



## MEMORANDUM

February 10, 2017

TO: Board of Supervisors' Transportation/Planning Committee

FROM: Medical Cannabis Interdepartmental Work Group

MEETING DATE: February 14, 2017

SUBJECT: Draft Medical Cannabis Dispensary and Cultivation Ordinances

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### **BACKGROUND**

At your January 12, 2017 meeting, staff presented a revised draft ordinance that incorporated the public comments that had been received thus far that corrected errors or did not change the substance of the ordinances. Staff also requested your direction as to how to address several public comments that raised issues that would change the substance of the ordinances. The revised ordinance attached to this memo reflects the direction you provided on these policy issues at your last meeting.

### **DISCUSSION/SUMMARY**

#### **Revisions to the Dispensary Ordinance**

The revised dispensary ordinance attached to this memo includes the following changes:

#### Dispensary Ordinance – Title 6 (See Attachment A)

##### *Number of Dispensaries*

- Section 6.108.030.D: revised the number of dispensaries to be allowed in the unincorporated county to five dispensaries in total:
  - three in the West County: two existing dispensaries already approved and one proposed at Fairmont Campus or at an alternative location to be determined if the Fairmont option does not proceed.
  - two in the East County, subject to an RFP process

*Buffers from Sensitive Uses*

- Section 6.108.030.E: maintained the 1000 foot buffer from sensitive uses in the existing County Code (i.e. does not reduce the buffer to 600 feet as stated in the earlier draft ordinance)

*Inventory Limit*

- Section 6.108.120.A.4: changed the limit on inventory at a dispensary from maximum 20 pounds to maximum 100 pounds

*Proposition 47*

- Sections 6.108.100.A.4, 6.100.120.A.12, and 6.108.125A.10: deleted the exclusion of individuals with Prop 47 reclassified drug violations from employment/licensure

*On-site Ingestion*

- Section 6.108.120.A.5: changed to allow limited testing of product on site, but only by management as necessary for business operations.

Zoning Ordinance Amendments for Dispensaries – Title 17 (See Attachment B)

*Dispensary Locations*

- Section 17.06.040.R: removed requirement that dispensaries conditionally permitted in the Agricultural district be accessory to a permitted cannabis cultivation operation.

**Revisions to the Cultivation Ordinance**

The revised cultivation ordinance attached to this memo includes the following changes:

Pilot Cultivation Ordinance – Title 6 (See Attachment C)

*Number of Cultivation Sites*

- Section 6.106.030: Added two potential cultivation sites to the proposed pilot program, for a total of four sites:
  - Up to two permitted dispensaries in good standing will be eligible for pilot cultivation permit.
  - Up to two cultivators may be selected through a solicitation process similar to that being used for dispensaries.

*Proposition 47*

- Sections 6.106.060.B.3: deleted the exclusion of individuals with Prop 47 reclassified drug violations from employment/licensure

Zoning Ordinance Amendments for Cultivation – Title 17 (See Attachment D)

*Buffers from Sensitive Uses*

- Section 17.52.585.C.9.c.: changed the 600 foot buffer from sensitive uses in the earlier draft ordinance to 1000 feet.

## **Equity Measures**

At your January 12<sup>th</sup>, 2017 meeting, your Committee directed staff to include in the RFP process for dispensaries in the West County equity provisions such as preference to co-ops and businesses with community partnerships. For dispensaries and cultivation sites in the East County, the Committee directed staff to include in the RFP process a preference for long-term residents and property owners.

## **California Environmental Quality Act**

The draft environmental document is undergoing internal review and revision based on changes to the project description resulting from the recent changes to the draft ordinances. The document is expected to be completed within the next few weeks, at which time it will be released for a 20-day public review period.

## **January 24<sup>th</sup>, 2017 Agricultural Advisory Committee Meeting**

At the Agricultural Advisory Committee's January 24<sup>th</sup> meeting, the Committee discussed many issues pertaining to the potential impacts that cannabis facilities may have on agricultural operations if they are allowed in the rural areas of the unincorporated county. A letter prepared by the Committee based on the outcome of their discussion is provided in Attachment F.

## **February 6<sup>th</sup>, 2017 Planning Commission Meeting**

At the February 6<sup>th</sup> Planning Commission meeting, staff presented the most recent version of the draft ordinances (Attachments A-E) and provided an update on the status of the ordinance approval process. The commissioners heard public testimony from one resident of the unincorporated area who is opposed to additional cannabis facilities. Other unincorporated residents, as well as several industry advocates, spoke in favor of the ordinances. The Commission continued the item to their February 21<sup>st</sup> meeting.

## **NEXT STEPS**

### **Project Timeline**

A tentative meeting schedule for the completion of the public process for the approval of the draft dispensary and cultivation ordinances is provided below.

February 21, 2017	Planning Commission Meeting
February 22, 2017	Unincorporated Services Committee
February 27, 2017	Castro Valley Municipal Advisory Committee
March 6, 2017	Transportation/Planning Committee
March 14, 2017	Board of Supervisors - First Reading
March 28, 2017	Board of Supervisors - Second Reading

The public meeting schedule, including times and locations, is available on the County website at: <http://www.acgov.org/cda/planning/landuseprojects/medical-cannabis.htm>. This webpage also provides a list of past meetings and links to presentations and written materials from those meetings.

The ordinances will go into effect 30 days after the Board takes action at the second reading of the ordinances. After that time, staff will begin preparing for the solicitation of proposals for the additional dispensaries and the cultivation sites allowed under the ordinances.

**Attachments:**

- Attachment A – An Ordinance Amending Chapter 6.108 of the Alameda County General Code to Regulate Medical Marijuana Dispensaries, to Permit and Regulate the Delivery of Medical Cannabis in the Unincorporated Area of Alameda County, and to Regulate the Sale, Dispensing and Delivery of Edibles
- Attachment B – An Ordinance Amending Title 17 of the Alameda County General Code to Conditionally Permit Medical Cannabis Dispensaries in Specified Districts within the Unincorporated Area of Alameda County
- Attachment C – An Ordinance Adding Chapter 6.106 to the Alameda County General Code to Implement a Pilot Program Authorizing and Regulating the Cultivation of Medical Cannabis in the Unincorporated Area of Alameda County
- Attachment D – An Ordinance Amending Title 17 of the Alameda County General Code to Implement a Pilot Program Authorizing and Regulating the Cultivation of Medical Cannabis in the Unincorporated Area of Alameda County
- Attachment E – Performance Standards and Standard Conditions for Pilot Program Cultivation Sites.
- Attachment F – January 30, 2017 Letter from the Alameda County Agricultural Advisory Committee

## ORDINANCE NO. 2017-\_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 6.108 OF THE ALAMEDA COUNTY GENERAL CODE TO REGULATE MEDICAL MARIJUANA DISPENSARIES, TO PERMIT AND REGULATE THE DELIVERY OF MEDICAL CANNABIS IN THE UNINCORPORATED AREA OF ALAMEDA COUNTY, AND TO REGULATE THE SALE, DISPENSING AND DELIVERY OF EDIBLES

## 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 marijuana 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 section 11362.7 *et seq.* and titled the "Medical Marijuana Program Act") to clarify the scope of the Compassionate Use Act of 1996. The Medical Marijuana Program Act allows counties to adopt and enforce rules and regulations consistent with its provisions; and
4. In 2011, Assembly Bill 2650 was enacted (codified as California Health and Safety Code section 11362.768). This law affirms that counties can adopt ordinances that restrict the location and establishment of medical marijuana collectives and cooperatives; and
5. In 2015, Assembly Bill 243, Assembly Bill 266 and Senate Bill 643 were enacted (codified in part as California Business and Professions Code section 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; and
7. The Medical Cannabis Regulation and Safety Act establishes a comprehensive framework to license and regulate commercial medical cannabis cultivation, manufacturing, distribution, transportation, sales, and testing; and
8. Pursuant to California Business and Professions Code section 19315(a), nothing in the Medical Cannabis Regulation and Safety Act 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
9. This Ordinance is enacted, consistent with the Compassionate Use Act of 1996, the Medical Marijuana Program Act, and the Medical Cannabis Regulation and Safety Act to protect the public health, safety, and welfare of Alameda County residents in relation to the distribution

and delivery of medical cannabis; and

10. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court concluded that nothing in the Compassionate Use Act nor the Medical Marijuana Program Act preclude a local jurisdiction from regulating or prohibiting facilities that distribute medical marijuana; and
11. Although not authorized by the County, it is believed that the delivery of medical cannabis has been occurring in the unincorporated area of Alameda County; and
12. Permitting the delivery of medical cannabis provides an important service to those who are seriously ill, elderly, and persons with disabilities who are otherwise unable to easily access "brick and mortar" dispensaries; and
13. Absent appropriate regulation, the delivery of medical cannabis in the unincorporated area of Alameda County poses a potential threat to the public peace, health, and safety; and
14. Medical cannabis dispensaries have been dispensing food products containing cannabis, commonly referred to as "edibles", that may constitute a unique health hazard to the public because, unlike other ingestible items, edibles are not presently regulated, inspected, or analyzed for concentration by state or federal government; and
15. The County of Alameda intends to proceed with further study and public meetings to consider additional ordinances that most effectively regulate and license all facets of medical cannabis activities, including cultivation and manufacturing; and
16. The County of Alameda has a compelling interest in protecting the public health, safety, and welfare of its citizens, residents, visitors and businesses, in preserving the peace and quiet of the neighborhoods within the unincorporated areas of the County by regulating the distribution and delivery of medical cannabis and the production and packaging of edibles; and
17. On November 8, 2016, In 1996, the voters of the State of California approved Proposition 64 (codified, in part, as California Business and Professions Code sections 2600 *et seq.* and titled the "Control, Regulate and Tax Adult Use of Marijuana Act"), which decriminalizes the adult use of marijuana for non-medical purposes and establishes a regulatory scheme at the state level; and
18. This Ordinance regulates the dispensing and delivery of medical cannabis and medical cannabis products in the unincorporated areas of the County and does not address the dispensing or delivery of marijuana for non-medical use under Proposition 64 or otherwise;
19. Nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. § 801 *et seq.* or to license any activity that is prohibited under said Act except as mandated by State law; and
20. Nothing in this Ordinance shall be construed to: (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) allow the use of cannabis for non-medical purposes; (3) exempt dispensaries or delivery operations from compliance with zoning and land use regulations, or, (4) 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 1. That~~ Chapter 6.108 of the Alameda County General Code is hereby ~~be~~ amended to read as follows:

**Chapter 6.108 – Medical Marijuana Dispensaries, Delivery Operations and Edibles**

**6.108.010 - Purpose and intent.**

The purpose and intent of this chapter is to implement state law by providing a means for regulating the operation of medical cannabis dispensaries, the delivery of medical cannabis, and the preparation, packaging and labeling of medical cannabis edibles in a manner that is consistent with state law and which promotes the health, safety and general welfare of the residents and businesses within the unincorporated portions of the county.

**6.108.020 - Definitions.**

The following words and phrases shall have the following meanings when used in this chapter:

- A. "Applicant" means a person who shall seek a permit under this chapter by filing an application as provided for in this chapter. "Application" means that form provided by the director in accordance with this chapter for the purpose of seeking a permit.
- B. "Bureau" or "BMCR" means the Bureau of Medical Cannabis Regulation within the California Department of Consumer Affairs.
- C. "Brick and mortar" dispensary means a dispensary with a permanent physical location for which a license or permit to dispense medical cannabis from a store-front retail premise for direct physical access to qualified patients and primary caregivers has been issued by the state and, when required by the jurisdiction in which the dispensary is located, by the host local government.
- D. "Cannabis" or "Marijuana" shall have the same definition as in Business and Professions Code section 19300.5(f), which defines "cannabis" as all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" also means marijuana as defined by Section 11018 of the California Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For purposes of this chapter, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

- E. "Cannabis concentrate" or "Concentrate" shall have the same definition as in Business and Professions Code section 19300.5(g), which defines "cannabis concentrate" to mean manufactured cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product's potency. Resin from granular trichomes from a cannabis plant is a concentrate for purposes of this chapter. A cannabis concentrate is not considered food, as defined by Section 109935 of the California Health and Safety Code, or a drug, as defined by Section 109925 of the California Health and Safety Code.
- F. "Community Development Agency" means the community development agency of the County of Alameda.
- G. "County" means the county of Alameda.
- H. "Cultivate" or "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of medical cannabis.
- I. "Delivery" means the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the Bureau of Medical Cannabis Regulation or, until the BMCR establishes an allowed amount, the amount allowed by California Health and Safety Code Section 11362.77, to a primary caregiver or qualified patient as defined in Section 11362.7 of the California Health and Safety Code, or a testing laboratory. "Delivery" also includes the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed by the BMCR, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.
- J. "Delivery Operator" means a person holding a permit under this Chapter to engage in the delivery of medical cannabis or medical cannabis products.
- K. "Director" means the director of the Community Development Agency or his designee.
- L. "Dispensing" means any activity involving the retail sale of medical cannabis or medical cannabis products from a dispensary.
- M. "Dispensary" means a premises where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to Business and Professions Code Section 19340, medical cannabis and medical cannabis products as part of a retail sale under the authority of the California Compassionate Use Act, the Medical Marijuana Program Act, or the California Medical Cannabis Regulation and Safety Act and as regulated by this chapter; provided, however, that the following facilities are exempt from the requirement of a permit:
  - 1. A clinic that is licensed under Chapter 1 of Division 2 of the California Health and Safety Code.
  - 2. A health care facility that is licensed under Chapter 2 of Division 2 of the California Health and Safety Code.
  - 3. A residential care facility for persons with chronic life-threatening illness that is licensed under Chapter 3.01 of Division 2 of the California Health and Safety Code.
  - 4. A residential care facility for the elderly that is licensed under Chapter 3.2 of Division 2 of the California Health and Safety Code.



