

BEFORE THE BOARD OF COUNTY COMMISSIONERS

STATE OF OREGON, COUNTY OF JACKSON

IN THE MATTER OF DECLARING A LOCAL) ORDER NO. 186-21
STATE OF EMERGENCY WITHIN JACKSON)
COUNTY RELATING TO UNLAWFUL)
CANNABIS ACTIVITIES AND OTHER)
MATTERS RELATED THERETO)

WHEREAS, at the November 2014 General Election, the voters of the State of Oregon passed Ballot Measure 91, *Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act of 2014*, which has the effect of legalizing the production and use of recreational marijuana and industrial hemp; and

WHEREAS, on November 5, 2014, the Jackson County Board of Commissioners, recognizing that the legalization of recreational marijuana in Jackson County was likely to have a significant impact on Jackson County and the residents of Jackson County, referred a ballot measure to the citizens of Jackson County to impose local County taxes on the production and retail sale of medical and non-medical marijuana occurring in Jackson County in order to provide revenue to the County to offset the costs to the County associated with the impacts of the legalization of recreational marijuana and industrial hemp; and

WHEREAS, at the March 2015 Special Election, the voters of Jackson County overwhelming approved the Ballot Measure referred by the Board of Commissioners with 62.93 percent of the voters voting in favor of County taxes on the production and retail sale of marijuana in the County; and

WHEREAS, after the voters of Jackson County overwhelmingly approved the County taxes on the production and retail sale of marijuana, the Oregon Legislature enacted, and Governor Brown signed, Oregon House Bill 3400 (2015) (HB 3400), a portion of which was codified as Oregon Revised Statute (ORS) 475B.345 (renumbered in 2017 as ORS 475B.491), which prohibited local governments from enacting any tax or fee on the production, processing, or sale of marijuana, except for a local tax capped at 3 percent on only the retail sale of recreational marijuana; and

WHEREAS, the effect of ORS 475B.491 was to preempt the voters overwhelming prior approval of the Jackson County local County taxes on the production and retail sale of marijuana in Jackson County, and prohibit the collection of these taxes; and

WHEREAS, the provisions of HB 3400 also enacted ORS 475B.700 to ORS 475B.760 establishing a statewide tax on the retail sale of marijuana and, from the proceeds of which, a portion was to be distributed to local governments in Oregon to provide revenue to deal with the ongoing impacts of the marijuana industry; and

WHEREAS, prior to January 1, 2021, Jackson County received approximately \$700,000, on average, per quarter in revenue for each of the previous four quarters as its share of the distribution of the statewide tax on the retail sale of marijuana under the provisions of ORS 475B.700 to ORS 475B.760; and

WHEREAS, at the November 2020 General Election, the voters of the State of Oregon passed Ballot Measure 110, of which Section 10 amended the provisions of ORS 475B.759 and dramatically reduced Jackson County's share of the proceeds from the statewide tax on the retail sale of marijuana; and

WHEREAS, for the first distribution of Jackson County's share of the proceeds from the statewide tax on the retail sale of marijuana, after the adoption of Ballot Measure 110, the revenue was reduced from \$811,927, the last payment prior to the effective date of Ballot Measure 110 and the amendment to ORS 475B.759, to \$213,510, the first payment after the effective date of Ballot Measure 110 and the amendment to ORS 475B.759; and

WHEREAS, the effect of Ballot Measure 110 is nearly a 75 percent reduction in the ongoing revenue to Jackson County from the distribution of the proceeds of the statewide tax on the retail sale of marijuana; and

WHEREAS, the actual impacts of the legalization of recreational marijuana and industrial hemp to Jackson County far exceed any initial estimate of those impacts and include violations of the Codified Ordinances of Jackson County and the Jackson County Land Development Ordinance (County Codes), violations of State criminal laws, violations of State laws regulating cannabis production, and violations of State water laws; and

WHEREAS, in 2015, the year prior to the implementation of legalized production, processing, and wholesaling of recreational marijuana in the State of Oregon, the Code Enforcement Division of the Jackson County Development Services Department (Code Enforcement) initiated 604 cases related to violations of the County Codes, of which zero were related to marijuana production or processing; and

WHEREAS, in 2016, one year after the implementation of legalized production, processing, and wholesaling of recreational marijuana in the State of Oregon, Code Enforcement initiated 902 cases related to violations of the County Codes, of which 333, or 37 percent of all cases, were related to marijuana production or processing; and

