

ORDINANCE NO. _____

**AN ORDINANCE ESTABLISHING THE
CANNABIS BUSINESS LICENSING FEE**

THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, ORDAINS AS FOLLOWS:

SECTION 1: Findings

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, "The Compassionate Use Act," codified as Health and Safety Code Section 11362.5, which was intended to decriminalize cultivation and possession of medical marijuana under certain circumstances; and

WHEREAS, in 2004, the State of California enacted the "Medical Marijuana Program Act" (codified as Health and Safety Code Section 11362.7 *et seq.*) to expand and clarify the scope of The Compassionate Use Act of 1996 and the authority of counties to adopt and enforce local ordinances (Health and Safety Code Section 11362.83); and

WHEREAS, on October 9, 2015, the State of California enacted the Medical Marijuana Regulation and Safety Act (former Business & Professions Code Section 19300, *et seq.*; "MMRSA"). MMRSA created a state licensing program for commercial medical cannabis activities and allowed for local government regulation of medical cannabis activities; and

WHEREAS, on November 8, 2016, the voters of California adopted Proposition 64, the Adult-use of Marijuana Act (AUMA), which legalized the use of cannabis for adult-use and established a maximum cultivation allowance of six plants for personal use; and

WHEREAS, the AUMA allows for local control of adult-use cannabis land uses, and reasonable regulation of personal cultivation; and

WHEREAS, on June 27, 2017, the State of California enacted the Medicinal and Adult-Use of Cannabis Regulatory and Safety Act (Business & Professions Code Section 26000, *et seq.*; "MAUCRSA"), which combined MMRSA and AUMA into a single State licensing system for both medicinal and adult-use cannabis; and

WHEREAS, MAUCRSA allows counties and cities to maintain local regulatory authority over commercial cannabis activities and adopt business licensing requirement (Business and Professions Code Section 26200); and

WHEREAS, the Federal Controlled Substances Act, 21 U.S.C. Section 801 *et seq.*, classifies cannabis as a Schedule I Drug; as such, it is unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana; and

WHEREAS, the Santa Barbara County Board of Supervisors (Board) voted on February 6 and 27, 2018, to adopt a series of land use zoning and permitting amendments to the Land Use and Development Code, the Coastal Zoning Ordinance and the Montecito Land Use and Development Code that permits certain activities in specific zones, specifies necessary land use permits and establishes development standards, with regard to cannabis-related land uses and development; and

WHEREAS, the Board voted on May 1, 2018, to adopt an ordinance, Santa Barbara County Code § 50-1 *et seq.*, establishing a local Cannabis Business Licensing Program that requires annual business licenses for cannabis Cultivators, Nurseries, Manufacturers, Distributors, Testing, Retailers and Microbusinesses; and

WHEREAS, the County conducted a fee analysis of the time allocation of County staff and the full recoverable cost of those employees, which is attached to the May 8, 2018 Board Agenda Letter, to determine the reasonable cost of providing the services and regulatory activities for the County's Cannabis Business Licensing Program, a summary of which is included as Attachment A to this Ordinance; and

WHEREAS, the fee analysis determined that the estimated cost of the Cannabis Business Licensing Program would be as follows: \$4,000 for a Cannabis Business License Application, \$4,500 for a Cannabis Business License Renewal Application, and \$3,100 for a Cannabis Business License and Compliance; and

WHEREAS, the proposed fees are directly related to the cost reasonably necessary to provide each service in the County's Cannabis Business Licensing Program, but do not include any statutorily required fee or other departmental fees such as Live scan or fingerprinting fees; and

WHEREAS, pursuant to California Government Code Section 50076 and California Constitution Article XIII C, Section 1, subdivision (e)(1), (2) and (3), a fee for licensing services may be charged by the local government provided that it does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged; and

WHEREAS, pursuant to Business and Professions Code Section 16100 and Revenue and Taxation Code Section 7284, the County may license businesses within the County and may charge a fee for said licensing services after holding at least one open and public meeting at which testimony may be provided; and

