

BOARD OF SUPERVISORS, COUNTY OF CALAVERAS
STATE OF CALIFORNIA
June 9, 2020

Ordinance
No. 20200609o3137

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF
CALAVERAS COUNTY RESCINDING IN FULL THE
EXISTING CHAPTER 17.91 AND ADDING A NEW
CHAPTER 17.91 OF THE CALAVERAS COUNTY CODE
RELATING TO CANNABIS RETAILERS**

The Board of Supervisors of the County of Calaveras does hereby ordain as follows:

SECTION 1: Pursuant to its authority granted by Article XI Section 7 of the California Constitution, Sections 65850 et seq., 25845 and 53069.4 of the California Government Code, Section 11362.83 of the California Health and Safety Code, and the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) (California Business & Professions Code Section 26000 et. seq.), Calaveras County Code Chapter 17.91, governing cannabis cultivation and commerce, is repealed in its entirety and the following new Chapter 17.91 is adopted and substituted in its place to read as follows:

CHAPTER 17.91 CANNABIS RETAILERS

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17.91.010 Purpose and Intent.

- A. It is the purpose and intent of this chapter to regulate, in compliance with the Medicinal and Adult Use of Cannabis Regulation and Safety Act (hereinafter "MAUCRSA", Section §26000 et seq. of the California Business and Professions Code), the retail sales of cannabis from licensed cannabis retailers within the unincorporated area of Calaveras County to consumers of non-medical cannabis and to qualified patients,

persons with an identification card and/or primary caregivers of medical cannabis.

- B. The purpose and intent of this Chapter is also to regulate, permit, and control cannabis retailers within the County in order to protect the public health, safety, and welfare of County residents; and to reduce or eliminate any adverse public health, safety, welfare, and environmental effects of new and existing cannabis retailers in the County.
- C. The purpose and intent of this Chapter is also to reduce conditions that create public nuisances by enacting reasonable regulations including, without limitation, restrictions as to the location and type of cannabis retailers to more effectively control the potential adverse impacts associated with cannabis retailers.
- D. Any ambiguity in this Chapter should be construed in whatever manner best effectuates this intent.

17.91.020 Applicability and Interpretation.

- A. The regulations in this Chapter shall apply to the location, permitting, and operation of cannabis retailers in zoning districts where such use is authorized under the County Code.
- B. The current provisions of this Chapter shall supersede any prior provisions of this Chapter, and the provisions of this Chapter shall apply regardless of whether any of the activities they regulate existed or occurred prior to the adoption of this Chapter.
- C. Nothing in this Chapter is intended, nor shall it be construed, to exempt any cannabis retailer from compliance with any other applicable Calaveras County zoning and land use regulations or any other applicable provisions of the County Code.
- D. Nothing in this Chapter is intended, nor shall it be construed, to exempt cannabis retailers from any and all applicable local and state environmental, building or land use standards or permitting requirements.
- E. Nothing in this Chapter shall be construed to authorize any use, possession, cultivation, sale, transfer, transport, or distribution of cannabis or cannabis products in interstate commerce or that is in violation of state law or Chapter 17.95 of the County Code.
- F. Nothing in this Chapter is intended nor shall it be construed to preclude a landlord from limiting or prohibiting cannabis use, cultivation, retail sales, or other related activities by tenants within the limits of state and local law, whether the cannabis activity is commercial or non-commercial.
- G. A separate permit pursuant to this Chapter is required for each premises on which an applicant proposes to own or operate a cannabis retailer within the County, and there shall be no more than one cannabis retailer premises per parcel.

- H. Except when citing to various sections or past versions of this Chapter, all references to laws and ordinances shall be interpreted as applying equally to any subsequent amendments made to such laws and ordinances.

17.91.030 Definitions.

Unless defined separately in this Chapter, or unless it is apparent from the context that they have a different meaning, all terms shall have the same meaning as they do in Chapter 17.95 of the County Code.

