

## Chapter 7.126 MEDICAL CANNABIS CULTIVATION

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### **7.126.010 Purpose.**

The purpose of this chapter is to prohibit medical cannabis cultivation while granting limited immunity from the enforcement of its prohibition to those medical cannabis cultivation activities that do not violate the restrictions and limitations set forth in this chapter.

It is also the purpose of this chapter to mitigate the negative impacts and secondary effects associated with ongoing medical cannabis cultivation activity including, but not limited to, demands placed on law enforcement and administrative resources; neighborhood disruption; the exposure of children to medical cannabis; robberies; burglaries; assaults; drug trafficking and other violent crimes; and the damage to the natural environment resulting from destructive 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. [Ord. 5176 § 1, 2014].

### **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) "Building" means any structure having a roof supported by columns or walls, for the housing, shelter or enclosure of persons, animals, chattels, or property of any kind.
- (B) "Cultivation" or "cultivate" means the planting, growing, harvesting, drying, processing or storage of one or more cannabis plants or any part thereof in any location, indoor or outdoor, including within a fully enclosed and secure building.
- (C) "Enforcing Officer" means the Planning Director or any other peace officer, public official or employee duly authorized to enforce against violations of the County Code.
- (D) "Fence" means a wall or barrier connected by boards, masonry, rails, panels or any other materials for the purpose of enclosing space or separating parcels of land. For purposes of this chapter, the term "fence" does not include tarpaulins, scrap material, bushes or hedgerows.

(E) "Garden canopy" means the net vegetative growth area measured by the combined diameters of individual cannabis plants.

(F) "Hazardous materials" means any substance that is "flammable, reactive, corrosive or toxic," as further defined in California Health and Safety Code Sections 25501 and 25503.5, as may be amended.

(G) "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, such contiguous legal parcels shall be counted as a single "location" or "parcel" for purposes of this chapter.

(H) "Manager" means any person to whom a medical cannabis business has delegated discretionary powers to organize, direct, carry on or control its operations. Authority to control one or more of the following functions shall be prima facie evidence that such a person is a manager of the business: (1) to hire, select, direct, schedule or assign employees or staff, including volunteers; (2) to acquire facilities, furniture, equipment or supplies other than the occasional replenishment of stock; (3) to disburse funds of the business other than for the receipt of regularly replaced items of stock; or (4) to make, or participate in making, policy decisions relative to operations of the business.

(I) "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.

(J) "Cannabis plant" means any mature or immature cannabis plant, or any cannabis seedling, unless otherwise specifically provided herein.

(K) "Medical cannabis cultivation business" means any location where cannabis is started, planted, cultivated, harvested, dried or processed. Medical cannabis cultivation business shall not include:

(1) A qualified medical cannabis patient or person holding a valid identification card, or their designated primary caregiver, cultivating medical cannabis solely for the patient's personal use on a parcel that includes the residence of the patient or caregiver. The amount of cannabis grown shall not exceed 100 square feet of total garden canopy, as measured by the combined vegetative growth area and shall be subject to the following limitations:

(a) If the parcel is located within that area defined by SCCC 2.04.030, outdoor cultivation of cannabis is prohibited. If the parcel is located outside of that area defined by SCCC 2.04.030, evidence of cultivation taking place outdoors shall not be visible from any public right-of-way; and

(b) If cultivation takes place within a residence or a structure other than a residence: (i) lighting for cultivation purposes shall not exceed 1,200 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; (ii) the use of flammable products such as butane or alcohol for

cultivation or processing purposes is prohibited; and (iii) exterior evidence of cultivation is prohibited.

(2) A cultivation site granted an exemption by the Planning Director pursuant to SCCC 13.10.670(G) as enacted by Ordinance No. 5090, so long as the area subject to cultivation is not expanded or enlarged beyond what existed at that location on January 1, 2012.

(L) "Outdoor" or "outdoors" means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.

(M) "Park" means any playground, hiking or riding trail, recreational area, beach, community center or building, historic structure or facility, owned, managed or controlled by any public entity.

(N) "Residence" means a fully enclosed structure, including any attached garage or ancillary structure, used as the primary dwelling unit of a "person with an identification card"; "primary caregiver"; or "qualified patient."

(O) "School" means any licensed preschool or 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.

