

**ORDINANCE NO. NS-300.927**

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA RETITLING AND AMENDING DIVISION B26.5 OF THE COUNTY OF SANTA CLARA ORDINANCE CODE RELATING TO THE PROHIBITION OF COMMERCIAL CANNABIS ACTIVITY**

Summary

This Ordinance amends Division B26.5 of the County of Santa Clara Ordinance Code relating to prohibiting the establishment, maintenance, and/or operation of commercial cannabis activity in the unincorporated area of Santa Clara County.

**THE BOARD OF SUPERVISORS OF SANTA CLARA COUNTY, CALIFORNIA ORDAINS AS FOLLOWS:**

SECTION 1. Division B26.5 of Title B of the Ordinance Code of the County of Santa Clara relating to Medicinal Marijuana Cultivation is retitled and amended to read as follows:

**Division B26.5 – COMMERCIAL CANNABIS ACTIVITY**

**Sec. B26.5-1. Findings and Purpose.**

(a) In 1996, the voters of the State of California approved Proposition 215, which was codified as California Health and Safety Code section 11362.5, and entitled “The Compassionate Use Act of 1996.”

(b) The intent of Proposition 215 was to enable persons who are in need of Cannabis for medical purposes to legally obtain and use it under limited, specified circumstances without fear of criminal prosecution. Proposition 215 further provides that “[n]othing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.” (Health & Saf. Code, § 11362.5, subd. (b)(2).) The ballot arguments supporting Proposition 215 expressly acknowledged that “Proposition 215 does not allow ‘unlimited quantities of marijuana to be grown anywhere.’” (Rebuttal to Argument Against Proposition 215, available at: <http://vigarchive.sos.ca.gov/1996/general/pamphlet/215norbt.htm>.)

(c) In 2003, the California Legislature passed Senate Bill 420 (codified as California Health and Safety Code § 11362.7 *et seq.*) to clarify the scope of Proposition 215 and expressly allow cities and counties to adopt and enforce ordinances that are consistent with SB 420.

(d) In November 2016, California voters approved Proposition 64, which enacted the Control, Regulate, and Tax Adult Use of Marijuana Act. Proposition 64 makes it legal under state law for anyone 21 years of age or older to possess, plant, cultivate, harvest, dry, and process up to six Cannabis plants per private Residence for personal adult use. (Health & Saf. Code, §§ 11362.2 & 11362.3 (as amended by Sen. Bill No. 94 §§ 130 & 131).) Proposition 64 also explicitly provides for local control over Personal Adult-Use Cultivation, enabling cities and counties to “enact and enforce reasonable regulations to regulate” Indoor Cultivation of Adult- Use Cannabis and to prohibit all Outdoor Cultivation of Adult-Use Cannabis on the grounds of a private Residence. (Health & Saf. Code, § 11362.2, subds. (b)(1) & (b)(3) (as amended by Sen. Bill No. 94 § 130).)

(e) On June 27, 2017, the Governor approved Senate Bill 94, which repealed the Medical Marijuana Regulation and Safety Act (MMRSA) and includes certain provisions of MMRSA in the licensing provisions of the Control, Regulate, and Tax Adult Use of Marijuana Act. Under SB 94, these consolidated provisions would be known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). The types of licenses available for commercial Adult-Use Cannabis activity and commercial Medicinal Cannabis activity would be the same under SB 94. These licensing requirements do not apply to Qualified Patients who cultivate, possess, store, manufacture, or Transport Cannabis exclusively for their own personal use. (Bus. & Prof. Code, § 26033, subd. (a).) Nor do the licensing requirements apply to Primary Caregivers who cultivate, possess, store, manufacture, or Transport Cannabis exclusively for the personal medical purposes of no more than five specified Qualified Patients. (Bus. & Prof. Code, § 26033, subd. (b).) Likewise, the licensing provisions do not apply to the planting, growing, harvesting, drying, curing, grading, or trimming of Cannabis, done or performed by an adult for non-medical, personal, non-commercial purposes, pursuant to Health and Safety Code sections 11362.2 and 11362.3.

(f) SB 94 also consistently replaced the term “marijuana” with “cannabis” in state law, although the definition remains the same. For consistency with state law as revised by SB 94, the County adopts the term “Cannabis” in place of “marijuana” in this Ordinance. The adoption of the term “Cannabis” herein, however, shall not invalidate references to “marijuana” in any County ordinance, policy, or regulation. The two terms share the same meaning and are used interchangeably in the County Ordinance Code.

