

6

ORDINANCE NO. _____

ORDINANCE REPEALING CHAPTER 7.126 OF THE SANTA CRUZ COUNTY CODE AND ADOPTING NEW CHAPTER 7.126 PROHIBITING THE COMMERCIAL CULTIVATION OF CANNABIS

The Board of Supervisors of Santa Cruz County hereby finds and declares the following:

WHEREAS, in 1992 the voters of the County of Santa Cruz enacted Measure "A", adding Chapter 7.122 to the Santa Cruz County Code which declared support for making cannabis available for medical use; and

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5, and entitled "The Compassionate Use Act of 1996"); and

WHEREAS, (1) the intent of Proposition 215 was to enable persons who are in need of cannabis for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances; (2) the proposition further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of cannabis for non-medical purposes"; and (3) the ballot arguments supporting Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of cannabis to be grown anywhere"; and

WHEREAS, the Board of Supervisors added Chapter 7.124 to the Santa Cruz County Code which implemented provisions of Proposition 215 by establishing a medical cannabis identification card program operated by the County; and

WHEREAS, in 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code sections 11362.7 *et seq.*) to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who cultivate cannabis for medical purposes with a limited defense to certain specified State criminal statutes; and

WHEREAS, Health and Safety Code section 11362.83 expressly allows cities and counties to adopt and enforce ordinances that are consistent with Senate Bill 420; and

WHEREAS, following enactment of Senate Bill 420, Chapter 7.124 was amended to establish local guidelines consistent with the new State law for the possession and cultivation of medical cannabis used by qualified patients and caregivers; and

WHEREAS, (1) the Federal Controlled Substances Act, 21 U.S.C. §§ 801 *et seq.*, classifies cannabis as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision; (2) the Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense,

cannabis; and (3) the Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of cannabis for medical purposes; and

WHEREAS, (1) Proposition 215 and Senate Bill 420 primarily address criminal law issues, providing qualifying patients and primary caregivers with limited immunity from state criminal prosecution under certain identified statutes; and (2) Proposition 215, Senate Bill 420, the relevant provisions of the Santa Cruz County Code, and the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use adopted pursuant to Senate Bill 420 do not provide comprehensive civil regulation of premises used for cannabis cultivation; and

WHEREAS, (1) on May 6, 2013, the California Supreme Court unanimously ruled in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (“*Inland Empire*”), that California’s medical cannabis laws do not preempt local ordinances that ban medical cannabis facilities; and (2) the Court found that the local police power derived from Article XI, section 7, of the California Constitution includes broad authority to determine, for purposes of public health, safety, and welfare, the appropriate uses of land within a local jurisdiction’s borders, and that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of medical cannabis will not be permitted to operate within its borders”; and

WHEREAS, (1) the unregulated cultivation of cannabis in the unincorporated area of Santa Cruz County can adversely affect the health, safety, and well-being of the county and its residents; and (2) comprehensive civil regulation of premises used for cannabis cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, obnoxious smells, and indoor electrical fire hazards that may result from unregulated cannabis cultivation; and

WHEREAS, on December 10, 2013, the Board of Supervisors adopted an ordinance deleting then reenacting Chapter 7.124 of the Santa Cruz County Code, which prohibited medical cannabis businesses, but also granted a limited immunity from enforcement for such businesses that did not violate the restrictions and limitations added by that Chapter; and

WHEREAS, on February 25, 2014, the Board of Supervisors adopted an ordinance enacting Chapter 7.126 of the Santa Cruz County Code, which prohibited medical cannabis cultivation businesses, but also granted a limited immunity from enforcement for such businesses that did not violate the restrictions and limitations added by that Chapter; and

WHEREAS, after the enactment of Chapter 7.126, County staff documented a sharp rise in illegal cannabis cultivation sites that constitute a public nuisance by degrading the environment, improperly diverting natural resources, creating fire danger, and negatively impacting the quality of life for residents of Santa Cruz County; and

WHEREAS, (1) the limited right of qualified patients and their primary caregivers under state law to cultivate cannabis plants for medical purposes does not confer the right to create or

maintain a public nuisance; and (2) by adopting the regulations contained in this ordinance, Santa Cruz County will achieve a significant reduction in the aforementioned harms caused or threatened by the unregulated cultivation and dispensing of cannabis in the unincorporated area of the County; and

WHEREAS, (1) it is the purpose and intent of this ordinance to implement State law by providing a means for regulating the cultivation of medical cannabis in a manner that is consistent with State law and which balances the needs of medical patients and their caregivers and promotes the health, safety, and welfare of the residents and businesses within the unincorporated territory of Santa Cruz County; and (2) the intent and purpose of this ordinance is to establish reasonable regulations upon the manner in which cannabis may be cultivated, including restrictions on the location of cultivation activities and the amount of cannabis that may be cultivated in any location or premises, in order to protect the public health, safety, and welfare in Santa Cruz County; and

WHEREAS, (1) nothing in this ordinance shall be construed to allow the use of cannabis for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of cannabis that is otherwise illegal under State or federal law; and (2) no provision of the Chapter created by this ordinance shall be deemed a defense or immunity to any action brought against any person by the Santa Cruz County District Attorney, the Attorney General of the State of California, or the United States of America.

