

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

184



FROM: County Counsel

SUBMITTAL DATE:
December 8, 2015

SUBJECT: Adoption of Ordinance No. 928 Clarifying the County's Prohibition on Mobile Marijuana Dispensaries and Marijuana Deliveries, Declaring Mobile Marijuana Dispensaries and Marijuana Deliveries to be a Nuisance, and Incorporating By Reference Ordinance No. 725 – All Districts [\$0] – CEQA Exempt

RECOMMENDED MOTION: That the Board of Supervisors:

1. Adopt Ordinance No. 928, an ordinance of the County of Riverside clarifying its prohibition on mobile marijuana dispensaries and marijuana deliveries and declaring mobile marijuana dispensaries and marijuana deliveries to be a public nuisance; and
2. Direct the Clerk of the Board to submit the attached Notice of Exemption to the County Clerk for filing and posting within five working days of the Board's adoption of the ordinance.

BACKGROUND:

Summary

On December 8, 2015, this Board introduced Ordinance No. 928. The Board's adoption of Ordinance No. 928, through this agenda item, will finalize the Board's approval of the ordinance clarifying the County's existing prohibition on Mobile Marijuana Dispensaries and marijuana deliveries.

(cont. page 2)

Gregory P. Priamos
County Counsel

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	

SOURCE OF FUNDS:	Budget Adjustment: N/A
	For Fiscal Year: N/A

C.E.O. RECOMMENDATION:

APPROVE

BY: Tina Grande

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

Departmental Concurrence

- A-30
- 4/5 Vote
- Positions Added
- Change Order

Prev. Agn. Ref.: 3-58 of 12/8/15; 16-2 of 5/19/15; 3-26 of 6/2/15; 3.30 of 10/3/06.

District: ALL

Agenda Number:

3-45

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

FORM 11: Ordinance No. 928 Prohibiting Mobile Marijuana Dispensaries and Marijuana Deliveries and Declaring Mobile Marijuana Dispensaries and Marijuana Deliveries to be a Nuisance

DATE: December 8, 2015

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BACKGROUND:

Summary (continued)

Through this Board's prior actions, the Board has repeatedly made clear its position prohibiting medical marijuana dispensaries under its land use authority and police powers. As advised in agenda item 3-58 of December 8, 2015, the County's zoning ordinance prohibits medical marijuana dispensaries in all zone classifications throughout the unincorporated area of the County. Since October 2006, "Medical Marijuana Dispensary" has been defined in Ordinance No. 348 as "any facility or location, whether fixed or mobile, where medical marijuana is made available to, distributed to, or distributed by, one or more of the following: a primary caregiver, a qualified patient, or a patient with an identification card as those terms are defined in Health and Safety Code Section 11362.5 et seq... ."

The Governor recently signed Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill No. 643 establishing the Medical Marijuana Regulation and Safety Act ("Act") effective January 1, 2016. The Act, at Business and Professions Code section 19300 et seq., regulates "commercial cannabis activity" which includes "cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product." (Business and Professions Code section 19300.5(k).) The general rule is that upon implementation of regulations under the Act, no person shall engage in commercial cannabis activity without possessing both a state license and a local permit, license or other authorization from the applicable local jurisdiction. The state will begin issuing licenses in January 2018.

The Act makes clear that nothing in the Act "shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning regulations or local ordinances, or enforcement of local permit or licensing requirements." (Business and Professions Code section 19315(a).) Simply put, if a local jurisdiction does not authorize dispensaries, cultivation, or other marijuana activities, a state license cannot be issued for those activities in that jurisdiction. For that reason, the Act will have limited impact on the unincorporated areas of the County since the County has existing bans on marijuana cultivation and dispensaries pursuant to the Board's prior actions. The commercial cannabis activity contemplated under the Act, including cultivating, manufacturing, testing, distributing, and dispensing, remains prohibited in the unincorporated areas of the County.

