

ORDINANCE NO.

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

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

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

Sec. 6.36.060 - Application Procedure.

(A) The Office of the Tax Collector shall refer the application to the Department of Planning and Building Services, the Division of Environmental Health, and other departments or divisions as necessary, to verify that the application is in compliance with County Code provisions and that the applicant has valid County license(s), permit(s), and/or other approvals, as required, prior to issuing any County Cannabis Facility Business License. The Office of the Tax Collector shall charge the applicant all fees required under the Master Fee Schedule for these referrals.

(1) All County Cannabis Facility Business Licenses are provisional until a valid State of California license, as required under MAUCRSA, is verified.

(a) A copy of the State license issued pursuant to MAUCRSA must be filed with the Tax Collector within fifteen (15) days of issuance.

(2) If a cannabis facility is denied a state license under MAUCRSA, the provisional County Cannabis Facility Business License will become invalid.

~~(B) Within ten (10) days of filing a complete Cannabis Facility Business License application with the Office of the Tax Collector, each business owner, partner, and operator/manager (if they are not the owner) are required to have a LiveScan criminal history inquiry. Applicants and every individual engaged in the management of, or employed by, the applicant. Each business owner, partner, operator/manager (if they are not the owner) shall be subject to a criminal history check, which shall include a Live Scan criminal history inquiry. provide the Sheriff with written permission authorizing the Sheriff to complete a LiveScan criminal history inquiry to determine if a criminal history record exists for the person or shall complete a LiveScan criminal history inquiry at a location certified and approved by the Department of Justice (DOJ) and Federal Bureau of Investigation (FBI). The reasonable costs of a Live Scan criminal history inquiry and review done by the Sheriff pursuant to this section shall be the responsibility of the applicant and every individual engaged in the management of, or employed by, the applicant business owner, partner,~~

~~and operator/manager and shall be paid in advance to the Sheriff. Live Scan criminal history inquiries completed at a certified and approved Live Scan location shall only be valid for the purposes of this section if they are transmitted to the Sheriff or District Attorney for review. An application shall be denied if any of the following is determined to be true:~~

~~(1) The applicant or any individual engaged in the management of, or employed by, the applicant -has been convicted of any crime listed in subdivision (b)(4) of California Business and Professions Code section 26057, or any crime that if committed in the State of California would have constituted any of the crimes listed in subdivision (b)(4) of California Business and Professions Code section 26057. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere;~~

~~(2) The applicant or any individual engaged in the management of, or employed by, the applicant -has been convicted of a felony offense under California Health and Safety Code section 11358, 11359, or 11360, as amended by Proposition 64 § 8.4, effective November 9, 2016, or any crime that if committed in the State of California would have constituted a felony offense under California Health and Safety Code section 11358, 11359, or 11360, as amended by Proposition 64 § 8.4, effective November 9, 2016;~~

~~(3) The applicant or any individual engaged in the management of, or employed by, the applicant has a conviction under section 11366.5 of the California Health and Safety Code;~~

~~(4) The applicant or any individual engaged in the management of, or employed by, the applicant has a conviction under section 11379.6 of the California Health and Safety Code;~~

~~(3)(5) The applicant or any individual engaged in the management of, or employed by, the applicant is subject to a condition of probation, mandatory supervision, Post Release Community Supervision, parole or any other lawful order which prohibits the possession or cultivation of cannabis.~~

~~(C) The Sheriff's deputy or employee charged with the duty of making the inquiry shall determine whether the business owner, partner, and operator/manager 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.~~

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

Sec. 10A.17.020 - Definitions.

As used herein the following definitions shall apply:

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

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

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

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

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

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

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

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

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

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

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

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

"Cultivation site" means one (1) or more locations or facilities on one (1) legal parcel (or one (1) or more legal parcels if specifically allowed for by this Chapter 10A.17) subject to a single approved Permit where cannabis is planted, grown, harvested, dried, cured, graded, trimmed, processed or packaged for transport, or that does all or any combination of those activities. One (1) or more areas of cannabis cultivation may exist on the legal parcel used for that purpose.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

fence (where permissible) using hot wire or barbed wire strung between the extensions, etc.

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

Section 3: Section 10A.17.082 is hereby added to the Mendocino County Code to read as follows:

Sec. 10A.17.082 – Application Deadline for Parcels Affected by Amendment to Definition of Legal Parcel.

Notwithstanding the provisions of paragraph (A)(1) of section 10A.17.080, applications for Phase One Permits for cultivation sites not previously eligible under the definition of "legal parcel" or "parcel" adopted by Ordinance No. 4381, but that are eligible under the definition of "legal parcel" or "parcel" as amended by the ordinance adding this section 10A.17.082, shall be accepted until one hundred eighty (180) days after the effective date of the ordinance that made such amendment and added this section.

