



## COUNTY OF MENDOCINO CANNABIS DEPARTMENT

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DATE: August 3, 2023  
TO: Cannabis Department Staff/Contract Planning Staff  
FROM: Matt Goines, Senior Planner  
RE: Setback Requirement

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### PURPOSE

The Mendocino County Cannabis Department ("MCD") provides the following memorandum to carry out the Board of Supervisor's directive to implement the streamlined Cannabis Cultivation Ordinance by promoting a consistent review of requirements within Chapter 10A.17. and Chapter 20.242 of the Mendocino County Code ("MCC") for CCBL applications and by providing an interpretation of the ordinance for this implementation.

### DEFINITIONS

"Cannabis Cultivation Business License" or "CCBL" means a business license issued to persons engaged in the cultivation of cannabis in Mendocino County pursuant to this Chapter.

### ORDINANCE SECTIONS

#### **Sec. 10A.17.030 – CCBL Required; Exemptions.**

(A) Except as provided for by this Section, cultivation of cannabis shall be allowed only following the issuance of a CCBL pursuant to the provisions of this Chapter, and the review of a permit pursuant to the provisions of Chapter 20.242 of the Mendocino County Zoning Code. Chapter 20.242 authorizes the cultivation of cannabis only in specifically enumerated zoning districts, as determined by permit type, subject either to a zoning clearance, administrative permit or minor use permit.

#### **Sec. 10A.17.040 – General Limitations on Cultivation of Cannabis.**

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

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

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

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

#### **Sec. 10A.17.080 – CCBL Phases and Requirements Specific to each Phase.**

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

(A) CCBL's under the MCCO will be issued in the following three (3) phases:

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

(2) Phase Two: Starting January 1, 2018, the Department will begin accepting applications for Type C-A, 1A and Type 2A CCBL's for indoor cultivation, and Type C-B, 1B and 2B CCBL's for mixed-light cultivation, which mixed-light cultivation must occur in a greenhouse equipped with filtered ventilation systems as described in paragraph (P) of section 10A.17.070 and may not occur in a hoop house, in the following zoning districts, subject to compliance with all other applicable conditions of this Chapter and Chapter 20.242: Limited Industrial (I-1), General Industrial (I-2), and Pinoleville Industrial (P-1). Proof of cultivation prior to January 1, 2016, is not required. '

(3) Phase Three: Starting April 1, 2021, the Department will begin accepting CCBL applications from any applicant in conformance with the conditions of this Chapter and Chapter 20.242. Proof of cultivation prior to January 1, 2016, is not required.

(B) Requirements specific to Phase One CCBL's.

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

#### **STAFF INTERPRETATION**

Setbacks for outdoor and mixed-light cultivation activities are more restrictive for CCBLs issued after January 1, 2020, and it inherently impedes MCD's ability to streamline applications that were submitted before that date, which is the directive under the current ordinance dated May 23, 2023.

CCBL applications, classified as "Phase One" or "Phase Two", were received between May 4, 2017, and December 31, 2019, and processed in accordance with MCC Chapter 10A.17.040 and Chapter 20.242, including the setback requirements for CCBLs issued prior to January 1, 2020. In order to determine setbacks, MCD utilized photographic proof "Proof of Prior" for Phase One applications; however, such "Proof of Prior" was not required for Phase Two applications. As such, for Phase Two applications, MCD utilized pre-site inspections, zoning clearances, and administrative permits to ensure compliance with all applicable requirements, regardless of the date the application was submitted.

However, after further review, MCD has determined that the lack of CCBL issuance prior to January 1, 2020, for applications that were submitted prior to that date should not preclude applicants, in cases when no expansion has occurred, to benefit from a less-restrictive setback.

With few exceptions, almost all applications that were received between May 4, 2017, and December 31, 2019, and that are currently being processed, may be materially affected by the more restrictive setbacks than those that applied at the time the application was submitted.

In interpreting and implementing the setback requirements found in the aforementioned MCC, and as a reasonable pathway to local licensure, MCD has determined that applications received prior to January 1, 2020, are to be processed with the less-restrictive setbacks identified in 10A.17.040(A)(2)(5), and those applications that are determined to have expanded or received after January 1, 2020, are to be subject to the more-restrictive setbacks identified in 10.A 17.040(A)(2)(5).

AUTHORITY

  
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Matt Goines, Senior Planner  
Mendocino Cannabis Department

  
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DATE