposes including habitat and production of food and fiber, guards against encroachment of large scale or illegal outdoor cultivation onto these lands (General Plan Sections 6.1 through 6.10), and is in furtherance of the public necessity, health, safety, convenience, and general welfare.

- F. The County finds that 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 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the following categorical exemptions apply: sections 15308 (actions taken as authorized by local ordinance to assure protection of the environment), 15321 (action by agency for enforcement of a law, general rule, standard or objective administered or adopted by the agency, including, but not limited to, by direct referral to the County Counsel as appropriate for judicial enforcement), and 15303 (new construction or conversion of small structures, e.g., a residential accessory building). There are no unusual circumstances under CEQA Guideline 15300.2(c). Each exemption stands as a separate and independent basis for determining that this ordinance is not subject to CEQA.

SECTION 2. Imposition of Moratorium.

In accordance with Government Code section 65858, for the period of this ordinance, or any extension thereof, the following shall be in full force and effect:

A. Intent.

It is the intent of the Board of Supervisors to prohibit commercial cannabis activity in the unincorporated area of the County of Shasta.

B. Definitions

For purposes of this section only, the following definitions shall be applicable:

“Commercial cannabis activity” shall have the same definition as set forth in Business & Professions Code section 26001. For purposes of this section, it shall also include “delivery” as set forth in Business & Professions Code section 26001, and “operation,” as set forth in Business & Professions Code § 26001.

“Cannabis” shall have the same meaning as set forth in Health and Safety Code Section 11018 and Business & Professions Code section 26001. It shall also include “cannabis concentrate,” “cannabis products,” “edible cannabis products,” “medicinal cannabis,” and “medicinal cannabis product,” as set forth in Business & Professions Code § 26001.

“Customer” shall have the same definition as set forth in Business & Professions Code section 26001.

“Delivery” shall have the same definition as set forth in Business & Professions Code section 26001.

“Primary caregiver” shall have the same definition as set forth in Health & Safety Code section 11362.7(d).

“Qualified patient” shall have the same definition as set forth in Health & Safety Code section 11362.7(c) and (f).

“Transfer” means to make available, sell, transmit, give, distribute, or otherwise provide.

All references to statutes and ordinances in this section refer to statutes and ordinances as they currently exist and as they may be amended.

C. Prohibition

1. Commercial cannabis activity is prohibited in all zones of the unincorporated area of the County of Shasta and no permit or approval of any type shall be issued therefor. This prohibition applies regardless of whether the commercial cannabis activity is for medical purposes or nonmedical purposes.
2. The delivery of cannabis to a customer in the unincorporated area of the County of Shasta is prohibited and no permit or approval of any type shall be issued therefor. This prohibition applies regardless of whether the delivery is for medical purposes or nonmedical purposes
3. Temporary events involving the onsite sale or consumption of cannabis are hereby prohibited in all zones of the unincorporated area of the County of Shasta and no permit or approval of any type shall be issued therefor. This prohibition applies regardless of whether the temporary event is for medical purposes or nonmedical purposes.
4. This section shall not prohibit the transfer of medicinal cannabis or medicinal cannabis products by primary caregivers to their qualified patients for compensation in accordance with Health & Safety Code section 11362.765(c), when both of the following requirements are satisfied:
 - a. The transfer of medicinal cannabis or medicinal cannabis products is authorized under Shasta County Code section 17.88.310; and
 - b. The primary caregivers and qualified patients are exempt from the licensure requirements of Division 10 of the Business & Professions Code (commencing at Business & Professions Code section 26000), pursuant to Business & Professions Code section 26033.

D. Enforcement.

Any violation of Subsection (C) of Section 2 this Ordinance is hereby declared to be a public nuisance and may be abated in accordance with Chapter 8.28 (Nuisances) of the Shasta County Code and Shasta County Code Chapter 17.94 and by any other means available by law.