NOW THEREFORE the Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION I

The Santa Cruz County Code is hereby amended by deleting existing Chapter 7.126 in its entirety.

SECTION II

The Santa Cruz County Code is hereby amended by adding new Chapter 7.126 to read as follows:

**Chapter 7.126
Prohibition On The Cultivation Of Cannabis**

Sections:

- 7.126.010 Purpose.**
- 7.126.020 Definitions.**
- 7.126.030 Prohibited activities.**
- 7.126.040 No vested or nonconforming rights.**
- 7.126.050 Limited severability.**
- 7.126.060 Enforcement.**
- 7.126.070 No duty to enforce.**

7.126.010 Purpose.

The purpose of this Chapter is to prohibit the cultivation of cannabis by anyone other than qualified patients or their caregivers.

It is also the purpose of this Chapter to mitigate the negative impacts and secondary effects associated with ongoing cannabis cultivation activities including, but not limited to, demands placed on law enforcement and administrative resources; neighborhood disruption; robberies; burglaries; assaults; drug trafficking and other violent crimes; and the damage to the natural environment resulting from destructive cannabis cultivation activity.

This Chapter is not intended to conflict with Federal or State law. It is the intention of the County that this Chapter be interpreted to be compatible with Federal and State enactments and in furtherance of the public purposes that those enactments encompass.

7.126.020 Definitions.

As used in this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

(A) "Cannabis" shall be construed as the term "marijuana" is defined in California Health and Safety Code section 11018 and further shall specifically include any product that contains cannabis or a derivative of cannabis.

(B) "Cultivation" or "cultivate" means the planting, growing, developing, propagating, harvesting, drying, processing, or storage of, one or more cannabis plants or any part thereof in any location, indoor or outdoor.

(C) "Enforcing Officer" means any employee duly authorized to investigate violations of and enforce Chapter 19.01 of the County Code, or any peace officer.

(D) "Indoor" or "indoors" means any location that is contained within a fully enclosed and secured permanent structure that contains walls, a roof, and access to utilities, that is reasonably intended to prevent unauthorized access. Other structures of a temporary or moveable nature, including but not limited to moveable greenhouses, tents, and hoop houses, are not considered "indoor" or "indoors" for purposes of this definition.

(E) "Location" or "parcel" means that unit of land assigned a unique Assessor's Parcel Number by the County Assessor, whether vacant or occupied by a building, group of buildings, or accessory buildings, and includes the buildings, structures, yards, open spaces, lot width, and lot area. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall be counted as a single "location" or "parcel" for purposes of this Chapter.

(F) "Outdoor" or "Outdoors" means any location that is not "indoors" as defined in this Chapter.

(G) "Residence" means a fully enclosed structure or structures, including any attached or detached garage or ancillary structure, used as a primary dwelling unit.

(H) "Structure" means any secure building constructed or erected, supported directly or indirectly on the earth, the interior of which is protected from the elements and meant to be occupied by people or property. "Structure" does not include a greenhouse, tent, hoop house, vehicle, carport, or other structures of a temporary or moveable nature.

(I) "Vehicle" means a device by which any person or property may be propelled, moved, or drawn upon a street, sidewalk or waterway, including but not limited to a device moved exclusively by human power.

(J) When used in this section, the term "Qualified patient" means a person who possesses or cultivates cannabis for his or her own personal medical use upon the written or oral recommendation or approval of a physician, as set forth in California Health and Safety Code section 11362.5(d).

(K) When used in this section, the term "Primary caregiver" means the individual designated by a qualified patient who has consistently assumed responsibility for the housing, health, or safety of that qualified patient, as set forth in California Health and Safety Code section 11362.5(e).

7.126.030 Prohibited activities.

(A) It is unlawful and shall constitute a public nuisance for anyone other than a qualified patient or that qualified patient's designated primary caregiver to cultivate cannabis. A qualified patient, or his or her designated primary caregiver, may cultivate medical cannabis solely for the patient's personal use as long as the cultivator is in full compliance with the following provisions:

(1) Cultivation can only take place on a parcel that includes the residence of the patient or caregiver, and cultivation is limited to one resident per parcel.

