# Cannabis Cultivation Choices Committee (C4)

Convened by the Santa Cruz County Board of Supervisors

 701 Ocean Street, Room 520 • Santa Cruz, CA 95060

[www.scc4.us](http://www.scc4.us)

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| Bob Kennedy |
| Second District |
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| Eric Hoffman |
| Third District |
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| Nick Bulaich |
| Fourth District |
|  |
| Eric Hammer |
| Fifth District |
|  |
| Colin Disheroon |
| Association for Standardized |
| Cannabis |
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| D’Angelo C. Roberto |
| Responsible Cultivation Santa Cruz |
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| Kim Sammet |
| Santa Cruz Mountains for Sustainable Cannabis Medicine |
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| Patrick Malo |
| Cannabis Advocates Alliance |
|  |
| Jason C. Sweatt |
| Santa Cruz Veterans Alliance |
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| Tom Burns |
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**To:**

**From:** Cannabis Choices Cultivation Committee

**Subject:** Medical Cannabis Cultivation Recommendations

**Date:**

**Please note that the recommendations contained in this memo are draft, not final, and may be modified.**

Thank you again for your leadership in creating the Cannabis Cultivation Choices Committee (C4 or the Committee). After 25 meetings over the past 7 months, the Committee is pleased to provide its recommendations for medical cannabis cultivation policy for Santa Cruz County.

The Committee has been guided by its charge to develop medical cannabis cultivation policy recommendation that protect our neighborhoods, youth, and environment, and ensure access for patients with a doctor’s recommendation. In addition, the Committee is being guided by the Medical Marijuana Regulatory and Safety Act (MMRSA) regulatory framework, including protecting the public interest when different policy goals or stakeholder interests’ conflict, as well as recommendations the Committee has received.

The Committee reached consensus of 10 members or more, and a super-majority agreement of 8 or members or more, on the vast majority of issues contained in this report. Still, there were also significant issues with only a simple majority of the Committee or where minority views are highlighted. Throughout the report, the Committee identifies the key issues or dynamics it considered to explain how the Committee arrived at its recommendations.

The Committee has conducted its work in an open manner consistent with the Brown Act and with extensive public and expert participation and input. Throughout its work, Committee members have demonstrated the highest example of how citizen leadership and civic discourse can help to design solutions for complex community challenges.

**General approach**

In general, the Committee believes that commercial medical cannabis cultivation is appropriate for licensing in Santa Cruz County, subject to appropriate zoning and regulatory restrictions, and subject to compliance with MMRSA. At the same time, the Committee also had to ensure that any cultivation policy meet the Committee objectives of protecting neighborhoods and the environment and be consistent with underlying zoning and surrounding land uses.

With an orientation toward keeping it local, keeping it small, and protecting our community and environment from an outside “green rush”, the Committee has tried to develop an approach that brings as many existing cultivators into the licensing system as possible, under appropriate terms and restrictions that protect youth, neighborhoods and the environment. At the same time, as explained further below, the Committee recognizes that some types of cultivation that supported the medical cannabis community prior to this new licensed market are simply not appropriate for licensing.

As a result, the Committee readily agreed that some areas, like indoor warehouses or commercial agriculture zoning, are suitable for commercial cultivation. In other areas, particularly Residential Agriculture (RA), Agriculture (A), Special Use (SU), and Timber Production (TP) zoning in rural mountain neighborhoods, the Committee had extensive discussion about the best approach to balance legitimate interests in cannabis cultivation with protection of neighborhoods and the environment, with the most restrictive rules applying to cultivation on RA parcels.

**Basic Framework**

In the end, the Committee recommends the following framework for cultivation license categories and zones:

**Indoor warehouse**: C4, M1, M2, and M3 zoning; up to the MMRSA limit of 22,000SF

**Commercial agriculture**: CA zoning; canopy limit of 2 percent parcel size, must meet setbacks, up to MMRSA limits of 22,000 SF in year one, 44,000SF in year two

**Rural**: A, TP, SU, and RA zoning; canopy limit of 1.25 percent parcel size. 3 acre minimum for existing RA cultivation, with exception down to 1 acre. 5 acre minimum for new cultivation on RA.

