

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA
Certified copy of portion of proceedings, Meeting of October 17, 2017

**INTERIM ORDINANCE ESTABLISHING A TEMPORARY PROHIBITION OF
COMMERCIAL CANNABIS ACTIVITIES IN SUPPORT OF MEDICINAL OR ADULT USES,
INCLUDING CULTIVATION, PROCESSING, DISTRIBUTION, MANUFACTURING, OR
SALE WITHIN THE COASTAL ZONE OF THE UNINCORPORATED AREA OF HUMBOLDT
COUNTY, AND DECLARING THE URGENCY THEREOF.**

ORDINANCE NO. 2583

WHEREAS, the State of California enacted the Medical Marijuana Regulation and Safety Act (MMRSA) on October 9, 2015, establishing regulations for the commercial cultivation, distribution, manufacturing, testing, transportation, and sale of medical marijuana, subject to local land use regulation. MMRSA was subsequently amended and renamed the Medical Cannabis Regulation and Safety Act (MCRSA) by SB 837, on June 26, 2016.

WHEREAS, on January 26, 2016, the County of Humboldt adopted Ordinance No. 2544, the Commercial Medical Marijuana Land Use Ordinance (CMMLUO), to establish land use regulations governing the commercial cultivation, processing, distribution, and manufacturing of cannabis for medical use in both the Coastal Zone and Inland Areas of the County. On September 13, 2016, the County of Humboldt adopted Ordinance No. 2559, making clarifying and corrective amendments to the CMMLUO.

WHEREAS, on July 19, 2016, the County of Humboldt adopted Ordinance No. 2554, establishing land use regulations for Medical Cannabis Dispensaries and Testing Facilities in both the Coastal Zone and Inland Areas of the County.

WHEREAS, the Coastal Zone provisions of Ordinance Nos. 2554 and 2559 only take effect after they have been certified by the California Coastal Commission as in conformance with the Coastal Act. (Pub. Res. Code § 30514.) The ordinances were submitted by the County to the Coastal Commission on December 31, 2016. Certification is pending with no known date when certification may be completed.

WHEREAS, on November 8, 2016, the voters of the State of California passed Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA) to authorize and regulate the commercial cultivation, distribution, manufacturing, testing, transportation, and sale of marijuana for persons 21 years of age or older.

WHEREAS, on December 13, 2016, the County of Humboldt adopted Ordinance No. 2567, the Commercial Marijuana Cultivation Tax, after approval by the voters on November 8, 2016. The tax is only collected from cannabis cultivation sites that have received local permits pursuant to the CMMLUO. No tax can be collected from commercial cannabis cultivation sites located in the Coastal Zone until the Coastal Zone provisions of the CMMLUO are certified by the Coastal Commission.

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WHEREAS, on June 27, 2017, the State of California adopted a comprehensive statute to integrate MCRSA and AUMA for the regulation of commercial medicinal and adult use cannabis cultivation, distribution, manufacturing, testing, and sale known as the Medicinal and Adult Use Cannabis Regulation and Safety Act (SB 94), Statutes of 2017, chapter 27, Business and Professions Code Section 26000, et seq.. State licensing authorities are the Department of Food and Agriculture for cultivation, the Department of Public Health for manufacturing, and the Bureau of Cannabis Control in the Department of Consumer Affairs for all other commercial cannabis activity license types. None of the licensing authorities have as yet published comprehensive regulations that include both medicinal and adult use commercial cannabis activities. SB 94 authorizes licensing authorities to adopt emergency regulations, which do not require prior notice and public comment.

WHEREFORE, the Board of Supervisors of the County of Humboldt hereby finds as follows:

1. The relationship between local land use permitting and state licensing of commercial cannabis activities remains uncertain with respect to local regulations adopted by counties and cities for commercial cannabis activities in the Coastal Zone that are not yet effective because they have not been certified by the Coastal Commission. Local governments are authorized to prohibit most commercial cannabis activities or to adopt local regulations requiring issuance of a local permit. (Bus. & Prof. Code § 26200.) Pursuant to Business and Professions Code Section 26055 (d), state licensing authorities shall not approve an application for a state license if it will violate the provisions of any local ordinance or regulation. However, officials of some state licensing authorities have indicated that they intend to issue commercial cannabis activity licenses for locations where there is no local ordinance in effect that either prohibits the activity or imposes a local permit requirement.
2. Humboldt County desires to retain full local control of commercial cannabis activities in all areas of the County, including in the unincorporated areas of the County within the Coastal Zone, in order to assure the full protection of the public health, safety, and welfare with regard to the social, environmental, and economic impacts of commercial cannabis activities, including the ability to assess and collect the Commercial Marijuana Cultivation Tax from persons engaged in commercial cannabis cultivation uniformly throughout all areas of the County. State licensed commercial cannabis cultivation sites in the Coastal Zone without local permits would not be subject to the County of Humboldt's Cannabis Cultivation Tax until local permits can be issued.
3. Humboldt County Code Section 311-10.1 provides that no land, building, structure or premises shall be used for any purpose or in any manner other than is included among the uses hereinafter listed [in the Zoning Ordinance] as permitted in the zone in which such buildings, land or premises is located. Within the Coastal Zone of the unincorporated area of Humboldt County the only use related to cannabis in the Humboldt County Code that has been certified by the Coastal Zone is indoor cultivation for personal use pursuant to Humboldt County Code Section 313-55.1, (Ord. No. 2468, 12/13/2011, eff. 3/9/12.) Commercial cannabis activities pursuant to SB 94 are therefore prohibited within the Coastal Zone of the unincorporated area of Humboldt County, until such

