

ORDINANCE NO. _____

AN INTERIM URGENCY ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN BERNARDINO, CALIFORNIA, ESTABLISHING A MORATORIUM ON CERTAIN COMMERCIAL MARIJUANA LAND USES AND ACTIVITIES, OUTDOOR PERSONAL CULTIVATION OF MARIJUANA, AND CANNABIS EVENTS

WHEREAS, in September of 2015, the Governor signed into law the Medical Cannabis Regulations and Safety Act (“MCRSA”) which established regulations of medical cannabis cultivation, manufacturing and transportation, as well as created local and State-level licensing systems in California; and

WHEREAS, MCRSA allows a city to regulate or prohibit, through land use regulation or ordinances, the cultivating, delivering, distributing, selling or processing of medical marijuana; and

WHEREAS, on November 8, 2016, the voters of the City of San Bernardino (“City”) enacted the San Bernardino Regulate Marijuana Act of 2016 (“Measure O”) which established a zoning and regulatory scheme for the marijuana business activities regulated under MCRSA; and

WHEREAS, the intent of the voters in passing Measure O was to establish a zoning and regulatory scheme for marijuana businesses in a manner consistent with state law as new laws are subsequently enacted including laws that allow recreational marijuana business activities; and

WHEREAS, on November 8, 2016, the voters of the State of California (“State”) enacted Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”); and

WHEREAS, subject to certain exceptions, AUMA generally establishes a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of recreational marijuana, including marijuana products, for use by adults 21 years and older, and to tax the commercial growth and retail sale of recreational marijuana; and

1 **WHEREAS**, AUMA also allows local governments to adopt and enforce local
2 ordinances regulating marijuana related land uses, as well as the possession, planting,
3 cultivation, harvesting, testing, drying, and processing of recreational marijuana,
4 including the complete prohibition of such activities; and

5 **WHEREAS**, on June 27, 2017, the Governor signed SB 94 into law the
6 Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), which
7 incorporated the medical-marijuana licenses available under MCRSA into a dual
8 licensing system with the recreational-marijuana licenses available under AUMA; and

9 **WHEREAS**, under MAUCRSA, the City continues to be able to regulate
10 marijuana related land uses, as well as possession, planting, cultivation, harvesting,
11 testing, drying, and processing of marijuana, including the complete prohibition of such
12 activities; and

13 **WHEREAS**, MAUCRSA creates a licensing system whereby the State will issue
14 licenses to businesses authorizing them to cultivate, distribute, transport, store,
15 manufacture, process, and sell marijuana and marijuana products for medical and
16 recreational purposes, with such licenses to be issued by January 1, 2018; and

17 **WHEREAS**, MAUCRSA mandates that State licensing authorities shall not
18 approve an application for a State license if approval of the State license will violate the
19 provisions of any local ordinance or regulation; and

20 **WHEREAS**, Measure O’s validity has been challenged in multiple lawsuits that
21 are set for hearing on December 28, 2017; and

22 **WHEREAS**, at the hearing on December 28, 2017, Measure O may be held
23 wholly or partially invalid; and

24 **WHEREAS**, the City of San Bernardino operates under a permissive zoning
25 regulatory scheme; and

26 **WHEREAS**, in the event Measure O is held wholly or partially invalid, those
27 commercial marijuana activities previously permitted by Measure O prior to court
28 determination of its invalidity would violate the provisions of local ordinance; and

1 **WHEREAS**, notwithstanding the foregoing, the Mayor and City Council desire
2 to provide certainty and clarity in the event Measure O is held wholly or partially invalid
3 by explicitly enacting a moratorium; and

4 **WHEREAS**, significant concerns have been raised regarding the impacts that
5 possessing, planting, cultivating, harvesting, drying, processing, distributing,
6 transporting, storing, manufacturing, and selling of marijuana for medical and
7 recreational purposes (hereinafter “commercial marijuana activities”) and at cannabis
8 events will have on the public health, safety, and welfare in the City, including the
9 protection of environmental resources and neighborhood quality; and

