

ORDINANCE NO. _____

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF CALAVERAS COUNTY
RESCINDING IN FULL AND ADDING A NEW CHAPTER 17.95 OF THE
CALAVERAS COUNTY CODE RELATING TO CANNABIS CULTIVATION AND
COMMERCE**

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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 and Sections 11362.83(c) and 11362.768 of the California Health and Safety Code, Sections 26200 of the California Business & Professions Code, and The Control, Regulate and Tax Adult Use of Marijuana Act (Proposition 64, approved by voters November 8, 2016), Calaveras County Code Chapter 17.95, governing medical cannabis cultivation and commerce, is repealed in its entirety and the following new Chapter 17.95 is adopted and substituted in its place to read as follows:

**Chapter 17.95
REGULATION OF COMMERCIAL AND NON-COMMERCIAL CANNABIS
CULTIVATION; ALL OTHER COMMERCIAL CANNABIS USES PROHIBITED
(EXCEPT FOR MEDICAL CANNABIS RETAILERS PURSUANT TO CHAPTER 17.91)**

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17.95.010 Purpose and intent

- A. It is the purpose and intent of this chapter to prohibit, with limited exceptions, the commercial medical and recreational cultivation, manufacture, testing, distribution, transportation, and storage of cannabis in order to preserve the public peace, health, safety, and general welfare of the citizens of Calaveras County and the environment while retaining the ability of patients to have access to medical cannabis in the County to the extent deemed necessary under state law.
- B. It is also the purpose and intent of this Chapter to eliminate commercial cannabis cultivation in residential zones and to reduce its impact on parcels located in those zones but to also allow commercial medical cannabis cultivators who have timely applied for and who ultimately receive a medical cannabis cultivation registration under the May 10, 2016 version of this Chapter an opportunity to either apply for compatible zoning designations for their parcels or to relocate to available parcels with compatible zoning.
- C. It is also the purpose and intent of this Chapter to reduce conditions that create public nuisances by enacting regulations including, without limitation, restrictions as to location, type, size, and operation of cannabis cultivation sites, and the use of adequate screening, security, and other protective measures to more effectively control the adverse impacts on County residents and the environment associated with cannabis cultivation and other commercial cannabis activities.
- D. It is also the purpose and intent of this Chapter to impose reasonable regulations upon non-commercial recreational cannabis cultivation that is protected under state law in order to preserve the public peace, health, safety, and general welfare of the citizens of Calaveras County and the environment.
- E. Finally it is also the purpose and intent of this Chapter to generate sufficient tax revenue under Chapter 3.56 of the County Code to adequately support the enforcement of this Chapter and the elimination of those cannabis activities that are prohibited under it.
- F. Any ambiguity in this Chapter should be construed in whatever manner best effectuates this intent.

17.95.020 Definitions

- A. Unless the context clearly indicates a different meaning, the definitions in this Section are intended to apply to this Chapter only. Any term which is not specifically defined for purposes of this Chapter shall have the definition, if any, provided by Title 17 of the Calaveras County Code or elsewhere within the County Code. “A-type” or “A-license” has the same meaning as “A-license” in B&P §26001.
- B. “Accessory use” or “Accessory” has the same meaning as in County Code Section 17.06.0080.
- C. “Activation” or “Activated” means the validation of the cannabis registration by demonstrating compliance with all conditions of approval to the satisfaction of the Planning Director and as provided in Section 17.90.010.
- D. “Adoption of this Chapter” means the day on which the ordinance is adopted by the Board of Supervisors.
- E. “Applicant” means a person or entity who has submitted an application but has not yet received a registration or permit, or whose registration or permit has not yet been activated.
- F. “Application Pending” is the status of an applicant for a registration under the May 10, 2016 version of this Chapter whose application has not yet been processed by the Planning Department to determine whether or not a registration should issue.
- G. “Cannabis” shall have the same meaning as it does in B&P §26001. “Cannabis” shall also include “cannabis products” as defined in B&P §26001, which includes both “edible cannabis products” as defined in B&P 26001 and topical cannabis, meaning a cannabis product that is applied to the skin.
- H. “Cannabis distribution” shall have the same meaning as “distribution” in B&P §26001.
- I. “Cannabis manufacturing” shall have the same meaning as “manufacture” in B&P §26001.
- J. “Caregiver” or “primary caregiver” shall have the same meaning as it does in H&S §11362.7.

- K. “Child resistant” shall have the same meaning as it does in B&P §26001.
- L. “Commercial”, as used in this Chapter, refers to the cultivation, manufacture, distribution, laboratory testing, transport, storage, possession, processing, labeling, dispensing, sale, or other activities involving cannabis that are or will be subject to state licensure under the Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA) and its subsequent amendments. “Commercial”, for purposes of this Chapter, shall also refer to all collective and cooperative cannabis cultivation under Health & Safety Code §11362.775, whether for nonmedical purposes or for medical purposes, other than 1) that cultivation allowed under 17.95.050 and 2) cultivation allowed by a medical cannabis dispensary operating in compliance with state law and Chapter 17.91 of the Calaveras County Code.
- M. “Costs of Enforcement” or “Enforcement Costs” means all costs, direct or indirect, actual or incurred related to the performance of various administrative acts required pursuant to the enforcement of this Chapter, which include but are not limited to: administrative overhead, salaries and expenses incurred by County officers and enforcement officers, site inspections, investigations, evidence storage, notices, telephone contacts and correspondence, conducting hearings, as well as time expended by County staff in calculating the above expenses. The costs also include the cost of time and expenses associated with bringing the matter to hearing, the costs associated with any appeals from any decision rendered by any hearing body, hearing officer or court, the costs of judicially abating a violation, and all costs associated with removing, correcting or otherwise abating any violation, including administrative penalties of this Chapter.
- N. “County” means the County of Calaveras.
- O. “Cultivation” shall have the same meaning as it does in B&P §26001.
- P. “Cultivation activity” means activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- Q. “Cultivation area” shall mean that portion of the cultivation site containing live cannabis plants.
- R. “Cultivation site” means a location where “cultivation” occurs as defined by B&P §26001 or where “cultivation activities” occur as defined by this Chapter.

- S. “Delivery” shall have the same meaning as it does in B&P §26001.
- T. “Dispensing”, “dispensary”, or “medical cannabis dispensary” refers to the premises from which a medical cannabis retailer, as defined in B&P §26070, conducts commercial activities related to the retail sales and delivery of cannabis, as well as the actions involved in conducting such activities. “Medical cannabis dispensary” also has the same meaning as it does in Chapter 17.91 of the Calaveras County Code.
- U. “Distribution” shall have the same meaning as it does in B&P §26001.
- V. “Dwelling”, for purposes of this Chapter, means a building intended for human habitation that has been legally established, permitted, and certified as a single family or multi-family dwelling.
- W. “Enactment” means the date on which the ordinance adopted by the Board of Supervisors goes into effect pursuant to the Government Code §25123.
- X. “Enforcement Officer” or “Enforcement Official” means a County Code Enforcement Officer, the County Agricultural Commissioner, the County Sheriff, or a department head who is authorized by County Code to enforce this Title or other Title of the Calaveras County Code, or the authorized deputies or designees of any of these officials, each of whom is independently authorized to enforce this Chapter.
- Y. “Entity” means any firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit.
- Z. “Indoor cultivation” shall have the same meaning as it does in MAUCRSA.
- AA. “Labeling” shall have the same meaning as it does in B&P §26001.
- BB. “M-type” or “M-license” shall have the same meaning as “M-license” in B&P §26001.
- CC. “Manufacture” or “manufacturing”, when referring to medical cannabis, has the same meaning as it does in B&P §26001.
- DD. “Medical cannabis” shall have the same meaning as “medicinal cannabis” as defined in B&P §26001.

- EE. “Minor” or “minors” means a person or people under twenty-one (21) years of age. “Minor” or “minors” does not include a person or people between eighteen (18) and twenty (20) years of age who use medical cannabis in compliance with the Compassionate Use Act (CUA), Medical Marijuana Program Act (MMPA), and MAUCRSA.
- FF. “Mixed light cultivation” shall have the same meaning as it does under MAUCRSA.
- GG. “Multi-family dwelling” is a “dwelling” containing multiple private residences.
- HH. “Non-commercial cannabis” or “Non-commercial”, as used in this Chapter, refers to any cannabis that is not commercial.
- II. “Nonmedical”, “non-medical” or “Non-medical cannabis” refers to all cannabis that is not “medical cannabis”.
- JJ. “Nursery”, when referring to medical cannabis, shall have the same meaning as it does in B&P§ 26001.
- KK. “Outdoor cultivation” shall have the same meaning as it does in MAUCRSA.
- LL. “Owner”, or “landowner” when referring to the owner of the parcel, means the person(s) or entity identified as the owner on the recorded deed for the parcel.
- MM. “Owner”, when referring to the owner of an entity, shall have the same meaning as it does in B&P §26001.
- NN. “Parcel” means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (commencing with Section 66410 of the Government Code).
- OO. “Permittee” means someone who has been issued a permit under this Chapter.
- PP. “Person” means an individual.
- QQ. “Personal cultivation” means that cultivation of cannabis for personal use that it is allowed under MAUCRSA and the provisions of this Chapter.
- RR. “Plant” has the same meaning as “live plant” in B&P §26001.

- SS. “Possessing” or “possession”, when referring to medical cannabis, has the same meaning as it does for purposes of the Health & Safety Code.
- TT. “Primary caregiver” shall have the same meaning as it does in B&P §11362.7.
- UU. “Private residence” means a “dwelling” as defined in this Chapter; or an individual unit of a multi-family dwelling; or a temporary dwelling as provided in Chapter 17.93 of the County Code to the extent there are victims eligible for relief under this Chapter due to a currently declared disaster.
- VV. “Recreational cannabis” means that cannabis allowed under MAUCRSA that is not medical cannabis.
- WW. “Registrant” means someone who has been issued a non-commercial cultivation registration under this Chapter or, as the context requires, someone who has been issued a registration under the May 10, 2016 version of this Chapter.
- XX. “Retailer” shall have the same meaning as it does in B&P §26070.
- YY. “Residence” shall have the same meaning as “Dwelling”, as defined in 17.95.020.V.
- ZZ. “Self-Distribution” shall have the same meaning as it does in 16 C.C.R. §5315(d).
- AAA. “Sensitive Natural Communities” means those natural communities that are of limited distribution statewide, are vulnerable to environmental effects of land use changes, and have been assigned a State Rank S1, S2, or S3 by the California Department of Fish and Wildlife. In Calaveras County the sensitive natural communities are riparian woodland, lone chaparral, and big tree forest.
- BBB. “Testing” or “laboratory testing”, when referring to medical cannabis, has the same meaning as “laboratory testing” as defined in B&P §26001.
- CCC. “Total Canopy Area” means the gross area of cannabis planting covered by the canopy of all cannabis to be cultivated on the cultivation site when the cannabis plants reach their maximum canopy size, including the space between the plants.