- A. “Applicant” means a person or entity who has submitted a cannabis retailer administrative use permit in accordance with this Chapter.
- B. “Cannabis accessories” shall have the same meaning as it does in B&P §26001.
- C. “Cannabis products” shall have the same meaning as it does in B&P §26001.
- D. “Licensed cannabis retailers” means cannabis retailers that have a state-issued “retailer” license as described in B&P §26070.
- E. “Landowner”, “land owner”, “parcel owner” or “property owner” means the person or entity identified as the owner on the recorded deed for the parcel.
- F. “Permittee” or “Permit holder” means a person or entity with an administrative use permit issued under this Chapter.
- G. “Premises” shall have the same meaning as it does in B&P §26001.
- H. “Pre-existing permitted medical cannabis retailers” means cannabis retailers that have been operating as medical cannabis dispensaries under an administrative use permit issued pursuant to the 2005 version of this Chapter.
- I. “Self-distribution license” refers to the subtype of ‘transport only’ distributor license described in 16 CCR §5315.
- J. “State-issued license” means a license issued by the State under MAUCRSA.
- K. “State licensing authority” shall have the same meaning as “licensing authority” as defined in B&P §26001.
- L. “Type 10 state retailer license” is a state-issued cannabis retailer license for retailers who have storefronts that are open to the public. It is distinguishable from a “Type 9” retailer license, which is issued to non-storefront retailers which are not open to the public and which conduct sales exclusively via delivery.
- M. “Validated”, in the context of a permit issued under this Chapter, shall mean an action of the Planning Director indicating compliance with all provisions of this chapter and that an appropriate cannabis license has been issued by the State of California.

17.91.040 Nuisance Declared; Non-compliant Cannabis Retail Activities

Prohibited.

All cannabis retailers, except as provided in this Chapter, are unlawful in all zones and a public nuisance that may be abated and subject to enforcement pursuant to §17.95.160 and Chapter 8.06 of the County Code, or, without limitation, as otherwise permitted by law.

17.91.050 Cannabis Retailer Administrative Use Permit (“AUP”); General Provisions and Minimum Requirements.

- A. Before a person or entity initiates operations for a new cannabis retailer the person or entity shall apply to the Planning Department and receive from the County a cannabis retailer AUP, pursuant to Chapter 17.83, on the terms and conditions set forth in this Chapter. New cannabis retailers shall not begin operations before the AUP is validated.
- B. Cannabis retailers shall be located only in the CP (Professional Office) zoning district.
- C. Cannabis retailers shall provide separation of one thousand (1000) feet from the property line from any of the following uses in existence at the time the initial application is deemed complete:
 - 1. A park.
 - 2. A school providing instruction in kindergarten or any grades 1 through 12, as defined by Health and Safety Code section 11362.768(h).
 - 3. A day care center, as defined by Health and Safety Code section 1596.76, or a family day care home, as defined by Health and Safety Code section 1596.78.
 - 4. A youth center, as defined by Health and Safety Code section 11353.1(e)(2).
 - 5. The County central library and its branches.

The distance shall be measured in a straight line from the property line of the use to the closest property line of the parcel containing the premises.

- D. The fact that an applicant possesses other types of state or county permits, licenses, or other entitlements does not exempt the applicant from the requirement of obtaining an AUP from the County of Calaveras to operate a cannabis retailer within the jurisdiction of the County.
- E. A commercial cannabis retailer shall be limited to the following commercial cannabis activities, and no commercial cannabis activities, other than the following, shall be permitted on a parcel containing a cannabis retailer:
 - 1. Self-distribution of cannabis cultivated on the parcel in compliance with 16

C.C.R. §5315 and pursuant to a state license.

2. Cannabis cultivation pursuant to a permit issued under Chapter 17.95 of the County Code and pursuant to a conforming state license.
 3. Cannabis retail sales pursuant to this Chapter and pursuant to a Type 10 state retailer license.
 4. Deliveries in conformance with MAUCRSA for a Type 10 licensee.
- F. Non-storefront retailers, as described in 16 §CCR 5414, are prohibited.
- G. No cannabis retailer permit will be issued or renewed for a parcel until the parcel is cleared of all violations described under Chapter 8.06 of the County Code.

