

ORDINANCE NO. 2017-36

AN ORDINANCE ADDING CHAPTER 6.106 TO 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 were enacted and were subsequently revised by Assembly Bill 21 in 2016 (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
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

8. 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
9. 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
10. 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).
11. 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
12. 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
13. 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.
14. 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
15. 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
16. 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

17. 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
18. 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
19. 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
20. 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
21. 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
22. 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
23. Allowing these dispensaries to 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 a consistent, responsible entity at both the beginning and end of the supply in a vertically integrated structure; and
24. Allowing limited additional cultivation operations during this pilot program 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 multiple parties participating in the supply chain outside of a vertically integrated structure; and
25. 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.

26. 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;
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 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
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
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 Ordinance Code and reads as follows:

Chapter 6.106 – Medical Cannabis Cultivation Pilot Program

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 of Alameda.

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.
- B. "Application" means that form provided by the Director in accordance with this chapter for the purpose of seeking a permit.
- C. "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.
- D. "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. Cannabis cultivation includes the operations of a cannabis nursery. Cannabis cultivation does not mean the temporary maintenance and selling of clones from a permitted dispensary, where such activities are incidental and subordinate to the primary dispensary operation.
- E. "Cannabis 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.
- F. "Cannabis nursery" means an operation that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of medical cannabis.
- G. "Cannabis Operator" or "operator" as used in this chapter means the natural person or designated officer responsible for the operation of any permitted cannabis operation.
- H. "Clone" means the cutting of a cannabis plant that has been re-planted and is non-flowering.
- I. "Community Development Agency" means the community development agency of the County of Alameda.
- J. "County" means the County of Alameda.

- K. "Director" means the director of the Community Development Agency or his designee.
- L. "Indoor cannabis cultivation" means the cultivation of medical cannabis within an enclosed structure using artificial light, at a rate of or greater than 25 watts per square foot or such other threshold for indoor cultivation as may be established by the California Department of Food and Agriculture.
- M. "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.
- N. "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.
- O. "Mixed-light cannabis cultivation" means the cultivation of medical cannabis using light deprivation and/or artificial lighting below 25 watts per square foot or such other maximum threshold for mixed-light cultivation as may be established by the California Department of Food and Agriculture.
- P. "Permit" means a cannabis cultivation permit issued by the county to operate a cannabis cultivation site under this chapter.
- Q. "Permitted cannabis dispensary" or "cannabis 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, under the authority of the California Compassionate Use Act, the Medical Marijuana Program Act, and/or the California Medicinal and Adult-Use Cannabis Regulation and Safety Act and as regulated by chapter 6.108.
- R. "Permittee" means a person who holds an effective and current permit under this chapter.
- S. "Person" means any human being or an incorporated or unincorporated business entity or association established under the laws of the state.
- T. "Premises" means the parcel or parcels containing a medical cannabis cultivation site, including any buildings, greenhouses, accessory structures and appurtenant areas.

U. "Sheriff" means the sheriff of the County of Alameda and his or her authorized representatives.

V. "State" means the State of California.

6.106.030 General requirements and program terms.

- A. It is unlawful for any person to conduct, engage in or allow to be conducted or engaged in, cannabis cultivation in the unincorporated portion of the County of Alameda, 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 area of the 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 six cannabis cultivation permits throughout the duration of the pilot program, to be selected pursuant to sections 6.106.050 through 6.106.110 herein. A maximum of two permits will be available for indoor cannabis cultivation operations. A maximum of four permits will be available for mixed-light cannabis cultivation operations.
- 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 6.106.190 herein, whichever is earlier.
- 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.
- 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.
- 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 Ordinance 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 – vertically integrated operations.

- A. Each application for a cultivation permit by a permitted cannabis dispensary in the unincorporated area of the county 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 cannabis 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.

6.106.060 Application review and action – 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 cannabis dispensary;
 2. The applicant's permitted cannabis 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 cannabis dispensary permit has not been suspended or revoked and that there are no pending proceedings for the suspension or revocation of the cannabis dispensary permit.

3. No person who is listed on the application pursuant to subsection (1) or (5) of Section 6.106.050(A) has been convicted of a felony within the past three 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.

- A. The director will initiate a process to solicit applications for the establishment of one or more cannabis cultivation sites that need not be affiliated with a permitted cannabis dispensary.
- B. Each application for the establishment of a cannabis 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 – 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 cannabis cultivation site and the name and address of the owner of the premises.

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 cannabis 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 cannabis 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 cannabis 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 be regularly engaged at the proposed 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 ensuring 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 cannabis cultivation 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 by each structure at the cannabis 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 the external appearance of the cannabis 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 cannabis 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 cannabis cultivation site 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 cannabis cultivation site will operate consistent with state and local law, including but not limited to: the minimum staffing levels for operation of the cannabis 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 cannabis cultivation site and including a copy of the cultivation operation's labor peace agreement when required by California Business & Professions Code Section 26051.5 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 6.106.130.

6.106.090 Initial review of application – cultivation only.

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.

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.

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 – 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.
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 6.106.080 has been convicted of a felony within the past three (3) 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 cannabis 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 – 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 of 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 cannabis 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 director shall establish operating conditions for cannabis 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.

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 cannabis dispensary or delivery permit pursuant to Chapter 6.108 of this code.

6.106.150 Violations

Any person violating any of the provisions of this chapter is guilty of a misdemeanor. Each person is 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 cannabis cultivation site and is punishable accordingly. For purposes of this section, each and every day of violation includes each day on which a failure to comply with this chapter or any conditions of a permit issued pursuant to this chapter continues.

6.106.160 Limitations.

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 cannabis 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.

6.106.170 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.

6.106.180 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.

6.106.190 Sunset and termination.

The pilot program for cultivation of cannabis shall terminate two years from the effective date of this ordinance. 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 the second anniversary of the effective date of 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 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