

ORDINANCE NO. 1568

**AN ORDINANCE CREATING CHAPTER 7.41
COMMERCIAL CANNABIS ACTIVITIES**

The following ordinance consisting of three (3) sections was duly and regularly passed and adopted by the Board of Supervisors of the County of Yuba, State of California, at a regular meeting of the Board of Supervisors held on the 14 day of, November 2017 by the following vote:

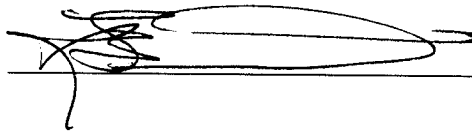
AYES: Supervisors Vasquez, Bradford, Fletcher

NOES: None

ABSENT: Supervisor Lofton

ABSTAIN: Supervisor Leahy

Chairperson of the Board of Supervisors County of
Yuba, State of California



ATTEST: Donna Stottlemeyer
Clerk of the Board of Supervisors

Rachael Ferraris, Deputy Clerk

APPROVED AS TO FORM:
Courtney Abril, County Counsel

Courtney C. Abril

**THE BOARD OF SUPERVISORS OF THE COUNTY OF YUBA, STATE OF CALIFORNIA
DOES ORDAIN AS FOLLOWS:**

Section 1. This ordinance shall take effect thirty (30) days after its passage, and before the expiration of fifteen (15) days after its passage a summary shall be published with the names of the members voting for and against the same, once in a local newspaper of general circulation in the County of Yuba, State of California.

Section 2. Chapter 7.41 of Title VII of the Yuba County Ordinance Code is hereby created and reads as follows:

CHAPTER 7.41

COMMERCIAL CANNABIS ACTIVITIES

Sections

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ARTICLE I

GENERAL PROVISIONS

7.41.100 Authority

Pursuant to authority granted by Article XI Section 7 of the California Constitution, Sections 11362.2(b)(1) and 11362.83(c) of the California Health and Safety Code, Section 25845 of the California Government Code, and section 26200 of the California Business and Professions Code the Yuba County Board of Supervisors does hereby enact this Chapter.

7.41.110 Purpose & Intent

The purpose and intent in adopting this Chapter is to acknowledge State law as it relates to

commercial cannabis activities, to state the County's position on this topic, and to establish regulations in order to reduce conditions that create public nuisances. Nothing in this Chapter shall be construed to authorize any use, possession, cultivation, manufacture, transportation, or distribution of cannabis in violation of state or federal law regulating such activities.

7.41.120 Findings

- A. The Federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., classifies cannabis (marijuana) as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision.
- B. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for medical purposes.
- C. Division 10 of the California Health and Safety Code, Uniform Substance Control Act, makes it unlawful, under State law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana.
- D. In 1996, the voters of the State of California approved Proposition 215, "The Compassionate Use Act", (codified as Health and Safety Code Section 11362.5) which was intended to decriminalize cultivation and possession of medical marijuana by a seriously ill patient, or the patient's primary caregiver, for the patient's personal use, and to create a limited defense to the crimes of possessing or cultivating marijuana. The Act further provided that nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.
- E. The State enacted SB 420 in 2004 (known as the "Medical Marijuana Program Act", codified as Health and Safety Code Section 11362.7 et seq.) to expand and clarify the scope of The Compassionate Use Act of 1996 by creating the Medical Marijuana Identification Card program, creating reasonable regulations for cultivating, processing, transporting and administering marijuana, as well as limiting the amount marijuana a qualified individual may possess. The Medical Marijuana Program Act defines a "primary caregiver" as an individual who is designated by a qualified patient or by a person with an identification card, and who has consistently assumed responsibility for the housing, health, or safety of that patient or person and is further defined in the California Supreme Court decision *People v. Mentch* (2008) 45 Cal.4th 274.
- F. In 2015 the State enacted AB243, AB266 and SB643 (known as the Medical Cannabis Regulation and Safety Act or "MCRSA"). The three bills created the Bureau of Medical Marijuana Regulation to oversee commercial activities related to the cultivation, testing, manufacturing, distribution and dispensing of medical marijuana in conjunction with the Department of Food and Agriculture and the Department of Public Health. The MCRSA also established the regulatory framework for licensing each activity associated with commercial medical marijuana, including authorizing local jurisdictions to also license and regulate commercial activities related to medical cannabis, while preserving a local

