

## **Chapter 20.537 – Coastal Cannabis Cultivation Sites – DRAFT 4.23.19**

### **Sec. 20.537.010 – Title, Purpose and Intent.**

This chapter 20.537 ("Chapter") is intended to provide land use regulations for the Coastal Zone of the County of Mendocino, excluding the Town of Mendocino, where cannabis may be cultivated, subject to the limitations established by this chapter and the provisions of Mendocino County Code Chapter 10A.17, the Mendocino Cannabis Cultivation Ordinance ("MCCO").

The purpose and intent of this Chapter, together with the MCCO, is to allow for the cultivation of cannabis in locations that are consistent with the intent of the zoning district and to help ensure that its cultivation and related activities will not create adverse impacts to the public health, safety, and welfare of the residents and businesses of the County of Mendocino.

### **Sec. 20.537.020 - Application.**

The cultivation of cannabis is prohibited in all zoning districts in the Coastal Zone of Mendocino County, excluding the Town of Mendocino, except as allowed by this Chapter and by Chapter 10A.17.

### **Sec. 20.537.030 – Definitions.**

Unless otherwise defined in this Chapter, the terms and phrases used herein shall have the same definitions as provided in Chapter 10A.17, or as provided in this Title 20.

As used herein the following definitions shall apply:

"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 20.537) subject to a single permit approved pursuant to this Chapter, 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.

"Legal parcel" or "Parcel" means a lot of real property created pursuant to the Subdivision Map Act and recorded in the Mendocino County Recorder's Office, or a parcel of real property that qualifies for a certificate of compliance pursuant to Government Code section 66499.35.

"Publicly 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 20.308.110(32).

"Rental unit" means a housing unit that is occupied by a party or household that is not its owner, and who pays a fee for the use of the unit.

**Sec. 20.537.040 – Coastal Development Permit for Cannabis Cultivation Required; Exemptions.**

- (A) Cultivation of cannabis pursuant to the exemptions provided in section 10A.17.030 shall not be required to obtain a coastal development permit or coastal development use permit pursuant to this chapter, but may be required to obtain a coastal development permit or coastal development use permit pursuant to Chapter 20.532 if the cultivation constitutes “development” as defined in Section 20.308.035(D).
- (B) Cultivation of cannabis in excess of the exemptions provided for in section 10A.17.030 shall only be allowed following the issuance of a coastal development permit or coastal development use permit pursuant to the provisions of this Chapter and Chapter 20.532 and the issuance of a cultivation permit pursuant to the provisions of Chapter 10A.17 of the Mendocino County Code. The coastal development permit or coastal development use permit shall be issued prior to the issuance of a cultivation permit under Chapter 10A.17.
- (C) Coastal development permits or coastal development use permits pursuant to this Chapter shall be issued consistent with Table 1 below, which specifies which zoning districts allow which cannabis cultivation types and the type of permit required. If multiple cultivation types are sought for a single cultivation site, a single coastal development permit or coastal development use permit may be applied for and granted, upon approval or conditional approval by the Department, at the more restrictive permit level.

TABLE 1

Permit Requirement for Cannabis Cultivation by Zoning District and Cannabis Cultivation Ordinance Permit Type

