

## **ORDINANCE NO. 4490**

### **AN URGENCY ORDINANCE OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS EXTENDING A TEMPORARY MORATORIUM ON THE COMMENCEMENT OF PHASE THREE CANNABIS CULTIVATION PERMITTING UNDER MENDOCINO COUNTY CODE CHAPTERS 10A.17 AND 20.242 PENDING THE STUDY AND CONSIDERATION OF LAND USE AND OTHER REGULATIONS PERTAINING TO CANNABIS CULTIVATION**

WHEREAS, on March 22, 2021, by Ordinance No. 4488, the Board of Supervisors approved an initial urgency moratorium on the commencement of Phase Three cannabis cultivation permitting under Mendocino County Code Chapters 10A.17 and 20.242, for a period not to exceed forty-five days; and

WHEREAS, an extension of the term of the urgency ordinance, pursuant to Government Code section 65858, is necessary to allow a reasonable amount of time to properly and carefully consider and further study proposed regulations which would replace Phase Three cannabis cultivation permitting; and

WHEREAS, on April 12, 2021, the Board of Supervisors held a noticed public hearing for the purpose of considering an extension of the urgency ordinance for a period not to exceed ten (10) months and fifteen (15) days.

The Mendocino County Board of Supervisors ordains as follows:

#### **Section 1. Purpose and Authority.**

The purpose of this urgency ordinance is to extend a temporary moratorium on the commencement of Phase Three permitting as provided for in Chapters 10A.17 and 20.242 of the Mendocino County Code, the Mendocino Cannabis Cultivation Ordinance. Specifically, section 10A.17.080 provides that permits under Chapter 10A.17 will be issued in three phases, the third of which ("Phase Three") would open for applications on April 1, 2021. In addition, section 20.242.060 contains the zoning table for Phase Three cultivation. An urgency moratorium on the commencement of Phase Three is necessary as the County is actively in the process of preparing ordinance code amendments that would change the permitting process for cannabis cultivation moving forward.

This urgency ordinance is adopted pursuant to California Constitution Article 11, Section 7, Government Code section 65800, *et seq.*, particularly section 65858, and other applicable law.

#### **Section 2. Declarations and Findings.**

The Mendocino County Board of Supervisors hereby find that the above recitals are true and correct and incorporated herein by this reference, and make the following declarations and findings in support of the immediate adoption and application of this urgency ordinance:

A. On April 4, 2017, the Mendocino County Board of Supervisors adopted Ordinance No. 4381, establishing Chapters 10A.17 and 20.242 of the Mendocino County Code regarding cannabis cultivation.

B. Section 10A.17.080 created three phases of cannabis cultivation permit issuance. Phase One applies to applicants with proof of prior cultivation at a cultivation site in the County

prior to January 1, 2016, Phase Two applies to applications for certain cannabis cultivation permits on industrially zoned property, and Phase Three applies to all applicants for cannabis cultivation permits, including persons without proof of prior cultivation. Consistent with section 10A.17.080, Chapter 20.242 contains zoning and certain additional permit requirements for the three separate phases.

C. Permits issued under Chapter 10A.17 are ministerial in nature, though in certain circumstances and in certain zoning districts, additional discretionary permits are required pursuant to Chapter 20.242.

D. The timing of Phases One, Two and Three have been amended on multiple occasions, with Phase Three currently set to begin on April 1, 2021.

E. The Mendocino County Board of Supervisors has been considering the progress and status of the permitting program created by Chapters 10A.17 and 20.242, and given direction to County staff on multiple occasions.

F. On October 13, 2020, the Board of Supervisors directed staff to develop a new discretionary use permit program that would supersede Phase Three. Review and approval standards of the new ordinance being prepared will be entirely different from those of Phase Three, with additional differences in the types of permits that may be applied for as well as which zoning districts allow which type of cannabis cultivation.

G. On January 25, 2021, the Board of Supervisors reviewed the updated zoning table and additional ordinance concepts brought forward by staff, and the Board directed staff to prepare an ordinance to take to the Mendocino County Planning Commission for its report and recommendation, as required by the Government Code.

H. The time necessary to bring a draft ordinance to the Planning Commission for its report and recommendation, including statutorily required noticing of meetings, means that any ordinance or program intended to supersede Phase Three will not become effective by the Phase Three start date of April 1, 2021.

I. However, allowing Phase Three to go into effect while the County is actively preparing a new, entirely different permitting structure to replace it will have negative impacts for permit applicants and County residents. Permit applicants, neighborhood residents, and County staff will be forced to navigate and explain the existing program requirements and the proposed program requirements. The County would additionally need to determine whether and how to make further ordinance amendments to attempt to integrate the active Phase Three program with the new regulatory structure.

J. The resulting confusion will expend already constrained County staff resources and negatively impact the County's ability to process other applications and queries submitted to the County, particularly the Department of Planning and Building Services. Staff of this department process building permits, land use applications and cannabis cultivation permits. The increased workload that will result from intake of Phase Three applications, while developing and then implementing a new cannabis regulatory structure, will cause delay in processing other permits applied for by the public. This, in turn, would have a negative impact on residential and business development in Mendocino County.

