

ATTACHMENT 3: ARTICLE X ORDINANCE AMENDMENT

ORDINANCE NO. _____

AN ORDINANCE AMENDING ARTICLE X, MEDICAL MARIJUANA REGULATIONS, OF CHAPTER 35, ZONING, OF THE SANTA BARBARA COUNTY CODE, TO ADD A PROCESS TO DETERMINE THE LEGAL, NONCONFORMING STATUS OF MEDICAL MARIJUANA CULTIVATION LOCATIONS EXISTING AS OF JANUARY 19, 2016, AND TO PROVIDE FOR THE TERMINATION OF SUCH NONCONFORMING STATUS.

Case No. 17ORD-00000-00007

The Board of Supervisors of the County of Santa Barbara ordains as follows:

SECTION 1:

Article X, Medical Marijuana Regulations, of Chapter 35, Zoning, of the Santa Barbara County Code, is hereby amended to change the list of section numbers to add a new Section 35-1005 titled “Nonconforming Status Determinations” and to renumber existing Section 35-1005, Existing County Code Not Affected, as Section 35-1006, to read as follows:

Article X. - Medical Marijuana Regulations

- Section 35-1001 - Purpose and Authority.
- Section 35-1002 - Definitions.
- Section 35-1003 - Prohibited Acts and Exceptions.
- Section 35-1004 - Public Nuisance and Enforcement.
- Section 35-1005 - Nonconforming Status Determinations.
- Section 35-1006 - Existing County Code Not Affected.

SECTION 2:

Section 35-1002, Definitions, of Article X, Medical Marijuana Regulations, of Chapter 35, Zoning, of the Santa Barbara County Code, is hereby amended to add the following new definitions of “Applicant,” “Board, or Board of Supervisors,” “Coastal Zone,” “Department,” “Director,” “Owner,” “Planning Commission,” and “Review Authority” to read as follows:

Applicant. A person who files an application requesting a review authority action and:

1. Is the owner or lessee of property;
2. Has contracted to purchase property contingent upon that party's ability to acquire the necessary approvals required for that action in compliance with this Article, and presents written authorization from the property owner to file an application with the County; or
3. Presents written authorization from the property owner to file an application with the County.

Board, or Board of Supervisors. The Board of Supervisors of the County of Santa Barbara, State of California.

Coastal Zone. The land and water area within the County of Santa Barbara extending seaward to the State's outer limit of jurisdiction, including all offshore islands, and extending inland to the boundary shown on the official State Coastal Zone Maps, as amended from time to time.

Department. The Santa Barbara County Planning and Development Department.

Director. The Director of the Santa Barbara County Planning and Development Department, including the Director's designees.

Owner. The record owner or any person having possession and control of the property that is the subject of a nonconforming status determination.

Planning Commission. The Santa Barbara County Planning Commissions, including the Montecito Planning Commission.

Review Authority. The individual or official County body (Director, Planning Commission, or Board of Supervisors) identified in this Article as having the responsibility and authority to review, and approve or disapprove an application or determination, including an appeal of the action on an application or determination.

SECTION 3:

Section 35-1003, Prohibited Acts and Exemptions, of Article X, Medical Marijuana Regulations, of Chapter 35, Zoning, of the Santa Barbara County Code, is hereby amended to change Section A, Medical marijuana cultivation prohibited, to read as follows:

A. Medical marijuana cultivation prohibited. Except for the limited exemptions in subsections A.1 and A.2, below, medical marijuana cultivation is prohibited in all zones, districts, properties, and areas within the unincorporated areas of Santa Barbara County.

1. Medical marijuana cultivation for personal medical use exemption. A qualified patient or person with an identification card or that patient's or person's primary caregiver is allowed to engage in indoor or outdoor medical marijuana cultivation for personal medical use provided:

- a. The cultivation occurs on the lot that contains the lawful residential structure occupied by the qualified patient or person with an identification card; and
- b. The cultivation occurs on a single cultivation site that does not exceed one hundred square feet; and
- c. The cultivation conforms to all applicable zoning regulations and current California and county building codes; and
- d. The qualified patient or person with an identification card does not sell, distribute, donate, or provide marijuana to any other person or entity; and
- e. The primary caregiver does not sell, distribute, donate, or provide marijuana to any other person or entity for which they are not acting as the primary caregiver in accordance with the Medical Marijuana Regulation and Safety Act.

