

**ORDINANCE REPEALING CHAPTER 7.128 OF THE SANTA CRUZ COUNTY CODE
AND ADOPTING NEW CHAPTER 7.128 REGARDING LICENSES FOR THE
COMMERCIAL CULTIVATION OF MEDICAL CANNABIS**

The Board of Supervisors of Santa Cruz County hereby finds and declares the following:

WHEREAS, in 1992 the voters of the County of Santa Cruz enacted Measure "A", adding Chapter 7.122 to the Santa Cruz County Code which declared support for making cannabis available for medical use; and

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5, and entitled "The Compassionate Use Act of 1996"); and

WHEREAS, (1) the intent of Proposition 215 was to enable persons who are in need of cannabis for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances; (2) the proposition further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of cannabis for non-medical purposes"; and (3) the ballot arguments supporting Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of cannabis to be grown anywhere"; and

WHEREAS, the Board of Supervisors added Chapter 7.124 to the Santa Cruz County Code which implemented provisions of Proposition 215 by establishing a medical cannabis identification card program operated by the County; and

WHEREAS, in 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code sections 11362.7 *et seq.*) to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who cultivate cannabis for medical purposes with a limited defense to certain specified State criminal statutes; and

WHEREAS, Health and Safety Code section 11362.83 expressly allows cities and counties to adopt and enforce ordinances that are consistent with Senate Bill 420; and

WHEREAS, following enactment of Senate Bill 420, the Board of Supervisors amended Chapter 7.124 to establish local guidelines consistent with the new State law for the possession and cultivation of medical cannabis used by qualified patients and caregivers; and

WHEREAS, (1) the Federal Controlled Substances Act, 21 U.S.C. §§ 801 *et seq.*, classifies cannabis as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision; (2) the Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, cannabis; and (3) the Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of cannabis for medical purposes; and

WHEREAS, (1) Proposition 215 and Senate Bill 420 primarily address criminal law issues, providing qualifying patients and primary caregivers with limited immunity from State criminal prosecution under certain identified statutes; and (2) Proposition 215, Senate Bill 420, the relevant provisions of the Santa Cruz County Code, and the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use adopted pursuant to Senate Bill 420 do not provide comprehensive civil regulation of cannabis cultivation facilities; and

WHEREAS, (1) on May 6, 2013, the California Supreme Court unanimously ruled in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (“*Inland Empire*”), that California’s medical cannabis laws do not preempt local ordinances that ban medical cannabis facilities; and (2) the Court found that the local police power derived from Article XI, section 7, of the California Constitution includes broad authority to determine, for purposes of public health, safety, and welfare, the appropriate uses of land within a local jurisdiction’s borders, and that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of medical cannabis will not be permitted to operate within its borders”; and

WHEREAS, (1) the unregulated cultivation of cannabis in the unincorporated area of Santa Cruz County can adversely affect the health, safety, and well-being of the county and its residents; and (2) comprehensive civil regulation of premises used for cannabis cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, obnoxious smells, indoor electrical fire hazards that may result from unregulated cannabis cultivation and related risks; and

WHEREAS, on December 10, 2013, the Board of Supervisors adopted an ordinance deleting then reenacting Chapter 7.124 of the Santa Cruz County Code, which prohibited medical cannabis businesses, but also granted a limited immunity from enforcement for such businesses that did not violate the restrictions and limitations added by that Chapter; and

WHEREAS, on February 25, 2014, the Board of Supervisors adopted an ordinance enacting Chapter 7.126 of the Santa Cruz County Code, which prohibited medical cannabis cultivation businesses, but also granted a limited immunity from enforcement for such businesses that did not violate the restrictions and limitations added by that Chapter; and

WHEREAS, after the enactment of Chapter 7.126, County staff identified a sharp rise in illegal cannabis cultivation sites that constitute a public nuisance by degrading the environment, improperly diverting natural resources, creating fire danger, and negatively impacting the quality of life for residents of Santa Cruz County; and

WHEREAS, on April 14, 2015, the Board of Supervisors adopted Ordinance No. 5201, which repealed existing Chapter 7.126 and adopted a new Chapter 7.126 prohibiting the commercial cultivation of cannabis in Santa Cruz County; and

WHEREAS, on June 17, 2015, the Santa Cruz County Clerk of Elections notified the Board of Supervisors that a County Referendum Against County Ordinance No. 5201 contained

a sufficient number of qualified signatures to require further action on the part of the Board of Supervisors; and

WHEREAS, on August 18, 2015, the Board of Supervisors repealed Ordinance No. 5201, which had the effect of leaving the prior version of Chapter 7.126 in place; and

WHEREAS, on or about September 11, 2015, the California Legislature approved Assembly Bill 266, Assembly Bill 243, and Senate Bill 643, together constituting the “Medical Marijuana Regulation and Safety Act,” and subsequently renamed the “Medical Cannabis Regulation and Safety Act” (hereinafter “MCRSA”), which the Governor thereafter signed into law; and

WHEREAS, on December 8, 2015, the Board of Supervisors enacted an ordinance adding Chapter 7.128 to the Santa Cruz County Code, which created an interim licensing scheme to regulate the commercial cultivation of medical cannabis; and

WHEREAS, (1) cultivation of any amount of cannabis at locations within six hundred feet of a school or public park creates unique risks that the cannabis plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles; (2) the potential for criminal activities associated with cannabis cultivation in such locations or premises poses heightened risks that juveniles will be involved or endangered; and (3) cultivation of any amount of cannabis in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the cannabis plants; and

WHEREAS, as recognized by the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of cannabis grown for medical use, the cultivation or other concentration of cannabis in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, (1) the limited right of qualified patients and their primary caregivers under state law to cultivate cannabis plants for medical purposes does not confer the right to create or maintain a public nuisance; and (2) by adopting the regulations contained in this ordinance, Santa Cruz County will achieve a significant reduction in the aforementioned harms caused or threatened by the unregulated cultivation and dispensing of cannabis in the unincorporated area of the County; and

