ORDINANCE NO.

ORDINANCE AMENDING CHAPTER 6.36 - CANNABIS FACILITIES BUSINESSES AND CHAPTER 10A.17 - MENDOCINO CANNABIS CULTIVATION ORDINANCE

The Board of Supervisors of the County of Mendocino, State of California, ordains as follows:

Section 1: Section 6.36.060 of the Mendocino County Code is hereby amended to read as follows:

Sec. 6.36.060 - Application Procedure.

(A) The Office of the Tax Collector shall refer the application to the Department of Planning and Building Services, the Division of Environmental Health, and other departments or divisions as necessary, to verify that the application is in compliance with County Code provisions and that the applicant has valid County license(s), permit(s), and/or other approvals, as required, prior to issuing any County Cannabis Facility Business License. The Office of the Tax Collector shall charge the applicant all fees required under the Master Fee Schedule for these referrals.

(1) All County Cannabis Facility Business Licenses are provisional until a valid State of California license, as required under MAUCRSA, is verified.

(a) A copy of the State license issued pursuant to MAUCRSA must be filed with the Tax Collector within fifteen (15) days of issuance.

(2) If a cannabis facility is denied a state license under MAUCRSA, the provisional County Cannabis Facility Business License will become invalid.

(B) Applicants and every individual engaged in the management of, or employed by, the applicant shall be subject to a criminal history check, which shall include a Live Scan criminal history inquiry. The reasonable costs of a Live Scan criminal history inquiry pursuant to this section shall be the responsibility of the applicant and every individual engaged in the management of, or employed by, the applicant. Live Scan criminal history inquiries completed at a certified and approved Live Scan location shall be transmitted to the Sheriff or District Attorney for review. An application shall be denied if any of the following is determined to be true:

(1) The applicant or any individual engaged in the management of, or employed by, the applicant has been convicted of any crime listed in subdivision (b)(4) of California Business and Professions Code section 26057, or any crime that if committed in the State of California would have constituted any of the crimes listed in subdivision (b)(4) of California Business and Professions Code section 26057. A conviction within the meaning of this section

means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

(2) The applicant or any individual engaged in the management of, or employed by, the applicant has one or more felony convictions, occurring prior to January 1, 2018, for violations of California Health and Safety Code section 11358 that involved pled and proven environmental violations, including but not limited to violations of California Fish and Game Code sections 1602, 5650 and 5652.

(3) The applicant or any individual engaged in the management of, or employed by, the applicant has been convicted of a felony offense, occurring after January 1, 2018, under California Health and Safety Code section 11358, 11359, or 11360, as amended by Proposition 64 § 8.4, effective November 9, 2016, or any crime that if committed in the State of California would have constituted a felony offense under California Health and Safety Code section 11358, 11359, or 11360, as amended by Proposition 64 § 8.4, effective November 9, 2016.

(4) The applicant or any individual engaged in the management of, or employed by, the applicant has a conviction under section 11366 of the California Health and Safety Code.

(5) The applicant or any individual engaged in the management of, or employed by, the applicant has a conviction under section 11366.5(b) of the California Health and Safety Code or any felony conviction under section 11366.5(a) of the California Health and Safety Code involving chemical extraction, chemical synthesis or a controlled substance other than marijuana.

(6) The applicant or any individual engaged in the management of, or employed by, the applicant has a conviction under section 11379.6 of the California Health and Safety Code.

(7) The applicant or any individual engaged in the management of, or employed by, the applicant is subject to a condition of probation, mandatory supervision, Post Release Community Supervision, parole or any other lawful order which prohibits the possession or cultivation of cannabis.

Section 2: Section 10A.17.020 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.020 - Definitions.

As used herein the following definitions shall apply:

"A-license" means a state license issued under the State of California Medicinal and Adult-Use Cannabis Regulatory Safety Act (MAUCRSA), or subsequent legislation, for cannabis or cannabis products that are intended for adults twenty-one (21) years of age and over and who do not possess physician's recommendations.

"A-licensee" means any person holding a license under the MAUCRSA, or subsequent legislation, for cannabis or cannabis products that are intended for adults twenty-one (21) years of age and over and who do not possess physician's recommendations.

"Agricultural Commissioner" or "Agricultural Commissioner's Office" or the "Department of Agriculture" means the Mendocino County Department of Agriculture or the authorized representatives thereof, or such other department, division or representative as designated by the Board of Supervisors.

"Attorney General's Guidelines" means the document titled "Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use issued by the California State Attorney General in August 2008.

"Baseline date" means August 26, 2016, which is the date the Initial Study under the California Environmental Quality Act for the MCCR was initiated.

"Cannabis" means all parts of the plant Cannabis sativa, Cannabis indica, or Cannabis ruderalis, or any other strain or varietal of the genus Cannabis that may hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds thereof. "Cannabis" also means marijuana as defined by Section 11018 of the State of California Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. For the purpose of this section, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the State of California Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

"Cannabis product" has the same meaning as in Health and Safety Code section 11018.1.

"Clone" means a portion of a stem that is cut from a parent plant and induced to form roots by chemical, mechanical, or environmental manipulation.

"Cultivation cycle" means each individual cycle where cannabis plants are grown to maturity from seeds, clones or nursery starts.

"Cultivation of cannabis" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming or processing of cannabis.

"Cultivation site" means one (1) or more locations or facilities on one (1) legal parcel (or one (1) or more legal parcels if specifically allowed for by this Chapter 10A.17) subject to a single approved Permit for the cultivation of cannabis where cannabis is planted, grown, harvested, dried, cured, graded,

trimmed, or processed, or that does all or any combination of those activities. One (1) or more areas of cannabis cultivation may exist on the legal parcel used for that purpose.

"Disturbance" means areas of land where natural plant growth has been removed whether by physical, animal, or chemical means, or natural grade has been modified for any purpose. Land disturbance includes all activities whatsoever associated with developing or modifying land for cannabis cultivation related activities or access. Land disturbance activities include, but are not limited to, construction of roads, buildings, or water storage areas; excavation; grading; and site clearing. Disturbed land includes cultivation areas and storage areas where soil or soil amendments (e.g., potting soil, compost, or biosolids) are located. Areas where plant material has been removed for the purpose of wildfire suppression are not considered disturbed.

"Dwelling unit" means a legal residential structure providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation, and having only one (1) kitchen.

"Expansion" means an increase in the size of Plant Canopy above the area cultivated as of the Baseline Date.

"Flowering" means that a cannabis plant has formed a mass of pistils measuring greater than one half (½) inch wide at its widest point.

"Greenhouse" means a completely enclosed structure whose structural members are made of pre- formed, rigid construction materials. The walls, roof, and ends are typically covered using a transparent material, often glass, that is fixed in place, and which allows solar radiation to penetrate the surface and affect the growing environment of the plants inside.

"Hoop House" means a structure with structural members are made of flexible and somewhat rigid construction materials, typically PVC pipe or similar material. The ends may be covered or left open and the material covering the structural members is readily removable and is typically removed and re-affixed frequently.

"Identification card" shall have the same definition as California Health and Safety Code section 11362.5 et seq., and as may be amended.