(g) While consolidating state licensing programs at the state level, SB 94 preserved local authority to regulate licensed Commercial Cannabis Activity, including but not limited to the authority “to completely prohibit the establishment or operation of one or more types of businesses” licensed under state Commercial Cannabis Activity provisions within the local jurisdiction. (Bus. & Prof. Code, § 26200.) SB 94 also requires state licensing authorities to contact local jurisdictions for confirmation of an applicant’s local license or authorization before issuing any state license for Commercial Cannabis Activity. (Bus. & Prof. Code, § 26055, subd. (d).)

(h) On October 20, 2015, the Board of Supervisors adopted Ordinance No. NS-300.884, adding Division B26.5 to Title B of the County of Santa Clara Ordinance Code, to regulate Medicinal Cannabis Cultivation by Qualified Patients and Primary Caregivers and prohibit all other Cultivation. After the passage of Proposition 64, the Board of Supervisors adopted No. NS-300.913 to amend Division B26.5 to regulate Indoor Personal Adult-Use Cannabis Cultivation permitted under Proposition 64 and prohibit all other forms of Cultivation except for Personal Medicinal Cannabis Cultivation by Qualified Patients and Primary Caregivers.

(i) The Federal Controlled Substances Act (21 U.S.C. § 801 *et seq.*) classifies Cannabis as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute, dispense, or possess with the intent to manufacture, distribute, or dispense, Cannabis. The Federal Controlled Substances Act contains no exemption for the Cultivation, manufacture, distribution, dispensation, or possession of Cannabis for medical purposes or adult use permitted by state law.

(j) Because Commercial Cannabis Activity licensed by the state would be unlawful under the Federal Controlled Substances Act, the establishment or operation of these activities is prohibited in the unincorporated area of the county by the County Zoning Ordinance. Commercial Cannabis Cultivation is also prohibited by the Ordinance Code and Zoning Ordinance.

(k) To clarify this prohibition on Commercial Cannabis Activities, the Board of Supervisors, on September 12, 2017, adopted Uncodified Interim Urgency Ordinance No. NS-300.914 establishing a temporary moratorium on the establishment, maintenance, and/or operation of Commercial Cannabis Activity in the unincorporated area of the county. The Board of Supervisors later adopted Ordinance No. 300-917, extending the temporary moratorium on Commercial Cannabis Activity for 10 months and 15 days to September 12, 2018. The County intends to establish a permanent moratorium on the

establishment, maintenance, and/or operation of Commercial Cannabis Activity in the unincorporated area of the county.

(l) Santa Clara County's geography and climate, which include dense vegetated areas that are remote and sparsely populated, provide conditions that are favorable to Outdoor Cannabis Cultivation. Outdoor Cannabis growers can achieve a high per-plant yield because of the county's favorable growing conditions. Additionally, Santa Clara County's remote rural areas and hillsides, such as in the Santa Cruz Mountains, provide ideal locations to conceal illicit Cultivation operations. These factors, coupled with Santa Clara County's close proximity to vibrant legal and illegal Cannabis markets and a perception of no Cultivation regulations, make unincorporated Santa Clara County attractive to illegal Cultivation operations.

(m) The unregulated Cultivation of Cannabis in the unincorporated areas of Santa Clara County can adversely affect the health, safety, and well-being of the county's residents and environment. Regulating the Cultivation of Cannabis is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, offensive odor, and fire hazards that may result from unregulated Cannabis Cultivation.

(n) From 2011 to 2013, the County:

- Prosecuted 118 illegal Indoor Cannabis grows, including 5 cases involving fires caused by illegally wired electrical systems;
- Removed 355,005 Cannabis plants from illegal Outdoor grows;
- Seized 1,838 pounds of processed Cannabis bud from Outdoor grows;
- Charged environmental crimes in 21 separate illegal Outdoor growing investigations;
- Eradicated 11 Outdoor grows on public land or open space;
- Conducted 36 illegal Cannabis investigations involving firearms, including one investigation that resulted in an officer-involved shooting after a suspect pointed a loaded rifle at a Fish and Wildlife warden;
- Charged illegal cultivators with additional serious or violent felony crimes in 8 instances, ranging from burglary and robbery to assault with a deadly weapon;
- Documented 8 illegal Cultivation operations involving drug cartels and/or criminal street gangs; and
- Investigated ten illegal Cannabis grows where children were present.

In 2016, the County:

- Removed 100,147 Cannabis plants from illegal Outdoor grows;
- Seized 1,006 pounds of processed Cannabis bud from Outdoor grows;
- and

- Made 22 arrests, including six arrests involving illegal possession of weapons.