<b>MCCO</b>	<b>C</b>	<b>C-A</b>		<b>C-B</b>	<b>1</b>	<b>1-A</b>	<b>1-B</b>	<b>2</b>	<b>2-A</b>	<b>2-B</b>	<b>4</b>
<b>Permit Type</b>	<b>Sm Outdoor</b>	<b>Sm Indoor, Artificial Light</b>		<b>Sm, Mixed Light</b>	<b>Med Outdoor</b>	<b>Med Indoor, Artificial Light</b>	<b>Med Mixed Light</b>	<b>Lg Outdoor</b>	<b>Lg Indoor, Artificial Light</b>	<b>Lg Mixed Light</b>	<b>Nursery</b>
<b>Min Parcel Area (ac)</b>	2	2		2	5	5	5	10	10	10	10
<b>Cultivation Area Limit (sf)</b>	2,500	500	501 — 2,500	2,500	2,501 — 5,000	2,501 — 5,000	2,501 — 5,000	5,001 — 10,000	5,001 — 10,000	5,001 — 10,000	22,000
<b>Zoning District</b>	<b>AG</b>	CDP	CDP	CDP	CDP	CDU	CDP	CDP	CDU	CDP	CDP
	<b>FL</b>	CDU	CDU	CDU	CDU	CDU	CDU	CDU	CDU	CDU	CDU
	<b>TPZ</b>	CDU	CDU	CDU	CDU	CDU	CDU	CDU	CDU	CDU	CDU
	<b>RL</b>	CDP	CDP	CDP	CDP	CDU	CDP	CDP	CDU	CDP	CDU
	<b>RR</b>	CDP	CDP	CDP	CDP	CDU	CDP	CDP	CDU	CDP	CDU
	<b>RMR</b>	CDP	CDP	CDP	CDP	CDU	CDP	CDP	CDU	CDP	CDU

CDP = Coastal Development Permit, CDU = Coastal Development Use Permit

(D) Notwithstanding the above Table 1:

- (1) A parcel that is located in a zoning district that allows commercial cultivation and has a lot area between three and one-half (3.5) and five (5) acres, and that shares at least fifty percent (50%) of its boundaries with parcels five (5) acres in size or larger, may apply for and be granted permit types 1 and 1-B pursuant to the findings listed in Section 20.537.080.
- (2) A parcel that is located in a zoning district that allows commercial cultivation and has a lot area between seven (7) and ten (10) acres, and that shares at least fifty percent (50%) of its boundaries with parcels ten

(10) acres in size or larger, may apply for and be granted permit types 2, 2-B and 4 pursuant to the findings listed in Section 20.537.080.

**Sec. 20.537.050 – General Limitations and Requirements for All Cultivation.**

The cultivation of all cannabis within the Coastal Zone shall be subject to the limitations and requirements of this section.

- (A) The cultivation of cannabis in Mendocino County, in any amount or quantity by any entity, shall not be allowed in the following areas:
  - (1) Within one thousand (1,000) feet of a youth-oriented facility, a school, or a park that is in existence at the time a permit is initially applied for.
  - (2) Outdoors or using mixed light within two hundred (200) 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) Outdoors or using mixed light within one hundred (100) feet from any adjoining legal parcel under separate ownership or access easement (whichever is most restrictive).
  - (5) Any indoor cultivation sites that comply with paragraph (A)(1) shall also be subject to the following:
    - (a) Indoor cultivation sites shall comply with the building property line setback established by the zoning district in which the cultivation site is located.
    - (b) The cultivation of cannabis within an accessory structure shall be allowed subject to the development requirements of the zoning district in which it is located and to requirements of Chapter 20.456 — Accessory Use Regulations except, notwithstanding Section 20.456.010: (i) the cultivation of cannabis in an accessory structure is not permitted prior to the construction of the legal dwelling unit on the parcel, if a legal dwelling unit is required by this Chapter, and (ii) cultivation of cannabis shall only be allowed on the same parcel as the dwelling unit, if required.
    - (c) Indoor cultivation sites for individuals desiring to cultivate cannabis for adult use pursuant to section 10A.17.030(C) shall also be

subject to the following limitation: cultivation sites located within a private residence that is a rental unit, as that term is defined in this chapter, shall not be located in any indoor space other than a garage or accessory structure.

- (B) The distance between the listed uses in the above paragraph (A)(1) and cannabis that is being cultivated shall be measured in a straight line from the nearest point of the fence required in section 20.537.050(H), or if the cannabis is cultivated indoors, from the nearest exterior wall of the building in which the cannabis is cultivated to the nearest point of the exterior wall of the facility, building, or structure, or portion of the facility, building, or structure in which the above-listed use occurs or to the nearest point of any fenced, maintained or improved area where the users of the facility are typically present during normal hours of operation, whichever is closest. The distance in paragraphs (A)(2) and (A)(3) to any residential structure shall be measured from the fence required in section 20.537.050(H) to the nearest exterior wall of the residential structure. The distance in paragraph (A)(4) shall be measured from the fence required in section 20.537.050(H) to the boundary line of a legal parcel or access easement.