- jurisdiction's ability to further regulate personal use medicinal marijuana up to and including a complete ban.
- G. In 2016, the voters of the State of California approved Proposition 64, The Adult Use of Marijuana Act (AUMA) which, among other things, legalizes marijuana cultivation, possession and use for those 21 years of age, and older, for personal non-medical use with some limitations. The Act further provides the regulatory framework to license, regulate, and tax non-medical cannabis for commercial activities through a variety of State Agencies with the ultimate oversight lying with the Bureau of Cannabis Regulation – formerly the Bureau of Medical Marijuana Regulation. The AUMA also authorizes local jurisdictions to further regulate, license and tax commercial cannabis activities, including allowing the reasonable regulation of personal use non-medical marijuana.
 - H. In 2017 the State enacted SB94, commonly called the “Cannabis Trailer Bill”. SB 94 attempted to reconcile outstanding issues between the bills that created the Medical Cannabis Regulation and Safety Act or “MCRSA” and Proposition 64, The Adult Use of Marijuana Act (AUMA) and created the Medicinal and Adult-Use Cannabis Regulation and Safety Act.
 - I. SB 94 created the Bureau of Cannabis Control, which among other duties, is tasked with implementation of regulations consistent with the Medicinal and Adult-Use Cannabis Regulation and Safety Act.
 - J. SB 94 created a definition for commercial cannabis activities, codified in Section 26001 of the Business and Professions Code.
 - K. In June of 2016, the voters of Yuba County voted down Measure A, “The Yuba County Medical Marijuana Cultivation Act of 2015”, which proposed allowing outdoor cultivation and in greater quantity than the County Code allowed.
 - L. In June of 2016, the voters of Yuba County voted down Measure B, “The Patients Access to Regulated Medical Cannabis Act of 2015”, which proposed licensed medical marijuana dispensaries.
 - M. In November of 2016, the voters of Yuba County voted down Measure E, “Cannabis Cultivation & Commerce”, which proposed an ordinance for commercial medical cannabis activities.
 - N. In November of 2016, the voters of Yuba County voted down Proposition 64 however the Proposition was approved statewide.
 - O. Unregulated commercial cannabis activities, including cultivation, in the unincorporated area of Yuba County can adversely affect the health, safety, and well-being of the County, its residents and environment. Comprehensive regulation of commercial cannabis activities is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, fire hazards, and other hazards that may result from unregulated activities.
 - P. There are not currently well-established commercial cannabis regulations statewide. The Bureau of Cannabis Control is rapidly developing regulations to meet a January 1, 2018, deadline in order to implement statewide commercial cannabis licensing; however, effectiveness of the regulations' implementation is uncertain due to a variety of factors including it being a new industry being regulated and a new statewide Bureau providing the regulations.

