

ORDINANCE NO. NS-300.884

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA ADDING DIVISION B26.5 TO THE COUNTY OF SANTA CLARA COUNTY ORDINANCE CODE REGULATING MEDICINAL MARIJUANA CULTIVATION

Summary

This Ordinance adds a new Division B26.5 to the County of Santa Clara Ordinance Code to regulate the cultivation of medicinal marijuana in the unincorporated area of Santa Clara County.

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

SECTION 1. A new Division B26.5 is hereby added to the County of Santa Clara Ordinance Code to read as follows:

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

A. In 1996, the voters of the State of California approved Proposition 215, which was codified as Cal. Health & Safety Code § 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 marijuana 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.” (Cal. Health & Safety Code § 11362.5(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. The Federal Controlled Substances Act (21 USC §§ 801 *et seq.*) classifies marijuana 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 or dispense, or possess with the intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for medical purposes.

E. The County's geography and climate, which include dense vegetated areas that are remote and sparsely populated, provide conditions that are favorable to outdoor marijuana cultivation. Outdoor marijuana 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 marijuana markets and a perception of no cultivation regulations, make unincorporated Santa Clara County attractive to illegal cultivation operations.

F. The unregulated cultivation of marijuana in the unincorporated areas of Santa Clara County can adversely affect the health, safety, and well-being of the County, its residents and environment. Regulating the cultivation of marijuana 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 medicinal marijuana cultivation. From 2011 to 2013, the County has:

- Prosecuted 118 illegal indoor marijuana grows, including 5 cases involving fires caused by illegally wired electrical systems;
- Removed 355,005 marijuana plants from illegal outdoor grows;
- Seized 1,838 pounds of processed marijuana 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 marijuana 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 Mexican National Drug Cartels and/or criminal street gangs; and
- Investigated 10 illegal marijuana grows where children were present.

G. Santa Clara County 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.

H. The creation of persistent strong odors as marijuana 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 marijuana plants and creating an increased risk of crime.

I. Children are particularly vulnerable to the effects of marijuana use, and the presence of marijuana 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 marijuana cultivation in such locations poses heightened risks that children will be involved or endangered.

J. The indoor cultivation of substantial amounts of marijuana 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, exposure to fertilizers, pesticides, anti-fungus/mold agents, and exposure to potential property crimes targeting the residence.

K. The production of concentrated marijuana and extraction of compounds from marijuana 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.

L. The right of qualified patients and their primary caregivers under State law to cultivate marijuana 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 cultivation to a single space no larger than 50 square feet in a single room and limiting marijuana plants to a single layer, and by limiting outdoor cultivation to 12 plants, the County anticipates a reduction in the negative secondary effects of unfettered growing such as odor, fire, crime, and pollution.

M. 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.

N. Limiting the number of medicinal marijuana plants cultivated outdoors is necessary because cultivating medicinal marijuana 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.

O. Limiting the number of medicinal marijuana plants or medicinal marijuana 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 marijuana that the qualified patient needs for his or her reasonable medical use.

P. The County has established a uniform setback from adjacent property lines for marijuana 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.

Q. The right of qualified patients and their primary caregivers under State law to cultivate marijuana plants for medical purposes does not confer upon them the right to cultivate or possess an amount of marijuana 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. An analysis of 427 felony marijuana investigations conducted by the County of Santa Clara Office of the District Attorney between January 2014 and present found that the risk of additional crimes and diversion through illegal sales increase as individuals possess larger amounts of marijuana:

- Of 427 felony marijuana investigations, 223 involved 8 ounces or more of marijuana;
- Virtually all investigations included evidence of illegal sales – 98% of cases involving less than 8 ounces of marijuana, 100% of cases involving between half a pound and a pound, and 98.2% of cases involving a pound or more;
- Firearms or other weapons were found in 33.1% of investigations involving a pound or more of marijuana, compared with 19.1% of investigations involving less than half a pound;
- Gang or drug cartel activity was found in 13.3% investigations of a pound or more, compared with 3.4% of investigations involving less than half a pound;
- Violent crimes occurred in 21.1% of cases involving more than a pound, compared with 10.8% of cases involving less than 8 ounces; and
- Child endangerment occurred in 8.4% of cases involving more than a pound, compared with 3.4% of cases involving less than 8 ounces.

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

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

By limiting the amount of medicinal marijuana 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, the County seeks to reduce the harms that come with possession of larger amounts, including illegal sales, accompanying crimes, and illegal cultivation practices.

R. Regulation of parcels used for marijuana 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 marijuana cultivated on any legal parcel is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.

S. It is the purpose and intent of this division to implement State law by providing a means for regulating the cultivation of medicinal marijuana in a manner that is consistent with State law and which balances the needs of medical patients and their caregivers and promotes the health, safety, and welfare of the residents and businesses within the unincorporated area of Santa Clara County. This division is intended to prohibit the cultivation of marijuana by anyone for any purpose other than by a qualified patient or primary caregiver cultivating for personal medicinal use 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 Proposition 215 and Senate Bill 420. Rather, the intent and purpose of this division is to establish reasonable regulations upon the manner in which marijuana for medicinal purposes may be cultivated, including restrictions on the amount of marijuana that may be cultivated in any location or premises, in order to protect the public health, safety and environment in Santa Clara County.

T. The limited right of qualified patients and their primary caregivers under State law to cultivate marijuana plants for medicinal purposes does not confer the right to create or maintain a public nuisance. By adopting the regulations in this division, the County will achieve a significant reduction in the aforementioned harms caused or threatened by unregulated cultivation of marijuana in the unincorporated area of Santa Clara County.

U. Nothing in this division shall be construed to allow the cultivation of marijuana for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal under State or federal law.