Furthermore, in the performance of his or her functions, the enforcing officer, as identified in Shasta County Code section 17.94.060, is authorized to enter upon and inspect private properties to ensure compliance with the provisions of this Ordinance. Any such entry and inspection remains subject to all requirements established by the United States Constitution, the California Constitution, and any other applicable state and federal law.

E. Non-Exclusive Remedy.

This section is cumulative to all other remedies now or hereafter available to abate or otherwise regulate or prevent public nuisances or to enforce the provisions of the Shasta County Code or Shasta County ordinances.

F. Liability.

The provisions of this section shall not be construed to protect qualified patients, primary caregivers, or any other person from prosecution pursuant to any laws that may prohibit the cultivation, sale, distribution, possession, and/or use of controlled substances, or to authorize conduct that is unlawful under state or federal law. Moreover, cultivation, sale, possession, distribution, and use of cannabis remain violations of federal law as of the date of adoption of this ordinance and this ordinance is not intended to, and does not authorize conduct or acts that violate federal law, does not serve in any manner as an obstacle to enforcement of federal law, and does not protect any of the above-described persons from arrest or prosecution under those federal laws. Qualified patients, primary caregivers, and any other persons assume any and all risk and any and all liability that may arise or result under state and federal laws from the cultivation, sale, possession, distribution, and/or use of cannabis. Further, to the fullest extent permitted by law, any actions taken under the provisions of this ordinance by any public officer or employee of the county of Shasta or Shasta County itself shall not become a personal liability of such person or a liability of the county.

G. Misdemeanor Penalty.

As authorized by Government Code section 25132, and except as otherwise provided by state statute, any person or entity violating any provision of this ordinance shall be guilty of a misdemeanor.

SECTION 3. Written Report

Ten days prior to the expiration of this ordinance or any extension thereof, the Board of Supervisors shall issue a written report describing the measures taken to alleviate the conditions that led to the adoption of this ordinance.

SECTION 4. Severability

If any provision of this ordinance or the applications thereof to any person or circumstances is held invalid, the remainder of the ordinance and the applications of such provision will remain in effect to the extent permitted by law.

SECTION 5. Conflicting Laws

For the term of this ordinance, as set forth in Section 7 below, the provisions of this ordinance shall govern. For the term of this ordinance, as set forth in Section 7 below, Section 17.88.315 of the Shasta County Code, entitled “Medical Cannabis Deliveries,” shall be suspended. To the extent that there is any conflict between the provisions of this ordinance and the provisions of any other County code, ordinance, resolution or policy, all such conflicting provisions shall be suspended. The adoption of this ordinance shall not in any manner affect any action or prosecution or violation of ordinances, which violations were committed prior to the effective date hereof, be construed as a waiver of any license, fee or penalty required by or resulting from any such ordinance, or affect the validity of any bond (or cash deposit in lieu thereof) required be posted, filed, or deposited pursuant to such ordinance.

SECTION 6. Operative Date

This ordinance shall be operative only if Ordinance 2017-07 is suspended pursuant to Elections Code section 9144 and shall be operative on the date Ordinance 2017-07 is suspended pursuant to Elections Code section 9144.

SECTION 7. Effective Date and Term

This ordinance is declared an urgency measure for the immediate protection and preservation of the public peace, health, safety and welfare for the reasons stated in Section 1, and it shall take effect immediately upon its adoption by a four-fifths (4/5) vote of the Board of Supervisors pursuant to Government Code section 65858 and Government Code section 25123 (d).

This ordinance shall continue in effect for forty-five (45) days from the date of its adoption and shall thereafter be of no further force and effect unless, after notice pursuant to Government Code Section 65090 and a public hearing, the Board of Supervisors extends this ordinance for an additional period of time pursuant to Government Code Section 65858. The clerk shall cause this ordinance to be published as required by law.

DULY PASSED AND ADOPTED this ____ day of December, 2017, by the Board of Supervisors, County of Shasta, State of California, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

DAVID KEHOE, CHAIRMAN
Board of Supervisors
County of Shasta

State of California

ATTEST:

LAWRENCE G. LEES
Clerk of the Board of Supervisors

By: _____
Deputy