17.91.060 Cannabis Retailer Application Requirements; Processing; Changes.

- A. All applicants for cannabis retailer AUPs shall submit a complete application on a form(s) provided by the Planning Director.
- B. The Planning Director, in consultation with the County Department of Cannabis Control, shall develop criteria for what information and documents shall be submitted to constitute a complete cannabis retailer AUP application but, at a minimum, shall include:
1. Contact information for the permittee and, if different, the landowner.
 2. An emergency contact who can be reached on a 24/7 basis and who can quickly provide access to the premises in the event of an emergency.
 3. Written landowner consent.
 4. A fully executed indemnification agreement as described in §17.95.210.
 5. The premises diagram submitted to or to be submitted to the State pursuant to 16 CCR 5006.
 6. The operating procedures submitted to or to be submitted to the State as part of the cannabis retailer application pursuant to 16 CCR §5002, including but not limited to the transportation, inventory, quality control, security, and delivery procedures described in Forms BCC-LIC-015, 016, 017, 018, and 020.
 7. Written consent to inspections by enforcement officials, which may be conducted randomly without prior notice or by first notifying the permittee.
 8. For an entity applicant or entity landowner, adequate evidence of signature authority.
- C. Regardless of whether or not an AUP has already issued pursuant to this Chapter, any changes to the information provided in the application required under this Chapter shall be reported in writing to the Planning Department within three business days.

- D. Applications submitted under this chapter shall be processed pursuant to Chapter 17.83 of the County Code and shall be subject to the payment of applicable fees.
- E. For the purpose of informing the State that a licensure applicant and his/her/its associated premises is eligible to qualify to participate in the County's cannabis retailer program as described in this Chapter, a letter of conditional authorization from the County may be issued by the Planning Department in conjunction with a permit. A letter of conditional authorization is not a substitute for a permit under this Chapter and does not itself authorize any commercial cannabis activities to take place in the County. If the permit is not timely validated, or if it is revoked, the County will issue a subsequent letter rescinding the conditional authorization and informing the State that permittee is no longer eligible to engage in commercial cannabis retailer activities in the County.
- F. The burden of proving the accuracy of parcel, premises, or cultivation site boundaries for the purpose of establishing whether or not a parcel, premises, or cultivation site meets the setback, separation, size, or locational requirements, or any other provision of this Chapter for which a determination of parcel, premises, or cultivation site boundaries might be determinative shall be borne by the applicant/permittee and not by the County. In the event of a dispute, evidence sufficient to satisfy the burden of proof shall require, at a minimum, a survey performed by a person licensed to practice surveying in the State of California.

17.91.070 Validation and Revocation of Cannabis Retailer AUPs.

- A. An AUP for a cannabis retailer and/or self-distribution may be issued by the Planning Department to an eligible applicant with an eligible premises who has not yet received a state license; but the permit will not be validated, and commercial cannabis activities will remain prohibited on the premises, until:
 - 1. The Planning Department receives a copy of the applicant's State retailer and/or transport only self-distribution license for the premises, including any conditions or restrictions imposed by the state, and
 - 2. The Planning Department verifies that all permit eligibility criteria and, if applicable, permit conditions have been met.
- B. Permit applications under this Chapter may be denied, and permits issued pursuant to this Chapter may be revoked, for failure to comply with the conditions of project approval and/or with Title 17 of the Calaveras County Code (including this Chapter) and/or for any of the following reasons:
 - 1. The applicant, after receiving a permit, fails or refuses to inform the County of alterations to the property or operations that would compromise the original permit approval, has submitted false or misleading information as part of the application, fails to comply with the permit conditions, or either fails to obtain or loses through revocation any other required local, county, regional, or state permit or license that is related to the property where the AUP is issued.

2. After issuance of the permit, the County discovers that approving the permit violated a county, state, or local law or regulation, or the permit was otherwise issued in error.
 3. Failure to timely pay fees established in this Chapter.
 4. Failure to pay the tax described in Chapter 3.56 of the County Code or to comply with all provisions of that Chapter that apply to the cannabis activities occurring on the parcel.
- C. The Planning Director's written determination shall be served by mail to the last permittee address provided by the permittee, with a statement of factual and/or legal reasons for the determination.
- D. If a permit is revoked pursuant to this Section, the Planning Director shall notify the State Bureau of Cannabis Regulation pursuant to Business & Professions Code §26200 as well as the Calaveras County Sheriff.
- E. Revocation of a permit under this Chapter does not in any way operate to limit any existing power of the County of Calaveras to simultaneously or subsequently enforce County ordinances, to abate any and all nuisances, or employ any remedy available at law or equity with respect to the parcel, including but not limited to the nuisance abatement and enforcement provisions of Title 8 of the County Code or Chapter 17.100 of the Calaveras County Code.

17.91.080 Appeals.

The Planning Director's decision on an application for an AUP or renewal of an AUP under this Chapter may be appealed pursuant to Chapter 17.98 of the County Code.

