



LAND USE SERVICES DEPARTMENT PLANNING COMMISSION STAFF REPORT

HEARING DATE: June 23, 2016

AGENDA ITEM NO: 2

Project Description:

Applicant: Land Use Services Department
Community: Countywide
Project No: P201600241
Staff: Christney Barilla
Proposal: A Development Code Amendment to modify provisions relating to marijuana (cannabis) in Title 8 of the County Code, including a prohibition of all forms of commercial cannabis activity in the unincorporated area of the County, with limited exceptions.

Hearing Notice Published: June 12, 2016

Report Prepared By: Christney Barilla

REGULATORY BACKGROUND

The Controlled Substances Act of 1970 (CSA) was enacted by Congress as the federal policy under which the manufacture, import, possession, use and distribution of certain substances is regulated. Drugs regulated by the CSA are grouped in five schedules based on criteria such as potential for abuse and acceptance for medical use. Marijuana (or cannabis) is a Schedule I substance, the most severely regulated category, meaning that it has high potential for abuse and does not currently have an accepted medical use. Similarly in California law, the Health and Safety (H&S) Code has historically prohibited possession and cultivation of marijuana.

The Compassionate Use Act of 1996 (CUA) was approved by California voters as Proposition 215. The CUA amended the H&S Code to exempt patients and their primary caregivers from criminal prosecution for possession and cultivation of marijuana, provided that the marijuana was cultivated and used for personal medical purposes, on the recommendation of a physician.

The Medical Marijuana Program of 2004 (MMP) was approved as California Senate Bill 420, introduced as legislation intended to clarify the scope of the CUA and to allow cities and counties to adopt and enforce local regulations consistent with the CUA. The MMP also created the medical marijuana patient identification card system and set location criteria for marijuana dispensaries, with specific authority for local agencies to further limit dispensary locations. Case law has upheld the authority of California cities and counties to allow, restrict, limit, or entirely ban medical marijuana dispensaries and cultivation within their jurisdictions.

San Bernardino County Ordinance No. 4140 was adopted by the Board of Supervisors as an amendment to the County Development Code on April 5, 2011 (Item No. 73). The County ordinance banned medical marijuana dispensaries and outdoor cultivation of marijuana in the unincorporated areas of the County. The ordinance provided exemptions to allow for 1 or 2 people

Action taken by the Planning Commission on this item may be appealed to the Board. Yes No
Note: Recommendations to the Board of Supervisors are not appealable.

to cultivate indoors, and for certain licensed health care facilities to cultivate and/or dispense medical marijuana. Litigation resulting from enforcement actions by the County of San Bernardino has been favorable to the County regulations and enforcement activities in every instance.

The Medical Marijuana Regulation and Safety Act (MMRSA) went into effect on January 1, 2016. This law created a State of California Bureau of Medical Marijuana Regulation (BMMR) and instituted a dual licensing scheme for “commercial cannabis activity,” related to medical marijuana, including commercial cultivation, distribution, manufacture, testing, processing, storing, transporting, delivery and sale of marijuana, also known as cannabis. The MMRSA preserved the authority of cities and counties to prohibit, regulate and/or license commercial cannabis activity within their local jurisdictions.

The Parker Initiative is a proposal to legalize recreational use of marijuana in California, for those over the age of 21. This initiative has qualified to be included on the California ballot for the general election in November of 2016. The Parker initiative contains a state licensing, regulation and enforcement scheme for recreational marijuana use, similar to the provisions in the MMRSA for medical marijuana, but applicable only to recreational use. Like the MMRSA, the Parker Initiative would allow local jurisdictions to ban recreational marijuana-related businesses and outdoor cultivation. It would also allow local jurisdictions to regulate, but not to ban the indoor cultivation of cannabis for recreational use.

ANALYSIS OF PROPOSAL

General Approach: The Proposed amendment to the Development Code has been prepared to be consistent with previous policy direction from the Board of Supervisors (Board) when the current Development Code regulations pertaining to marijuana were adopted. The proposed ordinance would update the Development Code to prohibit commercial cannabis activity, as defined by the MMRSA, and would extend the prohibitions to cannabis activities related to recreational use, in the event such activities become legal under California law.

Role of the Planning Commission: The Planning Commission is appointed by the Board to consider matters of planning, zoning, land use and development and make recommendations to the Board. The Development Code contains County planning, zoning, land use and development regulations, adopted by the Board. Commercial cannabis activities are land use activities appropriately regulated by the Development Code. Additional policy issues such as costs and potential revenues related to regulation of commercial cannabis activities and the impacts of these activities on law enforcement and other County services, fall beyond the jurisdiction of the Planning Commission.

Current Development Code: Current regulations pertaining to medical marijuana are in Development Code Section 82.02.070, entitled *Medical Marijuana Dispensaries, Registration, Outdoor Cultivation*. Section 810.01.150 (r) defines Medical Marijuana Dispensary as follows:

Medical Marijuana Dispensary.

1. “A medical marijuana dispensary is *any facility or location, whether fixed or mobile, where marijuana is cultivated, made available, and/or distributed by or to three or more persons within the following categories: a primary caregiver, a qualified patient, or a patient with an identification card, as those terms are defined in Health and Safety Code Sections 11362.5 and 11362.7 et seq. as such sections may be amended from time to time.*”
2. Part 2 of the definition lists various state-licensed health care facilities, residential care facilities and hospice facilities that shall not be considered dispensaries. Note that cultivation or provision of marijuana for one or two qualified patients or primary caregivers or patients with identification cards is excluded from the definition of a medical marijuana dispensary.

Section 82.02.070 *Medical Marijuana Dispensaries, Registration, Outdoor Cultivation:*

- Prohibits medical marijuana dispensaries (defined as cultivation or dispensing to or for three or more persons, with exemptions for licensed health care facilities).
- Requires registration of licensed health care facilities that dispense marijuana.
- Prohibits outdoor cultivation of marijuana, and specifies that indoor cultivation shall occur in a secure, locked, and fully enclosed structure with solid walls and a roof.

Content of the Proposed Ordinance: The proposed ordinance repeals the existing Development Code marijuana regulations (Sections 82.02.070 and 810.01.150(r)) and adds Chapter 84.34, entitled “Commercial Cannabis Activity” to the Development Code, which will contain all regulations related to marijuana. The proposed Chapter 84.34:

- Contains definitions consistent with state laws related to commercial cannabis activity and medical use of marijuana.
- Prohibits commercial cannabis activities, including commercial cultivation, distribution, transportation, delivery, storage, laboratory testing, manufacturing, processing, provision or sales of cannabis products. This prohibition would apply to medical marijuana, and marijuana produced for recreational use, should that become legal under California law.
- Continues the prohibition of outdoor cultivation of marijuana/cannabis.
- Continues the exemption for specified licensed health care and residential care facilities.
- Allows an exemption for qualified patients and holders of medical marijuana identification cards and primary caregivers for no more than five patients to cultivate a maximum of 12 plants per patient (indoors), with a maximum of 24 plants per private residence.
- Expands current standards for indoor cultivation with more specific requirements, including:
 - Cultivation must occur in a designated area within a private residence that is separately secured and locked apart from other uses of the residence, secure from access by minors and other unauthorized persons, and not perceptible from the exterior of the residence.
 - Cultivation is prohibited in common use areas of multi-family housing or mobile home parks.
 - Cultivation is prohibited in residences where child day care is provided.
 - Cultivation requires written consent of the property owner.

In summary, the proposed ordinance would update the County Development Code to be consistent with current state laws related to marijuana, and would preserve local prohibition of commercial cannabis activities related to medical marijuana (with limited exemptions) as well as recreational use of marijuana, should that become legal in the state of California.

ENVIRONMENTAL DETERMINATION

The Proposed ordinance amending the Development Code is exempt from the California Environmental Quality Act (CEQA) because the regulations in the ordinance will continue to prohibit activities that are currently prohibited. Therefore, the ordinance will not result in a direct or reasonably foreseeable indirect change in the environment, pursuant to Section 15060(c)(2) of the CEQA Guidelines, and the amendment is covered by the general rule exemption in Section 15061(b)(3) of the CEQA Guidelines, which provides that CEQA applies only to projects that have the potential for causing a significant effect on the environment.

