

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voters November 8, 2016), Calaveras County Code Chapter 17.95, governing medical cannabis cultivation and commerce, is repealed in its entirety and the following new Chapter 17.95 is adopted and substituted in its place to read as follows: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

**ALL COMMERCIAL CANNABIS CULTIVATION & COMMERCE PROHIBITED;
RECREATIONAL AND MEDICAL CANNABIS CULTIVATION PROHIBITED EXCEPT
AS ALLOWED UNDER STATE LAW; REASONABLE REGULATION OF
RECREATIONAL AND NON-COMMERCIAL MEDICAL CANNABIS CULTIVATION**

- 17.95.010 Purpose and Intent
- 17.95.020 Definitions
- 17.95.030 Relationship to Other Laws
- 17.95.040 Nuisance Declared; Cannabis Cultivation & Related Activities Prohibited;
Exceptions
- 17.95.050 Remediation of Former Cultivation Sites
- 17.95.060 Enforcement; Fines; Liability to Pay Costs and Fines

17.95.010 Purpose and intent

It is the purpose and intent of this chapter to prohibit, to the maximum extent allowed under state law, 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. Any ambiguity in this Chapter should be construed in whatever manner best

effectuates this intent.

17.95.020 Definitions

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. "Accessory use" or "Accessory" has the same meaning as in County Code Section 17.06.0080.
- B. "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.
- C. "Cannabis distribution" shall have the same meaning as "distribution" in B&P §26001.
- D. "Cannabis manufacturing" shall have the same meaning as "manufacture" in B&P §26001.
- E. "Caregiver" or "primary caregiver" shall have the same meaning as it does in H&S §11362.7.
- F. "Child resistant" shall have the same meaning as it does in B&P §26001.
- G. "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 permitted under 17.95.040.C and 2) cultivation permitted by a medical cannabis dispensary operating in compliance with state law and Chapter 17.91 of the Calaveras County Code.
- H. "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.

- I. "County" means the County of Calaveras.
- J. "Cultivation" shall have the same meaning as it does in B&P §26001.
- K. "Cultivation area" shall mean that portion of the cultivation site containing live cannabis plants.
- L. "Cultivation site" means the location where cannabis has been planted, grown, harvested, dried, cured, graded, or trimmed.
- M. "Delivery" shall have the same meaning as it does in B&P §26001.
- N. "Dispensing", "dispensary", or "medical cannabis dispensary" refers to the premises from which a 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.
- O. "Distribution" shall have the same meaning as it does in B&P §26001.
- P. "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.
- Q. "Enactment" means the date on which the ordinance adopted by the Board of Supervisors goes into effect pursuant to the Government Code §25123.
- R. "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.
- S. "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.

- T. "Indoor cultivation" shall have the same meaning as it does in MAUCRSA.
- U. "Labeling" shall have the same meaning as it does in B&P §26001.
- V. "Manufacture" or "manufacturing", when referring to medical cannabis, has the same meaning as it does in B&P §26001.
- W. "Medical cannabis" shall have the same meaning as "medicinal cannabis" as defined in B&P §26001.
- X. "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.
- Y. "Mixed light cultivation" shall have the same meaning as it does in MAUCRSA.
- Z. "Multi-family dwelling" is a "dwelling" containing multiple private residences.
- AA. "Non-commercial cannabis" or "Non-commercial", as used in this Chapter, refers to any cannabis that is not commercial.
- BB. "Nonmedical", "non-medical" or "Non-medical cannabis" refers to all cannabis that is not "medical cannabis".
- CC. "Nursery", when referring to medical cannabis, shall have the same meaning as it does in B&P§ 26001.
- DD. "Outdoor cultivation" shall have the same meaning as it does in MAUCRSA.
- EE. "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.
- FF. "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).
- GG. "Person" means an individual.

- HH. “Personal cultivation” means that cultivation of cannabis for personal use that is allowed under MAUCRESA and the provisions of this Chapter.
- II. “Plant” has the same meaning as “live plant” in B&P §26001.
- JJ. “Possessing” or “possession”, when referring to medical cannabis, has the same meaning as it does for purposes of the Health & Safety Code.
- KK. “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
- LL. “Recreational cannabis” means that cannabis allowed under MAUCRSA that is not medical cannabis.
- MM. “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.
- NN. “Residence” shall have the same meaning as “Dwelling”, as defined in 17.95.020.P.
- OO. “Testing” or “laboratory testing”, when referring to medical cannabis, has the same meaning as laboratory testing” as defined in B&P §26001.
- PP. “Transport”, “transporting”, or “transportation”, refers to the transporting of cannabis and cannabis products between holders of state-issued licenses under MAUCRSA.

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

- 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.

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 17.95.050 within ninety (90) days of its effective date and shall come into full compliance with the provisions of Section 17.95.050 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, 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 revoked or invalidated after issuance, the Planning Department shall, in such notice to the State, explain that the rescission of these approvals 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; Exceptions

A. 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 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, testing, distributing, or transporting, 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 a licensed medical cannabis dispensary in compliance with MAUCRSA and with Chapter 17.91 of the County Code.