17.91.090 Operating Restrictions for Cannabis Retailers.

- A. Administrative use permits for cannabis retailers will be issued with specific premises indicated on the permit, with the same boundaries as the premises for which the State retailer license is issued.
- B. The permitted premises shall, at all times, be in full compliance with MAUCRSA, state regulations implementing MAUCRSA, and all conditions of the permittee's State commercial cannabis license for the same premises.
- C. All owners and workers, as these terms are defined in Chapter 9.22 of the County Code, shall have and maintain a current, valid cannabis background clearance badge whenever engaging in any commercial cannabis activity on the premises and shall comply with all provisions of Chapter 9.22.
- D. The parcel on which the cannabis retailer is located shall remain in compliance with all applicable laws and regulations.
- E. Permittees shall not sublet any portion of the permitted premises.
- F. A cannabis retailer shall at all times be operated in such a way as to ensure the

health and safety of employees, independent contractors, vendors, distributors, visitors, customers, neighboring property owners, and end users of cannabis and to safeguard against the diversion of cannabis across state lines or to any other market or end user deemed unlawful under MAUCRSA..

- G. A cannabis retailer shall have and maintain at all times a current, valid Type 10 state license in good standing. Permittees shall have a continuing duty to notify the Planning Department and Sheriff within three business days of:
 - 1. Any modification of their state-issued commercial cultivation license or of any denial, suspension, revocation, or non-renewal of the license.
 - 2. Any modification to any of the information provided in the application materials provided to the Planning Department pursuant to Section 17.91.060.
- H. Any citation issued to a retailer under B&P §26134, or any seizure of cannabis or cannabis products from a retailer under B&P §26135, shall be reported to the Planning Department and Sheriff's Office within three business days of the permit holder receiving the citation.
- I. Permittees shall notify the Calaveras County Sheriff's Office of any theft, loss, or criminal activity as required under 16 CCR §5036.
- J. The operator shall provide the name, physical address, mailing address, contact phone number and written consent, on a form provided by the Planning Department, of a willing, competent, adult individual who permanently resides within thirty (30) miles of the site to serve as a 24-hour emergency contact for law enforcement, fire, utility, and County personnel and who has the means and authorization to provide these personnel access to the site in an emergency. Changes to this contact person and/or information shall be reported in writing to the Planning Department within three business days of any change.
- K. The permit holder shall possess and maintain a current, valid business license issued by the County pursuant to Title 5 of the Calaveras County Code.
- L. The permit holder shall not allow cannabis in any form to be smoked, ingested, vaped, or otherwise consumed on the premises of the retailer.
- M. Pursuant to B&P §26160(c), the permit holder shall comply with any request by a County enforcement official to inspect the premises or the records of the retailer.
- N. The permit holder shall secure the premises in accordance with the security plan submitted to and approved by the state as part of his/her/its licensure application, a copy of which shall be submitted to the Sheriff.
- O. The retailer and any cannabis cultivation on the parcel shall be in a lawful, permitted structure(s) that is enclosed by four walls and a roof, and which has window coverings or screens that reasonably prevent all cannabis and cannabis products from being viewed by members of the public present on public roads, public lands, or public properties.

- P. The permit holder shall not, without the written pre-approval of the Planning Director (and, as required by law, the state licensing body), materially or substantially change or alter the premises, the usage of the premises, or the mode or character of business operation conducted from the premises. A “material or substantial” physical change to or change in use of the premises shall include, but not be limited to, a substantial increase or decrease in the total area of the licensed premises previously diagrammed, or any other physical modification resulting in substantial change in the mode or character of business operation. Should a modification or alteration require a change to the permit holder’s state license, the revised license shall be provided to the Planning Director within three business days of its issuance.
- Q. Any armed security personnel employed by the permittee to patrol the parcel shall be registered by the California Bureau of Security and Investigative Services. Notice that armed security is or will be employed on the parcel shall be provided to the County Sheriff’s Office.
- R. If the Planning Department receives a written revocation of landowner consent to a cannabis retailer permit, the Planning Department shall send written notice to the permittee at the mailing address provided on the permit application. The cannabis retailer permit shall be automatically revoked thirty (30) days after the Planning Department mails this notice.
- S. A permit holder shall not engage in interstate commerce as it relates to cannabis and shall be in compliance with state law and Chapter 17.95 of County Code.