FINDINGS

The following findings are recommended for the Planning Commission to recommend to the Board of Supervisors, for approval of the proposed Development Code Amendment:

1. The proposed ordinance is necessary for and will protect the health, safety, and welfare of those within the County and is a reasonable exercise of the County's police powers.
2. The proposed ordinance amending the Development Code is consistent with the General Plan and any applicable community plan or specific plan because the ordinance will prohibit activities that are currently prohibited consistent with General Plan policies implemented by the Development Code and various community plans and specific plans. Prohibition of commercial cannabis activities will continue to protect public health and safety, consistent with the following excerpts from the Countywide Vision and the General Plan:

We envision a sustainable system of high-quality education, community health, public safety, housing, retail, recreation, arts and culture, and infrastructure, in which development complements our natural resources and environment.

Goal LU 1: The County will have a compatible and harmonious arrangement of land uses by providing a type and mix of functionally well-integrated land uses that are fiscally viable and meet general social and economic needs of the residents.

3. The proposed ordinance would not be detrimental to the public interest, health, safety, convenience, or welfare of the County. The ordinance is proposed with the express purpose of preserving public health and safety, by prohibiting activities that are often associated with crime and abuse of narcotics, in conflict with federal law.
4. The proposed ordinance amending the Development Code is internally consistent with other applicable provisions of the Development Code. It adds new definitions and a new chapter of regulations, which have been reviewed to ensure consistency with other chapters of the Development Code.
5. The proposed amendment is exempt from the requirements of CEQA pursuant to state CEQA Guidelines §15061(b)(3) because it can be seen with certainty that implementation of the proposed ordinance would not have a significant effect on the environment.

RECOMMENDATION

That the Planning Commission recommend the following actions to the Board of Supervisors:

- A. ADOPT the proposed Ordinance amending Title 8 of the County Code (Development Code) relating to marijuana (cannabis), including a prohibition of commercial cannabis activities, with limited exceptions.
- B. ADOPT the findings as contained in the staff report.
- C. FILE the Notice of Exemption.

ATTACHMENTS:

- Exhibit A: [Proposed County Code Section Changes \(Red-lined Version\)](#)
Exhibit B: [Draft Ordinance](#)

EXHIBIT A

Proposed County Code Section Changes (Red-lined Version)

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- (8) **Utilities.** The erection, construction, alteration, or maintenance by a public utility or public agency of utilities intended to service existing or nearby approved developments shall be permitted in any zone. These include: water; gas; electric; supply or disposal systems; including wires, mains, drains, sewers, pipes, conduits, cables, fire-alarm boxes, police call boxes, traffic signals, hydrants, etc., but not including new transmission lines and structures. Commercial satellite and wireless communications antennas are not exempt, and are instead subject to Chapter 84.27 (Wireless Telecommunications Facilities).
- (9) **Noncommercial receive only antennas.** The following noncommercial, receive only antennas for the sole use of a resident occupying a residential structure shall not be regulated by this Development Code:
- A. A ground or structure-mounted, radio or satellite dish antenna that does not project above the roof ridge line and does not have a diameter greater than one meter (39 inches); and
 - B. Roof-mounted radio or television aerials not exceeding 75 feet in overall height.

Adopted Ordinance 4011 (2007); Amended Ordinance 4067 (2009); Amended Ordinance 4085 (2009); Amended Ordinance 4245 (2014)

82.02.050 Special Developments

Special Developments shall be allowed in any land use zoning district with the approval of a Planned Development Permit in compliance with Chapter 85.10 (Planned Development Permits).

Adopted Ordinance 4011 (2007); Amended Ordinance 4067 (2009)

82.02.060 Temporary Uses

Requirements for establishing a temporary use (for example, a construction yard, seasonal sales lot, special event, temporary office trailer, etc.) are in Chapter 84.25 (Temporary Structures and Uses).

Adopted Ordinance 4011 (2007); Amended Ordinance 4067 (2009)

~~82.02.070 Medical Marijuana Dispensaries, Registration, Outdoor Cultivation~~

~~(a) Notwithstanding Section 82.02.030(a)(3), in no event shall a medical marijuana dispensary as defined in Section 810.01.150 be considered a permitted or conditionally permitted use in any land use zoning district. A medical marijuana dispensary is prohibited in all land use zoning districts, as those may be amended from time to time, and no permit of any type shall be issued therefor. This section shall not affect the right to possess, use or cultivate marijuana for medicinal purposes as is presently authorized or prohibited by the laws of the State of California as set forth in the Health and Safety Code, Penal Code, or other state law, or by any federal law.~~

- ~~(b) Before commencing the cultivation and/or distribution of medical marijuana, operators of those facilities listed under Section 810.01.150(q)(2) shall register with Environmental Health Land Use Services, and renew said registration on an annual basis. Upon said registration and each renewal thereof, the operator shall provide proof of a valid license as provided by Chapters 2, 3.01, 3.2, 8 and/or 8.5 of Division 2 of the Health and Safety Code.~~
- ~~(c) No outdoor cultivation or growing of medical marijuana shall be permitted within the unincorporated areas of San Bernardino County. Any cultivation not inconsistent with California state law, or this Code, as such laws may be amended from time to time, shall at all times occur indoors, in a secure, locked, and fully enclosed structure that includes solid walls, and a ceiling, roof or top.~~

~~Amended Ordinance 4140 (2011)~~

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CHAPTER 84.34 COMMERCIAL CANNABIS ACTIVITY

Sections:

84.34.010 Purpose.

84.34.020 Definitions

84.34.030 Prohibition of Commercial Cannabis Activity

84.34.040 Exemption for Licensed Health Facilities

84.34.010 Purpose.

It is the purpose and intent of this Chapter of the County Code to prohibit the operation of commercial cannabis activity, with limited exceptions, within the unincorporated area of the County, pursuant to the authority granted by Article XI, section 7 of the California Constitution, California Business and Professions Code sections 19300 et seq., California Government Code sections 65850, 25845 and 53069.4, and California Health and Safety Code sections 11362.83 and 11362.768(f).

Adopted Ordinance XXXX (2016)

84.34.020 Definitions.

The definitions in this Section are intended to apply to this Chapter only. Any term which is not specifically defined herein, shall have the definition as provided by Division 10 of this Development Code.

- (a) **Cannabis or Marijuana.** All parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the 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. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also includes "marijuana" as defined by Section 11018 of the Health and Safety Code as currently enacted or hereafter amended.
- (b) **Cannabis Concentrate.** Cannabis that has undergone a process to concentrate the cannabinoid active ingredient, thereby increasing the product's potency. Concentrate includes, but is not limited to, wax, oil, and tinctures.
- (c) **Cannabis Plant.** Any mature or immature cannabis plant, any cannabis seedling or any clipping or cutting from a cannabis plant that contains roots.
- (d) **Cannabis Product.** Cannabis that has undergone a process whereby the raw cannabis has been transformed into a concentrate, including, but not limited to, cannabis concentrate. Cannabis product also includes products containing cannabis and other

ingredients, such as, but not limited to, edible cannabis products and topical cannabis products.

(e) **Commercial Cannabis Activity.** Any enterprise or activity, whether or not for profit, gain or benefit, concerning the cultivation, production, storage, processing, manufacture, dispensing, delivery, distribution, laboratory testing, transportation, provision or sale of cannabis or cannabis products, for medical purposes or otherwise. Without limiting the foregoing, commercial cannabis activity specifically includes, but is not limited to, those activities defined as “commercial cannabis activity” by California Business and Professions Code section 19300.5, as currently enacted or hereafter amended.

(f) **Cultivation.** Any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis, whether conducted indoors or outdoors.

(g) **Delivery.** The transfer of cannabis or cannabis products by: a person or entity located within the unincorporated County directly to an individual within the unincorporated County; or, a person, entity or location outside of the unincorporated County to an individual within the unincorporated County. Delivery includes the use of any technology platform that enables entities or individuals to arrange for or facilitate the transfer of cannabis or cannabis products.