**Provisional**: Available to existing cultivators as of January 1, 2016 who sites do not meet regulatory requirements. Canopy limits capped at 1,000 SF for 1-5 acres, 2,000SF for 5-10 acres, and 3,000SF for 10+ acres. Compliance required in 2 years.

The Committee recommends focusing on existing cultivators first, with an eligibility date of January 1, 2016, as well as existing cultivators who are displaced because they cannot meet the new licensing requirements. The Committee understands that the County expects to announce a signup period for a time certain, and focus on process the applications received during this time period before opening up licensing to new applicants.

All license applications will have a detailed plan for the property and cultivation site, including a security plan, as part of their license application. All cultivators will have to meet all applicable regulatory requirements or otherwise protect public health, safety, and environment, and will be required to develop a compliance plan for their cultivation site in order to get a license.

**Outreach and implementation**

To ensure success, the Committee believes that it will be critical for the County to have a Licensing Official and regulatory team in place, with sufficient resources for program administration, code compliance, and law enforcement. The County and the cannabis sector will need to work together effectively to encourage cultivators to apply for licenses and to work through the implementation of the new licensing program.

In this regard, the Committee strongly recommends that the Board of Supervisors create of a Medical Cannabis Advisory Commission as a part of its medical cannabis licensing system. After extensive time and discussion, there is unanimous agreement that the County and entire community would benefit from having such a Commission, which could be more limited in number than C4 and could sunset.

**WAREHOUSE CULTIVATION (C-4, M-1, M-2, M-3)**

The Committee recommends a licensing category for indoor cultivation in C-4, M-1, M-2, and M-3 zoning districts in all MMRSA licensing tiers up to 22,000SF. Setbacks are recommended as follows:

|  |  |
| --- | --- |
| Schools & youth intensive sites\* Insert definition somewhere | 600 ft. |
| Parks | Still need to fill in this |
| Licensed treatment facilities | 300 ft |
|  | Will complete detail |
|  |  |

Within this overall support for indoor cultivation, some members expressed concern whether policy should support larger licenses over 10,000SF. Members also questioned whether there should be some overall cap or limit on licenses.

In particular, given the limited amount of commercial space available in the county, there is some concern that the profitability of commercial cannabis cultivation could unduly impact demand and availability of space for other commercial activities necessary to a healthy community. The Committee is also cognizant that other types of medical cannabis business may also be competing for commercial space, particularly for manufacturing and distribution.

However, others argued against license caps, believing that the market and regulatory requirements will work better than the government imposing a cap on the total number of licenses to be issued. To address this issue, the Committee recommends that the County monitor the impacts of cannabis cultivation on commercial real estate markets to assess if there is undue market impacts that should be addressed by policy makers.

The Committee also did not align on whether cultivation triggers public notice, with a split vote on whether an occupancy permit is required.

**COMMERCIAL AGRICULTURE CULTIVATION (CA)**

The Committee recommends licensing medical cannabis cultivation on commercial agricultural (CA) parcels in accordance with all the MMRSA tiers for indoor, outdoor and mixed light cultivation, up to 22,000SF in year one and 44,000SF in year two (outdoor only). For outdoor and mixed light cultivation, the Committee recommends that canopy sizes be based on a 2 percent of parcel size formula, rounded up to the nearest 100 SF. Indoor cultivation is capped at 22,000SF and is allowed in existing non-habitable farm buildings with an air filtration system.

The two percent formula results in the following acreage and canopy sizes. *Will insert chart showing canopy sizes.*

A supermajority of the committee opposed a use permit requirement, and the Committee did not agree on what level of cultivation, if any, should trigger public notice.