17.91.100 Pre-Existing Permitted Medical Cannabis Retailers.

- A. Pre-existing permitted medical cannabis retailers may continue to engage in all medical cannabis activities allowed under that permit until it expires, so long as the activities are in full compliance with state law.
- B. In order to continue cannabis sales and, if applicable, cultivation after expiration of a pre-existing medical cannabis dispensary permit, retailers shall comply with the terms of this Chapter.
- C. Before the expiration of their current AUPs, pre-existing permitted medical cannabis retailers may apply under this chapter for modified AUP to engage in the broader range of retail cannabis activities allowed under the current version of this ordinance, including retail sales of non-medical cannabis. Any pre-existing AUP shall expire as of the date of the validation of the new AUP.

17.91.110 Cannabis Cultivation and Self-Distribution on Same Parcel as Cannabis Retailer.

- A. Cultivation
 - 1. No commercial cannabis cultivation shall occur on a parcel containing a cannabis retailer without the cannabis retailer also obtaining and maintaining a separate commercial cannabis cultivation permit under Chapter 17.95 of the County Code. The cultivation shall occur on a

premises that is separated from the retail premises by walls in accordance with state law. The cannabis cultivation premises must at all times comply with Chapter 17.95.

2. In order to continue any cannabis cultivation activities on the parcel after the expiration of their current permit, pre-existing permitted medical cannabis retailers must file a complete application for a commercial cultivation permit pursuant to Chapter 17.95 of the County Code. If the commercial cultivation permit is denied or revoked, all cultivation shall cease on the parcel.

B. Self-Distribution

A person or entity who receives a commercial cannabis cultivation permit under Chapter 17.95, and who also receives a state self-distribution license as described in 16 C.C.R. §5315, may engage in the activities allowed under the self-distribution license so long as these activities involve only that cannabis lawfully cultivated pursuant to the applicant's county cannabis cultivation permit.

17.91.120 Indemnification.

As a condition of issuing a permit pursuant to this chapter, the applicant and, if different, the parcel owner shall execute a standard agreement provided by the County to defend, indemnify and hold harmless the County and its agents, officers, and employees from any claim, action, or proceeding brought against the County, its agencies, boards, planning commission or board of supervisors arising from the County's review and issuance of a permit for the site. The indemnification shall apply to any damages, costs of suit, attorney fees or other expenses incurred by the County, its agents, officers and employees in connection with such action.

17.91.130 Enforcement; Fines; Liability to Pay Costs and Fines.

- A. Inspections of the premises shall be conducted by County enforcement officials at least yearly, and may be conducted randomly, without prior notice, or by first notifying the permittee. The County may conduct additional inspections if determined necessary by enforcement officials. Inspections may continue to be conducted after denial of an application and during the pendency of any appeals to ensure compliance with the provisions of the Chapter.
- B. Any commercial cannabis retail activity, except as authorized pursuant to this chapter, shall be a misdemeanor that shall be subject to injunction, abatement or any other administrative, criminal or civil remedy available to the County under applicable State and County laws, including but not limited to Government Code §§25845 and 53069.4, Business and Professions Code §26038, and Chapters 8.06 and 17.100 of the County Code.
- C. Each person or entity violating this Chapter shall be liable for a separate violation for each and every day during which a storefront is open for retail business or delivery service is available after a notice of violation and order to abate is served upon the property owner and/or the person or business entity responsible for the violation.

- D. The operator of the illegal retailer and the owner(s) of the parcel on which the violation is found to exist shall be jointly and severally liable for all administrative costs and actual abatement costs incurred by the County in enforcing the provisions of this Chapter.
- E. In addition to costs of administrative enforcement and costs of abatement incurred by the County in enforcing this Chapter, any person or business entity, and property owner that has been served a notice of violation and fails to comply with an order to abate shall be assessed a fine in the amount of one-thousand dollars (\$1,000) per day).
- F. Nothing herein shall be read, interpreted or construed in any manner so as to limit any existing right or power of the County to enforce County ordinances and regulations, to abate any and all nuisances, or to employ any remedy available at law or equity.
- G. Notwithstanding the fact that this Chapter involves retailer premises rather than cultivation premises, citations for violations of this Chapter may be issued and served in accordance with the expedited cannabis cultivation enforcement procedures under §8.06.700 *et seq.* of the County Code, and these expedited procedures shall apply to violations of this Chapter.
- H. Issuance of a warning shall not be a requirement prior to enforcement of any provision of this Chapter.

