

ORDINANCE NO. 4807

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

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**ORDINANCE AMENDING CHAPTER 5.148 OF THE SAN MATEO COUNTY
ORDINANCE CODE REGARDING COMMERCIAL CANNABIS CULTIVATION IN THE
UNINCORPORATED AREA OF SAN MATEO COUNTY**

SECTION 1. FINDINGS. The Board of Supervisors of the County of San Mateo (“County”) hereby finds and declares as follows:

WHEREAS, on December 12, 2017, the Board of Supervisors adopted an ordinance allowing mixed-light cannabis cultivation and nurseries, subject to the issuance of a ministerial license, and prohibiting (with a sunset provision that contemplates future action) other cannabis activities that can be prohibited consistent with California law, including personal and commercial outdoor cannabis cultivation, indoor commercial cannabis cultivation, and other commercial cannabis activities within the unincorporated area of the County, including, without limitation, manufacturing, testing, microbusinesses, and retail sales (codified as Chapter 5.148 of the San Mateo County Ordinance Code), and directed staff to monitor implementation of the ordinance and return with any necessary modifications; and

WHEREAS, on March 13, 2018, the Board of Supervisors repealed that ordinance and replaced it with the current ordinance, which allows mixed-light cannabis cultivation and nurseries, subject to the issuance of a discretionary license, and retains all other provisions of the prior ordinance (Ordinance Code Chapter 5.148); and

WHEREAS, the Board of Supervisors now wishes to amend Ordinance Code Chapter 5.148 to clarify requirements, achieve consistency with State law, and eliminate

the sunset provision that, without such action, could allow other types of commercial cannabis activities to occur in the unincorporated area of the County; and

WHEREAS, adoption of this ordinance is exempt from the California Environmental Quality Act (“CEQA”) for the following reasons:

- (1) Pursuant to California Business and Professions Code Section 26055(h), CEQA does not apply to the adoption of an ordinance that requires discretionary review of licenses to engage in commercial cannabis activity.
- (2) Under CEQA Guidelines Sections 15060(c)(2), 15060(c)(3), and 15061(b)(3), the moratorium on other commercial cannabis activities is not a project subject to CEQA review because it will not result in a direct or reasonably foreseeable indirect physical change in the environment.

NOW, THEREFORE, the Board of Supervisors of the County of San Mateo ordains as follows:

SECTION 2. Ordinance Code Section 5.148.050 – Prohibited Cannabis Activity is hereby amended to be entitled and numbered and read as follows:

Section 5.148.050 – Prohibited Cannabis Activity

- a) Only Licenses for Mixed-Light Cultivation of Cannabis and Mixed-Light Nursery Cultivation of Cannabis will be issued by the County. The County shall only issue such Licenses for (1) lands designated as “Agriculture” by the County General Plan Land Use Map, and (2) other lands where commercial agricultural use has been conducted for the three years preceding the effective date of this Ordinance, as verified by the Agriculture Commissioner. No other Commercial Cannabis Activities for either medical or non-medical purposes, including, without limitation, Outdoor Cultivation, Indoor Cultivation, Manufacturing, Testing, Microbusinesses, stand-alone Processing on a separate Premises, or Retail Sales, are allowed in the unincorporated area of the County. In addition, no personal non-medical Outdoor Cultivation is allowed in the unincorporated area of the County.
- b) Notwithstanding the foregoing, the following Commercial Cannabis activities may

occur in the unincorporated area of the County pursuant to a valid State License: transportation of Cannabis on public roads as expressly authorized under California Business and Professions Code Section 26080(b); and lawful delivery of Cannabis to a Customer, however, no physical location for such delivery service shall be permitted within the unincorporated area of the County.

SECTION 3. Ordinance Code Section 5.148.060 – Commercial Cannabis

Activity License Application Requirements, subsection (b)(17) is hereby amended to read as follows:

17. If the Applicant has not yet received a State License, the Applicant shall attest that the Applicant intends to apply for a State License and agrees to submit documentation of the State License to the Department upon issuance. If the Applicant has already received a State License, the Applicant shall provide a copy of such State License(s). The authority to conduct any Commercial Cannabis Activity pursuant to a County License is explicitly conditioned upon Applicant's receipt of a valid State License.