(P) "Structure" means anything constructed or erected which is supported directly or indirectly on the earth, but not including any vehicle.

(Q) "Third-party standards and certification program" means a form of certification in which a medical cannabis cultivator's claim of conformity with growing and processing standards is validated by a technically competent body other than one controlled by the cultivator. A third-party standards and certification program shall include, at a minimum, the following elements:

- (1) Monitor compliance with State and local regulations including: (a) zoning, water quality, and building code requirements; (b) grading and riparian regulations; and (c) timber management practices;
- (2) Certify that the medical cannabis cultivation business either owns or has the consent of the owner(s) to carry out cultivation activities on the property;
- (3) Monitor the safety of products used in the cultivation process;
- (4) Certify that the cannabis produced does not contain unacceptable levels of contaminants;
- (5) Certify compliance with all labor laws and monitor worker safety practices;
- (6) Certify adequate security plan;
- (7) A conflict of interest element containing the following requirements:
  - (a) Not certifying a cannabis production or handling operation if the certifying agent or a responsibly connected party of such certifying agent has or has held a commercial interest in the production or handling operation, including an immediate family interest or the

provision of consulting services, within the 12-month period prior to the application for certification;

(b) Excluding any person, including contractors, with conflicts of interest from work, discussions, and decisions in all stages of the certification process and the monitoring of certified production or handling operations for all entities in which such person has or has held a commercial interest, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification;

(c) Not permitting any employee, inspector, contractor, or other personnel to accept payment, gifts, or favors of any kind, other than prescribed fees, from any business inspected; and

(d) Requiring all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and all parties responsibly connected to the certifying agent to complete an annual conflict of interest disclosure report.

(R) "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.

(S) The following words or phrases when used in this section shall be construed as defined in California Health and Safety Code Sections 1746, 11362.5, 11362.7, and 11834.02:

"Alcoholism or drug abuse recovery or treatment facility"; "hospice"; "identification card"; "person with an identification card"; "primary caregiver"; and "qualified patient." [Ord. 5176 § 1, 2014].

#### **7.126.030 Prohibited business activities.**

(A) It is unlawful and shall constitute a public nuisance for any medical cannabis cultivation business to cultivate cannabis.

(B) The prohibition in subsection (A) of this section includes renting, leasing, or otherwise permitting a medical cannabis cultivation business to occupy or use a location. [Ord. 5176 § 1, 2014].

#### **7.126.040 Limited immunity for medical cannabis cultivation business.**

Notwithstanding the activities prohibited by SCCC 7.126.030, and notwithstanding that a medical cannabis cultivation business is not and shall not become a permitted use or activity in the County for so long as this chapter remains in effect, a medical cannabis cultivation business shall not be subject to the enforcement remedies set forth in the Santa Cruz County Code solely on the basis of: (1) an activity prohibited by SCCC 7.126.030; and (2) the fact that medical cannabis cultivation business is not a permitted use or activity in the County; provided, however, that as authorized by California Health and Safety Code Section 11362.83, this limited immunity is available and may be asserted as an affirmative defense only so long as: (a) subsections (A) through (O) of this section remain in effect

in their entirety; and (b) only if that medical cannabis cultivation business does not violate any of the following:

(A) Every medical cannabis cultivation business is prohibited that is not collectively or cooperatively cultivating cannabis for medicine: (1) for use among its members or (2) to provide medicine to a Santa Cruz County medical cannabis business as defined in and operating under Chapter 7.124 SCCC;

(B) Every medical cannabis cultivation business is prohibited that does not operate in a manner that ensures the security of the crop and safeguards against diversion for nonmedical purposes;

(C) Every medical cannabis cultivation business is prohibited that employs or otherwise allows a person 21 years of age or younger unaccompanied by a parent or legal guardian to enter its premises;

(D) Every medical cannabis cultivation business is prohibited where cannabis is visible from any public right-of-way;

(E) Every medical cannabis cultivation business is prohibited that illuminates any portion of its premises between the hours of 6:00 p.m. and 9:00 a.m. by lighting that is visible from the exterior of the premises, except such lighting as is reasonably utilized for the security of the premises;