17.91.150 Fees.

The County may impose by Board resolution such fees as are reasonably necessary to recoup the County's cost in administering and implementing the provisions of this Chapter, including, but not limited to capital expenses and staff costs for processing applications, issuing permits, administrative adjudication of staff decisions, and administrative enforcement.

SECTION 2: SEVERABILITY

If any section, subsection, sentence, clause or phrase or word of this Ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have passed and adopted this Ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional, unlawful or otherwise invalid.

SECTION 3: FINDINGS

The Board of Supervisors of the County of Calaveras finds and declares as follows:

- A. In 1996, the voters of the State of California approved Proposition 215, "The Compassionate Use Act", (codified as Health and Safety Code Section 11362.5), which was intended to decriminalize cultivation and possession of cannabis by a seriously ill patient, or the patient's primary caregiver, for the patient's personal

use, and to create a limited defense to the crimes of possessing or cultivating cannabis. The Act further provided that nothing in it shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of cannabis for non- purposes.

- B. The State enacted SB 420 in 2004 (known as the " Medical Marijuana Program Act", codified as Health and Safety Code Section 11362.7 et seq.) to expand and clarify the scope of The Compassionate Use Act of 1996 by creating the Marijuana Identification Card program, creating reasonable regulations for cultivating, processing, transporting and administering cannabis, as well as limiting the amount of cannabis a qualified individual may possess.
- C. In 2005 the Board of Supervisors adopted Ordinance 2830, regulating the availability and distribution of cannabis within the unincorporated area of the county. Under the provisions of this ordinance, three cannabis retailers have been established and are currently operating.
- D. The State enacted the Marijuana Regulation and Safety Act (MMRSA) on September 11, 2015 (SB 643, AB 266, and AB 243), instituting a comprehensive state-level licensure and regulatory scheme for cultivation, manufacturing, distribution, transportation, laboratory testing, and dispensing of cannabis through numerous changes and additions to the Business & Professions Code and the Health and Safety Code. MMRSA legalized and regulated for-profit commercial activity related to cannabis in California. MMRSA has been subsequently amended and renamed the Medical Cannabis Regulation and Safety Act (MCRSA).
- E. On November 8, 2016, the voters of California adopted Proposition 64, "The Control, Regulate and Tax Adult Use of Marijuana Act" (AUMA), which required local jurisdictions to allow its residents to cultivate up to six cannabis plants indoors non-commercially for recreational use. AUMA retained the right of local jurisdictions to impose reasonable regulations on recreational cultivation and imposes a comprehensive statewide regulatory scheme on recreational cannabis use and commerce.
- F. On June 27, 2017, the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA) was enacted, intended to reconcile the differences between previously enacted state regulations, and the State subsequently adopted three sets of regulations implementing the various provisions of the law.
- G. On November 8, 2016 the voters of Calaveras County adopted a measure to tax commercial cannabis businesses within the County. A cannabis retailer permitted under this Chapter is a commercial cannabis business for purposes of this tax.
- H. Allowing commercial cannabis retailers who obtain the requisite state license to sell and deliver medical and non-medical cannabis to county residents, rather than incentivizing or requiring residents to travel out-of-county to procure cannabis and cannabis products from other licensees, serves the county's

interest in creating a lawful, economically viable cannabis industry in the county that will help the county rid itself of illegal cultivation and sales and their concomitant social and environmental problems.

- I. The unregulated retail sale and delivery of cannabis by cannabis retailers in the unincorporated area of Calaveras County can adversely affect the health, safety, and well-being of the County, its residents and environment. Comprehensive regulation of commercial cannabis retailers, including the imposition of a limit on where retailers may operate in the County, is proper and necessary to reduce the risks of criminal activity, fire hazards, unauthorized youth access, degradation of the natural environment, excessive traffic, and other public safety hazards that may result from unregulated cannabis retailers, and these risks are especially significant if the amount of cannabis kept, or sold on a single premises is not regulated.
- J. Children (minors under the age of 18) are particularly vulnerable to the effects of cannabis use and the presence of cannabis plants or products is an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children (including schools, parks, and other similar locations). The retail sale of cannabis near the locations and uses described in 17.95.050.C creates unique risks that the cannabis plants may be accessed or observed by juveniles, and therefore, be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with the retail sales of cannabis in the proximity of such locations poses heightened risks that juveniles may be involved or endangered.
- K. Calaveras County has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses, in protecting the local environment and local resources, in preserving the peace and quiet of the neighborhoods in which cannabis retailers may exist, and, and in providing access to cannabis for residents; and it therefore has a compelling interest in regulating or prohibiting commercial cannabis activities accordingly.
- L. The immunities from certain prosecution provided to qualified patients, their primary caregivers, and recreational users under State law to cultivate or possess cannabis plants individually, collectively, or cooperatively does not confer the right of a cannabis retailer to create or maintain a public nuisance. By adopting the regulations contained in this Chapter, the County intends to minimize the risks described in Subsections I and J of this Section.
- M. In *County of Los Angeles v. Martin Hill et al.* (2011) 192 Cal.App.4th 861, the California Court of Appeal found that state cannabis laws did not preclude a county from applying its nuisance laws to cannabis dispensaries that violated a valid local ordinance and stated that “The statute (referring to state law granting immunity from prosecution to certain individuals possessing or dispensing cannabis) does not confer on qualified patients and their caregivers the unfettered right to cultivate or dispense marijuana anywhere they choose. These laws also do not preclude a county from prohibiting cannabis dispensaries under its zoning code. See *City of Riverside v. Inland Empire Patients Health &*