WHEREAS, (1) it is the purpose and intent of this ordinance to implement State law by providing a means for regulating the cultivation of medical cannabis in a manner that is consistent with State law and regulations, and which balances the needs of medical patients and their caregivers and promotes the health, safety, and welfare of the residents and businesses within the unincorporated territory of Santa Cruz County; and (2) the intent and purpose of this ordinance is to establish reasonable regulations upon the manner in which medical cannabis may be cultivated, including restrictions on the location of cultivation activities and the amount of cannabis that may be cultivated in any location or premises, in order to protect the environment, water supply, public health, safety, and welfare in Santa Cruz County; and

WHEREAS, the Board of Supervisors has identified as its major policy goals concerning the cultivation of medical cannabis to be 1) an adequate supply of medical cannabis for local qualified patients; 2) protection of the environment; and 3) protection of neighborhood quality; and

WHEREAS, (1) nothing in this ordinance shall be construed to allow the cultivation of cannabis for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of cannabis that is otherwise illegal under State or federal law; and (2) no provision of the Chapter created by this ordinance shall be deemed a defense or immunity to any action brought against any person by Santa Cruz County, the Santa Cruz County District Attorney, the Attorney General of the State of California, or the United States of America.

NOW THEREFORE the Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION I

The Santa Cruz County Code is hereby amended by deleting existing Chapter 7.128 in its entirety.

SECTION II

The Santa Cruz County Code is hereby amended by adding new Chapter 7.128 to read as follows:

Chapter 7.128 Medical Cannabis Cultivation Licenses

Sections:

- 7.128.010 Purpose.**
- 7.128.030 Definitions.**
- 7.128.050 Prohibited activities.**
- 7.128.070 Creation of the Medical Cannabis Cultivation Licensing Program.**
- 7.128.090 License categories.**
- 7.128.110 License required.**
- 7.128.130 Enforcement.**
- 7.128.150 No duty to enforce.**

7.128.010 Purpose.

The purpose of this Chapter is to provide a licensing scheme to regulate the cultivation of medical cannabis in the unincorporated area of Santa Cruz County. It is also the purpose of this Chapter to mitigate the negative impacts and secondary effects associated with ongoing cannabis activities including, but not limited to: demands placed on law enforcement and administrative resources; neighborhood disruption; the exposure of children to cannabis; recreational drug sales to minors and adults; fraud in issuing, obtaining, or using medical cannabis recommendations; robberies; burglaries; assaults; drug trafficking and other violent crimes; and the damage to the natural environment resulting from destructive cannabis cultivation activity.

This Chapter is not intended to conflict with federal or State law. It is the intention of the County that this Chapter be interpreted to be compatible with federal and State enactments and in furtherance of the public purposes that those enactments encompass.

7.128.030 Definitions.

As used in this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section.

- (A) “Applicant” means the person or entity submitting an application for a commercial cultivation license under this Chapter on behalf of the owner or owners of the cannabis cultivation business seeking to be licensed.
- (B) “Approved on-site source” means a source of water on the parcel at issue for which the applicant has obtained 1) the permission of all persons holding a legal right to the use of that water; and 2) the permission of all relevant federal, State, and local government agencies having authority to control or regulate the use of that water.
- (C) “Building” means any structure consisting of walls and a roof, which is used for the housing, shelter, or enclosure of persons, animals, chattels, or property of any kind.
- (D) “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not, as defined under the California Medical Cannabis Regulation and Safety Act at Health and Safety Code section 19300.5(f), as may be amended.
- (E) “Canopy” means the net vegetative growth area of the combined diameters of individual plants. For purposes of this definition, diameter is measured by plotting a straight line from side to side through the widest part of a plant.
- (F) “Coastal Zone” means that portion of the Coastal Zone, as established by the Coastal Act of 1976 and as it may subsequently be amended, which lies within the unincorporated area of Santa Cruz County.
- (G) “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- (H) “Cultivation site” means a location where cannabis is planted, grown, harvested, dried, cured, graded, or trimmed. A licensed cultivation site may be located on more than one parcel as long as the parcels are adjacent and commonly owned.
- (I) “Fence” means a wall or barrier connected by boards, masonry, rails, panels, or any other materials for the purpose of enclosing space or separating and securing parcels of land. For purposes of this Chapter, the term “Fence” does not include tarpaulins, scrap material, hedges, or bushes.
- (J) “Growing Area” means a specific area on a cultivation site where cannabis is grown.

(K) “Hazardous material” means any material as defined in California Health and Safety Code Section 25501(n), as may be amended.

(L) “Indoor” or “indoors” means any area that is contained within a fully enclosed and secured permanent structure that contains fixed exterior walls and a roof, that is not open to or accessible by the public without authorization by the licensee. Structures of a temporary or non-secure nature, including but not limited to moveable greenhouses, tents, and hoop houses, are not considered “indoor” or “indoors” for purposes of this definition.

(M) “License” means the written evidence of permission given by the Licensing Official for a licensee to cultivate cannabis. “License” does not mean “permit” within the meaning of the Permit Streamlining Act, and a license does not constitute a land use permit that runs with the land on which cultivation takes place.

(N) “Licensee” means the person or entity holding a valid license to cultivate cannabis under this Chapter.

(O) “Licensing Official” means the official designated by the County Administrative Officer who is responsible for implementing the provisions of this Chapter.

(P) “MCCL Program” means the Medical Cannabis Cultivation Licensing Program created by this Chapter.

(Q) “Outdoor” or “Outdoors” means any area that is not “indoors” as defined in this Chapter.

(R) “Owner” or “owners” means all persons or entities holding a financial interest in a cannabis cultivation business. For purposes of this definition, the term “financial interest” does not include a security interest, lien, or encumbrance on property.

(1) If the owner is an entity, “owner” includes within the entity each person participating in the direction, control, or management of the business.