- Q. Outdoor cannabis cultivation is creating devastating impacts to California's surface and groundwater resources. The State Water Resources Control Board, the North Coast Regional Water Quality Control Board, the Central Valley Regional Water Quality Control Board and the Department of Fish and Wildlife have seen a dramatic increase in the number of marijuana gardens and corresponding increases in impacts to water supply and water quality, including the discharge of sediments, pesticides, fertilizers, petroleum hydrocarbons, trash and human waste. These devastating impacts are the result of unpermitted and unregulated timber clearing, road development, stream diversion for irrigation, land grading, and temporary human occupancy without proper sanitary facilities.
- R. The immunities from certain prosecution provided to qualified patients and their primary caregivers under State law to cultivate medical cannabis plants for medical purposes, as well as the legalization of cannabis cultivation for personal recreational use does not confer the right to create or maintain a public nuisance. By adopting the regulations contained in this Chapter, the County will achieve a significant reduction in the risks of fire, crime and pollution caused or threatened by unregulated commercial cannabis activities in the unincorporated area of Yuba County.
- S. Nothing in this Chapter shall be construed to allow the use of cannabis for medical or non-medical purposes, or to allow any activity relating to the cultivation, manufacture, transportation, distribution, or consumption of marijuana that is otherwise illegal under State law or 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 County of Yuba, Yuba County District Attorney, the Attorney General of State of California, or the United States of America.
- T. In *Browne v. County of Tehama*, 213 Cal. App. 4th 704 (2013), the California Court of Appeal stated that "Neither the Compassionate Use Act nor the Medical Marijuana Program grants . . . anyone . . . an unfettered right to cultivate marijuana for medical purposes. Accordingly, the regulation of cultivation of medical marijuana does not conflict with either statute." Similarly, in *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.*, 56 Cal. 4th 729 (2013), the California Supreme Court concurred that "Nothing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land . . ." Additionally, in *Maral v. City of Live Oak* (2013), 221 Cal.App. 4th 975, 983, review denied 2014 Cal. LEXIS 2402 (March 26, 2014), the same Court of Appeal held that "there is no right—and certainly no constitutional right—to cultivate medical marijuana . . ." The Court in *Live Oak* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.
- U. State law authorizes a person 21 years, or older, to possess, process, transport, purchase, obtain, or give away, without any compensation whatsoever, not more than 28.5 grams of marijuana not in the form of concentrated cannabis and not more than 8 grams of concentrated cannabis for personal medical and/or non-medical use.
- V. State law authorizes a person 21 years, or older, to possess, plant, cultivate, harvest, dry, or process not more than 6 (six) living cannabis plants for personal use and possess the cannabis produced by the plants.

7.41.130 Scope

The provisions of this Chapter shall apply generally to all commercial cannabis activities throughout the unincorporated area of the County of Yuba.

7.41.140 No Vested Rights

The provisions contained in this Chapter shall supersede any previous regulations related to commercial cannabis activities. No person, firm, corporation or entity shall have any vested right to engage in any commercial cannabis activities in any manner that is contrary to or inconsistent with the provisions contained herein.

7.41.150 Responsibilities

- A. Regardless of whether an owner is in actual possession of his or her real property, it is the duty of every owner of real property within the unincorporated area of Yuba County to prevent a public nuisance from arising on, or from existing upon, his or her real property.
- B. No person or entity shall cause, permit, maintain, conduct or otherwise allow a public nuisance as defined in this Chapter to exist upon any property within their control; nor shall any person or entity cause a public nuisance to exist upon any other property within the unincorporated limits of the County of Yuba. It shall be the duty of every owner, occupant, or person that controls any land or interest therein within the unincorporated area of the County of Yuba to remove, abate and prevent the reoccurrence of any public nuisance upon such land.

7.41.160 Private Right of Action

Nothing contained in this Chapter shall be construed to prohibit the right of any person or public or private entity damaged by any violation of this Chapter to institute a civil proceeding for injunctive relief against such violation, for money damages, or for whatever other or additional relief the court deems appropriate. The remedies available under this Chapter shall be in addition to, and shall not in any way restrict other rights or remedies available under law.

ARTICLE 2 DEFINITIONS

7.41.200 Definitions

Except where the context otherwise requires, the following definitions shall govern the construction of this Chapter:

- A. "Cannabis" 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; or any 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" 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 11018.5 of the Health and Safety Code.