"Immature plant" or "immature" means a cannabis plant which has a first true leaf measuring greater than one half inch long from base to tip (if started from seed) or a mass of roots measuring greater than one half inch wide at its widest point (if vegetatively propagated), but which is not flowering.

“Indoor cultivation” or "indoors" means within a fully enclosed and secure structure that complies with the California Building Code, as adopted by the County of Mendocino, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must

be secure against unauthorized entry, accessible only through one (1) or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as two (2) inches by four (4) inches or thicker studs overlain with three-eighths (3/8) inches or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

"Legal parcel" or "Parcel" means a lot of real property which was created pursuant to the Subdivision Map Act or for which an application for subdivision was on file with the Department of Planning and Building Services prior to January 1, 2016, or for which a certificate of compliance was recognized and recorded prior to January 1, 2016; provided, however, for real property within Industrial zoning districts, subdivisions or certificates of compliance may be recognized and recorded after January 1, 2016.

"License" means a state license issued under the MAUCRSA, or subsequent legislation, and includes both an A-license and an M-license.

"Licensee" means a person issued a state license under the MAUCRSA, or subsequent legislation, to engage in commercial cannabis activity, regardless of whether the license held is an A-license or an M-license.

"M-license" means a state license issued under the MAUCRSA, or subsequent legislation, for commercial cannabis activity involving medicinal cannabis.

"M-licensee" means any person holding a license under the MAUCRSA, or subsequent legislation, for commercial cannabis activity involving medicinal cannabis.

"Mature plant" or “mature” means a cannabis plant that is flowering.

“Mixed light cultivation” or "mixed light" means the use of both natural and artificial or supplemental lighting sources during the growing cycle to cultivate cannabis. Included in this definition is the process of solely manipulating natural light to cultivate cannabis.

“Nursery” means all activities associated with producing clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of cannabis.

“Outdoor cultivation” or "outdoors" means any cultivation site that uses no artificial or supplemental lighting to cultivate cannabis. Use of supplemental lighting to maintain vegetative starts or immature plants prior to transplanting outdoors shall be considered consistent with this definition.

"Park" means an area of land used for community recreation owned or operated by a public entity or a private area of land recognized as a neighborhood park utilized by youth. State or Federal designated parks and forestlands as recognized within the Mendocino County General Plan are not included within this definition.

"Permit" means a permit to cultivate cannabis in Mendocino County pursuant to this Chapter.

"Permittee" means a Person issued a permit to cultivate cannabis in Mendocino County pursuant this Chapter.

"Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.

"Person with an identification card" means an individual who is a qualified patient who has applied for and obtained a valid identification card pursuant to Article 2.5 of Chapter 6 of Division 10 of the California Health and Safety Code (Section 11362.7 et seq.).

"Plant canopy" or "square footage" or "total square footage of plant canopy" or "cultivation area" means the cumulative total of square footage occupied by growing cannabis plants as calculated by the Agricultural Commissioner's Office but does not include aisles or other open areas outside the canopy area of growing cannabis plants.

"Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, as defined in Health and Safety Code section 11362.7(d).

"Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling, for purposes of this Chapter.

“Process,” "processing," and “processes” means all activities associated with the drying, curing, grading, trimming, rolling, storing, packaging, and labeling of nonmanufactured cannabis products.

"Publically traveled private road" means a private roadway easement or access easement which serves, or has the potential to serve, more than four (4) lots or parcels. Such easement shall be considered a street as defined in Mendocino County Code section 20.008.052(26).

"Qualified patient" or "Patient" means a person who is entitled to the protections of section 11362.5 of the Health and Safety Code, but who does not have an identification card issued pursuant to Article 2.5 of Chapter 6 of Division 10 of the Health and Safety Code (Section 11362.7 et seq.).

"School" means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code, or any licensed child day care or preschool facility. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education,

but it does not include a vocational or professional institution of higher education, including a community or junior college, college or university.

"Sheriff" or "Sheriff's Office" means the Sheriff's Office of the County of Mendocino or the authorized representatives thereof.

"Track and Trace" means a monitoring system providing traceability throughout the production and distribution lifecycle of permitted cannabis utilizing a unique identifier pursuant to section 11362.777 of the Health and Safety Code to assist government with enforcing regulations and preventing the illegal diversion of cannabis.

"Unique identifier" or "Unique ID" means individual, non-repeating identification issued to a permittee and attached to the base of each cannabis plant permitted at a cultivation site during the cultivation period or otherwise utilized in connection with an approved Track and Trace system.

"Youth-oriented facility" means an elementary school, middle school, high school, public park, or any establishment that advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors. Youth-oriented facility shall include "day care center," as defined in Section 1596.76 of the California Health and Safety Code, as that section may be modified or superseded, and shall include "youth center" as defined in Section 11353.1 of the Health and Safety Code, as that section may be modified or superseded.

Section 3: Section 10A.17.040 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.040 - General Limitations on Cultivation of Cannabis.

The following limitations shall apply to all cultivation of cannabis in Mendocino County, including but not limited to cultivation pursuant to a Permit issued under this Chapter or an exemption provided for in Section 10A.17.030. Cultivation of cannabis shall also be subject to all applicable restrictions of Mendocino County Code Chapter 20.242.

(A) The cultivation of cannabis in Mendocino County, in any amount or quantity by any entity, shall not be allowed in the following areas:

(1) Within one thousand (1,000) feet of a youth-oriented facility, a school, or a park as defined herein that is in existence at the time a Permit is initially applied for.

(2) Outdoors or using mixed light within one hundred (100) feet of any occupied legal residential structure located on a separate legal parcel; provided, however, that on January 1, 2020, this setback shall be increased to two hundred (200) feet for all Permit applications but shall not

apply to renewals of Permits originally issued before that date.

(3) Outdoors or using mixed light in a mobile home park as defined in Health and Safety Code Section 18214.1 within one hundred (100) feet of an occupied mobile home that is under separate ownership.

(4) In any location where the cannabis plants are visible from the public right of way or publicly traveled private roads.

(5) Outdoors or using mixed light within fifty (50) feet from any adjoining legal parcel under separate ownership or access easement (whichever is most restrictive); provided, however, that on January 1, 2020, this setback shall be increased to one hundred (100) feet for all Permit applications but shall not apply to renewals of Permits originally issued before that date.

(6) Any indoor cultivation sites that comply with paragraph (A)(1) shall also be subject to the following:

(a) Indoor cultivation sites shall comply with the building property line setback established by the zoning district in which the cultivation site is located.

(b) The cultivation of cannabis within an accessory structure shall be allowed subject to the development requirements of the zoning district in which it is located and to requirements of Chapter 20.164 — Accessory Use Regulations except, notwithstanding Section 20.164.010: (a) the cultivation of cannabis in an accessory structure is not permitted prior to the construction of the legal dwelling unit on the parcel, if a legal dwelling unit is required by this Chapter, and (b) cultivation of cannabis shall only be allowed on the same parcel as the dwelling unit, if required.

(c) Indoor cultivation sites for individuals desiring to cultivate cannabis for adult use pursuant to section 10A.17.030(C) shall also be subject to the following limitation: cultivation sites located within a private residence that is a rental unit, as that term is defined by County Code section 20.008.050, shall not be located in any indoor space other than a garage or accessory structure.