(o) The County of Santa Clara and other public agencies have reported adverse impacts from Cultivation, including, but not limited to, disagreeable odors; negative effects on the environment; unsanitary conditions; negative effects on physical, mental, and community health; violation of building codes and other land development codes; increased risk of burglary and other property crimes; and acts of violence in connection with the commission of such crimes or the occupants' attempts to prevent such crimes.

(p) The creation of persistent strong odors as Cannabis plants mature and flower is offensive to many people, results in complaints of respiratory problems, and generally creates an attractive nuisance by alerting persons, including children, to the location of valuable Cannabis plants and creating an increased risk of crime.

(q) The presence of Cannabis plants is an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children including schools, Parks, and other similar locations. Further, the potential for criminal activities associated with Cannabis Cultivation in such locations poses heightened risks that children will be involved or endangered.

(r) Children are particularly vulnerable to the effects of Cannabis use. Studies have shown that adolescent Cannabis use can have harmful short- and long-term effects. The County's Behavioral Health Services Department prepared a policy brief in which it cited studies finding that Cannabis is unique in its impact on adolescents and young adults because of the lasting effects it has on memory and executive functioning.

(s) The establishment of Commercial Cannabis Activity is associated with increased Cannabis use in adolescents. Locally, the Office of the Public Defender conducted an analysis that appears to link the proliferation and proximity of Cannabis dispensaries in San José to increased substance-related suspensions in East Side Union High School District. During the 2011-2012 school year, the District experienced a 106 percent increase in substance-related suspensions (administering 614 substance-related suspensions compared to 297 the previous school year), while overall suspensions decreased 28.36 percent over the same time period. This increase in substance-related suspensions coincided with the number of Cannabis dispensaries in San José reaching approximately 100.

(t) The Indoor Cultivation of substantial amounts of Cannabis within a Residence presents potential health and safety risks to those living in the Residence, especially children, including, but not limited to, increased risk of fire from grow light systems; potential adverse effects on the structural integrity of a building; exposure to

fertilizers, pesticides, and anti-fungus/mold agents; and exposure to potential property crimes targeting the Residence.

(u) The production of concentrated Cannabis and extraction of compounds from Cannabis using alcohol or flammable liquids or gases has caused numerous fires and explosions throughout California, including a 2014 fire in Gilroy and several other fires throughout Santa Clara County. At least one city in Santa Clara County has reported a rise in illegal laboratories. The City of Mountain View Police Department arrested suspects during eight drug lab investigations from 2012 to 2016. Seven of the eight lab investigations involved Butane Honey Oil (BHO) extraction, which is closely associated to Cannabis Cultivation as the leftover Cannabis plant cuttings are primarily used in BHO labs. The Mountain View Police Department had not encountered any illicit drug labs in the city prior to 2012.

(v) The right of Qualified Patients and their Primary Caregivers under state law to cultivate Cannabis plants for medical purposes does not confer upon them the right to create or maintain a public nuisance. By limiting the Cultivation area for Indoor medical Cannabis Cultivation to a single space no larger than 50 square feet in a single room and limiting Cannabis plants to a single layer, and by limiting Outdoor medical Cannabis Cultivation to 12 plants, the County anticipates a reduction in the negative secondary effects of unfettered growing such as odor, fire, crime, and pollution.

(w) Limiting the area of Indoor Cultivation to 50 square feet is necessary because the lights and electricity required by Cultivation areas larger than 50 square feet are likely to exceed the wattage supported by a typical household light and receptacle circuit, thereby creating an unreasonable risk to public health, safety, and welfare and a public nuisance through the hazard of fire and overloading of circuits.

(x) Limiting the number of Medicinal Cannabis plants cultivated Outdoors is necessary because cultivating Medicinal Cannabis plants in excess of 12 would create an unreasonable risk of causing a public nuisance due to odors, attracting criminal activity, including theft and burglaries, and creating an attractive nuisance for children. Prohibiting the Outdoor Personal Adult-Use Cannabis Cultivation is necessary because Outdoor Personal Adult-Use Cannabis Cultivation would create an unreasonable risk of causing a public nuisance. Permitting Outdoor Personal Adult-Use Cannabis Cultivation would expand Outdoor Cultivation to a broader population of cultivators, potentially leading to more widespread Outdoor Cultivation and exacerbating the adverse impacts of Cultivation experienced by the County and other agencies. The potential for proliferation would be more pronounced if Cultivation were to be permitted for persons growing for personal recreational use, as opposed to the relatively small numbers of Qualified Patients and Primary Caregivers allowed to cultivate medical Cannabis Outdoors.