- DDD. “Transport”, “transporting”, or “transportation”, refers to the transporting of cannabis and cannabis products between holders of state-issued licenses under MAUCRSA.
- EEE. “Type”, when used with respect to cannabis licenses, refers to a category of state license described under MAUCRSA.
- FFF. “Utility-provided water” means water service provided to the public by a water district or similar entity providing water from a surface or ground water source and regulated by the State of California or the County of Calaveras. It does not mean an entity that uses vehicles to transport water to a property.

17.95.030 Relationship to other laws; termination of medical cannabis registrations and “application pending” certificates.

- A. It is intended that the provisions of this Chapter will supersede any other provisions of the Calaveras County Code found to be in conflict and shall apply regardless of whether the activities existed or occurred prior to the adoption of this Chapter.
- B. Any and all “registration” or “application pending” certificates issued by the County for medical cannabis cultivation sites under the prior version of this Chapter (the Urgency Ordinance adopted May 10, 2016), whether for personal, primary caregiver, or commercial cultivation, shall terminate and be rendered invalid ninety (90) days after the effective date of this permanent ordinance. The Planning Department will continue, after this deadline, to process its backlog of timely submitted applications under the prior version of this Chapter for those commercial medical cannabis cultivation applicants who seek to qualify for a commercial cultivation permit under one of the exceptions described in Section 17.95.050 of this Chapter.
- C. All individuals or entities cultivating cannabis pursuant to a cannabis cultivation site registration or “application pending” certificate under the prior version of this Chapter (the Urgency Ordinance adopted May 10, 2016) shall come into full compliance with all provisions of this Chapter other than Section 17.95.080 within ninety (90) days of its effective date and shall come into full compliance with the provisions of Section 17.95.080 within twelve (12) months of its enactment.
- D. The Planning Department shall, within sixty (60) days of the effective date of this permanent ordinance, notify the State Bureau of Cannabis Control pursuant to Business & Professions Code Section 26200 that all County approvals of medical

cannabis cultivation sites under the May 10, 2017 version of this Chapter, whether pursuant to a registration or an “application pending” certificate, will be terminated as a matter of law at the end of the ninetieth (90th) day after the effective date of this Chapter. With the exception of cannabis cultivators who have had their registrations individually revoked or invalidated after issuance, the Planning Department shall, in such notice to the State, explain that the rescission of these approvals is based solely on the County’s adoption of a new cannabis ordinance and is unrelated to the individual conduct of the growers.

- E. Notwithstanding any of the above, the provisions of this Chapter shall not apply to medical cannabis dispensaries, which are separately regulated under Chapter 17.91 of the Calaveras County Code.
- F. Nothing in this Chapter is intended nor shall it be construed to preclude a landlord from limiting or prohibiting cannabis cultivation, smoking, or other related activities by tenants within the limits of state and local law.
- G. No cannabis cultivation, including cannabis cultivation that occurred pursuant to the temporary authorization provided under the prior version of this Chapter, shall be deemed an “agricultural operation” for purposes of Title 14 of the Calaveras County Code or a “legally existing agricultural land use” for purposes of Title 17 of the Calaveras County Code.

17.95.040 Nuisance Declared; Cannabis Cultivation & Related Activities Prohibited

- A. Except as provided in Section 17.95.050, all cultivation of cannabis, whether indoor or outdoor, is hereby declared to be unlawful in all zones and a public nuisance that may be abated and subject to enforcement pursuant to Chapter 8.06 of the County Code. This provision shall apply to cannabis cultivation by a nursery but shall not apply to cannabis cultivation by a lawful, permitted medical cannabis dispensary operating in compliance with state law and Chapter 17.91 of this Code. This Section shall not affect the right to use or possess cannabis as authorized by state law.
- B. All cannabis manufacturing and testing, and all cannabis distributing and transporting except as provided in Section 17.95.050, is hereby declared to be unlawful in all zones and a public nuisance that may be abated and subject to enforcement pursuant to Chapter 8.06 of the County Code. This provision shall not apply to prevent a lawful, permitted medical cannabis dispensary operating in compliance with state law and Chapter 17.91 of this Code from engaging in any

of the activities permitted under a state licensed medical cannabis retailer as defined by B&P §26070 and as further restricted by Chapter 17.91. This provision shall also not apply to the lawful transportation of medical cannabis by a licensed medical cannabis distributor (holding a current, valid M-Type 11 license or similar temporary license pursuant to MAUCRSA) to or from a licensed medical cannabis dispensary in compliance with MAUCRSA and with Chapter 17.91 of the County Code.

17.95.050 Exceptions

A. Non-Commercial Cannabis Cultivation.

The prohibition against cultivating cannabis shall not apply to the non-commercial cultivation of recreational cannabis by a person(s) aged twenty-one (21) or older who is issued a personal cannabis cultivation registration pursuant to this Chapter, or the non-commercial cultivation of medical cannabis by a person(s) aged eighteen (18) years or older, or by a primary caregiver who is issued a primary caregiver cannabis cultivation registration pursuant to this Chapter, provided that such cultivation complies with all applicable provisions of this Chapter.

B. Outdoor and Mixed Light Commercial Medical Cannabis Cultivation Registered Under the May 10, 2016 Urgency Ordinance.

For a period of five (5) years after the enactment of the current version of this Chapter, the prohibition against cultivating cannabis shall not apply to the commercial outdoor or mixed light cultivation of medical cannabis on a parcel zoned GF, A1, AP, or U by persons or entities who have been lawfully cultivating cannabis pursuant to a cannabis cultivation registration or “application pending” certificate under the terms of the May 10, 2016 version of this ordinance, provided this person or entity:

1. Applies for and receives a cannabis cultivation permit pursuant to the current version of this Chapter, and
2. Remains in compliance with all applicable provisions of the current version of this Chapter.
3. To the extent that the parcel for which the cannabis cultivation registration or “application pending” certificate was received under the May 10, 2016 version of this ordinance is compatible with the requirements of the current version of this Chapter, cultivation on the parcel must nonetheless cease within ninety (90) days of the enactment of this Chapter and may not

commence anew until a new permit under the current version of this Chapter is applied for, issued, and activated for that parcel. Notwithstanding the above, an amount of immature, non-flowering cannabis plants less than or equal to ten percent (10%) of the total canopy area allowed under the grower's cannabis cultivation registration or "application pending" certificate under the May 10, 2016 version of this Chapter may be retained and kept indoors on the parcel, in a lawful structure compliant with County Code, pending the receipt of a permit under the current version of this Chapter. Immature cannabis plants kept pursuant to this section shall be kept in full compliance with the Section 17.95.070.A & B and shall not be transferred to any other person or entity.

4. To the extent that the parcel for which the cannabis cultivation registration or "application pending" certificate was received under the May 10, 2016 version of this ordinance is incompatible with the requirements of the current version of this Chapter, an otherwise qualified person or entity may relocate to a conforming parcel provided that all of the following additional requirements are satisfied:
 - a. All cultivation activity on the parcel registered under the May 10, 2016 version of this Chapter shall cease within ninety (90) days of the effective date of the current version of this Chapter.
 - b. As a condition precedent to the activation of a cannabis cultivation permit for the new parcel following relocation, the applicant shall remediate the prior registered cultivation site pursuant to Section 17.95.080 and shall do so within twelve (12) months of the effective date of this Chapter.
 - c. The applicant shall provide written notice to the Planning Department, on a form provided by that Department, of the intent to relocate and shall pay a placeholder fee, the amount of which shall be established by resolution of the Board of Supervisors. Providing a notice of intent and/or paying a placeholder fee pursuant to this subsection shall in no way guarantee the ultimate approval or activation of a permit for the proposed new cultivation site and shall not extend the deadline for compliance with Section 17.95.080.
 - d. Commercial cultivation at the new location shall not commence until a permit for that parcel is applied for, issued, and activated pursuant to this Chapter.

5. As an alternative to relocation under Subsection C.3 above, to the extent that the parcel for which the cannabis cultivation registration or “application pending” certificate was received under the May 10, 2016 version of this ordinance is incompatible with the zoning requirements of the current version of this Chapter, an otherwise qualified person or entity may apply under Chapter 17.86 of the County Code to amend the zoning designation of that parcel to render it compatible, provided that all of the following additional requirements are satisfied:
 - a. All cultivation activity on the parcel registered under the prior version of this Chapter shall cease within ninety (90) days of the effective date of the current version of this Chapter.
 - b. The applicant shall notify the Planning Department in writing of the intent to apply for a zoning application within forty-five (45) days of the effective date of this Chapter and shall file a complete application for the zoning amendment with the Planning Department within ninety (90) days of the effective date of this Chapter.
 - c. Commercial cultivation may only resume on the parcel if and when the zoning amendment becomes effective and a permit is applied for, issued, and activated pursuant to this Chapter.
 - d. Submitting a notice of intent to apply for, applying for, and/or receiving a zoning amendment pursuant to this Section shall not extend the deadline for compliance with Section 17.95.080, which the applicant shall be required to comply with until such time as a cultivation permit under the current version of this Chapter is activated by the Planning Department.
 - e. If the parcel for which a zoning amendment is sought pursuant to this section is located within a community plan or special plan, no zoning amendment pursuant to this Section shall be granted if the proposed zoning is inconsistent with that plan.

C. Indoor Commercial Medical Cannabis Cultivation Registered Under the May 10, 2016 Urgency Ordinance.

For a period of five (5) years after the enactment of the current version of this Chapter, the prohibition against cultivating cannabis shall not apply to the commercial indoor cultivation of medical cannabis on a parcel zoned M1, M2, or M4 by persons or entities who have been lawfully cultivating cannabis pursuant

to a cannabis cultivation registration or “application pending” certificate under the terms of the May 10, 2016 version of this ordinance, provided this person or entity:

1. Applies for and receives a cannabis cultivation permit pursuant to the current version of this Chapter, and
2. Remains in compliance with all applicable provisions of the current version of this Chapter.
3. To the extent that the parcel for which the cannabis cultivation registration or “application pending” certificate was received under the May 10, 2016 version of this ordinance is compatible with the requirements of the current version of this Chapter, cultivation on the parcel must nonetheless cease within ninety (90) days of the enactment of this Chapter and may not commence anew until a new permit under the current version of this Chapter is applied for, issued, and activated for that parcel. Notwithstanding the above, an amount of immature, non-flowering cannabis plants less than or equal to ten percent (10%) of the total canopy area allowed under the grower’s cannabis cultivation registration or “application pending” certificate under the May 10, 2016 version of this Chapter may be retained and kept indoors on the parcel, in a lawful structure compliant with County Code, pending registration under the current version of this Chapter. Immature cannabis plants kept pursuant to this section shall be kept in full compliance with the Section 17.95.070.A & B and shall not be transferred to any other person or entity.
4. To the extent that the parcel for which the cannabis cultivation registration or “application pending” certificate was received under the May 10, 2016 version of this ordinance is incompatible with the requirements of the current version of this Chapter, an otherwise qualified person or entity may relocate to a conforming parcel provided that all of the following additional requirements are satisfied:
 - a. All cultivation activity on the parcel registered under the May 10, 2016 version of this Chapter shall cease within ninety (90) days of the effective date of the current version of this Chapter.
 - b. The applicant shall provide written notice to the Planning Department, on a form provided by that Department, of the intent to relocate and shall pay a placeholder fee, the amount of which shall

be established by resolution of the Board of Supervisors. Providing a notice of intent and payment of a placeholder fee pursuant to this subsection shall in no way guarantee the ultimate approval and/or successful permit for the proposed new cultivation site.