2. Legal nonconforming uses exemption and termination of legal, nonconforming uses.

a. Exemption. Medical marijuana cultivation locations which (1) are not subject to the exemption for personal use set forth in Subsection A.1 (Medical marijuana cultivation for personal medical use exemption), (2) were already existing on January 19, 2016, if they and (3) are legal under California state and local law; ~~these would become~~ are legal nonconforming uses.

(1) Minor modifications allowed. Notwithstanding the restrictions on nonconforming uses pursuant to the County Land Use and Development Code Section 35.101.020 (Nonconforming Uses of Land and Structures), the Montecito Land Use and Development Code Section 35.491.020 (Nonconforming Uses of Land and Structures), and Article II, the Coastal Zoning Ordinance Section 35-161 (Nonconforming Uses of Land, Buildings, and Structures), minor modifications to a nonconforming cultivation location may be allowed provided:

- (a) The modification is required in order to comply with State regulations, and
- (b) The modification does not result in an expansion or extension of the area of the medical

marijuana cultivation location beyond the area that existed on January 19, 2016.

b. Termination.

- (1) Legal nonconforming uses shall terminate six months after the operative date of the County ordinance regarding medical marijuana cultivation which is being studied by the Cannabis Land Use Ordinances and Licensing Program EIR (Project Case Nos.: 17ORD-00000-00009, -00010, and -00013) or one year from the effective date of this Ordinance Case No.: 17ORD-00000-00007 which adds this Section 35-1003.A.2.b (Termination), whichever is longer.
- (2) If the County medical marijuana ordinance referenced above allows for cultivation of medical marijuana but requires a zoning permit, legal nonconforming uses that have submitted a complete application to the Santa Barbara County Planning and Development Department to permit their legal, nonconforming cultivation site by the termination date listed above may continue to operate their same existing legal, nonconforming medical marijuana cultivation site while their permit application is being processed, as long as the cultivation location continues to comply with the requirements of Article X as revised, State law and the applicable provision of either the County Land Use and Development Code Section 35.101.020 (Nonconforming Uses of Land and Structures), the Montecito Land Use and Development Code Section 35.491.020 (Nonconforming Uses of Land and Structures), or Article II, the Coastal Zoning Ordinance Section 35-161 (Nonconforming Uses of Land, Buildings, and Structures). It is solely within the Department's discretion to determine if it has received a complete permit application.
- (3) If the permit application is denied, the applicant shall cease all marijuana cultivation operations until a permit is obtained.

SECTION 4:

Article X, Medical Marijuana Regulations, of Chapter 35, Zoning, of the Santa Barbara County Code, is hereby amended to add a new Section 35-1005 titled "Nonconforming Status Determinations" to read as follows, and to renumber existing Section 35-1005, Existing County Code Not Affected, as Section 35-1006:

Section 35-1005. - Nonconforming Status Determinations.

- A. Purpose.** The purpose of this Section is to provide a process to determine the nonconforming status of medical marijuana cultivation locations which (1) are not subject to the exemption for personal use set forth in Section 35-1003.A.1 of this Article, and (2) existing in the unincorporated areas of the County as of January 19, 2016. Providing this nonconforming status determination process will assist:
1. Cultivators in obtaining local authorization that can be presented to the State as part of the State license application,
 2. With the determination of those local operators who may comply with Business and Professions Code Section 26054.2(b), and
 3. The County in responding to the State regarding legal, nonconforming cultivation sites in accordance with Business and Professions Code Section 26055(g)(2).
- B. Applicability.** The provisions of this section shall apply to all medical marijuana cultivation locations which (1) are not subject to the exemption for personal use set forth in Section 35-1003.A.1 of this Article, (2) existing in the unincorporated areas of the County as of January 19, 2016, and (3) for which an applicant is seeking a determination that the medical marijuana cultivation operation is legal,

nonconforming, and thus exempt from Section 35-1003.A (Medical marijuana cultivation prohibited) in compliance with Section 35-1003.A.2 (Legal nonconforming uses exemption).