(y) Limiting the number of Medicinal Cannabis plants or Medicinal Cannabis Cultivation space available to a Qualified Patient or Primary Caregiver is not intended to preclude a Qualified Patient or Primary Caregiver from obtaining through dispensaries, collectives, or other legal means additional Medicinal Cannabis that the Qualified Patient needs for his or her reasonable medical use.

(z) Limiting the number of Adult-Use Cannabis plants cultivated Indoors for personal use and the total wattage of lights used for Cultivation is necessary because cultivating Cannabis plants in excess of six plants and with unlimited total wattage would create an unreasonable risk of fire danger caused by high-wattage grow lights and excessive use of electricity.

(aa) Requiring Indoor cultivation to be secured in a locked space increases the possibility that Cannabis grown for purposes that are legal under state law remains secure and will not be distributed to minors or in illicit markets.

(bb) The County has established a uniform setback from adjacent property lines for Cannabis cultivation in order to reduce the potential for nuisances to neighboring property owners. The setback standards include a provision for reduced setbacks on narrow parcels smaller than 10,000 square feet.

(cc) The right of Qualified Patients and their Primary Caregivers under state law to cultivate Cannabis plants for medical purposes does not confer upon them the right to cultivate or possess an amount of Cannabis in excess of the amount reasonably necessary to treat the Qualified Patient's condition or to create a public nuisance as a result of illegal diversion. And the interest of residents in engaging in Commercial Cannabis Activity must be weighed against the potential increase in criminal activity. An analysis of 427 felony Cannabis investigations conducted by the County of Santa Clara Office of the District Attorney between January 2014 and October 2015 found that the risk of additional crimes and diversion through illegal sales increase as individuals possess larger amounts of Cannabis:

- Of 427 felony Cannabis investigations, 223 involved 8 ounces or more of Cannabis;
- Virtually all investigations included evidence of illegal sales—98 percent of cases involving less than 8 ounces of Cannabis, 100 percent of cases involving between half a pound and a pound, and 98.2 percent of cases involving a pound or more;
- Firearms or other weapons were found in 33.1 percent of investigations involving a pound or more of Cannabis, compared with 19.1 percent of investigations involving less than half a pound;

- Gang or drug cartel activity was found in 13.3 percent of investigations involving a pound or more, compared with 3.4 percent of investigations involving less than half a pound;
- Violent crimes occurred in 21.1 percent of cases involving more than a pound, compared with 10.8 percent of cases involving less than 8 ounces; and
- Child endangerment occurred in 8.4 percent of cases involving more than a pound, compared with 3.4 percent of cases involving less than 8 ounces.

Additionally, while only 1 percent of cases involving 8 ounces or less also indicated illegal Cultivation, 39.2 percent of cases involving a pound or more indicated illegal Cultivation. Of the 65 illegal Cultivation cases involving more than a pound:

- 26 involved theft of electricity;
- 43 occurred at rental properties; and
- 31 included vandalism to the property.

By limiting the amount of Medicinal Cannabis that a Qualified Patient or Primary Caregiver may possess to up to eight ounces, or the amount that is reasonably related to the Qualified Patient's current medical needs, and prohibiting Commercial Cannabis Activity in the unincorporated area, the County seeks to reduce the harms that come with possession of larger amounts of Cannabis, including illegal sales, accompanying crimes, and illegal Cultivation practices.

(dd) A number of factors, including the high monetary value of Cannabis plants and the reliance of commercial Cannabis establishments on cash transactions, can result in increased crime from Commercial Cannabis Activity. The U.S. Drug Enforcement Agency reports that each Cannabis plant may yield an average of one-half to two pounds of Cannabis in its lifetime. The per-pound price of domestically produced high-grade Cannabis can reach \$2,000 to \$5,000. The strong odor of Cannabis creates an attractive nuisance, alerting persons to the location of valuable plants, and increasing the risk of burglary, armed robbery, or other violent crimes. Experts have also found that employees and customers of Commercial Cannabis Activity establishments are disproportionately targeted for crime because of the reliance of Cannabis businesses on cash transactions, which can result in large amounts of cash on hand. The California Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use confirmed that the Cultivation or other concentration of Cannabis in any location or premises, without adequate security, increases the risk that nearby homes or businesses may be negatively impacted by nuisance activities such as crime or loitering.

(ee) Regulation of parcels used for Cannabis Cultivation is proper and necessary to address the risks and adverse impacts as stated herein, and as further documented in research on file with the Office of the County Executive, that are especially significant if



the amount of Cannabis cultivated on any Legal Parcel is not regulated and substantial amounts of Cannabis are thereby allowed to be concentrated in one place.