(h) **Dispensary.** A facility or location, whether fixed or mobile, where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, made available to, or provided, either individually or in any combination, with or without remuneration, for medical purposes or otherwise. A dispensary includes those facilities defined as a “dispensary” by Business and Professions Code section 19300.5, as currently enacted or hereafter amended.

(i) **Distribution.** The procurement, sale, and transport of cannabis or cannabis products between entities or facilities, and not directly to an individual.

(j) **Edible Cannabis Product.** Manufactured cannabis that is intended to be used, in whole or in part, for human consumption, including, but not limited to, any type of food, drink, or pill, for medical purposes or otherwise.

(k) **Enforcement Officer.** Any County employee, Special District employee, or agent of the County with the authority to enforce any provision of this Development Code, specifically:

(1) The Code Enforcement Chief, Program Manager, each Code Enforcement Supervisor, and each Code Enforcement Officer or other designated employee of the Code Enforcement Division of the Land Use Services Department, or successor department thereto;

(2) The Building Official, each Regional Building and Safety Supervisor, each Building Inspector, and other designated employees of the Building and Safety Division of the Land Use Services Department;

- (3) The Fire Chief/Fire Warden, Fire Marshal, and other designated employees of the San Bernardino County Fire Protection District;
- (4) The Director, each Inspector, and other designated employees of the Environmental Health Services Division of the Department of Public Health;
- (5) The Division Chief, each Animal Control Supervisor/Officer, and other designated employees of the Animal Care and Control Program of the Department of Public Health;
- (6) The Sheriff-Coroner, each Deputy Sheriff (all ranks), and other designated employees of the Department of the Sheriff-Coroner;
- (7) The Director and other designated employees of the Public Works Department;
- (8) The Agricultural Commissioner, Agricultural Standards Officers, and other designated employees of the Department of Agriculture/Weights and Measures; and
- (9) Any other Director and other designated employees of a County department or Special District as designated by the County Executive Officer or the Board of Supervisors.
- (l) **Identification Card.** A document issued by the State Department of Public Health that identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.
- (m) Manufacture. To produce, prepare, propagate, compound, blend, extract, infuse, or otherwise make or prepare a cannabis product. The manufacture of cannabis includes the use of non-volatile solvents and volatile solvents. Volatile solvents include, but are not limited to, volatile organic compounds, including:

 - (1) Explosive gases, such as Butane, Propane, Xylene, Styrene, Gasoline, Kerosene, O2 and H2; and
 - (2) Dangerous poisons, toxins, or carcinogens, such as methanol, iso-propyl alcohol, methylene chloride, acetone, benzene, toluene, and tri-chloro-ethylene.
- (n) Manufacturer. A person or facility that conducts the production, preparation, propagation, manufacture, or compounding of manufactured cannabis, or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. Manufacturer includes, but is not limited to, those persons defined as "manufacturers" by Business and Professions Code section 19300.5, as currently enacted or hereafter amended.
- (o) **Person with an Identification Card.** An individual who is a qualified patient and who has applied for and received a valid identification card pursuant to the Medical

Marijuana Program (Health and Safety Code section 11362.7, et seq.) as currently in effect or hereafter amended.

- (p) **Private Residence.** A single-family dwelling, a multi-family dwelling unit, a mobile home, or a residential accessory structure thereto. For purposes of this Chapter, a residential accessory structure includes only those structures that are limited to the sole use of the single-family dwelling, multi-family dwelling unit or mobile home in which the person with an identification card or primary caregiver resides. A private residence does not include: hotels, motels, bed and breakfast inns, residential care facilities, group residential, transitional housing or any other use subject to the Transient Occupancy Tax as provided for in section 14.0203 of the County Code.
- (q) **Primary Caregiver.** The individual designated by a qualified patient or person with an identification card as one who has consistently assumed responsibility for the housing, health or safety of the patient and who meets the definition of a “primary caregiver” as defined by Health and Safety Code section 11362.7, as currently enacted or hereafter amended.
- (r) **Qualified Patient.** A person entitled to the protections of Health and Safety Code section 11362.5, but who does not have an identification card.
- (s) **Topical Cannabis Product.** A product containing cannabis that is intended for external use, such as but not limited to, lotions, balms and oils.
- (t) **Transport.** The transfer of cannabis or cannabis products from one facility or site to another facility or site, for the purposes of conducting commercial cannabis activity.
- (u) **Testing Laboratory.** A facility, entity, or site that offers or performs tests of cannabis or cannabis products. A testing laboratory, includes, but is not limited to, those facilities, entities and sites defined by the Business and Professions Code section 19300.5, as currently enacted or hereafter amended.

84.34.030 Prohibition of Commercial Cannabis Activity.

Except as expressly provided by Sections 84.34.040 and 83.34.050, in no event shall commercial cannabis activity be considered a permitted or conditionally permitted use in any land use zoning district. Commercial cannabis activity, including delivery, is prohibited in all land use zoning districts, as those may be amended from time to time, and no permit of any type shall be issued therefor. It shall be unlawful for any person to conduct, cause to be conducted, or permit to be conducted, a commercial cannabis activity within the unincorporated area of the County. This section shall not affect the right to possess or use cannabis as authorized or prohibited by the laws of the State of California, or by any federal law.

84.34.040 Exemption for Cultivation by Specified Persons.

Notwithstanding Section 84.34.030, the prohibition concerning commercial cannabis activity does not apply to a person with an identification card cultivating cannabis for his or her personal medical use or to a primary caregiver cultivating cannabis for the personal medical use of no

more than five (5) specified persons with identification cards, subject to the following requirements:

- (a) The cannabis is not sold, distributed, donated, or provided to any other person or entity.
- (b) A primary caregiver may only receive compensation in full compliance with Health and Safety Code section 11362.765, subdivision (c).
- (c) Cultivation may only be conducted indoors at the private residence of the person with an identification card or the primary caregiver of the person with an identification card.
- (d) Cultivation shall be limited to no more than:
 - (1) Twelve (12) cannabis plants per person with an identification card or primary caregiver per private residence; and,
 - (2) An aggregate total of twenty-four (24) cannabis plants per private residence when more than one person with an identification card or primary caregiver live at the private residence.
- (e) A private residence where cultivation occurs must be a fully enclosed structure, that includes solid walls, and a ceiling, roof or top. Cultivation of cannabis plants within the limitations described above, must be conducted in one designated cultivation area within the private residence. The designated cultivation area must be separately secured and locked from all other uses of the private residence, such that all cannabis plants are reasonably secured from theft and from access by minors or other unauthorized persons. The cultivation must not be perceptible from the exterior of the private residence, by means, including but not limited to:
 - (1) Common visual observation, including any form of signage;
 - (2) Odors, smells, fragrances, or other olfactory stimulus generated by the cultivation;
 - (3) Light pollution, glare or brightness of artificial illumination associated with the cultivation.
- (f) The cultivation must be subordinate, incidental and accessory to the residential use.
- (g) The designated area where cannabis is cultivated must be in full compliance with all other applicable requirements of the Development Code, including, but not limited to, the building, safety, and technical codes and requirements with respect to obtaining necessary building, plumbing, electrical, mechanical, or other permits, inspection of the residence, and the issuance of a certificate of occupancy.

- (h) The cultivation of cannabis shall not occur outdoors in the yard, curtilage, or other area outside of a private residence.
- (i) No cultivation is permitted within the common areas of a multi-family dwelling, residential development, mobile home park or other similar areas.
- (j) If the person with an identification card or a primary caregiver cultivates cannabis within any private residence that he or she does not own, written consent must be obtained from the property owner prior to commencing the cultivation of cannabis plants on the property. Such written documentation shall also include the property owner's express consent to any material alterations to the private residence associated with the cultivation of cannabis plants, including but not limited to alterations to walls, windows, ventilation, plumbing, or electrical, in addition to obtaining all necessary building permits. The written consent must be maintained at the private residence and provided upon request to an enforcement officer.
- (k) All cultivation must be conducted in full compliance with the Compassionate Use Act (Health and Safety Code section 11362.5), the Medical Marijuana Program (Health and Safety Code sections 11362.7, et seq.) and the Medical Marijuana Regulation and Safety Act (Business and Professions Code sections 19300, et seq.), as currently enacted or hereafter amended.
- (l) The following activities shall not be permitted pursuant to this exemption, but such restrictions shall not be deemed to prohibit the use of lawful fertilizers, additives, supplements or nutrients:

 - (1) Any activity involving the use of a chemical or other process to enhance tetrahydrocannabinol (THC) in cannabis; or
 - (2) The manufacture of cannabis.
- (m) Cultivation shall not occur upon any private residence containing a child day care, as defined by Section 810.01.060, subdivision (e).
- (n) A primary caregiver shall provide the identification card number of each of his or her patients to enforcement officers, upon request when acting in the course of their official duties while investigating compliance with the requirements of this Chapter.