(2) If the owner is a publicly traded company, “owner” means the chief executive officer in addition to anyone holding a financial interest in the business.

(S) “Parcel” means that unit of land assigned a unique Assessor’s Parcel Number by the County Assessor, whether vacant or occupied by a building, group of buildings, or accessory buildings, and includes the buildings, structures, yards, open spaces, lot width, and lot area. The Licensing Official shall have the discretion to consider contiguous parcels under common ownership as a single parcel for purposes of this Chapter, where appropriate.

(T) “Park” means any playground, hiking or riding trail, recreational area, beach, community center or building, historic structure or facility, conservation land, biological mitigation area, or open space owned, managed or controlled by any public entity or conservation entity such as a non-profit land trust.

(U) “Qualified Patient Cultivation Site” or “QPCS” means:

(1) A cultivation site operated by a qualified patient, person with an identification card, or designated primary caregiver, solely for the patient's non-commercial personal use, on a single parcel that includes the residence of the patient or caregiver, and subject to the following restrictions:

(a) The amount of cannabis grown must not exceed one hundred (100) square feet of total garden canopy;

(b) Any cannabis cultivated within that geographic area defined by SCCC 2.04.030 must be grown indoors;

(c) Cultivation must not be visible from any adjacent public right-of-way;

(d) If cultivation takes place indoors, (i) lighting must not exceed 1,200 watts without a written certification from a licensed electrician that the cultivation site has all necessary electrical permits required by the California Building Codes to ensure that the level and manner of electricity use is safe; (ii) there must be no flammable products used for cultivation purposes; and (iii) there must be no exterior evidence of cultivation; and

(e) None of the cannabis that is cultivated at the QPCS is sold to, donated to, transferred to, or used by any person other than the qualified patient or person with an identification card for whom the medical cannabis is cultivated.

(2) A cultivation site granted an exemption by the Planning Director pursuant to SCCC 13.10.670(G) as enacted by Ordinance No. 5090 (now repealed), as long as the area subject to cultivation is not expanded or enlarged beyond what existed on January 1, 2010 at the location where the exemption was granted. The holder of the exemption may move its location to another site in the County, as long as the area subject to cultivation does not exceed what existed on January 1, 2010 at the location where the exemption was originally granted, and as long as the new site meets all other requirements of this Chapter, other than those specifically waived by the Licensing Official.

(V) "Residence" means a fully enclosed structure or structures, including any garage or ancillary structure, used as a dwelling unit.

(W) "School" means any licensed preschool or any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private residences.

(X) "Structure" means any secure building constructed or erected, supported directly or indirectly on the earth, the interior of which is protected from the elements and meant to be occupied by people or property. "Structure" does not include a greenhouse, tent, hoop house, vehicle, carport, or other facilities of a temporary or moveable nature.

(Y) The following words or phrases when used in this section shall be construed as defined in California Health and Safety Code Section 11362.7, as may be amended: "qualified patient;" "identification card;" "person with an identification card;" and "primary caregiver."

7.128.050 Prohibited activities.

Other than as specifically allowed under this Chapter, it is unlawful and shall constitute a public nuisance for anyone to cultivate cannabis.

(A) It is unlawful and shall constitute a public nuisance for any person to cultivate cannabis for commercial purposes (i.e., for purposes of sale, trade, or gain) without 1) a currently valid local license required by this Chapter; and 2) a currently valid State license required under California law, once such licenses are being issued.

(B) It is unlawful and shall constitute a public nuisance for any person to cultivate cannabis for non-commercial purposes (i.e., for personal use) unless the cultivation complies with the definition of a Qualified Patient Cultivation Site as set forth in SCCC Section 7.128.030(U).

(C) It is unlawful and shall constitute a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel within the County to cause or allow such parcel to be used for the cultivation of cannabis in violation of this Chapter.

7.128.070 Creation of the Medical Cannabis Cultivation Licensing Program.

(A) There is hereby created the Medical Cannabis Cultivation Licensing Program. The MCCL Program shall be operated by the Licensing Official. The Licensing Official shall be designated by the County Administrative Officer.

(B) The Licensing Official shall take the necessary steps to build and manage the MCCL Program. This includes, but is not limited to, accomplishing the following tasks:

- (1) Creating application forms for licensees;
- (2) Conducting pre-licensure inspections;
- (3) Approving and denying license applications;
- (4) Issuing and revoking licenses;
- (5) Creating a system on the County's website to communicate the number of licenses issued and notifying the public as to whether applications for such licenses are being accepted;
- (6) Designing a system to facilitate access to medical cannabis for very low and low income residents;
- (7) Establishing administrative policies, procedures, rules, regulations, or fees necessary to implement the MCCL Program consistent with this Chapter; and
- (8) Working with other officials in the County to ensure that licensees comply with all aspects of the County Code.

7.128.090 License categories.

In order to cultivate cannabis for commercial purposes in the County, cultivators must have both a State license and a local license (for State license categories, *see* Health and Safety Code sections 19300.7 *et seq.*).

The following categories of local licenses are created under this Chapter for the commercial cultivation of cannabis.

- (A) Class CA licenses for cultivation taking place on parcels zoned CA (Commercial Agriculture) per the Santa Cruz County Zoning Ordinance (SCCC section 13.10.311 *et seq.*).
- (B) Class A licenses for cultivation taking place on parcels zoned A (Agriculture) per the Santa Cruz County Zoning Ordinance.
- (C) Class RA licenses for cultivation taking place on parcels zoned RA (Residential Agriculture) per the Santa Cruz County Zoning Ordinance.
- (D) Class C-4 licenses for cultivation taking place on parcels zoned C-4 (Commercial Services) per the Santa Cruz County Zoning Ordinance.
- (E) Class M licenses for cultivation taking place on parcels zoned M-1 (Small Light Industrial), M-2 (Light Industrial), or M-3 (Mining, Agriculture, etc.) per the Santa Cruz County Zoning Ordinance.
- (F) Class TP licenses for cultivation taking place on parcels zoned TP (Timber Production) per the Santa Cruz County Zoning Ordinance.
- (G) Class SU licenses for cultivation taking place on parcels zoned SU (Special Use) per the Santa Cruz County Zoning Ordinance.