Sec. B26.5-2. Definitions.

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

A. *Cultivation* means the planting, growing, or harvesting of one or more marijuana plants or any part thereof.

B. *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.

C. *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.

D. *Marijuana* shall have the same meaning as in California Health and Safety Code Section 11018, as may be amended. Marijuana, medicinal marijuana, and the cultivation thereof, as defined in this division shall not be considered an agricultural activity, operation or facility under Cal. Civil Code § 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.

E. *Medicinal marijuana* means marijuana used for medical purposes in accordance with Cal. Health & Safety Code §§ 11362.7 *et seq.*

F. *Outdoor* means any location that is not indoor within a fully enclosed and secure structure and may include shade structures.

G. *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.

H. *Primary caregiver* means a primary caregiver as defined in Cal. Health & Safety Code § 11362.7(d).

I. *Qualified patient* means a qualified patient as defined in Cal. Health & Safety Code § 11362.7(f).

J. *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.

K. *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 § 233 or Cal. Vehicle Code § 545, or school pupil buses, as defined in Cal. Vehicle Code § 546.

Sec. B26.5-3. Marijuana cultivation—prohibited.

A. Outdoor cultivation of marijuana is prohibited in the unincorporated area of the County.

B. Indoor cultivation of marijuana is prohibited in the unincorporated area of the County.

C. This section shall not apply to cultivation of medicinal marijuana 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.

Sec. B26.5-4. Medicinal marijuana cultivation—regulations.

A. Medicinal marijuana 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:

1. Indoor cultivation, provided that the cultivation is performed in strict compliance with Section B26.5-5.

2. Outdoor cultivation, provided that the cultivation is performed in strict compliance with Section B26.5-6.

B. No evidence of cultivation of medicinal marijuana shall be visible or detectable from any property or public right of way. Evidence of cultivation of medicinal marijuana 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 marijuana.

C. No medicinal marijuana cultivated under this chapter shall be distributed to any person other than the qualified patient cultivating the medicinal marijuana or the qualified patient of a primary caregiver cultivating the medicinal marijuana.

D. All electrical systems and fuel storage involved in cultivation of medicinal marijuana 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. 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 marijuana 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 marijuana 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 marijuana 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 marijuana must be secured in a manner to prevent unauthorized access, including by children.

H. The extraction of chemical compounds from marijuana 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 cultivation of medicinal marijuana occurs shall be permitted and performed pursuant to all applicable ordinances, laws, and regulations.

Sec. B26.5-5. Additional regulations for indoor cultivation.

In addition to the regulations specified in Section B26.5-4, the following regulations shall apply to any qualified patient or primary caregiver 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 marijuana plants cultivated indoors shall be arranged in a single layer. This limit shall apply notwithstanding the number of qualified patients and/or primary caregivers residing at the residence.

B. Indoor cultivation shall be secured in a manner to prevent unauthorized access, including by children.

C. The drying, processing, and/or storage of medicinal marijuana shall be limited to a single room within the residence where the cultivation occurs and must be secured in a manner to prevent unauthorized access, including by children.

Sec. B26.5-6. Additional regulations for outdoor cultivation.

In addition to the regulations specified in Section B26.5-4, the following regulations shall apply to any qualified patient or primary caregiver performing outdoor cultivation:

A. Cultivation is prohibited as follows:

1. For parcels 10,000 square feet or larger:

a. Within 1,000 feet of any park.

b. Within 1,000 feet of any school bus stop, school, day care center, college, or university.

c. Within 25 feet of any property line.

- d. In the front yard of any parcel.
- 2. For parcels smaller than 10,000 square feet:
 - a. Within 1,000 feet of any park.
 - b. Within 1,000 feet of any school bus stop, school, day care center, college, or university.
 - c. Within 25 feet from any property line, or within 30 percent of the average lot width from any property line, whichever is smaller.
 - d. In the front yard of any parcel.

B. Cultivation shall be limited to a total of 12 marijuana 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 marijuana cultivated outdoors shall be limited to a single room at the residence where the outdoor cultivation occurs and must be secured in a manner to prevent unauthorized access, including by children.

Sec. B26.5-7. 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:

- 1. Office of the Sheriff
- 2. Department of Planning and Development
- 3. Office of the County Counsel
- 4. Office of the District Attorney
- 5. Consumer and Environmental Protection Agency
- 6. Office of the Fire Marshal

B. Enforcement under this section shall be at the discretion of the enforcing agency, pursuant to the following:

1. If a peace officer, or any employee, agent, or officer of an enforcing agency determines that the marijuana plants or a condition or use associated with marijuana 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 marijuana plants pursuant Division A1, Chapter III, of the County Ordinance Code.

2. If the marijuana cultivation is, or can be immediately brought into compliance with the allowable number and locations of marijuana plants set forth in Section B26.5-4 (cultivation regulations), Section B26.5-5 (indoor cultivation) or Section B26.5-6 (outdoor cultivation) and the cultivation is not a health, safety, or environmental hazard, then the 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 marijuana plants, including dried and/or processed marijuana, pursuant to Division A1, Chapter III, of the County Ordinance Code.

Sec. B26.5-8. 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. B26.5-9. 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. B26.5-10. Criminal penalties.

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

Sec. B26.5-11. 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. B26.5-12. 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.

SECTION 2. This ordinance and the various parts thereof are hereby declared to be severable. Should any section of this ordinance be declared by a court to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any portion thereof, other than the section so declared to be unconstitutional or invalid.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California on _____ by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

DAVE CORTESE, President
Board of Supervisors

ATTEST:

MEGAN DOYLE
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:



MICHAEL L. ROSSI
Deputy County Counsel

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