SECTION 4. Ordinance Code Section 5.148.070 – Review, Approval, and

Issuance of Commercial Cannabis Activity Licenses, subsection (b) is hereby amended to read as follows:

- b) Upon review of a complete Application, the Community Development Director, or his designee, shall deny the Application on one or more grounds provided by Section 5.148.080, or may grant the requested License upon making all of the following findings:
 - i) the Applicant's proposed Commercial Cannabis Activities comply with the provisions of this Chapter and all additional requirements of State law and County Code;
 - ii) the Application is either exempt from or has complied with the requirements of the California Environmental Quality Act ("CEQA");
 - iii) feasible mitigation measures or feasible alternatives identified during CEQA review necessary to avoid or substantially lessen any significant impact on the environment have been imposed as an enforceable condition of the License;
 - iv) the Department has imposed written conditions on the proposed Commercial Cannabis Activity which require the Applicant to obtain a valid State License prior to engaging in any Commercial Cannabis Activity; and

- v) the Department has imposed written conditions on the proposed Commercial Cannabis Activity which, in the judgment or discretion of the Community Development Director or his designee, are necessary to preserve the health, welfare, or safety of the community or environment.

SECTION 5. Ordinance Code Section 5.148.130 – General Operational

Requirements, subsection (d) is hereby amended to read as follows:

d) Surveillance.

1. At a minimum, the Premises shall have a complete digital video surveillance system in accordance with the approved security plan with a minimum camera resolution of 1280 × 1024 pixels. The surveillance-system storage device or the cameras shall be transmission control protocol (TCP)/capable of being accessed through the internet. The video surveillance system shall be capable, at all times and in all lighting conditions, of effectively recording images. The video surveillance system must have the capabilities to produce a color still photograph from any camera image, live or recorded, of the Premises. Cameras must be immobile and in a permanent location.
2. Cameras shall be placed in a location that allows the camera to clearly record activity occurring within 20 feet of all points of entry and exit on the Premises, and allows for the clear and certain identification of any Person and activities in all areas required to be filmed. Areas that shall be recorded on the video surveillance system include, without limitation, the following: limited access areas; areas where Cannabis or Cannabis Products are weighed, packed, stored, quarantined, loaded and unloaded for transportation, prepared, or moved within the premises; areas where Cannabis is destroyed; security rooms; areas storing a surveillance-system storage device with at least one camera recording the access points to the secured surveillance recording area; and entrances and exits to the Premises, which shall be recorded from both indoor and outdoor vantage points.
3. Cameras shall record continuously 24 hours per day and at a minimum of 20 frames per second. The physical media or storage device on which surveillance recordings are stored must be secured in a manner to protect the recording from tampering or theft. All video surveillance equipment shall have sufficient battery backup to support a minimum of four (4) hours of recording in the event of a power outage. Licensee must notify the Department of any loss of video surveillance capabilities that extend beyond four (4) hours. All video surveillance systems must be equipped with a failure notification system that provides prompt notification to the Licensee of any prolonged surveillance interruption and/or the complete failure of the surveillance system.

4. Surveillance recordings shall be kept for a minimum of 90 days. Recordings are subject to inspection by and copies of recordings shall be provided, upon request, to employees or agents of the following: the Department; County Code Compliance; County Division of Environmental Health; the applicable Fire Protection Agency; the County Sheriff's Office; the County Department of Agriculture/Weights and Measures; and the County Health System. All records applicable to the surveillance system shall be maintained on the Premises. At a minimum, Licensees shall maintain a map of the camera locations, direction of coverage, camera numbers, surveillance equipment maintenance activity log, user authorization list, and operating instructions for the surveillance equipment.
5. Recorded images shall clearly and accurately display the time and date. Time is to be measured in accordance with the official United States time established by the National Institute of Standards and Technology and the U.S. Naval Observatory (PDT/PST Time zone).
6. The Community Development Director may waive or modify the requirements of this Section if an Applicant proposes an alternative that is generally accepted in the industry and achieves the objective of providing adequate security at the Premises.

SECTION 6. Ordinance Code Section 5.148.130 – General Operational

Requirements, subsection (e) is hereby amended to read as follows:

- e) Alarm System. A Licensee shall maintain an alarm system in accordance with the approved security plan as required by the Department and the State. A Licensee shall also ensure a licensed alarm company operator or one or more of its registered alarm agents installs, maintains, monitors, and responds to the alarm system. All information related to the alarm system, monitoring, and alarm activity shall be made available upon request to employees or agents of the following: the Department; County Code Compliance; County Environmental Health Services; the applicable Fire Protection Agency; the County Sheriff's Office; the County Department of Agriculture/Weights and Measures; and the County Health System.

The Community Development Director may waive or modify the requirements of this Section if an Applicant proposes an alternative that is generally accepted in the industry and achieves the objective of providing adequate security at the Premises.

