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Chapter 10A.17 – Medical Cannabis Cultivation Ordinance

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**Section 10A.17.010 – Purpose and Intent**

This Chapter shall be known as the Medical Cannabis Cultivation Ordinance (MCCO). It is the purpose and intent of this Chapter 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 current State law and with the State of California’s future implementation of the Medical Cannabis Regulation and Safety Act (“MCRSA”).

This Chapter is intended to address the County of Mendocino's prerogative to permit and control, in the unincorporated areas of the county, the cultivation of cannabis for medical use in a manner 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.

The intent of this Chapter is to offer persons wishing to cultivate cannabis for medical use the option to do so in the context of the parameters set forth within the MCRSA, including, but not limited to, the provisions of Business and Professions Code Sections 19315, 19316, 19320, 19322, 19332, and 19360, and Health and Safety Code Section 11362.777, in order to protect the public health, safety and welfare of the residents of the County of Mendocino. This Chapter is intended to operate in alignment with the future state licensing requirements for the cultivation of medical cannabis and to provide the local permitting structure that will be required to obtain a state license to cultivate cannabis for medical use, once state licenses become available.

All cultivation of medical cannabis within the jurisdiction of the County of Mendocino shall be controlled by the provisions of this Chapter, regardless of whether the cultivation site existed or occurred prior to the adoption of this Chapter.

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) to allow the use or diversion of cannabis for nonmedical purposes, or 3) to 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 Section, 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” means the Mendocino County Agricultural Commissioner’s Office or the authorized representatives thereof.

“Attorney General's Guidelines” means guidelines for the security and non-diversion of cannabis grown for medical use issued by the Attorney General in August 2008.

“Cannabis” means all parts of the plant Cannabis sativa Linnaeus, 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.

“Collective” mean a Medical Marijuana Collective, as defined below.

“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 the location or a facility where medical cannabis is planted, grown, harvested, dried, cured, graded, trimmed, or packaged for transport, or that does all or any combination of those activities.

“Dwelling Unit” means a single unit 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, which allows solar radiation to penetrate the surface and affect the growing environment of the plants inside.

“Hoop House” means a structure that whose 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 (CBC), 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, upon application, is eligible for a certificate of compliance or which was created pursuant to the Subdivision Map Act”.

“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 person that produces vegetative immature medical cannabis plants, through cloning, seed germination, or tissue culture. At no time shall a nursery producer have in their possession any cannabis plant that has developed to the point of initiating the process of developing flowers. Also see “Seed Producer”.

“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.

“Permittee” means a person (or persons) issued a permit to cultivate medical cannabis in Mendocino County pursuant to the entirety of this Chapter.

“Primary Caregiver” or “Caregiver” means an individual designated by a qualified patient who has consistently assumed responsibility for the housing, health, or safety of that patient and as defined in Health and Safety Code Section 11362.7(d).

“Processing” means, for the purposes of this Chapter, 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) - Definitions.

“Qualified cardholder” or “Cardholder” means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to sections 11362.7 – 11362.83 of the Health and Safety Code.

“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 sections 11362.71 – 11362.76 of the Health and Safety Code.

“Residential Treatment Facility” means a State licensed facility providing for treatment of drug and 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 person that grows medical cannabis plants for the expressed purpose of producing specific breeds or varieties of cannabis seeds for sale to other permittees or to develop unique strains or varieties for eventual sale to permittees.

“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’s Office to conduct compliance consultations with permitted cultivators to assess compliance with this section.

“Track and Trace” means a monitoring system providing traceability of the movement of legal medical cannabis in the production lifecycle and distribution off the cultivation site utilizing a unique identifier pursuant to section 11362.777 of the Health and Safety Code and including reporting capabilities 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.

“Wildlife Exclusionary fence” means fencing that is designed to hinder 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 elementary school, middle school, high school, public park, and 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.

“Zip-Ties” means plastic ties with individualized numbers stamped on them, issued by the Mendocino County Sheriff’s Office for the purpose of assisting in identifying a legal cannabis plant which is cultivated by a qualified patient or primary caregiver and for which a local permit or state license is not required.

#### **Section 10A.17.030 – Cultivation Permit Required; Exemptions.**

- (A) All cultivation of cannabis for medical use shall operate in compliance with this Chapter, as well as all applicable state and local laws.
- (B) Cultivation of cannabis for medical use shall be permitted only following the issuance of a Cultivation 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 permits the cultivation of cannabis for medical use only in specifically enumerated zoning, as determined by permit type, subject either to zoning clearance or an administrative permit or use permit.
- (C) Persons or entities may apply for and hold a maximum of two (2) Cultivation Permits listed in Section 10A.17.070 at any given time.
- (D) Qualified patients or primary caregivers cultivating medical cannabis pursuant to this Section are exempt from the permit requirements of paragraph (B) of this Section provided that the qualified patient or primary caregiver shall register with the Agricultural Commissioner’s Office and must comply with the provisions of Sections 10A.17.040. Qualified patients or primary caregivers cultivating medical cannabis pursuant to this Section may voluntarily comply with Section 10A.17.050(B) hereof.