- c. Commercial cultivation at the new location shall not commence until a permit for that parcel is applied for, issued, and activated pursuant to this Chapter.
- D. All commercial cannabis registrations issued pursuant to this Chapter, are transferable, but they do not run with the land and shall expire as a matter of law five years after the current version of this Chapter is enacted.
- E. Self-Distribution of Commercial Cannabis
- 1. A person or entity who receives a commercial cannabis cultivation permit under this Chapter, and who also receives a state self-distribution license as described in 16 C.C.R. §5315(d), may engage in the activities allowed under the self-distribution license so long as:
 - a. These activities involve only that cannabis lawfully cultivated pursuant to the permittee's local cannabis cultivation permit.
 - b. The applicant's intent to self-distribute is declared on the permit application and permission to self-distribute is expressly granted as part of the permit.
 - c. The permittee notifies the Planning Department within seventy-two (72) hours of any denial, revocation, suspension, rescission, or any other change in status related to his/her state self-distribution license, and
 - d. The permittee complies with all provisions of this Chapter and MAUCRSA.
 - 2. A permittee engaging in self-distribution activities as provided in this section shall provide to the Sheriff all transport vehicle information to the full extent that it must be provided to the state under 16 C.C.R. §5312.
 - 3. A permittee engaging in self-distribution activities as provided in this section shall comply with all transport personnel requirements of 16 C.C.R. §5313 and with all shipping manifest requirements of 16 C.C.R. §5314.

17.95.060 Registration and Permitting Requirements for All Cannabis Cultivation.

- A. All applicants for a registration or permit pursuant to this Chapter, whether for personal, primary caregiver, or commercial cultivation, shall provide the Planning Department with:
1. A complete application, the mandatory form and content of which shall be developed by the Planning Department and posted on its website.
 2. If the applicant is not the owner of the parcel to be permitted, a letter on a form developed by the Planning Department and signed, dated and notarized by the owner(s) of the parcel, authorizing the applicant to cultivate cannabis on the parcel and to make any associated material alterations to the property. The letter shall include the name, address, and phone number of the land owner.
 3. A written description of where the cultivation area will be sited and how it will be secured against access by trespassers and children, including description of all fencing, screening, gating, locks, lighting, cameras, and alarms.
 4. The indemnification agreement required under 17.95.110, which shall be on a form provided by the Planning Department.
 5. Any other information required to complete the application form required under Subsection 17.95.060.A.1.
 6. All applicants for a registration or permit under this Chapter shall pay, at the time of submitting an application, and annually thereafter, an application and processing fee established by resolution of the Board of Supervisors.
- B. Commercial cultivation applicants shall additionally provide the Planning Department with:
1. A plot plan, drawn to scale, depicting property boundaries, cultivation area, structures, access drives and other pertinent information.
 2. Written consent to reasonable compliance inspections on a form developed by the Planning Department.

3. Evidence of the legal, County-approved water source that will be used for irrigation of the medical cannabis, including a copy of any local permit required to use that water.
4. A copy of the Notice of Applicability enrolling the cultivator for coverage under General Order No. R5-2015-0113, consistent with the area proposed to be registered, as well as a copy of the resulting permit issued by the Central Valley Regional Water Quality Control District.
5. A copy of a current, valid, verifiable government-issued photographic identification such as a driver's license or state-issued identification card.
6. A complete copy of the State-issued commercial cultivation license issued pursuant to MAUCRSA, whether temporary or permanent.
7. The biological site assessment prepared for Central Valley Regional Water Quality Control Board compliance. The County shall arrange for a qualified biologist to review said assessments to ensure that the construction and operation associated with the cannabis cultivation would not remove or otherwise affect sensitive natural communities that may occur within the County. The cultivation area shall be located on an area of the site that will not result in the removal of or otherwise affect sensitive natural communities. If no such area is available on the site the application shall be denied.
8. The name, physical address, mailing address, contact phone number and written consent 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 pursuant to all state and local laws and regulations and who has the means and authorization to provide access to the cultivation site in conformance with those laws and to comply with a site inspection.
9. Whether a sulphur burner or carbon dioxide enhancement equipment will be used at the cultivation site.
10. A fire prevention plan approved by the Planning Department in consultation with the chief of the fire district in which the parcel applied for lies.

11. Each application by an entity for a commercial cultivation permit shall be attested to and signed by at least one “owner” as defined in B&P §26001, who shall provide written evidence satisfactory to the Planning Director of his/her authority to make all written representations to the County that are required by this Chapter and to bind the entity into all written agreements with the County required under this Chapter, including but not limited to the application and the indemnification agreement.
 12. Whether the applicant seeks permission to self-distribute as described in 17.95.050.E.
- C. All individuals applying for a commercial medical cannabis permit under this Chapter (including but not limited to all individual owners of an entity applicant), and all additional individuals who will be participating in any cultivation activity on-site, shall submit fingerprints and be subject to criminal background checks as follows:
1. The criminal background checks shall be conducted by the Calaveras County Sheriff pursuant to California Penal Code Sections §§11105(b)(11) and 13300(b)(11), which authorize county authorities to access state and local summary criminal history information for employment, licensing or certification purposes and authorize access to federal level criminal history information by transmitting fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation. If the applicant is an entity, each “owner” as defined in B&P §26001 shall submit fingerprints and be subject to the background check required by this Chapter.
 2. The Sheriff shall develop standards to consider the results of the background checks, utilizing the factors described in B&P §26057 and other relevant factors, and shall summarize his findings with respect to each one in a written report, which shall include a determination as to whether or not the subject of the background check has a history of criminal convictions that is incompatible with the responsibilities required to participate in a commercial cannabis cultivation operation under this Chapter. The Sheriff shall take into account the type and number of convictions as well as the length of time that has passed since the conviction(s) occurred. In the event of an “incompatible” finding, the Sheriff shall, to the extent allowed by law, provide the criminal history information that resulted in this finding to the subject of the background check and to

the Planning Director in a manner that complies with criminal history disclosure laws.

3. If the Sheriff finds that the applicant's criminal history requires denial of the application, the Planning Director shall deny the application. If the Sheriff finds that an individual who will be participating in the cultivation activity on-site, but who is not an applicant, has a criminal history that requires him/her to be excluded from participating in the cultivation, the Planning Director shall impose a condition on the applicant's permit precluding this individual from participating in the cultivation.
 4. Only an applicant or landowner may appeal a decision made by the Sheriff pursuant to this section. If the Sheriff's decision is appealed, the reviewing body shall review the Sheriff's decision for abuse of discretion.
- D. The Planning Director shall develop standards utilizing the factors described in B&P §26057 and other relevant factors to review an applicant's history of having been sanctioned, fined, or otherwise penalized for a non-criminal violation of federal, state, or local law (other than cannabis-related activities recognized as legal by the State of California) on any parcel within the County in the ownership or possession of the applicant, and, using those standards, shall determine whether a permit should be denied on this basis.
- E. The security plan provided pursuant to 17.95.060.A.3 shall be reviewed for adequacy by the Sheriff against a set of security standards he/she develops.
- F. In addition to the other requirements of 17.95.060, where a proposed commercial cultivation permit is for a parcel abutting a parcel of land that is zoned for residential use as identified in Article 3 of Title 17 of the Calaveras County Code or Residential Agricultural zones, or if it is abutting a parcel of land of any zoning designation containing a pre-existing lawful, permitted dwelling, a commercial cultivation permit shall not be issued unless advance notification of the application for a permit is provided to the owners of parcels located within five hundred (500) feet of the parcel sought to be permitted, and a reasonable opportunity for these neighboring property owners to comment is provided.
1. If no written objections are received within the allotted time period from one or more of the neighboring property owners described above, the Planning Director shall process the permit as described in 17.95.060.J.

2. If one or more written objections are received within the allotted time period from one or more of the neighboring property owners described above, the permit shall not be approved unless the Planning Commission approves the permit at a noticed public hearing.
 3. If a permit application requires Planning Commission review pursuant to this section, the Planning Commission may impose requirements and conditions on commercial cultivation permits with respect to location, siting, construction, maintenance, operation, duration and overall development of commercial as deemed reasonable and necessary for the protection of the public health, safety and general welfare.
- G. No commercial outdoor or mixed light cultivation permit will issue under this Chapter unless the applicant submits to the following soil and water sample testing protocol developed by the Environmental Management Agency (EMA):
1. All soil and water samples shall be taken from the parcel, both from inside and outside the cultivation area by the EMA or by a Qualified Professional. For the purpose of this subsection, the following shall be considered to be Qualified Professionals:
 - a. Professional Geologist
 - b. Certified Engineering Geologist
 - c. Certified Hydrogeologist
 - d. Licensed Civil Engineer
 - e. Academician who can demonstrate, to the EMA's satisfaction, expertise and experience in sampling and chain-of-custody procedures
 2. A chain-of-custody shall be required for all samples. All laboratory analysis shall be conducted at a State Certified laboratory approved by the EMA.
 3. Based on the data and analysis provided, the EMA, with consultation with experts in the field, will determine whether there is substantial evidence that either unpermitted pesticides or excessive levels of nutrients have been or are being used within the cultivation area.
 4. If the initial samples indicate an absence of unpermitted pesticides and do not indicate an excessive use of nutrients or pesticides within the cultivation area, the sampling results shall constitute the baseline levels for future sampling events.