7.128.110 License required.

(A) Registration.

(1) In order to be eligible to apply for an original license for an existing or proposed cultivation site, the applicant must have participated in the County's 90-day registration process (including the completion of a registration form) and obtained acknowledgment of registration from the Licensing Official. The Licensing Official shall reject any application for an original license by an applicant who did not participate in the County's registration process.

(a) Exception: The registration process is voluntary for those persons or entities with a documented history of over 3 years of commercial farming or agricultural production unrelated to cannabis production in the CA zone district.

(b) Exception: The registration process is voluntary for the operator of a cultivation site granted an exemption by the Planning Director pursuant to SCCC section 13.10.670(G) as enacted by Ordinance No. 5090 (now repealed).

(2) A registration form shall not be accepted by the Licensing Official without payment of a registration fee to be set by the Licensing Official and approved by the Board of Supervisors.

(B) Original License.

(1) Submission Of The Application.

(a) An application for an original license under this Chapter shall be made on the forms designated for that purpose promulgated by the Licensing Official, and shall include all required information, attachments, and signatures required by the Licensing Official. The forms shall be submitted under penalty of perjury, and shall include, but not be limited to, the following information:

(i) The names of the applicant(s) and owner(s);

(ii) The exact location of the cultivation site by street address and Assessor's Parcel Number(s);

(iii) A map containing the location of the growing area on the cultivation site (cultivation should take place in a single growing area where total garden canopy may be easily measured, or as few areas as reasonably possible, not spread throughout the cultivation site);

(iv) Previous law enforcement activity at the cultivation site related to the cultivation of cannabis;

(v) The applicants' and owners' waiver and release of the County from any and all liability for monetary damages related to or arising from the application for a license, the issuance of the license, or the enforcement of the conditions of the license;

(vi) Background information to be determined by the Licensing Official, including but not limited to a statement that the applicant and owners have submitted to a Live Scan background check no earlier than thirty days prior to the date the application is submitted;

(vii) Tax identification information;

(viii) Security plans;

(ix) Information regarding required land use permits;

(x) Identification of water supply to be used for cultivation and documentation demonstrating that the source is in compliance with all statutes, regulations, and requirements of the California State Water Resources Control Board, Division of Water Rights, including copies of any pending application to appropriate water, applicable permit, license, or registration, or copy of a statement of water diversion and use of surface water from a stream, river, underground stream, or other watercourse with the California State Water Resources Control Board's Division of Water Rights, if required by Water Code section 5101; and

(xi) Such other information as the Licensing Official deems reasonably necessary to a thorough review of the application.

(2) Payment Of The Application Fee.

An application for an original license hereunder shall not be accepted unless it is accompanied by the payment of a non-refundable application fee set by the Licensing Official and approved by the Board of Supervisors. The purpose of any and all fees assessed under this Chapter is to pay for the costs of the MCCL Program.

(3) Review Of The Application.

(a) Upon receipt of an application for an original license, the Licensing Official will first determine whether the applicant has participated in the County's registration process, as set forth in section 7.128.110(A). If the applicant did not participate in the registration process, the application shall be rejected.

(b) If the Licensing Official determines that the applicant participated in the registration process, the Licensing Official shall create a Licensing File related to the application, and shall inspect the cultivation site to determine whether it meets the requirements of the MCCL Program. The Licensing Official shall be the custodian of the Licensing File. The Licensing File is a public record within the meaning of the California Public Records Act.

(c) As part of the inspection outlined above, the Licensing Official shall take photos of the growing area and keep a copy of those photos with the Licensing File for enforcement purposes.

(4) Grant Or Denial Of The License.

(a) After concluding the required pre-license investigation, the Licensing Official shall notify the applicant in writing whether the license has been granted or denied. If the license is denied, any further non-licensed commercial cannabis cultivation may only be carried out in accordance with the limitations set forth in section 7.128.110(I)(2).

(b) The Licensing Official is authorized to impose conditions on the license at the time it is granted in order to ensure the cultivation will meet the intent and requirements of this Chapter.

(5) Payment Of The License Fee.

An original license shall not be granted to an applicant under this Chapter until the applicant has paid a non-refundable original license fee as set by the Licensing Official and approved by the Board of Supervisors.

(6) Length Of Time The Original License Is Valid.

(a) The original license shall be valid for one year from the date of issuance. If a licensee wishes to continue cultivating cannabis after expiration of the original license, the licensee must obtain a renewal license, as set forth below in section 7.128.110(C).

(C) Renewal License.

(1) Requirement To Obtain A Renewal License.

In order to continue cultivating cannabis after the original licenses expires, a licensee must obtain a renewal license. A renewal license must be obtained annually via an application form designated for that purpose.

(2) Submission Of The Renewal License Application.

(a) An application for a renewal license shall be made on the forms designated for that purpose promulgated by the Licensing Official, and shall include all required information, attachments, and signatures required by the Licensing Official. The forms shall be submitted under penalty of perjury, and shall include, but not be limited to, the following information:

(i) The information required for the submission of an original license under section 7.128.110(B);

(ii) Identification of any changes to the information the applicant submitted on the original license application, including but not limited to any proposed changes to the growing area on the cultivation site;

(iii) Any law enforcement or license enforcement activity related to the licensee's operations during the past calendar year;

(iv) A representation that the applicant continues to hold in good standing any license required by the State of California for the cultivation of medical cannabis;

(v) Such other information as the Licensing Official deems reasonably necessary to a thorough review of the application.

(b) Renewal license applications must be submitted at least 90 days before an existing license expires. The Licensing Official is not authorized to accept an untimely renewal license application.