Even though the County bans marijuana activities, the County cannot prevent transportation of medical marijuana or medical marijuana products on public roads by a licensee transporting such products in compliance with the Act. (Business and Professions Code sections 19338(b), 19340(f).) With regard to deliveries of medical marijuana and marijuana products, the Act states that "deliveries... can only be made by a dispensary and in a city, county, or city and county that does not explicitly prohibit it by local ordinance." (Business and Professions Code section 19340(a).)

The County's current definition of "medical marijuana dispensary" in Ordinance No. 348, which includes reference to mobile facilities and locations, prohibits deliveries in the unincorporated areas of the County. That said, it is our recommendation that Ordinance No. 928 be adopted to explicitly prohibit deliveries so as to clarify the County's existing ban on deliveries and be consistent with the explicit language in the Act.

Ordinance No. 928 is not a project under the California Environmental Quality Act (CEQA) per CEQA Guidelines sections 15060(c)(2), 15060(c)(3) and 15378 and is otherwise exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) based on the findings and conclusions contained in the attached Notice of Exemption.

Impact on Residents and Businesses

This ordinance merely clarifies the County's current prohibition with regard to marijuana deliveries in light of the new state law. Enforcement of this ordinance will be accomplished in conjunction with the County's other

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FORM 11: Ordinance No. 928 Prohibiting Mobile Marijuana Dispensaries and Marijuana Deliveries and Declaring Mobile Marijuana Dispensaries and Marijuana Deliveries to be a Nuisance

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existing ordinances prohibiting marijuana dispensaries and cultivation with such enforcement costs being handled under the enforcing departments' existing operating budgets.

SUPPLEMENTAL:

Additional Fiscal Information

N/A

ATTACHMENTS:

1. Ordinance No. 928
2. Notice of Exemption

1 Health and Safety Code.”

- 2 b. In *City of Riverside v. Inland Empire Patients Health and Wellness Center,*
3 *Inc.* (2013) 56 Cal. 4th 729, the California Supreme Court held that
4 “[n]othing in the [Compassionate Use Act of 1996] or the [Medical
5 Marijuana Program] expressly or impliedly limits the inherent authority of a
6 local jurisdiction, by its own ordinances, to regulate the use of its land... .”
- 7 c. On May 19, 2015, in Ordinance No. 348.4802, the Board of Supervisors
8 adopted another amendment to Ordinance No. 348 clarifying that
9 cultivation of marijuana is prohibited in all zone classifications within the
10 unincorporated areas of Riverside County and that no permit of any type
11 shall be issued for marijuana cultivation. Ordinance No. 348.4802 further
12 states that nothing in the County’s zoning ordinance shall be construed to
13 allow a use that is otherwise illegal under State or Federal law.
- 14 d. On June 2, 2015, the Board of Supervisors adopted Ordinance No. 925
15 declaring marijuana cultivation, either indoors or outdoors, upon any
16 premises within all unincorporated areas to be prohibited and a public
17 nuisance subject to abatement and administrative and civil penalties.
- 18 e. Through its prior actions, the Board of Supervisors has made clear its
19 position with regard to medical marijuana dispensaries, including mobile
20 dispensaries, and cultivation under its land use authority and police powers.
- 21 f. The Federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., classifies
22 marijuana as a Schedule I Drug, which is defined as a drug or other
23 substance that has a high potential for abuse, that has no currently accepted
24 medical use in treatment in the United States, and that has not been
25 accepted as safe for use under medical supervision. The Federal Controlled
26 Substances Act makes it unlawful, under federal law, for any person to
27 cultivate, manufacture, distribute or dispense, or possess with intent to
28 manufacture, distribute or dispense, marijuana. The Federal Controlled

1 Substances Act contains no exemption for the cultivation, manufacture,
2 distribution, dispensation, or possession of marijuana for medical purposes.