WHEREAS, in September 2021, six years after the implementation of legalized production, processing, and wholesaling of recreational marijuana in the State of Oregon, Code Enforcement initiated 1,006 cases related to violations of the County Codes, of which 663, or 65 percent of all cases, are related to marijuana production or processing, with four months of 2021 still remaining; and

WHEREAS, if complaints continue at the current rate for 2021, Code Enforcement will initiate an estimated 1,509 cases related to violations of the County Code, with an estimated 980 of those cases related to marijuana production or processing alone; and

WHEREAS, in comparing the amount of time from when a citation of a violation of the County Codes is issued by a Code Enforcement Officer, to when a County Hearings Officer can consider the case, in 2016, the average case took three weeks from the time of citation to the time of hearing but, in 2021, the average case now takes three months, or 12 weeks, from the time of citation to the time of hearing; and

WHEREAS, criminal activity related to marijuana production has also dramatically increased since the passage of Ballot Measure 91 in 2014; and

WHEREAS, as compared to 2014, the year prior to the passage of Ballot Measure 91, to today, the Jackson County Sheriff's Office has seen a 59 percent increase in calls for service including, but not limited to, burglary, theft, assault, robbery, and nuisance crimes associated with the marijuana industry; and

WHEREAS, as compared to 2014, the year prior to the passage of Ballot Measure 91, law enforcement in Jackson County, including the Jackson County Sheriff's Office, has witnessed a significant increase in the number of cases and the amount of marijuana being transported from Jackson County to localities outside of the State of Oregon; and

WHEREAS, as law enforcement in Jackson County, including the Jackson County Sheriff's Office, is witnessing new criminal offenses and other violations, generally unseen before 2014, occurring at cannabis grow sites including significant evidence of what is being called "narco-slavery," including forced labor; squalid and unsafe living conditions for workers; and exploitation, intimidation, and abuse of workers; and

WHEREAS, on April 13, 2021, the Governor declared that Jackson County is in a drought emergency pursuant to Executive Order No. 21-08; and

WHEREAS, complaints related to the use of water in violation of State water laws, and individual water rights, have dramatically increased since 2015; and

WHEREAS, in 2015, the Oregon Water Resources Department District 13 Watermaster (District 13) had a staff of 3.50 full-time equivalent (FTE) positions to respond to complaints and perform all of their other duties for Jackson and Josephine Counties; and

WHEREAS, in 2021, District 13 has a staff of 4.00 FTEs to respond to complaints and perform all of their other duties for Jackson and Josephine Counties; and

WHEREAS, in 2015, District 13 received 39 complaints related to the use of water in Jackson County; and

WHEREAS, in 2021, year-to-date, District 13 has received 195 complaints related to the use of water in Jackson County, for a projected 275 complaints for all of 2021; and

WHEREAS, due to the limits caused by the current size of the District 13 staff, of the 195 complaints received in 2021, year-to-date, District 13 has been unable to take any action on 82 of those complaints; and

WHEREAS, illegal uses of water exacerbate the drought under which Jackson County is suffering and places legal uses of water under existing water rights in jeopardy; and

WHEREAS, in 2021, the Oregon Legislature enacted, and Governor Brown signed, Oregon House Bill 3000 (2021) (HB 3000) which made certain revisions to the State law governing the production and sale of cannabis in the State of Oregon including:

- (a) Making the production of cannabis without an appropriate registration or license issued by the State of Oregon a crime; and
- (b) Providing the Oregon Liquor and Cannabis Commission (OLCC) and Oregon Department of Agriculture (ODA) the authority to inspect cannabis production sites within the jurisdiction of the other agency; and
- (c) Providing monetary grants to local governments related to the enforcement of laws related to the production of cannabis; and
- (d) Authorizing the deployment of the Oregon National Guard to assist, as able, in the enforcement of laws related to cannabis production; and

WHEREAS, HB 3000 failed to provide any directed and ongoing revenue to Jackson County for the issues Jackson County is facing related to the impacts of the production of marijuana in the County; and

WHEREAS, the inspections of registered industrial hemp sites by officers of the OLCC have so far indicated that nearly one out of two sites registered to grow industrial hemp are growing cannabis with Tetrahydrocannabinol (THC) in excess of the limits allowed for industrial hemp and another 20 percent of the sites have refused entry to officers of the OLCC to conduct any inspection; and

WHEREAS, law enforcement estimates that the number of sites producing industrial hemp or marijuana who are doing so without the appropriate State issued license or registration far exceeds the number of sites who are producing cannabis with the appropriate State issued license or registration; and