(3) Payment Of The Renewal License Application Fee.

(a) An application for a renewal license shall be accompanied by the payment of a non-refundable renewal license application fee set by the Licensing Official and approved by the Board of Supervisors.

(b) A mandatory inspection of the cultivation site due to a proposed change in the location of the growing area shall require payment of an additional fee as set by the Licensing Official and approved by the Board of Supervisors.

(4) Review Of The Renewal License Application.

(a) Upon receipt of an application for a renewal license, the Licensing Official shall update the licensee's Licensing File and perform whatever investigation the Licensing Official deems necessary to determine whether to grant or deny the renewal license. The investigation may include a physical inspection of the cultivation site, at the discretion of the Licensing Official, to determine whether the licensee remains in compliance with the regulations of the MCCL Program.

(b) If the renewal license application proposes a change in the location of the growing area, the Licensing Official shall conduct an actual inspection of the proposed growing area to ensure that the licensee will remain compliant with the regulations of the MCCL Program if it is granted a renewal license. As part of this mandatory inspection, the Licensing Official shall take photos of the specific location of the proposed new growing area and keep a copy of those photos with the Licensing File for enforcement purposes.

(5) Grant Or Denial Of The Renewal License.

(a) After concluding the required renewal license investigation, the Licensing Official shall notify the applicant in writing of whether the renewal license has been granted or denied.

(b) The Licensing Official is authorized to impose conditions on the renewal license at the time it is granted in order to ensure the cultivation will meet the requirements of this Chapter.

(6) Payment Of The Renewal License Fee.

A renewal license shall not be granted to the applicant under this Chapter until the applicant has paid a non-refundable renewal license fee as set by the Licensing Official and approved by the Board of Supervisors.

(7) Length Of Time The Renewal License Is Valid.

The renewal license shall be valid for one year, beginning on the date of issuance. If a licensee wishes to continue cultivating cannabis after expiration of the renewal license, it must obtain a new renewal license per the terms of this section.

(D) Amending A License.

(1) Licensees may submit an application to amend an existing license on a form promulgated by the Licensing Official for that purpose. Applications to amend a license will be reviewed by the Licensing Official in a manner consistent with the review of original and renewal license applications.

(2) Applicants seeking an amended license must include with their application a monetary deposit, to be determined by the Licensing Official or his or her designee, based on an estimate of the hours the Licensing Official will need to review the application and perform any

necessary inspections. Additional deposits or payments shall be made as determined necessary by the Licensing Official in order to recover costs associated with processing the application.

(E) Required Statements On Licenses.

All licenses issued by the Licensing Official must contain the signature of the owner(s) of the license. In addition, all licenses shall contain the following statements, displayed prominently on the license itself:

(1) A warning that operators, employees, and members of facilities where cannabis is cultivated may be subject to prosecution under federal laws;

(2) An acknowledgment that, by accepting the license and cultivating cannabis for commercial purposes, the Licensee has released the County from any and all liability for monetary damages related to or arising from the application for a license, the issuance of the license, the enforcement of the conditions of the license, or the revocation of the license; and

(3) Any other statements deemed necessary by the Licensing Official.

(F) Rules And Restrictions Specific To License Types.

(1) Class CA Licenses.

(a) The minimum parcel size for a Class CA License is one acre.

(b) Size of canopy allowed, subject to approval of the Licensing Official: up to 2 percent of the size of the parcel containing the cultivation site, not to exceed twenty-two thousand (22,000) square feet.

(c) In the geographic area designated as the Coastal Zone, and within one mile beyond the Coastal Zone, cultivation with a Class CA License may only take place outdoors, or in existing indoor spaces (applicants may not construct new structures, including but not limited to greenhouses, in order to cultivate cannabis in this area).

(2) Class A Licenses.

(a) The minimum parcel size for a Class A License is ten acres.

(b) Size of canopy allowed, subject to approval of the Licensing Official: up to 1.5 percent of the size of the parcel containing the cultivation site, not to exceed ten thousand (10,000) square feet.

(c) In the geographic area designated as the Coastal Zone, and within one mile beyond the Coastal Zone, cultivation with a Class A License may only take place outdoors, or in existing indoor spaces (applicants may not construct new structures, including but not limited to greenhouses, in order to cultivate cannabis in this area).

(3) Class RA Licenses.

- (a) The minimum parcel size for a Class RA License is five acres.
- (b) Size of canopy allowed, subject to approval of the Licensing Official:

- (i) Up to 1.25 percent of the size of the parcel containing the cultivation site, not to exceed five thousand one hundred (5,100) square feet on parcels between five and ten acres in size.

- (ii) Up to 1.25 percent of the size of the parcel containing the cultivation site, not to exceed ten thousand (10,000) square feet on parcels greater than ten acres in size.

(4) Class C-4 Licenses.

- (a) Cannabis may only be cultivated indoors with a Class C-4 License.

- (b) Size of canopy allowed, subject to approval of the Licensing Official: not to exceed twenty-two thousand (22,000) square feet.

(5) Class M Licenses.

- (a) Cannabis may only be cultivated indoors with a Class M License.

- (i) Exception: On parcels zoned M-3 with a Q (Quarry) General Plan Overlay designation, where quarry operations have ceased, outdoor cultivation may be considered for licensure in conjunction with the adoption or amendment of a reclamation plan.

- (b) Size of canopy allowed, subject to approval of the Licensing Official: not to exceed twenty-two thousand (22,000) square feet.

(6) Class TP Licenses.

- (a) The minimum parcel size for a Class TP License is five acres.

- (b) Size of canopy allowed, subject to approval of the Licensing Official:

- (i) Up to 1.25 percent of the size of the parcel containing the cultivation site, not to exceed five thousand one hundred (5,100) square feet on parcels between five and ten acres in size.