3 g. On October 9, 2015, the Governor signed Assembly Bill No. 243, Assembly
4 Bill No. 266, and Senate Bill No. 643 establishing the Medical Marijuana
5 Regulation and Safety Act (“Act”). The Act, at Business and Professions
6 Code section 19300 et seq., regulates “commercial cannabis activity” which
7 includes “cultivation, possession, manufacture, processing, storing,
8 laboratory testing, labeling, transporting, distribution, or sale of medical
9 cannabis or a medical cannabis product.” Upon implementation of
10 regulations under the Act, no person shall engage in commercial cannabis
11 activity without possessing both a state license and a local permit, license or
12 other authorization from the applicable local jurisdiction.

13 h. Business and Professions Code section 19340 states deliveries of medical
14 marijuana can only be made by a dispensary in a city, county, or city and
15 county that does not explicitly prohibit delivery by local ordinance.

16 i. The purpose of this ordinance is to clarify the County’s existing prohibition
17 on marijuana activities, which already includes a ban on mobile marijuana
18 dispensaries, by explicitly prohibiting medical marijuana deliveries within
19 all unincorporated areas of Riverside County.

20 Section 2. AUTHORITY. This ordinance is adopted pursuant to the authority granted
21 by Article XI, section 7 of the California Constitution, Business and Professions Code sections 19315 and
22 19340, Health and Safety Code section 11362.83, and Government Code sections 25845 and 53069.4.

23 Section 3. DEFINITIONS. As used in this ordinance, the following terms shall have
24 the following meanings:

25 a. Delivery. Has the same meaning as the term is defined in Business and
26 Professions Code section 19300.5, effective January 1, 2016 or thereafter
27 amended.
28

1 b. Mobile Marijuana Dispensary. Any clinic, cooperative, collective, club,
2 business or group which transports or delivers, or arranges the
3 transportation or delivery, of medical marijuana to a person.

4 c. Person. Any person, firm, cooperation, association, club, collective,
5 society, or other organization. Person shall include any owner, manager,
6 proprietor, employee, volunteer or salesperson.

7 d. Operation. Any effort to locate, operate, own, lease, supply, allow to be
8 operated, or aid, abet or assist in the operation of a Mobile Marijuana
9 Dispensary.

10 Section 4. PROHIBITION ON MOBILE MARIJUANA DISPENSARIES. Mobile
11 Marijuana dispensaries are prohibited within all unincorporated areas of Riverside County. No person
12 shall locate, operate, own, suffer, allow to be operated or aid, abet or assist in the operation of any Mobile
13 Marijuana Dispensary within the unincorporated areas of Riverside County.

14 Section 5. PROHIBITION ON MARIJUANA DELIVERY. No person shall:

15 a. Deliver marijuana to any location within all unincorporated areas of
16 Riverside County from a Mobile Marijuana Dispensary, regardless of where
17 the Mobile Marijuana Dispensary is located, or engage in any operation for
18 this purpose.

19 b. Deliver any marijuana-infused project such as tinctures, baked goods, or
20 other consumable products, to any location within all unincorporated areas
21 of Riverside County from a Mobile Marijuana Dispensary, regardless of
22 where the Mobile Marijuana Dispensary is located, or engage in any
23 operation for this purpose.

24 Section 6. PUBLIC NUISANCE DECLARED. Operation of a Mobile Marijuana
25 Dispensary or delivery of marijuana within the unincorporated areas of Riverside County in violation of
26 this ordinance is hereby declared a public nuisance and shall be abated pursuant to all available remedies.

27 Section 7. VIOLATIONS. The procedures, remedies and penalties for violation of
28 this ordinance and for recovery of costs related to enforcement are provided for in Ordinance No. 725, as

1 it is amended from time to time, which is incorporated herein by this reference. Notwithstanding any
2 other provision of the County's ordinances, a violation of this ordinance is not subject to criminal
3 penalties.

