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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANN MARIE BORGES and CHRIS GURR,) 3:20-cv-04537-SI
individually and doing business as GOOSE)
HEAD VALLEY FARMS,	) NOTICE OF MOTION AND MOTION
	) TO DISMISS PURSUANT TO F.R.C.P.
Plaintiffs,	) RULE 12(b)(6); MEMORANDUM OF
	) POINTS AND AUTHORITIES IN
v.	) SUPPORT THEREOF
COUNTY OF MENDOCINO, SUE)
ANZILOTTI, and DOES 1-25 inclusive,)
Defendants.)
	) DATE: September 18, 2020
	) TIME: 9:00 a.m.
) CTRM: 1, 17 th Floor 450 Golden Gate Ave,
) San Francisco
)
) Honorable Susan Illston, Senior District Judge
)

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NOTICE OF MOTION AND MOTION TO DISMISS PURSUANT TO F.R.C.P. RULE 12(b)(6);
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

[3:20-cv-04537-SI]

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TO: Plaintiffs ANN MARIE BORGES and CHRIS GURR, and their attorney, JOHN HOUSTON SCOTT, Esq.:

PLEASE TAKE NOTICE that on September 18, 2020, at 9:00 a.m. in Courtroom 1, 17th Floor, of the above-entitled court, located at 450 Golden Gate Avenue, San Francisco, California, before the Honorable Susan Illston, Senior District Judge, defendant COUNTY OF MENDOCINO will move for dismissal of each of Plaintiffs' Causes of Action.

This motion is based on this Notice of Motion and Motion, and the Memorandum of Points and Authorities in Support of Motion to Dismiss Pursuant to F.R.C.P. Rule 12(b)(6), the Request for Judicial Notice filed herewith, and all the pleadings, papers, and records on file herein, and on such further oral and documentary evidence as may be presented at the hearing on this motion.

DATED: August 13, 2020

OFFICE OF THE COUNTY COUNSEL
Mendocino County

by /s/ Christian M. Curtis
CHRISTIAN M. CURTIS, County Counsel
Attorney for Defendant
County of Mendocino

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Anne Marie Borges and Chris Gurr (collectively "Plaintiffs") have brought this action under 42 U.S.C. section 1983 seeking monetary damages stemming from the County of Mendocino's denial of a permit to commercially cultivate cannabis on their property outside of Ukiah, California.¹ Denial of the permit appears to be the sole basis for the claims asserted

¹ The Mendocino County ordinances at issue in this case use the term "cannabis" to refer to the plant with the scientific name *cannabis sativa*. "'Cannabis' also means marijuana as defined by Section 11018 of the State of California Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972." MCC § 10A.17.010. The relevant federal statute uses the term "Marihuana" and several of the cases cited herein use the term "marijuana." 21 U.S.C. § 812(c)(10). For convenience and consistency, the term "cannabis" is used herein.

herein. Although their complaint makes reference to a raid by California Department of Fish and Wildlife in 2017, that agency is not joined as a defendant, the raid is not identified as a basis for any of the causes of action, and the acts alleged fall outside of the applicable statute of limitations. Complaint ¶ 18. Defendant County of Mendocino now requests that this court dismiss Plaintiffs' claims with prejudice, as denial of a permit to cultivate cannabis is not a cognizable injury under federal law, any state law claims would be time-barred, and the facts as alleged in the Complaint show that denial of the permits was proper under the relevant County ordinance.

II. FACTS

Plaintiffs are Mendocino County Residents who "decided to partner in a business venture to become licensed to cultivate medical cannabis . . ." Complaint ¶ 9. In August of 2016, Plaintiffs purchased a farm for the purposes of cannabis cultivation based on information obtained in public meetings "featuring County and State agency representatives." Complaint ¶ 10. Plaintiffs do not allege that they resided on or cultivated cannabis at that location prior to purchasing the property. Plaintiffs completed and submitted an application to cultivate cannabis on May 1, 2017. Complaint ¶ 12; Complaint Ex. A. They received an "Application Receipt" on May 4, 2017, indicating that any garden at that site was considered to be compliant with county ordinances "until such time as a permit is issued or denied." Complaint ¶ 13; Complaint Ex. B. Subsequent to this application, Plaintiffs learned that they could not rely on prior cultivation from the County's coastal zone to qualify for a relocation permit in the inland zone, because

cannabis cultivation permits were not allowed in the coastal zone.² Plaintiffs attempted to remedy this issue by asserting prior cultivation at a second location in the inland zone. Complaint ¶ 20. Plaintiffs make no assertion that they owned, controlled, or were cultivating on this second inland site at the time of the application. Plaintiffs received an oral representation from Interim Agricultural Director Diane Curry that their application was approved, but no permit was issued due to legal counsel's concerns regarding the sufficiency of their application. Complaint ¶ 21. The County ultimately determined that this prior cultivation did not satisfy the requirements of the County's ordinance, and denied on that basis. Complaint ¶ 26; Complaint Ex. G. Plaintiffs assert that the County incorrectly interpreted its ordinance to deny their permit application. Complaint ¶ 27. Plaintiffs further allege that the denial was the product of a conspiracy to deny Plaintiffs a permit to cultivate cannabis despite meeting the legal requirements of the County's ordinance.

The County's Cannabis Ordinance

Understanding the allegations in Plaintiffs' Complaint requires some background regarding Mendocino County's ordinances regulating the cannabis cultivation industry. Historically, the possession, production, cultivation, and sale of cannabis were prohibited by both the Federal Government and the State of California. Beginning in 1996, however, California began a process of decriminalization of cannabis for limited medical purposes. *See* Cal. Health & Saf. Code § 11362.5. In 2016, California voters enacted an initiative which legalized the recreational use of cannabis subject to State and local laws. *See* Control, Regulate and Tax Adult Use of Marijuana Act, Voter Information Guide, Gen. Elec. (Nov. 8, 2016) text of

² Plaintiffs incorrectly allege that the County amended its ordinance in a manner that disqualified Plaintiffs as applicants. Complaint ¶ 15. Unlike Plaintiffs' other allegations, the Court is not required to accept as true Plaintiffs' legal contentions or assertions which contradict facts properly subject to judicial notice. Contrary to Plaintiffs' assertions, the Mendocino County Board of Supervisors did not meet on June 28, 2017. *See* Complaint ¶ 15; RJN #1 and 4. None of the ordinances amending Chapter 10A.17 of the Mendocino County Code contain the change alleged by Plaintiffs. RJN #1. The inability to lawfully cultivate in the coastal zone existed from the original version of Mendocino County Code Chapter 10A.17, because changes to the land uses allowed in the coastal zone are subject to additional review and approval under the Coastal Act. *See* Gov. Code §§ 30600 et seq.

Prop. 64. A key feature of this initiative was state and local regulation designed to mitigate the negative externalities of an industry that operated during prohibition without much of the same regulatory framework as comparable industries. In April of 2017, Mendocino County adopted the original version of Chapter 10A.17 of the Mendocino County Code (“MCC”), which contains the majority of the the County’s current cannabis cultivation regulations. Since 2017, the County has passed a series of additional ordinances amending Chapter 10A.17. These ordinances contain several aspects tailored to the unique challenges of obtaining regulatory compliance from an industry that remains prohibited under federal statutes and which stands to realize higher profit margins by ignoring local regulation in addition to federal law. Some of these aspects of Mendocino’s ordinances are alluded to but not fully explained in Plaintiffs’ Complaint, and therefore require additional explanation.

The first aspect of the ordinance that is relevant to this case is that the County of Mendocino attempted to bring existing cultivators into regulatory compliance prior to allowing the proliferation of new cannabis cultivation sites. To this end, the County’s ordinance divided the permitting process into three phases. RJN # 2, Exhibit J - MCC § 10A.17.080(A).³ During the first phase, new cultivation is not allowed, and permits are issued exclusively to existing cultivators. MCC § 10A.17.080(A)(1). In order to qualify for a permit during phase one, applicants are required to establish that they are not creating a new cultivation site by providing “Proof of Prior Cultivation.” MCC § 10A.17.080(B)(1). For most applicants, this proof must consist of photographs showing “cultivation activities that existed on the legal parcel prior to January 1, 2016 . . .” and “cultivation activities that currently exist on the legal parcel . . .” in addition to “[a]t least one (1) additional document demonstrating cultivation on the legal parcel prior to January 1, 2016 . . .” MCC § 10A.17.080(B)(1)(a)-(c).⁴ Although not specifically

³ The County has requested judicial notice of the current version of MCC Chapter 10A.17, a copy of which is attached to the County’s Request for Judicial Notices as Exhibit J. Hereinafter citations to Chapter 10A.17 will include only the code section reference.

⁴ Alternative evidence is allowed to substitute for photographs of the prior cultivation if historical cultivation can be shown by an alternative document, or if evidence of participation in the County’s prior permitting process is provided. MCC § 10A.17.080(B)(1)(c); MCC § 10A.17.080(B)(1)(e). These alternatives are not at issue in this case.

1 addressed in their Complaint, it is clear from Plaintiffs' allegations that the application in
 2 question was applied for under Phase I. *See* Complaint ¶ 12 (establishing application date during
 3 which only Phase I permits were accepted); MCC § 10A.17.080(A).

4 The second aspect of the ordinance that is relevant to this case, is that Phase I permittees
 5 are allowed to relocate from existing grow sites to new locations, so long as it does not increase
 6 the total number of cannabis grows in Mendocino County. MCC § 10A.17.080(B)(3). In doing
 7 so, however, they cannot create a new cultivation site in those zoning districts for which new
 8 cannabis grows are not allowed under Phase III.⁵ This effectively encourages the existing
 9 cultivators to move to more suitable areas, rather than remain in those zoning districts in which
 10 they were grandfathered in.

11 The third aspect that is relevant to this case is that the County of Mendocino deprioritized
 12 enforcement against those existing cultivators who were attempting to come into regulatory
 13 compliance by filing an application. Although not directly addressed in the ordinance, the
 14 deferral of enforcement against cultivators was widely communicated in order to encourage
 15 applications from existing cultivators who might be unable or unwilling to cease operations
 16 during the application period. The result was that the County issued receipts for applications
 17 before any approval or denial was granted, in order to better determine which cultivators were
 18 actively attempting to come into regulatory compliance. *See* Complaint Ex. B.

19 **III. LEGAL ARGUMENT**

20 **A. Standard For A Motion To Dismiss.**

21 For the purposes of this motion to dismiss, the Court must take all the factual allegations
 22 in the complaint as true. However, the Court is not bound to accept as true a legal conclusion
 23 couched as a factual allegation. *Papasan v. Allain*, 478 U.S. 265, 286 (1986) (citing *Briscoe v.*
 24

25
 26
 27 ⁵ Phase I allows existing cultivators to continue to operate in some locations not zoned for
 28 cultivation. MCC § 10A.17.080(B)(2). Those in certain residential zones, however, sunset after
 three years. MCC § 10A.17.080(B)(2)(b)(ii).

1 *LaHue*, 663 F.2d 713, 723 (7th Cir. 1981), *aff'd on other grounds sub nom. Briscoe v. Lahue*,
2 460 U.S. 325 (1983)).

3 [T]he tenet that a court must accept as true all of the allegations
4 contained in a complaint is inapplicable to legal conclusions.
5 Threadbare recitations of the elements of a cause of action,
6 supported by mere conclusory statements, do not suffice ... Rule 8
7 marks a notable and generous departure from the hyper-technical,
8 code-pleading regime of a prior era, but it does not unlock the doors
9 of discovery for a plaintiff armed with nothing more than
10 conclusions.

11 *Bassett v. Ruggles*, No. CV-F-09-528 OWW/SMS, 2009 U.S. Dist. LEXIS 83349, at *10 (E.D.
12 Cal. Sept. 14, 2009) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Federal Rules of
13 Civil Procedure ("F.R.C.P.") 12(b)(6) provides for dismissal for failure to state a claim when it
14 appears beyond doubt that plaintiffs can prove no set of facts to support their claim entitling
15 them to relief. *Conley v. Gibson*, 355 U.S. 41, 46 (1957). The Court must assume that the
16 plaintiff's allegations are true and must draw all reasonable inferences in the plaintiff's favor.
17 *Usher v. Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987).

18 Even if the face of the pleadings suggests that the chance of recovery is remote, the Court
19 must allow a plaintiff to develop a case at this stage of the proceedings. *United States v. City of*
20 *Redwood City*, 640 F.2d 963, 966 (9th Cir. 1981). A court, however, need not accept as true
21 unreasonable inferences, unwarranted deductions of fact, or conclusory legal allegations cast in
22 the form of factual allegations. *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981),
23 *cert. denied*, 454 U.S. 1031. Further, "a liberal interpretation of a civil rights complaint may not
24 supply essential elements of the claim that were not initially pled. Vague and conclusory
25 allegations of official participation in civil rights violations are not sufficient to withstand a
26 motion to dismiss." *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982) (citing *Johnson v.*
27 *Wells*, 566 F.2d 1016 (5th Cir. 1978); *Kennedy v. H & M Landing, Inc.*, 529 F.2d 987 (9th Cir.
28 1976)). A court may also consider matters subject to judicial notice on a motion to dismiss.
United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003). If the Court dismisses the complaint,
it must then decide whether to grant leave to amend. Leave to amend need not be granted when

1 amendment would be futile and the deficiencies of the complaint could not be cured by
2 amendment. *Reddy v. Litton Indus.*, 912 F.2d 291, 296 (9th Cir. 1990).

3 **B. Plaintiffs’ First and Second Causes of Action Fail to State a Claim under 42 U.S.C.**
4 **section 1983 Because Plaintiffs Have Failed to Allege Facts Establishing That They**
5 **Are a Class of One.**

6 Plaintiffs’ First and Second Causes of Action should be dismissed because Plaintiffs’
7 allegations fail to establish their claim that they are a class of one for equal protection purposes.
8 The Supreme Court has recognized “equal protection claims brought by a ‘class of one,’ where
9 the plaintiff alleges that she has been intentionally treated differently from others similarly
10 situated and that there is no rational basis for the difference in treatment.” *Willowbrook v.*
11 *Olech*, 528 U.S. 562, 564, 120 S. Ct. 1073, 1074 (2000). “In the paradigmatic class-of-one case,
12 a public official inflicts a cost or burden on one person without imposing it on those who are
13 similarly situated in material respects, and does so without any conceivable basis other than a
14 wholly illegitimate motive.” *Jicarilla Apache Nation v. Rio Arriba Cty.*, 440 F.3d 1202, 1209
15 (10th Cir. 2006). “[C]lass-of-one plaintiffs must show an extremely high degree of similarity
16 between themselves and the persons to whom they compare themselves.” *Clubsides, Inc. v.*
17 *Valentin*, 468 F.3d 144, 159 (2d Cir. 2006). This is because “[p]arties allegedly treated
18 differently in violation of the Equal Protection Clause are similarly situated only when they are
19 ‘arguably indistinguishable.’” *Erickson v. Cty. of Nev.*, 607 F. App’x 711, 712 (9th Cir. 2015).

20 In this case, Plaintiffs have not averred facts which would establish that they qualify as a
21 class of one, because Plaintiffs have failed to allege that they were treated differently from others
22 who were similarly situated in *material* respects. Although Plaintiffs have alleged that they are
23 the only AG40 applicants who were denied a permit despite meeting the requirements under
24 Mendocino County Code section 10A.17.010(B)(3), they do not address whether all other
25 applicants complied with Mendocino County Code section 10A.17.010(B)(1)—the basis on
26
27
28

1 which their permit was denied.⁶ Complaint ¶ 26, Ex. G. This is insufficient. Plaintiffs cannot
 2 adequately allege that they are “arguably indistinguishable” from those parties who received
 3 permits by focusing exclusively on factors unrelated to the permit denial. *Erickson v. Cty. of*
 4 *Nev.*, 607 F. App’x 711, 712 (9th Cir. 2015). Instead, they must allege facts establishing that
 5 they are “similarly situated in *material* respects . . .” *Jicarilla Apache Nation v. Rio Arriba Cty.*,
 6 440 F.3d 1202, 1209 (10th Cir. 2006) (*italics added*).

7 Moreover, while Plaintiffs have contended that the reason for permit denial was
 8 pretextual, it is clear from the Complaint that this characterization is based on a fundamental
 9 misreading of the County’s ordinance. Complaint ¶¶ 26-27. In some circumstances, evidence
 10 that the alleged basis for government action was pretextual may be relevant to establishing a
 11 class of one claim. *Squaw Valley Dev. Co. v. Goldberg*, 375 F.3d 936 (9th Cir. 2004) In this
 12 case, however, the facts as alleged in the Complaint show that denial of the permit was proper,
 13 because Plaintiffs were attempting to create a new cultivation site at a time at which the
 14 permitting process was only open to existing growers in the inland zone.⁷ In this case, Plaintiffs
 15 allege that they “never applied for a medical cannabis cultivation permit pursuant to paragraph
 16 (B)(1) of the County Ordinance.” Complaint ¶ 27. Instead, they assert that their application was
 17 “submitted pursuant to paragraph (B)(3) of the Ordinance . . .” *Id.* Because of this, Plaintiffs
 18 contend that the denial of their permit, which cited a failure to comply with section
 19 10A.17.080(B)(1), was “based on a false and fraudulent premise.” Complaint ¶ 26. The plain
 20 language of the ordinance, however, clearly establishes that an applicant for a relocation permit
 21 must meet the requirements of both section 10A.17.080(B)(1) and 10A.17.080(B)(3), and the
 22 County has publicly explained this requirement in its FAQ since 2017. *See* RJN #3, Exhibit K.

23
 24
 25 ⁶ Plaintiffs assert that they were denied a “temporary” permit to cultivate cannabis. Complaint
 26 ¶¶ 32, 33, 41. Unlike the State’s permit process, the Mendocino County Ordinance does not
 27 create a category of temporary permits. Accordingly, it’s unclear what Plaintiffs are asserting in
 28 this context.

⁷ Plaintiffs have not challenged the County’s scheme for processing applications from existing
 cultivators before accepting application for new cultivation.

1 Section 10A.17.080 of the Mendocino County Code is entitled “Permit Phases and
 2 Requirements Specific to each Phase.” It begins “[u]nless specifically exempted . . . all Permits
 3 shall comply with the following requirements . . .” MCC § 10A.17.080. Section 10A.17.080(B)
 4 sets forth the requirements for permits issued under Phase I. It provides that “Persons applying
 5 for a Permit during Phase One shall be required to provide to the Agricultural Commissioner
 6 evidence that they were cultivating cannabis on the cultivation site prior to January 1, 2016 . . .”
 7 Section 10A.17.080(B)(1). Although referred to as “prior cultivation,” the applicant must
 8 demonstrate both that they historically cultivated at that location and that they are *currently*
 9 cultivating at that location. MCC § 10A.17.080(B)(1)(a)-(c). New outdoor cultivation is not
 10 allowed until Phase III opens on April 1, 2021.⁸

11 During Phase I, applicants are allowed to move an existing cultivation site to a more
 12 suitable location through a process called “Relocation.” MCC § 10A.17.080(B)(3). This
 13 process, however, is not intended to create new cultivation sites during Phase I. Instead,
 14 relocation is only available to “[p]ersons able to show proof of prior cultivation pursuant to
 15 paragraph (B)(1) . . .” MCC § 10A.17.080(B)(3). Once relocated, cultivation on the prior site
 16 must be extinguished. MCC § 10A.17.080(B)(3)(e)-(f). Additionally, the applicant must restore
 17 the origin site to a suitable condition that rehabilitates any environmental impact caused by the
 18 cannabis cultivation in that location. MCC § 10A.17.080(B)(3)(c). The ordinance alternatively
 19 refers to the prior site as the “origin site” and an “existing cultivation site.” See MCC §
 20 10A.17.080(B)(3)(c)(i)-(ii). The effect and purpose of these requirements is that, during Phase I,
 21 *existing* cultivators are allowed to move their cultivation sites to more suitable locations, but *new*
 22 cultivation is not allowed. This is because the purpose of Phase I is to bring existing cultivators
 23 into regulatory compliance prior to allowing proliferation of new sites, not to convey a benefit on
 24 anyone who happened to cultivate prior to legalization.

25 In order to explain this requirement to the public, the County of Mendocino has
 26 maintained a “Frequently Asked Questions” (“FAQ”) page which explains these requirements.

27
 28 ⁸ This date has been moved back a few times by ordinance amendments. RJN #1. At this time,
 there is still a substantial number of Phase I permit applications pending final approval.

RJN #3. The denial letter provided to Plaintiffs cited this FAQ, and noted that this statement had been posted since July of 2017. Complaint Ex. G. It reads:

Is there a pathway for a cultivator to obtain a Permit for a parcel/cultivation site other than the one on which the cultivator can show “proof of prior cultivation” pursuant to MCC §10A.17.080(B)(1)?

Yes, through the relocation process identified in MCC §10A.17.080(B)(3).

Must the cultivation activities used to show proof of cultivation prior to 1/1/16 be located on the same legal parcel as the proof of current cultivation activities?

Yes. In order to show proof of prior cultivation pursuant to MCC §10A.17.080(B)(1)(a) & (b), a cultivator must show that the current cultivation activities and the cultivation activities prior to 1/1/16 took place on the same legal parcel.

See RJN #3, Exhibit K. This interpretation of the County’s own ordinance is entitled to substantial judicial deference, in the event that the Court finds any ambiguity in the language of the underlying ordinance. *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984); see also *Yamaha Corp. of Am. v. State Bd. of Equalization*, 19 Cal. 4th 1 (1998).

Based on the allegations in Plaintiffs’ complaint, it is clear that they did not qualify for a Phase I permit under MCC §10A.17.080(B)(3), because they were not attempting to license or relocate a permissible *existing* cultivation site. Plaintiffs allege that they decided to create a new business venture to cultivate cannabis in May of 2016. Complaint ¶ 9. They acquired real property for this purpose in August of 2016. Complaint ¶ 10. In May of 2017, they applied for a permit to cultivate cannabis at this location. Complaint ¶ 12. Their application, however, attempted to relocate a grow site from a coastal location. Complaint ¶ 13. They subsequently learned that this was not allowed, because cultivation was not allowed in the coastal zone. Complaint ¶¶ 15, 20. They then attempted to cure this defect by relying on proof of prior cultivation from an inland area of the County, in Willits, California. Complaint ¶ 20. Plaintiffs have not alleged, however, that they were currently cultivating at that location in Willits, and the document which plaintiff, Borges, provided to the County indicated that she had “previously cultivated cannabis” at that location but that “all of Borges’ cannabis cultivation activities at the Original Site have permanently ceased . . .” Complaint Ex. D.

Under these circumstances, the Court is not required to accept Plaintiffs' characterization of the basis for the permit denial as pretextual. Although Plaintiffs' factual averments must be accepted as true at this stage of the litigation, the same does not extend to Plaintiffs' legal conclusions. Plaintiffs' assertion that their application did not need to comply with the proof of prior cultivation requirements in Mendocino County Code section 10A.17.080(B)(1), is clearly a legal conclusion. Complaint ¶ 27. Because this legal conclusion is the sole basis for Plaintiffs' assertion that their permit was denied for pretextual reasons, because this legal conclusion is inconsistent with the plain language of the ordinance, and because Plaintiffs have not alleged any facts showing that they were treated differently from similarly situated applicants, Plaintiffs' first two causes of action fail to state a claim for which relief can be granted.

C. Plaintiffs' Third and Fourth Causes of Action Fail to State a Claim Under 42 U.S.C. section 1983 Because Federal Law Does Not Recognize a Property Interest in a Local Permit to Cultivate Cannabis.

Plaintiffs' Third and Fourth Causes of Action assert that the County of Mendocino violated their right to substantive due process by denying their application for a permit to cultivate medical cannabis on their property. Specifically, Plaintiffs allege that "The County of Mendocino . . . denied Plaintiffs a temporary permit to cultivate medical cannabis in violation of the Due Process Clause of the Fourteenth Amendment." (Complaint ¶ 50) These assertions, however, are insufficient to state a claim for relief because the cultivation of cannabis remains prohibited by federal statute. Consequently, "Plaintiffs face the insurmountable hurdle that federal law does not recognize any protectible liberty or property interest in the cultivation, ownership, or sale of marijuana." *Citizens Against Corruption v. Cty. of Kern*, No. 1:19-CV-0106 AWI GSA JLT, 2019 U.S. Dist. LEXIS 75225, at *8 (E.D. Cal. May 3, 2019)

"To obtain relief on § 1983 claims based upon procedural due process, the plaintiff must establish the existence of '(1) a liberty or property interest protected by the Constitution; (2) a

deprivation of the interest by the government; [and] (3) lack of process.”⁹ *Guatay Christian Fellowship v. Cty. of San Diego*, 670 F.3d 957, 983 (9th Cir. 2011). “Though state law creates a property interest, not all state-created rights rise to the level of a constitutionally protected interest.” *Brady v. Gebbie*, 859 F.2d 1543, 1548 n.3 (9th Cir. 1988). “Courts will not entertain a claim contesting the confiscation of contraband *per se* because one cannot have a property right in that which is not subject to legal possession.” *Cooper v. Greenwood*, 904 F.2d 302, 305 (5th Cir. 1990). “A typical example [of contraband *per se*] is cocaine, a controlled substance, the possession of which is unlawful under the Controlled Substances Act . . .” *Id.* Cannabis is also a controlled substance. 21 U.S.C. § 812(c)(10).

“[B]ecause marijuana is contraband *per se* under federal law . . . no person can have a cognizable legal interest in it.” *Marble v. Strecker*, No. CV 13-00186-M-DWM-JCL, 2014 U.S. Dist. LEXIS 50770, at *22 (D. Mont. Feb. 26, 2014). The same is true for any entitlement to possess cannabis under state law, such as a “marijuana card.” *Id.*; see also *Smith v. City of Berkeley*, No. C 15-04227 WHA, 2015 U.S. Dist. LEXIS 170826, at *6 (N.D. Cal. Dec. 21, 2015); *Barrios v. Cty. of Tulare*, No. 1:13-CV-1665 AWI GSA, 2014 U.S. Dist. LEXIS 71406, at *12-13 (E.D. Cal. May 22, 2014); *Staffin v. Cty. of Shasta*, No. 2:13-cv-00315 JAM-CMK, 2013 U.S. Dist. LEXIS 64625, at *13-14 (E.D. Cal. May 6, 2013); *Schmidt v. Cty. of Nev.*, No. 2:10-CV-3022 FCD/EFB, 2011 U.S. Dist. LEXIS 78111, at *18 n.10 (E.D. Cal. July 19, 2011). Consequently, while the County of Mendocino and the State of California have chosen to regulate cannabis and cannabis production in a manner other than blanket prohibition, that decision does not create a federally recognized property right to do what remains prohibited under federal law. Because Plaintiffs’ claims rest entirely on the denial of an entitlement to cultivate a controlled substance, they have not and cannot state a claim for violation of their federal due process rights.

⁹ Plaintiffs have characterized their due process claims as violations of *substantive* due process. Complaint [9:22]. This appears, however, to be a simple mislabeling in the title of the cause of action. “A substantive due process claim . . . alleges not that the state’s procedures are somehow deficient, but that the state’s conduct is inherently impermissible, regardless of any protective or remedial procedures it provides.” *Ramos v. Gallo*, 596 F. Supp. 833, 837 (D. Mass. 1984). The allegations in Plaintiffs’ Complaint are that their permit was denied improperly, not that the County lacked the ability to deny a permit.

D. The Entire Action Should Be Dismissed Under the Doctrine of *ex Turpi Causa Non Oritur Actio*, Because Congress Did not Intend 42 U.S.C. § 1983 to Allow a Plaintiff to Receive Monetary Damages for a Lost Opportunity to Engage in an Enterprise Forbidden by Federal Criminal Statutes.

As noted above, Plaintiffs' four causes of action are all based on the County's denial of Plaintiffs' application for a permit to commercially cultivate cannabis. Plaintiffs' claims for monetary damages are founded exclusively on a federal statute, 42 United States Code section 1983, and their time for presenting a claim founded on a state law claim has passed. Complaint ¶ 40-55; See Cal. Gov. Code § 911.2. Based on the denial of their cannabis permit, Plaintiffs seek "past and future lost earnings and lost earning capacity . . ." Complaint ¶ 37. That is, Plaintiffs seek monetary compensation for a lost opportunity to cultivate and sell cannabis. These activities, however, are prohibited by federal criminal law. 21 U.S.C. § 812. Accordingly, federal statutes and federal courts will not afford Plaintiffs the relief they seek.

Under established federal case law, "No court will lend its aid to a party who founds his claim for redress upon an illegal act." *The "Florida"*, 101 U.S. 37, 42 (1879). "If, from the plaintiff's own stating or otherwise, the cause of action appear to arise *ex turpi causa*, or the transgression of a positive law of the country, there the court says he has no right to be assisted." *Danebo Lumber Co. v. Koutsky-Brennan-Vana Co.*, 182 F.2d 489, 494 (9th Cir. 1950). "The denial of relief based on that maxim (known by the latin phrase *ex turpi causa non oritur actio*) is 'not for the sake of the defendant, but because [courts] will not lend their aid to such a plaintiff.'" *Smith v. City of Berkeley*, No. C 15-04227 WHA, 2015 U.S. Dist. LEXIS 170826, at *6 (N.D. Cal. Dec. 21, 2015) (quoting *Ewell v. Daggs*, 108 U.S. 143, 149, 2 S. Ct. 408, 27 L. Ed. 682 (1883)). This doctrine applies to plaintiffs who attempt to use federal law to obtain damages for a lost opportunity to engage in a cannabis enterprise due to denial of local permits. *Id.*

Moreover, it would be anomalous to conclude that Congress intended that the federal statute at issue in this case would be a vehicle for obtaining lost revenue from an enterprise wholly forbidden under federal criminal law. Such an interpretation would place section 1983 in tension with other federal criminal statutes and create absurd results. From context, however, it

is clear that Congress intended no such result. In enacting 42 United States Code section 1983, Congress chose to rely on common law tort principles, rather than statutory language, for several of its key features. See, e.g., *Carey v. Phipps*, 435 U.S. 247 (1978); see also *Talifferro v. Augle*, 757 F.2d 157 at 161-62 (7th Cir. 1985) (“[F]ederal tort statutes such as 42 U.S.C. § 1983 are not self-contained. They are enacted against a background of common law tort principles governing causation and damages.”). At the time of section 1983’s enactment, this include the common law principle of *ex turpi causa non oritur actio*. See *The “Florida”*, 101 U.S. 37, 42 (1879). Consequently, section 1983 cannot reasonably be understood to allow to grant Plaintiffs a monetary award for a local government’s denial of their request for a permit to cultivate cannabis.

E. Leave to Amend Would Be Futile.

In this case, the Court should dismiss the claims with prejudice because it is clear from the face of the pleadings that leave to amend would be futile. As noted above, the allegations in Plaintiffs’ own Complaint affirmatively establish that their permit application was properly denied under the County’s Ordinance. Moreover, Plaintiffs’ claims all derive from their lost opportunity to cultivate cannabis in contravention of federal law. Accordingly, it is clear that Plaintiffs cannot state a federal claim for which relief can be granted.

IV. CONCLUSION

Based on the foregoing legal arguments, Defendant respectfully submits that Plaintiffs’ action be dismissed in its entirety, with prejudice.

DATED: August 13, 2020

OFFICE OF THE COUNTY COUNSEL
Mendocino County

by /s/ Christian M. Curtis
CHRISTIAN M. CURTIS, County Counsel
Attorney for Defendant
County of Mendocino

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Attorneys for Defendant
County of Mendocino

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ANN MARIE BORGES and CHRIS GURR, individually and doing business as GOOSE HEAD VALLEY FARMS, Plaintiffs, v. COUNTY OF MENDOCINO, SUE ANZILOTTI, and DOES 1-25 inclusive, Defendants.) 3:20-cv-04537-SI)) REQUEST FOR JUDICIAL NOTICE IN) SUPPORT OF DEFENDANT COUNTY) OF MENDOCINO’S MOTION TO) DISMISS PURSUANT TO F.R.C.P. RULE) 12(b)(6))) Date: September 18, 2020) Time: 9:00 a.m.) Location: San Francisco Courthouse,) Courtroom 1, 17th Floor) 450 Golden Gate Avenue, San Francisco)) Honorable Susan Illston) Senior District Judge))
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TO: PLAINTIFFS ANN MARIE BORGES and CHRIS GURR, and their attorney, JOHN HOUSTON SCOTT, Esq.:

Pursuant to Rule 201(b) of the Federal Rules of Evidence, Defendant, County of Mendocino, requests judicial notice of the following:

1. Every Ordinance of the Mendocino County Board of Supervisors either creating or amending Mendocino County Code Chapter 10A.17 - Mendocino Cannabis Cultivation Ordinance. These ordinances show that the ordinance amendment alleged by Plaintiffs in paragraph 15 of the Complaint, excluding, “applicants for permits who relied upon prior coastal cultivation experience to qualify under paragraph (B)(3) of the Ordinance,” Complaint, ¶15, was not made. These ordinances include the following:

- a. County of Mendocino Ordinance No. 4463, dated May 19, 2020. A true and correct copy of this ordinance is attached as Exhibit A.
- b. County of Mendocino Ordinance No. 4438, dated October 1, 2019. A true and correct copy of this ordinance is attached as Exhibit B.
- c. County of Mendocino Ordinance No. 4422, dated December 18, 2018. A true and correct copy of this ordinance is attached as Exhibit C.
- d. County of Mendocino Ordinance No. 4420, dated December 4, 2018. A true and correct copy of this ordinance is attached as Exhibit D.
- e. County of Mendocino Ordinance No. 4413, dated July 10, 2018. A true and correct copy of this ordinance is attached as Exhibit E.
- f. County of Mendocino Ordinance No. 4411, dated June 5, 2018. A true and correct copy of this ordinance is attached as Exhibit F.
- g. County of Mendocino Ordinance No. 4408, dated April 24, 2018. A true and correct copy of this ordinance is attached as Exhibit G.
- h. County of Mendocino Ordinance No. 4392, dated August 29, 2017. A true and correct copy of this ordinance is attached as Exhibit H.
- i. County of Mendocino Ordinance No. 4381, dated April 4, 2017. A true and correct copy of this ordinance is attached as Exhibit I.

- 1 2. The current version of Mendocino County Code of Ordinances, Chapter 10A. 17, as
2 amended on May 19, 2020. A true and correct copy of Chapter 10A.17 is attached at
3 Exhibit J.
- 4 3. County Cannabis Cultivation Program FAQs from the County of Mendocino official
5 website. A true and correct copy of this document is attached as Exhibit K. Specifically,
6 County requests judicial notice of the FAQ that reads as follows:

7 If a cultivator intends to relocate, must the cultivation activities used to
8 show proof of cultivation prior to 1/1/16 be on the same legal parcel as the
9 proof of current cultivation activities after 1/1/16?

10 Yes. When establishing “proof of prior cultivation” the cultivation
11 activities before and after 1/1/16 must be the same legal parcel (See MCC
12 §10A.17.080(B)(1)(a) & (b)). This legal parcel will become the origin site
13 for purposes of relocation. Only after establishing prior cultivation on the
 origin site can a cultivator proceed with the relocation process for a permit
 on a destination site under MCC §10A.17.080(B)(3).

- 14 4. The fact that the Mendocino County Board of Supervisors did not meet on June
15 28, 2017. Attached as Exhibit L is the Declaration of Janelle Rau in Support of
16 Defendant County of Mendocino’s Motion to Dismiss Pursuant to F.R.C.P. Rule
17 12(b)(6) which includes as an attachment a list of every meeting held by the
18 Mendocino County Board of Supervisors in the year 2017. June 28, 2017 does
19 not appear on this list. The fact that the Mendocino County Board of Supervisors
20 did not meet on June 28, 2017, is significant because it shows that the Board
21 could not have taken the action of amending the Ordinance alleged by Plaintiffs
22 on that date.

23

24 Rule 201(b) of the Federal Rules of Evidence provides that a court may take judicial
25 notice of a fact “that is not subject to reasonable dispute because it is: (1) generally known
26 within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready
27 determination by resort to sources whose accuracy cannot reasonably be questioned.”
28 Fed.R.Evid. 201. This section allows a court to “take judicial notice of ‘matters of public

1 record.”” *Lee v. City of L.A.*, 250 F.3d 668, 689 (9th Cir. 2001) (quoting *Mack v. South Bay Beer*
2 *Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986)). All of the items for which Defendant requests
3 judicial notice are matters of public record. Additionally, although seeking judicial notice of the
4 County’s ordinances may not be required, it is permissible. *See Tollis Inc. v. Cty. of San Diego*,
5 505 F.3d 935, 938 n.1 (9th Cir. 2007). Publicly accessible websites are also proper subjects of
6 judicial notice. *See In re Yahoo Mail Litig.*, 7 F. Supp. 3d 1016, 1024 (N.D. Cal. 2014) (citing
7 *Caldwell v. Caldwell*, No. C 05-4166 PJH, 2006 U.S. Dist. LEXIS 13688, 2006 WL 618511, at
8 *4 (N.D. Cal. Mar. 13, 2006); *Wible v. Aetna Life Ins. Co.*, 375 F. Supp. 2d 956, 965 (C.D. Cal.
9 2005)).

10
11 DATED: August 13, 2020

Respectfully submitted,

12 CHRISTIAN M. CURTIS,
13 County Counsel,

14 /s/ Christian M. Curtis
15 Attorney for Defendant
16 County of Mendocino
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EXHIBIT A

ORDINANCE NO. 4463

ORDINANCE AMENDING SECTION 10A.17.080 OF THE MENDOCINO COUNTY CODE TO POSTPONE THE START DATE OF PHASE THREE OF THE CANNABIS CULTIVATION PERMIT PROGRAM DUE TO THE COVID-19 PANDEMIC

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

Section 1: Section 10A.17.080 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.080 - Permit Phases and Requirements Specific to each Phase.

Unless specifically exempted, in addition to compliance with all other requirements of this Chapter, all Permits shall comply with the following requirements:

- (A) Permits under the MCCO will be issued in the following three phases:
 - (1) Phase One: Following the effective date of the MCCO, Permits will only be issued to applicants who provide to the Agricultural Commissioner pursuant to paragraph (B)(1) of this section proof of cultivation at a cultivation site prior to January 1, 2016 ("proof of prior cultivation"), and who comply with all other applicable conditions of this Chapter and Chapter 20.242. Applications for Permits during Phase One shall only be accepted until December 31, 2018, and from Monday, April 1, 2019, until Friday, October 4, 2019. Applicants able to provide proof of prior cultivation may apply for a Permit on a relocation site pursuant to paragraph (B)(3) of this section.
 - (2) Phase Two: Starting January 1, 2018, the Agricultural Commissioner will begin accepting applications for Type C-A, 1A and Type 2A Permits for indoor cultivation, and Type C-B, 1B and 2B Permits for mixed-light cultivation, which mixed-light cultivation must occur in a greenhouse equipped with filtered ventilation systems as described in paragraph (M) of section 10A.17.110 and may not occur in a hoop house, in the following zoning districts, subject to compliance with all other applicable conditions of this Chapter and Chapter 20.242: Limited Industrial (I-1), General Industrial (I-2), and Pinoleville Industrial (P-1). Proof of cultivation prior to January 1, 2016, is not required.
 - (3) Phase Three: Starting April 1, 2021, the Agricultural Commissioner will begin accepting Permit applications from any applicant in conformance with the conditions of this Chapter and Chapter 20.242. Proof of cultivation prior to January 1, 2016, is not required.
- (B) Requirements specific to Phase One Permits.
 - (1) Proof of Prior Cultivation. Persons applying for a Permit during Phase One shall be required to provide to the Agricultural Commissioner evidence that they were cultivating cannabis on the cultivation site prior to January 1, 2016, which cultivation site shall have been, or could have been, in compliance with the setback requirements of paragraph (A) of section 10A.17.040. Evidence shall include:

- (a) Photographs of any cultivation activities that existed on the legal parcel prior to January 1, 2016, including: (i) ground level views of the cultivation activities and (ii) aerial views from Google Earth, Bing Maps, Terraserver, or a comparable service showing: both the entire legal parcel and the cultivation site in more detail. The date these images were captured shall be noted.
 - (b) Photographs of any cultivation activities that currently exist on the legal parcel, including: (i) ground level views of the cultivation activities and (ii) aerial views from Google Earth, Bing Maps, Terraserver, or a comparable service showing: both the entire legal parcel and the cultivation site in more detail. The date these images were captured shall be noted.
 - (c) At least one (1) additional document demonstrating cultivation on the legal parcel prior to January 1, 2016, which evidence may be used to substitute for evidence pursuant to clause (a). The Agricultural Commissioner shall prepare a list of the types of documentation that will be accepted to meet this requirement, and may accept other similarly reliable documentary evidence showing that cannabis was cultivated prior to January 1, 2016.
 - (d) Proof of prior cultivation shall be assigned to the applicant relative to their prior cultivation site.
 - (e) Persons who participated in a permit program pursuant to the County's Chapter 9.31 in previous years may present evidence of such participation and payment of all required fees in order to provide proof of prior cultivation.
- (2) Zoning Districts; Exceptions. Existing cultivation sites not located in zoning districts where Chapter 20.242 specifically allows cultivation may be issued a Type C, Type C-A, or Type C-B Permit, subject to the following requirements, in addition to all other applicable requirements of this Chapter:
- (a) The zoning district is one where a dwelling unit is a principally permitted use and a dwelling unit is present.
 - (b) Sunset Provision for Residential Districts. Cultivation sites on legal parcels located in the Single-Family Residential (R-1), Two-Family Residential (R-2), Multiple-Family Residential (R-3), Suburban Residential (S-R), Rural Community (R-C), and Rural Residential (lot sizes one (1) acre, two (2) acres and five (5) acres [legal non-conforming parcels to minimum zoning size][R-R: L-1, R- R:L-2, and R-R:L-5 {legal non-conforming to minimum zoning size}]), as well as cultivation sites in any other zoning district where a dwelling unit is a principally permitted use and the legal parcel is less than two (2) acres in size, are subject to the following requirements:

- (i) There is an occupied dwelling unit on the legal parcel with the cultivation site.
- (ii) A Permit may be renewed and valid only until three (3) years following the effective date of the ordinance adopting this Chapter and any permits issued shall be void not later than three (3) years following said effective date; provided, however, that indoor cultivation sites (Types C-A, 1A or 2A) within two (2) miles of the Coastal Zone Boundary which, as of May 14, 2019, have been issued a Permit (and issued any permit pursuant to Chapter 20.242) or have applied for a Permit and are under Permit review (and applied for and are under review for any permit pursuant to Chapter 20.242), may be issued and/or renew a Permit until June 30, 2022, subject to the modification of the existing administrative or use permit for the indoor cultivation site.

The provisions of this subsection, however, shall not apply in areas designated as "CA" Cannabis Accommodation Combining District, nor shall they apply to parcels zoned Rural Residential (lot size five (5) acres [R-R:L-5]) that are between 3.5 and 4.99 acres and have been issued an administrative permit pursuant to Section 20.242.070(C).

- (c) Cultivation sites on legal parcels located in the Rural Residential zoning district, lot size five (5) acres (conforming parcels of five acres or more only)(R-R:L-5), are subject to the following additional requirement that there is an occupied dwelling unit on the legal parcel with the cultivation site.
 - (d) If a Permit is granted pursuant to this paragraph (B)(2) in these zoning districts, any future revocation or lapse in renewal of such Permit shall extinguish the ability of any person to obtain a Permit for such cultivation site.
- (3) Relocation. Persons able to show proof of prior cultivation pursuant to paragraph (B)(1) above may apply for a Permit not on the site previously cultivated (the "origin site") but on a different legal parcel (the "destination site"), subject to the following requirements:
- (a) Persons may apply to relocate their cultivation site pursuant to this paragraph (B)(3) until three (3) years after the effective date of the ordinance adopting this Chapter, or until May 4, 2020.
 - (b) The location and operation of the proposed cultivation site on the destination parcel complies with all requirements and development standards that apply to a new cultivation site as of January 1, 2020, pursuant to this Chapter and Chapter

20.242; provided, however:

- (i) An existing cultivation site shall not be transferred to a legal parcel located within the Forestland or Timber Production Zone zoning districts.
 - (ii) An origin site may relocate to a destination site in the Rangeland zoning district, so long as the destination site has an existing cultivation site and no new cultivation sites would be established.
- (c) The origin site shall be restored. The application for a Permit on a destination site shall be accompanied by a restoration plan that is consistent with the standard conditions and best management practices listed in the North Coast Regional Water Quality Control Board Order No. 2015-0023, and which shall include the following:
 - (i) Remove or repurpose buildings, greenhouses, fences, irrigation equipment, water intakes, pumps, storage tanks and other materials brought to the origin site for the purpose of cannabis cultivation;
 - (ii) Remove illegal dams, ponds or other in-stream water storage to restore natural stream flows, unless such features will continue in use;
 - (iii) Remove or compost agricultural wastes;
 - (iv) Remove trash and other debris; and
 - (v) Revegetate cleared areas with native plants typical of nearby natural areas, including groundcover, shrubs and trees.
- (d) Unless the destination site is within the Agricultural zoning district, the application shall include either a water availability analysis pursuant to paragraph (C)(1)(b) below or a will serve letter pursuant to paragraph (C)(1)(c) below.
- (e) Prior to the issuance of the Permit to cultivate cannabis at the destination parcel, the applicant shall provide the Agricultural Commissioner with an agreement, on a form approved by the Agricultural Commissioner and County Counsel, providing that the applicant releases any right to continue or resume cultivation of cannabis on the origin parcel.
- (f) If a person is granted a Permit for a destination site, any claims of proof of prior cultivation on the origin site shall be effectively transferred to the destination site, and the ability to claim proof of prior cultivation at the origin site shall be extinguished.
- (g) There shall be a two (2) acre minimum parcel size for all Type

C, Type C-A or Type C-B Permits.

- (4) Multiple Permits may be applied for and granted on a single legal parcel that is owned by multiple persons. Each owner may individually apply for a Permit to cultivate cannabis, provided that each owner must provide proof of prior cultivation pursuant to paragraph (B)(1) above. Each owner shall be limited to a Type C, Type C-A or Type C-B Permit, unless that owner was previously enrolled in a permit program pursuant to the County's Chapter 9.31, or unless the cumulative total square footage of plant canopy applied for by all owners does not exceed the maximum square footage permitted on a parcel for the relevant zoning district.
- (5) Persons eligible to apply for a Permit during Phase One may apply for a different and/or larger Permit type in subsequent years, subject to all requirements of this Chapter.
- (6) If a Permit is granted pursuant to this paragraph (B), any future revocation or lapse in renewal of such Permit shall extinguish the ability of any person to obtain a Permit for such cultivation site, unless otherwise allowed by this Chapter 10A.17; provided, however, that not more than once in a five-year period, a Permittee may file with the Department of Agriculture, on a form prescribed by the Department, a Notice of Non-Cultivation instead of an application to renew the Permit, and the Permittee's ability to obtain a Permit for such cultivation site will not be extinguished.

(C) Requirements specific to Phase Three Permits.

- (1) Watershed Assessment. All Permit applications, except for legal parcels located in the Agricultural (A-G) zoning district, shall demonstrate there is adequate water to serve the cultivation site.
 - (a) If surface water (or groundwater influenced by surface water) will be used, applicants may demonstrate that there is adequate water by providing (i) a watershed assessment that establishes there is sufficient watershed supply to serve the proposed cultivation site and existing uses within the watershed, and (ii) a water right exists to serve the cultivation site. A watershed assessment shall consist of an established "In Stream Flow Policy" as prepared by the State Water Resources Control Board Division of Water Rights or an equivalent document approved by that agency.
 - (b) If groundwater not influenced by surface water will be used, the applicant may demonstrate that there is adequate water by providing a water availability analysis which will address the adequacy of the proposed water supply, the direct effects on adjacent and surrounding water users, and possible cumulative adverse impacts of the development on the water supply within the watershed and show there is a sustained yield to support the proposed level of use.

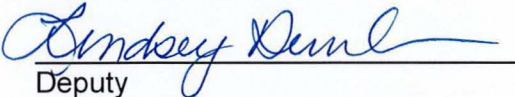
- (c) If water will be provided by a mutual water company, municipal or private utility or similar community provider, the applicant may demonstrate that there is adequate water by providing a will serve letter from the proposed provider.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this 19th day of May, 2020, by the following roll call vote:

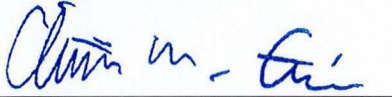
AYES: Supervisors Brown, McCowen, Haschak, Gjerde and Williams
NOES: None
ABSENT: None

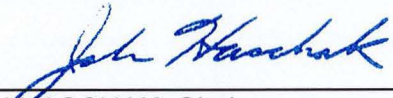
WHEREUPON, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO
Clerk of the Board


Deputy

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

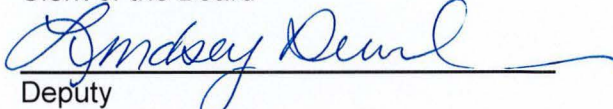




JOHN HASCHAK, Chair
Mendocino County Board of Supervisors

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

BY: CARMEL J. ANGELO
Clerk of the Board



Deputy

EXHIBIT B

ORDINANCE NO. 4438

**ORDINANCE AMENDING CHAPTER 10A.17 – MENDOCINO CANNABIS CULTIVATION
ORDINANCE AND CHAPTER 20.242 – CANNABIS CULTIVATION SITES**

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

Section 1: Section 10A.17.040 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.040 - General Limitations on Cultivation of Cannabis.

The following limitations shall apply to all cultivation of cannabis in Mendocino County, including but not limited to cultivation pursuant to a Permit issued under this Chapter or an exemption provided for in Section 10A.17.030. Cultivation of cannabis shall also be subject to all applicable restrictions of Mendocino County Code Chapter 20.242.

- (A) The cultivation of cannabis in Mendocino County, in any amount or quantity by any entity, shall not be allowed in the following areas:
- (1) Within one thousand (1,000) feet of a youth-oriented facility, a school, or a park as defined herein that is in existence at the time a Permit is initially applied for.
 - (2) Outdoors or using mixed light within one hundred (100) feet of any occupied legal residential structure located on a separate legal parcel; provided, however, that on January 1, 2020, this setback shall be increased to two hundred (200) feet for all Permit applications but shall not apply to renewals of Permits originally issued before that date.
 - (3) Outdoors or using mixed light in a mobile home park as defined in Health and Safety Code Section 18214.1 within one hundred (100) feet of an occupied mobile home that is under separate ownership.
 - (4) Intentionally omitted.
 - (5) Outdoors or using mixed light within fifty (50) feet from any adjoining legal parcel under separate ownership or access easement (whichever is most restrictive); provided, however, that on January 1, 2020, this setback shall be increased to one hundred (100) feet for all Permit applications but shall not apply to renewals of Permits originally issued before that date.
 - (6) Any indoor cultivation sites that comply with paragraph (A)(1) shall also be subject to the following:
 - (a) Indoor cultivation sites shall comply with the building property line setback established by the zoning district in

which the cultivation site is located.

- (b) The cultivation of cannabis within an accessory structure shall be allowed subject to the development requirements of the zoning district in which it is located and to requirements of Chapter 20.164 — Accessory Use Regulations except, notwithstanding Section 20.164.010: (a) the cultivation of cannabis in an accessory structure is not permitted prior to the construction of the legal dwelling unit on the parcel, if a legal dwelling unit is required by this Chapter, and (b) cultivation of cannabis shall only be allowed on the same parcel as the dwelling unit, if required.
 - (c) Indoor cultivation sites for individuals desiring to cultivate cannabis for adult use pursuant to section 10A.17.030(C) shall also be subject to the following limitation: cultivation sites located within a private residence that is a rental unit, as that term is defined by County Code section 20.008.050, shall not be located in any indoor space other than a garage or accessory structure.
- (B) The distance between the listed uses in the above paragraph (A)(1) and cannabis that is being cultivated shall be measured in a straight line from the nearest point of the fence required in section 10A.17.040(H), or if the cannabis is cultivated indoors, from the nearest exterior wall of the building in which the cannabis is cultivated to the nearest point of the exterior wall of the facility, building, or structure, or portion of the facility, building, or structure in which the above-listed use occurs or to the nearest point of any fenced, maintained or improved area where the users of the facility are typically present during normal hours of operation, whichever is closest. The distance in paragraphs (A)(2) and (A)(3) to any residential structure shall be measured from the fence required in section 10A.17.040(H) to the nearest exterior wall of the residential structure. The distance in paragraph (A)(5) shall be measured from the fence required in section 10A.17.040(H) to the boundary line of a legal parcel or access easement.

Applicants may seek a reduction in the setback described in paragraphs (A)(1) and (A)(5) upon issuance of an administrative permit pursuant to Chapter 20.242. See also sections 20.242.060(D) and 20.118.040 (D), (E) and (F) for further exceptions to setback regulations.
- (C) The outdoor, indoor or mixed light cultivation of cannabis shall not propagate objectionable odors which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that endanger the comfort, repose, health, or safety of any of those persons or the public.
- (D) The indoor or mixed-light cultivation of cannabis shall rely on the electrical grid or some form of alternative energy source. The indoor or mixed-light

cultivation cannabis shall not rely on a generator as a primary source of power.

- (E) All lights used for the indoor or mixed light cultivation of cannabis shall be fully contained within structures or otherwise shielded to fully contain any light or glare involved in the cultivation process. Security lighting shall be motion activated and all outdoor lighting shall be shielded and downcast or otherwise positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the legal parcel upon which they are placed.
- (F) All activities associated with the cultivation of cannabis shall not exceed the noise level standards as set forth in the County General Plan Policies DE100, 101 and 103.
- (G) All cultivation of cannabis shall not utilize water that has been or is illegally diverted from any spring, wetland, stream, creek, or river. The activities associated with the cultivation of cannabis shall not create erosion or result in contaminated runoff into any stream, creek, river or body of water.
- (H) All cannabis grown in Mendocino County (excluding indoor growing) must be within a secure fence of at least six (6) feet in height that fully encloses the garden area. The fence must include a lockable gate that is locked at all times when a qualified patient, caregiver or permittee (or their agent) is not in the immediate area. Said fence shall not violate any other ordinance, code section or provision of law regarding height and location restrictions and shall not be constructed or covered with plastic or cloth except shade cloth may be used on the inside of the fence.
- (I) All buildings where cannabis is cultivated or stored shall be properly secured to prevent unauthorized entry.
- (J) Persons cultivating cannabis pursuant to either section 10A.17.030, paragraphs (B) or (C) shall also comply with the provisions of section 10A.17.110, paragraphs (N) and (O).
- (K) Prohibition on Tree Removal. Removal of any commercial tree species as defined by Title 14 California Code of Regulations section 895.1, Commercial Species for the Coast Forest District and Northern Forest District, and the removal of any true oak species (*Quercus* sp.) or Tan Oak (*Notholithocarpus* sp.) for the purpose of developing a cannabis cultivation site is prohibited. This prohibition shall not include the pruning of any such trees for maintenance, or the removal of such trees if necessary to address safety or disease concerns.

Section 2: Section 10A.17.060 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.060 - Permit Types.

The cultivation Permits that may be applied for under this Chapter are for the production of flowering cannabis plants and for nursery and seed production, as defined in section 10A.17.020. A Permittee producing flowering cannabis plants may maintain an area scaled appropriately for their operation where they may propagate their own immature plants (starts) through cloning, seed germination or tissue culture. Starts produced in this manner shall be for the exclusive and personal use of the permittee only and the sale, trade, barter, etc. of such starts is prohibited. The square footage of cultivation area dedicated to propagation of starts shall not be included in measuring the cumulative total square footage allowed under a given Permit and must not constitute any new disturbance, as defined by this chapter.

The following cannabis cultivation Permit types may be applied for and granted provided the applicant and the legal parcel (or legal parcels, subject to section 10A.17.070(D)(3)) that contains the cultivation site are determined to be in compliance with all applicable conditions of this Chapter and Mendocino County Code Chapter 20.242; all Permit types shall be applied for stating whether the applicant will be applying for an A-License or an M-License, or a stated combination thereof.

- (1) "Type C" for small outdoor cultivation using no artificial lighting not to exceed a maximum of two thousand five hundred (2,500) square feet of total plant canopy.
- (2) "Type C-A" for small indoor cultivation using exclusively artificial lighting not to exceed a maximum two thousand five hundred (2,500) square feet of total plant canopy within a structure or structures.
- (3) "Type C-B" for small mixed light cultivation (using a combination of natural and supplemental artificial lighting) not to exceed a maximum of two thousand five hundred (2,500) square feet of total plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle.
- (4) "Type 1" for medium outdoor cultivation using no artificial lighting of two thousand five hundred one (2,501) to a maximum of five thousand (5,000) square feet of total plant canopy on one legal parcel not less than five (5) acres in size.
- (5) "Type 1A" for medium indoor cultivation using exclusively artificial lighting of two thousand five hundred one (2,501) to a maximum of five thousand (5,000) square feet of total plant canopy within a structure or structures.
- (6) "Type 1B" for medium mixed light cultivation (using a combination of natural and supplemental artificial lighting) of two thousand five hundred one (2,501) to a maximum of five thousand (5,000) square feet of total

plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle, on one (1) legal parcel not less than five (5) acres in size.

- (7) "Type 2" for large outdoor cultivation using no artificial lighting of five thousand one (5,001) to a maximum of 10,000 square feet of total plant canopy on one legal parcel not less than ten (10) acres in size.
- (8) "Type 2A" for large indoor cultivation using exclusively artificial lighting of five thousand one (5,001) to ten thousand (10,000) square feet of total plant canopy on one legal parcel.
- (9) "Type 2B" for mixed light cultivation (using a combination of natural and supplemental artificial lighting) of five thousand one (5,001) to a maximum of ten thousand (10,000) square feet of total plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle, on one (1) legal parcel not less than ten (10) acres in size.
- (10) "Type 4" for the cultivation of cannabis nursery stock and/or seed production which shall not exceed a maximum of twenty-two thousand (22,000) square feet of total plant canopy on one (1) legal parcel. Seed production activities, if any, shall be described in the application for a Type 4 Permit. The legal parcel shall not be less than five (5) acres in size, provided, however, that legal parcels in industrial zoning districts are not subject to this parcel size restriction. Any on-site sales of nursery products which were produced on and occur on a parcel within the Timberland Production, Rangeland or Forestland zoning districts shall be limited to permitted cultivators only.

Section 3: Section 10A.17.070 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.070 - Requirements for All Permits.

Unless specifically exempted, in addition to compliance with all other requirements of this Chapter, all Permits shall comply with the following requirements:

- (A) Zoning Districts. Cultivation of cannabis shall only be permitted on legal parcels that comply with the applicable zoning districts and parcel sizes as provided in Chapter 20.242.
- (B) Indoor Cultivation Permits. The use or conversion of habitable space (i.e., kitchen, bedrooms, bathrooms, living room or hallways) in any structure shall not be allowed for the indoor cultivation of cannabis.
- (C) Cultivation of cannabis is not permitted within any required parking space.
- (D) Permit Density. A Person may apply for and obtain a maximum of two (2) Permits listed in section 10A.17.060 at any given time. Permits shall be

granted at a maximum density of one (1) Permit per legal parcel; provided, however, that

- (1) A Person may obtain two (2) separate Permits of different Permit types on a single legal parcel if the total square footage of the two (2) Permits does not exceed the largest maximum square footage permitted on a parcel for the relevant zoning district. A Person who applies for and obtains a Type 4 Permit in combination with any other Permit, shall not exceed a total square footage of twenty-two thousand (22,000) square feet per legal parcel, of which not more than ten thousand (10,000) square feet may be grown to maturity and entered into the Track and Trace system for commercial use. Plants may be grown to maturity by a Type 4 Permit holder for seed production or genetic expression, where the mature flowers are destroyed, and not used for commercial purposes, shall not require a separate cultivation permit.
 - (2) A Person may apply for one (1) Permit of a single size (e.g. Type C, Type 1 or Type 2) that may include any combination of all three (3) cultivation types (e.g. indoor, outdoor, mixed-light), but if any cultivation would require the issuance of a permit pursuant to Chapter 20.242, the entire Permit shall be subject to review under Chapter 20.242.
 - (3) A Person may obtain one (1) Permit for multiple legal parcels, so long as the parcels are contiguous and under the same ownership. Should the Person sell any of the parcels subject to the Permit, subsequent permits shall be required to modify the cultivation site to adhere to required setbacks.
- (E) Dwelling Unit Requirement. Legal parcels with a cultivation site are also required to have a dwelling unit; provided, however, that this requirement shall not apply to legal parcels within the following zoning districts: Upland Residential (U-R), Agricultural (A-G), Rangeland (R-L), Forest Land (F-L), Timberland Production (TPZ), Limited Industrial (I-1), General Industrial (I-2) Pinoleville Industrial (P-I). In addition, legal conforming parcels in Rural Residential, lot size ten (10) acres (R-R:L-10), shall also be exempt from the dwelling unit requirement of this paragraph, upon issuance of an administrative permit pursuant to Chapter 20.242.
- (F) Generators. The indoor or mixed-light cultivation of cannabis shall not rely on a generator as a primary source of power. If no grid power source is available and there is not an alternative power source supporting both any required legal dwelling unit and the indoor or mixed-light permit operations, a generator may be used only under the following conditions: (1) the permittee shall install an alternative power source that will meet at least one-half ($\frac{1}{2}$) of the combined power requirements by the expiration of four (4) years from the date of initial application for a permit pursuant to this Chapter and (2) it will be a condition of the renewal of a permit at the end of such four (4) year period that the cultivator commit, in writing, to expand their alternative power source to fully meet the combined needs

of the cultivation operations and any required legal dwelling unit within two years. See also section 10A.17.090 regarding application requirements related to generators.

- (G) Permittees shall be required to enroll in and comply with all requirements of any Track and Trace system as designated by the County to track the production and distribution of cannabis. Permittees shall obtain and use unique identifiers from an approved source, maintain them in a readable state, comply with all data entry requirements, and pay all required Track and Trace fees. Non-compliance with Track and Trace requirements shall constitute a violation of the terms of the Permit.
- (H) Fees: An application fee shall be paid at the time an application is submitted to the Agricultural Commissioner for initial review. A Permit fee shall be paid prior to issuance of any Permit. Once a Permit is issued, the Permittee may renew the Permit upon submission of a renewal application and payment of a renewal fee. No Permit shall issue without payment of the required fees.
 - (1) Fees prescribed by this Chapter shall be set by the Mendocino County Board of Supervisors in accordance with all applicable laws and regulations and the County's Master Fee Policy. Any fee prescribed by this Chapter shall be paid to the County Treasurer/Tax Collector and is non-refundable. A receipt for payment of the required fee shall be provided to the Agricultural Commissioner prior to the initial review and issuance or annual renewal of any application, permit or other program described herein where a fee has been established, including for required inspections.
- (I) Inspections by Agricultural Commissioner. All applicants shall be subject to and shall facilitate an initial on-site pre-permit inspection and all Permittees shall be subject to and facilitate at least one (1) annual on-site compliance inspection (Type 4 Permits shall be subject to two (2) on-site compliance inspections annually), which shall serve as the inspection required to be performed prior to any renewal of the Permit, with additional inspections as required by this Chapter or as deemed necessary by the Agricultural Commissioner. All inspections will be scheduled with at least twenty-four (24) hours advance notice to the applicant or Permittee, and shall be conducted during regular business hours. Cancellation of scheduled inspections without notice to the Agricultural Commissioner shall result in the Permittee being invoiced for the actual travel time and mileage incurred by the Agricultural Commissioner.
 - (1) All site inspections conducted prior to issuance of a Permit for any indoor or mixed-light cultivation Permit may include a representative from the Department of Planning and Building Services.
- (J) Intentionally Omitted.

- (K) Assignment of Permits. A permittee may assign a Permit to another person subject to the following provisions:
- (1) Submission of the following to the Agricultural Commissioner:
 - (a) An application fee as set by resolution of the Board of Supervisors;
 - (b) A completed application form as provided by the department, and the submission of information or documents pursuant to Section 10A.17.090 relating to the assignee, including, but not limited to, the Live Scan criminal history inquiry process outlined in Section 10A.17.090(M);
 - (c) A copy of the existing Permit showing that it has not expired;
 - (d) Either:
 - (i) The existing Permittee's request to assign all rights and responsibilities of the Permit to the assignee; or
 - (ii) In the event of the death or incapacitation of the existing Permittee, evidence of such death or incapacitation;
 - (e) Evidence that assignee's legal interest in the real property involved allows for assignee's use of the Permit; and
 - (f) An affidavit executed by the assignee attesting to the assignee's agreement to comply with the terms and conditions of the Permit and all applicable laws and regulations.
 - (2) The assignment shall be effective upon the department's written approval of the documentation submitted, notice that the assignee does not have a criminal history that includes any of the conditions listed in Section 10A.17.090(M), and the assigned Permit shall be granted subject to the terms and conditions of the original Permit.
 - (3) Permits issued on parcels subject to the Sunset Provision of Section 10A.17.080(B)(2) shall not be assignable pursuant to this Section 10A.17.070(K); provided, however, that permits issued on parcels located within a "CA" Cannabis Accommodation Combining District are assignable.