10 **WHEREAS**, commercial marijuana activities and cannabis events pose an
11 environmental health risk to the public and create public nuisances, including without
12 limitation: offensive and irritating odors, degradation of air quality, excessive noise,
13 criminal activity, improper and/or dangerous electrical alterations, and impairment of the
14 general quality of life of property owners and occupants adjoining marijuana cultivation
15 sites; and

16 **WHEREAS**, the adoption of a comprehensive marijuana ordinance that addresses
17 unregulated commercial marijuana activities, outdoor personal cultivation of marijuana,
18 and cannabis events will take time and careful consideration and will require input from
19 various community stakeholders and the general public; and

20 **WHEREAS**, the Mayor and City Council have begun the process of receiving
21 input from various community stakeholders and the general public by establishing the
22 Citizen’s Advisory Committee on Marijuana which held public meetings on November
23 13, November 20, November 27, December 4, and December 11, 2017; and

24 **WHEREAS**, the staff at the City has begun to review the state regulatory
25 framework and best practices from other communities, coordinating with consultant HdL
26 Companies for professional guidance on establishing a local regulatory framework; and

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1 **WHEREAS**, the State is continuing to modify and refine the MAUCRSA
2 regulations and has adopted regulations under emergency rulemaking effective December
3 7, 2017; and

4 **WHEREAS**, the City has a compelling interest in protecting the public health,
5 safety, and welfare of its residents and businesses, and preserving the peace and integrity
6 of neighborhoods within the City; and

7 **WHEREAS**, the City has devoted considerable staff time and financial resources
8 towards adopting specific plans and implementing development that is consistent with the
9 City's General Plan; and

10 **WHEREAS**, the City findings that the issuance of land use permits, building
11 permits, licenses, or other entitlements for unregulated commercial marijuana activities,
12 outdoor personal cultivation of marijuana, and cannabis events would pose a current and
13 immediate threat to the public health, safety, and welfare, since such uses could
14 potentially create conflicts with
15 surrounding land uses, including sensitive land uses, and could conflict with the City's
16 long-term planning goals to be implemented through the City's General Plan, Specific
17 Plans, and Zoning Ordinance; and

18 **WHEREAS**, in order to address community concerns regarding unregulated
19 commercial marijuana activities, outdoor personal cultivation of marijuana, and cannabis
20 events it is necessary for the City to study the impact such uses will have on the public
21 health, safety and welfare, and potentially revise the City's existing regulations or adopt
22 new regulations; and

23 **WHEREAS**, to protect the City's investment in its planning efforts, ensure that
24 the City's long-term planning goals and strategies can be achieved in an effective and
25 timely manner, and to avoid a current and immediate threat to the public health, safety,
26 and welfare, the City proposes adopting a moratorium on the issuance of use permits,
27 building permits and all other applicable entitlements for unregulated commercial
28 marijuana activities, outdoor personal cultivation of marijuana and cannabis events; and

1 **WHEREAS**, it is necessary to protect the health, safety and welfare, specifically
2 the City and the public's interests in the City's aesthetic, economic, health, safety and
3 community character, until additional staff review has been completed and any necessary
4 local regulations or
5 code revisions have been revised, adopted and otherwise made effective; and

6 **WHEREAS**, the citizens of the City will benefit from a comprehensive and
7 thoughtful local regulatory scheme that addresses the potential impacts of unregulated
8 commercial marijuana activities, outdoor personal cultivation of marijuana, and cannabis
9 events; and

10 **WHEREAS**, there is an immediate need to prevent unregulated commercial
11 marijuana activities in the City, outdoor personal cultivation of marijuana, and cannabis
12 events which have the potential to affect the character and aesthetic of the community;
13 and

14 **WHEREAS**, the California Constitution, Article XI, section 7, provides cities
15 with the authority to enact ordinances to protect the health, safety, and welfare of their
16 citizens, and adoption of zoning regulations are a permissible exercise of this authority;
17 and

18 **WHEREAS**, Government Code section 65858 authorizes the Mayor and City
19 Council to adopt as an urgency measure an interim ordinance, effective immediately
20 upon a four-fifths vote for the Mayor and City Council, to protect the public health,
21 safety, and welfare. The interim ordinance is effect for a period of forty-five (45) days,
22 unless extended pursuant to Government Code section 65858, subdivision (c); and