(B) The distance between the listed uses in the above paragraph (A)(1) and cannabis that is being cultivated shall be measured in a

straight line from the nearest point of the fence required in section 10A.17.040(H), or if the cannabis is cultivated indoors, from the nearest exterior wall of the building in which the cannabis is cultivated to the nearest point of the exterior wall of the facility, building, or structure, or portion of the facility, building, or structure in which the above-listed use occurs or to the nearest point of any fenced, maintained or improved area where the users of the facility are typically present during normal hours of operation, whichever is closest. The distance in paragraphs (A)(2) and (A)(3) to any residential structure shall be measured from the fence required in section 10A.17.040(H) to the nearest exterior wall of the residential structure. The distance in paragraph (A)(5) shall be measured from the fence required in section 10A.17.040(H) to the boundary line of a legal parcel or access easement.

Applicants may seek a reduction in the setback described in paragraphs (A)(1) and (A)(5) upon issuance of an administrative permit pursuant to Chapter 20.242. See also sections 20.242.060(D) and 20.118.040 (D), (E) and (F) for further exceptions to setback regulations.

(C) The outdoor, indoor or mixed light cultivation of cannabis shall not propagate objectionable odors which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that endanger the comfort, repose, health, or safety of any of those persons or the public.

(D) The indoor or mixed-light cultivation of cannabis shall rely on the electrical grid or some form of alternative energy source. The indoor or mixed-light cultivation cannabis shall not rely on a generator as a primary source of power.

(E) All lights used for the indoor or mixed light cultivation of cannabis shall be fully contained within structures or otherwise shielded to fully contain any light or glare involved in the cultivation process. Security lighting shall be motion activated and all outdoor lighting shall be shielded and downcast or otherwise positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the legal parcel upon which they are placed.

(F) All activities associated with the cultivation of cannabis shall not exceed the noise level standards as set forth in the County General Plan Policies DE100, 101 and 103.

(G) All cultivation of cannabis shall not utilize water that has been or is illegally diverted from any spring, wetland, stream, creek, or river. The activities associated with the cultivation of cannabis shall not create erosion or result in contaminated runoff into any stream, creek, river or body of water.

(H) All cannabis grown in Mendocino County (excluding indoor

growing) must be within a secure fence of at least six (6) feet in height that fully encloses the garden area. The fence must include a lockable gate that is locked at all times when a qualified patient, caregiver or permittee (or their agent) is not in the immediate area. Said fence shall not violate any other ordinance, code section or provision of law regarding height and location restrictions and shall not be constructed or covered with plastic or cloth except shade cloth may be used on the inside of the fence.

(I) All buildings where cannabis is cultivated or stored shall be properly secured to prevent unauthorized entry.

(J) Persons cultivating cannabis pursuant to either section 10A.17.030, paragraphs (B) or (C) shall also comply with the provisions of section 10A.17.110, paragraphs (N) and (O).

(K) Prohibition on Tree Removal. Removal of any commercial tree species as defined by Title 14 California Code of Regulations section 895.1, Commercial Species for the Coast Forest District and Northern Forest District, and the removal of any true oak species (Quercus sp.) or Tan Oak (Notholithocarpus sp.) for the purpose of developing a cannabis cultivation site is prohibited. This prohibition shall not include the pruning of any such trees for maintenance, or the removal of such trees if necessary to address safety or disease concerns.

Section 4: Section 10A.17.050 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.050 – Reserved.

Section 5: Section 10A.17.060 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.060 - Permit Types.

The cultivation Permits that may be applied for under this Chapter are for the production of flowering cannabis plants and for nursery and seed production, as defined in section 10A.17.020. A Permittee producing flowering cannabis plants may maintain an area scaled appropriately for their operation where they may propagate their own immature plants (starts) through cloning, seed germination or tissue culture. Starts produced in this manner shall be for the exclusive and personal use of the permittee only and the sale, trade, barter, etc. of such starts is prohibited. The square footage of cultivation area dedicated to propagation of starts shall not be included in measuring the cumulative total square footage allowed under a given Permit and must not constitute any new disturbance, as defined by this chapter.

The following cannabis cultivation Permit types may be applied for and granted provided the applicant and the legal parcel (or legal parcels, subject to section 10A.17.070(D)(3)) that contains the cultivation site are determined to be in

compliance with all applicable conditions of this Chapter and Mendocino County Code Chapter 20.242; all Permit types shall be applied for stating whether the applicant will be applying for an A-License or an M-License, or a stated combination thereof.

(1) "Type C" for small outdoor cultivation using no artificial lighting not to exceed a maximum of two thousand five hundred (2,500) square feet of total plant canopy.

(2) "Type C-A" for small indoor cultivation using exclusively artificial lighting not to exceed a maximum two thousand five hundred (2,500) square feet of total plant canopy within a structure or structures.

(3) "Type C-B" for small mixed light cultivation (using a combination of natural and supplemental artificial lighting) not to exceed a maximum of two thousand five hundred (2,500) square feet of total plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle.

(4) "Type 1" for medium outdoor cultivation using no artificial lighting of two thousand five hundred one (2,501) to a maximum of five thousand (5,000) square feet of total plant canopy on one legal parcel not less than five (5) acres in size.

(5) "Type 1A" for medium indoor cultivation using exclusively artificial lighting of two thousand five hundred one (2,501) to a maximum of five thousand (5,000) square feet of total plant canopy within a structure or structures.

(6) "Type 1B" for medium mixed light cultivation (using a combination of natural and supplemental artificial lighting) of two thousand five hundred one (2,501) to a maximum of five thousand (5,000) square feet of total plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle, on one (1) legal parcel not less than five (5) acres in size.

(7) "Type 2" for large outdoor cultivation using no artificial lighting of five thousand one (5,001) to a maximum of 10,000 square feet of total plant canopy on one legal parcel not less than ten (10) acres in size.

(8) "Type 2A" for large indoor cultivation using exclusively artificial lighting of five thousand one (5,001) to ten thousand (10,000) square feet of total plant canopy on one legal parcel.

(9) "Type 2B" for mixed light cultivation (using a combination of natural and supplemental artificial lighting) of five thousand one (5,001) to a maximum of ten thousand (10,000) square feet of total plant canopy, all or a portion of which may be within a structure or structures during a cultivation cycle, on one (1) legal parcel not less than ten (10) acres in size.

(10) "Type 4" for the cultivation of cannabis nursery stock and/or seed production which shall not exceed a maximum of twenty-two thousand

(22,000) square feet of total plant canopy on one (1) legal parcel. Seed production activities, if any, shall be described in the application for a Type 4 Permit. The legal parcel shall not be less than ten (10) acres in size, provided, however, that legal parcels in industrial zoning districts are not subject to this parcel size restriction. Any on-site sales of nursery products which were produced on and occur on a parcel within the Timberland Production, Rangeland or Forestland zoning districts shall be limited to permitted cultivators only.

Section 6: Section 10A.17.070 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.070 - Requirements for All Permits.

Unless specifically exempted, in addition to compliance with all other requirements of this Chapter, all Permits shall comply with the following requirements:

(A) Zoning Districts. Cultivation of cannabis shall only be permitted on legal parcels that comply with the applicable zoning districts and parcel sizes as provided in Chapter 20.242.