5. If the initial samples indicate the presence of unpermitted pesticides or an excessive use of fertilizer within the cultivation area, further testing shall take place to determine the extent of unpermitted pesticide use and the degree of over application of nutrients and a baseline shall be established for comparison with pesticide and nutrient levels identified within the cultivation area.
 6. Establishment of baseline levels shall take into consideration one or more of the following:
 - a. The levels of pesticides or nutrients measured inside and outside of the cultivation area.
 - b. Pesticides or nutrients used on the land prior to cultivation of cannabis.
 - c. Typical levels of naturally occurring hazardous substances. This baseline report of existing soil and water contaminants shall be maintained by the EMA and all costs of soil and water testing both before and after a registration or permit is issued shall be borne solely by the applicant and the permittee.
 7. When the concentration of unpermitted pesticides or the excessive application of nutrients have been documented, the EMA Administrator or the EMA Administrator's designee shall summarize all findings in a written report to the Planning Department, which shall be mailed also to owners of adjacent parcels and shall include a determination as to whether or not the subject parcel is adequately free of contamination to support further cannabis cultivation under this Chapter and, if not, what remediation activities are recommended to remediate the site. This report shall address the extent to which any contaminants found on the parcel may be naturally occurring soil or water components as opposed to byproducts of cannabis cultivation.
 8. The Planning Director shall review the EMA director's report prior to determining whether to deny a permit under this Chapter.
 9. If an appeal is filed that relates in whole or in part to the exclusion of a parcel due to soil or water testing results pursuant to this Section, the EMA Director shall be notified and invited to participate in the appeal proceedings.
- H. If the cultivation site is not served by a public water system the following shall be done prior to permit activation for indoor cultivators and within twelve (12) months

of permit activation for outdoor and mixed light cultivators in order to determine the sustainability of water production capacity:

1. The well serving as the water source of the cultivation activity shall be tested by a 24 hour Pump Test, with a Source Capacity Report submitted to Environmental Health.
2. The Pump Test and Source Capacity Report shall be performed by a qualified professional as defined in Section 16.03.365 of the Calaveras County Code.
3. The Pump Test and Source Capacity Report shall follow the Source Capacity Test Procedures established by the Environmental Health Department.
4. Minimum sustainable water production capacity, as determined by the Source Capacity Report shall indicate a sustainable production of water at the site of at least 8 gallons per minute.
5. The maximum pump output shall be set at 5 gallons per minute. This shall require 4,500 gallons minimum of equalizing storage of water. The water storage tank must be AWWA approved or equivalent approved by the EMA Director.
6. The minimum sustainable water production capacity may be met by one or more wells on the subject parcel. If more than one well is required to meet the minimum standard, the Source Capacity Test shall be conducted simultaneously on all production wells within 500 feet of each other.
7. Wells on nearby parcels shall be tested utilizing the following procedures.
 - a. The Environmental Health Department shall identify wells on parcels within a 500 foot radius of the applicant's well.
 - b. The County shall provide the property owners of the nearby wells with a written notification of the planned Source Capacity Test ten days prior to the test and allow them to opt into the testing program by having the qualified professional monitor their well's static water level for the 24 hours that the Source Capacity Test is taking place.
8. No registration shall be approved unless EMA has verified through a Source Capacity Test on the parcel that there is adequate sustainable water and that the test results indicate that there will not be an impact

static water level of wells whose owners opted into the testing program provided in paragraph 7.

- I. Commercial cannabis cultivation permittees shall be subject to payment of a onetime Road Impact Mitigation (RIM) Fee prior to initiation of operational activities and activation of the registration or permit. Fees assessed for cultivation activity will be based on the potential vehicular trips associated with the cultivation as determined by the Calaveras County Public Works Department.
- J. The Planning Director shall review commercial cannabis cultivation permit applications to determine whether the applicant qualifies under the provisions of this Chapter for a commercial cannabis cultivation permit.

17.95.070 Operating Restrictions

- A. General Requirements. The following requirements apply to all cannabis cultivation in the County:
 - 1. If a person or entity cultivating cannabis does not own the parcel on which the cultivation site is located, express written permission from the owner(s) consenting to cannabis cultivation and any associated material alterations to the property must be obtained prior to commencing cultivation, shall be maintained on the parcel, and a copy of this letter shall be provided to the County upon request of any Enforcement Officer. At least one copy of this letter shall, if the registration is for outdoor or mixed light cultivation, be maintained at all time at the private residence or non-residential structure on the parcel. If the registration is for indoor cultivation, at least one copy of this letter shall be maintained at all times at the cultivation site.
 - 2. The cultivation site must be in full compliance with all other applicable requirements of the County Code, including but not limited to the building, safety, and technical codes and requirements relevant to obtaining necessary building, plumbing, electrical, mechanical, grading, or other permits, inspection of structures requiring permits, and the issuance of certificates of occupancy.
 - 3. No cultivation is permitted within the common areas of a multi-family dwelling, residential development, mobile home park, or other similar residential arrangements.

4. Whenever the cultivation site contains cannabis, the cultivation site shall be enclosed and securely locked, using a child resistant lock, in a manner designed to reasonably prevent access by unaccompanied minors at all times that it is not occupied by an adult at least eighteen years of age.
5. There shall be no form of signage on the parcel suggesting the presence of cannabis.
6. There shall be no light pollution, glare, or brightness of artificial illumination associated with the cultivation.
7. No generator shall be used for cultivation activities, including pumping, except as an emergency backup to another power source. Any generator providing temporary, emergency power to the cultivation site shall be:
 - a. Housed in an insulated shed; and
 - b. Set back a minimum of seventy-five (75) feet from the property line; and
 - c. In compliance with the County's noise ordinance.
8. Soil and mulch, amendments, pesticides, herbicides, rodenticides, fungicides, fertilizers and other hazardous materials shall be used, stored, and disposed of in full compliance with federal, state, and local laws.
9. The cultivation, applicant, and/or registrant shall comply with all provisions of this Chapter and all laws, regulations, and ordinances that apply within the County's jurisdictional boundaries including but not limited to the CUA, MMPA, MAUCRSA; state and local laws, ordinances and regulations; applicable federal and tribal laws and regulations; and any subsequent amendments to any of these laws, regulations, and ordinances.
10. There shall be no cultivation on any parcel containing a child day care as defined by state and/or local law.
11. The cultivation site shall be located within a single designated area.
12. The cultivation area, including any fencing around it, shall be reasonably screened from common ground-level public view and from the view of parcels containing a "sensitive use" as that term is defined in Calaveras

County Code Chapter 17.91. "Public view", as used in this paragraph, shall mean view from a public or private road fronting the parcel on which cannabis is cultivated.

B. Non-Commercial Cultivation. In addition to the requirements described in subsection (A) above, the following requirements shall apply to all noncommercial cultivation:

1. With the exception of primary caregiver cultivation in compliance with this Chapter, no more than six (6) live cannabis plants per private residence may be cultivated at any one time regardless of:
 - a. Whether the cannabis is medical or recreational;
 - b. Whether the cannabis is grown inside the private residence or in an accessory structure thereto;
 - c. The size or maturity of the plant(s); or
 - d. The number of recreational or medical cannabis users residing together in the private residence.
2. There shall be at least one dwelling as defined in Section 17.95.020 of this Chapter (or a temporary dwelling as provided in Chapter 17.93 of the County Code to the extent there are victims eligible for relief under this Chapter due to a currently declared disaster) on any parcel on which cannabis is cultivated pursuant to this Section.
3. Each person cultivating non-commercial cannabis must maintain his/her primary residence on the parcel on which the cultivation occurs. If a cultivator moves to a new primary residence that will accommodate the inclusion of his/her registered non-commercial cultivation within the requirements of this Chapter, he/she must notify the Planning Department and request a modification of his/her registration within seventy-two (72) hours of placing live cannabis plants on the parcel to which he/she is relocating.
4. If a person with a non-commercial cannabis registration stops cultivating cannabis at his/her residence, he/she must notify the Planning Department within seventy-two (72) hours of the removal of the live plants and request a cancellation of his/her registration.

5. Non-commercial indoor cannabis cultivation shall only occur within a single designated area inside a dwelling or within a single accessory structure thereto with solid walls and a ceiling, roof or top and which complies with all local ordinances, codes, regulations, and permitting requirements for the accessory structure's type, size, and intended use. The cultivation shall be subordinate, incidental, and accessory to the residential use, and the air filtration requirements of 17.95.070.F.5 shall apply.
 6. A non-commercial outdoor cannabis cultivation area shall be:
 - a. Fully enclosed by a metal or wooden fence at least six feet in height that is of a strength that reasonably prevents against access by trespassers and children. Access to the cultivation area shall be secured by a lock of reasonable strength to prevent against access by trespassers and children.
 - b. Set back at least seventy-five (75) feet from any property line, measured using the shortest distance between the cultivation area and the property lines of the abutting parcels. This setback may be reduced by providing at the time of registration written permission from the landowner whose land is closer than seventy-five (75) feet from the proposed cultivation area.
 7. The cultivation area shall be watered using a County-approved water source that is either utility-provided or a permitted well water source on the parcel. The cultivation area shall at all times be watered in full compliance with state and local law, without engaging in unlawful or unpermitted surface drawing of water for such cultivation, and without allowing illegal discharges of water or chemicals from the property.
- C. Primary Caregiver Cultivation. The following requirements, in addition to all of the requirements described in Subsections A above, and all non-conflicting requirements in Subsection B above, apply to primary caregiver cultivation registrations:
1. Caregiver cultivation may only occur on property owned or leased by the primary caregiver or authorized patient for whom the medical cannabis is cultivated, and the property must be used by the caregiver or patient respectively, or both the caregiver and patient together, as his/her/their permanent residence.

2. No more than six (6) live medical cannabis plants per patient, for a maximum of two (2) patients, may be cultivated at any one time by a primary caregiver registered under this Chapter. The cultivation shall be undertaken for the sole benefit of the patients under the care of the primary caregiver, and the cultivation shall occur in full compliance with the primary caregiver provisions of MAUCRSA.
3. This outer limit of twelve (12) live medical cannabis plants per primary caregiver cultivation shall apply regardless of whether the cannabis is grown outdoors or indoors within the private residence or in an accessory structure thereto, regardless of the size or maturity of the plant(s), and regardless of the number of primary caregivers or patients residing together in the private residence.
4. If personal cannabis cultivation is occurring in the same residence as registered primary caregiver cultivation, the primary caregiver cannabis shall be kept and secured in the same cultivation area as the personal cannabis but shall be clearly identified in a manner that would allow an enforcement official entering the room to immediately distinguish these plants from plants being cultivated for personal use pursuant to Subsection A above.
5. No more than six (6) non-commercial cannabis plants of any type may be cultivated outdoors on any parcel at any one time, regardless of the number of patients a caregiver has and regardless of whether or not recreational cannabis will also be grown on the parcel.

D. Commercial Medical Cannabis Cultivation. The following requirements, in addition to all of the requirements of Subsection A above, shall apply to all commercial cultivation registrations and permits:

1. The cultivation area shall at all times be watered in full compliance with state and local law, without engaging in unlawful or unpermitted surface drawing of water for such cultivation, and without allowing illegal discharges of water or chemicals from the property. The cultivation area shall, prior to permit activation for indoor cultivators and within twelve (12) months of permit activation for outdoor and mixed light cultivators, be watered using a County-approved water source that is either utility-provided or from a permitted well water source on the parcel.

