

ORDINANCE NO. 2018-_____

AN ORDINANCE AMENDING TITLE 17 OF THE ALAMEDA COUNTY GENERAL
ORDINANCE CODE TO REGULATE THE CULTIVATION OF CANNABIS IN THE
UNINCORPORATED AREA OF THE COUNTY OF ALAMEDA

SECTION 1

The Board of Supervisors makes the following findings of fact in support of this ordinance:

1. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5 and titled the "Compassionate Use Act of 1996"); and
2. The intent of Proposition 215 was to enable persons who are in need of cannabis for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances; and
3. In 2004, Senate Bill 420 was enacted (codified as California Health and Safety Code sections 11362.7, *et seq.* and titled the "Medical Marijuana Program Act") to clarify the scope of the Compassionate Use Act of 1996; and
4. In 2011, Assembly Bill 2650 was enacted (codified as California Health and Safety Code section 11362.768), which affirmed that counties could adopt ordinances that restrict the location and establishment of medical cannabis collectives and cooperatives; and
5. Assembly Bill 243, Assembly Bill 266, and Senate Bill 643 were enacted in 2015 and subsequently revised by Assembly Bill 21 and Senate Bill 837 in 2016 (codified, in part, as California Business and Professions Code sections 19300, *et seq.* and titled the "Medical Cannabis Regulation and Safety Act") (MCRSA). These bills also amended provisions of the Medical Marijuana Program Act related to the cultivation of medical cannabis; and
6. MCRSA established a comprehensive framework to license and regulate commercial medical cannabis cultivation, manufacturing, distribution, transportation, sales, and testing; and
7. On November 8, 2016, the voters of the State of California approved Proposition 64 (codified, in part, as California Business and Professions Code sections 26000 *et seq.* and titled the "Control, Regulate and Tax Adult Use of Marijuana Act"), which decriminalized the adult use of cannabis for non-medical purposes and established a regulatory scheme at the state level; and
8. On June 27, 2017, Senate Bill 94 (codified, in part, as California Business and Professions Code sections 26000, *et seq.* and titled the "Medicinal and Adult-Use

Cannabis Regulation and Safety Act”, or, “MAUCRSA”) repealed and replaced MCRSA. MAUCRSA consolidates the medical and non-medical cannabis statutes (MCRSA and Proposition 64).

9. Pursuant to California Business and Professions Code section 26200, nothing in MAUCRSA shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements; and
10. The County adopted ordinances authorizing and regulating medical cannabis cultivation operations on September 12, 2017; and
11. This Ordinance is enacted, consistent with the Compassionate Use Act of 1996, the Medical Marijuana Program Act, and MAUCRSA to protect the public health, safety, and welfare of residents of the County of Alameda in relation to the cultivation of cannabis; and
12. The Alameda County Zoning Ordinance (codified as Alameda County General Ordinance Code, Title 17) is a permissive zoning ordinance, enumerating permitted uses in the various zoning districts of the unincorporated county and thereby prohibiting those uses not specifically permitted, under a principle known as “permissive zoning”; and
13. The cultivation of cannabis in appropriate locations will help ensure that locally-produced cannabis cultivated pursuant to local and state regulatory schemes will be available to other businesses within the supply chain while preserving the character, health and safety of the surrounding area; and
14. Absent appropriate regulation, the cultivation of cannabis in the unincorporated area of the County poses a potential threat to public peace, health, and safety; and
15. The County has a compelling interest in protecting the public health, safety, and welfare of its citizens, residents, visitors and businesses, in preserving the safety, peace and quiet of the neighborhoods and agricultural districts within the unincorporated areas of the County by regulating the cultivation of cannabis; and
16. The Board of Supervisors has determined that, although cultivation of cannabis shares some similarities with other agricultural activities, and as identified by recent state legislation, cultivation of cannabis raises health, safety and welfare concerns not raised by other traditional agricultural products and therefore, cannabis cultivation is not a permitted agricultural use by right for the purposes of land use and zoning; and
17. In adopting the East County Area Plan (ECAP) in 1994 and Measure D in 2000, the Board of Supervisors and the voters established an urban growth boundary and associated goals and policies to protect agricultural and open space uses while allowing some limited development, including “agriculture enhancing commercial uses” that can demonstrate an economic connection to agricultural use and production and “visitor-

serving commercial uses” that promote agriculture and are subordinate and directly related to the area’s agricultural production; and