5. A residential hospice or a home health agency that is licensed under Chapter 8 of Division 2 of the California Health and Safety Code.
- N. "Distribution" means the procurement, sale, and transport of medical cannabis and medical cannabis products between entities licensed pursuant to Chapter 3.5 of the California Business and Professions Code.
- O. "Edible cannabis product", "Edible" or "Edibles" shall have the same definition as in Business and Professions Code section 19300.5(s), which defines "edible cannabis product" as manufactured cannabis that is intended to be used, in whole or in part, for human consumption, including, but not limited to chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the California Food and Agricultural Code. An edible medical cannabis product is not considered food, as defined by Section 109935 of the California Health and Safety Code or a drug as defined by Section 109925 of the California Health and Safety Code.
- P. "Eligible application" means an application that complies with the requirements of the initial review and is submitted for final selection, as provided for in Section 6.108.110.
- Q. "Identification card" has the same definition as in Section 11362.7 of the California Health and Safety Code, as it may be amended.
- R. "Labeling" means any label or other written, printed, or graphic matter upon a medical cannabis product, or upon its container or wrapper, or that accompanies any medical cannabis product.
- S. "Manufactured cannabis" means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product.
- T. "Medical cannabis," "medical cannabis product," or "cannabis product" means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code. For the purposes of this chapter, "medical cannabis" does not include "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.
- U. "Nursery" means a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of medical cannabis.
- V. "Permit" means a permit issued by the county to a medical cannabis dispensary or delivery operator under this chapter. "Permittee" means a person who holds an effective and current permit under this chapter.
- W. "Person" means any human being or an incorporated or unincorporated business entity or association established under the laws of the state.
- X. "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to Article 2.5 of the California Health and Safety Code
- Y. "Premises" means the building in which a medical cannabis dispensary is operated and, in addition, any accessory structures and appurtenant areas.
- Z. "Primary caregiver" means the individual, designated by a qualified patient or a person with an identification card, who has consistently assumed responsibility for the housing,

health, or safety of that patient or person, and may include those persons identified in subdivision (e) of Section 11362.5 of the California Health and Safety Code, as it may be amended.

- AA. "Qualified patient" means a person who is entitled to the protections of Section 11362.5 of the California Health and Safety Code, but who does not have an identification card issued pursuant to Article 2.5 of the California Health and Safety Code.
- BB. "School" means an institution of learning for minors, whether public or private, that offers a regular course of instruction ~~and any child or day care facility.~~
- CC. "Sheriff" means the sheriff of the county of Alameda and his or her authorized representatives.
- DD. "State" means the state of California.

#### 6.108.030 – Dispensary permit required.

- A. It shall be unlawful for any person to conduct, engage in or allow to be conducted or engaged in, the operation of a medical cannabis dispensary in the unincorporated portion of Alameda County, unless such medical cannabis dispensary has been granted a legally effective permit issued under this chapter. Notwithstanding the above, the permits issued under this chapter do not provide any protection or immunity for any person from state or federal laws, or from prosecution pursuant to any applicable state or federal laws.
- B. The owner, managing partner, officer of a corporation or such other person who shall be primarily responsible for the operation of a proposed medical cannabis dispensary shall apply for a permit under this chapter and, if granted, shall maintain the operation of the medical cannabis dispensary in conformity with the terms of this chapter and of the permit.
- C. The fact that an applicant possesses other types of state or county permits or licenses other than those identified in Section 6.108.020 shall not exempt the applicant from obtaining a permit under this chapter, nor shall the terms and conditions of any other such permit or license modify the requirements of a permit granted under this chapter.

#### OPTION NO. 1:

- D. At no time shall the county have in effect more than ~~six~~ five permits, which shall not exceed a maximum of ~~one~~ two permits in any ~~one~~ of the three areas shown in Exhibit A (West County) or a maximum of two permits in the area shown in Exhibit B (East County) at the end of this chapter. ~~In no event shall the total number of permits for all areas shown in Exhibit A (West County) exceed four or the total number of permits for all areas shown in Exhibit B (East County) exceed two.~~ No permit shall be issued in any portion of the unincorporated area that is not within one of the areas delineated in Exhibit A or Exhibit B.

#### OPTION NO. 2:

- D. ~~At no time shall the county have in effect more than six permits. No permit shall be issued in any portion of the unincorporated area that is not within one of the areas delineated in Exhibit A (West County) and Exhibit B (East County) at the end of this chapter. At no time shall the number of permits issued exceed a total of four for all areas shown in Exhibit A (West County) or more than one for each individual area shown in Exhibit A (West County).~~

~~which includes Unincorporated Ashland, Unincorporated Cherryland, and Unincorporated San Lorenzo, as these areas are more accurately defined in the Eden Area General Plan, adopted March 2010, and Unincorporated Castro Valley, as that area is more accurately defined in the Castro Valley General Plan, adopted March 2012. At no time shall the number of permits exceed a maximum of two permits in all areas shown in Exhibit B (East County) at the end of this chapter.~~

- E. Notwithstanding subsection D of this section, each medical cannabis dispensary shall comply with all zoning requirements in Title 17 of the Alameda County General Code, ~~and the Alameda County General Plan Measure D (Save Agriculture and Open Space Lands), including, and any Specific Plan applicable to the location of the dispensary, including~~ the requirement to obtain any conditional use permits, and shall also meet all of the following locational standards:
1. No dispensary may be closer than ~~six hundred one thousand (6001000)~~ six hundred one thousand (6001000) feet from any other dispensary.
  2. No dispensary may be closer than ~~six hundred one thousand (6001000)~~ six hundred one thousand (6001000) feet from any school, child or day care facility, public park or playground, drug recovery facility or recreation center.
  3. No dispensary shall be located in a residential zone or its equivalent.

#### **6.108.035 – Delivery permit required.**

A. It shall be unlawful for any person, including a legally permitted medical cannabis dispensary, to conduct, engage in or allow to be conducted or engaged in the delivery of medical cannabis or medical cannabis products in the unincorporated portion of Alameda County, unless such person has been granted a legally effective delivery permit issued under this chapter. Notwithstanding the above, the permits issued under this chapter do not provide any protection or immunity for any person from state or federal laws, or from prosecution pursuant to any applicable state or federal laws.

B. The owner, managing partner, officer of a corporation or such other person who shall be primarily responsible for the operation of a proposed medical cannabis delivery operation shall apply for a permit under this chapter and, if granted, shall maintain the operation of the medical cannabis delivery operation in conformity with the terms of this chapter and of the permit.

C. The fact that an applicant possesses other types of state or county permits or licenses shall not exempt the applicant from obtaining a delivery permit under this chapter, nor shall the terms and conditions of any other such permit or license modify the requirements of a permit granted under this chapter.

D. A medical cannabis delivery permit shall be issued only to a "brick and mortar" dispensary holding a valid license or permit to dispense medical cannabis issued by the State of California or by a California city, county, or city and county. Mobile dispensaries that do not have a permanent physical dispensary location (a "brick and mortar" dispensary) are not eligible for and shall not be issued a delivery permit.

E. A delivery permit shall automatically expire, be suspended or revoked when the permit holder's dispensary license or permit expires, is suspended or revoked. The expiration, suspension or revocation of a delivery permit will not automatically affect the status of the delivery permit holder's dispensary license.

**6.108.040 - Term of permits and renewals.**

- A. Each dispensary permit shall expire two years after the date of its issuance.
- B. The term of each delivery permit shall run concurrent with the term of the delivery permit holder's dispensary permit, but in no event longer than two years after the date of its issuance.
- C. Any permit may be renewed by the director for successive two-year periods upon the submission of a renewal application by the permittee. At the time of consideration of a renewal application, the county shall consider compliance with conditions in the prior term.
- D. Any application for renewal shall be filed at least forty-five (45) days before expiration of the permit.
- E. Any application for renewal shall be rejected if:
  - 1. The application is filed less than forty-five (45) days before its expiration.
  - 2. The permit is suspended or revoked at the time of the application; provided, however, that an application for renewal may be filed within ten days after the granting of a permittee's appeal of the suspension or revocation of a permit.
  - 3. The dispensary authorized by the dispensary permit has not been in regular operation in the four months prior to the renewal application.
  - 4. The dispensary fails to conform to the criteria set forth in Section 6.108.100 or, for a delivery permit, the dispensary fails to conform to the criteria set forth in Section 6.108.125.

**6.108.050 – Dispensary permit application and renewal procedures.**

- A. When one or more dispensary permits authorized by Section 6.108.030 is available for award, the director will initiate a process to solicit applications for the establishment of a dispensary within an area where a dispensary could be established based upon the provisions of Section 6.108.030.
- B. Each application for the establishment of a dispensary or renewal of an existing dispensary permit shall be filed with the director and the director shall be responsible for administering the application solicitation and renewal application processes as set forth in this chapter.
- C. The director shall adopt such forms and procedures as are necessary to implement this chapter with respect to the initial selection, future selection, renewal, revocation and suspension of permits.
- D. Wherever this chapter requires the county to give notice to an applicant, appellant or permittee, such notice shall be given by the director, in writing, and shall be delivered either by personal delivery or by certified U.S. mail, postage prepaid, return receipt requested. In addition, any such notice shall be posted at the address of the dispensary on the date of the mailing of notice.
- E. No person or facility that purports to have distributed or delivered cannabis prior to the enactment of this chapter shall be deemed to have been a legally established dispensary or delivery operation under the provisions of this chapter, and such person or facility shall not be entitled to claim a legal nonconforming status.

**6.108.060 - Contents of dispensary permit application.**

- A. In response to a solicitation for applications initiated by the director, each application for a dispensary permit shall set forth or incorporate by reference the following information and such other relevant information determined by the director to be reasonably required, all in a standard form adopted by the director:
1. Address of the proposed dispensary and the name and address of the owner of the premises.
  2. The full name, date of birth, social security number, present address and telephone number of the applicant.
  3. The address to which notice of action on the application is to be mailed.
  4. All residential addresses of the applicant for the five years immediately prior to the date of the application.
  5. Written proof that the applicant is eighteen (18) years of age or older (i.e., California driver's license, California identification card or birth certificate).
  6. The height and weight and the color of eyes and hair of the applicant.
  7. Photographs of the applicant for identification purposes to be taken by the sheriff.
  8. The names and addresses of all businesses operated by and the employment of the applicant for the five years immediately prior to the date of the application.
  9. The address of any dispensaries that had previously been operated by the applicant and a statement of whether the authorization for any such operation had been revoked or suspended and, if so, the reason therefor.
  10. The names and telephone numbers of the person or persons to be regularly engaged in the operation of the proposed dispensary, whether an employee, volunteer or contractor. The application shall also identify those persons, including telephone numbers (i.e., emergency contact), having management and supervisory responsibilities for the proposed dispensary. Every person listed as owner, manager, supervisor or employee must submit fingerprints and other necessary information for a background check to the Alameda County sheriff's office, and be photographed for identification purposes. In addition, any new employees, independent contractors, other persons and/or volunteers who will work at the proposed medical cannabis dispensary must submit their information to the sheriff's office within five days prior to their employment.
  11. A security plan containing a detailed description of the proposed security arrangements for insuring the safety of persons from theft and robbery and protection of the premises from theft and burglary. The security plan shall be approved by the Sheriff, and shall include a lighting plan showing existing and proposed exterior premises and interior lighting levels, alarms and security surveillance cameras. Security video shall be maintained for 30 business days and shall be made available to the Sheriff upon request. The video system for security cameras must be located in a locked, tamper-proof compartment. A professionally monitored robbery alarm system shall be installed and maintained in good working condition. The security plan shall include the provision of a suitable locked safe on the premises for after-hours storage of medical cannabis.
  12. A floor plan, consisting of a sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the dispensary. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus twelve (12) inches. The dispensary must have a lobby waiting

area at the entrance to receive clients, and a separate and secure designated area for dispensing medical cannabis to qualified patients or designated caregivers. The primary entrance shall be located and maintained clear of barriers, landscaping or similar obstructions so that it is clearly visible from public streets, sidewalks, or site driveways.

13. A description of external appearance of the dispensary, including a precise depiction of any signage, which shall not obstruct the entrance or windows of the dispensary. All signage shall comply with the County Zoning Ordinance and be approved by the director.
  14. A description of products to be sold or dispensed by the dispensary.
  15. The mission statement of the dispensary with respect to meeting the medical needs of patients in its area, as delineated by subsection D of Section 6.108.030.
  16. A description of the methods by which the applicant will mitigate any potentially adverse impacts, such as loitering, odors or noise, on surrounding property owners. The dispensary shall be designed to provide sufficient odor absorbing ventilation and exhaust systems to that any odor generated inside the dispensary is not detected outside the building in which it operates, on adjacent public rights-of-way, or within other units located within the same building as the dispensary if it occupies only a portion of the building.
  17. Authorization for the county, its agents and employees to seek verification of the information contained in the application.
  18. Written certification that the applicant has reviewed and understands and accepts the standard conditions that are set forth in Section 6.108.120.
  19. Certification, under penalty of perjury, that all the information contained in the application is true and correct.
  20. A statement by the applicant that it has the ability to comply with all laws regulating businesses in the state of California and that it shall maintain compliance during the term of the permit.
  21. An operating plan specifically describing how the dispensary will operate consistent with State and local law, including but not limited to: the minimum staffing levels for operation of the dispensary, policies and procedures for record keeping, specific details of the dispensary's track and trace program, specific details of the dispensary's product testing, specific details of the dispensary's proposed odor absorbing ventilation and exhaust systems, and other relevant information regarding the operation of the proposed dispensary and including a copy of the dispensary's labor peace agreement when the dispensary is required by California Business & Professions Code Section 19322(a)(6) to enter into or abide by a labor peace agreement.
- B. The filing of an application shall be deemed complete upon the submission of an application in conformance with this section and payment of the application fees required by Section 6.108.070.
- C. An application may be reviewed and copied by any member of the public in accordance with the California Public Records Act.

**6.108.065 – Delivery permit application and renewal procedures; contents of delivery permit application.**

- A. The owner, managing partner, officer of a corporation of a licensed or permitted medical cannabis dispensary or such other person who shall be authorized by the licensed or permitted

medical cannabis dispensary may apply for a delivery permit or for renewal of a delivery permit under this chapter and, if granted, shall maintain the operation of the medical cannabis delivery operation in conformity with the terms of this chapter and of the permit.

B. Each application for a delivery permit or renewal of a delivery permit shall set forth or incorporate by reference the information required for a dispensary permit in Section 6.108.060 and such other information as the director may require in a standard form adopted by the director:

C. The filing of an application for a delivery permit or renewal of a delivery permit shall be deemed complete upon the submission of an application in conformance with this section and payment of the application fees required by Section 6.108.070.

D. An application may be reviewed and copied by any member of the public in accordance with the California Public Records Act.

#### **6.108.070 - Fees.**

- A. Every application or renewal of a dispensary or delivery permit shall be accompanied by a nonrefundable fee, as established by the board of supervisors, in order to reimburse the county for the cost of reviewing and acting upon the application.
- B. In addition, each dispensary and delivery operator shall pay an annual fee, as established by the board of supervisors, for the administration of the permit, including monitoring and enforcing compliance with terms of the permit.
- C. The board of supervisors may enact such other fees as may be necessary to recover the county's costs of inspection and corrective actions in relation to dispensaries and delivery operations.