2. Permittees shall comply with any and all federal, state, and local laws or regulations related to the use, storage, and disposal of hazardous materials or wastes. Soil and mulch, amendments, pesticides, herbicides, rodenticides, fungicides, fertilizers and other similar materials shall be used, stored, and disposed of in full compliance with federal, state, and local laws. Permittees shall at all times abide by the requirements of Division 6 of the Food and Agriculture Code and shall not use any pesticide that does not meet California Department of Pesticide Regulations criteria for lawful use on cannabis.
3. The cultivation shall at all times be conducted in such a way as to ensure the health and safety of employees, independent contractors, visitors to the area, neighboring property owners, and end users of medical cannabis; to protect the environment from harm to streams, fish, and wildlife; to ensure the security of the medical cannabis; and to safeguard against the diversion of medical cannabis for non-medical purposes.
4. Applicants seeking authorization to cultivate cannabis on parcels where active Code Enforcement violations of any provision of the Calaveras County Code exist shall first correct the Code violations prior to receiving a County permit pursuant to this chapter.
5. Permittees shall comply with all applicable local, state and federal laws, statutes, and regulations relating to housing, sanitation, and health and safety of agricultural workers employed at the site.
6. The parcel's street address shall be posted in conformance with Section 1274.09 of Title 14 of the California Code of Regulations.
7. If the maximum canopy area of cannabis cultivated exceeds the maximum total canopy area authorized for the parcel under this Chapter, the total canopy size shall be reduced to conform to the requirements of this Chapter within twenty-four (24) hours of notification by an enforcement official. All excess cannabis shall be immediately destroyed, with none retained for use of the permittee, landowner, or for transfer to any other person or entity. Evidence that the cannabis has been destroyed as required (such as a receipt from a County waste disposal facility or a site inspection by County personnel) shall be provided to the Sheriff and Planning Department within seventy-two (72) hours of its destruction.

8. There shall be no more than four commercial medical cannabis cultivation permits issued per parcel, and each permitted cultivation site on a parcel shall be separately fenced in conformance with this Chapter.
9. There shall be no camping or sheltering by the registrant, landowner, or any other person in a vehicle, tent, yurt, teepee, or similar portable structure beyond the period of time specified in County Code Section 17.04.180, except as provided in Chapter 17.93 of the County Code (to the extent there are victims eligible for relief under this Chapter due to a currently declared disaster) on any parcel on which cannabis is cultivated pursuant to this Section.
10. Inspections of the site, including the cultivation area, shall be conducted by County enforcement officials at least twice yearly, and may be conducted randomly, without prior notice, or by first notifying the registrant. 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.
11. All commercial cannabis cultivation applicants and permittees shall have a continuing duty to:
 - a. Ensure that any individual who will be participating in any on-site cultivation activities first submits to the background check required by Section 17.95.060.C and is not disqualified by the Planning Director under that Section.
 - b. Ensure that any individual who will be participating in any on-site cultivation activities displays at all times a laminated or plastic-coated identification badge issued by the Sheriff at all times while engaging in commercial cannabis cultivation activity. The identification badge shall, at a minimum, include the licensee's "doing business as" name and license number, the employee's first name, an employee number exclusively assigned to that employee for identification purposes, and a color photograph of the employee that clearly shows the full front of the employee's face and that is at least 1 inch in width and 1.5 inches in height. This local identification badge shall be required in addition to the separate state identification badge required under 16 C.C.R. §5043, The Sheriff may charge a fee to recover the costs of administrating this

requirement, and such fee shall be set by resolution of the Board of Supervisors.

- c. Notify the Planning Director and Sheriff within three (3) business days of any change in criminal history status of an applicant, registrant, or on-site cultivation participant; or of any loss or destruction of a cultivation participant's Sheriff-issued identification card.
 - d. Notify the Sheriff of any theft, loss, or criminal activity as required under 16 C.C.R. §5036.
12. All commercial cannabis cultivation applicants and permittees shall have a continuing duty to notify the Planning Director and Sheriff within three (3) business days of any modification of their State-issued commercial cultivation license or of any denial, suspension, revocation, or non-renewal of the license.
13. Should the State modify the Food and Agriculture Code to allow local jurisdictions to require organic certification as a condition of receiving local permission to cultivate cannabis, all registrants and permittees shall, within one year of either this modification of the Food and Agriculture Code or of the adoption of the state organic cannabis cultivation program (or comparable program) required pursuant to Business and Professions Code Section 26062, whichever occurs last, apply for and obtain organic certification under this program and provide evidence of successful certification to the Planning Department. If, after the organic certification program is adopted, the Planning Department determines that obtaining the final certification under the adopted program cannot reasonably be obtained within one year of the program's adoption, the Planning Department shall determine, notify permittees by mail of, and post on its website an alternative deadline by which the registrant or permittee must demonstrate successful certification.
14. Cannabis cultivators shall pay all applicable taxes under state and local law.
15. A permittee shall dispose of cannabis waste in a secured waste receptacle or in a secured area on the licensed parcel. For the purposes of this section, "secure waste receptacle" or "secured area" means that physical access to the receptacle or area is restricted to the permittee and its

employees and the local agency, local agency franchiser, or permitted private waste hauler. Public access to the designated receptacle or area is prohibited. Burning of excess plant material resulting from cannabis cultivation, or burning of excess canopy removed pursuant to Subsection 17 above, shall be prohibited, except that this restriction shall not include the lawful burning of excess plant material does not fall within the definition of “cannabis”.

16. Cannabis cultivators shall comply with all grading and timber harvesting permit requirements under state and local law.
17. Cannabis cultivation shall not form the basis for a cultivator to apply with the County to enter into a Williamson Act contract pursuant to California Government Code Section 51200 et seq.; however, a landowner who otherwise qualifies for a Williamson Act contract due to another qualifying agricultural operation on the property at issue shall not be denied a Williamson Act contract solely because cannabis is also cultivated on the property. There shall be no more than one commercial cannabis cultivation permit issued per Williamson Act contract, regardless of the number of parcels within the contract.
18. Applicants and permittees shall maintain enrollment for coverage under General Order No. R5-2015-0113 of the Central Valley Regional Water Quality Control Board, consistent with the canopy area registered under the May 10, 2016 version of this Chapter and, once a permit is issued under this Chapter, consistent with the canopy area for which a permit is issued.
19. The burden of proving the accuracy of parcel boundaries for the purpose of establishing whether or not a parcel meets the setback and locational requirements, acreage limits, canopy limits, or any other provision of this Chapter for which a determination of parcel boundaries might be determinative shall be borne by the applicant/permittee and not by the County.
20. Each permittee shall, prior to the activation of the permit, file with the Planning Department and at all times thereafter maintain in full force and effect, a performance bond in an amount to be determined by resolution of the Board of Supervisors, to cover the costs of destruction of cannabis or cannabis products if necessitated by a violation of permit requirements.

The County Administrative Officer or his designee shall determine the form and specific requirements of the bond and surety to be required.

21. Permittees shall ensure that any person on the cultivation site, except for employees and contractors of the permittee, are escorted at all times by the permittee or at least one employee of the permittee when on the cultivation site.
22. Permittees shall install and maintain in good working condition a video surveillance system that comports, at a minimum, with all requirements of 16 C.C.R. §5044.
23. A permittee shall not sublet any portion of the designated cultivation site.
24. An individual or entity shall be limited to only one commercial cannabis cultivation registration or permit in Calaveras County.

E. Commercial Medical Cannabis Cultivation—Outdoor and Mixed Light. The following requirements, in addition to all of the requirements in Subsections A and D above, apply to all outdoor and mixed light commercial cannabis permits:

1. The minimum parcel size for an outdoor or mixed light commercial medical cannabis cultivation site shall be one hundred (100) acres.
2. The cultivation area of an outdoor or mixed light commercial cannabis cultivation site shall not exceed 22,000 square feet of total canopy area. Applicants for a permit under the current version of this Chapter shall not be limited from applying to cultivate a larger total canopy area than they were registered for under the May 10, 2016 version of this ordinance so long as the total canopy area does not exceed the 22,000 square feet maximum and conforms to all the other requirements of this Chapter. If a non-commercial cultivation registration is issued for the same parcel, the total canopy area of the non-commercial cannabis on the parcel shall be counted towards the maximum allowed under the commercial cultivation permit.
3. The cultivation area of an outdoor or mixed light commercial cannabis cultivation site shall be set back at least five hundred (500) feet from any property line.

4. A parcel on which commercial cannabis is cultivated shall be at least one thousand (1000) feet from any parcel containing a “sensitive use” as that term is defined in Calaveras County Code Chapter 17.91, measured using the shortest distance between the property lines of the respective parcels.
5. If a parcel on which commercial cannabis cultivation is proposed does not abut a parcel zoned residential as identified in Article 3 of Title 17 of the Calaveras County Code or Residential Agricultural, the applicant/permittee may apply for a modification to the setback requirements described in Subsection E.3 utilizing a form and procedure developed by the Planning Department for this purpose.
6. Permittees shall demonstrate that there is at least one lawful permanent dwelling, eligible temporary dwelling, or non-residential structure on the parcel containing the permitted cultivation site or on an adjacent parcel under common ownership that meets, at a minimum, all of the following criteria:
 - a. Has sufficient permanent restroom facilities available to its employees and visitors 24 hours per day.
 - b. Has sufficient capacity to provide adequate heating or cooling for its employees and visitors 24 hours per day.
 - c. Has a sink, refrigerator, microwave, trash disposal, and seating sufficient to accommodate all employee meal and break activities on a 24-hour basis.

If a modular structure is used to accommodate this requirement, it must be affixed to a permanent foundation. If an applicant is otherwise qualified to receive a commercial cultivation permit under this chapter, but the parcel does not contain a lawful conforming dwelling or non-residential structure at the time this Chapter is enacted, a permit may be issued on the condition that the permittee demonstrate that all pre-construction permits required for a conforming structure on the parcel have been successfully obtained within twelve (12) months of the enactment of this Chapter and that all final approvals allowing the structure to be occupied and used have been successfully obtained within twenty-four (24) months of the enactment of this Chapter. Adequate chemical toilet facilities with a contract for pumping with a Calaveras County registered pumping service must be provided on the cultivation site pending construction of the permanent structure to the full extent required by state agricultural labor laws.

7. All structures for mixed light cultivation shall be equipped with an opaque cover that blocks all light from being emitted from inside the structure. The cover shall be in place at any time between sunset and sunrise when

artificial light is being used in the cultivation process. All lighting provided in conjunction with facility security or cultivation activities shall be installed, directed down and away from nearby property lines, and shielded to confine all direct rays of light within the boundaries of such facilities.