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time as the Coastal Commission certifies zoning ordinance amendments as being in conformance with the Coastal Act. However, to avoid any uncertainty, an urgency ordinance adopted in accordance with Government Code Section 65858 to explicitly prohibit commercial cannabis activities in the Coastal Zone, until such time as the Coastal Commission can certify Humboldt County ordinances regulating such activity, is reasonably necessary to ensure that Humboldt County regulations needed to protect the public health, safety and welfare are not avoided through state licensing in the interim.

4. Public Resources Code Section 30005 of the Coastal Act states that no provision of the Coastal Act, except as otherwise limited by state law, is a limitation on the power of a county to adopt or enforce additional regulations, not in conflict with the act, imposing further conditions, restrictions, or limitations with respect to any land or water use or other activity which might adversely affect the resources of the coastal zone, or on the power of any county to declare, prohibit, and abate nuisances. An interim ordinance prohibiting commercial cannabis activities within the unincorporated area of the Coastal Zone of Humboldt County is not in conflict with the Coastal Act because it protects resources of the coastal zone until such time as the Coastal Commission can certify zoning regulations that permit such activities are in conformance with the requirements of the Coastal Act.
5. An interim ordinance prohibiting commercial cannabis activities within the unincorporated area of the Coastal Zone of Humboldt County is not subject to the California Environmental Quality Act (CEQA) because the activity is not a project as defined by Section 15378 of the CEQA guidelines. The ordinance has no potential for resulting in physical change to the environment either directly or indirectly. Furthermore, pursuant to Section 15060(c) (2) of the CEQA Guidelines the prohibition of commercial cannabis activity within the Coastal Zone of the unincorporated area of the County of Humboldt is exempt because it will not result in a direct or reasonably foreseeable indirect physical change in the environment.
6. Pursuant to Government Code Section 65858, an interim zoning ordinance prohibiting any uses that may be in conflict with a zoning proposal to regulate commercial cannabis activities that the Planning Commission and Board of Supervisors is currently studying may be adopted as an urgency measure.
7. This interim ordinance is necessary to be adopted as an urgency measure in that there is a current and immediate threat to the public health, safety, and welfare from the potential establishment of commercial cannabis activities that are located within the Coastal Zone in the unincorporated area of the County and that have not obtained local permits from the County of Humboldt, for the reasons more fully set forth in the above findings.
8. The interim ordinance meets the requirements for adoption of a zoning ordinance established by Humboldt County Code Section 312-50, and is consistent with the Humboldt County Framework General Plan for the reasons more fully set forth in Resolution No. 17-84.

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

SECTION 1. Section 313-54 is hereby added to Title III, Chapter 3 of the Humboldt County Code as follows:

313-54 PROHIBITION OF COMMERCIAL CANNABIS ACTIVITIES IN THE COASTAL ZONE

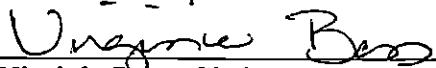
All commercial cannabis activities, including cultivation, processing, manufacturing, testing, distribution or sale, which might otherwise be conducted pursuant to the Medicinal and Adult Use Cannabis Regulation and Safety Act, or any other state statute, within the Coastal Zone of the unincorporated area of the County of Humboldt are prohibited, except where expressly authorized for person, non-commercial use. Any building or use operated or maintained contrary to the provisions of this Section shall be and is hereby declared to be a public nuisance and shall be subject to injunction and abatement.

SECTION 2. DECLARATION OF URGENCY - EFFECTIVE PERIOD

This interim ordinance is hereby declared to be an urgency ordinance for the immediate preservation of the public health, safety and welfare of the County of Humboldt and it shall take effect immediately upon its adoption for the reasons more fully set forth in the above findings. Pursuant to Government Code Section 65858, this ordinance shall be in full force and effect for forty-five (45) days from the date of its adoption, unless, following a public hearing noticed pursuant to Government Code Section 65090 and four-fifths vote of its members, the Board of Supervisors extends the ordinance until such time as Humboldt County ordinances regulating Commercial Cannabis Activities in the Coastal Zone can be certified by the California Coastal Commission as in conformance with the Coastal Act and fully take effect, or the maximum period authorized by Government Code Section 65858, whichever shall occur first.

PASSED, APPROVED AND ADOPTED this 17th day of October, 2017 on the following vote, to wit:

AYES: Supervisors Fennell, Bass, Wilson, Sundberg, Bohn
NOES: Supervisors --
ABSENT: Supervisors --



Virginia Bass, Chair
Board of Supervisors of the County of Humboldt,
State of California

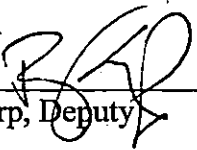
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(SEAL)

ATTEST:

Kathy Hayes, Clerk of the Board of Supervisors
of the County of Humboldt, State of California

By: _____


Ryan Sharp, Deputy