The Committee recommends the following setbacks for CA cultivation: *Will clean up this chart*.

|  |  |
| --- | --- |
| Schools & youth intensive sites | 600 ft. |
| City/county parksLicensed treatment facilities | 200 ft |
| Adjacent habitable structure | 100-200-300 ft, based on parcel size, per 7.126 |
| Streams | 100, 50, and 25 foot from perennial, intermittent, and ephemeral streams |
| Rights of way |  |

The Committee also recommends that fencing required for outdoor grows only within 200 feet of adjacent residence or public road. While the Committee could not agree on requiring fencing or hedges for all outdoor grows, the Committee does believe that such measures will be necessary as part of the security plan that will be required for each cultivation site.

The Committee agreed that the cultivator does not need to live on site for CA parcels. The Committee also agreed to allow trucked water from an approved source and the use of generators consistent with how generators are allowed in existing agricultural cultivation on CA lands.

As with warehouse grows, some members of the Committee expressed concern about the overall sizes and numbers of licenses for CA cultivation. Cultivation on these lands may not present the same kind of challenges as indoor commercial cultivation. Cannabis cultivation would be competing with other commercial crops, for which our market could be supplied by other producers, rather than displacing commercial services, which could not.

However, cannabis cultivation could also lead to outside or corporate interest in acquiring CA parcels, driving up already expensive prices for other farmers and residents who live in commercial agriculture zones. Like warehouse cultivation, the Committee recommends that the County monitor the impact of cannabis cultivation on commercial agriculture real estate markets.

The Committee is also aware of potential interest in using existing, large greenhouses in CA land for cannabis cultivation, including potentially making such sites available for small scale greenhouse cultivation. Such locations or other large CA parcels could potentially serve as a location for cultivators whose existing cultivation will not meet licensing requirements. The Committee discussed whether multiple licenses could be issued for such parcels, and the general view expressed was supportive so long as the requirements for each individual license is met.

**RURAL CULTIVATION (A, TP, SU, RA)**

The Committee is committed to respecting the safety, integrity, and enjoyment of our rural neighborhoods and environment. The Committee recognizes that there are many cultivation sites that have occurred in the mountains and rural neighborhoods for decades without causing neighborhood or environmental concerns. At the same time, the Committee recognizes and deplores illegal activity and behavior by cannabis cultivators who damage the environment or threaten neighbors. The Committee also does not want to encourage a “green rush” from interests outside the county. The challenge, then, is how to provide the needed neighborhood and environmental protection while allowing compliant sites to transition into legal status.

As an initial matter, the Committee recommends that the licensing official focus on license applications from existing cultivators and displaced cultivators first. This includes new cultivation sites for existing cultivators, before considering applications from new cultivators who have not cultivated in Santa Cruz County before January 1, 2016.

In addition, the Committee considered the question of how much cultivation to allow on larger rural parcels in agriculture zoning, which allows commercial activity as a permitted use but does so in the context of surrounding land use. RA zoning, in contrast, is residential in nature, but allows commercial activity in conjunction with the principal use of the property as residential.

For A, SU, and TP parcels, the Committee recommends that cultivation be based on 1.25 percent of parcel size and round down to the nearest 100SF, which equates to the following canopy sizes, down to a minimum parcel size of 1 acre:

 1-2 acres = 500 SF

 2-3 acres = 1000 SF

 3-4 acres = 1500 SF

 4-5 acres = 2000 SF

 10 acres = 5000 Sf

 20 acres = 10,000 SF

 40+ acres = MMRSA cap of 22,000SF *(Will turn this into a table)*

For RA parcels, the Committee recommends a three acre minimum for existing cultivation, with an exception process down to 1 acre. For new cultivation in RA, the Committee recommends a five acre minimum in RA, without exception.

**Setbacks (still need to complete the chart)**

The Committee recommends the following setbacks for rural cultivation. *To be finalized Tuesday.*

|  |  |
| --- | --- |
| Schools & youth intensive sites | 600 ft.outdoor/greenhouse, unless exception; 300 feet indoor |
| State parks  |  |
| Licensed treatment facilities  | 200 feet |
| Adjacent habitable structure-outdoor & greenhouse cultivation | 100-200-300 ft, based on parcel size, per 7.126, outdoor & greenhouse |
| Streams | 100, 50, and 25 foot from perennial, intermittent, and ephemeral streams |
| R.O.W | To be completed still  |

**Rural residential (RR) cultivation**

The Committee is aware that there is extensive cultivation in rural residential (RR) zoning districts. Given the underlying residential nature of rural residential zoning, the Committee does not believe that cultivation on rural residential parcels should be eligible for licenses. However, the Committee does believe that these cultivators should be eligible to apply for a two year provisional license, described below, to assist them in the transition to the new licensing system in suitable locations.