23 **WHEREAS**, this interim urgency ordinance is necessary, as stated above, in that
24 there is a current and immediate threat to the public health, safety, and welfare from
25 unregulated commercial marijuana activities, outdoor personal cultivation of marijuana,
26 and cannabis events; and

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1 **WHEREAS**, this interim urgency ordinance is necessary to prevent potential
2 grandfathering of unregulated commercial marijuana activities, outdoor personal
3 cultivation of marijuana, and cannabis events; and

4 **WHEREAS**, an interim moratorium on unregulated commercial marijuana
5 activities, outdoor personal cultivation of marijuana, and cannabis events is required to
6 allow the City the opportunity to consider the various policy implications, allow the
7 challenges to Measure O's validity to be heard, and then allow the City to develop a
8 comprehensive approach to regulate marijuana-related activities; and

9 **WHEREAS**, the existing rules, regulations and ordinances regarding commercial
10 marijuana activities and cultivation established under Measure O, remain in full force and
11 effect unless and until declared by a court to be wholly or partially invalid.

12 **NOW, THEREFORE, THE MAYOR AND CITY COUNCIL OF THE CITY**
13 **OF SAN BERNARDINO DOES ORDAIN AS FOLLOWS:**

14 **SECTION 1.** Incorporation of Recitals.

15 The above recitals are hereby declared to be true and correct and represent
16 the findings of the Mayor and City Council, made in the exercise of their
17 independent judgment and that based on the above recitals, there is an
18 immediate threat to the public health, safety and welfare. The adoption of
19 this ordinance is necessary for the immediate protection of the public
20 health, safety and welfare. Said findings are hereby incorporated by
21 reference and made a part of this ordinance.

22 **SECTION 2.** Definitions.

23 For the purposes of this ordinance, the following definitions shall apply:

24 (1) The term "unregulated commercial marijuana activities" means the
25 cultivation, possession, manufacture, processing, distribution, storing,
26 grading, marketing, packaging, labeling, delivery, laboratory testing,
27 transportation, use or sale of marijuana and marijuana products, whether
28 or not through a for-profit or non-profit enterprise, and whether or not

1 conducted with a license issued in accordance with Division 10 of the
2 Business and Professions Code (Business and Professions Code section
3 26000, et seq.) that is not specifically authorized by a valid provision of
4 the San Bernardino Municipal Code, or otherwise except as stated below:

5 a. Qualified Patient Exception. This term shall not include the
6 actions of a qualified patient, as defined in Section 11362.7 of the Health
7 and Safety Code, who cultivates, possesses, stores, manufactures, or
8 transports marijuana exclusively for his or her personal medical use but
9 who does not provide, donate, sell, or distribute marijuana to any other
10 person.

11 b. Primary Caregiver Exception. This term does not include
12 the actions of a primary caregiver who cultivates, possesses, stores,
13 manufactures, transports, donates, or provides marijuana exclusively for
14 the personal medical purposes of no more than five specified qualified
15 patients for whom he or she is the primary caregiver within the meaning of
16 Section 11362.7 of the Health and Safety Code, but who does not receive
17 remuneration for these activities except for compensation in full
18 compliance with subdivision (c) of Section 11362.765 of the Health and
19 Safety Code.

20 c. Personal Indoor Cultivation Exception. This term does not
21 include those actions specifically authorized by Section 11362.2 of the
22 Health and Safety Code.

23 (2) The term “marijuana” shall mean all items included in Health and
24 Safety Code sections 11018 and 11018.1.

25 (3) The term “indoor cultivation” shall mean cultivation inside a fully
26 enclosed private residence as articulated in Health and Safety Code section
27 11362.2, subdivision (b)(2).
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1 (4) The term “outdoor cultivation” shall mean any cultivation that is
2 not defined as indoor cultivation as articulated in Health and Safety Code
3 section 11362.2, subdivision (b)(2).

4 (5) The term “cultivation” means any activity involving the planting,
5 growing, harvesting, drying, curing, grading or trimming of marijuana.