- (1) Any and all cannabis cultivated by a qualified patient shall be for the sole and exclusive use by the patient only. A maximum of 100 square feet of medical cannabis may be cultivated by a qualified patient.
- (2) 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. 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.**

- (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.
  - (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 of a legal parcel under separate ownership.

The distance between the above-listed uses in Subsection (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 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 Subsections (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.

- (B) The outdoor, indoor or mixed light cultivation of medical cannabis shall not subject residents of neighboring legal parcels who are of normal sensitivity to objectionable odors.

- (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 for production. 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 “mixed light” cultivation of medical cannabis 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.
- (G) 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 or caregiver 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) Cultivation of medical cannabis by qualified patients or by primary caregivers shall be subject to the restrictions of Mendocino County Code Chapter 20.242.

#### **Section 10A.17.050 – Unique Identifier; Track & Trace**

- (A) All cannabis plants grown for medical use shall have a unique identifier tag affixed to the base of the plant. A Track and Trace (T&T) system will be used by the County of Mendocino to track the production of cannabis for medical use and all permitted cultivators will be required to either use that system or use another approved system that will upload identical information to the County’s system. The unique ID tags will be generated by the T&T system for the cultivator’s use.



It is the responsibility of the permittee to affix each tag and maintain them in a readable state for movement tracking, data entry and compliance inspections. The permittee must then provide the appropriate data into the T&T system that accurately reflects the particulars and activities related to each plant, including, but not limited to, movement, harvest dates, harvest data, and destruction.

- (B) Qualified patients or primary caregivers that qualify for the permit exemption found in Section 10A.17.030(D) are not required to participate in the T & T system. However, to assist in the enforcement of this Chapter and to avoid unnecessary confiscation and destruction of medical cannabis plants, qualified patients or primary caregivers may purchase “zip-ties” from the Mendocino County Sheriff's Office. For patients and caregivers that wish to purchase “zip-ties”, the Agricultural Commissioner’s Office shall provide an embossed copy of their registration which can be used to obtain the ties. These "zip-ties" should be securely attached to the base of individual flowering cannabis plants. All applicants for "zip-ties" must present to the Agricultural Commissioner’s Office a State-issued medical cannabis identification card or a valid medical recommendation, or those of the up to two (2) patients they are caregiving for. The fee for the "zip-ties" shall be set by the Mendocino County Board of Supervisors in accordance with all applicable laws and regulations and the Master Fee Policy. Any zip-tie fees may be discounted by fifty (50) percent for Medi-Cal, SSI, and CMSP recipients, and equivalent income-qualified veterans.

#### **Section 10A.17.060 - Medical Marijuana Collectives**

Medical marijuana collectives currently operate to produce medical cannabis for seriously ill Californians under an array of State law and guidelines established for that purpose, including Proposition 215 and Senate Bill 420 (2004). Under the provisions of MCRSA, the current collective/cooperative model for the production and dispensing of medical cannabis remains in effect until the moment an entity obtains the required State license issued under MCRSA for that activity. From that point forward, the State regulations developed in response to MCRSA will define the operational model for any entity conducting activities related to commercial medical cannabis cultivation.

Additionally, Health and Safety Code section 11362.775 (b) mandates that the current collective/cooperative model in California, as detailed above, will be repealed one (1) year from the date that the Department of Consumer Affairs posts on its public internet webpage a notice stating that State licenses are being issued for activities covered under MCRSA, at which point Health and Safety Code Section 11362.775 (a) will sunset. In addition to obtaining any required cultivation permit pursuant to this Chapter (10A.17), medical marijuana collectives engaged in cultivation shall also comply with all of 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.
- (F) Allow reimbursements and allocations of medical cannabis as set forth in Section IV B.6. of the Attorney General's Guidelines.
- (G) 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.
- (H) Exterior signage shall not indicate or advertise the presence or availability of medical cannabis.

#### **Section 10A.17.070 – Permit Types**

The following types of cultivation permits will be offered at a maximum density of one (1) cultivation permit per applicant per legal parcel. However, if a single legal parcel is owned by multiple individuals residing in separate habitable residential units on that legal parcel, each owner may individually apply for a permit to cultivate medical cannabis, provided that the cumulative total square footage of cultivation of all owners shall not exceed the total maximum square footage allowed based on the permit type. All owners seeking to cultivate in this manner shall initiate the application process at the same time; any partial owner of the legal parcel not cultivating medical cannabis shall provide a statement, as part of the application, that he or she will not so cultivate.

- (A) “Type C” for outdoor cultivation using no artificial lighting of a maximum of 2,500 square feet of total canopy size on one legal parcel.
- (B) “Type C-A” for indoor cultivation using exclusively artificial lighting not to exceed 2,500 square feet of cultivation area within a structure or structures on one legal parcel.