SECTION 7. Ordinance Code Section 5.148.130 – General Operational

Requirements, subsection (q) is hereby added to read as follows:

- q) **Notice to Employees.** A Licensee shall provide written notice, in a form approved by the Director, to its existing employees and any new employee prior to that employee beginning cannabis-related work, informing them that (1) cannabis is classified as a Schedule I Drug under the Federal Controlled Substances Act, (2) it is unlawful, under federal law, for any person to cultivate, manufacture, distribute, or dispense cannabis, or to possess with the intent to manufacture, distribute, or dispense cannabis, and (3) it is possible that working in the cannabis industry could pose immigration or other legal risks and that employees should consider seeking legal advice. The Licensee shall attest to completion of this notice requirement prior to initially engaging in Commercial Cannabis Activity, and annually as part of the renewal process thereafter. Such attestation shall be in writing, in a form acceptable to the Director, and submitted to the Department prior to engaging in Commercial Cannabis Activity. The requirements of this provision will cease in the event that federal law is amended in a manner that cultivation and possession of cannabis are no longer unlawful.

SECTION 8. Ordinance Code Section 5.148.140 – Record Retention, subsection

(a) is hereby amended to read as follows:

- a) A Licensee shall keep and maintain the following records for at least seven (7) years:
1. Financial records including, without limitation, bank statements, sales invoices, receipts, tax records, and all records required by the State Board of Equalization, other State agencies, the Department, or other County departments;
 2. Personnel records, including each employee's full name, social security, or individual tax payer identification number, date of beginning employment, and date of termination of employment if applicable;
 3. Contracts with other Licensees;
 4. Limited-access area logs and copies of current versions of any applicable plans required under this Chapter, including, without limitation, security plan, waste disposal plan, water management plan, water conservation plan, access restriction procedures, record keeping policy, odor and ventilation measures, energy usage plan, fire prevention plan, parking plan, and pest management plan; and

5. State License and permits, licenses, and other local licenses, permits, or authorizations to conduct Commercial Cannabis Activity.

SECTION 9. Ordinance Code Section 5.148.160 – Cultivation Requirements is

hereby amended to be entitled and numbered and read as follows:

Section 5.148.160 – Cultivation Requirements

- a) Cultivation Types Allowed. The following State License types, as defined by California Business and Professions Code Section 26061, will be permitted in the unincorporated County, subject to issuance of a Commercial Cannabis License: Type 1B – Cultivation, Specialty Mixed-Light, Small; Type 2B – Cultivation, Specialty Mixed-Light, Small; Type 3B – Cultivation, Mixed-Light, Medium; and Type 4 – Cultivation, Nursery. No other State Licenses for Cultivation, including Indoor Cultivation (i.e., State License Type 1A – Cultivation, Specialty Indoor, Small; Type 2A – Cultivation, Indoor Small; Type 3A – Cultivation, Indoor, Medium; Type 5A – Cultivation, Indoor, Large), Outdoor Cultivation (i.e., State License Type 1 – Cultivation, Specialty Outdoor, Small; Type 2 – Cultivation, Outdoor, Small; Type 3 – Cultivation, Outdoor, Medium; Type 5 – Cultivation, Outdoor, Large) or Microbusinesses (State License Type 12), shall be allowed in the unincorporated area. Nursery licenses shall only be issued for Mixed-Light growth.
- b) Number of Licenses. The Department will not restrict the total number of Licenses an Owner is authorized to hold at any point in time, provided the Owner's total authorized Canopy, as indicated in the Licenses, does not exceed a maximum of 66,000 square feet on a single parcel or across multiple parcels and meets all State and County requirements. Multiple Cultivation Licenses may be located on the same parcel if each Premises has a unique entrance and immovable physical barriers between uniquely Licensed Premises. All Licensees must meet all applicable State and County land use and zoning requirements. Licensees are prohibited from commingling Cannabis from other Premises.
- c) Square Footage Limitations. The total combined square footage of the Cultivation Area shall not exceed the maximum size thresholds as established by the applicable State License set forth in California Business and Professions Code Section 26061.
- d) Structure Setbacks. All structures associated with Cultivation shall be setback a minimum of 300 feet from residential and business structures on surrounding properties. This setback applies only to residential and business structures in existence at the time a License is first issued for the subject property, unless the subject property is without a valid License for a period of 18 months or more at any time after a License is first issued. In the latter case, residential and business

structures that have been added to surrounding properties shall be deemed to have been in existence at the time a License is first issued, and the 300-foot setback shall apply to such structures. The 300-foot setback shall not apply to residential or business structures on parcels owned by the same owner as the parcel on which Cultivation will occur.