(B) Indoor Cultivation Permits. The use or conversion of habitable space (i.e., kitchen, bedrooms, bathrooms, living room or hallways) in any structure shall not be allowed for the indoor cultivation of cannabis.

(C) Cultivation of cannabis is not permitted within any required parking space.

(D) Permit Density. A Person may apply for and obtain a maximum of two (2) Permits listed in section 10A.17.060 at any given time. Permits shall be granted at a maximum density of one (1) Permit per legal parcel; provided, however, that

(1) A Person may obtain two (2) separate Permits of different Permit types on a single legal parcel if the total square footage of the two (2) Permits does not exceed the largest maximum square footage permitted on a parcel for the relevant zoning district. A Person who applies for and obtains a Type 4 Permit in combination with any other Permit, shall not exceed a total square footage of twenty-two thousand (22,000) square feet per legal parcel, of which not more than ten thousand (10,000) square feet may be grown to maturity and entered into the Track and Trace system for commercial use. Plants may be grown to maturity by a Type 4 Permit holder for seed production or genetic expression, where the mature flowers are destroyed, and not used for commercial purposes, shall not require a separate cultivation permit.

(2) A Person may apply for one (1) Permit of a single size (e.g. Type C, Type 1 or Type 2) that may include any combination of all three (3) cultivation types (e.g. indoor, outdoor, mixed-light), but if any cultivation would require the issuance of a permit pursuant to

Chapter 20.242, the entire Permit shall be subject to review under Chapter 20.242.

(3) A Person may obtain one (1) Permit for multiple legal parcels, so long as the parcels are contiguous and under the same ownership. Should the Person sell any of the parcels subject to the Permit, subsequent permits shall be required to modify the cultivation site to adhere to required setbacks.

(E) Dwelling Unit Requirement. Legal parcels with a cultivation site are also required to have a dwelling unit; provided, however, that this requirement shall not apply to legal parcels within the following zoning districts: Upland Residential (U-R), Agricultural (A-G), Rangeland (R-L), Forest Land (F-L), Timberland Production (TPZ), Limited Industrial (I-1), General Industrial (I-2) Pinoleville Industrial (P-I). In addition, legal conforming parcels in Rural Residential, lot size ten (10) acres (R-R:L-10), shall also be exempt from the dwelling unit requirement of this paragraph, upon issuance of an administrative permit pursuant to Chapter 20.242.

(F) Generators. The indoor or mixed-light cultivation of cannabis shall not rely on a generator as a primary source of power. If no grid power source is available and there is not an alternative power source supporting both any required legal dwelling unit and the indoor or mixed-light permit operations, a generator may be used only under the following conditions: (1) the permittee shall install an alternative power source that will meet at least one-half (½) of the combined power requirements by the expiration of twelve (12) months from the date of initial application for a permit pursuant to this Chapter and (2) it will be a condition of the re-issuance of a permit that the cultivator commit, in writing, to expand their alternative power source to fully meet the combined needs of the cultivation operations and any required legal dwelling unit by the end of the second permitted year. See also section 10A.17.090 regarding application requirements related to generators.

(G) Permittees shall be required to enroll in and comply with all requirements of any Track and Trace system as designated by the County to track the production and distribution of cannabis. Permittees shall obtain and use unique identifiers from an approved source, maintain them in a readable state, comply with all data entry requirements, and pay all required Track and Trace fees. Non-compliance with Track and Trace requirements shall constitute a violation of the terms of the Permit.

(H) Fees: An application fee shall be paid at the time an application is submitted to the Agricultural Commissioner for initial review. A Permit fee shall be paid prior to issuance of any Permit. Once a Permit is issued, the Permittee may renew the Permit upon submission of a renewal application and payment of a renewal fee. No Permit shall issue without payment of the required fees.

(1) Fees prescribed by this Chapter shall be set by the Mendocino County Board of Supervisors in accordance with all applicable

laws and regulations and the County's Master Fee Policy. Any fee prescribed by this Chapter shall be paid to the County Treasurer/Tax Collector and is non-refundable. A receipt for payment of the required fee shall be provided to the Agricultural Commissioner prior to the initial review and issuance or annual renewal of any application, permit or other program described herein where a fee has been established, including for required inspections.

(I) Inspections by Agricultural Commissioner. All applicants shall be subject to and shall facilitate an initial on-site pre-permit inspection and all Permittees shall be subject to and facilitate at least one (1) annual on-site compliance inspection (Type 4 Permits shall be subject to two (2) on-site compliance inspections annually), which shall serve as the inspection required to be performed prior to any renewal of the Permit, with additional inspections as required by this Chapter or as deemed necessary by the Agricultural Commissioner. All inspections will be scheduled with at least twenty-four (24) hours advance notice to the applicant or Permittee, and shall be conducted during regular business hours. Cancellation of scheduled inspections without notice to the Agricultural Commissioner shall result in the Permittee being invoiced for the actual travel time and mileage incurred by the Agricultural Commissioner.

(1) All site inspections conducted prior to issuance of a Permit for any indoor or mixed-light cultivation Permit may include a representative from the Department of Planning and Building Services.

(J) Intentionally Omitted.

(K) Non-Transferability of Permits. All Permits are non-transferable to another person, except that the Permittee may transfer the Permit to a spouse/domestic partner, child, parent, or, for estate planning purposes, to a trust in which the permittee serves as a trustee, provided the trust existed on or before January 1, 2016, which transfer shall not be deemed a change in ownership for purposes of this Chapter.

Section 7: Section 10A.17.080 is amended as follows:

Sec. 10A.17.080 - Permit Phases and Requirements Specific to each Phase.

Unless specifically exempted, in addition to compliance with all other requirements of this Chapter, all Permits shall comply with the following requirements:

(A) Permits under the MCCO will be issued in the following three phases:

(1) Phase One: Following the effective date of the MCCO, Permits will only be issued to applicants who provide to the Agricultural Commissioner pursuant to paragraph (B)(1) of this section proof of cultivation at a cultivation site prior to January 1, 2016 ("proof of prior cultivation"), and who comply with all other applicable conditions of this Chapter and Chapter 20.242. Applications for Permits during Phase One shall only be accepted until December 31, 2018, and from Monday, April 1, 2019, until Friday, October 4, 2019. Applicants able to provide proof of prior cultivation may apply for a Permit on a relocation site pursuant to paragraph (B)(3) of this section.

(2) Phase Two: Starting January 1, 2018, the Agricultural Commissioner will begin accepting applications for Type 1A and Type 2A Permits for indoor cultivation in the following zoning districts, subject to compliance with all other applicable conditions of this Chapter and Chapter 20.242: Limited Industrial (I-1), General Industrial (I-2), and Pinoleville Industrial (P-I). Proof of cultivation prior to January 1, 2016, is not required.

(3) Phase Three: Starting January 1, 2020, the Agricultural Commissioner will begin accepting Permit applications from any applicant in conformance with the conditions of this Chapter and Chapter 20.242. Proof of cultivation prior to January 1, 2016, is not required.

(B) Requirements specific to Phase One Permits.