- (C) “Type C-B” for cultivation using a combination of natural and supplemental artificial lighting (mixed light) not to exceed 2,500 square feet of cultivation area within a structure or structures on one legal parcel.
- (D) “Type 1” for outdoor cultivation using no artificial lighting of 2,501 to 5,000 square feet of total canopy size on one legal parcel.
- (E) “Type 1A” for indoor cultivation using exclusively artificial lighting 2,501 to 5,000 square feet of cultivation area within a structure or structures on one legal parcel.
- (F) “Type 1B” for cultivation using a combination of natural and supplemental artificial lighting (mixed light) of 2,501 to 5,000 square feet of cultivation area within a structure or structures on one legal parcel.
- (G) “Type 2” for outdoor cultivation using no artificial lighting of 5,001 to 10,000 square feet of total canopy size on one legal parcel.
- (H) “Type 2A” for indoor cultivation using exclusively artificial lighting having a cumulative cultivation area within a structure or structures of 5,001 to 10,000 square feet on one legal parcel.
- (I) “Type 2B” for cultivation using a combination of natural and supplemental artificial lighting (mixed light) of 5,001 to 10,000 square feet of cultivation area within a structure or structures on one legal parcel on one legal parcel.
- (J) “Type 4” for the cultivation of medical cannabis solely as a nursery product to be sold to a permittee, a qualified patient or a primary caregiver. The nursery product may take the form of vegetative and non-flowering starts or may be in the form of seeds, if the applicant is applying as a seed producer under this type of permit. The cumulative cultivation area shall not exceed 22,000 square feet on one legal parcel.

#### **Section 10A.17.080 – Cultivation Permits – Specific Requirements**

This section contains specific requirements that apply to each of the permit types listed in Section 10A.17.070. In addition, Chapter 20.242 contains additional zoning permit requirements for each of the below cultivation permit types, which vary based on how the legal parcel is zoned. As provided in Section 10A.17.090, cultivation permit applications will be referred to the Department of Planning and Building Services to determine compliance with Chapter 20.242.

These cultivation permits are for the production of flowering medical cannabis plants and for nursery and seed production, as specifically defined in Section 10A.17.020. A permittee producing flowering medical cannabis plants may maintain a clone room or area where they may propagate their own starts from existing stock on hand., that is scaled appropriately for their operation, Clones produced in this manner shall be for the exclusive and personal use of the

permittee only and the sale, trade, barter, etc. of such clones is expressly prohibited. The square footage of cultivation area dedicated to such a vegetative start (clone) production area will be included in measuring the cumulative total square footage allowed under a given permit.

In addition to any other requirements listed in this Chapter, the following limitations and requirements shall apply to cultivation permits issued pursuant to this Chapter:

(A) “Type C” permits: (Small, outdoor (natural light only))

- (1) Will be issued to qualifying applicants for a maximum of 2,500 square feet of total canopy size.
- (2) Cultivation under this type of permit requires that there be a legal dwelling unit on the legal parcel used for cultivation, excluding legal parcels with the industrial zoning listed below.
- (3) The permittee shall engage the services of an approved third party inspector and have a minimum of one (1) consultation inspection performed by that entity approximately 1/2 way through the total cultivation period for each harvestable crop.
- (4) The legal parcel where cultivation is occurring must have one of the following inland zoning designations: Rural Residential R-R 2; Rural Residential “R-R 5”; Rural Residential “R-R 10”; Agriculture “A-G”; Upland Residential “U-R”; Rangeland “R-L”, Forest Land “F-L”, or Timberland Production “TPZ”; Limited Industrial “I-1”; General Industrial “I-2”; or Pinoleville Industrial “P-I”.

(B) “Type C-A” permits: (Small, indoor (artificial light only))

- (1) The required pre-permit site inspection shall include a representative from the Department of Planning and Building Services to confirm that the structure used for the permit complies with the requirements stated in the definition of “Indoors” in Section 10A.17.020 and is suitable for support the proposed cultivation activity.
- (2) Will be issued for qualifying applicants for a cumulative maximum of 2,500 square feet of cultivation area within a structure or structures on one legal parcel.
- (3) Cultivation under this type of permit requires that there be a legal dwelling unit on the legal parcel used for cultivation, excluding legal parcels with the industrial zoning listed below.
- (4) All structures used shall be constructed in a manner so as to fully contain any light or light glare involved in the cultivation process.

