

**ORDINANCE NO. NS-300.913**

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA AMENDING DIVISION B26.5 OF THE COUNTY OF SANTA CLARA COUNTY ORDINANCE CODE REGULATING MEDICINAL AND PERSONAL CANNABIS CULTIVATION**

Summary

This Ordinance amends Division B26.5 of the County of Santa Clara Ordinance Code relating to the regulation of medicinal and personal cultivation of cannabis 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 the County of Santa Clara Ordinance Code is hereby amended 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 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

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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 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 use cultivation, enabling cities and counties to “enact and enforce reasonable regulations to regulate” indoor cultivation of cannabis for personal use and to prohibit all outdoor cultivation of cannabis for personal use on the grounds of a private residence. (Health & Saf. Code, § 11362.2, subs. (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. Senate Bill 94, which seeks to align the regulatory frameworks for medical and nonmedical cannabis, amended, repealed, or added code sections in the following California Codes: Business and Professions, Fish and Game, Food and Agriculture, Health and Safety, Revenue and Taxation, and Water. 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 adopted 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 Code of Ordinances.

F. 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 for personal use permitted by state law.

G. 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. Now, after the passage of Proposition 64, the County intends to regulate the cultivation of cannabis for personal use permitted under Proposition 64.

H. 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

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vibrant legal and illegal cannabis markets and a perception of no cultivation regulations, make unincorporated Santa Clara County attractive to illegal cultivation operations.

I. 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. From 2011 to 2013, the County has:

- 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 has:

- 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.

J. 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.

K. 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.

L. Children are particularly vulnerable to the effects of cannabis use, and 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.

M. 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.

N. 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.

O. 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.

P. 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.

Q. 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 cultivation of cannabis for personal use is necessary because outdoor personal cannabis cultivation would create an unreasonable risk of causing a public nuisance. Permitting outdoor personal 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.

R. 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.

S. Limiting the number of personal 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.

T. 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.

U. 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.

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 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. 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

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- 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 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, the County seeks to reduce the harms that come with possession of larger amounts, including illegal sales, accompanying crimes, and illegal cultivation practices.

W. 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.

X. It is the purpose and intent of this division to implement state law by providing a means for regulating the cultivation of medicinal and personal 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 personal use 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 prohibit the cultivation of cannabis by anyone for any purpose other than by a qualified patient, primary caregiver, or personal use 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 establish reasonable regulations upon the manner in which cannabis for medicinal or personal purposes 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.

Y. The limited right of qualified patients and their primary caregivers and personal use cultivators under state law to cultivate cannabis plants for medicinal purposes or personal use 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 cannabis in the unincorporated area of Santa Clara County.

Z. Nothing in this division shall be construed to allow the cultivation of cannabis for purposes other than medicinal and personal use, or allow any activity relating to the cultivation, distribution, or consumption of cannabis that is illegal under state 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, harvesting, drying, curing, grading, or trimming of one or more cannabis 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. *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 Cal. 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.

E. *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.

F. *Outdoor* means any location that is not indoor within a fully enclosed and secure structure and includes 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. *Personal 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 (as amended by Senate Bill 94 section 130).

I. *Personal use cannabis* means cannabis used by an adult 21 years of age or older for purposes in accordance with Cal. Health and Safety Code sections 11362.1, 11362.2, 11362.3, 11362.4, and 11362.45 (as amended by Senate Bill 94 sections 129-133).

J. *Primary caregiver* means a primary caregiver as defined in Cal. Health and Safety Code section 11362.7, subdivision (d) (as amended by Senate Bill 94 section 134).

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

L. *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.

M. *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 Cal. Vehicle Code section 545, or school pupil buses, as defined in Cal. Vehicle Code section 546.

**Sec. B26.5-3. 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 medicinal cannabis cultivation.* This section shall not apply to cultivation of medicinal cannabis 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 cultivation.* This section shall not apply to indoor cultivation of cannabis for personal use at any residence on a legal parcel where the personal use cultivator 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 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:

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

2. Outdoor cultivation, provided that the cultivation is performed in strict compliance with Section B26.5-7.

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 chapter 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. B26.5-5. Personal use cannabis cultivation—regulations.**

A. Personal use cannabis cultivation is allowed at any private residence on a legal parcel where the personal use 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 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 use cannabis shall be detectable from a public place.

C. No personal use cannabis cultivated under this chapter shall be distributed to any person other than the personal use cultivator. This provision shall not apply to the following transactions made lawful under Health and Safety Code section 11362.1 (as amended by Senate Bill 94 section 129):

1. 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.

2. 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 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 the cultivation of personal use 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 personal 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 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 cultivation of personal use cannabis occurs shall be permitted and performed pursuant to all applicable ordinances, laws, and regulations.

J. No personal use cannabis may be cultivated outdoors.

**Sec. B26.5-6. Additional regulations for indoor cultivation.**

In addition to the regulations specified in Section B26.5-4 and Section B26.5-5, the following regulations shall apply to any qualified patient, primary caregiver, or cultivator of personal 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 use 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 personal 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.

**Sec. B26.5-7 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 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. B26.5-8. 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 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 Division A1, Chapter III, of the County Ordinance Code.

2. 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 B26.5-4 and B26.5-5 (cultivation regulations), Section B26.5-6 (indoor cultivation) or Section B26.5-7 (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. B26.5-9. 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.

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**Sec. B26.5-10. 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. B26.5-11. Criminal penalties.**

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

**Sec. B26.5-12. 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.

**Sec. B26.5-13. 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.

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**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:**

  
\_\_\_\_\_  
MARCELO QUIÑONES  
Deputy County Counsel

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