8. The most current permit issued by the Planning Department to authorize the existing cultivation must be weatherproofed and visibly and clearly posted within ten feet of the ingress of the cultivation area. It shall be posted between four and six feet above the ground on a durable, rigid, and rectangular signboard of no less than eighteen inches per side containing reflective material sufficient to allow an enforcement official to readily locate it with a flashlight after dark.
9. The cultivation area shall be fully enclosed by a metal or wooden fence at least six feet in height that is of a strength that reasonably prevents against access by trespassers and children. Access to the cultivation area shall be secured by a lock of reasonable strength to prevent against access by trespassers and children.
10. No armed security personnel shall be employed by the registrant to patrol outdoors on a commercial cultivation site.
11. After a permit is issued, subsequent sampling and testing of the soil and water following the EMA protocols described in 17.95.060.G shall be conducted twice a year, once in April and once in November, by an independent laboratory to document any increases in toxins, if any. Any increase in soil or water toxins caused by the cultivation activity may be cause for revocation or invalidation of the permit. All costs of soil and water testing both before and after a permit is issued shall be borne solely by the applicant and the permittee.
12. The minimum commercial outdoor or mixed-light cultivation area shall be 1000 square feet.
13. Outdoor and mixed-light commercial cannabis cultivation shall not be located within 1000 feet of a state scenic highway or national scenic byway.
14. Prior to activation of a commercial cannabis cultivation permit, a site inspection shall be made by the County to verify compliance with all requirements of this Chapter.

15. Each permittee shall, prior to the activation of the permit, file with the Planning Department and at all times thereafter maintain in full force and effect, a performance bond in an amount to be determined by resolution of the Board of Supervisors, to cover the costs of remediation pursuant to 17.95.080 should the permittee and land owner fail to meet their obligations under those provisions, thereby requiring the County to complete those tasks. The County Administrative Officer or his designee shall determine the form and specific requirements of the bond and surety to be required.
16. Cannabis cultivated outdoors must be cultivated directly in the ground or in containers fully recessed into the ground.
17. Each applicant shall demonstrate a reduction in annual greenhouse gas (“GHG”) emissions equivalent to a one-time offset of 17.2 metric tons of CO₂e for construction-related emissions and an offset of 5.9 metric tons of CO₂e/year for operational emissions or a reduction equivalent to the construction and annual operational GHG emissions associated with the specific cultivation site, as calculated using model/technique accepted by the California Air Resources Board. The manner in which this is demonstrated may include, but is not limited to, the following in order of preference to reduce emissions:
 - a. Photovoltaic panels on on-site structures. The extent to which solar is considered feasible shall be based on roof orientation, shade, and other factors. Each applicant shall submit to the Planning Department a determination/evaluation of whether on-site solar is feasible or infeasible prepared by a qualified professional;
 - b. Provision of and documentation submitted to the Planning Department that the well pump used to supply irrigation water to the cannabis grow area is powered by photovoltaic cells;
 - c. Documentation of attainment of offset credits of metric tons of carbon dioxide-equivalent associated with construction and operation of the new outdoor commercial grow site, including the loss of carbon-sequestering vegetation. The offset credit must be issued by a recognized and reputable carbon registry that validates that the offset credit is real, additional, quantifiable, and enforceable. Documentation demonstrating purchase of the annual offset credit must be provided to the Planning Department prior to the beginning of the first cannabis grow cycle during each calendar year.

F. Commercial Medical Cannabis Cultivation—Indoor. The following requirements, in addition to all of the requirements in Subsections A and D above, apply to all indoor commercial permits:

1. The maximum total canopy area of indoor cultivation shall be ten thousand (10,000) square feet in M1, M2 and M4 zones.
2. An indoor cultivation area shall be in a lawful, permitted structure that is:
 - a. Securely locked in a manner that reasonably prevents against access by trespassers and children,
 - b. Is enclosed by four walls and a roof, and
 - c. Has window coverings or screens that reasonably prevent the marijuana plants from being viewed by members of the public present on public roads, public lands or public properties, or parcels containing a “sensitive use” as that term is defined in Calaveras County Code Chapter 17.91.
3. Indoor commercial cannabis cultivation in M1, M2, and M4 zones shall meet the setback requirements of the zone in which it is located unless the parcel is abutting a residential zone identified in Article 3 of Title 17 of the Calaveras County Code or a parcel zoned RA, in which case the setback shall be one hundred (100) feet from the property line.
4. Indoor commercial cultivation located in a community plan or special plan area shall utilize a utility-provided water source.
5. A filtered ventilation system, approved by the County, which relies on activated carbon filtration, negative ion generation, and/or other odor control mechanism demonstrated to be effective in reducing cannabis odors shall be installed and maintained so that cannabis odors cannot be detected by a person of average sensitivity outside the structure in which cannabis is cultivated.
6. Wastewater from indoor cultivation shall be stored in a tank approved by the County and sampled and tested twice yearly, by an independent testing facility approved by the EMA, for constituents that cannot be treated by standard on-site wastewater disposal or public sanitary sewage treatment facilities. If constituents are found that cannot be safely treated,

cultivation must cease within twenty-four (24) hours of notice by the EMA. The cost of all testing shall be borne by the applicant/permittee.

7. The most current permit issued by the Planning Department to authorize the existing cultivation must be visibly and clearly posted in the cultivation area so that it can be readily noticed by an inspector entering the area.
8. If a sulphur burner or carbon dioxide enhancement equipment will be used at the cultivation site, a warning to this effect shall be prominently posted beside all exterior entrances into the building containing the cultivation site and beside all exit doors within the building containing the cultivation site.
9. The flooring material used in the cultivation site must be washable and cannot be carpeting.
10. Each applicant shall demonstrate a reduction in annual greenhouse gas (GHG) emissions equivalent to a one-time offset of 11.3 metric tons of CO₂e for construction-related emissions and an offset of 56.5 metric tons of CO₂e/year for operational emissions or a reduction equivalent to the construction and annual operational GHG emissions associated with the specific cultivation site, as calculated using model/technique accepted by the California Air Resources Board. The manner in which this is demonstrated may include, but is not limited to, the following in order of preference to reduce emissions:
 - a Photovoltaic panels on on-site structures. The extent to which solar is considered feasible shall be based on roof orientation, shade, and other factors. Each applicant shall submit to the Planning Department a determination/evaluation of whether on-site solar is feasible or infeasible prepared by a qualified professional;
 - b Provision of and documentation submitted to the Planning Department that the well pump used to supply irrigation water to the cannabis grow area is powered by photovoltaic cells;
 - c Documentation of attainment of offset credits of metric tons of carbon dioxide-equivalent associated with construction and operation of the new outdoor commercial grow site, including the loss of carbon-sequestering vegetation. The offset credit must be issued by a recognized and reputable carbon registry that validates that the offset credit is real, additional, quantifiable, and enforceable. Documentation demonstrating purchase of the annual offset credit must be provided to the Planning Department prior to

the beginning of the first cannabis grow cycle during each calendar year.

17.95.080 Remediation and Restoration of Former Cannabis Cultivation Sites

- A. A “former cannabis cultivation site” for purposes of this section is that portion of a parcel on which cannabis cultivation or related activities have occurred within twenty-four (24) months of the enactment date of this Chapter but no longer legally occurs, regardless of whether or not anyone is lawfully residing on the parcel and regardless of whether or not a previous cannabis cultivator retains physical or legal possession of the parcel.

- B. The current legal owner(s) and former cultivator(s) of a parcel containing a former cannabis cultivation site, whether or not the site was registered under the County’s prior medical cannabis cultivation site registration system or had an “application pending” certificate, shall have a joint and several duty to take immediate steps to maintain the site in a manner which prevents soil erosion and sediment run-off; visual blight; illegal diversion of water supply; contamination of soil; contamination of waters of the State from soil additives such as soil and mulch, amendments, and fertilizers; improper keeping, storage and/or disposal of rodenticides, fungicides, herbicides and pesticides; and improper keeping, generation, storage, or disposal of household waste, fuel and chemical containers, and/or other hazardous waste or materials which may cause harm to public health or the environment.

- C. The current owner(s) and former cultivator(s) of a parcel containing a former cannabis cultivation site shall additionally have a joint and several duty to take all of the following actions to remediate and restore the abandoned cannabis cultivation site within twenty-four (24) months of the effective date of the current version of this Chapter:
 - 1. All preparation and/or development of the site for future cannabis cultivation or related activities that are not permitted under this Chapter shall cease, regardless of whether or not a grading permit, building permit, or other similar permit has been issued for these activities.

 - 2. To the extent an unexpired permit exists for earthmoving activity, water diversion activity, waste discharge, timber harvesting, construction, or any other activity, and to the extent such unexpired permit imposes conditions for the site upon cessation of cannabis cultivation activity, these conditions shall be fully complied with.

3. To the extent that earthmoving activity, water diversion activity, timber harvesting, construction, or any other activity occurred on the site which requires a permit under local, state, or federal law, but for which a permit was never applied for or received, a permit shall be applied for and received, and its conditions shall be fully complied with, regardless of whether or not the unpermitted activity has ceased.
4. All remediation and restoration activities shall be performed in compliance with all applicable local, state, and federal rules and regulations.
5. Best management practices shall be employed to control soil erosion and protect water quality on the site.
6. Any unlawful diversion or use of water for cannabis cultivation on the site shall cease, and both the site and the streambed(s) or waterway(s) impacted by the diversion shall be restored to their pre-diversion state in compliance with all laws.
7. Soil and mulch, amendments, pesticides, herbicides, rodenticides, fungicides, fertilizers and other hazardous materials shall be properly disposed of or stored as required by law.
8. All temporary structures placed on the site for purposes of cannabis cultivation or related activities, including but not limited to hoop houses and unpermitted greenhouses, recreational vehicles, outhouses, and temporary fencing shall be removed and properly disposed of within 90 days of the effective date of this ordinance.
9. All waste, including but not limited to household, commercial, and agricultural waste, fuel and chemical containers, and any other hazardous waste shall be properly collected and removed from the site in accordance with all laws to prevent a nuisance and public health hazard.

These provisions do not require restoration of the site to its pre-cannabis cultivation condition but require the site to be reclaimed pursuant to the above-stated provisions to a condition that allows for suitable subsequent use of the property.

- D. Any temporary permit issued pursuant to 17.95.165.N.14 of the version of this Chapter adopted May 10, 2016 shall automatically terminate, and all removal of

temporary facilities authorized by that permit shall be removed, within 90 days of the effective date of this ordinance.

17.95.090 Term; Renewal

- A. Any permit issued pursuant to this Chapter shall automatically expire after one (1) year after date of issuance, and on the anniversary of such issuance each year thereafter, unless an annual compliance review has been conducted by Planning Department, the permitted site has been found to comply with all conditions of approval, and a renewal has been approved by the Planning Director. An application for renewal must be submitted to the Planning Department at least sixty (60) days prior to the expiration date of the previously issued registration.
- B. If the Planning Director determines that the site for which a permit renewal is sought does not comply with the requirements of this Chapter (and/or, if 17.95.060.F applies to the permit application, all resulting conditions of approval), the permit shall not be renewed. To receive a subsequent permit, the applicant whose option to renew has been terminated must begin the original application process anew.
- C. Non-renewal 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 in code enforcement activities pursuant to Title 8 of the County Code or Section 17.100 of the Calaveras County Code, including but not limited to nuisance abatement activities or proceedings, concerning the same parcel subject to non-renewal.
- D. The fact that an existing permit under this Chapter is deemed non-renewable upon its expiration shall not limit or prevent the Planning Director from proceeding with revocation under Section 17.95.095 of this Chapter if such action was initiated prior to the registration's expiration date.
- E. In the event that a permit is not renewed, the planning Director shall notify the State Bureau of Medical Cannabis Regulation pursuant to Business & Professions Code §26200 as well as the Calaveras County Sheriff.

