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May 3, 2011

0414  
Attachment 2

ORDINANCE No. \_\_\_\_\_

**ORDINANCE AMENDING SECTION 13.10.700-M AND SECTION 13.10.332(B)  
AND ADDING SECTION 13.10.670 TO THE SANTA CRUZ  
COUNTY CODE RELATING TO THE REGULATION OF  
MEDICAL MARIJUANA COOPERATIVES**

**SECTION I**

Section 13.10.700-M of the Santa Cruz County Code is hereby amended to add the following definition after "Matrix Unit" to read as follows:

Medical Marijuana Cooperative. Any cooperative or collective of 10 or more persons where the primary purpose is to provide the lawful distribution of medical marijuana that has been recommended by a licensed physician, in strict accordance with Health and Safety Code Section 11362.5 *et seq.* The sharing or distribution of medical marijuana between nine or fewer persons is not subject to this code. Except as otherwise expressly authorized, the sharing or distribution of medical marijuana is not an allowed use.

**SECTION II**

The Commercial Uses Chart in Section 13.10.332 (b) of the Santa Cruz County Code is hereby amended by adding the category "Medical Marijuana Cooperatives, subject to the provisions of Section 13.10.670" below the category "Cottage Industry" to read as follows:

USE	PA	VA	CT	C-1	C-2	C-4
Medical Marijuana Cooperatives, subject to the provisions of Section 13.10.670	5	-	-	5	5	5

**SECTION III**

The Santa Cruz County Code is hereby amended by adding Section 13.10.670 entitled "Medical Marijuana Cooperatives" to read as follows:

13.10.670 Medical Marijuana Cooperatives.

- (a) Purpose. Standards are required to assure that the operations of medical marijuana cooperatives are in compliance with California Health and Safety Code Section 11362.5 (adopted as Proposition 215, the "Compassionate Use Act of 1996") or any State regulations and/or guidelines adopted in furtherance thereof, and to mitigate the adverse secondary effects from operations of cooperatives. This Ordinance is enacted as a health and safety measure pursuant to the county's police power. Nothing contained herein shall excuse, facilitate or promote a violation of federal law.
- (b) Level 5 Approval Required. It shall be unlawful to establish, cause, or permit the operation of a medical marijuana cooperative without first obtaining a development permit required by this section. A medical marijuana cooperative shall meet the siting criteria and performance standards described below if authorized pursuant to the procedures for a Level 5 Approval. The Planning Department shall provide notice of the application to the Health Services Agency, Sheriff's Office and other relevant county departments.
- (c) Siting Criteria. Applicants for a medical marijuana cooperative must meet the following siting criteria prior to consideration of a permit application:
- (1) The proposed location shall lie within a P-A (Professional and Administrative Offices), C-1 (Neighborhood Commercial), C-2 (Community Commercial) or C-4 (Commercial Services) zone district.
  - (2) If the proposed location is located within 300 feet of any residentially zoned area, the applicant shall be required to demonstrate to the decision-maker that the use would not create an intensity of use that is incompatible with the nearby residential use and that the applicant would employ security measures that would insure that the use would not adversely affect the security and safety of the neighboring residential uses.
  - (3) The proposed location shall not be located within eight hundred feet of (a) any other medical marijuana cooperative, or within six hundred feet of (b) any licensed preschool, or (c) any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.
  - (4) The distance specified in subsection (2) and (3) shall be the horizontal distance measured in a straight line from the property line of the referenced use to the closest property line of the lot on which the cooperative is to be located without regard to intervening structures.
- (d) Performance Standards. Medical marijuana cooperatives, once permitted, shall meet the following operating procedures and performance standards for the duration of the use; and the Management Plan shall incorporate these procedures and standards:

- (1) The cooperative shall not provide an on-site location for doctors or medical professionals to write recommendations.
- (2) No product shall be smoked, ingested or otherwise consumed within the cooperative or within 50 feet of the building in which the cooperative is located, except that cooperative employees and volunteer staff that possess a valid medical doctor's recommendation for medical marijuana, may individually smoke, ingest or otherwise consume medical marijuana during normal break time(s).
- (3) The hours of operation shall be limited to no more than 7:00 a.m. to 8:30 p.m., daily.
- (4) Parking shall be provided at a rate of 1 space per 300 gross square feet of floor area. Exterior lighting of the parking area shall be kept at a sufficient intensity so as to provide adequate lighting for patrons, while not disturbing surrounding residential or commercial areas.
- (5) The cooperative shall prohibit loitering by persons within 50 feet of any entryway into or exit from the cooperative.
- (6) The cooperative shall provide litter removal services each day of operation on and in front of the premises and, if necessary, on public sidewalks within fifty feet of any entry into or exit from the cooperative.
- (7) The cooperative shall provide adequate security on the premises, including lighting, alarms and dedicated security personnel, to insure the safety of persons and to protect the premises from theft.
- (8) All employees of the cooperative shall be at least 18 years of age.
- (9) Signage shall be limited to one identifying sign stating the business name, address and hours of operation not to exceed 4 square feet in area; such signs shall not be directly illuminated and shall not contain graphics identifying marijuana. In addition to an identification sign, appropriate directional signage may be required.
- (10) No advertising for sale of medical marijuana shall be permitted, except advertising that is directed exclusively to cooperative or collective members. An entry in the telephone directory with the name, location and phone number of the cooperative is allowed. Each cooperative is allowed a website with the name, location and phone number of the cooperative. Such websites must include the cooperative's bylaws, membership criteria, and operating procedures but may not include the display of a sales price to non-members for any marijuana product that is dispensed by the cooperative. The display of the sales price to cooperative or collective members on a portal that may be accessed by members only may be permitted.

(11) The cooperative shall provide the Planning Director, the Sheriff and all adjoining property owners located within fifty feet of the building in which the cooperative is located with a current name, phone number, email address and facsimile number of an on-site community relations staff person to whom one can provide notice if there are concerns regarding operating problems associated with the establishment. The establishment shall make every good faith effort to encourage neighbors to call this person to try to solve operating problems, if any, before any calls or complaints are made to the county.

(12) The cooperative shall post a copy of the conditions of approval for the permit on the premises in a place where it may be readily viewed by any member of the general public. All members shall be required to sign a "good neighbor" agreement restating and agreeing to abide by the requirements of the Level 5 Approval and this Section and indicating that if a member is found in violation, their membership may be revoked.

(13) The cooperative shall meet any specific operating procedures and measures imposed as additional conditions of approval that are reasonably related to the health, safety or welfare of the community.

(14) All cooperatives shall operate in strict compliance with Health and Safety Code Section 11362.5, *et seq.*, as amended, and any related state regulations. No cooperative shall operate for profit. Cash and in-kind contributions, reimbursements, and reasonable compensation provided by members towards the cooperative's actual expenses for the growth, cultivation, and provision of medical marijuana shall be allowed provided that they are in strict compliance with State Law. All such cash and in-kind amounts and items shall be fully documented. Medical marijuana shall be labeled as grown indoors or outdoors and whether or not pesticides were used in its production. The marijuana used in the products dispensed by the cooperative shall be grown locally only.

*Synthetic*

A cooperative shall maintain a management plan that governs the operation and dispensing of medical marijuana, including provisions addressing how the cooperative will meet the performance standards and other provisions of the County Code governing medical marijuana cooperatives.