- (ii) Up to 1.25 percent of the size of the parcel containing the cultivation site, not to exceed ten thousand (10,000) square feet on parcels greater than ten acres in size.

(7) Class SU Licenses.

- (a) The minimum parcel size for a Class SU License is five acres.

- (b) Size of canopy allowed, subject to approval of the Licensing Official:

(i) Up to 1.25 percent of the size of the parcel containing the cultivation site, not to exceed five thousand one hundred (5,100) square feet on parcels between five and ten acres in size.

(ii) Up to 1.25 percent of the size of the parcel containing the cultivation site, not to exceed ten thousand (10,000) square feet on parcels greater than ten acres in size.

(G) Additional Rules And Restrictions Applicable To All Licensees.

(1) General Eligibility And Restrictions.

(a) Cultivation licenses may only be issued to applicants who provide the Licensing Official with sufficient reliable evidence documenting that they 1) have been cultivating cannabis in Santa Cruz County since before January 2013; or 2) have been engaged in commercial farming or agricultural production unrelated to cannabis production for over 3 years in the CA zone district, and are applying for a Class CA license.

(b) All licenses issued under this Chapter must be consistent with the County's policies, objectives, laws, regulations, and programs related to land use, including those related to the County's General Plan and Local Coastal Program. In utilizing discretion in the issuance of licenses, the Licensing Official shall use the County's established standards for determining consistency with agricultural uses and neighborhood compatibility.

(c) In issuing a license under this Chapter, the Licensing Official may add conditions to the license to ensure compliance with environmental regulations related to slope, grading, and similar requirements set forth in County Code Chapter 16, as well as the Forest Practices Act and any other controlling State or local law.

(d) In issuing a license under this Chapter, the Licensing Official may place restrictions on canopy size to maintain consistency with other laws, agricultural uses, and neighborhood compatibility.

(e) With the exception of Class CA, C-4, and M Licenses, no license may be issued to cultivate cannabis on a parcel unless the cultivator or cultivation manager resides in a permitted residence on the parcel.

(f) No license may be issued to cultivate cannabis on a parcel that has active violations of the Santa Cruz County Code, including but not limited to those sections related to grading, building, zoning, environmental, or fire code violations.

(g) No license may be issued to a person who has failed the background investigation required by the Licensing Official, including but not limited to those individuals who have a disqualifying felony criminal record. Felonies over ten years old and felonies related to cannabis occurring prior to January 2013 that did not involve sales to a minor shall not alone result in failure of a background investigation.

(h) No license may be issued to cultivate cannabis in solely residential zoned districts, including home-based cultivation for commercial purposes.

(i) Multiple licenses may not be issued on a single parcel.

Exception: At the discretion of the Licensing Official, multiple licenses may be issued on a single parcel zoned CA that is over forty (40) acres in size. The Licensing Official shall promulgate rules and regulations for the equitable implementation of this section.

(2) Geographical Restrictions.

(a) With the exception of Class CA, A, C-4 and M Licenses, no license may be issued to cultivate cannabis in the geographic area designated as the Coastal Zone, and within one mile beyond the Coastal Zone.

(b) With the exception of Class C-4 and M Licenses, and Class CA and A Licenses issued in the geographic area designated as the Coastal Zone, and within one mile beyond the Coastal Zone, no license may be issued for parcels located within that geographic area included within the Urban Services Line or the Rural Services Line.

(c) Within that geographic area defined by section 2.04.030 of the Santa Cruz County Code, a licensee may only cultivate cannabis indoors, and only on a parcel which is at least five acres in size.

(3) Setbacks.

(a) Cannabis shall not be cultivated within six hundred (600) feet of (1) a municipal boundary; (2) a school; (3) a library; (4) an alcohol or drug treatment facility; or (5) any park other than a State Park located within the urban area defined by the Urban Services Line.

(b) Cannabis shall not be cultivated within two hundred (200) feet of any habitable structure on a neighboring parcel. No exception shall be granted allowing a setback of less than one hundred (100) feet of a habitable structure on a neighboring parcel.

(c) Cannabis shall not be cultivated within three hundred (300) feet of a State Park located within the urban area defined by the Urban Services Line.

(d) On parcels ranging in size from one to five acres, cannabis shall not be cultivated within one hundred (100) feet of a public right-of-way.

(e) On parcels ranging in size from five to ten acres, cannabis shall not be cultivated within two hundred (200) feet of a public right-of-way.

(f) On parcels over ten acres in size, cannabis shall not be cultivated within three hundred (300) feet of a public right-of-way.

(g) Cannabis shall not be cultivated within one hundred (100) feet of a perennial stream.

(h) Cannabis shall not be cultivated within fifty (50) feet of an intermittent stream or in violation of SCCC sections 16.30 (riparian corridor and wetlands protection) or 16.32 (sensitive habitats), whichever is most restrictive.

(i) Cannabis shall not be cultivated within fifty (50) feet of an ephemeral stream or in violation of SCCC sections 16.30 (riparian corridor and wetlands protection) or 16.32 (sensitive habitats), whichever is most restrictive.

(j) Cannabis shall not be cultivated within one hundred (100) feet of the high water mark of a lake, estuary, lagoon, or natural body of standing water.

(k) The distance specified in this sub-section for municipal boundaries, schools, libraries, and drug treatment facilities shall be the horizontal distance measured in a straight line from the municipal boundary, school, library, park, and drug treatment facility to the closest property line of the parcel on which cannabis is being cultivated, without regard to intervening structures.

(l) The distance specified in this sub-section for public rights-of-way, streams, and habitable structures shall be the horizontal distance measured in a straight line from the public right-of-way, streams and water areas, or habitable structure and the growing area on the cultivation site, without regard to intervening structures.

(m) Exceptions. With respect to all setbacks other than the 600 foot setback imposed by State law regarding schools, the Licensing Official has discretion to allow for exceptions to the rules set forth herein for setbacks. If the Licensing Official is prepared to authorize such an exception, the Licensing Official must first require owners and occupants of all parcels within at least 300 feet of the parcel at issue to be notified and given an opportunity to be heard in a public forum before making a decision.