K. Mendocino County has a compelling interest in protecting the public health, safety and welfare of its residents and businesses. The welfare of the County's residents would be

harmful in allowing Phase Three of Chapter 10A.17 to go into effect while the County is actively preparing a permit structure to replace it.

L. Based on the above recitals and the evidence in the record before it, the Board of Supervisors finds that allowing the opening of Phase Three cannabis cultivation permitting at this time poses a current and immediate threat to the public health, safety and welfare of Mendocino County and that a temporary moratorium on such an opening is necessary while the County completes its consideration of replacement regulations.

M. It is the desire of the Mendocino County Board of Supervisors to maintain the status quo and place a temporary moratorium on the opening of Phase Three cannabis cultivation permitting, while, as set forth in Government Code section 65858, County staff and the Board of Supervisors complete its review, consideration and development of new cannabis cultivation regulations appropriate for the County and its residents.

N. There is no feasible alternative to enactment of this moratorium ordinance that will satisfactorily mitigate or avoid the previously identified impacts to the public health, safety and welfare with a less burdensome or restrictive effect.

O. This ordinance complies with State law and imposes reasonable regulations that the Board of Supervisors concludes are necessary to protect the public safety, health and welfare of residents and business within the County.

### **Section 3. Phase Three Opening Date Suspended; Moratorium on Applications.**

During the term of this interim ordinance, including any extensions hereto and notwithstanding the provisions of Chapters 10A.17 or 20.242 and any other County ordinance or code section, the commencement of Phase Three cannabis cultivation permitting is hereby suspended. A moratorium is hereby placed on the acceptance of applications for Phase Three cannabis cultivation permits by the Department of Planning and Building Services. Any applications for a Phase Three cannabis cultivation permit received by the Department of Planning and Building Services shall be rejected.

### **Section 4. Declaration of Urgency.**

Based on the findings set forth in Section 2, this ordinance is declared to be an urgency ordinance that shall be effective immediately upon adoption by the Board of Supervisors. Without this urgency ordinance, commencement of Phase Three cannabis cultivation permitting would create impacts which would detrimentally affect the health, safety and welfare of the County and which would conflict with the use regulations and development standards ultimately adopted with respect to the cultivation of cannabis. Therefore, this ordinance is necessary for the immediate preservation of the public peace, health and safety and its urgency is hereby declared.

### **Section 5. Study and Written Report.**

As directed by Ordinance No. 4488, the Department of Planning and Building Services prepared a written report pursuant to Government Code section 65858, describing the measures taken to alleviate the condition which led to the adoption of that ordinance, which report was incorporated into the agenda summary accompanying this ordinance. The Board of Supervisors hereby further directs the Department of Planning and Building Services to continue its study and preparation for the consideration of the Board of Supervisors changes to the County's General Plan and/or County code with respect to the regulation of the cultivation of cannabis. The Department of Planning and Building Services is hereby authorized and directed to prepare the report required by paragraph (d) of Government Code section 65858 describing the measures

taken to alleviate the condition which led to the adoption of this ordinance.

**Section 6. CEQA.**

This ordinance is categorically exempt from the California Environmental Quality Act under (a) section 15060(c)(2) of the State CEQA Guidelines because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; (b) section 15060(c)(3) of the State CEQA Guidelines because it is not a project within the meaning of CEQA since it has no potential for resulting in physical changes in the environment; (c) section 15061(b)(3) since there is no possibility the activity in question may have a significant effect on the environment; and (d) section 15308 since the action is a local ordinance adopted to assure protection of the environment and there are no unusual circumstances under section 15300.2 of the State CEQA Guidelines.

**Section 7. Severability.**

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

**Section 8. Conflicting Laws.**

For the term of this ordinance, as set forth in Section 9 below, the provisions of this ordinance shall govern. To the extent that there is any conflict between the provisions of this ordinance and the provisions of any other County code, ordinance, resolution or policy, the provisions of this ordinance shall control.

**Section 9. Effective Date and Term.**

This urgency Ordinance shall take full force and effect immediately upon adoption by a vote of at least four-fifths of the Board of Supervisors. In accordance with Government Code Section 65858, this Ordinance shall be in full force and effect for a period of ten (10) months and fifteen (15) days from the date of adoption, or until February 27, 2022, and shall expire as of that date unless extended by the Board of Supervisors as provided in Government Code Section 65858.

**PASSED AND ADOPTED** by the Board of Supervisors of the County of Mendocino, State of California, on this 12<sup>th</sup> day of April, 2021, by the following roll call vote:

AYES: Supervisors McGourty, Mulheren, Hashcak, Gjerde, and Williams  
NOES: None  
ABSENT: None

**WHEREUPON**, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO  
Clerk of the Board

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DAN GJERDE, Chair  
Mendocino County Board of Supervisors

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Deputy

*APPROVED AS TO FORM:*  
CHRISTIAN M. CURTIS,  
County Counsel

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

BY: CARMEL J. ANGELO  
Clerk of the Board

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Deputy