84.34.050 Exemption for Licensed Health Care Facilities.

- (a) Notwithstanding Section 84.34.030, the prohibition concerning commercial cannabis activity does not apply to any of the following entities or facilities, defined as "primary caregivers" by Health and Safety Code section 11362.7, if the owner or operator, or no more than three employees who are designated by the owner or operator, of the entities or facilities are designated as a primary caregiver by a qualified patient or person with an identification card:

- (1) A clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code;
- (2) A health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code;
- (3) A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2 of the Health and Safety Code;
- (4) A residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2 of the Health and Safety Code;
- (5) A hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code.
 - (a) Before commencing a commercial cannabis activity, operators of those entities or facilities listed above, shall register with Land Use Services, and renew said registration on an annual basis. Upon said registration and each renewal thereof, the operator shall provide proof of a valid license as provided by Chapters 2, 3.01, 3.2, 8 and/or 8.5 of Division 2 of the Health and Safety Code.
 - (b) No facility or entity listed above shall conduct outdoor cultivation of cannabis.

84.34.060 Landlords.

Nothing in this Chapter is intended, nor shall it be construed, to preclude a landlord from limiting or prohibiting marijuana cultivation, smoking, or other related activities by tenants.

84.34.070 Application with other laws.

Nothing in this ordinance shall be construed to allow the use of cannabis that is otherwise illegal under State or federal law. No provision of this chapter deemed a defense or immunity to any action brought against any person by the San Bernardino County District Attorney, the Attorney General of State of California, or the United States of America.

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Typical uses include: tires, inner tubes, rubber and plastic footwear, rubber and plastic hoses and belts.

- (11) **Stone, Clay, and Glass Products.** The manufacture of products from stone, clay, sand and other nonmetallic minerals, excluding fuels. Typical uses include: brick, tile, dish, glass and insulation manufacturing and concrete plants.
- (12) **Textile Mill Products.** The preparation of fiber and subsequent manufacturing, drying, finishing or coating of fiber, thread, yarn, woven, knit, or nonwoven fabrics or miscellaneous textiles. Typical uses include: broad woven fabric mills, dyeing and finishing textiles, floor covering mills.
- (n) **Masonry Construction.** As defined in the [California Building Code, 2013 Edition](#) with amendments.
- (o) **Map Act.** California Subdivision Map Act, Government Code Section 66410 et seq.
- (p) **May.** A permissive or optional provision, regulation or specification.
- (q) **Maximum Applied Water Allowance (MAWA).** The upper limit of the annual amount of applied water allowed for an established landscape.

~~(r) **Medical Marijuana Dispensary.**~~

- ~~(1) A medical marijuana dispensary is any facility or location, whether fixed or mobile, where marijuana is cultivated, made available, and/or distributed by or to three or more persons within the following categories: a primary caregiver, a qualified patient, or a patient with an identification card, as those terms are defined in Health and Safety Code Sections 11362.5 and 11362.7 et seq. as such sections may be amended from time to time.~~
- ~~(2) A medical marijuana dispensary shall not include the following uses, provided that such uses may otherwise be lawfully established and operated and comply with this code and all other applicable laws, including, but not limited to, Health and Safety Code Sections 11362.5 and 11362.7 et seq.:~~
- ~~(A) An in-patient "health facility" as defined by and licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code (commencing with Section 1250);~~
- ~~(B) A "residential care facility for persons with chronic life threatening illness" as defined by and licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code (commencing with Section 1568.01);~~
- ~~(C) A "residential care facility for the elderly" as defined by and licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code (commencing with Section 1569);~~

- ~~(D)~~ A “home health agency” as defined by and licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code (commencing with Section 1725); and,
- ~~(E)~~ A nonexempt “hospice” as defined by and licensed pursuant to Chapter 8.5 of Division 2 of the Health and Safety Code (commencing with Section 1745).
- ~~(3)~~ The word “marijuana” shall have the same meaning as that set forth in Health & Safety Code Section 11018. The term “medical marijuana” is marijuana used for medicinal purposes in strict accordance with Health and Safety Code Sections 11362.5 and 11362.7 et seq.
- (sr)** **Medical Services, Hospital (see Land Use Tables).** Hospitals and similar facilities engaged primarily in providing diagnostic services, and extensive medical treatment, including surgical and other hospital service. These establishments have an organized medical staff, inpatient beds, and equipment and facilities to provide complete health care. May include on-site accessory clinics and laboratories, accessory retail uses, and on-site ambulance dispatch facilities.
- (ts)** **Medical Services - Rehabilitation Center (see Land Use Tables).** A facility providing skilled nursing and/or in-patient medical care to persons recovering from injuries or dependencies.
- (ut)** **Meeting Facility, Public or Private (see Land Use Tables).** A facility for public or private meetings, including community centers, civic and private auditoriums, grange halls, mortuaries, union halls, meeting halls for clubs and other membership organizations, etc. Also includes functionally related internal facilities such as kitchens, multi-purpose rooms, and storage. Does not include conference and meeting rooms accessory and incidental to another primary use that are typically used only by on-site employees and clients, and occupy less floor area on the site than the offices they support (see “Offices”). Does not include: sports or other commercial entertainment facilities (see “Theater,” and “Sports and Entertainment Assembly”); or convention centers (see “Conference/Convention Facility”). Related on-site facilities including day care centers and schools are separately defined. Also see “Places of Worship.”
- (vu)** **Menagerie.** A private collection of three or more wild, exotic or dangerous animals that are raised, bred, trained and/or maintained without any public display or exhibition on the site.
- (wv)** **Microclimate.** The climate of a small, specific landscaped area that may contrast with the climate of the overall landscaped areas due to varying factors such as wind, sun/shade exposure, the density of planting material, and/or the proximity to adjacent reflective surfaces.
- (xw)** **Mined Lands.** Includes the surface, subsurface, and groundwater of an area where surface mining operations will be, are being, or have been conducted. This includes

private ways and roads appurtenant to any land excavations, workings, mining waste, and areas where structures, facilities, equipment, machines, tools or other materials or property that result from, or are used in, surface mining operations are located. See also “Surface Mining Operations.”

- (~~yx~~) **Mineral Resources.** A collective term for all mineral deposits of a particular kind, or for mineral deposits in general.
- (~~zy~~) **Minerals.** See “Surface Mining Operations.”
- (~~ax~~) **Minimum Lot Size.** See “Lot Size, Minimum.”
- (~~baa~~) **Mining and Reclamation Lead Agency.** See “Lead Agency.”
- (~~ebb~~) **Mining and Reclamation Operator.** See “Surface Mining Operations.”
- (~~dcc~~) **Mining and Reclamation Plan.** A plan required by the County for all surface mining operations. The plan requires measures to be taken that provide for reclamation of mined lands to a usable condition that is readily adaptable for alternative land use and creates no danger to public health or safety.
- (~~edd~~) **Mining Hazardous, Excavation.** See “Hazardous Excavation.”
- (~~fee~~) **Mining Reclamation.** See “Surface Mining Operations.”
- (~~gff~~) **Mining Waste.** Includes the residual of soil, rock, mineral, liquid, vegetation, equipment, machines, tools, or other materials or property directly resulting from, or displaced by, surface mining operations.
- (~~hgg~~) **Mini-Storage.** See “Storage, Personal.”
- (~~hh~~) **Minor Grading.** See “Grading.”
- (~~hii~~) **Minor Event.** See “Special Event, Temporary.”
- (~~kkj~~) **Minor Maintenance/Repair.** See “Vehicle Services.”
- (~~Hkk~~) **Minor Subdivision Plot Plan.** Any application plot plan requesting the subdivision of any parcel or parcels of land shown as a unit or contiguous units under one or a common ownership, and that is proposed for subdivision for the purpose of sale, lease, financing, or other conveyance, including gift, either immediate or in the future, into two, three or four lots, parts or parcels and a remainder parcel. For the purposes of this definition, a Minor Subdivision Plot Plan shall also mean a Tentative Parcel Map.
- (~~mml~~) **Mitigation Measures.** Necessary steps taken to lessen potential impacts of development or actions on the environment.
- (~~mmm~~) **Mixed Land Use.** The unspecified mixture of compatible land uses within one building or within a section or sections of a community.