Wellness Center, Inc., 56 Cal. 4th 729 (2013), in which the California Supreme Court concurred that “Nothing in the CUA or the MMPA expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land . . .”

- N. California Business and Professions Code §26200 expressly states that the division added to the Business and Professions Code pursuant to MAUCRSA “shall not be interpreted to supersede or limit the authority of a local jurisdiction to...completely prohibit the establishment or operation” of a commercial business licensed under MAUCRSA or to “supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local license, permit, or other authorization requirement”.
- O. California Business and Professions Code §26200(f) expressly states, “This division, or any regulations promulgated there under, shall not be deemed to limit the authority or remedies of a city, county, or city and county under any provision of law, including, but not limited to, Section 7 of Article XI of the California Constitution.
- P. California Business and Professions Code §26200(a)(2) expressly states that MAUCRSA, “shall not 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 license, permit, or other authorization requirements.”
- Q. California Business and Professions Code §2626201 provides that a local jurisdiction may establish stricter standards than the state regarding health and safety, environmental protection, testing, security, food safety, and worker protections.”
- R. The proposed ordinance amendment is internally consistent with other applicable provisions of Title 17; it has been prepared by County Planning Department staff and County Counsel to ensure that internal consistency of the Zoning Ordinance and the provisions of state law are maintained, including Chapter 17.95 of the County Code, and MAUCRSA.
- S. The proposed ordinance amendment is consistent with the County’s General Plan. The proposed ordinance is intended to provide for continued operations of retail sales of cannabis products. This is consistent with Goal LU-5 to improve the economy of the County and develop a strong and diverse economy. It is consistent with the land use element by directing the use to existing commercially zoned parcels. By restricting the use to CP zoned parcels and maintaining a minimum separation between retailers’ locations and the uses described in 17.95.050.C, the ordinance is consistent with Policy LU 3.5, requiring adequate infrastructure for new development, and Policy and LU 4.3, requiring compatibility with surrounding land uses. Expanding the retail sales to include adult use cannabis is consistent with Policy LU 5.4, encouraging new compatible businesses and industry to the county. The provisions of the ordinance protect

the public health and safety by ensuring fire and life safety standards are met, consistent with Policy S 3.2, avoiding exposure to hazardous materials, consistent with Goal S-5.

- T. There is no substantial evidence that the ordinance amendment will have a significant effect on the environment. An initial study was prepared in accordance with the California Environmental Quality Act (CEQA), finding that no significant effects would result from adoption of the ordinance. The initial study/negative declaration was circulated for 30 days, beginning on February 7, 2020 and ending on March 9, 2020. No comments were received during the comment period.

SECTION 4: This ordinance, or a summary thereof including the vote of each Board member, shall be published within fifteen days after the date hereof in a newspaper of general circulation printed and published in the County of Calaveras, State of California, and shall become effective thirty days after the date hereof.

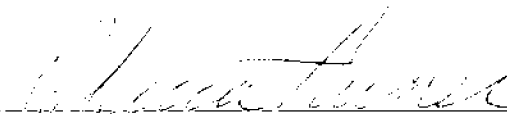
AYES: Callaway, Stopper, Garamendi

NAYS: Tofanelli, Mills

Merita Callaway, District 3 Supervisor

6/9/2020

ATTEST



R. Jessica Turner, Clerk-Recorder 6/9/2020