A medical marijuana cooperative shall maintain records at the location accurately and truthfully documenting:

- (a) the full name, address, and telephone number(s) of the owner, landlord and/or lessees of the location;
- (b) the full name, address, telephone number(s) and specific role of all members who are engaged in the management of the cooperative;

- (c) all receipts of the cooperative, including but not limited to all contributions, reimbursements, and reasonable compensation whether cash or in-kind and all expenditures incurred by the cooperative;
- (d) an inventory record documenting the dates, amounts and content testing, if testing is conducted, of all marijuana in the possession of the cooperative;
- (e) a log documenting the transfer of medical marijuana to members;
- (f) a log documenting all complaints filed with the on-site community relations staff person, the date and how individual complaints were resolved; and
- (g) a low-income patient participation plan that fully describes and documents how low-income patients are provided assistance and access to cooperative membership, medical marijuana and cooperative services. The availability of low-income patient assistance and access shall be advertised in a prominent facility location to increase member awareness and participation.

A cooperative shall not: (a) unreasonably deny membership in the cooperative to any county resident, or (b) unreasonably deny access to a cooperative member's prescribed medication. The demonstrated financial inability of a cooperative member to pay for medical marijuana shall not, in and of itself, constitute a reasonable basis for denying membership in the cooperative, or denying or otherwise limiting the member's access to medical marijuana appropriate for the member's medical needs. The County may audit the membership and financial records of the cooperative at any time. Current copies of the management plan, and other cooperative records shall be available for inspection within a reasonable period of time by County Code Compliance staff, Sheriff's Office staff and other assigned County staff.

(15) Release of the county from liability. The owner(s) and permittee(s) of each cooperative shall release the county, and its agents, officers, elected officials, and employees from any injuries, damages, or liabilities of any kind that result from any arrest or prosecution of cooperative owners, operators, employees, or members for violation of state or federal laws by executing a release of liability in a form satisfactory to the county planning director.

(16) County indemnification. The owner(s) and permittee(s) of each cooperative shall indemnify and hold harmless the county and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to the operations at the cooperative, and for any claims brought by any of their members for problems, injuries, damages or liabilities of any kind that may arise out of the distribution and any use of medical cannabis provided at the cooperative.

(e) Findings. In approving a Level 5 Approval, it shall be determined by the hearing body that all of the following apply:

- (1) The proposed use as described by the management plan of the cooperative complies with all of the mandatory requirements of this section and other applicable sections of this code and applicable policies of the General Plan;
  - (2) The proposed use will not adversely affect the health, safety or welfare of area residents or businesses, or uses; and will not result in an undue concentration in any one neighborhood;
  - (3) The operational characteristics of the proposed use, such as hours of operation, noise, odor, amount and location of parking, signage, safety, loitering and litter, will not have a negative impact upon the surrounding area;
  - (4) The proposed use is compatible with the sizes and types of other neighboring uses in the surrounding area;
  - (5) The proposed use is not located in what has been determined by the Santa Cruz County Sheriff's Office to be an area where a disproportionate number of law enforcement service calls occur; and
  - (6) The proposed use, as a nonresidential occupancy, shall meet all building code requirements for such occupancy.
  - (7) The bylaws, membership criteria, employee compensation schedules and operating procedures are all consistent with a bona fide medical marijuana cooperative.
- (f) Basis for denial. The decision-maker may deny any application which is inconsistent with the above-noted findings.
- (g) Previously existing medical marijuana cooperative. Notwithstanding any other provisions of this Code, the existing location of a cooperative in operation on September 28, 2010, that is located outside of a P-A (Professional and Administrative Offices), C-1 (Neighborhood Commercial), C-2 (Community Commercial, or C-4 (Commercial Services) zone district shall be exempt from the requirements of this chapter for the period of time allowed by subsection (1) commencing with the effective date of this chapter, if the cooperative is determined to be eligible pursuant to subsection (2):

- (1) The exemption period for a cooperative is set forth below:

<u>Number of years in Operation</u>	<u>Length of Exemption</u>
10 or more years	7 years
5 to 9 years	5 years
0 to 5 years	1 year