Section 4: Section 10A.17.090 of the Mendocino County Code is hereby amended to read as follows:

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

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

Following the submission of an application for a Phase One Permit, an applicant may file with the Agricultural Commissioner's Office, on a form prescribed by the Agricultural Commissioner's Office, a Notice of Application Stay for the purpose of preventing the denial of an application for a Phase One Permit based on inactivity by the applicant for up to a one-year period. An applicant may only file a Notice of Application Stay one time. Nothing in this paragraph is intended to prevent the County or the applicant the ability to continue processing or perfecting the application. During the time period of this Application Stay, the applicant shall be prohibited from cultivating cannabis in excess of the limitations

of paragraph (B) or (C) of section 10A.17.030 and shall allow the County to make and shall pay the reasonable costs for an inspection of the applicant's cultivation site (and origin site if the application involves a relocation) to confirm compliance with this paragraph; violation of this prohibition shall be a violation of County Code, subject to administrative penalties, and shall be cause for immediate denial of the permit application. Any denial of an application may be followed by nuisance abatement procedures. During the time period of the Application Stay, the applicant shall remain subject to all code enforcement provisions as identified in section 10A.17.100.

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

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

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

- (A) The name, business and residential address, and phone number(s) of the applicant.
- (B) If the applicant is not the record title owner of the legal parcel, written consent from the owner allowing the cultivation of cannabis on their property by the applicant with original signature of the record title owner.
- (C) Written evidence that each person applying for the permit and any other person who will be engaged in the cultivation of cannabis is at least twenty-one (21) years of age.
- (D) Site plan showing the entire legal parcel configuration with Assessor's Parcel Number(s), acreage, site address, including the location of:
 - (1) Easements (access and utility and all roadways public and private);
 - (2) Streams, springs, ponds and other surface water features,

including the location of any flood plain or floodways;

- (3) The location and area of the cultivation site on the legal parcel, with dimensions of the area for cultivation of cannabis and showing that all setbacks required by section 10A.17.040 are being met;
 - (4) All areas of ground disturbance or surface water disturbance associated with cultivation of cannabis activities, including: access roads, water diversions, culverts, ponds, dams, graded flats, and other related features;
 - (5) All structures, which shall be clearly labeled; and
 - (6) All septic systems, leach fields and water wells.
- (E) Applications submitted for any Permit during Phase One shall include proof of prior cultivation pursuant to section 10A.17.080
- (F) A cultivation and operations plan which includes elements that meet or exceed the minimum legal standards for the following: water storage, conservation and use; drainage, runoff and erosion control; watershed and habitat protection; and proper storage of fertilizers, pesticides and other regulated products to be used on the legal parcel. Any fuel, fertilizer, pesticides, or other substance toxic to wildlife, children, or pets, must be stored in a secured and locked structure or device. The plan will also provide a description of cultivation activities including, but not limited to, permit type, cultivation area, soil/media importation and management, the approximate date(s) of all cannabis cultivation activities that have been conducted on the legal parcel prior to the effective date of this ordinance, and schedule of activities during each month of the growing and harvesting season.
- If a generator is proposed to support any aspect of the cultivation site or related operations, the cultivation and operations plan shall identify any containment structure and dimensions necessary to contain any leak or spill that may develop or occur as a result of relying on any generator for backup power generation. The plan shall also include a maintenance plan for the generator, detailing how spent oil, used oil filters, expired batteries and other hazardous wastes generated from the operation of the generator will be handled, including fuel storage and delivery systems.
- (G) Copy of the statement of water diversion, or other permit, license or registration filed with California Water Resources Control Board, Division of Water Rights, if applicable.
- (H) An irrigation plan and projected water usage for the proposed

cultivation activities, as well as a description of legal water source, if not covered by item (G).

- (I) Copy of Notice of Intent and Monitoring Self-Certification and any other documents filed with the North Coast Regional Water Quality Control Board (NCRWQCB) demonstrating enrollment in and compliance with (or proof of exemption from) Tier 1, 2 or 3, North Coast Regional Water Quality Control Board Order No. 2015-0023, or any substantially equivalent rule that may be subsequently adopted by the County of Mendocino or other responsible agency.
- (J) If any on-site or off-site component of the cultivation facility, including access roads, water supply, grading or terracing impacts the bed or bank of any stream or other watercourse, show proof they have notified the California Department of Fish and Wildlife (CDFW) pursuant to section 1602 of the Fish and Game Code and provide a copy of the Streambed Alteration Permit obtained from the Department of Fish & Wildlife.
- (K) If the source of water is a well, a copy of the County well permit, if available; applicant shall provide documentation showing the approximate date of installation.
- (L) A unique identifying number from a State of California Driver's License or Identification Card for each person applying for the permit and any other person who will be engaged in cultivation of cannabis.