- (~~00nn~~) **Mobile Home, Boat, or RV Sales (see Land Use Tables).** Retail establishments selling both mobile home dwelling units, and/or various vehicles and watercraft for recreational uses. Includes the sales of boats, campers and camper shells, jet skis, mobile homes, motor homes, and travel trailers.
- (~~00oo~~) **Mobile Home, Dependent.** A mobile home or travel trailer coach not equipped with a toilet for sewage disposal.
- (~~00pp~~) **Mobile Home.** A structure that was constructed prior to June 15, 1976, is transportable in one or more sections, which in the traveling mode, is eight body feet or more in width, or 40 feet or more in length, or, when erected on site, is 320 or more square feet, and designed to be used as a dwelling unit with or without a permanent foundation when connected to utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein; except that such term will include any structure which meets all the requirements of this subsection and complies with the state standards in effect at the time of construction. "Mobile home does not include commercial modulars, as defined in Section 18001.8, factory-built housing, as defined in Section 19971, a manufactured home, as defined in Section 18007, or a recreational vehicle, as defined in Section 18010 of the California Health and Safety Code (CHSC).
- (~~00qq~~) **Mobile Home Park/manufactured home land-lease community (see Land Use Tables).** An area or tract of land designed as a single unit where spaces for two or more mobile homes used for human habitation are rented or leased on a monthly or greater basis, or owned separately.
- (~~00rr~~) **Mobile Home Park Lot.** A portion of a mobile home park designated or used for the occupancy of one trailer coach or camping party.
- (~~00ss~~) **Mobile Home, Self-Contained.** A mobile home or trailer equipped with a toilet, water storage tank for potable water and a sewage holding tank.
- (~~00tt~~) **Mobile Recycling Unit.** See "Recycling Facility."
- (~~00uu~~) **Modular unit (Factory-built housing).** A residential building, dwelling unit, or an individual dwelling room or combination of rooms thereof, or building component, assembly, or system manufactured in such a manner that all concealed parts or processes of manufacture cannot be inspected before installation at the building site without disassembly, damage, or destruction of the part, including units designed for use as a part of an institution for resident or patient care, that is either wholly manufactured or is in substantial part manufactured at an offsite location to be wholly or partially assembled onsite in accordance with building standards published in the California Building Standards Code and other regulations adopted by the commission pursuant to section 19990. Factory-built housing does not include a mobile home, as defined in Section 18008, a recreational vehicle, as defined in Section 18010.5, or a commercial modular, as defined in Section 18012.5 of the California Health and Safety Code (CHSC).

- (wwwv) **Monopole.** See “Wireless Telecommunication Facility.”
- (xxww) **Monument Sign.** See “Sign.”
- (yyxx) **Moratorium.** See “Development Moratorium.”
- (zzvv) **Mortuary Services (see Land Use Tables).** An establishment providing services for preparing the human dead for burial or cremation and arranging and managing funerals. This excludes cemeteries, crematoriums and columbariums.
- (aaaaz) **Motel.** A building or group of two or more detached, semi-detached or attached buildings containing guest rooms designed, used and intended, wholly or in part, for the accommodation of transients for compensation on a daily or weekly basis. These establishments provide lodging and parking for automobile travelers and the rooms are usually accessible from outdoor parking area. These establishments may include guest rooms with food preparation areas (kitchenettes) and are designed, intended or used primarily for the accommodation of automobile travelers. Included are lodging establishments designated as cabins, motor courts, and similar designations; not including those facilities defined in residential care facilities or any jail, hospital, asylum, sanitarium, orphanage, prison or other building in which human beings are housed and detained under legal restraint.
- (bbbaa) **Motor Vehicle.** A self-propelled device by which persons or property may be moved upon a highway, excepting a device moved by human power or used exclusively upon stationary rails or tracks.
- (eeebb) **Motor Vehicle Dismantling Facility (see Land Use Tables).** Any premises used for the dismantling of wrecking of vehicles required to be registered under the Vehicle Code of the State of California. Activities may include the buying, selling or dealing in vehicles, their integral parts, or component materials thereof, and the storage, sale or dumping of dismantled, partially dismantled, wrecked or inoperative vehicles. See also “Recycling Facilities – Scrap and Dismantling Yard.”
- (dddcc) **Motor Vehicle Storage/Impound Facility (see Land Use Tables).** Any lot, lot area, or parcel of land used, designed, or maintained for the specific purpose of storing, impounding, or keeping motor vehicles, but not including dismantling or wrecking activities.
- (eeddd) **Mountain Major Highway.** See “Road System.”
- (fffee) **Mountain Region.** Areas within the following described boundary: Beginning at the intersection of the boundary line between San Bernardino and Los Angeles Counties and the north line of Section 31 Township 4 North, Range 7 West, SBB&M, thence generally easterly and southerly along the National Forest boundary to its intersection with the boundary line between San Bernardino and Riverside Counties; thence westerly along the County line to the southwest corner of Township 1 South, Range 1 East; thence generally northerly and westerly following the National Forest boundary to the intersection of north boundary of Section 24, Township 1 North,

Range 8 West, SBB&M and the boundary line between San Bernardino and Los Angeles Counties; thence northerly along the County line to the point of beginning.

(gggff) Mountain Secondary Highway. See “Road System.”

(hhhggg) Mudslide. The flow of mud and debris in a downslope direction due to slope failure, caused by poor structural and water retention properties of the soil. They are generally experienced after heavy precipitation, fast snowpack melt, an earthquake or any combination thereof.

(iihhh) Mulch. Organic material such as leaves, bark, or inorganic material such as pebbles, stones, gravel, decorative sand, and decomposed granite that is left loose and applied to the soil surface for the beneficial purposes of reducing evaporation, suppressing weeds, moderating soil temperatures, and preventing soil erosion.

(iiiii) Multi-Family Residential Projects. Development project in which two or more attached or detached units are located, including apartments or condominiums.

(kkkjj) Multiple Dwelling Unit (see Land Use Tables). A multiple dwelling unit is a series or combination of dwelling units, either attached or detached, designed to house more than one family with individual, shared or no kitchen privileges (e.g. apartments, condominiums, boarding houses, residential hotels). See also “Dwelling, Multiple Family.”

(Hkkk) “Multi-unit manufactured housing.”

- (1) Pursuant to California Health and Safety Code (CHSC) Section 18008.7, multi-unit manufactured housing means either of the following:
 - (A) A structure transportable under permit in one or more sections designed and equipped to contain not more than two dwelling units, a dormitory, or an efficiency unit as defined in Section 17958.1, to be used with a support system pursuant to Section 18613 or a foundation system pursuant to Section 18551.
 - (B) A structure transportable under permit in one or more sections, designed to be used with a foundation system for either of the following purposes:
 - (I) Three or more dwelling units, as defined in Section 18003.3.
 - (II) A residential hotel, as defined by Subsection 50519(b)(1).
- (2) “Multi-dwelling unit manufactured housing” shall be constructed in compliance with all applicable department regulations. The egress and fire separation requirements of Title 24 of the California Code of Regulations (CCR) applicable to dormitories, hotels, apartment houses, and structures that contain two dwelling units shall also be applicable to all multi-dwelling manufactured housing constructed for those purposes. The accessibility and adaptability requirements of Title 24 of the CCR applicable to dormitories, hotels and apartment homes

shall also be applicable to multi-dwelling unit manufactured housing containing three or more dwelling units.