Applicants may seek a reduction in the setbacks described in paragraphs (A)(1), (A)(2), and (A)(4) pursuant to Section 20.537.080.

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

associated with the cultivation of cannabis shall not create erosion or result in contaminated runoff into any stream, creek, river or body of water.

- (H) All cannabis grown in Mendocino County (excluding indoor growing) must be within a secure fence of at least six (6) feet in height that fully encloses the garden area. The fence must include a lockable gate that is locked at all times when a qualified patient, caregiver or permittee (or their agent) is not in the immediate area. Said fence shall not violate any other ordinance, code section or provision of law regarding height and location restrictions and shall not be constructed or covered with plastic or cloth except shade cloth may be used on the inside of the fence.
- (I) All buildings where cannabis is cultivated or stored shall be properly secured to prevent unauthorized entry.
- (J) Persons cultivating cannabis pursuant to either section 10A.17.030, paragraphs (B) or (C) shall also comply with the provisions of section 20.537.060, paragraphs (H) and (I).
- (K) Major Vegetation Removal. The removal of major vegetation, as defined in Section 20.308.080, is prohibited in the Coastal Zone of Mendocino County unless performed in accordance with a coastal development permit approved pursuant to Chapter 20.532. A coastal development permit for cannabis cultivation that includes the removal of major vegetation shall not be approved if it includes the removal of any commercial tree species as defined by Title 14 California Code of Regulations section 895.1, Commercial Species for the Coast Forest District and Northern Forest District, and the removal of any true oak species (*Quercus* sp.) or Tan Oak (*Notholithocarpus* sp.) for the purpose of developing a cannabis cultivation site. This prohibition shall not include the pruning of any such trees for maintenance, or the removal of such trees if necessary, to address safety or disease concerns.

**Section 20.537.060 - Requirements for all Coastal Development Permits Issued Pursuant to this Chapter.**

All cannabis cultivation pursuant to a coastal development permit issued under this Chapter shall comply with the following requirements, unless specifically exempted:

- (A) Zoning Districts. Cultivation of cannabis shall only be permitted on legal parcels that comply with the applicable zoning districts and parcel sizes as provided Table 1 of section 20.537.040.

- (B) Indoor Cultivation Permits. The use or conversion of habitable space (i.e., kitchen, bedrooms, bathrooms, living room or hallways) in any structure shall not be allowed for the indoor cultivation of cannabis.
- (C) Cultivation of cannabis is not permitted within any required parking space.
- (D) Permit Density. A Person may apply for and obtain a maximum of one (1) coastal development permit for cannabis cultivation per legal parcel or for multiple legal parcels, so long as the parcels are contiguous and under the same ownership. A single coastal development permit for cannabis cultivation may include multiple cultivation types. Should the Person sell any of the parcels subject to the Permit, subsequent permit modifications shall be required to modify the cultivation site to adhere to required setbacks.
- (E) Dwelling Unit Requirement. Legal parcels with a cultivation site in the Rural Residential (R-R) zoning district shall be required to have a dwelling unit.
- (F) Generators. The indoor or mixed-light cultivation of cannabis pursuant to a coastal development permit issued under this Chapter shall not rely on a generator as a primary source of power. If a generator is used to support any aspect of the permitted cultivation operations, it shall be as a secondary or back-up power source. The use of the generator is only allowed when the primary alternative power source is unable to provide its normal output and generate sufficient power to meet the needs of the cultivation operation and the legal dwelling unit. The Owner's Manual and/or Operation Manual (or operational fact sheet) providing the operational characteristics and maintenance schedule for the generator shall be on-site and available for review.
  - (1) If no grid power source is available and there is not an alternative power source supporting both any required legal dwelling unit and the indoor or mixed-light permit operations, a generator may be used only under the following conditions: (1) the permittee shall install an alternative power source that will meet at least one-half ( $\frac{1}{2}$ ) of the combined power requirements by the expiration of twelve (12) months from the date of initial application for a permit pursuant to this Chapter and (2) it will be a condition of the permit that the cultivator shall expand their alternative power source to fully meet the combined needs of the cultivation operations and any required legal dwelling unit within two (2) years after issuance of the coastal development permit. If a generator is being used pursuant to the conditions set forth in this paragraph (F)(a.), the coastal development permit shall be conditioned on conducting an analysis of the noise levels produced by the generator at full operational speed, performed by an accredited acoustical engineer, and such analysis shall show compliance with Mendocino County Coastal Zoning Code Appendix