Section 4: Section 10A.17.080 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.080 - Permit Phases and Requirements Specific to each Phase.

Unless specifically exempted, in addition to compliance with all other requirements of this Chapter, all Permits shall comply with the following requirements:

- (A) Permits under the MCCO will be issued in the following three phases:
 - (1) Phase One: Following the effective date of the MCCO, Permits will only be issued to applicants who provide to the Agricultural Commissioner pursuant to paragraph (B)(1) of this section proof of cultivation at a cultivation site prior to January 1, 2016 ("proof of prior cultivation"), and who comply with all other applicable conditions of this Chapter and Chapter 20.242. Applications for Permits during Phase One shall only be accepted until December 31, 2018, and from Monday, April 1, 2019, until Friday, October 4, 2019. Applicants able to provide proof of prior cultivation may apply for a Permit on a relocation site pursuant to paragraph (B)(3) of this section.
 - (2) Phase Two: Starting January 1, 2018, the Agricultural Commissioner will begin accepting applications for Type C-A, 1A and Type 2A Permits for indoor cultivation, and Type C-B, 1B and 2B Permits for mixed-light cultivation, which mixed-light cultivation must occur in a greenhouse equipped with filtered ventilation systems as described in paragraph (M) of section 10A.17.110 and may not occur in a hoop house, in the following zoning districts, subject to compliance with all other applicable conditions of this Chapter and Chapter 20.242: Limited Industrial (I-1), General Industrial (I-2), and Pinoleville Industrial (P-I). Proof of cultivation prior to January 1, 2016, is not required.
 - (3) Phase Three: Starting July 1, 2020, the Agricultural Commissioner will begin accepting Permit applications from any applicant in conformance with the conditions of this Chapter and Chapter 20.242. Proof of cultivation prior to January 1, 2016, is not required.
- (B) Requirements specific to Phase One Permits.
 - (1) Proof of Prior Cultivation. Persons applying for a Permit during Phase One shall be required to provide to the Agricultural Commissioner evidence that they were cultivating cannabis on the cultivation site prior to January 1, 2016, which cultivation site shall have been, or could have been, in compliance with the setback requirements of paragraph (A) of section 10A.17.040. Evidence shall include:

- (a) Photographs of any cultivation activities that existed on the legal parcel prior to January 1, 2016, including: (i) ground level views of the cultivation activities and (ii) aerial views from Google Earth, Bing Maps, Terraserver, or a comparable service showing: both the entire legal parcel and the cultivation site in more detail. The date these images were captured shall be noted.
 - (b) Photographs of any cultivation activities that currently exist on the legal parcel, including: (i) ground level views of the cultivation activities and (ii) aerial views from Google Earth, Bing Maps, Terraserver, or a comparable service showing: both the entire legal parcel and the cultivation site in more detail. The date these images were captured shall be noted.
 - (c) At least one (1) additional document demonstrating cultivation on the legal parcel prior to January 1, 2016, which evidence may be used to substitute for evidence pursuant to clause (a). The Agricultural Commissioner shall prepare a list of the types of documentation that will be accepted to meet this requirement, and may accept other similarly reliable documentary evidence showing that cannabis was cultivated prior to January 1, 2016.
 - (d) Proof of prior cultivation shall be assigned to the applicant relative to their prior cultivation site.
 - (e) Persons who participated in a permit program pursuant to the County's Chapter 9.31 in previous years may present evidence of such participation and payment of all required fees in order to provide proof of prior cultivation.
- (2) Zoning Districts; Exceptions. Existing cultivation sites not located in zoning districts where Chapter 20.242 specifically allows cultivation may be issued a Type C, Type C-A, or Type C-B Permit, subject to the following requirements, in addition to all other applicable requirements of this Chapter:
- (a) The zoning district is one where a dwelling unit is a principally permitted use and a dwelling unit is present.
 - (b) Sunset Provision for Residential Districts. Cultivation sites on legal parcels located in the Single-Family Residential (R-1), Two-Family Residential (R-2), Multiple-Family Residential (R-3), Suburban Residential (S-R), Rural Community (R-C), and Rural Residential (lot sizes one (1) acre, two (2) acres and five (5) acres [legal non-conforming parcels to minimum zoning size])[R-R:L-1, R-R:L-2, and R-R:L-5 {legal non-conforming to minimum zoning size}], as well as cultivation sites in any other

zoning district where a dwelling unit is a principally permitted use and the legal parcel is less than two (2) acres in size, are subject to the following requirements:

- (i) There is an occupied dwelling unit on the legal parcel with the cultivation site.
- (ii) A Permit may be renewed and valid only until three (3) years following the effective date of the ordinance adopting this Chapter and any permits issued shall be void not later than three (3) years following said effective date; provided, however, that indoor cultivation sites (Types C-A, 1A or 2A) within two (2) miles of the Coastal Zone Boundary which, as of May 14, 2019, have been issued a Permit (and issued any permit pursuant to Chapter 20.242) or have applied for a Permit and are under Permit review (and applied for and are under review for any permit pursuant to Chapter 20.242), may be issued and/or renew a Permit until June 30, 2022, subject to the modification of the existing administrative or use permit for the indoor cultivation site.

The provisions of this subsection, however, shall not apply in areas designated as "CA" Cannabis Accommodation Combining District, nor shall they apply to parcels zoned Rural Residential (lot size five (5) acres [R-R:L-5]) that are between 3.5 and 4.99 acres and have been issued an administrative permit pursuant to section 20.242.070(C).

- (c) Cultivation sites on legal parcels located in the Rural Residential zoning district, lot size five (5) acres (conforming parcels of five acres or more only)(R-R:L-5), are subject to the following additional requirement that there is an occupied dwelling unit on the legal parcel with the cultivation site.
 - (d) If a Permit is granted pursuant to this paragraph (B)(2) in these zoning districts, any future revocation or lapse in renewal of such Permit shall extinguish the ability of any person to obtain a Permit for such cultivation site.
- (3) Relocation. Persons able to show proof of prior cultivation pursuant to paragraph (B)(1) above may apply for a Permit not on the site previously cultivated (the "origin site") but on a different legal parcel (the "destination site"), subject to the following requirements:
- (a) Persons may apply to relocate their cultivation site pursuant to this paragraph (B)(3) until three (3) years

after the effective date of the ordinance adopting this Chapter, or until May 4, 2020.

- (b) The location and operation of the proposed cultivation site on the destination parcel complies with all requirements and development standards that apply to a new cultivation site as of January 1, 2020, pursuant to this Chapter and Chapter 20.242; provided, however:
 - (i) An existing cultivation site shall not be transferred to a legal parcel located within the Forestland or Timber Production Zone zoning districts.
 - (ii) An origin site may relocate to a destination site in the Rangeland zoning district, so long as the destination site has an existing cultivation site and no new cultivation sites would be established.
- (c) The origin site shall be restored. The application for a Permit on a destination site shall be accompanied by a restoration plan that is consistent with the standard conditions and best management practices listed in the North Coast Regional Water Quality Control Board Order No. 2015-0023, and which shall include the following:
 - (i) Remove or repurpose buildings, greenhouses, fences, irrigation equipment, water intakes, pumps, storage tanks and other materials brought to the origin site for the purpose of cannabis cultivation;
 - (ii) Remove illegal dams, ponds or other in-stream water storage to restore natural stream flows, unless such features will continue in use;
 - (iii) Remove or compost agricultural wastes;
 - (iv) Remove trash and other debris; and
 - (v) Revegetate cleared areas with native plants typical of nearby natural areas, including groundcover, shrubs and trees.
- (d) Unless the destination site is within the Agricultural zoning district, the application shall include either a water availability analysis pursuant to paragraph (C)(1)(b) below or a will serve letter pursuant to paragraph (C)(1)(c) below.
- (e) Prior to the issuance of the Permit to cultivate cannabis at the destination parcel, the applicant shall provide the

Agricultural Commissioner with an agreement, on a form approved by the Agricultural Commissioner and County Counsel, providing that the applicant releases any right to continue or resume cultivation of cannabis on the origin parcel.

- (f) If a person is granted a Permit for a destination site, any claims of proof of prior cultivation on the origin site shall be effectively transferred to the destination site, and the ability to claim proof of prior cultivation at the origin site shall be extinguished.
 - (g) There shall be a two (2) acre minimum parcel size for all Type C, Type C-A or Type C-B Permits.
 - (4) Multiple Permits may be applied for and granted on a single legal parcel that is owned by multiple persons. Each owner may individually apply for a Permit to cultivate cannabis, provided that each owner must provide proof of prior cultivation pursuant to paragraph (B)(1) above. Each owner shall be limited to a Type C, Type C-A or Type C-B Permit, unless that owner was previously enrolled in a permit program pursuant to the County's Chapter 9.31, or unless the cumulative total square footage of plant canopy applied for by all owners does not exceed the maximum square footage permitted on a parcel for the relevant zoning district.
 - (5) Persons eligible to apply for a Permit during Phase One may apply for a different and/or larger Permit type in subsequent years, subject to all requirements of this Chapter.
 - (6) If a Permit is granted pursuant to this paragraph (B), any future revocation or lapse in renewal of such Permit shall extinguish the ability of any person to obtain a Permit for such cultivation site, unless otherwise allowed by this Chapter 10A.17; provided, however, that not more than once in a five-year period, a Permittee may file with the Department of Agriculture, on a form prescribed by the Department, a Notice of Non-Cultivation instead of an application to renew the Permit, and the Permittee's ability to obtain a Permit for such cultivation site will not be extinguished.
- (C) Requirements specific to Phase Three Permits.
- (1) Watershed Assessment. All Permit applications, except for legal parcels located in the Agricultural (A-G) zoning district, shall demonstrate there is adequate water to serve the cultivation site.
 - (a) If surface water (or groundwater influenced by surface water) will be used, applicants may demonstrate that there is adequate water by providing (i) a watershed

assessment that establishes there is sufficient watershed supply to serve the proposed cultivation site and existing uses within the watershed, and (ii) a water right exists to serve the cultivation site. A watershed assessment shall consist of an established "In Stream Flow Policy" as prepared by the State Water Resources Control Board Division of Water Rights or an equivalent document approved by that agency.

- (b) If groundwater not influenced by surface water will be used, the applicant may demonstrate that there is adequate water by providing a water availability analysis which will address the adequacy of the proposed water supply, the direct effects on adjacent and surrounding water users, and possible cumulative adverse impacts of the development on the water supply within the watershed and show there is a sustained yield to support the proposed level of use.
- (c) If water will be provided by a mutual water company, municipal or private utility or similar community provider, the applicant may demonstrate that there is adequate water by providing a will serve letter from the proposed provider.

Section 5: Section 20.242.040 of the Mendocino County Code is hereby amended to read as follows:

Sec. 20.242.040 - Existing Cannabis Cultivation Sites.

- (A) Referrals of applications to the Department for review related to existing cultivation sites shall include the Agriculture Commissioner's determination that the cultivation site existed prior to January 1, 2016, unless the Agricultural Commissioner requests the assistance of the Department in making this determination as part of the referral to the Department.
- (B) Cultivation sites, in conformance with the MCCO, may be allowed on a legal parcel with an approved Zoning Clearance, Administrative Permit or Minor Use Permit as required for the zoning district in which the cultivation site is located and as listed in Table 1.

TABLE 1
Zoning Permit Requirement for Existing Cannabis Cultivation by Zoning District and Cannabis Cultivation Ordinance Permit Type

MCCO Permit Type	C Sm Outdoor	C-A Sm Indoor, Artificial Light		C-B Sm, Mixed Light	1 Med Outdoor	1-A Med Indoor, Artificial Light	1-B Med Mixed Light	2 Lg Outdoor	2-A Lg Indoor, Artificial Light	2-B Lg Mixed Light	4 Nursery
Min Parcel Area (ac) * ¹ , * ² , * ³	NA	NA		NA	5	5	5	10	10	10	5
Cultivation Area Limit (sf)	2,500	500	501 — 2,500	2,500	2,501 — 5,000	2,501 — 5,000	2,501 — 5,000	5,001 — 10,000	5,001 — 10,000	5,001 — 10,000	22,000
Zoning District	RR 5* ¹	ZC	AP	UP	ZC	ZC	—	ZC	—	—	—
	RR 10	ZC	AP	UP	ZC	ZC	—	ZC	ZC	—	ZC
	AG	ZC	AP	UP	ZC	ZC	—	ZC	ZC	—	ZC
	UR	ZC	AP	UP	ZC	ZC	—	ZC	ZC	—	ZC
	RL	ZC	AP	UP	ZC	ZC	—	ZC	ZC	—	ZC
	FL* ⁴	ZC	AP	UP	ZC	AP	—	AP	AP	—	AP
	TPZ* ⁴	ZC	AP	UP	ZC	AP	—	AP	AP	—	AP
	I1* ⁵	ZC	ZC	ZC	ZC	ZC	ZC	ZC	—	ZC	ZC
	I2* ⁵	ZC	ZC	ZC	ZC	ZC	ZC	ZC	—	ZC	ZC
	PI* ⁵	ZC	ZC	ZC	ZC	—	ZC	ZC	—	ZC	ZC

— = Not Allowed, ZC = Zoning Clearance, AP = Administrative Permit, UP = Minor Use Permit

*1 Parcels in the RR-5 zoning district must have a minimum parcel size of five (5) acres.

*2 A parcel that is located in a zoning district that allows commercial cultivation and has a lot area between three and one-half (3.5) and five (5) acres, and that shares at least fifty percent (50%) of its boundaries with parcels five (5) acres in size or larger, may apply for and be granted permit types 1, 1-B and 4 following the issuance of an Administrative Permit pursuant to section 20.242.070(C).

*3 A parcel that is located in a zoning district that allows commercial cultivation and has a lot area between seven (7) and ten (10) acres, and that shares at least fifty percent (50%) of its boundaries with parcels ten (10) acres in size or larger, may apply for and be granted permit types 2 and 2-B following the issuance of an Administrative Permit pursuant to section 20.242.070(C).

*4 Existing cultivation sites in the FL and TPZ zoning districts that were previously enrolled in a permit program pursuant to the County's Chapter 9.31 shall be required to

obtain a zoning clearance unless the applicant seeks to expand beyond the size previously cultivated under such permit program.

*5 Parcels in Industrial zoning districts are not subject to a minimum parcel area.

- (C) A reduction in the setback from a legal parcel line required by section 10A.17.040(A)(5) may be allowed following the issuance of an Administrative Permit, approved pursuant to section 20.242.070(C), subject to the following limitations: (1) the approved reduced setback for cultivation not within a structure shall be no less than twenty (20) feet from an adjoining property under separate ownership or an access easement, or (2) for cultivation within a structure, the setback shall be no less than the front, rear, or side yard setback (as applicable) setback for the zoning district in which the property is located. Any reduction of the setback pursuant to this section must comply with the required setback from an occupied legal structure and the reduced setback may not encroach into any corridor preservation setback, pursuant to sections 20.152.015 and 20.152.020.
- (D) An existing cultivation site located in a zoning district not listed in Table 1 of this section may continue, but shall not be expanded or enlarged, subject to the following planning permit and approval requirements.
 - (1) Planning Permit Requirements:
 - (a) Outdoor Cultivation (pursuant to a MCCO Type C Permit) not exceeding two thousand five hundred (2,500) requires an approved Zoning Clearance.
 - (b) Indoor Artificial Light Cultivation (pursuant to a MCCO Type C-A Permit) not exceeding five hundred (500) square feet requires an approved Administrative Permit.
 - (c) Indoor Artificial Light Cultivation (pursuant to a MCCO Type C-A Permit) between five hundred one (501) and two thousand five hundred (2,500) square feet requires an approved Minor Use Permit.
 - (d) Mixed Light Cultivation (pursuant to a MCCO C-B Permit) not exceeding two thousand five hundred (2,500) square feet requires an approved Zoning Clearance.
 - (i) Any future lapse or revocation of the MCCO permit will extinguish the permittee's ability to obtain a future permit from the Department to continue or resume an existing cultivation site that is not within a zoning district listed in Table 1 of this section.
- (E) Transferability of Permits. A permittee may assign a permit to another person subject to the following provisions:

- (1) Submission of the following to the Agricultural Commissioner:
 - (a) An application fee as set by resolution of the Board of Supervisors;
 - (b) A completed application form as provided by the department;
 - (c) A copy of the existing permit showing that it has not expired;
 - (d) Either:
 - (i) The existing permittee's request to assign all rights and responsibilities of the permit to the assignee; or
 - (ii) In the event of the death or incapacitation of the existing permittee, evidence of such death or incapacitation;
 - (e) Evidence that assignee's legal interest in the real property involved allows for assignee's use of the permit; and
 - (f) An affidavit executed by the assignee attesting to the assignee's agreement to comply with the terms and conditions of the permit and all applicable laws and regulations.
- (2) The assignment shall be effective upon the department's written approval of the documentation submitted, and the assigned permit shall be granted subject to the terms and conditions of the original permit.
- (3) Permits issued on parcels subject to the Sunset Provision of Section 10A.17.080(B)(2) shall not be assignable pursuant to this Section 20.242.040(E); provided, however, that such permits issued on parcels located within a "CA" Cannabis Accommodation Combining District are assignable.

Section 6: Section 20.242.050 of the Mendocino County Code is hereby amended to read as follows:

Sec. 20.242.050 - New Cannabis Cultivation Sites Located in Industrial Zoning Districts.

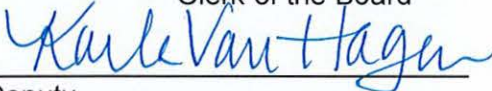
Establishment of a new cannabis cultivation site in the I1 (Light Industrial), I2 (General Industrial), and Pinoleville (PI) zoning districts, for the following MCOO permit types, may be permitted on or after January 1, 2018, subject to the requirements of Section 20.242.060: Type C-A, 1A and 2A, and Type C-B, 1B and 2B Permits for mixed-light cultivation, which mixed-light cultivation must occur in a greenhouse equipped with filtered ventilation systems as described in paragraph (M) of section 10A.17.110 and may not occur in a hoop house.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this 1st day of October, 2019, by the following roll call vote:

AYES: Supervisors Brown, McCowen, Haschak, Gjerde and Williams
NOES: None
ABSENT: None

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

ATTEST: CARMEL J. ANGELO
Clerk of the Board


Deputy

APPROVED AS TO FORM:
KATHARINE L. ELLIOTT, County Counsel





CARRE BROWN, Chair
Mendocino County Board of Supervisors

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

BY: CARMEL J. ANGELO
Clerk of the Board


Deputy

EXHIBIT C

ORDINANCE NO. 4422

**ORDINANCE AMENDING CHAPTER 6.36 - CANNABIS FACILITIES BUSINESSES AND
CHAPTER 10A.17 - MENDOCINO CANNABIS CULTIVATION ORDINANCE**

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

Section 1: Section 6.36.060 of the Mendocino County Code is hereby amended to read as follows:

Sec. 6.36.060 - Application Procedure.

- (A) The Office of the Tax Collector shall refer the application to the Department of Planning and Building Services, the Division of Environmental Health, and other departments or divisions as necessary, to verify that the application is in compliance with County Code provisions and that the applicant has valid County license(s), permit(s), and/or other approvals, as required, prior to issuing any County Cannabis Facility Business License. The Office of the Tax Collector shall charge the applicant all fees required under the Master Fee Schedule for these referrals.
 - (1) All County Cannabis Facility Business Licenses are provisional until a valid State of California license, as required under MAUCRSA, is verified.
 - (a) A copy of the State license issued pursuant to MAUCRSA must be filed with the Tax Collector within fifteen (15) days of issuance.
 - (2) If a cannabis facility is denied a state license under MAUCRSA, the provisional County Cannabis Facility Business License will become invalid.
- (B) Applicants and every individual engaged in the management of, or employed by, the applicant shall be subject to a criminal history check, which shall include a Live Scan criminal history inquiry. The reasonable costs of a Live Scan criminal history inquiry pursuant to this section shall be the responsibility of the applicant and every individual engaged in the management of, or employed by, the applicant. Live Scan criminal history inquiries completed at a certified and approved Live Scan location shall be transmitted to the Sheriff or District Attorney for review. An application shall be denied if any of the following is determined to be true:
 - (1) The applicant or any individual engaged in the management of, or employed by, the applicant has been convicted of any crime listed in subdivision (b)(4) of California Business and Professions Code section 26057, or any crime that if committed in the State of California would have constituted any of the crimes listed in subdivision (b)(4) of California Business and Professions Code section 26057. A conviction within the meaning of this section

means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

- (2) The applicant or any individual engaged in the management of, or employed by, the applicant has one or more felony convictions, occurring prior to January 1, 2018, for violations of California Health and Safety Code section 11358 that involved pled and proven environmental violations, including but not limited to violations of California Fish and Game Code sections 1602, 5650 and 5652.
- (3) The applicant or any individual engaged in the management of, or employed by, the applicant has been convicted of a felony offense, occurring after January 1, 2018, under California Health and Safety Code section 11358, 11359, or 11360, as amended by Proposition 64 § 8.4, effective November 9, 2016, or any crime that if committed in the State of California would have constituted a felony offense under California Health and Safety Code section 11358, 11359, or 11360, as amended by Proposition 64 § 8.4, effective November 9, 2016.
- (4) The applicant or any individual engaged in the management of, or employed by, the applicant has a conviction under section 11366 of the California Health and Safety Code.
- (5) The applicant or any individual engaged in the management of, or employed by, the applicant has a conviction under section 11366.5(b) of the California Health and Safety Code or any felony conviction under section 11366.5(a) of the California Health and Safety Code involving chemical extraction, chemical synthesis or a controlled substance other than marijuana.
- (6) The applicant or any individual engaged in the management of, or employed by, the applicant has a conviction under section 11379.6 of the California Health and Safety Code.
- (7) The applicant or any individual engaged in the management of, or employed by, the applicant is subject to a condition of probation, mandatory supervision, Post Release Community Supervision, parole or any other lawful order which prohibits the possession or cultivation of cannabis.

Section 2: Section 10A.17.020 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.020 - Definitions.

As used herein the following definitions shall apply:

"A-license" means a state license issued under the State of California Medicinal and Adult-Use Cannabis Regulatory Safety Act (MAUCRSA), or subsequent legislation, for cannabis or cannabis products that are intended for adults twenty-one (21) years of age and over and who do not possess physician's recommendations.

"A-licensee" means any person holding a license under the MAUCRSA, or subsequent legislation, for cannabis or cannabis products that are intended for adults twenty-one (21) years of age and over and who do not possess physician's recommendations.

"Agricultural Commissioner" or "Agricultural Commissioner's Office" or the "Department of Agriculture" means the Mendocino County Department of Agriculture or the authorized representatives thereof, or such other department, division or representative as designated by the Board of Supervisors.

"Attorney General's Guidelines" means the document titled "Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use" issued by the California State Attorney General in August 2008.

"Baseline date" means August 26, 2016, which is the date the Initial Study under the California Environmental Quality Act for the MCCR was initiated.

"Cannabis" means all parts of the plant *Cannabis sativa*, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds thereof. "Cannabis" also means marijuana as defined by Section 11018 of the State of California Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. For the purpose of this section, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the State of California Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

"Cannabis product" has the same meaning as in Health and Safety Code section 11018.1.

"Clone" means a portion of a stem that is cut from a parent plant and induced to form roots by chemical, mechanical, or environmental manipulation.

"Cultivation cycle" means each individual cycle where cannabis plants are grown to maturity from seeds, clones or nursery starts.

"Cultivation of cannabis" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming or processing of cannabis.

"Cultivation site" means one (1) or more locations or facilities on one (1) legal parcel (or one (1) or more legal parcels if specifically allowed for by this Chapter 10A.17) subject to a single approved Permit for the cultivation of cannabis where cannabis is planted, grown, harvested, dried, cured, graded,

trimmed, or processed, or that does all or any combination of those activities. One (1) or more areas of cannabis cultivation may exist on the legal parcel used for that purpose.

"Disturbance" means areas of land where natural plant growth has been removed whether by physical, animal, or chemical means, or natural grade has been modified for any purpose. Land disturbance includes all activities whatsoever associated with developing or modifying land for cannabis cultivation related activities or access. Land disturbance activities include, but are not limited to, construction of roads, buildings, or water storage areas; excavation; grading; and site clearing. Disturbed land includes cultivation areas and storage areas where soil or soil amendments (e.g., potting soil, compost, or biosolids) are located. Areas where plant material has been removed for the purpose of wildfire suppression are not considered disturbed.

"Dwelling unit" means a legal residential structure providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation, and having only one (1) kitchen.

"Expansion" means an increase in the size of Plant Canopy above the area cultivated as of the Baseline Date.

"Flowering" means that a cannabis plant has formed a mass of pistils measuring greater than one half ($\frac{1}{2}$) inch wide at its widest point.

"Greenhouse" means a completely enclosed structure whose structural members are made of pre-formed, rigid construction materials. The walls, roof, and ends are typically covered using a transparent material, often glass, that is fixed in place, and which allows solar radiation to penetrate the surface and affect the growing environment of the plants inside.

"Hoop House" means a structure with structural members are made of flexible and somewhat rigid construction materials, typically PVC pipe or similar material. The ends may be covered or left open and the material covering the structural members is readily removable and is typically removed and re-affixed frequently.

"Identification card" shall have the same definition as California Health and Safety Code section 11362.5 et seq., and as may be amended.

"Immature plant" or "immature" means a cannabis plant which has a first true leaf measuring greater than one half inch long from base to tip (if started from seed) or a mass of roots measuring greater than one half inch wide at its widest point (if vegetatively propagated), but which is not flowering.

"Indoor cultivation" or "indoors" means within a fully enclosed and secure structure that complies with the California Building Code, as adopted by the County of Mendocino, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must

be secure against unauthorized entry, accessible only through one (1) or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as two (2) inches by four (4) inches or thicker studs overlain with three-eighths (3/8) inches or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

"Legal parcel" or "Parcel" means a lot of real property which was created pursuant to the Subdivision Map Act or for which an application for subdivision was on file with the Department of Planning and Building Services prior to January 1, 2016, or for which a certificate of compliance was recognized and recorded prior to January 1, 2016; provided, however, for real property within Industrial zoning districts, subdivisions or certificates of compliance may be recognized and recorded after January 1, 2016.

"License" means a state license issued under the MAUCRSA, or subsequent legislation, and includes both an A-license and an M-license.

"Licensee" means a person issued a state license under the MAUCRSA, or subsequent legislation, to engage in commercial cannabis activity, regardless of whether the license held is an A-license or an M-license.

"M-license" means a state license issued under the MAUCRSA, or subsequent legislation, for commercial cannabis activity involving medicinal cannabis.

"M-licensee" means any person holding a license under the MAUCRSA, or subsequent legislation, for commercial cannabis activity involving medicinal cannabis.

"Mature plant" or "mature" means a cannabis plant that is flowering.

"Mixed light cultivation" or "mixed light" means the use of both natural and artificial or supplemental lighting sources during the growing cycle to cultivate cannabis. Included in this definition is the process of solely manipulating natural light to cultivate cannabis.

"Nursery" means all activities associated with producing clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of cannabis.

"Outdoor cultivation" or "outdoors" means any cultivation site that uses no artificial or supplemental lighting to cultivate cannabis. Use of supplemental lighting to maintain vegetative starts or immature plants prior to transplanting outdoors shall be considered consistent with this definition.

"Park" means an area of land used for community recreation owned or operated by a public entity or a private area of land recognized as a neighborhood park utilized by youth. State or Federal designated parks and forestlands as recognized within the Mendocino County General Plan are not included within this definition.

"Permit" means a permit to cultivate cannabis in Mendocino County pursuant to this Chapter.

"Permittee" means a Person issued a permit to cultivate cannabis in Mendocino County pursuant this Chapter.

"Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.

"Person with an identification card" means an individual who is a qualified patient who has applied for and obtained a valid identification card pursuant to Article 2.5 of Chapter 6 of Division 10 of the California Health and Safety Code (Section 11362.7 et seq.).

"Plant canopy" or "square footage" or "total square footage of plant canopy" or "cultivation area" means the cumulative total of square footage occupied by growing cannabis plants as calculated by the Agricultural Commissioner's Office but does not include aisles or other open areas outside the canopy area of growing cannabis plants.

"Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, as defined in Health and Safety Code section 11362.7(d).

"Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling, for purposes of this Chapter.

"Process," "processing," and "processes" means all activities associated with the drying, curing, grading, trimming, rolling, storing, packaging, and labeling of nonmanufactured cannabis products.

"Publically traveled private road" means a private roadway easement or access easement which serves, or has the potential to serve, more than four (4) lots or parcels. Such easement shall be considered a street as defined in Mendocino County Code section 20.008.052(26).

"Qualified patient" or "Patient" means a person who is entitled to the protections of section 11362.5 of the Health and Safety Code, but who does not have an identification card issued pursuant to Article 2.5 of Chapter 6 of Division 10 of the Health and Safety Code (Section 11362.7 et seq.).

"School" means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code, or any licensed child day care or preschool facility. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education,

but it does not include a vocational or professional institution of higher education, including a community or junior college, college or university.

"Sheriff" or "Sheriff's Office" means the Sheriff's Office of the County of Mendocino or the authorized representatives thereof.

"Track and Trace" means a monitoring system providing traceability throughout the production and distribution lifecycle of permitted cannabis utilizing a unique identifier pursuant to section 11362.777 of the Health and Safety Code to assist government with enforcing regulations and preventing the illegal diversion of cannabis.

"Unique identifier" or "Unique ID" means individual, non-repeating identification issued to a permittee and attached to the base of each cannabis plant permitted at a cultivation site during the cultivation period or otherwise utilized in connection with an approved Track and Trace system.

"Youth-oriented facility" means an elementary school, middle school, high school, public park, or any establishment that advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors. Youth-oriented facility shall include "day care center," as defined in Section 1596.76 of the California Health and Safety Code, as that section may be modified or superseded, and shall include "youth center" as defined in Section 11353.1 of the Health and Safety Code, as that section may be modified or superseded.

Section 3: Section 10A.17.040 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.040 - General Limitations on Cultivation of Cannabis.

The following limitations shall apply to all cultivation of cannabis in Mendocino County, including but not limited to cultivation pursuant to a Permit issued under this Chapter or an exemption provided for in Section 10A.17.030. Cultivation of cannabis shall also be subject to all applicable restrictions of Mendocino County Code Chapter 20.242.

- (A) The cultivation of cannabis in Mendocino County, in any amount or quantity by any entity, shall not be allowed in the following areas:
 - (1) Within one thousand (1,000) feet of a youth-oriented facility, a school, or a park as defined herein that is in existence at the time a Permit is initially applied for.
 - (2) Outdoors or using mixed light within one hundred (100) feet of any occupied legal residential structure located on a separate legal parcel; provided, however, that on January 1, 2020, this setback shall be increased to two hundred (200) feet for all Permit applications but shall not

apply to renewals of Permits originally issued before that date.

- (3) Outdoors or using mixed light in a mobile home park as defined in Health and Safety Code Section 18214.1 within one hundred (100) feet of an occupied mobile home that is under separate ownership.
 - (4) In any location where the cannabis plants are visible from the public right of way or publicly traveled private roads.
 - (5) Outdoors or using mixed light within fifty (50) feet from any adjoining legal parcel under separate ownership or access easement (whichever is most restrictive); provided, however, that on January 1, 2020, this setback shall be increased to one hundred (100) feet for all Permit applications but shall not apply to renewals of Permits originally issued before that date.
 - (6) Any indoor cultivation sites that comply with paragraph (A)(1) shall also be subject to the following:
 - (a) Indoor cultivation sites shall comply with the building property line setback established by the zoning district in which the cultivation site is located.
 - (b) The cultivation of cannabis within an accessory structure shall be allowed subject to the development requirements of the zoning district in which it is located and to requirements of Chapter 20.164 — Accessory Use Regulations except, notwithstanding Section 20.164.010: (a) the cultivation of cannabis in an accessory structure is not permitted prior to the construction of the legal dwelling unit on the parcel, if a legal dwelling unit is required by this Chapter, and (b) cultivation of cannabis shall only be allowed on the same parcel as the dwelling unit, if required.
 - (c) Indoor cultivation sites for individuals desiring to cultivate cannabis for adult use pursuant to section 10A.17.030(C) shall also be subject to the following limitation: cultivation sites located within a private residence that is a rental unit, as that term is defined by County Code section 20.008.050, shall not be located in any indoor space other than a garage or accessory structure.
- (B) The distance between the listed uses in the above paragraph (A)(1) and cannabis that is being cultivated shall be measured in a

straight line from the nearest point of the fence required in section 10A.17.040(H), or if the cannabis is cultivated indoors, from the nearest exterior wall of the building in which the cannabis is cultivated to the nearest point of the exterior wall of the facility, building, or structure, or portion of the facility, building, or structure in which the above-listed use occurs or to the nearest point of any fenced, maintained or improved area where the users of the facility are typically present during normal hours of operation, whichever is closest. The distance in paragraphs (A)(2) and (A)(3) to any residential structure shall be measured from the fence required in section 10A.17.040(H) to the nearest exterior wall of the residential structure. The distance in paragraph (A)(5) shall be measured from the fence required in section 10A.17.040(H) to the boundary line of a legal parcel or access easement.

Applicants may seek a reduction in the setback described in paragraphs (A)(1) and (A)(5) upon issuance of an administrative permit pursuant to Chapter 20.242. See also sections 20.242.060(D) and 20.118.040 (D), (E) and (F) for further exceptions to setback regulations.

- (C) The outdoor, indoor or mixed light cultivation of cannabis shall not propagate objectionable odors which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that endanger the comfort, repose, health, or safety of any of those persons or the public.
- (D) The indoor or mixed-light cultivation of cannabis shall rely on the electrical grid or some form of alternative energy source. The indoor or mixed-light cultivation cannabis shall not rely on a generator as a primary source of power.
- (E) All lights used for the indoor or mixed light cultivation of cannabis shall be fully contained within structures or otherwise shielded to fully contain any light or glare involved in the cultivation process. Security lighting shall be motion activated and all outdoor lighting shall be shielded and downcast or otherwise positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the legal parcel upon which they are placed.
- (F) All activities associated with the cultivation of cannabis shall not exceed the noise level standards as set forth in the County General Plan Policies DE100, 101 and 103.
- (G) All cultivation of cannabis shall not utilize water that has been or is illegally diverted from any spring, wetland, stream, creek, or river. The activities associated with the cultivation of cannabis shall not create erosion or result in contaminated runoff into any stream, creek, river or body of water.
- (H) All cannabis grown in Mendocino County (excluding indoor

growing) must be within a secure fence of at least six (6) feet in height that fully encloses the garden area. The fence must include a lockable gate that is locked at all times when a qualified patient, caregiver or permittee (or their agent) is not in the immediate area. Said fence shall not violate any other ordinance, code section or provision of law regarding height and location restrictions and shall not be constructed or covered with plastic or cloth except shade cloth may be used on the inside of the fence.

- (I) All buildings where cannabis is cultivated or stored shall be properly secured to prevent unauthorized entry.
- (J) Persons cultivating cannabis pursuant to either section 10A.17.030, paragraphs (B) or (C) shall also comply with the provisions of section 10A.17.110, paragraphs (N) and (O).
- (K) Prohibition on Tree Removal. Removal of any commercial tree species as defined by Title 14 California Code of Regulations section 895.1, Commercial Species for the Coast Forest District and Northern Forest District, and the removal of any true oak species (*Quercus* sp.) or Tan Oak (*Notholithocarpus* sp.) for the purpose of developing a cannabis cultivation site is prohibited. This prohibition shall not include the pruning of any such trees for maintenance, or the removal of such trees if necessary to address safety or disease concerns.

Section 4: Section 10A.17.050 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.050 – Reserved.

Section 5: Section 10A.17.060 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.060 - Permit Types.

The cultivation Permits that may be applied for under this Chapter are for the production of flowering cannabis plants and for nursery and seed production, as defined in section 10A.17.020. A Permittee producing flowering cannabis plants may maintain an area scaled appropriately for their operation where they may propagate their own immature plants (starts) through cloning, seed germination or tissue culture. Starts produced in this manner shall be for the exclusive and personal use of the permittee only and the sale, trade, barter, etc. of such starts is prohibited. The square footage of cultivation area dedicated to propagation of starts shall not be included in measuring the cumulative total square footage allowed under a given Permit and must not constitute any new disturbance, as defined by this chapter.

The following cannabis cultivation Permit types may be applied for and granted provided the applicant and the legal parcel (or legal parcels, subject to section 10A.17.070(D)(3)) that contains the cultivation site are determined to be in

compliance with all applicable conditions of this Chapter and Mendocino County Code Chapter 20.242; all Permit types shall be applied for stating whether the applicant will be applying for an A-License or an M-License, or a stated combination thereof.

- (1) "Type C" for small outdoor cultivation using no artificial lighting not to exceed a maximum of two thousand five hundred (2,500) square feet of total plant canopy.
- (2) "Type C-A" for small indoor cultivation using exclusively artificial lighting not to exceed a maximum two thousand five hundred (2,500) square feet of total plant canopy within a structure or structures.
- (3) "Type C-B" for small mixed light cultivation (using a combination of natural and supplemental artificial lighting) not to exceed a maximum of two thousand five hundred (2,500) square feet of total plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle.
- (4) "Type 1" for medium outdoor cultivation using no artificial lighting of two thousand five hundred one (2,501) to a maximum of five thousand (5,000) square feet of total plant canopy on one legal parcel not less than five (5) acres in size.
- (5) "Type 1A" for medium indoor cultivation using exclusively artificial lighting of two thousand five hundred one (2,501) to a maximum of five thousand (5,000) square feet of total plant canopy within a structure or structures.
- (6) "Type 1B" for medium mixed light cultivation (using a combination of natural and supplemental artificial lighting) of two thousand five hundred one (2,501) to a maximum of five thousand (5,000) square feet of total plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle, on one (1) legal parcel not less than five (5) acres in size.
- (7) "Type 2" for large outdoor cultivation using no artificial lighting of five thousand one (5,001) to a maximum of 10,000 square feet of total plant canopy on one legal parcel not less than ten (10) acres in size.
- (8) "Type 2A" for large indoor cultivation using exclusively artificial lighting of five thousand one (5,001) to ten thousand (10,000) square feet of total plant canopy on one legal parcel.
- (9) "Type 2B" for mixed light cultivation (using a combination of natural and supplemental artificial lighting) of five thousand one (5,001) to a maximum of ten thousand (10,000) square feet of total plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle, on one (1) legal parcel not less than ten (10) acres in size.
- (10) "Type 4" for the cultivation of cannabis nursery stock and/or seed production which shall not exceed a maximum of twenty-two thousand

(22,000) square feet of total plant canopy on one (1) legal parcel. Seed production activities, if any, shall be described in the application for a Type 4 Permit. The legal parcel shall not be less than ten (10) acres in size, provided, however, that legal parcels in industrial zoning districts are not subject to this parcel size restriction. Any on-site sales of nursery products which were produced on and occur on a parcel within the Timberland Production, Rangeland or Forestland zoning districts shall be limited to permitted cultivators only.

Section 6: Section 10A.17.070 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.070 - Requirements for All Permits.

Unless specifically exempted, in addition to compliance with all other requirements of this Chapter, all Permits shall comply with the following requirements:

- (A) Zoning Districts. Cultivation of cannabis shall only be permitted on legal parcels that comply with the applicable zoning districts and parcel sizes as provided in Chapter 20.242.
- (B) Indoor Cultivation Permits. The use or conversion of habitable space (i.e., kitchen, bedrooms, bathrooms, living room or hallways) in any structure shall not be allowed for the indoor cultivation of cannabis.
- (C) Cultivation of cannabis is not permitted within any required parking space.
- (D) Permit Density. A Person may apply for and obtain a maximum of two (2) Permits listed in section 10A.17.060 at any given time. Permits shall be granted at a maximum density of one (1) Permit per legal parcel; provided, however, that
 - (1) A Person may obtain two (2) separate Permits of different Permit types on a single legal parcel if the total square footage of the two (2) Permits does not exceed the largest maximum square footage permitted on a parcel for the relevant zoning district. A Person who applies for and obtains a Type 4 Permit in combination with any other Permit, shall not exceed a total square footage of twenty-two thousand (22,000) square feet per legal parcel, of which not more than ten thousand (10,000) square feet may be grown to maturity and entered into the Track and Trace system for commercial use. Plants may be grown to maturity by a Type 4 Permit holder for seed production or genetic expression, where the mature flowers are destroyed, and not used for commercial purposes, shall not require a separate cultivation permit.
 - (2) A Person may apply for one (1) Permit of a single size (e.g. Type C, Type 1 or Type 2) that may include any combination of all three (3) cultivation types (e.g. indoor, outdoor, mixed-light), but if any cultivation would require the issuance of a permit pursuant to

Chapter 20.242, the entire Permit shall be subject to review under Chapter 20.242.

- (3) A Person may obtain one (1) Permit for multiple legal parcels, so long as the parcels are contiguous and under the same ownership. Should the Person sell any of the parcels subject to the Permit, subsequent permits shall be required to modify the cultivation site to adhere to required setbacks.
- (E) Dwelling Unit Requirement. Legal parcels with a cultivation site are also required to have a dwelling unit; provided, however, that this requirement shall not apply to legal parcels within the following zoning districts: Upland Residential (U-R), Agricultural (A-G), Rangeland (R-L), Forest Land (F-L), Timberland Production (TPZ), Limited Industrial (I-1), General Industrial (I-2) Pinoleville Industrial (P-I). In addition, legal conforming parcels in Rural Residential, lot size ten (10) acres (R-R:L-10), shall also be exempt from the dwelling unit requirement of this paragraph, upon issuance of an administrative permit pursuant to Chapter 20.242.
- (F) Generators. The indoor or mixed-light cultivation of cannabis shall not rely on a generator as a primary source of power. If no grid power source is available and there is not an alternative power source supporting both any required legal dwelling unit and the indoor or mixed-light permit operations, a generator may be used only under the following conditions: (1) the permittee shall install an alternative power source that will meet at least one-half ($\frac{1}{2}$) of the combined power requirements by the expiration of twelve (12) months from the date of initial application for a permit pursuant to this Chapter and (2) it will be a condition of the re-issuance of a permit that the cultivator commit, in writing, to expand their alternative power source to fully meet the combined needs of the cultivation operations and any required legal dwelling unit by the end of the second permitted year. See also section 10A.17.090 regarding application requirements related to generators.
- (G) Permittees shall be required to enroll in and comply with all requirements of any Track and Trace system as designated by the County to track the production and distribution of cannabis. Permittees shall obtain and use unique identifiers from an approved source, maintain them in a readable state, comply with all data entry requirements, and pay all required Track and Trace fees. Non-compliance with Track and Trace requirements shall constitute a violation of the terms of the Permit.
- (H) Fees: An application fee shall be paid at the time an application is submitted to the Agricultural Commissioner for initial review. A Permit fee shall be paid prior to issuance of any Permit. Once a Permit is issued, the Permittee may renew the Permit upon submission of a renewal application and payment of a renewal fee. No Permit shall issue without payment of the required fees.
 - (1) Fees prescribed by this Chapter shall be set by the Mendocino County Board of Supervisors in accordance with all applicable

laws and regulations and the County's Master Fee Policy. Any fee prescribed by this Chapter shall be paid to the County Treasurer/Tax Collector and is non-refundable. A receipt for payment of the required fee shall be provided to the Agricultural Commissioner prior to the initial review and issuance or annual renewal of any application, permit or other program described herein where a fee has been established, including for required inspections.

- (I) Inspections by Agricultural Commissioner. All applicants shall be subject to and shall facilitate an initial on-site pre-permit inspection and all Permittees shall be subject to and facilitate at least one (1) annual on-site compliance inspection (Type 4 Permits shall be subject to two (2) on-site compliance inspections annually), which shall serve as the inspection required to be performed prior to any renewal of the Permit, with additional inspections as required by this Chapter or as deemed necessary by the Agricultural Commissioner. All inspections will be scheduled with at least twenty-four (24) hours advance notice to the applicant or Permittee, and shall be conducted during regular business hours. Cancellation of scheduled inspections without notice to the Agricultural Commissioner shall result in the Permittee being invoiced for the actual travel time and mileage incurred by the Agricultural Commissioner.
 - (1) All site inspections conducted prior to issuance of a Permit for any indoor or mixed-light cultivation Permit may include a representative from the Department of Planning and Building Services.
- (J) Intentionally Omitted.
- (K) Non-Transferability of Permits. All Permits are non-transferable to another person, except that the Permittee may transfer the Permit to a spouse/domestic partner, child, parent, or, for estate planning purposes, to a trust in which the permittee serves as a trustee, provided the trust existed on or before January 1, 2016, which transfer shall not be deemed a change in ownership for purposes of this Chapter.

Section 7: Section 10A.17.080 is amended as follows:

Sec. 10A.17.080 - Permit Phases and Requirements Specific to each Phase.

Unless specifically exempted, in addition to compliance with all other requirements of this Chapter, all Permits shall comply with the following requirements:

- (A) Permits under the MCCO will be issued in the following three phases:

- (1) Phase One: Following the effective date of the MCCO, Permits will only be issued to applicants who provide to the Agricultural Commissioner pursuant to paragraph (B)(1) of this section proof of cultivation at a cultivation site prior to January 1, 2016 ("proof of prior cultivation"), and who comply with all other applicable conditions of this Chapter and Chapter 20.242. Applications for Permits during Phase One shall only be accepted until December 31, 2018, and from Monday, April 1, 2019, until Friday, October 4, 2019. Applicants able to provide proof of prior cultivation may apply for a Permit on a relocation site pursuant to paragraph (B)(3) of this section.
 - (2) Phase Two: Starting January 1, 2018, the Agricultural Commissioner will begin accepting applications for Type 1A and Type 2A Permits for indoor cultivation in the following zoning districts, subject to compliance with all other applicable conditions of this Chapter and Chapter 20.242: Limited Industrial (I-1), General Industrial (I-2), and Pinoleville Industrial (P-I). Proof of cultivation prior to January 1, 2016, is not required.
 - (3) Phase Three: Starting January 1, 2020, the Agricultural Commissioner will begin accepting Permit applications from any applicant in conformance with the conditions of this Chapter and Chapter 20.242. Proof of cultivation prior to January 1, 2016, is not required.
- (B) Requirements specific to Phase One Permits.
- (1) Proof of Prior Cultivation. Persons applying for a Permit during Phase One shall be required to provide to the Agricultural Commissioner evidence that they were cultivating cannabis on the cultivation site prior to January 1, 2016, which cultivation site shall have been, or could have been, in compliance with the setback requirements of paragraph (A) of section 10A.17.040. Evidence shall include:
 - (a) Photographs of any cultivation activities that existed on the legal parcel prior to January 1, 2016, including: (i) ground level views of the cultivation activities and (ii) aerial views from Google Earth, Bing Maps, Terraserver, or a comparable service showing: both the entire legal parcel and the cultivation site in more detail. The date these images were captured shall be noted.

- (b) Photographs of any cultivation activities that currently exist on the legal parcel, including: (i) ground level views of the cultivation activities and (ii) aerial views from Google Earth, Bing Maps, Terraserver, or a comparable service showing: both the entire legal parcel and the cultivation site in more detail. The date these images were captured shall be noted.
 - (c) At least one (1) additional document demonstrating cultivation on the legal parcel prior to January 1, 2016, which evidence may be used to substitute for evidence pursuant to clause (a). The Agricultural Commissioner shall prepare a list of the types of documentation that will be accepted to meet this requirement, and may accept other similarly reliable documentary evidence showing that cannabis was cultivated prior to January 1, 2016.
 - (d) Proof of prior cultivation shall be assigned to the applicant relative to their prior cultivation site.
 - (e) Persons who participated in a permit program pursuant to the County's Chapter 9.31 in previous years may present evidence of such participation and payment of all required fees in order to provide proof of prior cultivation.
- (2) Zoning Districts; Exceptions. Existing cultivation sites not located in zoning districts where Chapter 20.242 specifically allows cultivation may be issued a Type C, Type C-A, or Type C-B Permit, subject to the following requirements, in addition to all other applicable requirements of this Chapter:
- (a) The zoning district is one where a dwelling unit is a principally permitted use and a dwelling unit is present.
 - (b) Sunset Provision for Residential Districts. Cultivation sites on legal parcels located in the Single-Family Residential (R-1), Two-Family Residential (R-2), Multiple-Family Residential (R-3), Suburban Residential (S-R), Rural Community (R-C), and Rural Residential (lot sizes one (1) acre, two (2) acres and five (5) acres [legal non-

conforming parcels to minimum zoning size][R-R:L-1, R-R:L-2, and R-R:L-5 {legal non-conforming to minimum zoning size}]], as well as cultivation sites in any other zoning district where a dwelling unit is a principally permitted use and the legal parcel is less than two (2) acres in size, are subject to the following requirements:

- (i) There is an occupied dwelling unit on the legal parcel with the cultivation site.
- (ii) A Permit may be renewed and valid only until three (3) years following the effective date of the ordinance adopting this Chapter and any permits issued shall be void not later than three (3) years following said effective date.

The provisions of this subsection, however, shall not apply in areas designated as "CA" Cannabis Accommodation Combining District, nor shall they apply to parcels zoned Rural Residential (lot size five (5) acres [R-R:L-5]) that are between 3.5 and 4.99 acres and have been issued an administrative permit pursuant to section 20.242.070(C).

- (c) Cultivation sites on legal parcels located in the Rural Residential zoning district, lot size five (5) acres (conforming parcels of five acres or more only)(R-R:L-5), are subject to the following additional requirement that there is an occupied dwelling unit on the legal parcel with the cultivation site.
 - (d) If a Permit is granted pursuant to this paragraph (B)(2) in these zoning districts, any future revocation or lapse in renewal of such Permit shall extinguish the ability of any person to obtain a Permit for such cultivation site.
- (3) Relocation. Persons able to show proof of prior cultivation pursuant to paragraph (B)(1) above may apply for a Permit not on the site previously cultivated (the "origin site") but on a different legal parcel (the "destination site"), subject to the following requirements:
- (a) Persons may apply to relocate their cultivation site pursuant to this paragraph (B)(3) until three (3) years after the effective date of the ordinance adopting this Chapter, or until May 4, 2020.

- (b) The location and operation of the proposed cultivation site on the destination parcel complies with all requirements and development standards that apply to a new cultivation site as of January 1, 2020, pursuant to this Chapter and Chapter 20.242; provided, however:
 - (i) An existing cultivation site shall not be transferred to a legal parcel located within the Forestland or Timber Production Zone zoning districts.
 - (ii) An origin site may relocate to a destination site in the Rangeland zoning district, so long as the destination site has an existing cultivation site and no new cultivation sites would be established.
- (c) The origin site shall be restored. The application for a Permit on a destination site shall be accompanied by a restoration plan that is consistent with the standard conditions and best management practices listed in the North Coast Regional Water Quality Control Board Order No. 2015-0023, and which shall include the following:
 - (i) Remove or repurpose buildings, greenhouses, fences, irrigation equipment, water intakes, pumps, storage tanks and other materials brought to the origin site for the purpose of cannabis cultivation;
 - (ii) Remove illegal dams, ponds or other in-stream water storage to restore natural stream flows, unless such features will continue in use;
 - (iii) Remove or compost agricultural wastes;
 - (iv) Remove trash and other debris; and
 - (v) Revegetate cleared areas with native plants typical of nearby natural areas, including groundcover, shrubs and trees.
- (d) Unless the destination site is within the Agricultural zoning district, the application shall include either a water availability analysis pursuant to paragraph (C)(1)(b) below or a will serve letter pursuant to paragraph (C)(1)(c) below.

- (e) Prior to the issuance of the Permit to cultivate cannabis at the destination parcel, the applicant shall provide the Agricultural Commissioner with an agreement, on a form approved by the Agricultural Commissioner and County Counsel, providing that the applicant releases any right to continue or resume cultivation of cannabis on the origin parcel.
 - (f) If a person is granted a Permit for a destination site, any claims of proof of prior cultivation on the origin site shall be effectively transferred to the destination site, and the ability to claim proof of prior cultivation at the origin site shall be extinguished.
 - (g) There shall be a two (2) acre minimum parcel size for all Type C, Type C-A or Type C-B Permits.
- (4) Multiple Permits may be applied for and granted on a single legal parcel that is owned by multiple persons. Each owner may individually apply for a Permit to cultivate cannabis, provided that each owner must provide proof of prior cultivation pursuant to paragraph (B)(1) above. Each owner shall be limited to a Type C, Type C-A or Type C-B Permit, unless that owner was previously enrolled in a permit program pursuant to the County's Chapter 9.31, or unless the cumulative total square footage of plant canopy applied for by all owners does not exceed the maximum square footage permitted on a parcel for the relevant zoning district.
- (5) Persons eligible to apply for a Permit during Phase One may apply for a different and/or larger Permit type in subsequent years, subject to all requirements of this Chapter.
- (6) If a Permit is granted pursuant to this paragraph (B), any future revocation or lapse in renewal of such Permit shall extinguish the ability of any person to obtain a Permit for such cultivation site, unless otherwise allowed by this Chapter 10A.17; provided, however, that not more than once in a five-year period, a Permittee may file with the Department of Agriculture, on a form prescribed by the Department, a Notice of Non-Cultivation instead of an application to renew the Permit, and the Permittee's ability to obtain a Permit for such cultivation site will not be extinguished.

(C) Requirements specific to Phase Three Permits.

- (1) Watershed Assessment. All Permit applications, except for legal parcels located in the Agricultural (A-G) zoning district, shall demonstrate there is adequate water to serve the cultivation site.
 - (a) If surface water (or groundwater influenced by surface water) will be used, applicants may demonstrate that there is adequate water by providing (i) a watershed assessment that establishes there is sufficient watershed supply to serve the proposed cultivation site and existing uses within the watershed, and (ii) a water right exists to serve the cultivation site. A watershed assessment shall consist of an established "In Stream Flow Policy" as prepared by the State Water Resources Control Board Division of Water Rights or an equivalent document approved by that agency.
 - (b) If groundwater not influenced by surface water will be used, the applicant may demonstrate that there is adequate water by providing a water availability analysis which will address the adequacy of the proposed water supply, the direct effects on adjacent and surrounding water users, and possible cumulative adverse impacts of the development on the water supply within the watershed and show there is a sustained yield to support the proposed level of use.
 - (c) If water will be provided by a mutual water company, municipal or private utility or similar community provider, the applicant may demonstrate that there is adequate water by providing a will serve letter from the proposed provider.

Section 8: Section 10A.17.090 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.090 - Cultivation Permit Application and Zoning Review.

Any person or entity that wishes to engage in the cultivation of cannabis shall submit an application for a Permit to the Agricultural Commissioner's Office. Applications for Permits shall be made upon such forms and accompanied by such plans and documents as may be prescribed by the Agricultural

Commissioner's Office. The application shall be reviewed by the Agricultural Commissioner's office and other agencies as described herein and renewed annually. Any referral to or consultation with an agency other than the County of Mendocino shall state that a response must be returned within thirty (30) days of the date of the referral.

Following the submission of an application for a Phase One Permit, an applicant may file with the Agricultural Commissioner's Office, on a form prescribed by the Agricultural Commissioner's Office, a Notice of Application Stay for the purpose of preventing the denial of an application for a Phase One Permit based on inactivity by the applicant for up to a one-year period. An applicant may only file a Notice of Application Stay one time. Nothing in this paragraph is intended to prevent the County or the applicant the ability to continue processing or perfecting the application. During the time period of this Application Stay, the applicant shall be prohibited from cultivating cannabis in excess of the limitations of paragraph (B) or (C) of section 10A.17.030 and shall allow the County to make and shall pay the reasonable costs for an inspection of the applicant's cultivation site (and origin site if the application involves a relocation) to confirm compliance with this paragraph; violation of this prohibition shall be a violation of County Code, subject to administrative penalties, and shall be cause for immediate denial of the permit application. Any denial of an application may be followed by nuisance abatement procedures. During the time period of the Application Stay, the applicant shall remain subject to all code enforcement provisions as identified in section 10A.17.100.

The Agricultural Commissioner's Office shall refer each application to the Department of Planning and Building Services for a determination pursuant to Chapter 20.242 as to what type of clearance or permit is required. No application for a Permit shall be approved without clearance or final permit approval as required by Chapter 20.242.

The Agricultural Commissioner's Office shall consult with the Mendocino County Air Quality Management District (MCAQMD) prior to the issuance of the Permit to determine if a permit or other approval by the MCAQMD is necessary. The applicant shall obtain all approvals and permits required by the MCAQMD pursuant to state and federal laws, MCAQMD regulations, adopted air quality plans, MCAQMD policies and other applicable statutes prior to the issuance of a Permit. The required consultation with MCAQMD may be eliminated if MCAQMD authorizes County to determine when a permit or other approval by the District is necessary based on an objective set of criteria developed by MCAQMD for such purposes.

Applicants for a Permit shall provide the following information on, or as an attachment to, the application:

- (A) The name, business and residential address, and phone number(s) of the applicant.
- (B) If the applicant is not the record title owner of the legal parcel, written consent from the owner allowing the cultivation of cannabis on their property by the applicant with original signature of the

record title owner.

- (C) Written evidence that each person applying for the permit and any other person who will be engaged in the cultivation of cannabis is at least twenty-one (21) years of age.
- (D) Site plan showing the entire legal parcel configuration with Assessor's Parcel Number(s), acreage, site address, including the location of:
 - (1) Easements (access and utility and all roadways public and private);
 - (2) Streams, springs, ponds and other surface water features, including the location of any flood plain or floodways;
 - (3) The location and area of the cultivation site on the legal parcel, with dimensions of the area for cultivation of cannabis and showing that all setbacks required by section 10A.17.040 are being met;
 - (4) All areas of ground disturbance or surface water disturbance associated with cultivation of cannabis activities, including: access roads, water diversions, culverts, ponds, dams, graded flats, and other related features;
 - (5) All structures, which shall be clearly labeled; and
 - (6) All septic systems, leach fields and water wells.
- (E) Applications submitted for any Permit during Phase One shall include proof of prior cultivation pursuant to section 10A.17.080
- (F) A cultivation and operations plan which includes elements that meet or exceed the minimum legal standards for the following: water storage, conservation and use; drainage, runoff and erosion control; watershed and habitat protection; and proper storage of fertilizers, pesticides and other regulated products to be used on the legal parcel. Any fuel, fertilizer, pesticides, or other substance toxic to wildlife, children, or pets, must be stored in a secured and locked structure or device. The plan will also provide a description of cultivation activities including, but not limited to, permit type, cultivation area, soil/media importation and management, the approximate date(s) of all cannabis cultivation activities that have been conducted on the legal parcel prior to the effective date of this ordinance, and schedule of activities during each month of the growing and harvesting season.

If a generator is proposed to support any aspect of the cultivation

site or related operations, the cultivation and operations plan shall identify any containment structure and dimensions necessary to contain any leak or spill that may develop or occur as a result of relying on any generator for backup power generation. The plan shall also include a maintenance plan for the generator, detailing how spent oil, used oil filters, expired batteries and other hazardous wastes generated from the operation of the generator will be handled, including fuel storage and delivery systems.

- (G) Copy of the statement of water diversion, or other permit, license or registration filed with California Water Resources Control Board, Division of Water Rights, if applicable.
- (H) An irrigation plan and projected water usage for the proposed cultivation activities, as well as a description of legal water source, if not covered by item (G).
- (I) Copy of Notice of Intent and Monitoring Self-Certification and any other documents filed with the North Coast Regional Water Quality Control Board (NCRWQCB) demonstrating enrollment in and compliance with (or proof of exemption from) Tier 1, 2 or 3, North Coast Regional Water Quality Control Board Order No. 2015-0023, or any substantially equivalent rule that may be subsequently adopted by the County of Mendocino or other responsible agency.
- (J) If any on-site or off-site component of the cultivation facility, including access roads, water supply, grading or terracing impacts the bed or bank of any stream or other watercourse, show proof they have notified the California Department of Fish and Wildlife (CDFW) pursuant to section 1602 of the Fish and Game Code and provide a copy of the Streambed Alteration Permit obtained from the Department of Fish & Wildlife.
- (K) If the source of water is a well, a copy of the County well permit, if available; applicant shall provide documentation showing the approximate date of installation.
- (L) A unique identifying number from a State of California Driver's License or Identification Card for each person applying for the permit and any other person who will be engaged in cultivation of cannabis.
- (M) Applicants and every individual engaged in the management of, or employed by, the applicant shall be subject to a criminal history check, which shall include a Live Scan criminal history inquiry. The reasonable costs of a Live Scan criminal history inquiry pursuant to this section shall be the responsibility of the applicant and every individual engaged in the management of, or employed by, the applicant. Live Scan criminal history inquiries completed at

a certified and approved Live Scan location shall be transmitted to the Sheriff or District Attorney for review. An application shall be denied if any of the following is determined to be true:

- (1) The applicant or any individual engaged in the management of, or employed by, the applicant has been convicted of any crime listed in subdivision (b)(4) of California Business and Professions Code section 26057, or any crime that if committed in the State of California would have constituted any of the crimes listed in subdivision (b)(4) of California Business and Professions Code section 26057. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
- (2) The applicant or any individual engaged in the management of, or employed by, the applicant has one or more felony convictions, occurring prior to January 1, 2018, for violations of California Health and Safety Code section 11358 that involved pled and proven environmental violations, including but not limited to violations of California Fish and Game Code sections 1602, 5650 and 5652.
- (3) The applicant or any individual engaged in the management of, or employed by, the applicant has been convicted of a felony offense, occurring after January 1, 2018, under California Health and Safety Code section 11358, 11359, or 11360, as amended by Proposition 64 § 8.4, effective November 9, 2016, or any crime that if committed in the State of California would have constituted a felony offense under California Health and Safety Code section 11358, 11359, or 11360, as amended by Proposition 64 § 8.4, effective November 9, 2016.
- (4) The applicant or any individual engaged in the management of, or employed by, the applicant has a conviction under section 11366 of the California Health and Safety Code.
- (5) The applicant or any individual engaged in the management of, or employed by, the applicant has a conviction under section 11366.5(b) of the California Health and Safety Code or any felony conviction under section 11366.5(a) of the California Health and Safety Code involving chemical extraction, chemical synthesis or a controlled substance other than marijuana.
- (6) The applicant or any individual engaged in the management of, or employed by, the applicant has a

conviction under section 11379.6 of the California Health and Safety Code.

- (7) The applicant or any individual engaged in the management of, or employed by, the applicant is subject to a condition of probation, mandatory supervision, Post Release Community Supervision, parole or any other lawful order which prohibits the possession or cultivation of cannabis.
- (N) A statement describing the proposed security measures for the facility that shall be sufficient to ensure the safety of members and employees and protect the premises from theft.
- (O) If the applicant is organized as a non-profit corporation, the applicant shall set forth the name of the corporation exactly as shown in its Articles of Incorporation, and the names and residence addresses of each of the officers and/or directors. If the applicant is organized as a partnership, the application shall set forth the name and residence address of each of the partners, including the general partner and any limited partners. Copies of the Articles of Incorporation or a statement listing the members of the partnership shall be attached to the application.
- (P) Intentionally Omitted.
- (Q) A copy of a Board of Equalization Seller's Permit if applicant intends to sell directly to qualified patients or primary caregivers.
- (R) Written consent for an onsite pre-permit inspection of the legal parcel pursuant to section 10A.17.070 by County officials or other appropriate agency representatives at a prearranged date and time in consultation with the applicant prior to the approval of a permit to cultivate cannabis, and at least once annually thereafter.
- (S) For all indoor cultivation facilities, identify the source of electrical power and plan for compliance with applicable Building Codes. Also, provide documentation that addresses the handling of waste discharge from the grow location of items including, but not limited to nutrients, spent growing media, un-used containers and other associated hardware, supplies, and garbage.
- (T) No application shall be approved which identifies or would require the removal of tree species listed in paragraph (I) of Section 10A.17.040 after May 4, 2017, for the purpose of developing a cultivation site. For applications where trees were removed prior to May 4, 2017, applicants shall provide evidence to the Department of Agriculture that no trees were unlawfully removed to develop a cultivation site; such evidence may include, but is not limited to, a less-than-3-acre conversion exemption or timberland conversion permit issued by the California Department of Forestry and Fire

Protection ("CalFire") and trees were removed prior to May 4, 2017. If during review of an application County staff determine that trees were unlawfully removed to develop a cultivation site, the County shall deny the application. Notwithstanding the foregoing, for cultivation sites created prior to May 4, 2017, through prior unauthorized conversion of timberland as defined in Public Resources Code section 4526, a Permit may be approved if the applicant provides evidence that environmental impacts of the tree removal have been mitigated to the extent feasible or otherwise resolved, as required by the resource protection agencies including CalFire, the NCRWQCB and the CDFW. County staff shall defer to the resource protection agencies referenced herein for determinations as to the unlawful removal of trees or unauthorized conversion of timberland or the sufficiency of any required remediation to address the environmental impacts. Nothing herein shall be construed to limit or condition in any way the regulatory or enforcement authority of the resource agencies listed herein.