- (3) Notwithstanding any other provision of law, all provisions of law that apply to manufactured homes shall apply to equally to multi-dwelling unit manufactured housing. For purposes of this section:
- (A) “Dormitory” means a room or rooms inhabited for the purposes of temporary residence by two or more persons
- (B) “Efficiency unit” has the same meaning as defined in Section 17958.1.

~~(mmml)~~ **Multi-use Center.** An area of service, retail or publicly oriented facilities that are centrally located along collector streets or major arterials and serve the local residents.

~~(mmmm)~~ **Museum.** See “Library, Museum, Art Gallery, Outdoor Exhibit.”

Adopted Ordinance 4011 (2007); Amended Ordinance 4043 (2008); Amended Ordinance 4067 (2009), Amended Ordinance 4136 (2011); Amended Ordinance 4140 (2011); Amended Ordinance 4189 (2012); Amended Ordinance 4245 (2014); Amended Ordinance XXXX (2016)

EXHIBIT B

Draft Ordinance

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ORDINANCE NO.

AN ORDINANCE OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, REPEALING SECTION 82.02.070, REPEALING SECTION 810.01.150(r), AND ADDING CHAPTER 84.34 TO DIVISION 4 OF TITLE 8 OF THE SAN BERNARDINO COUNTY CODE, RELATING TO COMMERCIAL CANNABIS ACTIVITIES.

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

SECTION 1. The Board of Supervisors of the County of San Bernardino 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.

(b) At the General Election held on November 5, 1996, California voters approved Proposition 215 (codified as Health and Safety Code section 11362.5, and titled the “Compassionate Use Act of 1996” (“CUA”)), which provided in relevant part that “Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient’s primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.”

(c) On January 1, 2004, Senate Bill 420 (codified as Health and Safety Code sections 11362.7 et seq. and titled the “Medical Marijuana Program” (“MMP”)) went into effect and was enacted to clarify the scope of the CUA and to allow cities and counties to adopt and enforce regulations consistent with the CUA and MMP.

1 (d) On April 5, 2011, the Board of Supervisors adopted Ordinance 4140
2 banning medical marijuana dispensaries, as defined, including a complete ban on the
3 outdoor cultivation or growing of marijuana.

4 (e) In *City of Riverside v. Inland Empire Patients Health and Wellness Center,*
5 *Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that “neither the CUA nor
6 the MMP expressly or impliedly preempts the authority of California cities and counties,
7 under their traditional land use and police powers, to allow, restrict, limit, or entirely
8 exclude facilities that distribute medical marijuana, and to enforce such policies by
9 nuisance actions.”

10 (f) In *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975 (“*Maral*”), the
11 Court of Appeal held that “there is no right – and certainly no constitutional right – to
12 cultivate medical marijuana....” The Court in *Maral* thus affirmed the ability of a local
13 governmental entity to prohibit the cultivation of marijuana under its land use authority.

14 (g) On January 1, 2016, the Medical Marijuana Regulation and Safety Act
15 (“MMRSA”), codified in various sections of the Business and Professions Code, the Fish
16 and Game Code, the Health and Safety Code, and the Water Code, went into effect,
17 instituting a dual licensing scheme for “commercial cannabis activity,” including the
18 distribution, manufacture, cultivation, delivery, testing, processing, storing, transporting
19 and sale of marijuana.

20 (h) The MMRSA preserved the County’s authority to prohibit, regulate and/or
21 license commercial cannabis activity within its jurisdiction as it expressly provides that
22 the MMRSA:

23 (1) Is not intended “to supersede or limit existing local authority for law
24 enforcement activity, enforcement of local zoning requirements or local ordinances, or
25 enforcement of local permit or licensing requirements.” (See Business and Professions
26 Code section 19315(a).)

27 (2) Does not limit the authority or remedies of a local government
28 under any provision of law regarding marijuana, including but not limited to a local

1 government's right to make and enforce within its limits all police regulations not in
2 conflict with general laws. (See Business and Professions Code section 19316(c).)

3 (3) Authorizes local jurisdictions to "adopt ordinances that establish
4 additional standards, requirements, and regulations for local licenses and permits for
5 commercial cannabis activity." (See Business and Professions Code section 19316.)

6 (j) The MMRSA requires a local government that wishes to prevent cannabis
7 delivery, as defined at Business and Professions Code section 19300.5, from occurring
8 within the local government's boundaries, to enact an ordinance expressly banning
9 deliveries. (See Business and Professions Code section 19340(a).)

10 (k) The Board of Supervisors finds that commercial cannabis activities,
11 whether for medical purposes or otherwise in the unincorporated area of San
12 Bernardino County, may adversely affect the health, safety, and well-being of County
13 residents and have the potential for adversely impacting the County. The continued
14 County-wide prohibition of commercial cannabis activities is proper and necessary to
15 avoid the potential risks of criminal activity — including trespassing, theft, violent
16 robberies and robbery attempts — degradation of the natural environment, malodorous
17 smells, damage to residences and other buildings, excessive use and pollution of water
18 in a time of historic drought, and dangerous electrical alterations and use.

19 (l) In light of the findings set forth herein the County desires to revise the
20 County Code provisions relating to marijuana to further specify that all forms of
21 commercial cannabis activity are prohibited within the unincorporated area of the
22 County, including deliveries, except in the limited and specified circumstances as is
23 established herein.

24
25 SECTION 2. Section 82.02.070 of the County Code is repealed.

26
27 SECTION 3. Section 810.01.150, subdivision (r) ("Medical Marijuana
28 Dispensary") of the County Code is repealed and all subsequent subsections are

1 sequentially renumbered. For example, current subdivision (s) (“Medical Services,
2 Hospital”) shall be redesignated as subdivision (r).

3
4 SECTION 4. Chapter 84.34 is added to Division 4 of Title 8 of the San
5 Bernardino County Code to read:

6 **Chapter 84.34 Commercial Cannabis Activity**

7 **Sections:**

8 **84.34.010 Purpose.**

9 **84.34.020 Definitions.**

10 **84.34.030 Prohibition of Commercial Cannabis Activity.**

11 **84.34.040 Exemption for Cultivation by Specified Persons.**

12 **84.34.050 Exemption for Primary Caregiver Affiliated with Licensed
13 Facility.**

14 **84.34.010 Purpose.**

15 It is the purpose and intent of this chapter of the County Code to prohibit, to the
16 maximum extent allowed under state law, the operation of commercial cannabis
17 activity, with limited exceptions, within the unincorporated area of the County, pursuant
18 to the authority granted by Article XI, section 7 of the California Constitution, Business
19 and Professions Code sections 19300 et seq., Government Code sections 25845,
20 53069.4, and 65850, and Health and Safety Code sections 11362.83 and 11362.768(f).

21 **84.34.020 Definitions.**

22 The definitions in this section are intended to apply to this chapter only. Any
23 term which is not specifically defined herein, shall have the definition as provided by
24 Division 10 of the Development Code or elsewhere within the County Code.

25 (a) ***Cannabis or Marijuana.*** All parts of the plant *Cannabis sativa* Linnaeus,
26 *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the
27 resin, whether crude or purified, extracted from any part of the plant; and every
28 compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds,

1 or resin. "Cannabis" also means the separated resin, whether crude or purified,
2 obtained from marijuana. "Cannabis" also includes "marijuana" as defined by Section
3 11018 of the Health and Safety Code as currently enacted or hereafter amended.

4 (b) **Cannabis Concentrate.** Cannabis that has undergone a process to
5 concentrate the cannabinoid active ingredient, thereby increasing the product's
6 potency. Concentrate includes, but is not limited to, wax, oil, and tinctures.

7 (c) **Cannabis Plant.** Any mature or immature cannabis plant, any cannabis
8 seedling or any clipping or cutting from a cannabis plant that contains roots.