18. The Board of Supervisors has determined that, with appropriate conditions, cultivation of cannabis may be an appropriate conditionally permitted use in the agricultural districts and outside of the urban growth boundary established by Measure D; and
19. Pursuant to MAUCRSA, the California Department of Food and Agriculture has promulgated regulations governing commercial cannabis cultivation and has begun issuing commercial cultivation licenses; and
20. On September 12, 2017, the County adopted a zoning ordinance amendment conditionally permitting medical cannabis cultivation sites to implement the County’s pilot program for cannabis cultivation; and
21. Allowing a single cultivation site to produce cannabis that may eventually be sold to both medicinal and adult-use retail customers will have limited if any impact on other County residents and businesses because the cultivation operation will not be materially impacted by the designation of the eventual retail customer as either medicinal or adult-use; and
22. The Board of Supervisors acknowledges that regulation of cannabis activities is an evolving field at the state level, as evidenced by the recent passage of Proposition 64, adoption of MAUCRSA, and release of emergency regulations by various state licensing agencies. As a result, the field of local regulation is also expected to continue to evolve over the next several years including possible further revisions to the County ordinances, policies and performance standards; and
23. Nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. sections 801, *et seq.* or to license any activity that is prohibited under said Act except as mandated by state law; and
24. Nothing in this Ordinance shall be construed to: (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) exempt cultivation operations from compliance with zoning, land use regulations and health and safety regulations, or, (3) allow any activity relating to the manufacturing, distribution, or consumption of cannabis that is illegal under state or federal law.

SECTION 2

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of the County of Alameda, as follows:

Section 17.04.010 of the Alameda County General Ordinance Code is hereby amended as follows:

The definition of “Cannabis Cultivation” is revised to read:

“Cannabis Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming, including any associated storage, of Cannabis, including cannabis for medicinal use and/or adult-use in accordance with the Medicinal and Adult-Use Cannabis Regulation and Safety Act.

Section 17.06.040 of the Alameda County General Ordinance Code, regarding conditional uses in the Agricultural district, is amended as follows:

Add “Cannabis Cultivation, subject to and in compliance with Chapter 6.106 of this code and Section 17.52.585 of this title.” as paragraph S at the end of the list of conditional uses.

Delete the “.” (period) following the penultimate conditional use listed and replace with “;” (semicolon).

Section 17.52.585 of the Alameda County General Ordinance Code is amended to read as follows:

17.52.585 Conditional Use—Cannabis Cultivation.

- A. Cannabis Cultivation shall be permitted as a conditional use in the A district only if approved by the board of zoning adjustments as provided in Section 17.54.130 and pursuant to Section 17.06.040(S).
- B. A Cannabis Cultivation permit must be issued and any appeals finally determined in accordance with Chapter 6.106 of this code prior to the hearing on an application for a conditional use permit pursuant to this section. A conditional use permit issued pursuant to this section shall be effective only during such time as the permittee also holds a valid and effective Cannabis Cultivation permit pursuant to Chapter 6.106 and a valid and effective state license permitting Cannabis Cultivation.
- C. Cannabis Cultivation uses approved pursuant to this section shall meet the criteria established by section 17.06.040(S), 17.54.130, section 17.54.140 and any criteria established for the district. In addition, no conditional use permit for Cannabis Cultivation shall issue unless the following additional findings are made by the board of zoning adjustments based on sufficient evidence:
 - 1. The applicant has demonstrated an ability to provide effective security for the Cannabis Cultivation site and to provide a safe environment for people working at the site;
 - 2. Theft and diversion of Cannabis cultivated on the premises is prevented;
 - 3. Artificial light shall not escape structures used for Cannabis Cultivation (e.g. greenhouses) at a level that is visible from neighboring properties between sunset and sunrise. Lighting that is visible from the exterior of the Cannabis Cultivation area is prohibited, except such lighting as is reasonably utilized for the security of the premises;

4. Any direct or sky-reflected glare or heat shall not be perceptible at any point outside of the Cannabis Cultivation site;
 5. Noise or vibration, other than that related to transportation activities and temporary construction work, shall not be discernible without instruments at any lot line of the site;
 6. Odorous gases or odorous matter shall not be emitted in quantities such as to be perceptible outside of the Cannabis Cultivation site;
 7. The discharge into any public sewer, private sewage disposal system or stream or into the ground shall not occur except in accordance with the standards approved by the State Department of Health, of any materials of such nature or temperature as to contaminate any water supply, interfere with bacterial processes and sewage treatment, or in any way cause the emission of dangerous or offensive elements;
 8. Any dust, dirt or particulate matter shall not be discharged into the air from any activity or from any products stored on the site; and
 9. The areas of the site to be actively used for Cannabis Cultivation activities are set back as follows:
 - a. At least fifty (50) feet from any property line shared with an adjacent property with different ownership, unless waived in writing by the adjacent owner;
 - b. At least three hundred (300) feet from any residence on an adjacent property with different ownership, unless waived in writing by the adjacent owner; and
 - c. At least one thousand (1000) feet from any school for pre-K to 12th grade students, licensed child or day care facility, public park or playground, drug or alcohol recovery facility or public recreation center.
- D. The Planning Director may establish additional performance standards and standard conditions providing detailed guidance for applicants and permittees. Permittees shall be required to comply with the performance standards and any conditions of approval applicable to a permit issued pursuant to this chapter.

SECTION 3

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on the ____ day of _____, 2018, by the following called vote:

AYES:

NOES:

EXCUSED:

WILMA CHAN
President of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors,

By: _____
Deputy Clerk

APPROVED AS TO FORM:

DONNA R. ZIEGLER, COUNTY COUNSEL

By: _____
Heather Littlejohn
Deputy County Counsel