

CHAPTER 84.34: COMMERCIAL CANNABIS ACTIVITY

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§ 84.34.010 Purpose.

The purpose of this Chapter is to prohibit, to the maximum extent allowed under State law, 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, Business and Professions Code §§ 19300 *et seq.*, Government Code §§ 25845, 53069.4, and 65850, and Health and Safety Code §§ 11362.83 and 11362.768(f).

(Ord. 4309, passed - -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 the Development Code or elsewhere within the County 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 § 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 Business and Professions Code § 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 § 19300.5, as currently enacted or hereafter amended.

(i) **DISTRIBUTION.** The procurement, sale, and transport of cannabis or cannabis products between entities or facilities. Distribution does not include such transactions if done directly to an individual end-user.

(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 or Special District with the authority to enforce any provision of the County 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 California Department of Public Health that identifies a person authorized under California law 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 § 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 §§ 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 facilities, transitional housing, or any other use subject to the Transient Occupancy Tax as provided in § 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 § 11362.7, as currently enacted or hereafter amended.

(r) **QUALIFIED PATIENT.** A person entitled to the protections of Health and Safety Code § 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 Business and Professions Code § 19300.5, as currently enacted or hereafter amended.

(Ord. 4309, passed - -2016)

§ 84.34.030 Prohibition of Commercial Cannabis Activity.

Except as expressly provided by §§ 84.34.040 and 83.34.050, commercial cannabis activity shall not 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 by Federal or State law.

(Ord. 4309, passed - -2016)

§ 84.34.040 Exemption for Cultivation by Specified Persons.

Notwithstanding § 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 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 § 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 cannabis plants per person with an identification card or primary caregiver per private residence; and,
 - (2) An aggregate total of 24 cannabis plants per private residence when more than one person with an identification card or primary caregiver lives 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 distinct 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 County Code, including, but not limited to, the building, safety, and technical codes and requirements relevant 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 residential arrangements.

(k) 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 include the property owner's express consent to the cultivation of cannabis within the residence, and 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.

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

(m) 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 product.

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

(o) 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.

(p) If, after the adoption of this Chapter, any Federal or State law is passed which requires the County to allow the cultivation of cannabis by any persons not included within the exemption stated above, the exemption shall be expanded to include those persons specifically identified by said Federal or State law, upon the date the law becomes effective. Any plant limitations imposed by said Federal or State law, if in an amount less than specified in this Section, shall apply to the additional exempted persons. All other provisions of this Section shall apply to the additional exempted persons. It is the intent of this provision that the cultivation of cannabis within the unincorporated areas of the County is as restrictive as allowed under State law.

(Ord. 4309, passed - -2016)

§ 84.34.050 Exemption for Primary Caregiver Affiliated with Licensed Facility.

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

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

(2) A health care facility licensed pursuant to Chapter 2 (commencing with § 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 § 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 § 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 § 1725) of Division 2 of the Health and Safety Code.

(b) Before commencing a commercial cannabis activity, operators of those entities or facilities listed above shall register with the Land Use Services Department, 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 facility or entity listed above shall conduct outdoor cultivation of cannabis.

(Ord. 4309, passed - -2016)

§ 83.04.060 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.

(Ord. 4309, passed - -2016)

§ 83.04.070 Application with other laws.

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

(Ord. 4309, passed - -2016)