

ORDINANCE NO. 2018-_____

AN ORDINANCE AMENDING TITLE 17 OF THE ALAMEDA COUNTY GENERAL
ORDINANCE CODE TO CONDITIONALLY PERMIT CANNABIS RETAILERS IN
SPECIFIED DISTRICTS WITHIN THE UNINCORPORATED AREA OF THE COUNTY OF
ALAMEDA

SECTION 1

The Board of Supervisors makes the following findings 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 can adopt ordinances that restrict the location and establishment of medical cannabis collectives and cooperatives; and
5. In 2015, Assembly Bill 243, Assembly Bill 266 and Senate Bill 643 were enacted and subsequently revised by Assembly Bill 21 in 2016 (codified in part as California Business and Professions Code sections 19300, *et seq.* and titled the "Medical Marijuana Regulation and Safety Act"). These bills also amended provisions of the Medical Marijuana Program Act related to the cultivation of medical cannabis; and
6. In 2016, Senate Bill 837 was enacted to change all references to medical marijuana or marijuana to medical cannabis or cannabis, including changing the name of the Medical Marijuana Regulation and Safety Act to the Medical Cannabis Regulation and Safety Act (MCRSA); and
7. MCRSA established a comprehensive framework to license and regulate commercial medical cannabis cultivation, manufacturing, distribution, transportation, sales, and testing; and
8. 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
9. 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).

10. 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
11. On September 12, 2017, the County adopted ordinances regulating medical cannabis cultivation and retail operations (or, “dispensaries”), including amendments to Title 17 to allow medical cannabis dispensaries as a conditional use in certain commercial districts and in the agricultural district; and
12. 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 retail sale and delivery of cannabis; and
13. The County has a compelling interest in protecting the public health, safety, and welfare of its residents, visitors and businesses, in preserving the peace and quiet of the neighborhoods within the unincorporated areas of the County by regulating cannabis retailers as a land use; and
14. Concurrent with this ordinance, the County is considering amending Chapter 6.106 of the General Ordinance Code and amending the Zoning Ordinance to conditionally permit and regulate cultivation of cannabis for both medicinal and adult-use in Agricultural district of the unincorporated County; and
15. Concurrent with this ordinance, the County is considering amending Chapter 6.108 of the General Ordinance Code which regulates cannabis retailers, including allowing retailers to sell cannabis to both medicinal and adult-use customers; and
16. Allowing approved medicinal cannabis retail operators to sell adult-use cannabis will streamline the County’s regulation of cannabis businesses; and
17. Allowing a single retailer to sell cannabis and cannabis products for both medicinal and adult-use will have limited if any impact on other County residents and businesses because the retail operation will not be materially impacted by the designation of the customer as either a medicinal or adult-use customer; and
18. The Board of Supervisors has determined that, with appropriate conditions, cannabis retailers may be appropriately located in certain commercial districts; and
19. 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 is not a permitted agricultural use by right for the purposes of land use and zoning; and
20. 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

21. 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
22. The Board of Supervisors has determined that, with appropriate conditions, a cannabis retailer may be an appropriate conditionally permitted use in the agricultural district and outside of the urban growth boundary established by Measure D as an “agriculture enhancing commercial use” and a “visitor-serving commercial use” that is economically related to and supports the area’s cannabis cultivation; and
23. 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
24. 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
25. 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, retail or delivery operations from compliance with permitting regulations pursuant to other titles in this code, or, (3) allow any activity relating to the cultivation, 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 to add the following definition, inserted in alphabetical order into the existing text of the section:

“Cannabis Retailer” means a premises where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale under the authority of the California Compassionate Use Act, the Medical Marijuana Program Act, or the Medicinal and Adult-Use Cannabis Regulation and Safety Act and as regulated by chapter 6.108 of this Code.

Section 17.04.010 of the Alameda County General Ordinance Code is hereby amended to delete the term and the entirety of the definition for “Medical Cannabis Dispensary.”

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

Delete Paragraph R, “Medical cannabis dispensary.”

Insert as Paragraph R: “Cannabis retailer, subject to and in compliance with Chapter 6.108 of this code;”

Section 17.38.030 of the Alameda County General Ordinance Code, regarding conditional uses in the Retail Business (C-1) commercial district, is amended as follows:

Delete Paragraph W, “Medical cannabis dispensary.”

Insert as Paragraph W: “Cannabis retailer, subject to and in compliance with Chapter 6.108 of this code.”

Section 17.40.030 of the Alameda County General Ordinance Code, regarding conditional uses in the General Commercial (C-2) district, is amended as follows:

Delete Paragraph Q, “Medical cannabis dispensary.”

Insert as Paragraph Q: “Cannabis retailer, subject to and in compliance with Chapter 6.108 of this code.”

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