- B. All generators shall be, at a minimum, equipped with the manufacturer's specified muffler; if compliance with Appendix B requires additional measures, the generator shall be equipped with such measures, which may include a hospital-grade muffler and/or a structure to enclose the generator designed for sound suppression.
- (2) 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.
- (G) All buildings, including greenhouses, used for the cultivation of cannabis pursuant to an "artificial light" permit (generally Type C-A, Type 1-A, Type 2-A and Nursery as applicable), shall be equipped with filtered ventilation systems, permitted by the Mendocino County Air Quality Management District (MCAQMD) which rely on Activated Carbon Filtration, Negative Ion Generation, Ozone Generation or other odor control mechanism demonstrated to be effective in reducing cannabis odors.
- (H) Any use of pesticide products shall be consistent with State law and regulations enforced by the California Department of Pesticide Regulation and the Agricultural Commissioner's Office. All agricultural use pesticides and concentrated fertilizers, amendments, and similar materials shall be stored in a locked, hard-faced enclosure to prevent unauthorized entry by humans, to exclude large animals that may be attracted by odors, and to ensure that they will not enter or be released into surface or ground waters.
- (I) 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.

#### **Sec. 20.537.070 – Coastal Development Permit Application**

Any person or entity that wishes to engage in the cultivation of cannabis shall submit an application for a coastal development permit or coastal development use permit as required by Section 20.537.040 to the Department of Planning and Building Services. Applications for coastal development permits or coastal development use permits shall be made upon such forms and accompanied by such plans and documents as may be prescribed by the Department of Planning and Building Services.

In addition to the coastal development permit and coastal development use permit application requirements detailed in Section 20.532.025, applications for a coastal development permit or coastal development use permit for cannabis cultivation shall provide the following supplemental information on, or as an attachment to, the application:



- (A) A written description of the proposed water source. All Permit applications shall demonstrate there is adequate water to serve the cultivation site pursuant to Section 20.516.015 (B), unless water will be provided by a mutual water company and the following is provided:
  - (1) 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.
- (B) An irrigation plan and projected water usage for the proposed cultivation activities.
- (C) 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 showing that all setbacks required by Section 20.537.050 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;
  - (6) All septic systems, leach fields and water wells; and
  - (7) All features identified in Section 20.532.060 if an Environmentally Sensitive Habitat Area (ESHA), as defined in Section 20.308.040, has been identified within five hundred (500) feet of the proposed development.
- (D) A cultivation and operations plan which includes elements that describe: 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. 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.

- (1) 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.
- (E) For all indoor cultivation facilities, identify the source of electrical power and plan for compliance with applicable Building Codes.
- (F) If applicable, clearance from CalFire related to compliance with the requirements of Public Resources Code Section 4290 (defensible space) and any implementing regulations.
- (G) 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.

The Department of Planning and Building Services 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.

#### **Sec. 20.537.080 – Exceptions**

All cannabis cultivation sites shall be consistent with the requirements of this Chapter and all applicable conditions of Chapter 10A.17; provided, however, that an applicant may seek an exception to specific requirements as stated below.