WHEREAS, the provisions of HB 3000, and other State laws, do not provide for any current enforcement of State law regulating cannabis production at sites without the appropriate State issued license or registration; and

WHEREAS, the lack of any current enforcement of State laws regarding cannabis production, at sites without the appropriate State issued license or registration, leaves the vast majority of the cannabis production sites in Jackson County without any current enforcement of State laws regulating cannabis production sites by agents or officers of the State of Oregon; and

WHEREAS, Jackson County has enacted a local ordinance, Chapter 224, Emergency Management, of the Codified Ordinances of Jackson County, pursuant to the authority granted to Jackson County by ORS Chapter 401, which provides that the authority to declare a state of emergency rests with the Board of County Commissioners; and

WHEREAS, the following conditions have resulted in the need for a local state of emergency:

- (a) Since the passage of Ballot Measure 91, the production and processing of cannabis has resulted in significant impacts to Jackson County related to enforcing compliance with County Codes, State criminal laws, and State water laws; and jeopardizing the public health, safety, and welfare of our citizens.
- (b) The State of Oregon has preempted the ability of Jackson County to obtain revenue, at the County level, through the taxation of the production and retail sales of medical and non-medical marijuana to provide resources to address the significant impacts on our County.
- (c) The State of Oregon, by the vote of its citizens to adopt Measure 110, has dramatically reduced the revenue provided to Jackson County through the distribution of the share of the proceeds from the statewide tax on the retail sale of marijuana.
- (d) The impacts to Jackson County from the production and processing of cannabis in our County continue to increase year after year.
- (e) Jackson County lacks the ability to develop revenue needed for resources at the local level to address the existing and future impacts on our community and, therefore, requires funding and resources from the State of Oregon to properly regulate and enforce the County Codes, State criminal laws, and State water laws related to cannabis production; and

WHEREAS, the continued lack of funding and resources to properly regulate and enforce the County Codes, State criminal laws, and State water laws related to the cannabis industry constitutes an ongoing and extreme risk to public health and safety, and are continuing to cause significant impacts in Jackson County.

Now, therefore,

The Board of County Commissioners of Jackson County ORDERS:

1. A local state of emergency exists in Jackson County, effective on October 13, 2021, throughout all of Jackson County related to the production of cannabis in violation of County Codes, State criminal laws, and State water laws.
2. The County shall request the assistance of the State of Oregon, through Governor Brown and the Oregon Legislature, to provide the revenue and resources necessary to properly enforce the County Codes, State criminal laws, State laws on the licensure and registration of cannabis related activities, and State water laws through whatever means are available including, but not limited to:
 - (a) Funds from the State to the County to employ sufficient personnel to adequately enforce County Codes and State criminal laws relating to cannabis production including Code Enforcement Officers, Sheriff's Deputies, Administrative Hearings Officers, Deputy District Attorneys, and administrative personnel.
 - (b) Assigning sufficient State personnel to assist in the enforcement of County Codes, State criminal laws, and State water laws including Administrative Law Judges to assist in resolving County Code citations, State law enforcement personnel to enforce State criminal laws, State Water Resources personnel to enforce State water laws, and OLCC and ODA personnel to enforce registration and licensure requirements for cannabis production sites, and to pursue enforcement against unlicensed and unregistered production sites.
 - (c) Repealing those provisions of ORS 475B.345 which prohibit the County from enforcing the provisions of the Jackson County local County taxes on the production and sale of medical and non-medical marijuana, which would allow Jackson County to derive its own funds to develop the necessary resources to enforce County Codes and State criminal laws.
 - (d) Ordering the deployment of the Oregon National Guard to assist, as able, in the enforcement of laws related to the production of cannabis.
3. This declaration of emergency shall expire on October 13, 2022, unless rescinded or extended further.

DATED this 13th day of October, 2021, at Medford, Oregon.

JACKSON COUNTY BOARD OF COMMISSIONERS

/s/ Rick Dyer
Rick Dyer, Chair

/s/ Dave Dotterer
Dave Dotterer, Commissioner

/s/ Colleen Roberts
Colleen Roberts, Commissioner

Due to the existing novel coronavirus (COVID-19) pandemic and the need to promote physical distancing, the Jackson County Board of Commissioners is conducting meetings through electronic and telephonic means. On January 5, 2021, the Board of Commissioners approved Order No. 1-21 authorizing the use of their electronic signatures on Ordinances, Orders, and other documents. Following the motion and roll call vote, Commissioners Dyer, Dotterer, and Roberts authorized the use of his/her electronic signature on this Board Order No. 186-21.