6 (6) The term “cannabis event” shall mean those activities requiring a
7 state temporary event license to a licensee authorizing onsite cannabis
8 sales, trade or exchange to, and consumption by, persons 21 years of age
9 or older, including those activities occurring at a state designated fair
10 under Sections 19418.1, 19418.2, or 19418.3 of the Business and
11 Professions Code.

12 **SECTION 3. Purpose.**

13 The purpose of this interim ordinance is to establish a moratorium on the
14 approval or issuance of any land use permit, building permit, business
15 license or any other applicable entitlement or approval for unregulated
16 commercial marijuana activities, outdoor personal cultivation of
17 marijuana, and/or cannabis events for the immediate preservation of the
18 public health, safety, and welfare.

19 **SECTION 4. Authority and Findings.**

20 Based on the findings set forth in the Recitals incorporated herein by
21 Section 1, unregulated commercial marijuana activities, outdoor personal
22 cultivation of marijuana, and cannabis events pose a current and
23 immediate threat to the public health, safety, and welfare on the citizens of
24 the City and as such the Mayor and City Council hereby enact this interim
25 ordinance by not less than a four-fifths vote, under the authority granted to
26 it by Article XI, Section 7 of the California Constitution and section 65858
27 of the California Government Code, which allows the City to adopt an
28 interim ordinance prohibiting land uses which may be in conflict with a

1 contemplated general plan, specific plan, or zoning proposal that the City
2 Council, Planning Commission or the Community Development
3 Department is considering or studying or intends to study within a
4 reasonable time. The City Council hereby directs City Manager to
5 consider the recommendations made by the Citizen's Advisory Committee
6 on Marijuana and study impacts of unregulated commercial marijuana
7 activities, outdoor personal cultivation of marijuana, and
8 cannabis events and to return with a comprehensive ordinance that
9 addresses these issues.

10 **SECTION 5. Moratorium Imposed.**

11 In accordance with the authority granted to the City under Article XI,
12 Section 7 of the California Constitution and California Government Code
13 section 65858, from and after the date of this ordinance, a temporary
14 moratorium is hereby established and imposed and the following activities
15 are prohibited and no land use entitlements, building permits, business
16 licenses and any other applicable approval or decisions for commercial
17 marijuana activities, shall be granted for such activities:

18 (1) In the event that Measure O is held wholly or partially invalid, to
19 the extent Measure O is held invalid, any unregulated commercial
20 marijuana activity, which may include, but is not limited to cultivation,
21 manufacturing, processing, labeling, storing, distribution, delivery, sales
22 and retail, shall be prohibited in every zone in the City.

23 (2) Outdoor personal cultivation of marijuana including, but not
24 limited to, planting, cultivating, harvesting, drying, or processing, is
25 prohibited in every zone in the City. Indoor planting, cultivation,
26 harvesting, drying, or processing of marijuana plants for recreational use is
27 limited to within private residences, is limited to six (6) plants per private
28 residence, and must be entirely for the personal use of a resident of the

1 residence who is twenty-one (21) years of age or older, as permitted in
2 Health and Safety Code sections 11362.1 and 11362.2. The City reserves
3 the right to enact regulations regarding the indoor cultivation of marijuana
4 at a later date.

5 (3) Cannabis events are prohibited in every zone of the City, including
6 those areas of the City that may operate as a state designated fair under
7 Sections 19418.1, 19418.2, or 19418.3 of the Business and Professions
8 Code.

9 **SECTION 6. Issuance of Land Use Entitlements in Violation of this Moratorium**
10 Declared a Public Nuisance.

11 The issuance of any land use permits, building permits, licenses, or other
12 applicable entitlements for unregulated commercial marijuana activities,
13 outdoor personal cultivation of
14 marijuana, or cannabis events in the City as defined in this ordinance,
15 during the duration of this moratorium, or any extension thereof, is
16 declared to be a public nuisance. Violations of this ordinance may be
17 enforced by any applicable law or ordinances, including but not limited to
18 injunctions or administrative or criminal penalties, under the San
19 Bernardino Municipal Code.