(ff) It is the purpose and intent of this Division to implement state law by providing a means for regulating the Personal Adult-Use Cultivation of Medicinal and Adult-Use Cannabis in a manner that is consistent with state law and which balances the needs of medical patients and their caregivers and the interests of Adult-Use Cannabis cultivators, while promoting the health, safety, and welfare of the residents and businesses within the unincorporated area of Santa Clara County. This Division is intended to further clarify the County's existing prohibition on Commercial Cannabis Activity and to prohibit all Cannabis Cultivation by anyone for any purpose other than by a Qualified Patient, Primary Caregiver, or Adult-Use Cannabis cultivator cultivating in strict compliance with this Division, and applicable state law. This Division is not intended to prohibit persons from exercising any right otherwise granted by state law, including but not limited to Proposition 215, Senate Bill 420, Proposition 64, and Senate Bill 94. Rather, the intent and purpose of this Division is to reiterate the County's prohibition on Commercial Cannabis Activity and establish reasonable regulations upon the manner in which personal Medicinal or Adult-Use Cannabis may be cultivated, including restrictions on the amount of Cannabis that may be cultivated in any location or premises, in order to protect the public health, safety, and environment in Santa Clara County.

(gg) The limited right of Qualified Patients and their Primary Caregivers and Adult-Use Cannabis cultivators under state law to cultivate Cannabis plants for personal Medicinal purposes or adult use does not confer the right to create or maintain a public nuisance, and the public's interest in establishing or operating commercial Cannabis businesses in the unincorporated area must be weighed against the substantial potential harms identified above. By adopting the regulations in this Division, the County will ensure that it achieves a significant reduction in the aforementioned harms caused or threatened by Commercial Cannabis Activity and the unregulated Cultivation of Cannabis in the unincorporated area of Santa Clara County.

(hh) Nothing in this Division shall be construed to allow the Cultivation of Cannabis for purposes other than personal Medicinal and adult use, or allow any activity relating to Commercial Cannabis Activity or the Cultivation, distribution, or consumption of Cannabis that is illegal under state law.

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## **Sec. B26.5-2. Definitions.**

As used in this chapter, the following terms and phrases shall be defined as follows:

(a) *Adult-Use Cannabis* means Cannabis used by an adult 21 years of age or older for purposes in accordance with Health and Safety Code sections 11362.1, 11362.2, 11362.3, 11362.4, and 11362.45.

(b) *Cannabis* shall have the same meaning as in California Health and Safety Code section 11018, as amended by Senate Bill 94 and as may be further amended. Cannabis, Medicinal Cannabis, and the Cultivation thereof, as defined in this Division shall not be considered an agricultural activity, operation or facility under Civil Code section 3482.5 or Division B29, Chapter I of the Ordinance Code, or Agriculture, Agricultural Processing, Agricultural Research, or Agricultural Sales as defined in Section 2.10.040 of the Zoning Ordinance of the County of Santa Clara.

(c) *Commercial Cannabis Activity* shall have the same meaning as defined in Business and Professions Code section 26001 and includes the Cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of Cannabis and Cannabis products as those activities are defined and licensed under Division 10 of the Business and Professions Code. *Commercial Cannabis Activity* does not include personal Cultivation of Adult-Use Cannabis permitted by Health and Safety Code sections 11362.1 and 11362.2 or personal Medicinal uses allowed by sections 11362.765 and 11362.77, as amended from time to time.

(d) *Cultivation* means the planting, growing, harvesting, drying, curing, grading, or trimming of one or more Cannabis plants or any part thereof.

(e) *Indoor* means within a fully enclosed and secure structure, including any attached or detached accessory structure, that complies with the California Building Code, as adopted by the County of Santa Clara. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors and may be constructed of any approved building materials.

(f) *Legal Parcel* means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Cal. Govt. Code § 66410 *et seq.*) and the Santa Clara County Subdivision Ordinance.

(g) *Medicinal Cannabis* means Cannabis used for medical purposes in accordance with Health and Safety Code sections 11362.7, 11362.71, 11362.715,

11362.765, 11362.768, 11362.77, 11362.78, 11362.785, 11362.79, and 11362.795, as amended by Senate Bill 94 section 20.

(h) *Outdoor* means any location that is not Indoor within a fully enclosed and secure structure and includes shade structures.

(i) *Park* means any playground, hiking or riding trail, recreation area, community center, or historic structure, that is owned, managed, operated, or controlled by any public entity.