9 (d) **Cannabis Product.** Cannabis that has undergone a process whereby
10 the raw cannabis has been transformed into a concentrate, including, but not limited to,
11 cannabis concentrate. Cannabis product also includes products containing cannabis
12 and other ingredients, such as, but not limited to, edible cannabis products and topical
13 cannabis products.

14 (e) **Commercial Cannabis Activity.** Any enterprise or activity, whether or
15 not for profit, gain or benefit, concerning the cultivation, production, storage,
16 processing, manufacture, dispensing, delivery, distribution, laboratory testing,
17 transportation, provision or sale of cannabis or cannabis products, for medical
18 purposes or otherwise. Without limiting the foregoing, commercial cannabis activity
19 specifically includes, but is not limited to, those activities defined as "commercial
20 cannabis activity" by Business and Professions Code section 19300.5, as currently
21 enacted or hereafter amended.

22 (f) **Cultivation.** Any activity involving the planting, growing, harvesting,
23 drying, curing, grading, or trimming of cannabis, whether conducted indoors or
24 outdoors.

25 (g) **Delivery.** The transfer of cannabis or cannabis products by: a person or
26 entity located within the unincorporated County directly to an individual within the
27 unincorporated County; or, a person, entity or location outside of the unincorporated
28 County to an individual within the unincorporated County. Delivery includes the use of

1 any technology platform that enables entities or individuals to arrange for or facilitate
2 the transfer of cannabis or cannabis products.

3 (h) **Dispensary.** A facility or location, whether fixed or mobile, where
4 cannabis, cannabis products, or devices for the use of cannabis or cannabis products
5 are offered, made available to, or provided, either individually or in any combination,
6 with or without remuneration, for medical purposes or otherwise. A dispensary
7 includes those facilities defined as a “dispensary” by Business and Professions Code
8 section 19300.5, as currently enacted or hereafter amended.

9 (i) **Distribution.** The procurement, sale, and transport of cannabis or
10 cannabis products between entities or facilities, and not directly to an individual.

11 (j) **Edible Cannabis Product.** Manufactured cannabis that is intended to
12 be used, in whole or in part, for human consumption, including, but not limited to, any
13 type of food, drink, or pill, for medical purposes or otherwise.

14 (k) **Enforcement Officer.** Any County employee, Special District employee,
15 or agent of the County or Special District with the authority to enforce any provision of
16 this Development Code, specifically:

17 (1) The Code Enforcement Chief, Program Manager, each Code
18 Enforcement Supervisor, and each Code Enforcement Officer or other designated
19 employee of the Code Enforcement Division of the Land Use Services Department, or
20 successor department thereto;

21 (2) The Building Official, each Regional Building and Safety
22 Supervisor, each Building Inspector, and other designated employees of the Building
23 and Safety Division of the Land Use Services Department;

24 (3) The Fire Chief/Fire Warden, Fire Marshal, and other designated
25 employees of the San Bernardino County Fire Protection District;

26 (4) The Director, each Inspector, and other designated employees of
27 the Environmental Health Services Division of the Department of Public Health;

28 (5) The Division Chief, each Animal Control Supervisor/Officer, and

1 other designated employees of the Animal Care and Control Program of the
2 Department of Public Health;

3 (6) The Sheriff-Coroner, each Deputy Sheriff (all ranks), and other
4 designated employees of the Department of the Sheriff-Coroner;

5 (7) The Director and other designated employees of the Public Works
6 Department;

7 (8) The Agricultural Commissioner, Agricultural/Standards Officers,
8 and other designated employees of the Department of Agriculture/Weights and
9 Measures; and

10 (9) Any other director and other designated employees of a County
11 department or Special District as designated by the County Executive Officer or the
12 Board of Supervisors.

13 (l) **Identification Card.** A document issued by the State Department of
14 Public Health that identifies a person authorized to engage in the medical use of
15 marijuana and the person's designated primary caregiver, if any.

16 (m) **Manufacture.** To produce, prepare, propagate, compound, blend,
17 extract, infuse, or otherwise make or prepare a cannabis product. The manufacture of
18 cannabis includes the use of non-volatile solvents and volatile solvents. Volatile
19 solvents include, but are not limited to, volatile organic compounds, including:

20 (1) Explosive gases, such as butane, propane, xylene, styrene,
21 gasoline, kerosene, O₂ and H₂; and

22 (2) Dangerous poisons, toxins, or carcinogens, such as methanol, iso-
23 propyl alcohol, methylene chloride, acetone, benzene, toluene, and tri-chloro-ethylene.

24 (n) **Manufacturer.** A person or facility that conducts the production,
25 preparation, propagation, manufacture, or compounding of manufactured cannabis, or
26 cannabis products, either directly or indirectly or by extraction methods, or
27 independently by means of chemical synthesis or by a combination of extraction and
28 chemical synthesis. Manufacturer includes, but is not limited to, those persons defined

1 as “manufacturers” by Business and Professions Code section 19300.5, as currently
2 enacted or hereafter amended.

3 (o) **Person with an Identification Card.** An individual who is a qualified
4 patient and who has applied for and received a valid identification card pursuant to the
5 Medical Marijuana Program (Health and Safety Code section 11362.7 et seq.) as
6 currently in effect or hereafter amended.

7 (p) **Private Residence.** A single-family dwelling, a multi-family dwelling unit,
8 a mobile home, or a residential accessory structure thereto. For purposes of this
9 chapter, a residential accessory structure includes only those structures that are limited
10 to the sole use of the single-family dwelling, multi-family dwelling unit, or mobile home
11 in which the person with an identification card or primary caregiver resides. A private
12 residence does not include: hotels, motels, bed and breakfast inns, residential care
13 facilities, group residential facilities, transitional housing, or any other use subject to the
14 Transient Occupancy Tax as provided for in Section 14.0203 of the County Code.

15 (q) **Primary Caregiver.** The individual designated by a qualified patient or
16 person with an identification card as one who has consistently assumed responsibility
17 for the housing, health, or safety of the patient and who meets the definition of a
18 “primary caregiver” as defined by Health and Safety Code section 11362.7, as currently
19 enacted or hereafter amended.

20 (r) **Qualified Patient.** A person entitled to the protections of Health and
21 Safety Code section 11362.5, but who does not have an identification card.

22 (s) **Topical Cannabis Product.** A product containing cannabis that is
23 intended for external use, such as but not limited to, lotions, balms, and oils.

24 (t) **Transport.** The transfer of cannabis or cannabis products from one
25 facility or site to another facility or site, for the purposes of conducting commercial
26 cannabis activity.

27 (u) **Testing Laboratory.** A facility, entity, or site that offers or performs tests
28 of cannabis or cannabis products. A testing laboratory includes, but is not limited to,

1 those facilities, entities, and sites defined by Business and Professions Code section
2 19300.5, as currently enacted or hereafter amended.

3 **84.34.030 Prohibition of Commercial Cannabis Activity.**

4 Except as expressly provided by Sections 84.34.040 and 83.34.050, commercial
5 cannabis activity shall not be considered a permitted or conditionally permitted use in
6 any land use zoning district. Commercial cannabis activity, including delivery, is
7 prohibited in all land use zoning districts, as those may be amended from time to time,
8 and no permit of any type shall be issued therefor. It shall be unlawful for any person
9 to conduct, cause to be conducted, or permit to be conducted, a commercial cannabis
10 activity within the unincorporated area of the County. This section shall not affect the
11 right to possess or use cannabis as authorized by the laws of the State of California, or
12 by any federal law.

13 **84.34.040 Exemption for Cultivation by Specified Persons.**

14 Notwithstanding Section 84.34.030, the prohibition concerning commercial
15 cannabis activity does not apply to a person with an identification card cultivating
16 cannabis for his or her personal medical use or to a primary caregiver cultivating
17 cannabis for the personal medical use of no more than five (5) specified persons with
18 identification cards, subject to the following requirements:

19 (a) The cannabis is not sold, distributed, donated, or provided to any other
20 person or entity.

21 (b) A primary caregiver may only receive compensation in full compliance
22 with Health and Safety Code section 11362.765, subdivision (c).