- (2) Each cooperative seeking an exemption pursuant to this subdivision shall apply for and obtain a written determination from the planning director as to

its eligibility for and the duration of an exemption. A Level 3 application fee shall be paid to process an application and receive a written determination. The exemption granted for a cooperative located within a residential zone district shall be no longer than 1 year in length. To be eligible for an exemption, an application shall be filed with the director within ninety (90) days after the effective date of this chapter. The director may require all information necessary to make a determination, including a management plan that complies fully with Section 13.10.670(d) (14) and proof or verification of non-profit status, with at least ten cooperative members. If one or more previously existing cooperatives are located within 800 feet of any other existing cooperative, the director may approve the locations for a period not to exceed the length of the exemption. At the conclusion of the exemption, the cooperative with the fewer years or days of operation shall be precluded from applying for a new application unless the other cooperative(s) choose not to apply or the cooperative(s) cannot comply with remaining sections of this ordinance and are therefore prohibited from making future application(s). Notwithstanding an initial approval by the Planning Director, any cooperative found to be in violation of any of the exemption requirements at any time is subject to the enforcement provisions cited in this section of the code.

(h) **Liability.** The provisions of this Section shall not be construed to protect cooperative owners, permittees, operators, and employees, or their members from prosecution pursuant to any laws that may prohibit the cultivation, sale, use, or possession of controlled substances. Moreover, cultivation, sale, possession, distribution, and use of marijuana remain violations of federal law as of the date of adoption of the ordinance creating this section and this section is not intended to, nor does it, protect any of the above described persons from arrest or prosecution under those federal laws. Owners and permittees must assume any and all risk and any and all liability that may arise or result under state and federal criminal laws from operation of a medical marijuana cooperative. Further, to the fullest extent permitted by law, any actions taken under the provisions of this section by any public officer or employee of the County or the County itself, shall not become a personal liability of such person or the liability of the County. A warning and disclaimer shall be put on medical marijuana zoning application forms and shall include the following: a warning that the cooperative operators and their employees may be subject to prosecution under federal marijuana laws; and a disclaimer that the county will not accept any legal liability in connection with any approval and/or subsequent operation of a cooperative.

(i) **Private enforcement.** Any interested person may file a civil action to enforce the membership and access requirements of subsection (d)(14). In cases where a cooperative is found by a court of law to have acted unreasonably in denying membership in a cooperative, or in denying access to a person's medicine as a result of that person's inability to pay, the cooperative shall be liable for reasonable attorney fees. The remedies provided by this section shall be in addition to any other remedies provided by statutory or decisional law.

(j) Revocation, Periodic Review. Notwithstanding the provisions cited above, any cooperative found to be in violation of any requirements imposed by this ordinance is subject to revocation provided in Section 18.10.136 of the County Code. The County may also pursue any and all remedies and actions available under local and state laws for violations committed by a cooperative and persons related to or associated with a cooperative. The County may also require periodic review of any medical marijuana cooperative approved through a Level 5 permit.

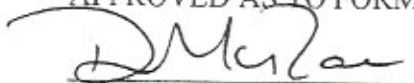
PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by the following vote:

AYES: SUPERVISORS  
NOES: SUPERVISORS  
ABSENT: SUPERVISORS  
ABSTAIN: SUPERVISORS

\_\_\_\_\_  
CHAIRPERSON, BOARD OF SUPERVISORS

ATTEST: \_\_\_\_\_  
Clerk of the Board

APPROVED AS TO FORM:

  
\_\_\_\_\_  
County Counsel

Copies to: Planning  
County Counsel  
Sheriff

**AN UNCODIFIED INTERIM ORDINANCE OF THE COUNTY OF SANTA CRUZ EXTENDING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES AND PRODUCTION HOUSES WITHIN THE COASTAL ZONE PORTIONS OF THE UNINCORPORATED AREA OF SANTA CRUZ COUNTY AND DECLARING THE URGENCY THEREOF**

The Board of Supervisors of the County of Santa Cruz find as follows:

**WHEREAS**, concerns have been raised in the community regarding the need for regulations to address impacts including, but, not limited to, safety and the impact a proliferation and/or over concentration of medical marijuana dispensaries and production houses may have on the community as a whole; and