(1) Proof of Prior Cultivation. Persons applying for a Permit during Phase One shall be required to provide to the Agricultural Commissioner evidence that they were cultivating cannabis on the cultivation site prior to January 1, 2016, which cultivation site shall have been, or could have been, in compliance with the setback requirements of paragraph (A) of section 10A.17.040. Evidence shall include:

(a) Photographs of any cultivation activities that existed on the legal parcel prior to January 1, 2016, including: (i) ground level views of the cultivation activities and (ii) aerial views from Google Earth, Bing Maps, Terraserver, or a comparable service showing: both the entire legal parcel and the cultivation site in more detail. The date these images were captured shall be noted.

(b) Photographs of any cultivation activities that currently exist on the legal parcel, including: (i) ground level views of the cultivation activities and (ii) aerial views from Google Earth, Bing Maps, Terraserver, or a comparable service showing: both the entire legal parcel and the cultivation site in more detail. The date these images were captured shall be noted.

(c) At least one (1) additional document demonstrating cultivation on the legal parcel prior to January 1, 2016, which evidence may be used to substitute for evidence pursuant to clause (a). The Agricultural Commissioner shall prepare a list of the types of documentation that will be accepted to meet this requirement, and may accept other similarly reliable documentary evidence showing that cannabis was cultivated prior to January 1, 2016.

(d) Proof of prior cultivation shall be assigned to the applicant relative to their prior cultivation site.

(e) Persons who participated in a permit program pursuant to the County's Chapter 9.31 in previous years may present evidence of such participation and payment of all required fees in order to provide proof of prior cultivation.

(2) Zoning Districts; Exceptions. Existing cultivation sites not located in zoning districts where Chapter 20.242 specifically allows cultivation may be issued a Type C, Type C-A, or Type C-B Permit, subject to the following requirements, in addition to all other applicable requirements of this Chapter:

(a) The zoning district is one where a dwelling unit is a principally permitted use and a dwelling unit is present.

(b) Sunset Provision for Residential Districts. Cultivation sites on legal parcels located in the Single-Family Residential (R-1), Two-Family Residential (R-2), Multiple-Family Residential (R-3), Suburban Residential (S-R), Rural Community (R-C), and Rural Residential (lot sizes one (1) acre, two (2) acres and five (5) acres [legal non-

conforming parcels to minimum zoning size][R-R:L-1, R-R:L-2, and R-R:L-5 {legal non-conforming to minimum zoning size}]), as well as cultivation sites in any other zoning district where a dwelling unit is a principally permitted use and the legal parcel is less than two (2) acres in size, are subject to the following requirements:

(i) There is an occupied dwelling unit on the legal parcel with the cultivation site.

(ii) A Permit may be renewed and valid only until three (3) years following the effective date of the ordinance adopting this Chapter and any permits issued shall be void not later than three (3) years following said effective date.

The provisions of this subsection, however, shall not apply in areas designated as “CA” Cannabis Accommodation Combining District, nor shall they apply to parcels zoned Rural Residential (lot size five (5) acres [R-R:L-5]) that are between 3.5 and 4.99 acres and have been issued an administrative permit pursuant to section 20.242.070(C).

(c) Cultivation sites on legal parcels located in the Rural Residential zoning district, lot size five (5) acres (conforming parcels of five acres or more only)(R-R:L-5), are subject to the following additional requirement that there is an occupied dwelling unit on the legal parcel with the cultivation site.

(d) If a Permit is granted pursuant to this paragraph (B)(2) in these zoning districts, any future revocation or lapse in renewal of such Permit shall extinguish the ability of any person to obtain a Permit for such cultivation site.

(3) Relocation. Persons able to show proof of prior cultivation pursuant to paragraph (B)(1) above may apply for a Permit not on the site previously cultivated (the "origin site") but on a different legal parcel (the "destination site"), subject to the following requirements:

(a) Persons may apply to relocate their cultivation site pursuant to this paragraph (B)(3) until three (3) years after the effective date of the ordinance adopting this Chapter, or until May 4, 2020.

(b) The location and operation of the proposed cultivation site on the destination parcel complies with all requirements and development standards that apply to a new cultivation site as of January 1, 2020, pursuant to this Chapter and Chapter 20.242; provided, however:

(i) An existing cultivation site shall not be transferred to a legal parcel located within the Forestland or Timber Production Zone zoning districts.

(ii) An origin site may relocate to a destination site in the Rangeland zoning district, so long as the destination site has an existing cultivation site and no new cultivation sites would be established.

(c) The origin site shall be restored. The application for a Permit on a destination site shall be accompanied by a restoration plan that is consistent with the standard conditions and best management practices listed in the North Coast Regional Water Quality Control Board Order No. 2015-0023, and which shall include the following:

(i) Remove or repurpose buildings, greenhouses, fences, irrigation equipment, water intakes, pumps, storage tanks and other materials brought to the origin site for the purpose of cannabis cultivation;

(ii) Remove illegal dams, ponds or other in-stream water storage to restore natural stream flows, unless such features will continue in use;

(iii) Remove or compost agricultural wastes;

(iv) Remove trash and other debris; and

(v) Revegetate cleared areas with native plants typical of nearby natural areas, including groundcover, shrubs and trees.

(d) Unless the destination site is within the Agricultural zoning district, the application shall include either a water availability analysis pursuant to paragraph (C)(1)(b) below or a will serve letter pursuant to paragraph (C)(1)(c) below.

(e) Prior to the issuance of the Permit to cultivate cannabis at the destination parcel, the applicant shall provide the Agricultural Commissioner with an agreement, on a form approved by the Agricultural Commissioner and County Counsel, providing that the applicant releases any right to continue or resume cultivation of cannabis on the origin parcel.

(f) If a person is granted a Permit for a destination site, any claims of proof of prior cultivation on the origin site shall be effectively transferred to the destination site, and the ability to claim proof of prior cultivation at the origin site shall be extinguished.

(g) There shall be a two (2) acre minimum parcel size for all Type C, Type C-A or Type C-B Permits.

(4) Multiple Permits may be applied for and granted on a single legal parcel that is owned by multiple persons. Each owner may individually apply for a Permit to cultivate cannabis, provided that each owner must provide proof of prior cultivation pursuant to paragraph (B)(1) above. Each owner shall be limited to a Type C, Type C-A or Type C-B Permit, unless that owner was previously enrolled in a permit program pursuant to the County's Chapter 9.31, or unless the cumulative total square footage of plant canopy applied for by all owners does not exceed the maximum square footage permitted on a parcel for the relevant zoning district.

(5) Persons eligible to apply for a Permit during Phase One may apply for a different and/or larger Permit type in subsequent years, subject to all requirements of this Chapter.

(6) If a Permit is granted pursuant to this paragraph (B), any future revocation or lapse in renewal of such Permit shall extinguish the ability of any person to obtain a Permit for such cultivation site, unless otherwise allowed by this Chapter 10A.17; provided, however, that not more than once in a five-year period, a Permittee may file with the Department of Agriculture, on a form prescribed by the Department, a Notice of Non-Cultivation instead of an application to renew the Permit, and the Permittee's ability to obtain a Permit for such cultivation site will not be extinguished.