~~(M) Evidence that the applicant or any individual engaged in the management of, or employed by, the cultivator has not been convicted of a violent felony as defined in Penal Code section 667.5(c) within the State of California, or a crime that would have constituted a violent felony as defined in Penal Code section 667.5(c) if committed in the State of California and is not currently on parole or felony probation. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Applicants and every individual engaged in the management of, or employed by, the applicant, shall be subject to a criminal history check, which shall include a Live Scan criminal history inquiry. The reasonable costs of a Live Scan criminal history inquiry pursuant to this section shall be the responsibility of the applicant and every individual engaged in the management of, or employed by, the applicant. Live Scan criminal history inquiries completed at a certified and approved Live Scan location shall be transmitted to the Sheriff or District Attorney for review. An application shall be denied if any of the following is determined to be true:~~

~~(1) The applicant or any individual engaged in the~~

management of, or employed by, the applicant has been convicted of any crime listed in subdivision (b)(4) of California Business and Professions Code section 26057, or any crime that if committed in the State of California would have constituted any of the crimes listed in subdivision (b)(4) of California Business and Professions Code section 26057. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere;

(2) The applicant or any individual engaged in the management of, or employed by, the applicant has been convicted of a felony offense under California Health and Safety Code section 11358, 11359, or 11360, as amended by Proposition 64 § 8.4, effective November 9, 2016, or any crime that if committed in the State of California would have constituted a felony offense under California Health and Safety Code section 11358, 11359, or 11360, as amended by Proposition 64 § 8.4, effective November 9, 2016;

(3) The applicant or any individual engaged in the management of, or employed by, the applicant has a conviction under section 11366.5 of the California Health and Safety Code;

(4) The applicant or any individual engaged in the management of, or employed by, the applicant has a conviction under section 11379.6 of the California Health and Safety Code;

(5) The applicant or if any individual engaged in the management of, or employed by, the applicant is subject to a condition of probation, mandatory supervision, Post Release Community Supervision, parole or any other lawful order which prohibits the possession or cultivation of cannabis.

(N) A statement describing the proposed security measures for the facility that shall be sufficient to ensure the safety of members and employees and protect the premises from theft.

(O) If the applicant is organized as a non-profit corporation, the applicant shall set forth the name of the corporation exactly as shown in its Articles of Incorporation, and the names and residence addresses of each of the officers and/or directors. If the applicant is organized as a partnership, the application shall set forth the name and residence address of each of the partners, including the general partner and any limited partners. Copies of

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

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

implementing regulations.

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

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

Section 5: Section 10A.17.160 of the Mendocino County Code is hereby amended to read as follows:

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

- (A) All of the remedies provided for in this Chapter, or elsewhere in the law, shall be cumulative and not exclusive for violations of this Chapter. Violations of this Chapter include, but are not limited to failure to obtain and maintain in good standing any permit required by this Chapter, compliance with any required element on which a permit was issued pursuant to this Chapter, or any violation of the provisions of this Chapter where a permit is not required, such as a violation of section 10A.17.040 when a person is otherwise exempt pursuant to section

10A.17.030. The County may enforce this Chapter by using any applicable state or county law, including, but not limited to Mendocino County Code Chapters 1.08, 8.75 or 8.76, and may use either the administrative process to achieve code compliance or available civil remedies, such as injunctive relief.

- (B) The cultivation of cannabis with a valid permit pursuant to this Chapter shall not be declared a public nuisance under County Code Chapter 8.75 or 8.76. Any cultivation of cannabis in the absence of a permit issued pursuant to this Chapter is a public nuisance and may be abated by the County as a public nuisance in accordance with the provisions of either County Code Chapter 8.75 or 8.76 unless such cultivation either: (1) is exempt pursuant to County Code section 10A.17.030 and in compliance with the laws to which the exemption is subject; ~~(2) is otherwise in compliance with State Proposition 64 and all regulations adopted by the County related to cannabis for adult use pursuant to Proposition 64;~~ or (32) is being cultivated by an entity whose application for a Phase One Permit pursuant to this Chapter has been submitted, accepted and is currently pending, and who has also submitted a sworn affidavit to the County Agricultural Commissioner on a form prepared by the Agricultural Commissioner that includes, but is not limited to, an affirmation that they have met the requirements to obtain a permit or are actively in the process of fulfilling the requirements, and who also possesses a State temporary or provisional license for the cultivation site applied for at the County level.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this _____ 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