**WHEREAS**, many County residents seek access to medical marijuana provided that the facilities are designed and located to minimize the concerns described above; and

**WHEREAS**, On September 28, 2010, the Board of Supervisors adopted Ordinance No. 5075 imposing a temporary 45 day moratorium on the establishment of medical marijuana dispensaries and production houses in the unincorporated area of Santa Cruz County; and

**WHEREAS**, On November 9, 2010, the Board of Supervisors adopted Ordinance No. 5077 extending the temporary moratorium for an additional ten months and 15 days; and

**WHEREAS**, the County of Santa Cruz has studied and analyzed the concerns of said uses on public health, safety and welfare of the community and if such proliferation and/or over concentration might be in conflict with current or proposed General Plan policies; and

**WHEREAS**, the Santa Cruz County Board of Supervisors enacted an ordinance regulating Medical Marijuana Cooperatives that will take effect within the unincorporated areas of the County in areas outside of the Coastal Zone; and

**WHEREAS**, the regulations adopted by the Board of Supervisors require review and certification by the California Coastal Commission before they can take effect within the Coastal Zone area of the County; and

**WHEREAS**, based on the foregoing it is in the best interest of public health, safety and welfare to allow the California Coastal Commission adequate study of medical marijuana dispensaries as they relate to land use issues within the Coastal Zone as they consider the regulations adopted by the Board of Supervisors; therefore it is appropriate to extend the moratorium on medical marijuana dispensaries and production houses within the Coastal Zone District of Santa Cruz County consistent with the authority granted by Government Code Section 65858.

**NOW, THEREFORE BE IT ORDAINED** by the Board of Supervisors of the County of Santa Cruz as follows:

### SECTION I

In accordance with Government Code Section 65858, from and after the date of this Ordinance, a moratorium against the establishment of any medical marijuana dispensaries or production houses within any portion of the Coastal Zone lying within the unincorporated area of the County of Santa Cruz is hereby enacted for a period of one year from the adoption of this ordinance to allow consideration by the California Coastal Commission of the ordinance regulating Medical Marijuana Cooperatives enacted by Santa Cruz County Board of Supervisors.

### SECTION II

This interim ordinance is necessary in that there is a current and immediate threat to the public health, safety, or welfare from the unregulated operation of medical marijuana dispensaries and/or production houses that are presently in operation or that may thereafter begin operation; and that the approval of use permits, building permits, or any other applicable entitlement for medical marijuana dispensaries and production houses which are required in order to comply with a zoning ordinance would appropriately address that threat to public health, safety, or welfare as discussed above.

### SECTION III

This interim ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c) (2) – the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment and Section 15060(c) (3) – the activity is not a project as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly.

## SECTION IV

Effective Date. This ordinance shall take effect immediately based on the findings by the Board of Supervisors that this ordinance is adopted consistent with Government Code Section 65858, and is necessary for the protection of the public health, safety, and general welfare. Pursuant to Government Code Section 65858, this ordinance shall be in full force and effect for one year from the date of its adoption by the Board of Supervisors.

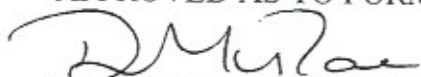
PASSED AND ADOPTED THIS \_\_\_\_ day of \_\_\_\_\_, 2011, by the Board of Supervisors of the County of Santa Cruz by the following vote:

AYES: SUPERVISORS  
 NOES: SUPERVISORS  
 ABSENT: SUPERVISORS  
 ABSTAIN: SUPERVISORS

\_\_\_\_\_  
 Chairperson of the Board of Supervisors

Attest: \_\_\_\_\_  
 Clerk of the Board

APPROVED AS TO FORM:

  
 \_\_\_\_\_  
 County Counsel

Distribution: County Administrative Officer  
 Planning Department  
 County Sheriff