**PROVISIONAL LICENSES**

The Committee approved the concept of a provisional license category as part of the implementation process. **See attachment X**. Essentially, the provisional license would allow an eligible, existing cultivators as of January 1, 2016 to get a license to cultivate while they bring their cultivation site into compliance with the requirements for a regular license.

The County will announce that applications for cultivation licenses can be made for 90-180 days. *C4 needs to make a recommendation for the timeline.* During this time, the Committee recommends that the County work with the industry and community partners to do outreach about the new program.

Cultivators would provide a detailed application form regarding their cultivation site and license category. If applicants appear to meet the eligibility criteria, the licensing official will process the application and issue a license. However, if it appears that to the licensing official that the cultivator will need time to come into compliance with the requirements for a regular license, the cultivator would be put into the provisional license category. To be eligible for the provisional license, cultivators would need to meet a minimum set of basic safety requirements and not have a history of unreasonable interference with others ability to enjoy property.

Cultivators would have up to two years in order to bring their site into compliance. *With respect to compliance for existing small rural cultivators, the Committee recommends that compliance be required for the cultivation site only, not for the full parcel. The C4 has never voted on this issue but has discussed.*

The Committee recognizes that some cultivators may never be able to satisfy the terms for a cultivation license. For existing small rural cultivators, like the rural residential cultivators referenced above, the C4 nevertheless recommends allowing such cultivators to apply for a provisional license for two years. These cultivators have provided for the medical cannabis market, and the Committee believes that policy should give them an opportunity to transition into the new regulated marketplace by giving them a two year provisional license.

The setbacks outlined for each cultivation category would apply but canopy sizes are lower. Specifically, the provisional license acreage limitations and canopy sizes would be:

 1-5 acres = 1000 SF or 35 non-contiguous plants, 750 SF Indoor

 5-10 acres = 2000 SF or 50 non-contiguous plants, 1500 SF Indoor

 10+ acres = 3000 SF outdoor/greenhouse, 2500 SF indoor

**OVERALL ISSUES**

**Exception process**

In arriving at its consensus based recommendations, the Committee often agreed to define a general standard, but then allow the licensing official to grant exceptions from that process. As a result, it will be essential for this exception process to work efficiently and effectively for the overall system to work as the Committee intends. Specific recommended language is attached as Exhibit X. The Committee strongly emphasizes that the exception process should be informal and accessible to participants, with neighborhood meetings and prompt resolution, and not a detailed, drawn out process that bogs down the licensing system or discourages applicants from applying.

**Public notice**

The Committee has a mixed view of when cannabis cultivation should trigger public notice. Some committee members strongly support public notice, while others are concerned that such requirements may deter participation or create safety concerns for cultivators. A public notice requirement for 3-5 acre grows in RA received an evenly split vote, while two other proposals for public notice for rural grows over 5000SF and 10,000SF each received 7 votes.

*One potential way to resolve the issue could be to require public notice of cultivation in RA on parcels of 5 acres or less.*

**Reside onsite**

The Committee could also not reach consensus about whether cultivators should be required to live on site. The Committee voted 8-5 that existing cultivators should live onsite for small parcels under 10 acres, but also voted 8-5 against a requirement that growers live onsite during other deliberations. There is consensus that cultivators are not required to live onsite in commercial agriculture zoning.

The Committee recognizes that there are many legitimate reasons that cultivators would not want or need to reside on site and believes that security plans can address many of the concerns related to onsite residency. However, the Committee also believes that public safety may be better served by having the cultivator reside on sight.

