

BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN JOAQUIN
STATE OF CALIFORNIA

ORDINANCE NO. 4462

ORDINANCE ADDING TITLE 4, DIVISION 10, CHAPTER 1 PERTAINING TO MEDICAL MARIJUANA
CULTIVATION

THIS BOARD OF SUPERVISORS of the County of San Joaquin, State of California, does ordain as follows:

Section 1. The following sections of the Ordinance Code of San Joaquin County are added as follows:

**TITLE 4 PUBLIC SAFETY
DIVISION 10 MEDICAL MARIJUANA
CHAPTER 1 MEDICAL MARIJUANA CULTIVATION**

4-10000 Findings.

The Board of Supervisors of the County of San Joaquin finds and declares as follows:

- (a) In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code Section 11362.5 and titled the "Compassionate Use Act of 1996").
- (b) The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances.
- (c) In 2004, Senate Bill 420 was enacted (codified as California Health and Safety Code section 11362.7 *et seq.* and titled the "Medical Marijuana Program Act") to clarify the scope of the Compassionate Use Act of 1996. The Medical Marijuana Program Act allows counties to adopt and enforce rules and regulations consistent with its provisions.
- (d) In 2011, Assembly Bill 2650 was enacted (codified as California Health and Safety Code section 11362.768). This law affirms that counties can adopt ordinances that restrict the location and establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.
- (e) The Supreme Court of California held in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, 753 ("*Inland Empire*") that the objectives of the Compassionate Use Act of 1996 and Medical Marijuana Program Act were modest and that those acts did not create a broad right to access medical marijuana.
- (f) *Inland Empire* states that neither the Compassionate Use Act of 1996 nor the Medical Marijuana Program Act "expressly or impliedly preempts the authority of California cities

and counties, under their traditional land use and police powers, to allow, restrict, limit, or entirely exclude" the distribution of medical marijuana. (*Id.* at p. 762.)

- (g) The Court of Appeal of California, Third Appellate District, held in *Browne v. County of Tehama* (2013) 213 Cal. App. 4th 704 upheld a Tehama County ordinance regulating the cultivation of medical marijuana based on the Court's finding that "[n]either the Compassionate Use Act of 1996 nor the Medical Marijuana Program grants petitioners, or anyone for that matter, an *unfettered* right to cultivate marijuana for medical purposes. Accordingly, the regulation of cultivation of medical marijuana does not conflict with either statute." (*Id.* at p. 711, original italics.)
- (h) The Court of Appeal of California, Third Appellate District, held in *James Maral, et al. v. City of Live Oak* (2013) 221 Cal. App. 4th 975, that the reasoning of *Inland Empire* applies to the cultivation of medical marijuana as well as its distribution, as both are addressed in the Compassionate Use Act of 1996 and Medical Marijuana Program Act. Accordingly, the Court of Appeal of California held that Compassionate Use Act of 1996 and Medical Marijuana Program Act do not preempt a municipality's police power to prohibit the cultivation of all marijuana within that municipality.
- (i) This chapter is enacted, consistent with the provisions of Health and Safety Code Section 11362.7 *et seq.*, the Medical Marijuana Program Act, to protect the public health, safety, and welfare of County residents in relation to the legal operation and location of medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.
- (j) Medical marijuana cultivation creates offensive and irritating odor, especially when the plants are flowering.
- (k) The "street value" of a single cannabis plant is substantial. The Federal Drug Enforcement Administration reports that each marijuana plant under various planting conditions may yield an average of two hundred thirty-six grams, or about one-half pound, to eight hundred forty-six grams, or nearly two pounds in its lifetime. Pound prices for domestically produced high-grade cannabis sold illegally within Northern California can reach two thousand dollars to five thousand dollars, and far greater amounts in other states. Thus, a single marijuana plant can yield four thousand dollars or more in salable marijuana.
- (l) The County's unique geographic and climatic conditions, which include rural, agricultural and riparian areas with access to waterways, along with the sparse population in many areas of the County, provide conditions that are favorable to marijuana cultivation. Marijuana growers can achieve a high per-plant yield because of the County's favorable climate and growing conditions.
- (m) According to the San Joaquin County Sheriff's Office, medical marijuana cultivation by individuals and collectives has been increasing in San Joaquin County for several years.