20 **SECTION 7. Authority; Urgency Statement.**

21 This ordinance is an interim ordinance, adopted as an urgency measure
22 pursuant to Government Code section 65858 and is for the immediate and
23 long-term preservation of the public safety, health, and welfare. The
24 Mayor and City Council hereby find that there is a current and immediate
25 threat to the public health, safety and welfare that warrants the
26 establishment of a temporary moratorium on unregulated commercial
27 marijuana activities, outdoor personal cultivation of recreational
28 marijuana, and cannabis events as described in this ordinance. The

1 following facts support this urgency measure: establishing and allowing
2 for unregulated commercial marijuana activities, outdoor personal
3 cultivation of marijuana, or cannabis events in the City, before the City
4 has an opportunity to study and review regulations, could lead to conflicts
5 amongst various land uses, conflicts with the City's long-term planning
6 goals, and a potential increase in nuisance and criminal activity within the
7 City, as well as create a deleterious effect on residents' quality of life.
8 Accordingly, the Mayor and City Council hereby find that the approval of
9 land use permits, building permits, business licenses, or any other
10 applicable approval or decision for unregulated commercial marijuana
11 activities, outdoor personal cultivation of marijuana, or cannabis events
12 would result in that threat to public health, safety, and welfare. These
13 findings are based upon all the facts recited in this ordinance, in the staff
14 report accompanying this ordinance, all matters and information presented
15 to this Mayor and City Council at its meeting on December 20, 2017.

16 **SECTION 8. Effective Date and Duration.**

17 This ordinance shall become effective immediately upon adoption if
18 adopted by at least four-fifths vote of the Mayor and City Council, and
19 shall remain in full force and effect for a period of forty-five (45) days
20 from the date of its adoption unless extended by the Mayor and City
21 Council in accordance with the provisions of California Government Code
22 section 65858.

23 **SECTION 9. Severability.**

24 If any provision of this ordinance or the application thereof to any person
25 or circumstance is held to be unconstitutional or otherwise invalid by a
26 court of competent jurisdiction, such invalidity shall not affect other
27 provisions or applications of this ordinance which can be implemented
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1 without the invalid provision or application and to this end the provisions
2 of this ordinance are declared to be severable.

3 **SECTION 10. California Environmental Quality Act.**

4 The Mayor and City Council hereby find that this ordinance is not subject
5 to review under the California Environmental Quality Act (CEQA)
6 pursuant to CEQA Guidelines sections 15060, subdivision (c)(2) (the
7 activity will not result in a direct or reasonably foreseeable indirect
8 physical change in the environment) and 15061, subdivision (b)(3) (there
9 is no possibility the activity in question may have a significant effect on
10 the environment). In addition to the foregoing general exemptions, the
11 City Council further finds that this ordinance is categorically exempt from
12 review under CEQA under the Class 8 Categorical Exemption (regulatory
13 activity to assure the protection of the environment), CEQA Guidelines
14 section 15308.

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AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN BERNARDINO, CALIFORNIA, ESTABLISHING A MORATORIUM ON COMMERCIAL MARIJUANA LAND USES AND ACTIVITIES AND ON OUTDOOR PERSONAL CULTIVATION OF RECREATIONAL MARIJUANA

I HEREBY CERTIFY that the foregoing ordinance was duly adopted by the Mayor and City Council of the City of San Bernardino at a regular meeting thereof, held on the ____ day of _____, 2017, by the following vote to wit:

<u>Council Members:</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
MARQUEZ	_____	_____	_____	_____
BARRIOS	_____	_____	_____	_____
VALDIVIA	_____	_____	_____	_____
SHORETT	_____	_____	_____	_____
NICKEL	_____	_____	_____	_____
RICHARD	_____	_____	_____	_____
MULVIHILL	_____	_____	_____	_____

Georgeann Hanna, CMC, City Clerk

The foregoing Ordinance is hereby adopted this ____ day of _____, 2017.

R. CAREY DAVIS, Mayor
City of San Bernardino

Approved as to form:
Gary D. Saenz,
City Attorney

By: _____