#### **6.108.090 - Initial review of application.**

- A. The director shall commence review of any application immediately upon its filing and shall complete such initial review within the time period established in the solicitation process for dispensary permits, but in no event shall the initial review exceed one hundred and twenty (120) days, and within forty-five (45) days for delivery permits, delivery permit renewal applications, and dispensary renewal applications. In conducting this review, the following county agencies shall comment on specific portions of the application:
  - 1. The sheriff shall be responsible for verifying factual information in the application, including names, addresses and other information on the applicant operator and its employees of the proposed dispensary or delivery operation.
  - 2. The sheriff shall comment upon the adequacy of security measures that are described in the application, the security plan, the floor plan, and other relevant aspects of the application.
  - 3. The community development agency shall comment upon the proposed location's compliance with the requirements of subsections D and E of Section 6.108.030, the general responsiveness to the solicitation process in Section 6.108.050, and conditions that are needed to mitigate adverse impacts on surrounding uses.
  - 4. The health care services agency shall comment upon the services to be provided and the mission statement set forth in the application.
  - 5. The environmental health services agency shall comment upon the application's compliance with the requirements of Section 6.108.230.

- B. Within twenty (20) business days after the filing of an application, the director shall reject any application and so notify the applicant, if the application has been improperly completed or if it is incomplete. The applicant may amend and refile the application within ten days after such rejection.
- C. At the conclusion of the initial review, the director shall notify the applicant of the results of the initial review of the application.

**6.108.100 - Action upon completion of initial review.**

- A. Upon completion of the initial review, the director shall reject any permit application that meets any of the following criteria:
  1. The proposed dispensary or delivery operation does not comply with requirements of this chapter.
  2. The applicant has knowingly made a false statement of material fact or has knowingly omitted a material fact from the application.
  3. The operation of the proposed dispensary at the proposed location is prohibited by any state or local law or regulation.
  4. Any person who is listed on the application pursuant to subsection (A)(10) of Section 6.108.060 or subsection (A)(10) of Section 6.108.065 has been convicted of a felony ~~or a drug-related misdemeanor reclassified by Section 1170.18 of the California Penal Code (Proposition 47)~~ within the past ten (10) years. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
  5. The applicant or the operator listed in the application is less than eighteen (18) years of age.
  6. The health care services agency has determined that the application for a dispensary has failed to state a health care purpose that fulfills the purposes of Section 11362.5 et seq. of the California Health and Safety Code.
  - ~~7. The applicant is delinquent in the payment of any applicable state or County taxes and fees.~~
- B. Any application that is not rejected upon completion of the initial review shall be deemed an eligible application and submitted to the final selection phase of the solicitation process.

**6.108.110 - Final selection of medical cannabis dispensaries.**

- A. The final selection phase of the solicitation process shall be comprised of selection of which eligible applications shall be submitted for final selection and the establishment of operating conditions of any permits issued under this chapter. The final selection process shall not exceed one hundred and twenty (120) days in the absence of an appeal.
- B. The final selection process for dispensaries shall commence with the separation of all eligible applications into the areas that are delineated in subsection D of Section 6.108.030. If an area has a number of eligible applications that is the same as or less than the allowable number of medical cannabis dispensaries for such area, then all applications for that area shall be submitted for establishment of operating conditions as set forth in subsection C of this section. If any area has a number of eligible applications that exceeds the maximum number of dispensaries for such area, the eligible applications to be submitted for final selection shall be designated by a competitive evaluation process in which applicants are



scored and ranked with the director recommending issuance of a permit to the highest ranked, eligible applicants in each geographic area where dispensary permits are available.

- C. The sheriff and the director shall establish operating conditions, in addition to the standard conditions contained in Section 6.108.120 for dispensaries and in Section 6.108.120 for delivery operations, for each eligible application that has been submitted for final review. The operating conditions shall be limited to those that are necessary to carry out the purposes of this chapter and to mitigate specific and foreseeable adverse impacts on properties in the vicinity.
- D. At the conclusion of the final selection, the director shall give notice to the dispensary permit applicant of the operating conditions that would attach to the permit. Within ten days after notice, the applicant shall either:
  - 1. Certify acceptance of the operating conditions and the standard conditions of the permit, and the permit shall thereupon issue immediately.
  - 2. If the applicant refuses or fails to certify agreement with any operating condition or standard condition, the application shall be denied. The applicant may appeal any condition within ten days after notice of the conditions. Upon either the failure to file a timely appeal or the rejection of the appeal, the application shall be deemed denied.
- E. The operating conditions established by the director shall include the requirement for each eligible applicant to obtain (1) any required state permits or licenses for the operation of a dispensary and delivery operation, if applicable, and (2) all land use entitlements required to operate a dispensary and delivery operation, if applicable. No dispensary or delivery permit shall be effective until these conditions of approval are satisfied.

**(Ord. 2005-25 § 2 (part))**

**6.108.120 - Standard conditions for medical cannabis dispensaries.**

- A. Throughout the term of the medical cannabis dispensary permit, each permittee shall not violate this chapter and shall comply with the following standard conditions:
  - 1. It shall be a violation of this chapter for a dispensary to distribute, provide or allow to be provided cannabis to any person except those persons who are primary caregivers or qualified patients who are in possession of an identification card which is in compliance with the regulations established by the California Department of Health or health care services agency or have a verifiable written recommendation from a licensed physician for medical cannabis. All distribution that does not strictly comply with Section 11362.5 of the California Health and Safety Code and the terms of the permit and this chapter is prohibited. It shall be the responsibility of the permittee to ensure that a good faith effort be made to verify the validity of any identification card and written recommendation provided to the dispensary.
  - 2. Each dispensary shall maintain records of persons who have received cannabis from the dispensary. These records shall set forth only the identification card number issued pursuant to California Health and Safety Code Section 11362.71 et seq., as a protection of the confidentiality of the cardholders or a copy of such documentation that authorizes such distribution under this chapter.
  - 3. No dispensary shall be open for business between the hours of 12:00 a.m. and 9:00 a.m. or between the hours of 9:00 p.m. and 11:59 p.m. on any day. Additionally, to avoid conflict with the travel of students to and from the school, no dispensary located within

one thousand (1,000) feet of any school shall be open during the one and one-half hour period immediately following the cessation of classes. No activities that are undertaken in the operation of the dispensary shall be conducted outside the interior premises of the dispensary.

4. Unless and until a local and state nursery or cultivation license or permit or a state producing dispensary license (type 10A) has been issued for the dispensary location, cannabis may not be grown or cultivated on the premises.

A dispensary shall actively regulate and monitor its purchasing limits, such that no qualified patient is permitted to purchase in excess of eight ounces of cannabis in any calendar month.

A dispensary shall actively regulate and monitor its inventory, such that at no time the amount of cannabis on the premises exceeds 100 pounds.

5. No cannabis shall be smoked, ingested or otherwise consumed on the premises of a dispensary, provided that ingestion by a vaporization device may be authorized in writing by the health care services agency, other than by dispensary management as reasonably necessary for dispensary operations such as purchasing, pricing and quality control.
6. A dispensary shall ensure that its products are in tamper-evident packages and labeled as required by California Business and Professions Code Section 19347, regulations established by the BMCR, and requirements of the California Department of Food and Agriculture and by stating the name of the dispensary and the weight of cannabis. Any edible cannabis product must be contained in a package that is labeled to indicate the ingredients, including the amount of cannabis contained in the package, identify the product, state who is responsible for the product, and such other information as may be required by state or local law.
7. Medical cannabis may be provided by a dispensary in an edible form, provided that the edibles meet all applicable state and county requirements, including but not limited to the provisions in Section 6.108.230.
8. No person who is less than eighteen (18) years of age may be employed or otherwise engaged in the operation of the dispensary. No person under the age of eighteen (18) shall be allowed on the premises. It shall be unlawful for any dispensary to provide medical cannabis to any person under the age of eighteen (18) unless that person is a qualified patient or a primary caregiver with a valid identification card in accordance with California Health and Safety Code section 11362.7 or have a verifiable written recommendation from a licensed physician for medical cannabis.
9. The entrance to a dispensary shall be posted with a notice that states the restrictions on the presence of persons under the age of eighteen (18) and that smoking, ingesting or consuming cannabis on the premises is prohibited. In addition, each dispensary shall conspicuously display the permit.
10. No dispensary may hold a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, nor may it include a business that sells alcoholic beverages. No alcohol may be stored, sold, dispensed or used on the premises.
11. Each permittee shall maintain a current registry of persons, including, but not limited to, employees, contractors and volunteers, who are engaged in the operation of the dispensary. The registry shall be provided to the director and the sheriff at any time upon request. The registry shall include the name, current residential address, telephone

- number, date of birth and the height, weight and color of eyes and hair of each such person.
12. No person who has been convicted of a felony ~~or a drug-related misdemeanor reclassified by Section 1170.18 of the California Penal Code (Proposition 47)~~ within the past ten years may be actively engaged in the operation of any dispensary. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
  13. A dispensary shall provide adequate security on the premises, including lighting and alarms, to insure the safety of persons and to protect the premises from theft.
  14. The permittee shall provide the director with the name, telephone number and facsimile number of a community relations contact to whom one can provide notice of problems associated with the dispensary. The permittee shall make a good faith effort to resolve problems without the need for intervention by the county.
  15. A dispensary shall provide litter removal services twice each day of operation on and in front of the premises and, if necessary, on public sidewalks within one hundred (100) feet of the premises.
  16. A dispensary shall comply with county building, zoning and health codes, and shall allow inspections to ensure conformance with such regulations.
  17. A dispensary shall not be delinquent in the payment of fees required by this chapter.
  18. All activities of the dispensary must take place within the interior of the building
  19. A dispensary must have appropriate restroom facilities that will accommodate both male and female customers.
  20. Once the BMCR begins issuing licenses to testing laboratories, a dispensary shall ensure that a representative sample of its Cannabis and Cannabis Products have been submitted for analytical testing at a licensed testing laboratory, as defined in Business and Professions Code section 19300.5(ak), before the Cannabis and Cannabis Products are delivered to the dispensary.
  21. A dispensary shall package all cannabis flowers sold on its premises in child resistant packaging.
  22. A dispensary shall implement a track and trace program with a unique identifier for every product, both for inventory stored in a safe and inventory packaged for sale, pursuant to Section 11362.777 of the California Health and Safety Code and in compliance with Section 19335 of the California Business and Professions Code and all applicable regulations.
  23. A dispensary shall use devices that meet the standards of the California Department of Food and Agriculture's Division of Measurement Standards for all weighing and measuring devices, including but not limited to scales and scanners; register with Alameda County Sealer of Weights of Measures; allow inspections and sealing of all weighing and measuring devices, including scanners or POS systems; and comply with all other requirements in Division 5 of California Business and Professions Code related to weights and measures, Title 4 Division 9 of the California Code of Regulations, and any relevant Alameda County ordinance.
  24. No dispensary shall (a) enter into any agreement or employ a physician for the purpose of evaluating patients for the issuance of a medical marijuana recommendation or identification card; (b) allow a physician to locate on the dispensary premises at any time

for the purpose of issuing a medical marijuana recommendation or identification card; (c) give or offer to give any form of remuneration to a physician if the physician or his or her immediate family have a financial interest (as that term is defined in California Business and Professions Code section 650.01) in the dispensary; and (d) not distribute any form of advertising for physician recommendations for medical cannabis in California unless the advertisement bears the notice to consumers contained in California Business and Professions Code section 2525.5.

25. Each dispensary shall fully comply with the terms of its approved security plan, floor plan and operating plan.
- B. In order to minimize any adverse impacts on surrounding properties or residents, the standard operating conditions that are set forth in this section may be modified upon the issuance of the permit or upon ten days' notice during the term of the permit.
- C. During the term of each permit, the county shall require the permittee to comply with the standard operating conditions that are set forth in this section or as they may be modified in accordance with subsection B of this section and, in addition, any such operating conditions that may be established pursuant to subsections C and D of Section 6.108.110.
- D. At any time during the operation of a dispensary and without notice, the director or sheriff, acting in conjunction with other appropriate county officials, may enter the premises for the purpose of observing compliance of the dispensary with the conditions of its permit.
- E. Release of the county from liability. The owner and permittee of each dispensary and delivery operation shall release the county, and its agents, officers, elected officials, and employees from any injuries, damages, or liabilities of any kind that result from any arrest or prosecution of dispensary or delivery operator owners, operators, employees, or clients for violation of state or federal laws in a form satisfactory to the director.
- F. County indemnification. The owners and permittee of each dispensary and delivery operator shall indemnify and hold harmless the county and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to the operations at the dispensary or by the delivery operator, and for any claims brought by any of their clients for problems, injuries, damages or liabilities of any kind that may arise out of the distribution, delivery and/or on- or off-site use of cannabis provided at the dispensary or delivered by the delivery operator in a form satisfactory to the director.

~~(Ord. 2005-52 § 2 (part); Ord. 2005-25 § 2 (part))~~

#### **6.108.125 - Standard conditions for delivery operations.**

- A. Throughout the term of the medical cannabis delivery permit, each permit holder shall not violate this chapter and shall comply with the following standard conditions:
1. It shall be a violation of this chapter for a delivery operation to distribute, provide or allow to be provided cannabis to any person except those persons who are primary caregivers or qualified patients who are in possession of an identification card that is in compliance with the regulations established by the California Department of Health or the Alameda County Public Health Department or have a verifiable written recommendation from a licensed physician for medical cannabis. All deliveries that do not strictly comply with Section 11362.5 of the California Health and Safety Code and the terms of the permit and this chapter are prohibited. It shall be the responsibility of the permit holder to ensure that a good faith effort is made to verify the validity of

- any identification card or the written recommendation from a licensed physician provided to the delivery operator.
2. All employees of a delivery operator delivering medical cannabis or medical cannabis products shall carry a copy of the dispensary's current dispensary license or permit and the dispensary's current delivery permit authorizing those services with them during deliveries and the employee's government-issued identification, and shall present that license, permit and identification upon request to state and local law enforcement, employees of regulatory authorities, and other state and local agencies enforcing this chapter.
  3. During any delivery, the permittee shall maintain a physical copy of the delivery request and shall make it available upon request of the director or law enforcement officers. The delivery request documentation shall comply with state and federal law regarding the protection of confidential medical information.
  4. No delivery vehicle shall contain a quantity of cannabis in excess of an amount equal to the total of all orders shown on the delivery requests for qualified patients and primary caregivers to whom that the vehicle is then making a delivery. No delivery vehicle shall contain a quantity of Edibles in excess of the total amount of all orders for Edibles shown on the delivery requests for qualified patients and primary caregivers to whom that the vehicle is then making a delivery.
  5. The qualified patient or primary caregiver requesting the delivery shall maintain a copy of the delivery request and shall make it available, upon request, to the director or law enforcement officers.
  6. No deliveries shall be made between the hours of 12:00 a.m. and 9:00 a.m. or between the hours of 9:00 p.m. and 11:59 p.m. on any day.
  7. No person who is less than eighteen (18) years of age may be employed or otherwise engaged in the delivery of medical cannabis.
  8. It shall be unlawful for any delivery operation to provide medical cannabis to any person under the age of eighteen (18) unless that person is a qualified patient or a primary caregiver with a valid identification card in accordance with California Health and Safety Code section 11362.7 or have a verifiable written recommendation from a licensed physician for medical cannabis.
  9. Each permittee shall maintain a current registry of persons, including, but not limited to, employees, contractors and volunteers, who are engaged in delivery operations. The registry shall be provided to the director and sheriff at any time upon request. The registry shall include the name, current residential address, telephone number, date of birth and the height, weight and color of eyes and hair of each such person. Every person listed as owner, manager, supervisor or employee must submit fingerprints and other necessary information for a background check to the Alameda County sheriff's office, and be photographed for identification purposes. In addition, any new employees, independent contractors, other persons and/or volunteers who will work at or for the delivery operation must submit their information to the sheriff's office within five days prior to their employment.