(C) Requirements specific to Phase Three Permits.

(1) Watershed Assessment. All Permit applications, except for legal parcels located in the Agricultural (A-G) zoning district, shall demonstrate there is adequate water to serve the cultivation site.

(a) If surface water (or groundwater influenced by surface water) will be used, applicants may demonstrate that there is adequate water by providing (i) a watershed assessment that establishes there is sufficient watershed supply to serve the proposed cultivation site and existing uses within the watershed, and (ii) a water right exists to serve the cultivation site. A watershed assessment shall consist of an established "In Stream Flow Policy" as prepared by the State Water Resources Control Board Division of Water Rights or an equivalent document approved by that agency.

(b) If groundwater not influenced by surface water will be used, the applicant may demonstrate that there is adequate water by providing a water availability analysis which will address the adequacy of the proposed water supply, the direct effects on adjacent and surrounding water users, and possible cumulative adverse impacts of the development on the water supply within the watershed and show there is a sustained yield to support the proposed level of use.

(c) If water will be provided by a mutual water company, municipal or private utility or similar community provider, the applicant may demonstrate that there is adequate water by providing a will serve letter from the proposed provider.

Section 8: Section 10A.17.090 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.090 - Cultivation Permit Application and Zoning Review.

Any person or entity that wishes to engage in the cultivation of cannabis shall submit an application for a Permit to the Agricultural Commissioner's Office. Applications for Permits shall be made upon such forms and accompanied by such plans and documents as may be prescribed by the Agricultural

Commissioner's Office. The application shall be reviewed by the Agricultural Commissioner's office and other agencies as described herein and renewed annually. Any referral to or consultation with an agency other than the County of Mendocino shall state that a response must be returned within thirty (30) days of the date of the referral.

Following the submission of an application for a Phase One Permit, an applicant may file with the Agricultural Commissioner's Office, on a form prescribed by the Agricultural Commissioner's Office, a Notice of Application Stay for the purpose of preventing the denial of an application for a Phase One Permit based on inactivity by the applicant for up to a one-year period. An applicant may only file a Notice of Application Stay one time. Nothing in this paragraph is intended to prevent the County or the applicant the ability to continue processing or perfecting the application. During the time period of this Application Stay, the applicant shall be prohibited from cultivating cannabis in excess of the limitations of paragraph (B) or (C) of section 10A.17.030 and shall allow the County to make and shall pay the reasonable costs for an inspection of the applicant's cultivation site (and origin site if the application involves a relocation) to confirm compliance with this paragraph; violation of this prohibition shall be a violation of County Code, subject to administrative penalties, and shall be cause for immediate denial of the permit application. Any denial of an application may be followed by nuisance abatement procedures. During the time period of the Application Stay, the applicant shall remain subject to all code enforcement provisions as identified in section 10A.17.100.

The Agricultural Commissioner's Office shall refer each application to the Department of Planning and Building Services for a determination pursuant to Chapter 20.242 as to what type of clearance or permit is required. No application for a Permit shall be approved without clearance or final permit approval as required by Chapter 20.242.

The Agricultural Commissioner's Office shall consult with the Mendocino County Air Quality Management District (MCAQMD) prior to the issuance of the Permit to determine if a permit or other approval by the MCAQMD is necessary. The applicant shall obtain all approvals and permits required by the MCAQMD pursuant to state and federal laws, MCAQMD regulations, adopted air quality plans, MCAQMD policies and other applicable statutes prior to the issuance of a Permit. The required consultation with MCAQMD may be eliminated if MCAQMD authorizes County to determine when a permit or other approval by the District is necessary based on an objective set of criteria developed by MCAQMD for such purposes.

Applicants for a Permit shall provide the following information on, or as an attachment to, the application:

(A) The name, business and residential address, and phone number(s) of the applicant.

(B) If the applicant is not the record title owner of the legal parcel, written consent from the owner allowing the cultivation of cannabis on their property by the applicant with original signature of the

record title owner.

(C) Written evidence that each person applying for the permit and any other person who will be engaged in the cultivation of cannabis is at least twenty-one (21) years of age.

(D) Site plan showing the entire legal parcel configuration with Assessor's Parcel Number(s), acreage, site address, including the location of:

(1) Easements (access and utility and all roadways public and private);

(2) Streams, springs, ponds and other surface water features, including the location of any flood plain or floodways;

(3) The location and area of the cultivation site on the legal parcel, with dimensions of the area for cultivation of cannabis and showing that all setbacks required by section 10A.17.040 are being met;

(4) All areas of ground disturbance or surface water disturbance associated with cultivation of cannabis activities, including: access roads, water diversions, culverts, ponds, dams, graded flats, and other related features;

(5) All structures, which shall be clearly labeled; and

(6) All septic systems, leach fields and water wells.

(E) Applications submitted for any Permit during Phase One shall include proof of prior cultivation pursuant to section 10A.17.080

(F) A cultivation and operations plan which includes elements that meet or exceed the minimum legal standards for the following: water storage, conservation and use; drainage, runoff and erosion control; watershed and habitat protection; and proper storage of fertilizers, pesticides and other regulated products to be used on the legal parcel. Any fuel, fertilizer, pesticides, or other substance toxic to wildlife, children, or pets, must be stored in a secured and locked structure or device. The plan will also provide a description of cultivation activities including, but not limited to, permit type, cultivation area, soil/media importation and management, the approximate date(s) of all cannabis cultivation activities that have been conducted on the legal parcel prior to the effective date of this ordinance, and schedule of activities during each month of the growing and harvesting season.

If a generator is proposed to support any aspect of the cultivation

site or related operations, the cultivation and operations plan shall identify any containment structure and dimensions necessary to contain any leak or spill that may develop or occur as a result of relying on any generator for backup power generation. The plan shall also include a maintenance plan for the generator, detailing how spent oil, used oil filters, expired batteries and other hazardous wastes generated from the operation of the generator will be handled, including fuel storage and delivery systems.

(G) Copy of the statement of water diversion, or other permit, license or registration filed with California Water Resources Control Board, Division of Water Rights, if applicable.

(H) An irrigation plan and projected water usage for the proposed cultivation activities, as well as a description of legal water source, if not covered by item (G).

(I) Copy of Notice of Intent and Monitoring Self-Certification and any other documents filed with the North Coast Regional Water Quality Control Board (NCRWQCB) demonstrating enrollment in and compliance with (or proof of exemption from) Tier 1, 2 or 3, North Coast Regional Water Quality Control Board Order No. 2015-0023, or any substantially equivalent rule that may be subsequently adopted by the County of Mendocino or other responsible agency.

(J) If any on-site or off-site component of the cultivation facility, including access roads, water supply, grading or terracing impacts the bed or bank of any stream or other watercourse, show proof they have notified the California Department of Fish and Wildlife (CDFW) pursuant to section 1602 of the Fish and Game Code and provide a copy of the Streambed Alteration Permit obtained from the Department of Fish & Wildlife.

(K) If the source of water is a well, a copy of the County well permit, if available; applicant shall provide documentation showing the approximate date of installation.

(L) A unique identifying number from a State of California Driver's License or Identification Card for each person applying for the permit and any other person who will be engaged in cultivation of cannabis.

