

**ORDINANCE NO. 17-010**

**AN ORDINANCE OF THE COUNTY OF ORANGE, CALIFORNIA,  
ADDING SECTION 7-9-146.14 AND AMENDING SECTION 5-1-31,  
SECTION 5-1-32, AND SECTION 5-1-33 OF THE CODIFIED  
ORDINANCES OF THE COUNTY OF ORANGE RELATED TO  
PROHIBITING COMMERCIAL CANNABIS ACTIVITIES  
AND OUTDOOR PERSONAL CULTIVATION**

**WHEREAS**, in 1996, the voters of the State of California approved Proposition 215 (codified as Health & Safety Code Section 11362.5 *et seq.* and entitled “The Compassionate Use Act of 1996”);

**WHEREAS**, the intent of Proposition 215 was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use without fear of criminal prosecution, in limited, specified circumstances. The ballot arguments supporting Proposition 215 expressly acknowledged that “Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere.”

**WHEREAS**, in 2003, the California Legislature adopted SB 420 (codified as Health and Safety Code Section 11362.7 *et seq.* and entitled the “Medical Marijuana Program Act”) to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified criminal statutes under the Penal Code; and

**WHEREAS**, in 2010 and 2011, the Medical Marijuana Program Act was amended to expressly recognize the authority of counties and cities to adopt “local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to enforce such ordinances; and

**WHEREAS**, in December 2010, the County of Orange adopted Orange County Codified Ordinance sections 5-1-31 to 5-1-33 which prohibited the “the sale or distribution of marijuana or any other controlled substances, as defined herein, under local, state or federal law or which is illegal to sell or distribute under local, state or federal law” and set penalties for the violations thereof; and

**WHEREAS**, in 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, holding that cities have the authority to prohibit medical marijuana uses; and

**WHEREAS**, also in 2013, the Court of Appeal in *Maral v. City of Live Oak*, held that “there is no right – and certainly no constitutional right – to cultivate medical marijuana . . .”

**WHEREAS**, in 2015 the California Legislature adopted the Medical Marijuana Regulation and Safety Act (“MMRSA”) that provided a regulatory framework for medical cannabis for the first time in state history; and

**WHEREAS**, in 2016, the voters of the State of California approved Proposition 64 (codified as Health & Safety Code Section 11362.2, among other provisions, and entitled “The Control, Regulate and Tax Adult Use of Marijuana Act” [“AUMA”]) to legalize the non-medical use of marijuana by persons 21 years of age and over and the personal cultivation of up to six marijuana plants, to create a state regulatory and licensing system governing the commercial cultivation, testing, and distribution of non-medical marijuana, and the manufacturing of non-medical marijuana products; and

**WHEREAS**, in 2017, the Legislature passed Senate Bill No. 94, adopting the “Medicinal and Adult-Use Cannabis Regulation and Safety Act” to establish a comprehensive system to control and regulate the cultivation, distribution, transport, storage, manufacturing, processing and sale of both medicinal cannabis and adult-use cannabis for adults age 21 and over.

**WHEREAS**, under the Federal Controlled Substances Act (codified as 21 U.S.C. Section 801 et seq.), the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

**WHEREAS**, commercial cannabis activities, including cultivation and the presence of dispensaries in the unincorporated area of Orange County can adversely affect the health, safety, and well-being of County residents. Prohibition of commercial cannabis activities is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated cannabis cultivation and other commercial cannabis activities, and that are especially significant if the amount of cannabis cultivated, sold, manufactured, or tested, on a single premises is not regulated and substantial amounts of cannabis are thereby allowed to be concentrated in one place; and

**WHEREAS**, cannabis plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors; and

**WHEREAS**, the strong smell of cannabis creates an attractive nuisance, alerting persons to the location of the valuable plants and products, and creating a risk of burglary, robbery or armed robbery; and

**WHEREAS**, the California Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of cannabis in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

**WHEREAS**, based on the experiences of other counties and cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the County due to the establishment and operation of cannabis cultivation, processing and distribution uses, manufacturing and testing, and cannabis dispensaries; and

**WHEREAS**, the Board of Supervisors wishes to reaffirm the existing prohibition on the

sale and distribution of cannabis within unincorporated Orange County; and

**WHEREAS**, the Board of Supervisors further wishes to prohibit the commercial cultivation of cannabis, and other commercial cannabis activities, as defined herein, including manufacturing, laboratory testing, delivery and distribution of cannabis, whether for medical or non-medical purposes ; and

**WHEREAS**, the Board of Supervisors further wishes to prohibit the outdoor personal cultivation of cannabis to the extent permitted by state law; and

**NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF ORANGE DOES ORDAIN AS FOLLOWS:**

SECTION 1. Section 7-9-146.14 is hereby added to the County of Orange Codified Ordinances to read in its entirety as follows:

Sec. 7-9-146.14. – County of Orange Commercial Cannabis Activities and Outdoor Personal Cultivation Prohibition Ordinance

(a) Definitions. For the purposes of this section, the following definitions shall apply:

- (1) “Cannabis” or “Marijuana” means 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 cannabis. “Cannabis” also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. The term “cannabis” shall also have the same meaning as set forth in Section 19300.5(f) of the California Business and Professions Code, as may be amended from time to time. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, “cannabis” does not mean “industrial hemp” as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.
- (2) “Cannabis cultivation” shall mean any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis, and shall also include the possession, manufacturing, processing, storing, laboratory testing, transporting, distribution, delivery, or sale of cannabis, whether all or any combination of those activities, and whether for medical or non-medical purposes or sale.
- (3) “Cannabis dispensary” shall mean a facility or location, whether fixed or mobile, where 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 “dispensary” by Business and Professions Code section 19300.5, as enacted, or as hereafter amended. Cannabis dispensary or marijuana dispensary shall also mean “Retailer” and “Distributor” and “Microbusiness” as defined by Business and Professions Code section 26070, as enacted, or as hereafter amended.

- (4) “Commercial Cannabis activity” includes the cultivation, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products whether for medical or non-medical purposes.
- (5) “Commercial cannabis cultivation” or “Commercial marijuana cultivation” shall mean cannabis cultivation, as defined in this section, for commercial use or purposes, and whether for medical or non-medical purposes. For the purpose of this subsection, “processing” (as contained in the definition of cannabis cultivation) shall mean any method used to prepare cannabis or its by-products for commercial retail and/or wholesale sale, including without limitation drying, cleaning, curing, packaging, and extraction of active ingredients to create cannabis products or cannabis-related products and concentrates.
- (6) “Cannabis products” shall mean cannabis that has undergone a process whereby the plant material has been transformed into concentrate, including, but not limited to, concentrated cannabis, edible or topical product containing cannabis or concentrated cannabis and other ingredients.
- (7) “Delivery” shall mean the commercial transfer of cannabis or cannabis products to a customer whether for medical or non-medical purposes. “Delivery” also includes the use by a retailer of any technology platform owned and controlled by the retailer.
- (8) “Distribution” means the procurement, sale, and transport of cannabis and cannabis products between licensees whether for medical or non-medical purposes.
- (9) “License” means a state license issued under the Medicinal and Adult-Use Cannabis Regulation and Safety Act, Business and Professions Code, section 26000, et seq.
- (10) “Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product whether for medical or non-medical purposes.
- (11) “Manufacturer” means the production, preparation, propagation, or compounding of 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 at a fixed location that packages or repackages cannabis or cannabis products, or labels or relabels its container.
- (12) “Operation” means any act encompassing commercial cannabis activity, as defined herein, or any commercial transfer of cannabis or cannabis products.

- (13) “Personal cannabis cultivation” or “Personal marijuana cultivation” shall mean cannabis cultivation for personal use, medicinal use, or purposes in accordance with all applicable state laws.
- (14) “Testing Laboratory” means a laboratory, facility or entity that offers or performs tests of cannabis or cannabis products.

(b) Prohibited activities.

- (1) A cannabis dispensary, as defined in this chapter, is expressly prohibited and not an allowable activity within any zoning district within unincorporated areas of Orange County.
- (2) Commercial cannabis cultivation, as defined in this chapter, is expressly prohibited and not an allowable activity within any zoning district within unincorporated areas of Orange County.
- (3) Delivery services may not locate their distribution center within any zoning district within unincorporated areas of Orange County.
- (4) A Manufacturer, as defined in this chapter, is expressly prohibited and not an allowable activity within any zoning district within unincorporated areas of Orange County.
- (5) Testing Laboratories, as defined in this chapter, are expressly prohibited and not an allowable activity within any zoning district within unincorporated areas of Orange County.
- (6) Personal cannabis cultivation, as defined in this chapter, shall not exceed the number of living plants permitted by California Health and Safety Code Sections 11362.1 and 11362.2. Personal cannabis cultivation is limited solely to inside a person’s private residence, or inside an accessory structure to a private residence located on the grounds of the private residence, that is fully enclosed and secure. Personal cannabis cultivation is expressly prohibited outdoors upon the grounds of any private residence or any other outdoor location within unincorporated.

(c) Public Nuisance.