*Accordingly, the Committee recommends/does not recommend that residency be/ not be required for RA/other zones cultivation of 5 acres or less, unless an exception is granted, or require that cultivators reside onsite on small parcels in all zones.*.

**Power/water**

The Committee has a split view on whether generators can be a main source of power and whether to allow trucked water from an approved source. For small rural cultivation on parcels below 10 acres, the Committee supported generators for emergency use only and required an approved water source onsite. However, for CA parcels there is consensus support for generators and trucked water. For large rural parcels over 10 acres, a majority of the committee supports allowing the use of generators with standard safety and noise requirements and the use of trucked water from an approved source.

The use of generators and trucked water raise a number of questions. On one hand, these practices enable the commercial of property that is otherwise off the grid. This can be beneficial from an economic development point of view. It is also clear that generators and trucked water are common for many commercial enterprises in the county, not simply cannabis. In fact, at least one water district is considering having all commercial activity use trucked water as a means to manage the underlying aquifer.

At the same time, these practices may also not be consistent with policy goals to preserve some areas of the county from much if not all commercial development. In addition, the use of generators also raises the question of noise and fire safety, which is one of the top issues the community raises about cannabis cultivation.

**Fire safety**

The question of fire safety is essential to get right, including fire road capacity, which is one of the major issues to be addressed. If cannabis cultivation is to succeed as a commercial venture, it is imperative that fire safety be effectively addressed throughout all aspects of the cannabis supply chain. In addition to regulation and enforcement, the cannabis industry itself must adopt best practices and social norms that drive out irresponsible and illegal behavior that jeopardizes public health, safety, and the environment

The Committee had CALFIRE representatives participate in an extensive meeting in 2015 about fire and environmental impacts of cannabis cultivation, including some discussion about how regulation of the timber industry evolved over the years. The Committee has a small working group that has been meeting with fire safety officials. For a variety of reasons, the Committee is still awaiting a full report from the fire working group and may make subsequent recommendations to the Board in this regard.

**Overall license sizes**

With respect to the overall size of licenses and whether limits on licenses should be required, there is consensus support for licenses up to the allowed MMRSA license limits for indoor warehouse and CA cultivation. With respect to larger grows on rural parcels, there is also majority support for larger licenses up to 22,000SF.

However, other members express concern about how much overall cultivation the licensing system should allow and argue that the system should start slow, with phased licensing. They argue the county should not encourage more cultivation and that large licenses could attract outside corporate investors.

Other members argued that the licensing system should allow these cultivation sizes, which are contemplated under MMRSA, if policy makers want to attract cultivators into the licensing system. The cultivation can satisfy all regulatory requirements, including fire roads. The licensing system will need the revenue from these larger cultivators. If the County wants to attract growers into a licensing system and eliminate black market grows, it should develop license systems in keeping with MMRSA limits, these members argue.

*In final passage, the Committee decided to (1) keep its existing recommendations for cultivation sizes or (2) phase in cultivation sizes, with 10,000SF cap in year one, 22,000 cap in year two and MMRSA limits of 44,000SF in year three, or some other phase in or license caps.*

**Usability and slope**

The Committee considered the relationship between parcel and canopy sizes, where sometimes parcels may only have a small percentage of usable property given high slope or other characteristics that inhibit usability. While some expressed interest in adopting a slope or usability standard, others argued that the setback requirements will protect neighbors and mitigate the need for slope restrictions. Ultimately, the Committee did not adopt a slope or usability percentage. However, it is important to emphasize the cultivation sizes per parcel are contingent upon meeting the required setbacks. In other words, just because a parcel has the required acreage, it can only be cultivated to the canopy size allowed if it is able to meet the required setbacks.

**Education and outreach**

To ensure the successful implementation of the new licensing program, the Committee recommends that the county work with industry and other community partners to develop a systematic education and outreach campaign to explain the new program and build mutual relationships across all stakeholders. In this regard, the Committee believes it is important to emphasize that this outreach will need to include both code compliance (civil enforcement) and law enforcement to explain how the County will respond to complaints under the new regulatory system. Clear and consistent messages about how the new program will be implemented are essential to ensuring that cultivators trust the new licensing system and begin to apply.