C. Application Preparation and Filing. This Subsection 35-1005.C (Application Preparation and Filing) provides procedures and requirements for the preparation, filing, and initial processing of permit applications for nonconforming status determinations. Government Code Section 65920 et seq. (Permit Streamlining Act), does not apply to applications for nonconforming status determinations.

1. Application contents. Each application for a Nonconforming Status Determination shall be filed with the Director on a Department application form, together with required fees and/or deposits, and all other information and materials as identified in the application. Submittal requirements may be increased or waived on an application specific basis as determined necessary or appropriate by the Director.

a. Eligibility for filing. Only applicants, as defined in Section 35-1002 of this Article, may file an application for a Nonconforming Status Determination.

b. Contents of application. The applicant must present substantial evidence in support of the finding required by Section 35-1005.E (Finding required for approval). Each application for a Nonconforming Status Determination shall include, at a minimum, evidence to support that the medical marijuana cultivation operation is in compliance with all of the following criteria:

(1) The medical marijuana cultivation location was existing on January 19, 2016 (Santa Barbara County Code, Chapter 35, Article X, Section 35-1003.A.2).

(2) The medical marijuana cultivation location is not located within a 600-foot radius of a school [Business and Professions Code Section 19332(a)(4); Health and Safety Code Section 11362.768(b)].

(a) The distance shall be the horizontal distance measured in a straight line from the property line of the school to the closest property line of the lot on which the medical marijuana cooperative, collective, dispensary, operator, establishment, or provider is to be located without regard to intervening structures [Health and Safety Code Section 11362.768(c)].

(b) For the purposes of this requirement, “school” means any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes. [Health and Safety Code Section 11362.768(h)]

(3) The medical marijuana cultivation location complies with local laws, including, but not limited to, zoning, building, grading, and water requirements, codes, and ordinances [Business and Professions Code Section 19322(a)(2); Health and Safety Code Section 11362.769 and 11362.777(b)(3)].

(4) The medical marijuana cultivation is not a for profit business/organization [Health and Safety Code Section 11362.765(a)].

(5) The owner/operator of the medical marijuana cultivation location has a caregiver relationship with qualified patients and/or their primary caregivers [Health and Safety Code Section 11362.5(d) and Health and Safety Code Section 11362.7(d)-(f)].

(6) The quantity of medical marijuana cultivated complies with the amounts specified in Health and Safety Code Section 11362.77(a) and (b), or is reasonably related to meet the medical needs of each qualified patient.

(7) The medical marijuana cultivator possesses, and conducts the medical marijuana cultivation in compliance with, a valid Seller’s Permit from the State Board of Equalization [Business and Professions Code Section 19332(a)(7); Revenue and

Taxation Code Section 6066 et seq.] In order to demonstrate compliance with the requirement, the applicant shall submit a copy of the Seller's Permit from the State Board of Equalization.

c. Defense and indemnification agreement.

- (1) At the time of the filing of an application, the applicant shall agree to defend, indemnify and hold harmless the County, as well as its agents, officers, and employees, from any claim, action, or proceeding against the County, as well as its agents, officers and employees, to attack, set aside, void, or annul, in whole or in part, an approval of the application by the County.
- (2) The applicant shall submit a completed defense and indemnification agreement, provided by the Department, at the time of filing the application with the Department.
- (3) The Department shall not accept an application for processing if the application does not include an executed defense and indemnification agreement that complies with the requirements of this subsection 35-1005.C.1.c.

2. Application fees. The applicant shall pay the required filing fee and/or deposits in compliance with the applicable Board Fee Ordinance in effect at the time of the filing of the application. The Department shall not commence with processing of the application until the fee/deposit is paid.