10. No person who has been convicted of a felony ~~or a drug-related misdemeanor reclassified by Section 1170.18 of the California Penal Code (Proposition 47)~~ within the past ten years may be actively engaged in delivery operations. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
11. Delivery vehicles shall not include signage or markings that identify the vehicle as a cannabis delivery vehicle.
12. Delivery operators shall provide adequate security for their delivery personnel and vehicles, to insure the safety of persons and to protect the vehicle operators from theft.
13. The delivery permit holder will satisfy the release of liability and County indemnification requirements in subdivision E and F of Section 6.108.120.

**6.108.130 - Appeal from administrative determinations.**

- A. An appeal may be filed by an applicant, permittee or the owner or occupant of property within one thousand (1,000) feet of any existing or proposed dispensary or by an applicant, permittee or owner or occupant of property within the unincorporated area of the County for any existing or proposed delivery operation.
- B. Any appellant may appeal an administrative determination that is made in relation to any of the following actions:
  1. Finding that an application is incomplete;
  2. Determination that an application does not comply with the requirements of Section 6.108.100;
  3. Establishment or modification of operating conditions;
  4. Denial of a permit; or
  5. Suspension or revocation of a permit.
- C. Any appeal shall be filed with the director within ten days after the date of the notice of any such administrative determination.
- D. Within ten days after the filing of an appeal, notice shall be given in accordance with Section 6.108.050. Such notice shall set forth the grounds for the appeal, the method of submitting comments to the county regarding the appeal and the date and location of the hearing of the appeal.
- E. Any appeal that is not timely filed will be deemed ineffective and the administrative determination that is being appealed will become final.

**6.108.140 - Administrative review of appeal.**

- A. Within thirty (30) days after the filing of an appeal of an administrative determination, the director shall convene a panel consisting of one or more representatives of the county administrator, community development agency, health care services agency, and the sheriff at which the appeal shall be heard in public session. The appellant and any interested parties will be allowed to address the panel regarding the appeal.

- B. Within ten days after conclusion of the hearing of the appeal by the administrative panel, the director shall give notice of the decision of the panel.
- C. Any appellant may file an appeal of the determination of the administrative panel within ten days after the date of the notice of the decision of the administrative panel.

**6.108.150 - Hearing by the board of supervisors.**

- A. Within ninety (90) days after the filing of an appeal of the administrative panel's decision, the board of supervisors shall conduct a hearing of the appeal.
- B. At least ten days prior to the hearing of the appeal by the board of supervisors, notice shall be given in accordance with Section 6.108.050. Such notice shall set forth the grounds for the appeal, the method of submitting comments to the county regarding the appeal and the date and location of the hearing of the appeal by the board of supervisors. The board of supervisors may give such additional notice of hearing as it deems appropriate in a particular case.
- C. The board of supervisors may take any appropriate action upon the original administrative action that was appealed pursuant to Section 6.108.130, including granting or denying the appeal or imposing, deleting or modifying operating conditions of the permit. The decision of the board of supervisors shall be final.

**6.108.160 - Suspension and revocation.**

- A. The sheriff or the director may initiate the revocation or suspension of a permit when it shall appear that the permittee has committed any of the following actions:
  - 1. Violates the operating or standard conditions of the permit or the requirements of state or local laws.
  - 2. Fails to take reasonable measures to control disturbances, loitering or such other problems on the premises.
- B. No permit shall be revoked or suspended by virtue of this section until a hearing has been held in the same manner as described in Sections 6.108.140 and 6.108.150. Notice of the hearing shall contain a brief statement of the grounds for revoking or suspending the permit and the time and date for the hearing.
- C. The decision of the administrative panel may include suspension, revocation or the modification of the permit by adding conditions that are designed to reduce or remove the problems that caused the proposed revocation or suspension of the permit.
- D. Within ten days after conclusion of the hearing of the appeal by the administrative panel, the director shall give notice of the decision of the panel.
- E. Any appellant may appeal the determination of the administrative panel to the board of supervisors within ten days after the date of the notice of the decision of the administrative panel. The board of supervisors shall act upon the appeal in accordance with Section 6.108.150.

**6.108.170 - Transfer of the permit.**

- A. No permittee may transfer a permit without authorization by the county, granted in accordance with this section.

- B. A permittee shall apply for transfer of a dispensary permit by submitting an application that complies with Section 6.108.060. The director shall verify information in the application and shall approve the transfer unless it fails to comply with the standards set forth in Section 6.108.100.
- C. A permittee shall apply for transfer of a delivery permit by submitting an application that complies with Section 6.108.065. The director shall verify information in the application and shall approve the transfer unless it fails to comply with the standards set forth in Section 6.108.100.
- D. Before a transfer of a permit may become effective, the transferee shall certify acceptance of the operating conditions and the standard conditions of the permit.

**6.108.180 - Prohibited operations.**

The permittee and or his or her agents shall at all times comply with Section 11326.5 et seq. of the California Health and Safety Code and this chapter in the operation of the dispensary and the delivery operation. This includes, but is not limited to, the prohibition of sales, transportation and delivery of medical cannabis off the site of the dispensary premises unless the dispensary holds a valid delivery permit.

**6.108.190 - Misdemeanor violation.**

Any person violating any of the provisions or failing to comply with Section 6.108.120(A)(2)—(6), (8)) or (11) or Section 6.108.125(A)(4)-(8) of this chapter shall be guilty of a misdemeanor. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter or the permit is committed, continued or allowed in conjunction with the operation of a dispensary and shall be punishable accordingly.

**6.108.200 - Civil injunction.**

In addition to the penalties provided in this chapter, any condition caused or allowed to exist in violation of any of the provisions of this chapter shall be deemed a public nuisance and shall, at the discretion of county, create a cause of action for injunctive relief.

~~(Ord. 2005-25 § 2 (part))~~

**6.108.210 - Severability.**

The provisions of this chapter are hereby declared to be severable. If any provision, clause, word, sentence or paragraph of this chapter or the application thereof to any person, establishment or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter.

**6.108.220 - Judicial review.**

Judicial review of a final decision made under this chapter may be had by filing a petition for a writ of mandate with the Superior Court in accordance with the provisions of Section 1094.5 of the California Code of Civil Procedure. Any such petition or any other action seeking judicial review shall be filed within ninety (90) days after the day the decision becomes final.

**6.108.230 – Sale, Distribution and Dispensing Edibles.**



The sale, distribution and delivery of Edibles shall be conducted in a manner that complies with all applicable food safety laws for the protection of consuming medical cannabis patients. It shall be unlawful for any dispensary or delivery operation to sell, distribute or deliver edibles not prepared, packaged or labeled as required by this Section.

**A. Preparation of Edibles.**

1. A facility, such as a commercial kitchen, that proposes to prepare, store, dispense, and distribute edibles must comply with the relevant provisions of all state and local laws regarding the preparation, distribution, labeling and sale of food. No food production will be allowed in the same facility to avoid the unintentional contamination of food with cannabis. Facilities shall be constructed, permitted, operated and inspected in accordance with the applicable building code and applicable food safety requirements by the Alameda County Department of Environmental Health.
2. Individuals involved in the production or distribution of edibles shall thoroughly wash their hands before commencing production and before handling the finished product. Gloves must be worn when packaging edibles.
3. To reduce the likelihood of foodborne disease transmission, individuals who are suffering from symptoms associated with acute gastrointestinal illness or are known to be infected with a communicable disease that is transmissible through foodstuffs are prohibited from preparing edibles until they are free of that illness or disease, or are incapable of transmitting the illness or disease through foodstuffs. Individuals who have sores or cuts on their hands must use gloves when preparing and handling edibles.
4. Producers of edibles must be state certified food handlers. The valid certificate must be onsite at the facility where the edible is produced and made available during inspections.
5. Hand-washing facilities shall be adequate and convenient and be furnished with 100F hot running water. Hand washing facilities shall be located in the facility in edible preparation areas and where good sanitary practices require employees to wash their hands and provide effective hand-cleaning (liquid soap) and disposable paper towel or suitable drying devices.

**B. Packaging and Labeling of Edibles.** Edibles shall be labeled and packaged in accordance with Sections 19347 and 19347.5 of the California Business and Professions Code and all applicable regulations and as provided in this subdivision.

1. All edibles shall be individually wrapped at the original point of preparation. Labeling shall be distinctly and clearly legible on the front of the package and must include: (a) a warning if nuts or other known allergens are used in the manufacturing of the edibles; (b) a warning that the item is a medication containing cannabis and the total weight (in ounces or grams) and amount of Active Ingredients in the package; (c) the cultivation and ~~date of~~ manufacture date and source; (d) a statement that the contents are not a food product; and (e) information indicating any caloric impact on the consumer. The package label must have a warning clearly legible emphasizing that the product is to be kept away from children.
2. Labels of edibles that are not tested for contaminants (baked goods) shall include a statement that the cannabis used in the product was tested for contaminants.
3. Packaging of edibles shall be opaque (non see-through), and may not make it appear as if the edible is a food product. Packaging that makes the product attractive to children or imitates candy is prohibited.
4. Packaging of edibles shall be tamper proof-evident and child resistant.

C. Edible Product Log. Producers of edibles that are not tested for contaminants shall maintain a written or computerized log documenting:

1. The source of the cannabis used in each batch of product;
2. The contaminant testing date; and
3. The testing laboratory facility that analyzed the sample of the medical cannabis product.

~~SECTION 2. That~~ Chapter 6.108 of the Alameda County General Code is be hereby further amended as follows:

~~to delete~~Delete Exhibit A, including the list of Assessor parcel numbers for each area, and adopt the revised Exhibit A attached to this Ordinance.

Delete ~~and~~ Exhibit B.

~~and to adopt the new Exhibits A and B attached to this Ordinance.~~

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 \_\_\_\_\_, 2017, by the following called vote:

AYES:

NOES:

EXCUSED:

\_\_\_\_\_  
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: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit A ~~and Exhibit B~~ — Medical Cannabis Dispensary Areas

[INSERT] ~~[new maps to be provided for Option 1 or delete all exhibits if Option 2 is selected]~~

ORDINANCE NO. 2017-\_\_\_\_\_

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

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 marijuana 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 section 11362.7 *et seq.* and titled the "Medical Marijuana Program Act") to clarify the scope of the Compassionate Use Act of 1996. The Medical Marijuana Program Act allows counties to adopt and enforce rules and regulations consistent with its provisions; and
4. In 2011, Assembly Bill 2650 was enacted (codified as California Health and Safety Code section 11362.768). This law affirms that counties can adopt ordinances that restrict the location and establishment of medical marijuana collectives and cooperatives; and
5. In 2015 and 2016, Assembly Bill 243, Assembly Bill 266 and Senate Bill 643 were enacted (codified in part as California Business and Professions Code section 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 marijuana; 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; and
7. The Medical Cannabis Regulation and Safety Act establishes a comprehensive framework to license and regulate commercial medical cannabis cultivation, manufacturing, distribution, transportation, sales, and testing; and
8. Pursuant to California Business and Professions Code section 19315(a), nothing in the Medical Cannabis Regulation and Safety Act 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
9. This Ordinance is enacted, consistent with the Compassionate Use Act of 1996, the Medical Marijuana Program Act, and the Medical Cannabis Regulation and Safety Act to protect the

- public health, safety, and welfare of Alameda County residents in relation to the distribution and delivery of medical cannabis; and
10. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court concluded that nothing in the Compassionate Use Act nor the Medical Marijuana Program Act preclude a local jurisdiction from regulating or prohibiting facilities that distribute medical marijuana; and
  11. Although not authorized by the County, it is believed that the delivery of medical cannabis has been occurring in the unincorporated area of Alameda County; and
  12. Permitting the delivery of medical cannabis provides an important service to those who are seriously ill, elderly, and persons with disabilities who are otherwise unable to easily access "brick and mortar" dispensaries; and
  13. Absent appropriate regulation, the delivery of medical cannabis in the unincorporated area of Alameda County poses a potential threat to the public peace, health, and safety; and
  14. Medical cannabis dispensaries have been dispensing food products containing cannabis, commonly referred to as "edibles", that may constitute a unique health hazard to the public because, unlike other ingestible items, edibles are not presently regulated, inspected, or analyzed for concentration by state or federal government; and
  15. The County of Alameda has a compelling interest in protecting the public health, safety, and welfare of its citizens, residents, visitors and businesses, in preserving the peace and quiet of the neighborhoods within the unincorporated areas of the County by regulating the distribution and delivery of medical cannabis and the production and packaging of edibles; and
  16. Concurrent with this ordinance, the County is considering amending Chapter 6.108 of the General Ordinance Code which regulates cannabis dispensaries, including increasing the number of allowable dispensaries in the unincorporated areas of the County from three to ~~six~~five, with ~~four~~three allowable in the western, urban portions of the County and two allowable in the eastern, rural portions of the County; and
  17. Concurrent with this ordinance, the County is considering adoption of an ordinance that would establish a pilot program to temporarily allow limited cultivation of medical cannabis while the County further studies a potential permanent cultivation ordinance; and
  18. The County of Alameda intends to proceed with further study and public meetings to consider additional ordinances that most effectively regulate and license all facets of medical cannabis activities, including cultivation and manufacturing; and
  19. 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