(j) *Personal Adult-Use Cannabis Cultivation* means the planting, growing, harvesting, drying, curing, grading, or trimming of Cannabis, done or performed by an adult for non-medical, personal, non-commercial purposes, pursuant to Health and Safety Code section 11362.2.

(k) *Primary Caregiver* means a primary caregiver as defined in Health and Safety Code section 11362.7, subdivision (d).

(l) *Qualified Patient* means a qualified patient as defined in Health and Safety Code section 11362.7, subdivision (f) (as amended by Senate Bill 94 section 134).

(m) *Residence* means the place where an individual has his or her true, fixed, permanent home and principal establishment, and to which place he or she has, whenever absent, the intention of returning.

(n) *School Bus Stop* means any location designated in accordance with California Code of Regulations, title 13, section 1238, to receive school buses, as defined in Cal. Vehicle Code section 233 or Vehicle Code section 545, or school pupil buses, as defined in Vehicle Code section 546.

(o) *Transport* means the delivery of Cannabis and Cannabis products on public roads by a licensee in compliance with Division 10 of the Business and Professions Code and local law.

### **Sec. B26.5-3. Commercial Cannabis Activity—Prohibited.**

(a) The establishment, maintenance, and/or operation of any Commercial Cannabis Activity is prohibited in the unincorporated area of the county.

(b) *Exemption for Transport through the county.* This Section shall not prohibit Transport of Cannabis and Cannabis products on public roads by a licensee

through the county to a Residence located outside of the unincorporated area of the county.

**Sec. B26.5-4. Personal Cannabis Cultivation—Prohibited.**

(a) Outdoor Cultivation of Cannabis is prohibited in the unincorporated area of the county.

(b) Indoor Cultivation of Cannabis is prohibited in the unincorporated area of the county.

(c) *Exemption for Personal Medicinal Cannabis Cultivation.* This Section shall not apply to Personal Medicinal Cannabis Cultivation by a Qualified Patient or Primary Caregiver at any Residence on a Legal Parcel where the Qualified Patient or Primary Caregiver resides, provided that the Cultivation is performed in strict compliance with the regulations of this Division and applicable state law.

(d) *Exemption for Indoor Personal Adult-Use Cannabis Cultivation.* This Section shall not apply to Indoor Adult-Use Cannabis Cultivation at any Residence on a Legal Parcel where the Adult-Use Cannabis cultivator resides, provided that the Cultivation is performed in strict compliance with the regulations of this Division and applicable state law.

**Sec. B26.5-5. Personal Medicinal Cannabis Cultivation—Regulations.**

(a) Medicinal Cannabis Cultivation by a Qualified Patient or Primary Caregiver at any Residence on a Legal Parcel where the Qualified Patient or Primary Caregiver resides is limited to one of the following:

(i) Indoor Cultivation, provided that the Cultivation is performed in strict compliance with Section B26.5-7.

(ii) Outdoor Cultivation, provided that the Cultivation is performed in strict compliance with Section B26.5-8.

(b) No evidence of Cultivation of Medicinal Cannabis shall be visible or detectable from any property or public right of way. Evidence of Cultivation of Medicinal Cannabis includes, but is not limited to, dust, glare, light, heat, gases, odors, smoke, or vibrations caused by any activity associated with the Cultivation of Medicinal Cannabis.

(c) No Medicinal Cannabis cultivated under this Division shall be distributed to any person other than the Qualified Patient cultivating the Medicinal Cannabis or the Qualified Patient of a Primary Caregiver cultivating the Medicinal Cannabis.

(d) All electrical systems and fuel storage involved in Cultivation of Medicinal Cannabis shall be permitted, used, and installed pursuant to all applicable ordinances, laws, and regulations. The total wattage for all lights used for Cultivation shall not exceed 1,200 watts per circuit. All lights used for Cultivation shall be plugged directly into a wall outlet. The number and wattage of lights used must not exceed the design capacity of the electrical system's circuits.

(e) All water used in Cultivation of Medicinal Cannabis shall be permitted and obtained from a legal source and shall be applied in accordance with all applicable ordinances, laws, and regulations.

(f) Any individual cultivating Medicinal Cannabis on a Legal Parcel for which the individual is not the legal owner must obtain and post written permission from the legal owner(s) or landlord consenting to the Cultivation of Medicinal Cannabis on the property.

(g) The Primary Caregiver or Qualified Patient may store or possess on a Legal Parcel no more than eight ounces or the amount that is reasonably related to the Qualified Patient's current medical needs. All storage of dried and/or processed Cannabis must be secured in a locked space, in a manner that will prevent unauthorized access by children.