3. Initial application review.

a. Filing and acceptance of an application. An application is considered to be filed after the Department has accepted it for processing and the applicant has paid the required application fees and/or deposits. The Director shall review each application for receipt of all submittal requirements and accuracy prior to accepting the application. The Director's acceptance of an application for processing shall be based on the Department's list of required application contents. See Subsection C.1 (Application Contents), above.

b. Notification of applicant. Within 30 calendar days of either the initial application filing or subsequent filings after a determination of application incompleteness has been made, the Director shall inform the applicant, in writing, that (1) the application is complete and the Director has accepted it for processing, or (2) the application is incomplete and the applicant must provide additional information specified in the incomplete letter.

c. Appeal of determination of application incompleteness. After an initial determination of application incompleteness, where the Director has determined for a second or additional time that an application is incomplete, and the applicant believes that the application is complete and/or that the information requested by the Director is not required, the applicant may appeal the Director's determination in compliance with Subsection G (Appeals), below.

d. Time for submittal of additional information. When an application is incomplete, the time used by the applicant to submit the required additional information shall not be considered part of the time within which the determination of completeness or incompleteness shall occur.

4. Referral of application. At the discretion of the Director, or where otherwise required by this Article or State or Federal law, the Director may refer an application to any County department or public agency that may be affected by or have an interest in the application.

5. Right of entry/inspection. Every applicant seeking a Nonconforming Status Determination shall allow the Director access to any premises or property which is the subject of the application at all reasonable times.

D. Processing.

1. The Planning Commission with jurisdiction over the application for a Nonconforming Status Determination as determined in compliance with either Subsection D.1.a. or Subsection D.1.b. below, shall hold at least one noticed public hearing on the requested application for a Nonconforming Status Determination.
 - a. The County Planning Commission shall have jurisdiction over applications for Nonconforming Status Determination for property that is not located within the Montecito planning area as designated in the Montecito Community Plan.
 - b. The Montecito Planning Commission shall have jurisdiction over applications for Nonconforming Status Determination for property that is located within the Montecito planning area as designated in the Montecito Community Plan.
2. Notice of the hearing shall be given and the hearing shall be conducted in compliance with Subsection F (Noticing and Public Hearings), below.
3. The action of the Planning Commission is final subject to appeal in compliance with Subsection G (Appeals).

E. Finding required for approval. The Planning Commission shall determine that a medical marijuana cultivation location is legal, nonconforming if it finds that there is substantial evidence to demonstrate that the operation of the medical marijuana cultivation location (1) existed as of January 19, 2016, and (2) was in compliance with all applicable California State laws and County regulations, in compliance with County Code Section 35-1003.A.2.

F. Noticing and public hearings. The Department shall provide notice of the public hearing on the application for a Nonconforming Status Determination or appeal of a determination of application incompleteness in compliance with Government Code Sections 65090-65096. In addition, the Department and the applicant shall satisfy the following minimum requirements.

1. **Department noticing responsibilities.** The Department shall provide notice of the application for the Nonconforming Status Determination and the public hearing in compliance with the following:
 - a. **Newspaper publication.** The Department shall arrange to have the notice of public hearing published in at least one newspaper of general circulation within the County and circulated in the area that the determination may affect at least 10 days before the scheduled public hearing by the review authority.
 - b. **Mailed notice.**
 - (1) **Notice of filing of an application.** Within 15 calendar days following the Department's determination that an application is complete for processing in compliance with Subsection C.4 (Initial Application Review), the Department shall mail a notice regarding the filing of the application to:
 - (a) Any person who has filed a written request for notice and has supplied the Department with self-addressed stamped envelopes.
 - (b) The applicant.
 - (c) The owner of the subject lot, if different from the applicant.
 - (d) Owners of property located within a 1,000-foot radius of the exterior boundaries of the subject lot.
 - (e) All residents located within a 100-foot radius of the exterior boundaries of the subject lot if the lot is located within the Coastal Zone.
 - (f) The Coastal Commission if the lot is located within the Coastal Zone.