- (5) No structure shall be used for cultivation under this type of permit that has undergone a conversion of habitable space to cultivation area.
  - (6) The permittee shall engage the services of an approved third party inspector and have a minimum of one (1) consultation inspection performed by the inspector at approximately the mid-point of the total cultivation period for each harvestable crop.
  - (7) The legal parcel where cultivation is occurring must have one of the following inland zoning designations: Rural Residential R-R 2; Rural Residential "R-R 5"; Rural Residential "R-R 10"; Agriculture "A-G"; Upland Residential "U-R"; Rangeland "R-L"; Forest Land "F-L", Timberland Production "TPZ"; Limited Industrial "I-1"; General Industrial "I-2"; or Pinoleville Industrial "P-I".
- (C) "Type C-B" permits: (Small, mixed light sources)
- (1) Will be issued for qualifying applicants for a maximum of 2,500 square feet of total cultivation area within a structure or structures on one legal parcel.
  - (2) Cultivation under this type of permit requires that there be a legal dwelling unit on the legal parcel used for cultivation, excluding legal parcels with the industrial zoning listed below.
  - (3) The permittee shall engage the services of an approved third party inspector and have a minimum of one (1) consultation inspection performed by the inspector at approximately the mid-point of the total cultivation period for each harvestable crop.
  - (4) The legal parcel where cultivation is occurring must have one of the following inland zoning designations: Rural Residential R-R 2; Rural Residential "R-R 5"; Rural Residential "R-R 10"; Agriculture "A-G"; Upland Residential "U-R"; Rangeland "R-L"; Forest Land "F-L", Timberland Production "TPZ"; Limited Industrial "I-1"; General Industrial "I-2"; or Pinoleville Industrial "P-I".
- (D) "Type 1" permits: (Medium, outdoor (natural light only))
- (1) Will be issued to qualifying applicants for 2,501 to 5,000 square feet of total canopy size on one legal parcel.
  - (2) The legal parcel size for cultivation under this permit shall be a minimum of five (5) acres.

- (3) The legal parcel where cultivation is occurring must have one of the following inland zoning designations: Rural Residential R-R 2; Rural Residential “R-R 5”; Rural Residential “R-R 10”; Agricultural “A-G”; Upland Residential “U-R”; Rangeland “R-L”; Forest Land “F-L”, or Timberland Production “TPZ”.
  - (4) Cultivation under this type of permit requires that there be a legal dwelling unit on the legal parcel used for cultivation.
  - (5) The permittee shall engage the services of an approved Third Party Inspector and facilitate a minimum of one (1) consultation inspection performed by the inspector at approximately the mid-point of the total cultivation period for each harvestable crop.
  - (6) The permittee shall facilitate at least one on-site compliance inspection, and additional inspections if deemed necessary, with at least 24 hours prior notice, to be conducted by the Agricultural Commissioner during regular business hours (Monday – Friday, 9:00 am – 5:00 pm, excluding holidays). The permittee shall notify the appropriate county official, at least 30 days prior to harvest, to schedule an annual on-site compliance inspection.
- (E) “Type 1A” permits: (Medium, indoor (artificial light only))
- (1) The required pre-permit site inspection shall include a representative from the Department of Planning and Building Services to confirm that the structure used for the permit complies with the requirements stated in the definition of “Indoors” in Section 10A.17.020 and is otherwise suitable to support the proposed cultivation activity.
  - (2) Will be issued to qualifying applicants for a cumulative maximum of 2,501 to 5,000 square feet of cultivation area within a structure or structures located on one legal parcel.
  - (3) All structures used shall be constructed in a manner so as to fully contain any light or light glare involved in the cultivation process.
  - (4) The legal parcel where cultivation is occurring must have one of the following inland zoning designations: Limited Industrial “I-1”; General Industrial “I-2”; or Pinoleville Industrial “P-I”.
  - (5) The permittee shall engage the services of an approved Third Party Inspector and facilitate a minimum of one (1) consultation inspection performed by the inspector at approximately the mid-point of the total cultivation period for each harvestable crop.

- (6) The permittee shall facilitate at least one annual on-site compliance inspection, and additional inspections if deemed necessary, with at least 24 hours prior notice, to be conducted by the Agricultural Commissioner during regular business hours (Monday – Friday, 9:00 am – 5:00 pm, excluding holidays). The permittee shall notify the appropriate county official, at least 30 days prior to harvest, to schedule an annual on-site compliance inspection.
- (F) “Type 1B” permits: (Medium, mixed light sources)
- (1) Will be issued to qualifying applicants for a cumulative maximum of 2,501 to 5,000 square feet of cultivation area within a structure or structures on one legal parcel.
- (2) The legal parcel size for cultivation under this permit shall be a minimum of five (5) acres, excluding legal parcels with the industrial zoning listed below .
- (3) The legal parcel where cultivation is occurring must have one of the following inland zoning designations: Rural Residential “R-R 5”; Rural Residential “R-R 10”; Agriculture “A-G”; Upland Residential “U-R”; Rangeland “R-L”; Forest Land “F-L”, Timberland Production “TPZ”; Limited Industrial “I-1”; General Industrial “I-2”; or Pinoleville Industrial “P-I”.
- (4) Cultivation under this type of permit requires that there be a legal dwelling unit on the legal parcel used for cultivation, excluding legal parcels with the industrial zoning listed above.
- (5) The permittee shall engage the services of an approved Third Party Inspector and facilitate a minimum of one (1) consultation inspection performed by the inspector at approximately the mid-point of the total cultivation period for each harvestable crop.
- (6) The permittee shall facilitate the annual on-site compliance inspection, and additional inspections if deemed necessary, with at least 24 hours prior notice, to be conducted by the Agricultural Commissioner during regular business hours (Monday – Friday, 9:00 am – 5:00 pm, excluding holidays). The permittee shall notify the appropriate county official, at least 30 days prior to harvest, to schedule an annual on-site compliance inspection.
- (G) “Type 2” permits: (Large, outdoor (natural light only))