- (U) If applicable, clearance from CalFire related to compliance with the requirements of Public Resources Code Section 4290 and any implementing regulations.
- (V) For activities that involve construction and other work in Waters of the United States, that are not otherwise exempt or excluded, including streams and wetlands, the application shall include a copy of a federal Clean Water Act (CWA) Section 404 permit obtained from the Army Corps of Engineers and a CWA Section 401 water quality certification from the NCRWQCB.
- (W) Projects that disturb one (1) or more acres of soil or projects that disturb less than one acre but that are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the State Water Resources Control Board General Permit for Discharges of Storm Water Associated with Construction Activity Construction General Permit Order 2009- 0009-DWQ. Construction activity subject to this permit includes clearing, grading and disturbances to the ground such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility.
- (X) The results of a "Cortese List" database search for sites known to be contaminated with hazardous materials. If the site is listed on the "Cortese List", the application shall include sufficient information to demonstrate that the cultivation is in compliance with any cleanup and/or abatement order that is established for the site.
- (Y) If water or sewer services to the cultivation site will be provided by a community provider, a will-serve letter from the provider

indicating adequate capacity to serve the cultivation site.

The Agricultural Commissioner is authorized to require in the permit application any other information reasonably related to the application including, but not limited to, any information necessary to discover the truth of the matters set forth in the application.

Section 9. Section 10A.17.100 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.100 - Permit Review and Issuance.

- (A) The Agricultural Commissioner's Office shall issue a Permit pursuant to this Chapter only:
- (1) Following the referral to and clearance or permit approval pursuant to Chapter 20.242; and
 - (2) Following review by qualified County staff to review proposed permit locations and identify where habitat suitable for sensitive species may exist. The County shall consult with the California Department of Fish and Wildlife ("CDFW") to evaluate if there is a possibility for presence or habitat suitable for sensitive species on the parcel with a proposed Permit location. Upon consultation, CDFW may recommend approval of the proposed development, ask to conduct a site inspection or request additional studies in order to make the determination that no impacts to sensitive species will occur. A cultivator that cannot demonstrate that there will be a less than significant impact to sensitive species will not be issued a Permit. The County shall develop a policy in consultation with CDFW to define an objective set of criteria that applications can be checked against and when during Phases 1 and 2 a formal referral to CDFW is required to avoid impacts to sensitive species and natural communities. Following the development of the policy referred to in the previous sentence, consultation with CDFW shall not be required but be performed pursuant to the policy. During Phase 3 all applications will be referred to CDFW; and
 - (3) After the Agricultural Commissioner's Office, and other County and State agency staff, as appropriate, have reviewed the application and performed a pre-permit site inspection to confirm adherence to the requirements established in the MCCO; and
 - (4) Following receipt of evidence of payment of the required permit fee, pursuant to Section 10A.17.070.
- (B) As a condition of approval for any cultivation permit, the owner or permittee shall indemnify and hold harmless the County of Mendocino and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by affected property owners or other third

parties due to the commercial cultivation of cannabis and for any claims brought by any person for problems, injuries, damages, or liabilities of any kind that may arise out of the commercial cultivation of cannabis.

(C) Discovery of any violation(s) of the Mendocino County Code during the Permit application process will be treated in a similar manner to violation(s) that are self-reported during an active amnesty program. That is, the discovered violation(s) will still need to be corrected, but any investigative and/or penalty fees associated with an after-the-fact County permit will be waived.

(1) If the discovered violation(s) are directly related to a Phase One Permit application, and/or if it is discovered that the Permit would authorize a particular use for which a separate County permit is required but has not yet been obtained, the applicant shall be required to agree in writing to a compliance plan prior to issuance of the Permit. Failure by applicant to agree in writing to a required compliance plan shall be grounds for denial of the Permit.

(a) The compliance plan will identify the violation(s) and may suggest corresponding remedial action(s) that may be taken to correct the violation(s), will identify the required permit(s) based on the uses identified in the Permit application, and will include timelines for achieving code compliance for all violations and/or for submitting completed applications for each required permit.

(b) In no event will more time be given to correct all violations, and/or submit a complete application for each required permit, than one (1) year after the date of issuance of the Permit.

(c) After the applicant has signed the compliance plan, as presented by the Agricultural Department in coordination with the appropriate County department(s), the Agricultural Department may issue a Permit restricted as indicated in the compliance plan, so long as no other barrier(s) to such issuance exists. Failure to abide by the compliance plan shall be grounds for Permit termination, or non-renewal, pursuant to section 10A.17.140.

(d) The compliance plan will be the primary mechanism to obtain code compliance from Permit applicants with respect to violations directly related to Phase One Permits applications. However, nothing in this section is intended to limit the use of any other applicable code enforcement provision or the ability of any County department with the appropriate authority from enforcing the Mendocino County Code.

(2) If the discovered violation(s) are not directly related to a Phase

One Permit application, such violation(s) will not affect the processing of the Phase One Permit application. However, any County department with appropriate enforcement authority with respect to such violation(s) may make use of any applicable code enforcement mechanism as if the violation(s) were discovered as a result of self-reporting during an active amnesty program.

(D) Permit Application Denial.

- (1) The Agricultural Commissioner's Office may, at any time during the application process, deny an application based on the failure to meet the requirements of this Chapter 10A.17, including, but not limited to, the following:
 - (a) Incomplete application.
 - (b) Failure to provide additional information or documentation within the timeframe prescribed by the Agricultural Commissioner's Office.
 - (c) Cultivation of cannabis on a legal parcel (beyond what is exempt from a permit requirement pursuant to County Code section 10A.17.030) during an application stay pursuant to County Code section 10A.17.090.
 - (d) Cultivation of cannabis in illegal and/or non-compliant structures.
 - (e) Cultivation of cannabis, or activities related to preparing a cultivation site, that are non-compliant with the requirements of this Chapter 10A.17 or not consistent with the application as submitted, whether such issues are discovered during a pre-permit site inspection or other inspection of the property.
- (2) If the applicant does not meet the requirements to obtain a permit and a permit with a compliance plan is not viable, the Agricultural Commissioner's Office shall deny the permit application unless:
 - (a) the applicant immediately files for a Notice of Application Stay pursuant to County Code section 10A.17.090 and corrects the conditions of the property in a manner that would allow for permit issuance no later than the expiration of the Application Stay; or
 - (b) the applicant immediately amends the application in a manner that allows for permit issuance.
- (3) A permit may be denied based on confirmation that the applicant provided false or misleading information to the County, or any other agency if such communication was made as part of the

process in securing a permit under this Chapter 10A.17.

- (4) A permit may be denied if the applicant or any agent or employee of the applicant has engaged in or is engaging in activities related to the cultivation of cannabis that endangers the health or safety of people or property.
- (5) This paragraph (D) in no way limits the authority of the Agricultural Commissioner's Office to deny an application as inherently or explicitly provided by this Chapter 10A.17.
- (E) Track & Trace unique identifiers will only be made available following the issuance of a Permit by the Agricultural Commissioner's Office. The Permittee will have seventy-two (72) hours to register with the County Track & Trace system. Upon Track & Trace system registration, the system will provide unique identifiers. The unique identifiers shall be affixed to the individual plants within seventy-two (72) hours of being provided to the Permittee.
- (F) Permits shall remain valid for one (1) year from the date of issuance, subject to any enforcement action or other action that may result in earlier suspension or revocation.

Section 10: Section 10A.17.160 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.160 - Enforcement and Declaration of Public Nuisance.

- (A) All of the remedies provided for in this Chapter, or elsewhere in the law, shall be cumulative and not exclusive for violations of this Chapter. Violations of this Chapter include, but are not limited to failure to obtain and maintain in good standing any permit required by this Chapter, compliance with any required element on which a permit was issued pursuant to this Chapter, or any violation of the provisions of this Chapter where a permit is not required, such as a violation of section 10A.17.040 when a person is otherwise exempt pursuant to section 10A.17.030. The County may enforce this Chapter by using any applicable state or county law, including, but not limited to Mendocino County Code Chapters 1.08, 8.75 or 8.76, and may use either the administrative process to achieve code compliance or available civil remedies, such as injunctive relief.
- (B) The cultivation of cannabis with a valid permit pursuant to this Chapter shall not be declared a public nuisance under County Code Chapter 8.75 or 8.76. Any cultivation of cannabis in the absence of a permit issued pursuant to this Chapter is a public nuisance and may be abated by the County as a public nuisance in accordance with the provisions of either County Code Chapter 8.75 or 8.76 unless such cultivation either: (1) is exempt pursuant to County Code section 10A.17.030 and in compliance with the laws to which the exemption is subject; or (2) is being cultivated by an entity whose application for a Phase One Permit

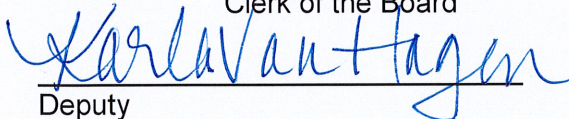
pursuant to this Chapter has been submitted, accepted and is currently pending, and who has also submitted a sworn affidavit to the County Agricultural Commissioner on a form prepared by the Agricultural Commissioner that includes, but is not limited to, an affirmation that they have met the requirements to obtain a permit or are actively in the process of fulfilling the requirements, and who also possesses a State temporary or provisional license for the cultivation site applied for at the County level.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this 18TH day of December, 2018, by the following roll call vote:

AYES: Supervisors Brown, McCowen, Croskey, and Gjerde
NOES: None
ABSENT: Supervisor Hamburg


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

ATTEST: CARMEL J. ANGELO
Clerk of the Board


Deputy

APPROVED AS TO FORM:
KATHARINE L. ELLIOTT
County Counsel

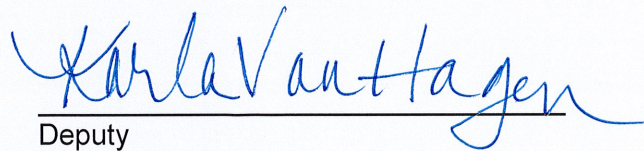




GEORGEANNE CROSKEY, Chair
Mendocino County Board of Supervisors

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

BY: CARMEL J. ANGELO
Clerk of the Board



Deputy

EXHIBIT D

ORDINANCE NO. 4420

ORDINANCE AMENDING CHAPTER 10A.17 MENDOCINO CANNABIS CULTIVATION ORDINANCE AND CHAPTER 20.242 CANNABIS CULTIVATION SITES OF THE MENDOCINO COUNTY CODE; ADDING CHAPTER 20.118 "CA" CANNABIS ACCOMMODATION COMBINING DISTRICT AND CHAPTER 20.119 "CP" COMMERCIAL CANNABIS PROHIBITION COMBINING DISTRICT TO THE MENDOCINO COUNTY CODE; AND REZONING CERTAIN PARCELS TO APPLY THE CA AND CP COMBINING DISTRICTS.

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

Section 1: Section 10A.17.040 is hereby amended to read as follows:

Sec. 10A.17.040 - General Limitations on Cultivation of Cannabis.

The following limitations shall apply to all cultivation of cannabis in Mendocino County, including but not limited to cultivation pursuant to a Permit issued under this Chapter or an exemption provided for in Section 10A.17.030. Cultivation of cannabis shall also be subject to all applicable restrictions of Mendocino County Code Chapter 20.242.

- (A) The cultivation of cannabis in Mendocino County, in any amount or quantity by any entity, shall not be allowed in the following areas:
 - (1) Within one thousand (1,000) feet of a youth-oriented facility, a school, a park, or any church or residential treatment facility as defined herein that is in existence at the time a Permit is initially applied for.
 - (2) Outdoors or using mixed light within one hundred (100) feet of any occupied legal residential structure located on a separate legal parcel; provided, however, that on January 1, 2020, this setback shall be increased to two hundred (200) feet for all Permit applications but shall not apply to renewals of Permits originally issued before that date.
 - (3) Outdoors or using mixed light in a mobile home park as defined in Health and Safety Code Section 18214.1 within one hundred (100) feet of an occupied mobile home that is under separate ownership.
 - (4) In any location where the cannabis plants are visible from the public right of way or publicly traveled private roads.
 - (5) Outdoors or using mixed light within fifty (50) feet from any adjoining legal parcel under separate ownership or access easement (whichever is most restrictive); provided, however, that on January 1, 2020, this setback shall be

increased to one hundred (100) feet for all Permit applications but shall not apply to renewals of Permits originally issued before that date.

- (6) Any indoor cultivation sites that comply with paragraph (A)(1) shall also be subject to the following:
 - (a) Indoor cultivation sites shall comply with the building property line setback established by the zoning district in which the cultivation site is located.
 - (b) The cultivation of cannabis within an accessory structure shall be allowed subject to the development requirements of the zoning district in which it is located and to requirements of Chapter 20.164 — Accessory Use Regulations except, notwithstanding Section 20.164.010: (a) the cultivation of cannabis in an accessory structure is not permitted prior to the construction of the legal dwelling unit on the parcel, if a legal dwelling unit is required by this Chapter, and (b) cultivation of cannabis shall only be allowed on the same parcel as the dwelling unit, if required.
 - (c) Indoor cultivation sites for individuals desiring to cultivate cannabis for adult use pursuant to section 10A.17.030(C) shall also be subject to the following limitation: cultivation sites located within a private residence that is a rental unit, as that term is defined by County Code section 20.008.050, shall not be located in any indoor space other than a garage or accessory structure.
- (B) The distance between the listed uses in the above paragraph (A)(1) and cannabis that is being cultivated shall be measured in a straight line from the nearest point of the fence required in section 10A.17.040(H), or if the cannabis is cultivated indoors, from the nearest exterior wall of the building in which the cannabis is cultivated to the nearest point of the exterior wall of the facility, building, or structure, or portion of the facility, building, or structure in which the above-listed use occurs or to the nearest point of any fenced, maintained or improved area where the users of the facility are typically present during normal hours of operation, whichever is closest. The distance in paragraphs (A)(2) and (A)(3) to any residential structure shall be measured from the fence required in section 10A.17.040(H) to the nearest exterior wall of the residential structure. The distance in paragraph (A)(5) shall be measured from the fence required in section 10A.17.040(H) to the boundary line of a legal parcel or access easement.

Applicants may seek a reduction in the setback described in paragraphs (A)(1) and (A)(5) upon issuance of an administrative permit pursuant to Chapter 20.242. See also sections 20.242.060(D) and 20.118.040 (D), (E) and (F) for further exceptions to setback regulations.

- (C) The outdoor, indoor or mixed light cultivation of cannabis shall not propagate objectionable odors which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that endanger the comfort, repose, health, or safety of any of those persons or the public.
- (D) The indoor or mixed-light cultivation of cannabis shall rely on the electrical grid or some form of alternative energy source. The indoor or mixed-light cultivation cannabis shall not rely on a generator as a primary source of power.
- (E) All lights used for the indoor or mixed light cultivation of cannabis shall be fully contained within structures or otherwise shielded to fully contain any light or glare involved in the cultivation process. Security lighting shall be motion activated and all outdoor lighting shall be shielded and downcast or otherwise positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the legal parcel upon which they are placed.
- (F) All activities associated with the cultivation of cannabis shall not exceed the noise level standards as set forth in the County General Plan Policies DE100, 101 and 103.
- (G) All cultivation of cannabis shall not utilize water that has been or is illegally diverted from any spring, wetland, stream, creek, or river. The activities associated with the cultivation of cannabis shall not create erosion or result in contaminated runoff into any stream, creek, river or body of water.
- (H) All cannabis grown in Mendocino County (excluding indoor growing) must be within a secure, wildlife exclusionary fence of at least six (6) feet in height that fully encloses the immediate garden area. The fence must include a lockable gate that is locked at all times when a qualified patient, caregiver or permittee (or their agent) is not in the immediate area. Said fence shall not violate any other ordinance, code section or provision of law regarding height and location restrictions and shall not be constructed or covered with plastic or cloth except shade cloth may be used on the inside of the fence.
- (I) All buildings where cannabis is cultivated or stored shall be properly secured to prevent unauthorized entry.

- (J) Persons cultivating cannabis pursuant to either section 10A.17.030, paragraphs (B) or (C) shall also comply with the provisions of section 10A.17.110, paragraphs (N) and (O).
- (K) Prohibition on Tree Removal. Removal of any commercial tree species as defined by Title 14 California Code of Regulations section 895.1, Commercial Species for the Coast Forest District and Northern Forest District, and the removal of any true oak species (*Quercus* sp.) or Tan Oak (*Notholithocarpus* sp.) for the purpose of developing a cannabis cultivation site is prohibited. This prohibition shall not include the pruning of any such trees for maintenance, or the removal of such trees if necessary to address safety or disease concerns.

Section 2: Section 10A.17.080 is amended as follows:

Sec. 10A.17.080 - Permit Phases and Requirements Specific to each Phase.

Unless specifically exempted, in addition to compliance with all other requirements of this Chapter, all Permits shall comply with the following requirements:

- (A) Permits under the MCCO will be issued in the following three phases:
 - (1) Phase One: Following the effective date of the MCCO, Permits will only be issued to applicants who provide to the Agricultural Commissioner pursuant to paragraph (B)(1) of this section proof of cultivation at a cultivation site prior to January 1, 2016 ("proof of prior cultivation"), and who comply with all other applicable conditions of this Chapter and Chapter 20.242. Applications for Permits during Phase One shall only be accepted until December 31, 2018. Applicants able to provide proof of prior cultivation may apply for a Permit on a relocation site pursuant to paragraph (B)(3) of this section.
 - (2) Phase Two: Starting January 1, 2018, the Agricultural Commissioner will begin accepting applications for Type 1A and Type 2A Permits for indoor cultivation in the following zoning districts, subject to compliance with all other applicable conditions of this Chapter and Chapter 20.242: Limited Industrial (I-1), General Industrial (I-2), and Pinoleville Industrial (P-I). Proof of cultivation prior to January 1, 2016, is not required.

- (3) Phase Three: Starting January 1, 2020, the Agricultural Commissioner will begin accepting Permit applications from any applicant in conformance with the conditions of this Chapter and Chapter 20.242. Proof of cultivation prior to January 1, 2016, is not required.
- (B) Requirements specific to Phase One Permits.
 - (1) Proof of Prior Cultivation. Persons applying for a Permit during Phase One shall be required to provide to the Agricultural Commissioner evidence that they were cultivating cannabis on the cultivation site prior to January 1, 2016, which cultivation site shall have been, or could have been, in compliance with the setback requirements of paragraph (A) of section 10A.17.040. Evidence shall include:
 - (a) Photographs of any cultivation activities that existed on the legal parcel prior to January 1, 2016, including: (i) ground level views of the cultivation activities and (ii) aerial views from Google Earth, Bing Maps, Terraserver, or a comparable service showing: both the entire legal parcel and the cultivation site in more detail. The date these images were captured shall be noted.
 - (b) Photographs of any cultivation activities that currently exist on the legal parcel, including: (i) ground level views of the cultivation activities and (ii) aerial views from Google Earth, Bing Maps, Terraserver, or a comparable service showing: both the entire legal parcel and the cultivation site in more detail. The date these images were captured shall be noted.
 - (c) At least one (1) additional document demonstrating cultivation on the legal parcel prior to January 1, 2016, which evidence may be used to substitute for evidence pursuant to clause (a). The Agricultural Commissioner shall prepare a list of the types of documentation that will be accepted to meet this requirement, and may accept other similarly reliable documentary evidence showing that cannabis was cultivated prior to January 1, 2016.
 - (d) Proof of prior cultivation shall be assigned to the applicant relative to their prior cultivation site.

- (e) Persons who participated in a permit program pursuant to the County's Chapter 9.31 in previous years may present evidence of such participation and payment of all required fees in order to provide proof of prior cultivation.
- (2) Zoning Districts; Exceptions. Existing cultivation sites not located in zoning districts where Chapter 20.242 specifically allows cultivation may be issued a Type C, Type C-A, or Type C-B Permit, subject to the following requirements, in addition to all other applicable requirements of this Chapter:
 - (a) The zoning district is one where a dwelling unit is a principally permitted use and a dwelling unit is present.
 - (b) Sunset Provision for Residential Districts. Cultivation sites on legal parcels located in the Single-Family Residential (R-1), Two-Family Residential (R-2), Multiple-Family Residential (R-3), Suburban Residential (S-R), Rural Community (R-C), and Rural Residential (lot sizes one (1) acre, two (2) acres and five (5) acres [legal non-conforming parcels to minimum zoning size][R-R:L-1, R-R:L-2, and R-R:L-5 {legal non-conforming to minimum zoning size}]), as well as cultivation sites in any other zoning district where a dwelling unit is a principally permitted use and the legal parcel is less than two (2) acres in size, are subject to the following requirements:
 - (i) There is an occupied dwelling unit on the legal parcel with the cultivation site.
 - (ii) A Permit may be renewed and valid only until three (3) years following the effective date of the ordinance adopting this Chapter and any permits issued shall be void not later than three (3) years following said effective date.

The provisions of this subsection, however, shall not apply in areas designated as "CA" Cannabis Accommodation Combining District, nor shall they apply to parcels zoned Rural Residential (lot size five (5) acres [R-R:L-5]) that are between 3.5 and 4.99 acres and have been issued an administrative permit pursuant to section 20.242.070(C).

- (c) Cultivation sites on legal parcels located in the Rural Residential zoning district, lot size five (5) acres (conforming parcels of five acres or more only)(R-R:L-5), are subject to the following additional requirement that there is an occupied dwelling unit on the legal parcel with the cultivation site.
 - (d) If a Permit is granted pursuant to this paragraph (B)(2) in these zoning districts, any future revocation or lapse in renewal of such Permit shall extinguish the ability of any person to obtain a Permit for such cultivation site.
- (3) Relocation. Persons able to show proof of prior cultivation pursuant to paragraph (B)(1) above may apply for a Permit not on the site previously cultivated (the "origin site") but on a different legal parcel (the "destination site"), subject to the following requirements:
 - (a) Persons may apply to relocate their cultivation site pursuant to this paragraph (B)(3) until three (3) years after the effective date of the ordinance adopting this Chapter, or until May 4, 2020.
 - (b) The location and operation of the proposed cultivation site on the destination parcel complies with all requirements and development standards that apply to a new cultivation site as of January 1, 2020, pursuant to this Chapter and Chapter 20.242; provided, however:
 - (i) An existing cultivation site shall not be transferred to a legal parcel located within the Forestland or Timber Production Zone zoning districts.
 - (ii) An origin site may relocate to a destination site in the Rangeland zoning district, so long as the destination site has an existing cultivation site and no new cultivation sites would be established.
 - (c) The origin site shall be restored. The application for a Permit on a destination site shall be accompanied by a restoration plan that is consistent with the standard conditions and best management practices listed in the North Coast Regional Water Quality Control Board Order No. 2015-0023, and which shall include the following:

- (i) Remove or repurpose buildings, greenhouses, fences, irrigation equipment, water intakes, pumps, storage tanks and other materials brought to the origin site for the purpose of cannabis cultivation;
 - (ii) Remove illegal dams, ponds or other in-stream water storage to restore natural stream flows, unless such features will continue in use;
 - (iii) Remove or compost agricultural wastes;
 - (iv) Remove trash and other debris; and
 - (v) Revegetate cleared areas with native plants typical of nearby natural areas, including groundcover, shrubs and trees.
 - (d) Unless the destination site is within the Agricultural zoning district, the application shall include either a water availability analysis pursuant to paragraph (C)(1)(b) below or a will serve letter pursuant to paragraph (C)(1)(c) below.
 - (e) Prior to the issuance of the Permit to cultivate cannabis at the destination parcel, the applicant shall provide the Agricultural Commissioner with an agreement, on a form approved by the Agricultural Commissioner and County Counsel, providing that the applicant releases any right to continue or resume cultivation of cannabis on the origin parcel.
 - (f) If a person is granted a Permit for a destination site, any claims of proof of prior cultivation on the origin site shall be effectively transferred to the destination site, and the ability to claim proof of prior cultivation at the origin site shall be extinguished.
 - (g) There shall be a two (2) acre minimum parcel size for all Type C, Type C-A or Type C-B Permits.
- (4) Multiple Permits may be applied for and granted on a single legal parcel that is owned by multiple persons residing in separate habitable dwelling units on that legal parcel. Each owner may individually apply for a Permit to cultivate cannabis, provided that each owner must provide proof of prior cultivation pursuant to paragraph

(B)(1) above. Each owner shall be limited to a Type C, Type C-A or Type C-B Permit, unless that owner was previously enrolled in a permit program pursuant to the County's Chapter 9.31, or unless the cumulative total square footage of plant canopy applied for by all owners does not exceed the maximum square footage permitted on a parcel for the relevant zoning district.

- (5) Persons eligible to apply for a Permit during Phase One may apply for a different and/or larger Permit type in subsequent years, subject to all requirements of this Chapter.
- (6) If a Permit is granted pursuant to this paragraph (B), any future revocation or lapse in renewal of such Permit shall extinguish the ability of any person to obtain a Permit for such cultivation site, unless otherwise allowed by this Chapter 10A.17; provided, however, for Permits granted in the Rangeland (RL), Forestland (FL) or Timberland Protection (TPZ) zoning districts, not more than once in a five-year period, a Permittee may file with the Department of Agriculture, on a form prescribed by the Department, a Notice of Non-Cultivation instead of an application to renew the Permit, and the Permittee's ability to obtain a Permit for such cultivation site will not be extinguished.

(C) Requirements specific to Phase Three Permits.

- (1) Watershed Assessment. All Permit applications, except for legal parcels located in the Agricultural (A-G) zoning district, shall demonstrate there is adequate water to serve the cultivation site.
 - (a) If surface water (or groundwater influenced by surface water) will be used, applicants may demonstrate that there is adequate water by providing (i) a watershed assessment that establishes there is sufficient watershed supply to serve the proposed cultivation site and existing uses within the watershed, and (ii) a water right exists to serve the cultivation site. A watershed assessment shall consist of an established "In Stream Flow Policy" as prepared by the State Water Resources Control Board Division of Water Rights or an equivalent document approved by that agency.

- (b) If groundwater not influenced by surface water will be used, the applicant may demonstrate that there is adequate water by providing a water availability analysis which will address the adequacy of the proposed water supply, the direct effects on adjacent and surrounding water users, and possible cumulative adverse impacts of the development on the water supply within the watershed and show there is a sustained yield to support the proposed level of use.
- (c) If water will be provided by a mutual water company, municipal or private utility or similar community provider, the applicant may demonstrate that there is adequate water by providing a will serve letter from the proposed provider.

Section 3: Section 10A.17.081 is hereby added to the Mendocino County Code to read as follows:

Sec. 10A.17.081 – Application Deadline for Parcels in “CA” Cannabis Accommodation Combining Districts.

Notwithstanding the provisions of paragraph (A)(1) of section 10A.17.080, Phase One Permits may be issued for cultivation sites within a “CA” Cannabis Accommodation Combining District so long as applications for such sites are submitted to the County within one hundred eighty (180) days of the effective date of the ordinance that establishes the applicable CA district.

Section 4: Chapter 20.118 is hereby added to the Mendocino County Code to read as follows:

Chapter 20.118 – “CA” Cannabis Accommodation Combining District

Sec. 20.118.010. Intent.

The “CA” Cannabis Accommodation Combining District (CA Combining District or CA district) is intended to be applied to areas where greater flexibility in the development standards related to cannabis cultivation operations is desirable and necessary in order to accommodate existing commercial cannabis cultivation sites.

Sec. 20.118.020. Applicability.

- (A) The CA Combining District may be applied to areas that include existing commercial cannabis cultivation operations, and where the zoning designation of the majority of the lots allows residential use by right.

- (B) A CA Combining District may range from neighborhood to community in scale, but in no case be composed of fewer than ten (10) legal parcels as that term is defined in section 10A.17.020. All parcels within a CA Combining District shall be contiguous (excepting separations by public or private roads, rail lines, utility easements, or similar linear public facilities).
- (C) The regulations in this section are supplemental to the regulations for the applicable underlying zoning district. In the event of a conflict between the regulations for the CA Combining District and the underlying zoning district, the CA district regulations shall prevail.

Sec. 20.118.030. Establishment of CA Combining District.

- (A) The establishment of a CA Combining District shall be in accordance with the provisions of Chapter 20.212, except as otherwise provided in this section.
- (B) Establishment of a CA Combining District may be initiated by one (1) or more property owner(s) within the boundaries of the proposed CA district. Such application shall be filed with the Planning and Building Services Department and shall be accompanied by either:
 - (1) A petition that demonstrates support for the proposed CA district by more than sixty percent (60%) of the affected property owners (as demonstrated by one (1) owner's signature per legal parcel) within the proposed CA district; or
 - (2) An alternative demonstration of landowner support, including but not limited to a landowner survey conducted by the County and funded by the applicant, or other method as approved by the County.
- (C) Action on the filed application shall be taken by the Planning Commission and Board of Supervisors as established in Chapter 20.212.
- (D) Applications for CA Combining Districts will be accepted until November 1, 2019.

Sec. 20.118.040. Regulations for CA Combining District.

- (A) Notwithstanding application deadlines identified in section 10A.17.080(A)(1), applications for cannabis cultivation permits within a CA Combining District must be submitted within one hundred eighty (180) days of the effective date of the ordinance that establishes the CA Combining District.

- (B) The Sunset Provision for cannabis cultivation (section 10A.17.080(B)(2)(b)) shall not apply within the CA district.
- (C) Cannabis cultivation permit types defined in section 10A.17.060 as (C) Small Outdoor, (C-A) Small Indoor, Artificial Light, and (C-B) Small Mixed Light may be permitted for existing cultivation sites on any parcel subject to the planning permit and approval requirements in section 20.242.040(C).
- (D) The minimum setback for a cultivation site from any adjoining legal parcel under separate ownership, as required by section 10A.17.040(A)(5), shall be twenty (20) feet.
- (E) The minimum setback for a cultivation site to an adjoining legal parcel under separate ownership, as required by section 10A.17.040(A)(5), may be reduced to less than twenty (20) feet or waived through the approval of an Administrative Permit pursuant to section 20.242.070(C).
- (F) The minimum setback for a cultivation site to any occupied legal residential structure located on a separate legal parcel, as required by section 10A.17.040(A)(2), may be reduced to twenty (20) feet through the approval of an Administrative Permit pursuant to section 20.242.070(C).
- (G) Changes to the underlying zoning of a parcel or parcels within the CA Combining District would have no effect on the uses permitted and defined by this section, nor would the CA Combining District limit any use rights granted by a future rezoning of property within this CA district.

Sec. 20.118.050. Changes to CA Combining District.

- (A) For the first ten (10) years after the date of adoption, no application to repeal or amend a CA Combining District, except as described in section 20.118.050(D), may be initiated by a member of the public.
- (B) Following the in-effect period of ten (10) years from the date of adoption, a CA Combining District may be repealed or amended upon submittal of an application by one (1) or more property owner(s) within the boundaries of the CA district. The application shall be accompanied by either:
 - (1) A petition demonstrating support for the repeal or amendment of the CA district by more than sixty percent (60%) of all current property owners (as demonstrated by one owner's signature per parcel or parcels owned) within the CA district; or

- (2) An alternative demonstration of landowner support, including but not limited to a landowner survey conducted by the County and funded by the applicant, or other method as approved by the County.
- (C) If a CA Combining District is repealed at any time, all current cultivators that do not meet the development standards of the underlying zoning district shall be permitted to continue operations for three (3) years from the date of repeal of the CA district. After three (3) years following the date of repeal of the CA district, permits for cultivators that do not meet the standards of the underlying zoning district shall not be renewed by the County.
- (D) An owner of property that is contiguous with a CA Combining District may submit a petition to the County to be included in the CA district. Petitions for inclusion in an existing CA district shall only be submitted by the current property owner. An addition of new property to an established CA district shall not alter the in-effect period of ten (10) years for the district.
- (E) Action on an application to repeal, amend, or add contiguous property to a CA Combining District shall be taken by the Planning Commission and Board of Supervisors consistent with the provisions of Chapter 20.212, except as provided by this section.

Sec. 20.118.060. Fees for Petitions for CA Combining District.

The Board of Supervisors shall require payment of fees or deposits, as established by the Board, for the processing of applications seeking to establish, repeal, or amend a CA Combining District in an amount that covers all costs for review, public noticing and hearings, and approval or denial of the application. The fees shall be as set and established by Resolution passed by the Board of Supervisors.

Sec. 20.118.070. Adopted CA Combining Districts.

The CA Combining District has been applied to the following areas, which are more specifically defined in the ordinance that rezoned the areas to the CA Combining District:

- (A) Covelo Core
- (B) Covelo Fairbanks Road
- (C) Laytonville
- (D) South Leggett

Section 5: Chapter 20.119 is hereby added to the Mendocino County Code to read as follows:

Chapter 20.119 – “CP” Commercial Cannabis Prohibition Combining District

Sec. 20.119.010. Intent.

The “CP” Commercial Cannabis Prohibition Combining District (CP Combining District or CP district) is intended to allow the County to designate specific areas where commercial cannabis operations are prohibited.

Sec. 20.119.020. Applicability.

- (A) The CP Combining District may be applied to an area where a majority of the parcels allow residential use by right.
- (B) A CP Combining District shall be composed of no fewer than ten (10) legally created legal parcels, as that term is defined in section 10A.17.020, that are contiguous (excepting separations by public or private roads, rail lines, utility easements, or similar linear public facilities).
- (C) The regulations in this section are supplemental to the regulations for the applicable underlying zoning district. In the event of a conflict between the regulations for the CP Combining District and the underlying zoning district, the CP district regulations shall prevail.

Sec. 20.119.030. Establishment of CP Combining District.

- (A) The establishment of a CP Combining District shall be in accordance with the provisions of Chapter 20.212, except as otherwise provided in this section.
- (B) Establishment of a CP Combining District may be initiated by one (1) or more property owner(s) within the boundaries of the proposed CP district. Such application shall be filed with the Planning and Building Services Department and shall be accompanied by either:
 - (1) A petition that demonstrates support for the proposed CP district by more than sixty percent (60%) of the affected property owners (as demonstrated by one (1) owner's signature per legal parcel) within the proposed CP district; or
 - (2) An alternative demonstration of landowner support, including but not limited to a landowner survey conducted by the County and funded by the applicant, or other method as approved by the County.
- (C) Action on the filed application shall be taken by the Planning Commission and Board of Supervisors as established in Chapter 20.212.

Sec. 20.119.040. Regulations for CP Combining District.

- (A) All new and unpermitted cannabis cultivation sites as defined in section 10A.17.020, except those uses identified as exempt under section 10A.17.030, and all cannabis facilities as defined in section 20.243.030 shall be prohibited within the CP district.
- (B) Existing permitted cannabis cultivation sites or permitted cannabis facilities located within a newly adopted CP Combining District zone shall be permitted to continue operations for three (3) years from the date of establishment of the CP district. After three (3) years following the date of establishment of the district, all previously permitted commercial cannabis cultivation sites and commercial cannabis facilities shall cease operations.
- (C) Nothing in this section shall be construed to extend the period of allowed cultivation as established under Mendocino County Code section 10A.17.080(B)(2)(b) (Sunset provisions).

Sec. 20.119.050. Changes to CP Combining District.

- (A) For the first ten (10) years after the date of adoption, no application to repeal or amend a CP Combining District, except as described in section 20.119.050(C), may be initiated by a member of the public.
- (B) Following the in-effect period of ten (10) years from the date of adoption, a CP Combining District may be repealed or amended upon submittal of an application by one (1) or more property owner(s) within the boundaries of the CP district. The application shall be accompanied by either:
 - (1) A petition demonstrating support for the repeal or amendment of the CP district by more than sixty percent (60%) of all current property owners (as demonstrated by one (1) owner's signature per legal parcel) within the CP district; or
 - (2) An alternative demonstration of landowner support, including but not limited to a landowner survey conducted by the County and funded by the applicant, or other method as approved by the County.
- (C) An owner of property that is contiguous with a CP district may submit a petition to the County to be included in the CP Combining District. Petitions for inclusion in an existing CP district shall only be submitted by the current property owner. An addition of new property to an established CP district shall not alter the in-effect period of ten (10) years for the district.

- (D) Action on an application to repeal, amend, or add contiguous property to a CP district shall be taken by the Planning Commission and Board of Supervisors consistent with the provisions of Chapter 20.212, except as provided by this section.

Sec. 20.119.060. Fees for Petitions for CP Combining District.

The Board of Supervisors shall require payment of fees or deposits, as established by the Board, for the processing of applications seeking to establish, repeal, or amend a CP Combining District in an amount that covers all costs for review, public noticing and hearings, and approval or denial of the application. The fees shall be as set and established by Resolution passed by the Board of Supervisors.

Sec. 20.119.070. Adopted CP Combining Districts.

The CP Combining District has been applied to the following areas, which are more specifically defined in the ordinance that rezoned the areas to the CP Combining District:

- (A) Deerwood (Ukiah area)
- (B) Boonville Road – Woodyglen (Ukiah area)

Section 6. Section 20.242.040 of the Mendocino County Code is hereby amended to read as follows:

Sec. 20.242.040 - Existing Cannabis Cultivation Sites.

- (A) Referrals of applications to the Department for review related to existing cultivation sites shall include the Agriculture Commissioner's determination that the cultivation site existed prior to January 1, 2016, unless the Agricultural Commissioner requests the assistance of the Department in making this determination as part of the referral to the Department.
- (B) Cultivation sites, in conformance with the MCCO, may be allowed on a legal parcel with an approved Zoning Clearance, Administrative Permit or Minor Use Permit as required for the zoning district in which the cultivation site is located and as listed in Table 1.

TABLE 1
Zoning Permit Requirement for Existing Cannabis Cultivation by Zoning District and Cannabis Cultivation Ordinance Permit Type

MCCO Permit Type		C Sm Outdoor	C-A Sm Indoor, Artificial Light		C-B Sm, Mixed Light	1 Med Outdoor	1-A Med Indoor, Artificial Light	1-B Med Mixed Light	2 Lg Outdoor	2-A Lg Indoor, Artificial Light	2-B Lg Mixed Light	4 Nursery
Min Parcel Area (ac) ^{*1, *2, *3}		NA	NA		NA	5	5	5	10	10	10	10
Cultivation Area Limit (sf)		2,500	500	501 — 2,500	2,500	2,501 — 5,000	2,501 — 5,000	2,501 — 5,000	5,001 — 10,000	5,001 — 10,000	5,001 — 10,000	22,000
Zoning District	RR 5 ^{*1}	ZC	AP	UP	ZC	ZC	—	ZC	—	—	—	—
	RR 10	ZC	AP	UP	ZC	ZC	—	ZC	ZC	—	ZC	ZC
	AG	ZC	AP	UP	ZC	ZC	—	ZC	ZC	—	ZC	ZC
	UR	ZC	AP	UP	ZC	ZC	—	ZC	ZC	—	ZC	ZC
	RL	ZC	AP	UP	ZC	ZC	—	ZC	ZC	—	ZC	ZC
	FL ^{*4}	ZC	AP	UP	ZC	AP	—	AP	AP	—	AP	AP
	TPZ ^{*4}	ZC	AP	UP	ZC	AP	—	AP	AP	—	AP	AP
	I1 ^{*5}	ZC	ZC	ZC	ZC	ZC	ZC	ZC	—	ZC	ZC	ZC
	I2 ^{*5}	ZC	ZC	ZC	ZC	ZC	ZC	ZC	—	ZC	ZC	ZC
	PI ^{*5}	ZC	ZC	ZC	ZC	—	ZC	ZC	—	ZC	ZC	ZC

— = Not Allowed, ZC = Zoning Clearance, AP = Administrative Permit, UP = Minor Use Permit

*1 Parcels in the RR-5 zoning district must have a minimum parcel size of five (5) acres.

*2 A parcel that is located in a zoning district that allows commercial cultivation and has a lot area between three and one-half (3.5) and five (5) acres, and that shares at least fifty percent (50%) of its boundaries with parcels five (5) acres in size or larger, may apply for and be granted permit types 1 and 1-B following the issuance of an Administrative Permit pursuant to section 20.242.070(C).

*3 A parcel that is located in a zoning district that allows commercial cultivation and has a lot area between seven (7) and ten (10) acres, and that shares at least fifty percent (50%) of its boundaries with parcels ten (10) acres in size or larger, may apply for and be granted permit types 2, 2-B and 4 following the issuance of an Administrative Permit pursuant to section 20.242.070(C).

*4 Existing cultivation sites in the FL and TPZ zoning districts that were previously enrolled in a permit program pursuant to the County's Chapter 9.31 shall be required to

obtain a zoning clearance unless the applicant seeks to expand beyond the size previously cultivated under such permit program.

*5 Parcels in Industrial zoning districts are not subject to a minimum parcel area.

(C) A reduction in the setback from a legal parcel line required by section 10A.17.040(A)(5) may be allowed following the issuance of an Administrative Permit, approved pursuant to section 20.242.070(C), subject to the following limitations: (1) the approved reduced setback for cultivation not within a structure shall be no less than twenty (20) feet from an adjoining property under separate ownership or an access easement, or (2) for cultivation within a structure, the setback shall be no less than the front, rear, or side yard setback (as applicable) setback for the zoning district in which the property is located. Any reduction of the setback pursuant to this section must comply with the required setback from an occupied legal structure and the reduced setback may not encroach into any corridor preservation setback, pursuant to sections 20.152.015 and 20.152.020.

(D) An existing cultivation site located in a zoning district not listed in Table 1 of this section may continue, but shall not be expanded or enlarged, subject the following planning permit and approval requirements.

(1) Planning Permit Requirements:

- (a) Outdoor Cultivation (pursuant to a MCCO Type C Permit) not exceeding two thousand five hundred (2,500) requires an approved Zoning Clearance.
- (b) Indoor Artificial Light Cultivation (pursuant to a MCCO Type C-A Permit) not exceeding five hundred (500) square feet requires an approved Administrative Permit.
- (c) Indoor Artificial Light Cultivation (pursuant to a MCCO Type C-A Permit) between five hundred one (501) and two thousand five hundred (2,500) square feet requires an approved Minor Use Permit.
- (d) Mixed Light Cultivation (pursuant to a MCCO C-B Permit) not exceeding two thousand five hundred (2,500) square feet requires an approved Zoning Clearance.
 - (i) Any future lapse or revocation of the MCCO permit will extinguish the permittee's ability to obtain a future permit from the Department to continue or resume

an existing cultivation site that is not within a zoning district listed in Table 1 of this section.

- (E) Transferability of Permits. Permits issued pursuant to this Section shall not be transferable to another person, except that the permittee may transfer the permit to a spouse/domestic partner, child, parent, or, for estate planning purposes, to a trust in which the permittee serves as a trustee, which shall not be deemed a change in ownership for purposes of this Chapter.

Section 7. Section 20.242.060 of the Mendocino County Code is hereby amended to read as follows:

Sec. 20.242.060 - New Cannabis Cultivation Sites.

- (A) Except as provided in Section 20.242.050, on or after January 1, 2020, new cannabis cultivation sites may be permitted in accordance with this section.
- (B) All new cannabis cultivation sites shall be consistent with the General Limitations on Cultivation of Cannabis, Section 10A.17.040; provided, however, that an applicant may seek a reduction in the setback requirements as stated in paragraph (D) of this section.
- (C) Cultivation sites, operated in conformance with the MCCO, may be allowed on a legal parcel with an approved Zoning Clearance, Administrative Permit or Minor Use Permit, as required for the zoning district in which the cultivation site is located and listed in Table 2.

TABLE 2
Zoning Permit Requirement for New Cannabis Cultivation by Zoning District and Cannabis Cultivation Ordinance Permit Type

MCCO Permit Type	C Sm Outdoor	C-A Sm Indoor, Artificial Light		C-B Sm Mixed Light	1 Med Outdoor	1-A Med Indoor, Artificial Light	1-B Med Mixed Light	2 Lg Outdoor	2-A Lg Indoor, Artificial Light	2-B Lg Mixed Light	4 Nursery	
Min Parcel Area (ac)	2	2		2	5	5	5	10	10	10	10	
Cultivation Area Limit (sf)	2,500	500	501 — 2,500	2,500	2,501 — 5,000	2,501 — 5,000	2,501 — 5,000	5,001 — 10,000	5,001 — 10,000	5,001 — 10,000	22,000	
Zoning District	RR 5* ¹	ZC	AP	UP	ZC	ZC	—	ZC	—	—	—	—
	RR 10	ZC	AP	UP	ZC	ZC	—	ZC	ZC	—	ZC	ZC
	AG	ZC	AP	UP	ZC	ZC	—	ZC	ZC	—	ZC	ZC
	UR	ZC	AP	UP	ZC	ZC	—	ZC	ZC	—	ZC	ZC
	I1* ²	ZC	ZC	ZC	ZC	—	ZC	ZC	—	ZC	ZC	ZC
	I2* ²	ZC	ZC	ZC	ZC	—	ZC	ZC	—	ZC	ZC	ZC
	PI* ²	ZC	ZC	ZC	ZC	—	ZC	ZC	—	ZC	ZC	ZC

— = Not Allowed, ZC = Zoning Clearance, AP = Administrative Permit, UP = Minor Use Permit

*1 Parcels in the RR-5 zoning district must have a minimum parcel size of five (5) acres.

*2 Parcels in Industrial zoning districts are not subject to a minimum parcel area.

- (D) **Setback Reduction.** A reduction in the setback from a legal parcel line required by Section 10A.17.040 may be allowed with an Administrative Permit, approved according to Section 20.242.070(C), provided that the approved setback reduction is fifty (50) feet or greater from an adjoining property under separate ownership or access easement, whichever is most restrictive and the location of the cannabis cultivation site continues to comply with the required setback from an occupied legal residential structure.

Section 8. Section 20.242.070 of the Mendocino County Code is hereby amended to read as follows:

Sec. 20.242.070 - Planning approval required to cultivate cannabis.

- (A) **Planning Approval Procedure.** Each proposed cannabis cultivation site is subject to one (1) of the following planning

review processes that correspond to the applicable zoning district and Chapter 10A.17 permit as specified by Table 1 or Table 2 in this Chapter.

The Agricultural Commissioner's Office shall refer applications for cultivation permits pursuant to Chapter 10A.17 to the Department, which shall review the application to determine which of the following processes applies. If the application needs only a Zoning Clearance, the Department will provide a zoning clearance approval to the Agricultural Commissioner's Office. If the application requires either an Administrative Permit or a Minor Use Permit, the Department will notify the Agricultural Commissioner's Office and the applicant that planning approval is required.

- (B) Zoning Clearance. The Department shall review the MCCO permit application to confirm the cannabis cultivation site is allowed in zoning district, subject to the applicable requirements of this chapter, and confirm the legal parcel on which the cultivation site is located. The Department shall additionally provide any information as requested by the Agricultural Commissioner's Office to confirm compliance with any of the provisions of Chapter 10A.17.
- (C) Administrative Permit. In accordance with the Administrative Permit review procedure listed in Chapter 20.192, the Zoning Administrator shall approve, conditionally approve or deny an Administrative Permit for cannabis cultivation sites based on the following special findings.
 - (1) The cannabis cultivation site is allowed in the zoning district and it is in compliance with the provisions of Chapter 10A.17.
 - (2) There is no other environmentally superior cultivation site located on the same parcel; the location and operation of the cannabis cultivation site will, to the maximum extent feasible, avoid or minimize its impact on environmentally sensitive areas including hillsides exceeding fifteen (15) percent, prime soil, oak woodland, and timber resources.
 - (3) The cannabis cultivation will avoid or minimize odor and light impact on residential uses.
 - (4) For any new cannabis cultivation site established after January 1, 2020 and that is not located in the AG (Agriculture) Zoning District, the submitted MCCO permit application contains evidence that demonstrates: (1) there is adequate water supply in the watershed and water rights to serve the cultivation site; (2) the cultivation site has received a Clean Water Act Section 404 permit

from the Army Corps of Engineers or a Clean Water Act Section 401 permit from the North Coast Regional Water Quality Control Board, as applicable, and a General Permit for Discharges of Storm Water from the State Water Resources Control Board.

- (5) The Administrative Permit granted for the cannabis cultivation site shall be limited to a period not to exceed ten (10) years. The Administrative Permit shall expire at the end of this period unless it is renewed prior to the end of the 10-year period, or at any time the approved MCCO permit for the cultivation site expires or is revoked.
- (6) An Administrative Permit may be applied for and granted for an exception to the dwelling unit requirement of Chapter 10A.17 for parcels in the Rural Residential, lot size ten (10) acres (R-R:L-10) zoning district with the additional finding that the applicant shall demonstrate that the cultivation site and any associated infrastructure (roads, buildings, water storage, etc.) does not preclude the development of the parcel with a residence in the future. For parcels that will need on-site sewage disposal systems to be developed, making this finding may require the identification of a primary and reserve leach field to be identified in order to issue the Administrative Permit.
- (7) An Administrative Permit may be applied for and granted for an exception to the one thousand (1,000) foot setback requirement of a cannabis cultivation site as outlined in section 10A.17.040(B). Administrative permits may be approved, conditionally approved or denied for the reduction of the setback provided for in section 10A.17.040(A)(1) based on the findings of 20.242.070(C)(1), (C)(2) and (C)(3) and on the following special findings:
 - (i) That there be special circumstances applicable to the property involved, including size, shape, topography, location or surrounding;
 - (ii) That the granting of such reduction will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located; and
 - (iii) That the granting of such reduction will not adversely affect the General Plan.
- (8) Applicants eligible for a Phase One Permit pursuant to Chapter 10A.17 may apply for and be granted an

Administrative Permit for an exception to the setback requirement of section 10A.17.040(A)(5) of an outdoor, greenhouse, or mixed light cultivation site to an adjacent legal parcel under separate ownership or access easement. Administrative Permits may be approved, conditionally approved, or denied for the reduction of required setbacks established in section 10A.17.040(A)(5) to no less than twenty (20) feet for cultivation not in a structure or no less than applicable front, side and rear yard setbacks for cultivation in a structure, based on the findings of section 20.242.070(C)(1), (C)(2), and (C)(3) and on the following special findings:

- (i) That the granting of such reduction will not adversely affect the character, livability, or right to appropriate development of the adjacent property from which the setback reduction is requested; and will not interfere with rights of access or usage for any legal recorded easement; and
 - (ii) That the reduced setback maintains setbacks consistent with provisions of sections 10A.17.040(A)(1), (A)(2), (A)(3), and (A)(4), as applicable, unless the applicant obtains a reduction of such setbacks through an Administrative Permit as permitted by this Chapter.
- (D) Minor Use Permit. In accordance with the Use Permit review procedure listed in Chapter 20.196, the Zoning Administrator or the Planning Commission shall approve, conditionally approve, or deny a Minor Use Permit for a cannabis cultivation site based on findings in Section 20.196.020 and the following special findings:
- (1) The proposed cannabis cultivation site is in compliance with the provisions of Chapter 10A.17.
 - (2) In cases where there is no other environmentally superior cultivation site located on the same parcel, the location and operation of the cannabis cultivation site will, to the maximum extent feasible, avoid or minimize its impact on environmentally sensitive areas including hillsides exceed fifteen (15) percent, prime soil, oak woodland, and timber resources.
 - (3) The proposed cannabis cultivation site will avoid or minimize odor and light impact on residential uses.

- (4) For any new cannabis cultivation site established after January 1, 2020 and that is not located in the AG (Agriculture) Zoning District, the submitted MCCO permit application contains evidence that demonstrates: (1) there is adequate water supply in the watershed and water rights to serve the cultivation site; (2) the cultivation site has received a Clean Water Act Section 404 permit from the Army Corps of Engineers or a Clean Water Act Section 401 permit from the North Coast Regional Water Quality Control Board, as applicable, and a General Permit for Discharges of Storm Water from the State Water Resources Control Board.
- (5) The Use Permit granted for the cannabis cultivation site shall be limited to a period not to exceed ten (10) years. The Use Permit shall expire at the end of this period unless it is renewed prior to the end of [the] 10-year period, or at any time the approved MCCO permit for the cultivation site expires or is revoked.

Section 9. General Plan Consistency. Based on the evidence in the record, the Board of Supervisors finds that the amendments and rezonings being made by this ordinance are consistent with the goals and policies of the Mendocino County General Plan and the Ukiah Valley Area Plan.

Section 10. Rezone – “CA” Cannabis Accommodation Combining Districts. Pursuant to Division I of Title 20, Chapter 20.212 of the Mendocino County Code, the zoning of the properties depicted and listed in the following exhibits, which are attached hereto and incorporated herein by this reference, is hereby changed to reclassify the properties to the “CA” Cannabis Accommodation Combining District:

- Exhibit A. Covelo Core CA District
- Exhibit B. Covelo Fairbanks Road CA District
- Exhibit C. Laytonville CA District
- Exhibit D. South Leggett CA District

Section 11. Rezone – Commercial Cannabis Prohibition Combining Districts. Pursuant to Division I of Title 20, Chapter 20.212 of the Mendocino County Code, the zoning of the properties depicted and listed in the following exhibits, which are attached hereto and incorporated herein by this reference, is hereby changed to reclassify the properties to the “CP” Commercial Cannabis Prohibition Combining District:

- Exhibit E. Deerwood CP District
- Exhibit F. Boonville/Woodyglen CP District

Section 12. Severability. If any section, subsection, provision, phrase, word, or clause of this ordinance or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this

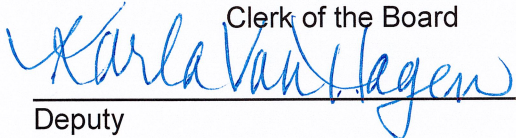
ordinance and each section, subsection, phrase, or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared invalid or unconstitutional.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this 4th day of December, 2018, by the following roll call vote:

AYES: Supervisors Brown, McCowen and Croskey
NOES: None
ABSENT: Supervisors Gjerde and Hamburg

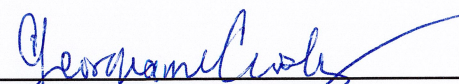
WHEREUPON, the Chair declared the Ordinance passed and adopted
and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO
Clerk of the Board


Deputy

APPROVED AS TO FORM:
KATHARINE L. ELLIOTT, County Counsel





GEORGEANNE CROSKEY, Chair
Mendocino County Board of Supervisors

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

BY: CARMEL J. ANGELO
Clerk of the Board

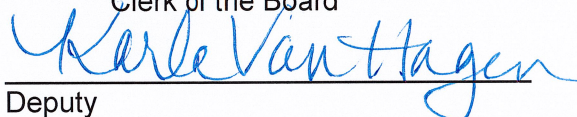

Deputy

EXHIBIT E

ORDINANCE NO. 4413

ORDINANCE AMENDING SECTION 10A.17.090 OF THE MENDOCINO COUNTY CODE TO ALLOW FOR A STAY OF DENIAL OF CANNABIS CULTIVATION PERMIT APPLICATIONS DURING A ONE-YEAR NON-CULTIVATION PERIOD

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

Section 1: Section 10A.17.090 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.090 - Cultivation Permit Application and Zoning Review.

Any person or entity that wishes to engage in the cultivation of cannabis shall submit an application for a Permit to the Agricultural Commissioner's Office. Applications for Permits shall be made upon such forms and accompanied by such plans and documents as may be prescribed by the Agricultural Commissioner's Office. The application shall be reviewed by the Agricultural Commissioner's office and other agencies as described herein and renewed annually. Any referral to or consultation with an agency other than the County of Mendocino shall state that a response must be returned within thirty (30) days of the date of the referral.

Following the submission of an application for a Phase One Permit, an applicant may file with the Agricultural Commissioner's Office, on a form prescribed by the Agricultural Commissioner's Office, a Notice of Application Stay for the purpose of preventing the denial of an application for a Phase One Permit based on inactivity by the applicant for up to a one-year period. An applicant may only file a Notice of Application Stay one time. Nothing in this paragraph is intended to prevent the County or the applicant the ability to continue processing or perfecting the application. During the time period of this Application Stay, the applicant shall be prohibited from cultivating cannabis in excess of the limitations of paragraph (B) or (C) of section 10A.17.030 and shall allow the County to make and shall pay the reasonable costs for an inspection of the applicant's cultivation site (and origin site if the application involves a relocation) to confirm compliance with this paragraph; violation of this prohibition shall be a violation of County Code, subject to administrative penalties, and shall be cause for immediate denial of the permit application. Any denial of an application may be followed by nuisance abatement procedures. During the time period of the Application Stay, the applicant shall remain subject to all code enforcement provisions as identified in section 10A.17.100.

The Agricultural Commissioner's Office shall refer each application to the Department of Planning and Building Services for a determination pursuant to Chapter 20.242 as to what type of clearance or permit is required. No application for a Permit shall be approved without clearance or final permit approval as required by Chapter 20.242.

The Agricultural Commissioner's Office shall consult with the Mendocino County Air Quality Management District (MCAQMD) prior to the issuance of the

Permit to determine if a permit or other approval by the MCAQMD is necessary. The applicant shall obtain all approvals and permits required by the MCAQMD pursuant to state and federal laws, MCAQMD regulations, adopted air quality plans, MCAQMD policies and other applicable statutes prior to the issuance of a Permit. The required consultation with MCAQMD may be eliminated if MCAQMD authorizes County to determine when a permit or other approval by the District is necessary based on an objective set of criteria developed by MCAQMD for such purposes.

Applicants for a Permit shall provide the following information on, or as an attachment to, the application:

- (A) The name, business and residential address, and phone number(s) of the applicant.
- (B) If the applicant is not the record title owner of the legal parcel, written consent from the owner allowing the cultivation of cannabis on their property by the applicant with original signature of the record title owner.
- (C) Written evidence that each person applying for the permit and any other person who will be engaged in the cultivation of cannabis is at least twenty-one (21) years of age.
- (D) Site plan showing the entire legal parcel configuration with Assessor's Parcel Number(s), acreage, site address, including the location of:
 - (1) easements (access and utility and all roadways public and private);
 - (2) streams, springs, ponds and other surface water features, including the location of any flood plain or floodways;
 - (3) the location and area of the cultivation site on the legal parcel, with dimensions of the area for cultivation of cannabis and showing that all setbacks required by section 10A.17.040 are being met;
 - (4) all areas of ground disturbance or surface water disturbance associated with cultivation of cannabis activities, including: access roads, water diversions, culverts, ponds, dams, graded flats, and other related features;
 - (5) all structures, which shall be clearly labeled; and
 - (6) all septic systems, leach fields and water wells.
- (E) Applications submitted for any Permit during Phase One shall include proof of prior cultivation pursuant to section 10A.17.080
- (F) A cultivation and operations plan which includes elements that meet or exceed the minimum legal standards for the following: water storage,

conservation and use; drainage, runoff and erosion control; watershed and habitat protection; and proper storage of fertilizers, pesticides and other regulated products to be used on the legal parcel. Any fuel, fertilizer, pesticides, or other substance toxic to wildlife, children, or pets, must be stored in a secured and locked structure or device. The plan will also provide a description of cultivation activities including, but not limited to, permit type, cultivation area, soil/media importation and management, the approximate date(s) of all cannabis cultivation activities that have been conducted on the legal parcel prior to the effective date of this ordinance, and schedule of activities during each month of the growing and harvesting season.

If a generator is proposed to support any aspect of the cultivation site or related operations, the cultivation and operations plan shall identify any containment structure and dimensions necessary to contain any leak or spill that may develop or occur as a result of relying on any generator for backup power generation. The plan shall also include a maintenance plan for the generator, detailing how spent oil, used oil filters, expired batteries and other hazardous wastes generated from the operation of the generator will be handled, including fuel storage and delivery systems.

- (G) Copy of the statement of water diversion, or other permit, license or registration filed with California Water Resources Control Board, Division of Water Rights, if applicable.
- (H) An irrigation plan and projected water usage for the proposed cultivation activities, as well as a description of legal water source, if not covered by item (G).
- (I) Copy of Notice of Intent and Monitoring Self-Certification and any other documents filed with the North Coast Regional Water Quality Control Board (NCRWQCB) demonstrating enrollment in and compliance with (or proof of exemption from) Tier 1, 2 or 3, North Coast Regional Water Quality Control Board Order No. 2015-0023, or any substantially equivalent rule that may be subsequently adopted by the County of Mendocino or other responsible agency.
- (J) If any on-site or off-site component of the cultivation facility, including access roads, water supply, grading or terracing impacts the bed or bank of any stream or other watercourse, show proof they have notified the California Department of Fish and Wildlife (CDFW) pursuant to section 1602 of the Fish and Game Code and provide a copy of the Streambed Alteration Permit obtained from the Department of Fish & Wildlife.
- (K) If the source of water is a well, a copy of the County well permit, if available; applicant shall provide documentation showing the approximate date of installation.

- (L) A unique identifying number from a State of California Driver's License or Identification Card for each person applying for the permit and any other person who will be engaged in cultivation of cannabis.
- (M) Evidence that the applicant or any individual engaged in the management of, or employed by, the cultivator has not been convicted of a violent felony as defined in Penal Code section 667.5(c) within the State of California, or a crime that would have constituted a violent felony as defined in Penal Code section 667.5(c) if committed in the State of California and is not currently on parole or felony probation. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
- (N) A statement describing the proposed security measures for the facility that shall be sufficient to ensure the safety of members and employees and protect the premises from theft.
- (O) If the applicant is organized as a non-profit corporation, the applicant shall set forth the name of the corporation exactly as shown in its Articles of Incorporation, and the names and residence addresses of each of the officers and/or directors. If the applicant is organized as a partnership, the application shall set forth the name and residence address of each of the partners, including the general partner and any limited partners. Copies of the Articles of Incorporation or a statement listing the members of the partnership shall be attached to the application.
- (P) Intentionally Omitted.
- (Q) A copy of a Board of Equalization Seller's Permit if applicant intends to sell directly to qualified patients or primary caregivers.
- (R) Written consent for an onsite pre-permit inspection of the legal parcel pursuant to section 10A.17.070 by County officials or other appropriate agency representatives at a prearranged date and time in consultation with the applicant prior to the approval of a permit to cultivate cannabis, and at least once annually thereafter.
- (S) For all indoor cultivation facilities, identify the source of electrical power and plan for compliance with applicable Building Codes. Also, provide documentation that addresses the handling of waste discharge from the grow location of items including, but not limited to nutrients, spent growing media, un-used containers and other associated hardware, supplies, and garbage.
- (T) No application shall be approved which identifies or would require the removal of tree species listed in paragraph (I) of Section 10A.17.040 after May 4, 2017, for the purpose of developing a cultivation site. For applications where trees were removed prior to May 4, 2017, applicants shall provide evidence to the Department of Agriculture that no trees were unlawfully removed to develop a cultivation site; such evidence

may include, but is not limited to, a less-than-3-acre conversion exemption or timberland conversion permit issued by the California Department of Forestry and Fire Protection ("CalFire") and trees were removed prior to May 4, 2017. If during review of an application County staff determine that trees were unlawfully removed to develop a cultivation site, the County shall deny the application. Notwithstanding the foregoing, for cultivation sites created prior to May 4, 2017, through prior unauthorized conversion of timberland as defined in Public Resources Code section 4526, a Permit may be approved if the applicant provides evidence that environmental impacts of the tree removal have been mitigated to the extent feasible or otherwise resolved, as required by the resource protection agencies including CalFire, the NCRWQCB and the CDFW. County staff shall defer to the resource protection agencies referenced herein for determinations as to the unlawful removal of trees or unauthorized conversion of timberland or the sufficiency of any required remediation to address the environmental impacts. Nothing herein shall be construed to limit or condition in any way the regulatory or enforcement authority of the resource agencies listed herein.

