

## ORDINANCE NO.

### 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 ~~June 30~~December 31, 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.

**PASSED AND ADOPTED** by the Board of Supervisors of the County of Mendocino, State of California, on this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the following roll call vote:

AYES:  
NOES:  
ABSENT:

**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