20. The County's General Ordinance Code currently regulates medical cannabis dispensaries, but does not include provisions in the Zoning Ordinance authorizing or regulating land uses for such dispensaries; and

21. The Board of Supervisors has determined that, with appropriate conditions, dispensaries may be appropriately located in certain commercial ~~and industrial~~ districts; and

22. The Board of Supervisors has determined that, although cultivation of medical cannabis shares some similarities with other agricultural activities, and as identified by recent state legislation, cultivation of medical cannabis raises health, safety and welfare concerns not raised by other traditional agricultural products and therefore, medical cannabis is not a permitted agricultural use by right for the purposes of land use and zoning; and

23. The Board of Supervisors has determined that, with appropriate conditions, cultivation of medical cannabis may be an appropriate conditionally permitted use in the agricultural districts and outside of the urban growth boundary established by Measure D; and

~~24. Accordingly,~~ the Board of Supervisors has determined that, with appropriate conditions, an ~~on-site dispensary accessory to such a permitted cultivation operation~~ 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" or as a "visitor-serving commercial use"; and "agriculture enhancing commercial use" and a "visitor-serving commercial use" that is economically related and supports the area's cannabis cultivation.~~

~~25-24.~~

~~26-25. The Board of Supervisors acknowledges that regulation of medical cannabis is an evolving field at the state level, as evidenced by the recent adoption and revision of the Medical Cannabis Regulation and Safety Act and the related regulations being drafted by various state agencies that are not expected to be finalized and implemented until 2018. 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~~

~~27-26. On November 8, 2016, In 1996, the voters of the State of California approved Proposition 64 (codified, in part, as California Business and Professions Code sections 2600 et seq. and codified as \_\_\_\_\_ and titled the "Control, Regulate and Tax Adult Use of Marijuana Act" also referred to as "AUMA"), which decriminalizes the adult use of marijuana for non-medical purposes and establishes a regulatory scheme at the state level; and~~

~~28-27. This Ordinance regulates the cultivation of medical cannabis in the unincorporated areas of the County and does not address the cultivation of marijuana for non-medical use under Proposition 64 or otherwise;~~

~~28. The Board of Supervisors acknowledges that regulation of medical cannabis activities is an evolving field at the state level, as evidenced by the recent adoption and revision of the Medical Cannabis Regulation and Safety Act, passage of Proposition 64 and the related regulations being drafted by various state agencies that are not expected to be finalized and implemented until 2018. 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~~

29. Nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. § 801 *et seq.* or to license any activity that is prohibited under said Act except as mandated by State law; and
30. Nothing in this Ordinance shall be construed to: (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) allow cannabis uses for non-medical purposes; (3) exempt cultivation, dispensary or delivery operations from compliance with permitting regulations pursuant to other titles in this code, or, (4) 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 Code is hereby amended to add the following definitions, inserted in alphabetical order into the existing text of the section:

“Cannabis” shall have the same definition as in Business and Professions Code section 19300.5(f), which defines “cannabis” as all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” also means marijuana as defined by Section 11018 of the California Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For purposes of this chapter, “cannabis” does not mean “industrial hemp” as defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming, including any associated storage, of Medical Cannabis.

“Medical Cannabis Dispensary” or “Dispensary” means a premises where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to Business and Professions Code Section 19340, medical cannabis and medical cannabis products as part of a retail sale under the authority of the California Compassionate Use Act, the Medical Marijuana Program Act, or the California Medical Cannabis Regulation and Safety Act and as regulated by chapter 6.108 of this Code.

Section 17.06.040 of the Alameda County General Code, regarding the Agricultural district, is amended to read as follows:

**17.06.040 - Conditional uses—Board of zoning adjustments.**



In addition to the uses listed in Sections 17.52.480 and 17.52.580, the following are conditional uses and shall be permitted in an A district only if approved by the board of zoning adjustments, as provided in Sections 17.54.130 and 17.06.010:

- A. Additional dwellings for persons employed in the agricultural use of subject property and the families of those persons, and/or living quarters for farm laborers, when found by the board of zoning adjustments to be necessary to the farming operation;
- B. Outdoor recreation facility;
- C. Animal hospital, kennel;
- D. Killing and dressing of livestock, except when accessory as specified in Section 17.06.050;
- E. Public or private hunting of wildlife or fishing, and public or private hunting clubs and accessory structures;
- F. Packing house for fruit or vegetables, but not including a cannery, or a plant for food processing or freezing;
- G. Flight strip when accessory or incidental to a permitted or conditional use;
- H. Hog ranch;
- I. Drilling for and removal of oil, gas or other hydrocarbon substances;
- J. Radio and television transmission facilities;
- K. Public utility building or uses, excluding such uses as a business office, storage garage, repair shop or corporation yard;
- L. Administrative offices accessory to the principal use on the premises including activities by the same occupancy which are not related to the principal use providing such activities not so related are accessory to the administrative office activity;
- M. Occupancy of one mobile home by persons directly related to an on-site agricultural pursuit on a parcel containing a minimum of one hundred (100) acres where there is no single-family dwelling or on a parcel containing a minimum of two hundred (200) acres where it can be demonstrated that security cannot be obtained by existing single-family dwelling occupancy; provided, however, that no such conditional use permit shall be issued for a period to exceed three years;
- N. Administrative support and service facilities of a public regional recreation district;
- O. Privately owned wind-electric generators;
- P. Remote testing facility;
- Q. Winery or olive oil mill related uses;
- R. Medical cannabis dispensary, only where accessory to a cannabis cultivation operation permitted pursuant to Section 17.585 of this Title and Chapter 6.106 of this Code or other Alameda County ordinance regulating the cultivation of cannabis in the unincorporated areas of the county.

Section 17.38.030 of the Alameda County General Code, regarding the Retail Business commercial district, is amended to read as follows:

**17.38.030 - Conditional uses—Board of zoning adjustments.**

The following are conditional uses in C-1 districts and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:

- A. Community facility;
- B. Animal hospital, kennel;
- C. Clubhouse, or rooms used by members of an organized club, lodge, union or society;

- D. Mortuary;
- E. Commercial recreation facility other than a theater, if within a building;
- F. Storage garage, and storage lots for recreational vehicles and boats;
- G. Theater, drive-in theater;
- H. Drive-in business;
- I. Hotel, motel, boarding house;
- J. Automobile sales lot;
- K. Service station, Type A; or a facility retailing automotive parts and supplies which are installed and serviced on the site but does not include, engine, transmission or differential rebuilding or body repair;
- L. Plant nursery including the sale of landscaping materials, excluding wet-mix concrete sales providing all equipment, supplies, and merchandise other than plant materials are kept within a completely enclosed building;
- M. Tavern;
- N. Massage parlor;
- O. Recycling centers, when operated in conjunction with a permitted use on the same premises;
- P. Advertising signs, provided that no single sign shall be flashing or intermittent, contain moving parts or be located so as to be directed towards lands in any adjacent R district, except pursuant to Section 17.52.515(A)(3) and in conformance with Section 17.54.226;
- Q. In-patient and out-patient health facilities as licensed by the State Department of Health Services;
- R. Tattoo studio;
- S. Alcohol outlet;
- T. Firearms sales;
- U. Beauty school or business school; and
- V. Unattended collection box(es) placed in conjunction with an approved community facility as defined in Section 17.04.010;
- W. Medical cannabis dispensary.

Section 17.40.030 of the Alameda County General Code, regarding the General Commercial district, is amended to read as follows:

**17.40.030 - Conditional uses—Board of zoning adjustments.**

In addition to the uses listed in Sections 17.52.480 and 17.52.580, the following are conditional uses in C-2 districts and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:

- A. Animal hospital, kennel;
- B. Mortuary;
- C. Community facility;
- D. Drive-in theater, drive-in business; recreation facility;
- E. Service station, Type A and Type B;
- F. Automobile, camper, boat and trailer sales, storage or rental lot;
- G. Plant nursery including the sale of landscaping materials, excluding wet-mix concrete sales, providing all equipment supplies and merchandise other than plant materials are kept within a completely enclosed building;
- H. Auto sales and service agency;
- I. Advertising sign, provided that no single sign shall exceed three hundred (300) feet in area and no sign shall be flashing or intermittent, contain moving parts or be located so as to be

directed towards lands in any adjacent R district, except pursuant to Section 17.52.515(A)(3) and in conformance with Section 17.54.226;

J. Tavern;

K. In-patient and out-patient health facilities as licensed by the State Department of Health Services;

L. Tattoo studio;

M. Alcohol outlets;

N. Firearms sales;

O. Trade school; and

P. Unattended collection box(es) placed in conjunction with an approved community facility as defined in Section 17.04.010;

Q. Medical cannabis dispensary.

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 \_\_\_\_\_, 2017, by the following called vote:

AYES:

NOES:

EXCUSED:

\_\_\_\_\_  
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: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## ORDINANCE NO. 2017-\_\_\_\_\_

AN ORDINANCE ADDING CHAPTER 6.106 TO THE ALAMEDA COUNTY GENERAL CODE TO IMPLEMENT A PILOT PROGRAM AUTHORIZING AND REGULATING THE CULTIVATION OF MEDICAL CANNABIS IN THE UNINCORPORATED AREA OF ALAMEDA COUNTY

## 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 section 11362.7 *et seq.* and titled the "Medical Marijuana Program Act") to clarify the scope of the Compassionate Use Act of 1996. The Medical Marijuana Program Act allows counties to adopt and enforce rules and regulations consistent with its provisions; and
4. In 2011, Assembly Bill 2650 was enacted (codified as California Health and Safety Code section 11362.768). This law affirms that counties can adopt ordinances that restrict the location and establishment of medical cannabis collectives and cooperatives; and
5. Pursuant to the Medical Marijuana Program Act, patients and caregivers may provide and acquire medical cannabis in a cooperative or collective manner wherein caregiver members may cultivate cannabis for the use of patient members, with costs and revenues of the cooperative or collective allocated accordingly; and
6. In 2015 ~~and 2016~~, Assembly Bill 243, Assembly Bill 266, Senate Bill 643 ~~and Senate Bill 837~~ were enacted (codified, in part, as California Business and Professions Code section 19300 *et seq.* and titled the "Medical ~~Cannabis~~ Marijuana Regulation and Safety Act"). These bills also amended provisions of the Medical Marijuana Program Act related to the cultivation of medical cannabis; and
- 6-7. 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; and

- ~~7-8.~~ The Medical Cannabis and Safety Act establishes a comprehensive framework to license and regulate commercial medical cannabis cultivation, manufacturing, distribution, transportation, sales, and testing; and
- ~~8-9.~~ Pursuant to California Business and Professions Code section 19315(a), nothing in the Medical Cannabis Regulation and Safety Act 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
- ~~9-10.~~ The County adopted an ordinance prohibiting delivery and cultivation of cannabis on January 16, 2016 (Ordinance No. 2016-6, codified as Chapter 6.106 of the County General Ordinance Code) in response to a provision of the Medical Cannabis Regulation and Safety Act that included a March 1, 2016 deadline for local jurisdictions to act, which provision was repealed by AB 21 on February 3, 2016; and
- ~~10-11.~~ Ordinance No. 2016-6 provided, "This Ordinance shall be repealed by its own terms upon the adoption of state legislation repealing or eliminating the March 1, 2016 deadline in Health and Safety Code section 11362.777(c)(4)" and accordingly, Chapter 6.106 of the General Ordinance Code was repealed on February 3, 2016.
- ~~11-12.~~ ~~Pursuant to California Business and Professions Code section 19315(a), nothing in the Medical Cannabis Regulation and Safety Act 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~~
- ~~12-13.~~ This Ordinance is enacted, consistent with the Compassionate Use Act of 1996, the Medical Marijuana Program Act, and the Medical Cannabis Regulation and Safety Act to protect the public health, safety, and welfare of Alameda County residents in relation to the cultivation of medical cannabis; and
- ~~13-14.~~ The cultivation of medical cannabis in appropriate locations will help ensure that medical cannabis will be available to the patients in need of it while preserving the character, health and safety of the surrounding area; and
- ~~14-15.~~ Absent appropriate regulation, the cultivation of medical cannabis in the unincorporated area of Alameda County poses a potential threat to the public peace, health, and safety; and
- ~~15-16.~~ The County of Alameda intends to proceed with further study and public meetings to consider a permanent, countywide ordinance that effectively regulates and licenses cultivation of medical cannabis, including commercial cultivation; and

~~16-17.~~ 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 medical cannabis; and

~~17-18.~~ Pursuant to the Medical Cannabis Regulation and Safety Act, the California Department of Food and Agriculture is responsible for promulgating regulations governing commercial cannabis cultivation and issuing cultivation licenses, which are anticipated to become effective in or around the year 2018; and

~~18-19.~~ The adoption of a pilot program allowing the short-term, small-scale cultivation of medical cannabis will allow the County to evaluate appropriate districts, performance standards and prohibitions prior to consideration of a permanent, countywide ordinance regulating all aspects of cannabis cultivation and implementing state regulations; and

~~19-20.~~ Participants in the pilot cultivation program would be permitted to cultivate medical cannabis through the duration of the pilot program only and would have no right to continue cultivation beyond the expiration of the pilot program or the expiration or revocation of the permit; and

~~20-21.~~ The existing dispensaries operating in the County have demonstrated an ability to operate secure and responsible medical cannabis dispensary establishments and to comply with existing county and state laws concerning the dispensing of medical cannabis; and

~~21-22.~~ Initiating the first phase of the cultivation pilot program by ~~Allowing expanding the permissible operations of these dispensaries to~~ include expand operations to limited cultivation in an approved location will allow the County to study cultivation-specific issues, including any effects on neighboring uses and mechanisms to track the product from cultivation through ultimate sale with ~~one a consistent,~~ responsible entity at both the beginning and end of the supply ~~chain in a closed-loop, vertically integrated structure~~ vertically integrated structure; and

~~23.~~ Allowing limited additional ~~Subsequently expanding cultivation operations during this pilot program in a second phase of the cultivation pilot program will allow the~~ allow the County to study cultivation-specific issues, including any effects on neighboring uses and mechanisms to track the product from cultivation through ultimate sale with multiple parties participating in the supply chain outside of a vertically integrated structure; and

~~22.~~ to study the implementation of the pilot program during the first phase in order to further refine regulations and performance standards for cultivation-specific issues, including any effects on neighboring uses and mechanisms to track the product from cultivation through ultimate sale; and

~~23-24.~~ During the term of the pilot program, the County will retain the authority to modify the terms, duration or requirements of the pilot program, including the authority to cancel the pilot program, revoke or modify permits issued, adopt a moratorium on cultivation, and any take any other actions within its power to protect the health, safety and welfare of County residents.