(2) Other than those qualified patients subject to additional limits as set forth in Section 7.124.070(d) of the County Code, the amount of cannabis grown cannot exceed one hundred (100) square feet of planted area.

(3) If the parcel is located within that area defined by section 2.04.030 of the Santa Cruz County Code, outdoor cultivation of cannabis is prohibited.

(4) If cultivation takes place outdoors, evidence of cultivation shall not be visible from any public right-of-way.

11

(5) If cultivation takes place indoors: (i) lighting for cultivation purposes shall not exceed 1200 watts unless a written certification is first obtained from a licensed electrician that the cultivation site has all necessary electrical permits required by the California Building Codes to ensure that the growing operations can be carried out safely; and (ii) exterior evidence of cultivation (including odor emanating from the premises) is prohibited.

(B) The extraction of chemical compounds from cannabis by way of a solvent-based extraction method utilizing compressed flammable gases or alcohol is prohibited.

(C) A cultivation site granted an exemption by the Planning Director pursuant to Santa Cruz County Code section 13.10.670(g) as enacted by Ordinance No. 5090, is not subject to section 7.126.030(A), so long as the area subject to cultivation is not expanded or enlarged beyond what existed at that location on January 1, 2012.

7.126.040 No vested or nonconforming rights.

(A) This Chapter prohibits the cultivation of cannabis. Neither this Chapter, nor any other provision of this Code or action, failure to act, statement, representation, certificate, approval, or permit issued by the county or its departments, or their respective representatives, agents, employees, attorneys or assigns, shall create, confer, or convey any vested or nonconforming right or benefit regarding the cultivation of medical cannabis. Any immunity or benefit conferred by this Chapter shall expire permanently and in full upon repeal of this Chapter.

7.126.050 Limited severability.

(A) If any provision or clause of section 7.126.030 of this Chapter is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall invalidate every other provision, clause and application of the invalidated section, and to this end the provisions and clauses of section 7.126.030 of this Chapter are declared to be inseverable.

(B) Except for the inseverability of the provisions, clauses and applications of section 7.126.030 on the terms set forth hereinabove, if any other provision or clause of this Chapter is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect those provisions, clauses or applications of this Chapter which can be implemented without the invalid provision, clause or application, and to this end the provisions and clauses of this Chapter other than section 7.126.030 are declared to be severable.

7.126.060 Enforcement.

(A) This Chapter shall be considered a land use regulation for purposes of Section 19.01 of this Code. Enforcement of this Chapter may be pursued by one or more of those alternatives set forth in subsection (A) of County Code section 19.01.030. It shall be a separate offense for each and every day during any portion of which any violation of, or failure to comply with, any provision of this Chapter is committed, continued or permitted.

(B) Whenever the Enforcing Officer determines that a public nuisance as defined in this Chapter exists at any location within the unincorporated area of Santa Cruz County, he or she is

12

authorized to issue a Notice of Violation pursuant to County Code section 1.12.070, except that the violator shall be provided with notice of the opportunity to remedy the violation within three (3) calendar days without civil penalties.

(C) In the event a court of competent jurisdiction preliminarily or permanently enjoins, or holds to be unconstitutional or otherwise invalid, any enforcement remedy provided for in this Section, then the remainder of the enforcement remedies provided for by this Section shall remain in full force and effect.

7.126.070 No duty to enforce.

Nothing in this Chapter shall be construed as imposing on the Enforcing Officer or the County of Santa Cruz any duty to issue a notice of violation, nor to abate any unlawful cannabis business activity or cultivation, nor to take any other action with regard to any unlawful cannabis business activity or cultivation, and neither the Enforcing Officer nor the county shall be held liable for failure to issue an order to abate any unlawful cannabis business activity or cultivation, nor for failure to abate any unlawful cannabis business activity or cultivation, nor for failure to take any other action with regard to any unlawful cannabis business activity or cultivation.

SECTION III

This ordinance shall take effect on the 31st day after the date of final passage.

PASSED AND ADOPTED this ___ day of _____, 2015, by the Board of Supervisors of the County of Santa Cruz by the following vote:

AYES: SUPERVISORS
NOES: SUPERVISORS
ABSENT: SUPERVISORS
ABSTAIN: SUPERVISORS

Chairperson of the
Board of Supervisors

Attest: _____
Clerk of the Board

APPROVED AS TO FORM:

JM Heats 3/19/15
County Counsel

cc: County Administrative Office
Planning Director
Sheriff's Office