- (A) Setback Requirements. A reduction to the setback requirements of a cannabis cultivation site described in Sections 20.537.050(A)(1), (A)(2) and (A)(4) may be

requested upon submittal of the coastal development permit required in Section 20.537.040, above. The request for a setback reduction may be approved, conditionally approved, or denied, in accordance with Section 20.537.090 and the following special findings:

- (1) A reduction in the one thousand (1,000) foot setback described in Section 20.537.050(A)(1):
  - (a) That there be special circumstances applicable to the property involved, including size, shape, topography, location or surrounding;
  - (b) That the granting of such reduction will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located; and
  - (c) That the granting of such reduction will not adversely affect and is in conformance with the Local Coastal Program.
- (2) A reduction in the setback from any occupied legal residential structure located on a separate legal parcel required by Section 20.537.050(A)(2):
  - (a) The approved reduced setback shall be no less than one hundred (100) feet from an occupied legal residential structure located on a separate legal parcel;
  - (b) The granting of such reduction will not adversely affect the character, livability, or right to appropriate development of the adjacent property from which the setback reduction is requested; and will not interfere with rights of access or usage for any legal recorded easement; and
  - (c) The reduced setback maintains setbacks consistent with provisions of sections 20.537.050(A)(1), (A)(3), and (A)(4), as applicable, unless the applicant obtains a reduction of such setbacks as permitted by this Chapter.
- (3) A reduction in the setback from a legal parcel line required by Section 20.537.050(A)(4):
  - (a) The approved reduced setback for cultivation not within a structure shall be no less than twenty (20) feet from an adjoining property under separate ownership or an access easement;

- (b) For cultivation within a structure, the setback shall be no less than the front, rear, or side yard setback (as applicable) setback for the zoning district in which the property is located;
  - (c) Any reduction of the setback must comply with the required setback from an occupied legal structure;
  - (d) The reduced setback may not encroach into any corridor preservation setback, pursuant to Sections 20.444.015 and 20.444.020;
  - (e) The granting of such reduction will not adversely affect the character, livability, or right to appropriate development of the adjacent property from which the setback reduction is requested; and will not interfere with rights of access or usage for any legal recorded easement; and
  - (f) The reduced setback maintains setbacks consistent with provisions of sections 20.537.050(A)(1), (A)(2), and (A)(3), as applicable, unless the applicant obtains a reduction of such setbacks as permitted by this Chapter.
- (B) Minimum Parcel Size Requirement. As specified in paragraph (D) of Section 20.537.040, exceptions to the minimum parcel size requirement for permit types 1, 1B, 2, 2B, and 4 may be granted as part of the required coastal development permit in the following situations and with the following requirements:
- (1) A parcel that is located in a zoning district that allows commercial cultivation and has a lot area between three and one-half (3.5) and five (5) acres shares at least fifty percent (50%) of its boundaries with parcels five (5) acres in size or larger, may apply for and be granted permit types 1 and 1-B.
  - (2) A parcel that is located in a zoning district that allows commercial cultivation and has a lot area between seven (7) and ten (10) acres, and that shares at least fifty percent (50%) of its boundaries with parcels ten (10) acres in size or larger, may apply for and be granted permit types 2, 2-B and 4.

#### **Sec. 20.537.090 –Permit Review Procedure.**

In accordance with the Coastal Development Permit and Coastal Development Use Permit application check procedures listed in Section 20.532.035 and the review procedures

listed in Chapter 20.536 and this Section, the Director or his designee in the case of Coastal Development Permits, or the Planning Commission in the case of Coastal Development Use Permits, may approve, conditionally approve or deny a Coastal Development Permit or Coastal Development Use Permit for a cannabis cultivation site subject to the findings contained in Section 20.532.095 and 20.532.100 and the following supplemental findings:

- (A) The cannabis cultivation site is allowed in the zoning district and it is in compliance with the provisions of Chapter 10A.17.
- (B) There is no other environmentally superior cultivation site located on the same parcel; the location and operation of the cannabis cultivation site will, to the maximum extent feasible, avoid or minimize its impact on environmentally sensitive areas including hillsides exceeding fifteen (15) percent, prime soil, oak woodland, timber resources and environmentally sensitive habitat areas as defined in Section 20.308.040(G).
- (C) The cannabis cultivation will avoid or minimize odor and light impact on residential uses.