4 Section 8. SEVERABILITY. If any provision, clause, sentence or paragraph of this
5 ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity
6 shall not affect the other provisions of this ordinance which can be given effect without the invalid
7 provision or application, and to this end, the provisions of this ordinance are hereby declared to be
8 severable.

9 Section 9. EFFECTIVE DATE. This ordinance shall take effect thirty (30) calendar
10 days after its adoption.

11
12 BOARD OF SUPERVISORS OF THE COUNTY
13 OF RIVERSIDE, STATE OF CALIFORNIA

14 By: _____

15 Chairman

16 ATTEST:

17 CLERK OF THE BOARD

18
19 By: _____

20 Deputy

21
22 (SEAL)

23 APPROVED AS TO FORM

24
25 December 8, 2015

26
27 By:  _____

28 TIEFANY N. NORTH
Deputy County Counsel

NOTICE OF EXEMPTION

To: _____ Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

From: County of Riverside
4080 Lemon Street
Riverside, CA 92501

To: X Office of the County Clerk & Recorder

Project Title: Ordinance No. 928 Prohibiting Mobile Marijuana Dispensaries and Marijuana Deliveries, Declaring Mobile Marijuana Dispensaries and Marijuana Deliveries to be a Nuisance, and Incorporating by Reference Ordinance No. 725.

Project Location: The unincorporated area of Riverside County.

Project Description: Ordinance No. 928 prohibits mobile marijuana dispensaries within all unincorporated areas of Riverside County. Under the ordinance, no person shall locate, operate, own, suffer, allow to be operated or aid, abet or assist in the operation of any Mobile Marijuana Dispensary within the unincorporated areas of Riverside County. Further, Ordinance No. 928 prohibits the delivery of marijuana or marijuana-infused products to any location within all unincorporated areas of Riverside County from a Mobile Marijuana Dispensary, regardless of where the Mobile Marijuana Dispensary is located. Ordinance No. 928 declares mobile marijuana dispensaries and marijuana deliveries to be a public nuisance. Ordinance No. 928 clarifies the County’s existing ban on mobile dispensaries, set forth in Ordinance No. 348 in light of the marijuana delivery provisions contained in the newly enacted Medical Marijuana Regulation and Safety Act (AB266, AB 243, and 643) which states that marijuana deliveries can only be made by a dispensary in a city, county, or city and county that does not explicitly prohibit it by local ordinance. Ordinance No. 928 is an explicit prohibition on marijuana deliveries.

Name of Public Agency Approving Project: County of Riverside

Name of Person or Agency Carrying Out Project: County of Riverside

Exempt Status: (check one)

- Ministerial
- Declared Emergency
- Emergency Project
- Categorical Exemption:
- Statutory Exemption:
- X Other: (State CEQA Guidelines Sec. 15060(c)(2), 15060(c)(3), 15061(b)(3))

Reasons Why Project is Exempt: Ordinance No. 928 is exempt from the provisions of the California Environmental Quality Act (CEQA) because the ordinance is not a “project” under CEQA pursuant to CEQA Guidelines sections 15060(c)(2) and 15060(c)(3) because the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment and the activity is not a project as defined in CEQA Guidelines section 15378. Additionally, the ordinance is exempt from CEQA per CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. This determination is an issue of fact and if sufficient evidence exists in the record that the activity cannot have a significant effect on the environment, then the exemption applies and no further evaluation under CEQA is required. See *Muzzy Ranch Co. v. Solana County Airport Land Use Comm’n* (2007) 41 Cal.4th 372. With certainty, there is no possibility that the ordinance may have a significant effect on the

environment.

Ordinance No. 928 merely clarifies the County's existing ban on mobile marijuana dispensaries, which includes a ban on the delivery of marijuana. The ordinance does not authorize any activity and maintains an existing prohibition. No new land disturbance or development projects are associated with the ordinance and the ordinance does not commit the County to approve any new land disturbance or development.

County Contact Person

Phone Number

Signature: _____ Title: _____ Date: _____

For County Clerk's Use Only