- (U) If applicable, clearance from CalFire related to compliance with the requirements of Public Resources Code Section 4290 and any implementing regulations.
- (V) For activities that involve construction and other work in Waters of the United States, that are not otherwise exempt or excluded, including streams and wetlands, the application shall include a copy of a federal Clean Water Act (CWA) Section 404 permit obtained from the Army Corps of Engineers and a CWA Section 401 water quality certification from the NCRWQCB.
- (W) Projects that disturb one (1) or more acres of soil or projects that disturb less than one acre but that are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the State Water Resources Control Board General Permit for Discharges of Storm Water Associated with Construction Activity Construction General Permit Order 2009- 0009-DWQ. Construction activity subject to this permit includes clearing, grading and disturbances to the ground such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility.
- (X) The results of a "Cortese List" database search for sites known to be contaminated with hazardous materials. If the site is listed on the "Cortese List", the application shall include sufficient information to demonstrate that the cultivation is in compliance with any cleanup and/or abatement order that is established for the site.
- (Y) If water or sewer services to the cultivation site will be provided by a community provider, a will-serve letter from the provider indicating adequate capacity to serve the cultivation site.

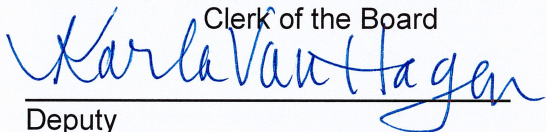
The Agricultural Commissioner is authorized to require in the permit application any other information reasonably related to the application including, but not limited to, any information necessary to discover the truth of the matters set forth in the application.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this 10th day of July, 2018, by the following roll call vote:

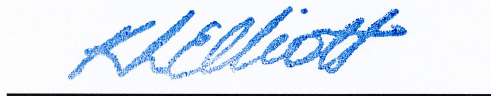
AYES: Supervisors Brown, McCowen, Croskey, Gjerde, and Hamburg
NOES: None
ABSENT: None

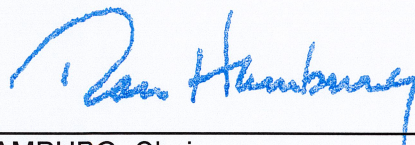
WHEREUPON, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO
Clerk of the Board


Deputy

APPROVED AS TO FORM:
KATHARINE L. ELLIOTT, County Counsel





DAN HAMBURG, Chair
Mendocino County Board of Supervisors

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

BY: CARMEL J. ANGELO
Clerk of the Board

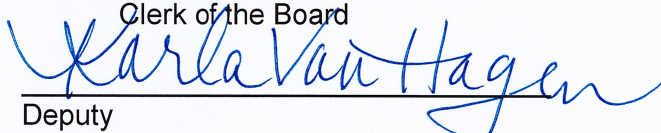

Deputy

EXHIBIT F

ORDINANCE NO. 4411

**ORDINANCE AMENDING SECTION 10A.17.080 OF THE MENDOCINO COUNTY CODE TO
EXTEND THE DEADLINE TO APPLY FOR A CANNABIS CULTIVATION PERMIT**

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

Section 1: Section 10A.17.080 is hereby amended to read as follows:

Sec. 10A.17.080 - Permit Phases and Requirements Specific to each Phase.

Unless specifically exempted, in addition to compliance with all other requirements of this Chapter, all Permits shall comply with the following requirements:

- (A) Permits under the MCCO will be issued in the following three phases:
 - (1) Phase One: Following the effective date of the MCCO, Permits will only be issued to applicants who provide to the Agricultural Commissioner pursuant to paragraph (B)(1) of this section proof of cultivation at a cultivation site prior to January 1, 2016 ("proof of prior cultivation"), and who comply with all other applicable conditions of this Chapter and Chapter 20.242. Applications for Permits during Phase One shall only be accepted until December 31, 2018. Applicants able to provide proof of prior cultivation may apply for a Permit on a relocation site pursuant to paragraph (B)(3) of this section.
 - (2) Phase Two: Starting January 1, 2018, the Agricultural Commissioner will begin accepting applications for Type 1A and Type 2A Permits for indoor cultivation in the following zoning districts, subject to compliance with all other applicable conditions of this Chapter and Chapter 20.242: Limited Industrial (I-1), General Industrial (I-2), and Pinoleville Industrial (P-I). Proof of cultivation prior to January 1, 2016, is not required.
 - (3) Phase Three: Starting January 1, 2020, the Agricultural Commissioner will begin accepting Permit applications from any applicant in conformance with the conditions of this Chapter and Chapter 20.242. Proof of cultivation prior to January 1, 2016, is not required.
- (B) Requirements specific to Phase One Permits.
 - (1) Proof of Prior Cultivation. Persons applying for a Permit during Phase One shall be required to provide to the Agricultural Commissioner evidence that they were cultivating cannabis on the cultivation site prior to January 1, 2016, which cultivation site shall have been, or could have been, in compliance with the setback requirements of paragraph (A) of section 10A.17.040. Evidence shall include:

- (a) Photographs of any cultivation activities that existed on the legal parcel prior to January 1, 2016, including: (i) ground level views of the cultivation activities and (ii) aerial views from Google Earth, Bing Maps, Terraserver, or a comparable service showing: both the entire legal parcel and the cultivation site in more detail. The date these images were captured shall be noted.
 - (b) Photographs of any cultivation activities that currently exist on the legal parcel, including: (i) ground level views of the cultivation activities and (ii) aerial views from Google Earth, Bing Maps, Terraserver, or a comparable service showing: both the entire legal parcel and the cultivation site in more detail. The date these images were captured shall be noted.
 - (c) At least one additional document demonstrating cultivation on the legal parcel prior to January 1, 2016, which evidence may be used to substitute for evidence pursuant to clause (a). The Agricultural Commissioner shall prepare a list of the types of documentation that will be accepted to meet this requirement, and may accept other similarly reliable documentary evidence showing that cannabis was cultivated prior to January 1, 2016.
 - (d) Proof of prior cultivation shall be assigned to the applicant relative to their prior cultivation site.
 - (e) Persons who participated in a permit program pursuant to the County's Chapter 9.31 in previous years may present evidence of such participation and payment of all required fees in order to provide proof of prior cultivation.
- (2) Zoning Districts; Exceptions. Existing cultivation sites not located in zoning districts where Chapter 20.242 specifically allows cultivation may be issued a Type C, Type C-A, or Type C-B Permit, subject to the following requirements, in addition to all other applicable requirements of this Chapter:
- (a) The zoning district is one where a dwelling unit is a principally permitted use and a dwelling unit is present.
 - (b) Sunset Provision for Residential Districts. Cultivation sites on legal parcels located in the Single-Family Residential (R-1), Two-Family Residential (R-2), Multiple-Family Residential (R-3), Suburban Residential (S-R), Rural Community (R-C), and Rural Residential (lot sizes one (1) acre, two (2) acres and five (5) acres [legal non-conforming parcels to minimum zoning size])[R-R:L-1, R-R:L-2, and R-R:L-5 {legal non-conforming to minimum

zoning size})), as well as cultivation sites in any other zoning district where a dwelling unit is a principally permitted use and the legal parcel is less than two (2) acres in size, are subject to the following requirements:

- (i) There is an occupied dwelling unit on the legal parcel with the cultivation site.
 - (ii) A Permit may be renewed and valid only until three (3) years following the effective date of the ordinance adopting this Chapter and any permits issued shall be void not later than three (3) years following said effective date.
 - (c) Cultivation sites on legal parcels located in the Rural Residential zoning district, lot size five (5) acres (conforming parcels of five acres or more only)(R-R:L-5), are subject to the following additional requirement that there is an occupied dwelling unit on the legal parcel with the cultivation site.
 - (d) If a Permit is granted pursuant to this paragraph (B)(2) in these zoning districts, any future revocation or lapse in renewal of such Permit shall extinguish the ability of any person to obtain a Permit for such cultivation site.
- (3) Relocation. Persons able to show proof of prior cultivation pursuant to paragraph (B)(1) above may apply for a Permit not on the site previously cultivated (the "origin site") but on a different legal parcel (the "destination site"), subject to the following requirements:
- (a) Persons may apply to relocate their cultivation site pursuant to this paragraph (B)(3) until three (3) years after the effective date of the ordinance adopting this Chapter, or until May 4, 2020.
 - (b) The location and operation of the proposed cultivation site on the destination parcel complies with all requirements and development standards that apply to a new cultivation site as of January 1, 2020, pursuant to this Chapter and Chapter 20.242; provided, however:
 - (i) An existing cultivation site shall not be transferred to a legal parcel located within the Forestland or Timber Production Zone zoning districts.
 - (ii) An origin site may relocate to a destination site in the Rangeland zoning district, so long as the destination site has an existing cultivation site and no new cultivation sites would be established.

- (c) The origin site shall be restored. The application for a Permit on a destination site shall be accompanied by a restoration plan that is consistent with the standard conditions and best management practices listed in the North Coast Regional Water Quality Control Board Order No. 2015-0023, and which shall include the following:
 - (i) Remove or repurpose buildings, greenhouses, fences, irrigation equipment, water intakes, pumps, storage tanks and other materials brought to the origin site for the purpose of cannabis cultivation;
 - (ii) Remove illegal dams, ponds or other in-stream water storage to restore natural stream flows, unless such features will continue in use;
 - (iii) Remove or compost agricultural wastes;
 - (iv) Remove trash and other debris; and
 - (v) Revegetate cleared areas with native plants typical of nearby natural areas, including groundcover, shrubs and trees.
 - (d) Unless the destination site is within the Agricultural zoning district, the application shall include either a water availability analysis pursuant to paragraph (C)(1)(b) below or a will serve letter pursuant to paragraph (C)(1)(c) below.
 - (e) Prior to the issuance of the Permit to cultivate cannabis at the destination parcel, the applicant shall provide the Agricultural Commissioner with an agreement, on a form approved by the Agricultural Commissioner and County Counsel, providing that the applicant releases any right to continue or resume cultivation of cannabis on the origin parcel.
 - (f) If a person is granted a Permit for a destination site, any claims of proof of prior cultivation on the origin site shall be effectively transferred to the destination site, and the ability to claim proof of prior cultivation at the origin site shall be extinguished.
 - (g) There shall be a two (2) acre minimum parcel size for all Type C, Type C-A or Type C-B Permits.
- (4) Multiple Permits may be applied for and granted on a single legal parcel that is owned by multiple persons residing in separate

habitable dwelling units on that legal parcel. Each owner may individually apply for a Permit to cultivate cannabis, provided that each owner must provide proof of prior cultivation pursuant to paragraph (B)(1) above. Each owner shall be limited to a Type C, Type C-A or Type C-B Permit, unless that owner was previously enrolled in a permit program pursuant to the County's Chapter 9.31, or unless the cumulative total square footage of plant canopy applied for by all owners does not exceed the maximum square footage permitted on a parcel for the relevant zoning district.

- (5) Persons eligible to apply for a Permit during Phase One may apply for a different and/or larger Permit type in subsequent years, subject to all requirements of this Chapter.
- (6) If a Permit is granted pursuant to this paragraph (B), any future revocation or lapse in renewal of such Permit shall extinguish the ability of any person to obtain a Permit for such cultivation site, unless otherwise allowed by this Chapter 10A.17; provided, however, for Permits granted in the Rangeland (RL), Forestland (FL) or Timberland Protection (TPZ) zoning districts, not more than once in a five-year period, a Permittee may file with the Department of Agriculture, on a form prescribed by the Department, a Notice of Non-Cultivation instead of an application to renew the Permit, and the Permittee's ability to obtain a Permit for such cultivation site will not be extinguished.

(C) Requirements specific to Phase Three Permits.

- (1) Watershed Assessment. All Permit applications, except for legal parcels located in the Agricultural (A-G) zoning district, shall demonstrate there is adequate water to serve the cultivation site.
 - (a) If surface water (or groundwater influenced by surface water) will be used, applicants may demonstrate that there is adequate water by providing (i) a watershed assessment that establishes there is sufficient watershed supply to serve the proposed cultivation site and existing uses within the watershed, and (ii) a water right exists to serve the cultivation site. A watershed assessment shall consist of an established "In Stream Flow Policy" as prepared by the State Water Resources Control Board Division of Water Rights or an equivalent document approved by that agency.
 - (b) If groundwater not influenced by surface water will be used, the applicant may demonstrate that there is adequate water by providing a water availability analysis which will address the adequacy of the proposed water supply, the direct effects on adjacent and surrounding water users, and possible cumulative adverse impacts of

the development on the water supply within the watershed and show there is a sustained yield to support the proposed level of use.

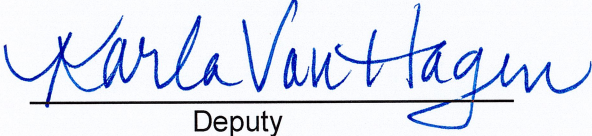
- (c) If water will be provided by a mutual water company, municipal or private utility or similar community provider, the applicant may demonstrate that there is adequate water by providing a will serve letter from the proposed provider.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this 5th day of June, 2018, by the following roll call vote:

AYES: Supervisors Brown, McCowen, Gjerde, and Hamburg
NOES: Supervisor Croskey
ABSENT: None

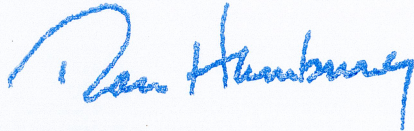
WHEREUPON, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO
Clerk of the Board


Deputy

APPROVED AS TO FORM:
KATHARINE L. ELLIOTT, County Counsel





DAN HAMBURG, Chair
Mendocino County Board of Supervisors

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

BY: CARMEL J. ANGELO
Clerk of the Board

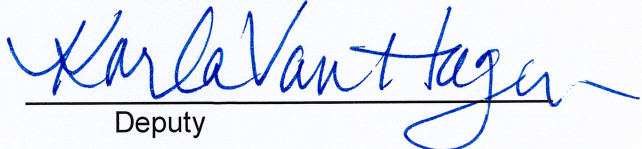

Deputy

EXHIBIT G

ORDINANCE NO. 4408

ORDINANCE REPEALING CHAPTER 9.30 – ADULT USE MARIJUANA CULTIVATION REGULATION AND AMENDING CHAPTER 10A.17 – MEDICAL CANNABIS CULTIVATION ORDINANCE AND CHAPTER 20.242 – MEDICAL CANNABIS CULTIVATION SITE

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

Section 1: Chapter 10A.17 is hereby renamed as follows:

CHAPTER 10A.17 - MENDOCINO CANNABIS CULTIVATION ORDINANCE

Section 2: Section 10A.17.010 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.010 - Title, Purpose and Intent.

This Chapter is known and may be cited as the Mendocino Cannabis Cultivation Ordinance ("MCCO"). Chapter 20.242 of the Mendocino County Code, titled Cannabis Cultivation Sites, is complementary to this Chapter and together the chapters may be cited as the Mendocino Cannabis Cultivation Regulation ("MCCR").

It is the purpose and intent of this Chapter, together with complementary regulations found in Chapter 20.242 of the Mendocino County Zoning Code, to regulate the cultivation of cannabis within the unincorporated areas of Mendocino County in a manner that is consistent with State law and which promotes the health, safety, and general welfare of the residents and businesses within those areas by balancing the needs of medical patients and their caregivers for enhanced access to medical cannabis, the needs of neighbors and communities to be protected from public safety and nuisance impacts, and the need to limit harmful environmental impacts that are sometimes associated with cannabis cultivation.

Adoption of this Chapter will protect the public health, safety and welfare of the residents of the County of Mendocino by adopting regulations regarding the cultivation of cannabis by individuals consistent with the provisions of State law and a local permitting structure that will operate in conformance with State licensing requirements for the commercial cultivation of cannabis, as state licenses become available.

All cultivation of cannabis within the County of Mendocino, except for cultivation allowed pursuant to Chapter 9.31, shall comply with the provisions of the MCCR, as well as all applicable state and local laws, regardless of whether the cultivation site existed or occurred prior to the adoption of the MCCR.

Nothing in this Chapter is intended, nor shall it be construed, to:

- 1) Allow persons to engage in conduct that endangers others or causes a public nuisance, or

- 2) Allow any activity relating to the cultivation, distribution or consumption of cannabis that is otherwise illegal under California State law.

Nothing in this Chapter is intended, nor shall it be construed, to exempt the cultivation of cannabis from compliance with all other applicable Mendocino County zoning and land use regulations, as well as other applicable provisions of the County Code, or compliance with any applicable state laws.

Nothing in this Chapter is intended, nor shall it be construed, to confer the right to create or maintain a public nuisance in the course of cultivating cannabis plants.

Nothing in this Chapter is intended, nor shall it be construed, to exempt the cultivation of cannabis, as defined herein, from any and all applicable local and state construction, grading, electrical, plumbing, land use, water rights, waste water discharge, streambed alteration, or any other environmental, building or land use standards or permitting requirements.

Nothing in this Chapter is intended, nor shall it be construed, to preclude a landlord or property owner from limiting or prohibiting the cultivation of cannabis.

All persons operating facilities and conducting activities associated with the cultivation of cannabis, as defined in this Chapter, are subject to possible federal prosecution, regardless of the protections provided by state or local law.

Section 3: Section 10A.17.020 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.020 - Definitions.

As used herein the following definitions shall apply:

"A-license" means a state license issued under the State of California Medicinal and Adult-Use Cannabis Regulatory Safety Act (MAUCRSA), or subsequent legislation, for cannabis or cannabis products that are intended for adults 21 years of age and over and who do not possess physician's recommendations.

"A-licensee" means any person holding a license under the MAUCRSA, or subsequent legislation, for cannabis or cannabis products that are intended for adults 21 years of age and over and who do not possess physician's recommendations.

"Agricultural Commissioner" or "Agricultural Commissioner's Office" or the "Department of Agriculture" means the Mendocino County Department of Agriculture or the authorized representatives thereof, or such other department, division or representative as designated by the Board of Supervisors.

"Attorney General's Guidelines" means the document titled "Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use issued by the California State Attorney General in August 2008.

"Baseline date" means August 26, 2016, which is the date the Initial Study under the California Environmental Quality Act for the MCCR was initiated.

"Cannabis" means all parts of the plant Cannabis sativa, Cannabis indica, or Cannabis ruderalis, or any other strain or varietal of the genus Cannabis that may hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds thereof. "Cannabis" also means marijuana as defined by Section 11018 of the State of California Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. For the purpose of this section, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the State of California Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

"Cannabis product" has the same meaning as in Health and Safety Code section 11018.1.

"Church" means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.

"Clone" means a portion of a stem that is cut from a parent plant and induced to form roots by chemical, mechanical, or environmental manipulation.

"Collective" means a medical marijuana collective, as defined below.

"Cultivation cycle" means each individual cycle where cannabis plants are grown to maturity from seeds, clones or nursery starts.

"Cultivation of cannabis" means the planting, growing, harvesting, drying or processing at a cultivation site of cannabis plants or any part thereof.

"Cultivation site" means one or more locations or facilities on one legal parcel (or one or more legal parcels if specifically allowed for by this Chapter 10A.17) subject to a single approved Permit where cannabis is planted, grown, harvested, dried, cured, graded, trimmed, processed or packaged for transport, or that does all or any combination of those activities. One or more areas of cannabis cultivation may exist on the legal parcel used for that purpose.

"Disturbance" means areas of land where natural plant growth has been removed whether by physical, animal, or chemical means, or natural grade has been modified for any purpose. Land disturbance includes all activities whatsoever associated with developing or modifying land for cannabis cultivation related activities or access. Land disturbance activities include, but are not limited to, construction of roads, buildings, or water storage areas; excavation; grading; and site clearing. Disturbed land includes cultivation areas and storage areas where soil or soil amendments (e.g., potting soil, compost, or

biosolids) are located. Areas where plant material has been removed for the purpose of wildfire suppression are not considered disturbed.

"Dwelling unit" means a legal residential structure providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation, and having only one (1) kitchen.

"Expansion" means an increase in the size of Plant Canopy above the area cultivated as of the Baseline Date.

"Flowering" means that a cannabis plant has formed a mass of pistils measuring greater than one half inch wide at its widest point.

"Greenhouse" means a completely enclosed structure whose structural members are made of pre-formed, rigid construction materials. The walls, roof, and ends are typically covered using a transparent material, often glass, that is fixed in place, and which allows solar radiation to penetrate the surface and affect the growing environment of the plants inside.

"Hoop House" means a structure with structural members are made of flexible and somewhat rigid construction materials, typically PVC pipe or similar material. The ends may be covered or left open and the material covering the structural members is readily removable and is typically removed and re-affixed frequently.

"Identification card" shall have the same definition as California Health and Safety Code section 11362.5 et seq., and as may be amended.

"Immature plant" or "immature" means a cannabis plant that is not flowering.

"Indoors" means within a fully enclosed and secure structure that complies with the California Building Code, as adopted by the County of Mendocino, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one (1) or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2" x 4" or thicker studs overlain with 3/8" or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

"Legal parcel" or "Parcel" means a lot of real property which was created pursuant to the Subdivision Map Act prior to January 1, 2016, or for which a certificate of compliance was recognized and recorded prior to January 1, 2016; provided, however, for real property within Industrial zoning districts, subdivisions or certificates of compliance may be recognized and recorded after January 1, 2016.

"License" means a state license issued under the MAUCRSA, or subsequent legislation, and includes both an A-license and an M-license.

"Licensee" means a person issued a state license under the MAUCRSA, or subsequent legislation, to engage in commercial cannabis activity, regardless of whether the license held is an A-license or an M-license.

"M-license" means a state license issued under the MAUCRSA, or subsequent legislation, for commercial cannabis activity involving medicinal cannabis.

"M-licensee" means any person holding a license under the MAUCRSA, or subsequent legislation, for commercial cannabis activity involving medicinal cannabis.

"Mature plant" means a cannabis plant that is flowering.

"Medical marijuana collective" means qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients who associate by written agreement, or form a cooperative in accordance with Section 12300 of the California Corporations Code within the unincorporated area of the County in order to collectively or cooperatively cultivate, store, and/or dispense cannabis for medical purposes, as provided in California Health and Safety Code Section 11362.775. The term collective shall include "cooperative" unless the context clearly indicates otherwise.

"Mixed light" means the use of both natural and artificial or supplemental lighting sources during the growing cycle to cultivate cannabis. Included in this definition is the process of solely manipulating natural light to cultivate cannabis.

"Nursery producer" means a Permittee that produces vegetative immature cannabis plants, through cloning, seed germination, or tissue culture, intended for sale, trade, barter, etc. A nursery producer may also apply to be a "seed producer" as defined herein.

"Outdoors" means any cultivation site that uses no artificial or supplemental lighting to cultivate cannabis. Use of supplemental lighting to maintain vegetative starts or immature plants prior to transplanting outdoors shall be considered consistent with this definition.

"Park" means an area of land used for community recreation owned or operated by a public entity or a private area of land recognized as a neighborhood park utilized by youth. State or Federal designated parks and forestlands as recognized within the Mendocino County General Plan are not included within this definition.

"Permit" means a permit to cultivate cannabis in Mendocino County pursuant to this Chapter.

"Permittee" means a Person issued a permit to cultivate cannabis in Mendocino County pursuant this Chapter.

"Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.

"Person with an identification card" means an individual who is a qualified patient who has applied for and obtained a valid identification card pursuant to Article 2.5 of Chapter 6 of Division 10 of the California Health and Safety Code (Section 11362.7 et seq.).

"Plant canopy" or "square footage" or "total square footage of plant canopy" or "cultivation area" means the cumulative total of square footage occupied by growing cannabis plants as calculated by the Agricultural Commissioner's Office but does not include aisles or other open areas outside the canopy area of growing cannabis plants.

"Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, as defined in Health and Safety Code section 11362.7(d).

"Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling, for purposes of this Chapter.

"Processing" means to harvest, dry, cure, grade, trim, or package for transport cannabis.

"Publically traveled private road" means a private roadway easement or access easement which serves, or has the potential to serve, more than four (4) lots or parcels. Such easement shall be considered a street as defined in Mendocino County Code section 20.008.052 (26).

"Qualified patient" or "Patient" means a person who is entitled to the protections of section 11362.5 of the Health and Safety Code, but who does not have an identification card issued pursuant to Article 2.5 of Chapter 6 of Division 10 of the Health and Safety Code (Section 11362.7 et seq.).

"Residential treatment facility" means a State licensed residential facility that provides treatment for drug and/or alcohol dependency.

"School" means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code, or any licensed child day care or preschool facility. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college or university.

"Seed producer" means a permitted nursery producer that has applied for and been approved to grow cannabis plants for the expressed purpose of producing specific breeds or varieties of cannabis seeds or to develop unique strains or varieties.

"Sheriff" or "Sheriff's Office" means the Sheriff's Office of the County of Mendocino or the authorized representatives thereof.

"Track and Trace" means a monitoring system providing traceability throughout the production and distribution lifecycle of permitted cannabis utilizing a unique identifier pursuant to section 11362.777 of the Health and Safety Code to assist government with enforcing regulations and preventing the illegal diversion of cannabis.

"Unique identifier" or "Unique ID" means individual, non-repeating identification issued to a permittee and attached to the base of each cannabis plant permitted at a cultivation site during the cultivation period or otherwise utilized in connection with an approved Track and Trace system.

"Wildlife exclusionary fence" means fencing that is designed to prevent the access of wild animals to the cultivation area by incorporating exclusionary measures designed to prevent the surface digging of wild animals under the upright portion of the fencing, the scaling of the fencing itself, and intrusion over the fencing. A number of methods are available to develop such fencing, including but not limited to: use of "no climb" wire fencing, addition of electrified "hot" wire(s) to the exterior of a solid fence, height extensions to a standard fence (where permissible) using hot wire or barbed wire strung between the extensions, etc.

"Youth-oriented facility" means an elementary school, middle school, high school, public park, or any establishment that advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors. Youth-oriented facility shall include "day care center," as defined in Section 1596.76 of the California Health and Safety Code, as that section may be modified or superseded, and shall include "youth center" as defined in Section 11353.1 of the Health and Safety Code, as that section may be modified or superseded.

Section 3. Section 10A.17.030 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.030 - Cultivation Permit Required; Exemptions.

- (A) Except as provided for by this Section, cultivation of cannabis shall be allowed only following the issuance of a Permit pursuant to the provisions of this Chapter, and the review of a permit pursuant to the provisions of Chapter 20.242 of the Mendocino County Zoning Code. Chapter 20.242 authorizes the cultivation of cannabis only in specifically enumerated zoning districts, as determined by permit type, subject either to a zoning clearance, administrative permit or minor use permit.

- (B) Qualified patients, persons with an identification card or primary caregivers cultivating cannabis are exempt from the permit requirements of paragraph (A) of this Section, subject to the following requirements:
- (1) Intentionally Omitted.
 - (2) Compliance with the provisions of Section 10A.17.040.
 - (3) Any and all cannabis cultivated by a qualified patient or person with an identification card shall be for the sole and exclusive use by the patient only; such cannabis may not be provided, donated, sold or distributed to any other person. A maximum of 100 square feet of medical cannabis may be cultivated on a legal parcel by a qualified patient or patients.
 - (4) Any and all cannabis cultivated by a primary caregiver shall be for the sole and exclusive use of up to a maximum of two (2) patients which have provided written designation to the primary caregiver to provide those services; the primary caregiver may not receive remuneration for these activities except for compensation in full compliance with subdivision (c) of Health and Safety Code section 11362.765. A maximum of 100 square feet of cultivation area of medical cannabis may be cultivated by a primary caregiver for each patient they are cultivating for. A maximum total of 200 square feet may be cultivated on a legal parcel by a primary caregiver or caregivers. Primary caregivers cultivating more than 100 square feet shall be required to register with the Agriculture Department on an annual basis.
 - (5) Persons eligible to cultivate cannabis under this paragraph (B) may also cultivate cannabis for adult use, but any such cannabis plants must be contained within the square footage allowed in this paragraph (B).
- (C) Individuals desiring to cultivate cannabis for adult use are exempt from the permit requirements of paragraph (A) of this section, subject to compliance with the following requirements:
- (1) Compliance with the provisions of Section 10A.17.040.
 - (2) Cultivation of cannabis must occur in or on the grounds of a private residence or accessory structure, may be within one (1) or more cultivation sites, and contain no more than six (6) cannabis plants with a total plant canopy not to exceed one hundred (100) square feet.
 - (3) Cultivation of adult use cannabis under this paragraph (C) on legal parcels where medical cannabis plants are being cultivated pursuant to Chapter 9.31 shall not be used to increase the total number of cannabis plants that may be cultivated on the legal

parcel, but up to six (6) of the total allowed number of twenty-five (25) plants may be set aside as personal cultivation of adult use cannabis.

- (4) Cultivation of adult use cannabis under this paragraph (C) on legal parcels where cannabis plants are being cultivated under a Permit issued pursuant to this Chapter 10A.17 is allowed, provided that the person or persons cultivating the adult use cannabis reside on the legal parcel, the adult use cannabis plants do not exceed one hundred (100) square feet of total plant canopy, and the adult use cannabis plants shall be identified on the site plan required pursuant to section 10A.17.090.
- (5) Cultivation of adult use cannabis under this paragraph (C) on any legal parcel less than ten (10) acres in size shall only be allowed indoors.

Section 4. Section 10A.17.040 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.040 - General Limitations on Cultivation of Cannabis.

The following limitations shall apply to all cultivation of cannabis in Mendocino County, including but not limited to cultivation pursuant to a Permit issued under this Chapter or an exemption provided for in Section 10A.17.030. Cultivation of cannabis shall also be subject to all applicable restrictions of Mendocino County Code Chapter 20.242.

- (A) The cultivation of cannabis in Mendocino County, in any amount or quantity by any entity, shall not be allowed in the following areas:
 - (1) Within one thousand (1,000) feet of a youth-oriented facility, a school, a park, or any church or residential treatment facility as defined herein that is in existence at the time a Permit is initially applied for.
 - (2) Outdoors or using mixed light within one hundred (100) feet of any occupied legal residential structure located on a separate legal parcel; provided, however, that on January 1, 2020, this setback shall be increased to two hundred (200) feet for all Permit applications but shall not apply to renewals of Permits originally issued before that date.
 - (3) Outdoors or using mixed light in a mobile home park as defined in Health and Safety Code Section 18214.1 within one hundred (100) feet of an occupied mobile home that is under separate ownership.
 - (4) In any location where the cannabis plants are visible from the public right of way or publicly traveled private roads.

- (5) Outdoors or using mixed light within fifty (50) feet from any adjoining legal parcel under separate ownership or access easement (whichever is most restrictive); provided, however, that on January 1, 2020, this setback shall be increased to one hundred (100) feet for all Permit applications but shall not apply to renewals of Permits originally issued before that date.
- (6) Any indoor cultivation sites that comply with paragraph (A)(1) shall also be subject to the following:
 - (a) Indoor cultivation sites shall comply with the building property line setback established by the zoning district in which the cultivation site is located.
 - (b) The cultivation of cannabis within an accessory structure shall be allowed subject to the development requirements of the zoning district in which it is located and to requirements of Chapter 20.164 — Accessory Use Regulations except, notwithstanding Section 20.164.010: (a) the cultivation of cannabis in an accessory structure is not permitted prior to the construction of the legal dwelling unit on the parcel, if a legal dwelling unit is required by this Chapter, and (b) cultivation of cannabis shall only be allowed on the same parcel as the dwelling unit, if required.
 - (c) Indoor cultivation sites for individuals desiring to cultivate cannabis for adult use pursuant to section 10A.17.030(C) shall also be subject to the following limitation: cultivation sites located within a private residence that is a rental unit, as that term is defined by County Code section 20.008.050, shall not be located in any indoor space other than a garage or accessory structure.
- (B) The distance between the listed uses in the above paragraph (A)(1) and cannabis that is being cultivated shall be measured in a straight line from the nearest point of the fence required in section 10A.17.040(H), or if the cannabis is cultivated indoors, from the nearest exterior wall of the building in which the cannabis is cultivated to the nearest point of the exterior wall of the facility, building, or structure, or portion of the facility, building, or structure in which the above-listed use occurs or to the nearest point of any fenced, maintained or improved area where the users of the facility are typically present during normal hours of operation, whichever is closest. The distance in paragraphs (A)(2) and (A)(3) to any residential structure shall be measured from the fence required in section 10A.17.040(H) to the nearest exterior wall of the residential structure. The distance in paragraph (A)(5) shall be measured from the fence required in section 10A.17.040(H) to the boundary line of a legal parcel or access easement.

Applicants may seek a reduction in the setback described in paragraphs (A)(1) and (A)(5) upon issuance of an administrative permit pursuant to Chapter 20.242.

- (C) The outdoor, indoor or mixed light cultivation of cannabis shall not propagate objectionable odors which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that endanger the comfort, repose, health, or safety of any of those persons or the public.
- (D) The indoor or mixed-light cultivation of cannabis shall rely on the electrical grid or some form of alternative energy source. The indoor or mixed-light cultivation cannabis shall not rely on a generator as a primary source of power.
- (E) All lights used for the indoor or mixed light cultivation of cannabis shall be fully contained within structures or otherwise shielded to fully contain any light or glare involved in the cultivation process. Security lighting shall be motion activated and all outdoor lighting shall be shielded and downcast or otherwise positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the legal parcel upon which they are placed.
- (F) All activities associated with the cultivation of cannabis shall not exceed the noise level standards as set forth in the County General Plan Policies DE100, 101 and 103.
- (G) All cultivation of cannabis shall not utilize water that has been or is illegally diverted from any spring, wetland, stream, creek, or river. The activities associated with the cultivation of cannabis shall not create erosion or result in contaminated runoff into any stream, creek, river or body of water.
- (H) All cannabis grown in Mendocino County (excluding indoor growing) must be within a secure, wildlife exclusionary fence of at least six (6) feet in height that fully encloses the immediate garden area. The fence must include a lockable gate that is locked at all times when a qualified patient, caregiver or permittee (or their agent) is not in the immediate area. Said fence shall not violate any other ordinance, code section or provision of law regarding height and location restrictions and shall not be constructed or covered with plastic or cloth except shade cloth may be used on the inside of the fence.
- (I) All buildings where cannabis is cultivated or stored shall be properly secured to prevent unauthorized entry.
- (J) Persons cultivating cannabis pursuant to either section 10A.17.030, paragraphs (B) or (C) shall also comply with the provisions of section 10A.17.110, paragraphs (N) and (O).

- (K) Prohibition on Tree Removal. Removal of any commercial tree species as defined by Title 14 California Code of Regulations section 895.1, Commercial Species for the Coast Forest District and Northern Forest District, and the removal of any true oak species (*Quercus* sp.) or Tan Oak (*Notholithocarpus* sp.) for the purpose of developing a cannabis cultivation site is prohibited. This prohibition shall not include the pruning of any such trees for maintenance, or the removal of such trees if necessary to address safety or disease concerns.

Section 5. Section 10A.17.050 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.050 - Medical Marijuana Collectives.

Until such time as State law provides otherwise, medical marijuana collectives operating pursuant to Health and Safety Code section 11362.775 shall obtain any Permit or other approval required by the MCCR and shall also comply with the following:

- (A) Operate on a non-profit basis as set forth in Section IV B.1. of the Attorney General's Guidelines.
- (B) Employ only persons who are at least twenty one (21) years of age and comply with all applicable state and federal requirements relating to the payment of payroll taxes including federal and state income taxes and/or contributions for unemployment insurance, state workers' compensation and liability laws.
- (C) Follow the membership and verification guidelines as set forth in Section IV B.3. of the Attorney General's Guidelines, except that wherever "should" appears it shall be replaced with "shall".
- (D) Require all prospective members to complete and sign a written membership application acknowledging and agreeing to abide by all the rules of the collective and all applicable requirements of this Section.
- (E) Prohibit sales to non-members as set forth in Section IV B.5. of the Attorney General's Guidelines. Allow reimbursements and allocations of medical cannabis as set forth in Section IV B.6. of the Attorney General's Guidelines.
- (F) Possess cannabis only in amounts consistent with the medical needs of the members of the collective; and only cultivate cannabis consistent with the limits set forth in this Ordinance.
- (G) Exterior signage shall not indicate or advertise the presence or availability of medical cannabis.

Section 6. Section 10A.17.060 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.060 - Permit Types.

The cultivation Permits that may be applied for under this Chapter are for the production of flowering cannabis plants and for nursery and seed production, as defined in section 10A.17.020. A Permittee producing flowering cannabis plants may maintain an area scaled appropriately for their operation where they may propagate their own immature plants (starts) through cloning, seed germination or tissue culture. Starts produced in this manner shall be for the exclusive and personal use of the permittee only and the sale, trade, barter, etc. of such starts is prohibited. The square footage of cultivation area dedicated to propagation of starts shall not be included in measuring the cumulative total square footage allowed under a given Permit and must not constitute any new disturbance, as defined by this chapter.

The following cannabis cultivation Permit types may be applied for and granted provided the applicant and the legal parcel (or legal parcels, subject to section 10A.17.070(D)(3)) that contains the cultivation site are determined to be in compliance with all applicable conditions of this Chapter and Mendocino County Code Chapter 20.242; all Permit types shall be applied for stating whether the applicant will be applying for an A-License or an M-License, or a stated combination thereof.

- (1) "Type C" for small outdoor cultivation using no artificial lighting not to exceed a maximum of 2,500 square feet of total plant canopy.
- (2) "Type C-A" for small indoor cultivation using exclusively artificial lighting not to exceed a maximum 2,500 square feet of total plant canopy within a structure or structures.
- (3) "Type C-B" for small mixed light cultivation (using a combination of natural and supplemental artificial lighting) not to exceed a maximum of 2,500 square feet of total plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle.
- (4) "Type 1" for medium outdoor cultivation using no artificial lighting of 2,501 to a maximum of 5,000 square feet of total plant canopy on one legal parcel not less than five (5) acres in size.
- (5) "Type 1A" for medium indoor cultivation using exclusively artificial lighting of 2,501 to a maximum of 5,000 square feet of total plant canopy within a structure or structures.
- (6) "Type 1B" for medium mixed light cultivation (using a combination of natural and supplemental artificial lighting) of 2,501 to a maximum of 5,000 square feet of total plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle, on one legal parcel not less than five (5) acres in size.

- (7) "Type 2" for large outdoor cultivation using no artificial lighting of 5,001 to a maximum of 10,000 square feet of total plant canopy on one legal parcel not less than ten (10) acres in size.
- (8) "Type 2A" for large indoor cultivation using exclusively artificial lighting of 5,001 to 10,000 square feet of total plant canopy on one legal parcel.
- (9) "Type 2B" for mixed light cultivation (using a combination of natural and supplemental artificial lighting) of 5,001 to a maximum of 10,000 square feet of total plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle, on one legal parcel not less than ten (10) acres in size.
- (10) "Type 4" for the cultivation of cannabis nursery stock and/or seed production which shall not exceed a maximum of 22,000 square feet of total plant canopy on one legal parcel, subject to the limitation of paragraph (C) below regarding seed production Nursery stock and/or seed production may only be sold to a Permittee, a qualified patient, person with an identification card or a primary caregiver. The nursery product may take the form of vegetative and non-flowering plant starts or may also be in the form of seeds, if the applicant also applies and is approved as a seed producer under this type of Permit. The legal parcel shall not be less than ten (10) acres in size, provided, however, that legal parcels in industrial zoning districts are not subject to this parcel size restriction. Additional requirements for Type 4 Permits are as follows:
 - (a) The Permittee shall produce only vegetative immature cannabis plants through cloning, seed termination or tissue culture starts for the planting, propagation and cultivation of cannabis, provided, however, with the approval of the Agricultural Commissioner, plants may be grown to maturity for the purpose of verifying genetic expression. The Agricultural Commissioner's approval shall include a square footage limitation and the plants shall be included within the Track and Trace system. No consumable cannabis product of any kind shall be derived from the plants being cultivated.
 - (b) Intentionally Omitted.
 - (c) A maximum of 5,000 square feet of plant canopy may be dedicated to cannabis seed production if the Permittee applies and is approved as a seed producer. The square footage of plant canopy dedicated to seed production shall be counted towards the maximum square footage allowed under this type of permit and shall be entered into the approved Track and Trace system.
 - (d) Any on-site sales of nursery products which were produced on and occur on a parcel within the Timberland Production, Rangeland or Forestland zoning districts shall be limited to permitted cultivators only.

- (e) At the time of sale, the nursery shall generate a manifest stating the date and time, nursery name, address, permit number (and license number, when applicable), buyers name, cultivation address, and permit number (and license number, when applicable). A copy of this manifest shall be retained by the purchaser and serve as a transport document for the purchaser to proceed directly from the nursery to the intended cultivation site. If the nursery is transporting nursery products to the cultivator's location, this manifest shall be filled-out and in possession of the nursery operator, their employee or their designated transporter during transport. Both the nursery and the buyer shall retain these records for a period of two (2) years.
- (f) The permittee shall agree to abide by the Mendocino Cannabis Nursery and Seed Manual established by the Mendocino County Agricultural Commissioner.

Section 7. Section 10A.17.070 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.070 - Requirements for All Permits.

Unless specifically exempted, in addition to compliance with all other requirements of this Chapter, all Permits shall comply with the following requirements:

- (A) **Zoning Districts.** Cultivation of cannabis shall only be permitted on legal parcels that comply with the applicable zoning districts and parcel sizes as provided in Chapter 20.242.
- (B) **Indoor Cultivation Permits.** The use or conversion of habitable space (i.e., kitchen, bedrooms, bathrooms, living room or hallways) in any structure shall not be allowed for the indoor cultivation of cannabis.
- (C) Cultivation of cannabis is not permitted within any required parking space.
- (D) **Permit Density.** A Person may apply for and obtain a maximum of two (2) Permits listed in section 10A.17.060 at any given time. Permits shall be granted at a maximum density of one (1) Permit per legal parcel; provided, however, that
 - (1) A Person may obtain two (2) separate Permits of different Permit types on a single legal parcel if the total square footage of the two Permits does not exceed the largest maximum square footage permitted on a parcel for the relevant zoning district. A Person who applies for and obtains a Type 4 Permit in combination with any other Permit, shall not exceed a total square footage of 22,000 square feet per legal parcel, of which not more than 10,000 square feet may be grown to maturity and

entered into the Track and Trace system for commercial use. Plants may be grown to maturity by a Type 4 Permit holder for seed production or genetic expression, where the mature flowers are destroyed, and not used for commercial purposes, shall not require a separate cultivation permit.

- (2) A Person may apply for one (1) Permit of a single size (e.g. Type C, Type 1 or Type 2) that may include any combination of all three cultivation types (e.g indoor, outdoor, mixed-light), but if any cultivation would require the issuance of a permit pursuant to Chapter 20.242, the entire Permit shall be subject to review under Chapter 20.242.
 - (3) A Person may obtain one (1) Permit for multiple legal parcels, so long as the parcels are contiguous and under the same ownership. Should the Person sell any of the parcels subject to the Permit, subsequent permits shall be required to modify the cultivation site to adhere to required setbacks.
- (E) Dwelling Unit Requirement. Legal parcels with a cultivation site are also required to have a dwelling unit; provided, however, that this requirement shall not apply to legal parcels within the following zoning districts: Upland Residential (U-R), Agricultural (A-G), Rangeland (R-L), Forest Land (F-L), Timberland Production (TPZ), Limited Industrial (I-1), General Industrial (I-2) Pinoleville Industrial (P-I). In addition, legal conforming parcels in Rural Residential, lot size ten (10) acres (R-R:L-10), shall also be exempt from the dwelling unit requirement of this paragraph, upon issuance of an administrative permit pursuant to Chapter 20.242.
- (F) Generators. The indoor or mixed-light cultivation of cannabis shall not rely on a generator as a primary source of power. If no grid power source is available and there is not an alternative power source supporting both any required legal dwelling unit and the indoor or mixed-light permit operations, a generator may be used only under the following conditions: (1) the permittee shall install an alternative power source that will meet at least one-half of the combined power requirements by the expiration of twelve months from the date of initial application for a permit pursuant to this Chapter and (2) it will be a condition of the re-issuance of a permit that the cultivator commit, in writing, to expand their alternative power source to fully meet the combined needs of the cultivation operations and any required legal dwelling unit by the end of the second permitted year. See also section 10A.17.090 regarding application requirements related to generators.
- (G) Permittees shall be required to enroll in and comply with all requirements of any Track and Trace system adopted and implemented by the County to track the production and distribution of cannabis. Permittees shall obtain and use unique identifies from an approved source, maintain them in a readable state, comply with all data entry requirements (including, but not limited to, harvest dates, harvest data,

and distribution or other disposition information), and pay all required Track and Trace fees. Non-compliance with Track and Trace requirements shall constitute a violation of the terms of the Permit.

- (H) Fees: An annual application fee shall be paid at the time an application is submitted to the Agricultural Commissioner for initial review and prior to any annual renewal of the application. An annual Permit fee shall be paid prior to issuance of any Permit. No Permit shall issue without payment of the initial application fee or renewal fee.
 - (1) Fees prescribed by this Chapter shall be set by the Mendocino County Board of Supervisors in accordance with all applicable laws and regulations and the County's Master Fee Policy. Any fee prescribed by this Chapter shall be paid to the County Treasurer/Tax Collector and is non-refundable. A receipt for payment of the required fee shall be provided to the Agricultural Commissioner prior to the initial review and issuance or annual renewal of any application, permit or other program described herein where a fee has been established, including for required inspections.
- (I) Inspections by Agricultural Commissioner. All applicants shall be subject to and shall facilitate an initial on-site pre-permit inspection and all Permittees shall be subject to and facilitate at least one annual on-site compliance inspection (Type 4 Permits shall be subject to two on-site compliance inspections annually), with additional inspections as required by this Chapter or as deemed necessary by the Agricultural Commissioner. All inspections will be scheduled with at least 24 hours advance notice to the applicant or Permittee, and shall be conducted during regular business hours. Cancellation of scheduled inspections without notice to the Agricultural Commissioner shall result in the Permittee being invoiced for the actual travel time and mileage incurred by the Agricultural Commissioner.
 - (1) All site inspections conducted prior to issuance of a Permit for any indoor or mixed-light cultivation Permit may include a representative from the Department of Planning and Building Services.
- (J) Intentionally Omitted.
- (K) Non-Transferability of Permits. All Permits are non-transferable to another person, except that the Permittee may transfer the Permit to a spouse/domestic partner, child, parent, or, for estate planning purposes, to a trust in which the permittee serves as a trustee, provided the trust existed on or before January 1, 2016, which transfer shall not be deemed a change in ownership for purposes of this Chapter.

Section 8. Section 10A.17.080 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.080 - Permit Phases and Requirements Specific to each Phase.

Unless specifically exempted, in addition to compliance with all other requirements of this Chapter, all Permits shall comply with the following requirements:

- (A) Permits under the MCCO will be issued in the following three phases:
 - (1) Phase One: Following the effective date of the MCCO, Permits will only be issued to applicants who provide to the Agricultural Commissioner pursuant to paragraph (B)(1) of this section proof of cultivation at a cultivation site prior to January 1, 2016 ("proof of prior cultivation"), and who comply with all other applicable conditions of this Chapter and Chapter 20.242. Applications for Permits during Phase One shall only be accepted until June 30, 2018; provided, however, that applications for Permits within the areas subject to the sunset provision of paragraph (B)(2)(b) of this section shall be accepted until December 31, 2018. Applicants able to provide proof of prior cultivation may apply for a Permit on a relocation site pursuant to paragraph (B)(3) of this section.
 - (2) Phase Two: Starting January 1, 2018, the Agricultural Commissioner will begin accepting applications for Type 1A and Type 2A Permits for indoor cultivation in the following zoning districts, subject to compliance with all other applicable conditions of this Chapter and Chapter 20.242: Limited Industrial (I-1), General Industrial (I-2), and Pinoleville Industrial (P-I). Proof of cultivation prior to January 1, 2016, is not required.
 - (3) Phase Three: Starting January 1, 2020, the Agricultural Commissioner will begin accepting Permit applications from any applicant in conformance with the conditions of this Chapter and Chapter 20.242. Proof of cultivation prior to January 1, 2016, is not required.
- (B) Requirements specific to Phase One Permits.
 - (1) Proof of Prior Cultivation. Persons applying for a Permit during Phase One shall be required to provide to the Agricultural Commissioner evidence that they were cultivating cannabis on the cultivation site prior to January 1, 2016, which cultivation site shall have been, or could have been, in compliance with the setback requirements of paragraph (A) of section 10A.17.040. Evidence shall include:
 - (a) Photographs of any cultivation activities that existed on the legal parcel prior to January 1, 2016, including: (i)

ground level views of the cultivation activities and (ii) aerial views from Google Earth, Bing Maps, Terraserver, or a comparable service showing: both the entire legal parcel and the cultivation site in more detail. The date these images were captured shall be noted.

- (b) Photographs of any cultivation activities that currently exist on the legal parcel, including: (i) ground level views of the cultivation activities and (ii) aerial views from Google Earth, Bing Maps, Terraserver, or a comparable service showing: both the entire legal parcel and the cultivation site in more detail. The date these images were captured shall be noted.
 - (c) At least one additional document demonstrating cultivation on the legal parcel prior to January 1, 2016, which evidence may be used to substitute for evidence pursuant to clause (a). The Agricultural Commissioner shall prepare a list of the types of documentation that will be accepted to meet this requirement, and may accept other similarly reliable documentary evidence showing that cannabis was cultivated prior to January 1, 2016.
 - (d) Proof of prior cultivation shall be assigned to the applicant relative to their prior cultivation site.
 - (e) Persons who participated in a permit program pursuant to the County's Chapter 9.31 in previous years may present evidence of such participation and payment of all required fees in order to provide proof of prior cultivation.
- (2) Zoning Districts; Exceptions. Existing cultivation sites not located in zoning districts where Chapter 20.242 specifically allows cultivation may be issued a Type C, Type C-A, or Type C-B Permit, subject to the following requirements, in addition to all other applicable requirements of this Chapter:
- (a) The zoning district is one where a dwelling unit is a principally permitted use and a dwelling unit is present.
 - (b) Sunset Provision for Residential Districts. Cultivation sites on legal parcels located in the Single-Family Residential (R-1), Two-Family Residential (R-2), Multiple-Family Residential (R-3), Suburban Residential (S-R), Rural Community (R-C), and Rural Residential (lot sizes one (1) acre, two (2) acres and five (5) acres [legal non-conforming parcels to minimum zoning size][R-R:L-1, R-R:L-2, and R-R:L-5 {legal non-conforming to minimum zoning size}]), as well as cultivation sites in any other zoning district where a dwelling unit is a principally

permitted use and the legal parcel is less than two (2) acres in size, are subject to the following requirements:

- (i) There is an occupied dwelling unit on the legal parcel with the cultivation site.
 - (ii) A Permit may be renewed and valid only until three (3) years following the effective date of the ordinance adopting this Chapter and any permits issued shall be void not later than three (3) years following said effective date.
 - (c) Cultivation sites on legal parcels located in the Rural Residential zoning district, lot size five (5) acres (conforming parcels of five acres or more only)(R-R:L-5), are subject to the following additional requirement that there is an occupied dwelling unit on the legal parcel with the cultivation site.
 - (d) If a Permit is granted pursuant to this paragraph (B)(2) in these zoning districts, any future revocation or lapse in renewal of such Permit shall extinguish the ability of any person to obtain a Permit for such cultivation site.
- (3) Relocation. Persons able to show proof of prior cultivation pursuant to paragraph (B)(1) above may apply for a Permit not on the site previously cultivated (the "origin site") but on a different legal parcel (the "destination site"), subject to the following requirements:
- (a) Persons may apply to relocate their cultivation site pursuant to this paragraph (B)(3) until three (3) years after the effective date of the ordinance adopting this Chapter, or until May 4, 2020.
 - (b) The location and operation of the proposed cultivation site on the destination parcel complies with all requirements and development standards that apply to a new cultivation site as of January 1, 2020, pursuant to this Chapter and Chapter 20.242; provided, however:
 - (i) An existing cultivation site shall not be transferred to a legal parcel located within the Forestland or Timber Production Zone zoning districts.
 - (ii) An origin site may relocate to a destination site in the Rangeland zoning district, so long as the destination site has an existing cultivation site and no new cultivation sites would be established.

- (c) The origin site shall be restored. The application for a Permit on a destination site shall be accompanied by a restoration plan that is consistent with the standard conditions and best management practices listed in the North Coast Regional Water Quality Control Board Order No. 2015-0023, and which shall include the following:
 - (i) Remove or repurpose buildings, greenhouses, fences, irrigation equipment, water intakes, pumps, storage tanks and other materials brought to the origin site for the purpose of cannabis cultivation;
 - (ii) Remove illegal dams, ponds or other in-stream water storage to restore natural stream flows, unless such features will continue in use;
 - (iii) Remove or compost agricultural wastes;
 - (iv) Remove trash and other debris; and
 - (v) Revegetate cleared areas with native plants typical of nearby natural areas, including groundcover, shrubs and trees.
 - (d) Unless the destination site is within the Agricultural zoning district, the application shall include either a water availability analysis pursuant to paragraph (C)(1)(b) below or a will serve letter pursuant to paragraph (C)(1)(c) below.
 - (e) Prior to the issuance of the Permit to cultivate cannabis at the destination parcel, the applicant shall provide the Agricultural Commissioner with an agreement, on a form approved by the Agricultural Commissioner and County Counsel, providing that the applicant releases any right to continue or resume cultivation of cannabis on the origin parcel.
 - (f) If a person is granted a Permit for a destination site, any claims of proof of prior cultivation on the origin site shall be effectively transferred to the destination site, and the ability to claim proof of prior cultivation at the origin site shall be extinguished.
 - (g) There shall be a two (2) acre minimum parcel size for all Type C, Type C-A or Type C-B Permits.
- (4) Multiple Permits may be applied for and granted on a single legal parcel that is owned by multiple persons residing in separate habitable dwelling units on that legal parcel. Each owner may

individually apply for a Permit to cultivate cannabis, provided that each owner must provide proof of prior cultivation pursuant to paragraph (B)(1) above. Each owner shall be limited to a Type C, Type C-A or Type C-B Permit, unless that owner was previously enrolled in a permit program pursuant to the County's Chapter 9.31, or unless the cumulative total square footage of plant canopy applied for by all owners does not exceed the maximum square footage permitted on a parcel for the relevant zoning district.

- (5) Persons eligible to apply for a Permit during Phase One may apply for a different and/or larger Permit type in subsequent years, subject to all requirements of this Chapter.
- (6) If a Permit is granted pursuant to this paragraph (B), any future revocation or lapse in renewal of such Permit shall extinguish the ability of any person to obtain a Permit for such cultivation site, unless otherwise allowed by this Chapter 10A.17; provided, however, for Permits granted in the Rangeland (RL), Forestland (FL) or Timberland Protection (TPZ) zoning districts, not more than once in a five-year period, a Permittee may file with the Department of Agriculture, on a form prescribed by the Department, a Notice of Non-Cultivation instead of an application to renew the Permit, and the Permittee's ability to obtain a Permit for such cultivation site will not be extinguished.

(C) Requirements specific to Phase Three Permits.

- (1) Watershed Assessment. All Permit applications, except for legal parcels located in the Agricultural (A-G) zoning district, shall demonstrate there is adequate water to serve the cultivation site.
 - (a) If surface water (or groundwater influenced by surface water) will be used, applicants may demonstrate that there is adequate water by providing (i) a watershed assessment that establishes there is sufficient watershed supply to serve the proposed cultivation site and existing uses within the watershed, and (ii) a water right exists to serve the cultivation site. A watershed assessment shall consist of an established "In Stream Flow Policy" as prepared by the State Water Resources Control Board Division of Water Rights or an equivalent document approved by that agency.
 - (b) If groundwater not influenced by surface water will be used, the applicant may demonstrate that there is adequate water by providing a water availability analysis which will address the adequacy of the proposed water supply, the direct effects on adjacent and surrounding water users, and possible cumulative adverse impacts of the development on the water supply within the

watershed and show there is a sustained yield to support the proposed level of use.

- (c) If water will be provided by a mutual water company, municipal or private utility or similar community provider, the applicant may demonstrate that there is adequate water by providing a will serve letter from the proposed provider.

Section 9. Section 10A.17.090 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.090 - Cultivation Permit Application and Zoning Review.

Any person or entity that wishes to engage in the cultivation of cannabis shall submit an application for a Permit to the Agricultural Commissioner's Office. Applications for Permits shall be made upon such forms and accompanied by such plans and documents as may be prescribed by the Agricultural Commissioner's Office. The application shall be reviewed by the Agricultural Commissioner's office and other agencies as described herein and renewed annually. Any referral to or consultation with an agency other than the County of Mendocino shall state that a response must be returned within thirty (30) days of the date of the referral.

The Agricultural Commissioner's Office shall refer each application to the Department of Planning and Building Services for a determination pursuant to Chapter 20.242 as to what type of clearance or permit is required. No application for a Permit shall be approved without clearance or final permit approval as required by Chapter 20.242.

The Agricultural Commissioner's Office shall consult with the Mendocino County Air Quality Management District (MCAQMD) prior to the issuance of the Permit to determine if a permit or other approval by the MCAQMD is necessary. The applicant shall obtain all approvals and permits required by the MCAQMD pursuant to state and federal laws, MCAQMD regulations, adopted air quality plans, MCAQMD policies and other applicable statutes prior to the issuance of a Permit. The required consultation with MCAQMD may be eliminated if MCAQMD authorizes County to determine when a permit or other approval by the District is necessary based on an objective set of criteria developed by MCAQMD for such purposes.

Applicants for a Permit shall provide the following information on, or as an attachment to, the application:

- (A) The name, business and residential address, and phone number(s) of the applicant.
- (B) If the applicant is not the record title owner of the legal parcel, written consent from the owner allowing the cultivation of cannabis on their property by the applicant with original signature of the record title owner.

- (C) Written evidence that each person applying for the permit and any other person who will be engaged in the cultivation of cannabis is at least twenty-one (21) years of age.
- (D) Site plan showing the entire legal parcel configuration with Assessor's Parcel Number(s), acreage, site address, including the location of:
 - (1) easements (access and utility and all roadways public and private);
 - (2) streams, springs, ponds and other surface water features, including the location of any flood plain or floodways;
 - (3) the location and area of the cultivation site on the legal parcel, with dimensions of the area for cultivation of cannabis and showing that all setbacks required by section 10A.17.040 are being met;
 - (4) all areas of ground disturbance or surface water disturbance associated with cultivation of cannabis activities, including: access roads, water diversions, culverts, ponds, dams, graded flats, and other related features;
 - (5) all structures, which shall be clearly labeled; and
 - (6) all septic systems, leach fields and water wells.
- (E) Applications submitted for any Permit during Phase One shall include proof of prior cultivation pursuant to section 10A.17.080
- (F) A cultivation and operations plan which includes elements that meet or exceed the minimum legal standards for the following: water storage, conservation and use; drainage, runoff and erosion control; watershed and habitat protection; and proper storage of fertilizers, pesticides and other regulated products to be used on the legal parcel. Any fuel, fertilizer, pesticides, or other substance toxic to wildlife, children, or pets, must be stored in a secured and locked structure or device. The plan will also provide a description of cultivation activities including, but not limited to, permit type, cultivation area, soil/media importation and management, the approximate date(s) of all cannabis cultivation activities that have been conducted on the legal parcel prior to the effective date of this ordinance, and schedule of activities during each month of the growing and harvesting season.

If a generator is proposed to support any aspect of the cultivation site or related operations, the cultivation and operations plan shall identify any containment structure and dimensions necessary to contain any leak or spill that may develop or occur as a result of relying on any generator for backup power generation. The plan shall also include a maintenance plan for the generator, detailing how spent oil, used oil filters, expired batteries and other hazardous wastes generated from the operation of

the generator will be handled, including fuel storage and delivery systems.

- (G) Copy of the statement of water diversion, or other permit, license or registration filed with California Water Resources Control Board, Division of Water Rights, if applicable.
- (H) An irrigation plan and projected water usage for the proposed cultivation activities, as well as a description of legal water source, if not covered by item (G).
- (I) Copy of Notice of Intent and Monitoring Self-Certification and any other documents filed with the North Coast Regional Water Quality Control Board (NCRWQCB) demonstrating enrollment in and compliance with (or proof of exemption from) Tier 1, 2 or 3, North Coast Regional Water Quality Control Board Order No. 2015-0023, or any substantially equivalent rule that may be subsequently adopted by the County of Mendocino or other responsible agency.
- (J) If any on-site or off-site component of the cultivation facility, including access roads, water supply, grading or terracing impacts the bed or bank of any stream or other watercourse, show proof they have notified the California Department of Fish and Wildlife (CDFW) pursuant to section 1602 of the Fish and Game Code and provide a copy of the Streambed Alteration Permit obtained from the Department of Fish & Wildlife.
- (K) If the source of water is a well, a copy of the County well permit, if available; applicant shall provide documentation showing the approximate date of installation.
- (L) A unique identifying number from a State of California Driver's License or Identification Card for each person applying for the permit and any other person who will be engaged in cultivation of cannabis.
- (M) Evidence that the applicant or any individual engaged in the management of, or employed by, the cultivator has not been convicted of a violent felony as defined in Penal Code section 667.5(c) within the State of California, or a crime that would have constituted a violent felony as defined in Penal Code section 667.5(c) if committed in the State of California and is not currently on parole or felony probation. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
- (N) A statement describing the proposed security measures for the facility that shall be sufficient to ensure the safety of members and employees and protect the premises from theft.
- (O) If the applicant is organized as a non-profit corporation, the applicant shall set forth the name of the corporation exactly as shown in its Articles of Incorporation, and the names and residence addresses of

each of the officers and/or directors. If the applicant is organized as a partnership, the application shall set forth the name and residence address of each of the partners, including the general partner and any limited partners. Copies of the Articles of Incorporation or a statement listing the members of the partnership shall be attached to the application.

- (P) Intentionally Omitted.
- (Q) A copy of a Board of Equalization Seller's Permit if applicant intends to sell directly to qualified patients or primary caregivers.
- (R) Written consent for an onsite pre-permit inspection of the legal parcel pursuant to section 10A.17.070 by County officials or other appropriate agency representatives at a prearranged date and time in consultation with the applicant prior to the approval of a permit to cultivate cannabis, and at least once annually thereafter.
- (S) For all indoor cultivation facilities, identify the source of electrical power and plan for compliance with applicable Building Codes. Also, provide documentation that addresses the handling of waste discharge from the grow location of items including, but not limited to nutrients, spent growing media, un-used containers and other associated hardware, supplies, and garbage.
- (T) No application shall be approved which identifies or would require the removal of tree species listed in paragraph (I) of Section 10A.17.040 after May 4, 2017, for the purpose of developing a cultivation site. For applications where trees were removed prior to May 4, 2017, applicants shall provide evidence to the Department of Agriculture that no trees were unlawfully removed to develop a cultivation site; such evidence may include, but is not limited to, a less-than-3-acre conversion exemption or timberland conversion permit issued by the California Department of Forestry and Fire Protection ("CalFire") and trees were removed prior to May 4, 2017. If during review of an application County staff determine that trees were unlawfully removed to develop a cultivation site, the County shall deny the application. Notwithstanding the foregoing, for cultivation sites created prior to May 4, 2017, through prior unauthorized conversion of timberland as defined in Public Resources Code section 4526, a Permit may be approved if the applicant provides evidence that environmental impacts of the tree removal have been mitigated to the extent feasible or otherwise resolved, as required by the resource protection agencies including CalFire, the NCRWQCB and the CDFW. County staff shall defer to the resource protection agencies referenced herein for determinations as to the unlawful removal of trees or unauthorized conversion of timberland or the sufficiency of any required remediation to address the environmental impacts. Nothing herein shall be construed to limit or condition in any way the regulatory or enforcement authority of the resource agencies listed herein.

- (U) If applicable, clearance from CalFire related to compliance with the requirements of Public Resources Code Section 4290 and any implementing regulations.
- (V) For activities that involve construction and other work in Waters of the United States, that are not otherwise exempt or excluded, including streams and wetlands, the application shall include a copy of a federal Clean Water Act (CWA) Section 404 permit obtained from the Army Corps of Engineers and a CWA Section 401 water quality certification from the NCRWQCB.
- (W) Projects that disturb one (1) or more acres of soil or projects that disturb less than one acre but that are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the State Water Resources Control Board General Permit for Discharges of Storm Water Associated with Construction Activity Construction General Permit Order 2009- 0009-DWQ. Construction activity subject to this permit includes clearing, grading and disturbances to the ground such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility.
- (X) The results of a "Cortese List" database search for sites known to be contaminated with hazardous materials. If the site is listed on the "Cortese List", the application shall include sufficient information to demonstrate that the cultivation is in compliance with any cleanup and/or abatement order that is established for the site.
- (Y) If water or sewer services to the cultivation site will be provided by a community provider, a will-serve letter from the provider indicating adequate capacity to serve the cultivation site.