**HOME BASED CULTIVATION**

The Committee considered whether to recommend licensing for home based cultivation, on parcels less than an acre, inside the urban services line. The Committee recognizes that a large percentage of cultivation in Santa Cruz is home-based cultivation, and that home-based cultivators have been a key source of medical cannabis for the county’s medical cannabis patients. The Committee has spent at least as much or more time deliberating this issue as any other area of cultivation. *In considering a proposal to treat medical cannabis cultivation as an allowed home occupation under terms of the Santa Cruz County home occupation ordinance, the Committee voted to accept/reject the proposal and does/does not recommend any licensing for home based cultivation. The Committee does/does not recommend that home-based cultivators be allowed to apply for provisional licenses to help them transition to a suitable location under the new licensing system.*

**PERSONAL AND COLLECTIVE CULTIVATION REGISTRATION**

The Committee heard from numerous community members who expressed concern about abuse of personal grows, particularly collective grows, being a source of neighborhood and environmental degradation and black market activity. The Sheriff had indicated support for registration of all grows to assist in identifying appropriate response to complaints. Upon consideration, the Committee recommends that individuals who cultivate for personal use be given the opportunity to register on a voluntary basis. However, the Committee recommends that collective cultivation of 2 or more card holders should be required to register.

**MEDICAL CANNABIS ADVISORY COMMISSION**

In addition to these licensing categories and requirements, the Committee strongly recommends that the Board of Supervisors create a Medical Cannabis Advisory Commission which could sunset or expire in 3-5 years. The Commission could serve as a forum for the County, the cannabis sector, and the community to consider the wide array of issues that are certain to arise as the licensing program is implemented.

The Committee is aware of skepticism and opposition to such a Commission. However, the Committee unanimously recommends the creation of an advisory body to assist in the continued implementation and problem solving that will arise as the new licensing system is implemented.

Potential roles could include monitor and evaluate implementation of cultivation policy, convene stakeholders as necessary to help address issues that arise during the implementation process, evaluate approval & denials of exceptions to make appropriate recommendations for policy adjustments, and provide guidance to BOS & licensing official as requested

The Committee has not had sufficient time to recommend the specific makeup of the Advisory Commission and will provide this detail in its next report to the Board.

**TAXES AND FEES**

The Committee recommends that the County would with representatives of the cannabis business community to create a fair and equitable tax measure for the November 2016 ballot.

The Committee recommends that a new tax on cannabis cultivation must meet the following objectives:

* Provide revenue to support essential governmental services and programs;
* Fairly allocate the tax burden so as not to disadvantage cannabis grown by and for local residents;
* Fairly distribute the tax burden imposed on the various businesses involved in the production and sale of cannabis;
* Off-set the social and environmental costs that may result from cannabis cultivation;
* Not be set at an rate that would result in tax evasion and black market cannabis sales;

The Committee identified the following possible options for a cultivation tax.

1. Cannabis would be subject to a tax based on the value of the crop upon its transfer to a licensed distributor/transporter.
2. Export of cannabis for sale outside of the County would require that the cultivator obtain a separate (E) designation (covering all or a portion of the cannabis crop to be grown that licensing year by the cultivator) on a commercial license issued by the County. The (E) designation would authorize a cultivation tax based on square footage of garden canopy/plant number or gram weight of cannabis produced.

If a “recreational cannabis” measure is approved by the voters in November, additional licensing designations could be added distinguishing medical from recreational crops.

1. All cannabis cultivation would be taxed based on square footage of garden canopy/plant number or gram weight of cannabis produced. Cultivator selling cannabis through a licensed County dispensary would be eligible for a rebate of cultivation taxes paid.

**Conclusion**

Thank you again for your leadership in creating the Cannabis Choices Cultivation Committee. We are grateful for the opportunity to be of service to Santa Cruz County on this most important and complex topic. We look forward to your questions, and we will keep you apprised as our remaining work unfolds.

Sincerely,

C4 members by individual signature?