In 2011 there were 31,000 illicit, non-medical marijuana plants discovered and eradicated by the San Joaquin County Sheriff's Office; in 2013 and 2014 those numbers were 138,519 and 100,000 plants respectively. In 2014 there were 52 outdoor medical marijuana grows, and 66 indoor medical marijuana grows. From 2008 to 2014 there was an average of one homicide per year related to marijuana cultivation and in 2014 a San Joaquin County Sheriff's Officer was shot at while investigating an outdoor marijuana grow. Many of the people responsible for these grows did not have medical marijuana recommendations, while others either had recommendations for extremely large quantities (i.e., 99 plants, 16 pounds of processed) and/or were growing as a collective.

- (n) Large scale medical marijuana cultivation is often concealed in a legitimately cultivated crop such as corn.
- (o) Outdoor grows illegally planted in crops threaten farm employees, interfere with farming practices, and can result in significant crop loss.
- (p) Outdoor grows often use chemicals and pesticides, many of which are illegal and extremely toxic to people and wildlife and which may pollute soil, ground water, and/or nearby water sources.
- (q) Investigations of medical marijuana grows are time consuming and dangerous for the San Joaquin County Sheriff's Office.
- (r) The San Joaquin County Sheriff's Office's investigations of medical marijuana grows have taken over 1,000 investigative hours, and resulted in over 80 arrests and the seizure of over 45 firearms, equipment, and over \$125,000 in US currency. The cases resulting from these investigations are being prosecuted in both state and federal court.
- (s) Medical marijuana cultivation attracts crime and associated violence; in this County and others cultivation has been a magnet for thefts, robberies, illegal firearms, shootings, and homicides.
- (t) Outdoor cultivation is very visible and may be easily accessible to the public, including children and youths.
- (u) Both outdoor and indoor grows require large amounts of water, which is sometimes illegally diverted from farms, homes, or waterways.
- (v) Indoor grows require extensive energy consumption, which is often illegally consumed and/or wired in an improper and dangerous manner.
- (w) Both outdoor and indoor grows may contain armed guards and/or booby trap devices that threaten severe bodily harm or death to those who attempt to access them. Such devices may be a threat to any person that enters the area of the grow, but are often designed specifically to injure law enforcement personnel. Especially during harvest and processing season there is an immediate threat of violent crime depending on the size,

location, gang/drug trafficker involvement, and monetary value of these medical marijuana grows.

- (x) Eradication of an illegal medical marijuana grows may be dangerous and labor intensive for law enforcement officials because of the potential of armed suspects, booby traps, and varying conditions of the grow.
- (y) Medical marijuana cultivation creates an increased likelihood of criminal activity.
- (z) Medical marijuana cultivation is harmful to the welfare of residents, creates a nuisance, and threatens the safety and premises of nearby land owners and their families.
- (aa) Medical Marijuana cultivation poses an urgent and immediate threat to the public peace, health, and safety.
- (bb) If medical marijuana cultivation is not banned then large quantities of illegal marijuana may be introduced into the local market and will bring with it increasing threats to public peace, health, and safety.
- (cc) San Joaquin County has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses, in preventing the establishment of nuisances, while also allowing the consumption of medical marijuana for ill residents pursuant to Compassionate Use Act of 1996 and the Medical Marijuana Program Act.
- (dd) Nothing in this chapter shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. § 841 or to license any activity that is prohibited under the act except as mandated by state law.
- (ee) The Federal Controlled Substances Act, 21 U.S.C. §§ 801 *et seq.*, classifies 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. 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.

4-10002 - Purpose and intent.

It is the purpose and intent of this chapter pursuant to Government Code Section 25123(d) to immediately prohibit medical marijuana cultivation to preserve the public peace, health, safety, and general welfare of the citizens of San Joaquin County.

4-10003 - Relationship to other laws.

This chapter is not intended to, nor shall it be construed or given effect in a manner that causes it to apply to, any activity that is regulated by state law to the extent that application of this chapter would conflict with such law or would unduly interfere with the achievement of state

regulatory purposes. It is the intention of the Board that this chapter shall be interpreted to be compatible and consistent with county and state enactments and in furtherance of the public purposes which those enactments express. It is the intention that the provisions of this chapter will supersede any other provisions of this code found to be in conflict.

4-10004 - Definitions.