17.95.095 Approval, Denial, Revocation of Cannabis Cultivation Permits

- A. The following decisions may be appealed to the Planning Commission pursuant to Chapter 17.98 of the County Code:
1. Approval or denial of a commercial cannabis cultivation permit application.
 2. Approval or denial of a renewal of a commercial cannabis cultivation permit other than an application for or renewal of a permit where Planning Commission vetting is already required under 17.95.060.F.
 3. Approval or denial of a request for modification to the setback requirements of 17.95.070.E.3.
 4. Revocation of a commercial cannabis cultivation permit.
- B. The Planning Director may revoke a registration of a medical cannabis cultivation site pursuant to this Chapter, and this decision may be appealed to the Planning Commission pursuant to Chapter 17.98 of the County Code) for any of the following reasons:
1. Failure to comply with the requirements of this Chapter.
 2. Illegal pesticides or fertilizers, or other illegal hazardous materials or substances found on the registered or permitted parcel.
 3. Failure to timely pay all local cannabis-related taxes.
 4. The permittee or an owner of the permittee is found by the Sheriff to have been convicted of a crime that would disqualify him/her from receiving a permit under 17.95.060.C.3.
 5. A person participating in the cultivation on the permitted site is found by the Sheriff to have been convicted of a crime that would disqualify him/her from participating in the cultivation, and the permittee refuses to exclude that person from participating in the cultivation.
 6. The permittee is sanctioned, fined, or otherwise penalized for a violation federal, state, or local law (other than cannabis-related activities recognized as legal by the State of California) on any parcel within the County in the ownership or possession of the permittee.
 7. Registration was in error or was accomplished under false pretenses.

8. Application for registration contained false or misleading information.
 9. The registrant, after registering, fails or refuses to inform the County of alterations to the property that would compromise the original registration.
 10. Denial, suspension, or revocation of a State-issued medical cannabis cultivation license.
- C. If registration is non-renewed or revoked pursuant to this Section, the Planning Director shall notify the State Bureau of Medical Marijuana Regulation pursuant to Business & Professions Code §26200 as well as the Calaveras County Sheriff.

17.95.100 Enforcement; Fines; Liability to Pay Costs and Fines

- A. To enforce the provisions of this Chapter, an Enforcement Official may, at a reasonable time, request inspection of any parcel known to be or suspected of cultivating cannabis in violation of this Chapter. If the person owning or occupying the parcel refuses the request for an inspection, the Enforcement Official shall have recourse to pursue every remedy provided by law to secure entry, including but not limited to obtaining an inspection or search warrant.
- B. Whenever any Enforcement Official determines that a public nuisance as described in this Chapter exists within the unincorporated County, he or she is authorized to utilize the enforcement, abatement, cost recovery, and administrative hearing provisions described in Chapter 8.06 of the County Code, including, as necessary, the summary abatement provisions of that Chapter. The County shall also have the right to utilize any injunction, enforcement, cost recovery, abatement or other administrative, criminal or civil remedy available to the County under applicable laws, including but not limited to the civil, criminal and administrative remedies provided in this Chapter, Chapter 17.100 of the County Code, Government Code §25845, and MAUCRSA. Nothing herein shall be read, interpreted or construed in any manner so as to limit any existing right or power of the county of Calaveras or any other governmental entity to enforce county ordinances, including but not limited to Chapter 17.100 of the Calaveras County Code, or to abate any and all nuisances, or employ any remedy available at law or equity.
- C. If the County enforces a violation of this Chapter pursuant to Chapter 8.06 of the County Code, the alternative enforcement procedures applicable to cannabis cultivation under Section 8.06.700 shall apply to violations of this Chapter and

shall apply equally to enforcing violations related to cannabis-related uses and activities other than cultivation such as violations concerning the manufacture, testing, distribution, or transporting of cannabis.

- D. Any person and/or entity that owns or occupies a residence or parcel upon which cannabis is cultivated, manufactured, tested, distributed or transported in violation of this Chapter, or which otherwise violates any of the provisions of this Chapter, may be subject to any and all remedies legally available to the County.
- E. In the event of any conflict between the provisions of this Chapter and other provisions of the County Code, the provisions of this Chapter shall apply. In the event of any conflict between the provisions of Chapter 8.06 and Chapter 17.100 of the County Code with respect to the enforcement of violations of this Chapter, the provisions of Chapter 8.06 shall apply.
- 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. Issuance of a warning shall not be a requirement prior to enforcement of any provision of this Chapter.
- H. In any enforcement action brought to enforce the provisions of this Chapter, each owner and/or occupant who causes, permits, allows, or maintains the unlawful cultivation, manufacture, testing, distribution or transporting of cannabis; and each owner and/or or former cultivator who fails to remediate the cultivation site as required by 17.98.080; shall be jointly and severally liable for all resulting administrative fines and for any and all actual costs of enforcement or remediation incurred by the County, in the event the County brings and prevails in any administrative proceeding, civil suit, or any other action to enforce the provisions of this Chapter.
- I. Each person or entity violating this Chapter shall be guilty of a separate offense for each and every day, or portion thereof, on which any violation of any provision of this Chapter is committed, continued, or permitted by any such person or entity. Any violation which persists for more than one day is deemed a continuing violation.
- J. In addition to the actual abatement and/or administrative costs incurred by the County in enforcing this Chapter, any person who has been issued a notice of

violation and fails to abate such violation within the timeframes specified in the notice, shall be assessed an administrative fine of one-thousand dollars (\$1,000.00) per day. The administrative fine shall be assessed immediately upon the expiration of the deadline specified in the notice of violation and shall continue to accrue daily until the violation has been fully abated and verified by the Enforcement Officer.

- K. Any violation of this Chapter can be prosecuted as a misdemeanor.
- L. A permittee shall provide to the planning director, upon request, written evidence to the planning director's reasonable satisfaction, that the permittee is not engaged in interstate commerce, as it relates to cannabis.

17.95.110 Indemnification

As a condition of registering any medical cannabis cultivation site pursuant to this chapter, the registrant and, if different, the property owner shall execute a standard agreement provided by the County to defend, indemnify and hold harmless the County of Calaveras 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 registration of 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.

SECTION 2: SEVERABILITY

If any part or subsection of this chapter is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity, unlawfulness, or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any other part of this chapter.

SECTION 3: FINDINGS

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

- A. The Federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., classifies cannabis (or marijuana) as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision.
- B. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with

- intent to manufacture, distribute or dispense, marijuana or cannabis. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana or cannabis for medical or recreational purposes.
- C. On October 19, 2009, then-Attorney General David W. Ogden issued a memorandum directing federal prosecutors in states with medical cannabis regulations to deprioritize the prosecution of compliant businesses and individuals. Substantively similar memoranda were subsequently issued by then-Deputy Attorney General James M. Cole and became known collectively as “the Cole memos”. The Cole memo, while not providing a defense against potential federal enforcement, professed tolerance of state schemes to regulate medical cannabis so long as they were sufficiently stringent to protect against the types of cannabis-related activity deemed a priority by the federal government. To date, the Cole memos have not been rescinded or replaced.
 - D. On December 16, 2014, then-President Barack H. Obama signed the Consolidated and Further Continuing Appropriations Act of 2015, containing language known as the Rohrabacher-Farr Amendment, which prohibits the expenditure of federal funds to prosecute cases against medical cannabis patients and providers, including businesses, in states where medical cannabis use is legal. The Rohrabacher-Farr Amendment has been repeatedly renewed and extended by both the former and current administrations and was extended most recently on December 22, 2017. There are, to date, no federal policies protecting against federal enforcement of the Controlled Substances Act in the recreational cannabis context.
 - E. 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 medical 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 nonmedical purposes.
 - F. 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 Medical 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.
 - G. Health & Safety Code §11362.7 defines a "primary caregiver" as an individual who is designated by a qualified patient or by a person with an identification card,

and who has consistently assumed responsibility for the housing, health, or safety of that patient or person and is further defined in the California Supreme Court decision People v. Mentch (2008) 45 Cal.4th 274.

- H. The State enacted the Medical 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 medical 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 medical cannabis in California. MMRSA has been subsequently amended and renamed the Medical Cannabis Regulation and Safety Act (MCRSA).
- I. While, prior to May 10, 2016, Calaveras County had never adopted a local ordinance allowing or regulating cannabis cultivation within the County (or other cannabis activities aside from medical cannabis dispensaries), there had been for many years several hundred unregulated cannabis cultivation sites within the County. While these cultivation sites were unlawful under principles of permissive zoning and County Code 17.04.010, some growers have argued they were legal because they were not expressly banned. The adoption of this ordinance will serve to clarify which cannabis cultivation activities the County expressly intends to allow and which ones it expressly intends to prohibit.
- J. When MMRSA was originally enacted on January 1, 2016, it contained a provision requiring local governments to either adopt a local regulatory scheme for medical cannabis activities by March 1, 2016 or the State would become "the sole licensing authority" for these activities.
- K. Throughout the State of California, many cities and counties, including cities and counties surrounding Calaveras County, quickly adopted local urgency ordinances banning or severely restricting medical cannabis activities within their boundaries.
- L. On February 3, 2016, the Governor of California signed Assembly Bill 21, removing the March 1st deadline for counties and cities to develop their own regulatory schemes.
- M. On February 16, 2016, the Board of Supervisors, at an open public meeting, directed the County Counsel's Office to draft an ordinance allowing but regulating medical cannabis cultivation and commercial uses involving medical cannabis within the jurisdictional boundaries of Calaveras County. This ordinance required the preparation of a programmatic environmental impact report before it could be adopted and implemented, and this process had the potential to take more than a year to complete.
- O. Meanwhile, in the wake of the Board of Supervisor's February 16, 2016 directive to prepare an ordinance allowing medical cannabis cultivation, Calaveras County

experienced a marked influx of people who were escaping the new regulatory bans of medical cannabis cultivation in neighboring jurisdictions, purchasing and leasing real estate within the County, and seeking to use these properties to cultivate medical cannabis in anticipation of the County's new ordinance. There had also been a steep rise in land speculation by existing local growers who were buying inexpensive properties affected by the Butte Fire and seeking to move or expand their cultivation sites beyond the ones they have already created. There was a concern that these trends were contributing to an unstudied, unregulated, and potentially significant impact on the environment.