- C. Notwithstanding Subsection A above, this section shall not apply to the non-commercial cultivation of recreational cannabis by a person(s) aged twenty-one (21) or older, or the non-commercial cultivation of medical cannabis by a person(s) aged eighteen (18) years or older, provided that such cultivation is registered in conformance with this Chapter and complies with all of the following conditions:
 - 1. No more than six (6) live cannabis plants per private residence may be cultivated indoors 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 users, medical users, or primary caregivers residing together in the private residence.

 - 2. If a person cultivating cannabis does not own the parcel on which the private residence 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 at the private residence, and shall be provided to the County upon request of any Enforcement Officer.

 - 3. 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 for disaster victims) on any parcel on which cannabis is cultivated pursuant to this Section, and each cultivator must maintain his/her primary residence on this parcel. 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. If a registered cultivator stops cultivating 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.

4. Cannabis cultivation shall only occur within a single designated area of 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.
5. 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, or other permits, inspection of the residence, and the issuance of a certificate of occupancy.
6. No cultivation is permitted within the common areas of a multi-family dwelling, residential development, mobile home park, or other similar residential arrangements.
7. 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.
8. The cultivation site 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.
9. There shall be no form of signage on the parcel suggesting the presence of cannabis.

10. There shall be no cultivation within any private residence containing a child day care as defined by state and/or local law.
11. There shall be no light pollution, glare, or brightness of artificial illumination associated with the cultivation.
12. 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.
13. The cultivation area shall be watered:
 - a. Using a legal water source on the parcel,
 - b. Without engaging in unlawful or unpermitted surface drawing of water for such cultivation, and
 - c. Without allowing illegal discharges of water or chemicals from the property.
14. 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.
15. The cultivation 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, as applicable, the CUA, MMPA, MAUCRSA, and any subsequent amendments to these laws, regulations, and ordinances.
16. If personal cultivation is occurring in the same residence as 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.
17. No more than six (6) cannabis plants of any type may be cultivated at a 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.

18. All applicants for a personal or primary caregiver non-commercial registration pursuant to this Chapter shall prove the Planning Department with:
 - a. A complete application, the mandatory form and content of which shall be developed by the Planning Department and posted on its website.
 - b. 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.
 - c. 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
 - d. The indemnification agreement required under 17.95.110, which shall be on a form provided by the Planning Department.
 - e. Any other information required to complete the application form required under Subsection 17.95.060.A.1.
 - f. 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.

17.95.050 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) 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 runoff; 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 former 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.

17.95.060 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. 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 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 shall be jointly and severally liable for all resulting administrative fines and for any and all actual costs of enforcement 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.

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 non-medical 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.
- N. 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.

- O. 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.
- P. 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.
- Q. 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.
- R. 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.

- S. 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.
- T. A significant number of registration applications for the 2016 cultivation season remain unprocessed to date, and now a second cannabis harvest has concluded.
- U. The knowledge that County staff is overwhelmed by the application burden will likely incentivize those whose sites or whose criminal background 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.
- V. 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.
- W. 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.
- X. 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.
- Y. 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.

- Z. 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.
- AA. 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.
- BB. 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 a ban on most commercial cannabis businesses within the County.
- CC. 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.
- DD. The prohibition of commercial cannabis cultivation in the unincorporated area of Calaveras County is necessary to protect the health, safety, and well-being of the County, its residents and its environment. Furthermore, comprehensive regulation of the premises used for non-commercial cannabis cultivation is

necessary to protect the health, safety, and well-being of the County, its residents and environment by reducing risks associated with criminal activity, degradation of the natural environment malodorous smells, and electrical fire hazards.

- EE. As cannabis plants begin to flower, and for a period of approximately two months or more during the growing season, they produce an extremely strong odor that is offensive to many people and detectable well 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.
- FF. Comprehensive prohibition of 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.
- GG. Illegal, unregulated outdoor cannabis cultivation, especially within the foothills, is negatively impacting 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. Express prohibition of outdoor cannabis cultivation is necessary to reduce the risks of these impacts.
- HH. 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.
- II. 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.

- JJ. Large-scale unregulated 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.
- KK. 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 in providing access to cannabis for ill residents.
- LL. The immunities from certain prosecution provided to qualified patients, their primary caregivers, and medical and recreational users under State law to cultivate cannabis plants does 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.
- MM. 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 the State of California, or the United States of America.
- NN. 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.

- OO. 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”.
- PP. 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.”
- QQ. While California Health and Safety Code §11362.777 declares cannabis cultivation an “agricultural product” for purposes of the Department of Food and Agriculture’s Medical Cannabis Cultivation Program and MCRSA, it also expressly prohibits cannabis cultivation statewide in the absence of “a license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city, county, or city and county in which the cultivation will occur”. State law regulates cannabis differently than it does other agricultural products, and it allows counties to do the same.

SECTION 4: CEQA FINDINGS

The Board of Supervisors of the County of Calaveras certifies that the Environmental Impact Report prepared for this ordinance has been completed in compliance with CEQA, that the Final Environmental Impact Report was presented to the Board of Supervisors and the Board of Supervisors has reviewed and considered the information contained in the Final EIR, and that the Final EIR reflects the County’s independent judgment. Further, the Board of Supervisors hereby adopts the Findings of Fact, which

are attached hereto as Exhibit A and incorporated by reference.

SECTION 5: 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 _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

Chair, Board of Supervisors

ATTEST:

DIANE SEVERUD, Clerk of the Board of Supervisors, Calaveras County,
California