- B. "Code" means the Yuba County Ordinance Code.
- C. "Code Enforcement Officer" means any person employed by the County of Yuba and appointed to the position of code enforcement officer.
- D. "Commercial Cannabis Activities" means all activities as defined in Section 26001 of the Business and Professions Code including the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis or cannabis products, and including all activities related to cannabis that are not considered Personal Use.
- E. "Costs of Enforcement" or "Enforcement Costs" means all costs, direct or indirect, actual or incurred related to the performance of various administrative acts required pursuant to the enforcement of this Chapter, which include but are not limited to: administrative overhead, salaries and expenses incurred by County Officers, site inspections, investigations, notices, telephone contacts and correspondence, conducting hearings, as well as time expended by County staff in calculating the above expenses. The costs also include the cost of time and expenses associated with bringing the matter to hearing, the costs associated with any appeals from any decision rendered by any hearing body, the costs of judicially abating a violation and all costs associated with removing, correcting or otherwise abating any violation including administrative penalties of this Chapter.
- F. "County" means the County of Yuba.
- G. "Cultivation" for the purpose of this Chapter, means any activity involving the planting, growing, harvesting, drying, curing, grading, trimming, processing, or storage of one or more cannabis plants or any part thereof.
- H. "Enforcement Official" means the Code Enforcement Officer or the Sheriff, or the authorized deputies or designees of either, each of whom is independently authorized to enforce this Chapter.
- I. "Parcel" means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (commencing with Section 66410 of the Government Code) and also means parcels that are described, recorded and kept in official County records specifically including documents and maps used by the County Assessor's Office, the County Tax Collector's Office and the County Recorder's Office.
- J. "Personal Use" for this Chapter means a person 21 years, or older who, for purposes of personal use only, possesses, processes, transports, purchases, obtains, or gives away without any compensation or consideration in return, not more than 28.5 grams of cannabis not in the form of concentrated cannabis and not more than 8 grams of concentrated cannabis. Personal Use for this Chapter includes a person 21 years or older who, for purposes of personal use, possesses, plants, cultivates, harvests, dries, or processes not more than 6 (six) living cannabis plants and possesses the cannabis produced by those 6 (six) plants. The restrictions on Personal Use as it relates to the 6 (six) plants referenced in the foregoing sentence means any combination of permitted Personal Use activities. Nothing in this section shall be construed to allow any person or entity to possess, plant, cultivate, harvest, dry, or process – in any combination – more than 6 (six) cannabis plants, either alive or dead.

- K. "Sheriff" or "Sheriff's Office" means the Yuba County Sheriff's Office or the authorized representatives thereof.

ARTICLE 3 RESTRICTIONS AND REQUIREMENTS

7.41.300 Commercial Cannabis Activities

All commercial cannabis activities as defined in this Chapter are prohibited within the unincorporated areas of the County of Yuba.

ARTICLE 4 PUBLIC NUISANCE

7.41.400 Conditions Creating Public Nuisance

A public nuisance shall be deemed to exist when any of the following conditions or circumstances is present:

- A. Any commercial cannabis activities as defined in this Chapter.

ARTICLE 5 ENFORCEMENT

7.41.500 Enforcement Authority

The Office of the Yuba County Sheriff and/or the Director of the County Department that has been assigned responsibility for administration of Code Enforcement services are hereby designated to enforce this Chapter.

7.41.510 Right of Entry/Inspection

To enforce the provision of this Code, an Enforcement Officer may at a reasonable time request inspection of any parcel suspected of commercial cannabis activities. If the person owning or occupying the parcel refuses the request for an inspection, the Enforcement Officer shall have recourse to every remedy provided by law to secure entry, including obtaining an inspection warrant.

7.41.520 Violations

- A. It is unlawful and a violation of this Chapter for any person to permit a public nuisance to exist upon real property in which such person has an ownership or possessory interest.
- B. It shall be unlawful and a violation of this Chapter to do anything in contrary to the guidelines set forth in this Chapter.
- C. Each person violating this Chapter shall be guilty of a separate offense for each and every

day, or portion thereof, which any violation of any provision of this Chapter is committed, continued, or permitted by any such person. Any violation which persists for more than one day is deemed a continuing violation.

7.41.530 Remedies

- A. Any violation of this Chapter may be deemed a public nuisance and is subject to the enforcement process as outlined in Chapter 7.40 of this Code.
- B. Nothing herein shall be read, interpreted or construed in any manner so as to limit any existing right or power of the County of Yuba or any other governmental entity to enforce County ordinances, to abate any and all nuisances, or employ any remedy available at law or equity.
- C. Issuance of a warning shall not be a requirement prior to using any enforcement provision of this Code. Violations are not tiered and are subject to enforcement without warning.
- D. The remedies provided in this Chapter are cumulative to all other remedies now or hereinafter available to abate or otherwise regulate or prevent violations related to commercial cannabis activities.

Section 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.