REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY, CALIFORNIA AND RECORD OF ACTION

August 23, 2016

FROM: **TOM HUDSON, Director**
Land Use Services Department

SUBJECT: **ORDINANCE AMENDING THE DEVELOPMENT CODE MODIFYING PROVISIONS RELATING TO MARIJUANA (CANNABIS)**

RECOMMENDATION(S)

1. Conduct a public hearing to consider an ordinance amending Title 8 of the County Code (Development Code) relating to marijuana (cannabis), including adding a prohibition of all forms of commercial cannabis activity in the unincorporated areas of the County, with limited exceptions.
2. Make alterations, if necessary, to proposed ordinance.
3. Approve introduction of proposed ordinance.
4. Adopt the findings as recommended by the Planning Commission.
5. Read title only of proposed ordinance; waive reading of entire text and adopt the **Ordinance No. 4309**.
6. Direct the Clerk of the Board to file a Notice of Exemption.

Hearing Opened
Public Comment: Osvaldo Diaz, Jay Lindberg
Hearing Closed

(Presenter: Terri Rahhal, Planning Director, 387-4431)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS AND OBJECTIVES

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

FINANCIAL IMPACT

The recommended actions will not result in the use of any additional Discretionary General Funding (Net County Cost).

BACKGROUND INFORMATION

The proposed ordinance prohibits commercial marijuana (cannabis) activities, including commercial cultivation, distribution, transportation, delivery, storage, laboratory testing, manufacturing, processing, provision, or sales of cannabis products, as permitted under the various statutes discussed below and court case law.

cc: w/ordinance
LUSD-Hudson
LUSD-Rahhal w/ NOE
County Counsel-Hardy
CAO-Snoke
File - Land Use Services w/attach
jr 8/26/16

ITEM 111

Record of Action of the Board of Supervisors

APPROVED
COUNTY OF SAN BERNARDINO
Board of Supervisors

MOTION	AYE	SECOND	MOVE	AYE	AYE
	1	2	3	4	5

LAURA H. WELCH, CLERK OF THE BOARD

BY _____

DATED: August 23, 2016

Rev 7-12-16

The Controlled Substances Act of 1970 (CSA) was enacted by Congress as the federal policy under which the manufacture, import, possession, use, and distribution of certain substances is regulated. Drugs regulated by the CSA are grouped in five schedules based on criteria such as potential for abuse and acceptance for medical use. Marijuana (or cannabis) is a Schedule I substance, the most severely regulated category, meaning that it has high potential for abuse and does not currently have an accepted medical use. Similarly in California law, the Health and Safety (H&S) Code has historically prohibited possession and cultivation of marijuana.

The Compassionate Use Act of 1996 (CUA) was approved by California voters as Proposition 215. The CUA amended the H&S Code to exempt patients and their primary caregivers from criminal prosecution for possession and cultivation of marijuana, provided that the marijuana was cultivated and used for personal medical purposes, on the recommendation of a physician.

The Medical Marijuana Program of 2004 (MMP) was approved as California Senate Bill 420, introduced as legislation intended to clarify the scope of the CUA and to allow cities and counties to adopt local regulations consistent with the CUA. The MMP also created the medical marijuana patient identification card system and established location criteria for marijuana dispensaries, with specific authority granted to local agencies to further limit dispensary locations. Case law has upheld the authority of California cities and counties to allow, restrict, limit, or entirely ban medical marijuana dispensaries and cultivation within their jurisdictions.

County Ordinance No. 4140 was adopted by the Board of Supervisors on April 5, 2011 (Item No. 73), and is codified in Section 82.02.070, entitled Medical Marijuana Dispensaries, Registration, Outdoor Cultivation, and Section 810.01.150 (r) which defines a "Medical Marijuana Dispensary." This ordinance banned medical marijuana dispensaries and outdoor cultivation of marijuana in the unincorporated areas of the County, with exemptions provided to allow for one or two people to cultivate indoors, and for certain licensed health care facilities to cultivate and/or dispense medical marijuana. Litigation resulting from enforcement actions by the County has resulted in rulings favorable to the County's regulatory and enforcement activities in every instance.

The Medical Marijuana Regulation and Safety Act (MMRSA) went into effect on January 1, 2016. This law created a State of California Bureau of Medical Marijuana Regulation (BMMR). It also instituted a dual licensing scheme for "commercial cannabis activity," related to medical marijuana, including commercial cultivation, distribution, manufacture, testing, processing, storing, transporting, delivery, and sale of marijuana. The MMRSA preserved the authority of cities and counties to prohibit, regulate, and/or license commercial cannabis activity within their local jurisdictions.

The Parker Initiative is a proposal to legalize recreational use of marijuana in California, for those over the age of 21. This initiative has qualified to be included on the California ballot for the general election in November 2016. The Parker Initiative contains a state licensing, regulation and enforcement scheme for recreational marijuana use, similar to the provisions in the MMRSA for medical marijuana, but applicable only to recreational use. Like the MMRSA, the Parker Initiative would allow local jurisdictions to ban recreational marijuana-related businesses and

outdoor cultivation. It would also allow local jurisdictions to regulate, but not to ban, the indoor cultivation of cannabis for recreational use.