- (1) Will be issued to qualifying applicants for 5,001 to 10,000 square feet of total canopy size on one legal parcel.
  - (2) The legal parcel size for cultivation under this permit shall be a minimum of ten (10) acres.
  - (3) The legal parcel where cultivation is occurring must have one of the following inland zoning designations: Rural Residential “R-R 10”; Agricultural “A-G”; Upland Residential “U-R”; Rangeland “R-L”; Forest Land “F-L”, or Timberland Production “TPZ”.
  - (4) Cultivation under this type of permit requires that there be a legal dwelling unit on the legal parcel used for cultivation.
  - (5) The permittee shall engage the services of an approved Third Party Inspector and facilitate a minimum of two (2) consultation inspections performed by the inspector at approximately uniform intervals through the total cultivation period for each harvestable crop.
  - (6) The permittee shall facilitate the annual on-site compliance inspection, and additional inspections if deemed necessary, with at least 24 hours prior notice, to be conducted by the Agricultural Commissioner during regular business hours (Monday – Friday, 9:00 am – 5:00 pm, excluding holidays). The permittee shall notify the appropriate county official, at least 30 days prior to harvest, to schedule an annual on-site compliance inspection.
- (H) “Type 2A” permits: (Large, indoor (artificial light only))
- (1) The required pre-permit site inspection shall include a representative from the Department of Planning and Building Services to confirm that the structure used for the permit complies with the requirements stated in the definition of “Indoors” in Section 10A.17.020 and is otherwise suitable to support the proposed cultivation activity.
  - (2) Will be issued to qualifying applicants for 5,001 to 10,000 square feet of cultivation area within a structure or structures located on one legal parcel.
  - (3) All structures used shall be constructed in a manner so as to fully contain any light or light glare involved in the cultivation process.
  - (4) The legal parcel where cultivation is occurring must have one of the following inland zoning designations: Limited Industrial “I-1”; General Industrial “I-2”; or Pinoleville Industrial “P-I”.



- (5) The permittee shall engage the services of an approved Third Party Inspector and facilitate a minimum of two (2) consultation inspections performed by the inspector at approximately uniform intervals through the total cultivation period for each harvestable crop.
  - (6) The permittee shall facilitate the annual on-site compliance inspection, and additional inspections if deemed necessary, with at least 24 hours prior notice, to be conducted by the Agricultural Commissioner during regular business hours (Monday – Friday, 9:00 am – 5:00 pm, excluding holidays). The permittee shall notify the appropriate county official, at least 30 days prior to harvest, to schedule an annual on-site compliance inspection.
- (I) “Type 2B” permits: (Large, mixed light sources)
- (1) Will be issued to qualifying applicants for 5,001 to 10,000 square feet of cultivation area within a structure or structures on one legal parcel.
  - (2) The legal parcel size for cultivation under this permit shall be a minimum of ten (10) acres, excluding legal parcels with the industrial zoning listed below.
  - (3) The legal parcel where cultivation is occurring must have one of the following inland zoning designations: Rural Residential “R-R 10”; Agriculture “A-G”; Upland Residential “U-R”; Rangeland “R-L”; Forest Land “F-L”, Timberland Production “TPZ” ; Limited Industrial “I-1”; General Industrial “I-2”; or Pinoleville Industrial “P-I”.
  - (4) Cultivation under this type of permit requires that there be an legal dwelling unit on the legal parcel used for cultivation, excluding legal parcels with the industrial zoning listed above.
  - (5) The permittee shall engage the services of an approved Third Party Inspector and facilitate a minimum of two (2) consultation inspection performed by the inspector at approximately uniform intervals through the total cultivation period for each harvestable crop.
  - (6) The permittee shall facilitate the annual on-site compliance inspection, and additional inspections if deemed necessary, with at least 24 hours prior notice, to be conducted by the Agricultural Commissioner during regular business hours (Monday – Friday, 9:00 am – 5:00 pm, excluding holidays). The permittee shall notify the appropriate county official, at least 30 days prior to harvest, to schedule an annual on-site compliance inspection.
- (J) “Type 4” permits: (“Nursery” and/or “Seed” permits)