The Agricultural Commissioner is authorized to require in the permit application any other information reasonably related to the application including, but not limited to, any information necessary to discover the truth of the matters set forth in the application.

Section 10. Section 10A.17.100 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.100 - Permit Review and Issuance.

- (A) The Agricultural Commissioner's Office shall issue a Permit pursuant to this Chapter only:
 - (1) Following the referral to and clearance or permit approval pursuant to Chapter 20.242; and
 - (2) Following review by qualified County staff to review proposed permit locations and identify where habitat suitable for sensitive species may exist. The County shall consult with the California

Department of Fish and Wildlife ("CDFW") to evaluate if there is a possibility for presence or habitat suitable for sensitive species on the parcel with a proposed Permit location. Upon consultation, CDFW may recommend approval of the proposed development, ask to conduct a site inspection or request additional studies in order to make the determination that no impacts to sensitive species will occur. A cultivator that cannot demonstrate that there will be a less than significant impact to sensitive species will not be issued a Permit. The County shall develop a policy in consultation with CDFW to define an objective set of criteria that applications can be checked against and when during Phases 1 and 2 a formal referral to CDFW is required to avoid impacts to sensitive species and natural communities. Following the development of the policy referred to in the previous sentence, consultation with CDFW shall not be required but be performed pursuant to the policy. During Phase 3 all applications will be referred to CDFW; and

- (3) After the Agricultural Commissioner's Office, and other County and State agency staff, as appropriate, have reviewed the application and performed a pre-permit site inspection to confirm adherence to the requirements established in the MCCO; and
 - (4) Following receipt of evidence of payment of the required permit fee, pursuant to Section 10A.17.070.
- (B) As a condition of approval for any cultivation permit, the owner or permittee shall indemnify and hold harmless the County of Mendocino and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by affected property owners or other third parties due to the commercial cultivation of cannabis and for any claims brought by any person for problems, injuries, damages, or liabilities of any kind that may arise out of the commercial cultivation of cannabis.
- (C) Discovery of any violation(s) of the Mendocino County Code during the Permit application process will be treated in a similar manner to violation(s) that are self-reported during an active amnesty program. That is, the discovered violation(s) will still need to be corrected, but any investigative and/or penalty fees associated with an after-the-fact County permit will be waived.
- (1) If the discovered violation(s) are directly related to a Phase One Permit application, and/or if it is discovered that the Permit would authorize a particular use for which a separate County permit is required but has not yet been obtained, the applicant shall be required to agree in writing to a compliance plan prior to issuance of the Permit. Failure by applicant to agree in writing to a required compliance plan shall be grounds for denial of the Permit.

- (a) The compliance plan will identify the violation(s) and may suggest corresponding remedial action(s) that may be taken to correct the violation(s), will identify the required permit(s) based on the uses identified in the Permit application, and will include timelines for achieving code compliance for all violations and/or for submitting completed applications for each required permit.
 - (b) In no event will more time be given to correct all violations, and/or submit a complete application for each required permit, than one (1) year after the date of issuance of the Permit.
 - (c) After the applicant has signed the compliance plan, as presented by the Agricultural Department in coordination with the appropriate County department(s), the Agricultural Department may issue a Permit restricted as indicated in the compliance plan, so long as no other barrier(s) to such issuance exists. Failure to abide by the compliance plan shall be grounds for Permit termination, or non-renewal, pursuant to section 10A.17.140.
 - (d) The compliance plan will be the primary mechanism to obtain code compliance from Permit applicants with respect to violations directly related to Phase One Permits applications. However, nothing in this section is intended to limit the use of any other applicable code enforcement provision or the ability of any County department with the appropriate authority from enforcing the Mendocino County Code.
- (2) If the discovered violation(s) are not directly related to a Phase One Permit application, such violation(s) will not affect the processing of the Phase One Permit application. However, any County department with appropriate enforcement authority with respect to such violation(s) may make use of any applicable code enforcement mechanism as if the violation(s) were discovered as a result of self-reporting during an active amnesty program.
- (D) Track & Trace unique identifiers will only be made available following the issuance of a Permit by the Agricultural Commissioner's Office. The Permittee will have 72 hours to register with the County Track & Trace system. Upon Track & Trace system registration, the system will provide unique identifiers. The unique identifiers shall be affixed to the individual plants within 72 hours of being provided to the Permittee.
- (E) Permits shall remain valid for one (1) year from the date of issuance, subject to any enforcement action or other action that may result in earlier suspension or revocation.

Section 11. Section 10A.17.110 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.110 - Performance Standards.

All Cultivation Permits issued by the Agricultural Commissioner's Office shall obligate the permittee to comply with the following performance standards:

- (A) Cultivation shall be located as shown on the approved application site plan and in compliance with all provisions of this Chapter and any permit issued pursuant to Chapter 20.242.
- (B) Once they become available, possession of a current, valid required license, or licenses, issued by any agency of the State of California in accordance with the MAUCRSA, and regulations promulgated thereunder covering a similar cannabis activity.
- (C) A unique identifier for compliance with the County's Track & Trace system shall be affixed to each permitted cannabis plant cultivated in Mendocino County. It shall be the responsibility of the permittee to ensure complete and accurate entry of information into the Track & Trace system within 72 hours of the reportable activity occurring.
- (D) Compliance with all statutes, regulations and requirements of the California State Water Resources Control Board, Division of Water Rights, including obtaining and complying with any applicable and approved permit, license or registration or the annual filing of a statement of diversion and use of surface water from a stream, river, underground stream, or other watercourse required by Water Code Section 5101.
- (E) If a generator is used to support any aspect of the permitted cultivation operations, (excluding the conditions set forth in section 10A.17.070(F)), it shall be as a secondary or back-up power source. The use of the generator is only allowed when the primary alternative power source is unable to provide its normal output and generate sufficient power to meet the needs of the cultivation operation and the legal dwelling unit. The Owner's Manual and/or Operation Manual (or operational fact sheet) providing the operational characteristics and maintenance schedule for the generator shall be on-site and available for review.

If a generator is being used pursuant to the conditions set forth in section 10A.17.070(F), the Permit shall be conditioned on the conducting of an analysis of the noise levels produced by the generator at full operational speed, performed by an accredited acoustical engineer, and such analysis shall show compliance with Mendocino County General Plan Policies DE100, 101 and 103. All generators shall be, at a minimum, equipped with the manufacturer's specified muffler; if compliance with Policies DE100, 101 and 103 requires additional measures, the generator shall be equipped with such measures, which may include a hospital-grade muffler and/or a structure to enclose the generator designed for sound suppression.

Any electrical wiring associated with the generator shall be of sufficient capacity and installed in such a way as to provide for the minimum installation and safety standards for the electrical service provided by that generator.

- (F) Establish and maintain enrollment in Tier 1, 2 or 3 with the North Coast Regional Water Quality Control Board (NCRWQB) Order No. 2015-0023, if applicable, or any substantially equivalent rule that may be subsequently adopted by the County of Mendocino or other responsible agency.
- (G) For cultivation areas for which no enrollment pursuant to NCRWQB Order No. 2015—0023 is required, the site shall comply with the standard conditions set forth in that Order, as well as the applicable "Best Management Practices for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects" as presented in Appendix B of the Water Board Order.
- (H) Maintain the applicable "Defensible Space" protocols and distances, as established by the California Department of Forestry and Fire Protection around structures located on the legal parcel.
- (I) Comply with the terms of any applicable Streambed Alteration Permit obtained from the California Department of Fish & Wildlife.
- (J) All weighing and measuring devices shall be type approved by the California Department of Food and Agriculture, Division of Measurement Standards and issued either a California Type Evaluation Program (CTEP) Certificate of Approval (COA) or a National Type Evaluation Program (NTEP) Certificate of Conformance (CC) before commercial use. All weighing and measuring devices shall be registered and inspected by the Agricultural Commissioner in accordance with Mendocino County Code Chapter 10A.16.
- (K) Consent to at least one (1) annual on-site compliance inspection by the Agricultural Commissioner's office, as more specifically provided for in section 10A.17.070.
- (L) Any guard dog(s) or guard animals kept at the cultivation site shall be restrained to a fixed point or contained in some manner to facilitate the inspections performed by any entity necessitating inspect as required by this Chapter. Animals considered family pets will be kept on a leash at all times and under control when any entity is performing a required inspection.
- (M) All buildings, including greenhouses, used for the cultivation of cannabis pursuant to an "artificial light" permit (generally Type C-A, Type 1-A, Type 2-A and Nursery as applicable), shall be equipped with filtered ventilation systems, permitted by the Mendocino County Air Quality

Management District (MCAQMD) which rely on Activated Carbon Filtration, Negative Ion Generation, Ozone Generation or other odor control mechanism demonstrated to be effective in reducing cannabis odors.

- (N) Any use of pesticide products shall be consistent with State law and regulations enforced by the California Department of Pesticide Regulation and the Agricultural Commissioner's Office. All agricultural use pesticides and concentrated fertilizers, amendments, and similar materials shall be stored in a locked, hard-faced enclosure to prevent unauthorized entry by humans, to exclude large animals that may be attracted by odors, and to ensure that they will not enter or be released into surface or ground waters.
- (O) Fuel shall be stored and handled in compliance with applicable state and local laws and regulations and in such a way that no spillage occurs.
- (P) The square footage of cultivation area dedicated to propagation of starts must not constitute any new disturbance, as defined by this chapter.
- (Q) Comply with any conditions that may apply as a result of an administrative or conditional use permit approved pursuant to Chapter 20.242, or with a written remediation plan required by Section 10A.17.080(B)(3).

Section 12. Section 10A.17.150 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.150 - Administrative Order to Show Cause.

- (A) Issuance of Order to Show Cause. At the same time as issuance of a Notice to Terminate Permit, or as soon as practicable thereafter, the Agricultural Commissioner's Office shall also issue a notice and order to show cause why the permit in question should not be terminated. Issuance may be completed by personal delivery, or by first class mail, postage prepaid, sent to the mailing address associated with the Permit and return receipt requested. The notice and order to show cause shall:
 - (1) Identify the permittee and the permit in question;
 - (2) Contain a statement describing the violations that caused the issuance of a Notice to Terminate Permit;
 - (3) Contain a description of the actions required to abate the violations;
 - (4) Notify the permittee that unless the owner or occupant abates the conditions, a hearing will be held to determine whether there is any good cause why the permit in question should not be terminated, which will be heard before a Hearing Officer, the

Agricultural Commissioner, or the Commissioner's authorized designee within the Agricultural Commissioner's Office who did not also issue the Notice to Terminate Permit;

- (5) Specify the date, time and location of the hearing to be held, or state that the date, time and location of the hearing will be specified in a subsequent notice, which will not be set for a date earlier than 5 days after personal delivery, or 10 days after mailing, of the notice specifying the date, time and location of the hearing;
 - (6) State that the permittee will be given an opportunity at the hearing to present and elicit testimony and other evidence regarding whether there is any good cause why the permit in question should not be terminated;
 - (7) Contain a statement that, unless the permittee abates the conditions causing the violations, or shows good cause why the conditions should not be abated, the permit in question shall be terminated.
- (B) Use of Hearing Officers. Whenever the Agricultural Commissioner issues an order to show cause why a permit issued pursuant to this Chapter should not be terminated, the Agricultural Commissioner is authorized to use the services of a Hearing Officer pursuant to Mendocino County Code Chapter 2.76. Such use of a Hearing Officer shall be made whenever a Hearing Officer is available, and the Agricultural Commissioner shall coordinate with County Counsel to appoint and maintain at least one Hearing Officer to the extent possible. In the event that a Hearing Officer is unavailable, the duty to hear the appeal shall remain with the Agricultural Commissioner.
- (C) Hearing Procedure.
- (1) The Hearing Officer shall hold an administrative hearing to determine whether the violations identified in the Notice to Terminate Permit created a sufficient basis on which to terminate the permit in question. The hearing shall be held at the date, time and location indicated on the notice to permittee, which shall be no less than five (5) calendar days after personal service, or no less than ten (10) calendar days after mailing of all the notices required by this section.
 - (2) Parties may choose to be represented by an attorney; however, formal rules of evidence or procedure shall not apply. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Nonetheless, any failure to make a timely objection to offered evidence constitutes a waiver of the objection. The Hearing Officer has discretion to exclude evidence if its probative value is substantially outweighed by the

probability that its admission will necessitate undue consumption of time.

- (3) The hearing shall be conducted in the English language. The proponent of any testimony by a witness who does not proficiently speak the English language shall provide an interpreter who has been certified as an interpreter by either the State of California or the County of Mendocino.
 - (4) The person who issued the Notice to Terminate Permit shall first describe the acts or conditions constituting the violations identifying in the Notice to Terminate Permit and present evidence to demonstrate how the identified violations form a basis for terminating the permit in question. Thereafter, the permittee shall be given an opportunity at the hearing to present and elicit testimony and other evidence to show good cause why the permit should not be terminated.
 - (5) In the event that the permittee does not appear and present evidence at the hearing, the Hearing Officer may base his or her decision solely upon the evidence submitted by the person issuing the Notice to Terminate Permit.
- (D) Determination after Hearing. The Hearing Officer shall consider the evidence presented by the parties, and shall issue a signed, written decision and order that either affirms or reverses the determination to terminate the permit in question. Such decision shall be delivered to the permittee by personal delivery or by first class mail, postage prepaid, sent to the mailing address associated with the Permit and return receipt requested. The decision shall become effective either on the day the decision is personally delivered to the permittee, or five (5) days after the decision is mailed to the permittee.

Section 13. Section 10A.17.160 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.160 - Enforcement and Declaration of Public Nuisance.

- (A) All of the remedies provided for in this Chapter, or elsewhere in the law, shall be cumulative and not exclusive for violations of this Chapter. Violations of this Chapter include, but are not limited to failure to obtain and maintain in good standing any permit required by this Chapter, compliance with any required element on which a permit was issued pursuant to this Chapter, or any violation of the provisions of this Chapter where a permit is not required, such as a violation of section 10A.17.040 when a person is otherwise exempt pursuant to section 10A.17.030. The County may enforce this Chapter by using any applicable state or county law, including, but not limited to Mendocino County Code Chapters 1.08, 8.75 or 8.76, and may use either the administrative process to achieve code compliance or available civil remedies, such as injunctive relief.

- (B) The cultivation of cannabis with a valid permit pursuant to this Chapter shall not be declared a public nuisance under County Code Chapter 8.75 or 8.76. Any cultivation of cannabis in the absence of a permit issued pursuant to this Chapter is a public nuisance and may be abated by the County as a public nuisance in accordance with the provisions of either County Code Chapter 8.75 or 8.76 unless such cultivation either: (1) is exempt pursuant to County Code section 10A.17.030; (2) is otherwise in compliance with State Proposition 64 and all regulations adopted by the County related to cannabis for adult use pursuant to Proposition 64; or (3) is being cultivated by an entity whose application for a Phase One Permit pursuant to this Chapter has been submitted, accepted and is currently pending, and who has also submitted a sworn affidavit to the Agricultural Commissioner on a form prepared by the Agricultural Commissioner that includes, but is not limited to, an affirmation that they have met the requirements to obtain a permit or are actively in the process of fulfilling the requirements.

Section 14. Section 10A.17.180 of the Mendocino County Code is hereby amended so that the title reads as follows, and the remainder of the section remains unchanged:

Sec. 10A.17.180 - Confidential nature of cannabis information — legislative intent.

Section 15. Chapter 20.242 is hereby renamed as follows:

CHAPTER 20.242 - CANNABIS CULTIVATION SITES

Section 16. Section 20.242.010 of the Mendocino County Code is hereby amended to read as follows:

Sec. 20.242.010 - Intent.

This chapter 20.242 ("Chapter") is intended to provide land use regulations for the County of Mendocino where cannabis may be cultivated, subject to the limitations established of this chapter and the provisions of Mendocino County Code Chapter 10A.17, the Mendocino Cannabis Cultivation Ordinance (MCCO). The objective of this Chapter is to allow the cultivation of cannabis in locations that are consistent with the intent of the base zoning district and to help ensure that its cultivation and related activities will not create adverse impacts to the public health, safety, and welfare of the residents of the County of Mendocino.

Section 17. Section 20.242.020 of the Mendocino County Code is hereby amended to read as follows:

Sec. 20.242.020 - Application.

The cultivation of cannabis is prohibited in all zoning districts in Mendocino County, except as allowed by this Chapter or by Chapter 10A.17.

Section 18. Section 20.242.040 of the Mendocino County Code is hereby amended to read as follows:

Sec. 20.242.040 - Existing Cannabis Cultivation Sites.

- (A) Referrals of applications to the Department for review related to existing cultivation sites shall include the Agriculture Commissioner's determination that the cultivation site existed prior to January 1, 2016, unless the Agricultural Commissioner requests the assistance of the Department in making this determination as part of the referral to the Department.
- (B) Cultivation sites, in conformance with the MCCO, may be allowed on a legal parcel with an approved Zoning Clearance, Administrative Permit or Minor Use Permit as required for the zoning district in which the cultivation site is located and as listed in Table 1.

TABLE 1
Zoning Permit Requirement for Existing Cannabis Cultivation by Zoning District and Cannabis Cultivation Ordinance Permit Type

MCCO Permit Type		C Sm Outdoor	C-A Sm Indoor, Artificial Light		C-B Sm, Mixed Light	1 Med Outdoor	1-A Med Indoor, Artificial Light	1-B Med Mixed Light	2 Lg Outdoor	2-A Lg Indoor, Artificial Light	2-B Lg Mixed Light	4 Nursery
Min Parcel Area (ac)		NA	NA		NA	5	5	5	10	10	10	10
Cultivation Area Limit (sf)		2,500	500	501 - 2,500	2,500	2,501-5,000	2,501-5,000	2,501-5,000	5,001-10,000	5,001-10,000	5,001-10,000	22,000
Zoning District	RR 5*	ZC	AP	UP	ZC	ZC	--	ZC	--	--	--	--
	RR 10	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC	ZC
	AG	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC	ZC
	UR	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC	ZC
	RL	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC	ZC
	FL ***	ZC	AP	UP	ZC	AP	--	AP	AP	--	AP	AP
	TPZ ***	ZC	AP	UP	ZC	AP	--	AP	AP	--	AP	AP
	I1**	ZC	ZC	ZC	ZC	ZC	ZC	ZC	--	ZC	ZC	ZC
	I2**	ZC	ZC	ZC	ZC	ZC	ZC	ZC	--	ZC	ZC	ZC
	P1**	ZC	ZC	ZC	ZC	--	ZC	ZC	--	ZC	ZC	ZC

-- = Not Allowed, ZC = Zoning Clearance, AP = Administrative Permit, UP = Minor Use Permit

* Parcels in the RR-5 zoning district must have a minimum parcel size of five (5) acres.

** Parcels in Industrial zoning districts are not subject to a minimum parcel area.

*** Existing cultivation sites in the FL and TPZ zoning districts that were previously enrolled in a permit program pursuant to the County's Chapter 9.31 shall be required to obtain a zoning clearance unless the applicant seeks to expand beyond the size previously cultivated under such permit program.

(C) An existing cultivation site located in a zoning district not listed in Table 1 of this section may continue, but shall not be expanded or enlarged, subject the following planning permit and approval requirements.

(1) Planning Permit Requirements:

- (a) Outdoor Cultivation (pursuant to a MCCO Type C Permit) not exceeding 2,500 requires an approved Zoning Clearance.
- (b) Indoor Artificial Light Cultivation (pursuant to a MCCO Type C-A Permit) not exceeding 500 square feet requires an approved Administrative Permit.
- (c) Indoor Artificial Light Cultivation (pursuant to a MCCO Type C-A Permit) between 501 and 2,500 square feet requires an approved Minor Use Permit.
- (d) Mixed Light Cultivation (pursuant to a MCCO C-B Permit) not exceeding 2,500 square feet requires an approved Zoning Clearance.
 - (i) Any future lapse or revocation of the MCCO permit will extinguish the permittee's ability to obtain a future permit from the Department to continue or resume an existing cultivation site that is not within a zoning district listed in Table 1 of this section.

(D) Transferability of Permits. Permits issued pursuant to this Section shall not be transferable to another person, except that the permittee may transfer the permit to a spouse/domestic partner, child, parent, or, for estate planning purposes, to a trust in which the permittee serves as a trustee, which shall not be deemed a change in ownership for purposes of this Chapter.

Section 19. Section 20.242.050 of the Mendocino County Code is hereby amended to read as follows:

Sec. 20.242.050 – New Cannabis Cultivation Sites Located in Industrial Zoning Districts.

Establishment of a new cannabis cultivation site in the I1 (Light Industrial), I2 (General Industrial), and Pinoleville (PI) zoning districts, for Type 1A and 2A MCCO permits, issued on or after January 1, 2018 may be permitted subject to the requirements of Section 20.242.060.

Section 20. Section 20.242.060 of the Mendocino County Code is hereby amended to read as follows:

Sec. 20.242.060 – New Cannabis Cultivation Sites.

- (A) Except as provided in Section 20.242.050, on or after January 1, 2020, new cannabis cultivation sites may be permitted in accordance with this section.
- (B) All new cannabis cultivation sites shall be consistent with the General Limitations on Cultivation of Cannabis, Section 10A.17.040; provided, however, that an applicant may seek a reduction in the setback requirements as stated in paragraph (D) of this section.
- (C) Cultivation sites, operated in conformance with the MCCO, may be allowed on a legal parcel with an approved Zoning Clearance, Administrative Permit or Minor Use Permit, as required for the zoning district in which the cultivation site is located and listed in Table 2.

TABLE 2
Zoning Permit Requirement for New Cannabis Cultivation by Zoning District
and Cannabis Cultivation Ordinance Permit Type

MCCO Permit Type		C Sm Outdoor	C-A Sm Indoor, Artificial Light		C-B Sm, Mixed Light	1 Med Outdoor	1-A Med Indoor, Artificial Light	1-B Med Mixed Light	2 Lg Outdoor	2-A Lg Indoor, Artificial Light	2-B Lg Mixed Light	4 Nursery
Min Parcel Area (ac)		2	2		2	5	5	5	10	10	10	10
Cultivation Area Limit (sf)		2,500	500	501 - 2,500	2,500	2,501- 5,000	2,501- 5,000	2,501- 5,000	5,001- 10,000	5,001- 10,000	5,001- 10,000	22,000
Zoning District	RR 5*	ZC	AP	UP	ZC	ZC	--	ZC	--	--	--	--
	RR 10	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC	ZC
	AG	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC	ZC
	UR	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC	ZC
	I1**	ZC	ZC	ZC	ZC	--	ZC	ZC	--	ZC	ZC	ZC
	I2**	ZC	ZC	ZC	ZC	--	ZC	ZC	--	ZC	ZC	ZC
	PI**	ZC	ZC	ZC	ZC	--	ZC	ZC	--	ZC	ZC	ZC

-- = Not Allowed, ZC = Zoning Clearance, AP = Administrative Permit, UP = Minor Use Permit

* Parcels in the RR-5 zoning district must have a minimum parcel size of five (5) acres.

** Parcels in Industrial zoning districts are not subject to a minimum parcel area.

- (D) Setback Reduction. A reduction in the setback from a legal parcel line required by Section 10A.17.040 may be allowed with an Administrative Permit, approved according to Section 20.242.070(C), provided that the approved setback reduction is 50 feet or greater from an adjoining property under separate ownership or access easement, whichever is most restrictive and the location of the cannabis cultivation site continues to comply with the required setback from an occupied legal residential structure.

Section 21. Section 20.242.070 of the Mendocino County Code is hereby amended to read as follows:

Sec. 20.242.070 – Planning Approval Required to Cultivate Cannabis.

- (A) Planning Approval Procedure. Each proposed cannabis cultivation site is subject to one of the following planning review processes that

correspond to the applicable zoning district and Chapter 10A.17 permit as specified by Table 1 or Table 2 in this Chapter.

The Agricultural Commissioner's Office shall refer applications for cultivation permits pursuant to Chapter 10A.17 to the Department, which shall review the application to determine which of the following processes applies. If the application needs only a Zoning Clearance, the Department will provide a zoning clearance approval to the Agricultural Commissioner's Office. If the application requires either an Administrative Permit or a Minor Use Permit, the Department will notify the Agricultural Commissioner's Office and the applicant that planning approval is required.

- (B) Zoning Clearance. The Department shall review the MCCO permit application to confirm the cannabis cultivation site is allowed in zoning district, subject to the applicable requirements of this chapter, and confirm the legal parcel on which the cultivation site is located. The Department shall additionally provide any information as requested by the Agricultural Commissioner's Office to confirm compliance with any of the provisions of Chapter 10A.17.
- (C) Administrative Permit. In accordance with the Administrative Permit review procedure listed in Chapter 20.192, the Zoning Administrator shall approve, conditionally approve or deny an Administrative Permit for cannabis cultivation sites based on the following special findings.
 - (1) The cannabis cultivation site is allowed in the zoning district and it is in compliance with the provisions of Chapter 10A.17.
 - (2) There is no other environmentally superior cultivation site located on the same parcel; the location and operation of the cannabis cultivation site will, to the maximum extent feasible, avoid or minimize its impact on environmentally sensitive areas including hillsides exceeding 15%, prime soil, oak woodland, and timber resources.
 - (3) The cannabis cultivation will avoid or minimize odor and light impact on residential uses.
 - (4) For any new cannabis cultivation site established after January 1, 2020 and that is not located in the AG (Agriculture) Zoning District, the submitted MCCO permit application contains evidence that demonstrates: (1) there is adequate water supply in the watershed and water rights to serve the cultivation site; (2) the cultivation site has received a Clean Water Act Section 404 permit from the Army Corps of Engineers or a Clean Water Act Section 401 permit from the North Coast Regional Water Quality Control Board, as applicable, and a General Permit for Discharges of Storm Water from the State Water Resources Control Board.

- (5) The Administrative Permit granted for the cannabis cultivation site shall be limited to a period not to exceed 10 years. The Administrative Permit shall expire at the end of this period unless it is renewed prior to the end of the 10-year period, or at any time the approved MCCO permit for the cultivation site expires or is revoked.
- (6) An Administrative Permit may be applied for and granted for an exception to the dwelling unit requirement of Chapter 10A.17 for parcels in the Rural Residential, lot size ten (10) acres (R-R:L-10) zoning district with the additional finding that the applicant shall demonstrate that the cultivation site and any associated infrastructure (roads, buildings, water storage, etc.) does not preclude the development of the parcel with a residence in the future. For parcels that will need on-site sewage disposal systems to be developed, making this finding may require the identification of a primary and reserve leach field to be identified in order to issue the Administrative Permit.
- (7) An Administrative Permit may be applied for and granted for an exception to the 1,000 foot setback requirement of a cannabis cultivation site as outlined in section 10A.17.040(B). Administrative permits may be approved, conditionally approved or denied for the reduction of the setback provided for in section 10A.17.040(A)(1) based on the findings of 20.242.070(C)(1), (C)(2) and (C)(3) and on the following special findings:
 - (i) That there be special circumstances applicable to the property involved, including size, shape, topography, location or surrounding;
 - (ii) That the granting of such reduction will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located; and
 - (iii) That the granting of such reduction will not adversely affect the General Plan.
- (D) Minor Use Permit. In accordance with the Use Permit review procedure listed in Chapter 20.196, the Zoning Administrator or the Planning Commission shall approve, conditionally approve, or deny a Minor Use Permit for a cannabis cultivation site based on findings in Section 20.196.020 and the following special findings:
 - (1) The proposed cannabis cultivation site is in compliance with the provisions of Chapter 10A.17.
 - (2) In cases where there is no other environmentally superior cultivation site located on the same parcel, the location and operation of the cannabis cultivation site will, to the maximum extent feasible, avoid or minimize its impact on environmentally sensitive areas including hillsides exceed 15%, prime soil, oak

woodland, and timber resources.

- (3) The proposed cannabis cultivation site will avoid or minimize odor and light impact on residential uses.
- (4) For any new cannabis cultivation site established after January 1, 2020 and that is not located in the AG (Agriculture) Zoning District, the submitted MCCO permit application contains evidence that demonstrates: (1) there is adequate water supply in the watershed and water rights to serve the cultivation site; (2) the cultivation site has received a Clean Water Act Section 404 permit from the Army Corps of Engineers or a Clean Water Act Section 401 permit from the North Coast Regional Water Quality Control Board, as applicable, and a General Permit for Discharges of Storm Water from the State Water Resources Control Board.
- (5) The Use Permit granted for the cannabis cultivation site shall be limited to a period not to exceed 10 years. The Use Permit shall expire at the end of this period unless it is renewed prior to the end of 10-year period, or at any time the approved MCCO permit for the cultivation site expires or is revoked.

Section 22. Chapter 9.30 of the Mendocino County Code is hereby repealed.

Section 23. CEQA. Section 15164 of the CEQA Guidelines (Title 14 California Code of Regulations section 15000 *et seq.*) provides that an addendum to a previously adopted mitigated negative declaration may be prepared if only minor technical changes or additions to the project are necessary or none of the conditions described in CEQA Guidelines section 15162 calling for the preparation of a subsequent environmental review document have occurred. Based on the addendum prepared for this ordinance, which is attached to the staff memorandum accompanying this ordinance, the Mendocino County Board of Supervisors hereby make the following findings:

A. The addendum to the previously adopted mitigated negative declaration has been completed in compliance with CEQA and the CEQA Guidelines.

B. The addendum to the previously adopted mitigated negative declaration was presented to the Board of Supervisors, which independently reviewed and considered the addendum and the Board of Supervisors has exercised its independent judgment in making the findings and determinations set forth herein.

C. That, based on the evidence submitted and as demonstrated by the analysis included in the addendum, none of the conditions described in Section 15162 of the CEQA Guidelines calling for the preparation of a subsequent negative declaration or environmental impact report have occurred.

D. The addendum to the previously approved mitigated negative declaration is hereby approved and adopted by the Board of Supervisors.

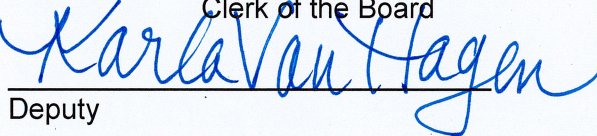
Section 24. Severability. If any section, subsection, provision, phrase, word or clause of this ordinance or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared invalid or unconstitutional.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this 24th day of April, 2018, by the following vote:

AYES: Supervisors Brown, McCowen, Croskey, Gjerde and Hamburg
NOES: None
ABSENT: None

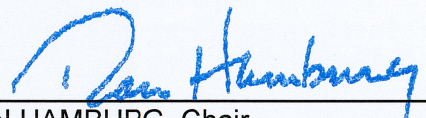
WHEREUPON, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO
Clerk of the Board


Deputy

APPROVED AS TO FORM:
KATHARINE L. ELLIOTT, County Counsel




DAN HAMBURG, Chair
Mendocino County Board of Supervisors

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

BY: CARMEL J. ANGELO
Clerk of the Board

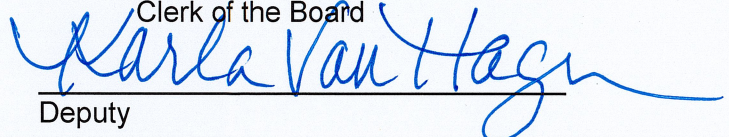

Deputy

EXHIBIT H

ORDINANCE NO. 4392

ORDINANCE MAKING CERTAIN AMENDMENTS TO CHAPTER 10A.17 – MEDICAL CANNABIS CULTIVATION ORDINANCE

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

Section 1. Section 10A.17.020 is hereby amended as follows:

The definition of “Third party inspector” shall be deleted.

The definition of “Youth-oriented facility” shall be amended to read as follows: "Youth-oriented facility" means an elementary school, middle school, high school, public park, or any establishment that advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors. Youth-oriented facility shall include “day care center,” as defined in Section 1596.76 of the California Health and Safety Code, as that section may be modified or superseded, and shall include “youth center” as defined in Section 11353.1 of the Health and Safety Code, as that section may be modified or superseded.

Section 2. Section 10A.17.030 is hereby amended to read as follows:

Sec. 10A.17.030 - Cultivation Permit Required; Exemptions.

- (A) Except as provided for by paragraph (B) of this Section, cultivation of cannabis for medical use shall be allowed only following the issuance of a Permit pursuant to the provisions of this Chapter, and the review of a permit pursuant to the provisions of Chapter 20.242 of the Mendocino County Zoning Code. Chapter 20.242 authorizes the cultivation of cannabis for medical use only in specifically enumerated zoning districts, as determined by permit type, subject either to a zoning clearance, administrative permit or minor use permit.
- (B) Qualified patients, persons with an identification card or primary caregivers cultivating medical cannabis are exempt from the permit requirements of paragraph (A) of this Section, subject to the following requirements:
 - (1) Registration with the Agricultural Commissioner on an annual basis and maintaining such registration.
 - (2) Compliance with the provisions of Section 10A.17.040.
 - (3) Any and all cannabis cultivated by a qualified patient or person with an identification card shall be for the sole and exclusive use by the patient only; such cannabis may not be provided, donated, sold or distributed to any other person. A maximum of 100 square feet of medical cannabis may be cultivated on a legal parcel by a qualified patient or patients.

- (4) Any and all cannabis cultivated by a primary caregiver shall be for the sole and exclusive use of up to a maximum of two (2) patients which have provided written designation to the primary caregiver to provide those services; the primary caregiver may not receive remuneration for these activities except for compensation in full compliance with subdivision (c) of Health and Safety Code section 11362.765. A maximum of 100 square feet of cultivation area of medical cannabis may be cultivated by a primary caregiver for each patient they are cultivating for. A maximum total of 200 square feet may be cultivated on a legal parcel by a primary caregiver or caregivers.

Section 3. Section 10A.17.040 is hereby amended as follows:

Sec. 10A.17.040 - General Limitations on Cultivation of Medical Cannabis.

The following limitations shall apply to all cultivation of cannabis for medical use in Mendocino County, whether pursuant to a Permit issued under this Chapter or the exemption provided for in Section 10A.17.030. Cultivation of cannabis for medical use shall also be subject to all applicable restrictions of Mendocino County Code Chapter 20.242.

- (A) The cultivation of medical cannabis in Mendocino County, in any amount or quantity by any entity, shall not be allowed in the following areas:
 - (1) Within one thousand (1,000) feet of a youth-oriented facility, a school, a park, or any church or residential treatment facility as defined herein that is in existence at the time a Permit is initially applied for.
 - (2) Outdoors or using mixed light within one hundred (100) feet of any occupied legal residential structure located on a separate legal parcel; provided, however, that on January 1, 2020, this setback shall be increased to two hundred (200) feet for all Permit applications but shall not apply to renewals of Permits originally issued before that date.
 - (3) Outdoors or using mixed light in a mobile home park as defined in Health and Safety Code Section 18214.1 within one hundred (100) feet of an occupied mobile home that is under separate ownership.
 - (4) In any location where the cannabis plants are visible from the public right of way or publicly traveled private roads.
 - (5) Outdoors or using mixed light within fifty (50) feet from any adjoining legal parcel under separate ownership or access easement (whichever is most restrictive); provided, however, that on January 1, 2020, this setback shall be increased to one hundred (100) feet for all Permit applications but shall not apply to renewals of Permits originally issued before that date.

- (6) Any indoor cultivation sites that comply with paragraph (A)(1) shall also be subject to the following:
 - (a) Indoor cultivation sites shall comply with the building property line setback established by the zoning district in which the cultivation site is located.
 - (b) The cultivation of cannabis for medical use within an accessory structure shall be allowed subject to the development requirements of the zoning district in which it is located and to requirements of Chapter 20.164 — Accessory Use Regulations except, notwithstanding Section 20.164.010: (a) the cultivation of cannabis for medical use in an accessory structure is not permitted prior to the construction of the legal dwelling unit on the parcel, if a legal dwelling unit is required by this Chapter, and (b) cultivation of cannabis for medical use shall only be allowed on the same parcel as the dwelling unit, if required.
- (B) The distance between the listed uses in the above paragraph (A)(1) and cannabis that is being cultivated shall be measured in a straight line from the nearest point of the fence required in section 10A.17.040(H), or if the cannabis is cultivated indoors, from the nearest exterior wall of the building in which the cannabis is cultivated to the nearest point of the exterior wall of the facility, building, or structure, or portion of the facility, building, or structure in which the above-listed use occurs or to the nearest point of any fenced, maintained or improved area where the users of the facility are typically present during normal hours of operation, whichever is closest. The distance in paragraphs (A)(2) and (A)(3) to any residential structure shall be measured from the fence required in section 10A.17.040(H) to the nearest exterior wall of the residential structure. The distance in paragraph (A)(5) shall be measured from the fence required in section 10A.17.040(H) to the boundary line of a legal parcel or access easement.

Applicants may seek a reduction in the setback described in paragraph (A)(5) upon issuance of an administrative permit pursuant to Chapter 20.242.
- (C) The outdoor, indoor or mixed light cultivation of medical cannabis shall not propagate objectionable odors which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that endanger the comfort, repose, health, or safety of any of those persons or the public.
- (D) The indoor or mixed-light cultivation of medical cannabis shall rely on the electrical grid or some form of alternative energy source. The indoor or mixed-light cultivation of medical cannabis shall not rely on a generator as a primary source of power.

- (E) All lights used for the indoor or mixed light cultivation of medical cannabis shall be fully contained within structures or otherwise shielded to fully contain any light or glare involved in the cultivation process. Security lighting shall be motion activated and all outdoor lighting shall be shielded and downcast or otherwise positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the legal parcel upon which they are placed.
- (F) All activities associated with the cultivation of medical cannabis shall not exceed the noise level standards as set forth in the County General Plan Policies DE100, 101 and 103.
- (G) All cultivation of medical cannabis shall not utilize water that has been or is illegally diverted from any spring, wetland, stream, creek, or river. The activities associated with the cultivation of medical cannabis shall not create erosion or result in contaminated runoff into any stream, creek, river or body of water.
- (H) All medical cannabis grown in Mendocino County (excluding indoor growing) must be within a secure, wildlife exclusionary fence of at least six (6) feet in height that fully encloses the immediate garden area. The fence must include a lockable gate that is locked at all times when a qualified patient, caregiver or permittee (or their agent) is not in the immediate area. Said fence shall not violate any other ordinance, code section or provision of law regarding height and location restrictions and shall not be constructed or covered with plastic or cloth except shade cloth may be used on the inside of the fence.
- (I) All buildings where medical cannabis is cultivated or stored shall be properly secured to prevent unauthorized entry.
- (J) Prohibition on Tree Removal. Removal of any commercial tree species as defined by Title 14 California Code of Regulations section 895.1, Commercial Species for the Coast Forest District and Northern Forest District, and the removal of any true oak species (*Quercus* sp.) or Tan Oak (*Notholithocarpus* sp.) for the purpose of developing a cannabis cultivation site is prohibited. This prohibition shall not include the pruning of any such trees for maintenance, or the removal of such trees if necessary to address safety or disease concerns.

Section 4. Section 10A.17.060 is hereby amended to read as follows:

Sec. 10A.17.060 - Permit Types.

The cultivation Permits that may be applied for under this Chapter are for the production of flowering medical cannabis plants and for nursery and seed production, as defined in section 10A.17.020. A Permittee producing flowering medical cannabis plants may maintain an area scaled appropriately for their operation where they may propagate their own starts through cloning, seed germination or tissue culture. Starts produced in this manner shall be for the

exclusive and personal use of the permittee only and the sale, trade, barter, etc. of such starts is prohibited. The square footage of cultivation area dedicated to propagation of starts will be included in measuring the cumulative total square footage allowed under a given Permit.

The following medical cannabis cultivation Permit types may be applied for and granted provided the applicant and the legal parcel that contains the cultivation site are determined to be in compliance with all applicable conditions of this Chapter and Mendocino County Code Chapter 20.242.

- (1) "Type C" for small outdoor cultivation using no artificial lighting not to exceed a maximum of 2,500 square feet of total plant canopy.
- (2) "Type C-A" for small indoor cultivation using exclusively artificial lighting not to exceed a maximum 2,500 square feet of total plant canopy within a structure or structures.
- (3) "Type C-B" for small mixed light cultivation (using a combination of natural and supplemental artificial lighting) not to exceed a maximum of 2,500 square feet of total plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle.
- (4) "Type 1" for medium outdoor cultivation using no artificial lighting of 2,501 to a maximum of 5,000 square feet of total plant canopy on one legal parcel not less than five (5) acres in size.
- (5) "Type 1A" for medium indoor cultivation using exclusively artificial lighting of 2,501 to a maximum of 5,000 square feet of total plant canopy within a structure or structures.
- (6) "Type 1B" for medium mixed light cultivation (using a combination of natural and supplemental artificial lighting) of 2,501 to a maximum of 5,000 square feet of total plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle, on one legal parcel not less than five (5) acres in size.
- (7) "Type 2" for large outdoor cultivation using no artificial lighting of 5,001 to a maximum of 10,000 square feet of total plant canopy on one legal parcel not less than ten (10) acres in size.
- (8) "Type 2A" for large indoor cultivation using exclusively artificial lighting of 5,001 to 10,000 square feet of total plant canopy on one legal parcel.
- (9) "Type 2B" for mixed light cultivation (using a combination of natural and supplemental artificial lighting) of 5,001 to a maximum of 10,000 square feet of total plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle, on one legal parcel not less than ten (10) acres in size.
- (10) "Type 4" for the cultivation of medical cannabis nursery stock and/or seed production which shall not exceed a maximum of 22,000 square feet of

total plant canopy on one legal parcel, subject to the limitation of paragraph (C) below regarding seed production Nursery stock and/or seed production may only be sold to a Permittee, a qualified patient, person with an identification card or a primary caregiver. The nursery product may take the form of vegetative and non-flowering plant starts or may also be in the form of seeds, if the applicant also applies and is approved as a seed producer under this type of Permit. The legal parcel shall not be less than ten (10) acres in size, provided, however, that legal parcels in industrial zoning districts are not subject to this parcel size restriction. Additional requirements for Type 4 Permits are as follows:

- (A) The Permittee shall produce only vegetative immature medical cannabis plants through cloning, seed termination or tissue culture starts for the planting, propagation and cultivation of medical cannabis, provided, however, with the approval of the Agricultural Commissioner, plants may be grown to maturity for the purpose of verifying genetic expression. The Agricultural Commissioner's approval shall include a square footage limitation and the plants shall be included within the Track and Trace system. No consumable medical cannabis product of any kind shall be derived from the plants being cultivated.
- (B) Intentionally Omitted.
- (C) A maximum of 5,000 square feet of plant canopy may be dedicated to medical cannabis seed production if the Permittee applies and is approved as a seed producer. The square footage of plant canopy dedicated to seed production shall be counted towards the maximum square footage allowed under this type of permit and shall be entered into the approved Track and Trace system.
- (D) Any on-site sales of nursery products which were produced on and occur on a parcel within the Timberland Production, Rangeland or Forestland zoning districts shall be limited to permitted cultivators only.
- (E) At the time of sale, the nursery shall generate a manifest stating the date and time, nursery name, address, permit number (and license number, when applicable), buyers name, cultivation address, and permit number (and license number, when applicable). A copy of this manifest shall be retained by the purchaser and serve as a transport document for the purchaser to proceed directly from the nursery to the intended cultivation site. If the nursery is transporting nursery products to the cultivator's location, this manifest shall be filled-out and in possession of the nursery operator, their employee or their designated transporter during transport. Both the nursery and the buyer shall retain these records for a period of two (2) years.

- (F) The permittee shall agree to abide by the Mendocino Cannabis Nursery and Seed Manual established by the Mendocino County Agricultural Commissioner.

Section 5. Section 10A.17.070 is hereby amended to read as follows:

Sec. 10A.17.070 - Requirements for All Permits.

Unless specifically exempted, in addition to compliance with all other requirements of this Chapter, all Permits shall comply with the following requirements:

- (A) Zoning Districts. Cultivation of cannabis for medical use shall only be permitted on legal parcels that comply with the applicable zoning districts and parcel sizes as provided in Chapter 20.242.
- (B) Indoor Cultivation Permits. The use or conversion of habitable space (i.e., kitchen, bedrooms, bathrooms, living room or hallways) in any structure shall not be allowed for the indoor cultivation of medical cannabis.
- (C) Cultivation of cannabis for medical use is not permitted within any required parking space.
- (D) A Person may apply for and obtain a maximum of two (2) Permits listed in section 10A.17.060 at any given time. Permits shall be granted at a maximum density of one (1) Permit per legal parcel; provided, however, that a Person may obtain two (2) separate Permits of different Permit types on a single legal parcel if the total square footage of the two Permits does not exceed the largest maximum square footage permitted on a parcel for the relevant zoning district. A Person who applies for and obtains a Type 4 Permit in combination with any other Permit, shall not exceed a total square footage of 22,000 square feet per legal parcel, of which not more than 10,000 square feet may be grown to maturity and entered into the Track and Trace system for commercial use. Plants may be grown to maturity by a Type 4 Permit holder for seed production or genetic expression, where the mature flowers are destroyed, and not used for commercial purposes, shall not require a separate cultivation permit.
- (E) Dwelling Unit Requirement. Legal parcels with a cultivation site are also required to have a dwelling unit; provided, however, that this requirement shall not apply to legal parcels within the following zoning districts: Upland Residential (U-R), Agricultural (A-G), Rangeland (R-L), Forest Land (F-L), Timberland Production (TPZ), Limited Industrial (I-1), General Industrial (I-2) Pinoleville Industrial (P-I). In addition, legal conforming parcels in Rural Residential, lot size ten (10) acres (R-R:L-10), shall also be exempt from the dwelling unit requirement of this paragraph, upon issuance of an administrative permit pursuant to Chapter 20.242.
- (F) Generators. The indoor or mixed-light cultivation of medical cannabis shall not rely on a generator as a primary source of power. If no grid

power source is available and there is not an alternative power source supporting both any required legal dwelling unit and the indoor or mixed-light permit operations, a generator may be used only under the following conditions: (1) the permittee shall install an alternative power source that will meet at least one-half of the combined power requirements by the expiration of twelve months from the date of initial application for a permit pursuant to this Chapter and (2) it will be a condition of the re-issuance of a permit that the cultivator commit, in writing, to expand their alternative power source to fully meet the combined needs of the cultivation operations and any required legal dwelling unit by the end of the second permitted year. See also section 10A.17.090 regarding application requirements related to generators.

- (G) Permittees shall be required to enroll in and comply with all requirements of any Track and Trace system adopted and implemented by the County to track the production and distribution of cannabis for medical use. Permittees shall obtain and use unique identifies from an approved source, maintain them in a readable state, comply with all data entry requirements (including, but not limited to, harvest dates, harvest data, and distribution or other disposition information), and pay all required Track and Trace fees. Non-compliance with Track and Trace requirements shall constitute a violation of the terms of the Permit.
- (H) Fees: An annual application fee shall be paid at the time an application is submitted to the Agricultural Commissioner for initial review and prior to any annual renewal of the application. An annual Permit fee shall be paid prior to issuance of any Permit. No Permit shall issue without payment of the initial application fee or renewal fee.
 - (1) Fees prescribed by this Chapter shall be set by the Mendocino County Board of Supervisors in accordance with all applicable laws and regulations and the County's Master Fee Policy. Any fee prescribed by this Chapter shall be paid to the County Treasurer/Tax Collector and is non-refundable. A receipt for payment of the required fee shall be provided to the Agricultural Commissioner prior to the initial review and issuance or annual renewal of any application, permit or other program described herein where a fee has been established, including for required inspections.
- (I) Inspections by Agricultural Commissioner. All applicants shall be subject to and shall facilitate an initial on-site pre-permit inspection and all Permittees shall be subject to and facilitate at least one annual on-site compliance inspection (Type 4 Permits shall be subject to two on-site compliance inspections annually), with additional inspections as required by this Chapter or as deemed necessary by the Agricultural Commissioner. All inspections will be scheduled with at least 24 hours advance notice to the applicant or Permittee, and shall be conducted during regular business hours. Cancellation of scheduled inspections without notice to the Agricultural Commissioner shall result in the

Permittee being invoiced for the actual travel time and mileage incurred by the Agricultural Commissioner.

- (1) All site inspections conducted prior to issuance of a Permit for any indoor or mixed-light cultivation Permit may include a representative from the Department of Planning and Building Services.
- (J) Intentionally Omitted.
- (K) Non-Transferability of Permits. All Permits are non-transferable to another person, except that the Permittee may transfer the Permit to a spouse/domestic partner, child, parent, or, for estate planning purposes, to a trust in which the permittee serves as a trustee, provided the trust existed on or before January 1, 2016, which transfer shall not be deemed a change in ownership for purposes of this Chapter.

Section 6. Section 10A.17.080 is hereby amended to read as follows:

Sec. 10A.17.080 - Permit Phases and Requirements Specific to each Phase.

Unless specifically exempted, in addition to compliance with all other requirements of this Chapter, all Permits shall comply with the following requirements:

- (A) Permits under the MCCO will be issued in the following three phases:
 - (1) Phase One: Following the effective date of the MCCO, Permits will only be issued to applicants who provide to the Agricultural Commissioner pursuant to paragraph (B)(1) of this section proof of cultivation at a cultivation site prior to January 1, 2016 ("proof of prior cultivation"), and who comply with all other applicable conditions of this Chapter and Chapter 20.242. Applications for Permits during Phase One shall only be accepted until June 30, 2018. Applicants able to provide proof of prior cultivation may apply for a Permit on a relocation site pursuant to paragraph (B)(3) of this section.
 - (2) Phase Two: Starting January 1, 2018, the Agricultural Commissioner will begin accepting applications for Type 1A and Type 2A Permits for indoor cultivation in the following zoning districts, subject to compliance with all other applicable conditions of this Chapter and Chapter 20.242: Limited Industrial (I-1), General Industrial (I-2), and Pinoleville Industrial (P-I). Proof of cultivation prior to January 1, 2016, is not required.
 - (3) Phase Three: Starting January 1, 2020, the Agricultural Commissioner will begin accepting Permit applications from any applicant in conformance with the conditions of this Chapter and Chapter 20.242. Proof of cultivation prior to January 1, 2016, is not required.

(B) Requirements specific to Phase One Permits.

- (1) Proof of Prior Cultivation. Persons applying for a Permit during Phase One shall be required to provide to the Agricultural Commissioner evidence that they were cultivating cannabis on the cultivation site prior to January 1, 2016, which cultivation site shall have been, or could have been, in compliance with the setback requirements of paragraph (A) of section 10A.17.040. Evidence shall include:
 - (a) Photographs of any cultivation activities that existed on the legal parcel prior to January 1, 2016, including: (i) ground level views of the cultivation activities and (ii) aerial views from Google Earth, Bing Maps, Terraserver, or a comparable service showing: both the entire legal parcel and the cultivation site in more detail. The date these images were captured shall be noted.
 - (b) Photographs of any cultivation activities that currently exist on the legal parcel, including: (i) ground level views of the cultivation activities and (ii) aerial views from Google Earth, Bing Maps, Terraserver, or a comparable service showing: both the entire legal parcel and the cultivation site in more detail. The date these images were captured shall be noted.
 - (c) At least one additional document demonstrating cultivation on the legal parcel prior to January 1, 2016, which evidence may be used to substitute for evidence pursuant to clause (a). The Agricultural Commissioner shall prepare a list of the types of documentation that will be accepted to meet this requirement, and may accept other similarly reliable documentary evidence showing that cannabis was cultivated for medical use prior to January 1, 2016.
 - (d) Proof of prior cultivation shall be assigned to the applicant relative to their prior cultivation site.
 - (e) Persons who participated in a permit program pursuant to the County's Chapter 9.31 in previous years may present evidence of such participation and payment of all required fees in order to provide proof of prior cultivation.
- (2) Zoning Districts; Exceptions. Existing cultivation sites not located in zoning districts where Chapter 20.242 specifically allows cultivation may be issued a Type C, Type C-A, or Type C-B Permit, subject to the following requirements, in addition to all other applicable requirements of this Chapter:
 - (a) The zoning district is one where a dwelling unit is a principally permitted use and a dwelling unit is present.

- (b) Sunset Provision for Residential Districts. Cultivation sites on legal parcels located in the Single-Family Residential (R-1), Two-Family Residential (R-2), Multiple-Family Residential (R-3), Suburban Residential (S-R), Rural Community (R-C), and Rural Residential (lot sizes one (1) acre, two (2) acres and five (5) acres [legal non-conforming parcels to minimum zoning size][R-R:L-1, R-R:L-2, and R-R:L-5 {legal non-conforming to minimum zoning size}]), as well as cultivation sites in any other zoning district where a dwelling unit is a principally permitted use and the legal parcel is less than two (2) acres in size, are subject to the following requirements:
 - (i) There is an occupied dwelling unit on the legal parcel with the cultivation site.
 - (ii) A Permit may be renewed and valid only until three (3) years following the effective date of the ordinance adopting this Chapter and any permits issued shall be void not later than three (3) years following said effective date.
 - (c) Cultivation sites on legal parcels located in the Rural Residential zoning district, lot size five (5) acres (conforming parcels of five acres or more only)(R-R:L-5), are subject to the following additional requirement that there is an occupied dwelling unit on the legal parcel with the cultivation site.
 - (d) If a Permit is granted pursuant to this paragraph (B)(2) in these zoning districts, any future revocation or lapse in renewal of such Permit shall extinguish the ability of any person to obtain a Permit for such cultivation site.
- (3) Relocation. Persons able to show proof of prior cultivation pursuant to paragraph (B)(1) above may apply for a Permit not on the site previously cultivated (the "origin site") but on a different legal parcel (the "destination site"), subject to the following requirements:
- (a) Persons may apply to relocate their cultivation site pursuant to this paragraph (B)(3) until three (3) years after the effective date of the ordinance adopting this Chapter.
 - (b) The location and operation of the proposed cultivation site on the destination parcel complies with all requirements and development standards that apply to a new cultivation site as of January 1, 2020, pursuant to this Chapter and Chapter 20.242; provided, however:

- (i) An existing cultivation site shall not be transferred to a legal parcel located within the Forestland or Timber Production Zone zoning districts.
 - (ii) An origin site may relocate to a destination site in the Rangeland zoning district, so long as the destination site has an existing cultivation site and no new cultivation sites would be established.
- (c) The origin site shall be restored. The application for a Permit on a destination site shall be accompanied by a restoration plan that is consistent with the standard conditions and best management practices listed in the North Coast Regional Water Quality Control Board Order No. 2015-0023, and which shall include the following:
 - (i) Remove or repurpose buildings, greenhouses, fences, irrigation equipment, water intakes, pumps, storage tanks and other materials brought to the origin site for the purpose of cannabis cultivation;
 - (ii) Remove illegal dams, ponds or other in-stream water storage to restore material stream flows, unless such features will continue in use;
 - (iii) Remove or compost agricultural wastes;
 - (iv) Remove trash and other debris; and
 - (v) Revegetate cleared areas with native plants typical of nearby natural areas, including groundcover, shrubs and trees.
- (d) Unless the destination site is within the Agricultural zoning district, the application shall include either a water availability analysis pursuant to paragraph (C)(1)(b) below or a will serve letter pursuant to paragraph (C)(1)(c) below.
- (e) Prior to the issuance of the Permit to cultivate cannabis for medical use at the destination parcel, the applicant shall provide the Agricultural Commissioner with an agreement, on a form approved by the Agricultural Commissioner and County Counsel, providing that the applicant releases any right to continue or resume cultivation of medical cannabis on the origin parcel.
- (f) If a person is granted a Permit for a destination site, any claims of proof of prior cultivation on the origin site shall be effectively transferred to the destination site, and the ability to claim proof of prior cultivation at the origin site shall be extinguished.

- (g) There shall be a two (2) acre minimum parcel size for all Type C, Type C-A or Type C-B Permits.
 - (4) Multiple Permits may be applied for and granted on a single legal parcel that is owned by multiple persons residing in separate habitable dwelling units on that legal parcel. Each owner may individually apply for a Permit to cultivate cannabis for medical use, provided that each owner must provide proof of prior cultivation pursuant to paragraph (B)(1) above. Each owner shall be limited to a Type C, Type C-A or Type C-B Permit, unless that owner was previously enrolled in a permit program pursuant to the County's Chapter 9.31, or unless the cumulative total square footage of plant canopy applied for by all owners does not exceed the maximum square footage permitted on a parcel for the relevant zoning district.
 - (5) Persons eligible to apply for a Permit during Phase One may apply for a different and/or larger Permit type in subsequent years, subject to all requirements of this Chapter.
- (C) Requirements specific to Phase Three Permits.
- (1) Watershed Assessment. All Permit applications, except for legal parcels located in the Agricultural (A-G) zoning district, shall demonstrate there is adequate water to serve the cultivation site.
 - (a) If surface water (or groundwater influenced by surface water) will be used, applicants may demonstrate that there is adequate water by providing (i) a watershed assessment that establishes there is sufficient watershed supply to serve the proposed cultivation site and existing uses within the watershed, and (ii) a water right exists to serve the cultivation site. A watershed assessment shall consist of an established "In Stream Flow Policy" as prepared by the State Water Resources Control Board Division of Water Rights or an equivalent document approved by that agency.
 - (b) If groundwater not influenced by surface water will be used, the applicant may demonstrate that there is adequate water by providing a water availability analysis which will address the adequacy of the proposed water supply, the direct effects on adjacent and surrounding water users, and possible cumulative adverse impacts of the development on the water supply within the watershed and show there is a sustained yield to support the proposed level of use.
 - (c) If water will be provided by a mutual water company, municipal or private utility or similar community provider,

the applicant may demonstrate that there is adequate water by providing a will serve letter from the proposed provider.

Section 7. Section 10A.17.090 is hereby amended to read as follows:

Sec. 10A.17.090 - Cultivation Permit Application and Zoning Review.

Any person or entity that wishes to engage in the cultivation of cannabis for medical use shall submit an application for a Permit to the Agricultural Commissioner's Office. Applications for Permits shall be made upon such forms and accompanied by such plans and documents as may be prescribed by the Agricultural Commissioner's Office. The application shall be reviewed by the Agricultural Commissioner's office and other agencies as described herein and renewed annually. Any referral to or consultation with an agency other than the County of Mendocino shall state that a response must be returned within thirty (30) days of the date of the referral.

The Agricultural Commissioner's Office shall refer each application to the Department of Planning and Building Services for a determination pursuant to Chapter 20.242 as to what type of clearance or permit is required. No application for a Permit shall be approved without clearance or final permit approval as required by Chapter 20.242.

The Agricultural Commissioner's Office shall consult with the Mendocino County Air Quality Management District (MCAQMD) prior to the issuance of the Permit to determine if a permit or other approval by the MCAQMD is necessary. The applicant shall obtain all approvals and permits required by the MCAQMD pursuant to state and federal laws, MCAQMD regulations, adopted air quality plans, MCAQMD policies and other applicable statutes prior to the issuance of a Permit. The required consultation with MCAQMD may be eliminated if MCAQMD authorizes County to determine when a permit or other approval by the District is necessary based on an objective set of criteria developed by MCAQMD for such purposes.

Applicants for a Permit shall provide the following information on, or as an attachment to, the application:

- (A) The name, business and residential address, and phone number(s) of the applicant.
- (B) If the applicant is not the record title owner of the legal parcel, written consent from the owner allowing the cultivation of medical cannabis on their property by the applicant with original signature of the record title owner.
- (C) Written evidence that each person applying for the permit and any other person who will be engaged in the cultivation of cannabis for medical use is at least twenty-one (21) years of age.

- (D) Site plan showing the entire legal parcel configuration with Assessor's Parcel Number(s), acreage, site address, including the location of:
- (1) easements (access and utility and all roadways public and private);
 - (2) streams, springs, ponds and other surface water features, including the location of any flood plain or floodways;
 - (3) the location and area of the cultivation site on the legal parcel, with dimensions of the area for cultivation of cannabis for medical use and showing that all setbacks required by section 10A.17.040 are being met;
 - (4) all areas of ground disturbance or surface water disturbance associated with cultivation of medical cannabis activities, including: access roads, water diversions, culverts, ponds, dams, graded flats, and other related features;
 - (5) all structures, which shall be clearly labeled; and
 - (6) all septic systems, leach fields and water wells.
- (E) Applications submitted for any Permit during Phase One shall include proof of prior cultivation pursuant to section 10A.17.080
- (F) A cultivation and operations plan which includes elements that meet or exceed the minimum legal standards for the following: water storage, conservation and use; drainage, runoff and erosion control; watershed and habitat protection; and proper storage of fertilizers, pesticides and other regulated products to be used on the legal parcel. Any fuel, fertilizer, pesticides, or other substance toxic to wildlife, children, or pets, must be stored in a secured and locked structure or device. The plan will also provide a description of cultivation activities including, but not limited to, permit type, cultivation area, soil/media importation and management, the approximate date(s) of all cannabis cultivation activities that have been conducted on the legal parcel prior to the effective date of this ordinance, and schedule of activities during each month of the growing and harvesting season.

If a generator is proposed to support any aspect of the cultivation site or related operations, the cultivation and operations plan shall identify any containment structure and dimensions necessary to contain any leak or spill that may develop or occur as a result of relying on any generator for backup power generation. The plan shall also include a maintenance plan for the generator, detailing how spent oil, used oil filters, expired batteries and other hazardous wastes generated from the operation of the generator will be handled, including fuel storage and delivery systems.

- (G) Copy of the statement of water diversion, or other permit, license or registration filed with California Water Resources Control Board, Division of Water Rights, if applicable.
- (H) An irrigation plan and projected water usage for the proposed cultivation activities, as well as a description of legal water source, if not covered by item (G).
- (I) Copy of Notice of Intent and Monitoring Self-Certification and any other documents filed with the North Coast Regional Water Quality Control Board (NCRWQCB) demonstrating enrollment in and compliance with (or proof of exemption from) Tier 1, 2 or 3, North Coast Regional Water Quality Control Board Order No. 2015-0023, or any substantially equivalent rule that may be subsequently adopted by the County of Mendocino or other responsible agency.
- (J) If any on-site or off-site component of the cultivation facility, including access roads, water supply, grading or terracing impacts the bed or bank of any stream or other watercourse, show proof they have notified the California Department of Fish and Wildlife (CDFW) pursuant to section 1602 of the Fish and Game Code and provide a copy of the Streambed Alteration Permit obtained from the Department of Fish & Wildlife.
- (K) If the source of water is a well, a copy of the County well permit, if available; applicant shall provide documentation showing the approximate date of installation.
- (L) A unique identifying number from a State of California Driver's License or Identification Card for each person applying for the permit and any other person who will be engaged in cultivation of cannabis for medical use.
- (M) Evidence that the applicant or any individual engaged in the management of, or employed by, the cultivator has not been convicted of a violent felony as defined in Penal Code section 667.5(c) within the State of California, or a crime that would have constituted a violent felony as defined in Penal Code section 667.5(c) if committed in the State of California and is not currently on parole or felony probation. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
- (N) A statement describing the proposed security measures for the facility that shall be sufficient to ensure the safety of members and employees and protect the premises from theft.
- (O) If the applicant is organized as a non-profit corporation, the applicant shall set forth the name of the corporation exactly as shown in its Articles of Incorporation, and the names and residence addresses of each of the officers and/or directors. If the applicant is organized as a partnership, the application shall set forth the name and residence address of each of the partners, including the general partner and any limited partners. Copies of

the Articles of Incorporation or a statement listing the members of the partnership shall be attached to the application.