(F) Every medical cannabis cultivation business is prohibited unless it is outside of the urban area defined by both the Urban Services Line and Rural Services Line, located in a zone district designated as SU (Special Use), TP (Timber Production), CA (Commercial Agriculture), A (Agriculture), AP (Agriculture Preserve) or RA (Residential Agriculture) by the Santa Cruz County Zoning Ordinance;

(G) Every medical cannabis cultivation business is prohibited that prints, publishes, advertises or disseminates in any way or means of communication, or causes to be printed, published, advertised or disseminated in any way or means of communication, including, but not limited to, the use of the Internet, any notice or advertisement with respect to either seeking or offering the availability of space to cultivate cannabis, regardless of whether the space is within a structure or outdoors;

(H) Every medical cannabis cultivation business is prohibited that is located within: (1) 600 feet from a school; or (2) 600 feet from a park. The distance specified in this subsection shall be the horizontal distance measured in a straight line from the property line of the school or park to the closest property line of the lot on which the medical cannabis cultivation business is located without regard to intervening structures;

(I) Every medical cannabis cultivation business is prohibited that fails to maintain the following information and thereafter make said information immediately available upon the request of any law enforcement officer or enforcing officer: (1) the name of the person or business to which the cannabis is supplied; (2) the address of the location to which the cannabis is supplied; (3) written documentation from the owner of the property where the cannabis cultivation takes place that he or she has agreed to the use of the site for cultivation of specialty crops; and (4) if the cannabis is being cultivated indoors, a written certification from a licensed electrician that the cultivation location has all

necessary electrical permits required by the California Building Codes to ensure that the growing operations can be carried out safely;

(J) Every medical cannabis cultivation business is prohibited that allows the transfer or delivery of cannabis except to a Santa Cruz County medical cannabis business as defined in and operating under Chapter 7.124 SCCC. Except as otherwise provided by this subdivision, the distribution, delivery, dispensing, or sale of cannabis by a medical cannabis cultivation business is prohibited;

(K) Every medical cannabis cultivation business is prohibited if:

- (1) It is located on a parcel less than one acre in size;
- (2) It is located on a parcel zoned RA (Residential Agriculture) which is less than five acres in size;
- (3) It is located on any parcel within that area defined by SCCC 2.04.030 which is less than five acres in size;
- (4) The location contains more than 99 cannabis plants; or
- (5) If the total garden canopy for any parcel exceeds the following limits:
  - (a) For a parcel of one acre but less than five acres in size: 1,000 square feet of garden canopy with all cannabis plants set back at least 100 feet from any habitable structure located on an adjacent parcel;
  - (b) For a parcel greater than five acres but less than 10 acres in size: 2,000 square feet of garden canopy with all cannabis plants set back at least 200 feet from any habitable structure located on an adjacent parcel;
  - (c) For a parcel greater than 10 acres in size: 3,000 square feet of garden canopy with all cannabis plants set back at least 300 feet from any habitable structure located on an adjacent parcel;

(L) The cultivation of cannabis outdoors by a medical cannabis cultivation business is prohibited unless the area cultivated is fully enclosed by an opaque fence at least six feet in height. The fence must be adequately secured by a locked gate to prevent unauthorized entry. Evidence of cultivation shall not be visible from a public right-of-way;

(M) No person owning, leasing, occupying, or having charge or possession of any parcel within the County shall cause, allow, suffer, or permit such premises to be used for the outdoor or indoor cultivation of cannabis plants in violation of this chapter;

(N) The cultivation of cannabis shall be carried out in compliance with all requirements of SCCC Title 16, Environmental and Resource Protection, and those applicable provisions of SCCC Title 7, Health and Safety, relating to water used in the commercial cultivation of cannabis including, but not limited to, Chapter 7.69 SCCC, Water Conservation; Chapter 7.70 SCCC, Water Wells; Chapter 7.71 SCCC, Water Systems; and Chapter 7.73 SCCC, Individual Water Wells;

(O) A medical cannabis cultivation business shall only operate if it is subject to a third-party standards and certification program.

The limited immunity provided by this section shall not be available to and shall not be asserted as an affirmative defense to any violation of law except as expressly set forth in this chapter. Further, nothing contained in this limited immunity is intended to provide or shall be asserted as a defense to a claim for violation of law brought by any County, State, or Federal governmental authority. Finally, the limited immunity provided by this section shall be available and may be asserted only so long as each and every provision and clause of subsections (A) through (O) of this section remain valid, effective and operative. [Ord. 5176 § 1, 2014].