- (1) The applicant shall complete a supplemental “Application for Medical Cannabis Nursery / Seed Production” and file it with the Agricultural Commissioner’s Office. The applicant shall declare on this form if they intend to produce medical cannabis nursery stock or medical cannabis seeds or both.
- (2) Type 4 permits will be issued to qualifying applicants for a cumulative maximum of 22,000 square feet of cultivation area within a structure or structures on one legal parcel for all activities.
- (3) The legal parcel size for cultivation under this permit shall be a minimum of ten (10) acres, excluding legal parcels with the industrial zoning listed below.
- (4) If the permittee is approved as a nursery producer, as defined herein, the permittee shall produce only tissue culture starts, vegetative starts (clones), or immature plants for the planting, propagation, and cultivation of medical cannabis by other permittees or state license holders or exempt individuals. If the permittee is approved as a nursery producer (the production of tissue cultures, clones, and immature plants), no consumable medical cannabis product of any kind shall be derived from the plants being cultivated under this permit.
- (5) Cultivation of nursery stock production under this type of permit requires that there be a legal dwelling unit on the legal parcel used for cultivation, excluding legal parcels with the industrial zoning listed above.
- (6) If the permittee is approved as a seed producer, as defined herein, the medical cannabis plants intended to be grown to maturity for seed production shall be entered into the Track and Trace program by the permittee to document the end use (processing or dispensing) or destruction of the medical cannabis plant material (flowers, leaf, stalk, etc.) derived from the plants once the seeds have been extracted.
- (7) Cultivation for seed production under this type of permit requires that there be a legal dwelling unit on the legal parcel used for cultivation, excluding legal parcels with the industrial zoning listed above.
- (8) The legal parcel where cultivation is occurring must have one of the following inland zoning designations: Rural Residential “R-R 10”; Agriculture “A-G”; Upland Residential “U-R”; Rangeland “R-L”; Forest Land “F-L”; Timberland Production “TPZ”; Limited Industrial “I-1”; General Industrial “I-2”; or Pinoleville Industrial “P-I”.
- (9) Any sales of nursery stock or seeds which were produced on and occur on a parcel within a TPZ or FL zoning district shall be limited to permitted

cultivators only. Such sales are limited to individuals that are in possession of a permit to cultivate under this Chapter and in possession of a State license to cultivate medical cannabis, once they become available. At the time of sale, the nursery shall generate a manifest stating the date and time, nursery name, address, and permit number (and license number, when applicable), the 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 stock to the cultivator's location, this manifest shall be filled-out and in position of the nursery operator during transport. Both the nursery and the buyer shall retain these records for a period of two (2) years.

- (10) The permittee for either type of production agrees to abide by and operate in accordance with the requirements established by the Mendocino County Agricultural Commissioner relating to nursery and seed operations which pertain to the cultivation of medical cannabis. Such requirements shall be established in the Mendocino Cannabis Nursery and Seed Manual.
- (11) The permittee shall engage the services of an approved Third Party Inspector and facilitate one (1) consultation inspection for each six (6) month period of operation to be performed by the inspector.
- (12) The permittee shall facilitate two (2) on-site compliance inspections annually, and additional inspections if deemed necessary, with at least 24 hours prior notice, to be conducted by the Agricultural Commissioner during regular business hours (Monday – Friday, 9:00 am – 5:00 pm, excluding holidays). The permittee shall notify the appropriate county official to schedule the annual on-site compliance inspections.

#### **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 to the Agricultural Commissioner's Office. Applications for Cultivation Permits shall be made upon such forms and accompanied by such plans and documents as may be prescribed by the Agricultural Commissioner's Office so as to assure the fullest practical presentation of facts for the review of the application. An application fee will be due at the time the application is submitted and is non-refundable.

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 Cultivation Permit shall be approved without clearance or final permit approval as required by Chapter 20.242 .

Until January 1, 2020, the Agricultural Commissioner's Office shall only consider applications for cultivation permits from persons or entities that were cultivating cannabis for medical use in Mendocino County prior to January 1, 2016. If such persons or entities move their cultivation site to a different legal parcel, the requirements listed as items I, II, and III immediately below then apply.

Starting January 1, 2020, applications from potential new cultivators will be accepted with the additional requirements listed below:

- I. The requirement set forth in Section 10A.17 .040 (A) (5) shall become 100 feet; and
- II. The requirement set forth in Section 10A.17 (A) (2) shall become 200 feet; and
- III. There will be a two (2) acre minimum parcel size for the Cottage type permits.

Starting January 1, 2018, the Agricultural Commissioner's Office shall start accepting applications for Type 1A and Type 2A permits from individuals that were not cultivating in Mendocino County prior to January 1, 2016. Applicants for a Cultivation 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 management of the collective is at least twenty-one (21) years of age;
- (D) Site plan showing the entire legal parcel, including easements, streams, springs, ponds and other surface water features, and the location and area for cultivation on the legal parcel, with dimensions of the area for cultivation and setbacks from property lines. The site plan shall also include all areas of ground disturbance or surface water disturbance associated with cultivation activities, including: access roads, water diversions, culverts, ponds, dams, graded flats, and other related features. The site plan shall include dimensions showing that the distance from any school, youth oriented facility, church, public park, or residential treatment facility to the nearest point of the cultivation area is at least 1,000 feet.
- (E) Photographs of any cultivation activities that existed on the legal parcel prior to January 1, 2016, including: 1) ground level views of the cultivation activities and 2) aerial views from Google Earth, Bing Maps, Terraserver, or other comparable services showing: a) the entire legal parcel and b) the cultivation area in more detail. The date these images were captured shall be noted as well.