Proposed Ordinance: The proposed ordinance repeals the existing Development Code marijuana regulations (Sections 82.02.070 and 810.01.150(r)) and adds Chapter 84.34, entitled "Commercial Cannabis Activity," to the Development Code, which will contain all Development Code regulations related to marijuana. The proposed Chapter 84.34:

- Contains definitions consistent with state laws related to commercial cannabis activity and medical use of marijuana.

- Prohibits commercial cannabis activities, including commercial cultivation, distribution, transportation, delivery, storage, laboratory testing, manufacturing, processing, provision or sales of cannabis products. This prohibition would apply to medical marijuana and marijuana produced for recreational use (should marijuana produced for recreational use become legal under California law).

- Continues the prohibition of outdoor cultivation of marijuana/cannabis.

- Continues the exemption for specified state-licensed health care and residential care facilities.

- Allows an exemption for qualified patients and holders of medical marijuana identification cards and primary caregivers for no more than five patients to cultivate a maximum of 12 plants per patient (indoors), with a maximum of 24 plants per private residence.

- Expands current standards for indoor cultivation with more specific requirements, including:

    - Cultivation must occur in a designated area within a private residence that is separately secured and locked apart from other uses of the residence, secure from access by minors and other unauthorized persons, and not perceptible from the exterior of the residence.

    - Cultivation is prohibited in common use areas of multi-family housing or mobile home parks.

    - Cultivation is prohibited in residences where child day care is provided.

    - Cultivation requires written consent of the property owner.

In summary, the proposed ordinance would update the Development Code to be consistent with current state laws related to marijuana, and would preserve local prohibition of commercial cannabis activities related to medical marijuana (with limited exemptions) as well as recreational use of marijuana, should recreational use become legal in the state of California.

Planning Commission
The proposed amendment to the Development Code was considered by the Planning Commission on June 23, 2016; no public comments were made. The Planning Commission voted unanimously 4-0 (Vice Chair Jonathan Weldy absent) to recommend approval of the proposed amendment. The Planning Commission recommendation included a finding that the ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to the general rule exemption in section 15061(b)(3) of the State CEQA Guidelines.

PROCUREMENT
Not Applicable.

REVIEW BY OTHERS
This item has been reviewed by County Counsel (Bart Brizzee, Principal County Counsel, 387-5455 and Ken Hardy, Deputy County Counsel, 387-5455) on July 13, 2016; Finance (Luther Snoke, Administrative Analyst, 387-4345) on July 28, 2016; and County Finance and Administration (Mary Jane Olhasso, Assistant Executive Officer, 387-4599) on August 1, 2016.

ORDINANCE NO. 4309

AN ORDINANCE OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, REPEALING SECTION 82.02.070, REPEALING SECTION 810.01.150(r), AND ADDING CHAPTER 84.34 TO DIVISION 4 OF TITLE 8 OF THE SAN BERNARDINO COUNTY CODE, RELATING TO COMMERCIAL CANNABIS ACTIVITIES.

The Board of Supervisors of the County of San Bernardino, State of California, ordains as follows:

SECTION 1. The Board of Supervisors (Board) of the County of San Bernardino (County) finds that:

(a) The federal Controlled Substances Act ("CSA") (21 U.S.C. sections 801 et seq.) makes it unlawful to manufacture, distribute, or possess any controlled substances, including marijuana, which has, as a Schedule I drug under the CSA, a high potential for abuse and no accepted medical value in treatment.

(b) At the General Election held on November 5, 1996, California voters approved Proposition 215 (Compassionate Use Act of 1996 ("CUA") (Health and Safety Code section 11362.5)), which provides in relevant part that "Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician."

(c) On January 1, 2004, Senate Bill 420 (Medical Marijuana Program ("MMP") (Health and Safety Code sections 11362.7 et seq.)) went into effect, clarifying the scope of the CUA and allowing cities and counties to adopt and enforce regulations consistent with the CUA and MMP.

(d) On April 5, 2011, the Board of Supervisors adopted Ordinance No. 4140 banning medical marijuana dispensaries, as defined, and banned the outdoor cultivation

and growing of marijuana.

(e) In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that "neither the CUA nor the MMP 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 facilities that distribute medical marijuana, and to enforce such policies by nuisance actions."

(f) In *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Court of Appeal held that "there is no right – and certainly no constitutional right – to cultivate medical marijuana…," thus affirming the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.

(g) On January 1, 2016, the Medical Marijuana Regulation and Safety Act ("MMRSA"), codified in various sections of the Business and Professions Code, the Fish and Game Code, the Health and Safety Code, and the Water Code, went into effect, instituting a dual licensing scheme for "commercial cannabis activity," including the distribution, manufacture, cultivation, delivery, testing, processing, storing, transporting, and sale of marijuana.

(h) The MMRSA preserved the County's authority to prohibit, regulate and/or license commercial cannabis activity within its jurisdiction as it expressly provides that the MMRSA:

(1) Is not intended "to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements." (See Business and Professions Code section 19315(a).)