~~24-25.~~ On November 8, 2016, In 1996, the voters of the State of California approved Proposition 64 (codified, in part, as California Business and Professions Code sections 2600 et seq. and codified as \_\_\_\_\_ and titled the "Control, Regulate and Tax Adult Use of Marijuana Act"~~—also referred to as "AUMA"~~), which decriminalizes the adult use of marijuana for non-medical purposes and establishes a regulatory scheme at the state level; and

~~25-26.~~ This Ordinance regulates the cultivation of medical cannabis in the unincorporated areas of the County and does not address the cultivation of marijuana for non-medical use under Proposition 64 or otherwise;

27. The Board of Supervisors acknowledges that regulation of cannabis activities is an evolving field at the state level, as evidenced by the recent adoption and revision of the Medical Cannabis Regulation and Safety Act, passage of Proposition 64 and the related regulations being drafted by various state agencies that are not expected to be finalized and implemented until 2018. 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

~~26-28.~~ Nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. §§ 801 *et seq.* or to license any activity that is prohibited under said Act except as mandated by state law; and

~~27-29.~~ Nothing in this Ordinance shall be construed to: (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) allow the cultivation of cannabis for non-medical purposes; (3) exempt cultivation operations from compliance with zoning and land use regulations, or, (4) 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:



Chapter 6.106 is hereby added to the Alameda County General Code and reads as follows:

**6.106.010 Purpose.**

The purpose and intent of this chapter is to provide a means for permitting and regulating the operation of a limited number of medical cannabis cultivation sites on a pilot basis in a manner that is consistent with state law and which promotes the health, safety and general welfare of the residents and businesses within the unincorporated areas of the county.

**6.106.020 Definitions.**

The following words and phrases shall have the following meanings when used in this chapter:

- A. "Applicant" means a person who shall seek a permit under this chapter by filing an application as provided for in this chapter. "Application" means that form provided by the Director in accordance with this chapter for the purpose of seeking a permit.
- B. "Cannabis" shall have the same definition as in Business and Professions Code section 19300.5(f), which defines "cannabis" as all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" also means marijuana as defined by Section 11018 of the California Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For purposes of this chapter, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.
- C. "Community Development Agency" means the community development agency of the County of Alameda.
- D. "County" means the County of Alameda.
- E. "Cannabis cultivation" or, as used in this chapter, "Cultivation" or "Cultivate", means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming, including any associated storage, of medical cannabis.
- F. "Cultivation Area" means the portion of the premises used for cultivation activities including all buildings, accessory structures, storage and parking areas, other than as may be required for security purposes.

- G. "Director" means the director of the Community Development Agency or his designee.
- H. "Manufacture" means the process by which the raw agricultural cannabis product is transformed into a concentrate, an edible product, or a topical product. Manufacturing includes producing, preparing, propagating, or compounding manufactured cannabis or cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.
- I. "Medical cannabis," "medical cannabis product," or "cannabis product" means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code. For the purposes of this chapter, "medical cannabis" does not include "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.
- J. "Permitted dispensary" means a facility in possession of a permit issued pursuant to Chapter 6.108 where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, medical cannabis and medical cannabis products as part of a retail sale under the authority of the California Compassionate Use Act, the Medical Marijuana Program Act, and/or the California Medical Cannabis Regulation and Safety Act and as regulated by chapter 6.108.
- K. "Permit" means a cultivation permit issued by the county to operate a cultivation site under this chapter.
- L. "Permittee" means a person who holds an effective and current permit under this chapter.
- M. "Person" means any human being or an incorporated or unincorporated business entity or association established under the laws of the state.
- N. "Premises" means the parcel or parcels containing a medical cannabis cultivation site, including any buildings, greenhouses, accessory structures and appurtenant areas.
- O. "Sheriff" means the sheriff of the county of Alameda and his or her authorized representatives.
- P. "State" means the state of California.

**6.106.030 General Requirements and Program Terms.**

- A. It shall be unlawful for any person to conduct, engage in or allow to be conducted or engaged in, cannabis cultivation in the unincorporated portion of Alameda County,

unless such cannabis cultivation operation has been granted a legally effective permit issued under this chapter. Permits to cultivate medical cannabis under this chapter shall be issued on a temporary basis until such time as the county adopts a permanent ordinance regulating or banning cannabis cultivation in the unincorporated county. Notwithstanding the above, the permits issued under this chapter do not provide any protection or immunity for any person from state or federal laws, or from prosecution pursuant to any applicable state or federal laws.

~~B.~~ The county shall have in effect no more than four cannabis cultivation permits throughout the duration of the pilot program. ~~Two permits shall be available during Phase One of the pilot program and two additional permits shall become available during Phase Two of the pilot program, to be selected pursuant to sections 6.106.060 through 6.106.110 herein.~~

~~C.~~ During Phase One of the pilot program, a permitted dispensary with a record of good standing with the County for at least one year may apply for a permit pursuant to this chapter. Applications for permits pursuant to Phase One of the pilot program may be submitted immediately upon the effective date of this chapter.

~~D.B.~~ During Phase Two of the pilot program, applicants need not be affiliated with a permitted dispensary in order to apply for a permit pursuant to this chapter. Applications for permits pursuant to Phase Two of the pilot program must be submitted in accordance with the timelines established in the solicitation process described in Section 6.106.170.

~~E.C.~~ Each cannabis cultivation permit shall expire two years after the date of its issuance or upon the sunset and termination of this pilot program pursuant to section 6.106.180 herein, whichever is earlier.

~~F.D.~~ The fact that an applicant possesses other types of state or local permits or licenses shall not exempt the applicant from obtaining a cannabis cultivation permit under this chapter.

~~G.E.~~ A permittee may cultivate medical cannabis during the term of the permit only. A permittee shall have no right to cultivate medical cannabis before or after the expiration of the permit.

~~H.F.~~ Each medical cannabis cultivation site shall comply with all requirements in the Alameda County General Plan, including Measure D (Save Agriculture and Open Space Lands), any applicable specific plans, and Title 17 of the Alameda County General Code.

**6.106.040 Land Use Approval.**

Prior to commencement of cannabis cultivation activities, a permittee must obtain a conditional use permit pursuant to Section 17.52.585 of the Alameda County Zoning Ordinance for operation of a cannabis cultivation site.

**6.106.050 Cannabis cultivation permit application procedures ~~Phase One~~ vertically integrated operations.**

- A. Each application for a ~~Phase One~~ cultivation permit by a permitted dispensary in the unincorporated area of the county pursuant to Section 6.106.130(C) shall set forth or incorporate by reference the following information:
1. The full name, date of birth, social security number, present address and telephone number of the applicant.
  2. Name and location of applicant's permitted dispensary.
  3. The address to which notice of action on the application is to be mailed.
  4. A statement by the applicant that it has the ability to comply with all laws regulating businesses in the state of California and that it shall maintain compliance during the term of the permit.
  5. The names of each person with an ownership interest of more than 10 percent in the proposed cultivation operation.
  6. Certification, under penalty of perjury, that all the information contained in the application is true and correct.
  7. Authorization for the county, its agents and employees to seek verification of the information contained in the application.
  8. The applicant's agreement to hold harmless and indemnify the county from all costs and expenses, including attorney's fees, that the county incurs or that is held to be the liability of the county in connection with the county's defense of its actions in any proceeding challenging the county's actions with respect to the permit or cultivation project.
- B. The filing of an application shall be deemed complete upon the submission of an application in conformance with this section and payment of the application fees required by Section 6.106.130 and any fee schedule adopted by the County.
- C. An application may be reviewed and copied by any member of the public in accordance with the California Public Records Act.

**6.106.060 Application review and action ~~Phase One~~ vertically integrated operations.**

- A. The director shall commence review of any application upon its filing. Within thirty business days after the filing of an application, the director shall reject any application and so notify the applicant if the application has been improperly completed or if it is incomplete. The applicant may amend and refile the application within thirty days after such rejection.

- B. Upon receipt of a complete application, the director shall approve the application and grant the cultivation permit if each of the following conditions are met:
1. The applicant operates a permitted dispensary;
  2. The applicant's permitted dispensary has a record of good standing with the county for at least one year. For the purposes of this section, "good standing" means that the dispensary permit has not been suspended or revoked and that there are no pending proceedings for the suspension or revocation of the dispensary permit.
  3. No person who is listed on the application pursuant to subsection (1) or (5) of Section 6.106.0560(A) has been convicted of a felony within the past ten years. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
  4. The applicant or the operator listed in the application is at least eighteen (18) years of age.
- C. Upon receipt of a complete application, the director shall deny the application if one or more of the conditions set forth in subsection (B) above are not met.

**6.106.070 Cannabis cultivation permit application procedures – cultivation only – Phase Two.**

A. ~~When one or more cannabis cultivation permits authorized by this Chapter is available for award during Phase Two of the pilot program, the~~ director will initiate a process to solicit applications for the establishment of one or more a cultivation sites that need not be affiliated with a permitted dispensary.

B. Each application for the establishment of a cultivation site pursuant to this section shall be filed with the director and the director shall be responsible for administering the application solicitation and renewal application processes as set forth in this chapter.

C. The director shall adopt such forms and procedures as are necessary to implement this chapter with respect to the selection, revocation and suspension of permits.

D. Wherever this chapter requires the county to give notice to an applicant, appellant or permittee, such notice shall be given by the director, in writing, and shall be delivered either by personal delivery or by certified U.S. mail, postage prepaid, return receipt requested.

E. No person or facility that purports to have cultivated cannabis prior to the enactment of this chapter shall be deemed to have been a legally established cultivation operation under the provisions of this chapter, and such person or facility shall not be entitled to claim a legal nonconforming status.

**6.106.080 Contents of cannabis cultivation permit application – Phase Two cultivation only.**

A. In response to a solicitation for applications initiated by the director, each application for a cultivation permit [pursuant to section 6.106.070](#) shall set forth or incorporate by reference the following information in a standard form adopted by the director:

1. Address of the proposed cultivation site and the name and address of the owner of the premises.
2. The full name, date of birth, social security number, present address and telephone number of the applicant.
3. The address to which notice of action on the application is to be mailed.
4. All residential addresses of the applicant for the five years immediately prior to the date of the application.
5. Written proof that the applicant is eighteen (18) years of age or older (i.e., California driver's license, California identification card or birth certificate).
6. The height and weight and the color of eyes and hair of the applicant.
7. Photographs of the applicant for identification purposes to be taken by the sheriff.
8. The names and addresses of all businesses operated by and the employment of the applicant for the five years immediately prior to the date of the application.
9. The address of any cultivation sites or dispensaries that currently is or previously had been operated by the applicant and a statement of whether the authorization for any such operation had been revoked or suspended and, if so, the reason therefor.
10. The names and telephone numbers of the person or persons to be regularly engaged in the operation of the proposed cultivation site, whether an employee, volunteer or contractor. The application shall also identify those persons, including telephone numbers (i.e., emergency contact), having management and supervisory responsibilities for the proposed cultivation site. Every person listed as owner, manager, supervisor or employee must submit fingerprints and other necessary information for a background check to the Alameda County sheriff's office, and be photographed for identification purposes. In addition, any new employees, independent contractors, other persons and/or volunteers who will work at the proposed medical cannabis cultivation site must submit their information to the sheriff's office within five days prior to their employment.
11. A security plan containing a detailed description of the proposed security arrangements for insuring the safety of persons from theft and robbery and protection of the premises from theft and burglary. The security plan shall be approved by the Sheriff, and shall include a lighting plan showing existing and proposed exterior premises and interior lighting levels, alarms and security surveillance cameras. Security video shall be maintained for 30 business days and shall be made available to the Sheriff upon request. The video system for security cameras must be located in a locked, tamper-proof compartment. A professionally monitored robbery alarm system shall be installed and maintained in good working condition. The security plan shall include the provision of a suitable locked safe on the premises for after-hours storage of medical cannabis.

12. A site plan, consisting of a sketch or diagram showing the entire parcel and the area designated for cultivation activities, including the interior configuration of the greenhouse or other structure housing cultivation activities, including a statement of the floor area occupied each structure at the cultivation site. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus twelve (12) inches.
13. A description of external appearance of the cultivation site, including a precise depiction of any signage and access roads. All signage shall comply with the County Zoning Ordinance.
14. A description of products to be cultivated on the premises.
15. The mission statement of the cultivation site with respect to meeting the medical needs of patients.
16. A description of the methods by which the applicant will mitigate any potentially adverse impacts, such as traffic, light, odors or noise, on surrounding property owners. The cultivation shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated on the premises is not detected outside property on which it operates.
17. Authorization for the county, its agents and employees to seek verification of the information contained in the application.
18. Written certification that the applicant has reviewed and understands and accepts any performance standards for cannabis cultivation that may be adopted by the director.
19. Certification, under penalty of perjury, that all the information contained in the application is true and correct.
20. A statement by the applicant that it has the ability to comply with all laws regulating businesses in the state of California and that it shall maintain compliance during the term of the permit.
21. An operating plan specifically describing how the cultivation site will operate consistent with State and local law, including but not limited to: the minimum staffing levels for operation of the cultivation site, policies and procedures for record keeping, specific details of the cultivation operation's track and trace program, specific details regarding product testing, and other relevant information regarding the operation of the proposed cultivation site and including a copy of the cultivation operation's labor peace agreement when required by California Business & Professions Code Section 19322(a)(6) to enter into or abide by a labor peace agreement.
22. B. The filing of an application shall be deemed complete upon the submission of an application in conformance with this section and payment of the application fees required by Section C. An application may be reviewed and copied by any member of the public in accordance with the California Public Records Act.

**6.106.090** Initial review of application – [Phase Twocultivation](#).

- A. The director shall commence review of any application [received pursuant to section 6.106.080](#) immediately upon its filing and shall complete such initial review within

the time period established in the solicitation process for cannabis cultivation permits, but in no event shall the initial review exceed sixty (60) days. In conducting this review, the following county agencies shall comment on specific portions of the application:

1. The sheriff shall be responsible for verifying factual information in the application, including names, addresses and other information on the applicant operator and its employees of the proposed cultivation operation.
2. The sheriff shall comment upon the adequacy of security measures that are described in the application, the security plan, the site plan, and other relevant aspects of the application.
3. The community development agency shall comment upon the proposed location's compliance with zoning regulations and conditions that are needed to mitigate adverse impacts on surrounding uses.
4. The health care services agency shall comment upon the services to be provided and the mission statement set forth in the application.
5. The environmental health services agency shall comment upon the application's compliance with the requirements of Section 6.108.230.