(4) Neighborhood And Land Use Compatibility Restrictions.

(a) No license to cultivate may be issued if the Licensing Official determines there is substantial evidence that issuance of the license may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, which has not been previously considered by appropriate environmental review.

(b) No license to cultivate may be issued until the applicant has obtained whatever permits are required under the Santa Cruz County Code (development, building, grading, etc.) for the type of land use authorized under the license (including rules specific to location and public notice).

(c) The total amount of garden canopy approved for licensure under the Class C-4 and Class M Licenses shall not exceed one hundred thousand (100,000) square feet for the unincorporated area of the county. Once this amount is reached, the Licensing Official shall provide a report to the Board of Supervisors with a recommendation on whether this limitation should be adjusted.

(d) Cannabis shall not be cultivated within a residence.

(e) Cannabis cultivation shall not be visible from any adjacent public right-of-way.

(f) No lighting for cultivation purposes, except that necessary for security, shall be visible at cultivation sites from sunset to sunrise.

(g) Cannabis shall not be cultivated without written consent from the owner of the parcel where cultivation will take place, if the applicant is not the owner of the parcel.

(h) No on-site advertising is allowed at cultivation sites, other than one business identification sign that complies with all existing rules and restrictions regarding signs.

(i) Occupied residences located on parcels with cultivation sites must comply with all appropriate County ordinances, including but not limited to use of water, power, septic, and fire suppression.

(j) Outside of an emergency, generators may not be used as a power source for cultivation purposes.

(k) Direct sales to the public from cultivation sites are prohibited, unless otherwise authorized as part of a licensed dispensary.

(l) If cannabis cultivation occurs outdoors, the growing area must be fully secured and enclosed within an opaque fence at least six feet in height, and include a locked gate to prevent unauthorized entry.

(m) Licensees must utilize energy efficient cultivation methods.

(n) The applicant shall ensure compliance with all federal, State, and local environmental protection laws and regulations, including, but not limited to, those protecting threatened and endangered species, sensitive habitats, water quality, air quality, and cultural/archeological resources, and that any and all required permits involving environmental resources are obtained as may be required for the cannabis cultivation activity.

(5) Indoor Cultivation Sites.

(a) Cannabis shall not be cultivated indoors unless the cultivation site has a commercial air scrubbing or filtration system sufficient to prevent the odors associated with cannabis production from escaping the structure where cannabis is cultivated.

(b) No license may be issued to cultivate cannabis indoors unless all land use and building code requirements are met. Moreover, the applicant shall provide written certification from a licensed electrician that the cultivation location has all necessary electrical permits required by the California Building Codes to ensure that the growing operations can be carried out safely.

(c) No license may be issued to cultivate cannabis indoors where plants or lights are visible from a public right-of-way, an adjacent private right-of-way with public access, or a habitable structure.

(6) Water Restrictions.

(a) All water used for cultivation purposes must be obtained from an approved on-site source (except for water used in the case of emergencies).

(b) No license may be issued to cultivate cannabis with the use of a shared water source or water extraction equipment without the express permission of all of the persons holding an ownership interest in that water source or water extraction equipment. Water extraction equipment includes, but is not limited to, wells, pumps, pipes, or any other instrumentality or machinery designed to move water.

(c) No license may be issued to cultivate cannabis where the cultivation relies on the diversion of surface water, unless the applicant provides proof of valid rights to the water being diverted; however, proof of valid rights to diverted water does not guarantee issuance of a license.

(d) No license may be issued to cultivate cannabis unless the cultivation site has appropriate water storage or access to water for fire-fighting purposes, as well as appropriate emergency road access for fire-fighting purposes.

(7) Miscellaneous Restrictions.

(a) No license may be issued to cultivate cannabis if the cultivation site would be in violation of any administrative rule or regulation promulgated by the Licensing Official.

(b) Cannabis shall not be cultivated in violation of County Code section 7.31.030 (prohibition on cultivation of genetically engineered crops).

(c) Employees at cultivation sites must be at least 18 years of age. Employees between the ages of 18-21 must receive specialized training and education to be determined by the Licensing Official.

(d) Licensees must comply with all requirements of the California Medical Cannabis Regulation and Safety Act, as may be amended.

(e) Licensees must comply with all applicable requirements of County, State, and federal laws and regulations, including environmental and water regulations related to storm water management and fertilizer, pesticide, herbicide, and rodenticide storage and use at the cultivation site.

(f) Licensees must comply with all applicable requirements of County, State, and federal regulations pertaining to worker safety and storage and use of hazardous materials.

(h) Licensees are prohibited from manufacturing cannabis products at a cultivation site (edibles, tinctures, salves, etc.) unless the licensee also has a local manufacturing license for that specific site.

(i) Licensees are required to maintain an adequate security plan approved by the Licensing Official, which is intended to protect crops from unauthorized diversion and to protect the health, safety, and welfare of cultivation workers and the general public.

(j) Licensees are required to post and maintain at the cultivation site in a prominent location a copy of the local license issued pursuant to this section and a copy of any State license required to cultivate medical cannabis.

(H) Grounds For License Revocation.

(1) Grounds for revocation of a license include, but are not limited to:

(a) Failure to conduct cultivation operations in a manner that ensures the security of the crop and safeguards against diversion for nonmedical purposes.

(b) Allowance of any person younger than 18 years of age to enter the cultivation site without a parent or legal guardian.

(c) Violation of any requirement of the Santa Cruz County Code, including Title 16, Environmental and Resource Protection, and those applicable provisions of Title 7, Health and Safety, relating to water used in the commercial cultivation of cannabis including, but not limited to, Chapter 7.69, Water Conservation, Chapter 7.70, Water Wells, Chapter 7.71, Water Systems, and Chapter 7.73, Individual Water Wells, or any State law containing similar requirements.

