

SANTA CRUZ COUNTY
BOARD OF SUPERVISORS INDEX SHEET

Creation Date: 3/18/15

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Resolution(s):

Ordinance(s):

Contract(s):

Continue Date(s): [1] 4/14/15

- Index: -- Letter of the County Counsel, County Administrative Officer, Sheriff-Coroner, and Planning Department, dated March 19, 2015
- Draft ordinance repealing Chapter 7.126 of the Santa Cruz County Code and adopting new Chapter 7.126 prohibiting the commercial cultivation of cannabis
 - Draft ordinance repealing Chapter 7.126 of the Santa Cruz County Code and adopting new Chapter 7.126 regarding dispensary-related production of medical cannabis

- Item: 56. CONSIDERED Ordinance repealing Chapter 7.126 of the Santa Cruz County Code and adding new Chapter 7.126 relating to the cultivation of medical cannabis;
- APPROVED "in concept" Ordinance Repealing Chapter 7.126 of the Santa Cruz County Code and Adopting New Chapter 7.126 Prohibiting the Commercial Cultivation of Cannabis to return on April 14, 2015 for final adoption; and
- (2) Directed the Planning Department to schedule community informational workshops to educate the public on the new ordinance.

COUNTY OF SANTA CRUZ
STATE OF CALIFORNIA



AT THE BOARD OF SUPERVISORS MEETING

On the Date of March 24, 2015

REGULAR AGENDA Item No. 56

Upon the motion of Supervisor Friend, duly seconded by Supervisor McPherson, with Supervisor Leopold, and Supervisor Coonerty voting "no", the Board, approved "in concept" Ordinance Repealing Chapter 7.126 of the Santa Cruz County Code and Adopting New Chapter 7.126 Prohibiting the Commercial Cultivation of Cannabis to return for final adoption on April 14, 2015; and (2) Directed the Planning Department to schedule community informational workshops to educate the public on the new ordinance.

cc:

CAO

County Counsel

Sheriff-Coroner

Planning Department

State of California, County of Santa Cruz-ss.

I, Susan A. Mauriello, Ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz, State of California, do hereby certify that the foregoing is a true and correct copy of the order made and entered in the Minutes of said Board of Supervisors. In witness thereof I have hereunto set my hand and affixed the seal of said Board of Supervisors.

by _____, Deputy Clerk ON April 08, 2015



COUNTY OF SANTA CRUZ

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March 19, 2015

AGENDA: March 24, 2015

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, California 95060

**Re: Repeal Of County Code Chapter 7.126 And Adoption Of New Chapter 7.126
Regarding The Cultivation Of Medical Cannabis**

Dear Members of the Board:

On January 27, 2015, your Board directed County Counsel to work with the CAO's Office, the Planning Department, and the Sheriff's Office to create a new ordinance concerning the cultivation of medical cannabis, incorporating the suggestions outlined in the January 22, 2015 letter by the above departments. Your Board also directed us to work with the Farm Bureau regarding changes to the third party certification program language contained in the current ordinance. Since that date, County Counsel has consulted with a representative of the Farm Bureau and a local attorney representing cultivators, and County staff has spent many hours discussing and considering the issues.

We understand your Board's primary public policy goals in adopting a new cannabis cultivation ordinance are to: 1) protect the ability of all medical cannabis patients to obtain medical cannabis; and 2) protect the environment and residential quality of life in Santa Cruz County. The following fundamental challenges have complicated this process:

*The creation of rules contains an inherent assumption that people will follow them. Our experience has been to the contrary when it comes to cannabis cultivation. It appears that the number of illegal cannabis cultivation sites has grown dramatically despite the County's current efforts to regulate them. Staff was aware of roughly 84 illegal cultivation

sites in September 2014. Based on continual photographic review and interpretation and calls from the public, that number has ballooned to 139 today.

*Cultivators have continually expressed their opposition to having limits placed on the production of cannabis; at the same time, it is clear that growing operations have caused significant environmental damage and many citizens in residential areas do not want to live next to large cannabis farms.

A. Staff Recommends A Ban On All Cannabis Cultivation Other Than Personal Grows Associated With A Qualified Patient.

Santa Cruz County is the only County in this state with a commercial cannabis cultivation ordinance that immunizes conduct, and it is undisputed that the ordinance is not working. This County is now being publicized as allowing cultivation of cannabis in an amount greater than any other County allows. Moreover, misinformation about what is allowed is being spread by people who partially read the rules, or read them but do not understand them. This has resulted in an increase in illegal cultivation sites that has proven to be impossible to control. Land is currently being purchased by individuals intending to convert it to cultivation, and the number of new cultivation sites continues to grow. It is clear that the County is now being targeted as a very permissive place to undertake cultivation activities.