- (2) **Notice of public hearing.** At least 10 days before the scheduled hearing, the Department shall mail a notice of public hearing to all parties required to receive notice, in compliance with Subsection F.1.b.(1), above.
 - (3) **Optional notice authorized by the Director.** In areas of the County where mail delivery is unavailable, in lieu of providing mailed notice to persons specified in Subsections F.1.b.(1) (Notice of filing of an application), above, and F.1.b.(2) (Notice of public hearing), above, that only have street addresses on record, the Director may provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the County in compliance with the following.

 - (a) Notice of the filing of an application shall be published no later than 15 calendar days following the Department's determination that an application is complete.
 - (b) Notice of public hearing shall be published at least 10 days before the scheduled hearing.
 - (c) Mailed notice shall be sent to all relevant parties in compliance with this Subsection F.1.b (Mailed notice) where mail delivery is available to addresses appearing on the equalized County assessment roll.
 - (4) **Optional notice to more than 1,000 owners of property.** If the number of owners to whom notice would be mailed or delivered in compliance with this Subsection F (Noticing and public hearings) is greater than 1,000, the County may instead provide the notice required by Subsections F.1.b.(1) (Notice of filing of an application) and F.1.b.(2) (Notice of public hearing), above, by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the County at least 10 days before the scheduled hearing.
 - c. **Posted notice.** The Department shall conspicuously post notice at a minimum of one public place within the County's jurisdiction (e.g., at the Department).
 - d. **Contents of notice.** The notice shall include the following information:

 - (1) The date of filing of the application and the name of the applicant.
 - (2) The Department case number assigned to the application.
 - (3) The name of the Department staff person assigned to review the application and their postal mail address, electronic mail address, and telephone number.
 - (4) A description of the medicinal cannabis activities, a description of the location of the medicinal cannabis activities, and, if applicable, a statement that the location of the medicinal cannabis activities is within the Coastal Zone.
 - (5) The place, date, and general time of the hearing at which the review authority will consider the request for a nonconforming determination.
 - (6) A general description of the County procedures concerning the conduct of public hearings, including the submission of public comments either in writing or orally before the hearing or decision, and requirements regarding the procedure to appeal the decision.
 - e. The names and addresses used for mailed notice to property owners shall be those appearing on the equalized County assessment roll, as updated from time to time.
2. **Applicant's noticing responsibilities.** The applicant shall provide notice in compliance with the following:

a. Posted notice.

- (1) The applicant shall conspicuously post a notice at a minimum of one location on the subject lot with at least one notice posted in a location that can be viewed from the nearest public street. If the subject lot is a through lot, then the applicant shall conspicuously post a notice adjacent to each street frontage in a location that can be viewed from the street.
- (2) The Department shall provide the language and form of the notice. The notice shall be a minimum of 18 inches tall by 24 inches wide.
- (3) The applicant shall post the notice at least 10 days before the scheduled public hearing.
- (4) The applicant shall post the notice continuously from the date required by Subsection F.2.a.(3), above, until at least 10 days following the Planning Commission's action on the application, and, if the Planning Commission action is appealed to the Board, at least 10 days following the Board's action on the appeal.
- (5) The applicant shall provide proof of the posting of the required notice by filing an affidavit of noticing and any other required documentation with the Department no later than 10 days before the review authority's scheduled, initial public hearing. Failure of the applicant to comply with this Subsection F (Noticing and public hearings) may result in the review authority postponing the public hearing.

3. Failure to receive notice. The failure of any person or entity to receive notice given in compliance with this Section or in compliance with State law (Government Code Sections 65090-65096) shall not invalidate the Department's or the applicable review authority's actions.

4. Hearing procedure. A public hearing shall be held at the date, time, and place for which notice was given.

G. Appeals.

1. Who may appeal. Only an applicant or any aggrieved person may file an appeal. An aggrieved person is defined as any person who in person, or through a representative, appeared at a public hearing in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing or decision, informed the review authority of the nature of the person's concerns or who for good cause was unable to do either.