(d) Use of a generator for non-emergency purposes or illegal hazardous materials for cultivation of cannabis.

(e) Failure to contain all irrigation run-off, fertilizer, pesticides, and contaminants on-site.

(f) Failure to allow unannounced inspections of the premises by the Licensing Official or law enforcement at any time, without notice.

(g) Failure to timely pay any local, State, or federal tax associated with or required by the cultivation of cannabis.

(h) Violation of any provision of the California Medical Cannabis Regulation and Safety Act.

(i) Three or more citations for violation of SCCC Chapter 8.30 (Noise) within a single year.

(j) Possession, storage, or use of any firearm on the parcel where cultivation takes place.

(k) Violation of, or failure to comply with, any of the rules or restrictions relating to licensure promulgated by the County and the Licensing Official.

(l) Creation or maintenance of a public nuisance.

(m) Violation of, or failure to comply with, any land use or other permit requirements associated with the licensee's cultivation of cannabis, including but not limited to zoning, building, and agricultural permits as may be required for the cultivation activity and cultivation site.

(I) Denial Or Revocation of License; Remedies.

(1) The Licensing Official may deny an application for an original or renewal license, or revoke an original or renewal license, for any of the following reasons:

(a) Discovery of untrue statements submitted on a license application.

(b) Revocation or suspension of any State license required to cultivate cannabis.

(c) Previous violation by the applicant, or violation by the licensee, of any provision of the Santa Cruz County Code or State law related to the cultivation of cannabis, including any permit conditions associated with the cultivation of cannabis.

(d) Failure of the background check conducted by the Licensing Official, including the applicant's most recent Live Scan report. A failed Live Scan is a Live Scan report that includes any felony conviction within the past 10 years and/or reflects that the applicant is currently on parole or probation related to a felony conviction. Felony convictions for cannabis-related offenses prior to June 1, 2013 will not result in a failed Live Scan, unless the offense involved sales to a minor.

(2) The Licensing Official's denial of a license application or revocation of a license is a final action that is not subject to any further administrative remedy. The only legal remedy available to appeal the Licensing Official's action is to file a petition for writ of mandate in the superior court under California Code of Civil Procedure section 1085.

(a) If an application for an original or renewal license is denied, or if a license is revoked, all commercial cannabis cultivation on the parcel shall cease immediately, subject to the following exception:

(i) If the applicant or operator (1) is currently cultivating commercial cannabis under an issued license and; 2) files a petition with the superior court challenging the Licensing Official's denial or revocation decision within 10 days of the date the decision is issued and; 3) within 10 days thereafter obtains from the Superior Court an order authorizing continued cultivation of commercial cannabis for up to 30 days from the date that the Licensing Official's decision was issued, then the applicant or operator may continue to cultivate medical

cannabis for up to 30 days. Any commercial cannabis cultivation that occurs on the parcel after the 30 days has elapsed may only be conducted with a valid local license.

(ii) The purpose of this exception is to allow those appealing the Licensing Official's denial or revocation decision to, with Court permission, complete the harvesting cycle for any existing growing plants that are close to harvest. Under no circumstances does this exception authorize the applicant to start cultivating new cannabis plants during the 30 day period discussed above.

(3) Under no circumstances shall a cause of action for monetary damages be allowed against the County of Santa Cruz, the Licensing Official, or any County employee as a result of a denial or a revocation of a license. By applying for a license, the applicant and owners associated with a cannabis cultivation business waive any and all claims for monetary damages against the County, the Licensing Official, and all other officials of the County of Santa Cruz that may be associated with the denial or revocation of a license.

7.128.130 Enforcement.

(A) In addition to the authority of the Licensing Official to revoke any license pursuant to this Chapter, the Licensing Official may also elect to pursue one or more of those alternatives set forth in section 19.01.030(A) of this Code. It shall be a separate offense for each and every day during any portion of which any violation of, or failure to comply with, any provision of this Chapter is committed, continued or permitted.

(B) Notwithstanding the limitations on civil penalties set forth in SCCC section 1.12.070(A)(2), civil penalties for violation of Chapter 7.128 shall be assessed as follows:

(1) A fine not exceeding \$2,500 for a first violation.

(2) A fine not exceeding \$5,000 for a second violation of the same County Code provision within one year.

(3) A fine not exceeding \$7,500 for each additional violation of the same County Code provision within one year.

(C) Whenever the Licensing Official determines that a public nuisance as defined in this Chapter exists at any parcel within the unincorporated area of Santa Cruz County, he or she is authorized to issue a Notice of Violation pursuant to section 1.12.070 of this Code, except that the violator shall be provided with seven (7) calendar days from notice of the violation to correct the violation before the imposition of civil penalties under section 1.12.070(D)(2)(a) of this Code.

7.128.150. No duty to enforce.

Nothing in this chapter shall be construed as imposing on the Licensing Official or the County of Santa Cruz any duty to issue a Notice of Violation, nor to abate any unlawful cannabis business

activity or cultivation, nor to take any other action with regard to any unlawful cannabis business activity or cultivation, and neither the enforcing officer nor the County shall be held liable for failure to issue an order to abate any unlawful cannabis business activity or cultivation, nor for failure to abate any unlawful cannabis business activity or cultivation, nor for failure to take any other action with regard to any unlawful cannabis business activity or cultivation.

SECTION III

This ordinance shall take effect on the 31st day after the date of final passage.

PASSED AND ADOPTED this ___ day of _____ 2016, by the Board of Supervisors of the County of Santa Cruz by the following vote:

AYES: SUPERVISORS
NOES: SUPERVISORS
ABSENT: SUPERVISORS
ABSTAIN: SUPERVISORS

Chairperson of the
Board of Supervisors

Attest: _____
Clerk of the Board

APPROVED AS TO FORM:

Office of the County Counsel

cc: County Administrative Office
Planning Director
Sheriff's Office