Unless otherwise specified, the following definitions shall be applicable throughout this chapter:

- (a) "County" means the County of San Joaquin or the unincorporated area of the County of San Joaquin as required by the context.
- (b) "Collective" is the planting, growing, harvesting, drying, processing, or storage of one or more medical marijuana plants or any part thereof in any location on behalf of more than one qualified patient.
- (c) "Marijuana" shall have the same definition as in California Health and Safety Code Section 11018 as it now reads or as amended.
- (d) "Medical marijuana" means marijuana used for medical purposes in accordance with California Health and Safety Code Sections 11362.7 *et seq.* as it now reads or as amended.
- (e) "Medical Marijuana Cultivation" means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof, for medicinal purposes in accordance with California Health and Safety Code Sections 11362.7 *et seq.* as it now reads or as amended.
- (f) "Marijuana plant" means any mature or immature marijuana plant, or any marijuana seedling, with or without roots, unless otherwise specifically provided herein.
- (g) "Primary caregiver" shall be an individual that (1) consistently assumes responsibility for the house, health, or safety of the medical marijuana patient, (2) satisfies the criteria as expressed in California Supreme Court Case *People v. Mentch* (2008) 45 Cal. 4th 274, 283, which are that the person (i) consistently provides caregiving to the medical marijuana patient, (ii) provided that caregiving independent of any assistance in taking medical marijuana, (iii) provided that caregiving at or before the time they assumed responsibility for assisting with medical marijuana, and (3) holds a valid State of California, California Medical Marijuana Identification Card designating them as a Primary Caregiver.
- (h) "Qualified patient" shall be a person with a doctor's recommendation for medical marijuana/cannabis and holds a valid State of California, California Medical Marijuana Identification Card designating them as a patient.

4-10005 - Medical marijuana cultivation.

Medical marijuana cultivation by any person, including but not limited to a qualified patient or primary caregiver as individuals or in a cooperative or collective, is prohibited in the County.

4-10006 - Prohibited medical marijuana cultivation declared a nuisance.

The establishment, maintenance, or operation of any medical marijuana cultivation within the County is declared to be a nuisance and each person or responsible party is subject to abatement, and/or penalties for misdemeanor infractions, and/or administrative penalties under this chapter.

4-10007 - Penalties for violation.

- (a) Illegal medical marijuana cultivation is an unlawful violation of this Code and pursuant to San Joaquin County Code of Ordinances Title 1, Division 2, Chapter 1, a misdemeanor punishable by a fine of not more than five hundred dollars (\$500), imprisonment in the County Jail for no longer than six (6) months, or an alternative to detention, or by both such fine and imprisonment/alternative to detention, and/or any other enforcement remedies available to the County under any applicable state or federal statute or pursuant to any other lawful power the County may possess.
- (b) Each day illegal medical marijuana cultivation continues shall constitute a separate violation and be subject to the maximum penalty and any other enforcement remedies available to the County under any applicable state or federal statute or pursuant to any other lawful power the County may possess.
- (c) In addition to enforcement pursuant to this chapter, the County may bring a civil suit or action against the person responsible for such violation(s) and that person shall be liable to the County for costs of the suit, including, but not limited to, attorney's fees.

4-10008 - Remedies cumulative.

All remedies provided for herein are cumulative and not exclusive, and are in addition to any other remedy or penalty provided by law. Nothing in this chapter shall be deemed to authorize or permit any activity that violates any provision of state or federal law.

4-10009 - CEQA.

The County performed a California Environmental Quality Act Initial Study and, based on that study, prepared and adopted a Negative Declaration stating that this chapter will not have a significant effect on the environment.

4-10010 - Severability.

If any part or subsection of this chapter is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity, unlawfulness, or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any other part of this chapter.

Section 2. This ordinance shall take effect thirty (30) days after its adoption, and within fifteen (15) days after its passage shall be published at least once in a newspaper of general circulation, printed, and published in the County of San Joaquin.

PASSED AND ADOPTED by the Board of Supervisors of the County of San Joaquin, State of California, this 14th day of April 2015, by the following vote of the Board of Supervisors:

AYES: **Winn, Elliott, Villapudua, Bestolarides, Miller**

NOES: **None**

ABSENT: **None**

ABSTAIN: **None**

ATTEST: MIMI DUZENSKI
Clerk of the Board of Supervisors
County of San Joaquin,
State of California



By: *Mimi Duzenski*
CLERK

COUNTY OF SAN JOAQUIN
a political subdivision of the
State of California

By: *Katherine M. Miller*
KATHERINE M. MILLER
Chair, Board of Supervisors