(h) The extraction of chemical compounds from Cannabis by way of a solvent-based extraction method utilizing compressed flammable gases or alcohol is prohibited.

(i) Any modifications, alterations, or improvements made to the Residence or property where Medicinal Cannabis Cultivation occurs shall be permitted and performed pursuant to all applicable ordinances, laws, and regulations.

#### **Sec. B26.5-6. Personal Adult-Use Cannabis Cultivation—Regulations.**

(a) Personal Adult-Use Cannabis Cultivation is allowed at any private Residence on a Legal Parcel where the personal Adult-Use Cannabis cultivator resides and is limited to Indoor Cultivation performed in strict compliance with Section B26.5-6 and applicable state law.

(b) No evidence of Indoor Personal Adult-Use Cannabis Cultivation shall be visible by normal unaided vision from a public place. No odors caused by any activity

associated with the Cultivation of Indoor Personal Adult-Use Cannabis shall be detectable from a public place.

(c) No Adult-Use Cannabis cultivated under this chapter shall be distributed to any person other than the Adult-Use Cannabis cultivator. This provision shall not apply to the following transactions made lawful under Health and Safety Code section 11362.1.

(i) Individuals who are 21 years of age or older may give away to persons 21 years of age or older, without any compensation whatsoever, not more than 28.5 grams of Cannabis, provided that the Cannabis is not in the form of concentrated Cannabis.

(ii) Individuals who are 21 years of age or older may give away to persons 21 years of age or older, without any compensation whatsoever, not more than eight grams of Cannabis in the form of concentrated Cannabis, including as contained in Cannabis products.

(d) All electrical systems and fuel storage involved in Personal Adult-Use Cannabis Cultivation shall be permitted, used, and installed pursuant to all applicable ordinances, laws, and regulations. The total wattage for all lights used for Cultivation shall not exceed 1,200 watts per circuit. All lights used for Cultivation shall be plugged directly into a wall outlet. The number and wattage of lights used must not exceed the design capacity of the electrical system's circuits.

(e) All water used in Personal Adult-Use Cannabis Cultivation shall be permitted and obtained from a legal source and shall be applied in accordance with all applicable ordinances, laws, and regulations.

(f) Any individual cultivating Personal Adult-Use Cannabis on a Legal Parcel for which the individual is not the legal owner must obtain and post written permission from the legal owner(s) or landlord consenting to the Cultivation of Cannabis on the property.

(g) A Personal Adult-Use cultivator may cultivate not more than six living plants at one time. The living plants and any Cannabis produced by the plants in excess of 28.5 grams must be secured in a locked space.

(h) The extraction of chemical compounds from Cannabis by way of a solvent-based extraction method utilizing compressed flammable gases or alcohol is prohibited.

(i) Any modifications, alterations, or improvements made to the Residence or property where Personal Adult-Use Cannabis Cultivation occurs shall be permitted and performed pursuant to all applicable ordinances, laws, and regulations.

(j) No personal Adult-Use Cannabis may be cultivated Outdoors.

**Sec. B26.5-7. Additional Regulations for Indoor Cultivation.**

In addition to the regulations specified in Section B26.5-5 and Section B26.5-6, the following regulations shall apply to any Qualified Patient, Primary Caregiver, or cultivator of Adult-Use Cannabis performing Indoor Cultivation:

(a) Cultivation shall be limited to a single space in a single room. The single space in the single room shall be no larger than 50 square feet. All Cannabis plants cultivated Indoors shall be arranged in a single layer. This limit shall apply notwithstanding the number of Qualified Patients, Primary Caregivers, and/or personal Adult-Use Cannabis cultivators residing at the Residence.

(b) Indoor Cultivation shall be secured in a locked space, in a manner that will prevent unauthorized access by children. Doors shall be operable from inside the space at all times whether the doors are locked or unlocked.

(c) The drying, processing, and/or storage of Medicinal or Adult-Use Cannabis shall be limited to a single room within the Residence where the Cultivation occurs and must be secured in a locked space, in a manner that will prevent unauthorized access by children. Doors shall be operable from inside the space at all times whether the doors are locked or unlocked.

(d) Exits, including emergency egress windows or doors, required by the California Building Code and/or the California Residential Code, shall not be obstructed.

(e) Any lighting used shall be designated for residential use in accordance with requirements of the California Electrical Code.