(M) Applicants and every individual engaged in the management of, or employed by, the applicant shall be subject to a criminal history check, which shall include a Live Scan criminal history inquiry. The reasonable costs of a Live Scan criminal history inquiry pursuant to this section shall be the responsibility of the applicant and every individual engaged in the management of, or employed by, the applicant. Live Scan criminal history inquiries completed at

a certified and approved Live Scan location shall be transmitted to the Sheriff or District Attorney for review. An application shall be denied if any of the following is determined to be true:

(1) The applicant or any individual engaged in the management of, or employed by, the applicant has been convicted of any crime listed in subdivision (b)(4) of California Business and Professions Code section 26057, or any crime that if committed in the State of California would have constituted any of the crimes listed in subdivision (b)(4) of California Business and Professions Code section 26057. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

(2) The applicant or any individual engaged in the management of, or employed by, the applicant has one or more felony convictions, occurring prior to January 1, 2018, for violations of California Health and Safety Code section 11358 that involved pled and proven environmental violations, including but not limited to violations of California Fish and Game Code sections 1602, 5650 and 5652.

(3) The applicant or any individual engaged in the management of, or employed by, the applicant has been convicted of a felony offense, occurring after January 1, 2018, under California Health and Safety Code section 11358, 11359, or 11360, as amended by Proposition 64 § 8.4, effective November 9, 2016, or any crime that if committed in the State of California would have constituted a felony offense under California Health and Safety Code section 11358, 11359, or 11360, as amended by Proposition 64 § 8.4, effective November 9, 2016.

(4) The applicant or any individual engaged in the management of, or employed by, the applicant has a conviction under section 11366 of the California Health and Safety Code.

(5) The applicant or any individual engaged in the management of, or employed by, the applicant has a conviction under section 11366.5(b) of the California Health and Safety Code or any felony conviction under section 11366.5(a) of the California Health and Safety Code involving chemical extraction, chemical synthesis or a controlled substance other than marijuana.

(6) The applicant or any individual engaged in the management of, or employed by, the applicant has a

conviction under section 11379.6 of the California Health and Safety Code.

(7) The applicant or any individual engaged in the management of, or employed by, the applicant is subject to a condition of probation, mandatory supervision, Post Release Community Supervision, parole or any other lawful order which prohibits the possession or cultivation of cannabis.

(N) A statement describing the proposed security measures for the facility that shall be sufficient to ensure the safety of members and employees and protect the premises from theft.

(O) If the applicant is organized as a non-profit corporation, the applicant shall set forth the name of the corporation exactly as shown in its Articles of Incorporation, and the names and residence addresses of each of the officers and/or directors. If the applicant is organized as a partnership, the application shall set forth the name and residence address of each of the partners, including the general partner and any limited partners. Copies of the Articles of Incorporation or a statement listing the members of the partnership shall be attached to the application.

(P) Intentionally Omitted.

(Q) A copy of a Board of Equalization Seller's Permit if applicant intends to sell directly to qualified patients or primary caregivers.

(R) Written consent for an onsite pre-permit inspection of the legal parcel pursuant to section 10A.17.070 by County officials or other appropriate agency representatives at a prearranged date and time in consultation with the applicant prior to the approval of a permit to cultivate cannabis, and at least once annually thereafter.

(S) For all indoor cultivation facilities, identify the source of electrical power and plan for compliance with applicable Building Codes. Also, provide documentation that addresses the handling of waste discharge from the grow location of items including, but not limited to nutrients, spent growing media, un-used containers and other associated hardware, supplies, and garbage.

(T) No application shall be approved which identifies or would require the removal of tree species listed in paragraph (I) of Section 10A.17.040 after May 4, 2017, for the purpose of developing a cultivation site. For applications where trees were removed prior to May 4, 2017, applicants shall provide evidence to the Department of Agriculture that no trees were unlawfully removed to develop a cultivation site; such evidence may include, but is not limited to, a less-than-3-acre conversion exemption or timberland conversion permit issued by the California Department of Forestry and Fire

Protection ("CalFire") and trees were removed prior to May 4, 2017. If during review of an application County staff determine that trees were unlawfully removed to develop a cultivation site, the County shall deny the application. Notwithstanding the foregoing, for cultivation sites created prior to May 4,2017, through prior unauthorized conversion of timberland as defined in Public Resources Code section 4526, a Permit may be approved if the applicant provides evidence that environmental impacts of the tree removal have been mitigated to the extent feasible or otherwise resolved, as required by the resource protection agencies including CalFire, the NCRWQCB and the CDFW. County staff shall defer to the resource protection agencies referenced herein for determinations as to the unlawful removal of trees or unauthorized conversion of timberland or the sufficiency of any required remediation to address the environmental impacts. Nothing herein shall be construed to limit or condition in any way the regulatory or enforcement authority of the resource agencies listed herein.

(U) If applicable, clearance from CalFire related to compliance with the requirements of Public Resources Code Section 4290 and any implementing regulations.

(V) For activities that involve construction and other work in Waters of the United States, that are not otherwise exempt or excluded, including streams and wetlands, the application shall include a copy of a federal Clean Water Act (CWA) Section 404 permit obtained from the Army Corps of Engineers and a CWA Section 401 water quality certification from the NCRWQCB.

(W) Projects that disturb one (1) or more acres of soil or projects that disturb less than one acre but that are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the State Water Resources Control Board General Permit for Discharges of Storm Water Associated with Construction Activity Construction General Permit Order 2009- 0009-DWQ. Construction activity subject to this permit includes clearing, grading and disturbances to the ground such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility.

(X) The results of a "Cortese List" database search for sites known to be contaminated with hazardous materials. If the site is listed on the "Cortese List", the application shall include sufficient information to demonstrate that the cultivation is in compliance with any cleanup and/or abatement order that is established for the site.

(Y) If water or sewer services to the cultivation site will be provided by a community provider, a will-serve letter from the provider

indicating adequate capacity to serve the cultivation site.

The Agricultural Commissioner is authorized to require in the permit application any other information reasonably related to the application including, but not limited to, any information necessary to discover the truth of the matters set forth in the application.

Section 9. Section 10A.17.100 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.100 - Permit Review and Issuance.

(A) The Agricultural Commissioner's Office shall issue a Permit pursuant to this Chapter only:

(1) Following the referral to and clearance or permit approval pursuant to Chapter 20.242; and

(2) Following review by qualified County staff to review proposed permit locations and identify where habitat suitable for sensitive species may exist. The County shall consult with the California Department of Fish and Wildlife ("CDFW") to evaluate if there is a possibility for presence or habitat suitable for sensitive species on the parcel with a proposed Permit location. Upon consultation, CDFW may recommend approval of the proposed development, ask to conduct a site inspection or request additional studies in order to make the determination that no impacts to sensitive species will occur. A cultivator that cannot demonstrate that there will be a less than significant impact to sensitive species will not be issued a Permit. The County shall develop a policy in consultation with CDFW to define an objective set of criteria that applications can be checked against and when during Phases 1 and 2 a formal referral to CDFW is required to avoid impacts to sensitive species and natural communities. Following the development of the policy referred to in the previous sentence, consultation with CDFW shall not be required but be performed pursuant to the policy. During Phase 3 all applications will be referred to CDFW; and

(3) After the Agricultural Commissioner's Office, and other County and State agency staff, as appropriate, have reviewed the application and performed a pre-permit site inspection to confirm adherence to the requirements established in the MCCO; and

(4) Following receipt of evidence of payment of the required permit fee, pursuant to Section 10A.17.070.