- (P) Intentionally Omitted.
- (Q) A copy of a Board of Equalization Seller's Permit if applicant intends to sell directly to qualified patients or primary caregivers.
- (R) Written consent for an onsite pre-permit inspection of the legal parcel pursuant to section 10A.17.070 by County officials or other appropriate agency representatives at a prearranged date and time in consultation with the applicant prior to the approval of a permit to cultivate medical cannabis, and at least once annually thereafter.
- (S) For all indoor cultivation facilities, identify the source of electrical power and plan for compliance with applicable Building Codes. Also, provide documentation that addresses the handling of waste discharge from the grow location of items including, but not limited to nutrients, spent growing media, un-used containers and other associated hardware, supplies, and garbage.
- (T) No application shall be approved which identifies or would require the removal of tree species listed in paragraph (l) of Section 10A.17.040 after May 4, 2017, for the purpose of developing a cultivation site. For applications where trees were removed prior to May 4, 2017, applicants shall provide evidence to the Department of Agriculture that no trees were unlawfully removed to develop a cultivation site; such evidence may include, but is not limited to, a less-than-3-acre conversion exemption or timberland conversion permit issued by the California Department of Forestry and Fire Protection ("CalFire") and trees were removed prior to May 4, 2017. If during review of an application County staff determine that trees were unlawfully removed to develop a cultivation site, the County shall deny the application. Notwithstanding the foregoing, for cultivation sites created prior to May 4, 2017, through prior unauthorized conversion of timberland as defined in Public Resources Code section 4526, a Permit may be approved if the applicant provides evidence that environmental impacts of the tree removal have been mitigated to the extent feasible or otherwise resolved, as required by the resource protection agencies including CalFire, the NCRWQCB and the CDFW. County staff shall defer to the resource protection agencies referenced herein for determinations as to the unlawful removal of trees or unauthorized conversion of timberland or the sufficiency of any required remediation to address the environmental impacts. Nothing herein shall be construed to limit or condition in any way the regulatory or enforcement authority of the resource agencies listed herein.
- (U) If applicable, clearance from CalFire related to compliance with the requirements of Public Resources Code Section 4290 and any implementing regulations.

- (V) For activities that involve construction and other work in Waters of the United States, that are not otherwise exempt or excluded, including streams and wetlands, the application shall include a copy of a federal Clean Water Act (CWA) Section 404 permit obtained from the Army Corps of Engineers and a CWA Section 401 water quality certification from the NCRWQCB.
- (W) Projects that disturb one (1) or more acres of soil or projects that disturb less than one acre but that are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the State Water Resources Control Board General Permit for Discharges of Storm Water Associated with Construction Activity Construction General Permit Order 2009- 0009-DWQ. Construction activity subject to this permit includes clearing, grading and disturbances to the ground such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility.
- (X) The results of a "Cortese List" database search for sites known to be contaminated with hazardous materials. If the site is listed on the "Cortese List", the application shall include sufficient information to demonstrate that the cultivation is in compliance with any cleanup and/or abatement order that is established for the site.
- (Y) If water or sewer services to the cultivation site will be provided by a community provider, a will-serve letter from the provider indicating adequate capacity to serve the cultivation site.

The Agricultural Commissioner is authorized to require in the permit application any other information reasonably related to the application including, but not limited to, any information necessary to discover the truth of the matters set forth in the application.

Section 8. Section 10A.17.100 is hereby amended to read as follows:

Sec. 10A.17.100 - Permit Review and Issuance.

- (A) The Agricultural Commissioner's Office shall issue a Permit pursuant to this Chapter only:
 - (1) Following the referral to and clearance or permit approval pursuant to Chapter 20.242; and
 - (2) Following review by qualified County staff to review proposed permit locations and identify where habitat suitable for sensitive species may exist. The County shall consult with the California Department of Fish and Wildlife ("CDFW") to evaluate if there is a possibility for presence or habitat suitable for sensitive species on the parcel with a proposed Permit location. Upon consultation, CDFW may recommend approval of the proposed development, ask to conduct a site inspection or request additional studies in

order to make the determination that no impacts to sensitive species will occur. A cultivator that cannot demonstrate that there will be a less than significant impact to sensitive species will not be issued a Permit. The County shall develop a policy in consultation with CDFW to define an objective set of criteria that applications can be checked against and when during Phases 1 and 2 a formal referral to CDFW is required to avoid impacts to sensitive species and natural communities. Following the development of the policy referred to in the previous sentence, consultation with CDFW shall not be required but be performed pursuant to the policy. During Phase 3 all applications will be referred to CDFW; and

- (3) After the Agricultural Commissioner's Office, and other County and State agency staff, as appropriate, have reviewed the application and performed a pre-permit site inspection to confirm adherence to the requirements established in the MCCO; and
 - (4) Following receipt of evidence of payment of the required permit fee, pursuant to Section 10A.17.070.
- (B) As a condition of approval for any cultivation permit, the owner or permittee shall indemnify and hold harmless the County of Mendocino and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by affected property owners or other third parties due to the commercial cultivation of cannabis for medical use and for any claims brought by any person for problems, injuries, damages, or liabilities of any kind that may arise out of the commercial cultivation of cannabis for medical use.
- (C) Discovery of any violation(s) of the Mendocino County Code during the Permit application process will be treated in a similar manner to violation(s) that are self-reported during an active amnesty program. That is, the discovered violation(s) will still need to be corrected, but any investigative and/or penalty fees associated with an after-the-fact County permit will be waived.
- (1) If the discovered violation(s) are directly related to a Phase One Permit application, and/or if it is discovered that the Permit would authorize a particular use for which a separate County permit is required but has not yet been obtained, the applicant shall be required to agree in writing to a compliance plan prior to issuance of the Permit. Failure by applicant to agree in writing to a required compliance plan shall be grounds for denial of the Permit.
 - (a) The compliance plan will identify the violation(s) and may suggest corresponding remedial action(s) that may be taken to correct the violation(s), will identify the required permit(s) based on the uses identified in the Permit application, and will include timelines for achieving code

compliance for all violations and/or for submitting completed applications for each required permit.

- (b) In no event will more time be given to correct all violations, and/or submit a complete application for each required permit, than one (1) year after the date of issuance of the Permit.
 - (c) After the applicant has signed the compliance plan, as presented by the Agricultural Department in coordination with the appropriate County department(s), the Agricultural Department may issue a Permit restricted as indicated in the compliance plan, so long as no other barrier(s) to such issuance exists. Failure to abide by the compliance plan shall be grounds for Permit termination, or non-renewal, pursuant to section 10A.17.140.
 - (d) The compliance plan will be the primary mechanism to obtain code compliance from Permit applicants with respect to violations directly related to Phase One Permits applications. However, nothing in this section is intended to limit the use of any other applicable code enforcement provision or the ability of any County department with the appropriate authority from enforcing the Mendocino County Code.
- (2) If the discovered violation(s) are not directly related to a Phase One Permit application, such violation(s) will not affect the processing of the Phase One Permit application. However, any County department with appropriate enforcement authority with respect to such violation(s) may make use of any applicable code enforcement mechanism as if the violation(s) were discovered as a result of self-reporting during an active amnesty program.
- (D) Track & Trace unique identifiers will only be made available following the issuance of a Permit by the Agricultural Commissioner's Office. The Permittee will have 72 hours to register with the County track & Trace system. Upon Track & Trace system registration, the system will provide unique identifiers. The unique identifiers shall be affixed to the individual plants within 72 hours of being provided to the Permittee.
- (E) Permits shall remain valid for one (1) year from the date of issuance, subject to any enforcement action or other action that may result in earlier suspension or revocation.

Section 9. Section 10A.17.110 is hereby amended to read as follows:

Sec. 10A.17.110 - Performance Standards.

All Cultivation Permits issued by the Agricultural Commissioner's Office shall obligate the permittee to comply with the following performance standards:

- (A) Cultivation shall be located as shown on the approved application site plan and in compliance with all provisions of this Chapter and any permit issued pursuant to Chapter 20.242.
- (B) Once they become available, possession of a current, valid required license, or licenses, issued by any agency of the State of California in accordance with the MCRSA, and regulations promulgated thereunder covering a similar cannabis activity.
- (C) A unique identifier for compliance with the County's Track & Trace system shall be affixed to each permitted medical cannabis plant cultivated in Mendocino County. It shall be the responsibility of the permittee to ensure complete and accurate entry of information into the Track & Trace system within 72 hours of the reportable activity occurring.
- (D) Compliance with all statutes, regulations and requirements of the California State Water Resources Control Board, Division of Water Rights, including obtaining and complying with any applicable and approved permit, license or registration or the annual filing of a statement of diversion and use of surface water from a stream, river, underground stream, or other watercourse required by Water Code Section 5101.
- (E) If a generator is used to support any aspect of the permitted cultivation operations, (excluding the conditions set forth in section 10A.17.070(F)), it shall be as a secondary or back-up power source. The use of the generator is only allowed when the primary alternative power source is unable to provide its normal output and generate sufficient power to meet the needs of the cultivation operation and the legal dwelling unit. The Owner's Manual and/or Operation Manual (or operational fact sheet) providing the operational characteristics and maintenance schedule for the generator shall be on-site and available for review.

If a generator is being used pursuant to the conditions set forth in section 10A.17.070(F), the Permit shall be conditioned on the conducting of an analysis of the noise levels produced by the generator at full operational speed, performed by an accredited acoustical engineer, and such analysis shall show compliance with Mendocino County General Plan Policies DE100, 101 and 103. All generators shall be, at a minimum, equipped with the manufacturer's specified muffler; if compliance with Policies DE100, 101 and 103 requires additional measures, the generator shall be equipped with such measures, which may include a hospital-grade muffler and/or a structure to enclose the generator designed for sound suppression.

Any electrical wiring associated with the generator shall be of sufficient capacity and installed in such a way as to provide for the minimum installation and safety standards for the electrical service provided by that generator.

- (F) Establish and maintain enrollment in Tier 1, 2 or 3 with the North Coast Regional Water Quality Control Board (NCRWQB) Order No. 2015-0023, if applicable, or any substantially equivalent rule that may be subsequently adopted by the County of Mendocino or other responsible agency.
- (G) For cultivation areas for which no enrollment pursuant to NCRWQB Order No. 2015—0023 is required, the site shall comply with the standard conditions set forth in that Order, as well as the applicable "Best Management Practices for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects" as presented in Appendix B of the Water Board Order.
- (H) Maintain the applicable "Defensible Space" protocols and distances, as established by the California Department of Forestry and Fire Protection around structures located on the legal parcel.
- (I) Comply with the terms of any applicable Streambed Alteration Permit obtained from the California Department of Fish & Wildlife.
- (J) All weighing and measuring devices shall be type approved by the California Department of Food and Agriculture, Division of Measurement Standards and issued either a California Type Evaluation Program (CTEP) Certificate of Approval (COA) or a National Type Evaluation Program (NTEP) Certificate of Conformance (CC) before commercial use. All weighing and measuring devices shall be registered and inspected by the Agricultural Commissioner in accordance with Mendocino County Code Chapter 10A.16.
- (K) Consent to at least one (1) annual on-site compliance inspection by the Agricultural Commissioner's office, as more specifically provided for in section 10A.17.070.
- (L) Any guard dog(s) or guard animals kept at the cultivation site shall be restrained to a fixed point or contained in some manner to facilitate the inspections performed by any entity necessitating inspect as required by this Chapter. Animals considered family pets will be kept on a leash at all times and under control when any entity is performing a required inspection.
- (M) All buildings, including greenhouses, used for the cultivation of medical cannabis pursuant to an "artificial light" permit (generally Type C-A, Type 1-A, Type 2-A and Nursery as applicable), shall be equipped with filtered ventilation systems, permitted by the Mendocino County Air Quality Management District (MCAQMD) which rely on Activated Carbon Filtration, Negative Ion Generation, Ozone Generation or other odor control mechanism demonstrated to be effective in reducing cannabis odors.

- (N) Any use of pesticide products shall be consistent with State law and regulations enforced by the California Department of Pesticide Regulation and the Agricultural Commissioner's Office. All agricultural use pesticides and concentrated fertilizers, amendments, and similar materials shall be stored in a locked, hard-faced enclosure to prevent unauthorized entry by humans, to exclude large animals that may be attracted by odors, and to ensure that they will not enter or be released into surface or ground waters.
- (O) Fuel shall be stored and handled in compliance with applicable state and local laws and regulations and in such a way that no spillage occurs.
- (P) Comply with any conditions that may apply as a result of an administrative or conditional use permit approved pursuant to Chapter 20.242, or with a written remediation plan required by Section 10A.17.080(B)(3).

Section 10. Section 10A.17.130 is hereby amended to read as follows:

Sec. 10A.17.130 -Intentionally Omitted.

Section 11. Section 10A.17.140 is hereby amended to read as follows:

Sec. 10A.17.140 - Violations and Penalties Respecting Permitted Cultivation.

- (A) If at any time the Department of Agriculture determines that a law related to a Permit is being violated, the Department of Agriculture may issue a notice of violation or an administrative citation(s) pursuant to Mendocino County Code Chapter 1.08 and notify other interested public agencies or County departments of such violations. After the violation(s) have been cured, the correction must be confirmed. Failure by the Permittee to schedule a re-inspection with the Department of Agriculture to confirm the correction will result in an unscheduled compliance inspection.
- (B) **Inspection Fees.** After initial substantiation of a violation related to any law related to a Permit, inspection fees shall be charged to the Permittee for any additional compliance inspection undertaken by the Department of Agriculture, beyond those regularly scheduled and enumerated in section 10A.17.070, for the purpose of determining if the cited violations have been cured. All additional inspection fees shall consist of the hourly rate for an inspector from the Department of Agriculture for the travel and inspection time plus the standard IRS mileage rate for travel distance. The fees shall be paid pursuant to the provisions set forth in section 10A.17.070(H)(1).
- (C) **Notice to Terminate Permit.** The Department of Agriculture may issue a Notice to Terminate Permit by personal service or by first class mail, postage prepaid and return receipt requested. If by mail, service will be

deemed complete five (5) days after mailing. A Notice of Terminate Permit may be issued after:

- (1) the Department of Agriculture discovers that the Permittee would not have otherwise qualified to obtain a permit but for false or misleading information contained in either the Permittee's application or subsequent submittals to the County pertaining to the Permittee's Permit application; or
 - (2) the Permittee has engaged in activity related to the Permit that creates an immediate threat to health or safety, or has allowed such activity to be carried out by one or more of its employees or agents; or
 - (3) the Permittee has engaged in activity that is specified in a separate provision of the Mendocino County Code as grounds for Permit termination, including but not limited to section 10A.17.100; or
 - (4) the Department of Agriculture determines that the Permittee is in violation of one or more laws related to the Permit, and that the Permittee is unlikely or unable to correct such violation(s). The Department of Agriculture may make a determination that a Permittee is unlikely to correct a violation if:
 - (a) the Permittee has failed to correct any single code violation within 10 days of the initial notice, or such other time period otherwise specified in the pertinent notice of violation, administrative citation, or related writing; or
 - (b) the Permittee has received three (3) or more notices of violation or administrative citations, on separate occasions, within a twelve month period, which may or may not pertain to the same violation, recurring violation, or different violation; or
 - (c) the extent of, severity of, or conditions surrounding one or more violations make it clear that the Permittee was not acting in good faith to abide by the laws related to the Permit.
- (D) Termination of Permit. After issuance of a Notice to Terminate Permit, the Permit shall be terminated upon a final determination after the hearing on the order to show cause affirming the determination to terminate the permit in question pursuant to section 10A.17.150. The County shall notify any state license authority, as defined by the MCRSA, whenever a Permit has been terminated.
- (E) Nothing in this section is intended to limit the applicability of any other code enforcement provision or the ability of any other agency or department from enforcing the Mendocino County Code.

Section 12. The Board of Supervisors hereby authorizes the Department of Agriculture and the Treasurer Tax Collector to refund any fees previously paid to the County for applications to serve as Third Party Inspectors.


Section 13. Severability. If any provision of this ordinance, or the application thereof, is held invalid, that invalidity shall not affect any other provision or application of this ordinance that can be given effect without the invalid provisions or application; and to this end, the provisions or application of this ordinance are severable.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this 29th day of August, 2017, by the following roll call vote:

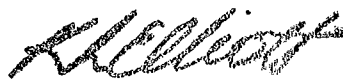
AYES: Supervisors Brown, McCowen, and Hamburg
NOES: None
ABSENT: Supervisors Croskey and Gjerde

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

ATTEST: CARMEL J. ANGELO
Clerk of the Board


Deputy

APPROVED AS TO FORM:
KATHARINE L. ELLIOTT
County Counsel





JOHN MCCOWEN, Chair
Mendocino County Board of Supervisors

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

BY: CARMEL J. ANGELO
Clerk of the Board

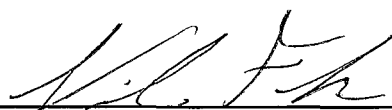

Deputy

EXHIBIT I

ORDINANCE NO. 4381

**ORDINANCE ADOPTING CHAPTER 10A.17 – MEDICAL CANNABIS CULTIVATION
ORDINANCE AND CHAPTER 20.242 – MEDICAL CANNABIS CULTIVATION SITE**

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

Section 1. Chapter 10A.17 is hereby added to the Mendocino County Code to read as follows:

Chapter 10A.17 – Medical Cannabis Cultivation Ordinance

Section 10A.17.010	Title, Purpose and Intent
Section 10A.17.020	Definitions
Section 10A.17.030	Cultivation Permit Required; Exemptions
Section 10A.17.040	General Limitations on Cultivation of Medical Cannabis
Section 10A.17.050	Medical Marijuana Collectives
Section 10A.17.060	Permit Types
Section 10A.17.070	Requirements for All Permits
Section 10A.17.080	Permit Phases and Requirements Specific to Each Phase
Section 10A.17.090	Cultivation Permit Application and Zoning Review
Section 10A.17.100	Permit Review and Issuance
Section 10A.17.110	Performance Standards
Section 10A.17.120	Certifications
Section 10A.17.130	Third Party Inspectors
Section 10A.17.140	Cultivation Site Inspections: Violations and Penalties
Section 10A.17.150	Administrative Order to Show Cause
Section 10A.17.160	Enforcement and Declaration of Public Nuisance
Section 10A.17.170	Attorneys' Fees
Section 10A.17.180	Confidential nature of medical cannabis information – legislative intent
Section 10A.17.190	Severability

Section 10A.17.010 – Title, Purpose and Intent

This Chapter is known and may be cited as the Medical Cannabis Cultivation Ordinance ("MCCO"). Chapter 20.242 of the Mendocino County Code, titled Medical Cannabis Cultivation Site, is complementary to this Chapter and together the chapters may be cited as the Medical Cannabis Cultivation Regulation ("MCCR").

It is the purpose and intent of this Chapter, together with complementary regulations found in Chapter 20.242 of the Mendocino County Zoning Code, to regulate the cultivation of cannabis intended exclusively for medical use (which may also be referred to herein as medical cannabis) within the unincorporated areas of Mendocino County in a manner that is consistent with State law and which promotes the health, safety, and general welfare of the residents and businesses within those areas by balancing the needs of medical patients and their caregivers for enhanced access to medical cannabis, the needs of neighbors and communities to be protected from public safety and nuisance impacts, and the need to limit harmful environmental impacts that are sometimes associated with cannabis cultivation.

Adoption of this Chapter will protect the public health, safety and welfare of the residents of the County of Mendocino by adopting a local permitting structure that will operate in conformance with State licensing requirements for the cultivation of medical cannabis, once state licenses

become available.

All cultivation of cannabis for medical use within the County of Mendocino shall comply with the provisions of the MCCR, as well as all applicable state and local laws, regardless of whether the cultivation site existed or occurred prior to the adoption of the MCCR.

Nothing in this Chapter is intended, nor shall it be construed, to 1) allow persons to engage in conduct that endangers others or causes a public nuisance, 2) allow the use or diversion of cannabis for nonmedical purposes, or 3) allow any activity relating to the cultivation, distribution or consumption of cannabis that is otherwise illegal under California State law.

Nothing in this Chapter is intended, nor shall it be construed, to exempt the cultivation of cannabis for medical use from compliance with all other applicable Mendocino County zoning and land use regulations, as well as other applicable provisions of the County Code, or compliance with any applicable state laws.

Nothing in this Chapter is intended, nor shall it be construed, to confer upon qualified patients and their primary caregivers the right to create or maintain a public nuisance in the course of cultivating cannabis plants for medical purposes.

Nothing in this Chapter is intended, nor shall it be construed, to exempt the cultivation of cannabis for medical use, as defined herein, from any and all applicable local and state construction, grading, electrical, plumbing, land use, water rights, waste water discharge, streambed alteration, or any other environmental, building or land use standards or permitting requirements.

Nothing in this Chapter is intended, nor shall it be construed, to preclude a landlord or property owner from limiting or prohibiting the cultivation of cannabis for medical use.

All persons operating facilities and conducting activities associated with the cultivation of cannabis for medical use, as defined in this Chapter, are subject to possible federal prosecution, regardless of the protections provided by state or local law.

Section 10A.17.020 - Definitions

As used herein the following definitions shall apply:

"Agricultural Commissioner" or "Agricultural Commissioner's Office" or the "Department of Agriculture" means the Mendocino County Department of Agriculture or the authorized representatives thereof.

"Attorney General's Guidelines" means the document titled "Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use issued by the California State Attorney General in August 2008.

"Cannabis" means all parts of the plant Cannabis sativa, Cannabis indica, or Cannabis ruderalis, or any other strain or varietal of the genus Cannabis that may hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds thereof. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. For the purpose of this section, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food

and Agricultural Code or Section 11018.5 of the Health and Safety Code.

“Church” means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.

“Clone” means a portion of a stem that is cut from a parent plant and induced to form roots by chemical, mechanical, or environmental manipulation.

“Collective” means a medical marijuana collective, as defined below.

“Cultivation cycle” means each individual cycle where cannabis plants are grown to maturity from seeds, clones or nursery starts.

“Cultivation of cannabis for medical use” means the planting, growing, harvesting, drying or processing at a cultivation site of cannabis plants or any part thereof.

“Cultivation site” means one or more locations or facilities on one legal parcel subject to a single approved Permit where medical cannabis is planted, grown, harvested, dried, cured, graded, trimmed, processed or packaged for transport, or that does all or any combination of those activities. One or more areas of cannabis cultivation may exist on the legal parcel used for that purpose.

“Dwelling unit” means a legal residential structure providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation, and having only one (1) kitchen.

“Greenhouse” means a completely enclosed structure whose structural members are made of pre- formed, rigid construction materials. The walls, roof, and ends are typically covered using a transparent material, often glass, that is fixed in place, and which allows solar radiation to penetrate the surface and affect the growing environment of the plants inside.

“Hoop House” means a structure with structural members are made of flexible and somewhat rigid construction materials, typically PVC pipe or similar material. The ends may be covered or left open and the material covering the structural members is readily removable and is typically removed and re-affixed frequently.

“Identification card” shall have the same definition as California Health and Safety Code section 11362.5 et seq., and as may be amended.

“Indoors” means within a fully enclosed and secure structure that complies with the California Building Code, as adopted by the County of Mendocino, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one (1) or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2" x 4" or thicker studs overlain with 3/8" or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

“Legal parcel” or “Parcel” means a lot of real property which was created pursuant to the Subdivision Map Act prior to January 1, 2016, or for which a certificate of compliance was recognized and recorded prior to January 1, 2016; provided, however, for real property within

Industrial zoning districts, subdivisions or certificates of compliance may be recognized and recorded after January 1, 2016

“Licensee” means a person issued a state license under the MCRSA to engage in commercial cannabis activity.

“Medical marijuana collective” means qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients who associate by written agreement, or form a cooperative in accordance with Section 12300 of the Corporations Code within the unincorporated area of the County in order to collectively or cooperatively cultivate, store, and/or dispense cannabis for medical purposes, as provided in Health and Safety Code Section 11362.775. The term collective shall include “cooperative” unless the context clearly indicates otherwise.

“Mixed light” means the use of both natural and artificial or supplemental lighting sources during the growing cycle to cultivate cannabis for medical use. Included in this definition is the process of solely manipulating natural light to cultivate cannabis for medical use.

“Nursery producer” means a Permittee that produces vegetative immature medical cannabis plants, through cloning, seed germination, or tissue culture. A nursery producer may also apply to be a “seed producer” as defined herein.

“Outdoors” means any cultivation site that uses no artificial or supplemental lighting to cultivate cannabis for medical use. Use of supplemental lighting to maintain vegetative starts or immature plants prior to transplanting outdoors shall be considered consistent with this definition.

“Park” means an area of land used for community recreation owned or operated by a public entity or a private area of land recognized as a neighborhood park utilized by youth. State or Federal designated parks and forestlands as recognized within the Mendocino County General Plan are not included within this definition.

“Permit” means a permit to cultivate medical cannabis in Mendocino County pursuant to this Chapter.

“Permittee” means a Person issued a permit to cultivate medical cannabis in Mendocino County pursuant this Chapter.

“Person” means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.

“Person with an identification card” means an individual who is a qualified patient who has applied for and obtained a valid identification card pursuant to Article 2.5 of Chapter 6 of Division 10 of the Health and Safety Code (Section 11362.7 *et seq.*).

“Plant canopy” or “square footage” or “total square footage of plant canopy” or “cultivation area” means the cumulative total of square footage occupied by growing cannabis plants as calculated by the Agricultural Commissioner’s Office but does not include aisles or other open areas outside the canopy area of growing cannabis plants.

“Primary caregiver” means the individual, designated by a qualified patient or by a person with

an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, as defined in Health and Safety Code section 11362.7(d).

"Processing" means to harvest, dry, cure, grade, trim, or package for transport medical cannabis.

"Publically traveled private road" means a private roadway easement or access easement which serves, or has the potential to serve, more than four (4) lots or parcels. Such easement shall be considered a street as defined in Mendocino County Code section 20.008.052 (26).

"Qualified patient" or "Patient" means a person who is entitled to the protections of section 11362.5 of the Health and Safety Code, but who does not have an identification card issued pursuant to Article 2.5 of Chapter 6 of Division 10 of the Health and Safety Code (Section 11362.7 *et seq.*).

"Residential treatment facility" means a State licensed residential facility that provides treatment for drug and/or alcohol dependency.

"School" means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code, or any licensed child day care or preschool facility. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college or university.

"Seed producer" means a permitted nursery producer that has applied for and been approved to grow medical cannabis plants for the expressed purpose of producing specific breeds or varieties of cannabis seeds or to develop unique strains or varieties.

"Sheriff" or "Sheriff's Office" means the Sheriff's Office of the County of Mendocino or the authorized representatives thereof.

"Third party inspector" means an individual that has been approved by the Agricultural Commissioner to conduct compliance consultations with permittees to assess compliance with this section.

"Track and Trace" means a monitoring system providing traceability throughout the production and distribution lifecycle of permitted cannabis utilizing a unique identifier pursuant to section 11362.777 of the Health and Safety Code to assist government with enforcing regulations and preventing the illegal diversion of medical cannabis.

"Unique identifier" or "Unique ID" means individual, non-repeating identification issued to a permittee and attached to the base of each medical cannabis plant permitted at a cultivation site during the cultivation period or otherwise utilized in connection with an approved Track and Trace system.

"Wildlife exclusionary fence" means fencing that is designed to prevent the access of wild animals to the cultivation area by incorporating exclusionary measures designed to prevent the surface digging of wild animals under the upright portion of the fencing, the scaling of the fencing itself, and intrusion over the fencing. A number of methods are available to develop such fencing, including but not limited to: use of "no climb" wire fencing, addition of electrified

“hot” wire(s) to the exterior of a solid fence, height extensions to a standard fence (where permissible) using hot wire or barbed wire strung between the extensions, etc.

“Youth-oriented facility” means an elementary school, middle school, high school, public park, or any establishment that advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.

Section 10A.17.030 – Cultivation Permit Required; Exemptions

- (A) Except as provided for by paragraph (B) of this Section, cultivation of cannabis for medical use shall be allowed only following the issuance of a Permit pursuant to the provisions of this Chapter, and the issuance of a permit pursuant to the provisions of Chapter 20.242 of the Mendocino County Zoning Code, if required. Chapter 20.242 authorizes the cultivation of cannabis for medical use only in specifically enumerated zoning districts, as determined by permit type, subject either to a zoning clearance, administrative permit or minor use permit.
- (B) Qualified patients, persons with an identification card or primary caregivers cultivating medical cannabis are exempt from the permit requirements of paragraph (A) of this Section, subject to the following requirements:
 - (1) Registration with the Agricultural Commissioner on an annual basis and maintaining such registration.
 - (2) Compliance with the provisions of Section 10A.17.040.
 - (3) Any and all cannabis cultivated by a qualified patient or person with an identification card shall be for the sole and exclusive use by the patient only; such cannabis may not be provided, donated, sold or distributed to any other person. A maximum of 100 square feet of medical cannabis may be cultivated by a qualified patient.
 - (4) Any and all cannabis cultivated by a primary caregiver shall be for the sole and exclusive use of up to a maximum of two (2) patients which have provided written designation to the primary caregiver to provide those services; the primary caregiver may not receive remuneration for these activities except for compensation in full compliance with subdivision (c) of Health and Safety Code section 11362.765. A maximum of 100 square feet of cultivation area of medical cannabis may be cultivated by a primary caregiver for each patient they are cultivating for, up to a maximum total of 200 square feet.

Section 10A.17.040 – General Limitations on Cultivation of Medical Cannabis

The following limitations shall apply to all cultivation of cannabis for medical use in Mendocino County, whether pursuant to a Permit issued under this Chapter or the exemption provided for in Section 10A.17.030. Cultivation of cannabis for medical use shall also be subject to all applicable restrictions of Mendocino County Code Chapter 20.242.

- (A) The cultivation of medical cannabis in Mendocino County, in any amount or quantity by any entity, shall not be allowed in the following areas:
- (1) Within one thousand (1,000) feet of a youth-oriented facility, a school, a park, or any church or residential treatment facility as defined herein.
 - (2) Outdoors or using mixed light within one hundred (100) feet of any occupied legal residential structure located on a separate legal parcel; provided, however, that on January 1, 2020, this setback shall be increased to two hundred (200) feet for all Permit applications but shall not apply to renewals of Permits originally issued before that date.
 - (3) Outdoors or using mixed light in a mobile home park as defined in Health and Safety Code Section 18214.1 within one hundred (100) feet of an occupied mobile home that is under separate ownership.
 - (4) In any location where the cannabis plants are visible from the public right of way or publicly traveled private roads.
 - (5) Outdoors or using mixed light within fifty (50) feet from any adjoining legal parcel under separate ownership or access easement (whichever is most restrictive); provided, however, that on January 1, 2020, this setback shall be increased to one hundred (100) feet for all Permit applications but shall not apply to renewals of Permits originally issued before that date.
 - (6) Any indoor cultivation sites that comply with paragraph (A)(1) shall also be subject to the following:
 - (a) Indoor cultivation sites shall comply with the building property line setback established by the zoning district in which the cultivation site is located.
 - (b) The cultivation of cannabis for medical use within an accessory structure shall be allowed subject to the development requirements of the zoning district in which it is located and to requirements of Chapter 20.164 – Accessory Use Regulations except, notwithstanding Section 20.164.010: (a) the cultivation of cannabis for medical use in an accessory structure is not permitted prior to the construction of the legal dwelling unit on the parcel, if a legal dwelling unit is required by this Chapter, and (b) cultivation of cannabis for medical use shall only be allowed on the same parcel as the dwelling unit, if required.

The distance between the listed uses in the above paragraph (A)(1) and cannabis that is being cultivated shall be measured in a straight line from the nearest point of the fence required in section 10A.17.040(g), or if the cannabis is cultivated indoors, from the nearest exterior wall of the building in which the cannabis is cultivated to the nearest boundary line of the property on which the facility, building, or structure, or portion of the facility, building, or structure in which the above-listed use occurs is located. The distance in paragraphs (A)(2) and (A)(3) to any residential structure shall be measured from the fence required

in section 10A.17.040(G) to the nearest exterior wall of the residential structure.

Applicants may seek a reduction in the setback described in paragraph (A)(5) upon issuance of an administrative permit pursuant to Chapter 20.242.

- (B) The outdoor, indoor or mixed light cultivation of medical cannabis shall not propagate objectionable odors which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that endanger the comfort, repose, health, or safety of any of those persons or the public.
- (C) The use of light assistance for the indoor or mixed light cultivation of medical cannabis shall not exceed a maximum of 35 watts of lighting capacity per one square foot of growing area. The indoor or mixed-light cultivation of medical cannabis shall rely on the electrical grid or some form of alternative energy source. The indoor or mixed-light cultivation of medical cannabis shall not rely on a generator as a primary source of power.
- (D) All lights used for the indoor or mixed light cultivation of medical cannabis shall be fully contained within structures or otherwise shielded to fully contain any light or glare involved in the cultivation process. Security lighting shall be motion activated and all outdoor lighting shall be shielded and downcast or otherwise positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the legal parcel upon which they are placed.
- (E) All activities associated with the cultivation of medical cannabis shall not exceed the noise level standards as set forth in the County General Plan Policies DE100, 101 and 103.
- (F) All cultivation of medical cannabis shall not utilize water that has been or is illegally diverted from any spring, wetland, stream, creek, or river. The activities associated with the cultivation of medical cannabis shall not create erosion or result in contaminated runoff into any stream, creek, river or body of water.
- (G) All medical cannabis grown in Mendocino County (excluding indoor growing) must be within a secure, wildlife exclusionary fence of at least six (6) feet in height that fully encloses the immediate garden area. The fence must include a lockable gate that is locked at all times when a qualified patient, caregiver or permittee (or their agent) is not in the immediate area. Said fence shall not violate any other ordinance, code section or provision of law regarding height and location restrictions and shall not be constructed or covered with plastic or cloth except shade cloth may be used on the inside of the fence.
- (H) All buildings where medical cannabis is cultivated or stored shall be properly secured to prevent unauthorized entry.
- (I) Prohibition on Tree Removal. Removal of any commercial tree species as defined by California Code of Regulations section 895.1, Commercial Species for the Coast Forest District and Northern Forest District, and the removal of any true oak species (*Quercus sp.*) or Tan Oak (*Notholithocarpus sp.*) for the purpose of developing a cannabis cultivation site is prohibited. This prohibition shall not

include the pruning of any such trees for maintenance, or the removal of such trees if necessary to safety or disease concerns.

Section 10A.17.050 - Medical Marijuana Collectives

Until such time as State law provides otherwise, medical marijuana collectives operating pursuant to Health and Safety Code section 11362.775 shall obtain any Permit or other approval required by the MCCR and shall also comply with the following:

- (A) Operate on a non-profit basis as set forth in Section IV B.1. of the Attorney General's Guidelines.
- (B) Employ only persons who are at least twenty one (21) years of age and comply with all applicable state and federal requirements relating to the payment of payroll taxes including federal and state income taxes and/or contributions for unemployment insurance, state workers' compensation and liability laws.
- (C) Follow the membership and verification guidelines as set forth in Section IV B.3. of the Attorney General's Guidelines, except that wherever "should" appears it shall be replaced with "shall".
- (D) Require all prospective members to complete and sign a written membership application acknowledging and agreeing to abide by all the rules of the collective and all applicable requirements of this Section.
- (E) Prohibit sales to non-members as set forth in Section IV B.5. of the Attorney General's Guidelines. Allow reimbursements and allocations of medical cannabis as set forth in Section IV B.6. of the Attorney General's Guidelines.
- (F) Possess cannabis only in amounts consistent with the medical needs of the members of the collective; and only cultivate cannabis consistent with the limits set forth in this Ordinance.
- (G) Exterior signage shall not indicate or advertise the presence or availability of medical cannabis.

Section 10A.17.060 - Permit Types

The cultivation Permits that may be applied for under this Chapter are for the production of flowering medical cannabis plants and for nursery and seed production, as defined in section 10A.17.020. A Permittee producing flowering medical cannabis plants may maintain an area scaled appropriately for their operation where they may propagate their own starts through cloning, seed germination or tissue culture. Starts produced in this manner shall be for the exclusive and personal use of the permittee only and the sale, trade, barter, etc. of such starts is prohibited. The square footage of cultivation area dedicated to propagation of starts will be included in measuring the cumulative total square footage allowed under a given Permit.

The following medical cannabis cultivation Permit types may be applied for and granted provided the applicant and the legal parcel that contains the cultivation site are determined to be in compliance with all applicable conditions of this Chapter and Mendocino County Code Chapter 20.242.

- (1) "Type C" for small outdoor cultivation using no artificial lighting not to exceed a maximum of 2,500 square feet of total plant canopy.
- (2) "Type C-A" for small indoor cultivation using exclusively artificial lighting not to exceed a maximum 2,500 square feet of total plant canopy within a structure or structures.
- (3) "Type C-B" for small mixed light cultivation (using a combination of natural and supplemental artificial lighting) not to exceed a maximum of 2,500 square feet of total plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle.
- (4) "Type 1" for medium outdoor cultivation using no artificial lighting of 2,501 to a maximum of 5,000 square feet of total plant canopy on one legal parcel not less than five (5) acres in size.
- (5) "Type 1A" for medium indoor cultivation using exclusively artificial lighting of 2,501 to a maximum of 5,000 square feet of total plant canopy within a structure or structures.
- (6) "Type 1B" for medium mixed light cultivation (using a combination of natural and supplemental artificial lighting) of 2,501 to a maximum of 5,000 square feet of total plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle, on one legal parcel not less than five (5) acres in size.
- (7) "Type 2" for large outdoor cultivation using no artificial lighting of 5,001 to a maximum of 10,000 square feet of total plant canopy on one legal parcel not less than ten (10) acres in size.
- (8) "Type 2A" for large indoor cultivation using exclusively artificial lighting of 5,001 to 10,000 square feet of total plant canopy on one legal parcel.
- (9) "Type 2B" for mixed light cultivation (using a combination of natural and supplemental artificial lighting) of 5,001 to a maximum of 10,000 square feet of total plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle, on one legal parcel not less than ten (10) acres in size.
- (10) "Type 4" for the cultivation of medical cannabis nursery stock and/or seed production which shall not exceed a maximum of 22,000 square feet of total plant canopy on one legal parcel, subject to the limitation of paragraph (C) below regarding seed production Nursery stock and/or seed production may only be sold to a Permittee, a qualified patient, person with an identification card or a primary caregiver. The nursery product may take the form of vegetative and non-flowering plant starts or may also be in the form of seeds, if the applicant also applies and is approved as a seed producer under this type of Permit. The legal parcel shall not be less than ten (10) acres in size, provided, however, that legal parcels in industrial zoning districts are not subject to this parcel size restriction. Additional requirements for Type 4 Permits are as follows:

- (A) The Permittee shall produce only vegetative immature medical cannabis plants through cloning, seed termination or tissue culture starts for the planting, propagation and cultivation of medical cannabis, provided, however, with the approval of the Agricultural Commissioner, plants may be grown to maturity for the purpose of verifying genetic expression. The Agricultural Commissioner's approval shall include a square footage limitation and the plants shall be included within the Track and Trace system. No consumable medical cannabis product of any kind shall be derived from the plants being cultivated.
- (B) If plant starts are tiered vertically in racks during their growing phase, the maximum allowed power usage shall be 35 watts per shelf.
- (C) A maximum of 5,000 square feet of plant canopy may be dedicated to medical cannabis seed production if the Permittee applies and is approved as a seed producer. The square footage of plant canopy dedicated to seed production shall be counted towards the maximum square footage allowed under this type of permit and shall be entered into the approved Track and Trace system.
- (D) Any on-site sales of nursery products which were produced on and occur on a parcel within the Timberland Production, Rangeland or Forestland zoning districts shall be limited to permitted cultivators only.
- (E) At the time of sale, the nursery shall generate a manifest stating the date and time, nursery name, address, permit number (and license number, when applicable), buyers name, cultivation address, and permit number (and license number, when applicable). A copy of this manifest shall be retained by the purchaser and serve as a transport document for the purchaser to proceed directly from the nursery to the intended cultivation site. If the nursery is transporting nursery products to the cultivator's location, this manifest shall be filled-out and in possession of the nursery operator, their employee or their designated transporter during transport. Both the nursery and the buyer shall retain these records for a period of two (2) years.
- (F) The permittee shall agree to abide by the Mendocino Cannabis Nursery and Seed Manual established by the Mendocino County Agricultural Commissioner.

Section 10A.17.070 - Requirements for All Permits

Unless specifically exempted, in addition to compliance with all other requirements of this Chapter, all Permits shall comply with the following requirements:

- (A) **Zoning Districts.** Cultivation of cannabis for medical use shall only be permitted on legal parcels that comply with the applicable zoning districts and parcel sizes as provided in Chapter 20.242.
- (B) **Indoor Cultivation Permits.** The use or conversion of habitable space (i.e., kitchen, bedrooms, bathrooms, living room or hallways) in any structure shall not

be allowed for the indoor cultivation of medical cannabis.

- (C) Cultivation of cannabis for medical use is not permitted within any required parking space.
- (D) Persons may apply for and obtain a maximum of two (2) Permits listed in section 10A.17.060 at any given time. Permits shall be granted at a maximum density of one (1) Permit per applicant per legal parcel; provided, however, that a Person may obtain two (2) separate Permits of different Permit types on a single legal parcel if the total square footage of the two Permits does not exceed the largest maximum square footage permitted on a parcel for the relevant zoning district.
- (E) Dwelling Unit Requirement. Legal parcels with a cultivation site are also required to have a dwelling unit; provided, however, that this requirement shall not apply to legal parcels within the following zoning districts: Upland Residential (U-R), Agricultural (A-G), Rangeland (R-L), Forest Land (F-L), Timberland Production (TPZ), Limited Industrial (I-1), General Industrial (I-2) Pinoleville Industrial (P-I). In addition, legal conforming parcels in Rural Residential, lot size ten (10) acres (R-R:L-10), shall also be exempt from the dwelling unit requirement of this paragraph, upon issuance of an administrative permit pursuant to Chapter 20.242.
- (F) Generators. The indoor or mixed-light cultivation of medical cannabis shall not rely on a generator as a primary source of power. If no grid power source is available and there is not an alternative power source supporting both any required legal dwelling unit and the indoor or mixed-light permit operations, a generator may be used only under the following conditions: (1) the permittee shall install an alternative power source that will meet at least one-half of the combined power requirements by the expiration of twelve months from the date of initial application for a permit pursuant to this Chapter and (2) it will be a condition of the re-issuance of a permit that the cultivator commit, in writing, to expand their alternative power source to fully meet the combined needs of the cultivation operations and any required legal dwelling unit by the end of the second permitted year. See also section 10A.17.090 regarding application requirements related to generators.
- (G) Permittees shall be required to enroll in and comply with all requirements of any Track and Trace system adopted and implemented by the County to track the production and distribution of cannabis for medical use. Permittees shall obtain and use unique identifies from an approved source, maintain them in a readable state, comply with all data entry requirements (including, but not limited to, harvest dates, harvest data, and distribution or other disposition information), and pay all required Track and Trace fees. Non-compliance with Track and Trace requirements shall constitute a violation of the terms of the Permit.
- (H) Fees: An annual application fee shall be paid at the time an application is submitted to the Agricultural Commissioner for initial review and prior to any annual renewal of the application. An annual Permit fee shall be paid prior to issuance of any Permit. No Permit shall issue without payment of the initial application fee or renewal fee.

- (1) Fees prescribed by this Chapter shall be set by the Mendocino County Board of Supervisors in accordance with all applicable laws and regulations and the County's Master Fee Policy. Any fee prescribed by this Chapter shall be paid to the County Treasurer/Tax Collector and is non-refundable. A receipt for payment of the required fee shall be provided to the Agricultural Commissioner prior to the initial review and issuance or annual renewal of any application, permit or other program described herein where a fee has been established, including for required inspections.
- (I) Inspections by Agricultural Commissioner. All applicants shall be subject to and shall facilitate an initial on-site pre-permit inspection and all Permittees shall be subject to and facilitate at least one annual on-site compliance inspection (Type 4 Permits shall be subject to two on-site compliance inspections annually), with additional inspections as required by this Chapter or as deemed necessary by the Agricultural Commissioner. All inspections will be scheduled with at least 24 hours advance notice to the applicant or Permittee, and shall be conducted during regular business hours. Cancellation of scheduled inspections without notice to the Agricultural Commissioner shall result in the Permittee being invoiced for the actual travel time and mileage incurred by the Agricultural Commissioner.
 - (1) All site inspections conducted prior to issuance of a Permit for any indoor or mixed-light cultivation Permit shall include a representative from the Department of Planning and Building Services to confirm that the structure(s) used for the Permit complies with the requirements stated in the definitions of "indoor" and "mixed-light" found in Section 10A.17.020 and is suitable for support of the proposed cultivation activity.
- (J) Third Party Inspectors. Permittees shall engage the services of a third party inspector approved by the Agricultural Commissioner, who shall conduct a minimum of one (1) consultation inspection at approximately the midpoint of each cultivation cycle; provided that Type 2, Type 2A, and Type 2B Permittees shall be subject to a minimum of two (2) consultation inspections conducted at approximately uniform intervals during each cultivation cycle, and Type 4 Permittees shall be subject to one (1) consultation inspection for each six-month period or operation.
- (K) Non-Transferability of Permits. All Permits are non-transferable to another person, except that the Permittee may transfer the Permit to a spouse/domestic partner, child, parent, or, for estate planning purposes, to a trust in which the permittee serves as a trustee, provided the trust existed on or before January 1, 2016, which transfer shall not be deemed a change in ownership for purposes of this Chapter.

Section 10A.17.080 - Permit Phases and Requirements Specific to each Phase

Unless specifically exempted, in addition to compliance with all other requirements of this Chapter, all Permits shall comply with the following requirements:

- (A) Permits under the MCCO will be issued in the following three phases:

- (1) Phase One: Following the effective date of the MCCO, Permits will only be issued to applicants who provide to the Agricultural Commissioner pursuant to paragraph (B)(1) of this section proof of cultivation at a cultivation site prior to January 1, 2016 ("proof of prior cultivation"), and who comply with all other applicable conditions of this Chapter and Chapter 20.242. Applications for Permits during Phase One shall only be accepted until December 31, 2017. Applicants able to provide proof of prior cultivation may apply for a Permit on a relocation site pursuant to paragraph (B)(3) of this section.
 - (2) Phase Two: Starting January 1, 2018, the Agricultural Commissioner will begin accepting applications for Type 1A and Type 2A Permits for indoor cultivation in the following zoning districts, subject to compliance with all other applicable conditions of this Chapter and Chapter 20.242: Limited Industrial (I-1), General Industrial (I-2), and Pinoleville Industrial (P-I). Proof of cultivation prior to January 1, 2016, is not required.
 - (3) Phase Three: Starting January 1, 2020, the Agricultural Commissioner will begin accepting Permit applications from any applicant in conformance with the conditions of this Chapter and Chapter 20.242. Proof of cultivation prior to January 1, 2016, is not required.
- (B) Requirements specific to Phase One Permits.
- (1) Proof of Prior Cultivation. Persons applying for a Permit during Phase One shall be required to provide to the Agricultural Commissioner evidence that they were cultivating cannabis on the cultivation site prior to January 1, 2016, which cultivation site shall have been in compliance with the provisions of section 10A.17.040. Evidence shall include:
 - (a) Photographs of any cultivation activities that existed on the legal parcel prior to January 1, 2016, including: (i) ground level views of the cultivation activities and (ii) aerial views from Google Earth, Bing Maps, Terraserver, or a comparable service showing: both the entire legal parcel and the cultivation site in more detail. The date these images were captured shall be noted.
 - (b) Photographs of any cultivation activities that currently exist on the legal parcel, including: (i) ground level views of the cultivation activities and (ii) aerial views from Google Earth, Bing Maps, Terraserver, or a comparable service showing: both the entire legal parcel and the cultivation site in more detail. The date these images were captured shall be noted.
 - (c) At least one additional document demonstrating cultivation on the legal parcel prior to January 1, 2016, which evidence may be used to substitute for evidence pursuant to clause (a). The Agricultural Commissioner shall prepare a list of the types of documentation that will be accepted to meet this requirement, and may accept other similarly reliable documentary evidence showing that

cannabis was cultivated for medical use prior to January 1, 2016.

- (d) Proof of prior cultivation shall be assigned to the applicant relative to their prior cultivation site.
 - (e) Persons who participated in a permit program pursuant to the County's Chapter 9.31 in previous years may present evidence of such participation and payment of all required fees in order to provide proof of prior cultivation.
- (2) Zoning Districts; Exceptions. Existing cultivation sites not located in zoning districts where Chapter 20.242 specifically allows cultivation may be issued a Type C, Type C-A, or Type C-B Permit, subject to the following requirements, in addition to all other applicable requirements of this Chapter:
- (a) The zoning district is one where a dwelling unit is a principally permitted use and a dwelling unit is present.
 - (b) Sunset Provision for Residential Districts. Cultivation sites on legal parcels located in the Single-Family Residential (R-1), Two-Family Residential (R-2), Multiple-Family Residential (R-3), Suburban Residential (S-R), Rural Community (R-C), and Rural Residential (lot sizes one (1) acre, two (2) acres and five (5) acres [legal non-conforming parcels to minimum zoning size][R-R:L-1, R-R:L-2, and R-R:L-5 {legal non-conforming to minimum zoning size}]), as well as cultivation sites in any other zoning district where a dwelling unit is a principally permitted use and the legal parcel is less than two (2) acres in size, are subject to the following requirements:
 - (i) There is an occupied dwelling unit on the legal parcel with the cultivation site.
 - (ii) A Permit may be renewed and valid only until three (3) years following the effective date of the ordinance adopting this Chapter and any permits issued shall be void not later than three (3) years following said effective date.
 - (c) Cultivation sites on legal parcels located in the Rural Residential zoning district, lot size five (5) acres (conforming parcels of five acres or more only)(R-R:L-5), are subject to the following additional requirement that there is an occupied dwelling unit on the legal parcel with the cultivation site.
 - (d) If a Permit is granted pursuant to this paragraph (B)(2) in these zoning districts, any future revocation or lapse in renewal of such Permit shall extinguish the ability of any person to obtain a Permit for such cultivation site.
- (3) Relocation. Persons able to show proof of prior cultivation pursuant to

paragraph (B)(1) above may apply for a Permit not on the site previously cultivated (the “origin site”) but on a different legal parcel (the “destination site”), subject to the following requirements:

- (a) Persons may apply to relocate their cultivation site pursuant to this paragraph (B)(3) until three (3) years after the effective date of the ordinance adopting this Chapter.
- (b) The location and operation of the proposed cultivation site on the destination parcel complies with all requirements and development standards that apply to a new cultivation site as of January 1, 2020, pursuant to this Chapter and Chapter 20.242; provided, however:
 - (i) An existing cultivation site shall not be transferred to a legal parcel located within the Forestland or Timber Production Zone zoning districts.
 - (ii) An origin site may relocate to a destination site in the Rangeland zoning district, so long as the destination site has an existing cultivation site and no new cultivation sites would be established.
- (c) The origin site shall be restored. The application for a Permit on a destination site shall be accompanied by a restoration plan that is consistent with the standard conditions and best management practices listed in the North Coast Regional Water Quality Control Board Order No. 2015-0023, and which shall include the following:
 - (i) Remove or repurpose buildings, greenhouses, fences, irrigation equipment, water intakes, pumps, storage tanks and other materials brought to the origin site for the purpose of cannabis cultivation;
 - (ii) Remove illegal dams, ponds or other in-stream water storage to restore material stream flows, unless such features will continue in use;
 - (iii) Remove or compost agricultural wastes;
 - (iv) Remove trash and other debris; and
 - (v) Revegetate cleared areas with native plants typical of nearby natural areas, including groundcover, shrubs and trees.
- (d) Unless the destination site is within the Agricultural zoning district, the application shall include either a water availability analysis pursuant to paragraph (C)(1)(b) below or a will serve letter pursuant to paragraph (C)(1)(c) below.

- (e) Prior to the issuance of the Permit to cultivate cannabis for medical use at the destination parcel, the applicant shall provide the Agricultural Commissioner with an agreement, on a form approved by the Agricultural Commissioner and County Counsel, providing that the applicant releases any right to continue or resume cultivation of medical cannabis on the origin parcel.
 - (f) If a person is granted a Permit for a destination site, any claims of proof of prior cultivation on the origin site shall be effectively transferred to the destination site, and the ability to claim proof of prior cultivation at the origin site shall be extinguished.
 - (g) There shall be a two (2) acre minimum parcel size for all Type C, Type C-A or Type C-B Permits.
 - (4) Multiple Permits may be applied for and granted on a single legal parcel that is owned by multiple persons residing in separate habitable dwelling units on that legal parcel. Each owner may individually apply for a Permit to cultivate cannabis for medical use, provided that each owner must provide proof of prior cultivation pursuant to paragraph (B)(1) above. Each owner shall be limited to a Type C, Type C-A or Type C-B Permit, unless that owner was previously enrolled in a permit program pursuant to the County's Chapter 9.31, or unless the cumulative total square footage of plant canopy applied for by all owners does not exceed the maximum square footage permitted on a parcel for the relevant zoning district.
- (C) Requirements specific to Phase Three Permits.
- (1) Watershed Assessment. All Permit applications, except for legal parcels located in the Agricultural (A-G) zoning district, shall demonstrate there is adequate water to serve the cultivation site.
 - (a) If surface water (or groundwater influenced by surface water) will be used, applicants may demonstrate that there is adequate water by providing (i) a watershed assessment that establishes there is sufficient watershed supply to serve the proposed cultivation site and existing uses within the watershed, and (ii) a water right exists to serve the cultivation site. A watershed assessment shall consist of an established "In Stream Flow Policy" as prepared by the State Water Resources Control Board Division of Water Rights or an equivalent document approved by that agency.
 - (b) If groundwater not influenced by surface water will be used, the applicant may demonstrate that there is adequate water by providing a water availability analysis which will address the adequacy of the proposed water supply, the direct effects on adjacent and surrounding water users, and possible cumulative adverse impacts of the development on the water supply within the watershed and show there is a sustained yield to support the proposed level of use.

- (c) If water will be provided by a mutual water company, municipal or private utility or similar community provider, the applicant may demonstrate that there is adequate water by providing a will serve letter from the proposed provider.

Section 10A.17.090 – Cultivation Permit Application and Zoning Review

Any person or entity that wishes to engage in the cultivation of cannabis for medical use shall submit an application for a Permit to the Agricultural Commissioner's Office. Applications for Permits shall be made upon such forms and accompanied by such plans and documents as may be prescribed by the Agricultural Commissioner's Office. The application shall be reviewed by the Agricultural Commissioner's office and other agencies as described herein and renewed annually. Any referral to or consultation with an agency other than the County of Mendocino shall state that a response must be returned within thirty (30) days of the date of the referral.

The Agricultural Commissioner's Office shall refer each application to the Department of Planning and Building Services for a determination pursuant to Chapter 20.242 as to what type of clearance or permit is required. No application for a Permit shall be approved without clearance or final permit approval as required by Chapter 20.242.

The Agricultural Commissioner's Office shall consult with the Mendocino County Air Quality Management District (MCAQMD) prior to the issuance of the Permit to determine if a permit or other approval by the MCAQMD is necessary. The applicant shall obtain all approvals and permits required by the MCAQMD pursuant to state and federal laws, MCAQMD regulations, adopted air quality plans, MCAQMD policies and other applicable statutes prior to the issuance of a Permit. The required consultation with MCAQMD may be eliminated if MCAQMD authorizes County to determine when a permit or other approval by the District is necessary based on an objective set of criteria developed by MCAQMD for such purposes.

Applicants for a Permit shall provide the following information on, or as an attachment to, the application:

- (A) The name, business and residential address, and phone number(s) of the applicant.
- (B) If the applicant is not the record title owner of the legal parcel, written consent from the owner allowing the cultivation of medical cannabis on their property by the applicant with original signature of the record title owner.
- (C) Written evidence that each person applying for the permit and any other person who will be engaged in the cultivation of cannabis for medical use is at least twenty-one (21) years of age.
- (D) Site plan showing the entire legal parcel configuration with Assessor's Parcel Number(s), acreage, site address, including the location of (1) easements (access and utility and all roadways public and private); (2) streams, springs, ponds and other surface water features, including the location of any flood plain or floodways; (3) the location and area of the cultivation site on the legal parcel, with dimensions of the area for cultivation of cannabis for medical use and showing that all setbacks required by section 10A.17.040 are being met; (4) all

areas of ground disturbance or surface water disturbance associated with cultivation of medical cannabis activities, including: access roads, water diversions, culverts, ponds, dams, graded flats, and other related features; (5) all structures, which shall be clearly labeled; and (6) all septic systems, leach fields and water wells.

- (E) Applications submitted for any Permit during Phase One shall include proof of prior cultivation pursuant to section 10A.17.080
- (F) A cultivation and operations plan which includes elements that meet or exceed the minimum legal standards for the following: water storage, conservation and use; drainage, runoff and erosion control; watershed and habitat protection; and proper storage of fertilizers, pesticides and other regulated products to be used on the legal parcel. Any fuel, fertilizer, pesticides, or other substance toxic to wildlife, children, or pets, must be stored in a secured and locked structure or device. The plan will also provide a description of cultivation activities including, but not limited to, permit type, cultivation area, soil/media importation and management, the approximate date(s) of all cannabis cultivation activities that have been conducted on the legal parcel prior to the effective date of this ordinance, and schedule of activities during each month of the growing and harvesting season.

If a generator is proposed to support any aspect of the cultivation site or related operations, the cultivation and operations plan shall identify any containment structure and dimensions necessary to contain any leak or spill that may develop or occur as a result of relying on any generator for backup power generation. The plan shall also include a maintenance plan for the generator, detailing how spent oil, used oil filters, expired batteries and other hazardous wastes generated from the operation of the generator will be handled, including fuel storage and delivery systems.

- (G) Copy of the statement of water diversion, or other permit, license or registration filed with California Water Resources Control Board, Division of Water Rights, if applicable.
- (H) An irrigation plan and projected water usage for the proposed cultivation activities, as well as a description of legal water source, if not covered by item (G).
- (I) Copy of Notice of Intent and Monitoring Self-Certification and any other documents filed with the North Coast Regional Water Quality Control Board (NCRWQCB) demonstrating enrollment in and compliance with (or proof of exemption from) Tier 1, 2 or 3, North Coast Regional Water Quality Control Board Order No. 2015-0023, or any substantially equivalent rule that may be subsequently adopted by the County of Mendocino or other responsible agency.
- (J) If any on-site or off-site component of the cultivation facility, including access roads, water supply, grading or terracing impacts the bed or bank of any stream or other watercourse, show proof they have notified the California Department of Fish and Wildlife (CDFW) pursuant to section 1602 of the Fish and Game Code and provide a copy of the Streambed Alteration Permit obtained from the

Department of Fish & Wildlife.

- (K) If the source of water is a well, a copy of the County well permit, if available; applicant shall provide documentation showing the approximate date of installation.
- (L) A unique identifying number from a State of California Driver's License or Identification Card for each person applying for the permit and any other person who will be engaged in cultivation of cannabis for medical use.
- (M) Evidence that the applicant or any individual engaged in the management of, or employed by, the cultivator has not been convicted of a violent felony as defined in Penal Code section 667.5(c) within the State of California, or a crime that would have constituted a violent felony as defined in Penal Code section 667.5(c) if committed in the State of California and is not currently on parole or felony probation. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
- (N) A statement describing the proposed security measures for the facility that shall be sufficient to ensure the safety of members and employees and protect the premises from theft.
- (O) If the applicant is organized as a non-profit corporation, the applicant shall set forth the name of the corporation exactly as shown in its Articles of Incorporation, and the names and residence addresses of each of the officers and/or directors. If the applicant is organized as a partnership, the application shall set forth the name and residence address of each of the partners, including the general partner and any limited partners. Copies of the Articles of Incorporation or a statement listing the members of the partnership shall be attached to the application.
- (P) The applicant shall provide proof, by way of a written agreement or agreements, that the applicant is authorized by one or more medical marijuana dispensing collectives or processors to produce medical marijuana for the use of the members of said collective(s) or processor(s).
- (Q) A copy of a Board of Equalization Seller's Permit if applicant intends to sell directly to qualified patients or primary caregivers.
- (R) Written consent for an onsite pre-permit inspection of the legal parcel pursuant to section 10A.17.070 by County officials or other appropriate agency representatives at a prearranged date and time in consultation with the applicant prior to the approval of a permit to cultivate medical cannabis, and at least once annually thereafter.
- (S) For all indoor cultivation facilities, identify the source of electrical power and plan for compliance with applicable Building Codes. Also, provide documentation that addresses the handling of waste discharge from the grow location of items including, but not limited to nutrients, spent growing media, un- used containers and other associated hardware, supplies, and garbage.

- (T) If the application would include the conversion of timberland as defined under Public Resources Code section 4526, in order to create or expand a cultivation site, a copy of a less-than-3-acre conversion exemption or timberland conversion permit, approved by the California Department of Forestry and Fire Protection ("CalFire"). Alternately, for existing operations occupying sites created through prior unauthorized conversion of timberland, the applicant must provide evidence that environmental impacts have been mitigated, to the extent feasible, as required by the resource protection agencies including CalFire, the NCRWQCB and the CDFW.
- (U) If applicable, clearance from CalFire related to compliance with the requirements of Public Resources Code Section 4290 and any implementing regulations.
- (V) For activities that involve construction and other work in Waters of the United States, that are not otherwise exempt or excluded, including streams and wetlands, the application shall include a copy of a federal Clean Water Act (CWA) Section 404 permit obtained from the Army Corps of Engineers and a CWA Section 401 water quality certification from the NCRWQCB.
- (W) Projects that disturb one (1) or more acres of soil or projects that disturb less than one acre but that are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the State Water Resources Control Board General Permit for Discharges of Storm Water Associated with Construction Activity Construction General Permit Order 2009-0009-DWQ. Construction activity subject to this permit includes clearing, grading and disturbances to the ground such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility.
- (X) The results of a "Cortese List" database search for sites known to be contaminated with hazardous materials. If the site is listed on the "Cortese List", the application shall include sufficient information to demonstrate that the cultivation is in compliance with any cleanup and/or abatement order that is established for the site.
- (Y) If water or sewer services to the cultivation site will be provided by a community provider, a will-serve letter from the provider indicating adequate capacity to serve the cultivation site.

The Agricultural Commissioner is authorized to require in the permit application any other information reasonably related to the application including, but not limited to, any information necessary to discover the truth of the matters set forth in the application.

Section 10A.17.100 – Permit Review and Issuance

The Agricultural Commissioner's Office shall issue a Permit pursuant to this Chapter only:

- (A) Following the referral to and clearance or permit approval pursuant to Chapter 20.242; and
- (B) Following review by qualified County staff and/or qualified third party inspectors

to review proposed permit locations and identify where habitat suitable for sensitive species may exist. The County shall consult with the California Department of Fish and Wildlife ("CDFW") to evaluate if there is a possibility for presence or habitat suitable for sensitive species on the parcel with a proposed Permit location. Upon consultation, CDFW may recommend approval of the proposed development, ask to conduct a site inspection or request additional studies in order to make the determination that no impacts to sensitive species will occur. A cultivator that cannot demonstrate that there will be a less than significant impact to sensitive species will not be issued a Permit. The County shall develop a policy in consultation with CDFW to define an objective set of criteria that applications can be checked against and when during Phases 1 and 2 a formal referral to CDFW is required to avoid impacts to sensitive species and natural communities. Following the development of the policy referred to in the previous sentence, consultation with CDFW shall not be required but be performed pursuant to the policy. During Phase 3 all applications will be referred to CDFW; and

- (C) After the Agricultural Commissioner's Office, and other County and State agency staff, as appropriate, have reviewed the application and performed a pre-permit site inspection to confirm adherence to the requirements established in the MCCO; and
- (D) Following receipt of evidence of payment of the required permit fee, pursuant to Section 10A.17.070.

As a condition of approval for any cultivation permit, the owner or permittee shall indemnify and hold harmless the County of Mendocino and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by affected property owners or other third parties due to the commercial cultivation of cannabis for medical use and for any claims brought by any person for problems, injuries, damages, or liabilities of any kind that may arise out of the commercial cultivation of cannabis for medical use.

If, during the pre-permit site inspection, violations of any building or other health, safety or other state or county statute, ordinance, or regulation are discovered, the applicant shall be required to submit a written plan to remediate, abate, or cure the violations at the earliest feasible date, but in no event more than one (1) year after the date of issuance of the Permit; said plan shall be signed by the applicant, approved by the relevant enforcement agency or agencies, and compliance with said plan shall be a condition of the Permit.

Track & Trace unique identifiers will only be made available following the issuance of a Permit by the Agricultural Commissioner's Office. The Permittee will have 72 hours to register with the County track & Trace system. Upon Track & Trace system registration, the system will provide unique identifiers. The unique identifiers shall be affixed to the individual plants within 72 hours of being provided to the Permittee.

Permits shall remain valid for one (1) year from the date of issuance, subject to any enforcement action or other action that may result in earlier suspension or revocation.