#### **7.126.050 No vested or nonconforming rights.**

(A) This chapter prohibits medical cannabis cultivation businesses. 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 any medical cannabis cultivation business. Any immunity or benefit conferred by this chapter shall expire permanently and in full upon repeal of this chapter.

(B) All existing medical cannabis cultivation businesses must immediately cease operation; except that any medical cannabis cultivation business that does not violate any of the medical cannabis cultivation business prohibitions described in SCCC 7.126.040, Limited immunity for medical cannabis cultivation business, may continue to operate but only so long as SCCC 7.126.040(A) through (O) remain valid, effective and operative. [Ord. 5176 § 1, 2014].

#### **7.126.060 Limited severability.**

(A) If any provision or clause of SCCC 7.126.040 and/or 7.126.070 are 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 SCCC 7.126.040 and 7.126.070 are declared to be inseverable.

(B) Except for the inseverability of the provisions, clauses and applications of SCCC 7.126.040 and/or 7.126.070 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 SCCC 7.126.040 and/or 7.126.070 are declared to be severable. [Ord. 5176 § 1, 2014].

#### **7.126.070 Enforcement.**

(A) Enforcement of this chapter may be pursued by one or more of those alternatives set forth in SCCC 19.01.030(A). 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 authorized to issue a notice of violation pursuant to SCCC 1.12.070, except that the violator shall be provided with notice of the opportunity to remedy the violation within seven 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. [Ord. 5176 § 1, 2014].

#### **7.126.080 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. [Ord. 5176 § 1, 2014].

#### **The Santa Cruz County Code is current through Ordinance 5205, passed June 23, 2015.**

The Santa Cruz County Codes are provided here as a public service. This online version of the County Code should not be relied upon for legal determination. Official Santa Cruz County Codes are on file in the Office of the Clerk of the Board. The County of Santa Cruz is not liable for any omissions or inaccuracies and is not liable for any reliance on these codes by the reader. It is recommended that you consult official Santa Cruz County Codes in the Office of the Clerk of the Board.

County Website: <http://www.co.santa-cruz.ca.us/> (<http://www.co.santa-cruz.ca.us/>)

County Telephone: (831) 454-2323

Code Publishing Company (<http://www.codepublishing.com/>)



# Growing Requirements

All persons growing medical marijuana on the property or participating directly or indirectly in the growing must be Butte County residents.

Persons engaging in growing of medical marijuana must have resided in Butte County for at least one year prior to growing medical marijuana in Butte County.

All members of a collective must be Butte County residents or immediate family members or primary caregivers of a Butte County resident.

## Property Ownership

Persons growing medical marijuana must either:

1. Own the premises where the growing is taking place, or
2. Have entered into a written lease with the actual owner of the premises.

If the person(s) growing and/or harvesting are not the legal owner(s) of the parcel(s), they shall obtain the written, notarized permission of the legal owner(s) consenting to the growing and/or harvesting.

## Penalties for Violation

Penalties for violating growing restrictions have increased.

Administrative Civil Penalties have been increased to \$500.00 a day for first violation and \$1,000.00 a day for each subsequent violation for each day that the violation exists.

## Property Requirements

Growing must be done on a legal parcel of property that includes an occupied residence.

Growing parcels must have a permitted permanent water well or connection to municipal water source.

No unlawful or unpermitted surface drawing of water and no illegal discharges of water from the premises.

Growing sites must have either municipal sewer systems or an inspected and permitted sewage disposal system.

## Reporting Violations

Any person can report a violation of this ordinance. Anonymous reports will be accepted.

Visit [www.buttecounty.net/stayinthebox](http://www.buttecounty.net/stayinthebox) or call 530.538.6000 to report a violation.

## Growing is not allowed in some places.

- Within 1,000 feet of a youth-oriented facility, a school, a park, or any church or residential treatment facility
- Within 600 feet of a school bus stop
- Within 50 or 100 feet (depending on parcel size) of an occupied residential structure on a separate parcel
- From any location where the plants are visible from the public right of way or publicly traveled private roads
- In commercial, industrial or special use zones