B. Within twenty (20) business days after the filing of an application, the director shall reject any application and so notify the applicant, if the application has been improperly completed or if it is incomplete. The applicant may amend and refile the application within ten days after such rejection.

C. At the conclusion of the initial review, the director shall notify the applicant of the results of the initial review of the application.

**6.106.100 - Action upon completion of initial review – ~~Phase Two~~[cultivation only](#).**

A. Upon completion of the initial review, the director shall reject any permit application that meets any of the following criteria:

1. The proposed cultivation operation does not comply with requirements of this chapter.
2. The applicant has knowingly made a false statement of material fact or has knowingly omitted a material fact from the application.
3. The proposed cultivation operation at the proposed location is prohibited by any state or local law or regulation.
4. Any person who is listed on the application pursuant to subsection (A)(10) of Section 6.106.0360 has been convicted of a felony ~~or a drug-related misdemeanor reclassified by Section 1170.18 of the California Penal Code (Proposition 47)~~ within the past ten (10) years. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
5. The applicant or the operator listed in the application is less than eighteen (18) years of age.
6. The health care services agency has determined that the application for a cultivation site has failed to state a health care purpose that fulfills the purposes of Section 11362.5 *et seq.* of the California Health and Safety Code.



7. The applicant is delinquent in the payment of any applicable state or County taxes and fees.

B. Any application that is not rejected upon completion of the initial review shall be deemed an eligible application and submitted to the final selection phase of the solicitation process.

**6.106.110** - Final selection of medical cannabis cultivation sites – ~~Phase Two~~cultivation only.

A. The final selection phase of the solicitation process shall include selection from the eligible applications and the establishment of operating conditions for any permits issued under this chapter to the selected eligible applicants. The final selection process shall not exceed sixty (60) days in the absence of an appeal.

B. If the number eligible applications is the same as or less than the allowable number of cannabis cultivation sites allowed pursuant to section 6.106.030, then all applications shall be submitted for establishment of operating conditions as set forth in subsection C of this section. If the number of eligible applications exceeds the maximum number of cultivation sites pursuant to 6.106.030, then a competitive evaluation process shall be conducted in which applicants are scored and ranked with the director recommending issuance of a permit to the highest ranked, eligible applicants.

C. The sheriff and the director shall establish operating conditions for cultivation sites for each eligible application that has been submitted for final selection. The operating conditions shall be limited to those that are necessary to carry out the purposes of this chapter and to mitigate specific and foreseeable adverse impacts on properties in the vicinity.

D. At the conclusion of the final selection process outlined above, the director shall give notice to the cultivation permit applicant of the operating conditions that would attach to the permit. Within ten days after notice, the applicant shall either:

1. Certify acceptance of the operating conditions and the standard conditions of the permit, and the permit shall thereupon issue immediately.
2. If the applicant refuses or fails to certify agreement with any operating condition, the application shall be denied. The applicant may appeal any condition within ten days after notice of the conditions. Upon either the failure to file a timely appeal or the rejection of the appeal, the application shall be deemed denied.

E. The operating conditions established by the director shall include the requirement for each eligible applicant to obtain (1) any required state permits or licenses for the operation of a cultivation operation, if and when applicable, and (2) all land use entitlements required to operate a cultivation operation, if and when applicable. No cultivation permit shall be effective unless and until these conditions of approval are satisfied.

**6.106.120** Appeal.

A. An applicant aggrieved by the decisions described in Section 6.106.060 or Section 6.106.110 may appeal that decision to the board of supervisors within ten (10) days following the date of issuance of that decision by filing with the clerk of the board of

supervisors or the director a notice of appeal specifying the grounds for such appeal. Filing such notice shall stay all proceedings in furtherance of the decision appealed from. The director is designated as an agent of the clerk of the board for purposes of receiving a notice of appeal.

- B. The board of supervisors shall give written notice of the time and place for hearing any appeal filed pursuant this section. Such notice shall be given to the applicant and to the agency which made the order appealed, and to any other person requesting such notice and depositing with the clerk of the board a self-addressed, stamped envelope to be used for that purpose.
- C. The board of supervisors may hear additional evidence and may sustain, modify, or overrule any order brought before it on appeal, and may make such findings and decisions as are not inconsistent with state law and county ordinances. The board of supervisors may also remand the decision to the director for reconsideration of his or her decision in light of new information not previously presented to the director. If no motion relative to the order appealed attains a majority vote of the board of supervisors within thirty (30) days from the date of the hearing by said board thereon, said order of the director shall stand sustained and be final.

**6.106.130 Fees.**

Each applicant shall reimburse the county for all staff costs, any consultant costs and any direct costs attributable to reviewing the application, conducting any required studies, acting upon the application, and verifying and enforcing compliance. The board of supervisors may establish a nonrefundable fee in order to reimburse the county for such costs.

**6.106.140 Prohibited operations.**

A permittee shall not conduct any manufacturing of cannabis on the premises. A permittee shall not dispense or deliver cannabis from the premises unless separately permitted by a dispensary or delivery permit.

**6.106.150 Limitations.**

Nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. §§ 840 et seq. or to license any activity that is prohibited under said Act except as mandated by state law; and

Nothing in this Ordinance shall be construed to: (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) allow the cultivation of cannabis or marijuana for non-medical purposes; (3) exempt cannabis cultivation operations from compliance with zoning and land use regulations, or, (4) allow any activity relating to the manufacturing, distribution, or consumption of cannabis that is illegal under state or federal law.

**6.106.160 Severability.**

The provisions of this chapter are hereby declared to be severable. If any provision, clause, word, sentence or paragraph of this chapter or the application thereof to any person, establishment or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter.

**6.106.170 Judicial review.**

Judicial review of a final decision made under this chapter may be had by filing a petition for a writ of mandate with the Superior Court in accordance with the provisions of Section 1094.5 of the California Code of Civil Procedure. Any such petition or any other action seeking judicial review shall be filed within thirty (30) days after the day the decision becomes final.

**6.106.180 Sunset and termination.**

The pilot program for cultivation of marijuana shall terminate on December 31, 2018. Any rights or privileges granted to a permittee pursuant to this Chapter existing on that date shall also terminate on that date. Unless an ordinance is adopted to amend this provision, this Chapter shall be repealed automatically on December 31, 2018.

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 \_\_\_\_\_, 2017, by the following called vote:

AYES:

NOES:

EXCUSED:

\_\_\_\_\_  
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: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ORDINANCE NO. 2017-\_\_\_\_\_

AN ORDINANCE AMENDING TITLE 17 OF THE ALAMEDA COUNTY GENERAL CODE TO IMPLEMENT A PILOT PROGRAM AUTHORIZING AND REGULATING THE CULTIVATION OF MEDICAL CANNABIS IN THE UNINCORPORATED AREA OF ALAMEDA COUNTY

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 section 11362.7 *et seq.* and titled the "Medical Marijuana Program Act") to clarify the scope of the Compassionate Use Act of 1996. The Medical Marijuana Program Act allows counties to adopt and enforce rules and regulations consistent with its provisions; and
4. In 2011, Assembly Bill 2650 was enacted (codified as California Health and Safety Code section 11362.768). This law affirms that counties can adopt ordinances that restrict the location and establishment of medical cannabis collectives and cooperatives; and
5. Pursuant to the Medical Marijuana Program Act, patients and caregivers may provide and acquire medical cannabis in a cooperative or collective manner wherein caregiver members may cultivate cannabis for the use of patient members, with costs and revenues of the cooperative or collective allocated accordingly; and
6. In 2015, ~~and 2016~~, Assembly Bill 243, Assembly Bill 266, Senate Bill 643 and Senate Bill 837 were enacted and subsequently revised by Assembly Bill 47 in 2016 (codified, in part, as California Business and Professions Code section 19300 *et seq.* and titled the "Medical Cannabis Regulation and Safety Act"). These bills also amended provisions of the Medical Marijuana Program Act related to the cultivation of medical cannabis; and
7. The Medical Cannabis and Safety Act establishes a comprehensive framework to license and regulate commercial medical cannabis cultivation, manufacturing, distribution, transportation, sales, and testing; and

8. The County adopted an ordinance prohibiting delivery and cultivation of cannabis on January 16, 2016 (Ordinance No. 2016-6, codified as Chapter 6.106 of the County General Ordinance Code) in response to a provision of the Medical Cannabis Regulation and Safety Act that included a March 1, 2016 deadline for local jurisdictions to act, which provision was repealed by AB 21 on February 3, 2016; and
9. Ordinance No. 2016-6 provided, "This Ordinance shall be repealed by its own terms upon the adoption of state legislation repealing or eliminating the March 1, 2016 deadline in Health and Safety Code section 11362.777(c)(4)" and accordingly, Chapter 6.106 of the General Ordinance Code was repealed on February 3, 2016.
10. Pursuant to California Business and Professions Code section 19315(a), nothing in the Medical Cannabis Regulation and Safety Act 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. This Ordinance is enacted, consistent with the Compassionate Use Act of 1996, the Medical Marijuana Program Act, and the Medical Cannabis Regulation and Safety Act to protect the public health, safety, and welfare of Alameda County residents in relation to the cultivation of medical 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 is not explicitly addressed by the Alameda County Zoning Ordinance and therefore has previously been considered a prohibited illegal activity under the principles of permissive zoning; and
14. The cultivation of medical cannabis in appropriate locations will help ensure that medical cannabis will be available to the patients in need of it while preserving the character, health and safety of the surrounding area; and
15. Absent appropriate regulation, the cultivation of medical cannabis in the unincorporated area of Alameda County poses a potential threat to the public peace, health, and safety; and
16. The County of Alameda intends to proceed with further study and public meetings to consider a permanent, countywide ordinance that effectively regulates and licenses cultivation of medical cannabis, including commercial cultivation; and
17. 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 medical cannabis; and

18. Pursuant to the Medical Cannabis Regulation and Safety Act, the California Department of Food and Agriculture is responsible for promulgating regulations governing commercial cannabis cultivation and issuing cultivation licenses, which are anticipated to become effective in or around the year 2018; and
19. The adoption of a pilot program allowing the short-term, small-scale cultivation of medical cannabis will allow the County to evaluate appropriate districts, performance standards and prohibitions prior to consideration of a permanent, countywide ordinance regulating all aspects of cannabis cultivation and implementing state regulations; and
20. Participants in the pilot cultivation program would be permitted to cultivate medical cannabis through the duration of the pilot program only and would have no right to continue cultivation beyond the expiration of the pilot program or the expiration or revocation of the permit; and
21. During the term of the pilot program, the County will retain the authority to modify the terms, duration or requirements of the pilot program, including the authority to cancel the pilot program, revoke or modify permits issued, adopt a moratorium on cultivation, and any take any other actions within its power to protect the health, safety and welfare of County residents.
22. On November 8, 2016, In 1996, the voters of the State of California approved Proposition 64 (codified as \_\_\_ and titled the "Control, Regulate and Tax Adult Use of Marijuana Act" also referred to as "AUMA"), which decriminalizes the adult use of marijuana for non-medical purposes and establishes a regulatory scheme at the state level; and
23. This Ordinance regulates the cultivation of medical cannabis in the unincorporated areas of the County and does not address the cultivation of marijuana for non-medical use under Proposition 64 or otherwise;
24. Nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. §§ 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) allow the cultivation of cannabis for non-medical purposes; (3) exempt cultivation operations from compliance with zoning and land use regulations, or, (4) 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 Code is hereby amended to add the following definitions, inserted in alphabetical order into the existing text of the section:

"Cannabis" shall have the same definition as in Business and Professions Code section 19300.5(f), which defines "cannabis" as all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" also means marijuana as defined by Section 11018 of the California Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For purposes of this chapter, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

"Cannabis Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming, including any associated storage, of Medical Cannabis.

"Medical Cannabis," "Medical Cannabis Product," or "Cannabis Product" means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code. For the purposes of this chapter, "medical cannabis" does not include "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

Section 17.52.585 is hereby added to the Alameda County General Code and shall read as follows:

**17.52.585 Conditional use—Pilot Program for Cultivation of Medical Cannabis.**

- 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 only to the extent required to implement the county's pilot program for Cannabis Cultivation established by Chapter 6.106 of this code.
- 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 or license pursuant to Chapter 6.106 or a subsequent ordinance permitting or licensing Cannabis Cultivation and a valid and effective state license permitting Cannabis Cultivation, once such licenses become available.

- C. Cannabis Cultivation uses approved pursuant to this section shall meet the criteria established by section 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;
  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 ~~six hundred~~ one thousand (~~600~~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 17.54.130 of the Alameda County General Code is hereby amended to read as follows:

**17.54.130 - Conditional uses.**

Certain uses, referred to in this title as conditional uses, are hereby declared to possess characteristics which require special review and appraisal in each instance, in order to determine whether or not the use:

- A. Is required by the public need;
- B. Will be properly related to other land uses and transportation and service facilities in the vicinity;
- C. If permitted, will under all the circumstances and conditions of the particular case, materially affect adversely the health or safety of persons residing or working in the vicinity, or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood; and
- D. Will be contrary to the specific intent clauses or performance standards established for the district, in which it is to be located.

A use in any district which is listed, explicitly or by reference, as a conditional use in the district's regulations, or in Section 17.52.580 or 17.52.585 shall be approved or disapproved as to zoning only upon filing an application in proper form and in accordance with the procedure governing such uses set forth hereinafter.

**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 \_\_\_\_\_, 2017, by the following called vote:

AYES:

NOES:

EXCUSED:

\_\_\_\_\_  
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: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## Performance Standards and Standard Conditions for Pilot Program Cultivation Sites.