2. Filing of the appeal. An appeal, which shall be in writing, and accompanying fee shall be filed within the 10 calendar days following the date of the decision that is the subject of the appeal.

a. The time within which the appeal shall be filed shall commence on the day following the day on which the decision was made. In the event the last day for filing an appeal falls on a non-business day of the County, the appeal may be timely filed on the next business day.

b. An appeal of a second or subsequent Director's determination that an application is incomplete shall be filed with the Department. The appellant shall use the form provided by the Department in addition to any other supporting materials the appellant may wish to furnish in compliance with Subsection G.3 (Requirements for contents of an appeal), below, explaining the reasons for the appeal.

c. An appeal of a decision by the Planning Commission on an application for a Nonconforming Status Determination shall be filed with the Clerk of the Board. The appellant shall use the form provided by the Clerk of the Board in addition to any other supporting materials the appellant may wish to furnish in compliance with Subsection G.3 (Requirements for contents of an appeal), below, explaining the reasons for the appeal.

3. Requirements for contents of an appeal. The appellant shall provide in the appeal all of the

following:

- a. The identity of the appellant and the appellant's interest in the decision;
 - b. The decision that is being appealed which may include the conditions of that decision;
 - c. A clear, complete, and concise statement of the reasons why the decision is inconsistent with the provisions and purposes of this Article or other applicable law;
 - d. If any of the following are claimed, then the appellant shall state the specific grounds for making such claim(s):
 - (1) There was an error or abuse of discretion on the part of the Planning Commission, or other officer or authorized employee.
 - (2) There was a lack of a fair and impartial hearing.
 - (3) The decision is not supported by the evidence presented for consideration leading to the making of the decision that is being appealed.
 - (4) There is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.
- 4. Acceptance of appeal.** The Director shall not accept an appeal unless the appeal application is complete and complies with all requirements of Subsection G.3 (Requirements for contents of appeal), above. This Director's decision is final and not subject to appeal.
- 5. Appeal fees.** The appellant shall pay the required filing fee in compliance with the applicable Board Fee Ordinance at the time of filing of the appeal.
- 6. Review authority.**
- a. **Planning Commission.** The Planning Commission that has jurisdiction over the location of the medical marijuana cultivation that is the subject of the application for a Nonconforming Status Determination shall be the review authority for an appeal of a second or subsequent determination of application incompleteness by the Director.
 - b. **Board.** The Board shall be the review authority for an appeal of:
 - (1) A Planning Commission decision on an appeal of the Director's second or subsequent determination of application incompleteness.
 - (2) A Planning Commission decision on an application for a Nonconforming Status Determination.
- 7. Public hearing required.** The review authority shall consider all appeals in a noticed public hearing.
- a. The Director shall be responsible for scheduling the matter before the review authority.
 - b. The Director shall arrange to provide notice of the hearing, and review authority shall conduct the hearing, in compliance with Subsection F (Noticing and public hearing).
 - c. The Department shall transmit to the review authority copies of all relevant information including all maps and data before the hearing on an appeal. If the appeal is regarding a Planning Commission decision, then the Department shall transmit a statement identifying the reasons for the Planning Commission's decision to the Board.
 - d. The scope of the hearing on the appeal shall be de novo.
- 6. Action on appeal.**
- a. **Planning Commission.** The Planning Commission shall affirm, reverse, or modify the decision of the Director. The decision of the Planning Commission may be appealed to the

Board in compliance with this Subsection G (Appeals).

- b. Board. The Board shall affirm, reverse, or modify the decision of the Planning Commission. The decision of the Board shall be final.**

SECTION 5:

Except as amended by this Ordinance, Article X, Medical Marijuana Regulations, of Chapter 35, Zoning, of the Santa Barbara County Code, shall remain unchanged and shall continue in full force and effect.

SECTION 6:

This ordinance shall take effect and be in force 30 days from the date of its passage 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.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this 17th day of October, 2017, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

JOAN HARTMANN, CHAIR
BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA

ATTEST:

MONA MIYASATO, COUNTY EXECUTIVE OFFICER
CLERK OF THE BOARD

By _____
Deputy Clerk

APPROVED AS TO FORM:

MICHAEL C. GHIZZONI
COUNTY COUNSEL

By _____
Deputy County Counsel