WHEREAS, on May 8, 2018, the County held a public hearing on the proposed Cannabis Business Licensing Program fees as part of a regularly scheduled meeting of the Board; and

WHEREAS, the Board finds that the fees set forth in this Ordinance are exempt from CEQA review pursuant to 14 CCR §§ 15273 and 15378(b)(5) and Public Resources Code

Section 21080, subdivision (b)(8)(A) and (B), in that the fees will be used for operating expenses and for the purchase of supplies, equipment and materials; and

WHEREAS, the Board finds, in accordance with 14 CCR § 15273(a) and (c), that the fees will be used for the purposes of meeting operating expenses and for the purchase of supplies, equipment and materials; and

WHEREAS, the Board hereby sets the fees and establishes deposit rates for the Cannabis Business Licensing Program as determined to be reasonable by said fee analysis.

SECTION 2: Authority.

The fees set forth in this Ordinance are hereby adopted pursuant to California Business and Professions Code Section 16100 to recover the cost of administering the Cannabis Business Licensing Program established in Santa Barbara County Code Section 50-1 *et seq.*

SECTION 3: Fees.

A. The Board hereby adopts the following fees for the Cannabis Business Licensing Program:

1. **Fees.** A cannabis business license applicant or licensee shall pay all costs for the processing, issuing and continued compliance review of a cannabis business license in accordance with the County's Cannabis Business Licensing Program. Fees charged shall be the hourly rate for staff, as set forth in Attachment B, based on time spent conducting the review and compliance activities identified in Attachment A and as required by the County's cannabis business licensing ordinance.

The fees set forth in Attachment B shall be reviewed annually by the County Executive Office and may be adjusted pursuant to changes in the Consumer Price Index based on all urban consumers, Los Angeles-Riverside-Orange County area. Adjustments shall be rounded to the nearest dollar and become effective no earlier than June 1st each year and appropriate notice shall be provided to the public 30 days prior to the effective date of the adjustment.

2. **Deposits.** To apply for or obtain a cannabis business license an applicant must deposit the following minimum amounts with the County:
 - **Cannabis Business License Application.** Any person or entity applying for a Cannabis Business License shall deposit \$3,250 with the County for use for fee charges based on the hourly rate of staff conducting the application review activities identified in Attachment A and as required by the cannabis business licensing ordinance.

- **Cannabis Business License Renewal Application.** Any person or entity applying to renew a Cannabis Business License shall deposit \$3,600 with the County for use for fee charges based on the hourly rate of staff conducting the licensing and compliance activities identified in Attachment A and as required by the cannabis business licensing ordinance.
- **Cannabis Business License and Compliance.** Once a Cannabis Business License application has been reviewed and is recommended for approval, the proposed new or continuing licensee shall deposit \$2,500 with the County for use for fee charges based on the hourly rate of staff issuing the license and conducting compliance activities identified in Attachment A and as required by the cannabis business licensing ordinance.

If any deposit amounts exceed the actual cost of the application or licensing activity, then a refund will be issued. If any application is denied, suspended or abandoned, the County will not refund any fees incurred for processing and staff time already spent on the application. If any license is suspended or revoked, the County will not refund any fees incurred for staff time already spent on licensing activities. If the costs for compliance with the County's cannabis business licensing ordinance exceed the deposited amount, the applicant will be provided a supplemental invoice based on full-cost recovery hourly rate for the additional hours required to complete the application or licensing processing. Failure to pay any supplemental invoice will result in no further staff action on a license application and may result in the denial, suspension or revocation of a license pursuant to Santa Barbara County Code Section 50-17(k), Section 50-21 and Section 50-26.

- B. Said fees are to be charged to all persons applying for, holding and renewing a Cannabis Business License as required by Section 50-3 of the Santa Barbara County Code.

SECTION 4: Severability.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 5: Effective and Operative Date.