23 (c) Cultivation may only be conducted indoors at the private residence of the
24 person with an identification card or the primary caregiver of the person with an
25 identification card.

26 (d) Cultivation shall be limited to no more than:

27 (1) Twelve (12) cannabis plants per person with an identification card
28 or primary caregiver per private residence; and,

1 (2) An aggregate total of twenty-four (24) cannabis plants per private
2 residence when more than one person with an identification card or primary caregiver
3 lives at the private residence.

4 (e) A private residence where cultivation occurs must be a fully enclosed
5 structure, that includes solid walls, and a ceiling, roof, or top. Cultivation of cannabis
6 plants within the limitations described above must be conducted in one distinct
7 designated cultivation area within the private residence. The designated cultivation
8 area must be separately secured and locked from all other uses of the private
9 residence, such that all cannabis plants are reasonably secured from theft and from
10 access by minors or other unauthorized persons. The cultivation must not be
11 perceptible from the exterior of the private residence, by means, including but not
12 limited to:

13 (1) Common visual observation, including any form of signage;

14 (2) Odors, smells, fragrances, or other olfactory stimulus generated by
15 the cultivation;

16 (3) Light pollution, glare or brightness of artificial illumination
17 associated with the cultivation.

18 (g) The cultivation must be subordinate, incidental, and accessory to the
19 residential use.

20 (h) The designated area where cannabis is cultivated must be in full
21 compliance with all other applicable requirements of the Development Code, including,
22 but not limited to, the building, safety, and technical codes and requirements with
23 respect to obtaining necessary building, plumbing, electrical, mechanical, or other
24 permits, inspection of the residence, and the issuance of a certificate of occupancy.

25 (i) The cultivation of cannabis shall not occur outdoors in the yard, curtilage,
26 or other area outside of a private residence.

27 (j) No cultivation is permitted within the common areas of a multi-family
28 dwelling, residential development, mobile home park, or other similar areas.

1 (k) If the person with an identification card or a primary caregiver cultivates
2 cannabis within any private residence that he or she does not own, written consent
3 must be obtained from the property owner prior to commencing the cultivation of
4 cannabis plants on the property. Such written documentation shall also include the
5 property owner's express consent to any material alterations to the private residence
6 associated with the cultivation of cannabis plants, including but not limited to alterations
7 to walls, windows, ventilation, plumbing, or electrical, in addition to obtaining all
8 necessary building permits. The written consent must be maintained at the private
9 residence and provided upon request to an enforcement officer.

10 (l) All cultivation must be conducted in full compliance with the
11 Compassionate Use Act (Health and Safety Code section 11362.5), the Medical
12 Marijuana Program (Health and Safety Code sections 11362.7 et seq.) and the Medical
13 Marijuana Regulation and Safety Act (Business and Professions Code sections 19300
14 et seq.), as currently enacted or hereafter amended.

15 (m) The following activities shall not be permitted pursuant to this exemption,
16 but such restrictions shall not be deemed to prohibit the use of lawful fertilizers,
17 additives, supplements or nutrients:

18 (1) Any activity involving the use of a chemical or other process to
19 enhance tetrahydrocannabinol (THC) in cannabis; or

20 (2) The manufacture of cannabis product.

21 (n) Cultivation shall not occur within any private residence containing a child
22 day care, as defined by Section 810.01.060, subdivision (e).

23 (o) A primary caregiver shall provide the identification card number of each of
24 his or her patients to enforcement officers, upon request, when acting in the course of
25 their official duties while investigating compliance with the requirements of this chapter.

26 (p) If, after the adoption of this chapter, any federal or state law is passed
27 which requires the County to allow the cultivation of cannabis by any persons not
28 included within the exemption stated above, the exemption shall be expanded to

1 include those persons specifically identified by said federal or state law, upon the date
2 the law becomes effective. Any plant limitations imposed by said federal or state law, if
3 in an amount less than specified in this section, shall apply to the additional exempted
4 persons. All other provisions of this section shall apply to the additional exempted
5 persons. It is the intent of this provision that the cultivation of cannabis within the
6 unincorporated County is as restrictive as allowed under state law.

7 **83.04.050 Exemption for Primary Caregiver Affiliated with Licensed Facility.**

8 (a) Notwithstanding Section 84.34.030, the prohibition against commercial
9 cannabis does not apply to a person designated as a primary caregiver by a qualified
10 patient or person with an identification card, if such primary caregiver is the owner or
11 operator of one of the following licensed facilities, or is one of no more than three
12 employees who are designated by the owner or operator of one of the following licensed
13 facilities:

14 (1) A clinic licensed pursuant to Chapter 1 (commencing with Section
15 1200) of Division 2 of the Health and Safety Code;

16 (2) A health care facility licensed pursuant to Chapter 2 (commencing
17 with Section 1250) of Division 2 of the Health and Safety Code;

18 (3) A residential care facility for persons with chronic life-threatening
19 illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of
20 Division 2 of the Health and Safety Code;

21 (4) A residential care facility for the elderly licensed pursuant to
22 Chapter 3.2 (commencing with Section 1569) of Division 2 of the Health and Safety
23 Code;

24 (5) A hospice, or a home health agency licensed pursuant to Chapter
25 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code.

26 (b) Before commencing a commercial cannabis activity, operators of those
27 entities or facilities listed above shall register with Land Use Services, and renew said
28 registration on an annual basis. Upon said registration and each renewal thereof, the

1 operator shall provide proof of a valid license as provided by Chapters 2, 3.01, 3.2, 8
2 and/or 8.5 of Division 2 of the Health and Safety Code.

3 (c) No facility or entity listed above shall conduct outdoor cultivation of
4 cannabis.

5 **83.04.060. Landlords.**

6 Nothing in this chapter is intended, nor shall it be construed, to preclude a
7 landlord from limiting or prohibiting marijuana cultivation, smoking, or other related
8 activities by tenants.

9 **83.04.070. Application with other laws.**

10 Nothing in this chapter shall be construed to allow the use of cannabis that is
11 otherwise illegal under state or federal law. No provision of this chapter shall be
12 deemed a defense or immunity to any action brought against any person by the San
13 Bernardino County District Attorney, the Attorney General of the State of California, or
14 the Attorney General of the United States of America.

15
16 SECTION 5. The Board declares that it would have adopted this ordinance and
17 each section, subsection, sentence, clause, phrase, or portion of it irrespective of the
18 fact that any one or more sections, subsections, clauses, phrases or portions of it be
19 declared invalid and unconstitutional. If for any reason any portion of this ordinance is
20 declared invalid or unconstitutional, then all other provisions of it shall remain valid and
21 enforceable.

22
23 SECTION 6. The Board finds that this ordinance is not subject to environmental
24 review under the California Environmental Quality Act (CEQA) pursuant to Title 14 of
25 the California Code of Regulations Section 15060(c)(2) (the activity will not result in a
26 direct or reasonably foreseeable indirect physical change in the environment) and
27 Section 15060(c)(3) (the activity is not a project as defined in Section 15378) because
28 it has no potential for resulting in physical change of the environment, directly or

1 indirectly.

2

3 SECTION 7. This ordinance shall take effect thirty (30) days from the date of
4 adoption.

5

6

JAMES RAMOS, Chairman
Board of Supervisors

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

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11

LAURA H. WELCH, Clerk of the
Board of Supervisors

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

4 I, LAURA H. WELCH, Clerk of the Board of Supervisors of the County of San
5 Bernardino, State of California, hereby certify that at a regular meeting of the Board of
6 Supervisors of said County and State, held on the _____ day of _____, 2016,
7 at which meeting were present Supervisors: _____

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

10 AYES: SUPERVISORS:
11 NOES: SUPERVISORS:
12 ABSENT: SUPERVISORS:

13 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official
14 seal of the Board of Supervisors this _____ day of _____, 2016.

15 LAURA H. WELCH, Clerk of the
16 Board of Supervisors of the
17 County of San Bernardino,
18 State of California

19 _____
20 Deputy

21 Approved as to Form:

22 JEAN-RENE BASLE
23 County Counsel

24 By: 
25 KENNETH C. HARDY
26 Deputy County Counsel

27 Date: 6/15/16

28