Section 10A.17.110 – Performance Standards

All Cultivation Permits issued by the Agricultural Commissioner's Office shall obligate the

permittee to comply with the following performance standards:

- (A) Cultivation shall be located as shown on the approved application site plan and in compliance with all provisions of this Chapter and any permit issued pursuant to Chapter 20.242.
- (B) Once they become available, possession of a current, valid required license, or licenses, issued by any agency of the State of California in accordance with the MCRSA, and regulations promulgated thereunder covering a similar cannabis activity.
- (C) A unique identifier for compliance with the County's Track & Trace system shall be affixed to each permitted medical cannabis plant cultivated in Mendocino County. It shall be the responsibility of the permittee to ensure complete and accurate entry of information into the Track & Trace system within 72 hours of the reportable activity occurring.
- (D) Compliance with all statutes, regulations and requirements of the California State Water Resources Control Board, Division of Water Rights, including obtaining and complying with any applicable and approved permit, license or registration or the annual filing of a statement of diversion and use of surface water from a stream, river, underground stream, or other watercourse required by Water Code Section 5101.
- (E) If a generator is used to support any aspect of the permitted cultivation operations, (excluding the conditions set forth in section 10A.17.070(F)), it shall be as a secondary or back-up power source. The use of the generator is only allowed when the primary alternative power source is unable to provide its normal output and generate sufficient power to meet the needs of the cultivation operation and the legal dwelling unit. The Owner's Manual and/or Operation Manual (or operational fact sheet) providing the operational characteristics and maintenance schedule for the generator shall be on-site and available for review.

If a generator is being used pursuant to the conditions set forth in section 10A.17.070(F), the Permit shall be conditioned on the conducting of an analysis of the noise levels produced by the generator at full operational speed, performed by an accredited acoustical engineer, and such analysis shall show compliance with Mendocino County General Plan Policies DE100, 101 and 103. All generators shall be, at a minimum, equipped with the manufacturer's specified muffler; if compliance with Policies DE100, 101 and 103 requires additional measures, the generator shall be equipped with such measures, which may include a hospital-grade muffler and/or a structure to enclose the generator designed for sound suppression.

Any electrical wiring associated with the generator shall be of sufficient capacity and installed in such a way as to provide for the minimum installation and safety standards for the electrical service provided by that generator.

- (F) Establish and maintain enrollment in Tier 1, 2 or 3 with the North Coast Regional Water Quality Control Board (NCRWQB) Order No. 2015-0023, if applicable, or any substantially equivalent rule that may be subsequently adopted by the

County of Mendocino or other responsible agency.

- (G) For cultivation areas for which no enrollment pursuant to NCRWQB Order No. 2015- 0023 is required, the site shall comply with the standard conditions set forth in that Order, as well as the applicable "Best Management Practices for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects" as presented in Appendix B of the Water Board Order.
- (H) Maintain the applicable "Defensible Space" protocols and distances, as established by the California Department of Forestry and Fire Protection around structures located on the legal parcel.
- (I) Comply with the terms of any applicable Streambed Alteration Permit obtained from the California Department of Fish & Wildlife.
- (J) All weighing and measuring devices shall be type approved by the California Department of Food and Agriculture, Division of Measurement Standards and issued either a California Type Evaluation Program (CTEP) Certificate of Approval (COA) or a National Type Evaluation Program (NTEP) Certificate of Conformance (CC) before commercial use. All weighing and measuring devices shall be registered and inspected by the Agricultural Commissioner in accordance with Mendocino County Code Chapter 10A.16.
- (K) Consent to the minimum prescribed number of visits by an approved Third Party Inspector, and at least one (1) annual on-site compliance inspection by the Agricultural Commissioner's office, as more specifically provided for in section 10A.17.070.
- (L) Any guard dog(s) or guard animals kept at the cultivation site shall be restrained to a fixed point or contained in some manner to facilitate the inspections performed by any entity necessitating inspect as required by this Chapter. Animals considered family pets will be kept on a leash at all times and under control when any entity is performing a required inspection.
- (M) All buildings, including greenhouses, used for the cultivation of medical cannabis pursuant to an "artificial light" permit (generally Type C-A, Type 1-A, Type 2-A and Nursery as applicable), shall be equipped with filtered ventilation systems, permitted by the Mendocino County Air Quality Management District (MCAQMD) which rely on Activated Carbon Filtration, Negative Ion Generation, Ozone Generation or other odor control mechanism demonstrated to be effective in reducing cannabis odors.
- (N) Any use of pesticide products shall be consistent with State law and regulations enforced by the California Department of Pesticide Regulation and the Agricultural Commissioner's Office. All agricultural use pesticides and concentrated fertilizers, amendments, and similar materials shall be stored in a locked, hard-faced enclosure to prevent unauthorized entry by humans, to exclude large animals that may be attracted by odors, and to ensure that they will not enter or be released into surface or ground waters.

- (O) Fuel shall be stored and handled in compliance with applicable state and local laws and regulations and in such a way that no spillage occurs.
- (P) Comply with any conditions that may apply as a result of an administrative or conditional use permit approved pursuant to Chapter 20.242, or with a written remediation plan required by Section 10A.17.080(B)(3).

Section 10A.17.120 - Certifications

Permittees who demonstrate compliance with all of the requirements set forth in this Chapter and the additional guidelines to be established by the Agricultural Commissioner in a Mendocino Sustainably Farmed Operations Manual will be issued a "Certified Mendocino County Grown" certificate through the Agricultural Commissioner's Office. Cannabis labeled with this certification shall be produced following production standards used in the production of crops labeled as organic according to United States Department of Agriculture, National Organic Program. This certification shall be valid for one (1) year from the date of issuance and shall be renewed annually thereafter following annual inspection(s) of the registered cultivation site and continued compliance with all requirements. An annual fee shall be paid for participation in this certification program, pursuant to the provisions set forth in Section 10A.17.070(H)(1).

Section 10A.17.130 – Third Party Inspectors

The Agricultural Commissioner's Office is authorized to allow third party inspectors to assist medical cannabis cultivators in complying with the provisions of this Chapter. The County shall develop policies in consultation with CDFW to determine required qualifications of third party inspectors. By performing field checks with the cultivators, identifying potential or real points of concern, and working with the cultivators to correct the issues(s) at hand, while communicating with the Agricultural Commissioner's office, adherence to the standards established by this Chapter will be greatly enhanced and the possibility of enforcement actions being initiated by the County will be reduced.

Any third party inspector must receive approval by the Agricultural Commissioner's Office in order to serve individual permittees and to be recognized as credible and ensuring compliance with the requirements of this Chapter. The Agricultural Commissioner shall have the authority to approve or deny any application to operate as a third-party inspector based on experience, qualifications, education, incomplete applications, and insufficient detail/scope of proposed work, conflicts of interest, and ability to perform. To ensure that a third party inspector is qualified to assist cannabis cultivators with the implementation of this Chapter, individuals desiring to be third party inspectors must submit an application/ proposal to the Agricultural Commissioner's Office and successfully pass an oral appraisal interview. An annual application fee will be due at the time the application is submitted for initial review or prior to any annual renewal of the application, and paid pursuant to the provisions set forth in Section 10A.17.070(H)(1).

Third party proposals shall include, at a minimum, the following:

- (A) Program Purpose: Statement of the functions which the third party proposes to fulfill, including procedures to implement the proposed functions/roles.
- (B) Technical experience and qualifications of the third party program necessary for implementation of technical functions/roles.

- (C) Demonstration of organizational capacity and funding mechanisms to administer the program.
- (D) Framework for filing consultation reports, photo-documentation, etc. with the Agricultural Commissioner's Office within 24 hours of an inspection.
- (E) Sample liability waiver that demonstrates that the responsibility falls to the landowner/operator of the site to meet the stated terms and conditions of the MCCO.
- (F) Framework for confirmation of adherence to standard conditions and developed plans and addressing non-compliance(s) by individual permittees.
- (G) Ability to provide proof of current and valid insurance for any vehicle used in the performance of Third Party Inspector duties.
- (H) If a third party application/proposal is approved, the Agricultural Commissioner will send an approval letter. All approved third party programs will be listed on the Mendocino County Department of Agriculture website. The approval is conditional and subject to a probationary period. Approvals for third party inspector status expire one year from the date of issuance and may be renewed, subject to a positive evaluation based on performance, by the Agricultural Commissioner.

The Agricultural Commissioner may establish additional criteria for third party programs and inspectors and may request any other information deemed reasonably related to verification of the qualifications of the third party program and/or inspector.

Successful candidates to become a Third Party Inspector will be required to sign an agreement letter with the County committing to certain conditions as part of being an approved Third Party Inspector.

All consultation inspection information and outcomes from Third Party Inspectors shall be forwarded to the Agricultural Commissioner's office within 24 hours of the completion of the inspection. Any dispute regarding findings or outcomes of Third Party inspections will be handled through the process established in the Third Party Inspector Program guidance and procedures manual.

Section 10A.17.140 – Cultivation Site Inspections: Violations and Penalties

If the Third Party inspector determines that the site does not comply with the requirements established by this Chapter, the inspector shall serve notice to the permit holder and the Agricultural Commissioner with a written statement identifying the items not in compliance and identifying a time frame in which the permit holder has to correct the items out of compliance. This statement may also suggest action(s) that the permit holder may take to cure the non-compliance(s). Personal delivery or mailing the written statement to the mailing address listed on the application by regular mail, plus three (3) days after date of mailing, shall constitute delivery. The time frame allowed for the permit holder to take appropriate actions to cure the non-compliance will be the shortest feasible time frame as determined by the inspector. The Agricultural Commissioner's office may amend the time frame if deemed appropriate. A re-

inspection by the Third Party inspector will be required to confirm and document the curative measure(s) taken by the permit holder. It is the responsibility of the permit holder to schedule the above mentioned re-inspection by the end of the timeframe identified in the notice of non-compliance. Failure to request and schedule re-inspection by the Third Party inspector and cure the items of non-compliance identified in the notice of non-compliance prior to the expiration of the time permitted in the notice of non-compliance shall prompt an un-scheduled compliance inspection from the Department of Agriculture. Inspection fees shall be charged to the permittee for any additional compliance inspections required beyond those regularly scheduled and enumerated in Section 10A.17.070. All additional inspection fees shall consist of the hourly rate for an inspector from the Department of Agriculture for the travel and inspection time plus the standard IRS mileage rate for travel distance. The fees shall be paid and paid pursuant to the provisions set forth in Section 10A.17.070(H)(1).

If any non-compliance(s) identified in the notice of non-compliance are substantiated during the un-scheduled compliance inspection above, the Department of Agriculture may issue an administrative citation pursuant to Mendocino County Code Chapter 1.08 against the permittee for a violation of the specific portion of this Chapter constituting the non-compliance and notify other public agencies or County departments, including the Department of Planning and Building Services, of these findings. The cultivation permit issued pursuant to this Chapter shall be in temporary "alert status" for possible action against the permit, pending a final compliance re-inspection from the Department of Agriculture within ten (10) days. If the permit holder desires additional time to cure any non-compliance(s) identified in the notice of non-compliance, it is the responsibility of the permit holder to request an extension of time from the Agricultural Commissioner prior to final re-inspection. The Agricultural Commissioner is not obligated to grant the requested extension, but may do so if deemed appropriate. No request for additional time to cure will be considered if requested during the final re-inspection, unless the Agricultural Commissioner determines that the request practicably could not have been made prior to the final re-inspection and that such extension is otherwise appropriate. This final re-inspection will be to determine whether or not the permit holder has cured all issues of noncompliance. Failure to request and schedule this final re-inspection and cure any items of non-compliance shall result in the issuance of a "Notice to Terminate Permit". The permit shall be terminated upon the final determination after the hearing on the order to show cause pursuant to Section 10A.17.150.

The County shall additionally notify any state license authority, as defined by the MCRSA, whenever the County cultivation permit has been terminated.

Section 10A.17.150 – Administrative Order to Show Cause

- (A) Issuance of Order to Show Cause. At the same time as issuance of a Notice to Terminate Permit, or as soon as practicable thereafter, the Agricultural Commissioner's Office shall also issue a notice and order to show cause why the permit in question should not be terminated. Issuance may be completed by personal delivery, or by first class mail, postage prepaid and return receipt requested. The notice and order to show cause shall:
 - (1) Identify the permittee and the permit in question;
 - (2) Contain a statement describing the violations that caused the issuance of a Notice to Terminate Permit;

- (3) Contain a description of the actions required to abate the violations;
 - (4) Notify the permittee that unless the owner or occupant abates the conditions, a hearing will be held to determine whether there is any good cause why the permit in question should not be terminated, which will be heard before a Hearing Officer, the Agricultural Commissioner, or the Commissioner's authorized designee within the Agricultural Commissioner's Office who did not also issue the Notice to Terminate Permit;
 - (5) Specify the date, time and location of the hearing to be held, or state that the date, time and location of the hearing will be specified in a subsequent notice, which will not be set for a date earlier than 5 days after personal delivery, or 10 days after mailing, of the notice specifying the date, time and location of the hearing;
 - (6) State that the permittee will be given an opportunity at the hearing to present and elicit testimony and other evidence regarding whether there is any good cause why the permit in question should not be terminated;
 - (7) Contain a statement that, unless the permittee abates the conditions causing the violations, or shows good cause why the conditions should not be abated, the permit in question shall be terminated.
- (B) Use of Hearing Officers. Whenever the Agricultural Commissioner issues an order to show cause why a permit issued pursuant to this Chapter should not be terminated, the Agricultural Commissioner is authorized to use the services of a Hearing Officer pursuant to Mendocino County Code Chapter 2.76. Such use of a Hearing Officer shall be made whenever a Hearing Officer is available, and the Agricultural Commissioner shall coordinate with County Counsel to appoint and maintain at least one Hearing Officer to the extent possible. In the event that a Hearing Officer is unavailable, the duty to hear the appeal shall remain with the Agricultural Commissioner.
- (C) Hearing Procedure.
- (1) The Hearing Officer shall hold an administrative hearing to determine whether the violations identified in the Notice to Terminate Permit created a sufficient basis on which to terminate the permit in question. The hearing shall be held at the date, time and location indicated on the notice to permittee, which shall be no less than five (5) calendar days after personal service, or no less than ten (10) calendar days after mailing of all the notices required by this section.
 - (2) Parties may choose to be represented by an attorney; however, formal rules of evidence or procedure shall not apply. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Nonetheless, any failure to make a timely objection to offered evidence constitutes a waiver of the objection. The Hearing Officer has discretion to exclude

evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

- (3) The hearing shall be conducted in the English language. The proponent of any testimony by a witness who does not proficiently speak the English language shall provide an interpreter who has been certified as an interpreter by either the State of California or the County of Mendocino.
 - (4) The person who issued the Notice to Terminate Permit shall first describe the acts or conditions constituting the violations identifying in the Notice to Terminate Permit and present evidence to demonstrate how the identified violations form a basis for terminating the permit in question. Thereafter, the permittee shall be given an opportunity at the hearing to present and elicit testimony and other evidence to show good cause why the permit should not be terminated.
 - (5) In the event that the permittee does not appear and present evidence at the hearing, the Hearing Officer may base his or her decision solely upon the evidence submitted by the person issuing the Notice to Terminate Permit.
- (D) Determination after Hearing. The Hearing Officer shall consider the evidence presented by the parties, and shall issue a written decision and order that either affirms or reverses the determination to terminate the permit in question. Such decision shall be delivered to the permittee by personal delivery or by first class mail, postage prepaid and return receipt requested. The decision shall become effective when signed by the Hearing Officer and on the day the decision is personally delivered to the permittee, or five (5) days after the decision is mailed to the permittee.

Section 10A.17.160 – Enforcement and Declaration of Public Nuisance

- (A) All of the remedies provided for in this Chapter, or elsewhere in the law, shall be cumulative and not exclusive for violations of this Chapter. Violations of this Chapter include, but are not limited to failure to obtain and maintain in good standing any permit required by this Chapter, compliance with any required element on which a permit was issued pursuant to this Chapter, or any violation of the provisions of this Chapter where a permit is not required, such as a violation of section 10A.17.040 when a person is otherwise exempt pursuant to section 10A.17.030. The County may enforce this Chapter by using any applicable state or county law, including, but not limited to Mendocino County Code Chapters 1.08, 8.75 or 8.76, and may use either the administrative process to achieve code compliance or available civil remedies, such as injunctive relief.
- (B) The cultivation of cannabis with a valid permit pursuant to this Chapter shall not be declared a public nuisance under County Code Chapter 8.75 or 8.76. Any cultivation of cannabis in the absence of a permit issued pursuant to this Chapter is a public nuisance and may be abated by the County as a public nuisance in accordance with the provisions of either County Code Chapter 8.75 or 8.76 unless such cultivation either: is exempt pursuant to County Code section 10A.17.030; is otherwise in compliance with State Proposition 64 and all

regulations adopted by the County related to cannabis for adult use pursuant to Proposition 64; or is being cultivated by an entity whose application for a permit pursuant to this Chapter has been submitted, accepted and is currently pending, and who has also submitted a sworn affidavit to the Agricultural Commissioner on a form prepared by the Agricultural Commissioner that includes, but is not limited to, an affirmation that they have met the requirements to obtain a permit or are actively in the process of fulfilling the requirements.

Section 10A.17.170 – Attorneys’ Fees

Pursuant to Government Code Section 25845(c), in any action, administrative proceeding, or matter commenced by the County to abate a nuisance, or to collect the cost of abatement or any penalty or fee related thereto, the prevailing party shall recover its attorneys' fees. The recovery of attorneys' fees under this Section is limited to those actions, administrative proceedings, or matters in which the County chooses at the initiation of the action, administrative proceeding, or matter to seek the recovery of its own attorneys' fees. In no event shall an award of attorneys' fees under this Section exceed the reasonable amount of attorneys' fees incurred by the County in the action or proceeding.

Section 10A.17.180 - Confidential nature of medical cannabis information – legislative intent

To the fullest extent authorized by State and Federal law, all use information received by and/or generated by the operation of this Chapter or prior iterations of cannabis cultivation ordinances of the County has always been intended to be treated and held by the County as confidential information. Notwithstanding the foregoing, information provided to the county may be released as required by law, judicial order, or subpoena, and could be used in criminal prosecution.

Section 10A.17.190 – Severability

If any provision of this Chapter, or the application thereof, is held invalid, that invalidity shall not affect any other provision or application of this Chapter that can be given effect without the invalid provisions or application; and to this end, the provisions or application of this Section are severable.

Section 2. Chapter 20.242 is hereby added to the Mendocino County Code to read as follows:

Chapter 20.242 Medical Cannabis Cultivation Site

- Section 20.242.010 Intent
- Section 20.242.020 Application
- Section 20.242.030 Definitions
- Section 20.242.040 Existing Medical Cannabis Cultivation Sites
- Section 20.242.050 New Medical Cannabis Cultivation Sites Located in Industrial Zoning Districts
- Section 20.242.060 New Medical Cannabis Cultivation Sites
- Section 20.242.070 Planning Approval Required to Cultivate Medical Cannabis

Section 20.242.010 - Intent

This Chapter 20.242 (“Chapter”) is intended to provide land use regulations for the County of

Mendocino where medical cannabis may be cultivated, subject to the limitations established in this Chapter and the provisions of Mendocino County Code Chapter 10A.17, the Medical Cannabis Cultivation Ordinance (MCCO). The objective of this Chapter is to allow the cultivation of medical cannabis in locations that are consistent with the intent of the base zoning district and to help ensure that its cultivation and related activities will not create adverse impacts to the public health, safety, and welfare of the residents of the County of Mendocino.

Section 20.242.020 – Application

The cultivation of medical cannabis is prohibited in all zoning districts in Mendocino County, except as allowed by this Chapter or by Chapter 10A.17.

Section 20.242.030 – Definitions

Unless otherwise defined in this Chapter, the terms and phrases used herein shall have the same definitions as provided in Chapter 10A.17, or as provided in this Title 20.

Section 20.242.040 Existing Medical Cannabis Cultivation Sites

- (A) Referrals of applications to the Department for review related to existing cultivation sites shall include the Agriculture Commissioner's determination that the cultivation site existed prior to January 1, 2016, unless the Agricultural Commissioner requests the assistance of the Department in making this determination as part of the referral to the Department.
- (B) Cultivation sites, in conformance with the MCCO, may be allowed on a legal parcel with an approved Zoning Clearance, Administrative Permit or Minor Use Permit as required for the zoning district in which the cultivation site is located and as listed in Table 1.

TABLE 1
Zoning Permit Requirement for Existing Medical Cannabis Cultivation by Zoning District and Medical Cannabis Cultivation Ordinance Permit Type

MCCO Permit Type	C Small Outdoor	C-A Small Indoor, Artificial Light		C-B Small, Mixed Light	1 Medium Outdoor	1-A Medium Indoor, Artificial Light	1-B Medium Mixed Light	2 Large Outdoor	2-A Large Indoor, Artificial Light	2-B Large Mixed Light	4 Nursery
Min Parcel Area (ac)	NA	NA		NA	5	5	5	10	10	10	10
Cultivation Area Limit (sf)	2,500	500	501 - 2,500	2,500	2,501- 5,000	2,501- 5,000	2,501- 5,000	5,001- 10,000	5,001- 10,000	5,001- 10,000	22,000
Zoning District	RR 5*	ZC	AP	UP	ZC	ZC	--	ZC	--	--	--
	RR 10	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC
	AG	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC
	UR	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC
	RL**	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC
	FL **	ZC	AP	UP	ZC	AP	--	AP	AP	--	AP
	TPZ**	ZC	AP	UP	ZC	AP	--	AP	AP	--	AP
	I1	ZC	ZC	ZC	ZC	--	ZC	ZC	--	ZC	ZC
	I2	ZC	ZC	ZC	ZC	--	ZC	ZC	--	ZC	ZC
	PI	ZC	ZC	ZC	ZC	--	ZC	ZC	--	ZC	ZC

-- = Not Allowed, ZC = Zoning Clearance, AP = Administrative Permit, UP = Minor Use Permit

* Parcels in the RR-5 zoning district must have a minimum parcel size of five (5) acres.

** Existing cultivation sites in the FL, TPZ and RL zoning districts are permitted subject to limitations of this section. Expansion of existing cultivation sites in the FL, TPZ and RL zoning districts is permitted, subject to the issuance of an Administrative Permit.

- (C) An existing cultivation site located in a zoning district not listed in Table 1 of this section may continue subject to the requirements of Chapter 10A.17 and the following planning permit requirements for a Zoning Clearance, Administrative Permit or Minor Use Permit.

(1) Planning Permit Requirements:

- (a) Outdoor Cultivation (pursuant to a MCCO Type C Permit) not exceeding 2,500 square feet requires an approved Zoning Clearance.
- (b) Indoor Artificial Light Cultivation (pursuant to a MCCO Type C-A Permit) not exceeding 500 square feet requires an approved Administrative Permit.
- (c) Indoor Artificial Light Cultivation (pursuant to a MCCO Type C-A Permit) between 501 and 2,500 square feet requires an approved

Minor Use Permit.

- (d) Mixed Light Cultivation (pursuant to a MCCO Type C-B Permit) not exceeding 2,500 square feet requires an approved Zoning Clearance.
- (2) Any future lapse or revocation of the MCCO permit will extinguish the permittee's ability to obtain a future permit from the Department to continue or resume an existing cultivation site that is not within a zoning district listed in Table 1 of this section.
- (D) An existing cultivation site, which qualifies for a MCCO permit, may continue within the FL (Forest Land), the TPZ (Timber Production Zone), or the RL (Rangeland) zoning districts not to exceed 2,500 square feet of cultivation with a Zoning Clearance, Administrative Permit or Minor Use Permit as listed in Table 1. The existing cultivation site may be expanded to a MCCO Outdoor or Mixed-Light permit type that allows up to 10,000 square feet of cultivation in conformance with all applicable MCCO requirements and conditions and with an approved Administrative Permit or Use Permit as listed in Table 1.
- (E) Transferability of Permits. Permits issued pursuant to this Section shall not be transferable to another person, except that the permittee may transfer the permit to a spouse/domestic partner, child, parent, or, for estate planning purposes, to a trust in which the permittee serves as a trustee, which shall not be deemed a change in ownership for purposes of this Chapter.

Section 20.242.050 New Medical Cannabis Cultivation Sites Located in Industrial Zoning Districts

Establishment of a new medical cannabis cultivation site in the I-1 (Light Industrial), I-2 (General Industrial), and Pinoleville Industrial (P-I) zoning districts, for Type 1A and 2A MCCO permits, issued on or after January 1, 2018, may be permitted subject to the requirements of Section 20.242.060.

Section 20.242.060 New Medical Cannabis Cultivation Sites

- (A) Except as provided in Section 20.242.050, on or after January 1, 2020, new medical cannabis cultivation sites may only be permitted in accordance with this section.
- (B) All new medical cannabis cultivation sites shall be consistent with the General Limitations on Cultivation of Medicinal Cannabis, Section 10A.17.040; provided, however, that an applicant may seek a reduction in the setback requirements as stated in paragraph (D) of this section.
- (C) Cultivation sites, operated in conformance with the MCCO, may be allowed on a legal parcel with an approved Zoning Clearance, Administrative Permit or Minor Use Permit, as required for the zoning district in which the cultivation site is located and listed in Table 2.

TABLE 2

Zoning Permit Requirement for New Medical Cannabis Cultivation by Zoning District and Medical Cannabis Cultivation Ordinance Permit Type

MCCO Permit Type	C Small Outdoor	C-A Small Indoor, Artificial Light		C-B Small Mixed Light	1 Medium Outdoor	1-A Medium Indoor, Artificial Light	1-B Medium Mixed Light	2 Large Outdoor	2-A Large Indoor, Artificial Light	2-B Large Mixed Light	4 Nursery
Min Parcel Area (ac)	2	2		2	5	5	5	10	10	10	10
Cultivation Area Limit (sf)	2,500	500	501 - 2,500	2,500	2,501- 5,000	2,501- 5,000	2,501- 5,000	5,001- 10,000	5,001- 10,000	5,001- 10,000	22,000
Zoning District	RR 5*	ZC	AP	UP	ZC	ZC	--	ZC	--	--	--
	RR 10	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC
	AG	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC
	UR	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC
	I1	ZC	ZC	ZC	ZC	--	ZC	ZC	--	ZC	ZC
	I2	ZC	ZC	ZC	ZC	--	ZC	ZC	--	ZC	ZC
	PI	ZC	ZC	ZC	ZC	--	ZC	ZC	--	ZC	ZC

-- = Not Allowed, ZC = Zoning Clearance, AP = Administrative Permit, UP = Minor Use Permit

* Parcels in the RR-5 zoning district must have a minimum parcel size of five (5) acres.

- (D) **Setback Reduction.** A reduction in the setback from a legal parcel line required by Section 10A.17.040 may be allowed with an Administrative Permit, approved according to Section 20.242.070(C), provided that the approved setback reduction is 50 feet or greater from an adjoining property under separate ownership or access easement, whichever is most restrictive and the location of the medical cannabis cultivation site continues to comply with the required setback from an occupied legal residential structure.

Section 20.242.070 - Planning Approval Required to Cultivate Medical Cannabis

- (A) **Planning Approval Procedure.** Each proposed medical cannabis cultivation site is subject to one of the following planning review processes that correspond to the applicable zoning district and Chapter 10A.17 permit as specified by Table 1 or Table 2 in this Chapter.

The Agricultural Commissioner's Office shall refer applications for cultivation permits pursuant to Chapter 10A.17 to the Department, which shall review the application to determine which of the following processes applies. If the application needs only a Zoning Clearance, the Department will provide a zoning clearance approval to the Agricultural Commissioner's Office. If the application requires either an Administrative Permit or a Minor Use Permit,

the Department will notify the Agricultural Commissioner's Office and the applicant that planning approval is required.

- (B) **Zoning Clearance.** The Department shall review the MCCO permit application to confirm the medical cannabis cultivation site is allowed in the zoning district, subject to the applicable requirements of this chapter, and confirm the legal parcel on which the cultivation site is located. The Department shall additionally provide any information as requested by the Agricultural Commissioner's Office to confirm compliance with any of the provisions of Chapter 10A.17.
- (C) **Administrative Permit.** In accordance with the Administrative Permit review procedure listed in Chapter 20.192, the Zoning Administrator shall approve, conditionally approve or deny an Administrative Permit medical cannabis cultivation sites based on the following special findings.
 - (1) The medical cannabis cultivation site is allowed in the zoning district and it is in compliance with the provisions of Chapter 10A.17.
 - (2) There is no other environmentally superior cultivation site located on the same parcel; the location and operation of the medical cannabis cultivation site will, to the maximum extent feasible, avoid or minimize its impact on environmentally sensitive areas including hillsides exceeding 15%, prime soil, oak woodland, and timber resources.
 - (3) The medical cannabis cultivation site will avoid or minimize odor and light impact on residential uses.
 - (4) For any new medical cannabis cultivation site established after January 1, 2020 and that is not located in the AG (Agriculture) Zoning District, the submitted MCCO permit application contains evidence that demonstrates: (1) there is adequate water supply in the watershed and water rights to serve the cultivation site; (2) the cultivation site has received a Clean Water Act Section 404 permit from the Army Corps of Engineers or a Clean Water Act Section 401 permit from the North Coast Regional Water Quality Control Board, as applicable, and a General Permit for Discharges of Storm Water from the State Water Resources Control Board.
 - (5) The Administrative Permit granted for the medical cannabis cultivation site shall be limited to a period not to exceed 10 years. The Administrative Permit shall expire at the end of this period unless it is renewed prior to the end of 10-year period, or at any time the approved MCCO permit for the cultivation site expires or is revoked.
 - (6) An Administrative Permit may be applied for and granted for an exception to the dwelling unit requirement of Chapter 10A.17 for parcels in the Rural Residential, lot size ten (10) acres (R-R:L-10) zoning district with the additional finding that the applicant shall demonstrate that the cultivation site and any associated infrastructure (roads, buildings, water storage, etc.) does not preclude the development of the parcel with a residence in the future. For parcels that will need on-site sewage disposal systems to

be developed, making this finding may require the identification of a primary and reserve leach field to be identified in order to issue the Administrative Permit.

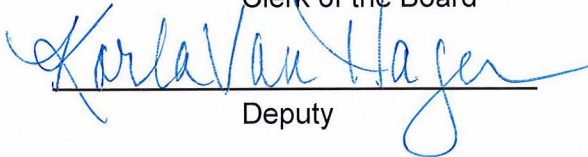
- (D) Minor Use Permit. In accordance with the Use Permit review procedure listed in Chapter 20.196, the Zoning Administrator or the Planning Commission shall approve, conditionally approve, or deny a Minor Use Permit for a medical cannabis cultivation site based on findings in Section 20.196.020 and the following special findings:
- (1) The proposed medical cannabis cultivation site is in compliance with the provisions of Chapter 10A.17.
 - (2) In cases where there is no other environmentally superior cultivation site located on the same parcel, the location and operation of the medical cannabis cultivation site will, to the maximum extent feasible, avoid or minimize its impact on environmentally sensitive areas including hillsides exceed 15%, prime soil, oak woodland, and timber resources.
 - (3) The proposed medical cannabis cultivation site will avoid or minimize odor and light impact on residential uses.
 - (4) For any new medical cannabis cultivation site established after January 1, 2020 and that is not located in the AG (Agriculture) Zoning District, the submitted MCCO permit application contains evidence that demonstrates: (1) there is adequate water supply in the watershed and water rights to serve the cultivation site; (2) the cultivation site has received a Clean Water Act Section 404 permit from the Army Corps of Engineers or a Clean Water Act Section 401 permit from the North Coast Regional Water Quality Control Board, as applicable, and a General Permit for Discharges of Storm Water from the State Water Resources Control Board.
 - (5) The Use Permit granted for the medical cannabis cultivation site shall be limited to a period not to exceed 10 years. The Administrative Permit shall expire at the end of this period unless it is renewed prior to the end of 10-year period, or at any time the approved MCCO permit for the cultivation site expires or is revoked.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this 4th day of April, 2017, by the following roll call vote:

AYES: Supervisors Brown, McCowen and Gjerde
NOES: None
ABSENT: None
RECUSED: Supervisor Hamburg

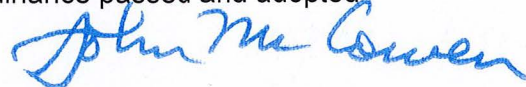
WHEREUPON, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO
Clerk of the Board


Deputy

APPROVED AS TO FORM:
KATHARINE L. ELLIOTT,
County Counsel





JOHN MCCOWEN, Chair
Mendocino County Board of Supervisors

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

BY: CARMEL J. ANGELO
Clerk of the Board

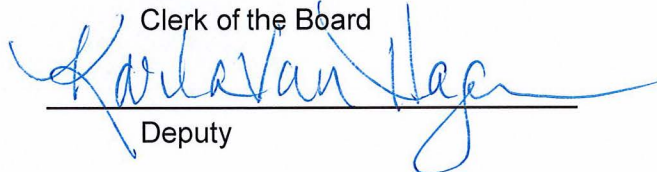

Deputy

EXHIBIT J

CHAPTER 10A.17 - MENDOCINO CANNABIS CULTIVATION ORDINANCE^[1]

Footnotes:

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Editor's note— Ord. No. [4408](#), § 1, adopted April 28, 2018, amended the title of ch. 10A.17, to read as set out herein. Previously ch. 10A.17 was titled "Medical Cannabis Cultivation Ordinance."

Sec. 10A.17.010 - Title, Purpose and Intent.

This Chapter is known and may be cited as the Mendocino Cannabis Cultivation Ordinance ("MCCO"). Chapter 20.242 of the Mendocino County Code, titled Cannabis Cultivation Sites, is complementary to this Chapter and together the chapters may be cited as the Mendocino Cannabis Cultivation Regulation ("MCCR").

It is the purpose and intent of this Chapter, together with complementary regulations found in Chapter 20.242 of the Mendocino County Zoning Code, to regulate the cultivation of cannabis within the unincorporated areas of Mendocino County in a manner that is consistent with State law and which promotes the health, safety, and general welfare of the residents and businesses within those areas by balancing the needs of medical patients and their caregivers for enhanced access to medical cannabis, the needs of neighbors and communities to be protected from public safety and nuisance impacts, and the need to limit harmful environmental impacts that are sometimes associated with cannabis cultivation.

Adoption of this Chapter will protect the public health, safety and welfare of the residents of the County of Mendocino by adopting regulations regarding the cultivation of cannabis by individuals consistent with the provisions of State law and a local permitting structure that will operate in conformance with State licensing requirements for the commercial cultivation of cannabis, as state licenses become available.

All cultivation of cannabis within the County of Mendocino, except for cultivation allowed pursuant to Chapter 9.31, shall comply with the provisions of the MCCR, as well as all applicable state and local laws, regardless of whether the cultivation site existed or occurred prior to the adoption of the MCCR.

Nothing in this Chapter is intended, nor shall it be construed, to:

- 1) Allow persons to engage in conduct that endangers others or causes a public nuisance, or
- 2) Allow any activity relating to the cultivation, distribution or consumption of cannabis that is otherwise illegal under California State law.

Nothing in this Chapter is intended, nor shall it be construed, to exempt the cultivation of cannabis from compliance with all other applicable Mendocino County zoning and land use regulations, as well as other applicable provisions of the County Code, or compliance with any applicable state laws.

Nothing in this Chapter is intended, nor shall it be construed, to confer the right to create or maintain a public nuisance in the course of cultivating cannabis plants.

Nothing in this Chapter is intended, nor shall it be construed, to exempt the cultivation of cannabis, as defined herein, from any and all applicable local and state construction, grading, electrical, plumbing, land use, water rights, waste water discharge, streambed alteration, or any other environmental, building or land use standards or permitting requirements.

Nothing in this Chapter is intended, nor shall it be construed, to preclude a landlord or property owner from limiting or prohibiting the cultivation of cannabis.

All persons operating facilities and conducting activities associated with the cultivation of cannabis, as defined in this Chapter, are subject to possible federal prosecution, regardless of the protections provided by state or local law.

(Ord. No. [4381](#), § 1, 4-4-2017; Ord. No. [4408](#), § 2, 4-28-2018)

Sec. 10A.17.020 - Definitions.

As used herein the following definitions shall apply:

"A-license" means a state license issued under the State of California Medicinal and Adult-Use Cannabis Regulatory Safety Act (MAUCRSA), or subsequent legislation, for cannabis or cannabis products that are intended for adults twenty-one (21) years of age and over and who do not possess physician's recommendations.

"A-licensee" means any person holding a license under the MAUCRSA, or subsequent legislation, for cannabis or cannabis products that are intended for adults twenty-one (21) years of age and over and who do not possess physician's recommendations.

"Agricultural Commissioner" or "Agricultural Commissioner's Office" or the "Department of Agriculture" means the Mendocino County Department of Agriculture or the authorized representatives thereof, or such other department, division or representative as designated by the Board of Supervisors.

"Attorney General's Guidelines" means the document titled "Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use issued by the California State Attorney General in August 2008.

"Baseline date" means August 26, 2016, which is the date the Initial Study under the California Environmental Quality Act for the MCCR was initiated.

"Cannabis" means all parts of the plant *Cannabis sativa*, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds thereof. "Cannabis" also means marijuana as defined by Section 11018 of the State of California Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. For the purpose of this section, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the State of California Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

"Cannabis product" has the same meaning as in Health and Safety Code section 11018.1.

"Clone" means a portion of a stem that is cut from a parent plant and induced to form roots by chemical, mechanical, or environmental manipulation.

"Cultivation cycle" means each individual cycle where cannabis plants are grown to maturity from seeds, clones or nursery starts.

"Cultivation of cannabis" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming or processing of cannabis.

"Cultivation site" means one (1) or more locations or facilities on one (1) legal parcel (or one (1) or more legal parcels if specifically allowed for by this Chapter 10A.17) subject to a single approved Permit for the cultivation of cannabis where cannabis is planted, grown, harvested, dried, cured, graded, trimmed, or processed, or that does all or any combination of those activities. One (1) or more areas of cannabis cultivation may exist on the legal parcel used for that purpose.

"Disturbance" means areas of land where natural plant growth has been removed whether by physical, animal, or chemical means, or natural grade has been modified for any purpose. Land disturbance includes all activities whatsoever associated with developing or modifying land for cannabis cultivation related activities or access. Land disturbance activities include, but are not limited to, construction of roads, buildings, or water storage areas; excavation; grading; and site clearing. Disturbed land includes cultivation areas and storage areas where soil or soil amendments (e.g., potting soil, compost, or biosolids) are located. Areas where plant material has been removed for the purpose of wildfire suppression are not considered disturbed.

"Dwelling unit" means a legal residential structure providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation, and having only one (1) kitchen.

"Expansion" means an increase in the size of Plant Canopy above the area cultivated as of the Baseline Date.

"Flowering" means that a cannabis plant has formed a mass of pistils measuring greater than one-half (½) inch wide at its widest point.

"Greenhouse" means a completely enclosed structure whose structural members are made of pre-formed, rigid construction materials. The walls, roof, and ends are typically covered using a transparent material, often glass, that is fixed in place, and which allows solar radiation to penetrate the surface and affect the growing environment of the plants inside.

"Hoop House" means a structure with structural members are made of flexible and somewhat rigid construction materials, typically PVC pipe or similar material. The ends may be covered or left open and the material covering the structural members is readily removable and is typically removed and re-affixed frequently.

"Identification card" shall have the same definition as California Health and Safety Code section 11362.5 et seq., and as may be amended.

"Immature plant" or "immature" means a cannabis plant which has a first true leaf measuring greater than one-half inch long from base to tip (if started from seed) or a mass of roots measuring greater than one-half inch wide at its widest point (if vegetatively propagated), but which is not flowering.

"Indoor cultivation" or "indoors" means within a fully enclosed and secure structure that complies with the California Building Code, as adopted by the County of Mendocino, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one (1) or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as two (2) inches by four (4) inches or thicker studs overlain with three-eighths (3/8) inches or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

"Legal parcel" or "Parcel" means a lot of real property which was created pursuant to the Subdivision Map Act or for which an application for subdivision was on file with the Department of Planning and Building Services prior to January 1, 2016, or for which a certificate of compliance was recognized and recorded prior to January 1, 2016; provided, however, for real property within Industrial zoning districts, subdivisions or certificates of compliance may be recognized and recorded after January 1, 2016.

"License" means a state license issued under the MAUCRSA, or subsequent legislation, and includes both an A-license and an M-license.

"Licensee" means a person issued a state license under the MAUCRSA, or subsequent legislation, to engage in commercial cannabis activity, regardless of whether the license held is an A-license or an M-license.

"M-license" means a state license issued under the MAUCRSA, or subsequent legislation, for commercial cannabis activity involving medicinal cannabis.

"M-licensee" means any person holding a license under the MAUCRSA, or subsequent legislation, for commercial cannabis activity involving medicinal cannabis.

"Mature plant" or "mature" means a cannabis plant that is flowering.

"Mixed light cultivation" or "mixed light" means the use of both natural and artificial or supplemental lighting sources during the growing cycle to cultivate cannabis. Included in this definition is the process of solely manipulating natural light to cultivate cannabis.

"Nursery" means all activities associated with producing clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of cannabis.

"Outdoor cultivation" or "outdoors" means any cultivation site that uses no artificial or supplemental lighting to cultivate cannabis. Use of supplemental lighting to maintain vegetative starts or immature plants prior to transplanting outdoors shall be considered consistent with this definition.

"Park" means an area of land used for community recreation owned or operated by a public entity or a private area of land recognized as a neighborhood park utilized by youth. State or Federal designated parks and forestlands as recognized within the Mendocino County General Plan are not included within this definition.

"Permit" means a permit to cultivate cannabis in Mendocino County pursuant to this Chapter.

"Permittee" means a Person issued a permit to cultivate cannabis in Mendocino County pursuant this Chapter.

"Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.

"Person with an identification card" means an individual who is a qualified patient who has applied for and obtained a valid identification card pursuant to Article 2.5 of Chapter 6 of Division 10 of the California Health and Safety Code (Section 11362.7 et seq.).

"Plant canopy" or "square footage" or "total square footage of plant canopy" or "cultivation area" means the cumulative total of square footage occupied by growing cannabis plants as calculated by the Agricultural Commissioner's Office but does not include aisles or other open areas outside the canopy area of growing cannabis plants.

"Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, as defined in Health and Safety Code section 11362.7(d).

"Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling, for purposes of this Chapter.

"Process," "processing," and "processes" means all activities associated with the drying, curing, grading, trimming, rolling, storing, packaging, and labeling of nonmanufactured cannabis products.

"Publically traveled private road" means a private roadway easement or access easement which serves, or has the potential to serve, more than four (4) lots or parcels. Such easement shall be considered a street as defined in Mendocino County Code section 20.008.052(26).

"Qualified patient" or "Patient" means a person who is entitled to the protections of section 11362.5 of the Health and Safety Code, but who does not have an identification card issued pursuant to Article 2.5 of Chapter 6 of Division 10 of the Health and Safety Code (Section 11362.7 et seq.).

"School" means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code, or any licensed child day care or preschool facility. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college or university.

"Sheriff" or "Sheriff's Office" means the Sheriff's Office of the County of Mendocino or the authorized representatives thereof.

"Track and Trace" means a monitoring system providing traceability throughout the production and distribution lifecycle of permitted cannabis utilizing a unique identifier pursuant to section 11362.777 of the Health and Safety Code to assist government with enforcing regulations and preventing the illegal diversion of cannabis.

"Unique identifier" or "Unique ID" means individual, non-repeating identification issued to a permittee and attached to the base of each cannabis plant permitted at a cultivation site during the cultivation period or otherwise utilized in connection with an approved Track and Trace system.

"Youth-oriented facility" means an elementary school, middle school, high school, public park, or any establishment that advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors. Youth-oriented facility shall include "day care center," as defined in Section 1596.76 of the California Health and Safety Code, as that section may be modified or superseded, and shall include "youth center" as defined in Section 11353.1 of the Health and Safety Code, as that section may be modified or superseded.

(Ord. No. [4381](#), § 1, 4-4-2017; Ord. No. [4392](#), § 1, 8-29-2017; Ord. No. [4408](#), § 3, 4-28-2018; Ord. No. [4422](#), § 2, 12-18-2018)

Sec. 10A.17.030 - Cultivation Permit Required; Exemptions.

- (A) Except as provided for by this Section, cultivation of cannabis shall be allowed only following the issuance of a Permit pursuant to the provisions of this Chapter, and the review of a permit pursuant to the provisions of Chapter 20.242 of the Mendocino County Zoning Code. Chapter 20.242 authorizes the cultivation of cannabis only in specifically enumerated zoning districts, as determined by permit type, subject either to a zoning clearance, administrative permit or minor use permit.
- (B) Qualified patients, persons with an identification card or primary caregivers cultivating cannabis are exempt from the permit requirements of paragraph (A) of this Section, subject to the following requirements:
 - (1) Intentionally Omitted.
 - (2) Compliance with the provisions of Section 10A.17.040.
 - (3) Any and all cannabis cultivated by a qualified patient or person with an identification card shall be for the sole and exclusive use by the patient only; such cannabis may not be provided, donated, sold or distributed to any other person. A maximum of one hundred (100) square feet of medical cannabis may be cultivated on a legal parcel by a qualified patient or patients.
 - (4) Any and all cannabis cultivated by a primary caregiver shall be for the sole and exclusive use of up to a maximum of two (2) patients which have provided written designation to the primary caregiver to provide those services; the primary caregiver may not receive remuneration for these activities except for compensation in full compliance with subdivision (c) of Health and Safety Code section 11362.765. A maximum of one hundred (100) square feet of cultivation area of medical cannabis may be cultivated by a primary caregiver for each patient they are cultivating for. A maximum total of two hundred (200) square feet may be cultivated on a legal parcel by a primary caregiver or caregivers. Primary caregivers cultivating more than one hundred (100) square feet shall be required to register with the Agriculture Department on an annual basis.
 - (5) Persons eligible to cultivate cannabis under this paragraph (B) may also cultivate cannabis for adult use, but any such cannabis plants must be contained within the square footage allowed in this paragraph (B).
- (C) Individuals desiring to cultivate cannabis for adult use are exempt from the permit requirements of paragraph (A) of this section, subject to compliance with the following requirements:
 - (1) Compliance with the provisions of Section 10A.17.040.
 - (2) Cultivation of cannabis must occur in or on the grounds of a private residence or accessory structure, may be within one (1) or more cultivation sites, and contain no more than six (6) cannabis plants with a total plant canopy not to exceed one hundred (100) square feet.
 - (3) Cultivation of adult use cannabis under this paragraph (C) on legal parcels where medical cannabis plants are being cultivated pursuant to Chapter 9.31 shall not be used to increase the total number of cannabis plants that may be cultivated on the legal parcel, but up to six (6) of

the total allowed number of twenty-five (25) plants may be set aside as personal cultivation of adult use cannabis.

- (4) Cultivation of adult use cannabis under this paragraph (C) on legal parcels where cannabis plants are being cultivated under a Permit issued pursuant to this Chapter 10A.17 is allowed, provided that the person or persons cultivating the adult use cannabis reside on the legal parcel, the adult use cannabis plants do not exceed one hundred (100) square feet of total plant canopy, and the adult use cannabis plants shall be identified on the site plan required pursuant to section 10A.17.090.
- (5) Cultivation of adult use cannabis under this paragraph (C) on any legal parcel less than ten (10) acres in size shall only be allowed indoors.

(Ord. No. [4381](#), § 1, 4-4-2017; Ord. No. [4392](#), § 2, 8-29-2017; Ord. No. [4408](#), § 3, 4-28-2018)

Sec. 10A.17.040 - General Limitations on Cultivation of Cannabis.

The following limitations shall apply to all cultivation of cannabis in Mendocino County, including but not limited to cultivation pursuant to a Permit issued under this Chapter or an exemption provided for in Section 10A.17.030. Cultivation of cannabis shall also be subject to all applicable restrictions of Mendocino County Code Chapter 20.242.

- (A) The cultivation of cannabis in Mendocino County, in any amount or quantity by any entity, shall not be allowed in the following areas:
 - (1) Within one thousand (1,000) feet of a youth-oriented facility, a school, or a park as defined herein that is in existence at the time a Permit is initially applied for.
 - (2) Outdoors or using mixed light within one hundred (100) feet of any occupied legal residential structure located on a separate legal parcel; provided, however, that on January 1, 2020, this setback shall be increased to two hundred (200) feet for all Permit applications but shall not apply to renewals of Permits originally issued before that date.
 - (3) Outdoors or using mixed light in a mobile home park as defined in Health and Safety Code Section 18214.1 within one hundred (100) feet of an occupied mobile home that is under separate ownership.
 - (4) Intentionally omitted.
 - (5) Outdoors or using mixed light within fifty (50) feet from any adjoining legal parcel under separate ownership or access easement (whichever is most restrictive); provided, however, that on January 1, 2020, this setback shall be increased to one hundred (100) feet for all Permit applications but shall not apply to renewals of Permits originally issued before that date.
 - (6) Any indoor cultivation sites that comply with paragraph (A)(1) shall also be subject to the following:
 - (a) Indoor cultivation sites shall comply with the building property line setback established by the zoning district in which the cultivation site is located.
 - (b) The cultivation of cannabis within an accessory structure shall be allowed subject to the development requirements of the zoning district in which it is located and to requirements of Chapter 20.164—Accessory Use Regulations except, notwithstanding Section 20.164.010: (a) the cultivation of cannabis in an accessory structure is not permitted prior to the construction of the legal dwelling unit on the parcel, if a legal dwelling unit is required by this Chapter, and (b) cultivation of cannabis shall only be allowed on the same parcel as the dwelling unit, if required.
 - (c) Indoor cultivation sites for individuals desiring to cultivate cannabis for adult use pursuant to section 10A.17.030(C) shall also be subject to the following limitation:

cultivation sites located within a private residence that is a rental unit, as that term is defined by County Code section 20.008.050, shall not be located in any indoor space other than a garage or accessory structure.

- (B) The distance between the listed uses in the above paragraph (A)(1) and cannabis that is being cultivated shall be measured in a straight line from the nearest point of the fence required in section 10A.17.040(H), or if the cannabis is cultivated indoors, from the nearest exterior wall of the building in which the cannabis is cultivated to the nearest point of the exterior wall of the facility, building, or structure, or portion of the facility, building, or structure in which the above-listed use occurs or to the nearest point of any fenced, maintained or improved area where the users of the facility are typically present during normal hours of operation, whichever is closest. The distance in paragraphs (A)(2) and (A)(3) to any residential structure shall be measured from the fence required in section 10A.17.040(H) to the nearest exterior wall of the residential structure. The distance in paragraph (A)(5) shall be measured from the fence required in section 10A.17.040(H) to the boundary line of a legal parcel or access easement.

Applicants may seek a reduction in the setback described in paragraphs (A)(1) and (A)(5) upon issuance of an administrative permit pursuant to Chapter 20.242. See also sections 20.242.060(D) and 20.118.040(D), (E) and (F) for further exceptions to setback regulations.

- (C) The outdoor, indoor or mixed light cultivation of cannabis shall not propagate objectionable odors which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that endanger the comfort, repose, health, or safety of any of those persons or the public.
- (D) The indoor or mixed-light cultivation of cannabis shall rely on the electrical grid or some form of alternative energy source. The indoor or mixed-light cultivation cannabis shall not rely on a generator as a primary source of power.
- (E) All lights used for the indoor or mixed light cultivation of cannabis shall be fully contained within structures or otherwise shielded to fully contain any light or glare involved in the cultivation process. Security lighting shall be motion activated and all outdoor lighting shall be shielded and downcast or otherwise positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the legal parcel upon which they are placed.
- (F) All activities associated with the cultivation of cannabis shall not exceed the noise level standards as set forth in the County General Plan Policies DE100, 101 and 103.
- (G) All cultivation of cannabis shall not utilize water that has been or is illegally diverted from any spring, wetland, stream, creek, or river. The activities associated with the cultivation of cannabis shall not create erosion or result in contaminated runoff into any stream, creek, river or body of water.
- (H) All cannabis grown in Mendocino County (excluding indoor growing) must be within a secure fence of at least six (6) feet in height that fully encloses the garden area. The fence must include a lockable gate that is locked at all times when a qualified patient, caregiver or permittee (or their agent) is not in the immediate area. Said fence shall not violate any other ordinance, code section or provision of law regarding height and location restrictions and shall not be constructed or covered with plastic or cloth except shade cloth may be used on the inside of the fence.
- (I) All buildings where cannabis is cultivated or stored shall be properly secured to prevent unauthorized entry.
- (J) Persons cultivating cannabis pursuant to either section 10A.17.030, paragraphs (B) or (C) shall also comply with the provisions of section 10A.17.110, paragraphs (N) and (O).
- (K) Prohibition on Tree Removal. Removal of any commercial tree species as defined by Title 14 California Code of Regulations section 895.1, Commercial Species for the Coast Forest District and Northern Forest District, and the removal of any true oak species (*Quercus* sp.) or Tan Oak (*Notholithocarpus* sp.) for the purpose of developing a cannabis cultivation site is prohibited.

This prohibition shall not include the pruning of any such trees for maintenance, or the removal of such trees if necessary to address safety or disease concerns.

(Ord. No. [4381](#), § 1, 4-4-2017; Ord. No. [4392](#), § 3, 8-29-2017; Ord. No. [4408](#), § 4, 4-28-2018; Ord. No. [4420](#), § 1, 12-4-2018; Ord. No. [4422](#), § 3, 12-18-2018; Ord. No. [4438](#), § 1, 10-1-2019)

Sec. 10A.17.050 - Reserved.

Editor's note— Ord. No. [4422](#), § 4, adopted December 18, 2018, amended the Code by repealing former § 10A.17.050, which pertained to medical marijuana collectives, and derived from Ord. No. [4381](#), adopted April 4, 2017; and Ord. No. [4408](#), adopted April 28, 2018.

Sec. 10A.17.060 - Permit Types.

The cultivation Permits that may be applied for under this Chapter are for the production of flowering cannabis plants and for nursery and seed production, as defined in section 10A.17.020. A Permittee producing flowering cannabis plants may maintain an area scaled appropriately for their operation where they may propagate their own immature plants (starts) through cloning, seed germination or tissue culture. Starts produced in this manner shall be for the exclusive and personal use of the permittee only and the sale, trade, barter, etc. of such starts is prohibited. The square footage of cultivation area dedicated to propagation of starts shall not be included in measuring the cumulative total square footage allowed under a given Permit and must not constitute any new disturbance, as defined by this chapter.

The following cannabis cultivation Permit types may be applied for and granted provided the applicant and the legal parcel (or legal parcels, subject to section 10A.17.070(D)(3)) that contains the cultivation site are determined to be in compliance with all applicable conditions of this Chapter and Mendocino County Code Chapter 20.242; all Permit types shall be applied for stating whether the applicant will be applying for an A-License or an M-License, or a stated combination thereof.

- (1) "Type C" for small outdoor cultivation using no artificial lighting not to exceed a maximum of two thousand five hundred (2,500) square feet of total plant canopy.
- (2) "Type C-A" for small indoor cultivation using exclusively artificial lighting not to exceed a maximum two thousand five hundred (2,500) square feet of total plant canopy within a structure or structures.
- (3) "Type C-B" for small mixed light cultivation (using a combination of natural and supplemental artificial lighting) not to exceed a maximum of two thousand five hundred (2,500) square feet of total plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle.
- (4) "Type 1" for medium outdoor cultivation using no artificial lighting of two thousand five hundred one (2,501) to a maximum of five thousand (5,000) square feet of total plant canopy on one legal parcel not less than five (5) acres in size.
- (5) "Type 1A" for medium indoor cultivation using exclusively artificial lighting of two thousand five hundred one (2,501) to a maximum of five thousand (5,000) square feet of total plant canopy within a structure or structures.
- (6) "Type 1B" for medium mixed light cultivation (using a combination of natural and supplemental artificial lighting) of two thousand five hundred one (2,501) to a maximum of five thousand (5,000) square feet of total plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle, on one (1) legal parcel not less than five (5) acres in size.
- (7) "Type 2" for large outdoor cultivation using no artificial lighting of five thousand one (5,001) to a maximum of 10,000 square feet of total plant canopy on one legal parcel not less than ten (10) acres in size.

- (8) "Type 2A" for large indoor cultivation using exclusively artificial lighting of five thousand one (5,001) to ten thousand (10,000) square feet of total plant canopy on one legal parcel.
- (9) "Type 2B" for mixed light cultivation (using a combination of natural and supplemental artificial lighting) of five thousand one (5,001) to a maximum of ten thousand (10,000) square feet of total plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle, on one (1) legal parcel not less than ten (10) acres in size.
- (10) "Type 4" for the cultivation of cannabis nursery stock and/or seed production which shall not exceed a maximum of twenty-two thousand (22,000) square feet of total plant canopy on one (1) legal parcel. Seed production activities, if any, shall be described in the application for a Type 4 Permit. The legal parcel shall not be less than five (5) acres in size, provided, however, that legal parcels in industrial zoning districts are not subject to this parcel size restriction. Any on-site sales of nursery products which were produced on and occur on a parcel within the Timberland Production, Rangeland or Forestland zoning districts shall be limited to permitted cultivators only.

(Ord. No. [4381](#), § 1, 4-4-2017; Ord. No. [4392](#), § 4, 8-29-2017; Ord. No. [4408](#), § 6, 4-28-2018; Ord. No. [4422](#), § 5, 12-18-2018; Ord. No. [4438](#), § 2, 10-1-2019)

Sec. 10A.17.070 - Requirements for All Permits.

Unless specifically exempted, in addition to compliance with all other requirements of this Chapter, all Permits shall comply with the following requirements:

- (A) Zoning Districts. Cultivation of cannabis shall only be permitted on legal parcels that comply with the applicable zoning districts and parcel sizes as provided in Chapter 20.242.
- (B) Indoor Cultivation Permits. The use or conversion of habitable space (i.e., kitchen, bedrooms, bathrooms, living room or hallways) in any structure shall not be allowed for the indoor cultivation of cannabis.
- (C) Cultivation of cannabis is not permitted within any required parking space.
- (D) Permit Density. A Person may apply for and obtain a maximum of two (2) Permits listed in section 10A.17.060 at any given time. Permits shall be granted at a maximum density of one (1) Permit per legal parcel; provided, however, that:
 - (1) A Person may obtain two (2) separate Permits of different Permit types on a single legal parcel if the total square footage of the two (2) Permits does not exceed the largest maximum square footage permitted on a parcel for the relevant zoning district. A Person who applies for and obtains a Type 4 Permit in combination with any other Permit, shall not exceed a total square footage of twenty-two thousand (22,000) square feet per legal parcel, of which not more than ten thousand (10,000) square feet may be grown to maturity and entered into the Track and Trace system for commercial use. Plants may be grown to maturity by a Type 4 Permit holder for seed production or genetic expression, where the mature flowers are destroyed, and not used for commercial purposes, shall not require a separate cultivation permit.
 - (2) A Person may apply for one (1) Permit of a single size (e.g. Type C, Type 1 or Type 2) that may include any combination of all three (3) cultivation types (e.g. indoor, outdoor, mixed-light), but if any cultivation would require the issuance of a permit pursuant to Chapter 20.242, the entire Permit shall be subject to review under Chapter 20.242.
 - (3) A Person may obtain one (1) Permit for multiple legal parcels, so long as the parcels are contiguous and under the same ownership. Should the Person sell any of the parcels subject to the Permit, subsequent permits shall be required to modify the cultivation site to adhere to required setbacks.

- (E) Dwelling Unit Requirement. Legal parcels with a cultivation site are also required to have a dwelling unit; provided, however, that this requirement shall not apply to legal parcels within the following zoning districts: Upland Residential (U-R), Agricultural (A-G), Rangeland (R-L), Forest Land (F-L), Timberland Production (TPZ), Limited Industrial (1-1), General Industrial (1-2) Pinoleville Industrial (P-1). In addition, legal conforming parcels in Rural Residential, lot size ten (10) acres (R-R:L-10), shall also be exempt from the dwelling unit requirement of this paragraph, upon issuance of an administrative permit pursuant to Chapter 20.242.
- (F) Generators. The indoor or mixed-light cultivation of cannabis shall not rely on a generator as a primary source of power. If no grid power source is available and there is not an alternative power source supporting both any required legal dwelling unit and the indoor or mixed-light permit operations, a generator may be used only under the following conditions: (1) the permittee shall install an alternative power source that will meet at least one-half ($\frac{1}{2}$) of the combined power requirements by the expiration of four (4) years from the date of initial application for a permit pursuant to this Chapter and (2) it will be a condition of the renewal of a permit at the end of such four (4) year period that the cultivator commit, in writing, to expand their alternative power source to fully meet the combined needs of the cultivation operations and any required legal dwelling unit within two years. See also section 10A.17.090 regarding application requirements related to generators.
- (G) Permittees shall be required to enroll in and comply with all requirements of any Track and Trace system as designated by the County to track the production and distribution of cannabis. Permittees shall obtain and use unique identifiers from an approved source, maintain them in a readable state, comply with all data entry requirements, and pay all required Track and Trace fees. Non-compliance with Track and Trace requirements shall constitute a violation of the terms of the Permit.
- (H) Fees: An application fee shall be paid at the time an application is submitted to the Agricultural Commissioner for initial review. A Permit fee shall be paid prior to issuance of any Permit. Once a Permit is issued, the Permittee may renew the Permit upon submission of a renewal application and payment of a renewal fee. No Permit shall issue without payment of the required fees.
 - (1) Fees prescribed by this Chapter shall be set by the Mendocino County Board of Supervisors in accordance with all applicable laws and regulations and the County's Master Fee Policy. Any fee prescribed by this Chapter shall be paid to the County Treasurer/Tax Collector and is non-refundable. A receipt for payment of the required fee shall be provided to the Agricultural Commissioner prior to the initial review and issuance or annual renewal of any application, permit or other program described herein where a fee has been established, including for required inspections.
- (I) Inspections by Agricultural Commissioner. All applicants shall be subject to and shall facilitate an initial on-site pre-permit inspection and all Permittees shall be subject to and facilitate at least one (1) annual on-site compliance inspection (Type 4 Permits shall be subject to two (2) on-site compliance inspections annually), which shall serve as the inspection required to be performed prior to any renewal of the Permit, with additional inspections as required by this Chapter or as deemed necessary by the Agricultural Commissioner. All inspections will be scheduled with at least twenty-four (24) hours advance notice to the applicant or Permittee, and shall be conducted during regular business hours. Cancellation of scheduled inspections without notice to the Agricultural Commissioner shall result in the Permittee being invoiced for the actual travel time and mileage incurred by the Agricultural Commissioner.
 - (1) All site inspections conducted prior to issuance of a Permit for any indoor or mixed-light cultivation Permit may include a representative from the Department of Planning and Building Services.
- (J) Intentionally Omitted.
- (K) Assignment of Permits. A permittee may assign a Permit to another person subject to the following provisions:

- (1) Submission of the following to the Agricultural Commissioner:
 - (a) An application fee as set by resolution of the Board of Supervisors;
 - (b) A completed application form as provided by the department, and the submission of information or documents pursuant to Section 10A.17.090 relating to the assignee, including, but not limited to, the Live Scan criminal history inquiry process outlined in Section 10A.17.090(M);
 - (c) A copy of the existing Permit showing that it has not expired;
 - (d) Either:
 - (i) The existing Permittee's request to assign all rights and responsibilities of the Permit to the assignee; or
 - (ii) In the event of the death or incapacitation of the existing Permittee, evidence of such death or incapacitation;
 - (e) Evidence that assignee's legal interest in the real property involved allows for assignee's use of the Permit; and
 - (f) An affidavit executed by the assignee attesting to the assignee's agreement to comply with the terms and conditions of the Permit and all applicable laws and regulations.
- (2) The assignment shall be effective upon the department's written approval of the documentation submitted, notice that the assignee does not have a criminal history that includes any of the conditions listed in Section 10A.17.090(M), and the assigned Permit shall be granted subject to the terms and conditions of the original Permit.
- (3) Permits issued on parcels subject to the Sunset Provision of Section 10A.17.080(B)(2) shall not be assignable pursuant to this Section 10A.17.070(K); provided, however, that permits issued on parcels located within a "CA" Cannabis Accommodation Combining District are assignable.

(Ord. No. [4381](#), § 1, 4-4-2017; Ord. No. [4392](#), § 5, 8-29-2017; Ord. No. [4408](#), § 7, 4-28-2018; Ord. No. [4422](#), § 6, 12-18-2018; Ord. No. [4438](#), § 3, 10-1-2019)

Sec. 10A.17.080 - Permit Phases and Requirements Specific to each Phase.