A person holding an effective medical cannabis cultivation permit site shall comply with the following performance standards and standard conditions:

1. Limited Authorization. Permittee may conduct activities involving the planting, growing, harvesting, drying, curing, grading, or trimming and associated storage of cannabis only at a site approved pursuant to a conditional use permit.
2. Indoor or Mixed-Light Cultivation Only. All planting, growing, harvesting, drying, curing, grading, or trimming and associated storage of cannabis must occur within the interior of an enclosed, secured structure, such as a greenhouse. Cannabis must not be visible from the exterior of the premises.
3. Maximum Cultivation Area. The maximum area permitted for growing cannabis plants, including both mature and immature plants, is limited to 22,000 square feet, inclusive, of total canopy size. The canopy includes all areas occupied by any portion of a cannabis plant, inclusive of all vertical planes, whether contiguous or noncontiguous on any one site.
- 3.4. Required Operations Plan Required. All applicants shall, at the time of the application for a conditional use permit, include an Operations Plan with their application materials that addresses the following elements in sufficient detail for the County to evaluate the proposed cultivation operation against the requirements included herein:
  - a. Site Plan
  - b. Site Security Plan
  - c. Track and Trace Plan
  - d. Cultivation Operations Plan
  - e. Worker Safety Plan
  - f. Cannabis Processing Plan
  - g. Waste Disposal Plan
4. ~~Vertical Integration. Cannabis cultivated at permittee's cultivation site and any cannabis products derived from cannabis cultivated at permittee's cultivation site must be dispensed only at the permittee's permitted dispensary.~~
5. No Dispensing. Permittee shall not dispense cannabis at the site, unless and until a dispensary permit is issued by the County permitting a dispensary to operate at the site.
6. Track and Trace. Permittee shall institute a track and trace program to be approved by the director to ensure that cannabis cultivated at the site is dispensed only at permittee's permitted dispensary. Unique identifiers shall be attached at the base of each plant and shall be traceable through the supply chain back to the cultivation site. Each permittee shall maintain records of each plant cultivated at the site and its ultimate destination.
7. No Manufacturing. Permittee shall not manufacture cannabis products at the cultivation site.

8. Testing. A cultivation site shall submit its Cannabis Products for analytical testing at an accredited testing laboratory, as defined in Business and Professions Code section 19300.5(z).
9. Lighting. Permittees using artificial lighting shall shield structures, including greenhouses, so that little to no light escapes. Light shall not escape at a level that is visible from neighboring properties between sunset and sunrise. Lighting that is visible from the exterior of the cultivation area is prohibited, except such lighting as is reasonably utilized for the security of the premises.
10. Minimum Age. No person who is less than eighteen (18) years of age may be employed or otherwise engaged in the cultivation operation. No person under the age of eighteen (18) shall be allowed on the premises. The entrance to the building area of the cultivation site shall be posted with a notice that states the restrictions on the presence of persons under the age of eighteen (18).
11. ~~No Limited Ingesting Permitted. No cannabis shall be smoked, ingested or otherwise consumed on the cultivation site, other than by management as reasonably necessary for cultivation operations such as research and development, quality control, and pricing. On-site smoking, ingesting or consuming of cannabis cultivated at the cultivation site and not obtained at a dispensary is prohibited.~~
12. Display Cultivation Permit. Each cultivation site shall conspicuously display the cultivation permit.
13. Registry of Employees. Each permittee shall maintain a current registry of persons, including, but not limited to, employees, contractors and volunteers, who are engaged in the operation of the dispensary. The registry shall be provided to the director and the sheriff at any time upon request. The registry shall include the name, current residential address, telephone number, date of birth and the height, weight and color of eyes and hair of each such person.
14. Criminal Background Checks. No person who has been convicted of a felony within the past ten years may be actively engaged in the operation of any cultivation site. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
15. Safety and Security. Permittees shall provide adequate security on the premises, including lighting and alarms, to insure the safety of persons and to protect the premises from theft.
16. Compliance with State Law. Permittees must comply with all state statutes, regulations and requirements. Permittees must obtain and maintain any permit, license, certification or registration required by the state. Permittees must pay all required state taxes and fees. Compliance with all applicable requirements established by the following agencies is specifically required:
  - a. California Department of Food and Agriculture
  - b. California Department of Fish & Wildlife
  - c. California Water Quality Control Board
  - d. Bay Area Air Quality Management District
  - e. CALFIRE

- f. California Department of Pesticide Regulation
  - g. California Environmental Protection Agency
  - h. California Franchise Tax Board
17. Compliance with Local Law. Permittees must comply with all local ordinances, regulations, guidelines, standards and requirements of all local agencies and departments. Permittees must obtain and maintain any permit, license, certification or registration required by a local agency or department. Permittees must pay all local taxes and fees. Compliance with all applicable requirements established by the following agencies and departments is specifically required:
- a. Alameda County Public Works Agency
  - b. Alameda County Planning Department
  - c. Alameda County Treasurer-Tax Collector
  - d. Alameda County Fire Department
  - e. Alameda County Agricultural Commissioner
  - f. Alameda County Environmental Health Department
  - g. Alameda County Sheriff's Office
  - h. Zone 7 Water Agency or other agency having jurisdiction over water supply and/or flood control
18. Inspections. Permittees must consent to periodic on-site compliance inspections to be conducted by appropriate officials.
19. Fees. Permittees must timely remit payment for all application, program, and inspection fees.
20. Conditions. Permittees must comply with any special conditions or conditions of approval applicable to the permit, parcel, or project.
21. Fuels and Agricultural Additives. Storage, use and handling of any fuels, fertilizer, pesticide, fungicide, rodenticide, or herbicide shall be in compliance with applicable state and local laws and regulations, and in such a way that prevents spillage.
22. Noise. Permittees must comply with the County Noise Ordinance.
23. Water. Water is to be sourced locally (on-site) and trucked water shall not be allowed for general cultivation purposes, but may be used for emergencies (e.g., fire).
24. Employer Certification. Pursuant to the Medical Cannabis Regulation and Safety Act, Health and Safety Code section 19322(a)(9), an applicant seeking a cultivation license shall "provide a statement declaring the applicant is an 'agricultural employer,' as defined in the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5 commencing with Section 1140) of Division 2 of the Labor Code), to the extent not prohibited by law."
25. Labor Conditions. Permittees 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, California Agricultural Labor Relations

Act, and the County General Ordinance Code. Permittees shall provide a copy of its labor peace agreement when the dispensary is required by California Business & Professions Code Section 19322(a)(6) to enter into and abide by a labor peace agreement. A cultivation site must have restroom facilities that will accommodate both male and female staff.

26. Cultivation Liaison. The permittee shall provide the director with the name, telephone number and facsimile number of a community relations contact to whom one can provide notice of problems associated with the cultivation site. The permittee shall make a good faith effort to resolve problems without the need for intervention by the county.

27. Processing Safety.

- a. Processing operations must be maintained in a clean and sanitary condition including all work surfaces and equipment.
- b. Processing operations must implement protocols which prevent processing contamination and mold and mildew growth on cannabis.
- c. Employees handling cannabis in processing operations must have access to facemasks and gloves in good operable condition as applicable to their job function.
- d. Employees must wash hands sufficiently when handling cannabis or use gloves.

28. Employee Safety Practices.

- a. Cultivation operations and processing operations must implement safety protocols and provide all employees with adequate safety training relevant to their specific job functions, which may include:
  - 1) Emergency action response planning as necessary;
  - 2) Employee accident reporting and investigation policies;
  - 3) Fire prevention;
  - 4) Hazard communication policies, including maintenance of material safety data sheets (MSDS);
  - 5) Materials handling policies;
  - 6) Job hazard analyses; and
  - 7) Personal protective equipment policies, including respiratory protection.
- b. Cultivation operations and processing operations must visibly post and maintain an emergency contact list which includes at a minimum:
  - 1) Operation manager contacts;
  - 2) Emergency responder contacts; and
  - 3) Poison control contacts.



- c. At all times, employees shall have access to safe drinking water and toilets and handwashing facilities that comply with applicable federal, state, and local laws and regulations. Plumbing facilities and water source must be capable of handling increased usage without adverse consequences to neighboring properties or the environment.
- d. On site-housing provided to employees shall comply with all applicable federal, state, and local laws and regulations.
- e. All permittees shall, at the time of the application for a conditional use permit, include a Cannabis Processing Plan with all of the following:
  - 1) Summary of processing practices.
  - 2) Description of location where processing will occur.
  - 3) Estimated number of employees, if any.
  - 4) Summary of Employee Safety Practices.
  - 5) Description of toilet and handwashing facilities.
  - 6) Description of plumbing and/or septic system and whether or not the system is capable of handling increased usage.
  - 7) Description of source of drinking water for employees.
  - 8) Description of increased road use resulting from processing and a plan to minimize that impact.
  - 9) Description of on-site housing, if any.

#### 29. Waste.

- a. Solid and liquid wastes generated during cannabis production and processing must be stored, managed, and disposed of in accordance with applicable state and local laws and regulations.
- b. Wastewater generated during cannabis production and processing must be disposed of in compliance with applicable state and local laws and regulations.
- c. Wastes from the production and processing of cannabis plants must be evaluated against the state's hazardous waste regulations to determine if those wastes classify as hazardous waste. It is the responsibility of each waste generator to properly evaluate their waste to determine if it is designated as a hazardous waste. If a generator's waste does qualify as a hazardous waste, then that waste is subject to the applicable management and disposal standards. A cannabis plant, usable cannabis, trim and other plant material in itself is not considered hazardous waste unless it has been treated or contaminated with a solvent.
- d. Cannabis wastes that do not qualify as hazardous including but not limited to trim, roots, stalks, leaves, and stems must be rendered unusable prior to leaving the cultivation site.

30. ~~Required Operations Plan. All applicants shall, at the time of the application for a conditional use permit, include an Operations Plan with their application materials that addresses the following elements in sufficient detail for the County to evaluate the proposed cultivation operation against the requirements included herein:~~

- a. ~~Site Plan~~
- b. ~~Site Security Plan~~
- c. ~~Track and Trace Plan~~
- d. ~~Cultivation Operations Plan~~
- e. ~~Worker Safety Plan~~
- f. ~~Cannabis Processing Plan~~
- g. ~~Waste Disposal Plan~~

h.

ALAMEDA COUNTY AGRICULTURAL ADVISORY COMMITTEE  
224 WEST WINTON AVE., ROOM 111  
HAYWARD, CA 94544

January 30, 2017

Dear Planning Commissioners:

The Alameda County Agricultural Advisory Committee (AAC) has the purpose to convene as “an advisory panel of experts to make recommendations to enhance the economic viability of agriculture and ranching, and to minimize environmental impacts.”

To fulfill our purpose regarding the Draft Medical Marijuana Dispensary and Cultivation Ordinances, the AAC has reviewed draft ordinances, met repeatedly with landowners and Medical Marijuana stakeholders, and held several Committee meetings for lengthy discussions and to receive testimony and presentations.

The Medical Marijuana industry is outside the scope of agricultural enhancement that we typically consider. Our opinions are diverse regarding this matter. However, collectively the AAC is concerned the introduction of legal Medical Marijuana cultivation and marketing into Alameda County may result in significant social, economic, and environmental impacts to existing agricultural enterprises and residents unless proper safeguards are taken.

We appreciate the efforts of Planning Staff, our Supervisors, stakeholders, and landowners to include us. Although we would have preferred to have traditional agricultural enhancement projects before us, the AAC desires to be an active participant in collaborative efforts to develop the CUP guidelines and mitigation measures and to evaluate the Pilot Project phase.

We respectfully submit with the attached table of our recommendations to be included into the Ordinance and policy.

Sincerely,

Larry Gosselin, Chair



**AGRICULTURAL ADVISORY COMMITTEE**  
 Advice to the Supervisors Regarding Implementation of the  
 State of California Medical Cannabis Regulation and Safety Act

The Agricultural Advisory Committee recommends:

RECOMMENDATION	COMMENT
Priority should be given to placement of Medical Marijuana Dispensaries on parcels: - Accessible to public transportation - Not restricted by Williamson Act contracts	-Public transportation serves urban areas. This recommendation benefits medical patients, and ensures proximity to the highest numbers of users. -It may be necessary to modify the Williamson Act Ordinance to allow Dispensaries.
A Medical Marijuana Dispensary should be designated a M (Mercantile) use by the Building Inspection Division.	A "M" use designation is consistent with ECAP <u>Visitor Servicing Commercial Uses Policy 81, 82, &amp; 83</u>
Medical Marijuana cultivation should be considered a horticultural land use. Horticulture is a common subcategory of agriculture and is presently permitted in the Zoning Ordinance.	Any product grown or raised for food or other use is an agricultural product. Should cannabis cultivation be considered something other than an agricultural land use there could be Measure D or Williamson Act impacts.
Medical Marijuana cultivation should be subject to discretionary approval.	Alameda County ECAP recognizes and prioritizes the enhancement of agriculture. However, when the impacts of a new agricultural use are not known, SDR or Conditional Permitting is warranted with the intent to enhance agriculture while minimizing impacts. Other examples of agricultural discretionary review exist in the Zoning Ordinance. Discretionary review should not be a tool to delay projects.
Cultivation sites: - Should not displace existing agricultural uses, but be complimentary to other agricultural uses of the property. - Should be separated from Dispensaries - Should have, if needed, a fire fuels management plan that includes grazing.	-The Medical Marijuana Industry boom could displace existing agricultural activity. - Separating Cultivation Sites from Dispensaries will decrease the fortress-like appearance that can result from combined operations - Grazing is a traditional agricultural use that can be supported while being used as a land management tool
A greenhouse, hoop-house, or enclosed grow shed is an agricultural building and should be designated a U use by the Building Inspection Division	A use designation can significantly affect the cost and planning time of an agricultural building. Typically, buildings used to raise plants or animals are considered a U use.
A drying shed is an agricultural building and should be designated a U use by the Building Inspection Division.	A use designation can significantly affect the cost and planning time of an agricultural building. Typically, buildings used to store, or hold, plants or animals are considered a U use.

<p>Any building used for processing of Medical Marijuana Products should be designated a F use by the Building Inspection Division.</p> <p>Form a subcommittee of representatives of the AAC, Planning Commission, Agriculture Commissioners Office, and Public Works to develop needed definitions specific to the MMO. These definitions should include, but not be limited to: greenhouse, hoop-house, enclosed cultivation shed, and others.</p> <p>Guard Dogs should not be used for security at Medical Marijuana Cultivation Sites</p> <p>Policy to prevent conflicts between Cultivation Site service traffic and commute traffic should be developed.</p> <p>When taxation is implemented, the following mitigation measures should be funded:</p> <ul style="list-style-type: none"> <li>- Additional Sheriff's patrol in East County</li> </ul>	<p>If there is disagreement regarding this designation, comparisons should be made to other jurisdictions.</p> <p>Definitions can significantly impact implementation of agricultural enhancement.</p> <p>Livestock could be at risk should SGuard Dogs escape or be allowed to roam.</p> <p>The AAC will cooperate with the Rural Roads Committee and landowners in areas of potential greater impact to recommend policy.</p>
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