(B) As a condition of approval for any cultivation permit, the owner or permittee shall indemnify and hold harmless the County of Mendocino and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by affected property owners or other third

parties due to the commercial cultivation of cannabis and for any claims brought by any person for problems, injuries, damages, or liabilities of any kind that may arise out of the commercial cultivation of cannabis.

(C) Discovery of any violation(s) of the Mendocino County Code during the Permit application process will be treated in a similar manner to violation(s) that are self-reported during an active amnesty program. That is, the discovered violation(s) will still need to be corrected, but any investigative and/or penalty fees associated with an after-the-fact County permit will be waived.

(1) If the discovered violation(s) are directly related to a Phase One Permit application, and/or if it is discovered that the Permit would authorize a particular use for which a separate County permit is required but has not yet been obtained, the applicant shall be required to agree in writing to a compliance plan prior to issuance of the Permit. Failure by applicant to agree in writing to a required compliance plan shall be grounds for denial of the Permit.

(a) The compliance plan will identify the violation(s) and may suggest corresponding remedial action(s) that may be taken to correct the violation(s), will identify the required permit(s) based on the uses identified in the Permit application, and will include timelines for achieving code compliance for all violations and/or for submitting completed applications for each required permit.

(b) In no event will more time be given to correct all violations, and/or submit a complete application for each required permit, than one (1) year after the date of issuance of the Permit.

(c) After the applicant has signed the compliance plan, as presented by the Agricultural Department in coordination with the appropriate County department(s), the Agricultural Department may issue a Permit restricted as indicated in the compliance plan, so long as no other barrier(s) to such issuance exists. Failure to abide by the compliance plan shall be grounds for Permit termination, or non-renewal, pursuant to section 10A.17.140.

(d) The compliance plan will be the primary mechanism to obtain code compliance from Permit applicants with respect to violations directly related to Phase One Permits applications. However, nothing in this section is intended to limit the use of any other applicable code enforcement provision or the ability of any County department with the appropriate authority from enforcing the Mendocino County Code.

(2) If the discovered violation(s) are not directly related to a Phase

One Permit application, such violation(s) will not affect the processing of the Phase One Permit application. However, any County department with appropriate enforcement authority with respect to such violation(s) may make use of any applicable code enforcement mechanism as if the violation(s) were discovered as a result of self-reporting during an active amnesty program.

(D) Permit Application Denial.

(1) The Agricultural Commissioner's Office may, at any time during the application process, deny an application based on the failure to meet the requirements of this Chapter 10A.17, including, but not limited to, the following:

(a) Incomplete application.

(b) Failure to provide additional information or documentation within the timeframe prescribed by the Agricultural Commissioner's Office.

(c) Cultivation of cannabis on a legal parcel (beyond what is exempt from a permit requirement pursuant to County Code section 10A.17.030) during an application stay pursuant to County Code section 10A.17.090.

(d) Cultivation of cannabis in illegal and/or non-compliant structures.

(e) Cultivation of cannabis, or activities related to preparing a cultivation site, that are non-compliant with the requirements of this Chapter 10A.17 or not consistent with the application as submitted, whether such issues are discovered during a pre-permit site inspection or other inspection of the property.

(2) If the applicant does not meet the requirements to obtain a permit and a permit with a compliance plan is not viable, the Agricultural Commissioner's Office shall deny the permit application unless:

(a) the applicant immediately files for a Notice of Application Stay pursuant to County Code section 10A.17.090 and corrects the conditions of the property in a manner that would allow for permit issuance no later than the expiration of the Application Stay; or

(b) the applicant immediate amends the application in a manner that allows for permit issuance.

(3) A permit may be denied based on confirmation that the applicant provided false or misleading information to the County, or any other agency if such communication was made as part of the

process in securing a permit under this Chapter 10A.17.

(4) A permit may be denied if the applicant or any agent or employee of the applicant has engaged in or is engaging in activities related to the cultivation of cannabis that endangers the health or safety of people or property.

(5) This paragraph (D) in no way limits the authority of the Agricultural Commissioner's Office to deny an application as inherently or explicitly provided by this Chapter 10A.17.

(E) Track & Trace unique identifiers will only be made available following the issuance of a Permit by the Agricultural Commissioner's Office. The Permittee will have seventy-two (72) hours to register with the County Track & Trace system. Upon Track & Trace system registration, the system will provide unique identifiers. The unique identifiers shall be affixed to the individual plants within seventy-two (72) hours of being provided to the Permittee.

(F) Permits shall remain valid for one (1) year from the date of issuance, subject to any enforcement action or other action that may result in earlier suspension or revocation.

Section 10: Section 10A.17.160 of the Mendocino County Code is hereby amended to read as follows:

Sec. 10A.17.160 - Enforcement and Declaration of Public Nuisance.

(A) All of the remedies provided for in this Chapter, or elsewhere in the law, shall be cumulative and not exclusive for violations of this Chapter. Violations of this Chapter include, but are not limited to failure to obtain and maintain in good standing any permit required by this Chapter, compliance with any required element on which a permit was issued pursuant to this Chapter, or any violation of the provisions of this Chapter where a permit is not required, such as a violation of section 10A.17.040 when a person is otherwise exempt pursuant to section 10A.17.030. The County may enforce this Chapter by using any applicable state or county law, including, but not limited to Mendocino County Code Chapters 1.08, 8.75 or 8.76, and may use either the administrative process to achieve code compliance or available civil remedies, such as injunctive relief.

(B) The cultivation of cannabis with a valid permit pursuant to this Chapter shall not be declared a public nuisance under County Code Chapter 8.75 or 8.76. Any cultivation of cannabis in the absence of a permit issued pursuant to this Chapter is a public nuisance and may be abated by the County as a public nuisance in accordance with the provisions of either County Code Chapter 8.75 or 8.76 unless such cultivation either: (1) is exempt pursuant to County Code section 10A.17.030 and in compliance with the laws to which the exemption is subject; or (2) is being cultivated by an entity whose application for a Phase One Permit

pursuant to this Chapter has been submitted, accepted and is currently pending, and who has also submitted a sworn affidavit to the County Agricultural Commissioner on a form prepared by the Agricultural Commissioner that includes, but is not limited to, an affirmation that they have met the requirements to obtain a permit or are actively in the process of fulfilling the requirements, and who also possesses a State temporary or provisional license for the cultivation site applied for at the County level.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this _____ day of _____, 2018, by the following roll call vote:

AYES:
NOES:
ABSENT:

WHEREUPON, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO
Clerk of the Board

_____
Deputy

APPROVED AS TO FORM:
KATHARINE L. ELLIOTT, County Counsel

_____

_____
DAN HAMBURG, Chair
Mendocino County Board of Supervisors

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

BY: CARMEL J. ANGELO
Clerk of the Board

_____
Deputy