

ORDINANCE NO. 2017- 37

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

SECTION 1

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

1. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5 and titled the "Compassionate Use Act of 1996"); and
2. The intent of Proposition 215 was to enable persons who are in need of cannabis for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances; and
3. In 2004, Senate Bill 420 was enacted (codified as California Health and Safety Code 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, Assembly Bill 243, Assembly Bill 266, Senate Bill 643 and Senate Bill 837 were enacted and subsequently revised by Assembly Bill 21 in 2016 (codified, in part, as California Business and Professions Code sections 19300, *et seq.* and titled the "Medical 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 Regulation and Safety Act established a comprehensive framework to license and regulate commercial medical cannabis cultivation, manufacturing, distribution, transportation, sales, and testing; and

8. On November 8, 2016, the voters of the State of California approved Proposition 64 (codified, in part, as California Business and Professions Code sections 26000 *et seq.* and titled the "Control, Regulate and Tax Adult Use of Marijuana Act"), which decriminalized the adult use of cannabis for non-medical purposes and established a regulatory scheme at the state level; and
9. On June 27, 2017, Senate Bill 94 (codified, in part, as California Business and Professions Code sections 26000 *et seq.* and titled the "Medicinal and Adult-Use Cannabis Regulation and Safety Act", or, "MAUCRSA") repealed and replaced MCRSA. MAUCRSA consolidates the medical and non-medical cannabis statutes (MCRSA and Proposition 64).
10. 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 Assembly Bill 21 on February 3, 2016; and
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 Alameda County General Ordinance Code was repealed on February 3, 2016.
12. Pursuant to California Business and Professions Code section 26200, nothing in the Medicinal and Adult-Use 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
13. This Ordinance is enacted, consistent with the Compassionate Use Act of 1996, the Medical Marijuana Program Act, and the Medicinal and Adult-Use Cannabis Regulation and Safety Act, to protect the public health, safety, and welfare of residents of the County of Alameda in relation to the cultivation of medical cannabis; and
14. 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
15. 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

16. 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
17. Absent appropriate regulation, the cultivation of medical cannabis in the unincorporated area of the County poses a potential threat to public peace, health, and safety; and
18. The County 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
19. 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
20. 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
21. 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
22. 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
23. Pursuant to the Medicinal and Adult-Use 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
24. 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
25. 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

26. 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 take any other actions within its power to protect the health, safety and welfare of County residents.
27. This Ordinance regulates the cultivation of medical cannabis in the unincorporated areas of the County and does not address the cultivation of cannabis for non-medical use under Proposition 64, MAUCRSA or otherwise;
28. Nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. sections 801, *et seq.* or to license any activity that is prohibited under said Act except as mandated by state law; and
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:

Section 17.04.010 of the Alameda County General Ordinance 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 26001(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" 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 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 11018.5 of the Health and Safety Code.

Section 17.52.585 is hereby added to the Alameda County General Ordinance 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; and
  9. The areas of the site to be actively used for Cannabis Cultivation activities are set back as follows:
    - a. At least fifty (50) feet from any property line shared with an adjacent property with different ownership, unless waived in writing by the adjacent owner;
    - b. At least three hundred (300) feet from any residence on an adjacent property with different ownership, unless waived in writing by the adjacent owner; and
    - c. At least one thousand (1000) feet from any school for pre-K to 12th grade students, licensed child or day care facility, public park or playground, drug or alcohol recovery facility or public recreation center.
- D. The Planning Director may establish additional performance standards and standard conditions providing detailed guidance for applicants and permittees. Permittees shall be required to comply with the performance standards and any conditions of approval applicable to a permit issued pursuant to this chapter.

Section 17.54.130 of the Alameda County General Ordinance Code regarding conditional uses is hereby amended as follows:

Delete the final sentence, "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 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."

Insert as the final sentence, "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 12 day of Sep, 2017, by the following called vote:

AYES: Supervisors Haggerty, Miley, Valle & President Chan

NOES: None

EXCUSED: Supervisor Carson

  
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WILMA CHAN  
President of the Board of Supervisors

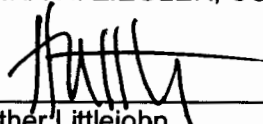
ATTEST:

Clerk of the Board of Supervisors,

By:   
\_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM:

DONNA R. ZIEGLER, COUNTY COUNSEL

By:   
\_\_\_\_\_  
Heather Littlejohn  
Deputy County Counsel