Prior to February 2014 (when your Board enacted the cannabis cultivation ordinance), the dispensaries in this County had no difficulty that we are aware of in providing sufficient medical cannabis to their patients. Cannabis was obviously being grown in the County, but it was being grown in great part by long-standing cultivators in areas where it did not impact the quality of life for neighbors, create community problems, or cause the widespread environmental damage we are seeing today. Where cultivation was problematic, the Sheriff was able to enforce State laws to control it. Together, County staff strongly believes it is most appropriate to return to the County's former practices in addressing cultivation.

Accordingly, attached hereto as Exhibit A is a new cultivation ordinance for your consideration that bans all cultivation other than 100 square foot personal grows (and the existing exception for one collective under Ordinance No. 5090). The 100 square foot personal grows allow patients or their caregivers to grow a very large amount of cannabis for their personal use (comparatively, other Counties allow much smaller personal grows). The personal grows would be regulated in a specific sense as set forth in the ordinance (for instance, outdoor growing is currently banned in the Second District, there would be certain safety restrictions related to indoor grows, etc.). Between the availability of personal grows, the 14 "immunized" dispensaries operating in the unincorporated area, the 2 dispensaries operating in the City of Santa Cruz, and the one facility operating in Watsonville, we believe that County residents will have the ability to obtain a sufficient amount of cannabis to meet their medical needs. In order to put an end to the serious and increasing problems the County is seeing as a result of the commercial cultivation of cannabis, County staff strongly recommends that your Board enact the ordinance attached as Exhibit A.

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B. Staff Is Also Presenting, But Not Recommending, An Alternative Cannabis Cultivation Ordinance For Your Consideration That Is Consistent With Your Board's Previous Instructions.

Attached hereto as Exhibit B is an alternative cannabis cultivation ordinance for your consideration. This version is being presented to you per your previous instructions, but without the recommendation of staff. Although Exhibit B does not reflect staff's best thinking on these issues, it represents the best ideas that staff could develop to implement your goals if your Board is committed to remaining with an ordinance that allows commercial cultivation.

1. The Basic Structure

Under the second ordinance, commercial cannabis cultivation would be limited to sites directly connected with one of the 14 immunized dispensaries that exist in the unincorporated area of Santa Cruz County. Each dispensary would be able to cultivate cannabis itself, or contract with up to three cultivation businesses who may cultivate cannabis for it, in an amount not to exceed 10,000 square feet total for each dispensary. Each dispensary would be limited to three cultivation sites. This would authorize roughly 140,000 square feet, or less than three acres, of cannabis cultivation in the County unassociated with personal grows. Under this approach, other than cultivation on the 42 authorized sites associated with dispensaries, the allowance for personal grows, and the exemption for one collective under Ordinance No. 5090, all other cannabis cultivation would be banned.

Your Board had earlier asked for language in the draft ordinance allowing for dispensaries to cultivate cannabis on site (i.e., at the dispensaries). However, in trying to draft suitable language, we came up against the fact that a number of the dispensaries are located in areas where they would not normally receive immunity for cultivation due to buffer restrictions and other concerns. In addition, given the location of the existing dispensaries, staff is concerned that the combination of cultivation and dispensary operations concentrated at one location will lead to impacts that are unacceptable to neighboring property owners, without an identified need to create them. Because of these concerns, this version of the ordinance contains a provision expressly prohibiting dispensaries from cultivating cannabis at any location where cannabis is dispensed.

In attempting to achieve your Board's policy objectives, the question of whether cannabis cultivation should be limited to particular zone districts or geographic areas was intensely evaluated by staff. Staff ultimately concluded that due to the County's unique land use regulations, traditional land usage patterns and population distribution, and the locations of current growing sites, restricting cannabis cultivation to certain general plan and zone districts is problematic. Moreover, restricting cultivation to certain zone districts would (without an exemption) indiscriminately ban established cultivation sites that are attempting to comply with the County's ordinance and are not causing problems or creating complaints. While the Board clearly articulated a goal of minimizing residential impacts, effectuating this shift on the ground would require relocation of the vast majority of current grow sites, including those operating without substantial adverse community impacts. Although it would certainly not please everyone, by limiting the number of immunized cultivation sites and the square footage, and providing additional buffers and other regulations to minimize the impact on County residents, we believe it would not be necessary or appropriate to limit production to specific areas within the County in order to accomplish your Board's goals, at this time.