- (F) Photographs of any cultivation activities that currently exist on the legal parcel, including: 1) ground level views of the cultivation activities from at least three different vantage points, and 2) aerial views from Google Earth, Bing Maps, Terraserver, or other comparable services showing: a) the entire legal parcel and b) the cultivation area in more detail. The date these images were captured shall be noted as well.
- (G) At least one additional evidential document demonstrating proof of cultivation prior to January 1, 2016. A list of examples of the types of documentation that will be accepted to meet this requirement are found in Appendix B to the application. Any similarly reliable documentary evidence to that found in Appendix B, which is deemed satisfactory to the Agricultural Commissioner, which establishes that medical cannabis was planted and grown on the parcel to be permitted prior to January 1, 2016, will likewise be accepted.
- (H) The proof of prior cultivation enumerated in items (E), (F), and (G) above shall be assigned to the applicant relative to their prior cultivation location. If the applicant subsequently moves their cultivation to a different legal parcel, that proof of prior cultivation transfers with the applicant to the new location. The ability to cultivate medical cannabis at the previous location is extinguished when the applicant changes cultivation locations. Permits for the cultivation of medical cannabis on TPZ or FL zoned parcels will only be issued if proof of prior cultivation by the applicant, as detailed in items (E), (F), and (G) above, at the existing site on the parcel under consideration for permitting, can be demonstrated. Any permits granted in these zoning districts will require additional setback and permitting requirements, as detailed in Chapter 20.242 of the Mendocino County Code.
- (I) 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.
- (J) 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. Description of legal water source, irrigation plan, and projected water usage.

- (K) 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 (J).
- (L) 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.
- (M) 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 §1602 of the Fish and Game Code and provide a copy of the Streambed Alteration Permit obtained from the Department of Fish & Wildlife.
- (N) If the source of water is a well, a copy of the County well permit, if available.
- (O) 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 the management of the collective.
- (P) Evidence that the applicant or any individual engaged in the management of, or employed by, the collective 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.
- (Q) 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.
- (R) 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 Partnership Agreement shall be attached to the application.
- (S) The applicant shall provide proof of either, a physician recommendation that the amount to be cultivated is consistent with the applicant's medical needs, the needs of the patients for whom the applicant is a caregiver, or a written agreement or

agreements, that the applicant is authorized by one or more medical marijuana dispensing collectives to produce medical marijuana for the use of the members of said collective or collectives,

- (T) That the Agricultural Commissioner is hereby 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.
- (U) Apply for and obtain a Board of Equalization Seller's Permit and collect and remit sales tax to the Board of Equalization if applicant intends to sell directly to qualified patients or primary caregivers.
- (V) Written consent for an onsite pre-permit inspection of the legal parcel by County officials 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.
- (W) 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, unused containers and other associated hardware, supplies, and garbage.
- (X) If the application would include the conversion of timberland as defined under Public Resources Code section 4526, 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.
- (Y) If applicable, clearance from CalFire related to compliance with the requirements of Public Resources Code Section 4290 and any implementing regulations.
- (Z) For activities that involve construction and other work in waters of the United States, that are not otherwise exempt or excluded, 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.
- (AA) For 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.

#### **Section 10A.17.100 – Permit Review and Issuance**

The Agricultural Commissioner's Office shall issue a Cultivation Permit pursuant to this Chapter only:

- (A) Following the referral to and clearance or permit approval pursuant to Chapter 20.242; and
- (B) After the Agricultural Commissioner's Office, and other County and State agency staff, as appropriate, have performed a pre-permit site inspection to confirm adherence to the requirements established in this Chapter and the M2C3 application process.

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 Cultivation 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 Cultivation Permit.

T & T unique identifiers will only be made available following the issuance of a Cultivation Permit by the Agricultural Commissioner's Office. The applicant will have 72 hours to register with the County designated T & T system. Upon T & T system registration, the system will provide unique identifiers. The unique identifiers shall be affixed to the individual plants within 72 hours of them being provided to the permittee.