The 300-foot setback from existing residential and business structures shall be measured from the nearest exterior wall of the residence/business to the nearest exterior wall of the structure associated with Cultivation.

The requirements of this subsection (d) shall not apply to operations of exclusively Type 4 Nursery Licenses.

- e) Property Setbacks. All Premises shall also be setback a minimum of 600 feet from any school providing education to K-12 grades, licensed day care center, youth center or playground as defined by California Health and Safety Code Section 11353.1, and alcohol or drug treatment facility as defined by California Health and Safety Code Section 11834.02 in existence at the time the License is issued. The 600-foot distance from these facilities shall be measured in a straight line from the closest property line of the protected site to the closest property line of the parcel with the Cultivation.

In addition, all Premises, except for those operating exclusively a Type 4 Nursery License, shall be setback a minimum of 600 feet from any properties designated for residential use by the San Mateo County General Plan or any local general plan adopted prior to January 1, 2018. The 600-foot distance from residentially designated lands shall be measured from the edge of the nearest property line with a residential land use designation to the exterior wall of the proposed cultivation structure.

- f) Building Requirements. All structures used for Cultivation shall comply with all applicable State or local building regulations, zoning, and land use requirements. Cultivation uses that provide access to the public including, but not limited to, employees, vendors, contractors, business partners, members, customers, or patients shall meet State or local requirements for accessibility including, at a minimum, ingress and egress.
- g) Agricultural Production Protection. Cultivation shall not displace any non-Cannabis commercial production existing as of June 1, 2017. However, a Licensee may offset a proposed Cultivation Site by relocating existing agricultural production to another area of the property where the Premises is located on a 1:1 ratio, provided such relocation does not conflict with any applicable policy or regulation. If the proposed Cultivation Site is located on a parcel under a Land Conservation Act (Williamson Act) contract, the Licensee must comply with all San Mateo County Land Conservation Act Uniform Rules and Procedures before engaging in Commercial Cannabis Activities. A plan for compliance with this

Section shall be proposed at the Application stage.

- h) Fire Code Requirements. A Licensee shall prepare and implement a fire prevention plan, which shall include, at minimum, emergency vehicle access and turn-around at the Cultivation Site, vegetation management, and fire break maintenance around all structures. A plan for compliance with this Section shall be proposed at the Application stage.
- i) Lighting. All lighting shall be fully shielded, downward casting, and not spill over onto other structures, other properties or the night sky. All operations shall be fully contained so that little to no light escapes. Between sunset and sunrise, light shall not escape at a level that is visible from neighboring properties or the public right of way, and, to the extent feasible, from a fixed location 250 feet in all directions from the structure where the Cultivation is being conducted.
- j) Security and Fencing. All Cultivation Sites shall be screened from public view by native, fire resistant vegetation, and vehicle access fenced with locking gates. Fencing shall be consistent with the surrounding area and shall not diminish the visual quality of the Premises or surrounding area. Razor wire, chain link, and similar fencing is not permitted. Security measures shall be designed to ensure emergency access in compliance with fire safety standards. All structures used for Cultivation shall have locking doors to prevent free access. If a Licensee hires or contracts for security personnel to provide security services, such security personnel shall comply with all State requirements relating to proprietary/private security services as currently set forth in Chapters 11.4 and 11.5 of Division 3 of the California Business and Professions Code. A plan for compliance with this Section and the surveillance, alarm, and monitoring requirements set forth above in Section 5.148.130 shall be proposed at the Application stage. Security plans will be confidential to the extent authorized by law.
- k) Runoff and Storm Water. Runoff containing sediment or other waste or by-products, including, without limitation, fertilizers and pesticides, shall not be allowed to drain to the storm drain system, waterways, or adjacent lands, and shall comply with all applicable State and federal regulations. A plan for compliance with this Section shall be proposed at the Application stage.
- l) Wastewater Discharge. Licensees shall submit verification of compliance with the Waste Discharge Requirements of the applicable Regional Water Quality Control Board, or waiver thereof. Excess irrigation water or effluent from Cultivation activities leaving the Cultivation Site shall be directed to a sanitary sewer (with permission from sewer authority), wastewater treatment and distribution system, irrigation, greywater or bio-retention treatment system. If discharging to a wastewater treatment and distribution system, a system capacity evaluation by a California-licensed civil engineer shall be included in the wastewater management plan. All domestic wastewater shall be disposed of in a

permanent sanitary sewer or on-site wastewater treatment system (OWTS) with demonstrated adequate capacity and in compliance with County Ordinance Code Chapter 4.84. A plan for compliance with this Section shall be proposed at the Application stage. The plan must, at minimum, identify the amount of wastewater, excess irrigation, and domestic wastewater anticipated, as well as treatment and disposal facilities.

