

ORDINANCE NO. 2017-35

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

SECTION 1

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

1. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5 and titled the "Compassionate Use Act of 1996"); and
2. The intent of Proposition 215 was to enable persons who are in need of cannabis for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances; and
3. In 2004, Senate Bill 420 was enacted (codified as California Health and Safety Code 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. In 2015, Assembly Bill 243, Assembly Bill 266 and Senate Bill 643 were enacted and subsequently revised by Assembly Bill 21 in 2016 (codified in part as California Business and Professions Code sections 19300 *et seq.* and titled the "Medical Marijuana Regulation and Safety Act"). These bills also amended provisions of the Medical Marijuana Program Act related to the cultivation of medical cannabis; and
6. In 2016, Senate Bill 837 was enacted to change all references to medical marijuana or marijuana to medical cannabis or cannabis, including changing the name of the Medical Marijuana Regulation and Safety Act to the Medical Cannabis Regulation and Safety Act; 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. 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
11. 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 distribution and delivery of medical cannabis; and
12. 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 cannabis; and
13. The County has a compelling interest in protecting the public health, safety, and welfare of its residents, visitors and businesses, in preserving the peace and quiet of the neighborhoods within the unincorporated areas of the County by regulating medical cannabis dispensaries as a land use; and
14. 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 five, with three allowable in the western, urban portions of the County and two allowable in the eastern, rural portions of the County; and
15. Concurrent with this ordinance, the County is considering adding Chapter 6.106 to the General Ordinance Code and amending the Zoning Ordinance to conditionally permit and regulate limited cannabis cultivation operations in Agricultural district of the unincorporated County; and
16. 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
17. The Board of Supervisors has determined that, with appropriate conditions, dispensaries may be appropriately located in certain commercial districts; and
18. 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
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 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
21. The Board of Supervisors has determined that, with appropriate conditions, a dispensary may be an appropriate conditionally permitted use in the agricultural district and outside of the urban growth boundary established by Measure D as an “agriculture enhancing commercial use” and a “visitor-serving commercial use” that is economically related to and supports the area’s cannabis cultivation; and
22. This Ordinance regulates the dispensing of medical cannabis in the unincorporated areas of the County and does not address the dispensing of marijuana for non-medical use under Proposition 64, MAUCRSA or otherwise; and
23. The Board of Supervisors acknowledges that regulation of cannabis activities is an evolving field at the state level, as evidenced by the recent adoption of the Medicinal and Adult-Use 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
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 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 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.

"Medical Cannabis 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 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 medical provisions of the California Medicinal and Adult-Use Cannabis Regulation and Safety Act and as regulated by chapter 6.108 of this Code.

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

Add "Medical cannabis dispensary." at the end of the list of conditional uses.

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

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

Add "Medical cannabis dispensary." at the end of the list of conditional uses.

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

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

Add "Medical cannabis dispensary." at the end of the list of conditional uses.

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

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 12th day of September, 2017, by the following called vote:

AYES: Supervisors Haggerty, Miley, Valle & President Chan

NOES: None

EXCUSED: Supervisors Carson

WILMA CHAN

President of the Board of Supervisors
County of Alameda, State of California

ATTEST: ANIKA CAMPBELL-BELTON

Clerk of the Board of Supervisors, County of Alameda

Approved as to Form

DONNA R. ZIEGLER, County Counsel

By: HEATHER LITTLEJOHN