Cultivation 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 T&T system shall be affixed to each permitted medical cannabis plant cultivated in Mendocino County, in compliance with Section 10A.17.050. The approved Third Party Inspector retained by the permittee will, upon the initial consultation visit, confirm adherence to this section. The Agricultural Commissioner's Office will likewise confirm adherence to this section during any compliance inspection. It shall be the responsibility of the permittee to ensure complete and accurate entry of information into the T&T system within 24 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 cultivation operations permitted, it shall be as a secondary or back-up power source. The containment area construction and dimensions to contain any leak or spill that may develop or occur shall be identified. Also, provide a maintenance plan for the generator that details 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. The generator shall be equipped with the manufacturer's specified muffler, shall be enclosed in a separate structure (other than the generator housing) designed for sound suppression, and shall comply with General Plan Policies DE100, 101 and 103. 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, which is set forth in Appendix A to this Chapter.
- (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 inspected by the Agricultural Commissioner in accordance with Mendocino County Code Chapter 10A.16.
- (K) Consent to facilitate and conduct the minimum prescribed number of visits by an approved Third Party Inspector, as detailed by the permit type issued and at least one (1) annual on-site compliance inspection, as detailed by the permit type, by the Agricultural Commissioner’s office.
- (L) 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. At the present time, there are no pesticides or herbicides registered specifically for use directly on cannabis and the use of pesticides on cannabis plants has not been reviewed for safety, human health effects, or environmental impacts. Under California law, the only pesticide products not illegal to use on cannabis are those that contain an active ingredient that is exempt from residue tolerance requirements and are either registered and labeled for a broad enough use to include use on cannabis, or exempt from registration requirements as a minimum risk pesticide under the Federal Insecticide Fungicide Rodenticide Act section 25(b) and California Code of Regulations, Title 3, Section 6147. All product labelling and any products on the site shall be placed, used, and stored in a manner that ensures that they will not enter or be released into surface or ground waters. 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 and to exclude large animals that may be attracted by odors.
- (M) 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.
- (N) Pay all applicable fees for application, unique identifiers, consultations, and inspections.
- (O) 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.17.100.

### **Section 10A.17.120 - Certifications**

- (A) Permittees who demonstrate compliance with all of the requirements set forth in this Chapter will be issued a “Certified Mendocino County Grown” certificate through the Agricultural Commissioner’s Office. 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. Mendocino County’s cannabis certification would represent the County’s appellation of origin for medical cannabis grown in Mendocino County. It is unlawful and a violation of Business and Professions Code section 19332.5 for medical cannabis that was not produced in Mendocino County to be labeled, marketed or packaged as originating from Mendocino County. The Bureau of Medical Cannabis Regulation (BMCR), within the California Department of Consumer Affairs, has been designated as the agency that will be assigning appellations for medical cannabis produced throughout the state. The Agricultural Commissioner will work with local producers and industry groups to assist, where appropriate, in the process to establish unique cannabis appellations within Mendocino County.
- (B) In addition to the standard compliance requirements of the cultivation and operations plan applicable to all medical cannabis cultivators under this Chapter, the Agricultural Commissioner’s Office shall develop standards for a separate “Mendocino Sustainably Farmed” (MSF Certified) cannabis certification. 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. These standards shall be incorporated into the cultivation and operations plan. A fee for cost recovery associated with this certification process will be charged to the cultivator.

### **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. 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 continually, adherence to the standards established by this Chapter will be greatly enhanced and the possibility of enforcement actions being initiated by the County are 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, 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. 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 Enforcement**

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 with a written statement identifying the items not in compliance, and may 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 inappropriate. 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 facilitate the above mentioned re-inspection by the end of the allowed timeframe. Failure to request re-inspection or to cure any items of non-compliance shall initiate 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.17.080. 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.

If the non-compliance(s) are substantiated during the un-scheduled compliance inspection above, the Department of Agriculture shall 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 suspension pending a final compliance re-inspection from the Department of Agriculture within seven (7) days. This final re-inspection will be to determine whether or not the permit holder has cured all issues of noncompliance. Failure to request and facilitate this final re-inspection or to cure any items of non-compliance shall terminate the cultivation permit through the issuance of a "Notice to Terminate Permit". The permit shall be terminated immediately upon the expiration of any appeal period or, if an appeal to this determination and action is filed, per Section 10A.17.150, upon the final determination of the appeal.

The County shall additionally notify any state license authority, as defined by the MCRSA, whenever the County cultivation permit has been suspended or terminated, as appropriate.

#### **Section 10A.17.150 – Cultivation Site Inspections and Appeals**

If a "Notice to Terminate Permit" is issued to a permittee by the Agricultural Commissioner's office, the permittee may appeal said notice within ten (10) days after delivery. 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 appeal shall

be made in writing, on a form provided by the Agricultural Commissioner's Office. The fee for filing the appeal is \$100.00. The appeal shall be heard by a Hearing Officer using the procedures outlined in Chapter 8.75, as modified by the following provision:

(A) The appeal shall be heard by the Hearing Officer within ten (10) business days following the filing of the appeal. The Hearing Officer shall render a written ruling on the appeal within three (3) business days following the hearing.

#### **Section 10A.17.160 – Public Nuisance**

All of the remedies provided for in this Chapter shall be cumulative and not exclusive for violations of this Chapter. Any violation of this Chapter, including, but 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, shall be, and the same hereby is declared to be, a public nuisance and unlawful and shall be subject to injunction, abatement or any other administrative or civil remedy available to the County under the applicable state and county laws, including but not limited to those set forth in Mendocino County Code and MCRSA .

The County may abate the violations of this Chapter in accordance with the provisions of County Code Section 8.75 or by the prosecution of a civil action, including an action for injunctive relief. The remedy of injunctive relief may take the form of a court order, enforceable through civil contempt proceedings, prohibiting the maintenance of the violation of this Chapter or requiring compliance with other terms.

The County may also abate the violation of this Chapter through the abatement process established by Government Code Section 25845.

#### **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.