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**Sec. B26.5-8. Additional Regulations for Outdoor Cultivation.**

In addition to the regulations specified in Section B26.5-5, the following regulations shall apply to any Qualified Patient or Primary Caregiver performing Outdoor Cultivation:

(a) Cultivation is prohibited as follows:

(i) For parcels 10,000 square feet or larger:

1. Within 1,000 feet of any Park.
2. Within 1,000 feet of any School Bus Stop, school, day care center, college, or university.
3. Within 25 feet of any property line.
4. In the front yard of any parcel.

(ii) For parcels smaller than 10,000 square feet:

1. Within 1,000 feet of any Park.
2. Within 1,000 feet of any School Bus Stop, school, day care center, college, or university.
3. Within 25 feet from any property line, or within 30 percent of the average lot width from any property line, whichever is smaller.
4. In the front yard of any parcel.

(b) Cultivation shall be limited to a total of 12 Cannabis plants at the Legal Parcel of the Qualified Patient's or Primary Caregiver's Residence. This limit shall apply notwithstanding the number of Qualified Patients and/or Primary Caregivers residing at the Legal Parcel.

(c) Cultivation shall be enclosed by a fence with a locking gate and shall at no time exceed the height of the fence. Any such fence shall be permitted and constructed in compliance with all zoning, planning, and building ordinances.

(d) The drying, processing, and/or storage of Medicinal Cannabis cultivated Outdoors shall be limited to a single room at the Residence where the Outdoor



Cultivation occurs and must be secured in a locked space, in a manner that will prevent unauthorized access by children.

**Sec. B26.5-9. Enforcement.**

(a) This Division may be enforced in any manner consistent with this Division by any peace officer, or by any employee, agent, or officer of any of the following County departments or agencies:

- (i) Office of the Sheriff
- (ii) Department of Planning and Development
- (iii) Office of the County Counsel
- (iv) Office of the District Attorney
- (v) Consumer and Environmental Protection Agency
- (vi) Office of the Fire Marshal

(b) Enforcement under this Section shall be at the discretion of the enforcing agency, pursuant to the following:

(i) If a peace officer, or any employee, agent, or officer of an enforcing agency determines that the Cannabis plants or a condition or use associated with Cannabis plants constitute a violation of the ordinance, the enforcing agency shall be authorized to summarily abate the condition or use through the seizure and confiscation of Cannabis plants pursuant to Division A1, Chapter III, of the County Ordinance Code.

(ii) If the Cannabis Cultivation is, or can be immediately brought into compliance with the allowable number and locations of Cannabis plants set forth in Sections B26.5-5 and B26.5-6 (Cultivation regulations), Section B26.5-7 (Indoor Cultivation) or Section B26.5-8 (Outdoor Cultivation) and the Cultivation is not a health, safety, or environmental hazard, then a peace officer, or any employee, agent, or officer of an enforcing agency may elect to issue a notice to abate in lieu of seizure and confiscation. The notice to abate will specify the violations and the allowable time for the property owner to remedy the violation until further enforcement action is taken. Failure to abate violations within the specified time shall be grounds for the seizure and confiscation of Cannabis plants, including dried and/or processed Cannabis, pursuant to Division A1, Chapter III, of the County Ordinance Code.

**Sec. B26.5-10. Public Nuisance.**

Any violation of this Division is hereby declared a public nuisance and may be abated by the County pursuant to Chapter III of Division A1 of this Code.

**Sec. B26.5-11. Separate Offense for Each Day.**

Any person who violates any provision of this Division shall be guilty of a separate offense for each and every day during any portion of which any person commits, continues to permit, or causes a violation thereof, and shall be penalized accordingly.

**Sec. B26.5-12. Criminal Penalties.**

Any violation of any provision of this Division shall be deemed a misdemeanor.

**Sec. B26.5-13. Administrative Remedies.**

In addition to the civil remedies and criminal penalties set forth above, any violation of this Division may be subject to administrative remedies, as set forth by Division A37.

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**Sec. B26.5-14. Other Ordinance Code Provisions.**

Notwithstanding this Division, the County, its employees, agents, and officers have the authority to pursue any and all applicable remedies for any other violations of any local, state, or federal law.

**PASSED AND ADOPTED** by the Board of Supervisors of the County of Santa Clara, State of California on SEP 11 2018 by the following vote:

**AYES: CHAVEZ, CORTESE, SIMITIAN, WASSERMAN, YEAGER**

**NOES: NONE**

**ABSENT: NONE**

**ABSTAIN: NONE**



S. JOSEPH SIMITIAN, President  
Board of Supervisors

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

ATTEST:



MEGAN DOYLE

Clerk of the Board of Supervisors

**APPROVED AS TO FORM AND LEGALITY:**



MARCELO QUIÑONES

Deputy County Counsel

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