Any activity or condition caused, or permitted to exist, in violation of any provision of this chapter shall be, and is hereby declared to be, a public nuisance and may be summarily abated by the County pursuant to Section 731 of the California Code of Civil Procedure or any other remedy available at law.

(d) Violations.

- (1) In addition to any other remedies permitted by this chapter or available at law,

the County Counsel may bring a civil action for injunctive relief and civil penalties against any person who violates any provision of this chapter. In any civil action that is brought pursuant to this chapter, a court of competent jurisdiction may award civil penalties and costs to the prevailing party.

- (2) Any violation of this chapter shall be a misdemeanor, punishable as provided by state law.

SECTION 2. Section 5-1-31 of the County of Orange Codified Ordinances is hereby amended to read in its entirety as follows:

Sec. 5-1-31.- Sale, distribution, commercial cultivation, delivery, manufacturing, and testing of cannabis or any other controlled substances.

- (a) Notwithstanding any other provision of this Code, no permit, license or other discretionary approval will be issued by the County of Orange, pursuant to any applicable section of the Orange County Codified Ordinances, or otherwise, that would permit the sale, distribution, commercial cultivation, manufacturing, and testing of cannabis or any other controlled substances, as defined herein, under local, state or federal law or which is illegal to sell or distribute under local, state or federal law.
- (b) This section does not prohibit the issuance of permits, licenses, or approvals, which are otherwise expressly permitted under local, state or federal law.
- (c) For the purposes of Sections 5-1-31 through 5-1-33 of this Code, the term "cannabis" shall have the same meaning as set forth in Section 7-9-146.14 of this Code, and shall mean "marijuana" as set forth in California Health and Safety Code Section 11018 and shall apply to cannabis used for any purpose, including medical.
- (d) For the purposes of Sections 5-1-31 through 5-1-33 of this Code, the term "controlled substance(s)" shall mean any drug or chemical substance whose possession and use are illegal under local, state or federal law.

SECTION 3. Section 5-1-32 of the County of Orange Codified Ordinances is hereby amended to read in its entirety as follows:

Sec. 5-1-32.- Businesses selling, distributing, commercially cultivating, manufacturing, and testing cannabis or any other controlled substances.

- (a) No person shall operate, maintain, conduct, facilitate, or permit any business, activity, or use involving the sale, distribution, commercial cultivation, manufacturing, and testing of cannabis or any other controlled substances, as defined in Section 5-1-31(c) of this Code, under local, state or federal law or which is illegal to sell or distribute under local, state or federal law.
- (b) In addition to any penalties set forth in Section 1-1-34 of this Code, violation of this

section shall be punishable with a civil fine as set forth in Section 5-1-33.

SECTION 4. Section 5-1-33 of the County of Orange Codified Ordinances is hereby amended to read in its entirety as follows:

Sec. 5-1-33. - Civil fine; businesses selling or distributing cannabis or any other controlled substances.

- (a) Notwithstanding any other Code section or resolution on the subject, violation of section 5-1-32 of this Code shall be subject to a fine of one thousand dollars (\$1,000.00) per day that a business, activity, or use operates in violation of section 5-1-32, and may be processed as set forth in section 1-1-40.15 of this Code.
- (b) Interest shall accrue on delinquent fines and penalties at the rate of ten (10) percent for fines not paid within thirty (30) days of their due date.

SECTION 5. The Board of Supervisors finds that this Ordinance is exempt from the California Environmental Quality Act (CEQA) because this activity is not a project pursuant to Sections 15060(c)(2), 15060(c)(3), 15061(b)(3), and 15378(a) of the State CEQA Guidelines. This activity has no potential to result in physical change in the environment, directly or indirectly. Alternatively, the activity is exempt from the requirements of CEQA because it is covered by the general rule that CEQA applies only to activities that have the potential for causing a significant effect on the environment; and here, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect or physical change to the environment.

SECTION 6. If any portion of this Ordinance, or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this Ordinance to the extent it can be given effect, of the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this Ordinance are severable.

SECTION 7. This Ordinance shall take effect and be in full force thirty (30) days from and after its passage, and before the expiration of fifteen (15) days after the passage thereof shall be published once in an adjudicated newspaper in the County of Orange.

THE FOREGOING was PASSED and ADOPTED by the following vote of the Orange County Board of Supervisors on December 05, 2017, to wit:

AYES: Supervisors: ANDREW DO, TODD SPITZER, LISSA A. BARTLETT,  
MICHELLE STEEL  
NOES: SHAWN NELSON  
EXCUSED:  
ABSTAINED:

\_\_\_\_\_/S/  
Robin Stieler, Clerk of the Board of Supervisors, Orange County, California