Finally, this ordinance would contain a variety of additional provisions designed to firm up the connection between the dispensaries and their cultivators. For instance, dispensaries would be charged with annually disclosing to Enforcing Officers (and at any other time upon demand) the identity and location of their selected cultivators. Cultivators would be required to post on-site information identifying the dispensary for which they are growing. Dispensaries would lose their limited immunity unless they ensure that their selected cultivators are complying with all of the restrictions of the cultivation ordinance.

2. Third Party Certification

In February 2014, your Board adopted the original cannabis cultivation ordinance with language concerning third party certification of cannabis cultivation businesses. Since then, we have determined that virtually no one is following those rules, and it has led to questions concerning their import and effectiveness. The Farm Bureau reports that third-party certification is really a concept that is more useable as a voluntary measure for valuing products in a free-market economy than a method of government regulation, and it is unaware of any "mandated" third-party certification system. Traditionally, farmers obtain third-party certification as a way of demonstrating to their customer base that their product is organic, or contains certain verified ingredients, so that it will be more attractive to its customer base, and lead to more sales. Third-party certification is not traditionally used as a government-mandated safety program.

The Farm Bureau is not at this time recommending the idea of requiring a third-party certification program to be a part of the County ordinance and we believe it is not workable at present. Accordingly, we have deleted that language from the version of the draft ordinance that will be presented to you for discussion.

3. Consideration Of A Pilot Program

We understand that certain local cultivators may be proposing a pilot program under which they can also enjoy limited immunity from the larger cultivation ban if they meet certain requirements. Under such a program, these cultivators would not have to be connected with a local dispensary. While we understand this is something that your Board may want to consider, especially if the cultivation community takes a more active role in assisting with the creation of proposed rules, developing such a program would take significant time and it is unclear whether such a program is necessary to achieve, or is consistent with, the public policy goals that your Board has identified in this area, even if your Board remains committed to keeping a commercial cultivation ordinance.

The problems associated with the current cultivation ordinance are undisputed, and the outdoor growing season is right around the corner. As stated above, the 84 illegal sites identified in September 2014 has grown to 139 illegal sites at last count (and those are the sites we know about). If your Board chooses to retain a commercial cultivation ordinance despite staff's recommendation to the contrary, we suggest that you move quickly to get a revised ordinance in place based on the principles discussed above, and then take additional time over the next year or so to carefully consider an additional ordinance if requested to do so by the cultivation community.

4. Other Matters

Our experience tells us that citizens will have many questions about whatever ordinance your Board adopts and that it will be necessary to educate the public about the various restrictions. We suggest that the Planning Department schedule several community informational workshops at which the ordinance can be discussed, and citizens can get their questions answered efficiently in a structured forum.

Finally, the growing number of illegal cultivation sites has resulted in an increasingly greater need for enforcement, which is costly. We suggest that your Board consider raising the Cannabis Business Tax rate to account for these greater enforcement costs.

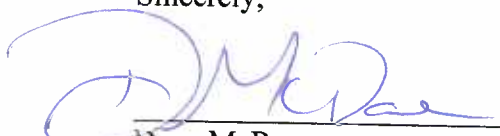
D. Conclusion

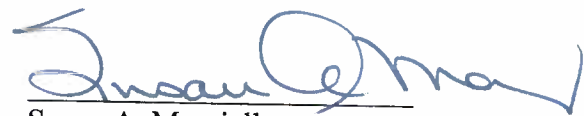
Although the original cultivation ordinance was enacted with the best of intentions, it has proven to be unworkable, and we believe that the best interests of the County overall would be served by banning cultivation unrelated to personal patient grows. Should your Board choose to retain a cultivation ordinance that immunizes commercial cultivation, we believe that the secondary option presented strikes a balance between the competing interests and implements the policy goals your Board has outlined.

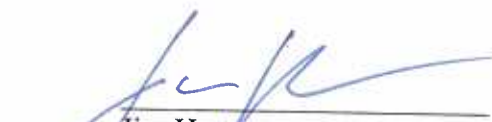
IT IS THEREFORE RECOMMENDED THAT YOUR BOARD:

1. Consider and enact the draft ordinance entitled "Ordinance Repealing Chapter 7.126 Of The Santa Cruz County Code And Adopting New Chapter 7.126 Prohibiting The Commercial Cultivation Of Cannabis;"
2. Direct the Planning Department to schedule community informational workshops to educate the public on the new ordinance; and
3. Direct the County Administrative Officer to return with a proposal to raise the Cannabis Business Tax rate in conjunction with budget hearings.

Sincerely,


 Dana McRae
 County Counsel


 Susan A. Mauriello
 Chief Administrative Officer


 Jim Hart
 Sheriff/Coroner


 Kathy Previsich
 Planning Director

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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.