- m) Pest Prevention. All Cannabis and Cannabis Products shall be kept commercially clean in respect to established pests of general distribution so that exposure to such pests is under effective control. Licensees shall comply with all applicable State and federal pesticide laws and regulations, including, without limitation, those enforced by the State Department of Food and Agriculture and State Department of Pesticide Regulation. A plan for compliance with this Section shall be proposed at the Application stage. The plan must, at minimum, include the product name and active ingredient(s) of all pesticides to be applied to Cannabis during any stage of plant growth and integrated pest management protocols, including chemical, biological, and cultural methods the Licensee anticipates using to control or prevent the introduction of pests on the Cultivation Site.
- n) Energy Usage. All electrical power, including, without limitation, for illumination, heating, cooling, and ventilation, shall be provided by on-grid power with 100% renewable energy source or on-site zero net energy renewable source such that annual consumed energy is less than or equal to the on-site renewable generated energy. The use of generators is prohibited, except for portable temporary use in emergencies only. A plan for compliance with this Section shall be proposed at the Application stage.
- o) Noise Limits. Noise generated at the Premises shall comply with the County's Noise Control requirements set forth Ordinance Code Chapter 4.88.
- p) Occupational Safety. Licensees shall comply with all applicable federal, State, and local laws and regulations governing California Agricultural Employers, which may include: federal and State wage and hour laws, CAL/OSHA, OSHA, and the California Agricultural Labor Relations Act.
- q) Hazardous Materials. Licensees who utilize hazardous materials shall comply with all applicable County and State hazardous materials requirements. Use of a Carbon Dioxide (CO₂) gas enrichment system requires a safety plan approved by the applicable Fire Protection Agency, and visible posting of the approved plan at Cultivation Site. All employees shall be trained on the safety plan on an annual basis.
- r) Waste Management. All Cannabis waste must be properly stored and secured to prevent access by the public. All garbage and refuse on the Cultivation Site shall be accumulated or stored in nonabsorbent, water-tight, vector resistant, durable,

easily cleanable, galvanized metal or heavy plastic containers with tight fitting lids. No refuse container shall be filled beyond the capacity to completely close the lid. All garbage and refuse on the Cultivation Site shall not be accumulated or stored for more than seven (7) calendar days, and shall be properly disposed of before the end of the seventh (7th) day. All non-Cannabis waste, including, without limitation, refuse, garbage, green waste, and recyclables, must be disposed of in accordance with County and State codes, laws and regulations. A plan for compliance with this Section shall be proposed at the Application stage. The plan must address the storing, handling, and disposing of all waste by-products of Cultivation and, at minimum, characterize the anticipated amount and types of waste generated, identify the designated holding area(s) for Cannabis waste, and describe the operational measures that are proposed to manage, track/identify, and dispose of Cannabis waste in compliance with County and State standards.

- s) Water Usage. Licensees must identify a water supply source adequate to meet all Cultivation uses on a sustainable basis for the Premises, provide the Department with proposed conservation measures, demonstrate that Licensee is in compliance with all statutes, regulations, and requirements of the State Department of Food and Agriculture and State Water Resources Control Board, Division of Water Rights, and allow the Department and/or other County departments access to the Premises to monitor water usage. Domestic water sources must be from a source permitted by the County. A plan for compliance with this Section shall be proposed at the Application stage. Applicants are encouraged to work with the San Mateo County Resource Conservation District for help in plan development.

SECTION 10. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, it shall not affect the remaining portions of this Ordinance.

SECTION 11. EFFECTIVE DATE. This Ordinance shall be effective 30 days from the date of its passage.

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Regularly passed and adopted this 13th day of November, 2018

AYES and in favor of said ordinance:

Supervisors: _____ *DAVE PINE*
 _____ *CAROLE GROOM*
 _____ *DON HORSLEY*
 _____ *WARREN SLOCUM*
 _____ *DAVID J. CANEPA*

NOES and against said ordinance:

Supervisors: _____ *NONE*



*President, Board of Supervisors
 County of San Mateo
 State of California*

Certificate of Delivery

I certify that a copy of the original ordinance filed in the Office of the Clerk of the Board of Supervisors of San Mateo County has been delivered to the President of the Board of Supervisors.



Deputy Clerk of the Board of Supervisors