This Ordinance shall take effect and be in force 30 days from the date of its adoption by the Board of Supervisors and before the expiration of 15 days after its passage a summary of it shall be published once together with the names of the members of the

Board of Supervisors voting for and against the same in the *Santa Barbara News-Press*, a newspaper of general circulation published in the County of Santa Barbara.

SECTION 6: Cannabis Disclaimer and Warning.

Cannabis activities are highly regulated by both the state and federal governments, and their regulation of cannabis activities is subject to rapid changes. Even if the Board of Supervisors adopts this Ordinance, the Board of Supervisors retains all of its statutory authority concerning cannabis activities. For example, the Board of Supervisors still may take action(s) later to change the zoning and/or licensing of cannabis activities to being prohibited. In part because cannabis activities are highly regulated by both the state and federal governments and their regulation of cannabis activities is subject to rapid changes, the Board of Supervisors later may need to change the zoning and/or licensing of cannabis activities to being prohibited and may need to do so without cannabis activities receiving: 1) an amortization period; and/or 2) legal nonconforming use status.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this ___ day of _____ 2018 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

COUNTY OF SANTA BARBARA

By: _____
SUPERVISOR DAS WILLIAMS
CHAIR, BOARD OF SUPERVISORS

ATTEST: MONA MIYASATO, COUNTY EXECUTIVE OFFICER
CLERK OF THE BOARD

By: Deputy Clerk

APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL

APPROVED AS TO FORM:
THEODORE FALLATI, CPA
AUDITOR-CONTROLLER

By: _____
Deputy County Counsel

By: _____
Deputy

ATTACHMENT A: ACTIVITIES ASSOCIATED WITH FEES AND STAFF RATES

The fees set forth in this Ordinance shall be applicable to the corresponding services provided by Santa Barbara County, which include, but are not limited to:

Pre-Application and Application Review Process

- Check Application for completeness and acknowledgements
- Review Information on business operation plan; Review Change in Premises
- Review Land Use Entitlement
- Review State licenses of existing operations; Verifying State licenses of new operations; Align premise and ownership changes with State.
- Review Cultivation Plan, pesticide storage & use and cultivation waste program
- Review Quality Control Plan
- Review Energy Conservation Plan
- Review Site Security Plan & Criminal Background Checks; Review Change of Ownership
- Review Inventory Control Plan
- Conduct site visit
- Review recommendation from departmental reviews; Determine license issuance; Appeals

License Issuance and Compliance Management Processes

- License Issuance and tax compliance check
- Respond to complaints, including site visits
- Review compliance Operating Requirements, including site visits
- Review compliance & implementation of Cultivation, Quality Control, Energy Conservation, Security & Inventory Control plans, including site visits
- Compliance Investigation; Compliance Improvement planning; Suspension or Revocation processes, including site visits

Annual License Renewal and Compliance Management Processes

- Check Renewal application for completeness
- Review Information on business operation plan
- Review Land Use Entitlement
- Review State licenses of existing operations; Verifying State licenses of new operations, if needed; Align premise and ownership changes with State
- Renewed License Issuance and tax compliance check
- Respond to complaints, including site visits
- Review compliance Operating Requirements, including site visits
- Review compliance & implementation of Cultivation, Quality Control, Energy Conservation, Security & Inventory Control plans, including site visits
- Compliance inspection; Compliance Improvement planning; Suspension or Revocation processes, including site visits

ATTACHMENT B: STAFF HOURLY Rates

CEO	Enterprise Leader	\$	134.00
Sheriff	Sheriff Deputy- Special Duty	\$	112.00
Sheriff	AOP II	\$	56.00
Public Health	Environmental Health Specialist	\$	70.00
Ag/ Weights and Measures	Ag Bio/Weights & Measures Supervisor	\$	90.00
Ag/ Weights and Measures	Ag Bio/Weights & Measures Inspector	\$	72.00
Treasurer-Tax Collector	FOP Senior	\$	78.00