- P. Meanwhile, the County's geographic and climatic conditions, which include dense forested areas with adequate precipitation and mild winters, provide conditions that are favorable to outdoor cannabis cultivation, allowing growers to achieve a high per-plant yield.
- Q. As a means of mitigating the impact of the influx of growers pending final adoption of an Environmental Impact Report on the proposed permanent regulatory scheme for cannabis cultivation and commerce, the Board of Supervisors, on May 10, 2016, adopted an interim urgency ordinance authorizing temporary fee-based registrations for existing cannabis cultivation sites and requiring strict compliance with local and state laws designed to protect the public and the environment until a permanent ordinance was adopted. The applications were lengthy in order to capture the extensive compliance criteria, and the processing of each application was, as a result, highly labor-intensive.
- R. As a result of 1) most neighboring jurisdictions having continued to ban or severely restrict commercial cannabis cultivation, 2) a sustained unusual availability of inexpensive land for sale that was suitable for cannabis cultivation, and 3) the approximately three-month gap between the day the regulatory scheme was publicly announced and the May 10, 2016 cut-off date for having a prepared cultivation site that could qualify for registration under it, the influx into the county of new growers continued, and approximately three times the expected number of registration applications were submitted to the Planning Department. Fewer than 300 were expected, but approximately 900 were received.
- S. Almost half of the registration applications thus far processed by the Planning Department have resulted in a denial of the application after further investigation revealed disqualifying circumstances concerning the site or the grower. Thus, the imposition of strict regulations and a three-month timeframe to comply did not adequately disincentivize unqualified cannabis cultivators from paying the registration fee and gambling that their disqualifying conditions would remain unnoticed. The unexpected influx of additional growers, which included an influx of unqualified growers, has been correlated with an increase in cannabis-related crime, including but not limited to robbery, assault, and murder.

- T. This unexpected number of registration applications, some legitimate and some not, overwhelmed the County's ability to quickly process the applications to determine if the sites met all of the qualification criteria of the urgency ordinance. The application burden far outpaced the ability of the Planning Department, Code Enforcement, and the Sheriff's Department, even with additional proceeds from registration fees, to hire, train, and retain an adequate number of new staff members to review applications, conduct background checks and inspect proposed sites while also continuing their other day-to-day duties.
- U. A significant number of registration applications for the 2016 cultivation season remain unprocessed to date, and now a second cannabis harvest has concluded.
- V. The knowledge that County staff is overwhelmed by the application burden has incentivized those whose sites or whose criminal backgrounds do not qualify for registration, but whose applications have not yet been processed, to continue growing cannabis despite having substandard sites or disqualifying circumstances that would negate the protections intended by the urgency ordinance.
- W. On November 8, 2016, the voters of California adopted Proposition 64, "The Control, Regulate and Tax Adult Use of Marijuana Act" (AUMA), which requires 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.
- X. On November 8, 2016 the voters of Calaveras County adopted a measure to tax commercial cannabis businesses within the County but rejected a voter initiative seeking to establish a permanent regulatory ordinance that allowed more uses in more zones than the existing urgency ordinance.
- Y. In January 2017, another County voter initiative, Measure B, qualified for the May 2017 ballot seeking to ban commercial cannabis within the County. The newly elected Board of Supervisors called a special election to allow the people to vote on the initiative,
- Z. In February 2017, the Board of Supervisors directed staff to prepare a permanent ordinance banning commercial cannabis cultivation and other commercial cannabis uses within the County (other than medical cannabis dispensaries, which remain regulated under a separate chapter of the County Code). Meanwhile, the Board voted to extend the Urgency Ordinance as allowed by state law to provide the time required to prepare and adopt a ban without existing regulations lapsing.
- AA. On March 28, 2017, after a legal challenge was filed by a member of the public, the Calaveras County Superior Court ordered Measure B stricken from the ballot after finding some of its language to be impermissibly misleading.

- BB. On June 27, 2017, the Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA) was enacted, intended to reconcile the differences between previously enacted state regulations. MAUCRSA was further amended on September 16, 2017. On November 16, 2017, the state adopted emergency regulations to implement MAUCRSA. Under the current state law cannabis regulatory scheme, counties are *required* to allow the indoor cultivation of at least six cannabis plants per residence, but counties are still permitted to impose regulations on this activity.
- CC. The rapid changes to cannabis-related state laws over the last two years; the concomitant transitioning of an illegal industry utilizing illegal cultivation and industry practices to a legal industry adopting legal cultivation and industry practices; and the uncertainty concerning federal enforcement policies, final state law requirements, and the effectiveness of the state's implementation and enforcement of MAUCRSA further justify the imposition of stringent local-level regulations to protect the health, safety, and welfare of the public and the environment.
- DD. Children (minor 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 cultivation of cannabis, including non-commercial cannabis, at locations deemed "sensitive uses" under Chapter 17.91 of the County Code creates unique risks that the cannabis plants may be observed by juveniles, and therefore, be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with the cultivation or distribution of cannabis in the proximity of such locations poses heightened risks that juveniles will be involved or endangered.
- EE. The unregulated cultivation of both commercial and non-commercial cannabis in the unincorporated area of Calaveras County can adversely affect the health, safety, and well-being of the County, its residents and environment. Comprehensive civil regulation of premises used for cannabis cultivation, including zoning regulation, is proper and necessary to reduce the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated cannabis cultivation, and that are especially significant if the amount of cannabis cultivated on a single premises is not regulated and substantial amounts of cannabis are thereby allowed to be concentrated in densely populated areas.
- FF. As cannabis plants begin to flower, and for a period of approximately two months or more during the growing season, they produce an odor that is offensive to many people and can be detectable beyond property boundaries upon which they are grown. The strong odor of cannabis may create an attractive nuisance,

- alerting individuals to the location of plants, thereby creating the risk of potential crimes such as burglary, robbery, armed robbery, assault, attempted murder, and murder.
- GG. Comprehensive regulation of other commercial activities related to cannabis, including but not limited to the manufacture of cannabis products, distribution of cannabis, storage of cannabis, testing of cannabis, and commercial transport of cannabis, is proper to address the risks and adverse impacts associated with such activities, which include but are not limited to risks related to the concentration of large amounts of cannabis on a single premises, fire hazards, and toxin release hazards.
- HH. Illegal, unregulated outdoor cannabis cultivation, especially within the foothills, has negatively impacted California's surface and groundwater resources. The State Water Resources Control Board, the North Coast Regional Water Quality Control Board, the Central Valley Regional Water Quality Control Board and the Department of Fish and Wildlife have seen a dramatic increase in the number of cannabis gardens, and corresponding increases in impacts to water supply and water quality, including the discharge of sediments, pesticides, fertilizers, petroleum hydrocarbons, trash and human waste. The sources of these impacts result from unpermitted and unregulated timber clearing, road development, stream diversion for irrigation, land grading, erosion of disturbed surfaces and stream banks, and temporary human occupancy without proper sanitary facilities. Strict regulation of cannabis cultivation is necessary to reduce the risks of these impacts.
- II. The unregulated indoor cultivation of substantial amounts of cannabis poses potential health and safety risks to those living in the residence, especially to children, and includes the increased risks of fire from grow light systems, exposure to fertilizers, pesticides, anti-fungus/mold agents, and exposure to potential property crimes targeting the residence.
- JJ. The Federal Drug Enforcement Administration reports that various types of cannabis plants under certain planting conditions may yield an average of between ½ pound to nearly 2 pounds of cannabis. The Northern California Regional Intelligence Center estimates the "street value" of domestically produced high-grade cannabis sold illegally in California at \$200-\$2500 per pound, and an informal survey by the Sheriff's Department of cannabis dispensary prices in Northern California revealed retail prices ranging between roughly \$2000 per pound to roughly \$6000 per pound.
- KK. Large-scale illegal cannabis cultivation has attracted crime and associated violence in this and other counties, and grows may involve armed guards and/or booby traps that threaten severe bodily harm or death to anyone who attempts to access the area of the grow. In 2011, there was an armed robbery and murder associated with an illegal grow in Amador County, and a robbery attempt in this

County resulted in the shooting deaths of three men in late 2015. The Calaveras County Sheriff has reported that successfully registered registration sites by cannabis growers who have met the conditions imposed by the urgency ordinance have not thus far proven more likely to engage in criminal conduct than the non-cannabis-growing population at large.

- LL. 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 large-scale cannabis cultivation operations may exist, and, and in providing access to cannabis for ill residents.
- MM. The immunities from certain prosecution provided to qualified patients, their primary caregivers, and medical and recreational users under State law to cultivate cannabis plants do not confer the right to create or maintain a public nuisance. By adopting the regulations contained in this Chapter, the County is hoping to minimize the risks of and complaints regarding fire, odor, crime, environmental degradation, and pollution caused or threatened by the unregulated cultivation of cannabis in the unincorporated area of Calaveras County.
- NN. Nothing in this Chapter shall be construed to allow the cultivation, distribution, or consumption of cannabis that is otherwise illegal under State law; to allow the diversion of medical cannabis into the non-medical market; or to allow the diversion of any cannabis into interstate commerce. No provision of this Chapter shall be deemed a defense or immunity to any action brought against any person by the County of Calaveras, Calaveras County District Attorney, the Attorney General of State of California, or the United States of America.
- OO. In Browne v. County of Tehama, 213 Cal. App. 4th 704 (2013), the California Court of Appeal stated that “Neither the Compassionate Use Act nor the Medical Cannabis Program grants...anyone...an unfettered right to cultivate cannabis for medical purposes. Accordingly, the regulation of cultivation of medical cannabis does not conflict with either statute.” Similarly, in City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc., 56 Cal. 4th 729 (2013), 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...” Additionally, in Maral v. City of Live Oak (2013), 221 Cal.App. 4th 975, 983 (review denied), the same Court of Appeal held that “there is no right—and certainly no constitutional right—to cultivate medical cannabis...” The Court in Live Oak affirmed the ability of a local governmental entity to prohibit the cultivation of cannabis under its land use authority. These cases have not been overruled by the state’s adoption of its new regulatory scheme.
- PP. 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 businesses 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 requirements”.

QQ. California Business and Professions Code §26200 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.”

RR. While California Business and Professions Code §26069 declares cannabis cultivation an “agricultural product” for purposes of the Department of Food and Agriculture’s Medical Cannabis Cultivation Program and MAUCRSA, it also expressly prohibits cannabis cultivation statewide in the absence of “a license issued by the department pursuant to this division”. State law regulates cannabis differently than it does other agricultural products, and it allows counties to do the same.

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.

The foregoing ordinance was duly passed and adopted by the Board of Supervisors of the County of Calaveras at a regular meeting thereof, held on the ____ day of _____ 2017, by the following vote:

AYES:

NOES:

ABSENT:

Chair, Board of Supervisors

ATTEST:
DIANE SEVERUD, Clerk of the

Board of Supervisors, Calaveras County,
California