(2) Does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws. (See Business and Professions Code section 19316(c).)

(3) Authorizes local jurisdictions to "adopt ordinances that establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity." (See Business and Professions Code section 19316.)

(i) The MMRSA requires a local government that wishes to prevent cannabis delivery, as defined at Business and Professions Code section 19300.5, from occurring within its jurisdiction, to enact an ordinance expressly banning deliveries. (See Business and Professions Code section 19340(a).)

(j) The Board of Supervisors finds that commercial cannabis activities, whether for medical purposes or otherwise in the unincorporated area of the County, may adversely affect the health, safety, and well-being of County residents and have the potential for adverse impacts on the County. The continued County-wide prohibition of commercial cannabis activities is proper and necessary to avoid the potential risks of criminal activity — including trespassing, theft, violent robberies and robbery attempts — degradation of the natural environment, malodorous smells, damage to residences and other buildings, excessive use and pollution of water in a time of historic drought, and dangerous electrical alterations and use.

(k) In light of the findings set forth herein the County desires to revise the County Code relating to marijuana to further specify that all forms of commercial cannabis activity are prohibited within the unincorporated area of the County, including deliveries, except in the limited and specified circumstances established herein.

SECTION 2. Section 82.02.070 of the County Code is repealed.

SECTION 3. Section 810.01.150, subdivision (r) ("Medical Marijuana Dispensary") of the County Code is repealed and all subsequent subsections are sequentially renumbered. For example, current subdivision (s) ("Medical Services, Hospital") shall be redesignated as subdivision (r).

SECTION 4. Chapter 84.34 is added to Division 4 of Title 8 of the San Bernardino County Code to read:

Chapter 84.34 Commercial Cannabis Activity

Sections:

84.34.010 Purpose.

84.34.020 Definitions.

84.34.030 Prohibition of Commercial Cannabis Activity.

84.34.040 Exemption for Cultivation by Specified Persons.

84.34.050 Exemption for Primary Caregiver Affiliated with Licensed Facility.

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 sections 19300 et seq., Government Code sections 25845, 53069.4, and 65850, and Health and Safety Code sections 11362.83 and 11362.768(f).

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 Section 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 section 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 section 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 section 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 section 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 Section 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 section 11362.7, as currently enacted or hereafter amended.

(r) ***Qualified Patient.*** A person entitled to the protections of Health and Safety Code section 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 section 19300.5, as currently enacted or hereafter amended.

84.34.030 Prohibition of Commercial Cannabis Activity.

Except as expressly provided by Sections 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.

84.34.040 Exemption for Cultivation by Specified Persons.

Notwithstanding Section 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 (5) 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 section 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 (12) cannabis plants per person with an identification card or primary caregiver per private residence; and,

(2) An aggregate total of twenty-four (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 section 11362.5), the Medical Marijuana Program (Health and Safety Code section 11362.7 et seq.) and the Medical Marijuana Regulation and Safety Act (Business and Professions Code section 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 Section 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.

83.04.050 Exemption for Primary Caregiver Affiliated with Licensed Facility.

(a) Notwithstanding Section 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 Section 1200) of Division 2 of the Health and Safety Code;

(2) A health care facility licensed pursuant to Chapter 2 (commencing with Section 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 Section 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 Section 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 Section 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.

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.

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.

SECTION 5. The Board declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion of it irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions of it be declared invalid and unconstitutional. If for any reason any portion of this ordinance is declared invalid or unconstitutional, then all other provisions of it shall remain valid and enforceable.

SECTION 6. The Board finds that this ordinance is not subject to environmental review under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and section 15060(c)(3) (the activity is not a project as defined in Section 15378) because it has no potential for resulting in physical change of the environment, directly or indirectly.

SECTION 7. This ordinance shall take effect thirty (30) days from the date of adoption.

JAMES RAMOS, Chairman
Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY
OF THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD

LAURA H. WELCH, Clerk of the
Board of Supervisors

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

I, LAURA H. WELCH, Clerk of the Board of Supervisors of the County of San Bernardino, State of California, hereby certify that at a regular meeting of the Board of Supervisors of said County and State, held on the 23rd day of August, 2016, at which meeting were present Supervisors: Robert A. Lovingood, Janice Rutherford, James Ramos, Curt Hagman, Josie Gonzales, and the Clerk, the foregoing ordinance was passed and adopted by the following vote, to wit:

AYES:	SUPERVISORS:	Robert A. Lovingood, Janice Rutherford, James Ramos, Curt Hagman, Josie Gonzales
NOES:	SUPERVISORS:	None
ABSENT:	SUPERVISORS:	None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Board of Supervisors this 23rd day of August, 2016.

LAURA H. WELCH, Clerk of the
Board of Supervisors of the
County of San Bernardino,
State of California

Deputy

Approved as to Form:

JEAN-RENE BASLE
County Counsel

By: _____
KENNETH C. HARDY
Deputy County Counsel

Date: 8·22·16