Unless specifically exempted, in addition to compliance with all other requirements of this Chapter, all Permits shall comply with the following requirements:

- (A) Permits under the MCCO will be issued in the following three (3) phases:
 - (1) Phase One: Following the effective date of the MCCO, Permits will only be issued to applicants who provide to the Agricultural Commissioner pursuant to paragraph (B)(1) of this section proof of cultivation at a cultivation site prior to January 1, 2016 ("proof of prior cultivation"), and who comply with all other applicable conditions of this Chapter and Chapter 20.242. Applications for Permits during Phase One shall only be accepted until December 31, 2018, and from Monday, April 1, 2019, until Friday, October 4, 2019. Applicants able to provide proof of prior cultivation may apply for a Permit on a relocation site pursuant to paragraph (B)(3) of this section.
 - (2) Phase Two: Starting January 1, 2018, the Agricultural Commissioner will begin accepting applications for Type C-A, 1A and Type 2A Permits for indoor cultivation, and Type C-B, 1B and 2B Permits for mixed-light cultivation, which mixed-light cultivation must occur in a greenhouse equipped with filtered ventilation systems as described in paragraph (M) of section 10A.17.110 and may not occur in a hoop house, in the following zoning districts, subject to compliance with all other applicable conditions of this Chapter and Chapter

20.242: Limited Industrial (I-1), General Industrial (I-2), and Pinoleville Industrial (P-1). Proof of cultivation prior to January 1, 2016, is not required.

- (3) Phase Three: Starting April 1, 2021, the Agricultural Commissioner will begin accepting Permit applications from any applicant in conformance with the conditions of this Chapter and Chapter 20.242. Proof of cultivation prior to January 1, 2016, is not required.

(B) Requirements specific to Phase One Permits.

- (1) Proof of Prior Cultivation. Persons applying for a Permit during Phase One shall be required to provide to the Agricultural Commissioner evidence that they were cultivating cannabis on the cultivation site prior to January 1, 2016, which cultivation site shall have been, or could have been, in compliance with the setback requirements of paragraph (A) of section 10A.17.040. Evidence shall include:
 - (a) Photographs of any cultivation activities that existed on the legal parcel prior to January 1, 2016, including: (i) ground level views of the cultivation activities and (ii) aerial views from Google Earth, Bing Maps, Terraserver, or a comparable service showing: both the entire legal parcel and the cultivation site in more detail. The date these images were captured shall be noted.
 - (b) Photographs of any cultivation activities that currently exist on the legal parcel, including: (i) ground level views of the cultivation activities and (ii) aerial views from Google Earth, Bing Maps, Terraserver, or a comparable service showing: both the entire legal parcel and the cultivation site in more detail. The date these images were captured shall be noted.
 - (c) At least one (1) additional document demonstrating cultivation on the legal parcel prior to January 1, 2016, which evidence may be used to substitute for evidence pursuant to clause (a). The Agricultural Commissioner shall prepare a list of the types of documentation that will be accepted to meet this requirement, and may accept other similarly reliable documentary evidence showing that cannabis was cultivated prior to January 1, 2016.
 - (d) Proof of prior cultivation shall be assigned to the applicant relative to their prior cultivation site.
 - (e) Persons who participated in a permit program pursuant to the County's Chapter 9.31 in previous years may present evidence of such participation and payment of all required fees in order to provide proof of prior cultivation.
- (2) Zoning Districts; Exceptions. Existing cultivation sites not located in zoning districts where Chapter 20.242 specifically allows cultivation may be issued a Type C, Type C-A, or Type C-B Permit, subject to the following requirements, in addition to all other applicable requirements of this Chapter:
 - (a) The zoning district is one where a dwelling unit is a principally permitted use and a dwelling unit is present.
 - (b) Sunset Provision for Residential Districts. Cultivation sites on legal parcels located in the Single-Family Residential (R-1), Two-Family Residential (R-2), Multiple-Family Residential (R-3), Suburban Residential (S-R), Rural Community (R-C), and Rural Residential (lot sizes one (1) acre, two (2) acres and five (5) acres [legal non-conforming parcels to minimum zoning size][R-R: L-1, R- R:L-2, and R-R:L-5 {legal non-conforming to minimum zoning size}]), as well as cultivation sites in any other zoning district where a dwelling unit is a principally permitted use and the legal parcel is less than two (2) acres in size, are subject to the following requirements:
 - (i) There is an occupied dwelling unit on the legal parcel with the cultivation site.
 - (ii) A Permit may be renewed and valid only until three (3) years following the effective date of the ordinance adopting this Chapter and any permits issued

shall be void not later than three (3) years following said effective date; provided, however, that indoor cultivation sites (Types C-A, 1A or 2A) within two (2) miles of the Coastal Zone Boundary which, as of May 14, 2019, have been issued a Permit (and issued any permit pursuant to Chapter 20.242) or have applied for a Permit and are under Permit review (and applied for and are under review for any permit pursuant to Chapter 20.242), may be issued and/or renew a Permit until June 30, 2022, subject to the modification of the existing administrative or use permit for the indoor cultivation site.

The provisions of this subsection, however, shall not apply in areas designated as "CA" Cannabis Accommodation Combining District, nor shall they apply to parcels zoned Rural Residential (lot size five (5) acres [R-R:L-5]) that are between 3.5 and 4.99 acres and have been issued an administrative permit pursuant to Section 20.242.070(C).

- (c) Cultivation sites on legal parcels located in the Rural Residential zoning district, lot size five (5) acres (conforming parcels of five (5) acres or more only)(R-R:L-5), are subject to the following additional requirement that there is an occupied dwelling unit on the legal parcel with the cultivation site.
- (d) If a Permit is granted pursuant to this paragraph (B)(2) in these zoning districts, any future revocation or lapse in renewal of such Permit shall extinguish the ability of any person to obtain a Permit for such cultivation site.
- (3) Relocation. Persons able to show proof of prior cultivation pursuant to paragraph (B)(1) above may apply for a Permit not on the site previously cultivated (the "origin site") but on a different legal parcel (the "destination site"), subject to the following requirements:
 - (a) Persons may apply to relocate their cultivation site pursuant to this paragraph (B)(3) until three (3) years after the effective date of the ordinance adopting this Chapter, or until May 4, 2020.
 - (b) The location and operation of the proposed cultivation site on the destination parcel complies with all requirements and development standards that apply to a new cultivation site as of January 1, 2020, pursuant to this Chapter and Chapter 20.242; provided, however:
 - (i) An existing cultivation site shall not be transferred to a legal parcel located within the Forestland or Timber Production Zone zoning districts.
 - (ii) An origin site may relocate to a destination site in the Rangeland zoning district, so long as the destination site has an existing cultivation site and no new cultivation sites would be established.
 - (c) The origin site shall be restored. The application for a Permit on a destination site shall be accompanied by a restoration plan that is consistent with the standard conditions and best management practices listed in the North Coast Regional Water Quality Control Board Order No. 2015-0023, and which shall include the following:

water intakes, pumps, storage tanks and other materials brought to the origin site for the purpose of cannabis cultivation;

- (ii) Remove illegal dams, ponds or other in-stream water storage to restore natural stream flows, unless such features will continue in use;
- (iii) Remove or compost agricultural wastes;
- (iv) Remove trash and other debris; and
- (v) Revegetate cleared areas with native plants typical of nearby natural areas, including groundcover, shrubs and trees.

- (d) Unless the destination site is within the Agricultural zoning district, the application shall include either a water availability analysis pursuant to paragraph (C)(1)(b) below or a will serve letter pursuant to paragraph (C)(1)(c) below.
 - (e) Prior to the issuance of the Permit to cultivate cannabis at the destination parcel, the applicant shall provide the Agricultural Commissioner with an agreement, on a form approved by the Agricultural Commissioner and County Counsel, providing that the applicant releases any right to continue or resume cultivation of cannabis on the origin parcel.
 - (f) If a person is granted a Permit for a destination site, any claims of proof of prior cultivation on the origin site shall be effectively transferred to the destination site, and the ability to claim proof of prior cultivation at the origin site shall be extinguished.
 - (g) There shall be a two (2) acre minimum parcel size for all Type C, Type C-A or Type C-B Permits.
- (4) Multiple Permits may be applied for and granted on a single legal parcel that is owned by multiple persons. Each owner may individually apply for a Permit to cultivate cannabis, provided that each owner must provide proof of prior cultivation pursuant to paragraph (B)(1) above. Each owner shall be limited to a Type C, Type C-A or Type C-B Permit, unless that owner was previously enrolled in a permit program pursuant to the County's Chapter 9.31, or unless the cumulative total square footage of plant canopy applied for by all owners does not exceed the maximum square footage permitted on a parcel for the relevant zoning district.
- (5) Persons eligible to apply for a Permit during Phase One may apply for a different and/or larger Permit type in subsequent years, subject to all requirements of this Chapter.
- (6) If a Permit is granted pursuant to this paragraph (B), any future revocation or lapse in renewal of such Permit shall extinguish the ability of any person to obtain a Permit for such cultivation site, unless otherwise allowed by this Chapter 10A.17; provided, however, that not more than once in a five-year period, a Permittee may file with the Department of Agriculture, on a form prescribed by the Department, a Notice of Non-Cultivation instead of an application to renew the Permit, and the Permittee's ability to obtain a Permit for such cultivation site will not be extinguished.
- (C) Requirements specific to Phase Three Permits.
- (1) Watershed Assessment. All Permit applications, except for legal parcels located in the Agricultural (A-G) zoning district, shall demonstrate there is adequate water to serve the cultivation site.
- (a) If surface water (or groundwater influenced by surface water) will be used, applicants may demonstrate that there is adequate water by providing (i) a watershed assessment that establishes there is sufficient watershed supply to serve the proposed cultivation site and existing uses within the watershed, and (ii) a water right exists to serve the cultivation site. A watershed assessment shall consist of an established "In Stream Flow Policy" as prepared by the State Water Resources Control Board Division of Water Rights or an equivalent document approved by that agency.
 - (b) If groundwater not influenced by surface water will be used, the applicant may demonstrate that there is adequate water by providing a water availability analysis which will address the adequacy of the proposed water supply, the direct effects on adjacent and surrounding water users, and possible cumulative adverse impacts of the development on the water supply within the watershed and show there is a sustained yield to support the proposed level of use.

- (c) If water will be provided by a mutual water company, municipal or private utility or similar community provider, the applicant may demonstrate that there is adequate water by providing a will serve letter from the proposed provider.

(Ord. No. [4381](#), § 1, 4-4-2017; Ord. No. [4392](#), § 6, 8-29-2017; Ord. No. [4408](#), § 8, 4-28-2018; Ord. No. [4411](#), § 1, 6-5-2018; Ord. No. [4420](#), § 2, 12-4-2018; Ord. No. [4422](#), § 7, 12-18-2018; Ord. No. [4438](#), § 4, 10-1-2019; Ord. No. [4463](#), § 1, 5-19-2020)

Sec. 10A.17.081 - Application Deadline for Parcels in "CA" Cannabis Accommodation Combining Districts.

Notwithstanding the provisions of paragraph (A)(1) of section 10A.17.080, Phase One Permits may be issued for cultivation sites within a "CA" Cannabis Accommodation Combining District so long as applications for such sites are submitted to the County within one hundred eighty (180) days of the effective date of the ordinance that establishes the applicable CA district.

(Ord. No. [4420](#), § 3, 12-4-2018)

Sec. 10A.17.090 - Cultivation Permit Application and Zoning Review.

Any person or entity that wishes to engage in the cultivation of cannabis shall submit an application for a Permit to the Agricultural Commissioner's Office. Applications for Permits shall be made upon such forms and accompanied by such plans and documents as may be prescribed by the Agricultural Commissioner's Office. The application shall be reviewed by the Agricultural Commissioner's office and other agencies as described herein and renewed annually. Any referral to or consultation with an agency other than the County of Mendocino shall state that a response must be returned within thirty (30) days of the date of the referral.

Following the submission of an application for a Phase One Permit, an applicant may file with the Agricultural Commissioner's Office, on a form prescribed by the Agricultural Commissioner's Office, a Notice of Application Stay for the purpose of preventing the denial of an application for a Phase One Permit based on inactivity by the applicant for up to a one-year period. An applicant may only file a Notice of Application Stay one time. Nothing in this paragraph is intended to prevent the County or the applicant the ability to continue processing or perfecting the application. During the time period of this Application Stay, the applicant shall be prohibited from cultivating cannabis in excess of the limitations of paragraph (B) or (C) of section 10A.17.030 and shall allow the County to make and shall pay the reasonable costs for an inspection of the applicant's cultivation site (and origin site if the application involves a relocation) to confirm compliance with this paragraph; violation of this prohibition shall be a violation of County Code, subject to administrative penalties, and shall be cause for immediate denial of the permit application. Any denial of an application may be followed by nuisance abatement procedures. During the time period of the Application Stay, the applicant shall remain subject to all code enforcement provisions as identified in section 10A.17.100.

The Agricultural Commissioner's Office shall refer each application to the Department of Planning and Building Services for a determination pursuant to Chapter 20.242 as to what type of clearance or permit is required. No application for a Permit shall be approved without clearance or final permit approval as required by Chapter 20.242.

The Agricultural Commissioner's Office shall consult with the Mendocino County Air Quality Management District (MCAQMD) prior to the issuance of the Permit to determine if a permit or other approval by the MCAQMD is necessary. The applicant shall obtain all approvals and permits required by the MCAQMD pursuant to state and federal laws, MCAQMD regulations, adopted air quality plans, MCAQMD policies and other applicable statutes prior to the issuance of a Permit. The required consultation with MCAQMD may be eliminated if MCAQMD authorizes County to determine when a permit or other approval by the District is necessary based on an objective set of criteria developed by MCAQMD for such purposes.

Applicants for a Permit shall provide the following information on, or as an attachment to, the application:

- (A) The name, business and residential address, and phone number(s) of the applicant.
- (B) If the applicant is not the record title owner of the legal parcel, written consent from the owner allowing the cultivation of cannabis on their property by the applicant with original signature of the record title owner.
- (C) Written evidence that each person applying for the permit and any other person who will be engaged in the cultivation of cannabis is at least twenty-one (21) years of age.
- (D) Site plan showing the entire legal parcel configuration with Assessor's Parcel Number(s), acreage, site address, including the location of:
 - (1) Easements (access and utility and all roadways public and private);
 - (2) Streams, springs, ponds and other surface water features, including the location of any flood plain or floodways;
 - (3) The location and area of the cultivation site on the legal parcel, with dimensions of the area for cultivation of cannabis and showing that all setbacks required by section 10A.17.040 are being met;
 - (4) All areas of ground disturbance or surface water disturbance associated with cultivation of cannabis activities, including: access roads, water diversions, culverts, ponds, dams, graded flats, and other related features;
 - (5) All structures, which shall be clearly labeled; and
 - (6) All septic systems, leach fields and water wells.
- (E) Applications submitted for any Permit during Phase One shall include proof of prior cultivation pursuant to section 10A.17.080
- (F) A cultivation and operations plan which includes elements that meet or exceed the minimum legal standards for the following: water storage, conservation and use; drainage, runoff and erosion control; watershed and habitat protection; and proper storage of fertilizers, pesticides and other regulated products to be used on the legal parcel. Any fuel, fertilizer, pesticides, or other substance toxic to wildlife, children, or pets, must be stored in a secured and locked structure or device. The plan will also provide a description of cultivation activities including, but not limited to, permit type, cultivation area, soil/media importation and management, the approximate date(s) of all cannabis cultivation activities that have been conducted on the legal parcel prior to the effective date of this ordinance, and schedule of activities during each month of the growing and harvesting season.

If a generator is proposed to support any aspect of the cultivation site or related operations, the cultivation and operations plan shall identify any containment structure and dimensions necessary to contain any leak or spill that may develop or occur as a result of relying on any generator for backup power generation. The plan shall also include a maintenance plan for the generator, detailing how spent oil, used oil filters, expired batteries and other hazardous wastes generated from the operation of the generator will be handled, including fuel storage and delivery systems.

- (G) Copy of the statement of water diversion, or other permit, license or registration filed with California Water Resources Control Board, Division of Water Rights, if applicable.
- (H) An irrigation plan and projected water usage for the proposed cultivation activities, as well as a description of legal water source, if not covered by item (G).
- (I) Copy of Notice of Intent and Monitoring Self-Certification and any other documents filed with the North Coast Regional Water Quality Control Board (NCRWQCB) demonstrating enrollment in and compliance with (or proof of exemption from) Tier 1, 2 or 3, North Coast Regional Water Quality Control Board Order No. 2015-0023, or any substantially equivalent rule that may be subsequently adopted by the County of Mendocino or other responsible agency.

- (J) If any on-site or off-site component of the cultivation facility, including access roads, water supply, grading or terracing impacts the bed or bank of any stream or other watercourse, show proof they have notified the California Department of Fish and Wildlife (CDFW) pursuant to section 1602 of the Fish and Game Code and provide a copy of the Streambed Alteration Permit obtained from the Department of Fish & Wildlife.
- (K) If the source of water is a well, a copy of the County well permit, if available; applicant shall provide documentation showing the approximate date of installation.
- (L) A unique identifying number from a State of California Driver's License or Identification Card for each person applying for the permit and any other person who will be engaged in cultivation of cannabis.
- (M) Applicants and every individual engaged in the management of, or employed by, the applicant shall be subject to a criminal history check, which shall include a Live Scan criminal history inquiry. The reasonable costs of a Live Scan criminal history inquiry pursuant to this section shall be the responsibility of the applicant and every individual engaged in the management of, or employed by, the applicant. Live Scan criminal history inquiries completed at a certified and approved Live Scan location shall be transmitted to the Sheriff or District Attorney for review. An application shall be denied if any of the following is determined to be true:
 - (1) The applicant or any individual engaged in the management of, or employed by, the applicant has been convicted of any crime listed in subdivision (b)(4) of California Business and Professions Code section 26057, or any crime that if committed in the State of California would have constituted any of the crimes listed in subdivision (b)(4) of California Business and Professions Code section 26057. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
 - (2) The applicant or any individual engaged in the management of, or employed by, the applicant has one or more felony convictions, occurring prior to January 1, 2018, for violations of California Health and Safety Code section 11358 that involved pled and proven environmental violations, including but not limited to violations of California Fish and Game Code sections 1602, 5650 and 5652.
 - (3) The applicant or any individual engaged in the management of, or employed by, the applicant has been convicted of a felony offense, occurring after January 1, 2018, under California Health and Safety Code section 11358, 11359, or 11360, as amended by Proposition 64 § 8.4, effective November 9, 2016, or any crime that if committed in the State of California would have constituted a felony offense under California Health and Safety Code section 11358, 11359, or 11360, as amended by Proposition 64 § 8.4, effective November 9, 2016.
 - (4) The applicant or any individual engaged in the management of, or employed by, the applicant has a conviction under section 11366 of the California Health and Safety Code.
 - (5) The applicant or any individual engaged in the management of, or employed by, the applicant has a conviction under section 11366.5(b) of the California Health and Safety Code or any felony conviction under section 11366.5(a) of the California Health and Safety Code involving chemical extraction, chemical synthesis or a controlled substance other than marijuana.
 - (6) The applicant or any individual engaged in the management of, or employed by, the applicant has a conviction under section 11379.6 of the California Health and Safety Code.
 - (7) The applicant or any individual engaged in the management of, or employed by, the applicant is subject to a condition of probation, mandatory supervision, Post Release Community Supervision, parole or any other lawful order which prohibits the possession or cultivation of cannabis.
- (N) A statement describing the proposed security measures for the facility that shall be sufficient to ensure the safety of members and employees and protect the premises from theft.

- (O) If the applicant is organized as a non-profit corporation, the applicant shall set forth the name of the corporation exactly as shown in its Articles of Incorporation, and the names and residence addresses of each of the officers and/or directors. If the applicant is organized as a partnership, the application shall set forth the name and residence address of each of the partners, including the general partner and any limited partners. Copies of the Articles of Incorporation or a statement listing the members of the partnership shall be attached to the application.
- (P) Intentionally Omitted.
- (Q) A copy of a Board of Equalization Seller's Permit if applicant intends to sell directly to qualified patients or primary caregivers.
- (R) Written consent for an onsite pre-permit inspection of the legal parcel pursuant to section 10A.17.070 by County officials or other appropriate agency representatives at a prearranged date and time in consultation with the applicant prior to the approval of a permit to cultivate cannabis, and at least once annually thereafter.
- (S) For all indoor cultivation facilities, identify the source of electrical power and plan for compliance with applicable Building Codes. Also, provide documentation that addresses the handling of waste discharge from the grow location of items including, but not limited to nutrients, spent growing media, un-used containers and other associated hardware, supplies, and garbage.
- (T) No application shall be approved which identifies or would require the removal of tree species listed in paragraph (I) of Section 10A.17.040 after May 4, 2017, for the purpose of developing a cultivation site. For applications where trees were removed prior to May 4, 2017, applicants shall provide evidence to the Department of Agriculture that no trees were unlawfully removed to develop a cultivation site; such evidence may include, but is not limited to, a less-than-3-acre conversion exemption or timberland conversion permit issued by the California Department of Forestry and Fire Protection ("CalFire") and trees were removed prior to May 4, 2017. If during review of an application County staff determine that trees were unlawfully removed to develop a cultivation site, the County shall deny the application. Notwithstanding the foregoing, for cultivation sites created prior to May 4, 2017, through prior unauthorized conversion of timberland as defined in Public Resources Code section 4526, a Permit may be approved if the applicant provides evidence that environmental impacts of the tree removal have been mitigated to the extent feasible or otherwise resolved, as required by the resource protection agencies including CalFire, the NCRWQCB and the CDFW. County staff shall defer to the resource protection agencies referenced herein for determinations as to the unlawful removal of trees or unauthorized conversion of timberland or the sufficiency of any required remediation to address the environmental impacts. Nothing herein shall be construed to limit or condition in any way the regulatory or enforcement authority of the resource agencies listed herein.
- (U) If applicable, clearance from CalFire related to compliance with the requirements of Public Resources Code Section 4290 and any implementing regulations.
- (V) For activities that involve construction and other work in Waters of the United States, that are not otherwise exempt or excluded, including streams and wetlands, the application shall include a copy of a federal Clean Water Act (CWA) Section 404 permit obtained from the Army Corps of Engineers and a CWA Section 401 water quality certification from the NCRWQCB.
- (W) Projects that disturb one (1) or more acres of soil or projects that disturb less than one acre but that are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the State Water Resources Control Board General Permit for Discharges of Storm Water Associated with Construction Activity Construction General Permit Order 2009- 0009-DWQ. Construction activity subject to this permit includes clearing, grading and disturbances to the ground such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility.

- (X) The results of a "Cortese List" database search for sites known to be contaminated with hazardous materials. If the site is listed on the "Cortese List", the application shall include sufficient information to demonstrate that the cultivation is in compliance with any cleanup and/or abatement order that is established for the site.
- (Y) If water or sewer services to the cultivation site will be provided by a community provider, a will-serve letter from the provider indicating adequate capacity to serve the cultivation site.

The Agricultural Commissioner is authorized to require in the permit application any other information reasonably related to the application including, but not limited to, any information necessary to discover the truth of the matters set forth in the application.

(Ord. No. [4381](#), § 1, 4-4-2017; Ord. No. [4392](#), § 7, 8-29-2017; Ord. No. [4408](#), § 9, 4-28-2018; Ord. No. [4413](#), § 1, 7-10-2018; Ord. No. [4422](#), § 8, 12-18-2018)

Sec. 10A.17.100 - Permit Review and Issuance.

- (A) The Agricultural Commissioner's Office shall issue a Permit pursuant to this Chapter only:
 - (1) Following the referral to and clearance or permit approval pursuant to Chapter 20.242; and
 - (2) Following review by qualified County staff to review proposed permit locations and identify where habitat suitable for sensitive species may exist. The County shall consult with the California Department of Fish and Wildlife ("CDFW") to evaluate if there is a possibility for presence or habitat suitable for sensitive species on the parcel with a proposed Permit location. Upon consultation, CDFW may recommend approval of the proposed development, ask to conduct a site inspection or request additional studies in order to make the determination that no impacts to sensitive species will occur. A cultivator that cannot demonstrate that there will be a less than significant impact to sensitive species will not be issued a Permit. The County shall develop a policy in consultation with CDFW to define an objective set of criteria that applications can be checked against and when during Phases 1 and 2 a formal referral to CDFW is required to avoid impacts to sensitive species and natural communities. Following the development of the policy referred to in the previous sentence, consultation with CDFW shall not be required but be performed pursuant to the policy. During Phase 3 all applications will be referred to CDFW; and
 - (3) After the Agricultural Commissioner's Office, and other County and State agency staff, as appropriate, have reviewed the application and performed a pre-permit site inspection to confirm adherence to the requirements established in the MCCO; and
 - (4) Following receipt of evidence of payment of the required permit fee, pursuant to Section 10A.17.070.
- (B) As a condition of approval for any cultivation permit, the owner or permittee shall indemnify and hold harmless the County of Mendocino and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by affected property owners or other third parties due to the commercial cultivation of cannabis and for any claims brought by any person for problems, injuries, damages, or liabilities of any kind that may arise out of the commercial cultivation of cannabis.
- (C) Discovery of any violation(s) of the Mendocino County Code during the Permit application process will be treated in a similar manner to violation(s) that are self-reported during an active amnesty program. That is, the discovered violation(s) will still need to be corrected, but any investigative and/or penalty fees associated with an after-the-fact County permit will be waived.
 - (1) If the discovered violation(s) are directly related to a Phase One Permit application, and/or if it is discovered that the Permit would authorize a particular use for which a separate County permit is required but has not yet been obtained, the applicant shall be required to agree in writing to a compliance plan prior to issuance of the Permit. Failure by applicant to agree in writing to a required compliance plan shall be grounds for denial of the Permit.

- (a) The compliance plan will identify the violation(s) and may suggest corresponding remedial action(s) that may be taken to correct the violation(s), will identify the required permit(s) based on the uses identified in the Permit application, and will include timelines for achieving code compliance for all violations and/or for submitting completed applications for each required permit.
 - (b) In no event will more time be given to correct all violations, and/or submit a complete application for each required permit, than one (1) year after the date of issuance of the Permit.
 - (c) After the applicant has signed the compliance plan, as presented by the Agricultural Department in coordination with the appropriate County department(s), the Agricultural Department may issue a Permit restricted as indicated in the compliance plan, so long as no other barrier(s) to such issuance exists. Failure to abide by the compliance plan shall be grounds for Permit termination, or non-renewal, pursuant to section 10A.17.140.
 - (d) The compliance plan will be the primary mechanism to obtain code compliance from Permit applicants with respect to violations directly related to Phase One Permits applications. However, nothing in this section is intended to limit the use of any other applicable code enforcement provision or the ability of any County department with the appropriate authority from enforcing the Mendocino County Code.
- (2) If the discovered violation(s) are not directly related to a Phase One Permit application, such violation(s) will not affect the processing of the Phase One Permit application. However, any County department with appropriate enforcement authority with respect to such violation(s) may make use of any applicable code enforcement mechanism as if the violation(s) were discovered as a result of self-reporting during an active amnesty program.
- (D) Permit Application Denial.
- (1) The Agricultural Commissioner's Office may, at any time during the application process, deny an application based on the failure to meet the requirements of this Chapter 10A.17, including, but not limited to, the following:
 - (a) Incomplete application.
 - (b) Failure to provide additional information or documentation within the timeframe prescribed by the Agricultural Commissioner's Office.
 - (c) Cultivation of cannabis on a legal parcel (beyond what is exempt from a permit requirement pursuant to County Code section 10A.17.030) during an application stay pursuant to County Code section 10A.17.090.
 - (d) Cultivation of cannabis in illegal and/or non-compliant structures.
 - (e) Cultivation of cannabis, or activities related to preparing a cultivation site, that are non-compliant with the requirements of this Chapter 10A.17 or not consistent with the application as submitted, whether such issues are discovered during a pre-permit site inspection or other inspection of the property.
 - (2) If the applicant does not meet the requirements to obtain a permit and a permit with a compliance plan is not viable, the Agricultural Commissioner's Office shall deny the permit application unless:
 - (a) the applicant immediately files for a Notice of Application Stay pursuant to County Code section 10A.17.090 and corrects the conditions of the property in a manner that would allow for permit issuance no later than the expiration of the Application Stay; or
 - (b) the applicant immediately amends the application in a manner that allows for permit issuance.

- (3) A permit may be denied based on confirmation that the applicant provided false or misleading information to the County, or any other agency if such communication was made as part of the process in securing a permit under this Chapter 10A.17.
- (4) A permit may be denied if the applicant or any agent or employee of the applicant has engaged in or is engaging in activities related to the cultivation of cannabis that endangers the health or safety of people or property.
- (5) This paragraph (D) in no way limits the authority of the Agricultural Commissioner's Office to deny an application as inherently or explicitly provided by this Chapter 10A.17.
- (E) Track & Trace unique identifiers will only be made available following the issuance of a Permit by the Agricultural Commissioner's Office. The Permittee will have seventy-two (72) hours to register with the County Track & Trace system. Upon Track & Trace system registration, the system will provide unique identifiers. The unique identifiers shall be affixed to the individual plants within seventy-two (72) hours of being provided to the Permittee.
- (F) Permits shall remain valid for one (1) year from the date of issuance, subject to any enforcement action or other action that may result in earlier suspension or revocation.

(Ord. No. [4381](#), § 1, 4-4-2017; Ord. No. [4392](#), § 8, 8-29-2017; Ord. No. [4408](#), § 10, 4-28-2018; Ord. No. [4422](#), § 9, 12-18-2018)

Sec. 10A.17.110 - Performance Standards.

All Cultivation Permits issued by the Agricultural Commissioner's Office shall obligate the permittee to comply with the following performance standards:

- (A) Cultivation shall be located as shown on the approved application site plan and in compliance with all provisions of this Chapter and any permit issued pursuant to Chapter 20.242.
- (B) Once they become available, possession of a current, valid required license, or licenses, issued by any agency of the State of California in accordance with the MAUCRSA, and regulations promulgated thereunder covering a similar cannabis activity.
- (C) A unique identifier for compliance with the County's Track & Trace system shall be affixed to each permitted cannabis plant cultivated in Mendocino County. It shall be the responsibility of the permittee to ensure complete and accurate entry of information into the Track & Trace system within seventy-two (72) hours of the reportable activity occurring.
- (D) Compliance with all statutes, regulations and requirements of the California State Water Resources Control Board, Division of Water Rights, including obtaining and complying with any applicable and approved permit, license or registration or the annual filing of a statement of diversion and use of surface water from a stream, river, underground stream, or other watercourse required by Water Code Section 5101.
- (E) If a generator is used to support any aspect of the permitted cultivation operations, (excluding the conditions set forth in section 10A.17.070(F)), it shall be as a secondary or back-up power source. The use of the generator is only allowed when the primary alternative power source is unable to provide its normal output and generate sufficient power to meet the needs of the cultivation operation and the legal dwelling unit. The Owner's Manual and/or Operation Manual (or operational fact sheet) providing the operational characteristics and maintenance schedule for the generator shall be on-site and available for review.

If a generator is being used pursuant to the conditions set forth in section 10A.17.070(F), the Permit shall be conditioned on the conducting of an analysis of the noise levels produced by the generator at full operational speed, performed by an accredited acoustical engineer, and such analysis shall show compliance with Mendocino County General Plan Policies DE100, 101 and 103. All generators shall be, at a minimum, equipped with the manufacturer's specified muffler; if compliance with Policies DE100, 101 and 103 requires additional measures, the generator shall be equipped with such measures, which may

include a hospital-grade muffler and/or a structure to enclose the generator designed for sound suppression.

Any electrical wiring associated with the generator shall be of sufficient capacity and installed in such a way as to provide for the minimum installation and safety standards for the electrical service provided by that generator.

- (F) Establish and maintain enrollment in Tier 1, 2 or 3 with the North Coast Regional Water Quality Control Board (NCRWQB) Order No. 2015-0023, if applicable, or any substantially equivalent rule that may be subsequently adopted by the County of Mendocino or other responsible agency.
- (G) For cultivation areas for which no enrollment pursuant to NCRWQB Order No. 2015-0023 is required, the site shall comply with the standard conditions set forth in that Order, as well as the applicable "Best Management Practices for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects" as presented in Appendix B of the Water Board Order.
- (H) Maintain the applicable "Defensible Space" protocols and distances, as established by the California Department of Forestry and Fire Protection around structures located on the legal parcel.
- (I) Comply with the terms of any applicable Streambed Alteration Permit obtained from the California Department of Fish & Wildlife.
- (J) All weighing and measuring devices shall be type approved by the California Department of Food and Agriculture, Division of Measurement Standards and issued either a California Type Evaluation Program (CTEP) Certificate of Approval (COA) or a National Type Evaluation Program (NTEP) Certificate of Conformance (CC) before commercial use. All weighing and measuring devices shall be registered and inspected by the Agricultural Commissioner in accordance with Mendocino County Code Chapter 10A.16.
- (K) Consent to at least one (1) annual on-site compliance inspection by the Agricultural Commissioner's office, as more specifically provided for in section 10A.17.070.
- (L) Any guard dog(s) or guard animals kept at the cultivation site shall be restrained to a fixed point or contained in some manner to facilitate the inspections performed by any entity necessitating inspect as required by this Chapter. Animals considered family pets will be kept on a leash at all times and under control when any entity is performing a required inspection.
- (M) All buildings, including greenhouses, used for the cultivation of cannabis pursuant to an "artificial light" permit (generally Type C-A, Type 1-A, Type 2-A and Nursery as applicable), shall be equipped with filtered ventilation systems, permitted by the Mendocino County Air Quality Management District (MCAQMD) which rely on Activated Carbon Filtration, Negative Ion Generation, Ozone Generation or other odor control mechanism demonstrated to be effective in reducing cannabis odors.
- (N) Any use of pesticide products shall be consistent with State law and regulations enforced by the California Department of Pesticide Regulation and the Agricultural Commissioner's Office. All agricultural use pesticides and concentrated fertilizers, amendments, and similar materials shall be stored in a locked, hard-faced enclosure to prevent unauthorized entry by humans, to exclude large animals that may be attracted by odors, and to ensure that they will not enter or be released into surface or ground waters.
- (O) Fuel shall be stored and handled in compliance with applicable state and local laws and regulations and in such a way that no spillage occurs.
- (P) The square footage of cultivation area dedicated to propagation of starts must not constitute any new disturbance, as defined by this chapter.

- (Q) Comply with any conditions that may apply as a result of an administrative or conditional use permit approved pursuant to Chapter 20.242, or with a written remediation plan required by Section 10A.17.080(B)(3).

(Ord. No. [4381](#), § 1, 4-4-2017; Ord. No. [4392](#), § 9, 8-29-2017; Ord. No. [4408](#), § 11, 4-28-2018)

Sec. 10A.17.120 - Certifications.

Permittees who demonstrate compliance with all of the requirements set forth in this Chapter and the additional guidelines to be established by the Agricultural Commissioner in a Mendocino Sustainably Farmed Operations Manual will be issued a "Certified Mendocino County Grown" certificate through the Agricultural Commissioner's Office. Cannabis labeled with this certification shall be produced following production standards used in the production of crops labeled as organic according to United States Department of Agriculture, National Organic Program. This certification shall be valid for one (1) year from the date of issuance and shall be renewed annually thereafter following annual inspection(s) of the registered cultivation site and continued compliance with all requirements. An annual fee shall be paid for participation in this certification program, pursuant to the provisions set forth in Section 10A.17.070(H)(1).

(Ord. No. [4381](#), § 1, 4-4-2017)

Sec. 10A.17.130 - Reserved.

Editor's note— Ord. No. [4392](#), § 10, adopted August 29, 2017, repealed § 10A.17.130, in its entirety. Former § 10A.17.130 pertained to "Third Party Inspectors," and was derived from Ord. No. [4381](#), § 1, adopted April 4, 2017.

Sec. 10A.17.140 - Violations and penalties respecting permitted cultivation.

- (A) If at any time the Department of Agriculture determines that a law related to a Permit is being violated, the Department of Agriculture may issue a notice of violation or an administrative citation(s) pursuant to Mendocino County Code Chapter 1.08 and notify other interested public agencies or County departments of such violations. After the violation(s) have been cured, the correction must be confirmed. Failure by the Permittee to schedule a re-inspection with the Department of Agriculture to confirm the correction will result in an unscheduled compliance inspection.
- (B) **Inspection Fees.** After initial substantiation of a violation related to any law related to a Permit, inspection fees shall be charged to the Permittee for any additional compliance inspection undertaken by the Department of Agriculture, beyond those regularly scheduled and enumerated in section 10A.17.070, for the purpose of determining if the cited violations have been cured. All additional inspection fees shall consist of the hourly rate for an inspector from the Department of Agriculture for the travel and inspection time plus the standard IRS mileage rate for travel distance. The fees shall be paid pursuant to the provisions set forth in section 10A.17.070(H)(1).
- (C) **Notice to Terminate Permit.** The Department of Agriculture may issue a Notice to Terminate Permit by personal service or by first class mail, postage prepaid and return receipt requested. If by mail, service will be deemed complete five (5) days after mailing. A Notice of Terminate Permit may be issued after:
 - (1) The Department of Agriculture discovers that the Permittee would not have otherwise qualified to obtain a permit but for false or misleading information contained in either the Permittee's application or subsequent submittals to the County pertaining to the Permittee's Permit application; or

- (2) The Permittee has engaged in activity related to the Permit that creates an immediate threat to health or safety, or has allowed such activity to be carried out by one (1) or more of its employees or agents; or
- (3) The Permittee has engaged in activity that is specified in a separate provision of the Mendocino County Code as grounds for Permit termination, including but not limited to section 10A.17.100; or
- (4) The Department of Agriculture determines that the Permittee is in violation of one (1) or more laws related to the Permit, and that the Permittee is unlikely or unable to correct such violation(s). The Department of Agriculture may make a determination that a Permittee is unlikely to correct a violation if:
 - (a) The Permittee has failed to correct any single code violation within ten (10) days of the initial notice, or such other time period otherwise specified in the pertinent notice of violation, administrative citation, or related writing; or
 - (b) The Permittee has received three (3) or more notices of violation or administrative citations, on separate occasions, within a twelve (12) month period, which may or may not pertain to the same violation, recurring violation, or different violation; or
 - (c) The extent of, severity of, or conditions surrounding one (1) or more violations make it clear that the Permittee was not acting in good faith to abide by the laws related to the Permit.
- (D) Termination of Permit. After issuance of a Notice to Terminate Permit, the Permit shall be terminated upon a final determination after the hearing on the order to show cause affirming the determination to terminate the permit in question pursuant to section 10A.17.150. The County shall notify any state license authority, as defined by the MCRSA, whenever a Permit has been terminated.
- (E) Nothing in this section is intended to limit the applicability of any other code enforcement provision or the ability of any other agency or department from enforcing the Mendocino County Code.

(Ord. No. [4381](#), § 1, 4-4-2017; Ord. No. [4392](#), § 11, 8-29-2017)

Editor's note— Ord. No. [4392](#), § 11, adopted August 29, 2017, amended § 10A.17.140, in its entirety. Previously § 10A.17.140 was titled "Cultivation Site Inspections: Violations and Penalties."

Sec. 10A.17.150 - Administrative Order to Show Cause.

- (A) Issuance of Order to Show Cause. At the same time as issuance of a Notice to Terminate Permit, or as soon as practicable thereafter, the Agricultural Commissioner's Office shall also issue a notice and order to show cause why the permit in question should not be terminated. Issuance may be completed by personal delivery, or by first class mail, postage prepaid, sent to the mailing address associated with the Permit and return receipt requested. The notice and order to show cause shall:
 - (1) Identify the permittee and the permit in question;
 - (2) Contain a statement describing the violations that caused the issuance of a Notice to Terminate Permit;
 - (3) Contain a description of the actions required to abate the violations;
 - (4) Notify the permittee that unless the owner or occupant abates the conditions, a hearing will be held to determine whether there is any good cause why the permit in question should not be terminated, which will be heard before a Hearing Officer, the Agricultural Commissioner, or the

Commissioner's authorized designee within the Agricultural Commissioner's Office who did not also issue the Notice to Terminate Permit;

- (5) Specify the date, time and location of the hearing to be held, or state that the date, time and location of the hearing will be specified in a subsequent notice, which will not be set for a date earlier than five (5) days after personal delivery, or ten (10) days after mailing, of the notice specifying the date, time and location of the hearing;
 - (6) State that the permittee will be given an opportunity at the hearing to present and elicit testimony and other evidence regarding whether there is any good cause why the permit in question should not be terminated;
 - (7) Contain a statement that, unless the permittee abates the conditions causing the violations, or shows good cause why the conditions should not be abated, the permit in question shall be terminated.
- (B) Use of Hearing Officers. Whenever the Agricultural Commissioner issues an order to show cause why a permit issued pursuant to this Chapter should not be terminated, the Agricultural Commissioner is authorized to use the services of a Hearing Officer pursuant to Mendocino County Code Chapter 2.76. Such use of a Hearing Officer shall be made whenever a Hearing Officer is available, and the Agricultural Commissioner shall coordinate with County Counsel to appoint and maintain at least one (1) Hearing Officer to the extent possible. In the event that a Hearing Officer is unavailable, the duty to hear the appeal shall remain with the Agricultural Commissioner.
- (C) Hearing Procedure.
- (1) The Hearing Officer shall hold an administrative hearing to determine whether the violations identified in the Notice to Terminate Permit created a sufficient basis on which to terminate the permit in question. The hearing shall be held at the date, time and location indicated on the notice to permittee, which shall be no less than five (5) calendar days after personal service, or no less than ten (10) calendar days after mailing of all the notices required by this section.
 - (2) Parties may choose to be represented by an attorney; however, formal rules of evidence or procedure shall not apply. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Nonetheless, any failure to make a timely objection to offered evidence constitutes a waiver of the objection. The Hearing Officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.
 - (3) The hearing shall be conducted in the English language. The proponent of any testimony by a witness who does not proficiently speak the English language shall provide an interpreter who has been certified as an interpreter by either the State of California or the County of Mendocino.
 - (4) The person who issued the Notice to Terminate Permit shall first describe the acts or conditions constituting the violations identifying in the Notice to Terminate Permit and present evidence to demonstrate how the identified violations form a basis for terminating the permit in question. Thereafter, the permittee shall be given an opportunity at the hearing to present and elicit testimony and other evidence to show good cause why the permit should not be terminated.
 - (5) In the event that the permittee does not appear and present evidence at the hearing, the Hearing Officer may base his or her decision solely upon the evidence submitted by the person issuing the Notice to Terminate Permit.
- (D) Determination after Hearing. The Hearing Officer shall consider the evidence presented by the parties, and shall issue a signed, written decision and order that either affirms or reverses the determination to terminate the permit in question. Such decision shall be delivered to the permittee by personal delivery or by first class mail, postage prepaid, sent to the mailing address associated with the Permit and return receipt requested. The decision shall become effective either on the day

the decision is personally delivered to the permittee, or five (5) days after the decision is mailed to the permittee.

(Ord. No. [4381](#), § 1, 4-4-2017; Ord. No. [4408](#), § 12, 4-28-2018)

Sec. 10A.17.160 - Enforcement and Declaration of Public Nuisance.

- (A) All of the remedies provided for in this Chapter, or elsewhere in the law, shall be cumulative and not exclusive for violations of this Chapter. Violations of this Chapter include, but are not limited to failure to obtain and maintain in good standing any permit required by this Chapter, compliance with any required element on which a permit was issued pursuant to this Chapter, or any violation of the provisions of this Chapter where a permit is not required, such as a violation of section 10A.17.040 when a person is otherwise exempt pursuant to section 10A.17.030. The County may enforce this Chapter by using any applicable state or county law, including, but not limited to Mendocino County Code Chapters 1.08, 8.75 or 8.76, and may use either the administrative process to achieve code compliance or available civil remedies, such as injunctive relief.
- (B) The cultivation of cannabis with a valid permit pursuant to this Chapter shall not be declared a public nuisance under County Code Chapter 8.75 or 8.76. Any cultivation of cannabis in the absence of a permit issued pursuant to this Chapter is a public nuisance and may be abated by the County as a public nuisance in accordance with the provisions of either County Code Chapter 8.75 or 8.76 unless such cultivation either: (1) is exempt pursuant to County Code section 10A.17.030 and in compliance with the laws to which the exemption is subject; or (2) is being cultivated by an entity whose application for a Phase One Permit pursuant to this Chapter has been submitted, accepted and is currently pending, and who has also submitted a sworn affidavit to the County Agricultural Commissioner on a form prepared by the Agricultural Commissioner that includes, but is not limited to, an affirmation that they have met the requirements to obtain a permit or are actively in the process of fulfilling the requirements, and who also possesses a State temporary or provisional license for the cultivation site applied for at the County level.

(Ord. No. [4381](#), § 1, 4-4-2017; Ord. No. [4408](#), § 13, 4-28-2018; Ord. No. [4422](#), § 10, 12-18-2018)

Sec. 10A.17.170 - Attorneys' Fees.

Pursuant to Government Code Section 25845(c), in any action, administrative proceeding, or matter commenced by the County to abate a nuisance, or to collect the cost of abatement or any penalty or fee related thereto, the prevailing party shall recover its attorneys' fees. The recovery of attorneys' fees under this Section is limited to those actions, administrative proceedings, or matters in which the County chooses at the initiation of the action, administrative proceeding, or matter to seek the recovery of its own attorneys' fees. In no event shall an award of attorneys' fees under this Section exceed the reasonable amount of attorneys' fees incurred by the County in the action or proceeding.

(Ord. No. [4381](#), § 1, 4-4-2017)

Sec. 10A.17.180 - Confidential nature of cannabis information — legislative intent.

To the fullest extent authorized by State and Federal law, all use information received by and/or generated by the operation of this Chapter or prior iterations of cannabis cultivation ordinances of the County has always been intended to be treated and held by the County as confidential information. Notwithstanding the foregoing, information provided to the county may be released as required by law, judicial order, or subpoena, and could be used in criminal prosecution.

(Ord. No. [4381](#), § 1, 4-4-2017; Ord. No. [4408](#), § 14, 4-28-2018)

Sec. 10A.17.190 - Severability.

If any provision of this Chapter, or the application thereof, is held invalid, that invalidity shall not affect any other provision or application of this Chapter that can be given effect without the invalid provisions or application; and to this end, the provisions or application of this Section are severable.

(Ord. No. [4381](#), § 1, 4-4-2017)

EXHIBIT K

Cannabis Cultivation Program FAQs

Frequently Asked Questions

What application phases are open for Cannabis Cultivation?

Phase 1 - CLOSED. Application period closed on October 4, 2019.

Phase 2 - OPEN. Type C-A, 1A and Type 2A Permits for indoor cultivation, and Type C-B, 1B and 2B Permits for mixed-light cultivation, which mixed-light cultivation must occur in a greenhouse equipped with filtered ventilation systems as described in paragraph (M) of section 10A.17.110 and may not occur in a hoop house, in the following zoning districts, subject to compliance with all other applicable conditions of this Chapter and Chapter 20.242 : **Limited Industrial (I-1), General Industrial (I-2), and Pinoleville Industrial (P-1).** **Proof of cultivation prior to January 1, 2016, is not required.**

Phase 3 - TBD Please See Board of Supervisor Agendas for upcoming discussions.

How can I stay updated on Phase 3 and or Cannabis Program Changes?

To keep updated on any Cannabis Program notifications and the opening date for Phase 3, we encourage you to sign up for our Canna Notes e-Newsletter. Learn more by clicking HERE.

Can I reassign or transfer my Cannabis Cultivation Permit?

Only ISSUED and VALID (not expired) Mendocino County Cultivation Permits may be reassigned. If the permit is expired, it will require renewal by the original permit holder before it can be reassigned.

A Transfer or Reassignment Application and Instructions can be found by clicking HERE.

Can I reassign a Cannabis Cultivation Permit Application that is under review?

No. There is no mechanism within our ordinance that allows for reassignments of applications under review.

How can I apply for the Mendocino County Cannabis Equity Program?

The County of Mendocino was notified that the California Governor's Office of Business and Economic Development (GO-Biz) has awarded \$2,242,704 in Cannabis Equity Grant Funding towards the development and implementation of a Local Equity Program for Mendocino County in April of 2020.

The application process and criteria for qualification has not yet been determined. The program will not begin until we have the Board of Supervisors' approval of the program budget and we actually receive the funds from the State. It will take some time to develop the program, which may be delayed by the current Public Health Crisis.

Planning and Building Services will be updating information on the Cannabis Program website pages as it become available. Please stay tuned, and sign up for Canna Notes on [eNotifications](#) to stay up to date.

Click [here](#) to view the grant funding Press Release from April 20, 2020.

Do I need to submit a Live Scan and a copy of a government issued identification card for my family who is involved in cultivation at my site?

Yes. A Live Scan criminal history inquiry is required for every individual involved in the cultivation of cannabis on the site. The applicant is responsible to have all individuals engaged in cultivation of cannabis listed and a Live Scan and government issued ID submitted to the Cannabis Program. Cultivation of cannabis means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming or processing of cannabis.

How can I determine my property's zoning?

You can do a "Property Search" by address or APN number on our website [HERE](#). You can see the Zoning Code by clicking on the Land Use Tab on the search results.

How can I report a Cannabis Cultivation Complaint?

Mendocino County Code Enforcement is concerned with complaints pertaining to Planning and Building codes and ordinances in the unincorporated areas of Mendocino County. Code Enforcement also handles complaints for the Medical and Non-medical Cannabis Ordinance(s).

[Cannabis Cultivation Online Complaint Form](#)

Cannabis Complaint Hotline: (844) 421-WEED (9333)

How can I find out if a property/individual is legally cultivating Cannabis and in good standing with Mendocino County's Cannabis Cultivation Permitting Program?

You can view and/or search our active applications and permits report online by clicking [HERE](#).

If you have a Cannabis Cultivation complaint please refer to the question above about how to submit a Code Enforcement Complaint.

How many permits can a person obtain?

No person can apply for more than two (2) permits of any type in Mendocino County and two (2) different persons cannot apply for a permit on the same legal parcel.

Please see the following Ordinance sections below for further detail: Ordinance Section [10A.17.020](#) – Definitions. "Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.

Is there a deadline to submit a relocation application if my cultivation site is located in a sunset zone or if I wish to relocate?

Yes, May 4, 2020 is the deadline to apply for relocation outlined in the ordinance [10A.17.080 \(B\)\(3\)\(a\)-\(g\)](#). Applications include submitting a completed [Relocation Worksheet](#) with the required materials to the Cannabis Program on or prior to May 4, 2020. Incomplete or late applications submitted after the the May 4, 2020 deadline will not be accepted.

Please read the requirements in the ordinance which includes the origin site restoration and the destination site meeting all the requirements and standards pursuant to [Chapter 20.242](#). Applications that do not meet the requirements of the ordinance will not be approved.

All who plan to submit a relocation application are encouraged to speak with Cannabis Program staff prior to submitting, to ensure their questions are addressed, and all application materials are included prior to the deadline.

If a cultivator intends to relocate his or her cultivation activities to a destination site, but is unable to restore the origin site, can the cultivator relocate during phase one?

No. Regardless of the reason, inability to restore the origin site will preclude a cultivator's ability to relocate during phase one. Restoration is mandatory. (See MCC §10A.17.080(B)(3)). However, a cultivator who is unable to relocate during phase for inability to restore will not be precluded from applying for a permit during phase two or phase three, subject to meeting the other requirements for those phases.

Frequently Asked Phase I Application Questions

If multiple cultivators previously cultivated a single cultivation site as a group, but now each cultivator desires to relocate to separate parcels/cultivation sites, which cultivator has priority to claim proof of prior cultivation?

MCC Chapter 10A.17 does not establish an order of priority for such applications. It is up to the cultivators themselves to decide how to proceed in such a circumstance given that a single cultivation site may not be split into multiple cultivation sites on multiple parcels through the phase one relocation process.

If multiple cultivators previously cultivated a single cultivation site as a group, and one of the cultivators desires to relocate while others do not, can the cultivators who remain on the origin site continue to cultivate?

If a person is able to successfully relocate to a destination site, the claim of prior cultivation on the origin site will be extinguished. (See MCC §10A.17.080(B)(3)(f)). The consequence of successful relocation is that no other person can claim prior cultivation on the origin site, which would prevent the cultivators remaining on the origin site from obtaining a Permit during phase one. However, successful relocation requires restoration of the origin site. Therefore, if active cultivation persists on the origin site, relocation will not be possible and any potential claim of prior cultivation on the origin site will not be extinguished.

If a single cultivation site was previously cultivated by multiple cultivators as a group, can each separate cultivator establish a cultivation site on separate parcels during phase one?

No. A claim of prior cultivation on a single cultivation site may be associated only with a single cultivation site. Therefore, the origin site that forms the basis for proof of prior cultivation may not be split into multiple cultivation sites on more than one parcel.

If a cultivator intends to relocate, must the cultivation activities used to show proof of cultivation prior to 1/1/16 be on the same legal parcel as the proof of current cultivation activities after 1/1/16?

Yes. When establishing “proof of prior cultivation” the cultivation activities before and after 1/1/16 must be the same legal parcel (See MCC §10A.17.080(B)(1)(a) & (b)). This legal parcel will become the origin site for purposes of relocation. Only after establishing prior cultivation on the origin site can a cultivator proceed with the relocation process for a permit on a destination site under MCC §10A.17.080(B)(3).

Is there a pathway for a cultivator to obtain a Permit for a parcel/cultivation site other than the one on which the cultivator can show “proof of prior cultivation” pursuant to MCC §10A.17.080(B)(1)?

Yes, through the relocation process identified in MCC §10A.17.080(B)(3).

Must the cultivation activities used to show proof of cultivation prior to 1/1/16 be located on the same legal parcel as the proof of current cultivation activities?

Yes. In order to show proof of prior cultivation pursuant to MCC §10A.17.080(B)(1)(a) & (b), a cultivator must show that the current cultivation activities and the cultivation activities prior to 1/1/16 took place on the same legal parcel.

May a corporate entity apply for a cultivation permit during phase one?

Permits during Phase One of the Medical Cannabis Cultivation Regulation may be issued only to a person or entity that can show proof that that person or entity was cultivating cannabis on the cultivation site prior to January 1, 2016. This means that a business entity may apply for a cultivation permit, but the proof of prior cultivation must show that the prior cultivation was being performed by that entity. Otherwise, only the person who can show they were the prior cultivator may apply for and obtain a permit.

EXHIBIT L

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Attorneys for Defendant
County of Mendocino

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANN MARIE BORGES and CHRIS GURR,
individually and doing business as GOOSE
HEAD VALLEY FARMS,

Plaintiffs,

v.

COUNTY OF MENDOCINO, SUE
ANZILOTTI, and DOES 1-25 inclusive,

Defendants.

) 3:20-cv-04537-SI

) **DECLARATION OF JANELLE RAU IN**
) **SUPPORT OF DEFENDANT COUNTY**
) **OF MENDOCINO'S MOTION TO**
) **DISMISS PURSUANT TO F.R.C.P. RULE**
) **12(b)(6)**

) Date: September 18, 2020

) Time: 10:00 a.m.

) Location: San Francisco Courthouse,

) Courtroom 1, 17th Floor

) 450 Golden Gate Avenue, San Francisco

) Honorable Susan Illston

) Senior District Judge

1
2 I, Janelle Rau, do hereby declare:

3 1) I am employed as Deputy Chief Executive Officer and have been in that position
4 since March 2015.

5 2) In my position as Deputy Chief Executive Officer, I am a custodian of records for
6 all files of the Mendocino County Board of Supervisors, including the Board of Supervisors
7 meeting calendar. I am familiar with the record keeping processes for Board of Supervisors
8 records.

9 3) Attached to this declaration as "Attachment 1" is a true and correct copy of a list
10 that accurately shows all meetings held by the Mendocino County Supervisors during the year
11 2017. This list was taken from the official webpage for the County of Mendocino.

12
13 I declare under penalty of perjury, under the laws of the State of California, that the
14 foregoing is true and correct and that if called as a witness, I could competently testify to the
15 above facts which are from my own personal knowledge. Executed this 12th day of August,
16 2020, at Ukiah, California.

17
18 
19 _____
JANELLE RAU

ATTACHMENT 1




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Board of Supervisors

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44 records		Group	Export							
Name	Meeting Date		Meeting Time	Meeting Location	Meeting Details	Agenda	Minutes	Video	eComment	
Board of Supervisors	12/19/2017		9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	 Agenda	 Minutes	 Video	Not available	
Board of Supervisors	12/18/2017		9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	 Agenda	 Minutes	 Video	Not available	
Board of Supervisors	12/5/2017		9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	 Agenda	 Minutes	 Video	Not available	
Board of Supervisors	11/21/2017		9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	 AMENDED agenda	 Minutes	 Video	Not available	
Board of Supervisors	11/14/2017		9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	 Agenda	 Minutes	 Video	Not available	
Board of Supervisors	11/13/2017		9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	 Agenda	 Minutes	 Video	Not available	
Board of Supervisors	11/7/2017		9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	 Agenda	 Minutes	 Video	Not available	

Name	Meeting Date	Meeting Time	Meeting Location	Meeting Details	Agenda	Minutes	Video	eComment
Board of Supervisors	10/31/2017	9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	Amended Agenda	Minutes	Video	Not available
Board of Supervisors	10/24/2017	9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	Agenda	Minutes	Video	Not available
Board of Supervisors	10/17/2017	9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	Agenda	Minutes	Video	Not available
Board of Supervisors	10/10/2017	9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Special Meeting</i>	Meeting details	Agenda	Minutes	Video	Not available
Board of Supervisors	10/3/2017	9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	Agenda	Minutes	Video	Not available
Board of Supervisors	9/19/2017	9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting and 1:30 P.M. Joint Meeting with Health and Human Services Agency Advisory Board</i>	Meeting details	Agenda	Minutes	Video	Not available
Board of Supervisors	9/18/2017	9:00 AM	Board Chambers, Room 1070 County Administration Center <i>MEETING CANCELED</i>	Meeting details	Agenda - MEETING CANCELED	Not available	Not available	Not available
Board of Supervisors	9/12/2017	9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	Agenda	Minutes	Video	Not available
Board of Supervisors	8/29/2017	9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	Amended Agenda	Minutes	Video	Not available

Name	Meeting Date		Meeting Time	Meeting Location	Meeting Details	Agenda	Minutes	Video	eComment
Board of Supervisors	8/22/2017		9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	 Amended Agenda	 Minutes	 Video	Not available
Board of Supervisors	8/15/2017		9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	 Agenda	 Minutes	 Video	Not available
Board of Supervisors	8/8/2017		9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	 Agenda	 Minutes	 Video	Not available
Board of Supervisors	8/1/2017		9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	 Agenda	 Minutes	 Video	Not available
Board of Supervisors	7/18/2017		9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	 Agenda - Revised	 Minutes	 Video	Not available
Board of Supervisors	7/17/2017		1:30 PM	Board Chambers, Room 1070 County Administration Center <i>MEETING CANCELED</i>	Meeting details	 Agenda - Meeting_Canceled	Not available	Not available	Not available
Board of Supervisors	7/11/2017		9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	 Agenda	 Minutes	 Video	Not available
Board of Supervisors	6/20/2017		9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	 06-20-17 Agenda	 Minutes	 Video	Not available
Board of Supervisors	6/7/2017		9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	 Agenda	 Minutes	 Video	Not available

Name	Meeting Date	Meeting Time	Meeting Location	Meeting Details	Agenda	Minutes	Video	eComment
Board of Supervisors	6/6/2017	9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	Agenda	Minutes	Video	Not available
Board of Supervisors	5/23/2017	9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Special Meeting</i>	Meeting details	Agenda	Minutes	Video	Not available
Board of Supervisors	5/16/2017	9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	Agenda	Minutes	Video	Not available
Board of Supervisors	5/15/2017	9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	Agenda	Minutes	Video	Not available
Board of Supervisors	5/2/2017	9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	Agenda	Minutes	Video	Not available
Board of Supervisors	4/18/2017	9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	Agenda	Minutes	Video	Not available
Board of Supervisors	4/17/2017	9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	Agenda	Minutes	Video	Not available
Board of Supervisors	4/4/2017	9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	Agenda	Minutes	Video	Not available
Board of Supervisors	3/28/2017	9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Special Meeting</i>	Meeting details	Agenda	Minutes	Video	Not available
Board of Supervisors	3/21/2017	9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	Agenda	Minutes	Video	Not available

Name	Meeting Date	Meeting Time	Meeting Location	Meeting Details	Agenda	Minutes	Video	eComment
Board of Supervisors	3/20/2017	9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	Agenda	Minutes	Video	Not available
Board of Supervisors	3/7/2017	9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	Agenda	Minutes	Video	Not available
Board of Supervisors	2/14/2017	9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	Agenda	Minutes	Video	Not available
Board of Supervisors	2/7/2017	9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	Agenda	Minutes	Video	Not available
Board of Supervisors	1/27/2017	10:00 AM	Board of Supervisors Chambers, Room 1070 County Administration Center <i>Board Workshop</i>	Meeting details	Agenda	Minutes	Video	Not available
Board of Supervisors	1/24/2017	9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	Agenda	Minutes	Video	Not available
Board of Supervisors	1/24/2017	9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	Not available	Not available	Not available	Not available
Board of Supervisors	1/23/2017	1:30 PM	Conference Room C County Administration Center <i>Joint Meeting with the Behavioral Health Advisory Board</i>	Meeting details	Agenda	Minutes	Video	Not available
Board of Supervisors	1/10/2017	9:00 AM	Board Chambers, Room 1070 County Administration Center <i>Regular Meeting</i>	Meeting details	Agenda	Minutes	Video	Not available

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Attorney for Defendant
County of Mendocino

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANN MARIE BORGES and CHRIS GURR,	) 3:20-cv-04537-SI
individually and doing business as GOOSE)
HEAD VALLEY FARMS,	) [PROPOSED] ORDER ON
	) DEFENDANTS COUNTY OF
Plaintiffs,	) MENDOCINO'S MOTION TO DISMISS
	) PURSUANT TO F.R.C.P. 12(b)(6)
v.)
COUNTY OF MENDOCINO, SUE	) DATE: September 18, 2020
ANZILOTTI, and DOES 1-25 inclusive,	) TIME: 9:00 a.m.
Defendants.	) CTRM: 1, 17 th Floor, 450 Golden Gate
	) Avenue, San Francisco, California
)
	) Honorable Susan Illston, Senior District Judge

Plaintiffs, ANN MARIE BORGES and CHRIS GURR, individually and doing business as GOOSE HEAD VALLEY FARMS, filed a complaint pursuant to 42 U.S.C. § 1983 relating to the denial of a permit to cultivate cannabis. Defendant, County of Mendocino, filed a motion to dismiss pursuant to F.R.C.P. rule 12(b).

Upon the consideration of all papers filed in favor and opposition to this motion, and oral argument by all parties or their attorneys, the court hereby orders as follows:

Defendant County of Mendocino's Motion to Dismiss Plaintiffs' Complaint is hereby GRANTED without leave to amend.

SO ORDERED.

1 Dated: _____ by _____
2 U.S. District Court Judge
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Attorney for Defendants County of Mendocino and Sue Anzilotti

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANN MARIE BORGES and CHRIS GURR,	) 3:20-cv-04537-SI
individually and doing business as GOOSE)
HEAD VALLEY FARMS,	) PROOF OF SERVICE
)
Plaintiffs,	) DATE: September 18, 2020
	) TIME: 9:00 a.m.
v.	) CTRM: 1, 17 th Floor, 450 Golden Gate
COUNTY OF MENDOCINO, SUE	) Avenue, San Francisco, California
ANZILOTTI, and DOES 1-25 inclusive,)
Defendants.	) Honorable Susan Illston, Senior District Judge
)
)

I hereby declare that I am over the age of eighteen years and am not a party to this legal action. I am in an office that employs a member of the bar of this Court, at whose direction the within service was made. My business address is Mendocino County Counsel, 501 Low Gap Road, Room 1030, Ukiah, CA 95482.

On August 13, 2020, I served the following:

DEFENDANT COUNTY OF MENDOCINO'S NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFFS' COMPLAINT PURSUANT TO F.R.C.P. § 12(b);
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF;

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT COUNTY OF MENDOCINO'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT;

[PROPOSED] ORDER ON DEFENDANT COUNTY OF MENDOCINO'S MOTION TO DISMISS PURSUANT TO F.R.C.P. 12(b)(6);

1 on the interested parties in the action by placing true copies thereof, enclosed in sealed
2 envelopes, with first class postage thereon fully prepaid, in the United States mail at Ukiah,
3 California, addressed as follows:

4 John Houston Scott
5 SCOTT LAW FIRM
6 1388 Sutter Street, Suite 715
7 San Francisco, California 94109

8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct. Executed this 13th day of August, 2020, at Ukiah, California.

10 /s/ Uta Telfer
11 Uta Telfer
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